Human Rights in Georgia

Report of the Public Defender of Georgia

first half of 2006

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Contents

2008

INTRODUCTION

BRIEF OVERVIEW OF THE SITUATION

The report on the human rights situation shall be submitted to Parliament by the Public Defender twice every year, as provided for by Article 22 of the Law on the Public Defender of Georgia. This Report contains an analysis of the human rights situation in Georgia for the first half of 2006, describes the violations found in the reporting period, and provides recommendations on measures to be taken with a view to remedying the situation.

Creation of the Public Defender's Institution under the 1995 Constitution and adoption of the Organic Law on the Public Defender of Georgia in 1996 led to the establishment of a national mechanism for the protection of human rights founded on traditions and basic principles of European Ombudsman's institutions. Since 1996, the Public Defender's Office has provided an effective leverage for the protection of human rights in Georgia, as corroborated by numerous interventions by PDO, as well as increased trust by the public.

It is important to note that over the reporting period the PDO, in conjunction with international and local experts, prepared a package of draft changes and amendments to the Law on the Public Defender. The changes to be made to the Law stem from the current situation in the protection of human rights and aim to better specify the Public Defender's functions, thus leading to better effectiveness of the institution. Draft changes were submitted to Parliament for consideration at its spring session.

Preparation of legal proposals and recommendations on statutory acts submitted to Parliament for consideration constitutes an important part of the work carried out by the Public Defender's Office, and is covered in a special chapter of the Report.

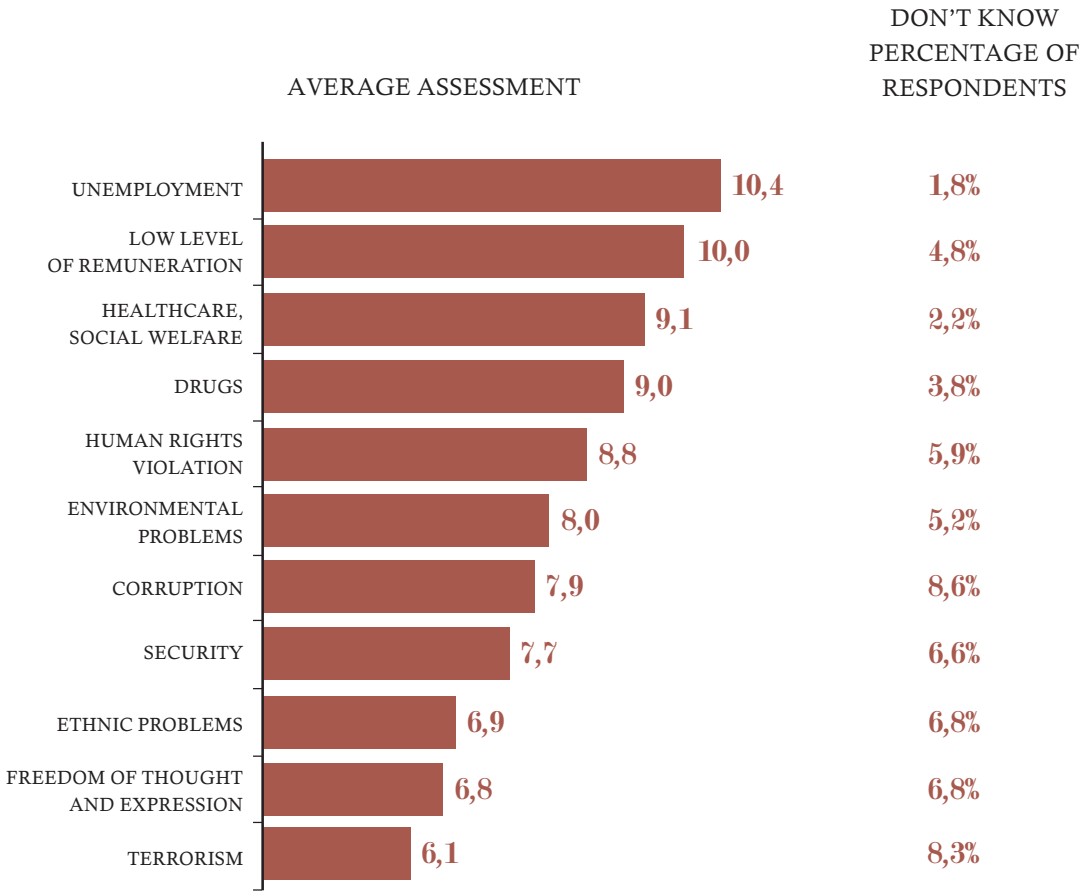
The Public Defender's Office seeks to promptly follow on all facts of human rights violations. As a result, the public trust and credit given to the PDO has increased considerably.

The sociological survey conducted by the Business Consulting Group (BCG) within the framework of the UNDP sponsored Public Defender's Office Support Project gives an idea of the attitude of the public to the issue of human rights protection in Georgia. The survey covered 3500 respondents from 407 reference points in various regions of Georgia, including representatives of executive, legislative and judiciary bodies, NGOs and the me-

2006

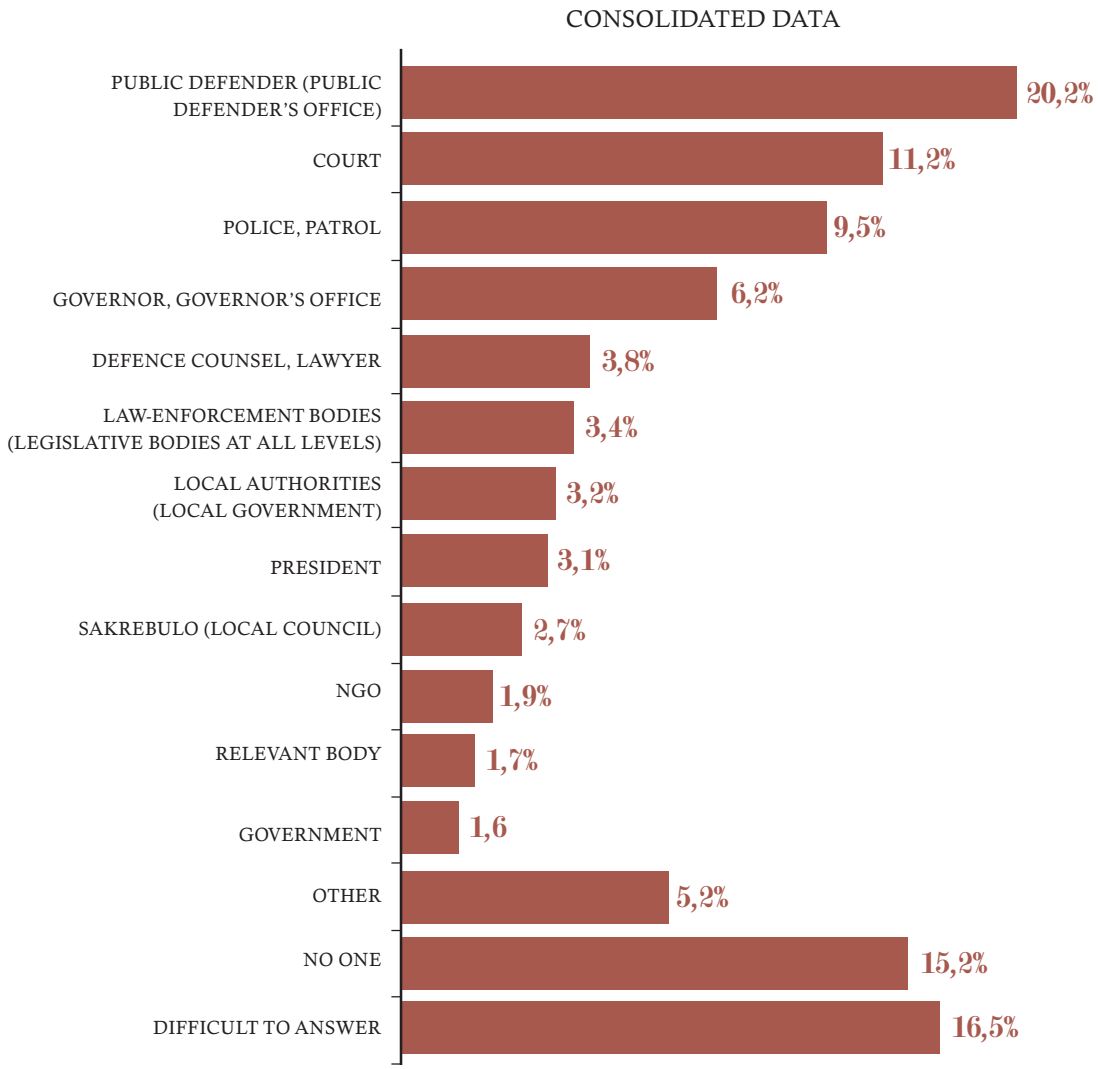
dia. The survey helped to identify problems of particular concern for the public. Most of the respondents see the main problem in prevailing socio-economic predicament in the country.

PLEASE, ASSESS EACH OF THE PROBLEMS LISTED BELOW ON 1-11 SCALE, WHERE '1' MEANS "ABSOLUTELY INSIGNIFICANT" AND '11' MEANS "VERY SIGNIFICANT"



Answers to the question "Whom would you apply to in case your rights are violated?" looked as follows:

WHOM WOULD YOU APPLY TO IN CASE YOUR RIGHTS ARE VIOLATED?



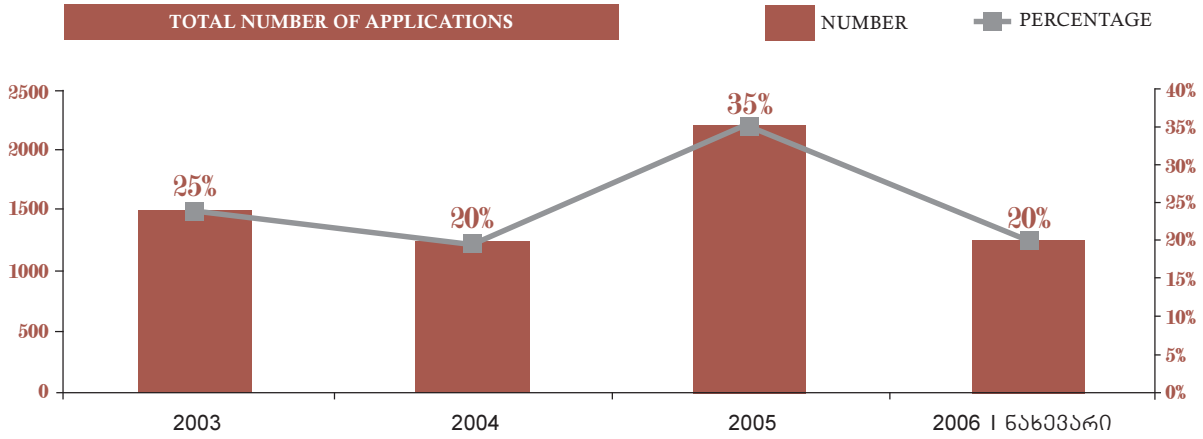
NOTE: RESPONDENTS COULD INDICATE SEVERAL OPTIONS; HENCE, THE SUM TOTAL IS GREATER THAN 100%.

In order to get a clear picture of the work carried out by the Public Defender in the reporting period, we tried to identify the main trends and tendencies in the protection of human rights, as well as attitudes of the public to the PDO. In order to consider the main strands in the PDO's work, the data for the earlier half of 2006 were compared with the results of 2005, as well as 2003 and 2004. Comparative analysis has demonstrated certain changes both in statistics and dynamics, surfaced new tendencies (positive and negative aspects), and pointed to ways of addressing the problems, as well as future prospects.

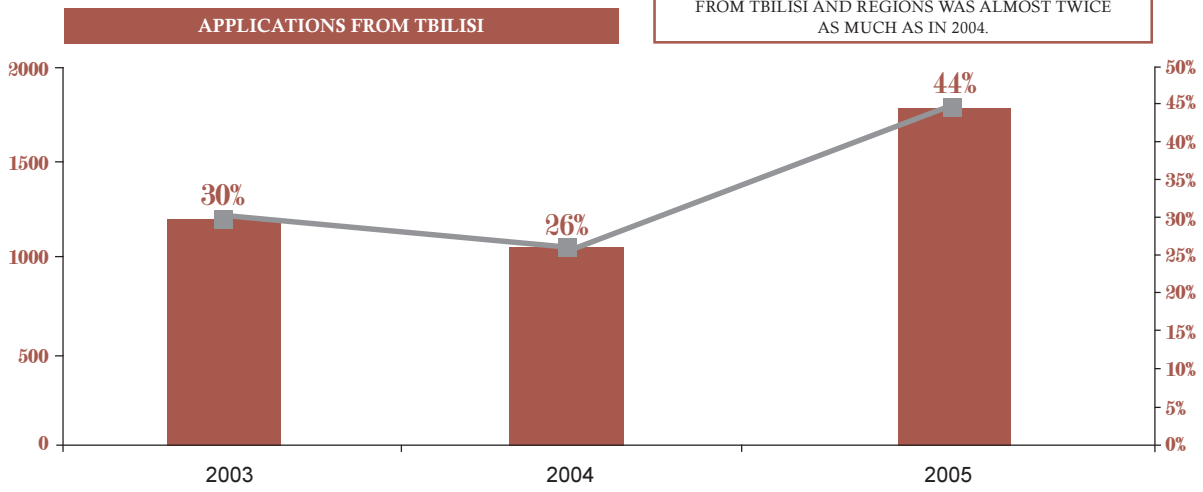
One of the important elements in PDO's activities is its follow-up work in response to citizens' complaints and applications addressed to the Public Defender – complex, versatile and time-consuming work.

The diagram below shows the dynamics of applications addressed to the Public Defender's Office in 2003-2006.

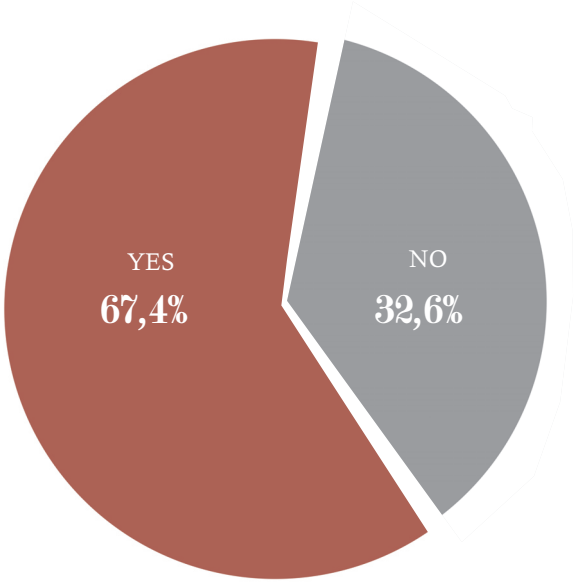
NUMBER OF APPLICATIONS ADDRESSED TO THE PUBLIC DEFENDER'S OFFICE (2003-2006)



IN 2005, THE NUMBER OF APPLICATIONS BOTH FROM TBILISI AND REGIONS WAS ALMOST TWICE AS MUCH AS IN 2004.



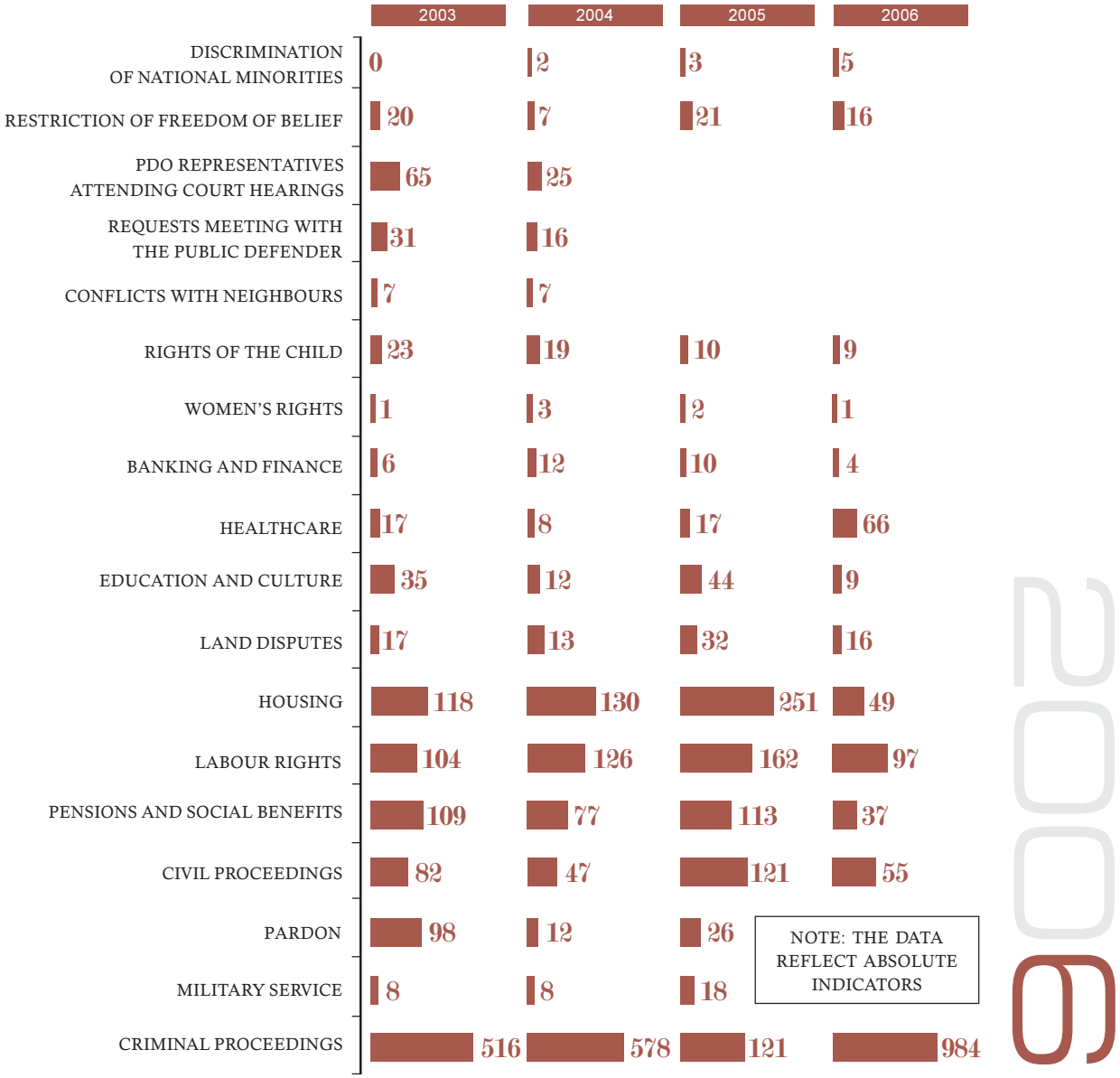
HAVE YOU EVER HEARD OF THE PUBLIC DEFENDER'S OFFICE?



The main line of reasoning for respondents satisfied with the PDO is the enhanced work of the Ombudsman over the past period (63.6%). Respondents showing criticism say that the PDO is not fully independent, or it starts a case but fails to complete it. They think that the institution is weak, as it lacks leverage necessary for adequately addressing an issue.

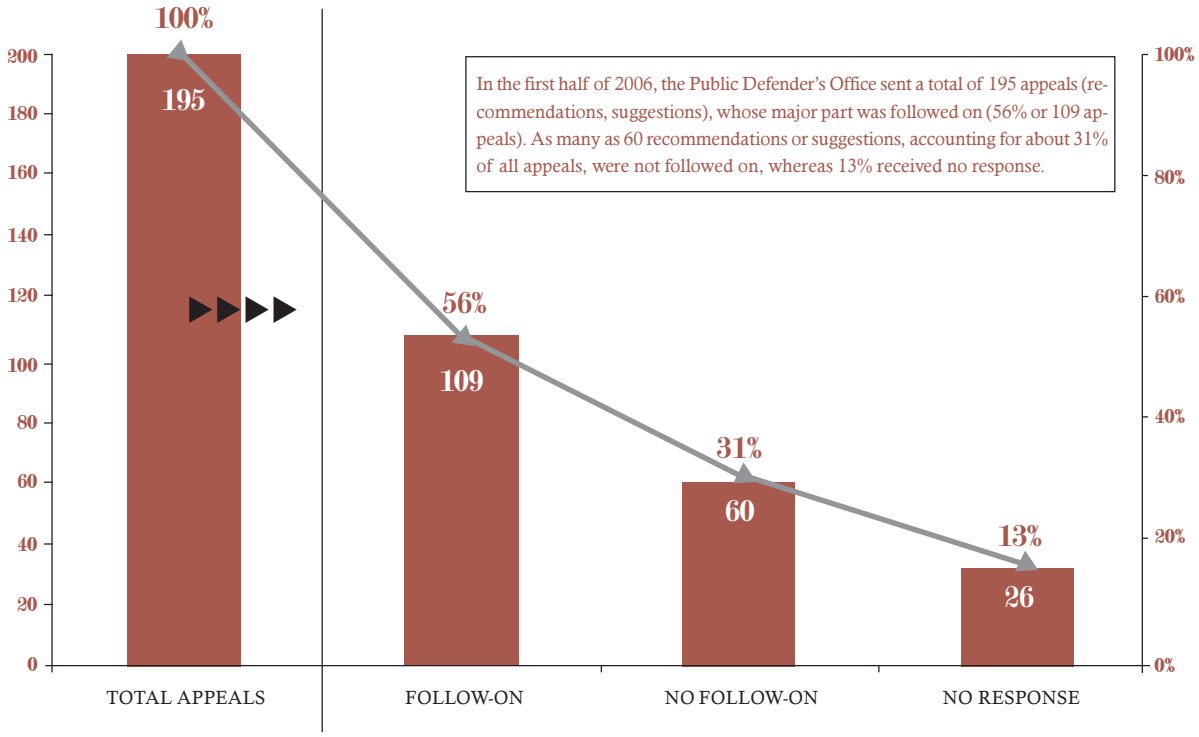
The diagram below shows the break-up of applications submitted to the PDO in the first half of 2006. As many as 116 out of 683 applications (i.e. 16.9%) are collective, whereas most of applications, namely 455 (i.e. 66.4%) are written by men. As for thematic break-up, most of the applications received by the PDO in 2003-2006 concerned the rights related to justice, as well as social, economic and cultural rights (2248 and 1872 applications, respectively), while only an insignificant proportion (54 applications) concerned issues related to freedom and equality.

NUMBER OF CONTENT-SPECIFIC APPLICATIONS BY YEARS (2003-2005)



The diagram shows the same indicators (by content) for the first half of 2006, to be augmented by applications to be submitted before the end of the year. Differently from previous years, the first half of 2006 showed an increase in the number of applications concerning property rights, totalling 48 applications.

RESULTS OF APPEALS SENT BY THE PUBLIC DEFENDER'S OFFICE IN THE FIRST HALF OF 2006



It is important to note that the reporting period demonstrated increased communication between the PDO and government authorities, as well as Parliament, NGOs, media representatives and, what is most important, the general public. This in turn has led to enhanced work of the PDO, wider scope of interventions, as well as their quality and effectiveness.

The Public Defender found many different violations of human rights by authorities, as described in the respective chapters of this Report. This calls for radical measures to be taken in order to improve the situation. To this end, the Public Defender's Office has prepared suggestions, special conclusions and recommendations presented in this Report.

THE JUDICIARY AND HUMAN RIGHT

Citizens frequently address the Public Defender and point out illegality of decisions taken by courts. As is known, the Public Defender cannot interfere into judicial proceedings and, hence, given the principle of judicial independence, the Public Defender of Georgia seeks not to interfere into the activity of courts, differently from other countries where the Ombudsman (Public Defender) oversees the activity of courts. To illustrate:

In **Sweden**, the Ombudsman ensures independence of courts in the discharge of their powers. The Riksdag Ombudsman or Chancellor of Justice can file a criminal case against a member of the Supreme Court or the Supreme Administrative Court for offence or wrongdoings committed by them in discharge of their official duties, lobby for a dismissal of above persons or termination of their powers and, if and where necessary, request their medical examination.

In **Denmark**, the Ombudsman enjoys the right to summon to court as a witness any person he deems important for the investigation he conducts.

In **Poland**, the Human Rights Commissioner (Ombudsman) can make a submission on commencement of administrative proceedings on a case; appeal decisions made by administrative court and take part in such proceedings as a procurator; in accordance with the rules and regulation defined in special ordinances, he can motion for penalties and abrogation of court decisions, already in force, on cases of dereliction and official misconduct, and make a special appeal against the final court decision that has already entered into force (Article 14 of the Law on Human Rights Commissioner).

In **Finland**, the Parliamentary Ombudsman has the right to raise an issue concerning the responsibility of the Chairman of the Supreme Court and the Chairman of the Supreme Administrative Court.

In countries of Asia, too, the Ombudsmen enjoy broad competences in respect of courts.

In **Australia, India, Fiji, Mongolia** and **Nepal**, the Ombudsmen have the right to summon witnesses to court and hear them; to interfere into and take part in court proceedings on cases involving human rights.

It should be noted that the Public Defender of Georgia is not authorised to take part in, or interfere into judicial proceedings; to summon witnesses to court or take on the function of a counsel for pros-

2 THE SITUATION OF PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN THE SPHERE OF JUSTICE AND POWER STRUCTURES

2003

ecution. The maximum right the Public Defender enjoys in relation to courts is to make suggestions to the High Council of Justice concerning disciplinary responsibility of judges, where there is a breach of law. Notably, none of the suggestions concerning disciplinary penalties against judges made by the Public Defender has so far been acted upon, though breaches of law by judges occurred **presumably**. Over the first half of 2006 alone, the Public Defender addressed the High Council of Justice with 13 suggestions concerning the breach of law by judges. Of these, seven suggestions were disagreed with, while proceedings commenced on five suggestions. The following case is of particular interest:

Ramishvili-Kokhreidze Case

The Chamber of Criminal Cases of the Tbilisi Court of Appeal, presiding judge Nana Chichileishvili, examined the criminal case of the accused Shalva Ramishvili and David Kokhreidze. In the course of proceedings the prosecutor motioned an objection to defence counsels Gocha Svanidze and David Korkotashvili, allowed by the judge. In the ruling issued, the judge invoked Article 107 Para. (e) of the Criminal Procedure Code providing **for the granting of defendant's request to conduct his own defence** as a grounds for exclusion of a legal counsel from the proceedings.

True, in the first instance proceedings the defendants renounced their right to defence and requested to conduct their own defence. However, at the appellate stage, they requested that their rights be protected by defence counsels Gocha Svanidze and David Korkotashvili, which right is granted under Article 78 of the Criminal Procedure Code providing that the defendant can change his position and solicit his defence again, while the solicitation must be allowed unless its purpose is to drag on the trial, or otherwise impede the proceedings for the other party.

The above ruling by the judge led to an infringement of the defendants' right to defence guaranteed by the Constitution of Georgia, international treaties and universally recognised principles and norms of international law **(the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms).**

The Public Defender made a suggestion to the Secretary of the High Council of Justice concerning the disciplinary responsibility of judge N. Chichileishvili, with no final reaction made known so far.

Despite the fact that the principle of judicial independence is guaranteed by the Constitution and other legal acts of Georgia, and any intervention into judicial activity is impermissible and punishable by law, it is not infrequent that this principle is violated, with ensuing pressure being brought to bear on judges. Judges, not infrequently either, satisfy prosecutors' motions and submissions, thereby grossly impairing the defendant's and accused party's rights, while it is their responsibility to control that their rights are protected.

Ghia Tetradze Case

The Tbilisi Regional Court issued a verdict of not guilty in the case of Ghia Tetradze, appealable by an opposite party within 14 days. The prosecutor of the Bolnisi district, G. Kapanadze, submitted a cassational appeal against the Regional Court's judgement after it had already entered into effect .

The cassational appeal was referred to the Supreme Court. The Supreme Court quashed Ghia Tatradze's acquittal and relegated the case for reconsideration to the Dmanisi District Court.

As the judgement of the Tbilisi Regional Court had already been effective, the court was not authorised to admit the prosecutor's cassational appeal and refer it for consideration to the Supreme Court. Neither should the Supreme Court examine the cassational complaint.

Proceeding from the above facts, the Public Defender addressed a suggestion to the High Council of Justice to consider the issue of disciplinary responsibility of the judges concerned. The High Council of Justice notified the Public Defender of the commencement of proceedings.

T. Sharashenidze Case

T. Sharashenidze was accused of an offence and remanded to custody pending a trial where he spent 9 months. The criminal case was later dismissed, and T.Sharashenidze was released from pre-trial detention. In 2005, the case was reopened. The prosecutor addressed the court with a motion concerning T.Sharashenidze detention, which was satisfied by a judge of the Tbilisi City Court. The court decision was retained by a judge of the appellate court.

Thus, T. Sharashenidze, who had spent in pre-trial detention 9 months in 1994, was again remanded to custody for the same offence, which constitutes a breach of the requirement of the Criminal Procedure Code of Georgia, namely, that the term of holding an accused person in custody for one and the same offence shall not exceed 9 months (old version of CPC).

The Public Defender addressed a suggestion to the High Council of Justice to consider the issue of disciplinary responsibility of the judges concerned. The High Council of Justice notified the Public Defender of the commencement of proceedings.

Sandro Girgvliani Case

Description

On January 28, 2006 a tortured body of Sandro Girgvliani was found on the outskirts of Tbilisi, in a forest nearby the Okrokana cemetery. His disappearance was made known to law enforcement bodies by Levan Bukhaidze, Girgvliani's friend, who had accompanied his friend on January 27 in the evening.

On January 2006, at 00.30 at night, Sandro Girgvliani and Levan Bukhaidze left the Kaiser bar after having parted with their friends and went by a taxi to the Sharden bar. In about half an hour they left the Sharden bar and walked along Leselidze street. At the bar, Sandro Girgvliani had an argument with his female friend Tatia Maisuradze, who was sitting there with her companions and moved to Gigvliani's and Bukhaidze's table to talk to them. Later it transpired that Tatia Maisuradze's companions were top-level officials of the Ministry of Internal Affairs, among them: Guram Donadze, head of Information and Public Relations Division; Data Akhalaia, chief of the Constitutional Security Department: Vasil Sanodze, chief of the General Inspection, and Oleg Melnikov, official of the Ministry of Internal Affairs.

Shortly after Sandro Girgvliani and Levan Bukhaidze left the scene, they were approached by a Mercedes class vehicle with unknown men inside, who got off the car, said that they were police officers, took mobile phones away from Sandro Girgvliani and Levan Bukhaidze's, stuffed them into the car and took them away. Later the victim, Levan Bukhaidze, found out they were taken to Okrokana. At the Okrokana cemetery the two friends were dragged out of the car, undressed, brutally beaten and assaulted. According to L. Bukhaidze, during the beating Sandro Girgvliani managed to escape and hide. After some time, the kidnappers stopped beating L.

Bukhaidze and left him in the forest. L. Bukhaidze could not find his friend S. Girgvliani. Neither could he find his clothes that were taken away by the kidnappers. After some time, Levan Bukhaidze reached a filling station and informed the police about the incident. On January 28, in the morning Girgvliani's half-naked body was found by his friends near the Okrokana cemetery with multiple injuries inflicted as a result of physical abuse. Levan Bukhaidze was first summoned to the City Police Department as a victim, then he was regarded as a suspect; however, by the end of the day he was again recognised as a victim and released.

Later, after the Imedi TV station aired a journalist investigation, one part of the public and Sandro Girgvliani's relatives indicated that top-level officials of the Ministry of Internal Affairs, namely: Guram Donadze, head of the Information and Public Relations Division; Data Akhalaia, chief of the Constitutional Security Department; Oleg Melnikov, his deputy, and Vasil Sanodze, chief of the General Inspection, could have been involved in the murder. They expressed their distrust towards the investigation conducted by the Ministry and demanded that the investigation be conducted by the Prosecutor General's Office.

Following the investigation, on 6 March, four officers were arrested on suspicion of killing Sandro Girgvliani:

- Geronti Z. Alania, chief of the first unit of the Constitutional Security Department of the Ministry of Internal Affairs;
- Avtandil D. Aptsiauri, officer of the first unit of the Constitutional Security Department of the Ministry of Internal Affairs;
- Mikheil J. Bibiluridze, officer of the first unit of the Constitutional Security Department of the Ministry of Internal Affairs; and
- Alexandre O. Gachava, officer of the first unit of the Constitutional Security Department of the Ministry of Internal Affairs.

The detained suspects said they had a spontaneous row with the victims at the Sharden bar exit. However, only G. Alania admitted his guilt, and only in respect of the offence stipulated in Article 33 of the Criminal Code (exceeding authority). This offence was imputed upon him as a guilt for illegal use of the vehicle sealed up by the Ministry of Internal Affairs.

Despite the arrest of the suspects, the case became highly publicised, as the public voiced suspicions that the motive for the crime had been an altercation between Sandro Girgvliani and the Ministry's high-ranking officials, or an argument between Tatia Maisuradze and Sandro Girgvliani.

The preliminary investigation was completed on June 21 and the case was sent to court for trial. G.Alania, A.Aptsiauri, M. Bibiluridze and A. Gachava were tried on criminal charges under Article 119; Article 143, Part 2 (a), (g) and (t); Article 333, Part 1 and Article 187, Part 1.

Court hearings into the murder case of Sandro Girgvliani started on June 27, setting a precedent in the Georgian system of justice, as the case, despite its complexity and significance, was closed on July 6 after only six court sessions. It took the court only nine days to examine the case, with the defendants found guilty of the imputed crime. G. Alania was sentenced to 8 years of imprisonment, while the remaining convicts – to 7 years of imprisonment each.

Sandro Girgvliani's case seized intense public attention from the opening of investigation, as the involvement of top-level officials of the Ministry of Internal Affairs made this case a particularly high-profile one.

The victims' defence counsels repeatedly complained of obstacles they faced in getting access to the case-files. In most cases these complains were well justified. Partiality became even more marked in the course of a public judicial examination. Most of appeals and motions made during the trial by the victim's legal successor and defence counsels were turned down. Notably:

- In the course of the trial, the defendants were convoyed by masked persons who were at the same time shielding them during the court sessions, disallowing their faces to be seized by video or photo cameras. Neither was it possible for session attendees to see the defendants' faces or hear their voices.
- On June 27, 2006, at the first session of the court, Sh.Shavgulidze, a defence counsel of the victim's successor, solicited for a postponement of the judicial examination by at least three days. He grounded his petition on the following facts:

The defendants and their attorneys could have access to the case-files during five months, i.e. for the duration of preliminary investigation, while the aggrieved party was only given access to the case-files after the preliminary investigation completed, i.e. for the duration of 5 days, which was grossly insufficient for adequate familiarisation with the materials contained in four volumes. Sh. Shavgulidze's solicitation was supported by the defence counsel of the victim, Levan Bukhaidze. The solicitation was challenged by the defendants' attorneys and the prosecutor. Under Articles 15, 437 and 439 of the Criminal Procedure Code, criminal proceedings shall be conducted in accordance with the principles of equality of arms and adversarity of the parties. However, the court turned down the solicitation, claiming that in the course of preliminary investigation the victim's legal successor's interests were represented by the same counsels, and alleged that they had adequate time to familiarise themselves with the case-file. Notably, the same ruling stated that in the period between sessions they would have time to get better familiar with the facts.

Under CPC Articles 69 and 84, respectively, a victim or his legal successor, or a legal counsel shall have the right of full access to the materials of a criminal case after the case is sent with the indictment to court. In the given circumstances, the case comprising four volumes was sent to court on June 21. Five days could in no way be seen as an adequate time span for the counsels to familiarise themselves with the facts. Therefore, the judge's statement to the effect that that in the course of preliminary investigation the victim's legal successor's interests had been represented by the same counsels who could have familiarised themselves with the case file is unfounded. Moreover, the judge further added that the counsels would have more time between sessions to better familiarise themselves with the facts, thus asserting that it was quite possible for the aggrieved party not to be familiar with the case-file. At the same time, again according to the judge, that was not of any special importance. It is to be noted that the examination of the case completed within a remarkably short span of time, with only one day allowed between the court sessions. Article 6, Para 3 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms explicitly lays on the state (in the given case - on the court) an obligation to ensure that everyone charged with a criminal offence has the minimum rights, including the right to have adequate time and facilities for the preparation of his defence. We believe that the same standard of rights should be enjoyed by the aggrieved party that had much more problems with the investigating bodies in this particular case than the defendants.

After the above solicitation was turned down, Sh.Shavgulidze stated: "Since the court ruling denied us additional three days to get adequately familiar with the case-file, at this session we are unable, under CPC Article 468, to make a solicitation on procurement of additional evidence. Therefore, such motions will be made at a later stage."

- At the court session held on July 3, Sh.Shavgulidze, the defence counsel of the victim's legal successor, solicited for not publicising the testimony given by the witness, A.Mikautadze, in the course of preliminary investigation, as witness A.Mikautadze was outside Tbilisi at that time. He was returning to Tbilisi in two days and ready to testify before the court, which he asserted in a conversation with Sh.Shavgulidze. According to Sh.Shavgulidze, the need to hear the witness stemmed from a difference between testimonies given by A.Mikautadze and G. Gobejishvili. Counsel Shavgulidze's solicitation was supported by the defence counsel of the victim, Levan Bukhaidze, but challenged by the defendants' attorneys and the prosecutor. The court rejected the solicitation. In this case, too, the solicitation made by the victim's defence side aimed to better understand the case and clear up doubtful and unclear details. The judge decided it unnecessary to wait for two days to hear the witness, as, in his opinion, it was more important to promptly close the case than to properly conduct the judicial examination.

- During the court session, counsel Sh.Shavgulidze solicited for publicising a video recording of the on-site verification of the evidence given by L.Bukhaidze; a video recording of the on-site verification of the evidence given by witness Eliashvili; the testimony given on March 22 by witness Gobejishvili; video recording of the identification lineup of Aptsiauri, Bibiluridze and Gachava conducted on March 6, the identification of Melnikov on March 8; records of additional interrogations of the victim L.Bukhaidze conducted on March 6 and 10; CD of surveillance camera footage made on January 28 at the Tbilisi-Kojori highway near B. Patarkatsishvili's house; video recording of the interrogation of witness Tatia Maisuradze on March 13; and a map showing Sandro Girgvliani's movements.

- The prosecutor did not support the motion claiming that it was unfounded, as did the defendants and their attorneys.

- After the prosecutor made his position known to the court, Sh.Shavgulidze addressed the court to explain the reasons for publicising the said video materials. He stated, *inter alia*, that during the interrogation one of the witnesses was getting instructions by phone, which must have been recorded on video. He said the reasoning behind the filming of testimonies was not clear in case they were not publicised if demanded by a party.

  The court satisfied the motion only partially, and publicised the records of the on-site verification of the evidence given by witness Eliashvili, and the video footage made on January 27, 2006.

  One cannot qualify the refusal to grant the above solicitation as directly breaching the law. However, clearly, in case one of the parties questions the investigative action's conformance with the procedural law, with the facilities as well as evidence available to have it verified, refusal to have them publicised is indicative either of the judge's intention to cover them up, or to have the case examined summarily, suggesting that proper judicial examination is seen as having only a minor importance.

- After denial of the above motion, Sh.Shavgulidze, the defence counsel of the victim's legal successor, entered another motion. He stated that since the court refused to publicise the evidence showing procedural breaches and Girgvliani's route, it was clear that the court could not be considered as independent and impartial. He held that refusal by the court to grant the request clearly pointed to the partiality of the court and the judge's biased attitudes, and demanded a disqualification of the judge. The motion was supported by defence counsels M. Ramishvili and L. Avaliani, as well as by I. Enukidze, the victim's legal successor and by the victim, L. Bukhaidze.

  Prosecutor M. Mosulishvili held that the motion was unfounded. The prosecutor's position was shared by the defendants' attorneys. Following the deliberation, the court turned down the motion with a motive that denial of a motion could not be a cause for disqualification of a judge.

- During the court session, defence counsel Sh.Shavgulidze made another motion requesting a disqualification of the prosecutors, Manana Mosulishvili and Shota Gengashvili. He cited the prosecutors' position concerning the motion requesting the publicising of evidence attached to the case by the procuracy, namely, their rejection of the said motion as a ground for disqualification. The defence counsel pointed out that the attachment of video materials to the case by the Tbilisi Prosecutor's Office stemmed from their special significance in the context of the case before the court. According to Sh.Shavgulidze, failure by the prosecutors to support the motion limited the possibilities of conducting the defence.

  The prosecutors and defendants again refused to support the motion as unfounded. The court turned down the motion made by the defence counsel, Sh.Shavgulidze.

- The defence counsel L. Avaliani filed a written petition requesting the MAGTICOM and GEOCELL cell telephony companies to provide lists of telephone calls made by the defendants and other attendees

of the part at the Sharden bar, with indication of transmission towers (the case only contained the respective lists of G.Alania, D.Akhalaia and G.Donadze). The petition was supported by the counsel Sh. Shavgulidze, the victim L. Bukhaidze and Irina Enukidze. The prosecutors challenged the petition reasoning that the culpability of defendants charged with a criminal offence was proved by the totality of evidence. As far as other attendees of the party are concerned, according to the prosecutors, the investigation had no grounds to question their testimony, hence, no grounds to allow the petition. The defendants and their attorneys again supported the prosecutors, reasoning that the list of telephone calls contained in the case provided for exhaustive information.

It is to be noted that the investigative actions raise doubts, too, as the investigative body only procured the list of telephone calls of the defendant G. Alania, with indication of telephony towers, while refusing to conduct the same investigative action in respect of the other defendants. Similarly, from among those present at the party at the Sharden bar, the investigative body only procured Guram Donadze's and Data Akhalaia's lists of telephone calls, while neglecting others. The court could have allowed the counsel's petition, though it has no obligation to do so. Such issues are decided by a judge upon his/her inner conviction and judgement, however the judgement can become a target for criticism.

- Following the rejection of the above petition, counsel Sh. Shavgulidze again motioned for disqualification of the judge, which was turned down by the court.

- The victim's defence counsel, L. Avaliani presented to the court a sealed copy of the victim's, L. Bukhaidze's, medical record and solicited for its attachment to the case-file. The record described the victim's health status in the period between February 1 and March 2, 2006. According to the record, the victim had a closed injury of the scull and concussion of the brain. The defence counsel also requested that additional forensic examination be conducted to determine the degree of injuries inflicted on L. Bukhaidze.

  Prosecutor M. Mosulishvili held that the solicitation could not be granted, as the case already contained a forensic report dated 31 January 2006, according to which the injuries inflicted on L. Bukhaidze fell under the "light" category. According to the prosecutor, neither the victim not his counsel had ever questioned the forensic report; they could have motioned for an additional examination in the course of preliminary investigation, which they never did. Hence, the prosecutor challenged the solicitation made by the defence.

  The defendants' attorneys alleged that the request on conducting a new forensic examination aimed at dragging out the judicial examination, and they supported the prosecutor's position.

  Following a deliberation in the courtroom, the court rejected the solicitation reasoning that the victim could have requested an alternative examination and presented an alternative forensic report to the court. The court also reasoned that L. Bukhaidze took part in the investigative actions conducted in the course of preliminary investigation.

  It is true that the victim had the right to appoint an alternative examination; however, failure to exercise the right should not have caused the court to deny him an alternative examination.

- Levan Bukhaidze asked the court to hear him again, as he was willing to give additional evidence. He told the court that defendant M. Bibiluridze was not at the scene of the crime and that instead of M. Bibiluridze, Oleg Melnikov was the fourth attacker. He stated that Oleg Melnikov showed a particular aggressiveness. When L. Bukhaidze was giving his evidence, the courtroom seemed somewhat confused. The detained persons were approached by two strangers, one of them wearing an employment certificate of the procuracy. One of the two persons was speaking on a mobile phone, giving information to the defendants and furnish-

ing by phone the information obtained from them. The stranger's behaviour arrested the attention of those present. While those in attendance were prevented from seeing the defendants, the strangers were not only allowed to talk to them, but also to pass over to them the information obtained by phone. Whilst even a minor exclamation or noise from those present automatically resulted in the application of CPC Article 208 by the judge, the latter displayed no reaction to the strangers' behaviour. This was pointed out by Tinatin Khidasheli present in the courtroom. The judge responded she could see no breach of the law, and instead of looking into the facts she chose to fine T. Khidasheli for 100 GEL.

Following Bukhaidze's testimony, Girgvliani's defence counsel Shalva Shavgulidze made another motion, this time based on a different ground, requesting the list of telephone calls, which was again turned down by the judge on a motive that the court had already considered a similar motion, and Bukhaidze's testimony did not reveal any new facts. It is to be noted, however, that Levan Bukhaidze's new testimony denied involvement of one of the defendants in the murder, and in order to gain conclusive evidence on newly discovered facts the court should have at least requested the list of telephone calls on M. Bibiluridze's mobile and looked at his route as indicated by mobile telephony towers. In this case too, the judge evaluated the evidence based on his inner conviction, hence his action cannot be considered as directly breaching the law; however, he could have taken a fairer and a better justified decision.

- It is important to note one more aspect. Under the norms in force at the time of investigation, it was against the law to place in one cell defendants charged with one and the same crime. This notwithstanding, all the four detained suspects were kept in one cell, and penal authorities asserted that there was no violation of the law.

The Public Defender's Office was closely following both the preliminary investigation and judicial examination of the case. Under the law, the Public Defender cannot interfere either in pre-trial or judiciary inquiry, but he can examine and make his own judgement as to the legality and fairness of the proceedings.

We believe that the preliminary investigation into G.Alania's, A. Aptsiauri's, A. Gachava's and M. Bibiluridze's involvement in the crime should have been conducted, apart from other charges, also on charges of offence stipulated in Article 144 (1) of the Criminal Code (Torture). The act of torture, as defined in the said article, is absolutely identical to the crime committed by the defendants. More specifically, Article 144 (1) of the Criminal Code defines the crime of torture as "subjecting a person, his/her close relatives or financially or otherwise dependent persons to such conditions, such treatment or punishment which by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose to obtain information, evidence or confession, to intimidate, coerce or punish a person for an act, he/she or a third party committed or is/are suspected of having committed".

The case in question clearly demonstrates such treatment which by its nature caused severe physical and mental pain and suffering to a person, and had the purpose to intimidate and punish him for an act he (in the case of Sandro Girgvliani) or a third party (in the case of Levan Bukhaidze) committed or were suspected of having committed. It should be emphasised that the act was committed by officials (the defendants were employees of the Ministry of Internal Affairs) acting in group, with the use of their official position (M. Bibiluridze was carrying arms and the defendants were ready to "arrest" the victims that were actually deprived by them of their liberty) against two persons. Hence, the crime they committed should have been qualified under Article 144 (1), Part 2 of the Criminal Code of Georgia.

Regrettably, the investigative body chose otherwise, and accused them of committing other, lesser crime, which was later incriminated on them.

Under Article 15 of the Criminal Procedure Code of Georgia, criminal proceedings (including a judicial process) shall follow the principle of equality of arms, and be adversary in nature.

Based on the equality of arms principle, the parties are entitled to present evidence, take part in the investigation, make a motion, raise an objection, and express their view on any issue related to the criminal case in question.

Adversary character of proceedings at the pre-trial investigation stage shall be provided for as follows: the function of bringing a charge shall lie on a prosecutor, victim, civil plaintiff and his/her representative; whereas the right of defence shall be given to a defendant, legal counsel, respondent and his/her representative.

In the Girgvliani case, the prosecution and the defendants' defence sided together to reach a desired outcome. To illustrate this, suffice it to say that on all significant motions and solicitations raised during the trial, the prosecution and the defence side of the persons charged with the killing of Sandro Girgvliani had an identical position. In reality, in the course of judicial examination of the case the victim, the victim's legal successor and their counsels had to undertake the function of accusation.

Interestingly, the motions raised at the trial were satisfied only if supported by the prosecutor and the defendants' attorneys. Moreover, in the course of the trial the court was doing its utmost to discredit the victim.

The court was under an obligation to create for the parties (including for the aggrieved party) adequate conditions to present evidence and have the evidence examined fully and comprehensively. Shalva Shavgulidze, the defence counsel of the victim's legal successor solicited for full and comprehensive examination of evidence attached to the case by the prosecutor's office (video footage). However, the court denied this right to the victim's side. The court is independent in its judgements; however, disregard for the Criminal Procedure Code basic principles cannot be justified by independence of the judiciary.

■

Structural reformation of the High Council of Justice is a positive development. The amendments to the Organic Law on General Courts, made on May 25, 2006, provided for increase in the membership of the High Council of Justice. Now, the High Council of Justice comprises 19 members, including: the Chairman of the Supreme Court of Georgia (*ex officio*), the Chairman of the Legal Affairs Committee of the Parliament (*ex officio*) and the Minister of Justice (*ex officio*). Also, two members of the High Council of Justice are appointed by the President of Georgia; five members, of whom four are members of Parliament, are elected by the Parliament of Georgia. Nine members of the High Council of Justice are elected by the Conference of Judges from among judges of general courts upon representation by the Chairman of the Supreme Court of Georgia.

Another very positive development is to be seen in the amendments being introduced into the Constitution, under which the judges will no longer be appointed by the President, which will be one of important safeguards for independence and impartiality in the administration of justice.

■

It is important to note the issue of proportionality to the crime of penalties imposed by judges. Not infrequently, the penalties imposed for relatively minor crimes are expressly disproportionate to a danger the crime represents for the society. For instance:

Citizen C.C. was fined by the court in the amount of 10 000 GEL on charges of storage and sales of contraband cigarettes. C.C. has 5 children, she is disabled, with a foot gangrene and breast cancer. C.C. urgently needed surgery, which she could not afford for lack of funds. She committed the offence to earn money needed for surgery, which *per se* does not justify the act; however, the judge could have imposed the minimum amount

of penalty for the offence committed – 2000 GEL, the more so as the law expressly prescribes that the court shall determine the amount of fine on the basis of the gravity of offence and financial capacity of the offender.

A similar problem is found in terms of penalties imposed on juvenile offenders. It is the responsibility of the judge to give due consideration to the minors' state of mind as they are in the process of development, they easily surrender themselves to the influence of older-age persons and often have wrongful notions on human values. They need to continue learning, be afforded better conditions for education, etc.

Juvenile Iveri Zerekidze was sentenced by court to 10 years of imprisonment for attempted murder (injuries inflicted by I. Zirekidze fell under the category of trivial, but he was given a maximum sentence). However, in other cases where crime lead to much graver outcomes, the court awards much lighter sentences. For instance, on July 28, 2006 the Tbilisi City Court approved a plea agreement reached between the prosecutor and defendants Araik and Sergo Matinyan. They were charged with a grave crime, namely, the infliction of fatal bodily harm, and sentenced to 3 years of punishment – one year of imprisonment and two years of probation (for details see the chapter on Prosecution).

It is to be noted that in the period 2005-2006, there has been not a single case where the court would relieve a juvenile offender of a criminal liability and apply coercive educational measures instead.

Not infrequently, the cases involving minors are examined by judges having no special training in pedagogy or psychology, prescribed by the law on criminal proceedings.

Lack of adequately qualified judges is harmful for the administration of justice. It is necessary to ensure serious training and retraining of judges. To this end, on December 28, 2005 the Parliament of Georgia adopted the Law on the High School of Justice. The School has already been launched and it will become fully operational from January 2007. The School will develop educational programmes and strategies, and provide for the training of trainers. It is believed that the High School of Justice will help to address the problem of inadequate qualification of judges in Georgia's judiciary system. To illustrate the problem of inadequate qualification of judges, one could look at the following case:

Zurab Shalikiani Case

On May 22, 2006, Judge Ana Gelegva of the Kutaisi City Court committed Zurab Shalikiani, born on 17 Ocotber 1988, to administrative arrest for the duration of 14 days. Shortly afterwards, the Kutaisi Court of Appeal partially changed the ruling issued in respect of Zurab Shalikiani and replaced the administrative arrest with fine.

Under Article 32, Part 3 of the Code of Administrative Offences of Georgia: "Administrative arrest shall not be imposed on pregnant women, mothers of children under 12 years of age, persons under 18 years of age, as well as invalids of categories 1 and 2."

Judge Ana Gelegva violated the relevant legal provision and committed to administrative arrest a person under the age of 18.

Since the action by the judge contained signs of offence provided for in Article 342 of the Criminal Code (neglect in the discharge of an official duty), the Public Defender recommended the Prosecutor General Z. Adeishvili to open an investigation.

The Prosecutor General's Office notified PDO of the commencement of preliminary investigation into the fact of administrative arrest of Z. Shalikiani under Article 342, Part 1 of the Criminal Code of Georgia, with no criminal liability incurred on the judge. The case in question required no investigation, as the judge should have clearly be held criminally liable, however, up until now the case is being investigated.

Compared to 2005, there is a tendency towards a decrease in the number of motions concerning the assignment of detention as a restraint measure, which is clearly a positive development. The prosecutor's office not infrequently used to enter motions for applying detention as a restraint measure, and most of them were satisfied by court. Over 2005, a total of 9962 motions on restraint measures (detention, recognizance, and bail) were made to courts, of which 9042, or 90% of all motions, concerned detention. 7159 motions for detention were granted, constituting 79% of all motions.

Over the first 6 months of 2006, a total of 8301 motions on restraint measures (detention, recognizance, and bail) were made to courts. Of these, 5868 motions, or 70% (20% less, compared to the previous year) concerned detention. It should be noted, however, that 5156 motions were granted, which constitutes about 90% of all motions - an increase compared to the previous year.

One aspect deserves special attention. Despite the fact that prosecutor's offices motion more frequently for non-custodial restraint measures, this by no means impacts the absolute number of detainees, as the total number of people kept in custody has increased dramatically.

It is advisable for courts to limit application of custodial sentences in respect of lesser crimes, which would at the same time help to solve the problem of overcrowding in penal institutions.

Notably, compared to 2005, the number of granted motions for bail and recognizance applied as a measure of restraint has increased. More specifically, 2121 of 2212 motions for bail and 216 of 221 motions have been granted.

A brief note on the statistics of acquittals is in order. Compared to 2005, the number of judgements of acquittal has decreased: if in 2005 the first instance general courts awarded the verdicts of not guilty on 64 cases and in respect of 79 persons, in the earlier half of 2006 the judgements of acquittal were awarded on 12 cases and in respect of 17 persons; in 2005 the courts of appeal awarded the verdicts of not guilty on 7 cases and in respect of 8 persons, whereas in the earlier half of 2006 the judgements of acquittal were awarded on 5 cases and in respect of 5 persons; in 2005 the court of cassation awarded the judgement of acquittal on 11 cases and in respect of 11 persons, while in the period between 1 January to 1 July 2006 acquittal was awarded on 4 cases and in respect of 5 persons.

In what concerns actions by judges to remedy human rights breaches, it is to be noted that no breaches identified by PDO (as a result of records' monitoring and analysis of applications) have been acted upon as prescribed by Article 50 of the Criminal Procedure Code, providing for issuance of individual rulings by judges, even though the materials sent to courts clearly demonstrate the impairment of procedural rights.

M.Chkheidze Case

On January 9, 2006 at 13:25 Judge Z. Kvavadze of the Bagdadi District Court issued a warrant of arrest of M. Chkheidze (M. Chkheidze was arrested on January 6, 2006 at 12:00), thus grossly violating provisions of Article

18 (3) of the Constitution of Georgia and Article 145 (7) of the Criminal Procedure Code ("The detention of an individual is permissible in circumstances determined by law by an official specifically so authorised. The detained individual or otherwise restricted person must be brought before the court not later than 48 hours following the arrest. If within the next 24 hours the court has not made a decision concerning the arrest or other kind of restriction, the individual must be released forthwith."). The judge failed to make a decision within 24 hours from bringing a charge against M. Chkheidze. He issued the order with a delay of one hour and 25 minutes. Thus, under Article 150 (1)(g) of the Criminal Procedure Code, M. Chkeidze should have been released from custody in the courtroom.

On January 17, 2006, Judge K.Gotsiridze of the Investigative Collegium of the Kutaisi Court of Appeal considered a defence counsel's complaint concerning cancellation of the restraint measure in respect of M. Chkheidze and retained the warrant of arrest against M. Chkheidze issued on January 9, 2006. Under Article 50, Parts 1 and 2, Judge K. Gotsiridze was to issue an individual ruling, as M. Chkheidze's detention was effected contrary to the law.

The Public Defender requested the High Council of Justice to consider the issue of disciplinary responsibility of judges Z. Kvavadze and K. Gotsiridze. The High Council of Justice notified the Public Defender that it found no breach of discipline.

Statistics on individual rulings obtained from the Supreme Court looks as follows: the number of individual rulings issued over the first 6 months of 2006 is 16, including: 15 rulings on breaches in the course of investigation and one ruling concerning causes conducive to offence. As far as individual rulings concerning the violation of defendant's rights are concerned, such data are not found in statistical reporting forms. (In 2005, a total of 25 individual rulings were issued, including 23 rulings on breaches in the course of investigation and 2 rulings concerning causes conducive to offence.)

Concerning the issue of conditional release on parole, in the earlier half of 2006, 290 out of 507 petitions were granted, constituting 57%; 2 petitions concerned a replacement of an unserved part of the sentence with a lighter penalty, but none of them was satisfied. In 2005, general courts considered 2036 petitions concerning a conditional release on parole and a replacement of an unserved part of the sentence with a lighter penalty, of which 1745 petitions (i.e. 85%) were satisfied. (In 2005 cases falling under these 2 categories were recorded in statistical reporting forms together). Clearly, compared to previous years, the number of persons released on parole has decreased. We believe that statistics on this matter should be positive.

In what concerns the remission of a penalty as a result of illness, in the initial 6 months of 2006 there were 10 petitions to that effect, of which only two were granted.

On March 9, 2006, Ordinance No 72/N of the Minister of Labour, Health and Social Security was amended: diseases of the nervous system and sensory organs were removed from the list of diseases allowing for release from a penalty in accordance with Article 65 of the Law on Detention (according to unofficial information, the said amendment was motivated by the fact that one of the so-called "thieves in law" suffered from a similar disease). Thus, persons suffering from diseases of this category, can no longer been released from a penalty. For instance, E.Sh. convicted of an offence, suffered from an incurable disease. He was placed in a prisoners' medical institution of the Penal Department separately from other inmates. Nursing care for the prisoner was provided by his wife, actually serving the sentence together with her husband. Because of his extremely poor health status, staying at the Penal Department's medical facility caused E.Sh. severe physical and mental suffering and amounted to treatment described in the notion of torture and other cruel, inhuman or degrading

treatment prohibited both under the Georgian law and international instruments. Given these facts, the Public Defender addressed the Minister of Labour, Health and Social Security with a suggestion to cancel the amendment to Ordinance No 72/N made on March 9, 2006 and include in part 6 of the ordinance the deleted paragraphs 1 and 4 (brain and spine vascular diseases, and diseases of the central nervous system) to ensure the protection of prisoners' rights as defined in the Georgian legislation and international legal standards.

After the Public Defender intervened (in his Report to the Parliament covering the second half of 2005, the Public Defender described E.Sh.'s health status and said that because of his disease his conditions of detention could be described as inhuman; he also said that because E.Sh.'s wife was giving him nursing care, she was actually serving the sentence together with her husband), on August 24, 2006 Bacha Akhalaia, Head of the Penal Department made a motion to the court to consider E.Sh.'s grave disease and postpone the execution of his penalty until he recovers. Thus, the grounds for E.Sh.'s remission of the penalty was one of diseases removed from the list of diseases contained in Ordinance No 72/N by an amendment made to the said ordinance on March 9, 2006.

In 2005, a total of 15 motions were made to courts on remission of a penalty because of illness, of which 5 were satisfied.

In what concerns release from a penalty because of old age, over the first half of 2006 no motion of this kind was made to courts (in 2005, statistical reporting forms did not consider this category of cases).

Similarly to 2005, the first half of 2006 demonstrated the tendency towards backlogging of cases in courts and delays in judicial examination, which results from insufficient numbers of judges, the problem of convoying detainees to the courtroom, and failure by witnesses to appear before the court.

In the context of the judicial power it is important to note one more issue: Article 336 of the Criminal Code of Georgia (issuance of illegal sentence or other decision by court) represents a tool for the prosecution to pressurise the court. Verification of the lawfulness and legality of court decisions is a prerogative of appellate and cassational courts. However, the existence of provisions contained in Article 336 of the Criminal Code of Georgia provides an avenue for the prosecutor's office, too, to review court judgements, which virtually turns the prosecution into the fourth judicial instance, thus coming in conflict with the principle enshrined in Article 84 of the Constitution, according to which no one shall have the right to make a judge accountable in a particular case and all acts limiting the independence of judges shall be considered null and void.

The existence of provisions contained in Article 336 of the Criminal Code of Georgia infringes the principle provided for in Article 8 of the Criminal Procedure Code, namely that the judiciary shall not be held accountable to the legislative or executive branches of power. The legal provision that entitles the prosecutor's office, which is part of the executive branch, to conduct an investigation into a wrongful sentence or judgement made by a judge comes into conflict with the above principle.

Besides, Article 336 of the Criminal Code allows the prosecutor's office to exert influence on a judge (through threatening imposition of criminal liability) and interfere into the administration of justice, which in itself jeopardises the principle of judicial independence and the rule of law.

The Public Defender addressed the Parliament with a suggestion to amend Article 336 of the Criminal Code of Georgia.

According to official information from the Prosecutor General's Office of Georgia, in the period between 2001 and October 5, 2006 nine judges were made liable under Article 336 of the Criminal Code of Georgia: 1) N. Khubua (military judge) was awarded judgement of guilty without imposition of a penalty due to expiration of

the limitation period; 2) M.Patarashvili (judge of the Mskheta district court) – the case sent to court for consideration on the merits; 3) T.Kvaratskhelia (judge of the Zugdidi district court) – awarded one-year conditional sentence; 4) M.Chkheidze (judge of the Gardabani district court) –awarded 3-year conditional sentence and a fine of 5000 GEL on the basis of a plea agreement; 5) I.Kvezereli (judge of the Gardabani district court) - awarded 2-year conditional sentence and a fine of 27300 GEL on the basis of a plea agreement; 6) M.Gelenidze (judge of the Tskaltubo district court) – awarded deprivation of liberty for the duration of 2 years; 7) N.Toloraya (judge of the Zugdidi district court) – awarded a fine of 200 GEL; 8) B.Gvajava (judge of the Poti district court) – awarded deprivation of liberty for the duration of 2 years; 9) D. Devrasashvili (judge of the Akhalgori district court) – the case is in preliminary investigation.

PROSECUTOR'S OFFICE AND HUMAN RIGHTS

Applications and complaints referred to the Public Defender's Office include also those that, upon examination, indicate evidence of a crime committed by state agents, such as: torture and inhuman treatment, unlawful arrest, non-execution of court orders, biased investigation, etc.

To initiate inquiry into such cases, the Public Defender refers relevant materials to the General Prosecutor's Office. Under Article 261 of the Criminal Procedure Code, once information on alleged crime is communicated to relevant authorities, the investigator and the prosecutor are under an obligation to open preliminary investigation. Under Article 18 of the same law, the investigator, the prosecutor and the judge are obliged to conclusively establish the crime in question, identify the perpetrator and look into all circumstances relevant to the fact in issue. Circumstances of the case should be investigated comprehensively, impartially and fully. Materials sent to the relevant authorities by PDO clearly indicate commission of a crime, however, the prosecutor's office is often reluctant to open investigation, allegedly due to unsoundness of arguments, or, alternatively, sends evidentiary materials to the court, that normally considers the culpability of a supposed offender, or person charged with crime, without ever looking into wrongful acts committed against them by state agents. In doing so, the prosecutor's office evades its obligation to initiate investigation and refers the case to court, therewith breaching the criminal procedure law. It should be noted, however, that on cases of particular interest, the prosecutor's office readily applies to the court with a motion to obtain the case materials and opens the investigation. Hence, an "exclusive" circle forms between the prosecutor's office and the court, which oftentimes obstructs establishment of the truth and results in proceedings where neither the prosecutor's office nor the court follow on the facts that evidence violation of the rights of persons charged with offence.

Alexandre Mkheidze Case

On 6 April 2005, in the course of a special operation conducted by the General Inspectorate of the Ministry of Internal Affairs, police officers arrested Alexandre Mkheidze of patrol police on allegations of bribe-taking. A. Mkheidze was severely beaten both when arrested and later, when brought to the General Inspectorate premises (information on injuries is supported by a forensic report). He stated from the outset that 20 GEL removed from his pocket had been planted by a police whom he said he could identify. A.Mkheidze made a motion requesting the investigative agency to allow the identification procedure, however, the motion was rejected.

Close examination of the case revealed some suspicious circumstances relating to charges against A. Mkheidze, namely:

1. Inconsistency between the specially marked and chemically treated 20-GEL notes and the 20-GEL note seized as a result of A.Mkheidze's personal search (inscriptions made with special ink on pre-marked notes are different from those found on the seized 20-GEL note).

2. When re-examined, A. Tatishvili and A.Asoyan, witnesses on A. Mkheidze's case, stated that under the UV light the money looked greenish-yellowish, whereas no similar fluorescence could be seen on A. Mkheidze's hands. When arrested, A. Mkheidze was cursing one person saying he had planted the pre-marked money into his pocket.
3. Vagarshak Loris-Russo recognized as a victim on A. Mkheidze's case, features in other criminal cases either as a witness or as a victim (at least in 5 cases known to PDO), which gives reasonable grounds to believe that Vagarshak Loris-Russo collaborates with police to provoke the commission of a crime, hence the legality of investigative actions conducted with his participation seems questionable.
4. The person featuring as an attesting witness in the records concerning money-marking appeared to be the brother-in-law to one of police officers involved in the special operation, thus leading to reasonable suspicion of his partiality with regards to the outcome of the case.

The relevant materials were sent by the Public Defender to the Prosecutor General's Office, which chose not to follow on the case itself and have the materials transferred to the court, with no one punished for A.Mkheidze's beating.

Amiran Robakidze Case

On 24 November 2004, in Didube-Chugureti district of Tbilisi near the Didube Church patrol police officers conducted a special operation of apprehension of persons sitting in a BMW type car. Patrol police opened the fire during which 19-year-old Amiran Robakidze was killed with the bullet shot by police officer G.Bashaleishvili. Other five persons: G.Kurdadze, A.Bartaia, K.Azarashvili, L.Dangadze and I.Mikaberidze were arrested.

Criminal case was initiated against Robakidze's friends on charges of armed resistance to police officers and illegal possession and carriage of arms.

The investigation side asserted that once the suspicious car was stopped by police, the persons put up armed resistance to police officers, after which the police began shooting. As a result, A. Robakidze died on site.

The above was supported by testimonies given by police officers (G.Bashaleishvili, D.Abuashvili, G.Chanturia and L.Lobzhanidze). According to their account of events, A.Robakidze was holding a sub-machine gun and he opened fire to the police; G.Bashaleishvili fired a response shot to defend himself and other officers.

However, numerous expert examinations requested by the family of the deceased Robakidze depicted a very different picture and denied the facts provided by the police officers. The Public Defender's Office examined the case and requested fair and comprehensive investigation. This recommendation yielded results, and criminal prosecution was initiated against G.Bashaleishvili, but only on the charges of inattentive destruction of somebody's life (Article 116 of the Criminal Code).

Several violations were revealed during the investigation process.

- A.Robakidze's family members recognized as the victim's successors were illegally denied to receive copies of the investigation materials;
- The case file contains a record of the site inspection that, as alleged by police, was copied from the original and was only signed after A.Robakidze's representative familiarized himself with it;
- Neither the Public Defender, not the family members of deceased Robakidze or the media were able to receive the video material shot by the Ministry of Internal Affairs and depicting detention and liquidation of A.Robakidze;
- Despite the numerous requests of the family of the deceased, those employees of the Emergency Medical Service, who had visited the site of the crime and registered the fact of death of Robakidze, were not questioned in spite of the fact that they claimed they had not seen any weapons on the site;

- Despite the well founded grounds, no examination of police officers on drug or alcohol abuse was carried out;
- Even in the scarce video footage available there is no trace of firearms claimed by the patrol policemen in the general shots, and the camera only shows weapons in zoomed images;
- The origin of the "withdrawn" arms was not found out as well as how so many arms of such quality had accumulated in the hands of students who had never been tried before. At first, the investigation claimed that all detainees were carrying guns. Later on, these charges were abolished in case of two detainees and according to the lawyers, one sub-machine-gun and one hand grenade were left in the case so that nobody was accused of illegal purchasing, possession and carrying of the weapons.

All the above exacerbated the doubts concerning the deliberate murder committed by G.Bashaleishvili, planting of weapons, exceeding authority by the policemen, illegal detention and false testimonies. Even more – the video material reveals that the-then and present Chiefs of Tbilisi Patrol Police Zurab Mikadze and Giorgi Grigalashvili as well as another high official David Bakradze were present on site. Besides, according to the detained friends of Robakidze, the-then Head of Information and Public Relations Division of the Administration of the Ministry of Internal Affairs Guram Donadze was also there. He was directing the shooting of the video material and was even asking people passing by to witness the fact of withdrawing of already planted arms.

The Public Defender addressed a recommendation to the Prosecutor General to initiate immediately criminal proceedings against all those police officers and law enforcers who took part in the arrest operation, search and withdrawal conducted on the site of the incident and officially registered the withdrawn evidence. The Public Defender also recommended to establish the origin of the firearms featuring in the case and urged the Prosecutor General's Office to take the case under control.

Prosecutor George Gviniashvili of Tbilisi informed the Public Defender that his recommendation was transferred to Tbilisi City Court examining G.Bashaleishvili's case, in order to secure full investigation of circumstances described in the recommendation.

After G.Bashaleishvili was found guilty and sentenced to four years of imprisonment, the Prosecutor General's office started investigation on facts relevant to the case under Article 369 ("falsification of evidence") and Article 333 ("excess of authority") of the Criminal Code, however no one was made criminally responsible for the actions committed.

D.J. Case

D.J., a defendant, was placed in the prisoners' hospital of the Penal Department in grave mental state, as confirmed by medical report No. 300 prepared by the expert commission of M.Asatiani Research Institute of Psychiatry. On 20 January 2006, the Judge of the Zugdidi district court issued a ruling on D.J.'s placement into Poti psychiatric hospital. The ruling was transferred for execution to the director of Prison No. 5 of the Penal Department, but has not been executed.

In order to initiate investigation on non-execution of court decisions (offence under Article 381 of the Criminal Procedure Code), the Public Defender sent the relevant materials the General Prosecutor's Office. P.Kovziridze, head of investigative department of the Ministry of Justice informed the Public Defender of the lack of necessary grounds to open investigation.

Nino Lobjanidze and Zviad Oboladze Case

Guliko Makharashvili was brought to the admissions office of Mstkheta multi-type district hospital at 4 am on 22 September 2005 with the initial diagnosis of food poisoning.

At the admissions office G. Makharashvili was examined by a therapist and a surgeon, however the surgeon made no record of examination. Based on the past medical history (according to the patient, she had been treated for infertility, had undergone ultrasound investigation and several days before admission she had suffered from spontaneous abortion, followed by periodic discharge), duty gynaecologist, Zviad Oboladze, was called to the admissions office. He examined the patient and diagnosed endometritis and pelvioperitonitis. The doctor prescribed antibacterial therapy and uterine curettage.

Near the hospital the patient's husband, Zviad Chokheli, noticed their neighbour's, Nino Lobjanidze's car. Nino Lonjanidze worked at the same hospital as a gynaecologist and the deputy medical director. Zviad Chokheli contacted Nino Lobjanidze and told her that his wife was brought to the hospital, though he knew nothing of her condition. N. Lobjanidze told Z. Chokheli that she had to carry out some therapeutic procedures for her patient at childbirth, after which she would visit G. Makharashvili.

The patient was brought into the treatment room for uterine curettage under general anaesthesia. In the course of the procedure, Nino Lobjanidze entered the treatment room to see the patient and found that one of medical instruments, namely the requisite size uterine dilator by Hegar was lacking from the set. She told the nurse to bring the instrument, introduced it into the uterus and left the treatment room, while Z.Oboladze continued the curettage procedure. Nino Lobjanidze informed G.Makharashvili's husband of her condition, instructed the nurse to bring for her a strong antibiotic drug and returned to her patient, Abazova. She also told Z. Chokheli to contact her should any help was needed.

Following completion of the procedure, the patient was transferred to the ward and put under observation of medical personnel. As indicated in the medical card, before 10 am, the patient's condition was stable, however she complained of abdominal pain and general weakness, for which reason she was given analgesics. Doctor Z. Oboladze periodically provided information on the patient's condition to her family members.

At 10 am, in conformity with hospital regulations, the patient was reassigned to Tina Svanidze, head of division, who came to the hospital by the time of Z.Oboladze's duty shift completion. T. Svanidze examined the patient and confirmed the diagnosis. In about 45 minutes the patient's condition worsened, with a significant fall in blood pressure. When informed of G.Makharashvili's condition, Z. Oboladze chose to stay at the hospital. Tina Svanidze called the head of the intensive therapy department and had the patient transferred for treatment there. Because of the worsened haemodynamic condition, it was decided to carry out ultrasonic scanning which was done at 11 am, with no cause of haemodymanic deterioration found. The doctor decided to wait until the bladder was filled to repeat ultrasonic scanning. It was performed at 1 pm, with fluid found in the abdominal cavity, which lea physicians to suspect internal bleeding and raise the issue of surgical treatment.

At 11 am, Nino Lobjanidze was approached by hospital attendant Areshov who told her that her colleagues asked her to see them. When N. Lobjanidze left her office and went out into the corridor, she was met by G. Makharashvili's family members, as well as Z.Oboladze, T.Svanidze, S.Metreveli and I.Tabidze. T. Svanidze told N. Lobjanidze that patient G.Makharashvili was transferred to the intensive therapy department. At about 11:30 Nino Lobjanidze was visited by the head of the obstetrics division M.Mkheidze who told her that she admitted a woman in childbirth in a very grave condition and suspected a uterine rupture.

At about 12 am N.Lobjanidze visited G.Makharashvili where she saw her relatives and learnt from them that the patient's brother and husband went to get blood for transfusion. N. Lobjanidze offered assistance in arranging blood transfusion, but the head of the intensive therapy department said that no assistance was needed. Then N. Lobjanidze asked M.Mkheidze why it was not possible to perform ultrasonic scanning. M. Mkheidze answered that the reason was lack of fluid in the bladder, and that they were waiting for another scanning to get the result. N.Lobjanidze suggested it was necessary to call the Centre for Emergency Medicine and have the patient transferred there by their own ambulance. S.Metereveli said it was not necessary as the patient's condi-

tion was stable. He asked N.Lobjanidze representing the hospital administration, to arrange for a visit of a sepsis specialist. N. Lobjanidze called the Centre for Emergency Medicine, found that their sepsis consultant was L.Mgaloblishvili and got his telephone number.

Then N.Lobjanidze called L.Mgaloblishvili and arranged for his consultation at 4 pm. L.Mgaloblishvili asked about results of ultrasonic scanning and was told that another scanning would be performed shortly. N.Lobjanidze was dissatisfied with a delay in performing the ultrasonic scanning and told T.Svanidze that in such cases (delay in ultrasonic scanning) it was possible to do diagnostic puncture through the posterior vaginal vault. For her part, T. Svanidze also expressed her dissatisfaction with such a prescription, after which N.Lobjanidze returned to the surgery room to do a caesarean section to her newly admitted patient. At about 13:30 T. Svanidze came into the surgery room and asked M. Mkheidze to assist her in giving surgery to G. Makharashvili. M. Mkheidze promised to help her in about 20 minutes, i.e. at about 14:00. At 14:50 Khatuna Berinashvili, working as a therapist at the admissions office of Mtskheta district hospital, called N. Lobjanidze and asked her to go downstairs to the obstetrics department. When examining the patient, N.Lobjanidze was asked to go without delay to the gynaecological surgery suit where she was told that G.Makharashvili died. N. Lobjanidze's colleagues present there asked her to inform G.Makharashvili's family of her death.

Nino Lobjanidze informed G.Makharashvili's relatives about her death.

Preliminary investigation opened on the same day. Nino Lobjanidze, Zviad Oboladze, Tina Svanidze and others were repeatedly interrogated by investigators. In December 2005, Lobjanidze, Oboladze and Svanidze were summoned to the prosecutor's office where they were arrested and accused of crime under Article 130, Para 2 of the Criminal Code.

Hearing of the criminal case in court started in April 2006, and on 9 August 2006 Nino Lobjanidze and Zviad Oboladze were found guilty of crime and sentenced to three years of imprisonment each.

Nino Lobjanidze worked at Mskheta District Hospital Ltd. as deputy medical director. At the same time she had a contract with the said hospital and worked as medical doctor providing medical services only to those patients with whom she had service contracts.

The court found Nino Lobjanidze guilty of a crime stipulated by Article 130, Para 2 of the Criminal Code, namely:

"Failure to provide, without a valid reason, emergency medical care to a patient in life-threatening state, which has led to the patient's loss of life shall be punishable by a deprivation of liberty for the period of three to five years, removal from office or divestment of the right to practice profession for the period of up to three years".

Formal elements of the crime provided for in the said article emerge where and when:

1. The patient appears to be in a life-threatening state;
2. The medical professional fails, without a valid reason, to provide emergency medical assistance to the patient, which results in the patient's loss of life.

Firstly, it is necessary to see whether the patient was found to be in a life-threatening state. To this end, it is appropriate to ask the following questions:

1. Was the patient diagnosed correctly?
2. Are endometritis and pelvioperitonitis considered to be life-threatening conditions?
3. Is extra-uterine pregnancy considered to be a life-threatening condition?
4. When did the patient's condition turned to become a life-threatening one?

The answer to the first question was provided by post mortem examination showing that the patient had been diagnosed incorrectly, though this was explicable by a number of circumstances. As indicated in the post

mortem report, judging by the symptoms found in the patient, as well as by her previous medical history, and taking into account that several days prior to the admission she had a spontaneous abortion, the diagnosis of endometritis and pelvioperitonitis was logical. As indicated by experts, the error on diagnosis was found after the patient's death. Hence, doctor Z. Oboladze prescribed the treatment that was adequate to the diagnosis, and the diagnosis was incurred from the combination of symptoms found in the patient.

N.Lobjanidze learnt about the patient's condition and diagnosis from Z.Oboladze. She could not have questioned the diagnosis, as she did not even examine the patient. She also knew that the principle of continuity of care was observed.

As far as the second question is concerned, namely, whether endometritis and pelvioperitonitis represent life-threatening conditions, it is imperative to define as to what is considered to be a life-threatening state. The law of Georgia "On health care" does not recognize the term "life-threatening condition", however the term "critical condition" appears to have the same meaning and is defined as follows: "Critical condition is the state of health damage that threatens human life, and without emergency treatment leads to imminent death". Such critical condition has to be interpreted as a life-threatening state, where failure to provide emergency medical treatment may lead to loss of the patient's life. As far as endometritis and pelvioperitonitis are concerned, they can in no way lead to loss of life. Hence a patient, diagnosed with endometritis and pelvioperitonitis, cannot be considered to be in a life-threatening state.

In what concerns the third question, one can state that extra-uterine pregnancy is not found to be a life-threatening condition. It would threaten the life only in case of the fallopian tube rupture or abdominal bleeding. Hence, extra-uterine pregnancy alone should not be considered to be a life-threatening condition.

When did the patient's condition turned to be a life-threatening one? The patient's condition became a life-threatening one when the blood started filling the abdominal cavity.

As suggested by the materials of the criminal case, the patient's state worsened starting from 10:40. By that time her attending doctor was Tina Svanidze. At about 11:00 the patient was transferred to the intensive therapy unit, with ultrasonic scanning performed. The scanning did not show any fluid in the abdominal cavity; however, neither was it possible to examine organs because the bladder was empty. After the bladder was filled, at about 13:00, the patient was again subjected to ultrasonic scanning which showed the presence of fluid in the abdominal cavity. Hence, the patient was found in need of emergency surgery. It can be inferred that starting from that moment she was in a life-threatening condition.

As seen from the record of judicial proceedings, according to Ghia Ninoshvili, expert in ultrasonic scanning, in case there had been any fluid in the abdominal cavity, it would have been found during the first scanning, irrespective of whether the bladder was full or not. Thus, it was not possible to establish as to when the abdominal bleeding started. However, according to Ninoshvili's testimony, there was no fluid in the abdominal cavity at 11:00. Hence, the patient appeared to be in life-threatening condition after 11:00, when kept under observation of T. Svanidze.

Thus, it can be stated that the patient was found to be in a life-threatening condition after termination of Z.Oboladze's responsibility before the patient, to say nothing of N.Lobjanidze.

That the patient's condition was threatening her life became known to the doctors at 13:00. Nino Lobjanidze had no contact with the patient after 12:00 when she came to see the patient and offered assistance in arranging blood transfusion. The she entered the surgical block to operate on her patient, and later found G.Makharashvili dead.

It is clear that at the time when N.Lobjanidzde and Z.Oboladze communicated with the patient, her condition was by no means life-threatening, therefore it is not justified to apply the above article against them. It should be noted that neither preliminary investigation, nor judicial investigation succeeded in establishing as

to when the patient entered the life-threatening condition. Any uncertainty should, as a minimum, be resolved in favour of a person before the court.

Secondly, from 10 am onwards G.Makharashvili's attending doctor was T.Svanidze, hence the principle of continuity of treatment was observed. Z.Oboladze would have been obliged to provide care to the patient if there had been no doctor to take over, and if emergency care had been found necessary, which was not the case under the described circumstances. The law "On health care" contains clear provisions describing as to who, where and when has the right to provide emergency care for the patient, and failure to provide emergency care shall be seen as a punishable offence. Z.Oboladze was not under any obligation to provide such care; moreover, he had no right to provide one.

Also, neither preliminary not judicial investigation gave any clear indication as to what act or omission by Z. Oboladze and N.Lobjanidze constituted the crime. In other words, what was it that there were obliged to do and failed to?

According to N.Lobjanidze, in the course of preliminary investigation she had provided evidence that was initially attached to the case file, namely, case reports of the patients that received medical assistance from her on 22 September, as well as the list of telephone calls on her cell phone, both incoming and outgoing, that could provide a clear clue for investigation to determine where she was and what she was doing at any specific moment in time and prove once again her innocence. Later, in the course of judicial proceedings, the evidence appeared to be removed from the case file. N.Lobjanidze believes the investigative agency removed the said evidence deliberately, to exclude any documents proving that N.Lobjanidze was not guilty of the incriminated offence.

It is to be noted that despite the defendants' request, the judge refused to allow filming of the trial. Later, when N.Lobjanidze and Z.Oboladze, then already convicted, were given access to the record of judicial proceedings, they found that part of the evidence, mostly expert evidence, was effectively changed. The evidence, as presented in the record of judicial proceedings was written in layman's language, not the language of medicine, and contained statements different from and, oftentimes, entirely opposite to what was stated by experts in their evidence. Unfortunately, the errors and changes were used against the persons at trial.

It is important to note also that at the judicial stage the case in respect of T. Svanidze was separated, and differently from N.Lobjanidze and Z.Oboladze, T.Svanidze was assigned bail as a restraint measure. The proceedings on T.Svanidze's case have not been resumed up until now.

The victim's successor, G.Makharashvili's husband Zviad Chokheli repeatedly expressed his concern and regret at N.Lobjanidze's and Z.Oboladze's being made liable for his wife's death, while T. Svanidze, who in Z.Chokheli's opinion, is responsible for what had happened, has not been adjudicated. Z.Chokheli addressed the court with a letter.

It is important to look at the judgement delivered by the court. The judgement shows no link between the act and the effect; in other words it is not possible to see as to what wrongful act was committed by N.Lobjanidze and Z.Oboladze. Moreover, the judgement delivered by the court is not supported by evidence collected on the case. More specifically:

The judgement rendered by the court says (page 2, para.2) that in the opinion of the court it is proved conclusively that: "The patient was transferred to the gynaecological department where she was examined by the duty doctor, gynaecologist Zviad Oboladze and gynaecologist Nino Lobjanidze, deputy medical director of the hospital, and diagnosed with "post-abortion acute endometritis and pelvioperitonitis". On the basis of the diagnosis, they carried out uterine curettage".

In order for the court to consider any fact as being proved conclusively, it has to be supported by conclusive evidence supported by materials of the case. In the case in issue, the judge himself made up a story on the victim being diagnosed by N.Lobjanidze. The fact that the victim was diagnosed by Z.Oboladze is corroborated by a entry in the medical register, whereas N. Lobjanidze did not make any entry concerning the diagnosis in the register, neither did any witness indicate anything to that effect. Moreover, the investigation established that N.Lobjanidze saw the patient for the first time when the latter was brought by Z.Oboladze into the treatment room for uterine curettage. The court deliberately, without any supporting evidence, declared an allegation to be a conclusively proved fact, which is not corroborated by any evidence found in the case.

The court, again deliberately, stated (page 6, para.1) that the witness Maia Taniashvili, working as anaesthesiologist at Mtskheta hospital, allegedly testified that when she had entered the gynaecological unit, she saw there Z.Oboladze, N.Lobjanidze and hospital attendants. However, in her testimony M. Taniashvili clearly stated that N.Lobjanidze was not staying at the gynaecological unit, she came and then left, though she did not remember the exact timing.

Such inaccuracies and errors are not infrequent in the judgment, and they serve the purpose of proving N. Lobjanidze's and Z. Obolodze's culpability based on non-existent evidence.

The Public Defender sent his questions to expert A.Koridze who took part in the work of expert commission. A. Koridze stated that his testimony, as presented in the record of judicial proceedings, was not identical to the testimony he had presented to the court. He provided answers to the questions by PDO, thus ruling out any culpability of N.Lobjanidze and Z.Oboladze. A. Koridze stated that he would not have even reprimanded N. Lobjanidze for her actions, as described in the case.

It should be noted that the Agency for State Regulation of Medical Activity working under the Ministry of Labour, Health and Social Security carried out an audit of Mskheta hospital in relation to the facts described above, and suspended Tina Svanidze's medical licence. Interestingly, the Agency did not even raise the issue on N.Lobjanidze's responsibility, as it considered that the latter had nothing to do with the patient, hence the issue of her responsibility was irrelevant.

Coverage of the events by Rustavi 2 TV Company both on the day of the patient's death and during doctors' arrest deserves special attention. According to Rustavi 2, G. Makharashvili's death was caused by incorrect diagnosis. Also, as stated by Rustavi 2, the patient was diagnosed with infection – another wrongful piece of information.

As far as the doctors' arrest is concerned, according to Rustavi 2 journalists, the three doctors would not be allowed to practice medicine (which is not true). According to journalist Nanuka Jorjoliani's account of events, Nino Lobjanidze was the only one among the three doctors who tried to abscond and was allegedly arrested near Mstkheta and brought to the procuracy together with the colleagues who put their signature under G. Makharashvili's diagnosis. This information is not true. Nino Lobjanidze appeared on her own at the procuracy and never tried to escape. According to the journalist the patient's death was caused by doctors' negligence and incorrect diagnosis. The journalist further stated that Nino Lobjanidze had put her signature under the diagnosis and affirmed that G.Makharashvili's pregnancy was interrupted. This information, is not true either, as no document contains any entry made by N. Lobjanidze concerning G. Makharashvili's diagnosis. The journalist stated that the patient was admitted to the hospital with high temperature, bleeding and acute abdominal pain, which is not true either. The allegations concerning high temperature or bleeding are not confirmed by materials of investigation. In the eyes of the public, the picture, as painted by the journalist, served to present all doctors as criminals. Rustavi 2's account of events alleged that the procuracy based its decision on the conclusion of the Ministry of Health that allegedly found all the three doctors culpable, which again is not true.

Analysis of the case unequivocally demonstrates that the investigative agency, namely, the procuracy, conducted investigation in a partial and biased way. Despite the fact that experts involved in consideration of

the case, as well as the evidence presented by witnesses ruled out any culpability of the defendants, they were nevertheless made criminally liable, and later, without any valid grounds, found guilty by judge G. Kiria and sentenced to three years of imprisonment.

David Sakvarelidze Case

The Public Defender was addressed by M.Sakvarelidze. In her application M. Sakvarelidze complained that investigation relating to the road accident of 22 November 2003 was biased. According to the applicant, on 22 November 2003 her 23-year old son David Sakvarelidze and her sister Eteri Tsuliashvili were killed in a clash accident between their private car and a military armoured personnel-carrier, and her sister's minor children Badri, Gocha and Sophiko Tsuliashvili were injured. Examination of materials attached to the application has led PDO to believe that the investigation was conducted partially.

Preliminary investigation of the case established that on 22 November 2003, at about 18:25 the armoured personnel-carrier moving along Gorgasali street from Rustavi to Tbilisi clashed into a BMW type vehicle (AAD-209). The armoured personnel carrier (BTR-1 004), belonging to the Rapid Reaction Department of the Special Operational Centre of the Ministry of State Security, was driven by driver-mechanic Avtandil Mamaladze.

After the accident the armoured personnel-carrier was re-painted and given a new number - 007 instead of 004, which represented an attempted concealment of the offence, however the investigation turned a blind eye to this fact. This raises the issue on responsibility of investigator G.Skhirtladze.

Multiple appraisals by experts point conclusively that the accident occurred through the fault of the personnel-carrier's driver.

1. According to the route tracing appraisal performed by the Military Criminalistics and Forensic Medical Examination Service of the Ministry of Defence on 26 December 2003 (Expert report No 46/14), "The BMW-type vehicle was moving from the centre of Tbilisi in the direction of Rustavi along Vakhtang Gorgasali street on 10 m wide, dry, asphalted, two-way, horizontal level road, while the armoured personnel-carrier was coming in the opposite direction. After the clash the personnel-carrier did not stop and continued driving, while the BMW moved forward, from the right to the left (because its front left tire was damaged) by inertia and stopped on the left side of the carriageway near the concrete border, as shown on the diagram attached to the report of accident scene inspection. The side of the road where the BMW was moving shows fragments of broken glass and plastic, scattered along the length of 16.1m in 2.5 m from the right-hand border of the road. Based on the vehicle damages, the clash angle and the trajectory of glass and plastic fragments, it is clear that at the moment of clash the BMW was moving on the right side of the carriageway, while the personnel carrier crossed over to the opposite way; i.e. the clash occurred on BMW's way". (Vol.1, 133-139). Clearly, the BMW was not only moving along its way, but it was moving on the extreme right side of its side of the road. It is important to note that the road is 10 m wide, hence the personnel-carrier crossed over completely to the opposite side of the road.

   When interviewed as witnesses, both members of the personnel-carrier crew indicated that a BMW type vehicle was coming from the opposite direction at high speed (Vol.1, pp. 29-32; 39-41; 66-72), however inspector G.Parkadze, chief of Mtatsminda-Krtsanisi district traffic police stated otherwise. When interviewed as a witness he indicated that on 22 November 2003 he was on duty shift in Gorgasali street together with his workmate, Vepkhia Shavreshiani, several hundred metres from the site of the accident. During his shift no vehicle travelled on high speed from Tbilisi (contrary to what was indicated by the personnel-carrier's crew members). Otherwise he would have without fail noticed a vehicle moving at excessive speed. As far as military personnel carriers are concerned, according to G. PArkadze (Vol.1, p.92-92), they were

moving at 70-80 km/h, with military servicemen sitting on top of both the vehicles. Later, on 31 August 2004 when interviewed again, G.Parkadze changed his evidence and said that the personnel carrier was moving at a speed of 50 km/h (Vol.2, p.97-104). **As far as G. Parkadze's workmate V. Shavreshiani is concerned, he was not been interviewed at all.**

These two facts – the change of evidence by G.Parkadze and reluctance to have V.Shavreshiani interviewed – point to attempted misrepresentation of facts. For 2 years and 8 months the investigation on the case has repeatedly been terminated and then resumed. Over this period of time none of the investigators or agencies conducting an inquiry into the case have ever expressed any willingness to have such an important witness and V. Shavreshiani interviewed.

2. The procuracy should have initiated criminal proceedings against the armoured personnel carrier's driver based on the expert appraisal, even without having V. Shavreshiani interviewed. However, the investigation chose to prescribe another, the **second**, auto-technical expert examination The examination was meant to establish whether it was technically possible for vehicle drivers to avoid the accident, and whether they had violated traffic safety requirements.

   According to the route tracing appraisal performed by the Military Criminalistics and Forensic Medical Examination Service of the Ministry of Defence on 16 January 2004 (Expert report No 85/13), "in the given circumstances, the action of Avtandil Mamaladze, driver of the armoured personnel-carrier does not conform with the requirements of Article 28, Para.1 of the Law of Georgia "On traffic safety", whose observance would have enabled him to avoid the clash; whether the accident would be avoided did not depend on the BMW driver, and his action showed no disregard of the requirements of the law "On traffic safety" (Vol.1, 143-145).

   Thereafter, criminal proceedings against A. Mamaladze on Article 400, Para.1 and 2 were initiated on 10 February, on the order of G.Skhirtladze, investigator of the Military Prosecutor's Office of Tbilisi. On 13 February A.Mamaladze was recognised as a suspect and interrogated on the same day as a person suspected of commission of the crime. The suspect A. Mamaladze was not assigned any restraint measure. He signed a recognizance not to abscond and appear at the first call to conduct an investigative action.

   Interestingly, the case file contains the investigator's report dated 19 February 2004 stating that on 18 February 2004 at 1:20 the investigator tried to contact the suspect A. Mamaladze on his cell phone that was turned off. Then he contacted A.Mamageishvili, security officer and told him that A. Mamaladze was expected to appear at the military prosecutor's office for investigative action, however A. Mamaladze did not appear at the procuracy on the following day. This act by suspect A. Mamaladze was not adequately followed on. Under Article 74 Para.2 of the Criminal Procedure Code, in case a suspect fails to honour his procedural obligation (when called, immediately to appear before the agency conducting the proceedings), he can be subjected to procedural coercion measures. Under Article 59 of the Criminal Procedure Code, the investigator was authorised to apply against suspect A. Mamaladze procedural coercion measures.

   Expert appraisal reports provided ample grounds to bring a charge against suspect A. Mamaladze, however the investigation chose otherwise.

3. After this, on 17 February 2004 the investigation prescribed another, this time combined - route tracing and auto-technical - expert examination, the **third** one in order, though there was no need to have the third expert examination conducted, as findings of the previous two appraisals were categorical and conclusive, which is not often the case with experts.

   The expert appraisal performed by the Military Criminalistics and Forensic Medical Examination Service of the Ministry of Defence (Expert report No 45/13 – 46/14 0f 26 February 2004), once again **categori-**

cally confirmed the fact of violation of traffic safety rules by A.Mamaladze, driver of the personnel-carrier. Expert report reads: "The BMW type vehicle was moving exclusively on the right side of its part of the carriageway. As a result of the clash the BMW's left side is almost completely damaged. The clash instantaneously caused pressure fall in the BMW's front left tyre, the residual kinetic energy sent the BMW from the right to the left first forward, after which the vehicle turned counter-clockwise and stopped in the extreme right side of the opposite way, as indicated in the site examination report and the enclosed diagram". The report further notes that in the given circumstances the road traffic accident could not have developed as indicated in the evidence by suspect A. Mamaladze and his accompanying witnesses: I.Lomidze, L.Chikhladze, S.Kolbaia, N.Iasashvili and M.Maglaperidze.

4. After this suspect A. Mamaladze should have been indicted, but instead, on 11 March, the investigation chose to prescribe one more expert examination, the **fourth** in the row, this time by the expert commission of the Expertise and Special Research Centre of the Ministry of Justice of Georgia. On 1 March 2004 the supervising prosecutor, I. Bagaturia, commissioned investigator G. Skhirtladze to fix expert examination by a commission as, in his view, the previously conducted expert appraisals were not well-founded and experts had failed to establish the trace of vehicles, as well as the exact timing of the vehicles' cross-over to the opposite sides of the road. From then onwards, the experts were tasked to establish the exact spot of the clash, which none of the following appraisals managed to do. However, no matter what the answer to the posed questions would have been, the fact remained that the clash occurred on the BMW side of the road and the BMW's driver did not violate any of traffic safety requirements, as confirmed by the findings of the previous three expert appraisals.

   The fourth expert report was compiled on 1 April 2004, and it presented the circumstances differently from the previous reports, however, it could not deny either that avoidance of the accident was in no way dependent on D. Sakvarelidze's actions.

   With all the circumstances of the case firmly established, instead of asking additional questions, the investigation should have presented an indictment and sent the case to court, which it failed to do thus raising the issue of responsibility of investigator G. Skhirtladze and supervising prosecutor I. Bagaturia.

5. On 7 April 2004, investigator of the Military Prosecutor's Office of Tbilisi G. Skhirtladze made an order on additional, the **fifth**, auto-technical expert appraisal to be performed by the Expertise and Special Research Centre of the Ministry of Justice of Georgia. The victim, Mariam Skhirtladze refused to have another appraisal performed, however her opinion was neglected. (Vol.2, 12-15).

   Concurrently with ordering the additional expert appraisal, G. Skhirtladze, fully aware that the last appraisal of 1 April 2004 grossly contradicted the previous appraisals as well as the reality, sent an inquiry to the chief of Tbilisi Traffic Police asking whether any other traffic accident occurred on the same day, at the same time and in the same location! Naturally, the answer was no. (Vol.2, 16-17).

   With all the above, when the only thing left was to write an indictment, an absolutely unexpected thing happened: the fully investigated case with all the established facts was withdrawn from the investigative unit of the Military Prosecutor's Office of Tbilisi and sent for further investigation to the Investigative Department of the Ministry of State Security. (Vol.2, 6-8). In other words, the virtually completed case was transferred for "further investigation" to the authority whose staff members were suspected of committing the crime under investigation. The case was transferred to the Ministry of State Security on 19 April 2004. The ordinance concerning the transfer of the case was signed by the then Prosecutor General Irakli Okruashvili, but it was silent as to what else was expected from the further investigation.

   The only possible conclusion to make from all the above is that the prosecutor's office was reluctant to send the case to court.

19 May 2004 saw one more, the **fifth**, expert appraisal report (No 561/13-562/14), whose authors found it impossible to establish as to "when the vehicles crossed over to the opposite side of the road". However, even this report concluded that "the clash must have occurred on the BMW's side of the carriageway". **True, the conclusion is no longer categorical, but the report further confirms that "in given circumstances the avoidance of the accident was not dependent on the action of D. Sakvarelidze driving the BMW"**. On the other hand, the experts refer in their report to the evidence provided by persons present on the personnel-carrier and conclude that according to their evidence Avtandil Mamaladze could not have avoided the accident (Vol.2, 19-34).

According to the witnesses' allegations, they saw how the BMW clashed into the personnel-carrier and started rotating, which they had never claimed to see in their first testimony. I. Lomidze interviewed as witness on 28 November, as well as T.Kolbaia and L.Chikhladze interviewed as witnesses on 8 December (all of them were crew members of the armoured personnel-carrier) stated that they noticed a BMW type vehicle moving at a high speed that clashed into the personnel-carrier and stopped slantwise behind them. None of the witnesses indicated any rotation when interviewed for the first time. It is to be noted that when interviewed additionally on 9 December I.Lomidze specified the layout of crew members in the personnel-carrier. According to his testimony he was sitting on top of the tower, to the driver's right, T.Kolbaia, with his head out, could observe the road to the right, and L.Chikhladze could observe the road on the rear side of the vehicle. Thus, the crew members would have certainly noticed the BMW's rotation, had it occurred.

On the whole, this last report is so much tempered, that it provides good grounds for opening criminal proceedings against its authors. Though, it should be noted that even they did not risk to fully falsify the report and chose to leave many questions open. Experts could not conceal the fact that location of broken glass and plastic fragments, as well as other evidence attest to D.Sakvarelidze's innocence, which they could only juxtapose with the testimony of the driver and crew members and their questionable presumptions.

The evidence provided by the driver and crew members of the personnel-carrier is biased, and calling into question objective findings and materials relying on nothing but biased evidence is nothing short of deliberate attempt to falsify the case.

6. The expert appraisal report of 19 May No 561/13-562/14 did not prove sufficient to fully falsify the case and on 21 June 2004 Vice-Colonel V.Sadatierashvili of the Investigative Department of the Ministry of State Security, investigator of cases of particular importance, fixed one more, the **sixth**, combined route tracing and auto-technical expert examination (Vol.2, 47-49).

   On 19 July Kakha Koberidze, Deputy Prosecutor General extended the period of investigation for the third time – till 23 September – allegedly, to obtain findings of expert appraisal.

   The expert appraisal was commissioned to the Main Criminalistics and Expert Appraisal Department of the Ministry of Internal Affairs. By the time of appraisal the incumbent Minister of Internal Affairs was Irakli Okruashvili, who had sent this particular case for "further investigation" to the body whose workers were implicated in the offence. This time the expert participating in the appraisal emphatically stated that the presented materials were not adequate for a fully-fledged investigation and refused to give any opinion (Vol.2, 91-94). Neither did the experts of the Expert Service of the Ministry of Defence, as well as the experts of "Sakexpertiza" Ltd. of the Georgian Chamber of Trade and Commerce agree to conduct expert appraisal, as they had already conducted the appraisal on the same case and were not allowed, under the procedural law, to carry out a repeated examination. (Vol. 2, 78)

7. On 4 October 2004, the investigator V.Sadatierashvili fixed a new, the **seventh**, combined tracing and auto-technical expert examination that was again commissioned to the Main Criminalistics and Expert Appraisal Department of the Ministry of Internal Affairs that refused to perform the appraisal, giving the

same reason (that allegedly the presented materials were not adequate for a fully-fledged investigation) (Vol.2, 130-132).

8. On 27 October 2004, the investigator V.Sadatierashvili fixed a new, the **eighth**, combined tracing and auto-technical expert examination, this time commissioned to the Military Criminalistics and Forensic Medical Examination Service of the Ministry of Defence. On 19 November the Prosecutor General Z. Adeishvili extended for the fifth time the period of investigation till 23 January 2005 (Vol.2, 145-147), then for the sixth time – till 23 March 2005 (Vol.2, 169-171), allegedly, to obtain the expert appraisal findings. The Military Criminalistics and Forensic Medical Examination Service of the Ministry of Defence refused to carry out an appraisal (Vol.2, 148).

   Finally, on 30 April 2005, the investigator V.Sadatierashvili issued an ordinance on termination of proceedings against Avtandil Mamaladze, endorsed by A.Khvadagiani, Chief of Criminal Prosecution Supervision Department of the Ministry of State Security of Georgia. The proceedings were terminated as "there was no wrongful act found" (Vol.2, 217-228).

9. The said ordinance was cancelled by the ruling issued by Judge S.Tsivtsivadze of the Collegium of Criminal Matters of Tbilisi City Court on 5 June 2005 and confirmed by Tbilisi Regional Court. According to the evidence given by the victim M. Sakvarelidze during the court session, her son's, David Sakvarelidze's, friends visited her on instruction of Achiko Mamageishvili, security officer and offered her a deal. The court considered it was necessary to interview the said persons to find out the reason for offering a deal to the affected party, as well as the motive and the purpose of the offered deal. The court also found that it was necessary to conduct a confrontation between minors Gocha and Badri Tsuliashvili present in the BMW, and the persons present in the personnel-carrier at the moment of accident.

   Further investigation on the case was conducted by Unit 8 of Tbilisi Main Department of Internal Affairs. On 23 February 2006, case No 1003544 was terminated for "lack of wrongful act" by the order of M.Gogoberidze, prosecutor of the Department for Supervision of Criminal Prosecution Legality.

10. The order concerning termination of the criminal case was challenged by the victim M. Sakvarelidze at the Collegium of Criminal Matters of Tbilisi City Court. By ruling of 22 May 2006, Judge J.Kopaliani revoked the order of Tbilisi Prosecutor's Office of 23 February 2006 concerning termination of the criminal case and remitted the case for preliminary investigation to Tbilisi Prosecutor's Office.

    It is to be noted that G. Gviniashvili, presently the Prosecutor of Tbilisi, whose office is supposed to carry out an investigation on the case remitted to it, worked as head of the investigation department of the Ministry of State Security at the time when the case was transferred for investigation to the said ministry.

Inasaridze – Levidze Case

On 18 December 2003, at about 17:20 L.Levidze, senior inspector of Unit 1 of the Criminal Investigation Department of the Ministry of Internal Affairs apprehended G. Inasaridze who appeared to be under the influence of narcotic drugs. Personal search of G. Inasaridze showed suspicious powdered substance, that upon examination was found to contain no narcotic drugs, which only entailed administrative responsibility of the detained G. Inasaridze.

G. Inasaridze was placed in the temporary isolation ward of the Ministry of Internal Affairs. On 20 December 2003, at 9 am G.Inasaridze was found dead in the cell. He was found hanging on the rail of a two-tier bed.

A criminal case concerning G. Inasaridze's suicide was opened on 20 December 2003.

On 27 June 2004, a separate case was opened in respect of L. Levidze and others. L. Levidze was made liable under Article 333, Para 3 (b) and Article 341 of the Criminal Code.

On 1 June 2005 the Collegium of Criminal Matters of Tbilisi Regional Court considered charges against L.Levidze and delivered a judgement of conviction. The indictment was based on the testimony furnished by Natela, Tariel, Nato and Manana Inasaridze, as well as the forensic report.

The court agreed to charges as presented in the indictment, and sentenced L. Levidze to 6 years of imprisonment and deprived him of the right to hold a position.

The judgement was appealed by cassation at the Supreme Court by both sides. The defence side requested to acquit L.Levidze of a charge and release him, while the prosecutor and the victim's successors insisted on having the case returned to the first instance court, as they thought the sentence was not adequate and the defendant deserved a more severe punishment.

On 2 March 2006 the Chamber of Criminal Cases of the Supreme Court of Georgia represented by judges D.Sulakvelidze (Chairing Judge), I.Tkeshelashvili and N.Kvantaliani examined the appeal and rendered a judgement. The Supreme Court partially satisfied the defendant's appeal, made changes to the sentence, changed the qualification of the charge invoking Article 342 of the Criminal Code, and sentenced him to 1 year and 9 months of imprisonment for negligence in the discharge of official duty.

Tbilisi Regional Court based its judgement on the evidence provided by witnesses N.Inasaridze, M.Inasaridze and T.Inasaridze, the victim's successors (sister, sister-in-law and brother, respectively), official information provided by the Georgian TELECOM and MAGTICOM Ltd., applications' register of Didube-Chugureti District Department of Internal Affairs, letter No 80/05-40 from the said department, scene examination report, forensic report and evidence provided by expert K.Eristavi, showing that L. Levidze had failed to notify G.Inasaridze's family of his detention, the entry made in the custody report was not true and that G. Inasaridze's body carried signs of trivial injuries, inflicted 1-3 days before his death.

Based on the above, the court judged that L.Levidze had exceeded his authority using violence – he arrested G. Inasaridze unlawfully and inflicted bodily injuries; besides, the court imputed on L. Levidze a forgery with a personal motive, stating that he had entered false data in the custody report to conceal the breach of law on his part.

The court of cassation was stringent in considering the lower instance court's judgement, and it applied all possible leverage provided by the law to resolve all doubts in favour of the defendant. Based on the materials relating to the case, the court of cassation found that the judgement delivered by the lower instance court was not objective, as charges under Article 333, Para 3 (b) were not supported by adequate evidence to prove that violence causing G.Inasaridze's bodily injuries was inflicted by L. Levidze. At the same time, the court of cassation also found lack of adequate evidence to prove that L. Levidze had exceeded his authority and took G. Inasaridze in custody unlawfully. The court of cassation did not support charges against L Levidze under Article 341 of the Criminal Code, as there was no sufficient evidence in the materials relating to the case to rebut the evidence, according to which L. Levidze had secured for the detained G. Inasaridze the right to notify his family. Based on the materials of the case, the court found that L. Levidze had allowed G. Inasaridze to make a telephone call, but showed negligence in that he had failed to control as to whom G. Inasaridze had called.

The Supreme Court found that L. Levidze displayed negligence in the discharge of his official duty – he failed to control whether the person taken into custody exercised his right to contact the family, he failed to secure timely return of G. Inasaridze's personal effects, he failed to follow up whether G.Inasaridze had left the building of the Ministry upon his release: if yes – could he reach his home, and if not, where and with whom he stayed.

All the above suggests that the prosecutor's office failed to investigate the case fully and completely, to collect adequate evidence to prove L.Levidze's culpability, which, despite the judgement rendered by the Regional Court, has finally led to rebuttal of the indictment and resolution of all doubts in favour of the defendant.

It is to be noted that the court would have been authorised to issue a writ concerning breaches of law by other police officers, if it had not been for the investigation that was virtually "swept the facts under the carpet". There are other criminal cases on which the court should have issued a writ. Apart from the case on G. Inasaridze's suicide (No 060394), on 15 October 2004, investigator V.Tsanava of the Mtatsminda-Krtsanisi Prosecutor's Office made an ordinance on separation of criminal case No 0604887 (in respect of L. Levidze and others) and severance of a new criminal case No 0604937 (in respect of unidentified persons) from it. The investigator made this ordinance as L.Levidze's culpability was already established and it was necessary to declare completion of the preliminary investigation on that case, while no concrete charges were imposed on any other of police officers.

Examination of the case concerning charges against L.Levidze is completed. As far as G.Inasaridze's arrest and death are concerned, as well as legality of the investigation carried out in respect of these facts, it is necessary to further examine criminal cases No 0603941 and No 0604937.

Not infrequently, the Prosecutor's Office is reluctant to open investigation on the basis of monitoring reports sent to it by the Public Defender's Office, where persons deprived of their liberty point to physical and mental pressure put on them by police and officers of penal institutions. Upon receipt of a monitoring report, a prosecutor or an investigator meet with detained persons (persons charged with crimes), have a conversation with them and then make a record where the persons concerned deny any misconduct against them by law enforcers.

It is to be noted that the criminal procedure law does not provide for a "conversation" as a procedural action. It is quite possible that persons charged with a criminal offence would deny the use of torture and maltreatment in return for a certain bargain on the part of the law enforcers, in prejudice of effective and impartial investigation, as provided for by the Georgian law, and international instruments ratified by Georgia (the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights). To illustrate:

In the course of monitoring carried out on 9 August 2006 at temporary detention prison No 2 of the Ministry of Internal Affairs, PDO representatives met with Imeda Chrelashvili who had physical injuries on his body that, according to the detainee, were inflicted on him by officers of Unit 1 of Isani-Samgori Police. The PDO addressed a letter to the Prosecutor of Tbilisi, Head of Human Rights Department of the Prosecutor General's Office and Head of Human Rights Monitoring Department of the Ministry of Internal Affairs with a request to take necessary measures against the perpetrators as stipulated by the law.

The Isani-Samgori District Prosecutor's Office informed the PDO that Prosecutor G.Kondakhishvili met with Imeda Chrelashvili at the premises of the Isani-Samgori District Prosecutor's Office. When interviewed, the detainee said that during his arrest there had been no physical abuse against him by police officers and he had no complaints against them. Hence, no criminal proceedings were opened against police officers under Articles 1441, 1432 and 1431 of the Criminal Procedure Code.

On 6 September 2006, Levan Maruashvili, director of Prison No 1 of the Penal Department of the Ministry of Justice of Georgia, entered one of the prison's cells together with several other persons. He introduced himself

to the cell's inmates – M.Kereselidze, O.Baboev, T.Shavedov and G.Vashakidze – as the new director and threatened them that unless they give him their mobile phones, they would end up with forbidden objects "planted" with them, and hence, with increased penalties. The search of the cell did not demonstrate the presence of any illegal objects, however, the inmates were taken separately out of the cell and physically abused. Examination of the detainees displayed injuries on their backs and feet. PDO representatives received explanations from the detainees and filed the reports that were sent for follow-up to George Latsabidze, Deputy Prosecutor General of Georgia; Pavle Kovziridze, Chief of Investigative Department of the Ministry of Justice of Georgia, and the Human Rights Department of the Prosecutor General's Office.

Later, representatives of the Human Rights Department of the Prosecutor General's Office A.Nadareishvili and Z.Begiashvili met with the detainees at the office of the prison's director. The prison director, Levan Maruashvili, and his deputy were present during the interview, which was perceived as a means of pressure brought to bear on the detainees and impeding full and effective investigation of possible acts of torture and other cruel, inhuman and degrading treatment (the Public Defender addressed the relevant letter to the Prosecutor General's Office). This fact was discovered by PDO representatives accidentally. When asked by PDO representatives as to what procedural action was carried out, and why members of prison administration were present there, representatives of the General Prosecutor's Office answered that no official procedural action was conducted, and that they were simply "interviewing" the detainees about the facts occurring on 6 September 2006.

■

It is important to note one aspect: when the prosecutor's office starts investigation concerning misconduct of law enforcers, it never opens criminal proceedings against concrete persons, despite the availability of valid grounds to that effect, whereas close inquiry normally proves their guilt for offence. For instance:

On 27 May 2006, in the morning eight young Georgians, residents of the village Achabeti, were going via Tskhinvali to Kintsvisi for prayer. They were detained by Ossetian law enforcers, allegedly for the purpose of examining their documents, and transferred to a local security administration. The detained persons were questioned and then released. This fact was followed by an absolutely inadequate reaction from the Georgian side: servicemen of a special unit sent from Tbilisi arrested over 40 Ossetians and brought them to the Gori Police, where 12 persons were subjected to physical abuse by the special unit servicemen themselves. They were mistreated to extract confession that they were members of the "volunteer corps", or to force them to give the names of volunteer corps members. The detainees were undressed, some of them completely, and severely battered with feet, feasts, plastic bottles, wet towels with a knotted end, etc. One of the detainees, Eduard Tedeev, had his skull fractured with a pistol. Besides, they were verbally assaulted. The beating continued between 30 minutes to one hour.

On the basis of this fact, the Public Defender addressed a recommendation to the Prosecutor General of Georgia, requesting to start preliminary investigation. The Regional Prosecutor's Office of Shida Kartli opened a preliminary investigation into the fact of intentional unlawful detention, with no one made criminally liable for gross misconduct.

■

The Public Defender's Office receives complaints from persons recognized as victims on criminal cases in which they express their dissatisfaction about so-called plea bargains (procedural agreements) between the procuracy and persons charged with a crime. To be more specific, when making a plea bargain, the procuracy

fails to take into account the public interest, the degree of unlawfulness of the committed act and the degree of guilt, and oftentimes makes a bargain with persons guilty of grave crime (while the authorities declared "zero tolerance" in respect of offenders).

For instance, on July 28, 2006, the Tbilisi City Court approved a plea agreement reached between the prosecutor and defendants A. and S. Matinyan. They were charged with a grave crime, namely, the infliction of fatal bodily harm, and sentenced to 3 years of punishment – one year of imprisonment and two years of conditional probation. By approving the plea agreement, the judge violated Article 50, Para 5 of the Criminal Procedure Code (under which only one third of the sentence is subject to conditional probation). As A. and S. Matinyan committed a grave crime, the judge was not authorised to commute their sentence and replace two years of imprisonment with conditional probation. The Public Defender addressed a suggestion to the high Council of Justice to examine the legality of the judge's action. The PDO was notified of commencement of the proceedings.

Oftentimes, the Prosecutor's Office motions with the court for assignment of detention as a restraint measure for any category of offence. True, the Criminal Procedure Code provides for the use of detention in cases where a person is charged with an offence punishable with two years of deprivation of liberty or more. But if the offence does not stir up heightened public interest, or if the detention may lead to results grossly detrimental for the person's health status, it is not necessary for procuracy to motion for detention in all cases. **For instance:**

On 20 February 2006, the judge of the Collegium of Criminal Matters of Tbilisi City Court ruled two-month detention as a measure of restraint for M.J. charged with a crime under Article 180 (fraud), Para. 2 and 3 of the Criminal Code. M.J. suffered from tumour. M.J.'s health status deteriorated while she was kept at prison No 5 for women and juvenile delinquents. The patient required urgent hospital care. On 16 August 2006 she was transferred to the Oncology Hospital and given surgery. Two days later M.J. died.

It is to be noted that the prosecutor's office displays loyalty towards police officers implicated in commission of a crime, and even in case of grave crimes it moves for assignment of non-custodial restraint measures against suspected offenders.

Citizen A.Oghanesyan addressed the Public Defender with an application in which he complained of ill-treatment (torture and beating) by officers of Unit 7 of Isani-Samgori District Police Department. The Public Defender repeatedly addressed the Tbilisi Prosecutor's Office concerning this fact. The PDO has been informed that two police officers have been made liable for abuse of authority, however they only received bail as a restraint measure.

In connection with prosecution and investigation, one has to note one problematic issue, such as misinterpretation and misapplication of criminal procedure norms. Interpretation of legal norms is a difficult and controversial process; however, of particular importance in this context are investigative practices that should evolve towards protecting the rights of parties to judicial proceedings, the more so as one of the objectives pursued by criminal proceedings is to protect the rights of the parties.

For instance, in the course of preliminary investigation the defence side is prevented for obtaining copies of important evidence, such as expert's reports. The defence is compelled to handwrite the content of a report. Despite Article 336 of the Criminal Procedure Code providing for the right to access and obtain an expert's report, the parties are faced with problems in this respect. Access to the expert's report presumes the right to obtain its copy, as obtaining is nothing more than a technical matter.

FISCAL POLICE AND HUMAN RIGHTS

The Public Defender of Georgia is often addressed by representatives of the public who complain of wrongful acts committed by Fiscal Police, such as disproportionate use of force (beating, use of arms) when arresting persons suspected of offence, and violation of the rights of persons in the course of criminal investigation.

In terms of human rights violations, the Shida Kartli Department of Fiscal Police shows an alarming record. Complaints addressed to the PDO often point to the chief of the said department, Zurab Arsoshvili.

Nikoloz Posuri Case

On 17 July 2006, representatives of the Public Defender's Office visited Nikoloz Posuri kept in custody at the temporary detention facility of the Shida Kartli Police Department. The detainee displayed multiple injuries in the face, spine and foot area. Later he was diagnosed with concussion of the brain.

Niloloz Posuri said that fiscal police officers came to his house in the village Plavi, Gori district and started physically assaulting his mother, sister and pregnant wife whom they threw down. N. Posuri tried to come to his wife's aid, but police officers did not allow him to help his wife, they started beating him, then handcuffed him and continued beating him, even more brutally.

Then he was taken to the Shida Kartli Department of Fiscal Police. On the way to the police, in the car police officers continued assaulting him both physically and verbally. When asked about the reason of the arrest, police officers chose not to answer and continued beating N. Posuri. When they arrived, he was taken to the office of Zurab Arsoshvili, head of the said police department who promised to release N.Posuri if he agreed to give the names of persons involved in smuggling goods. In case N.Posuri disagreed, police said they would open investigation against him. When N.Posuri rejected the offer, he was taken downstairs, where he was handcuffed to a heater and kept in this position for about two hours. During this period one of police officers came to the room, took off N. Posuri's blood-stained undershirt and gave him another one. After a while N.Posuri was transferred to the temporary detention facility as a person suspected of illegal purchase and possession of smuggled cigarettes. However, neighbours who witnessed the incident said that N.Posuri never kept any smuggled cigarettes, and that fiscal police officers were themselves trying to plant them in Posuri's house, but they were not allowed to.

Niloloz Posuri also stated that at the moment of his arrest Zurab Arsoshvili, chief of the Shida Kartli Department of Fiscal Police, was present at the site and he hit him on the head with a gun and forced him into the car.

The Public Defender sent the relevant materials to the Prosecutor General's Office requesting to open investigation. The investigation started, but so far no one has been made criminally liable.

The Public Defender addressed the Prosecutor's Office concerning other unlawful actions by fiscal police, but so far none of fiscal police officers has been punished. Moreover, over the period of 2005-2006 none of fiscal police officers received any disciplinary penalty for human rights breaches they committed.

The above information warrants a conclusion that the prevailing impunity syndrome is conducive to further wrongdoing by fiscal police.

Operation of Fiscal Police Special Unit

On 17 February 2006, the Fiscal Police Special Unit carried out an operation in the village Dirbi, Gori district and arrested Givi Mazniashvili, Levan Tatenashvili, Teimuraz Kutateladze, Mamuka Mushkiashvili, Zurab

Karenidze, Zaur Lazarashvili, Valeri Tatunashvili, Valeri Tetruashvili, Nikoloz Guliashvili and Tristan Mushkiashvili. The arrested persons showed no resistance to police, however they were severely beaten (hit with a gun butt in the head and face area). They were charged with a crime under Article 200 (production, possession, sales and transfer of excisable goods without excise stamps) and Article 353 (resistance, threat or violence against law enforcement officers or state agents).

The severity of physical injuries inflicted on the arrested persons suggests that members of the Fiscal Police Special Unit exceeded their powers. Tristan Mushkiashvili demonstrated a particularly grave health status, with a severe vision impairment as a result of beating.

The Public Defender addressed the Prosecutor General's Office requesting to look into the incident and suspend, for the period of investigation, official powers of the persons in charge of the said operation.

The Prosecutor General's Office informed the PDO that case witnesses and victims were questioned, and forensic examination conducted. However, as the police officers were masked in the course of the operation, no one has so far been made criminally liable for the incident.

In the previous report, the Public Defender stressed that absence of clear identification signs on hooded members of special units impedes investigation into unlawful acts committed by them, and recommended that this prevailing practice be changed.

David Naskidashvili Case

On 20 May 2006, David Naskidashvili and Ivane Vashakidze were transporting apples by car for sale from the village Tirbni in the Gori district to Batumi. Near Surami they were stopped by unknown persons (who introduced themselves as police officers, though they were not wearing uniforms and had no special police signs on their vehicle). D. Naskidashvili managed to escape, whereas I. Vashakidze was murdered by a blow into his head made with a blunt object.

Later, when D.Naskidashvili returned to the incident site, he was taken by police to a police station in Khashuri where he was told that fiscal police officers suspected of murdering I, VAsjakidze were arrested. He was asked whether he would be able to identify them. D. Naskidashvili answered that he would identify them. However, the said persons were never presented to D.Naskidashvili for identification. Instead, he was told that he himself had killed I. Vasjakidze, though no charges of murder were brought against him.

Z. Arsoshvili, chief of the Shida Kartli Fiscal Police said that three fiscal police officers had witnessed the robbery accidentally.

The family of murdered I.Vashakidze inculpate for the murder the fiscal police, saying that if there had been any robbery, then the robbers would have chosen for the act a more suitable section of the road between the village of Tirbni and the highway (where the traffic is very insignificant), rather then the central road.

Vashakidze's murder case has not been resolved.

It is important to note also human rights breaches committed by the fiscal police investigative service. This concerns truck drivers and their sealed vehicles. More specifically, when an investigation into smuggling starts,

law enforcers seize both smuggled goods and trucks used to transport them. Then they fix an expert examination to appraise the seized goods, however the examination is usually protracted for 5-6 months (for unknown reasons).Over this period trucks are parked at the terminal. Meanwhile truck drivers, that are in no way culpable of smuggling, as well as their family members for whom these trucks represent the only source to earn their living, are left without any livelihood and have to experience extreme hardships.

The Public Defender addressed the Public Prosecutor's Office with a recommendation to remedy the situation in order for the fiscal police investigative department to conduct all investigative actions in due time and ensure timely return of trucks to their owners. However, the recommendation has not been followed on, and similar breaches are recurrent.

MINISTRY OF INTERNAL AFFAIRS AND HUMAN RIGHTS

Despite the reformation of police force in Georgia, there are multiple facts of violation of human rights by police.

The Law of Georgia "On Police" defines the main principles of the work of police force. Under Article 4 of the law: "The work of police shall be based on the principles of legality, respect for person's honour and dignity, social justice, humanity and openness. Police shall respect and protect the rights and freedoms of any person based on the principle of equality, without any discrimination".

Regrettably, analysis of developments underway in the country reveals frequent violation of the above principles by police in the discharge of their duties, manifested in excessive use of force, physical and verbal assault of persons kept in custody, planting of weapons and narcotic drugs. Non-availability of a code of police ethics has a negative influence on police practice. During its visit to Georgia back in 2003, the Council of Europe's Committee for the Prevention of Torture (CPT) spoke about the need for police to have its code of ethics that would take into account the standards enshrined in the European Code of Police Ethics. Presently, the draft Code of Police Ethics has been submitted to international organisations for expert examination and according to spokespersons of the Ministry of Internal Affairs, the code will be adopted in the nearest future.

It is important to note inappropriate use of firearms, often leading to infringement of the right to life and health. Under the law, police can only resort to the use of arms as an extreme measure, and shall strictly observe the principle of proportionality and absolute necessity. Absolute necessity is defined as using firearms only in those cases where all other means prove useless, or where the use of other means fails to lead to a desired result.

In 2005 and the earlier half of 2006, the use of force by police resulted in the loss of lives of 33 persons in the process of arrest, among them 22 persons in 2005, and 11 persons in January - early May 2006. After the special operation conducted by police in Tbilisi the number of fatal cases has decreased sharply.

In 2006, armed resistance to law enforces resulted in the loss of lives of ten officers of the Ministry of Internal Affairs. According to the available statistics, since 2004 the number of law enforcement officers who killed in their line of duty has decreased: the number of police officers killed in 2004 was 28, while in 2005 their number went down to 21 persons.

Special Operation of 2 May 2006

A vivid example of inappropriate use of force by police is the special operation conducted on 2 May 2006 on the Sanapiro street in the centre of Tbilisi. More specifically, during special operation carried out by police on 2 May on the right bank of Mtkvari River in area adjoining the tennis courts, the police opened intensive fire at a BMW type vehicle. As a result of a shoot-out, two of the three persons sitting in a car, Alexander Khubuluri and Zurab Vazagashvili, were immediately killed, while Bondo Puturidze was severely injured. Tbilisi Procuracy opened investigation under Article 114 of the Criminal Code of Georgia (murder in overuse of power while detaining criminals).

The special operation was carried out in a crowded area in close vicinity to tennis courts, which is prohibited by Article 13, Para 7 of the Georgian Law on Police.

On 23 May 2006, lawyer G. Mosiashvili, petitioned with the investigation to recognize Ts. Shanava – mother of Z. Vazagashvili, as a victim. On 25 May 2006, investigator V.Latsusbaia and later, prosecutor I. Imerlishvili of the Tbilisi Procuracy investigative unit, refused to satisfy the petition, claiming that there was no legal basis for such recognition as defined by Article 68 of the Criminal Procedure Code. They alleged that the investigation

comprised a number of investigative actions and various expert appraisals that would ascertain whether there had been any breach of law by police.

According to Article 68 of the Criminal Procedure Code of Georgia, victim is defined as a public, legal or natural person who has suffered moral, physical or material damage as a result of a crime. The investigation was initiated on the fact of murder committed by police officers when they tried to detain a suspect/criminal, but exceeded their authority – an offence provided for in Article 114 of the Criminal Code of Georgia. The PDO stated that Ts.Shanava, mother of the killed Vazagashvili, should participate in the criminal proceedings as a victim, similarly to injured persons under other types of crime. The Public Defender addressed the Prosecutor General with a recommendation to recognise Ts.Shanava as a victim. On July 7 2006, following the recommendation of the Public Defender, the investigation recognised Ts.Shanava, Z.Vazagashvili's mother, as a victim.

On 20 September 2007, lawyers of Z.Vazagashvili's family, Irma Chkadua and Malkhaz Jangirashvili addressed the Public Defender with an application, complaining of the restriction of procedural rights of the victim's legal successor. They claimed that investigator V.Latsusbaia refused to allow Ts.Shanava, the deceased's mother, to get copies of expert's reports, thus compelling the mourning mother to make hand-written copies of reports of forensic examinations of her son's dead body and clothes.

Under Article 366, Para 1 of the Criminal Procedure Code of Georgia, in the course of forensic examination, the suspect, the accused person and the victim or his/her legal successor shall have the right of access to forensic or expert's reports and make a petition, not later that within 10 days of receiving the report, requesting additional or follow-up examination. The Public Defender is of the opinion that the right of access to expert's report implies *per se* also the right to make a copy of the document, as copying the document represent in this specific case only a technical means. Therefore, there can be no justification for mounting obstacles to aggrieved mother in getting the report copied.

On 21 September 2006, the Public Defender addressed the Prosecutor of Tbilisi with a recommendation to help provide copies of expert's reports to the victim's legal successor, which was not accepted.

Thus, obstructing the rights of the victim's successor by the investigation evokes a suspicion of neglecting the objective of criminal proceedings – to protect the rights and freedoms of the victim. Under Article 44 of the Criminal Procedure Code, the prosecution in litigation is represented by the prosecutor, as well as the victim. However, in the case in question the proceedings proved otherwise, as the investigation did all it could to prevent Ts.Shanava's access to the case file, as well as her recognition as a victim. Moreover, Ts. Shanava was not allowed to make copies of forensic reports, which further questions the impartiality of investigation. Despite numerous petitions by the victim's lawyers, the prosecutor refused to challenge investigator V.Latsusbaia.

The investigation was opened under Article 114 of the Criminal Code of Georgia (murder in overuse of power while detaining criminals), however, no criminal prosecution was initiated against any concrete police officer. Interestingly, the forensic reports were made available to the investigation several months ago, however, no disposition has been made so far, and the investigation on the fact is still in progress. It seems doubtful that police officers will be made criminally liable for the incident. Under international human rights law, the state is under an obligation to effectively investigate each and every fatal case of the use of force by police, and provide clear answers to all questions concerning a particular case, the more so as there are too many questions on this particular case, still unanswered. Namely:

1. On the day of the special operation, senior officers of the Ministry of Internal Affairs provided different versions of the incident account. Firstly, it was alleged that police made an ambush in the territory adjoining the tennis courts. The second version alleged that police was making surveillance to follow the movement of a "criminal gang". In both cases one can ask a legitimate question: Why was the special operation

conducted near the tennis courts, i.e. in a crowded location, and not somewhere else? (Article 13 of the Law on Police prohibits using firearms in places where it is possible to have other persons injured.)

2. According to the Ministry of Internal Affairs, they had received information several days before the incident about a criminal gang that was planning to attack a family in Tbilisi and about the expected location of the attack. Why then the police did not lay an ambush at the presumed place of the expected crime?
3. According to the Ministry of Internal Affairs, they had kept the group under surveillance and got telephone audio-records on the place where, allegedly, the criminals were planning to meet, as well as on their possible route. Why then the police failed to arrest them by one, or even when they were sitting in the car?
4. According to the Ministry of Internal Affairs, the persons killed in the shootout were suspected of a pawnshop robbery. Why then they were not arrested on the fact of robbery (it is to be noted that there is no criminal case in which the killed persons would feature as suspects).
5. Immediately upon completion of the special operation, senior officers of the Ministry of Internal Affairs made public statements praising the operation, which could affect impartiality of the investigation on the incident.

In the Public Defender's opinion, the special operation was carried out unprofessionally and inconsistently, which resulted in the deaths of two persons and threatened the life and health of many people present at the site, as 10 am is the time when the tennis courts' territory is full of people. It should be noted further that traffic in the location is regulated by traffic lights, and traffic in the area was stopped for the duration of the operation. Normally, at this time of the day there are many children in the tennis courts, which was not the case on that day by sheer accident, because of the bad weather.

It is necessary to carry out full and impartial investigation by competent and duly qualified persons on the fact of overuse of force by police.

It should be borne in mind that section 3 of the Law on Police that regulated the use of force and firearms is generic in character, and needs to be further worked out in detail taking into account the principle of proportionality and absolute necessity in the use of force.

MIA General Inspectorate's Special Operation in Sarpi Customs

In what concerns the facts of beating by police of persons kept in custody, there are cases where senior officers of the Ministry of Internal affairs abuse their authority and physically assault the persons in custody. **On 8 February 2006, David Mindiashvili, chief of the Ministry of Internal Affairs' General Inspectorate's Department in Western Georgia, carried out a special operation in Sarpi customs, during which 4 border officers – Kondaridze, Mikeladze, Tavartkiladze and Dvaladze were arrested. They were physically assaulted by police despite the absence of any resistance. All of them spoke of the involvement of David Mindiashvili, chief of the Ministry of Internal Affairs' General Inspectorate's Department in Western Georgia.**

The Public Defender sent the Prosecutor of Ajara relevant materials for preliminary investigation to be started. The PDO has been informed that the Prosecutor's Office of Ajara opened investigation on the fact of abuse of authority by officers of the regional department of the Ministry of Internal Affairs' General Inspectorate, however no one has so far been made criminally liable for beatings.

Revaz Tsilani Case

On 10 August 2005, Revaz Tsilani was assaulted both physically and verbally by members of the special unit of the Ministry of Internal Affairs (as reported by Revaz Tsilani: Malkhaz Tsiklauri, Tariel Pruidze and

Solomon Khorbaladze) and Temur Chikovani, officer of Mestia police. One of them hit him in face and when R. Tsilani fell down, the four abusers started battering him with feet. Physical violence continued at Mestia district police station, which was witnessed by the chief of police Teimuraz Gvaramia.

Revaz Tsilani died of cancer on 27 May 2006.

On the following day from the incident, Revaz Tsilani filed a complaint to Gulver Gurchiani, Prosecutor of Mestia district, however, with no follow-up on the case. According to prosecutor G. Gurchiani, he was addressed only on 22 August 2005; however, according to the documented information available to the PDO, V. Tsalani, prosecutor of Mestia district procuracy, addressed A. Chartolani, chief physician of Mestia district outpatients' clinic with a request to release R. Tsilani's case history, which was satisfied on 12 August with issuance of a certificate from the outpatient's clinic (Form No. 27). The above leads to a reasonable suspicion on Gurchiani's intentional failure to open investigation on the fact of R.Tsilani's beating.

In connection with this incident, the Public Defender's Representative in Samegrelo and Upper Svanetia B.Kiria got explanations from G. Gurchia, District Prosecutor of Mestia; T. Chikovani, senior inspector-investigator of Mestia district police; B.Mushkudiani, inspector of Mestia district police; Nazo Parjiani, psychiatrist at Mestia district outpatients' clinic, and residents of village Lenjera, Mestia district Emzar Merlani and Viola Tsilani.

The Public Defender sent the relevant materials the Prosecutor General's Office for the latter to open investigation on the fact.

The chief of Mestia District Police, Teimuraz Gvaramia was made criminally liable for on a charge of neglect in the discharge of official duty and Temur Chikovani, chief of criminal department of Mestia District Police – on charges of excess of authority and intentional unlawful detention. The court sentenced T. Chikovani to 5 years of imprisonment, and T. Gvaramia – to a fine of 10 000 GEL.

It is necessary to note illegal actions by patrol police officers.

Jemal Baramidze Case

On 12 February 2006, the patrol police stopped Jemal Baramidze for driving in excess of speed-limit. After a verbal row that followed, 47-year old J. Baramidze was brutally beaten by the patrol police officer, with the resultant brain concussion, bruises in the chest area, and damages in the eye and nose areas. The police continued beating J. Baramidze with a gun-butt after he was handcuffed.

The PDO representatives received incident accounts from eye-witnesses of the incident - L. Shainidze, who was travelling with J. Baramidze in the car, and his acquaintance T. Bolkvadze, who happened to be on the scene of the incident.

When in custody, J. Baramidze required urgent medical assistance, with ambulance called to the remand facility twice.

According to L. Shainidze, J. Baramidze's companion, Mamuka Jincharadze of patrol police threatened him with gun to prevent him from interfering in the incident to stop the violence.

J. Baramidze injuries are described both in the medical report, and in the records of examination conducted when J. Baramidze was brought to the detention facility.

The Public Defender addressed a recommendation to K.Maisuradze, Prosecutor of Ajara; V.Sanodze, Chief of the General Inspectorate of the Ministry of Internal Affairs and D.Bakuradze, chief of patrol police department in Ajara in order for them to open investigation on the incident.

On 9 August 2006, the court sentenced Mamuka Chincharadze to 3 years of imprisonment for abuse of authority.

Unlawful Detention by Police Officers

On Keeping Minors in Tskaltubo Police

On 22 February 2006, law-enforces kept suspects Mzia Dangadze and Vakhtang Gvelesiani (under Article 181 of the Criminal Code of Georgia) in police custody till 3 am together with their children (5- and 6-year old minors). According to police officers, they chose to bring the minors to police in order not to leave them at home unattended. However, Teona Kuchava, the Public Defender's Representative in Imereti Region who met with the detainees, as well as with their neighbours and relatives, reported that at the moment of arrest, the children's grandmother and aunt were present in the house. Therefore, keeping the children in the police station can only be interpreted as a criminal offence. The law-enforcers violated the minors' right to inviolability and security of person, which is against both domestic and international law.

The Public Defender addressed a recommendation to M.Chogovadze, Prosecutor of Imereti Region, as well as to the Prosecutor General's Office to open preliminary investigation and criminal proceedings against persons who had kept minors in police custody.

As reported by the Prosecutor's Office, the investigation is in progress.

Beating of Detainees in Kutaisi Prison

It is necessary to point out the case where a police officer, whose duty was to maintain law and order and protect security and dignity of persons, acted immorally, thus provoking a wrongful act. Persons suspected of committing an offence were arrested, brought to police where there was no longer any need to use force, and brutally beaten. Later, in return for keeping silence, they were promised a lighter penalty. Officers of Kutaisi police station No 5 arrested K.J., I.K., A.F. and N.Ts. The arrest was preceded by the following incident. One of police officers used to make regular visits to a store to see the wife of one of the persons who was arrested later.

According to the detainees and their friends and relatives, the police officer was harassing the woman forcing her to enter into an intercourse with him. This became known to the woman's husband (she told him about it herself), and he, together with his friends, met the police officer and told him to leave his wife alone. This was followed by a verbal assault by the police officer and a fight. According to allegations by police officers who came to the site, the detained persons were found to physically assault M.M. (police officer), and resisted the arrest, which led to injures at the moment of apprehension.

The PDO representatives examined the detention reports as well as the records in the police log. K.J., I.K., and N.Ts (the latter persons is infirm) showed various injuries. However, only K.J. was officially reported to have received injuries after he was brought to police, namely, as a result of beating. Others claimed to have received their injures at the moment of arrest. All the persons concerned stated verbally that they were beaten in police, however they chose not to mention that officially for various reasons.

One of the detainees, K.J. was transferred to Kutaisi Regional Hospital. He displayed multiple bodily injuries and concussion of the brain. Investigation was opened under Article 239, Para. 2 of the Criminal Code of Georgia. As stated by the detainees and their families, in the process of investigation they were offered a plea bargain, whereby they were expected to confess the crime and keep silence about the beating in police. Otherwise, they were threatened with remand custody. This is the reason why the detained persons choose not to state officially the fact of beating by police.

Finally, the prosecutor's office and the persons accused of crime made a procedural arrangement in which they confessed the crime and were released.

Another very important problem is the planting of arms and drugs with arrested persons.

Kh. Bukia Case

On 12 February 2006, Samegrelo-Zemo Svaneti Regional Department of the Ministry of Internal Affairs carried out a special operation, during which the police arrested Kh.Bukia and his accompanying persons. The special operation was led by Merab Gergaia, chief of the Regional Police Department.

The available video clearly shows that police officers physically assaulted Kh.Bukia (one policeman was shown to be pulling his ear, while the other one was battering him on the head). Kh. Bukia resisted the assault and was asking the police not to plant anything illegal with him. Kh. Bukia's personal search "revealed" a hand grenade in his pocket.

The Preliminary investigation and court judgement held the charge, while no one was punished for inhuman and degrading treatment of Kh.Bukia. The maltreatment, as reflected in the video, and Kh.Bukia request for the police not to plant anything illegal with him puts in question the lawfulness of the court decision.

Maisaia and Aniokhin Case

On 15 February 2005, the special police unit entered Ina Chkhenkeli's home and started searching the premises without giving any explanations. Despite numerous attempts by the owner of the premises to learn as to what had caused the search, the police continued searching the premises, with no attesting witnesses invited. It turned out later that the special unit entered Ina Chkhenkeli's apartment by mistake, as they were looking for some Aniokhin, who resided on an upper level of the same premises.

At the moment of search in Chkhenkeli's premises, Z.Maisaia, who was traced together with Aniokhin, was staying in Aniokhin's apartment. They learnt about the search in their house and when the police reached their apartment, they opened the door without any resistance. The personal search of Z.Maisaia and Aniokhin re-

vealed a narcotic drug, heroin. The arrested persons claimed the police had planted the drugs, which seems logical, as they had had ample time to get rid of the drug before the police came to their apartment. It is to be noted that no neighbours were allowed to be present at the search. By the judgment of Batumi Court of 29 April 2006, Z.Maisaia was sentenced to 6 years deprivation of liberty, and Aniokhin to 5 years in a strict-regime penal institution.

Cases of Wilfulness by Police

On 8 March 2006, the police held a spot-check in the area adjoining the city of Poti, near Maltakva cross-roads, and were stopping and searching all passing vehicles. The Public Defender, who happened to be in Poti, asked the police to present the Minister's order to carry out a spot-check and search. The police failed to present the order. Neither were they able to name the persons in charge of the spot-check. Moreover, the police did not even have their ID cards, and some of them were not wearing uniforms. All of them were armed with sub-machine guns. As stated by police, they received a verbal order from their seniors to conduct a spot-check.

Later, the Public Defender was told that the reason for conducting the spot-check was GAZ 2410 type car stolen from Poti. However, the police failed to give adequate reasons why they were also stopping other cars in addition to GAZ 2410 type vehicles.

The Public Defender addressed the General Inspectorate of the Ministry of Internal Affairs for follow-up inspection to be carried out in order to punish the officers who took part in the spot-check as well as its organisers. However, no one was punished for the said fact. As reported to the Public Defender by local journalists, such unlawful actions are not infrequent in Poti and in the adjoining area, and were covered by journalists in local media with description of concrete facts of physical and verbal assault against persons, including minors, by police. However, no one has been punished so far for these assaults.

POLICE MONITORING

In accordance with the Organic Law on the Public Defender of Georgia, starting from January 2005 the Public Defender's Office has been carrying out regular monitoring of police stations and temporary detention facilities both in the capital city and in the regions of Georgia. The purpose of monitoring is to examine the current situation, as well as human rights status in police stations and temporary detention facilities, and follow on violations when these are found. The preventive character of monitoring has contributed to a significant reduction in the number of violations of detainees' rights, as evidenced by comparative analysis of 2005-2006 statistics.

The monitoring involves examination of human rights status in police, as well as elucidation of the facts of impairment of human rights guaranteed by international human rights instruments, and follow-on. Monitoring groups visiting police stations and temporary detention facilities focus specifically on physical and psychological pressure by law-enforcers, as well as on other facts of inhuman and degrading treatment. On top of that, the monitoring implies control over fulfilment by police of procedural norms as defined by the Criminal Procedure Code of Georgia, such as: enlightening detainees about their rights, providing a copy of detention report, notifying the detainee's family of detention, etc.

In 2005, the monitoring groups made 1763 visits to police stations (not including regular monitoring by PDO regional offices, which raises the total to over 2000 visits).

Starting from January 2006, the monitoring of preliminary detention facilities has been carried out with varying intensity. The number of visits made between January-June 2006 totalled 307. The varying intensity of monitoring in 2006 was caused by PDO's shortage of human and technical resources, as the PDO only relied on its own resources when carrying out monitoring of police stations and penal institutions.

In the earlier half of 2006, the monitoring groups interviewed 231 persons in custody, of whom 178 displayed bodily injuries. Of these 178 persons, only 23 (i.e. 13% of detainees) acknowledged the fact of physical violence by police.

As many as 21 facts of physical injuries were followed by investigation (torture, excess of official authority). Of these, investigation was dropped on 11 cases for alleged absence of a crime in the act, while 10 cases are in the process of investigation.

As far as procedural breaches are concerned, these were found in respect of 110 detainees; of these, 70 alleged violations were not confirmed by the investigation. Thirty cases are in the process of examination. In connection with violations revealed by monitoring groups, 10 police officers were subjected to disciplinary penalties, and 13 officers received penalties for breaches in detention records.

The number of suspects kept in temporary detention facilities (in the earlier half of 2006) totalled 7466; of these 1357 detainees, i.e. 18% of the total number, displayed injuries. Only 86 detainees, i.e. 6% of the total number, expressed grievances about treatment by police.

According to the data of the Penal Department, in the first half of 2006, 352 inmates entered penal institutions of the Ministry of Justice with bodily injuries.

According to the information provided by the Ministry of Internal Affairs, in the course of operational and investigative work carried out by the Ministry's General Inspectorate 27 police officers were arrested and subjected to criminal proceedings; of these, 13 officers were made criminally liable for bribe taking, 7 officers for fraud, 3 officers for concealing the crime, 3 officers for abuse of authority, and one officer for illegal purchase, carriage and selling of narcotic drugs.

The General Inspectorate of the Ministry of Justice carried out 466 official checks, with disciplinary sanctions applied to 379 members of police force, among these 115 were reprimanded, 83 were strictly reprimanded, 5 were demoted in position, 107 were discharged from police service, 3 were demoted in title; and 37 officers were dismissed from police for drug use.

HUMAN RIGHTS IN ARMED FORCES

Currently, the Public Defender's Office is not carrying out systemic monitoring of military units of the Ministry of Defence, though it is planned to conduct it once the resources necessary for monitoring (human, technical, etc.) are made available.

As far as the elucidation of violations of human rights of military servicemen is concerned, they are mostly reluctant to discuss their human rights violations as well as their causes, as they are conscious of possible complications and problems that might emerge.

Representatives of the Public Defender's Office visited inmates of Prison No 5 in Tbilisi accused of desertion and leaving wilfully their military units. The motives for desertion as presented by the persons concerned appeared to be fairly vague, though it is clear that they are reluctant to give real reasons for their action. Some of the military servicemen stated that they left their units because of the existing situation there.

Soldiers in military units are grouped according to their region of origin, and conflicts between them are often found to occur on these grounds. Besides, difference between military servicemen stems from their authority as based on the hierarchy existing in military units: the so-called "honoured" (those with the authority, in some units referred to as "respected"), "braves" and "herd" (those with no authority). Hence, each of these categories follows its own pattern of behaviour. For instance, the "honoured" can take a leave without any problem, while a serviceman from among the "herd" has to ask for the honoured's permission first, and only afterwards can he go to the command to ask for a leave. In case the "honoured" refuses to grant him a leave, he cannot take a leave; in case he will, he will face serious problems. Also, when asked who their commander is, soldiers have to refer to the name of the "honoured" person who "controls" their unit. One can not reciprocate a blow to an "honoured" one, while physical violence from him is not considered to be any harm. When paid wages, servicemen all contribute to a "common pool". A servicemen deserting from the unit normally gives preference to being kept in custody than going back to the unit, as he will be brought to account by the so-called "honoured" boss.

For lack of information, it is not possible to assert that this hierarchy (with the same categories) exists in every unit, however the problem does exist. It should also be emphasised that military servicemen keep absolute silence on any problem they may have.

On several occasions the military servicemen approached the PDO for help, and their cases concerned mostly physical violence and psychic pressure on them by officers or other servicemen (the so called "honoured" ones).

Private Giorgi Sharikadze's Case

On 31 May 2006, Private Giorgi Sharikadze of MoD foot brigade No 4, was referred to the clinical hospital of the State Medical University with multiple bodily injuries and almost lost speech. G. Sharikadze was diagnosed with closed cranio-cerebral injury, closed injuries of abdominal cavity and thoracic cavity, bruises, excoriations and multiple haematomas. Giorgi Sharikadze said he was beaten by sergeants and privates who had him seated on a chair, tied his hands and feet, shaved his hair, and started beating him on face, shoulders, stroke him with a knife on the stomach, took his money away, etc. Before that incident he had been beaten 5 times. The first beating followed when he refused to wash other servicemen's clothes and socks. G.Sharikadze was referred to a military hospital several times, each time after the beating.

In the course of an investigative action G. Sharikadze identified concrete persons (sergeants and privates) who had beaten him, i.e. the victim pointed to the offenders; however the investigation chose not to have them recognised as suspects and placed in custody.

Private Valeri Sarishvili's Case

On 9 January 2006, the PDO representatives visited Private Valeri Sarishvili of the Akhaltsikhe artillery battalion, referred for treatment to O.Gudushauri National Medical Centre with the brain concussion and multiple injuries.

According to Sarishvili's lawyer, starting from November 2005 other privates of the unit where V. Sarishvili served, had been constantly abusing and assaulting him. V. Sarishvili had left his unit several times, and later returned on his father's advice.

On 29 December 2005, Sarishvili's father accompanied him to the unit himself and spoke to the commander. On 8 January, V. Sarishvili was severely beaten: he was put a knife on his throat to extort money; besides he was threatened with hanging unless his family send money for the "pool". The beating was witnessed by an officer, however he did nothing to stop the violence.

Private Valeri Sarishvili deserted from the unit, and was found on a motor road and brought to O. Gudushauri clinical centre.

The military police investigative unit opened preliminary investigation on money extortion and infliction of injuries, dangerous to health.

Private Zviad Beltadze's Case

Zviad Beltadze served at the air defence military unit. One day it was found that one submachine gun was lost, which led to the arrest of two privates and one officer. Z. Beltadze was in no way related to this incident, which is also confirmed by the unit's command. The unit announced a search for the lost gun, which was found by Z.Beltadze and two other privates. Z. Beltadze was interrogated several times; he was subjected to pressure and coercion in order to extract from him the details of what had happened. Two months were left before Z. Beltadze's completion of compulsory military service. Z. Beltadze, who was intimidated by the investigator, called his family and told them he was going to leave the unit because of the pressure and coercion he was subjected to. Finally, he left the unit. His father went to the unit the same day to meet the unit's command. Z. Beltadze was not going to return to the unit before the truth was established. When official retrieval was announced, Z. Baltadze hired a lawyer and agreed to return to the unit voluntarily, but was arrested at home on 15 March and placed in custody on charges of desertion.

Notably, according to the information provided by the Ministry of Defence, over 2005- 2006 there were no facts of human rights violations by military police officers. Hence, there were no disciplinary sanctions imposed on members of military police.

3 THE SITUATION IN THE PENITENTIARY SYSTEM

The human rights situation in Georgia's prison system continues to be a cause of major concern.

This applies both to the physical infrastructure as well as the general conditions of imprisonment, during which the inmates are often subjected to torture, inhuman and degrading treatment in violation of international law and the domestic legislation.

The basic principle for the treatment of prisoners is that they are sent to prison *as* punishment, and not *for* punishment. It is not allowed to keep them under conditions that may have a harmful effect on their health or even lead to their death. Moreover, when the State enforces its right to deprive individuals of their liberty, it must ensure that the persons who are kept in the custody of the State are treated in a decent and humane manner. The State has an obligation to create the prison environment that allows a dignified existence for the inmates.

Rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that "The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life".

In Georgia regulations concerning custody are provided in the Code of Criminal Procedure, the Law on Imprisonment and the relevant by-laws. A separate Penitentiary Code has also been drafted and submitted to international organizations and local NGOs for comment.

In 2005 the Criminal Justice Reform Strategy was elaborated, including proposals regarding the conceptual framework for the penitentiary reform. Work on the Action Plan for the implementation of this Strategy was completed in May 2006. The Action Plan provides a list of specific, time targeted measures, the implementing agencies and funds necessary to achieve the goals set out in the conceptual document. The Strategy was approved by the President at the end of 2005.

CHANGES TO THE LAW ON IMPRISONMENT, PRISONER RIGHTS AND THE SITUATION IN THE PENITENTIARY ESTABLISHMENTS

In the course of 2006 a number of legislative changes relating to the penitentiary system were enacted, with both positive outcomes and downsides.

A major decentralization reform was undertaken in the Penitentiary Department at all levels of administration and management. According to amended Law on Imprisonment, the staff list of a penitentiary body shall be approved by the Chairman of the Department by agreement with the Minister of Justice (Art. 11.2); staff members of the Department shall be appointed and dismissed by the Chairman of the Department (Art. 11. 21); staff members of a penitentiary establishment, except deputy directors, shall be appointed and dismissed by the Director of the penitentiary establishment (Art. 11. 24). **The regime of the execution and serving of imprisonment sentences** shall be determined by the Chairman of the Department, while the transfer of a convict to a penitentiary establishment of a different regime shall be effected with an order of the Chairman of the Department (Art. 25.3).

The Permanent Commission which has been set up at the Penitentiary Department is authorized to make a petition to the court for an early release of a convict or changing the unserved portion of the sentence with a lighter sentence (Art. 68). **The Commission is composed only of the staff members of the Penitentiary Department which may leave doubt as to the objectivity of their decisions. On the other hand, assigning the same task to a commission made up solely of the non-governmental sector representatives or of any other persons inexperienced in dealing with these sensitive matters, would be inadvisable and may provoke more confusion and disarray in the system. Therefore, we make recommendation to the Minister of Justice and the Chairman of the Penitentiary Department to form a mixed commission composed of an equal number of the Ministry of Justice and the Penitentiary Department representatives on the one hand and independent members, including from the NGO sector, on the other. We also recommend that the Commission take over responsibility for all issues related to prison regime in order to maximize objectivity in the decision-making over this crucial matter.**

As a result of decentralization, the Penitentiary Department has been given full discretion over the allocation of budgeted funds. Decisions concerning restrictions on the sending of parcels and packages to prisoners shall be made by the Chairman of the Department (Law on Imprisonment. Art. 36.2). We positively assess this new provision in the law.

Another positive amendment was made to the Law on Imprisonment on April 28, 2006. Specifically, a new sub-paragraph (f) was added to Article 22.1 stipulating that the list of persons accommodated separately in a penitentiary establishment shall include also the individuals recognized as victims of trafficking under Articles 1431 and 1433 of the Criminal Code of Georgia.

According to the changes made to Article 93 of the Law on Imprisonment, "Public oversight over penitentiary institutions shall be exercised by a **standing commission** comprised of officials of local government and self-government bodies, public figures, representatives of non-governmental and religious organizations and other persons. Staff of the penitentiary system may not be part of the commission." The tasks of these permanent commissions are to assist the administrations of penitentiary establishments in resolving issues relating to accommodation, study, work, food, medical service, supervision of prisoners as well as other matters concerning the execution of sentences. In the course of fulfilling these tasks, commissions have the right to elaborate recommendations and address the director of the penitentiary establishment.

The 2005 Report of the Public Defender on the Condition of Human Rights in Georgia contained a recommendation to the Minister of Justice to "Complete as soon as possible the establishment of permanent commissions at every penitentiary establishment as provided for in the Law on Imprisonment. Commission members must be given the right to carry out visits not only during the working hours, but at any time of the day, including on week-ends. They must get unimpeded access and have the opportunity to meet and interview inmates in private, move inside the prison without restriction, visit any cell or other room. Any attempt to prevent or impede commission members in the discharge of their duties must be subject to appropriate disciplinary sanctions". The Ministry of Justice has committed to act on this recommendation.

As a follow-up, we recommend that the Ministry of Justice give commission members the right to make visual and audio recordings during the visits if necessary.

The Ministry of Justice has announced a tender for the selection of commission members, however, only three permanent commissions for public oversight at Kutaisi Prison No.2, Zugdidi Prison No.4 and Batumi Prison No.3 have been formed so far. The Ministry of Justice has not developed selection criteria for the candidates which further complicates finalization of the process. We proposed for the Minister's consideration a list of criteria for the evaluation of candidates. Applicants should meet the following requirements:

- Not be an employee of any governmental agency (including a penitentiary institution), except local government and self-government bodies
- Be objective, impartial and without conflicts of interests
- Have a general competence in the field of human rights
- Know the Law of Georgia on Imprisonment
- Have the ability to formulate and clearly communicate issues of concern (orally, as well as in writing)
- Possess critical thinking skills
- Be experienced in writing reports
- Have team work experience

The Public Defender's Office carries out daily monitoring of the situation in the penitentiary system, but our human and financial resources are limited. It is critical to have an effective public oversight system in place. In view of that, the creation of permanent commissions at every penitentiary establishment as provided for by the Law on Imprisonment is a vitally important and urgent task.

Similar public monitoring bodies operate almost everywhere in Europe and are quite effective.

We consider that the creation of permanent commissions for public oversight would significantly improve the level of observance of human rights in the penitentiary system and recommend that the authorities provide the minimum necessary resources (telephone, fuel, etc) for the commissions to accomplish their mission.

THE TRAINING CENTRE FOR THE PENITENTIARY AND PROBATION SERVICE

The Training Centre for the Penitentiary and Probation Service under the Ministry of Justice was established by the Presidential Decree of November 8, 2005. On April 28, 2006, Article 111 was added to the Law on Imprisonment which stipulates that training, re-training and/or professional development of the staff of the Penitentiary Department, the Department for the Enforcement of Non-Custodial Sentences and Probation and/or persons who want to be employed in the system shall be carried out by the Training Centre for the Penitentiary and Probation Service established under the Ministry of Justice".

As a rule, the penitentiary and probation staff members (except the Chairman of the Department) are appointed only after the completion of a study course at the Training Centre for the Penitentiary and Probation Service (Art. 111.2 of the Law on Imprisonment)

However, the law also provides that a person may be appointed without having taken such a course on condition that he/she completes it within the six months following the appointment (Art. 111.3).

Establishment of the Training Centre for the Penitentiary and Probation Service has been a major step forward in the process of penitentiary reform, as many of the problems crippling the penitentiary system are caused by under-qualified staff.

The Training Centre actually began its work in September of 2005 and had trained 280 newly selected employees for Kutaisi Prison No.2 and the Strict Regime Penitentiary Establishment before the Presidential Decree was issued on 8 November 2005.

In December of 2005 the Centre trained another 151 employees who were selected competitively through an open tender procedure.

In March of 2006 the Centre re-trained 86 staff members of Zugdidi Prison No.4 and in May of the same year - an additional 122 employees from Batumi Prison No.3.

Currently the Centre is providing a specialized training course for 167 members of the Prisoner Escort Special Unit in Tbilisi.

It is our hope that the Training Centre for the Penitentiary and Probation Service will continue to make all efforts necessary to secure the highest standard of efficiency, competence and integrity of the penitentiary staff.

Under the Action Plan for the reform of the Penitentiary System, the Training Centre must complete the re-training of the system's entire staff before January 1, 2008.

VISITS TO PRISONERS

The changes made to the Law on Imprisonment have amended some rules concerning **visits to prisoners**. These changes have in effect restricted the right of prisoners to be visited by family and friends; the visit may last for up to an hour; the number of visits that convicts are entitled to has been established as follows:

- convicted women prisoners – up to three visits a month
- male prisoners in the strict regime penitentiary establishment – one visit a month
- male prisoners in the strict regime penitentiary establishment (repeated commission of offence) – one visit in two months
- life prisoners – up to four visits a year
- juvenile prisoners – up to four visits a month. With appropriate behavior and learning record, after having served a quarter of the sentence, less strict rules may apply and the right to additional two long visits a year be granted.

Under the amended law, no other categories of convicts except the juveniles retain the right to receive longer visits.

It must be noted also that the changes to the Law on Imprisonment have narrowed the circle of visitors to family members and close relatives only.

All the aforementioned changes run counter to the Criminal Justice Reform Strategy which endorses the principles of individualized approach and re-socialization as key components of the rehabilitation endeavour which, among others, is achieved through contacts maintained by short and longer visits of family members and relatives.

Contact with the outside world maintained by prisoners through people visiting them greatly facilitates their re-integration into a wider community upon release.

The international community pays a great deal of attention to the right of inmates to maintain ties with the outside world, as attested by a number of legal instruments and guidelines. The UN Standard Minimum

Rules (Rule 37) provide that "Prisoners shall be allowed, under necessary supervision, to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits".

Recommendation No R(2002)2 adopted by the Committee of Ministers of the Council of Europe in 2006 on the European Prison Rules states that "Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons" (24.1) and that "Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so" (24.5).

According to the CPT standards regarding prisoners (Brochure no 6, 2001), the CPT considers that the entitlement of receiving visits of up to an hour per month is not sufficient to maintain reasonably good contact with the outside world. The committee takes the view that "prisoners must be able to safeguard their relationships with their families and close friends and the guiding principle for prison authorities should be that prisoners' outside contacts are to be promoted".

The CPT also speaks of the possibility of granting short-term home leaves to prisoners. Under certain conditions, prisoners may be allowed to leave the penitentiary institution unaccompanied to visit family and close relatives.

It is interesting to review some of the existing policies and programs in other countries designed to facilitate family links during incarceration. Some establishments, for example, offer a number of family days for contacts with children and sometimes other family members in the prison cell. Many prisons in England have specially designed places for contacts between parents and children often referred to as "bonding visits".

In Canada the conjugal visit program enables inmates to spent 72 hours with the family in an apartment-style setting within prison walls. Similar Family Visit programs to help preserve family bonds behind bars are offered by prisons in France and Spain.

In Guernsey Prison (the Channel Islands), dependant upon privilege level, inmates can receive up to a maximum of 6 visits a month (a 28 day period). Prisoners are able to book visits 48 hours in advance. No more than two people can come on a visit at the same time. Visits take place in the Prison Visits Room where tables and seating is provided. For security and administrative reasons, closed visits may be arranged in a special room designed for the purpose of physically segregating the prisoner from the visitor.

The Hong Kong prison system maintains rather stringent controls over inmates' contacts with the outside world. Significant restrictions are placed on the frequency, length and character of prison visits. Only relatives and friends of prisoners are authorized to visit. Visits are unnecessarily short and, for convicted prisoners, too infrequent. However, conditions in prison visiting areas are pleasant. Visiting rooms and visitors' waiting rooms are air-conditioned and normally have televisions and phones.

Unconvicted prisoners are permitted daily fifteen-minute visits with up to two people at a time. Convicted prisoners are permitted two thirty-minute visits per month with up to three people at a time.

The Hong Kong prison system has two types of visits, open and closed. With closed visits, known also as non-contact visits, prisoners and their visitors are separated from each other by a glass or Plexiglas screen. This does not only prevent physical contact, but communications must be done via an intercom system, which is often frustrating for both prisoners and their family members. Closed visits are the rule for Category A and B prisoners, but it cal also be applied to Category C and D prisoners who are held in high security institutions.

With open visits, visitors and prisoners speak to each other directly and may enjoy a limited degree of physical contact. Shaking hands, for example, is allowed; kissing is not. Most open visits take place in rooms equipped

with a long table that is divided down the middle by a short Plexiglas partition that reaches almost to eye-level. Prisoners sit in a row on one side of the table; visitors sit on the other side. Drug smuggling into prison during open visits is often a serious problem.

Until the recent amendments to the Prison Rules, the Hong Kong prison system had imposed significant restrictions on prisoners' correspondence with outsiders, including the number of letters that could be sent. These amendments have greatly relaxed the curbs on correspondence and prisoners are now allowed to send out an unlimited number of letters. Also, prisoners may now correspond with anyone, which means they can send letters to the media and to outside organizations with an interest in human rights protection.

In Scotland convicted prisoners are entitled to a minimum of one visit of not less than 30 minutes in any period of seven consecutive days or not less than two hours in any period of 28 consecutive days including at least one weekend visit every four weeks.

Open Visits - These are the most common type of visiting arrangement. Visits take place in a more informal setting across a table without any other form of physical barrier. The visit area will be observed at all times. Visits could also be monitored with the help of electronic surveillance cameras.

Closed Visits - Some prisoners who have lost the privilege of open visits will have their visits under closed conditions, i.e. when prisoners and visitors are physically separated by a transparent screen.

Family Visits **-** A number of establishments operate a system of allowing close family members (and especially children), to visit in a quieter and more relaxed setting than is possible at ordinary visits. These visits allow families quality time to discuss personal issues, address family problems and most importantly, to maintain parent/child relationships - especially when the parent is serving a long sentence. In order to qualify, the prisoner will normally have to be either a security category 'C' or 'D' and have a good disciplinary record.

Bonding Visits **-** This type of visit is unique to female establishments. The purpose of these visits is to allow mothers to spend quality time with their children. The visits are available to those serving sentences of over three months and whose children are under 12 years of age. A maximum of two visits per prisoner per month is allowed.

In England convicted prisoners can receive two visits every four weeks. More frequent visits are allowed for remand prisoners. The time allowed for each visit depends on the individual prison.

Visitors are required to leave personal belongings in special lockers provided by the prison. In order to enhance security screening, establishments have introduced a range of measures including airport-style metal detectors through which visitors must walk before they can be allowed access to the visit area. Normally visits take place in a large room around a table. Some prisons have a children's play area. In some instances, prisoners are allowed extended, more relaxed visits with their children.

In Turkey, prisoners who have served at least one fifth of the term of the sentence and have a good disciplinary record may be transferred to an open prison subject to authorization by prison administration and disciplinary authorities.

Prisoners who have served one fifth of their sentence without a disciplinary report may be granted a home leave for up to ten days in the event of death of their parent, spouse or child;

Special arrangements can be made if there is an urgent domestic crisis in the prisoner's family - serious illness of a close relative or heavy material loss inflicted to the convict or his/her family due to natural calamity. Applications for home leaves in such circumstances have to be approved by the Minister.

In addition, short home leaves for up to 72 hours may be available to convicts held in an open prison if they have served one fourth of the sentence and satisfy the criteria of general good conduct.

In Georgia, regulations concerning leave from prison are different from the home leave rights available to prisoners in most European counties. In particular, Article 49 of the Law on Imprisonment provides that "A convict may be permitted to temporarily leave the territory of the penitentiary institution on account of extraordinary private circumstances, if there is credible information on the death or a life-threatening illness of his/her close relative. Period of leave shall not exceed seven days, including travelling time". Article 90 of the Law dealing with the **short-term release of prisoners states that "**In case of major and urgent personal or legal matter, where presence of a prisoner is indispensable, on the investigator's application, the court may issue a permit for short-term release of the prisoner for up to three days".

According to the official statistics, in the period between 2000 and 2006, 52 convicts were granted a temporary leave from prison and only 8 prisoners received a permission for short-term release.

We consider that the changes to the law, revoking prisoners' right to receive long-term visits without providing another alternative to sustain conjugal relationships, are unjustified and does not bode well for the maintenance of family bonds during incarceration. The Georgian legislation does not provide for home leaves for prisoners, unlike many European countries where the system has been successfully used for a long time.

These changes will have the most adverse consequences for life-sentenced and other long-term prisoners, exacerbating the deleterious effects inherent in long-term imprisonment. They also render the right to get married, which prisoners retain under the legislation, largely ineffective.

Fostering re-socialisation and re-integration is of particular relevance in respect of juveniles, who are inherently more vulnerable than adults and require particular care in assuring that their physical, mental and social well-being is adequately protected.

Juveniles in custody run a higher risk of long-term social maladjustment. The effects of becoming institutionalised, entailing limited contact with the outside world and strict internal regulations, can lead to the loss of self-esteem and lessen the feeling of personal responsibility.

The poll conducted among 400 young offenders in Germany revealed that the fear of social isolation was the strongest psychological effect that imprisonment had had on them.

As mentioned before, the revised law allows visits from a smaller circle of people. Considering that juvenile offenders often come from problematic or dysfunctional families, contacts with other relatives, rather than their parents, could be more beneficial to them.

We therefore see the above mentioned changes as detrimental to the well-being of juveniles deprived of their liberty and the process of their rehabilitation and readjustment as the main goals of their institutionalization.

Reducing the time allowed for short visits together with the loss of prisoners' right to long-term visits, impose much harsher restrictions and aggravate the conditions of imprisonment.

Recommendation: Revisit the changes to the Law on Imprisonment concerning prisoners' visits. Provide for long-term visits or an alternative option, increase the minimum time allowed for regular visits and extend the list of persons entitled to visit prisoners, especially juveniles deprived of their liberty.

According to the amendments made to the Law on Imprisonment, a leave to receive a visit from family or relatives is granted to a convicted prisoner by the prison administration (Article 48, Para 2 of the Law on Imprisonment). According to the previous law, a leave to receive a visit was granted by court. Even though the amendments seemingly make a visit to a prisoner easier, in real practice they create numerous problems for prisoners' families and relatives, and not infrequently they are denied the right to visit a prisoner. This is demonstrated by applications received by the Public Defender's Office from citizens complaining of the violations of the prisoners' right to receive a visit from their families or relatives.

The PDO Regional Department in Ajara was addressed by family members of defendants Nugzar Beradze, Nugzar Diasamidze and Emzar Diasamidze kept in Batumi prison No.3. According to the applicants, on 3 August 2006 they came to Batumi prison No. 3 and presented to the prison administration leaves for a visit issued by investigator M.Gvinianidze. According to the leaves, they could see the defendants, and they asked the prison administration to allow a visit.

However, the prison administration refused to grant a visit. According to Yuri Dirbaryan, deputy director of the prison, visits to prisoners are regulated by the prison administration. In the case under discussion, the prison administration deemed the visit to be illegal and refused to grant it.

According to Article 89 of the Law on Imprisonment, "a prisoner can be granted not more than two visits a month. A leave for a visit shall be granted an investigator, prosecutor, or a judge". Hence, the administration of Batumi prison No.3 violated the law, thus leading to an impairment of the prisoners' rights.

Under the Organic Law on the Public Defender of Georgia, the Public Defender addressed a suggestion to the Chief of the General Inspectorate of the Ministry of Justice to examine the issue of disciplinary responsibility of the deputy director of Batumi prison No.3 Yuri Dirbaryan. The General Inspectorate of the Ministry of Justice examined the case and sent it to the Prosecutor's Office of Batumi. The Prosecutor's Office informed the PDO of the absence of any signs of crime in the director's actions, and sent it back to the General Inspectorate of the Ministry of Justice for it to consider the issue of disciplinary responsibility of the prison director.

On 2 June 2006, the Public Defender was addressed by Tina Margania. According to the applicant, despite a relevant leave from a judge, she was not allowed to visit her son, defendant Lasha Margania.

According to the application, on 5 May 2006, T.Margania applied to Judge Dali Metreveli of the Collegium of Criminal Cases of the Tbilisi Regional Court to allow her to visit her son Lasha Margania. On 8 May T.Margania was granted a leave to visit her son. However, when she presented the leave to the administration of prison No.7, she was denied a visit, the reason allegedly being the absence of T.Margania's ID document's number in the leave. The judge considered T.Margania's request and indicated the number of her ID document in a new leave issued to T.Margania.

This notwithstanding, the prison director refused to allow T. Margania's visit to her son, allegedly because the time assigned for the visit had aspired. Since 9 May was a holiday, T. Margania came to prison on 10 May, and asked S. Khulordava to grant her a visit, again denied. S. Khulordava said that the leave was dated 8 May, and

hence on 10 May it was no longer valid. It is to be noted that the law does not contain a single provision stipulating that a leave issued by judge shall only be valid on the day of its issuance.

The PDO is of the opinion that S. Khulordava violated Article 89 of the Law on Imprisonment, according to which "a prisoner can be granted not more than two visits a month. A leave for a visit shall be granted an investigator, prosecutor, or a judge".

Under Article 21 (d) of the Organic Law on the Public Defender of Georgia, the PDO addressed a suggestion to the Minister of Justice of Georgia to examine the issue of disciplinary responsibility of S. Khulordava.
On 8 June Tina Margania, accompanied by a PDO representative went to prison No.7 with a leave issued on 8 May and met her son, Lasha Margania.

On 14 July, the PDO received a letter form the Ministry of Justice stating that the check conducted by the General Inspectorate did not confirm the allegations described in T.Margania's application, hence there was no reason to raise the issue of the prison director's responsibility. Moreover, he was promoted to the position of director of prison No. 6.

The Public Defender's Office was addressed by family members of prisoners kept in prison No. 7 of the Penal Department. According to the applicants, on 9 March they applied to the head of the Penal Department asking him to grant them a visit to their imprisoned family members, which was denied. The Public Defender's Office addressed a letter to the Penal Department for it to take the relevant measures.

According to a response received by the PDO from the Penal Department, under Section 5, Article 80, Para 4 (a) of the Law on Imprisonment of 22 July 1999: "convicted prisoners kept in strict regime penitentiary institutions shall be entitled to three short and one long visit over a year, under the surveillance of prison administration". Since prisoners G.Endeladze, B.Japaridze, M.Mgaloblishvili, G.Kartvelishvili and A.Landia had only be kept in prison for 2 months, they were not allowed a visit.

According to the Order of the Minister of Justice (28 December 1999), "The first visit to a convicted prisoner can be granted immediately upon his placement in a penitentiary institution, irrespective of whether he had been granted any previous visits in any other institutions". The above-mentioned prisoners were denied the right of the first visit.

The PDO addressed a suggestion to the Minister of Justice and the Head of the Penal Department to ensure the exercise of G.Endeladze's, B.Japaridze's, M.Mgaloblishvili's, G.Kartvelishvili's and A.Landia's right to receive a visit, and to consider the issue of administrative penalty against A. Khukha, chief of the Penal Department's security service.

In its response letter, the Penal Department stated that the legal provision under which "the first visit to a convicted prisoner can be granted immediately upon his placement in a penitentiary institution" is not an imperative norm in its nature, and hence it does not place the administration of a penal institution to necessarily grant the right under this norm. Thus, the Penal Department did not agree to the PDO's suggestion.
Under article 7, Para 2 of the General Administrative Code of Georgia, measures provided for by an administrative and legal act published in the exercise of a discretionary power shall not lead to an unfounded restriction of a person's legitimate rights and interests. Hence, the Penal Department did not have the right to deny the prisoners concerned the right of the first visit and to reject the suggestion of the Public Defender.
Due to an inadequate number of rooms for visits in some of penitentiary institutions, the prisoners' relatives have to queue for long hours to see them.

For instance, in Prison No.4 in Zugdidi there is only one room for visits, which is grossly inadequate. As a result, visitors have to be waiting for hours to be allowed to see their imprisoned relatives. The two rooms used for lawyers and their clients to meet are not sufficient either. There is no space in the prison to arrange for new rooms.

According to the amendments made to Article 48 of the Law on Imprisonment, "a person willing to visit a convicted prisoner shall notify the prison administration accordingly, not later than 5 working days before the visit.

In the PDO's opinion, this amendment is not justified, as penitentiary institutions are often addressed by the prisoners' family members living in Georgia's provinces who have travel a long distance to come to Tbilisi, with nowhere to stay at in Tbilisi. It is not clear as to what these people are supposed to do, if they have to travel to Tbilisi two times or more to get a leave for a visit.

Recommendation: **The Ministry of Justice and the Parliament of Georgia shall work to reduce the timeframe established by the law for issuance of leaves for visits, so that a leave be granted on the day of submission of a respective request.**

THE RIGHT TO DEFENCE

Article 42, Para 3 of the Constitution of Georgia provides for the right to legal defence. This right is regulated by various legal acts that provide for guarantees for the enjoyment of this constitutional right. The right to defence implies also the right of unlimited access to a defence counsel. This provision is contained in the Law on Imprisonment that states in Article 26, part I that "a convicted offender shall have an unlimited access to a defence lawyer".

Similar guarantees for convicted offenders are provided for in Article 48, Para 5 of the same law, according to which "every convicted criminal shall have the right to meet his/her lawyer without any interference or censorship. Penal institution officers can observe the meeting visually, but outside any hearing". Similar rights, this time for defendants and suspected offenders, are provided for in Article 89 of the Law on Imprisonment: "A detained persons shall have an unlimited access to a defence lawyer, in accordance with the provisions of the Criminal Procedure Code of Georgia".

Despite such imperative provisions of the Constitution and the law, the Penal Department has been systematically breaching the right to defence, namely, by prohibiting, though temporarily, meetings between defence lawyers and persons deprived of their liberty. In **late December 2005,** the events **in prison No.2** and the strict regime penitentiary institution in **Kutaisi** led to a restriction of the right to defence, which manifested itself in preventing the defence lawyers from entering the institutions and meeting with their clients. It is important to note, that no legal act was published to legitimise such an approach, and this order was given verbally by senior officers of the Penal Department and the institutions concerned. The described restrictions were imposed on 25 December 2005 and lasted for almost 8 days. Defence lawyers were allowed to meet their clients only after 2 January 2006.

A similar situation was observed in some other penitentiary institutions. If in Kutaisi it resulted from internal disorders inside the institutions, **in Batumi prison No.3** defence lawyers were not allowed to enter the institutions for five days, from 24 till 28 January 2006, allegedly because of sanitary and hygienic works underway in the institutions, which similarly to previous cases, was against the law. Moreover, the acting director of the institution issued an order concerning the restrictions and had it put on the wall near the entrance to the institution. The order was completely illegal, and was in conflict both with the Constitution of Georgia and provisions of international law, on the one hand, and the Criminal Procedure Code of Georgia and the Law on Imprisonment, on the other. At the same tine, defence lawyers, prisoners and their families and friends emphasise that their legitimate demands were usually met with cynical and debasing attitudes.

Family members and relatives of persons kept in custody in Tbilisi Prison No 7 note that members of the said penal institution treat their demands in a cynical way, they never respond to their requests and application within the established timeframe, etc. Restrictions in respect of defence lawyers started at prison No.7 in late December 2005 and lasted till 5 January 2006. On 4 January 2006, the Public Defender addressed a recommendation to the Head of the Penal department, Bacho Akhalaia, asking him to stop preventing the implementation of the right to defence. Following this recommendation, defence lawyers were allowed to enter the detention institutions and meet their clients. However, later, the right of access of defence lawyers to Batumi prison No.3, as well as the right of unlimited access of defendants and suspected offenders to defence was restricted by the Order of 24 January. Regrettably, the Penal Department failed to fulfil the recommendation of the Public Defender.

It is important to note that defence lawyers have to wait for hours in order to enter prison No.7 in Tbilisi, as there are not enough rooms for meetings. Only two out of three investigators' rooms are operational, with visual surveillance cameras installed in them. There are cases when defence lawyers, despite many hours of waiting, are still not allowed to meet their clients.

Recommendation: It is necessary to increase the number of rooms for meetings between defence lawyers and their clients, and provide for an unlimited access of defence lawyers to their clients.

On 3 May 2006, the Public Defender met with the head of the public defence lawyers' service, as well as with public defence lawyers, to discuss extensively the problems faced by defence lawyers, including when meeting with their clients.

Defence lawyers say they are searched when entering a penal institution. Before meeting with defence lawyers, the detainees are searched, too. Besides, they are searched in the presence of a defence lawyer after the meeting; moreover, before the post-meeting search of a detainee is completed, the defence lawyer is not allowed to leave the building. The purpose of such measures is to rule out any possibility of a transfer of a prohibited article between the defence lawyer and his/her client. However, defence lawyers consider that a repeated search of detainees is humiliating and debasing for them, and it also represents a way to pressurise a defence lawyer, as one can never be sure whether or not a detainee brought from his cell a prohibited item that was not found during the first search, whereas if found during the second search, it is always possible to accuse a defence lawyer in bringing a banned article to the prison.

It is difficult to understand why it is necessary to conduct a search of defence lawyers, if their clients are searched both before the meeting and after it. Rule 54.10 of the Prison Rules adopted by CoE Council of Ministers says that decisions concerning the control of professional visits to penal institutions, for instance, by defence counsels, social workers, medical doctors, etc. shall be taken after consulting their respective professional organisations. One can hardly think of any European country where the search of defence lawyers is conducted.

Recommendation: It is necessary to prohibit searching of defence lawyers coming to penal institutions to meet with their clients.

Public defence lawyers think that provisions concerning confidentiality of meetings are violated. Meeting rooms are equipped with surveillance cameras. Defence lawyers say they can by no way rule out the presence of other devices in the rooms. When placed in such stressful conditions, detainees to restrain themselves and are often nor frank and open with defence lawyers, which *per se* affects the enjoyment of the right to defence.

VIDEO CAMERAS IN MEETING ROOMS

On 16 June 2006, the Public Defender addressed the Penal Department with a recommendation, requesting to dismantle video surveillance cameras in meetings rooms for defence lawyers and their clients in Kutaisi prison No.2 and Tbilisi prison No.7, as Article 84 of the Criminal Procedure Code of Georgia contains an imperative provision, according to which "the defence lawyer shall have the right to meet with his client without anyone's' presence and without any surveillance".

In its response letter of 6 July, the Penal Department informed the PDO of its refusal to fulfil the Public Defender's recommendation, saying that what is prohibited by the Georgian law is allowed by the UN Standard Minimum Rules for the Treatment of Prisoners, and since provisions of international agreements and treaties have precedence over the domestic law, the Penal Department gives them a priority and is guided in its work by international standards.

This is a grossly inadequate answer, as the UN Standard Minimum Rules for the Treatment of Prisoners do not represent an international treaty ratified by the parliament, thus making it prevalent over the Georgian legislation. The UN Standard Minimum Rules for the Treatment of Prisoners is a document having a recommendation character whose implementation is only advisable for those countries where domestic legislation does not establish standards higher than those contained in the Standard Minimum Rules. In this case the Georgian legislation provides for higher standards, which is our view is one of the signs of democracy. Besides, as stated in the UN Standard Minimum Rules for the Treatment of Prisoners, their purpose is not to describe a perfect system. The purpose of the standard Minimum Rules is to demonstrate, on the basis of elements of the most satisfactory systems existing today, what is universally recognised as correct in the context of the treatment of prisoners.

We are certain that is well known to the Penal Department, too. What we have in reality is gross disrespect towards the law by senior officials. It is this attitude that jeopardised the rule of law in Georgia.

One more example of violating the principle of confidentiality of meetings with prisoners. Defence lawyer, Shalva Khachapuridze, told the Public Defender that in June 2006 he, together with his client, detainee T.Potskhveria, was brought to a cell in temporary detention isolator No.6, where they saw two persons, the so-called "thieves-in-law" G.Bobokhodze and G.Kuraspediani. This happened repeatedly, which is a clear violation of the right to confidential meetings that has to be followed on by the relevant bodies.

Recommendation: It is necessary to dismantle surveillance facilities installed in the meetings rooms of penitentiary institutions used for meetings between lawyers and their clients, to make relevant amendments to the Order of the Minister of Justice "On serving prison sentences" (28 December 1999) and to abrogate the last sentence of Article 19, part 9 of the said order saying that "prison representatives have the right to observe the meeting visually, in the absence of any hearing".

Recommendation: The Investigative Department of the Ministry of Justice should open investigation on Sh. Khachapuridze's case.

The above cases are indicative of open and gross violation of the law. The parliament represents that branch of power that is called to exercise democratic control over the executive as well as the observance by the latter of the rule of law. We believe that the parliament should follow on these and similar cases of the violation of the law.

FOOD, PARCELS, PACKAGES

Nutrition of inmates at penal institutions represents a particularly problematic issue.

The Law on Imprisonment defines in general terms the relevant norms as provided for in international standards. Thus, according to Article 36, Para 1 of the law: "Food supply to penitentiary institutions shall be arranged in a way to correspond to food traditions of the population and shall include alimentary components required to maintain adequate health and life of a human being. It is forbidden to reduce the calorie content of food in order to punish a convict". Para. 2 further states that "Convicts are entitled to receive additional food products with parcels except for cases defined by the Chairman of the Penal Department".

Besides, general provisions related to prisoners' food supply are contained in Order No. 5/500 "On Food Norms, Clothing and Sanitary-Hygienic Conditions of Prisoners" issued jointly by the Minister of Justice and Minister of Health, that defines the requisite energy content of food depending on the categories of prisoners (for convicted prisoners kept in general and strict regime establishments; convicts working in adverse conditions; inmates of rehabilitative establishments for juveniles; persons undergoing hospital-type treatment in medical service establishments, as well as expectant and nursing mothers; minors kept in penal institutions, as well as forced feeding in specific circumstances).

Daily nutrition for convicts differs according to the category they belong to, though according to the law, the calorie value of food provided to a convict should be at least 2735 for inmates of general and strict regime establishments, 2879 – for prisoners working in adverse conditions, 2486.1 – for inmates of cell-type establishments and juveniles, 2577.8 or 2964 - for sick prisoners, depending on his health status, 2950.9 – for expectant and nursing mothers. **These norms are silent about food for prisoners on special diets, vegetarians, as well as food for religious purposes (fasting). Besides, the procedures of intake of food by prisoners, as well as delivery of food products in quantities as defined by the law are not specified, which calls for concretization of the above provisions.**

According to the ordinance issued by the Minister of Justice, food rations in a number of establishments (prisons No.7, No.2, No.6) have increased to 50 GEL worth for one prisoner on preliminary detention, and to 45 GEL worth for one convicted prisoner. The same establishments have banned, under Article 36, Para. 2 of the Law on Imprisonment and Order No. 380 (4 April 2006) of the Minister of Justice, the receipt of parcels that were used by prisoners' families and relatives to deliver food products not supplied by the Penal Department and containing vitally important components (vitamins and proteins). **Thus, nutrition of prisoners now depends fully on the prison's food supply, which despite the doubling of allocations for food, has nevertheless exposed both scarcity of food rations and monotony in the diet provided to prisoners. Given the inadequacy of food provision at penitentiary institutions, such restrictions seem to be grossly unacceptable.** Representatives of the Ministry of Justice try to explain the above situation by the plans to open shops at penitentiary institutions. Besides, the negotiations with the Bank of Georgia, currently underway, contemplate opening for each prisoner of a bank account to keep money either remitted by the family or earned by the prisoner, which will enable the person concerned to buy items and food not prohibited under the law.

The changes related to the opening of shops and prisoners' private accounts appear to be positive; however, before these changes are fully implemented, it seems inappropriate to have introduced any restrictions, as it would have been more justified to strengthen control over food products brought into penitentiary institutions.

Food-related problems represent a frequent theme for commissions set up with penal institutions. The monitoring carried out by the Department for the Reform, Monitoring and Medical Surveillance of the Penal System and public commissions set up with the penal institutions in Western Georgia has shown that a considerable number of problems stem from prisoners' living conditions and are related, in particular, to food, food rations and diets at penal institutions.

As pointed out above, different penitentiary institutions receive differing funding for prisoners' food, however, the amount of funds allocated for this purpose is scarce in any case. Commissions set up at the penitentiary

institutions in Batumi and Zugdidi found that allocations for food in Batumi amounted to 23 GEL, and in Zugdidi to 26 GEL per inmate. Sick prisoners (that are present virtually at all penal institutions) are not provided with any specially prepared food; the menu at all penitentiary institutions is basically the same, and does not vary much; in some cases prisoners have no tin-ware or dishes to use for food. A particularly grave situation in this regard was found on 19 April 2006 at Zugdidi Prison No. 4, where 9 juvenile inmates had to share only one spoon and 3 glasses.

According to the report of the public commission set up with Batumi Prison No. 3, one of the most pressing problems at the said establishment is food. To be more specific, the prison has only one kitchen, the only pot available there is grossly outdated and not fit for cooking (it is leaky). There are no other kitchen utensils in the prison. Plates and tin-ware for inmates are provided by their families. It is to be noted that cooks do not wear any white cloaks when cooking food, which is contrary to any sanitary norms. Sick prisoners kept at Batumi Prison No. 3 are not given any special rations. The only thing provided by the prison administration for sick inmates is a doubled amount of sugar. Though, the monitoring carried out by the Public Defender's Office in January 2006 found a case where inmates had not been given any sugar for several days, as there was no sugar at the establishment and neither were the inmates' families allowed, under the Minister's order, to bring it in.

Similar facts were found to occur at Rustavi Prison No. 6, as well as at other establishments, which is a clear violation of prisoners' rights. **In case the establishment's administration is not in a position to provide the requisite amounts of food items for prisoners, they should be allowed to have the food (in this case – sugar) brought into the establishment from outside.**

It is interesting to look at the report of a public commission set up at Kutaisi Prison No. 2, that draws special attention to food-related problems. The food provided by the establishment is by no means adequate either by its quantity or quality, as food is provided according to an old ration, established in 1991, when food parcels were easily accepted to the establishment.

The report prepared by the public commission set up at Zugdidi Prison No. 4 indicates that interviews with inmates of the establishment helped to establish the menu offered to them, however, they find that food products brought into the prison via food parcels represents their main source of nutrition. The list of permitted food products is displayed at the parcels' admission point. The inmates' families were dissatisfied with the fact that there was only one window to admit parcels, which results in hours' long queues to have their parcels received. Similarly to Kutaisi prison, in Zugdidi, too, dishes and tin-ware are provided by inmates' families.

It seems interesting to look at the international standards on food for prisoners.

According to the UN Standard Minimum Rules (Rules 20 and 26): "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it". Penal establishments are under an obligation to have the medical officer to regularly inspect and advise the director upon the quantity, quality, preparation and service of food. It is necessary for administration to have prisoners provided with food according to their requirements and needs. At the same time "prisoners shall be provided with a nutritional diet that takes into account their age, health, physical condition, religion, culture and the nature of their work".

The revised European Prison Rules adopted by the Committee of Ministers on 11 January 2006 establish new standards, and specify daily norms of food. Rule 22.2 stipulates that "the requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law". Rule 22.4 states that "there shall be three meals a day with reasonable intervals between them".

According to international standards, it is forbidden to reduce the energy content of food in order to punish a prisoner.

It is important to dwell on one more important issue – provision of water. **The Georgian Law on Imprisonment contains provisions fully in line** with international standards in this regard, and one can safely state that legal provisions on food and water are in no way deficient, though **by-laws remain to be problematic. The Order of the Minister of Justice "On Food Norms, Clothing and Sanitary-Hygienic Conditions of Prisoners" is silent about specific procedures to be applied to provide water to penal establishments and individual prisoners in the establishments, where it is not possible to ensure continuous water supply.**

The monitoring carried out by the Public Defender's Office found that a considerable number of establishments lack running water, which compels prisoners to store water in polyethylene containers.

Water related problems were found in Rustavi Prison No.6

Due to poor water quality, residents of Rustavi choose not to drink tap water. Drinking water is delivered to inmates by their families, but it used to be measured by its weight (30 kg). Following the Public Defender's recommendation this restriction was removed in respect of plain water, but is still in place in respect of sparkling mineral water. It seems reasonable to remove this limitation, too, and allow unlimited amount of mineral water into the prison.

Recommendation: Considering the above, it is necessary to establish water suitability for drinking, and in case water is found to be dangerous for health – to provide for delivery of drinking water to penal establishments.

NATURAL LIGHT AND VENTILATION

Inadequate access to natural light and fresh air is a matter of considerable concern due to its crucial importance for the well-being of prisoners.

Article 33 of the Law on Imprisonment stipulates that "All prisoner accommodation shall have a window providing for a daylight and ventilation". The same provision concerning conditions in a penitentiary establishment is contained in the Sanitary and Hygiene Regulations.

The adverse effects of overcrowding together with the lack of natural light and ventilation result in inhuman and degrading conditions of detention. The buildings, with the exception of the new prisons in Rustavi (Prison No. 6) and Kutaisi (Prison No. 2) are not equipped with ventilating systems. In the summer of 2006 a ventilation system was installed at Prison No.7 in Tbilisi, but it is still not enough to supply adequate fresh air. The small size of the windows and the metal netting covering them prevent air circulation. The cells become oppressively stifling and unbearable to live in. Moreover, poor ventilation results in deteriorating sanitary conditions and the risk of disease outbreak.

The overcrowded conditions in combination with inadequate ventilation during the hot summer months caused a great deal of suffering among the inmates, taking a heavy toll on their health. Supposedly, this has been a major factor in the high number of prisoner deaths over the period between March and September, when the total number of 33 deaths occurred among the prisoners (with the highest proportion of deaths among the inmates of Prison No. 5 in Tbilisi).

We recommend that the Ministry of Justice take steps to have artificial ventilation systems installed in all penitentiary establishments.

It must be noted that as a result of great efforts by the commission for public oversight at Zugdidi Prison No.4, thick metal plates fitted to the cell windows were removed in the summer of 2006. Later, in August of 2006

such fittings were removed also from the windows of Tbilisi Prison No.5. Despite repeated recommendations by the Public Defender as well as a number of international organisations to do away with the iron shutters, the government only initiated the process after a severe heat wave in the summer combined with the overcrowding of prisons resulted in the daily occurrence of death among the prisoners.

Following the visit of Tbilisi Prison No.7 back in March of 2006, the Public Defender called on the prison administration to remedy the problem of the minimal natural light and insufficient artificial light in the prison cells. Some of the cells were almost completely dark.

On March 9, 2006, representatives of the Public Defenders office paid a follow-up visit to Tbilisi Prison No.7. Modest improvements had been made, such as changing the light bulbs in the prison cells, but overall the situation still remains unsatisfactory and more vigorous efforts need be made to address the problem.

On this point, it should be noted also that electric wiring in many prisons is in a state of severe disrepair and present a serious hazard to the prisoners.

According to preliminary information, the faulty wiring led to the fatal accident in Tbilisi Prison No.1, involving a 31 year-old convict, Mikhail Tokhadze. He died on the 23rd July 2006, allegedly of an electric shock from an uninsulated cable. Mikhail Tokhadze, who was serving a three-year sentence in Ksani Prison No. 7, had been transferred to Prison No.1 a week before the accident occurred. The Investigation Department of the Ministry of Justice opened a criminal case to investigate the circumstances of his death.

According to Article 26(f) of the Law on Imprisonment, "A convict shall have the right to make grievances to the prison administration to assure his/her personal safety".

In order to prevent any potential harm to prisoners, we recommend that the relevant authorities take all necessary measures to ensure that all electric wiring in prisons conform to requisite safety requirements.

The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 11 states that "In all places where prisoners are required to live or work, (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight".

International standards provide also that a medical officer should regularly inspect and advise the director upon the sanitation, heating, lighting and ventilation of the institution. The law, however, does not set out sufficiently detailed requirements in this respect. Special mention must also be made of the size of cell windows in Prison No.7. The windows are too small to allow proper ventilation and deprive prisoners of natural light.

The CPT frequently observes "devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The imposition of measures like this should be the exception rather than the rule. This implies that the relevant authorities must examine the case of each prisoner in order to ascertain whether specific security measures are really justified in his/her case. Further, even when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and, in particular, tuberculosis."

The European Prison Rules Article 18.2 require that "In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;
b. artificial light shall satisfy recognized technical standards; and
c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law".

UN Standard Minimum Rules Rule 31 state that "Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences".

The conditions in the karzer cells in Tbilisi prisons No.1 and No.5 were amounting to such cruel, inhuman and degrading treatment. These basement disciplinary cells were dark, with no access to natural light and fresh air, unventilated, damp and severely unhygienic.

In 2003 the Council of Europe Committee for the Prevention of Torture made a recommendation to "definitively take out of service all cells located in the basement of the main detention building". The Public Defender also called for addressing this problem as a matter of urgency. However, the karzer cells had not been removed from service until August of 2006, when the Ministry of Justice finally acted on the repeated recommendations by the CPT and the Public Defender.

Overall, the disciplinary units in the other penitentiary establishments are in a relatively better condition, but still these cells are often unhygienic, foul-smelling and damp (Prison Hospital, General and Strict Regime Establishment No.10 in Tbilisi, Zugdidi Prison No.4).

We recommend that the Ministry of Justice take measures to improve the existing situation in the disciplinary cells so that they can meet the European standards.

HYGIENE

Maintaining good personal hygiene is critical to protecting one's health and that of others, but it is essential also to other aspects of life. Some practices relating to personal hygiene may be linked with religious observance, which must be taken into account. The prison authorities are obliged to provide adequate arrangements and resources for the maintenance of prisoners' personal hygiene. Special provision must be made for the sanitary needs of women. The possibility to have a shower should depend, among others, on climatic conditions and prisoners' work.

The Georgian legislation does not set out detailed procedures for ensuring that prisoners actually get all the necessary means for the maintenance of personal hygiene. **Article 34 of the Law on Imprisonment requires that "**A convict shall have adequate facilities to satisfy his/her natural physiological needs and observe personal hygiene without any prejudice to human dignity and honour. 2. At least once a week, a convict shall be provided with clean linen and hair-dressing services. The penitentiary institution administration shall not request the convict to totally shave his/her head except when so required for the maintenance of hygiene or at a doctor's request". The same provisions are contained in the Regulations for Food, Sanitary and Hygiene Conditions of Prisoners. The latter also stipulates that "The medical staff of the penitentiary establishment shall regularly inspect (a) the quantity, quality, preparation and service of food; (b) The hygiene and cleanliness of the institution;

The majority of penitentiary establishments in Georgia fail to comply with these requirements, exposing prisoners to substandard and unhealthy conditions. In most cases, the essential hygiene products are provided by families, but there are those who are deprived even of that. Once again, a special mention must be made of Zugdidi Prison No.4 where at the time of our visit on 19 April 2006, nine juvenile inmates had to share one towel among themselves.

The Public Defender and his staff systematically undertake monitoring visits to Prison No.7, the strict regime penitentiary establishment in Tbilisi, in order to check the observance of relevant laws and regulations guaranteeing a **minimum level of physical conditions of imprisonment**. During these visits a lot of evidence has been found of grossly inadequate conditions of detention and the resulting human rights violations. In April of 2006 Prison No. 7 was found to be lacking in the essential implements and products for personal hygiene (soap, toilet paper, shaving utensils, mirror, tooth brushes, toothpaste, scissors, etc). Besides, some prisoners had no bed linen. Although the cells are not equipped with bedside cabinets or lockers, the inmates are not allowed to have plastic bags, so they have to keep their food next to their clothing on top of small tables.

Since January, the inmates had not been allowed to take a shower or bath. After the Public Defender's intervention, the situation somewhat improved. However, the prisoners only have access to a shower once every two or three weeks, instead of once a week as the law mandates.

Following the changes made to the Law on Imprisonment on 28 April 2006, prisoners' entitlement to receive parcels is now subject to restrictions imposed by the Penitentiary Department. The policy on packages varies from prison to prison. In some facilities relatives are not allowed to send in any detergents, soap, toothpaste or other toilet articles. In other facilities, the list of hygiene products that may be delivered in parcels or packages has been severely restricted in recent months. The monitoring undertaken by the Public Defender's Office has identified different practices in different penitentiary institutions in western Georgia. **This is due to the absence of official regulations that could be consistency applied. Instead, prison administrations act upon verbal instructions received from the Department.** In Batumi Prison No.3 no hygiene products in metal, glass or other non-transparent containers are allowed in. In Kutaisi Prison No.2 the banned items include any potentially inflammable or explosive materials and products placed in glass containers. Prison No.8 does not allow prisoners to receive perfume, cologne or other toiletries containing alcohol. It should be noted that the administration does not provide personal hygiene items in any of these establishments.

Because of inadequate communal shower facilities, prisoners in some penitentiary establishments can only get a shower once a month. This has to do with the problems related to water supply, but often there is no strong commitment to improve the existing conditions either. In those prisons where communal shower rooms remain out of order, the prisoners have to wash in the cells. Some have even created makeshift showers over the toilets. This does not only fail to ensure appropriate personal hygiene for inmates, but often leads to the spread of various diseases among them.

In June 2006, the Public Defender received a complaint from Elisabeth Chokhonelidze stating that she had filed a request for psychiatric examination of her mentally ill brother, David Kheiranov, who was held at Prison No.5 in Tbilisi. In June, Mr. Kheiranov was transferred to the forensic psychiatric facility for examination, however, he was not admitted there because of the state of his cleanliness.

The representatives of the Public Defender's Office met with the Director of Prison No.5 and informed him about the incident. Only after this intervention was Mr. Kheiranov washed, cleaned and once again transferred for the examination.

Some establishments (Prison No.7 and Prison for Women No.5 in Tbilisi, Batumi Prison No.3) have no laundry facilities and the inmates have to wash their personal items in the cells (sometimes the laundry is sent to

Rustavi Prison No.6). This results in worsening the conditions of confinement and poor hygiene. No hairdressing services are provided in some facilities (in Batumi Prison No.3, Kutaisi Prison No.2 and the General and Strict Regime Establishment No.8 barbering service is provided by the inmates performing the day-to-day domestic work in prisons). In the spring of 2006, the Norwegian Mission NORLAG has sponsored the opening of a hair salon, where the inmates can also undertake a course of vocational training with professional stylists.

The UN Standard Minimum Rules provide that "(15) Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. (16) In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly". The European Prison Rules state that "Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene".

In light of these considerations, we recommend to:

- **Remove the restrictions on parcels containing articles for personal hygiene, to compensate for the failure of the prison authorities to provide the inmates with the essentials for maintaining their personal hygiene.**
- **Provide the list of approved toiletry items in the relevant Ministerial Decree so that decisions are not made arbitrarily, based on oral instructions.**
- **Provide laundry facilities in every penitentiary establishment to allow prisoners to maintain their clothing and sleeping accommodation clean and tidy.**

CLOTHING AND BEDDING

Many states require that prisoners wear institutional clothing. This measure is designed to increase safety and security in prisons. This, however, does not imply that such a requirement should be a norm for every country, particularly countries like Georgia, where the prevailing socio-economic situation still remains unsatisfactory.

Before the changes of 28 April 2006, there was no statutory requirement for the State to issue special uniforms for convicted and remand prisoners. The changes introduced into the Law on Imprisonment, however, mandate that the State provide such uniforms to all convicts and "prisoners". "The special uniforms for convicts and prisoners shall be approved by the Minister of Justice according to individual institutions" (Article 35 (11) of the Law on Imprisonment)

The issue of mandatory prison dress may impinge on the presumption of innocence. The Georgian Constitution states that "Any person shall be presumed innocent until proved guilty in accordance with the procedure prescribed by law and under the final judgment of conviction". The term "prisoner" includes persons detained pending trial as well as convicted offenders. Integral to the presumption of innocence is that the former must be treated in accordance with this right at all stages of the proceedings prior to the final court judgment. Banning these persons from wearing personal clothing infringes on their right to the presumption of innocence.

We recommend that the Ministry of Justice release the accused and the defendants from the obligation to wear prison uniform.

As far as the provision of bedding is concerned, the Regulations for Food, Sanitary and Hygiene Conditions of Prisoners require that "Every prisoner shall be provided with a bed, mattress and bedding".

In practice, prisoners generally get the necessary clothing and bedding from their families. Often the number of available mattresses corresponds to the number of beds and not the prisoners and as a result they have to sleep on metal planks. In the establishments where each prisoner does have a separate bed, the bedding is poorly maintained, is not changed routinely or need to be replaced altogether. Some prisons have not been supplied with any new stocks of bedding and mattresses in the last ten years. The inmates in Zugdidi Prison No.4, Geguti Prison No.8 and Batumi Prison No.3 have to depend on their families. The conditions in which juvenile offenders are held in Zugdidi Prison No.4 are particularly dire. As of 9 April 2006, only three out of the nine juvenile prisoners there had sufficient bedding. The others had to do without pillows and blankets.

Some time ago, the Ministry of Justice provided new sets of beddings to the Juvenile Establishment in Tbilisi but has not replenished the supplies since. The administration is compelled to approach different organizations for help.

International prison standards require that "Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating….Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene" (UN Standard Minimum Rules for the Treatment of Prisoners, Rule17).

"Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness" (Rule 19).

WORK AND EDUCATION

Provision of work during sentence is of major importance for prisoners' rehabilitaion.

Any such work shall only be carried out in accordance with the national labour legislation and provisions of the Law on Imprisonment.

Prison authorities should strive to provide prisoners with sufficient work of a useful nature and maintain an adequate and equitable remuneration system allowing the prisoners to retain their earnings.

The rules and procedure of reimbursement of convicts' labour **are set out Article 55 of the Law on Imprisonment**. According to the law, "Out of the amount of salary issued to a convict, 15% will be transferred to the state budget, 50% will be given to the convict for personal expenses, 10% will be transferred to a special account for maintenance of the penitentiary institution; 25% will be cut off on the basis of execution documents according to established rules. Alimony payable to children aged under 18 shall be calculated from the total amount of money earned by the convict".

"If money is not deducted on the basis of execution documents, 75% of the total amount will be placed on the convict's personal account and may be withdrawn upon his/her release. The convict may, at his/her discretion, forward this amount to his/her family members or other persons".

The work programmes offer prisoners the possibility of engaging in purposeful activity and, on the other hand, allow them to save up money or to allocate a part of their earnings to their families. The basic importance of the work provided lies also in its relevance to re-socialisation and increasing prisoners' ability to earn a living after release.

Currently such employment opportunities for prisoners do not exist in any of the penitentiary establishments in Georgia, except the Women Colony where the TV Station Rustavi 2 project *Money, Idea and One*

Chance sponsored the opening of a tapestry manufactory in March of 2006. The earnings from the sale of tapestries are deposited on the prisoners' own accounts.

We consider that promoting employment and vocational training for the incarcerated population should become a key area of focus for the government interventions in the field of penitentiary reform. To this end, the readiness of various local NGOs and international donor agencies to support the government in this endeavour must be maximally utilized.

Education is another area of crucial importance for the well-being of prisoners. Chapter X of the Law in Imprisonment deals with the general and vocational education in prisons. As stated in Article 44 of the law, "Prison administration shall create conditions necessary for the convicts to receive general and vocational education. The administration shall provide for a library with not only educational materials but also texts of a number of legal instruments on imprisonment, including European Prison Rules, in a language understandable to the convicts. Convicts have the right to participate in social adaptation training groups that shall be created by the penitentiary institution administration".

Regrettably, the practical implementation of these provisions is confronted with many challenges. With the exception of the Establishment for Juvenile Offenders, no programmes of general or vocational education are arranged in prisons. The school operating in the Establishment for Juveniles, Evening School No.39, has its share of problems. Instruction is provided on the basis of the general secondary school programme by the teachers who are the Ministry of Education employees. The literacy levels among juvenile offenders are generally lower than their age, as many of the juveniles have had inadequate schooling or have learning disabilities. As a result, they are often unable to cope with the same curricula as their peers in ordinary secondary schools.

Recommendation: The Ministry of Education should design special education programmes tailored to the specific needs of juvenile offenders.

Education programmes are not offered at the General and Strict Regime Prison No.5 where at times juveniles are held longer than a year. The Code of Criminal Procedure of Georgia guarantees the prisoners' right to education. Article 136.3 of the Code, in particular, stipulates that "Juveniles who are detained, imprisoned or placed in a medical institution shall be provided with the opportunity to receive education corresponding to the general secondary school curriculum".

Recommendation: The Ministries of Justice and Education take steps to provide, as soon as practicable, adequate education arrangements for juveniles at the General and Strict Regime Prison No.5.

Libraries in all penitentiary establishments are poorly stocked. The Public Defender's Office began an effort to collect books for prison libraries and will hand them over to the Penitentiary Department in the nearest future.

Recommendation: Specific programs should be arranged for a high proportion of prisoners with a basic literacy need. It is important that all necessary measures be taken to implement the provisions stipulated in the Decree on Prisoner Education issued jointly by the Ministers of Justice and Education.

Recommendation: The Ministry of Justice should ensure that every penitentiary establishment has a library adequately stocked with a wide range of up-to-date instructional and recreational books.

International standards, based on the precept that promotion of prisoner education and employment plays an integral part in their rehabilitation and reintegration process, set forth the following minimum requirements relating to prisoners' right to education and work:

Rules 65 and 66 of the UN Standard Minimum Rules state that "The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose… to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility".

"To these ends, all appropriate means shall be used, including education and vocational guidance and training… in accordance with the individual needs of each prisoner, his physical and mental capacities and aptitudes …certified by a medical officer". According to Rule 77,

"(1)Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty".

Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules state that "Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment". At the same time "Every prison shall seek to provide all prisoners with access to educational programs which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations (Rule 28.1).

PRISONERS' PROPERTY

The monitoring has identified violations of prisoners' property right at Prison No.7. The examination of prisoners' personal files showed that different valuables and money was removed from prisoners Kakauridze, Endeladze, Kartvelishvili, Lekvtadze, Mujirishvili, Kipiani, Mgaloblishvili, Japaridze, Baloian, Tvildiani, Orekhov on admission to Prison No.7.

When the members of the monitoring group asked the director where these items were kept, he responded that they had been taken to the Penitentiary Department for safe-keeping.

Article 15.3 of the Internal Rules of Penitentiary Establishments regulates the procedures for removing and safe-keeping prisoners' property that is not allowed to be retained while in custody. "The money removed from the prisoner shall be deposited in his/her personal account. Valuables and other effects shall be placed in safe custody in the general unit of the penitentiary establishment. A receipt thereof shall be given to the prisoner". These regulations were not observed in the above case, as the items taken away from the prisoners on admission were not kept in Prison No.7.

OVERCROWDING

Regrettably, overcrowding has been a chronic problem afflicting Georgia's penitentiary system. It has become almost commonplace that 2, 3 and sometimes even 4 or 5 prisoners must take turns to sleep on one bed. The situation has been documented by various governmental and non-governmental organizations, international agencies and independent commissions. Their reports indicate that overcrowding has reached alarming levels and effective measures need to be urgently taken to address the problem.

The situation as of October 10, 2006 was as follows:

- Common and cell-type establishment No.5 for women and juveniles:
  Juveniles' section: capacity – 110, number of inmates held – 96;
  Women's prison: capacity – 110, number of inmates held – 167;
  Women's penal establishment: capacity – 220, number of inmates held - 363
- Tbilisi Prison No.1: capacity - 620, number of inmates held -1,014
- Zugdidi Prison No.4: capacity - 305, number of inmates held - 352
- Batumi Prison No.3: capacity - 250, number of inmates held - 550
- Tbilisi Prison No. 5: capacity - 2,020, number of inmates held - 3,863

The Government is trying to tackle the problem by building new prisons. Two new prisons opened in Kutaisi and Rustavi in 2005-2006. Rustavi Prison No.2 is being renovated. The Action Plan for the implementation of the Criminal Justice Reform Strategy envisages further expansion of the prison infrastructure through new construction, as well as the renovation of the existing facilities. A modern pre-trial detention facility which can accommodate 3,000 inmates will be built in the Gldani-Nadzaladevi District in Tbilisi. Pre-trial detention facilities will be built also in Batumi, Kutaisi (each with a capacity to hold 500 detainees) and Kakheti (with the capacity of 600). Open-type prisons will be built in Eastern and Western Georgia (each with the capacity of 200).

This will of course reduce the disparity between the available capacity and the actual inmate numbers, however, this alone will not offer a solution. Changing the current practice of remand pending trial, employing a range of alternative, non-custodial measures of punishment would significantly reduce the prison population and thereby remedy the overcrowding problem.

It is interesting to look at how international human rights instruments deal with the issue of overcrowding.

As required by international prison standards "Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room" (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 9 (1)). The European Prison Rules also contain a provision that "Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation" (Rule 18.5). Overcrowding is an issue of direct relevance to the CPT's mandate. The Committee observes that " All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint".

The CPT also states that "The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. …The fact that a State locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies and the judiciary must, in part, be responsible.

In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed."

In its report to the Georgian Government (CPT/inf (2005) 12, para.57) the CPT recommends that " the Georgian authorities pursue the application of a range of matters designed to combat prison overcrowding., including policies to limit or modulate the number of persons sent to prison. In this connection, the Georgian authorities should take into account the principles and measures set out in Recommendation No. R (99(22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec (2003) 22 on conditional release (parole)"

The report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment contains the same recommendation. In particular, the Special Rapporteur recommends to the Georgian Government that "Recourse to pre-trial detention be restricted in the Criminal Procedure Code, particularly for non-violent, minor or less serious offences, and the use of non-custodial measures such as bail and recognizance be increased" (E/CN.4/2006/6/ADD.3).

Furthermore, in its report on the visit to Georgia in 2003 and 2004, the CPT observed: (Para. 65) On November 2003, Prison No. 5 was accommodating 1,825 prisoners, which is comparable to the number held at the time of the visit in 2001 (1,855). By the time of the prolongation of the CPT's visit in May 2004, the number of inmates held at the establishment had grown by 22% and stood at 2,222, including 68 women and 66 juveniles. Although the total capacity remained officially fixed at 2,020, the delegation was informed that this figure dated back to the time of the Soviet Union and a capacity of 1,500 would be more realistic"

"The Georgian prison population had increased by some 700 inmates since January 2004, constituting a growth rate of 10% over four months. The total prison population stood at approximately 7,000, some 40% of whom were remand prisoners. As a result, overcrowding in the main pre-trial establishment in the country, Prison No.5 in Tbilisi, had reached alarming levels. At the same time, with a few exceptions, the existing prison estate was in a very bad state of repair and some of the buildings were unusable. As a result, conditions in many establishments were in flagrant violation of the provisions of both Georgian legislation and international standards" (Para. 55).

As of 10 October 2006 the total prison population in Georgia was 14, 172.

PRISONER ACCOMMODATION

According to Article 33 of the Law on Imprisonment "All living accommodation provided for prisoners shall conform to proper standards of construction, sanitation and hygiene and meet all requirements of maintaining health of inmates". Paragraph 2 of the same article provides that "Minimum floor space per convict shall be: 2 square meters in regular and strict regime institutions, 2.5 square meters in a prison, 3 square meters in a women's institution, 3.5 square meters in a minors' institution, and 3 square meters in a medical institution".

Given the current overcrowding of prisons, there is an obvious gap between these norms and the actual state of affairs, as prisoners often have to occupy less floor space than their statutory entitlement.

While emphasizing the requirement for adequate prisoner accommodation, neither the UN Standard Minimum Rules or the European Prison Rules provide a precise standard for minimum floor space per prisoner. The CPT, however, "by commenting on conditions and space available to prisoners in various countries, has developed minimum standards in the context of prisons, namely 4m2 per prisoner in a shared accommodation and 6m2 for a prison cell. The CPT has not expressly stated an opinion as to what would be a desirable level for the size of a cell for one prisoner; however, it is implicit from comments in various reports that it would probably be in the order of 9 to 10 m^2."

ESCORTING INMATES

Special attention shall be paid to escorting the accused to court houses. Inmates' relatives as well as defence lawyers address the Public Defender with concerns related to failure to escort inmates to court hearings; it enormously prolongs court hearings in time.

Insufficient number of convoy service employees, lack of convoy cars as well as negligent attitude of employees of the penitentiary system to the issue represents a material problem.

According to representatives of the Penal Department, the number of convoy cars was growing proportionately to increase of convoy service employees; their salary has increased and currently amounts to minimum GEL 400.

It is to be noted that it is not sufficient to take such measures only to address the abovementioned issue, unless employees of the penitentiary system change their approach and attitude to the problem.

There was a case when the court hearing was postponed 6 times (March 31, April 10, April 20, April 28, May 23 and June 8) due to the fact that three detainees related to one case were placed in various penitentiary institutions. Namely, Dorothe S. was placed at Prison No.6, Beka S. – at Tbilisi Prison No.5 and Karlen J. – at the medical institution for convicts and prisoners. Out of the three accused persons, either two or one were usually transported to the Court, but it was impossible to conduct the court review, since the convoy service failed to deliver all the three persons to the Court. As a result, not only the rights of inmates, but the rights of their family members were violated, since they had to travel from the Western Georgia and waste time and money; in addition, it was waste of state resources – of judges, convoy, financial resources (since inmates were convoyed to the court and back to prison), etc.

It is unclear, however, why in such a case, detainees are not placed together, in one prison, especially if this creates convoying problems. The example shows negligent and irresponsible attitude on the part of the Penal Department.

Below, we would like to present statistics for the first half of 2006 on court reviews postponed due to the convoy-related problems.

1. From May 8, 2006 to June 9, 2006 – the Criminal Cases Collegium of the **Tbilisi City Court** postponed 170 hearings due to failure to submit accused to the court reviews.
2. From March 1 to June 1, 2006 – the **Tbilisi Appellate Court** postponed 101 court hearings for the same reason; and late submission of inmates became a reason for delayed commencement of the court hearing in 17 cases.
3. From May 1 to June 5, 2006 the **Rustavi City Court** postponed 20 court hearings due to the same problem.
4. Between January 1 and May 31, 2006 the **Marneuli Regional Court** postponed 8 hearings.
5. Between February 1 and July 1 the **Gori Regional Court** postponed 30 hearings.

Recommendation: to urgently address the inmates' convoying problem and place inmates within penitentiary institutions in order to ensure the timely start of court hearings and eliminate the problem of delays in submitting inmates to the court hearings.

BEATING AND TORTURING PRISONERS

Special attention should be given to the facts of beating, torturing, and inhuman, degrading treatment and use of physical force against inmates.

It is a welcome fact that currently the Penal Department has started a fight against the so-called "thieves in law" and the Georgian criminal world in general, but this is not done in conformity with the law and is often accompanied by beating and torturing of prosoners.

A vivid example is the riot of March 27 at Tbilisi Prison No. 5 and the force used to suppress it, which resulted in the death of seven persons.

Riot at Prison No. 5

On March 27, the inmates' riot took place at Prison No.5. According to the information obtained, the inmates' discontent was growing for quite a long time and some kind of protest was being planned; however, it is hard to say as to what form it was planned to use to express the discontent - a riot, mass hunger-strike (which took place at the end of 2005 and in January 2006) or something else, for instance a so-called "noise".

However, the materials obtained by the Public Defender's Office allow assuming that (1) actions of the Penal Department's Administration provoked the riot, and (2) during suppression, the force used was disproportionate to resistance that the inmates could offer to special troops armed with machine guns.

More specifically, according to many inmates on March 27, Bacho Akhalaia, together with Special Troops entered the prison and verbally and physically assaulted several inmates. This provoked a riot, which in spite of long-standing factors, still started spontaneously. This is corroborated by almost identical statements of many inmates. It is to be noted that these inmates had no chance to agree among themselves in advance on testimonies they were going to give. The same is proved by testimonies of three inmates beaten up and tortured violently: Vibliani, Avaliani and Tsindeliani. They were transferred from the Prison Hospital to Prison No.7 before the riot; other inmates at the Prison Hospital claim the same.

As to the special operation, the PDO representatives could see for themselves right after the riot suppression the firearms abandoned in the prison corridors. According to the warden of Tbilisi Prison No. 5, Goga Paladashvili, shots against him were made from those firearms; as a result, two of his employees were wounded, and only after that the Special Troops started shooting. According to the same Paladashvili, he and his employees, completely unarmed, were walking in front of the Special Troops in order for inmates to recognize them and show less resistance; however, it happened otherwise. It is to be mentioned that even so, the resistance could be seen only in one floor, but the shooting took place all over the place, in different floors.

On the other hand, the majority of wounded inmates state that they received injuries not in the corridor, but in their cells. The inmates knocked out cell doors and came out of cells. One can say that after the Special Troops occupied the corridor, the major phase of the riot was over. The fact that most inmates received their injuries in cells demonstrates that the Special Troops were using firearms even after the riot was over, and the inmates stopped putting up resistance. Therefore, it can be assumed that force used against inmates was grossly disproportionate to the resistance showed by inmates. It was possible to avoid victims if not completely, then at least partially. The same kind of assumptions can be made considering that several inmates were wounded and killed with bullets from door spy-holes.

On March 27, during night hours, six inmates – **Malkhaz Zedelashvili, Paata Mamardashvili, Zurab Vibliani, Giorgi Avaliani, Levan Tsindelinai and Nikoloz Makharadze** – were transferred from the Medical Institution for Convicts and Inmates of the Penal Department of the Ministry of Justice to Tbilisi Prison No.7. They had multiple body injuries, which, according to them, were inflicted on them by the Head of the Penal Department and the Special Troops officers in the office of the hospital director. According to one of the inmates (Paata Mamardashvili), they trimmed his hair in some places just to humiliate him. The monitoring showed that part of his hair was cut in the front. According to Giorgi Avaliani, he was asked humiliating questions and them they started physically assaulting him – beating in the room, in the backyard of the hospital and on the way to the Prison.

According to the statements of G. Avaliani and other inmates, Bacho Akhalaia took part in the beating.

Beating of inmates was followed by the "noise" at the prison hospital, which later moved to Prison No.5 and grew into the riot. Later six inmates (M. Zedelashvili, P.Mamardashvili, Z. Vibliani, L. Tsindeliani and N. Makharadze) were transferred to Tbilisi Prison No.7. They were put on metal beds without mattresses. Neither a doctor, nor their lawyers were allowed to visit them. According to the inmates, they were deprived of their clothes, which were only returned to them after the visit of the Public Defender. However, after the Public Defender left, they were deprived of their clothes again. The clothes were finally returned only the following day, on March 28.

On the same day, in the evening of March 27, the Public Defender qualified the fact of beating of six inmates as torture and inhuman treatment.

The Public Defender addressed the Prosecutor General's Office with a recommendation to open preliminary investigation of the abovementioned facts; however, no response has followed so far. No medical forensic examination of inmates took place, neither did representatives of the Prosecutor General's Office interviewed them. Public Defender's representatives were the only visitors to see on a daily basis.

The inmates were so severely beaten that even on the 12th day, on April 7, their obviously displayed bodily injuries. In addition, the management of the Penal Department did not allow the PDO-appointed experts into Prison No. 7 and obstructed forensic medical examination.

Two of the six inmates were transferred to the medical institution only after the Public Defender stepped in and stated that that conditions they were held in were beyond any standards. One of them was paralyzed, he was unable to move, and the other one was unable to hear and in addition, had other complications.

On April 4, 2006, one of prisoners, Zurab V. was transferred to Rustavi Prison No.6 by an ambulance car. He had epilepsy, neurosurgical diseases, and it was necessary to ensure special conditions for him. Imprisonment would be a life-hazard for him.

The Riot at Kutaisi Prison No. 2

On December 20, 2005, the transfer of inmates to the newly constructed prison was followed by a sudden riot. The inmates lit the fire because of poor living conditions in the new prison. The special operation was conducted to suppress the riot. Three law enforcement officers and more than a hundred inmates received injuries. One inmate, Malkhaz Serginava, died later.

The Public Defender demanded that the fact be investigated. "The main purpose of the investigation is to determine the proportinality of force used to suppress the riot, which led to the death of one inmate".

Search at Batumi Prison No. 3

On January 24, 2006, a search was conducted at Batumi Prison No.3. As alleged by the Penal Department management, they had received information on the availability of arms in the prison, which called for a prompt action, and they brought the inmates out of the prison premises, in the snow.

In their applications addressed to the Public Defender, the inmates claim that officers of the Special Troops beat them in corridors, while they showed no resistance. The inmates were left in the prison yard for more than 4 hours, in winter snow and cold, half-dressed, most of them did not wear shoes, since the inspection started unexpectedly.

According to explanations provided by inmates, they were physically abused, deprived of things, permitted by the Order of the Minister of Justice (namely, wooden icons, crosses, TV sets, etc). Many of them received bodily injuries. Among them are Mamia Dvalishvili, Gela Gabitashvili, Marlen Megrelishvili, Lasha Khalvashi, ZSviad Geladze, Gocha Kakhadze, Bagrat Giorgadze, Mamuka Jincharadze, Nukri Nozadze, Nika Gogeshvili, Tariel Gorgiladze, Zviad Paksadze, Avtandil Zoidze, Guram Paksadze, Malkhaz Kakabadze, Zurab MOdebadze, David Shatirishvili, Vitaly Sikharulidze, Gela Gongadze, Micheil Koberidze, Vazha Mukhashavria, Mamuka Gasviani, Roland Chamba, Avtandil Sanikidze, Gia Chavleishvili, Elguja Meladze, David Emiridze, Revaz Kadidze, Ruslan Kviritadze, Jason Metreveli, David Tedoradze, Eduard Digani, Roman Surmanidze, Mindia Broladze, Gocha Mamaladze, Razhden Khalvashi, David Nakaidze, Ramaz Tsulukidze, Shota Megrelishvili, Vazha Rusidze, David Dzneladze, Irakli Dolidze, Aslan Emiridze.

Notably, no arms were found as a result of the search conducted in the prison.

The action by members of the penal institutions are equal to torture, inhuman and degrading treatment.

No preliminary investigation was opened to look at the facts.

Prisoners' relatives address the Public Defender's Office and indicate that inmates at penitentiary institutions are often physically abused.

Gocha Patsuria's Case

On January 17, 2006 the Public Defender visited Gocha Patsuria, kept at Tbilisi Prison No.1. The inmate was severely beaten and had multiple bodily injuries.

G. Patsuria was serving the sentence at the Ksani Correctional Establishment for convict with TB. He had an argument with the management of the institution. According to him, on January 14, when he was meeting his mother and a sister, members of the Special Troops, deputy director of the prison and deputy head of the Penal Department battered him. As claimed by Patsuria, they physically abused not only him, but even his mother.

According to the same inmate, later he was transferred to the Ksani Correctional Establishment and placed in a punishment cell, where members of administration beat him with batons.

On January 15, Gocha Patsuria, severely beaten, was transferred to Tbilisi Prison No 1. During a conversation with the Public Defender's representative, the inmate's mother and sister confirmed the fact of beating.

The Public Defender's Office addressed the Head of the Penal Department of the Ministry of Justice Bacho Akhalaia with the recommendation to have Patsuria transferred to the Medical Institution for Convicts and Prisoners; however, the recommendation was not followed on.

The Public Defender addressed Irakli Kldiashvili, Head of the National Forensic Examination Bureau of the Ministry of Justice with the recommendation to conduct the examination of injuries of the named inmate; this recommendation was not followed on either.

The PDO addressed the Prosecutor General's Office with a recommendation to open an investigation into the fact of beating; however, such investigation has never taken place. Gocha Patsuria was tried against

Article 378 of the Criminal Code of Georgia (Hindering Preliminary Detention or Activities of the Penitentiary Institution or Disorganization of Such Activities) and was sentenced to deprivation of liberty.

On March 2 of the current year, relatives and lawyers of inmates of Tbilisi Prison No.7 addressed the Public Defender's Office. According to them, on the night of February 28 - March 1, eight inmates of one of the cells were physically and verbally abused.

Upon receipt of the notification, the Public Defender visited Prison No.7. Two of them had obvious facial injuries, others were complaining about pain in different parts of the body. They refrained from speaking with the Public Defender on specific topics. They said they never received a visit by a doctor.

Inmates claim that even a minor violation of internal regulations, like calls-over between cells leads to physical abuse instead of established legal measures.

Iago Tsakvadze's Case

On March 21, on the basis of information received on the hotline the staff of the Public Defender's Office visited Iago Tsakvadze at Tbilisi Prison No.1. The inmate had severe facial and back injuries.

The inmate felt so bad that it was impossible to move him and the staff visited him in the cell. Due to heavy headaches Tsakvadze failed to write a statement. Therefore, the staff of the Public Defender's Office had to record his statement and the inmate just signed it.

According to Tsakvadze, after the verbal abuse and argument, members of the prison administration physically abused him. Temur Tkabladze, the director, was among them.

According to the inmate, despite his physical condition, he was not visited by a doctor.

The DO representatives emphasised the need for Tkabladze to be visited by a doctor.

It is to be noted that the Public Defender and his representatives are not allowed to bring cameras, audio or video recording equipment into a penitentiary institution. This hinders effective monitoring, which is one of the major functions of the Public Defender.

We call on the Ministry of Justice of Georgia and the Parliament to allow for cameras, audio and video recording equipment of the Public Defender to be brought into any penitentiary institution without prior permission.

All the above calls for special attention, and no fact shall be left without a response in order to prevent beating and torturing of inmates. In addition, one has to note that despite unbearable conditions of inmates described in this report, according to representatives of the Ministry of Justice, no employee of penitentiary institutions was held accountable for maltreatment of inmates.

Finally, it shall be mentioned that compared to 2005, there were more death cases in prisons in 2006. Namely, in 2005 – 49 death cases, and in the period between January to October 2006 – 71 cases.

All problems described in the report are equally important and call for urgent follow-on. The staff of the Public Defender's Office is ready to provide assistance and to cooperate within the limits of its competence.

Recommendations

1. The Commission is composed only of the staff members of the Penal Department which may leave doubt as to the objectivity of their decisions. On the other hand, assigning the same task to a commission made up solely of the non-governmental sector representatives or of any other persons inexperienced in dealing with these sensitive matters, would be inadvisable and may provoke more confusion and disarray in the system. Therefore, we make recommendation to the Minister of Justice and the Chairman of the Penitentiary Department to form a mixed commission composed of an equal number of the Ministry of Justice and the Penitentiary Department representatives on the one hand and independent members, including from the NGO sector, on the other. We also recommend that the Commission take over responsibility for all issues related to prison regime in order to maximize objectivity in the decision-making over this crucial matter.

2. The state shall allocate the minimum resources necessary to support the functioning of public commissions.

3. Revisit the changes to the Law on Imprisonment concerning prisoners' visits. Provide for long-term visits or an alternative option, increase the minimum time allowed for regular visits and extend the list of persons entitled to visit prisoners, especially juveniles deprived of their liberty.

4. The Ministry of Justice and the Parliament of Georgia shall work to reduce the timeframe established by the law for issuance of leaves for visits, so that a leave be granted on the day of submission of a respective request.

5. It is necessary to prohibit searching of defence lawyers coming to penal institutions to meet with their clients.

6. It is necessary to dismantle surveillance facilities installed in the meetings rooms of penitentiary institutions used for meetings between lawyers and their clients, to make relevant amendments to the Order of the Minister of Justice "On serving prison sentences" (28 December 1999) and to abrogate the last sentence of Article 19, part 9 of the said order saying that "prison representatives have the right to observe the meeting visually, in the absence of any hearing".

7. It is necessary to increase the number of rooms for meetings with lawyers and provide for possibility for lawyers to meet with their clients without any limitations.

8. The Penal department shall provide adequate food for prisoners on special diets, vegetarians, as well as food for religious purposes (fasting). These issues need to be specified by a respective normative act.

9. In case the establishment's administration is not in a position to provide the requisite amounts of food items for prisoners, they should be allowed to have the food brought into the establishment from outside. Before the opening of shops at penitentiary institutions is seems appropriate to remove restrictions on food items in parcels and, instead, to strengthen control over food products brought into penitentiary institutions.

10. Due to poor water quality, residents of Rustavi choose not to drink tap water. Drinking water is delivered to inmates by their families, but it used to be measured by its weight (30 kg). Following the Public Defender's recommendation this restriction was removed in respect of plain water, but is still in place in respect of sparkling mineral water. It seems reasonable to remove this limitation, too, and allow unlimited amount of mineral water into the prison. At the same time, it is necessary to establish water suitability for drinking, and in case water is found to be dangerous for health – to provide for delivery of drinking water to penal establishments.

11. In order to prevent any potential harm to prisoners, It is necessary that the Penal Department take all necessary measures to ensure that all electric wiring in prisons conform to requisite safety requirements.

12. It is necessary to improve the existing situation in the disciplinary cells.

13. Overcrowding in penitentiary institutions and lack of ventilation facilities result in unbearable conditions and deterioration of prisoners' health. It is necessary to install artificial ventilation facilities at all prisons.

14. It is necessary to remove the restrictions on parcels containing articles for personal hygiene, to compensate for the failure of the prison authorities to provide the inmates with the essentials for maintaining their personal hygiene.

15. It is necessary to provide laundry facilities in every penitentiary establishment to allow prisoners to maintain their clothing and sleeping accommodation clean and tidy.

16. Based on the principle of presumption of innocence, we recommend that the Ministry of Justice release the accused and the defendants from the obligation to wear prison uniform.

17. It is necessary to implement work and education programmes for prisoners.

18. The Ministry of Education should design special education programmes tailored to the specific needs of juvenile offenders.

19. The Ministries of Justice and Education take steps to provide, as soon as practicable, adequate education arrangements for juveniles at the General and Strict Regime Prison No.5.

20. Specific programs should be arranged for a high proportion of prisoners with a basic literacy need. It is important that all necessary measures be taken to implement the provisions stipulated in the Decree on Prisoner Education issued jointly by the Ministers of Justice and Education.

21. The Ministry of Justice should ensure that every penitentiary establishment has a library adequately stocked with a wide range of up-to-date instructional and recreational books.

22. It is necessary to urgently address the inmates' convoying problem and place inmates within penitentiary institutions in order to ensure the timely start of court hearings and eliminate the problem of delays in submitting inmates to the court hearings.

23. We recommend that the Minister of Justice make necessary amendments to orders Nos. 365, 366, and 367 (28 December 1999) to allow for cameras, audio and video recording equipment of the Public Defender and his representatives to be brought into any penitentiary institution without prior permission.

24. We recommend that the Investigative Department of the Ministry of Justice open investigation into Sh. Khachapuridze case.

PROVISION OF MEDICAL SERVICES IN THE PENITENTIARY SYSTEM

On October 12, 1999 with a view to fostering the reform of the penitentiary system in Georgia and its harmonisation with the unified European Prison Rules, as well as ensuring the enactment of the Law of Georgia "On Imprisonment", the President of Georgia issued Decree No.591, tasking the Ministry of Justice to transfer the penitentiary system from the Ministry of Internal Affairs to the system of the Ministry of Justice of Georgia and provide a relevant legal framework for enactment of the new penal legislation. The same decree contained an instruction to create a governmental commission, chaired by the State Minister. The commission was tasked to implement legal, organizational, financial, material, technical, and other relevant measures to ensure smooth transfer of the penitentiary system under the authority of the Ministry of Justice. The same commission was tasked with coordinating and exercising control over execution of the Presidential Decree by January 1, 2000.

One week after the issuance of the Presidential Decree, on September 19, 1999, the Ministers of Internal Affairs, Justice and the State Property Management issued a joint Order No. 2/530 concerning the inventory material and technical basis, facilities and property of the penitentiary system and the transfer of bases, sites and property registered in the books of the Ministry of Internal Affairs to the Ministry of Justice. Based on the above order, a joint commission was created with the objective to ensure inventory of material and technical basis, facilities (including facilities under construction and sanitary and medical services infrastructure) and property before November 1, 1999. Under the same order, the transfer of property was supposed to be effected in the period between property November 10 and December 10, 1999.

The final stage of the process was supposed to be Resolution No.1551 of the President of Georgia, dated December 20, 1999 – "On Transfer of the Property of the Penitentiary System from the Ministry of Internal Affairs to the Ministry of Justice of Georgia". According to the Resolution, the acceptance certificate was to be signed between the Ministry of Internal Affairs and the Ministry of Justice within one month after December 30, 1999.

On January 11, 2000 the Minister of Justice of Georgia issued Order No.10 on penitentiary institutions. The order defined institutions of the penitentiary system. Many changes have been introduced into the order since then. The final version of the order lists the following institutions under the Penal Department of Georgia:

1. General and Maximum Security Penitentiary Institution No. 1 (Rustavi);
2. Prison, General and Maximum Security Penitentiary Institution No. 6 (Rustavi);
3. Maximum Security Penitentiary Institution No. 3 (Sagarejo Region);
4. Penitentiary Institution No. 4 (Sagarejo Region);
5. Women's and Juvenile Penitentiary Institution No. 5 ;
6. Maximum Security Penitentiary Institution No. 6 (Tbilisi);
7. Maximum Security Penitentiary Institution No. 7 (Mtskheta Region);
8. Minimum and Maximum Security Penitentiary Institution No. 8 (Tskaltubo Region);
9. Minimum and Maximum Security Penitentiary Institution No. 9 (Khoni Region);
10. General and Maximum Security Penitentiary Institution No. 10 (Avchala district, Tbilisi);
11. Juveniles' Correctional Facility;
12. Prison No. 1 (Tbilisi);
13. Prison and Maximum Security Penitentiary Institution No.2 (Kutaisi);
14. Prison No. 3 (Batumi);
15. Prison No. 4 (Zugdidi);
16. Prison No. 5 (Tbilisi);
17. Prison No. 8 (Daba Ksani, Mtskheta Region);
18. Medical Institution of the Penitentiary Department for the TB convict patients;
19. Medical Institution of the Penitentiary Department for Convicts and Detainees.

Thus, the Ministry of Justice received a complex legacy. Currently, there is a difficult situation within the institutions of the penitentiary system. It was expected that after the Rose Revolution protection of human rights would become one of the major directions of activities of the new government, especially, where the risk of violations was high. Among places where the risk of human rights violations is especially high are institutions of the penitentiary system. Torture and other cruel and inhuman treatment or punishment in pre-trial detention facilities and police are almost eliminated, which is clearly a major achievement of the new government. Despite this positive achievement, one can state that today the situation in penitentiary institutions is rather difficult; this results from overcrowding in penitentiary institutions in the first place, dire socio-economic situation, extremely low professional qualifications of staff, low level of involvement on the part of other state structures, and other factors, affect directly or indirectly the functioning of the system. This notwithstanding, the state has managed to achieve certain positive results which is due to the endeavours of central authorities to improve, as far as possible, conditions in penal institutions through construction of new facilities, improvement of social conditions and implementation of other long-term programmes. In the situation where more than 13 000 inmates are serving their sentences within the penitentiary system, all efforts by the government to effect positive change are only a drop in the ocean, and they fail to offset a huge number of problems and violations, found currently in Georgian prisons. Human Rights Watch presented a comprehensive report in September 2006; according to the report, no judicial decision has been made in respect of 63% of inmates. They are compelled to await for months, and sometimes, for years judicial decisions and spend the time in unbearable conditions, which are grossly unacceptable and humiliating, and are to be seen hazardous for health.

The monitoring carried out by the PDO aimed to study and analyze medical services provided to inmates in the penitentiary system. In addition, the focus was made on their social conditions, and in particular, living conditions, food, sanitary and hygienic conditions, social rehabilitation and some other important factors. These issues are seen in the context of protected rights, considering that the existing situation, where it is not only the Georgian legislation that is violated, but also international standards, norms and commitments.

If seen in the general context, the results of the monitoring indicate that medical services rendered to inmates are absolutely inadequate; in this regard, a concept of rehabilitation is fully neglected. Such conditions exist due to inadequate and virtually destroyed medical resources: physical condition of buildings, lack of medical staff, and low level of professional qualifications among medical personnel (in many cases), limited number of medical instruments and scarce medications, lack of diagnosis equipment, etc.

The report reviews requirements imposed on penitentiary institutions based on current national legislation as well as international standards; each specific case is discussed in this context. The monitoring process faced many obstacles. In many instances, the monitoring group faced resistance, obstacles, distortion of factual evidence and other problems. In the course of monitoring the PDO representatives were not allowed to enter the institutions with photo cameras; all too often access to medical documentation proved to be an insurmountable obstacle. In some cases, despite life indications, PDO representatives were not allowed to bring in doctors and specialists of relevant qualification. Only in several cases did PDO representatives managed to transfer patients to city hospitals for the purpose of diagnosis and adequate treatment. In many cases the administration of penitentiary institutions deliberately rejected requests of the Public Defender's Office for forensic medical and forensic psychiatric examination. All the above affected the quality of our work, and in the first place, the health of patients.

Chapter 1
INTERNATIONAL PRINCIPLES OF MEDICAL SERVICES IN PENITENTIARY SYSTEM

Within its jurisdiction, the state performs the act of deprivation of liberty. Hence, the state is directly responsible to ensure the protection of human rights of persons deprived of their liberty. The state is under an obliga-

tion to respect human rights and freedoms as well as restore without delay the rights impaired in the penitentiary system.

The penitentiary system itself creates risks for the protection of human rights; hence, the responsibility of the state in this regard shall be increased significantly. In addition, it is necessary to design preventive mechanisms against human rights violation and rapid and effective reinstatement measures. Any national or legislative document governing matters related to persons deprived of their liberty, shall consider these major principles.

The right to health is one of the fundamental rights. Any restriction of this right is unacceptable. Thus, under national legislation and international law, medical service in the penitentiary system must become an effective mechanism, ensuring for inmates accessibility of medical care, which implies unlimited access to and contacts with the doctor. The second major principle to be observed is rendering equivalent medical service: this implies that the quality of medical service and its scope within the penitentiary system shall be in line with the generally recognized and established standards and norms. The rights of patients are to be protected in any case, even when preventive punishment is applied. Observance of patients' rights generally implies the following: the right to preventive measures, the right to accessibility, the right to information, the right to consent, the right to freedom of choice, the right to privacy and confidentiality, the right to relevant standard, the right to safety, the right to avoid unnecessary suffering and pain, the right to file a complaint, as well and other rights enshrined in national and international standards.

One more important function of the penitentiary system's medical service is to be seen in the fact the institution is under an obligation not only to provide medical treatment and care, but also to carry out preventive measures, which implies creating safe environment and and adequate social conditions. Another important function of the medical service is to provide humanitarian support. There is a high risk of violating not only inmates' rights, but also the rights of medical personnel, since professional activities of doctors in prisons are viewed as those of "doctors in risk zones". There are abundant facts of pressure being brought to bear on doctors, interference into their professional duties, and coercion against doctors to force them to participate in inhuman acts. In order to prevent such breaches, the World Medical Association adopted many declarations and resolutions. It is important to note the Tokyo and Hamburg Declarations of the World Medical Association, the Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975, and revised at the 170th Council Session, Divonne-les-Bains, France, May 2005 and the 173rd Council Session, Divonne-les-Bains, France, May 2006); World Medical Association Declaration Concerning Support for Medical Doctors Refusing to Participate in, or to Condone to, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment (adopted by the 49th WMA General Assembly Hamburg, Germany, November 1997); the Declaration of the World Medical Association on Independence and Professional Freedom of Doctors (adopted by the 38th World Medical Assembly at Ranch Mirage in California, US). The Declaration adopted in 2005 in Santiago, Chile by the World Medical Association is considered invalid. The latest Statement of the World Medical Association regarding torture was made on May 22, 2006 (latest releases: May 22, 2006).

It is important to look at the recommendations made by the most influential and respectful professional medical union – Standing Committee of Doctors of Europe – at the international meeting, held on August 23, 1986 in Copenhagen – "Doctors, Ethics and Torture". The Plenary Session held on 24-25 November 1989 in Madrid considered the problems faced by doctors and other medical personnel in various countries, still practicing torture, especially within the penitentiary system. The Plenary Session of the European Doctors' Association called on national medical associations of countries that have not yet ratified and published the Tokyo Declaration of 1975 (Guidelines for Doctors on Torture or Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment at Arrest or Imprisonment), to immediately do so and treat it as a fundamental statute to ensure independence of the medical profession with regard to the abovementioned issues.

The Declaration also called to include these issues and instructions into curricula of medical institutions; in addition, it called to consider the Code of Ethics that represents a body of obligations for medical doctors to observe, and be guided by whenever pressure is exerted on them to act in contradiction of ethical principles of their profession; it called on all national governments that have not yet done so, to ratify and implement the 1982 UN Declaration and all other related international documents; it called on all scientific and professional entities and professions in all countries to include provisions of the Tokyo Declaration into their statutes, guidelines and other regulatory documents, including implementation of the overarching principle according to which a doctor should never participate (directly or indirectly) in actions or procedures which, by their nature may be equivalent to destroying physical or mental integrity of a person, or be degrading towards dignity of a person. Besides, the Declaration called to create an international notification system on violations of professional ethics and publish information on the facts of torture; in addition, it called to establish a similar educational source for medical professionals, politicians and military persons, on expansion and support of scientific research against torture as well as the treatment of victims of torture; it called to provide international support to colleagues who oppose involvement in actions contravening the ethical principles and to voice protest against any effort to compel the profession to breach supreme ethical principles of doctors.

The World Medical Association has also implemented certain activities to support doctors, who work in risk areas. In the first place, this concerns prison doctors. In 2004, the Norwegian Medical Association developed a very important Internet-based project supported by the World Medical Association. The project consists of several parts and covers all aspects and areas of work of doctors on the penitentiary system. The project is available in English, Spanish and Hebrew. It is recommended to look at the project, as interested persons can undergo online training and acquire sufficient knowledge and information about activities of doctors in risk areas.

Observance of these principles is to be seen as an issue of special attention during the monitoring process, as pointed out in the European Guidelines and the Recommendations of the European Committee for the Prevention Torture (CPT).

Major principles and standards of providing medical services in institutions of the penitentiary system are defines in many international documents, such as:

- Recommendations of the Committee for the Prevention of Torture (CPT) (3rd General Report, 1992);
- European Prison Rules, Minimum Standards of Treatment (updated European version);
- Address of the Committee of Ministers of the Council of Europe (Recommendation of the Committee of Ministers of the Council of Europe No. R (98) 7) to Member States on Organizational and Ethical Aspects of the Provision of Medical Service in Prisons;
- The UN Minimum Standards of Treating Prisoners (adopted at the 1st UN Congress on crime prevention and treatment of criminals held in Geneva in 1955, and ratified by Resolutions No. 663 C (XXIC) of the Economic and Social Council on July 31, 1957 and Resolution No 2076 (LXII) on May 13, 1997);
- UN Resolution No. 43/173 – Body of Principles on Protection of Persons in Any Form of Detention or Imprisonment (adopted at the 76th Plenary Session of the UN General Assembly on December 9, 1988).

As indicated in the documents, physical and mental health of inmates represent the most important aspect of their treatment. Fair trial, the scope of legal aid, rules of imprisonment, living conditions represent a significant precondition ensuring proper physical and mental health of inmates. In any case, the inmates have the right to receive true information on how to preserve their physical and mental health, the necessary procedures of care, and to have access to prescribed medications and personal medical records.

As mentioned above, not only inmates, but medical staff as well, may represent risk groups at correctional facilities. In accordance with international standards, apart from regular functions, the prison doctor is tasked with additional three important ones. First of all, the prison doctor is to be seen as an inmate's personal doctor; he/she is also an advisor to the administration of a particular prison on very specific and important issues, and

finally, the doctor is to be viewed as part of prison staff, responsible for health and hygiene, exercising control and reporting to the institution's administration on general health condition and sanitary standards maintenance within the particular institution.

"Medical services of penitentiary institutions shall reveal all physical and mental diseases or deficiencies, which may be an obstacle to the inmate's rehabilitation; they shall also provide the treatment of inmates. To achieve these objectives, institutions must be able to ensure various types of therapeutic, surgical and psychiatric care" (rule 62, Medical Services Rules).

Professional responsibilities of prison doctors was formulated by the International Board of Prison Medical Service and the "Athens Oath" of September 10, 1979.

Medical personnel of prisons shall observe rules of professional ethics. Apart from possible pressure being brought to bear on doctors, patients may also create problems for them. In this regard, it is important to note that inmates fairly often simulate symptoms or aggravation of their condition. The doctor must be able to realize that simulation is not always intentional, it can result from lack of hope on prisoner's part due to his/her health condition or problems stemming from external factors (environment).

It is very important for a doctor to win trust and liking from a patient. A detained person shall be examined regularly, especially when moved from one establishment to another (on entry to a penal institution, when convoyed to another institution, etc.). Results of the medical examination shall be recorded and documented. The doctor shall describe all cases of injuries and have them documented in special records.

Apart from the level of professional qualification of the medical staff, another important factor is medical equipment, as well as the supply of medications. Activities of the paramedical personnel are an important factor, as well. Professional independence of nurses within the penitentiary system is lower than that of doctors, but this factor shall not undermine the process of diagnosis, treatment, as well as ways to address other medical problems.

According to international standards, the medical personnel shall keep records. Confidentiality of medical files and the right of the patient to have access to them shall be observed even after the person's release. The prisoner shall have the right to familiarize him/herself with any medical records at any time. In addition, the inmate shall have an opportunity to address professional medical organizations.

Protection of professional interests of doctors is an issue of major importance, especially in the penitentiary system. Professional autonomy of doctors is aimed at protecting inmates' rights. Professional autonomy implies that doctors have the right to depart from professional guidelines when necessary and they have to be ready undertake responsibility for such a departure. Doctors shall be independent in order to always be ready to act in the best **health** interests of a patient; doctors shall refrain from contacts, alliances and associations which may cause a conflict related to their professional duties; in addition, international documents call on all interested persons, who have the power to influence others, to refrain from offering incentives that may influence doctors' professional decisions.

Chapter 2
PLANNING AND GROUNDS FOR MONITORING

Grounds for monitoring:

The process of monitoring within penitentiary institutions of the Ministry of Justice has been initiated by Sozar Subari, the Public Defender of Georgia. The facts described in complaints/applications of citizens served

as grounds for conducting monitoring according to the format established by the PDO staff, in cooperation with other invited experts and specialists. The duration of monitoring is usually determined after a visit of group members to the site. In the working process, upon invitation and request of the Public Defender, representatives of the "Empathy" Centre for psychological rehabilitation often participate in the monitoring within the framework of the project "Rehabilitation of victims of torture in Georgia" (funded by the European Commission and the UN Volunteer Fund for Victims of Torture).

Members of the monitoring group:

Lana Galdava
Otar Kvachadze
Sergo Kekelashvili
Amiran Nikoleishvili
Giorgi Mshvenieradze
Tamuna Kemularia

Group of medical doctors:

Surgeon – Levan Labauri
Psychiatrist (international expert) – Mariam Jishkariani
Psychiatrist – Giorgi Berulava
Neurologist – Tamar Nioradze
Physician – Anna Kakabadze

All these persons possess relevant licenses issued by the Ministry of Labour, Health and Social Affairs of Georgia; besides, they possess international certificates in documenting facts of torture and inhuman treatment (pursuant to the Istanbul Protocol).

When necessary, specialists in other fields were involved in the monitoring process, too. However, such an approach caused certain difficulties, as the Penal Department was reluctant to admit these specialists to penitentiary institutions.

For the purpose of monitoring and medical consultations, medical experts conducted monitoring together with the PDO staff members.

Chapter 3
METHODOLOGY OF MONITORING

Goal:

The medical monitoring process was conducted in several stages: our primary goal was to describe the existing situation and find how conformant it was with international and national standards.

Objectives:

- Monitoring of social conditions in penitentiary institutions (living conditions, sanitary and epidemiological status, external factors, food, personal hygiene);
- Describing the facts of torture and other violent, inhuman, and degrading treatment and punishment, their specificities, availability of preventive measures; comparative analysis of international standards and the existing situation;

- Primary medical and psychological examination of individual inmates;

Methodology:

The monitoring was conducted in accordance with international standards on health care in prisons, contained in the 3rd General Report of the CPT, the UN Minimum Standards for Treatment of Prisoners: the European Prison Rules; the Recommendation of the Council of Europe No. R (98) 7; the CPT's Recommendations for Georgia; Report of 2001 and other documents. It was conducted also in accordance with national standards contained in the Law of Georgia "On Patients' Rights" (2000), the Law of Georgia "On Medical Activities" (2001), the Law of Georgia "On Healthcare" (1997), the Law of Georgia "On Imprisonment", the Constitution of Georgia and the UN Convention against Torture ratified by Georgia in 1994.

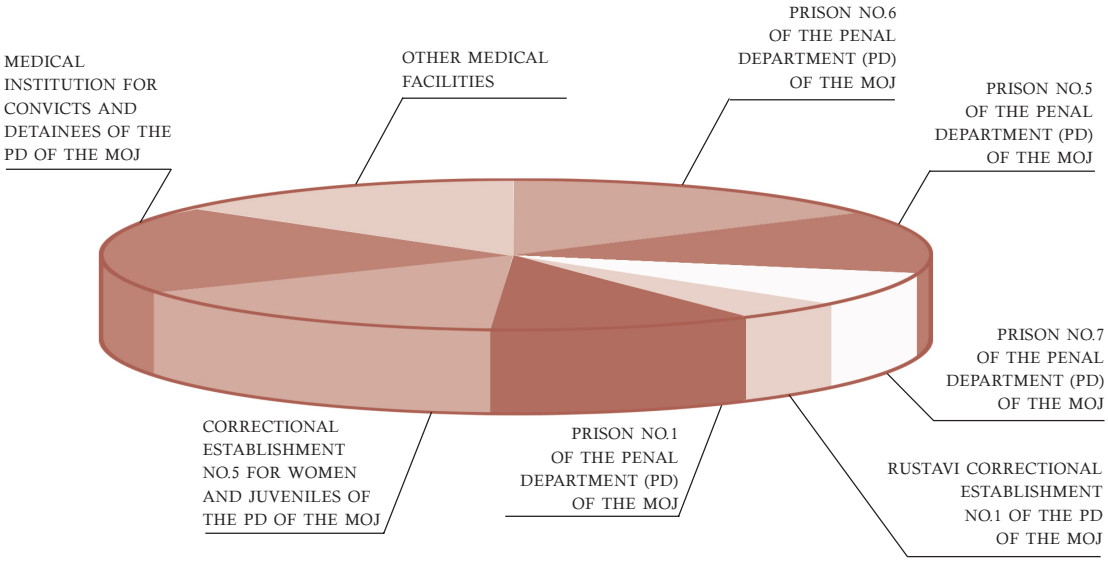
The monitoring group conducted 69 visits to the penitentiary institutions and different medical institutions, including:

#		April	May	June	July	August	September	Total
1	**Prison No.6 of the Penal Department (PD) of the MoJ**	2	3	2	1	2	1	11
2	**Prison No.5 of the Penal Department (PD) of the MoJ**	1	-	1	2	4	1	9
3	**Prison No.7 of the Penal Department (PD) of the MoJ**	2	1	-	1	1	-	5
4	**Rustavi Correctional Establishment No.1 of the PD of the MoJ**	-	-	-	-	2	1	3
5	**Prison No.1 of the Penal Department (PD) of the MoJ**	1	-	1	1	2	2	7
6	**Correctional Establishment No.5 for Women and Juveniles of the PD of the MoJ**	1	1	1	1	5	2	11
7	**Medical Institution for convicts and detainees of the PD of the MoJ**	2	1	2	3	3	2	13
8	**Other medical facilities**	-	4	3	1	1	1	10
		9	10	10	10	20	11	69

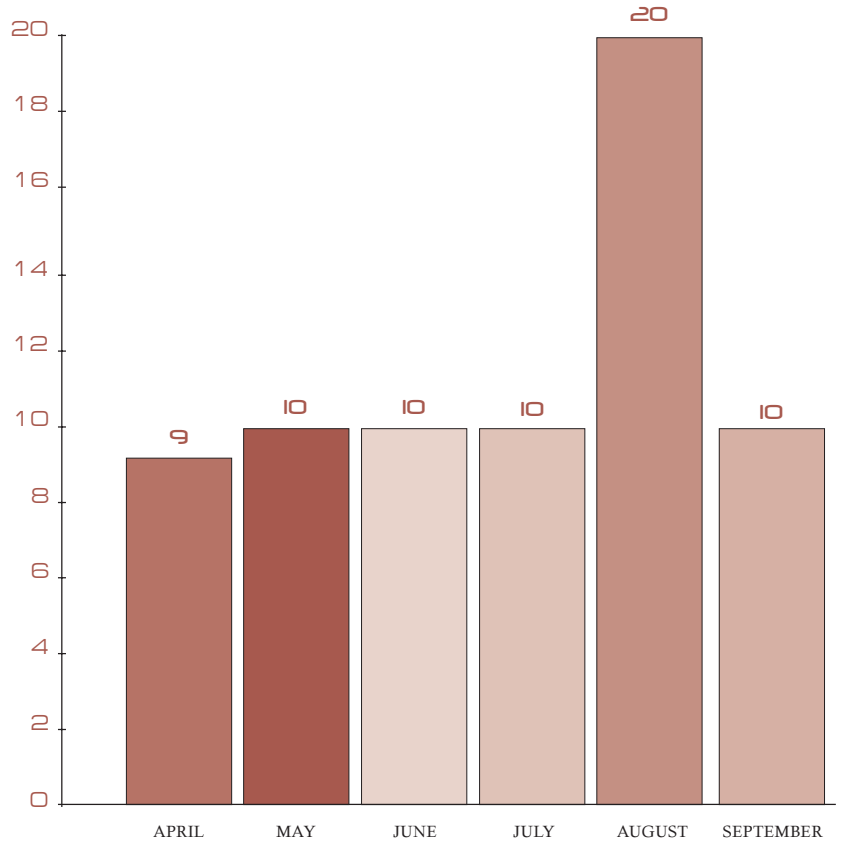
As indicated in the above table, the monitoring group held the largest number of visits in August, and among the visited institutions, the most frequently visited ones were medical facilities of the Penal Department of the Ministry of Justice.

The number of monitoring visits according to months and penitentiary institutions is shown in a diagram below:

VISITS TO THE PENITENTIARY INSTITUTIONS



VISITS BY MONTH



Simultaneously with the monitoring, we delivered some types of medical assistance to persons deprived of their liberty. More than 90 inmates received primary medical consultations. They were visited repeatedly to examine the results of treatment or provide additional consultations.

Chapter 4

MONITORING OF MEDICAL INSTITUTIONS (FACILITIES) OF THE PENITENTIARY SYSTEM

Currently, there are more than 13 000 inmates in the penitentiary system of the Ministry of Justice of Georgia. The overwhelming majority of inmates are in need of medical assistance in one form or the other, or at least of basic treatment. However, due to the overcrowding in detention facilities, lack of medical personnel, lack of material and technical basis, and most importantly, deficient work of the persons in charge of the facilities, one can safely state that the healthcare standard of medical facilities of the penitentiary system is beyond any criticism, and it is generally difficult to assess its current condition. This concerns medical, legal, ethical, social, economic and other aspects. In such conditions, any discussion on human rights and human dignity would be an abstraction.

Article 40.1 of the Law of Georgia "On Imprisonment" reads: "In a penitentiary institution with at least a hundred convicts a stationary medical unit shall be established to provide twenty-four-hour service".

On March 27, 2003, pursuant to the Law of Georgia "On Imprisonment", Order No.72/n of the Minister of Labour, Health and Social Affairs of Georgia, a list of severe incurable diseases was developed that can serve as a basis application requesting a release from serving a sentence. On March 9, 2006 the Minister of Labour, Health and Social Affairs signed Order No. 78/n, which introduced amendments to the above sub-legal act and paragraphs 1 and 4 were removed from Article 6 of the Annex (Nervous Diseases and Diseases of Sensory Organs). including the following diseases:

1. Vascular disease of the cerebrum and the spinal cord with clearly expressed focal manifestation of the cerebral lesion (hemi-paraplegia; deep hemi paraplegia; disorientation in space and time; akineticorigid syndrome):
   a. Circulatory disturbance of hemorrhagic, ischemic or mixed type;
   b. Chronic circulatory disturbance in the cerebrum – dis-circular encephalopathy – stage 3;
   c. Primary (non-traumatic) subarachnoidal haematoma, certified by instrumental examination
2. Traumatic diseases of the central nervous system with clear expression of cerebrum damage (hemi-paraplegias; deep hemi-paraplegias).

It seems that the most serious diseases known to the clinical neurology were removed from the Annex. The question arises then as to why not neurological diseases disappeared from the list.

The Public Defender of Georgia addressed the Minister of Labour, Health and Social Affairs, Vladimir Chipashvili with a recommendation to have these diseases put on the list again. However, the recommendation has not been followed on, and neither has there been an response from the Ministry.

The case of Sharashenidze, is related to the above problem. Sharashenidze's problem was resolved after the Public Defender of Georgia stepped in. Sharashenidze was treated at the medical facility for convicts, and his health condition was fairly serious. He was not provided with the requisite medical assistance and care. His condition aggravated severely, after which, with consent of the hospital administration, the convict's spouse was admitted to the ward to take care of him. This lasted for months. The situation was described in the Public Defender's Report in summer 2006). Later Sharashenidze was put on the list of persons whom it was recommended to exempt from serving the sentence, and later released.

a) Prison No. 6 of the Penal Department of the Ministry of Justice of Georgia

According to the interview with doctors of the newly opened Rustavi Prison No. 6, the medical ward has 27 beds. Most of the cells has 3 beds, and a very small number of cells is for 2 beds. The medical ward (in

addition to cells) has the following premises: room for staff, office of the chief of the medical ward, storage room, back office, and treatment /dressing room. The medical ward is supposed to supervise the quarantine room, which was not even visited by the medical personnel. Currently, the medical ward has no chief.

The medical ward employs two doctors and 7 nurses (4 night-shift nurses and 3 day-shift nurses). Nurses work for 24 hours in four days, while doctors' working hours are from 10 am to 5 pm. There is a separate room for sanitary disposal; therefore, no sanitary disposal of patients took ever place. The Law of Georgia "On Healthcare", Article 3 (z1) defines healthcare as "medical activity, related to preventive healthcare, diagnosis, treatment and rehabilitation and conforming to professional and ethical standards of medical service recognized in the country". The PDO monitoring group found a considerable number of violations; the Ministry of Labour, Health and Social Affairs has never issued a license for the said medical ward to carry out medical work in any field. Hence, any activity by the medical ward has to be seen as institutionally illegal. Pursuant to Article 56 of the Law of Georgia "On Healthcare": "A medical institution shall not carry out medical activities without a relevant license". Article 154.4 of the same law states that "illegal medical or pharmaceutical activity (i.e. the activity carried out in the absence of a state permit, license, and certificate) shall be subject to administrative sanction in the form of penalty".

Pursuant to Article 246 of the Criminal Code of Georgia (concerning illegal medical or pharmaceutical activity):

"1. Illegal medical or pharmaceutical activity that led to a health damage shall be punishable with a penalty or restraint of liberty for a term of up to 3 years, or deprivation of liberty for the same term.
2. The same action that led to fatal outcome shall be punishable with restraint of liberty for a term of up to 5 years or deprivation of liberty for up to 7 years, with or without dismissal from the post or removal of the right to practice the profession for a term of 3 years ".

The group visited patients' cells (selectively) and other medical rooms.

Medical manipulations tools include a dressing table, a bed, a basin, an additional table, two tables for medical materials, instrument table, and a cabinet. The room is not equipped with lateral or horizontal illumination necessary for surgical manipulations. There was one box on the instrument table with the following surgery instruments: Richter's scissors –1, plaster breaker – 1, surgical tweezers – 3, mouth-tooth forceps –1, flat probe –1, grooved probe –1, Billroth's haemostatic forceps (straight) – 1, curved haemostatic forceps –1.

According to a nurse, the above instruments were the only instruments at their disposal. The dressing room has not instruments like: Pean's forceps, scalpel and its blades, suturing materials and needles, clamping fixtures, wound spreader, sutures removing scissors, bulbous-end probe, etc. Part of the medical staff noted that materials and instruments are not sterilized at the ward because the sterilizer fused; the nurse said that when necessary the instruments are sterilized using a heater. For instance, on June 3, 2006, a doctor failed to provide a pincer, needed to introduce a catheter into the urinary bladder as there was no sterilized pincer. Dressing materials, according to a nurse, are provided through humanitarian aid. Such materials are; non-sterile tampons wrapped in paper; so-called sterile bandages (produced by Chesebrough-Pound's Inc., INTERSORB); such bandages have no indication of production or expiry date.

Dates are not indicated on sterile bandage packages (Absentee Shawnee). Hence, the sterility and validity of such materials are questionable, and they cannot be used for dressing purposes. The dressing room does not prepare gauze swabs and small swaps for surgical manipulations, therefore there is nothing to sterilize in a sterilizer box. Such negligence of aseptic means significantly increases the risk of infection. In this regard, the most dangerous are diseases transmittable through blood, like HIV, B hepatitis, C hepatitis, etc. Therefore, the standards defined in the order of the minister are breached; the standards apply to aseptic protection in medical activities. According to a nurse, it is not infrequent for the staff to have no sterile gloves and they often have to by them themselves. A

medical consultant visiting the prison on June 3, 2006 was offered rubber gloves to carry out a medical manipulation. It seems that such practices are not infrequent. According to a nurse, currently they have local anaesthesia medications, like Lidocaine and Novocaine, though no allergy test is made before these preparations are used. This leads to an increased risk of anaphylactic shock. Given the conditions in penal institutions, the anaphylactic shock would lead to death of a patient. The same applies to parenteral administration of antibiotics. This category of medications is represented by several denominations. Notable, the medical ward has neither a respiratory system, nor even a breathing bag. It is interesting to know how the medical personnel is going to do respiratory manipulations in these conditions in case of a respiratory standstill.

The PDO monitoring group also visited a pharmacy storeroom, where all infusion materials (sodium chloride, glucose, Ringer's solution) are stored on the floor. There is no refrigerator in the room to keep those medications that can only be stored in a refrigerator. There is no antitetanus serum and anatoxin. The room has sufficient lighting; part of medications is not protected from light, which affects their quality. Part of the medications is kept on the floor, another part on the table. There are no special shelves to keep medications by categories, , which is necessary in terms of safety. According to the medical personnel, even though the medical ward was supplied with transfusion crystalloid solutions, there were no catheters or transfusion systems; therefore it is highly doubtful that the medical personnel is in a position to perform intravenous transfusion. As noted by the medical personnel, they have no medications that require any special precautions. In addition, it was found that the medical ward had a pharmacist responsible for receipt, storage, protection, consumption and accounting of medication. The PDO monitoring group was unable to find the pharmacist to inspect this section, and the medical personnel presented the list of medications delivered on June 4, 2006 (79 denominations).

There is a wide variety of medications available, however, the medical ward does not have a first-aid cabinet. The group was unable to find first-aid items like respiratory masks, resuscitation bag, respiratory tubes, laryngoscope, mouth masks, tongue clips, defibrillator, and a tracheotomy set. There is no respiratory system or a monitor. Obviously, it is impossible to provide any kind of emergency care in the facility. The medical ward lacks basic items, like medical balances, auxanometer, and electrocardiograph. It is impossible to do simple lab tests. There is no laboratory; hence, it is not possible to do even very simple tests, like general blood test, or urine clinical test.

According to a nurse, minor surgical manipulations are carried out in the absence of a surgeon, as there is no surgeon in the medical ward. On one occasion, surgical care was provided to one of the inmates by a nurse and a psychologist who put on surgical sutures. presently the patient who received the care is place in a prison cell. There is no record on the surgery given. The medical personnel can freely access only manipulations room, staff room and storage.

The Law of Georgia "On Healthcare" (Article 43) puts a doctor and other medical personnel under an obligation "to provide relevant records in medical documentation". The Law of Georgia "On Medical Activities" (Chapter 7) provides for an obligation for an independent subject of medical activities to keep records. More specifically, Article 56 states that "a subject to independent medical activity shall keep medical records for each patient in accordance with the rules established by the law". Besides, "information shall be recorded in a timely manner within established deadlines; it shall adequately describe all details related to provision of medical services to a patient …The subject to independent medical activity shall observe medical records storage rules". These legal requirements are completely neglected and violated by the personnel of the medical ward. The medical ward does not keep medical records inmates who received in-patient treatment (case files). The only documentation available is listed below:

1. Personal medical records for persons receiving out-patient treatment;
2. List of convicts placed in the medical station;
3. Register of out-patient receptions;
4. Register of prescriptions;
5. Register of rounds.

Personal records (case files) are only available for 28 inmates (out of the total number of 800). Some of the patients have three files each. It is unclear as to which out of those three is the most recent or the most comprehensive one. No forms approved by the Ministry of Health were found at the medical ward. There are no prescription forms. There is a registry, providing extremely incomplete information on prescriptions. It is impossible to determine as to who gave the prescription, or who cancelled it; what dosage was prescribed, who was responsible for having the prescription fulfilled, etc. It is absolutely unacceptable that assignment, cancellation or alteration of treatment (dosage, intensity, etc) is not certified by a doctor's signature. This example alone clearly demonstrates that legal provisions are grossly violated, such deficient medical documentation can result in a highly undesirable outcome leading to a critical aggravation of the patient's health or even to death. It is not known whether anyone is going to be brought to account for these gross violations.

According to the medical personnel, their staffing schedule envisages a dentist's position; however, no dentist's office exist there, and the dentist only arrives at certain intervals. According to the same personnel, the medical ward will be supplied with a dentist's chair and equipment, which is currently in Kutaisi. However, for reasons unknown these items have not yet been delivered.

As stated by the doctor (which was corroborated by our inspection), water supply is sporadic; even when available, tap water cannot be used for drinking due to a high content of sand and rust in it. For some inmates water is delivered from outside, but most inmates have to drink tap water. Its is not used by medical personnel.

Inspection carried out at the medical ward showed that 18 patients are currently treated there (in-patient cases). Medical personnel are not aware of the reasons for placement of those patients. Half of them were not diagnosed. In some cases, the diagnosis is based on assumptions or narration of a patient. Even where the diagnosis were made, they were not always correct and contained inaccurate terminology. It is to be noted that several patients were transferred to the medical ward for unknown reasons. Their diagnoses, medical indications for transfer, or prescriptions are not known by the medical personnel. They have been accepted without any diagnosis.

Patient Giorgi N. The patient was examined by a doctor. The inmate is juvenile (17 years old). He complains about pain in the right side of the chest. The inmate was transferred from a penitentiary institution several days before the inspection. The examination showed that the patient had a post-surgery scar on a mid-line of the stomach and the right side of the chest. There were also signs of previous drainage on his back and the right lateral area. The patient said he was wounded in the past and operated. His health condition aggravated during the confinement. He complained about strong pains, especially in the evening time. Medications provided by doctors did not alleviated pain. The patients cried loudly, requesting help from persons in the corridor, asking to allow him to contact his parents, etc. The PDO monitoring group examined the patient: auscultation shows respiration in both lunges, however in the right lung lower part the respiration was weak. It is impossible to establish the diagnosis without instrumental examination and laboratory tests. Despite the instructions made by the monitoring group, no measures have been taken so far.

Inspections found significant breaches gross violations of almost all laws relevant to health care. In the first place it is important to emphasise the violation of constitutional provisions, as the Constitution of Georgia provides for equal rights to health for all citizens of the country.

The Law of Georgia On Healthcare

The main principle of the state policy in the healthcare sector is found to be violated (Article 4), namely, provisions concerning the universal and equal access to healthcare (b); protection of human rights and freedoms in healthcare, ensuring respect for, dignity of and autonomy of the patient (c); protection of inmates

from discrimination when providing medical assistance (e); the state responsibility for the scope and quality of medical care under the compulsory health insurance programme;

Citizens' rights in the field of healthcare are violated (Chapter 2), too, namely: the right of citizens of Georgia to use medical assistance envisaged under the established state healthcare programmes (Article 5); the right of the patient to choose or request a replacement of medical personnel and/or medical institution (Article 14). Besides, provisions of Chapter 5 (Article 30) are violated (according to this article during rendering the medical assistance, the doctor shall be free and independent in taking decisions in the best interests of the patient); Article 32, according to which a doctor or a nurse have the right to carry out independently medical activity in the field indicated in their certificates. The ward does not have a passport of a medical institution. The most important principle of rendering health services is violated, namely, the principle of continuity (Article 38) as well as the principle of sequence of services provided to be decided upon medical indications (Article 40). The rule medical record-keeping is also violated (Article 43). Article 45 of the Law is found to be seriously breached: the relevant provision states that the "medical personnel shall impart information in accordance with the established rules". The Ministry of Health has not issued a license for medical activities, as prescribed by Article 54. This notwithstanding, the medical ward continues medical activities, in violation of Article 56. The Ministry of Health does not exercise control over the quality of medical activities performed by the institution, which is mandatory under Article 63. Despite requirements set forth in Chapter 10, the safe environment is not provided, and no control is exercised over observance of sanitary rules and standards, or epidemiological measures. Articles 80, 81, 82 and 83 are violated. These articles define certain measures aimed towards control and prevention of tuberculosis, hepatitis, sexually transmittable diseases, in accordance with the established standards.

Law of Georgia on Medical Activities:

Article 6 of the Law of Georgia "On Medical Activities" is violated by the institution; the article authorizes doctors to freely take professional decisions. Despite prohibitions stipulated in the law, the subject of independent medical activities is not able to take adequate decisions on planning and conduct of medical activities. In contravention of provisions of Article 38, the subject of independent medical activities fails to abide by professional standards, since his/her activities are restricted given the specific character of the system. In accordance with Article 39, the doctor shall provide information about medical services to the patient in the language he/she can understand; unfortunately, this is not always the case.

Most patients know what kind of treatment is applied, or what results are expected. In Contrary to provisions contained in Article 41, patients, despite their requests, are hardly given access to the information in medical records. Not infrequently, this happens for a very simple reason of non-existence of medical documentation. Nobody ever tries to obtain informed consent of a patient, which is a gross violation of Article 44. Requirements of Article 48 are often violated and information confidentiality is breached. Very often health conditions of patients become subject to public discussion through mass media. Article 50 of the Law "On Medical Activities" envisages delegation of medical activities to other medical personnel, which is impossible to fulfil due to lack of human resources and the existing conditions. Contrary to Article 51(m), the institution's director is not provided with a relevant report in the event of worsening of a patient's condition.

Chapter 6 of the Law of Georgia "On Medical Activities" defines the responsibilities of the subject of independent medical activities in relation to provision of medical services to an inmate. According to Article 53, medical services rendered to an inmate of a penitentiary institution shall be equivalent to those provided to regular patients; however this is not the case. Pursuant to Article 54, the subject of independent medical activities shall not carry out actions, either directly or indirectly, that involve inhuman treatment. This notwithstanding, omission on the part of medical personnel and their passive attitudes often make them accomplices to such actions.

The subject of independent medical activities violates provisions of Article 56 on necessity and format of medical records. The medical ward under discussion, no control is carried out by the state over the quality of the service or documentation, which is violation of articles 66 and 67.

Law of Georgia on Patient's Rights

Pursuant to article 7 of the Law a patient has the right to immediately seek an alternative medical opinion at a different medical institution or from a different doctor. According to Article 8, a patient has the right to choose or seek replacement of a service provider at any time. These rights are practically ignored despite the fact that according to Chapter 10 of the Law defining the rights of persons kept in custody or serving their sentence: "a person in pre-trial detention or serving sentence shall enjoy **all rights** envisaged by this Law" (Article 46), whereas Article 47 states that the only right that may be restricted by the administration of a penitentiary institution is the right of the patient to choose a medical service provider. In addition, such a decision may be appealed in the court (Article 47). This notwithstanding, neither the prison administration, nor representatives of the relevant department know that the Law grants patients with such rights irrespective of their social or other status. As demonstrated above, it is impossible to provide emergency medical care at the mentioned penitentiary institution. It is a violation of the Law, since the Law of Georgia "On Patient's Rights" (article 12) clearly states: "1. The state shall protect the patient's rights to medical services, in the event of the absence of which death, disability or significant worsening of the patient's health is inevitable. 2. If a patient is in need of emergency medical assistance in the absence of which death, disability or significant worsening of the patient's health is inevitable, and the medical service provider is unable to render such assistance, the medical service provider shall provide the patient's relatives or legal representatives with information on places rendering the requisite service". No one at the medical ward has ever realised that in case of failure to provide the requisite medical assistance (since it would be beyond their capacity), they need to provide the relevant information to the patient's relatives or legal representatives. This is tantamount to discrimination among patients.

Article 18 of the Law of Georgia "On Patient's Rights" provides for the right of a patient to obtain full, objective, timely and clear information from the medical service provider on the existing resources and possible ways to get access to these resources; in addition, they are authorized to obtain comprehensive information on the results of medical examination and tests, alternative medical treatment, inherent risks and expected effectiveness.

Despite the existing legal requirements, this issue normally evokes a smile among prison administration. The medical ward ignores the right of a patient to an informed consent (Article 22). The existing medical documentation does not even carry any such record. As alleged by patients, their consent was never obtained either verbally, or in any other form. The fact that staff members of penitentiary institutions try to interfere with the provision of medical services is grossly unacceptable. Pursuant to Article 30 of the Law "On Patient's Rights", only those who are directly involved in rendering medical assistance are authorized to attend the process, except for cases when a patient requests attendance of other persons. The PDO group could observe for themselves a violation of this provision on several occasions. Members of the Penal Department, often those wearing masks, frequently try to impose control over medical activities. According to international standards, no one, especially, representatives of the penitentiary or services services, is allowed to attend (either overtly or covertly) a conversation between a doctor and a patient, since such information is treated as strictly confidential. Representatives of the penitentiary institution allegedly (as they themselves say) do so for security purposes, however such actions cannot be justified. Even though the patient's rights are violated, most of the patients do not even know that under Article 10 of the Law "a patient or his/her legal representative is authorized to address the court and request the following:

a. compensation for property and non-property damage, caused by:

- violation of patient's rights;
- wrongful medical action;
- other deficiencies in the functioning of the medical institution;
- incorrect state supervision and regulation;

b. suspension or termination of the medical activity license of the personnel;
c. amendment of state medical and sanitary standards"

Another violation is found in respect of Article 45 of the Law stipulating that:
"1. Availability of medical services for those in preliminary detention or serving sentence shall be provided through the state medical programmes.
2. Upon placement in the penitentiary institution, a person shall be entitled to request a relevant medical examination, and independent forensic examination and in case of necessity – medical service provision".

It is unacceptable when a medical institution does not keep any registry of injuries. Article 87 of the Law of Georgia "On Imprisonment" is frequently violated as well. Pursuant to the said article "Upon receipt to the prison, an accused person shall be medically examined by a prison doctor".

It is important to note Article 38 of the same Law related to control over the health of a convict. It states:

"1. As soon as a convict is brought to a penitentiary institution, he/she shall be medically examined.
2. Convict's health conditions shall be examined at least once a year. Sick convicts shall receive immediate treatment."

Thus, it is impossible to ensure treatment and care of patients at the medical wards of penitentiary institutions at an adequate level. Moreover, the environment existing in such institutions is threatening for life and health. According to the available information, this situation caused the management and medical personnel of medical wards in some penitentiary institutions to resign. This notwithstanding, we were not able to we find even a single written document (report) informing the administration of the penitentiary institution of the state of affairs. However, the medical personnel informed the administration in writing about the existing conditions, including in the presence of the PDO monitoring group. The administration sticks to its position of uncertainty, and tries to assure the monitoring group that the situation will improve in the nearest future. However, this is not the first time such promises are made, but little has changed.

The Law of Georgia "On Imprisonment", namely its article 41 declares: "2. A doctor hired by the penitentiary administration on a contractual basis shall exercise constant control over convicts' health, provide medical treatment to them to the extent possible and, when necessary, request their transfer to a medial institution. 3. The doctor shall, within established time limits, conduct medical examination and, when circumstances so require, notify the director of the penitentiary institution of conditions that are harmful to convicts' health". The following article (Article 42) lists responsibilities of the doctor with regard to sanitary and epidemiological conditions:

"1. A medical unit or a doctor of a penitentiary institution shall, on a regular basis, check:
a) Quality and amount of food given to convicts, sanitary and hygiene of cooking process;
b) Sanitary and hygienic conditions of the territory and buildings of the penitentiary institution;
c) Conditions of convicts' garments and bed linen and whether they correspond to outer climate.
2. If a violation of requirements under paragraph 1 of this Article is discovered, the medical unit or the doctor shall notify the institution administration in written thereon.
3. If the institution administration deems that elimination of violations discovered by the doctor are beyond the institution's capabilities, it shall address the Department administration with an explanatory letter. The explanatory letter shall be accompanied with a letter of the medical unit or the doctor."

It is interesting to know what legal responsibility is envisaged by the Criminal Code in case of such violation.

Article 247. Concealing or Falsifying Information on Threats to Life or Health

1. Concealing or falsifying information related to circumstances, facts or events threatening life, health or environment, by a person responsible for providing such information to the public – is punishable with a penalty or custody for a term of up to 3 years or deprivation of liberty for a term of up to 2 years, with or without dismissal from office or withdrawal of the right to activity for a term of up to three years.
2. The same action, committed by an employee, or the action which led to health damage or other serious consequences – is punishable by a penalty or deprivation of liberty for a term of up to 7 years, with or without dismissal from office or withdrawal of the right to activity for a term of up to 3 years.

As mentioned above, sanitary and epidemiological rules are materially violated at the medical ward of the penitentiary institution. It is to be noted that with approaching summer season the issues related to water supply, and hygienic conditions, the risk of infections spread (especially, enteric infections) become particularly pressing, as they can cause an irreparable damage to inmates' health. This notwithstanding, there is no system of epidemiological surveillance in penal institutions, and neither is there any plan of possible actions exists. With regards to such issues, the Criminal Procedures Code of Georgia provides for the following:

Article 248. Violation of Sanitary and Hygienic Rules

1. Violation of the sanitary and hygienic rules, which caused massive sickness or poisoning, - is punishable by a penalty or restraint of liberty for a term of up to three years or by deprivation of liberty for a term of up to two years, with or without dismissal from office or withdrawal of the right to activity for a term of up to three years.
2. The same action, which led to lethal outcome, - is punishable by restraint of liberty for a term of up to five years or deprivation of liberty for a term of up to seven years, with or without dismissal from office or withdrawal of the right to activity for a term of three years.

In the course of numerous visits to various institutions the PDO monitoring group could see that institutions do not have medications in ampoules, subject to strict accounting. THis notwithstanding, a certain proportion of patients, use psychotropic substances, antidepressants on other medications for the purpose of treatment, which under the law in force shall be strictly accounted for. For the sake of information, when an ampoule is opened and used, a relevant record shall be made in a medical file/history and a special registry with numbered pages, stringed and sealed; this shall be certified by the signature of the administration of the institution. In some cases, it is also envisaged to turn in a used ampoule. However, this rule is not always observed, and a certain category of patients receive intravenous injections of such medications for their treatment purposes. Thus, we deal with another material violation, punishable under the Criminal Law:

Article 261. Illegal Preparation, Production, Purchase, Storage, Transportation, Dispatch or Sale of Psychotropic Substances, their Analogues or Potent Substances

1. Illegal preparation, production, purchase, storage, transportation, sending or sale of psychotropic substances or their analogues – is punishable by a penalty or correctional works for a term of up to two years or by deprivation of liberty for a term of up to three years.
2. Illegal preparation, production, purchase, storage, transportation, sending or sale of a potent substances – is punishable by a penalty or correctional works for a term of up to one year.
3. An action described in paragraphs 1 and 2 of this article, committed:
   a. large volumes;
   b. upon preliminary agreement by a group of individuals;
   c. by use of official powers

d. repeatedly;
e. by a person, who has previously committed any crime listed in this Chapter of this Code –
is punishable by deprivation of liberty for a term of up to five years.

4. Actions described in paragraphs 1 and 2 of this article committed:
a. in extremely large volumes;
b. by an organized group –
is punishable by deprivation of liberty for a term of 3 to 8 years.

Article 270. Violation of Rules for Preparation, Production, Receipt, Accounting, Issuance, Storage, Transportation, Sending or Import of Psychotropic or Potent Substances

1. Violation of rules for preparation, production, receipt, accounting, issuance, storage, transportation, sending or import of psychotropic or potent substances, which led to circulation of such – is punishable by a penalty or correctional works for a term of up to one year, with or without dismissal from office or withdrawal of the right to activity.
2. The same action, which led to illegal circulation of large amounts of psychotropic or potent substances or other serious consequences – is punishable by a penalty or correctional works for a term of up to two years or deprivation of liberty for the same term, with dismissal from office or withdrawal of the right to activity for a term of up to three years.

b) Prison No. 5 of the Penal Department of the Ministry of Justice of Georgia

The situation in terms of medical service in other penitentiary institutions is much worse. Prison No. 5 of the Penal Department of the Ministry of Justice of Georgia is to be seen as the most overcrowded facility in Georgia. Cases where a cell with a capacity for 18-20 persons is shared by more than a hundred, are quite frequent. Sanitary conditions are far from satisfactory. Food and nutrition represent a very serious problem. Low level of medical service was obvious even during the first visit. According to the Chief Physician of Prison No. 5, currently there about 45 inmates with the diagnosis of epilepsy. However, these inmates are kept in dire conditions – they sleep in shifts, which is harmful for their health. The prison administration was given a recommendation to place these inmates in cells, where they would have their personal beds and at least some conditions to observe a proper sleeping regime. However, as indicated in a response letter from the prison, our request was not followed on due to the overcrowding in cells.

It is to be noted that cells are locked at night at the medical ward of the Prison No. 5. This limits contacts of patients with the medical personnel. The prison administration received a recommendation to provide relevant precautions, like in other institutions, so that the locking of cells is no longer necessary.

As stated by many prisoners, members of the Joint Commission of the Ministry of Justice and the Ministry of Health frequently violate the norms of medical ethics and deontology. The relations between a doctor and a patient are not confidential. Not infrequently doctors demonstrate an ironic attitude towards the patient's problems. They fail to follow carefully the patient's complaints.

During the monitoring at Prison No. 5, the PDO group found many patients with mental health problems, who despite their conditions were nevertheless kept in prison and were not able to receive adequate psychiatric treatment. Moreover, in many instances legal provisions related to their participation in court trials, psychiatric forensic examination and other issues are violated. In order to understand better the prevailing situation of inmates, suffice it to look at one case:

Patient Imedo Ts. was interviewed at the medical ward. According to him, on the night of the so-called "prison riot" he received multiple gunshot injuries and required surgery that was fairly complicated:

gastrorrhaphia, hepatorrhaphia, sigmostomia, sanation of the abdominal cavity, draining. Currently the sigmostoma is brought outside the left side of his abdomen, and the removal is tentatively planned in 1-2 months. The sigmostoma is functioning, the patient uses plastic bags instead of containers for feces. The patient is very weak and anaemic. According to him, it is very hard for him to care about the stoma in such conditions (even at the medical ward). As found later, all cells with patients are locked at night, and cell keys are not available before morning, unless something extraordinary happens. However, in such cases, when cells are unlocked, patients receive care with a delay. It is to be noted that cells are not equipped with lavatories and patients are not in a position to comply with the needs of nature until the doors are unlocked. The patient noted that the feces container, that got filled during the night could not be replaced, which produces a smell in the cell, disturbing for other patients. The patient was very concerned about the situation and even restricted himself in eating to avoid filling the feces container at night, as he was unable control the stoma and disturbed other patients.

It seems that patient I.Ts. fails to adequately care about the stoma; in addition, the lock-up of cells doors puts him in a very difficult situation. This situation is equal to torture and degrading treatment. It is necessary to provide without delay the requisite conditions for the patient and speed up his transfer to the medical facility for convicts and detainees for the purpose of removal of stoma. It is to be noted that despite high level of professionalism of the chief of the surgical department of the hospital for convicts and detainees, the surgery seems to be rather risky due to the condition of the operating theatre, anaesthesiology service and post- surgical room. All these factors have to be taken into account when planning a surgery.

During the summer months of 2006, due to high temperatures, the health status of patients worsened significantly, causing a rise in the incidence of cardiovascular diseases, as well as in the mortality and morbidity rates.

Compared to medical wards of other penitentiary institutions, the situation with regard to keeping medical records and documentation is better. The ward keeps records for patients treated at the facility. The medical ward has X-ray equipment, and when necessary the chest X-ray is made. Roentgenograms are kept and they were made available to the monitoring group. It is to be noted that the number of doctors in the institution under discussion is far greater than in other medical wards. However, considering the overcrowding in Prison No.5, it is in dire need of medical workers. Inmates often complain about negligence on the part of medical personnel. Below follow the description of cases observed:

Giorgi, Zh. patient. The capacity of the cell in which G.Zh. is placed is twenty-five persons, while the actual number of persons kept there is eighty-five. The patient complains of pains in the heart. Due to the presence of an excessively large number of people in the limited space, he often displays signs of psychic fits such as crying and shouting loudly. After a transfer to Prison No. 5, he was put in quarantine for one month and later, in the present ward. The conditions of detention are unbearable, as and there is a sharp lack of fresh air in the cell. As far as his condition is concerned, the patient noted "some problems with lungs". He often asks for a doctor, though medical personnel only provide him with Analgin and Validol. According to the patient, after a serious aggravation of his condition, he was taken to the medical unit where his heart X-ray was made. He received no medical examination; but based only on X-ray performed, he was told that nothing was wrong. as stated by the patient, the doctor did not examine his heart, though he had complained of pains in the area for about a month. He was not examined by the joint Commission of the Ministry of Justice and the Ministry of Health, either. No electrocardiogram was made, though he asked for it several times. He often feels palpitation and suffers from tachycardia. This happens roughly twice every month. The patient also complains of cough that was particularly intensive one month ago. Residual effects are still noticeable. The patient said that he was taken out for a walk once a week. Giorgi Zh. requires careful examination by a doctor and adequate medical treatment.

During the visit to the prison's medical ward the PDO monitoring group interviewed doctors. The doctors failed to remember the above person. The group asked for X-ray results, indicating an approximate date of

X-ray. X-ray showed no signs of diffusive or focal lesion. The doctor said it was impossible for him not to have examined the patient.

Nukri K. The patient was found in the medical ward. According to him, he had suffered from fever for several months. On the day proceeding the monitoring, his temperature was 39.6-400C, whereas on the day of the interview he showed 37.8-380C. Along with high temperature, he suffered from strong cough. He felt pains in his right shoulder due to which he was unable to sleep on the right side. He had asked several times to be moved to the medical ward, but the request was only met after a long time. Due to the treatment, his condition improved. Based on the patient's anamnesis, he received two courses of TB treatment from the Red Cross: one course lasted for nine months, and the second one for eight months. Recently the patient was given Streptomycin (20 ampoules). According to the doctor, His diagnosis at the time of the visit was flu, however, it seems strange that the only treatment prescribed was antibiotics (Gentamicin, once every eight hours). According to the doctor, on the previous day the patient had received a consultation from a otorhinolaryngologist, who thought that high temperature was caused by reasons other than flu, and recommended an X-ray. X-ray demonstrated the signs of some specific process. The bronchial picture was serious. Auscultation showed vesicular breathing with some background of bronchitis, except for the middle part of the right lung, where there were obvious signs of wheeze. Based on X-ray and clinical picture, the patient's diagnosis was bronchial pneumonia (pneumonia).

Patient **Givi G**. kept at Prison No. 5 was visited by the monitoring group several times. He is 78 years old. Before meeting with the patient, the group interviewed the chief physician of the medical ward. According to him, the patient had been examined by the Medical Commission. Medications were provided by the patient's family. On the day of the visit, the patient was given a blood test, and blood sample was given to his family for lab examination. According to the head of the medical ward, another examination by the Medical Commission would depend on the results of the above test. The group was told to contact Badri Balavadze, Head of the Medical Commission for additional information.

During the interview, the patient told the monitoring group he had had a conflict with people trying to extort money from him. During the incident he was seriously injured: he lost his left eye and received injuries in the heart and head area. He did not remember the date when he was transferred to prison No. 5. Neither could he remember his lawyer's name. The patient showed lack of adequate orientation in time or space and could not always answer the questions he was asked.

According to the patient, he received medications from his son and felt better. He also said that two years ago he was diagnosed with a liver disease. Besides, he complained of frequent fever and cramps in hands and legs. The patient noted that he had never asked for a medical examination and was presented to the Medical Commission two days earlier.

The medical file showed that the patient had been referred to a district hospital several times, The most recent treatment had been given to him two months before his imprisonment. The diagnosis featured the following: cirrhosis, portal hypertension, throat varicosis, duodenum ulcer accompanied by bleeding, acute post-hemorrhagic anaemia, and liver encephalopathy. The results of the laboratory analysis indicate that the patient suffers viral hepatitis C, as well as other pathologies.

The above demonstrates that patient Givi G. suffers from serious pathologies. His perception disturbances can be a consequence of encephalopathy developed as a result of portal hypertension, as well as his age. The patient runs a high risk of bleeding from the digestive system, which had been the case two months before the visit of the monitoring group, the more so as the patient suffers from throat varicosis. Despite his condition, the patient has not been transferred to the medical ward. One has to bear in mind that a repeated bleeding may be fatal for the patient. Therefore, the monitoring group recommended to have the patient transferred immediately to the medical ward. The recommendation was followed on and during the following visit the group was

told that the patient was transferred to the medical ward. However, the treatment provided could by no way be viewed as adequate.

In the course of the monitoring, the PDO group visited individual patients at the request of the local doctor. It might be interesting to look at some cases:

Temur R. The patient was put before the Medical Commission by the head of the medical ward, and referred to the medical institution for convicts and prisoners. Despite his severe health condition, the patient was discharged from the medical institution brought back to prison No.5. According to the chief physician, this was done on the basis of intelligence which, unfortunately, was seen as more important than the patient's health. In the past, the patient had a surgery of the abdominal cavity, however, it was not possible to identify the type and scope of the surgery. After the surgery the patient had developed a fistula in the abdominal cavity, with the drainage installed to withdraw pus. The Medical Commission found it necessary to have the patient referred to the medical institution. However, he was brought back to the prison.

The patient indicated that pus often changed colour to green. The reason for that might be a microbial infection, which can be very harmful also for the hospital because of its contagious nature, and threaten the condition of other patients in the medical ward, the more so as conditions there are far from adequate. On the other hand, the patient's condition is alarming, too. Most probably, its results from inadequate surgery performed in the past, post-surgery complications or inadequate care and treatment. Similar examples abound. However, nothing is done to remedy the situation.

c) Prison No. 7 of Penal Department of the Ministry of Justice of Georgia

In terms of medical service the most alarming situation was found in prison No.7 of the Penal Department of the Ministry of Justice of Georgia. "Total absence of medical service" is the term to describe conditions in prison No.7.

There is only one doctor in the prison. The PDO monitoring group managed to meet him only once despite recurrent visits, the reason being his frequent absence from the job. The doctor's office is located on the second floor of the prison. There is one table, two chairs, one medical cabinet, one sofa for the doctor and a basin. The room is about ten square meters. It has one small window and, consequently, poor lighting conditions. The cabinet featured some medications, but no instruments for surgical (forceps, etc.). There was no antiseptic solution, tools or materials for primary surgery. Besides, there were no injections or means for transfusion. There is no nurse on the staff list. In such conditions it is virtually impossible to provide any medical care, especially the emergency care. The patients interviewed by the group also spoke about the problem. The cases below paint a vivid picture of the situation found in the prison:

Rezo L. The patient is 48 years old. He was examined in the doctor's office. It is to be noted that the patient concerned had been visited by eth group earlier, when he was kept in Rustavi Prison No.6. The patient was very pale, with specific whitish-greyish complexion. He showed adequate response, good orientation in time and space, and could answers the questions clearly. Based on his anamnesis, in the past he had been treated by haematologist. He complained of regular pains in the gall bladder area, and took No-Spa to relieve the pain.

Notably, the patient took pills, since intramuscular injection was not possible due to unavailability of medical personnel in the prison (there is no nurse and only one doctor on the staff list). Hence, prisoners receive virtually no medical treatment. The patient noted that he had been using intravenous drugs for a long period of time and had viral hepatitis. Due to liver pathology he was in need of infusion therapy, though the condition of his veins did not allow to administer peripheral intravenous infusion, and the only possible way to administer medications is catheterization of the central vein. However, this is not a simple manipulation and can only be

performed by an anaesthesiologist and intensive care therapist. It requires a special set of tools, and strict observance of aseptic rules. The conditions in prison do not allow to apply the required treatment because of possible complications (bleeding, risk of damage of other organs, gas embolism, etc.). Thus, catheterization of the central vein can only be performed in hospital. The patient complained of deteriorated vision. About three years ago the patient received an ultra-sound examination that established a liver lesion. Besides, he suffered from TB in the past, but has not received any TB treatment since the 80s. Periodically, he suffers from difficult breathing and coughing. He also suffers from tympanism, and periodic increase of temperature to 370C. The patient has to be examined by a haematologist to establish the necessary course of treatment, to be carried out in hospital.

Giorgi A. In the past, the patient had been visited by the monitoring group several times. He was transferred to a civilian hospital for surgery. He underwent cholecystectomy, appendectomy and hernioplasty (due to post-surgical ventral hernia). On day 5 from the surgery, the wound suppurated which led to removal of several sutures and introduction of a drainage. The drainage was removed on day 10-15 after the surgery. By that time the wound was clean. He stayed at the hospital for 27 days, and was brought back to the prison. After some time he felt pain in the area he had received surgery on. After several days he went down with a fever. Upon examination the abdomen was soft, with no pains, and involved in breathing. There were no signs of peritoneal problems. In the central part of the abdomen there developed a commissure as a result of post-surgical laparotomic incision. Below the umbilicus, about 4.5-5 centimetres from laparotomic incision, there is a small-diameter hole whose periphery is hyperaemic. Moderate pressure on the area results in yellow pus form the hole. Palpation of the lateral part of the commissure allows detection of some supramuscular formation, whose distal side is swollen, suggesting a seroma. The drained pus was cleaned with small bandages made on the spot (there was no sterile and antiseptic bandage) and treated with hydrogen peroxide. The would was bandaged and the bandage was fixed on the front abdominal wall. This manipulation is to be considered as inadequate as only scarce resources available on the spot were used, though it was absolutely necessary. The patient is in need of adequate treatment, daily bandaging, antibiotics therapy, etc., that can by no ways be done in prison No. 7; hence, it s necessary to transfer the patient to a medical institution.

d) Rustavi Prison No 1 of General and Maximum Security Regime of the Penal Department of the Ministry of Justice

In Rustavi Prison No.1 of General and Maximum Security Regime of the Penal Department the PDO monitoring group interviewed medical personnel and visited several patients. premises of the medical unit has one floor and is located in the yard of the prison where the prisoners can move and have no limitation in terms of availability of medical resources. According to the chief medical officer, there are three doctors and several nurses in the prison. Nevertheless, there is an acute shortage of medical personnel. The chief medical officer also emphasised that the prison was an exception among other penitentiary institutions in that the medical personnel there are available on night shifts, too. One can always see prisoners awaiting in front of the doctor's office.

According to the chief medical officer, there is a lack of drugs and medications in the medical ward. It is not possible to perform even the most basic clinical-instrumental tests, such as general blood test, urine test, X-ray, ultra-sound examination and electrocardiography. There is a patient with myocardial ischemia who periodically requires electrocardiography in order to define the ways of treatment. Lack of these capabilities has a potential of creating fairly hard situation for the patients and for the doctors alike. According to the chief medical officer of the prison, there is a number of patients in the prison having serious mental health problems. The group met with some of them and interviewed them together with a psychiatrist. The results indicated convincingly that convicts with mental health problems should become a major focus of PDO monitoring work in future. As indicated by the medical personnel, despite a considerable number of inmates with mental health problems, it is not allowed to bring in, store and use psychotropic medicines in the prison, as prescribed

by the law. Medical personnel often has to conduct "psychotherapeutic" sessions in order to calm down the inmates with mental disorders, though psychiatry and psychotherapy represent a separate field of medicine. It is necessary to have at least one psychiatrist working in each of penitentiary institutions. In addition, it is necessary to develop legal procedures to admit psychotropic drugs in those facilities where patients are in need of such medications.

e) Prison No. 1 of Penal Department of the Ministry of Justice

The conditions in Prison No.1 of the Penal Department of the Ministry of Justice, like in other facilities of the penitentiary system, are very difficult both in social and sanitary-epidemic spheres. The quality of medical service in the facility is beyond criticism, which is explicable in the fist place by an inadequate number of medical personnel. There only is one doctor, two nurses and one pharmacist in the above facility. The new administration of the facility seems not to realize fully the existing situation in terms of medical care. The monitoring group repeatedly explained to the prison director that doctor and nurse represent different professions, though it seems that he sees these profession as absolutely identical. For the director, the key criterion in assessing the performance of medical personnel is working night shifts. The PDO group was unable to meet the doctor as he was not in the facility. The efforts of the group to discuss with the medical personnel the difficulties encountered by them did nt prove successful either. The group inspected the room for medical personnel and found that sanitary conditions there were unacceptable. The group met several members of staff there, among them Rita Bekauri, the acting nurse, who answered the questions asked by the monitoring group. The group asked her a question concerning the health status of a concrete inmate and requested the relevant medical documentation. According to R.Bekauri, she was not in a position to tell the group about the situation one month before the visit, as "old documents do not exist; everything was done by new staff; there was a complete chaos before; the doctor who was here before never gave us any documentation". When asked about the condition of one of the inmates, Giorgi Ch., nurse R. Bekauri answered: "He has never addressed us. He talked to you, so you are the ones who should solve his problems, it is not our business". Entries in the medical register were made starting from July 10, 2006. When asked whether Giorgi Ch. was ever examined by a medical commission, Bekauri answered that he was not, as he had never asked for that. It seems this picture requires no further comment.

A month later, when the PDO monitoring group visit the prison again, it appeared there was new administration there. The chief medical officer happened to be replaced, however, the group was not able to meet him. The problems found in the medical ward, remained unchanged. As stated by one nurse, the new prison administration instructed the medical personnel to work night shifts, too. However, there is no additional remuneration for work at night hours. Nurse's salary is GEL 160, which is grossly inadequate if a nurse has to use transport to travel to work. Mr. Bacho Akhalaia, Head of the Penal Department explains the situation by difficulties financial. . The Head of the Penitentiary Department This complaint of the employee of the medical unit was expressed in the presence of tried to explain the situation to the nurse referring to financial difficulties.

When visiting Prison No.1, the group met with George D., an inmate. He suffered from epilepsy and bronchial asthma. This notwithstanding, he had not been examined by doctor. In exceptional cases (according to George D.) he was visited by a doctor, whose name was Zura. The latter is an inmate in the same prison. The anamnesis showed that the first epileptic bout had occurred years ago, after a severe cranial injury. According to the patient, he went through the encephalographic examination. Epileptiform fits are quite frequent, and occur about twice every week. Other prisoners of the same cell said that the persons concerned sleeps one the upper bed of the double deck bed. Epileptiform fits may develop both when he is awake, or asleep. The latter happens frequently. During epileptiform fits the patient often falls down from the bed and gets different traumas. Other prisoners also described his convulsions. Apparently, the convulsions are both of tonal and clonal

nature. Shortly after the fir the patient falls asleep. According to the patient, the nurse periodically gives him Ketanov, Finlepsin and Euphylline. However, for the preceding seven days the delivery of medicines had been discontinued for unknown reasons, and the prisoner could not get even a minimum quantity of medicines. When visiting the medical ward, the monitoring group asked the nurse to clarify why patient George D. did not receive the necessary medications. According to the nurse, the former doctor of the institution locked the medicines in a safe and did not leave the keys. After a week the safe was broken, and a relevant document was compiled to describe the situation. After that the delivery of medications resumed. The monitoring group asked the medical personnel to present medical documentation, however, it appeared that there were no patients' cards compiled. Neither was there any register of injuries. After some time, the nurse produced a register entitled "Everyday injuries", with only one entry in it concerning a suicide committed two month before the visit. This is obviously beyond any comment. Bacho Akhalaia, Head of the Penal Department, present during the visit, could hardly conceal his indignation regarding the fact.

On September 6, 2006 several prisoners of Establishment No.1 of the Penal Department received body injuries of varying severity. The monitoring group visited the prison three days later to examine the health condition of the persons concerned.

Prisoner **Tamaz Sh.** was visited in the prison cell. There were 18 beds in the cell, however, the number of inmates was 30. According to Tamaz Sh., 4 days before the visit by the monitoring group, during a football match between Ukraine and Georgia, he was taken out of the cell to the corridor, stripped of his clothes and severely beaten. As stated by Tamaz Sh., two prisoners were taken out of the cell at a time. They were battered with batons and feet. The group consisted of about 10-15 persons who were beating the prisoners in a most cruel way, hitting their heads, their back and chest areas, and lower extremities. The persons concerned complained of headache, worsened sight, nausea, pain in the chest and waist area, The interviewed patient developed a case of nystagmus. There were various injuries his head, chest, waist, back and upper extremities (bruises and abrasions). According to the patient, in the initial hours following the beating he had gross hematuria (presence of the blood in urine), which disappeared after 2-3 days. Despite persistent requests, the patient was not visited by a physician or a nurse. His injuries were not cleaned and bandaged, he did not receive any treatment either immediately after the beating, or afterwards despite the multiple diagnosis of closed cerebro-cranial injury, concussion of the brain, closed injury of the chest, excoriations of different areas and bruises, etc.).

The group visited inmate **Guram V.** in his cell. According to Guram V., 4 days before teh visit he had been taken out of the cell into the corridor where he was stripped of his clothes and beaten with batons and feet. When being battered, he fell down, trying not to lose his consciousness. He complained of headache, vertigo and nausea, as well as pain in the chest during breathing and moving, especially on the right side. The patient feels sick. He had a clear picture of nystagmus. The patient has various injuries in different areas: the abdomen is soft, painful on palpation, especially the right half. Oleocecal area is extremely painful during palpation. Coastal arch is also very painful, too. After the beating the patient had gross hematuria (blood in urine). Despite persistent requests, the patient was not visited by a physician or a nurse. His injuries were not cleaned and bandaged, he did not receive any treatment either immediately after the beating, or afterwards despite the multiple diagnosis of closed cerebro-cranial injury, concussion of the brain, closed injury of the chest, excoriations of different areas and bruises, etc.).

The monitoring group visited prisoner **Otar B**. in his cell. According to Otar B., he was beaten on September 6 in the evening, during the football match between Ukraine and Georgia. He was taken out to the corridor where he was undressed and physically assaulted. He was taken out to the corridor alone. He was beaten with batons and feet. According to the prisoner, he was beaten by three persons, others were just watching. They were swearing at him, pointing to his ethnic origin and battering him violently with a wooden baton. At times he was hit by feet in the area of genitals; he was almost losing consciousness from pain. He would fall down, but the offenders would lift him up and continue beating.

Otar B. said was hit in the head only once with hand. When being beaten, he fainted for a second. According to Otar.B., one person was beating him from the back, another was standing in front of him and the third one was hitting in his genitals. The periorbital areas on his face were swollen. During the examination the patient complained of a headache, pain in the chest and in the right side of the stomach when breathing and moving. There were no injuries in the head. In the anamnesis, the patient stated chronic pyelonephritis. He did not have hematuria after beating, however after the first urination he felt strong burning pain. He still had pain in the area of genitals.

The patient said that despite repeated requests he was not seen by a physician. The patient displayed multiple injuries of varying nature. There were three postoperative adhesions on his back that seemed to be very old. According to the patient, these remained after the primary surgical treatment of cut wounds several years ago. The most obvious injury after beating is on the left side of the back, 15-16 cm further down a *processum* of a cervical vertebra, on the left side there was a wound of approximately 10-11 cm in width. The wound was open and the edges were apart. There was no bleeding during examination. There were blood clots on adjacent tissues. The wound was not cleaned. The waist-back area and the projection area of both kidneys were painful on palpation. According to the patient, he was beaten particularly cruelly in that area. The patient had a post-appendectomy scar in oleocecal area; also the commissure on the left groin area following old plastic surgery of inguinal hernia. The right side of the stomach was extremely painful on palpation. Despite persistent requests, the patient was not visited by a physician or a nurse. His injuries were not cleaned and bandaged, he did not receive any treatment either immediately after the beating, or afterwards despite the multiple diagnosis of closed injury of the chest, excoriations of different areas and bruises, haematomas, wound in the right half of the back, general injuries of the body.

The monitoring group visited prisoner **Michael K.** in his cell. According to Michael K., on September 6 in the evening he was taken out of the cell together with other prisoners to the corridor and beaten. Other inmates, already beaten, were leaned against the wall and watched the beating. Michael K was hit in his neck, as well as in his back and the right shoulder-blade area. At the time of the interview, the pain was not strong. According to Michael K., his injuries are minor compared to those other prisoners received, and therefore not requiring any medical examination. The prisoner had a tumorous node on the left cheek. On palpation it felt as a skin-deep cyst. It was soft, possibly containing the liquid. According to Michael K., he first noticed it a year ago; since then it has grown to take the current shape. Medical examination showed a soft abdomen, with no pains, no signs of peritoneum disturbance. AT the time of the examination he did not require any surgical treatment. He never received a visit from a doctor or a nurse.

Despite the described facts, the prison administration has not taken any steps to remedy the situation. The prisoners have not received any medical treatment. There is no record concerning the type or scope of injuries. No forensic medical examination has been assigned and no investigation has started in connection with the violence. Moreover, When meeting the PDO group, the director of the prison denied the facts, claiming that nobody had any in juries. The monitoring group made a recommendation to conduct a forensic medical examination, during which forensic experts should be able to visit patients to assess the nature, severity and scope of the injuries. Patients should be provided with adequate care, and be visited by the prison doctor on a regular basis. It is necessary to have them transferred to the medical institution for convicts and detainees for medical examinations.

f) Prison No. 5 of General and Cell-Type Regime for Women and Juveniles of the Penal Department of the Ministry of Justice of Georgia

Prison No. 5 of general and cell-type regime for women and juveniles of the Penal Department of the Ministry of Justice stands out among other penitentiary institutions. The level of medical service at the facility is very high, compared to all other institutions. Overall, medical services rendered to women and juveniles can be

viewed as satisfactory. The medical unit of the facility is located in a separate building, which was repaired and looks clean. The sanitary-epidemiologic conditions in the premises are satisfactory.

There is a special TB ward in the medical unit. Besides, there are medical offices in each building, where patients are examined and minor medical care is provided when necessary. The typical medical office is furnished with a medical cabinet, table, couch and desk for the doctor. The medical unit employs several medical professionals: head of the medical unit, a psychiatrist, a therapist, a surgeon, and mid-level medical personnel. Physicians work on night shifts. Medical personnel examine prisoners on a regular basis in the territory of the prison, and provide medical care to women and juveniles whenever necessary.

The physician checks the quality of food, gives his opinion on whether it is possible to apply a disciplinary punishment, based on the health conditions of each person. The medical unit has close contacts with medical institutions of the penitentiary system. The Empathy the Psycho-Social Rehabilitation Centre is implementing its project in the prison. Within the framework of the project the patients are provided with adequate medical care. In particular, based on the request from head of the medical unit, any medications registered in Georgia are delivered to the prison.

Consultants from different fields of medicine employed by the Empathy visit the prison frequently to examine the patients, provide consultations, assign medical treatment and observe their recovery process. Within the framework of the project the patients receive full diagnostic examination whenever necessary. Ultra-sound and X-ray examination can be made on the spot, based on request of the head of the medical unit and a visiting consultant. Not infrequently, patients are given high-tech medical checkups outside the territory of the prison, such as: computerized tomography, NMR imaging, Doppler ultrasonography, encephalography etc. patients of the Empathy Centre are also provided with different types of laboratory analyses.

There are cases when patients are taken out from the prison to any of civilian medical institutions, and the Empathy Centre fully or partly covers, either fully or in part, the cost of medical treatment. Within the framework of the project, psychotherapy and art therapy rooms were opened in the territory of prison's medical unit. Psychotherapists from Empathy conduct individual and group therapy session. The art therapy room is always busy, which is very important in terms of rehabilitation of prisoners. It is important to note that medical care for prisoners is seen as one of the priorities by the prison administration, which has been a factor conducive to efficiency of medical service at the institution.

g. Medical Treatment Facility for Convicts and Detainees of the Penal Department of the Ministry of Justice of Georgia

The Medical Treatment Facility for Convicts and Detainees of the Penal Department of the Ministry of Justice of Georgia is the main medical institution of the penitentiary system. It is located in a three-storey building, and consists of the Surgery Department, Therapeutic Department and Psychiatric Department. Conditions in the corridors, cubicles and other places are very unhygienic. It is virtually impossible to stay in some parts of the building due to a specific smell caused by lack of hygiene. The Surgery Department is located on the third floor. The so called operating unit is on the same floor but the term can only be used symbolically.

The pre-operation compartment is directly connected to the operating room. The idea probably was to use it to wash hands, however at the time of the visit there was no water there. Neither could the group find any soap. It is often impossible to wash hands after examining patients. No antiseptic materials for hand disinfection are available. There was an awful smell in the operating room. The operating room has no monitors of any kind, and no equipment, the exception being a respiratory apparatus necessary for endotracheal anaesthesia. According to the hospital staff, it is not always possible to start the respiratory apparatus. It is difficult to imagine the conditions for surgery in the facility.

The Surgery Department also has the so-called "resuscitation wards". This term in the context of the institution is symbolic, too, as the wards hardly meet even the minimum requirements. They are overcrowded, with 12 or more patients there. Due to the shortage of beds some patients lie on wheel stretchers. There is not a single monitor or respiratory apparatus there. The room is awfully dirty, the smell is intolerable; the situation is grossly unhygienic. Patients brought from the operating room lie next to those who have festering wounds. Some of the patients are unconscious, and hence unable to control urination or defecation. Usually these patients are not attended for a long time. One can say that the patients are so unattended and dirty, that often their examination by a visiting doctor is difficult if not impossible. The group could witness a situation when patients form resuscitation wards displayed lice. Two specific cases that follow to demonstrate the quality of treatment and medical care of patients in this facility.

Patient Naskhida X. The patient was unable to formulate his health-related complaints. After repeatedly asked about his condition, he said that his mouth was dry, he had difficult breathing and pains, but was not able to identify the location and character of the pain. His anamnesis suggested that the patient had received multiple physical injuries in various parts of the body as a result of beating and thermal impact. According to Form N 27 issued by the Medical Facility for Convicts, the patient's diagnosis was: brain injury, 2nd level of tumefaction, burns on the right thigh, chest injuries, closed injury of the abdomen, small haematoma in the pelvis cavity, excoriations and bruises on the face and the whole body. The patient was transferred to the Intensive Therapy Department of the Clinical Hospital, but shortly afterwards brought back to the resuscitation compound of the Medical Treatment Facility for Convicts and Detainees. The patient was treated using Lucetamin, Donormil, Cavinton, Neurorubin, Claforan, Holoperiodol, Cyclodol, Tiberal, Ampiox and infusion solutions.

Later the facility requested assistance in putting together a multi-disciplinary team to carry out a comprehensive examination of the patient. The examination was based on results of computer tomography included in Form N 27. The patient's case was studied by a panel of specialist doctors.

Objective data about the patient: The patient's general condition was grave. His body was generally swollen. The patient's position in the bed was unnatural (the head was raised, legs were bent in the thighs and knees). The patient had tremor, at times of increasing intensity. The skin was pale and dirty; there were multiple bruises on the face, extremities and other parts of the body. There were traces of the skin being treated with brilliant green solution. The patient had a fever, with abundant perspiration. There was a large injury on the lateral surface of the left thigh which was partially covered with bandages. Skin necrosis was visible at the upper edge of the bandage. The bandage was removed and the patient's injury was examined. The edges were inflamed. The bottom and edges of the injury had abundant fibrin deposition. The whole bandage was soaked with very smelly yellow purulent discharge. After removing the bandage one could see abundant purulent discharge and lightly granulated tissue. The wound was oval. It was located on the lateral surface of the thigh, between the upper and medium section. The wound edges were formed of skin, sub-skin tissues, wide fascia and the thigh-ankle tract; the bottom of the wound consisted of necrotic tissues of a muscle extending the wide fascia. The wound was covered with fibrin deposition and had lightly granulated tissues.

Besides, there were injured tissues of lateral edges of the front and back group muscles. The subcutaneous tissue was so emaciated that there was a tendency of cachexia. The visible mucous membranes were pale. As for bones and joints, thick joints (knees, elbows) were definitely swollen. The left palm was in a forcibly caused flexor condition. There were several burns on the dorsal surface of the palm, at the finger joints (burns of the first level). It was noticeable that the tissue around the burns was treated with the brilliant green solution. The nail on one of the fingers was traumatically removed.

Other finger bones were bruised. In some places there were wounds and blood traces. The breast was deformed. The ribs, breastbone and rib arcs could be well distinguished. The fat layer was emaciated, and the bone structure was distinctly visible. Touching the chest bone caused significant pain. One can assume that there was a trauma that could be identified by means of X-ray photography done at different angles. The patient's breathing was frequent; there was obvious tachypnea (R'40).

The patient was short of breath; his breathing was of mixed whistling type. The left lung was opened by auscultation. In the lower part breathing was weaker. On the right side breathing could be heard only at the top part, below was impossible to hear any breathing. On the right side of the breast the trace of puncture was visible. Heart: tones were accented, intensive palpitation, systole noise was heard at the top. P-104' rhythmic, average filling and tension. T/A – 120/70 mm/Hg. The tongue was whitish-yellowish. The abdominal distension was average. Palpation under the right side was painful. At the time of examination there were no signs of peritoneum disturbance. The peristaltic could be heard. Dejection took place every day. The kidneys were not palpable. The kidney area was painful. There was a catheter in the urinary bladder. About 100 ml. urine accumulated in the container was dark. There was no hematuria at that time.

Psychic condition: The patient looked frightened and stunned; communicated with difficulty; answered questions with delay; the patient was disoriented in time, place and environment. In other words, his response was not adequate. The patient displayed transitory disturbance of consciousness. According to other prisoners and his own statements, "he drank tomato sauce", for which reason he tried to get up at night and take off clothes to clean himself; he thought there were flies all around him; he said he could see himself dying and heard a voice telling him to get up. Automatic and anterograde memory (after the psycho-physical trauma) is disturbed; retrograde memory is preserved. The ability to concentrate attention is significantly deteriorated. Thinking is retarded. The patient is definitely frightened and depressed. He is critical regarding his own condition.

Neurological Status: The central nervous system: consciousness is vague, even though contact is partially possible. The patient can implement simple tasks. The speech is dysarthritic. Cranial nerves showed no significant pathology. There is no deficit of motor ability. The tonus of bending muscles of upper and lower extremities is increased. The expression on the face is hypo-mimic. The general background of joint, sinew and bone reflexes is vivid. Axial reflexes are intensive. The patient displayed bilateral Kerer response. Urination by means of a catheter.

CONCLUSION: In the anamnesis various psycho-physical traumas must be taken into consideration. The results of trauma were: brain injury, injuries of the chest and the whole body, also burns. This led to emergence of pneumothorax, the wound was suppurated and haematomas appeared in several parts of the body. At present, from the point of view of the central nervous system, special attention must be paid to the closed cerebro-cranial injury and the signs of amiostatic syndrome. From the psychological point of view special attention must be paid to the stupefied condition, transitory disturbance of consciousness, problems with fixation and anterograde memory. Based on the anamnesis data, CNS and somatic condition, as well as other objective data, this condition was caused by the cerebro-cranial injury It is also possible that the situation is aggravated by intoxication (possibly, acidosis) which is probably caused by the respiratory mechanism. It must be noted that the patient's medical treatment, hygienic conditions and nursing are inadequate.

FORECAST: Without starting **immediate** intensive therapy the patient's health will deteriorate to the critical point, with a fatal outcome.

DIAGNOSIS: general injuries, closed injury of the chest and abdomen, excoriations and bruises on different parts of the body; pneumothorax of the right side, post-burn suppuration on the lateral part of the left thigh; closed cerebro-cranial injury, signs of the amyostatic syndrome; stupefaction with transitory delirious conditions (caused by the organic injury of the brain and intoxication).

Recommendations: 1) the patient must be urgently transferred to a multi-profile hospital for intensive therapy; it is necessary to identify the final diagnosis (based on instrumental-laboratory tests); 2) adequate multi-profile treatment and design of a rehabilitation course; 3) constant monitoring over the health condition of the patient.

The above example shows that the patient will definitely die unless he is given adequate treatment. Unfortunately, such cases are not infrequent.

The monitoring group could establish the number of patients in the Therapeutic Department of the hospital. Oftentimes, it is impossible to find a doctor or a nurse. Most of the patients can walk. At a first glance, their condition might seem satisfactory. In one case the monitoring group requested the patient's case file, but it was impossible to find it, even though the head of the Therapeutic Department was in the hospital at that moment. He explained that the hospital personnel on duty had nothing to do with the case files, and seemed to evaluate the situation as fairly ordinary. The group's persistent demand made him aggressive in tone, ordering the group to leave the institution. Then he said that case files were locked in a special safe, and the group should have notified him in advance in case it wanted to see them. He explained the documents were locked in the safe to prevent stealing of the documents by patients; besides, this enables him to get all case files and be informed about the health situation of every patient. The group tried to address the issue with the help of the Chief Physician of the hospital, who admitted that the group's request to access the files was fully in line with the legal provisions, but then he said: "What you are asking for is the law requirement, but can you tell me about any law that is actually implemented?". Clearly, this statement is beyond any comment.

At present, 2 doctors (psychiatrists) and a nurse work at the Psychiatric Department of the hospital. There is no hospital attendant. It must be noted that any psychiatric institution needs hospital attendants, specially trained for the purpose. They play an important role in ensuring implementation of doctors' prescriptions. The Psychiatric Department is completely open. The patients have free access to the yard, corridors and wards. There were many cases when completely free psychiatric patients inflicted physical injuries on other people who were in the building. At the time of the visit the group had many reasons to think that the patients were transferred to the psychiatric department for reasons other than their medical diagnosis. This situation results partly from a low standards of the forensic psychiatric services and their conclusions, frequently very surprising. This leads to a situation whereby not infrequently the persons who really have mental health problems are locked up in punishment cells, whereas persons with less serious disorders or remission can freely walk around and live in the hospital cubicles.

On 18, 19 and 20 of July, 2006 the monitoring group visited the Medical Treatment Facility for Convicts to see patient Giorgi M., whose health condition deteriorated.

Prisoner Giorgi M. was transferred to the Psychiatric Department of the Medical Treatment Facility for Convicts for the first time in 2005. Despite persistent warnings by doctors from the Empathy Centre and their written opinion concerning the need for Giorgi M. to undergo more comprehensive examination and treatment, he was discharged from the hospital. However, three days later the patient was returned to the Medical Treatment Facility for Convicts.

Starting from 2006, his disease was found to progress, and his condition aggravated. The patient was visited by a psychiatrist. Visual examination revealed that the patient had bruises on the face and a haematoma near the left eye. The patient complained about the pain, eyesight deterioration and bruises.

Giorgi M. had a conflict with the medical personnel and other patients of the Psychiatric Department. As a result, he received additional injuries. Due to deterioration of his health condition, the patient had to be transferred for adequate treatment to a psychiatric hospital. The Minister Health and his deputy were personally notified about the situation several times. This notwithstanding, the transfer did not take place. Instead, the patient was locked up in a punishment cell with intolerable conditions, lack of any hygiene and health hazard. Lock-up in a cell with similar conditions is equal to cruel, inhuman treatment and punishment. In order to control the patient's aggressive behaviour he was given several injections.

In order to obtain copies of Giorgi M.'s case documents, The group addressed the Director of the Medical Treatment Facility for Convicts, Mr. Al. Mukhadze.

At the instruction of the Head of the Department and based on the information provided by the deputy director of the Medical Treatment Facility, one of the employees was sent to make copies of the documents. After

having waited for four hours, the group found out that Mr. Mukhadze did not allow his subordinates to give copies of the documents to the monitoring group.

In the course of the visit to the Medical Treatment Facility for Convicts, the monitoring had a meeting and discussion with Mr. A. Mukhadze. Finally, the discussion turned into a firce argument because Mr. Mukhadze made cynical comments on the Public Defender's Parliamentary Report. The argument culminated in Mukhadze's expressing his disagreement on medical aspects of surgery and diagnosis, and classification of pathological conditions. This is to be viewed as pressure on professional activity which is a punishable offence under the Georgian law. The PDO has ample reasons to assume that Mr. Mukhadze often interferes into the work of doctors working at the hospital, particularly where they have to make decisions concerning the course of treatment. A PDO representative interviewed a doctor from the Psychiatric Department, Ms. Ketevan Imerlishvili. The Minutes of the interview contain. K. Imerlishvili's opinion on the treatment and health condition of patient Giorgi M (see fragments from the stenography records below).

July 19, 2006. 12:45

The Dialogue took place in the Office of the Deputy Director of the Medical Treatment Facility for Convicts and Detainees of the Penal Department of the Ministry of Justice of Georgia

Ketevan Imerlishvili (K.I.) – I don't think that patient G.M is ill. He had a reactive psychosis, was examined, treated and cured;

K.I. – The boy is adequate and healthy!

K.I. – He came to my room the day before yesterday. I told him I was not his doctor. Get out! He tried to provoke me. Some time ago I met his sister when I was going to photocopy some documents. Your employee (from the Ombudsman's Office)- a tall blond guy - witnessed our conversation. He will confirm what I am saying!

(She remembers one conflict situation between herself and G.M.'s sister N.M.).
I ran into N.M. (G.M.'s sister) outside, round the corner.

N.M. – How is my brother?

K.I. – His condition is satisfactory, he got cured, there is no reactive condition any more.

N.M. – My brother will leave and you will follow him. You will not sell medicines here! This last statement was about the whole hospital and not me personally.

K.I. – I was not provoked. I was not raised in the street, like N.M.

K.I. – We … discharged him when he was cured. His sister strted shouting and threatening us, but of course I would not reply.

K.I. – Similar kind of statements were made, but of course I would not be provoked. I would not behave the same way as that G.M.?

K.I. – I told G.M. to go to Tengiz (Head of the Psychiatric Department) who would clarify everything.

G.M. – Nobody will be able to discharge me from the Hospital!

K.I. – Several days later G.M. was returned back to the hospital. I do not know anything about the reasons or who issued the order. He was observed by doctor A.K. The way G.M. treats me makes it obvious that that he can feel his sister's support, which gives him courage. She also threatens me. She is a journalist and she can do that!

K.I. – As for the last conflict, A.K. and I were in the Doctors' Room when suddenly G.M. came in and cried:

G.M – What did you say about me?

K.I. – I corrected the form of address into a polite one ("you" - second person singular with "YOU" - second person plural).

G.M. – No, what did "you" say about me?!
G.M. – I will break your bones right now, girl.
K.I. – Get out and speak politely. Do not address me as "you"! Then he closed the door.
K.I. – He does it in an absolutely normal way. This is not a behaviour of a sick person, because he does it consciously.
K.I. – G.M. is not a sick person who needs forcible medical treatment. I rely on the opinion of an expert of the Ministry of Justice.
K.I. – Employees of this facility need to be protected from discharged patients like this one; the prisoners are well protected.
K.I. – (She continued the story about the conflict) Then he came back into the room and I told him to get out!
G.M. – What do you mean! (How dare you!)
K.I. – I told you to get out!
K.I. – Get out!!!
K.I. – After this he cursed a lot.
K.I. – I told him that the words he called me would be more suitable for his family members!
K.I. – He moved towards me.
K.I. – An ordeal started, there was screaming.
K.I. – There was hidden aggression previously too, instigated by the sister. She was telling him that I discharged him from the hospital!
G.M. – You will not be able to do me any harm!
K.I. – He hit me with a fist! Then other prisoners helped me. This happened at the room entrance. I have a haematoma on the left side and a bruise on the left arm.
K.I. – Previously he showed no aggression towards the medical personnel. The aggression was directed only against me. Later he even apologized when he was sick. He apologized to the medical personnel in general.
K.I. – We told him kind words, "it does not matter…"
G.M. – You cannot do anything to me!
K.I. – For some reason he always talked about being discharged from the hospital and his sister knew about it. He probably talked to his sister on the phone. I do not know how exactly, but he definitely had telephone conversations.
K.I. – His sister also threatened me through other people.
K.I. – I do not know why she did it!
K.I. – When he was brought here for the second time it was by means of a special procedure, without a medical card and avoiding the Commission. It was on Monday.
K.I. – His sister is definitely using someone's help.
K.I. – I was very surprised when I learned about the position of the NGO.
K.I. – I had a lot of injuries, but I did not seek expert opinion because an official application was needed.
K.I. – I am not an intriguer to demand expertise.
K.I. – I have enough understanding not to be provoked by that man.

The group visited the Medical Treatment Facility for Convicts of the Penal Department of the Ministry of Justice of Georgia to see patient Giorgi M. again. His condition was stable compared to previous days. The Empathy Centre sent a neurosurgeon and a psychiatrist to the hospital to examine the patient. The group addressed the Chancellery and the Administration once again concerning the Letter submitted in July. The answer was that they could not give the copies because the Director had not reviewed the letter yet. The group asked them to give the letter to the Director, and was told instead that the Director was asleep and could not be disturbed.

Thus, the group was unable to get an answer (either positive or negative) for several days and, hence, unable to obtain medical documents on Giorgi M.'s case. This hinders our work on the case. Besides, the patient cannot get proper medical treatment. Even more so, as he is still locked up in the punishment cell.

The PDO monitoring group started identification of psychiatric patients and focussed monitoring of their medical treatment in summer 2006. The fact is that among inmates of penitentiary institutions there are many psychiatric patients. These patients arenot transferred to medical facilities or specialised medical institutions.

Cases below paint a clear picture of the existing situation:

Patient Zviad O. was examined by the group 2006. He complained of pains in the back, difficulties in walking, physical exercise, deterioration of work ability. It is known that a consulting neurosurgeon was invited to examine the health of prisoner Zviad O. He was sent by the President of the Psycho-Sociological Centre, Ms. Mariam Jishkariani. However, the administration of the Medical Treatment Facility did not allow the doctor to enter the hospital.

There was a verbal agreement with the Penal Department that the neurosurgeon would be allowed to examine the patient, however, this did not work. Administration of penitentiary institutions often neglect such agreements, which puts invited doctors and patients into an awkward situations. The PDO monitoring group familiarised itself with the materials of the case of patient Zviad O, and found many violations of the law.

Patient Malkhaz Z.: The group visited Malkhaz Z. in his isolated ward. He received a gunshot injury in the head area during the so-called "riot". After the incident, the patient was given a neurosurgical operation. The patient developed post-traumatic lower paraplegia and epilepsy. He is not receiving adequate medical treatment or a rehabilitation course. He is asking to give him an access to medical services, however his request is never fulfilled. On August 21 the patient went on hunger strike and refused to take any medications, either. He said he was taken to the Joint Medical Commission of the Ministry of Health and the Ministry of Justice, but did not receive any examination. According to the patient, the commission said that his medical treatment was adequate and there was no need to transfer him to a neurosurgical hospital.

It is to be noted that the Medical Treatment Facility for Convicts has neither a neurosurgical department, nor a neurosurgeon. Therefore, the "treatment" of Malkhaz Z. in the institution is nothing but a fiction. According to the patient, he often looses consciousness, about three times a week on the average. Epileptic fits usually start when he is asleep. The patient cannot move independently because of paralysis. He often has fever, On the scull, in the projection area of the occipital bone, laterally from the sagittal line there is a hole, most likely form a gunshot. The patient has strong headaches that are often intolerable. The pains start spontaneously and often cause sensation similar to electrocution, accompanied by numbness of different parts of the body. Being on hunger strike, the patient takes no medications either, not even anti-epileptic drugs.

According to the patient, the doctor does not often visit him. The sanitary condition of the isolated ward where the patient is placed, is unbearable. The temperature is so high that it is almost impossible to breath. There is filth all around and specific smell. The walls, ceiling and floor are almost completely damaged. There are rats, insects, mice and reptiles in the walls and on the ceiling, their noise heard constantly. Such conditions are equal to inhuman and degrading treatment, the more so that the medical treatment is grossly inadequate, and even non-existent.

As mentioned above, the patient went on hunger strike protesting refusal by administration to provide access to adequate medical care. In view of the patient's general condition, this may lead to critical aggravation of his health status. Despite the group's requests, the patient refused to change his decision. He only agreed to start taking water. The institution's medical staff does not seem to be making mush effort to persuade him to change his mind.

Under Article 55, Para. 2 of the Law of Georgia on Medical Activities: "If a detained or convicted person refuses take food, a person involved in independent medical activity shall inform the person concerned about

possible consequences of such action, and notify him/her of the medical services to be provided in case he/she looses consciousness as a result of starvation". It seems that this legal requirement is not fulfilled either.

Patient Jemal Sh. During a visit to the Medical Institution for Convicts the monitoring group found that prisoner J.Sh. kept in a so-called isolation ward received an injury of the upper extremity, with an ensuing paralysis. As indicated by J.Sh. and other patients, he fell off the bed onto his right hand. For two days the patient was kept without any medical care. He is half-sitting on his bed. Because of a loss of sensation, he felt no intensive pain, and his extremity was deformed. Neither could he move his shoulder joint.

Lateral and deltoid region of the right shoulder was found to be deformed, directed inwards and extended. Collarbone projection is also deformed. The patient displayed a swelling of the girdle of the upper extremity. After an injury the patient was X-rayed. The X-ray showed acromioclavicular fracture with displacement However, even 2 days after the injury, the patient was still waiting for medical assistance, was nothing done to fix his shoulder. Considering the fact that the patient was not able to move easily even before the injury, any abrupt movement or another injury might result in a damage of the main artery or nerves caused by bone fractures, which may lead to especially grave consequences. The patient was in need of surgical care. It is necessary to invite a traumatologist to identify further course of treatment. Unfortunately, this recommendation has not been followed on.

Patient A.V. was transferred to the Medical Treatment Facility for Convicts from Prison No.5 by ambulance. A.V. was brought to Prison No.5 from the zone of the Georgian-Ossetian conflict where during a special operation resulting in his detention, A.V. got gunshot injuries of the lower extremities.

It follows from A.V.'s medical card that the patient was transferred to the medical institution in June 2006 with the following diagnosis at admission: multiple gunshot injuries of both lower extremities, open comminuted fracture of the left extremity bones, traumatic amputation of toes I-II, post-hemorrhagic anaemia, traumatic and hemorrhagic shock.

Clinical diagnosis featured a fracture of the medium bones of the left extremity, fracture of toes, and traumatic injury of *N. Peroneus*.

The patient arrived in a grave condition, his arterial pressure was 120/80 mm g. According to the general blood test taken in June 22, he showed b-50, r – 1,8, which points at a serious anaemia that was probably caused extensive loss of blood. At the time of the first visit of the monitoring group, the patient was unconscious, whereas at the time of the second visit was possible to establish contact with him. At the time of both visits, the patient was kept at the so-called resuscitation unit of the facility. The wound was purulent, with a yellowish discharge with strong smell. The extremity was hanging on a skeletal stretcher. Bandages remained unchanged and the patient appeared largely unattended. He complained of acute pains and high temperature.

The patient's medical card contains a record dated 20/06/06 made by a neurologist, who visited the patient at the resuscitation unit. The record occupies half a page that was later inserted into the medical card. Presumably, at the time of the visit there was no medical card, and the neurologist made his record on a sheet of paper. The record is very short and features paresis of the right foot and fraction of the left foot. The patient requires a consultation of a neurosurgeon. Neurologist's prescription included neuromidinum, neurorubinum and plasmol. Notably, the prescription included nothing else. According to one of the doctors from the surgical department, on 27 June, 2006 the institution was visited by an angiologist invited as a consultant for another patient. Local doctors asked him to examine A.V. as well. Angiologist's record in the medical card says: "The patient has a perforating gunshot wound in the upper third of the left extremity bone, received 3 weeks ago. Hyposensitivity of toes, restricted sole flexure. A penetrating wound outside the nerve region. Pain on palpation. A traumatic injury of *N. Peroneus* is not excluded, to which end verification by electromyography is

required. Symptomatic treatment on the projection of the nerve contour. Diagnosis – Contusive, traumatic injury of *N.Peroneus*".

Currently, the diagnosis includes also an injury of the *N. Peroneus*. However, the diagnosis says nothing of the nature and extent of the injury of the nerve. Presumably, doctors imply one of the four nerves whose name contains the word "*Peroneus" (N. Peroneus Communis, N. Peroneus Profundis, N. Peroneus Profundis Accessorius, N. Peroneus Superficialis*). In other words, it is still unknown as to what the exact diagnosis is.

In the medical card one can also find a referral to the Director of the Gudushauri National Medical Centre (N10/31/3-1789), dated 11 July. According to this document, the chief medical officer of the Medical Treatment Facility for Convicts requested the Director of the Gudushauri Clinic to send to the facility "relevant specialists" from his clinic to diagnose the case and provide treatment to patient A.V. An interview with the chief medical officer, as well as analysis of the medical card show that the request letter was not followed on, which resulted in further delay in providing the requisite treatment for the patient.

There are other interesting records in the medical card of patient A.V., including the operation protocol of July, 2006.

"Date – 26/VII – 2006 11.00-12.00

PROTOCOL N9 OF THE OPERATION

Pre-operation diagnosis: open gunshot fracture of both lower extremities
Post-operation diagnosis – the same
Surgery: Osteosynthesis of the shinbone of the left extremity with metal plate.
Anaesthesia – endotracheal anesthesia.
Under endotracheal anesthesia a plaster bandage on the right lower extremity was changed. A left lower extremity was relieved from stretching. A cut was made on the lateral surface of the extremity (size 12 cm). Tissues were stripped by a rasp, interposition of soft issues can be observed in between fractured fragments, which are removed. Fragments reposition is performed. Osteosynthesis with a metal plate. Haemostasis is secured in full, a rubber drain is left in the wound, and cicatricial plaster is administered".

The record was made by the anaesthetist in Russian.
The medical card also contains records that are supposed to reflect the patient's condition and details of the treatment applied. Notably, the most recent record in the medical card is dated August 31, 2006, which means that for one month no one has ever asked about the patient's condition.

Under Chapter 7 of the Georgian Law on Medical Activity, the subjects of autonomous medical practice shall keep medical records. Article 51 of the law stipulates that: "1. A subject of autonomous medical practice shall keep medical records for each patient, as provided for by the Georgian legislation." Para. 2 of the same Article sets forth for subjects of autonomous medical practice the following condition to be observed in record-keeping:

"a) Medical records shall be made in the state language, in a clear and understandable language". As mentioned above, the medical card contained records made in Russian.
b) Medical records shall be complete. Subjects of autonomous medical practice shall complete in full every part of the medical records (personal, social, medical and other data)". Most of the records are far from being complete, and hardly reflect either interventions performed or the patient's condition.
c) Information contained in a medical card shall be recorded in due time, and in accordance with the terms prescribed by the law". In the present case, timeliness of information leaves much to be desired. Both in

A.V.'s card and in medical cards of other patients of the institution, one can often see the following note: "Day-off". Even if implying weekend, such approach is at least irresponsible, bearing in mind that it the matter of the patient's health and life.

d) Medical notes shall adequately reflect all details related to the treatment provided to a patient:
e) Every new note entered to a medical record shall be verified by a subject of autonomous medical practice with his clear signature in accordance to the existing procedure". (no comment).

Besides, the PDO group found complete ignorance of provisions of Article 56 of the law stipulating that "a subject of autonomous medical practice is obliged follow the existing procedure of keeping medical records. He/she shall present medical records to a third party only in cases provided for by this Law". The Medical Treatment Facility for Convicts seems to be largely unaware of eth respective procedure. It has been mentioned repeatedly that medical documents are practically unavailable at any time of the day and night, even during the work hours.

Neither the head of the department, nor the chief medical officer have access to medical documents. Medical cards are locked in a safe, and no one knows as to who has the key. According to D. Asatiani, the chief medical officer, T.J. was supposed to keep the medical card but he was not in the hospital. It was impossible to contact him by mobile phone. Despite all efforts, it was not possible for the group to get hold of the medical card.

It is to be emphasised that a medical card shall be kept with the personnel of a medical institution during work hours, and then handed over to duty personnel so that it could be available at any time. Besides, any records concerning the patient's condition shall be made without delay, to avoid interruption of the course of treatment. Obligation of uninterrupted treatment is explicitly required by the Laws on Health, on Medical Activity and on Patient's Rights.

The above examples demonstrate the condition of the central medical institution of the penitentiary system, as well as the practices there, by which one can judge of medical practices in other medical units of the system.

Georgian Law on Imprisonment (Article 37) stipulates that: "A Medical Unit of a penitentiary institution is part of the Georgian Ministry of Health system. Equipment of medical units of penitentiary institutions and qualification of medical personnel shall not be worse than overall level of the entire health system." Thus, considering the above, the Ministry of Labour, Health and Social Affairs of Georgia should urgently take measures to improve the critical situation in the system.

The described facts and violations are evidence of the quality of medical treatment within the penitentiary system. This notwithstanding, patients are still provided with in-patient "medical" treatment…

MEDICAL SPECTRUM OF MONITORING

#	ID information	Date	Prison	Gender	Diagnosis	
1	S.	6/IV	R.6	M	Bronchial asthma, with frequent bouts	Consultation
2	Giorgi N.	6/IV	R.6	M	Hepatocholecystitis	Consultation
3	Zurab V.	6/IV	R.6	M	Epilepsy, left-side hyemiparesisleft-eye keratoconus	Consultation, diagnosis, treatment, referral to hospital, visit of a consultant
4	M.	6/IV	R.6	M	Gastric and duodenum peptic ulcer, with frequent bouts; obstructive	Consultation
5	David K.	6/IV	R.6	M	Depression, agorophobia	Consultation
6	Vazha R.	6/IV	R.6	M	Post-trauma atrophy of the left eyeball left-eye keratoconus and myopia	Consultation
7	Vako D.	6/IV	R.6	M	Epilepsy	Consultation
8	Temur O.	6/IV	R.6	M	Epilepsy, gastric and duodenum peptic ulcer	Consultation
9	M.	6/IV	R.6	M	Bleeding hemorrhoids	Consultation
10	S.	6/IV	R.6	M	Bleeding hemorrhoids	Consultation
11	Spartak K.	6/IV	R.6	M	Post-starvation condition	Consultation
12	Zaza Ts.	13/IV	R.6	M	Exacerbation of chronic hepatitis	Consultation
13	Revaz L.	13/IV	R.6	M	Hepatitis	Consultation, treatment, visit of a consultant
14		13/IV	R.6	M		Consultation
15	B.	13/IV	R.6	M	Hepatitis	Consultation
16	B.	13/IV	R.6	M	Hepatitis	Consultation
17	Tariel F.	13/IV	R.6	M	Hepatitis	Consultation

#	ID information	Date	Prison	Gender	Diagnosis	
18	K.	13/IV	R.6	M	Hepatitis	Consultation
19	Giorgi M.	9/IX	R.6	M	Acute psychic condition	Consultation
20	Ts..	20/IV	R.6	M		Consultation, referral to a hospital
21	Michael O.	9/IX	R.6	M	Residual effects after mesootitis	Consultation, treatment
22	Gela S.	20/IV	R.6	M		Consultation
23	David A.	6/IV	R.6	M	Left forearm gunshot injury, wound in spine area	Consultation, treatment
24	Roman K.	6/IV	R.6	M	Gunshot wound in upper left thigh	Consultation, treatment
25	Dato K.	20/IV	R.6	M	Epileptic bouts	Consultation
26	K.	20/IV	R.6	M	Asthma	Consultation
27	A.	20/IV	R.6	M		Consultation
28	K.	6/IV	R.6	M	Two 0.7-1.0 cm diameter oval shape injuries in the left hip area	Consultation, treatment
29	A.	6/IV	R.6	M	Oval shape injury on the left hip dorsal surface	Consultation, treatment
30	L.	6/IV	R.6	M	0.7-1.0 cm diameter injury on the right hip medial surface	Consultation, treatment
31	A.	6/IV	R.6	M	Injury in the foot area	Consultation, treatment
32	S.	6/IV	R.6	M	Wound in the right hip area	Consultation, treatment
33	S.	6/IV	R.6	M	0.8-1.2 cm diameter oval shape injury in left buttock area	Consultation, treatment
34	G.	6/IV	R.6	M	0.8-1.2 cm diameter oval shape injury in the right thigh lateral area	Consultation, treatment
35	J.	6/IV	R.6	M	Contused injury and excoriations in the parietal bone area.	Consultation, treatment

#	ID information	Date	Prison	Gender	Diagnosis	
36	S.	6/IV	R.6	M	Contusion in the right half of the chest, multiple excoriations.	Consultation, treatment
37	X.	6/IV	R.6	M	Injury in the kidney projection area, hematuria	Consultation
38	O.	6/IV	R.6	M	0.7-1.0 cm diameter oval shape injury in the right thigh lower lateral area	Consultation, treatment
39	X.		P5		Endogenic toxemia, shock, pos-burn injury suppuration in the left thigh area, injuries in various areas (resulting form torture).	Consultation, diagnosis, treatment, referral to hospital, expert examination
40	A.		P5		Cholecystitis, appendicitis, post-surgical ventral hernia	Consultation, diagnosis, treatment, referral to hospital, expert examination
41	M.		P5		Mental disorder	Consultation, diagnosis, treatment, referral to hospital, expert examination
42	Malkhaz Z.		P5		Post-hunger period. Spastic paraplegia. Period following gunshot wound in head area. Epilepsy.	Consultation, diagnosis, treatment
43	Jemal S.		P5		Fracture of the right clavicle, paresis of the upper right extremity.	Consultation
44	Zviad O.		P5		Hernia of lumbar vertebra IV, radiculitis.	Consultation
45	Alan V.		P5		Lower extremities gunshot wound. Comminuted fracture of foot. Shin fracture	Consultation

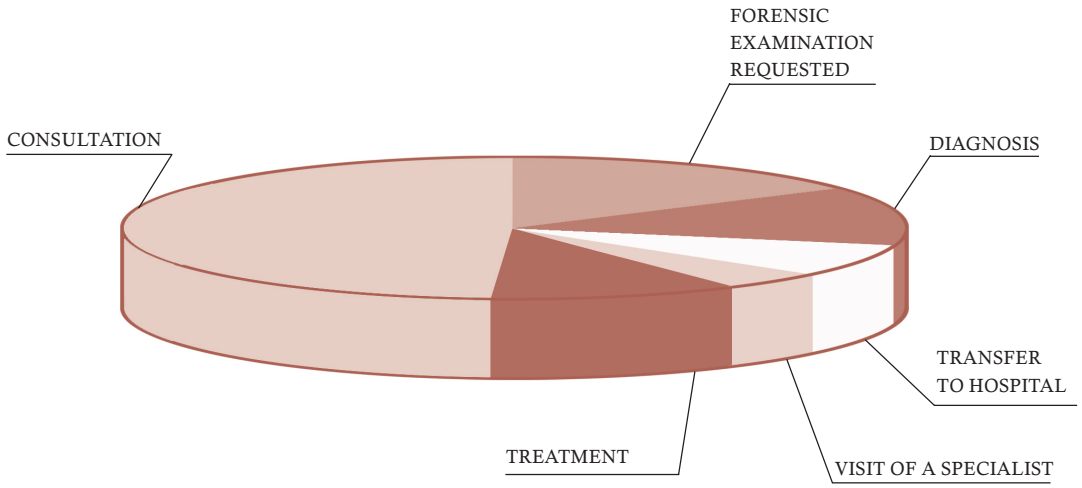
#	ID information	Date	Prison	Gender	Diagnosis	
46	K.		PB			Consultation
47	I.		PB		Post-epicystotomy period	Consultation
48	Giorgi D.		5		Epilepsy	Consultation, diagnosis, visit of a consultant
49	Givi G.		5		Portal hypertension, post-pharyngorrhagia period, encephalopathy	Consultation, diagnosis, treatment, expert examination, visit of a consultant
50	Irakli E.		5			Consultation
51	Nukri K.		5			Consultation
52	Imedo W.		5			Consultation, referral to a hospital
53	Otari M.		5		Mental disorder	Consultation, visit of a consultant
54	Kaxa O.		5		Mental disorder	Consultation, visit of a consultant
55	Isak A.		5		Mental disorder	Consultation, visit of a consultant
56	Giorgi J.		5			Consultation, visit of a consultant
57	Andro C.		5			Consultation
58	Robert B.		5		Mental disorder	Consultation, expert examination, visit of a consultant

#	ID information	Date	Prison	Gender	Diagnosis	
59	R.		5			Consultation
60	Tamaz G.		5		Ischemic heart disease, instable stenocardia. Post-vitrectomy and post-by-pass period. Diabetes milletus	Consultation
61	Spartak C.		5			Consultation
62	Giorgi B.		5		Period following face injury. Membrane perforation	Consultation
63	Levan C.		5			Consultation
64	Rezo L.		7		Chronic viral hepatitis B	Consultation
65	Giorgi A.		7		Period following cholecystectomy, appendectomy and hernioplastics. Operative wound suppuration	Consultation, diagnosis, treatment, referral to hospital, visit of a consultant
66	Levan C.		7	M	B+C hepatitis, pyodermia, Bronchial asthma TBC	Consultation, diagnosis, referral to hospital, visit of a consultant
67	K.		7	M		Consultation
68	Ts.		7	M		Consultation
69	D.		7	M		Consultation
70	J.		7	M		Consultation
71	Nugzar S.		1			Consultation
72	Tengiz M.		1		Tuberculosis	Consultation
73	Ali N		1			Consultation
74	Giorgi C.		1		Period following left-side hemicastration. Right testis teratoblastoma. Ischemic heart disease	Consultation

#	ID information	Date	Prison	Gender	Diagnosis	
75	Tamaz S.	9/IX	1	M	Closed craniocerebral injury. Concussion of the brain. Closed chest injury. Excoriations and hematomas in various areas, general contusion.	Consultation, expert examination
76	Gurami V.	9/IX	1	M	Closed craniocerebral injury. Concussion of the brain. Closed chest injury. Excoriations and hematomas in various areas, general contusion.	Consultation, expert examination
77	Otar B.	9/IX	1	M	Closed chest injury. Excoriations and hematomas in various areas, lacerated wound in the right spine area, general contusion.	Consultation, expert examination
78	Micheil K.	9/IX	1	M	General contusion, cyst-like formation in the right cheek aera	Consultation, expert examination
79	Rati K.	9/IX	1		Peptic ulcer. Viral C hepatitis	Consultation
80	Giorgi G.	9/IX	1	M	Epilepsy, bronchial asthma	Consultation
81	GiorgiG.		1	M		Consultation
82	Zaira K.		K.6	F	Period following sectoral mastectomy. Left-side mastectomy	Consultation
83	Nino L.		K.6	F	Ischemic heart disease. Lower hemiparesis. Neurotic and depressed state, suicidal attempts (2)	Consultation, diagnosis, treatment
84	Giorgi S.			M		Consultation
85	Irakli Ch.	10/IX	5	M	Right testis TB, post-traumatic condition	Consultation
86	Temur G.	10/IX	5	M	Paranasal chronic inflammation	Consultation
87	Dimitri S.	13/IX	R.1	M	Mental disorder	Consultation
88	Giorgi L.	13/IX	R.1	M	Mental disorder	Consultation
89	David I.	13/IX	R.1	M	Chronic viral hepatitis	Consultation
90	Nugzar S.	13/IX	R.1	M	Ischemic heart disease, post-infarction cardiosclerosis, hepatmegalia, ascites	Consultation

Thus, according to the available statistics, in the period under review, medical consulation and assistance was provided to 147 prisoners, of which 90 were first contact cases.

MEDICAL ASSISTANCE



From among patients registered by the PDO, 90 patients received medical consultation, 22 – treatment, 11 patients were visited by specialists, 8 patients were transferred to various civilian hospitals following PDO recommendation, diagnosis and differential diagnosis was carried out in 10 cases, whereas forensic medical examination was requested for 9 patients.

Chapter 6.
DEATH RATE WITHIN THE PENITENTIARY SYSTEM, AND CAUSATIVE FACTORS

In January-September 2006, the PDO conducted a survey and monitoring of mortality among prisoners in various institutions of the penitentiary system. According to the official data, the total number of prisoners who have died during the reporting period is 67. The breakdown by months (in absolute figures) looks as follows:

JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER
6	3	10	6	3	5	8	12	14

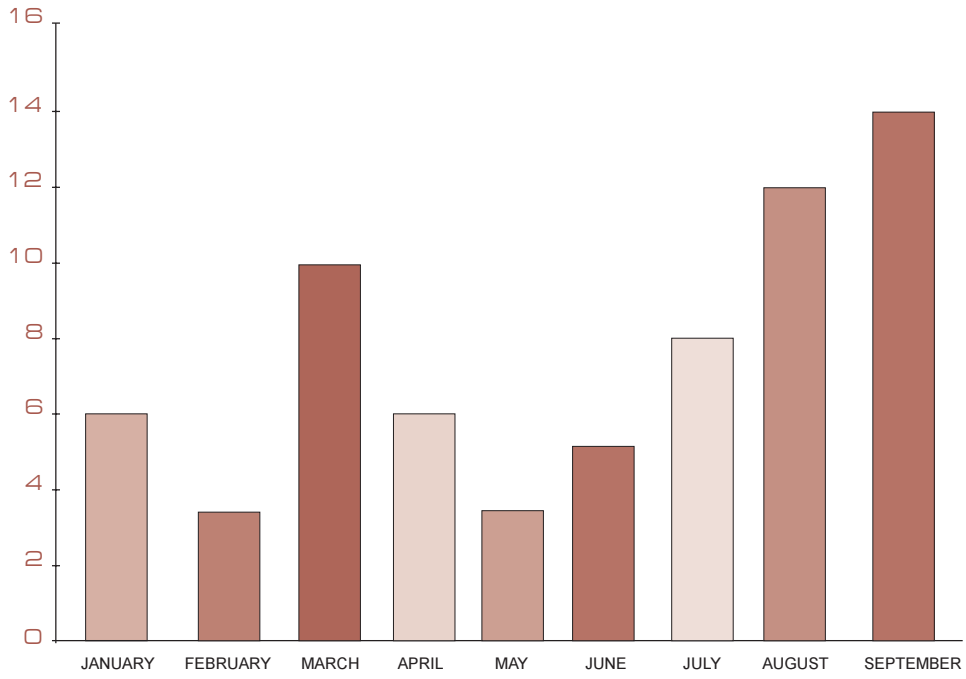
The source of information is data published on the web-page of the Ministry of Justice of Georgia (www.justice.gov.ge), data published on the web-page of the Penal Department of the Ministry of Justice of Georgia (www.dop.gov.ge), and information provided by Head of the Social Division of the Penal Department of the Ministry of Justice of Georgia – Mr. A. Kelbakiani (10/8-8883 05-09-2006) at the request of the Public Defender's Office (Letter of Inquiry, N1010/03-11 of September 5, 2006). In addition, in some cases the PDO got hold of data independently, including through autopsy.

First of all, it is to be noted that frequently, the data obtained from the above sources appeared to be incompatible, reflecting various statistics, and hence monitoring and analysis could not be grounded on one of these sources. The data from all the three sources was compared and collated, which in the end allowed to reach a consensus.

It should also be noted that none of the sources of information incorporated the data on 7 prisoners who died during the so-called "riot" of March 2006.

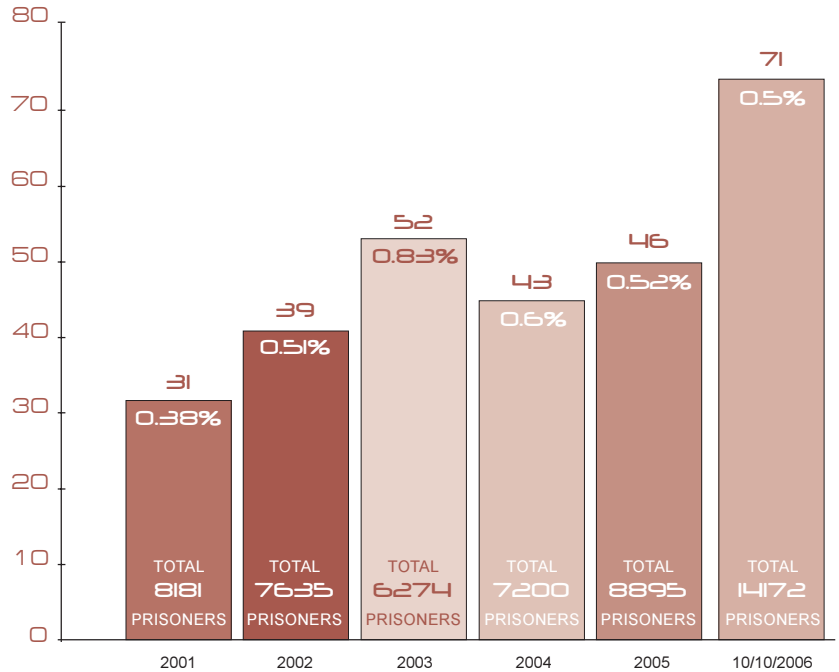
THE DIAGRAM SHOWS DEATH RATES AMONG PRISONERS WITHIN THE PENITENTIARY SYSTEM OF GEORGIA BY MONTH

In October 2006, the Ministry of Justice of Georgia published some of the statistical data, including the total number of prisoners who died in the establishments of the penitentiary system institutions in the period between 2001 and October 2006. As seen from the above sources, from 1 January to 10 October, 2006, as many



as 71 prisoners were reported to die, while our data derived through collation of the three sources shows the figure to be 69 prisoners (including those, who died in March and whose names were not published). This suggests that official statistics fails to reflect all cases, while our data is not quite accurate either. This notwithstanding, we are confident that our figure reflects the minimum number, data on death rates published by other sources are way higher.

THE TABLE BELOW SHOWS STATISTICAL DATA PUBLISHED BY THE MINISTRY OF JUSTICE ON 13:



Legend: Dynamics of prisoners' mortality in the period 2001-2006/10/10These data can be compared with the historical data. The total of 46 prisoners died in 12 months of 2005. This amounts to 0.52% of the total number of prisoners in Georgia. Considering the existing conditions, as well as a total failure and instability of the health care system within the penitentiary system, it is difficult to predict what changes might occur in the mortality rate in the remaining three months of 2006. It is obvious that the data for 12 months of 2005, 9 months, and 10 days of 2006 cannot be viewed as comparable values. The tendency towards a significant increase in the number of prisoners in 2006 is also noticeable. In particular, compared to 2005, the number of prisoners increased at least by 5,000, and almost doubled compared to 2002-2004. According to some sources, more than 60% of 14172 persons are in pre-trial detention, which is an alarming fact.

It is to be noted that 27 prisoners died in medical institutions for prisoners, and 25 prisoners – in different civilian hospitals (in Tbilisi and other cities). Three prisoners died in the Medical Facility for Convicts with TB. Prisons No.5 and No.1 stand out in terms of mortality rate there.

No	Penitentiary system institution/medical institution	Number of deceased prisoners
1	Medical Treatment Facility for Convicts and Detainees	27
2	Medical Institution for Convicts with TB	3
3	Different health care institutions of the city	25
4	Prison No.1 (Tbilisi)	3
5	Facility No.1 (Rustavi)	1
6	Prison No.2 (Kutaisi)	1
7	Prison No.3 (Batumi)	1
8	Prison No.5 (Tbilisi)	4
9	Prison No.6 (Rustavi)	1
10	Facility No.7 (Ksani)	1
	Total	***67***

It is difficult to speak of general rates of mortality and morbidity, since diagnoses in the absolute majority of cases are not accurate. In the reporting period there were four cases of suicide. In all the four cases the reason was mechanic asphyxia (hanging). It is noteworthy that the age of the deceased persons varies between 24-36 years. Two cases took place in prison No.1 and the other two - in Prisons No.5 and No.6. Three suicides were committed with a bed sheet, and in one case the prisoner hanged himself with his T-shirt. All the four cases occurred in summer (the last one on September 4).

On July 23, 2006 in Prison No.1 a 31-year old prisoner died in an accident. The death was caused by a contact with bare electric wires. It is difficult to say, whether this was done intentionally or not, but obviously safety in the prison was not given adequate attention.

In the reporting period there were 9 cases of death as a result of gunshot injuries. On January 3, 2006 a 20 year-old prisoner died in the medical facility for convicts from a gunshot wound in the left side of the chest. On August 4, 2006 a 16-year old prisoner died in one of medical institutions of Tbilisi as a result of a gunshot injury in the lung area. Apparently, gunshots were the cause of death in March, 2006, on the night of so called "prison riot".

Three cases of death as a result of HIV/AIDS occurred in the reporting period. Two patients died after having been transferred to the Centre of Infectious Pathology, AIDS and Clinical Immunology (one of them was transferred from Prison No. 3 of Batumi); one prisoner died in the medical institution for convicts. The age of the deceased persons varies between 30-38 years. In the above cases the diagnoses causing the death were as follows:

- HIV infection – AIDS of "C3" category, emaciation syndrome, pneumocystic pneumonia, terminal condition of chronic Hepatitis C;
- AIDS, acute lung and heart failure;
- HIV infection, AIDS of "C3" category, emaciation syndrome, left side hemiparesis, encephalomalacia, atrophic changes of cerebral cortex, crippling of forehead bone, epilepsy, terminal stage and Hepatitis C. The death was caused by brain edema.

There were 11 cases of death of prisoners in the reporting period as a result of lung TB with various complications. According to the existing official diagnoses, it is clear that 3 prisoners died as a result of gastro-duodenal bleeding from the upper parts of digestive system. In one case the death was caused diffusive peritonitis. This clearly shows that that surgical care is practically non-existent in penitentiary facilities, and where it does exist – it is only limited to several qualified persons (2-3) working in medical facilities for prisoners which is by no means a sufficient capacity to render the necessary care for 14,000 prisoners.

The reason for death of 5 prisoners was intoxication resulting from cancer in phase 4. It is interesting to find out why the requirements of the law were ignored in respect of patients with cancer in phase 4 (incurable disease). Two more patients died of an incurable decease (liver cirrhosis). In four cases the death was caused by various lung diseases; the same number of deaths was caused by kidney pathology; in 5 cases - severe disturbances of the central nervous system during caused by the blood circulation disorders.

In three cases the reason for death was intoxication (presumably of unknown aetiology). The results of monitoring conducted by the PDO suggest that that the death was caused by a overdose of narcotic drugs. Hence, the recent statements made by representatives of the penitentiary system to the effect that they managed to minimize or even eliminate influx of drugs into prisons are not true. To illustrate, suffice it to look at one specific case that ended in the death of a 29-year old prisoner at the Medical Treatment Facility for Convicts and Detainees.

One of the goals of PDO's visit to the Medical Treatment Facility for Convicts was to look into the details of medical treatment and diagnosis given to prisoner O.M. who died on August 22, 2006, shortly after his transfer from the Central Clinical Hospital of Tbilisi.

On August 23, 2006 the Ministry of Justice of Georgia disseminated information about the death of prisoner Otar M. at the Central Clinical Hospital on August 22. On July 4 he was transferred to the Medical Treatment Facility for Convicts from Rustavi Prison No. 4, and on August 22, due to sudden aggravation of his condition, he was transferred to the Central Clinical Hospital where he died. According to the official information from the Ministry of Justice of Georgia Otar M. was diagnosed with: neuro-circulatory dystrophy, cardiac depression, coma of unknown aetiology caused by medicines, asphyxia, Mendelssohn syndrome and acute breath deficit. It is to be noted that certain parts of the official diagnosis seem to be unrealistic. Besides, the absolute majority of diagnoses in respect of deceased patients contains words "unknown aetiology", thus raising many questions.

The PDO group asked for medical records of the deceased patient. Despite the fact that the medical records of the patient had to be taken away for forensic medical examination appointed after the patient's death, the group nevertheless received an original copy of medical records.

According to the records, Otar M., born in 1977 (charged under Article 260 of the Criminal Code of Georgia), was transferred to the Medical Treatment Facility for Convicts on July 4, 2006, at 10:30 p.m., from Rustavi Prison No. 6. The patient had been on hunger strike; on day 7, due to deterioration of health status, he was transferred to the Therapeutic Department. The record made at admission shows that the patient was complaining of general weakness, giddiness, coordination disorder. He had a post-surgery cicatrix on the chest, of an unknown origin, his pulse was 84, rhythmic, of average fill and tension; auscultation indicated subdued heart tones; blood pressure – 100/80; abdomen – sensitive to palpation under the right side; liver and spleen within coastal arch; Pasternatsky test – negative. The case file contains an attached letter from the Otar M.'s lawyer – D. Kh., dated August 23, 2006, addressed to Director A. Mukhadze, in which the lawyer asks about the diagnosis of his client, that served as basis for his transfer to the medical establishment.

The case file contains a prescription showing the treatment scheme.Two cardiograms were made on 04/07/07 and 20/07/06. Blood test was made on 10/07/06. Urine test was made on 11/07/06 and showed that urine was in norm.

Further records show that the transfusion therapy was prescribed on July 6 (T/A- 110/75 mmHg, P'-88).

July 10 – T/A- 100/70 mmHg, P'-80, ToC.
July 11 – thermal reaction (ToC – 37,5), T/A- 110/70 mmHg, P'-90. The patient has nausea.
July 12 – T/A- 110/75 mmHg, P'-86, ToC – 36.7.
July 13 – Dull ache under the right side. T/A- 100/60 mmHg, P'-86, ToC –37.3 – 37.5. Dry wheeze in the lungs, heart tones – subdued.
July 14 – Dry wheeze in the lungs, T/A- 100/60 mmHg, P'-86, ToC –37.5
July 17 – Ultrasonic examination of the abdomen showed that the shape, size and echo-structure of the liver, spleen, gall bladder, pancreas and kidneys were normal. The patient had fits of nausea; was short of breath; immediately after taking food he displayed epigastria pains and nausea. T/A- 100/60 mmHg, P'-90, ToC –37.6.
July 19 – The patient is short of breath, there are epigastria pains. T/A- 100/65 mmHg, P'-90, ToC – 37.2.
July 20 – T/A- 100/60 mmHg, P'-84, ToC –37.4.
July 24 – Pain behind the chest bone; epigastria pains. T/A- 100/60 mmHg, P'-86, ToC –37.2.
July 31 – Piercing pains in the heart.
August 1 – **Psychiatrist advice** appears in the case history:

"The patient is depressed, answers very briefly, easily getting tired, breaks in speech., mostly stays in bed, eats very little, complains of insomnia"
Diagnosis: Asthenodepressive syndrome
Xanax – 0.25 mg. 2X a day
Diazepam – 10 (before bedtime, two weeks)
Signature: Ketino Imerlishvili

The case file further features a prescription by a cardiologist:
T/a – 100/65 mmHg, P'-100, threadlike, average filling. On the electrocardiogram – T (-) V2, V3, III – in the branches.

Diagnosis - Neurocirculatory Dystonia (cardial type). Cardiologist prescribes vitamin B6, C, Coccarboxilaza, physiological/salt solution.

August 3 – unpleasant sensations in the chest area, vomiting, complications in balancing, dyspnoea, dry rales.
August 6 – weakness, headache, vertigo, unpleasant feeling, internal tension. T/A- 100/60 mmHg, P'-90.

August 7 – Psychiatrist's note: The patient is depressed, answers very briefly, easily getting tired, breaks in speech., mostly stays in bed, eats very little, complains of insomnia, displays irritability, weakness. The patient needs to be transferred to psychiatric for further treatment.
Diagnosis – Depression.

August 7 – transfer epicrisis: from this note it is clear that the patient stopped hunger strike after entering the hospital. Diagnosis: - depression, Neurocirculatory Dystonia of the cardial type, post-hunger dystrophic changes. The patient needs further treatment in the psychiatric ward (prescription – diazepam, tyzetsin)

August 8 – psychologist's consultation:
Perception – objective, right
Attention – distracted
Memory – maintained
Ideation – (indeciperable)
Emotional sphere - agitation

August 10 – according to the psychiatrist, patient's psycho-physical state is not satisfactory.

August 16 – Condition is not satisfactory satisfactory, sleeping disorders, tearfulness.

August 22 – **Doctor on duty's note:**

I was called by patient at 9:45. The patient shows no response to external stimulation. Photoreactions are slow. Nausea, scraping breathing, at times breathing arrest. Artificial respiration administered. After intravenous injection of Narkan patient started breathing again. Drug intoxication is assumed. T/A - 110/60 mmHg. Patient was moved to intensive care unit.

Signature – Tsismar G. (Therapist)

August 22– Epicrisis for transfer (Instruction to move the patient to the surgical ward)

On August 22, 09:30: Aggravation of the patient's condition. The state of unconsciousness. The patient was moved to intensive care unit. The patient was moved to the surgical ward (???)

August 22 – **Surgeon's note:**

The patient was transferred to the surgical ward from the psychiatric department. Symptoms: nausea, aspiration of the respiratory tracts, scraping breathing, cyanotic skin. After mouth and throat cleansing respiration was restored. Arterial pressure – 70/30. Peripheral pulse can not be measured. Administered drugs: Ringer – 500.0, Kofein – 4.0, Kordiamin-6.0, breathing18-20 per minute. The patient was also given Dofamin. Total transfusion: Ringer – 1500, physiological solution – 1000, sodium hydrocarbon – 100, Prednizolon' – 125 mg, Zantag – 2.0, Panangin – 1, Euphylline, Polyglukin. Gastric lavage made with a nasogastric probe. Haemodynamics stable – 100/50 -120/60. Breathing stable, medium fullness-20. With bronchial symptoms. Cornea and pupil reflexes are present. No response to painful stimulation. Patient was transferred from intensive care unit to the Central Republican Hospital.

Diagnose:
Drug-induced coma of unknown aetiology, Mendelssohn's syndrome.
The patient was transferred to the Central Republican Hospital by an ambulance. Diagnosis at admission: aspiration syndrome, acute respiratory failure. The patient was placed in the emergency medicine unit.

Presumably, the patient's death was caused overdose of narcotic drugs. The clinical picture allows to assume the drug, but it is necessary to carry out a laboratory test to confirm the assumption. In such a situation it seems legitimate to ask several questions. Firstly, how was the narcotic drug brought into a closed medical facility?; secondly, why did the medical personnel fail to attend to the patient's condition, especially after he lapsed into

coma? and finally, why do the relevant bodies choose to conceal the possible cause of the patient's death? . The official diagnosis as well as conclusion sound absurd, and lead to a conclusion that the medical personnel were in no way involved in drawing them up.

In most cases, the official diagnosis for inmates' death allegedly is "cardiovascular insufficiency". Out of 67 cases, in 28 cases (i.e. in 42% of cases) death was caused by cardiovascular insufficiency. In some cases the "cardiovascular insufficiency" is replaced with the term "cardiopulmonary insufficiency". It is notable that in some cases where the diagnosis features myocardial infarction, no cardiovascular insufficiency is mentioned at all.. Interestingly, one diagnosis even featured the following formulation: "By tentative opinion of an expert-criminologist, the death was caused by cardiovascular insufficiency". It is commonly known that the diagnosis in the event of death is usually made by a clinical doctor, or in case of autopsy by pathoanatomist/medical forensic expert. As to criminologist's opinion in determining the cause of death, they can be at best absurd. Presumably, the following diagnosis was compiled by a criminologist: "The death was caused by an acute stomach and stenocardiac attack". No comment.

The web site of the Ministry of Justice regularly publishes information on death cases. It is possible to identify a person, and obtain detailed information, including medical. This is a violation of the Laws of Georgia "On Healthcare", "On Medical Activities" and "On Patient's Rights". In addition, such actions constitute violation of fundamental principles of national and international documents on human rights and concepts on privacy and inviolability of person. Medical information shall be kept confidential, including after the patient's death.

- The Public Defender of Georgia addressed the Ministry of Justice of Georgia with a question on whether the Ministry had any authorisation to publish this information. Thereafter, the names of deceased prisoners are no longer published.

Analysis of the official information on prisoners' mortality has drawn attention to a the range of diagnoses provided and ways to formulate them. It is often difficult to understand the cause for death, while in many cases what is obvious is a gross medical error. Given below are diagnoses grouped according to certain systematization principles.

1	CARDIOVASCULAR DISEASES	Post-infarction cardiosclerosis Generalized atherosclerosis Cardial type depression Stenocardia Hypertensive disease Acute infarction Ischemic heart disease Acute cardiovascular insufficiency
2	DIGESTIVE SYSTEM DISEASES	Hepatitis C Gastro-duodenal haemorrhage Liver hemangioma Liver cirrhosis Nutritional dystrophy Chronic decompensatory tonsillitis
3	RESPIRATORY SYSTEM DISEASES	Hypostatic pneumonia Acute respiratory deficiency Pulmonary oedema Pneumonia Chronic obstructive disease Bronchiectasis

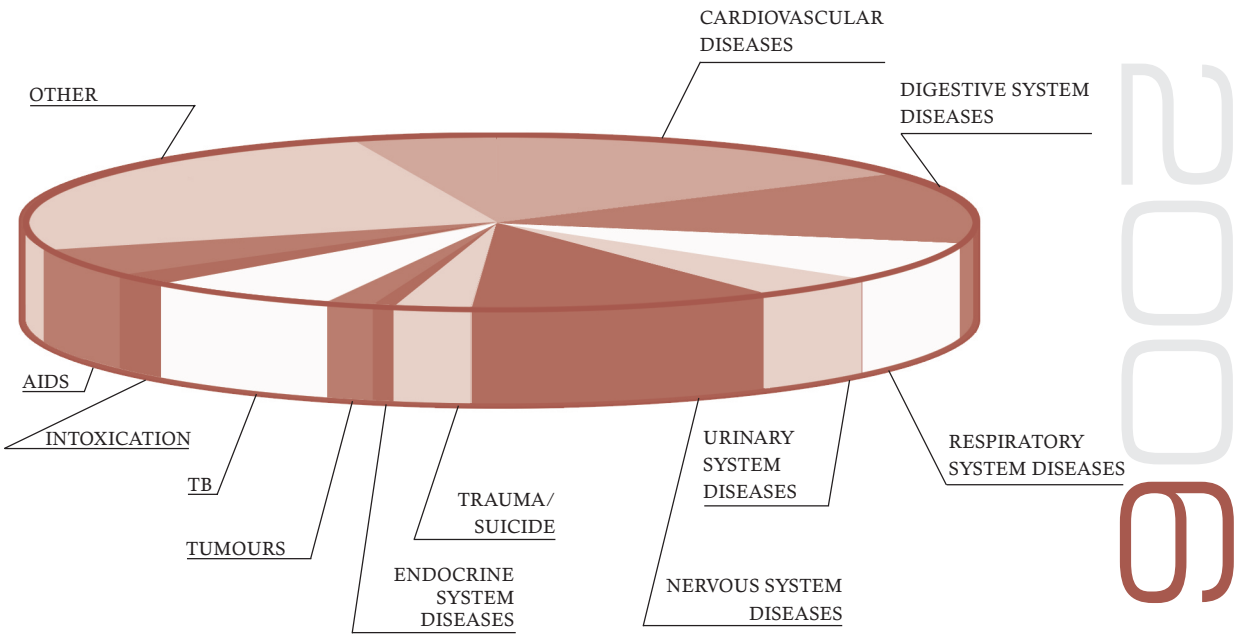
4	URINARY SYSTEM DISEASES	Urolithiasis Chronic pyelonephritis Chronic glomerulonephritis Renal hypertension
5	NERVOUS SYSTEM DISEASES	Ischemic insult Hemiparesis Encephalomalacia Paraplegia Cerebral cortex atrophy Brain oedema Epilepsy Neuroinfection Encephalopathy
6	TRAUMA/SUICIDE	Mechanical asphyxia (hanging) gunshot injury Traumatic intracranial Haematoma Accident
7	ENDOCRINE SYSTEM DISEASES	Diabetes mellitus Obesity
8	TUMOURS	Malignant lung ulceration Tumour
9	TB	Acute disseminated infiltrated tuberculosis meningitis Tuberculosis intoxication Tuberculosis adenitis
10	INTOXICATION	Drug intoxication of unknown etiology
11	AIDS	
12	Other	Hemorrhagic shock Coma Neuro-circulatory dystonia Asphyxia Post-surgery embolism of pulmonary artery Acute intestinal infection Fever of unknown etiology Polyorganic insufficiency Perforation, peritonitis Ascites Septic intoxication Meningitis

Basic arithmetic applied to this statistics would suggest that the main cause of inmates' deaths in penitentiary institutions is acute cardiovascular insufficiency. Such an attitude, the more so when expressed towards issues related to human health and life, is nothing but lack of any responsibility, to put it softly, whereas objectively, it has to interpreted as mere concealment of real causes of death, or their intentional falsification. Against the backdrop of increased mortality among inmates of penitentiary institutions, the acute cardiovascular insufficiency related hysteria on the part of the Ministry of Justice reached its peak in early August when due to intolerably high atmospheric temperature, penal establishments found themselves in a disastrous situation. On 10 August 2006, the Ministry of Justice published a press release on extraordinary measures taken in peniten-

tiary institutions in connection with high temperature: "Extraordinary meeting concerning penal system problems has been held at the Ministry of Justice of Georgia. Mr Kavtaradze, Minister; Mr Mikanadze, Deputy Minister and representatives of the Penitentiary System Reform, Monitoring and Medical Supervision Department discussed emergency measures to be adopted in penitentiary establishments facilities due to high temperature; also the increased death rate among convicts was considered. The Minister tasked the Penitentiary System Reform, Monitoring and Medical Supervision Department to assess the situation, evaluate the effectiveness of measures already taken and undertake additional arrangements. Meetings will continue on a daily basis until hot weather conditions remain in country and the cause of increased death rate in penal facilities is fully analysed". It seems that the analysis was completed on the same day, as according to the same source: "the majority of deceased convicts suffered form cardiovascular diseases". Analysis of the range of diagnoses in the table below is fully consonant with this observation.

1	Cardiovascular diseases	**36**
2	Digestive system diseases	**10**
3	Respiratory system diseases	**6**
4	Urinary system diseases	**4**
5	Nervous system diseases	**15**
6	Trauma/suicide	**8**
7	Endocrine system diseases	**3**
8	Tumours	**3**
9	TB	**15**
10	Intoxication	**3**
11	AIDS	**3**
12	Other	**21**

MAIN CAUSES OF MORTALITY



This notwithstanding, it is unwarranted to declare cardiovascular diseases to be the main cause of death. However, in the same press release the Ministry of Justice went on to declare: "Nine convicts died in facilities of the Penal Department in August. Most of them suffered from cardiovascular diseases - said Mr. Mikanadze, Deputy Minister during the press briefing in the Ministry. According to his information, the deceased persons were 40 to 50 years of age. The Ministry of Justice of Georgia carries out detailed examination of every fact, also forensic examination will be held in every case. Deputy Minister condemned speculations regarding casualties. Mr. Mikanadze informed about emergency measures taken in connection with high temperature. Every ward of and prisons No. 1 and No 5. in Tbilisi is equipped with 2 fans. The Penal Department manages 24 hour medical monitoring and water supply. Iron shutters are removed from windows in order to improve air distribution". However, so far there has been no forensic examination conclusion in respect of any specific case, nor even enquiry by investigation.

Thus, one can state that causes of prisoners' mortality have not received any adequate study, however this is no impediment for dissemination of information, mostly misleading, unwarranted and false. Such an attitude leads to many questions, and hinders interventions to eliminate factors dangerous for human life and health.

CONCLUSIONS AND RECOMMENDATIONS

Penitentiary institutions visited by the PDO monitoring group were found to be in a critical situation. Overcrowding is the most problematic issue which, apart from being a serious social factor, threatens inmates' life and health. Hence, one can safely state that **the situation in most penal establishments is dangerous for human health**. In such conditions, the more so compounded by acute shortage of medical personnel (or its absence in some cases), **it is impossible to carry out adequate diagnosis, treatment and care**. Moreover, a larger part of persons in need of care are not even revealed, so the issue of medical assistance in respect of such persons is not even discussed. It was not infrequent that the monitoring group visiting a prison was unable to meet with a prison doctor, for the simple reason of his not being present at the duty station. Doctors' absence was attributed to their being at the Ministry, Department or somewhere else, though it is not clear what an establishment's only doctor should be doing in an administrative body when hundreds and, sometimes, thousands of persons in need of medical care are awaiting for him as their only hope. Most inmates displayed aggressive attitudes whenever the monitoring group mentioned medical personnel, saying they had never seen a doctor. A considerable part of inmates was unable to distinguish between a doctor and a nurse, because medical care is in such a critical state that it does not really matter for them as to who gives them medical service.

Problems identified and recommendations:

- The right of access to a doctor as envisioned by international standards is impaired (CPT 3rd General Report – Medical Services in Prisons, 1992, Chapter A; European Prison Rules – Committee of Ministers of the Council of Europe, Recommendation No. R(87)3, Part 2 (Medical Service); Committee of Ministers of the Council of Europe, Recommendation No. R(98)7, Strasbourg, 20 April 1998, Chapter A; UN Minimum Standards of Imprisonment, Paras. 22,24,25; The Body of Principles for Protection of Persons in Any Form of Detention or Imprisonment – UN Resolution 43/173 – Principles 24,25,26. Prisons do not have doctors or other medical personnel available 24 hours a day; prisoners are not able to contact a doctor freely and they are not informed either on their health or possibilities of medical services available in prison; there is no special medical documentation on inmates;
- The right to equivalent and adequate medical assistance is impaired (CPT 3rd General Report –Chapter B; Committee of Ministers of the Council of Europe; Recommendation No. R(98)7 – Chapter B; UN Minimum Standards of Imprisonment, Para. 22; General Principles for Treatment of Prisoners (UN Resolution No. 45/111), Principle 9;
- The right to patient's informed consent, and especially, the right to confidentiality are impaired. Prisoners are not able to talk to a doctor confidentially; there are no registers kept by prison doctors to record the injuries found; in most cases inmates, when entering a prison, are not given a chance to talk with a doctor

confidentially, outside others' vision and hearing, as emphasized in CPT's Recommendations for Georgia (2001). Information reflected in the record of injuries is not complete, and does not include records of initial medical examination, required under international standards, which is in contravention of CPT's Recommendations for Georgia (2001), as well as other international standards (provided for in the Istanbul Protocol and other instruments). The group found violation of the CPT 3rd General Report – Paras 45,49,50; the European Prison Rules, Committee of Ministers of the Council of Europe, Recommendation No. R(87)3, Part 2 (Medical Service; Committee of Ministers of the Council of Europe, Recommendation No. R(98)7, Chapter C; the Code of Conduct of Law Enforcement Officials in Maintenance of Law and Order (UN resolution No. 34/169, 1979);

- Thus, all international standards of prevention are violated - CPT 3rd General Report, Chapter D – Prevention, 3 – Hygiene, Para 52; 4 – Elimination of violence – Paras 59,60,61; 5 – Social and family links; European Prison Rules – Part 2, Chapter 1, Paras a, b, c, d,; Discipline and Penalty, Paras 37,38; Part 4 – Prisoners' treatment and regime: Para 74, Para 85; Committee of Ministers of the Council of Europe, Recommendation No. R(98)7, Chapter 2: Information, Prevention and Education on Healthcare Issues; Chapter C – Special Forms of Pathology and Measures of Prevention in Prisons, Chapter 3: Organization of Medical Services in Prisons - Subchapter: Violence in Prisons, Subchapter: Special Programmes for Prisoners' Health Protection; Social and therapeutic programmes; Links with family and outside world, Protection of mother and child's interests; Minimum Standards of Imprisonment – Paras 12,13,14,15,16; sections 25, 26.
- International principles on elimination of torture and other cruel, inhuman and degrading treatment and punishment are violated (CPT Recommendations, CPT Report on Georgia 2001; Istanbul Protocol UN, New York, Geneva - Guidelines for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment). More specifically, after the incident of 27 March 2006 at the Medical treatment Facility for Convicts, the inmates who received injuries have not been given any medical or psychological/psychiatric examination, as stipulated in the Istanbul Protocol; neither was any medical examination given to other prisoners who spoke of injuries received as a result of beating and abuse. All this leads to increased probability of the use of torture and ill-treatment, and supports suspicion on the systematic character of torture and inhuman treatment;
- Prisoners' psychological condition and affect, the methods described, particularly hair-cutting and head shaving, stripping of inmates for beating, forcing other inmates to look at the beating of their cell-mates, coupled with the above observations warrants a conclusion that prisoners are subjected to torture and cruel, inhuman and degrading treatment and punishment;
- Considering the above facts and given the tensions between inmates and prison administration, it is necessary to implement, without delay, measures to improve the situation and bring to account those from among prison administration who are responsible for the above situation;
- It is necessary to eliminate inhumane treatment (non-availability of medical service, as well as other violations);
- It is necessary for the Ministry of Labour, Health and Social Affairs and the Prosecutor General's Office to take interest in the work of prison doctors, administrative staff and directors. It is necessary in individual cases to raise the issue of doctor's professional responsibility, and to initiate criminal proceedings in other cases. It is important to note the silence on the part of doctors on the facts of torture and other cruel, inhuman and degrading treatment and punishment. The silence on the part of medical personnel is to be interpreted as complicity in inhuman acts;
- Given an utmost crisis of medical service, it is necessary to declare a humanitarian catastrophe and take urgently tentative measures, such as increase in the number of medical personnel, as well as regular visits by medical commissions and monitoring of penitentiary establishments;
- It is necessary to note that when visiting penal establishments (for instance, in Prison No. 7), the monitoring group could see masked and armed persons, which is inadmissible, especially when the situation does not warrant a need for the presence of such. Such an outfit is seen as a means to exert psychological pressure both on members of the monitoring group, and on doctors, other staff, as well as inmates; in exceptional cases when masked persons are used, they should wear ID numbers, as otherwise the risk of the use of torture and inhuman treatment increases significantly.

- Given the above, one can state that two of fundamental and peremptory human rights are violated in the penitentiary institutions – the right to be free from torture and degrading treatment, as well as prisoners' right to safety and security of person;
- It can be concluded that concurrently with international principles, the following national standards are violated: the Law on Imprisonment, the Law on Patient's Rights, the Law on Medical Activities, and the Law on Healthcare;
- Overall, the medical service in the above penal establishments is not aligned either with international or national standards; medical wards that are virtually non-existent, do not have any medical licenses for the relevant activity. The same is true of hospital-type establishments, which means that their medical activities in the context of the law are illegal, i.e. punishable under the law. The medical service at the penitentiary system lacks professionalism; besides it is not adequate in the legal sense, too, which oftentimes puts at risk human health and life;
- It is necessary to envisage in the 2007 budget increased allocations for medical service at penitentiary institutions, which will alleviate, at least slightly, conditions of care for sick inmates of penal establishments and help to preserve their life and health.

4 ENFORCEMENT OF JUDGERMENTS

The Department of Execution of Non-custodial Punishments and Probation has been established under the Ministry of Justice with a view to ensuring enforcement of court judgements. The Departments comprises enforcement institutions called enforcement bureaus.

Under the Law on Procedure of Execution of Non-custodial Punishment and Probation, execution of court judgements is the responsibility of a bailiff, or enforcement officer.

Under the Georgian Constitution and other legal acts, "court decisions are binding for all state bodies and individuals all over the territory of the country". Hence, if court decision is not executed, the procedure of enforcement will start.

Over the reporting period the Public Defender's Office examined 15 applications concerning execution or non-execution of court decisions. Notably, it is almost impossible to get a response from the Tbilisi Enforcement Bureau, as according to staff members, their work conditions are far from adequate. For instance, lack of computers makes letter typing an insurmountable problem; lack of a vehicle creates problems with the movement of staff. Besides, there is no telephone, which hinders communication, etc. In this regard, the situation is somewhat better at the Department, but bureaus that bear the brunt of the enforcement job have no proper conditions to work. It is to be noted that enforcement police is weak, too, and they do not possess the necessary facilities and equipment to expedite enforcement of court decisions.

Therefore, the proportion of enforced decisions is fairly low. According to official statistics, in the period between September 2005 and 1 July 2006 the enforcement index stood at 46%, of which only 2,3 % account for enforcement for the benefit of the state budget.

Levan Sakhamberidze Case

The Public Defender's Office was addressed by Levan Sakhamberidze who complained of non-execution of a court decision concerning the payment of arrears in wages. According to the documents attached to the case, on 26 September 2005 the Collegium of Administrative Cases of Tbilisi City Court issues a writ of execution (Case No. 3/1680-05) according to which the citizen's claim was satisfied and the Main Police Authority of Tbilisi was put under an obligation to repay the arrears in wages in the amount of GEL 1624.1.

According to the established procedure, the writ of execution was brought before the enforcement bureau, however it took long to have the decision enforced.

The Public Defender came to a conclusion that the person's right to work remuneration and social security was impaired and addressed a recommendation to the Department of Execution f Non-custodial Punishments and Probation to follow on the case. The Department informed the PDO that the case is being followed on by a special group set up under the Department with a view to enforcing particularly important cases, that was tasked to ensure the timely execution of the court decision.

Elmira Bakirova Case

The Public Defender's Office was addressed by Elmira Bakirova who complained of a delay in execution of the court decision.

According to materials of the case, Elmira Bakirova and Elshat Eminov had a dispute concerning the residence of their minor son, Roman Eminov. The decision rendered by the Gardabani district court on 30 September 2004 established Elmira Bakirova's residence as her son's dwelling place. The decision led to issuance of writ of execution No 2-177-04 passed over for execution to the Kvemo Kartli Enforcement Bureau. The PDO addressed Head of Kvemo Kartli Enforcement Bureau, Mr. David Jachvadze for information. According to Mr. Jachvadze, the enforcement bureau took all the necessary measures to have the court decision enforced, however, due to resistance on the part of minor Roman Eminov, it was not possible to execute the decision. Therefore, on 26 December 2005 the case was passed over to the Department of Execution of the Ministry of Justice, that in turn passed it over to the Investigative Department of the Ministry of Justice on 9 January 2006. Despite all the steps taken, the court decision has not been enforced so far.

Lali Patarkatsishvili Case

On 22 September 2005, the Public Defender was addressed by Lali Patarkatsishvili who complained of a delay in execution of a court decision concerning the payment of an alimony.

According to the materials of the case, by the decision of Gldani-Nadzakadevi district court of 25 February 2002, the applicant's father, Vasil Patarkatsishvili was put under an obligation to pay a monthly alimony of GEL 25 in favour of his daughter. The decision led to issuance of writ of execution No 2/485-2002 (30.07.2002) passed over for execution to Tbilisi Enforcement Bureau. According to the applicant, execution of the court decision was delayed for reasons unknown.

The PDO addressed the Tbilisi Enforcement Bureau for information concerning execution of the decision, however, the response only pointed out the name of the law enforcement officer. Despite numerous enquiries and reminders, the Department of Execution of Non-custodial Punishments has failed to provide any information. Hence, the citizen's claim concerning deliberate drag-out of the enforcement seems warranted.

5 EXECUTION OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Considering the general deficiency of the system of execution of court decisions, the index of execution of the judgements made by the European Court of Human Rights appears to be fairly high. Up until present, the European Court rendered 8 judgements in respect of Georgia:

1. Asanidze Vs. Georgia (8 April 2004)
2. Shamaev and 12 Others Vs. Georgia (27 December 2005)
3. ISA Ltd and Makhrakidze Vs. Georgia (27 December 2005)
4. AMAT-G Ltd and Mebagishvili Vs. Georgia (27 December 2005)
5. Donadze Vs. Georgia (7 March 2006)
6. Davtyan Vs. Georgia (27 July 2006)
7. Gurgenidze Vs. Georgia (17 October 2006)
8. Danelia Vs. Georgia (17 October 2006)

As of 24 October 2006, the latter three decisions were not entered into force.

THE SITUATION OF EXECUTION OF JUDGEMENTS OF THE EUROPEAN COURT

According to the information provided by the Ministry of Justice, the judgements concerning Asanidze, Shamaev and Donadze have been executed fully: the day following the judgement Mr. Asanidze was released, and later received the compensation awarded by the European Court in the amount of GEL 155 000 that with the interest accrued amounted in total to GEL 370 000.

According to the Ministry of Justice, in connection with Shamaev Vs. Georgia case, the Georgian Government provided the Court with information concerning changes and amendments made to the Criminal Code of Georgia. This, presumably, implies changes in the extradition procedure. The process of execution of Shamaev case has been completed.

The execution of the judgments rendered in respect of ISA Ltd and AMAT-G Ltd cases is underway. According to the Ministry of Justice, the applicants have already received the sums awarded by the Court under the judgement.

Problems Encountered in the Process of Judicial Execution

It is to be noted that execution of the judgements of the European Court of Human Rights goes beyond the time-frame envisioned by

the court, which, as seen from the Asanidze's case, leads to accrued interest representing an additional burden on the state budget.

As explained by the Ministry of Justice, that delay in full execution of the Judgement made by the European Court in respect of Asanidze's case resulted from legislative amendments made to create the necessary legal framework for the execution of the judgement. However, according to the same Ministry of Justice, execution of the decisions of the European Court is governed by the Law on Execution of Non-Custodial Punishments" of 16 April 1999, and no specific legal framework to govern execution of the judgements of the European Court has been developed so far. Therefore, it is not clear as to what legal amendments led to a delay in the execution of the judgement rendered in respect of Asanidze's case.

Development of a special legal framework will not only speed up and make easier the execution of the judgements of the European Court, but will also help to replicate similar decisions based on the law and provide for adequate measures to be taken in the context of the law.

The process of promulgation of the decisions of the European Court of Human Rights is not perfect either. Translation of judgements into Georgian is only to be commended, but one has to state that translations are not always adequate, which is unacceptable, especially when one deals with judgements of the court. For instance, the original of the judgement in respect of ISA Ltd case states that "the adoption of the impugned Governmental Ordinance amounted to authorities' second attempt to interfere with applicant company's right to the peaceful enjoyment of its possessions, whereas the Georgian translation of the same paragraph is misleading. Paragraph 254 of the judgment in respect of Shamaev case lists articles of the Criminal Code, whereas the Georgian translation speaks of the dispositions of the Criminal Procedure Code.

The process of promulgation of the judgments is not consistent either: the judgements in respect of Asanidze, Shamaev, ISA Ltd and AMAT-G Ltd were published in the Georgian Legal Bulletin; besides, the judgement on Asanidze's case was published separately, with the support of the Council of Europe. It is not clear as to when the promulgation of a judgement takes place, and whether the judgement in respect of Donadze Vs. Georgia case was published at all. The website of the Ministry of Justice features only three judgements, which may be misleading for the interested persons. The PDO is of the opinion that before the Georgian translation is made, it would be advisable to post on the website an original version of the judgement, with a link to the ECHR website, or with a brief information on the judgement made by the European Court.

CONSIDERING ECHR JUDGEMENTS

Execution of the judgements of the European Court of Human Rights implies not only individual measures to satisfy an applicant, but also general measures to ensure that wrongful decisions are not rendered in future.

In Danelia's and Davtyan's cases, even though the applicants were not able to prove cruel and inhuman treatment by state agents, the ECHR still found a violation of Article 3 of the European Convention in terms of proceedings, as the Georgian authorities failed to carry out a proper and effective investigation. This implies that the state bodies are under an obligation to examine closely all complaints concerning cruel and inhuman treatment, and carry out effective investigation on all such cases.

As far as the execution of the ECHR judgements in general is concerned, it is important to note that three cases – Asanidze Vs Georgia, ISA Ltd Vs. Georgia and AMAT-G Ltd Vs. Georgia had as their main theme non-execution of the decisions rendered by court. Execution of court decisions appears to be delayed especially where the case deals with the payments from the state budget.

According to the Ministry of Justice, "the Government of Georgia should take adequate measures to eliminate the problem of non-execution of decisions made by national courts because of the non-availability of requisite funds". The PDO does share this view. Moreover, the PDO considers that such measures should be taken within the shortest time possible, as the problem described above is not new and was repeatedly described in the Public Defender's previous reports.

And, lastly, it seems interesting to see how the Gurgenidze case would influence the Georgian legislation and, especially, judicial practice. Gurgenidze case deals with a failure to provide adequate protection from intrusion into privacy. Notably, the cause for intrusion was not a state body or a state agent, but media. In the opinion of the European Court, the state should not only refrain from interference into a person's private life itself, but should also have an affirmative obligation to prevent such interference by others and provide for compensation of any damage, material or moral, if such occurs. Hopefully, Georgian judges will share the concept of non-interference into privacy, as interpreted by their colleagues from ECHR, and be guided in future by the ECHR judgement and the principles formulated in it.

6 ON THE VIOLATION OF HUMAN RIGHTS IN THE TERRITORIES OUTSIDE THE CONTROL OF CENTRAL AUTHORITIES

The reality of human rights situation in Georgia's uncontrolled (occupied) regions – South Ossetia and Abkhazia – continues to paint a bleak picture. Notably, human rights abuses are especially persistent in districts of compact settlement of Georgians, as well as in the areas controlled by the CIS peace-keeping forces.

Interestingly, according to the Resolution of the CIS Council of Heads of State "On the Use of Collective Forces in the Zone of the Georgian-Abkhazian Conflict" signed on 22 August 1994 and the Annex thereto of 26 May 1995, the peace-keeping forces are under an obligation "**to secure observance of human rights and norms of international law in the territory under their control**". The above decisions of the CIS Summit of Heads of State represent documents underlying the deployment of the CIS (that is to say, Russian) peace-keeping forces.

The Public Defender addressed numerous statements and appeals to international organisations, the command of the Russian peace-keeping forces, the Georgian authorities and international community stressing the need of concerted effort to protect the rights of populations residing in the conflict zones. The Public Defender has repeatedly called on command of the Russian peace-keeping forces to ensure fulfilment in good faith of obligations under their mandate.

At the same time, the Public Defender requested international organisations to carry out international monitoring of the human rights situation in Gali Region and the security zone.

Within the limits of his competence, the Public Defender asked repeatedly for assistance of international organisations to secure monitoring of the conditions of persons kept in custody in the territory of Abkhazia and, more specifically, provision of medical assistance and medications to Levan Mamasakhlisi kept in prison in Dranda. As a result of these efforts, Levan Mamasakhlisi, kept unlawfully in prison, was visited several times by officers of the UN Human Rights Centre in Sukhumi, and regular delivery of medications is organised through the instrumentality of the Aversi-Pharma pharmaceutical company and the Red Cross.

Oftentimes, the gravity of human rights violations in the above regions makes them international crime under international law.

Georgian citizens residing in Gali Region of Abkhazia, in the so-called security zone, as well as in South Ossetia, face violations of the rights and freedoms granted to them by the Georgian Constitution and provisions of the relevant international instruments, namely:

1. **Articles 3, 4, 5, 9,12 and 17 of the Universal Declaration of Human Rights;**
2. **Articles 7, 8, 9 and 17 of the International Covenant on Civil and Political Rights;**
3. **Articles 3, 5, 8, and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;**
4. **Protocols No.1 and No.12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms**
5. **Articles 17, 21 and 38 of the Georgian Constitution.**

Not a single person guilty of human rights violations or international crimes perpetrated in Abkhazia has been called to account, which logically adds to the impunity syndrome in the so-called peace-keeping zone controlled by the CIS peace-keeping forces and, broadly, in Abkhazia.

In this context, one has to look at another, very relevant matter, namely – Georgia's cooperation with the International Criminal Court. The Court's jurisdiction covers grave crimes "of concern for the international community", such as: genocide, crimes against humanity, war crimes and aggression (the latter will go into force after the final definition of "aggression" is reached).

As noted above, the Court's jurisdiction extends specifically to those crimes that are perpetrated against Georgian citizens in the territories outside the control of central authorities. Abuse, murders, persecution, torture and kidnappings are persistently found to occur in these territories.

We support peace negotiations and peaceful policies pursued by the Georgian authorities, however, we believe that through ratification of the Statute of Rome, Georgia has gained powerful leverage to punish perpetrators of war crimes and ethnic cleansing and an effective tool to facilitate the return of hundreds of thousands of IDPs to their original places of residence, the more so as Georgia ratified, on 16 July 2003, the Statute of the International Criminal Court (the Statute of Rome), aligned accordingly its legislation and had the Law on Cooperation with the International Criminal Court endorsed by the Georgian Parliament on 14 August 2003.

The PDO believes that this powerful mechanism can serve one of possible ways, by no means the only one, to resolve the conflict and pre-empt further crimes, as no crime should be allowed to remain unpunished. The state has an affirmative obligation to extend its penal jurisdiction to persons held liable for crimes under international law.

Under the pretext of an anti-criminal operation, the so-called Abkhaz law-enforcers conduct massive arrests of ethnic Georgians residing in Gali Region. They enter villages in vehicles, arrest dozens of persons without any legal grounds and transfer them to detention facilities of Gali, Ochamchire, or the Interior or Security Ministries in Sukhumi. In a number of cases, detainees not possessing the so-called temporary passports of the Republic of Abkhazia were forced to pay ransom.

Hostage taking has become a common practice. Unfortunately, so far not a single person has been punished for taking hostages, kidnapping or unlawful deprivation of liberty of citizens in Gali Region. No one feels safe from becoming a victim of violence, kidnapping or other unlawful interference by law-enforcement bodies of the Abkhaz authorities, or criminal groups acting through permission or omission of the same law-enforcement bodies.

Over years, the human rights situation in Gali Region has remained daunting, with no visible signs of improvement. There are no democratic institutions to protect human rights, largely through ineffective performance, negligence and, oftentimes, misconduct by Russian peace-keeping forces acting under the CIS aegis, as well as unlawful pressure by the Abkhaz administration.

The PDO appreciates the endeavours of the Ministry of Internal Affairs of Georgia, Staff of the State Minister for Conflict Resolution, UN Human Rights Centre's Office in Sukhumi, Service for Protection of

IDPs' Rights and all others who provide information on human rights violations in the territories of Abkhazia and South Ossetia, including in the so-called peace-keeping zone.

Among human rights violations and international crimes committed in Abkhazia, the following call for special attention:

2006

On 6 January, on the road between Gali and Tagiloni, six armed persons stopped a bus in the village of Nabakevi, forced Malkhaz Sh. Okujava, resident of Tagiloni, to get off the bus under the threat of arms, and released him after his family paid 12 thousand dollars.

On 8 January, the family of Dazmir Ekhvaia, residing in Gali, were attacked by several unidentified persons who took away 200 kg of nuts.

On 8 January, the family of L.V., residing in Ochamchire, were attacked by three members of the Rapid Response Unit of the separatist Ministry of Internal Affairs deployed in the same town. The attackers, in a drunken state, physically assaulted L.V., took her forcefully to their base and raped her. The injured party addressed local militia department, however no criminal case was opened against the attackers.

On 9 January, Zaira Ekhvaia, the village head, was kidnapped from her home in the village of Nabakevi. She was released on 11 January after the payment of ransom of 5 thousand GEL.

On 13 January, two unidentified masked persons kidnapped Valeri S.Gabisonia, 40, residing in the village of Tagiloni, Gali Region. He was released on 20 January, after the payment of 9 thousand GEL.

On 13 January, in 1.5 km from the village of Saberio, Gali Region, several unidentified persons opened fire at a vehicle moving in the direction of Chuburkhinji that was driven by Genadi G.Parulava, employee of Enguri power station, who died on the spot.

On 14 February, a group of Gali militia officers led by Otar Turanba, deputy chief of militia, were making the round of the Lower Zone villages. In the village of Ganakhleba, militiamen opened fire at a group of young people, killing Manuchar Pirtskhalava, and wounding Chakaberia and one more person who were transferred to Zugdidi.

On 19 February, in Gali several unidentified Abkhaz persons kidnapped from the central market Maia Buliskeria, resident of Gali Region.

On 1 March, Tariel Sokhadze, Thea Sharia and Temur Eliava were arrested by the separatist government security service on charges of "illegally crossing the border". The Public Defender made several statements concerning this fact and had a special meeting with Vladimir Stefanov, Head of UNOMIG's Human Rights Office in Sukhumi.

On 3 March, the family of Tamaz Antia, residing in the village of Okumi, were attacked by ten armed persons, who assaulted them physically, and took away family valuables and two tonnes of nuts.

In mid-March, the so-called Ablhaz law-enforcers arrested in the village of Gumurishi, Gali Region, Gurgen Tsaguria, who was found dead in a temporary detention cell several days later.

On 2 April, at 10 am, four armed persons driving a VAZ-2106 vehicle, attacked in the centre of Pirveli Otobaia, Gali Region, a bus moving in the direction of Mziuri-Zugdidi. The attackers took away money and valuables from the driver and passengers and left the scene.

In Gali Region armed assaults happen almost daily near the footbridge, located in the section between the Enguri railway and motorway bridges.

On 4 April, four unidentified persons met on the bridge and assaulted Ghia Okujava and his wife, Indira Okujava (residing in the village of Tagiloni), as well as representative of Tagiloni Abkhaz administration Ghia Sharia. The attackers took away personal belongings, money and valuables. On 12 April, at 5 pm, four unidentified masked persons assaulted near the footbridge Larisa Jgarkava and Marina Loria (both residing in Tagiloni), Prophile Tsulaia (village Khidi), and two young men residing in village Mziuri. About 20 armed assaults occurred in the said site in April alone.

6 April. On completion of the quadripartite meeting held in Chuburkhinji, S Chaban, Commander-in-Chief of the Russian peace-keeping forces appraised positively the situation in the conflict zone. Two additional posts were installed in connection with the rehabilitation works at the Enguri Hydropower Station.

On 9 April, an 80-year old Russian woman was killed in the armed assault in the village of Chkhortoli.

On 10 April, at day-break Otar Nachkebia, residing in the village Khurchi, Zugdidi region, was kidnapped from his home by unidentified armed persons. Later the kidnappers contacted Nachkebia's family and demanded 100 thousand USD for his release. On 25 April, O.Nachkebia was released after the payment of ransom.

On 14 April, at 2 am, Roin Aslandzia, resident of Pirveli Gali and working as a driver at the Enguri Hydropower Station, was attacked in his home by four Abkhaz persons armed with submachine guns, who tortured R. Aslandzia, and took away gold items and 500 USD.

On 15 April, Russian border-guards stopped at the Psou post a 49-year-old resident of Ochamchire district, searched his car and found in the boot a 24-year old victim of trafficking, citizen of Tajikistan.

On 16 April, three unidentified persons attacked the family of Roin Aleksandria residing in village Pirveli Gali, Gali Region. The attackers physically assaulted R. Aleksandria, took away money and went into hiding.

On 25 April, four masked criminals armed with submachine guns attacked the Shakaia family in the village of Agubedia in Ochamchire district and kidnapped Mitusha Shakaia, 60. The attackers contacted the family and demanded the payment of ransom for Shakaia's release.

On 25 April, Temur Tsaguria, 35, arrested on 24 February on charges of illegal carriage of arms died in prison in Sukhumi. Tsaguria's family members stated from the beginning that the gun had been planted. According to the available information, Otar Turanba, in drunken state, entered G. Tsaguria's cell, and a few hours later G. Tsaguria was found hanging in the cell. The story continued in Gali. On 8 May, at about 6 pm there was a conflict between Otar Turanba, deputy chief of Abkhaz militia in Gali and Temur Gangia, of Gali security service. Otar Turanba physically assaulted Temur Gagia, who fired several shots at Turanba. The conflict followed after T.Gagia accused O.Turanba of killing his relative Gurgen Tsaguria in the Sukhumi prison.

29-30 April. The Russian peace-keepers deployed in Gali Region patrolled the village of Refi, Gali Region, with the use of heavy military equipment, carrying out a check-up of documents of local Georgian residents, namely their ID cards and the so called "form No.9", made mandatory by the *de-facto* Abkhaz authorities for all local residents in order to be able to relocate from Abkhazia to other areas in Georgia proper. The persons not having the document, were extorted 10 GEL each by Russian "peace-keepers" for them to be allowed to cross to Zugdidi. This is another demonstration of human rights violations, already systemic in character, perpetrated by Russian "peace-keepers".

On 30 April, four unidentified masked persons armed with 2 submachine guns and 2 pistols attacked a family of local residents, threatened them with arms, tied them, raped their daughter born in 1980, and escaped.

On 2 May, at about 7 pm, four servicemen of the Russian peace-keeping forces driving an armoured vehicle, broke into Mamuka Sartania's home in the village of Sida, Gali Region and demanded a drink. When refused, they brutally beat the family.

On 2 May, at about 4 am, a group of 4 armed Russian peace-keepers (Igor Sazonov, Marina Sazonova, Andrei Trifonov and Volodya Serdyukov) broke into Liana Papava's home in Gali and demanded a drink. When refused, the Russian servicemen assaulted L.Papava's family members and started shooting, wounding L. Papava as a result. Notably, firearms were used also by civilian Marina Sazonova – wife of one of the Russian servicemen.

On 15 May, the People's Assembly – a self-proclaimed parliament of Abkhazia adopted a resolution on "Protection of the rights of citizens of Abkhazia, provision of housing and regulation". According to this resolution, Abkhaz courts shall not initiate proceedings and shall not examine applications where they have already been accepted, on all cases concerning the property of persons who left the territory of Abkhazia before the 1992-1993 hostilities, in the period of the conflict or after it, and their property was transferred to the citizens of Abkhazia. Under the same resolution, execution of judicial decisions concerning property rights of persons who left the territory of Abkhazia shall be suspended. Administrations of towns and villages are not allowed to accept for consideration any documents related to registration of ownership rights, either directly or by proxy, of persons who left Abkhazia before, during or after the conflict. The resolution entered into force on the day of its adoption. This actually serves to legitimize ethnic cleansing and violation of property rights guaranteed by Article 1, Protocol 1 to the European Convention on Human Rights.

26-28 May. At 5 am, a 18-person armed group of Abkhaz separatists led by major Otar Delba, deputy chief of Tkvarcheli department of internal affairs, entered the Gali Region villages in UAZ and VAZ-212 type vehicles. Among members of the group were representatives of the military registration and enlistment office led by Jolaria. The group had a list of call-up age Georgian youths whom they were looking for and apprehending. The operation ended up in apprehension of Bakur Bigvava, Ghia Cherkezia, Noshria Mikava, Givi Jobava (all residents of Okumi), Zaza Atsaguriani and Apolon Rodonaia (both residents of Pirveli Gali). The said persons were transferred to Tkvarcheli. As reported by their relatives, the young men are subjected to coercion to force them to serve in the Abkhaz army.

On 27 May, Alexander Korsenko, resident of village Primorsk in Gali Region was brought to the Republican Hospital in Zugdidi with severe injuries. According to A.Korsenko, he was brutally beaten by members of the Russian peace-keeping forces. The incident was witnessed by A.Korsenko's mother, Julia Korsenko who said that the soldiers started beating her son without any reason. They battered him with a butt, causing severe injuries.

On 28 May, residents of village Bedia, Gali Region, found a dead body of their neighbour Tamar Khvitia-Labjania, 68, killed in her home. According to eye-witnesses, T.Khvitia had multiple injuries in head area. T. Khvitia's relatives informed the militia about the fact, however the militia failed to follow on the incident.

On 10 June, at about 1 pm, two unidentified masked persons armed with submachine guns assaulted the family of Majara Kvachakhia, residing in the village of Gumurishi, Gali Region. The attackers took away jewellery and other items. Kvachakhia's house is located in the proximity to Post No 108 of the Russian peace-keeping forces, however, the latter showed no reaction to the incident.

On 10-11 June, members of the Abkhaz militia, in six vehicles, entered the Lower Zone villages of Gali Region: Sida, Tagiloni, Nabakevi, Otobaia, Gagida, Ganakhleba and Bargebi. The so- called "spot-check" was led by Otar Turanba. On 10 June, the Abkhaz militiamen arrested Nugzar Kobalia, Jumber Butbaia, Firuz Mikava and Gocha Mikava. On 11 June, the Abkhaz militiamen arrested in Sida Zaza Tsulukia and Ramaz Khubulava. The detained persons were transferred to the premises of the Abkhaz militia in Gali. On 12 June, they were released after the payment of a certain sum of money.

A group of Abkhaz border-guards and customs officers got accommodated in Roin Kardava's house in the village of Nabakevi, Gali Region, and started construction works. The group is made up of 18 militants armed with a mortar, machine-gun and submachine-guns. The group is holding under their control the road between Nabakevi and Khurcha, and several sites along Enguri.

On 17 June, at 2 am, Abkhaz law-enforcers led by Otar Turanba entered the village of Tagiloni, Gali Region and went to Otar Beraia's home. They encircled the house and asked Gela and Gogita Beraia to come out of the house with their hands up. The brothers were not at home, so the law-enforcers apprehended their father Otar Beraia and took him to militia in Gali. Two days later O. Beraia was released. He said O.Turanba wanted to kill his sons.

On 19 June, Abkhaz militiamen entered the village of Achigvara, Gali Region, in 3 vehicles and 3 PAZ-type buses together with the military commissioner of Ochamchire district (the group was composed of 15 persons armed with submachine guns) in order to enlist for military service local young men. The military commissioner, Konstantin Parulava had ready lists that were used to force about 15 young people out of their homes late at night. The young men were transferred to the militia premises in Ochamchire. Every young men was told to pay 400 USD to be released. The young men's families and relatives choose not to speak about the apprehension and money extortion, fearing that the young men might be mistreated. It is known that Temur Gogua, military commissioner of Tkvarcheli, Besik Bigvava, military commissioner of Gali and Besik Kirtadze, his deputy, extort money form local residents.

On 26 June, the Abkhaz militia of Gali and representatives of the military registration and enlistment office carried out a joint spot-check, arresting 11 youths. They were transferred to the militia in Gali and coerced to military service in the Abkhaz army. The names of three youths are: Nika Kolbaia (from Tagiloni), Giuli Adamia and Elguja Toria (both from Chuburkhinji). The latter two were released shortly after the payment of a certain amount of money, whereas others were released later, after their families paid money. Besik Kirtadze, representative of the military registration and enlistment office in Gali, spoke with residents of Tagiloni and said that unless their sons serve in the Abkhaz army, their families would not be allowed to live in Abkhazia.

On 16 June, in Nabakevi, Gali Region, unidentified armed persons attacked the house of Mamuka Jikia and Nato Khunchua, threatened them with arms and took away valuables and money. The attackers wounded Mamuka Jikia in leg. The attackers did not allow Jikia's family members to transfer him to hospital in Zugdidi, so they had to take a detour.

In the environment where human rights violations have taken on permanent and massive character, the CIS peace-keeping forces display unacceptable negligence. Moreover, they get awards. On 21 June, in the "Sukhumi" military sanatorium housing the Headquarters of the Russian peace-keeping forces, the self-proclaimed separatist government of Abkhazia marked the 12th anniversary of deployment of the Russian peace-keeping forces in the conflict zone. According to Sergei Chaban, Commander-in-Chief of the CIS peace-keeping forces: "in twelve years 1377 servicemen were marked with awards; two of them – lieutenant Roman Barsenov and private Dmitri Mironov were awarded posthumously the title of Hero of Russia; 27 servicemen were awarded the Order for Courage, 32 servicemen – the Order for Services for Homeland, 258 servicemen were awarded the medal "For Military Courage" (1st degree), 421 servicemen – the medal "For Military Courage" (2nd degree), and 639 servicemen were awarded the medal "For Strengthening the Military Community".

THE SITUATION IN GEORGIAN-LANGUAGE SCHOOLS IN GALI REGION

In the Georgian-language schools of Gali Region, representatives of the Abkhaz administration often create insurmountable problems for schoolchildren and their teachers, particularly in terms of receiving education in their native Georgian language. In Gali, in the territory under control of the CIS peace-keeping forces, a number of disciplines were withdrawn from the curriculum of local schools under the pressure of the Abkhaz authorities, namely, the history and geography of Georgia, and the Georgian language and literature. Georgian teachers in Gali are forced to teach by Russian textbooks and according to the school programme of the

Russian Federation. These facts represent gross violation of the provisions of Protocol 1, Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the right to education) and the European Charter on Regional and Minority Languages.

On 24 January 2006, Georgian participants of the meeting held in Gali under the UN auspices were greeted in Georgian by pupils of a nearby school. On the following day, the school principal and pupils were summoned by the *de-facto* authorities and threatened with closure of the school.

The *de-facto* Abkhaz government and the Ministry of Education held a meeting in Sukhumi and decided that starting from 1 September 2006, the languages of instruction in school in the whole territory of Abkhazia, including Gali Region, would be the Russian and Abkhaz languages. This process is encouraged by the officials of the Russian Federation. In May 2006, Indira Vardania, the Minister of Education of the *de-facto* government, had a meeting with Irina Badayan, Head of the Education and Science Authority of Sochi Administration. After the meeting Indira Vardania stated that "teachers in Abkhazia and their colleagues in Sochi work in a single space of the standards of the Russian Federation's system of education".

DEMOCRATIC INSTITUTIONS IN THE PEACE-KEEPING ZONE

There are no democratic institutions, human rights NGOs or offices of international organizations in Gali that would examine and objectively evaluate the situation existing in the peace-keeping zone.

Setting-up of a UN Human Rights Office in Gali has been an issue for several years already. It is to be noted that the operation of the UN Human Rights Office in Sukhumi is limited in scope. Its work in Gali Region is largely ineffective, and it has almost no impact on the human rights situation in the rest of Abkhazia.

The Georgian government has repeatedly spoken of the need to establish the UN Human Rights Office in Gali. However, according to representatives of the *de-facto* authorities, there is no need to open the UN Human Rights Office in Gali and the Abkhaz leadership does take measures to protect the rights of the population in Gali Region.

It is to be noted that the UN Secretary General Koffi Annan, repeatedly called the Abkhaz side to give its consent to deployment of civilian police operating under the UN Mission and open the Human Rights Office in Gali. However, despite the calls of international organisations, the Human Rights Office has not been opened and neither has the civilian police been deployed in Gali.

THE SITUATION OF THE PROTECTION OF HUMAN RIGHTS IN TSKHINVALI REGION

A continued violation of human rights is a persistent reality in Tskhinvali Region, with frequent cases of kidnapping, unlawful arrests, persecution on ethnic grounds. These abuses often go together with impaired freedom of thought and expression.

In addition to facts of crime, the South Ossetian authorities, too, perpetrate offences such as confiscation of private property. Under international law and Georgian legislation, such facts of confiscation and transfer of property are qualified as violations of human rights and criminal offences.

The following facts paint a clear picture of the human rights situation in Tskhinvali Region.

On 20 January, armed persons kidnapped near the village of Ergneti Lado Chalauri, chief of police in Eredvi and police officer Gocha Gvimradze, and brutally beat the. Several days later, on 25 January, they were released.

On 30 January, in the area near the Ergneti market, two Ossetians kidnapped K.Dvalishvili and Z.Papiashvili, fiscal police officers. Z. Papiashvili was physically assaulted in Tskhinvali commandant's office. Dimitri Tasoev, member of the South-Ossetian parliament and K.Dvalishvili's acquaintance, brought the two detained officers from Tskhinvali to the territory controlled by Georgians.

On 1 February, on the order of Marat Kulakhmetov, Commander of the Russian peace-keeping forces in the conflict zone, 11 armoured personnel carriers changed their stationing site and moved to the village of Tkviavi. Russian peace-keepers demanded that a truck stopped by Georgian law-enforcers on 31 January because of the accident be returned to them. The truck driver did not have the documents required in order to be allowed to move in the conflict zone.

On 8 February, three Russian officers, not having Georgian visas, were detained in the conflict zone. This was followed by the order of Marat Kulakhmetov, Commander of the Russian peace-keeping forces in the conflict zone to station heavy military equipment in Georgian villages.

On 17 February, at the Megvrekisi post, the Russian peace-keepers opened fire, without any warning, at civilians Ghia and Gela Chulukhidze.

On 17 April, a shot was fired from anti-tank mortar stationed in Dmenisi in the direction of police station in the village of Vanati.

On 29 May, the Public Defender visited Tskhinvali Region together with the State Minister Giorgi Khaindrava and had meeting with the Georgian population of the Liakhvi and Frone valleys. The situation in 12 out of 14 Georgian villages located in the Frone valley is particularly grave. Ethnic Georgians are subjected to violence and maltreatment, living in conditions equal to slavery. Not infrequently, they are subjected to forced labour.

PERSECUTION FOR POLITICAL BELIEFS

People holding differing views in the self-proclaimed Republic of South Ossetia are persecuted. Particularly active in this regard is the so-called State Security Committee. Critical statements concerning the de-facto president Eduard Kokoiti, as well as any pro-Georgian opinions are severely punished. Frequently people are arrested on charges of espionage in favour of Georgia.

On 4 January, the de-facto government compiled and published a "black list" of persons both from among Georgian officials and residents in Tskhinvali Region.

On 26 February a special unit attacked participants of a peaceful rally and arrested some of them.

On 26 February, officers of criminal police of the South-Ossetian Ministry of Internal Affairs arrested David Megelashvili, citizen of Georgia residing in village Sakasheti, Gori region, on absolutely unfounded charges of subversive activity and brutally beat him. Later, due to the efforts of the Georgian side, he was released.

LIABILITY FOR HUMAN RIGHTS VIOLATIONS IN THE TERRITORY OF ABKHAZIA AND SOUTH OSSETIA

Given the main goal of the protection of human rights, it is important to establish as to who is responsible for gross violations of human rights and international crimes perpetrated in Abkhazia, in Gali Region and the so-called peace-keeping zone. Clearly, under regular circumstances this would not be an issue to bring up, as Abkhazia, including Gali Region, is recognized as part of the Georgian State by all subjects of international law. Naturally, it is Georgia that bears the responsibility for safeguarding human rights in the region. However, it is widely known that Abkhazia is *de facto* outside the control of the Georgian state, as demonstrated by a number of legal documents endorsed by Georgia.

An answer to the question as to who is responsible for the protection of human rights in Abkhazia, particularly, in Gali Region, can be found in the decisions of the CIS Summit of Heads of State that led to the deployment of the CIS (that is to say, Russian) peace-keeping forces.

More specifically, according to Article 5 (d) of the Resolution of the CIS Council of Heads of State "On the Use of Collective Forces in the Zone of the Georgian-Abkhazian Conflict", peace keeping forces are under an obligation to secure observance of human rights and norms of international law in the territory under their control. This Resolution was signed by the CIS Heads of State on 22 August 1994. On 26 May 1995, the CIS Heads of State approved an annex to the said resolution. Article 5 (d) and (e) of the Annex puts the peace-keeping forces and the military observers mission under an obligation to secure for all persons displaced from the conflict zone proper conditions for their safe and dignified return to places of original residence, promote protection of human rights and norms of international law. Hence, primary responsibility for safeguarding human rights in the Georgian-Abkhazian conflict zone rests with the CIS peace-keeping forces. However, over the entire period after these resolutions, the CIS peace-keeping forces have not only failed to carry out properly their mandate, but have often initiated themselves or connived in abuse of human rights in the zone under their control.

Protection of human rights in Abkhazia, as well as in other parts of Georgia, should naturally be the responsibility of the Georgian state whose citizens live in Abkhazia, whose territory is part of Georgia. However, the primary responsibility for safeguarding human rights in Abkhazia rests with Russia that has a profound and powerful influence on Abkhazia. Russia has its military units stationed in Abkhazia, namely, in Ochamchire, Sukhumi and Gudauta, as well as the Bombora military airport. The CIS peace-keeping forces deployed in Abkhazia are composed exclusively of subunits of the Russian Armed Forces and subordinated directly to the Russian military command. Article 2 of the Resolution of the CIS Council of Heads of State "On the Use of Collective Forces in the Zone of the Georgian-Abkhazian Conflict" (22 August 1994) says that Commander of the peace-keeping forces in the peace-keeping zone shall be a representative of the Russian Armed Forces. Russia exercises a full measure of influence in Abkhazia, which is corroborated by factual evidence, as pointed out in previous reports.

In similar cases, where the realities on the ground make it necessary to identify the state liable for ongoing violations of human rights in a particular territory, it is essential to define both a *de jure* and a *de facto* jurisdiction over the territory where these violations (offences) occur.

In the context of international law, these issues are treated in the European Convention for the Protection of Human Rights and Fundamental Freedoms, namely, in Article 1: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention". The notion of jurisdiction referred to in this Article implies administrative and territorial jurisdiction, as well as actual jurisdiction exercised by a state both over its own territory and territories of other states where the state concerned is in a position to exert, through its agencies (structures) a decisive influence and exercise actual jurisdiction.

The European Court of Human Rights and the European Human Rights Commission do not allow the states to disclaim responsibility for action and omission of persons and agencies (structures) under their jurisdiction under the pretext of the action or omission occurring outside the borders of a state concerned. Hence, the notion of 'jurisdiction' referred to in Article 1 of the European Convention on Human Rights is not confined to territorial aspects alone, and includes also the jurisdiction a state can effectively exercise on the territory of another state through its administration, including the armed forces.

According to the case law of the European Court of Human Rights, 'jurisdiction' in the sense used in the Convention is not limited solely to the territory of the Contracting States and can include different territories, whose boundaries do not always coincide with geographical borders. In its judgment on the case "Loizidou v. Turkey" the European Court of Human Rights held that 'jurisdiction' is a broader notion than the 'territory'. The Court judged that "proceeding from the object and purpose of the Convention, the Contracting States are also held responsible for the territories outside their national borders they effectively control as a result of military action, whether lawful or unlawful, having an obligation to ensure either directly or by means of the administration they are controlling, including the armed forces, that the rights and liberties provided for in the Convention are observed in that territory".

Hence, proceeding from the above judgment of the European Court, a state, irrespective of whether a territory is part of it, is under an obligation to secure protection of the rights provided for in the Convention in the territories it controls *de facto* through its state structures, including armed forces.

Proceeding from the commonly known facts demonstrating Russia's involvement in and control over the territories of Abkhazia and South Ossetia, which was pointed out, *inter alia*, in the Public Defender's reports of 2004 and 2005, on the one hand, and the provisions of the European Convention on Human Rights and the European Court's case law, on the other, it can be concluded that the ultimate responsibility for securing in the territory of Abkhazia and South Ossetia the rights and freedoms provided for in the European Convention rests with the Russian State.

Georgia should raise this issue with the Council of Europe, OSCE, EU and UN in order for international organizations to have a real picture of the situation in these regions, and take it into consideration when assessing the situation.

Recommendations

1. It is important to carry out international monitoring with a view to looking at the existing situation of protection of human rights after the deployment of the Russian peace-keeping forces in Abkhazia, in the so-called security zone and in Gali Region. To this end, the Ministry of Foreign Affairs should carry out relevant work with OSCE, UN, the Council of Europe and other international organisations.
2. The Prosecutor General's Office of Georgia should open investigation into criminal acts committed in the territory of Abkhazia and South Ossetia that are described in this Report. It is necessary to initiate criminal proceedings (including through the Interpol channels) against Volmer Butba, Otar Turanba and all persons who took part in punitive operations against civilians, and are implicated in kidnappings, murders, robberies, rapes and other crimes.

7 ON THE SOCIO-ECONOMIC SITUATION OF IDPS

According to the data available for the first half of 2006, there has been no improvement in the socio-economic situation of IDPs. They are persistently faced with multiple social problems including access to healthcare, education, employment, food, housing, etc. The situation is further compounded by persistent impairment of the rights of IDPs, especially in the context of large-scale privatization currently underway in Georgia. When selling state-owned buildings and facilities, the state fails to take into consideration legitimate interests of IDPs compactly residing in collective accommodation facilities.

Oftentimes, IDPs are found to live in basements, in wrecky buildings, some of them damaged by the earthquake. Not infrequently, several families live in one room.

Many of refugees have not been provided with housing and most of them reside in rented homes. A steep rise in rentals puts IDPs under risk of not having any dwelling place at all. Up until now, the Ministry of Refugees and Accommodation has no structured policy aimed to address the problem of provision of housing for IDPs. Oftentimes, the Ministry tries to avoid exercising its powers.

Despite numerous promises, meagre IDP allowances of 14 GEL have not increased. The situation is further compounded by the fact that IDPs are no longer getting humanitarian relief. Lack of financial capacity makes timely and adequate medical assistance inaccessible for IDPs. The situation in Georgia's provinces is particularly daunting.

Another important issue is the problem of power supply, water and other utilities in collective accommodation facilities. In Tbilisi alone, 17 collective accommodation centres have no power supply, or at best have it for 2 hours a day. 1543 IDPs from Abkhazia, residing in Bagebi student's hostel premises have been disconnected from power supply for over 2 months. This, in turn, means lack of water, as water pumps cannot be operated without power, making IDPs living conditions even worse.

Because compact accommodation facilities are not equipped with individual electricity meters, IDPs, differently from other citizens of Georgia, are deprived of the right to have access to water and electricity, and pay only for their consumption. For the same reason, IDPs are not in a position to make use of the voucher for increased tariff compensation issued by the Ministry of Labour, Health and Social Security. It is an alarming fact that when IDPs try to address this issue, state agents resort to breach of law, blackmailing and use of force.

Annual registration of IDPs has not been conducted since 2004. As a result, full and objective information concerning IDPs' numbers and their accommodation is not available. This, in turn, has led to a chaos that followed ejection of compactly accommodated IDPs in Ajara. It is to be noted that the so-called verification conducted in 2005 could not have any legal effect, as it was not based on any legal grounds. The verification exercise cost 280 thousand Euro (provided through the financial support of the UNHCR Office and the Swiss Development Agency) and provided statistical data that have so far found no practical application. It is to be noted further that most of IDPs had certain misconceptions concerning the mandatory character of the process, as clips and booklets disseminated by the Ministry of Refugees and Accommodation stated that IDPs failing to pass verification would not get their benefits and allowances.

The Law of Georgia Internally Displaced Persons is far from perfect, and it is not aligned with the UN Guiding Principles on Internal Displacement, despite the fact that under Para. 39 of Resolution No 2004 (23 July 2004) of UN ECOSOC "The States faced with the problem of internal displacement should create an effective system of legal norms in line with the UN Guiding Principles on Internal Displacement to regulate internal displacement within the state".

It s important to note that Ordinance No 80 (23 February 2006) of the Georgian Government led to setting up a governmental commission tasked with preparing proposals for elaborating policies and strategies called to address the IDP problem, and coordinating activities towards implementation of the strategy. However, no strategy has been developed so far, hence no allocations can be included in a draft state budget for 2007 towards its implementation.

On the other hand, on 12 September 2005, the Georgian Government passed Ordinance No 157 concerning measures to regulate issues pertaining to registration , social protection, disbursement of money allowances, provision of humanitarian and other assistance to IDPs and refugees. Despite a number of obligations defined in the ordinance, the work of the Ministry is virtually confined to transfer of benefits and utility payments to respective accounts.

Thus, the state lacks well-reasoned and informed policies with regard to IDPs. The above problems are being addressed spontaneously and sporadically, which is clearly demonstrated by eviction of compactly accommodated IDPs first in Ajara and, later, from the Republican Hospital in Tbilisi.

On the Problem of Housing among IDPs residing in Ajara

The Public Defender has received collective (15) and individual (12) applications from IDPs from Abkhazia, residing in collective accommodation centres in hotels and sanatoria in Ajara.

Their dwelling space was purchased by Ajara Resorts Holding V company that demanded that IDPs vacate the buildings. IDPs considered that the compensation deal offered to them was not fair.

The applicants pointed out that the authorities and police of Ajara pressurized and threatened IDPs, thus forcing them to leave the buildings. The pressure implied putting water supply and sanitation out of order, disconnection from power supply, etc. IDPs said that threats were carried out by various officials, including Alexandre Shvelidze, Deputy Minister of Labour, Health and Social Security of the Ajara Autonomous Republic who ordered IDPs on 26 June 2006 to vacate the building within 48 hours and said in case they failed they would be ejected from the building by police and special task units.

The PDO representatives looked into the issue on the ground and concluded that IDPs had been accommodated in the building on the basis of a legal act representing a legal basis for them to reside in the said premises.

- Under the Law of Georgia on Internally Displaced Persons, Article 5, Para 2: "The exercise of IDPs rights at their place of temporary residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-government bodies".
- Under Article 5, Para 4 of the same law: "Housing disputes shall be settled through the court procedure. Therefore, before the restoration of Georgia's jurisdiction on the respective part of the territory of Georgia, IDPs shall not be expelled from their places of temporary residence unless:
  a) a written agreement has been reached with IDP;
  b) respective space of residence is allocated where IDPs living conditions may not be worsening;
  c) force major or other catastrophes take place, which entails specific compensation and is regulated according to the general rules;
  d) space is occupied illegally in violation of the law.

According to the above legal norm, it is possible to evict an IDP from the dwelling space in case an agreement is concluded with him in writing, though (s)he is not under an obligation to vacate the dwelling. In case the IDP concerned is not willing to leave the place of residence, the state has an alternative to provide another dwelling space with no worse living conditions than in the dwelling under question.

In the case under discussion, the agreement between the Government of Ajara and the Investor spoke of 1921 families accommodated in the disputed buildings. As of 5 June 2006, an agreement was reached with 1601 families, of which 1579 received the compensation, while no agreement was reached with remaining families.

Hence, the state (and/or the investor) have the right to apply to court demanding eviction of IDPs, which under Article 5, Para 4 of the Law on Refugees and IDPs is the only acceptable form of resolving housing-related disputes, or alternatively, to allocate for IDPs another dwelling space, where living conditions shall by no means be worse than in the disputed dwelling.

IDPs' eviction from a disputed space is only allowed on the basis of court orders, whereas execution of a court order on forcible eviction is the responsibility of enforcement department or police. However, contrary to the law, this function is performed in absence of any judicial act by units of the Ministry of Internal Affairs. More specifically, on 26 June 2006 criminal police officers visited all rooms at the Medea Hotel and threatened IDPs residing there with forcible ejection.

- Under the Law of Georgia on Internally Displaced Persons, Article 5, Para 2: "The exercise of IDPs rights at their place of temporary residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-government bodies". (Article 5, Para 2);
- "State shall secure IDPs' space of temporary residence. The Ministry shall accommodate IDPs through State bodies and bodies of local self-government (administration) within the limits of space allocated for IDPs temporarily"(Article 5, Para 3);
- "The issues of settlement, registration, social and other assistance shall be settled by the Ministry within its competence together with relevant executive and local self-government bodies" (Article 8).

These obligations notwithstanding, the Ministry of Refugees and Accommodation has averted fulfilment of its responsibilities, which is clearly demonstrated by the letter that Deputy Minister Irakli Gorgadze sent to the Public Defender stating that "the process of privatisation underway in the Ajara Autonomous Republic is regulated by the agreement concluded between the Government of Ajara and the Investor. Hence, payment of compensations is the responsibility of the local authorities of the Ajara Autonomous Republic, that is exercised by it independently from the Ministry of Refugees and Accommodation".

Based on the materials analyzed, the Public Defender concluded that is inadmissible to expel IDPs from collective centres in the absence of any agreement in writing, and without a judicial decision. Their forcible eviction

can only be carried out in accordance with Article 5, Para 4 (b), (c) and (d) of the Law of Georgia on Internally Displaced Persons.

Criminal police can only be involved to stop a crime or protect law and order.

The Public Defender concluded that under the effective law, protection of the rights of IDPs in the described circumstances was the responsibility of the Ministry of Refugees and Accommodation, as well as local authorities and self-government bodies of Ajara.

On 5 July, the Public Defender addressed the Minister of Refugees and Accommodation with a recommendation to take all necessary measures and ensure the fulfilment of its obligations by the Ministry, as prescribed by the law.

Despite a number or reminders, the Ministry of Refugees and Accommodation has so far failed to inform the PDO about the results of discussing by the Ministry of the Public Defender's recommendation.

Instead of having the dispute examined by court, or allocating alternative housing for IDPs, the authorities of Ajara chose to force IDPs out of the Medea Hotel. As a result of an operation carried out under the guidance and with direct involvement of the chief of the Main Department of Internal Affairs of Ajara, special units and criminal police, IDPs were forcibly ejected from the building.

Officers of the Main Department of Internal Affairs of Ajara had no right to take part in the forcible eviction of IDPs from their residence. Hence, this act represents an offence provided for in Article 333 of the Criminal Code of Georgia, namely, exceeding of official powers.

The Public Defender concluded that acts committed by officers of the Department of Internal Affairs involved signs of crime; materials examined by the PDO were sent to the Prosecutor General of Georgia Mr. Zurab Adeishvili for his office to open investigation. The Prosecutor General's Office, for its part, sent the relevant materials, applications and explanations to the Prosecutor of Ajara Autonomous Republic for follow-up, accompanied with a letter saying that "materials referred by the Public Defender to the Prosecutor General's Office were sent to the Prosecutor's Office of Ajara in order to be attached to the criminal case in its jurisdiction concerning the abuse of authority by the senior officials of the Department for IDP Matters of the Ministry of Labour, Health and Social Security of Ajara Autonomous Republic". The letter sent to Ajara by the General Prosecutor's Office is silent about the excess of official powers by officers of the Department of Internal Affairs, constituting an offence under Article 333 of the Criminal Code of Georgia.

In his letter to the Public Defender, the Prosecutor of Ajara Autonomous Republic Kakhaber Maisuradze pointed out that "police officers were involved in the process to ensure that vacation of the building was conducted peacefully, and to prevent any breach of law by persons antagonistic to the process, i.e. persons not belonging to the IDP category and occupying the premises of Meskheti Hotel illegally".

It is to be noted that in his response letter sent to the Public Defender in connection with a similar process of eviction, Police Coronel David Bedia, Chief of the Main Department of Internal Affairs of the Ministry of Internal Affairs of Ajara stated that "police officers were involved in the process of resettlement of IDP families from "Aisi" holiday hotel at the request of the Ministry of Labour, Health and Social Security in order to protect law and order and assist IDPs in relocating to new dwelling places".

Upon receipt of this letter, the Public Defender sent additional materials to the Prosecutor of the Ajara Autonomous Republic Kakhaber Maisuradze: explanations, clarifications, applications and video-materials.

In his response letter, the Prosecutor of the Ajara Autonomous Republic pointed out that the Prosecutor's Office had already provided an exhaustive answer to the Public Defender of Georgia.

Given the above facts, it can be concluded that the investigative actions carried out the Prosecutor's Office of the Ajara Autonomous Republic were not adequate, which leads to a presumption of neglect of official duty – an offence provided for in Article 342 of the Criminal Code of Georgia.

The process of eviction was witnessed by PDO representatives. They spoke to about 300 IDPs initiating a protest action, demanding protection of their legitimate rights. PDO representatives could see for themselves how policemen were visiting every single family and using threats to force them out of their temporary dwellings. Those IDPs who withstood the pressure were ejected from their premises by masked members of special units. Those IDPs who, under the signed agreements, were supposed to vacate their premises within two-week time, had to move their personal belongings in complete chaos.

The expelled IDPs were trying to save their belongings, often fairly expensive. To make the things worse, they were disconnected from power supply, which naturally led to stopped lifts. The sanitation system was put out of order. IDPs, literally left in the street, put up self-made tents in the street, however they were ejected from there, too. In protest, IDPs started marching towards Abkhazia. The march was covered both by Georgian and foreign media. Given all these facts, the allegations made by representatives of the Prosecutor's Office and other officials about the "assistance to IDPs provided by police" are none other than sheer cynicism.

About IDPs Accommodated in the Premises of D.Kipshidze Republican Clinical Hospital of the Georgian State Medical University

The Public Defender was repeatedly addressed by IDPs accommodated at the Republican Hospital. As stated in the application, most of IDPs residing in the premises of D.Kipshidze Republican Clinical Hospital of the Georgian State Medical University are family members of fighters for Georgia's territorial integrity, of whom many became war-disabled persons or were killed during the war.

According to the applicants, they heard from TV programmes and some oral statements that before September 2006, 210 IDP families residing in the hospital were supposed to vacate the premises. To this end, George Kheviashvili, Minister of Refugees and Accommodation offered them 10 thousand USD as a compensation deal per family; which was deemed by IDPs as inadequate amount to secure equivalent living conditions.

IDPs pointed to certain breaches and faults in the process of registration, where families were registered as such on the basis of biological, i.e. genetic kinship. In some cases compensations were calculated according to the floor area, in others – according to the number the family was assigned. When calculating the floor area, store rooms and toilets were taken in consideration selectively.

The PDO contacted the Ministry of Refugees and Accommodation to get information concerning the legal grounds for compensation deals and IDPs' evictions from their premises, as well as the list of those IDPs who had already received compensations. However, no response followed from the Ministry within the statutory period. After sending a reminder to the Ministry, the PDO received a letter from Minister Giorgi Kheviashvili (12.09.06, No 01/01-17/6215) stating that with a view to defining terms and conditions of vacation of hospital premises by IDPs, a special commission was set by the joint order of the Minister of Refugees and Accommodation and Minister of Labour, Health and Social Security (10.07.06 No.195/o 10.07.06 No.83) tasked with determining the amount of compensation and, to this end, conducting negotiations with IDPs to reach an agreement, regulating the form and terms of compensation deals, as well as addressing organizational matters related to the vacation of hospital premises by IDPs. Besides, the Minister pointed out in his letter that the

information requested by the PDO did not fall solely within the competence of the Ministry of Refugees and Accommodation; however, he promised that the Ministry, being one of the parties in the above commission, would provide the requested information after the commission completed its work.

PDO representatives spoke to IDPs who organised a protest action. According to the IDPs, in oral discussions the Ministry officials offered them certain deals. They also indicated certain faults in the process of registration, where families were registered on the basis of biological, i.e. genetic kinship. In some cases compensations were calculated according to the floor area, in others – according to the number the family was assigned. When calculating the floor area, store rooms and toilets were taken in consideration selectively, which lead to selectivity in compensating for the respective toilet or store room areas.

The Public Defender sent the above applications and relevant materials for follow-up to the Director of Constitutional Security Department, Vazha Leluashvili and Deputy Prosecutor General, George Latsabidze.

Tbilisi Republican Hospital – Collective Application

On 3 July 2006 the Public Defender received a collective application from representatives of the IDPs' committee established to protect the interests of IDPs accommodated at the Republican Hospital in Tbilisi.

The applicants pointed to certain breaches and faults in the process of registration, where families were registered as such on the basis of biological, i.e. genetic kinship, and debasing and, oftentimes, derisive attitude towards them by some officials of the Ministry of Refugees and Accommodation.

At the same time, representatives of the said committee addressed the Ministry of Refugees and Accommodation with two letters (dated 12 and 26 June 2006) requesting information on the schedule for eviction of IDPs from the hospital premises and payment of compensation. According to the applicants, no answer has been provided by the Ministry to this day.

We asked the Ministry to provide, within 15 days, information on the results of discussion concerning the IDPs' applications. However, so far there has been no follow-on by the Ministry.

Shalva Kvaratskhelia Case

The Public Defender was addressed by an IDP from Ablhazia, Major Shalva Kvaratskhelia. According to the applicant, in 1994 he was temporarily accommodated in a cottage at 17, Avchala street, village Zahesi. He is still registered at this address, which is corroborated by his IDP card (No 234). On 2 November 2004, he was expelled from his dwelling by about 30 masked members of a special unit and police officers of Mtskheta-Mtianeti Regional Department of Internal Affairs. According to the applicant, this was done by the order of the leadership of the Ministry of Internal Affairs, as when asked by Sh.Kvaratskhelia what they were doing, the said persons answered they were fulfilling the minister's order. Part of Sh.Kvaratskhelia's belongings were stolen, while others were taken to police storage without even asking for the owner's permission.

The Public Defender addressed the Prosecutor General's Office with a recommendation to start preliminary investigation, and requested the Ministry of Refugees and Accommodation to follow on these facts.

The Public Defender indicated the legal provisions called to regulate issues related to eviction of IDPs from their residence. Namely, under Article 5, Para 4 of the Georgian Law on Internally Displaced Persons: "Housing disputes shall be settled through the court procedure. Therefore, before the restoration of Georgia's juris-

diction on the respective part of the territory of Georgia, IDPs shall not be expelled from their places of temporary residence unless:

a) a written agreement has been reached with IDP;
b) respective space of residence is allocated where IDPs living conditions may not be worsening;
c) force major or other catastrophes take place, which entails specific compensation and is regulated according to the general rules;
d) space is occupied illegally in violation of the law.

Under the same law, "The exercise of IDPs rights at their place of temporary residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-government bodies" (Article 5, Para 2);

"State shall secure IDPs' space of temporary residence. The Ministry shall accommodate IDPs through State bodies and bodies of local self-government (administration) within the limits of space allocated for IDPs temporarily"(Article 5, Para 3);

"The issues of settlement, registration, social and other assistance shall be settled by the Ministry within its competence together with relevant executive and local self-government bodies" (Article 8).

It is to be noted that there was no agreement between Sh.Kvaratskhelia and the Ministry of Internal Affairs concerning his leaving the premises, and in case police thought he was occupying the premises illegally, in contravention of the law, the case should have in any case be resolved by court, in accordance with the relevant law.

Letters sent to the Public Defender by representatives of the General Prosecutor's Office and the Ministry of Refugees and Accommodation, are evidence of negligent attitude to the rights of Sh. Kvaratskhelia, an IDP from Abkhazia.

In connection with the above case, Besik Tkhelidze, of the Prosecutor General's Office explains in his letter (No.2/11-1-3/7576-j) that "as of 1 October 2004, it was not possible to follow the provisions of Article 5, Para 4 of the Law on Internally Displaced Persons, as recommended by the Public Defender, as the said provision of the law entered into force in 2005 (promulgated on 6 April 2005), i.e. after the entry of special unit into the premises". However, it is important to note, that before 6 April 2005, i.e. before the Law on Internally Displaced Persons was amended, the previous version of the said law contained in Article 7, Para 3 provisions similar to those, stipulated in Article 5, Para 4 of the amended law. According to Article 7, Para 3 of the previous law: "Property disputes shall be resolved through the court proceedings. In addition, before restoration of Georgian jurisdiction over the entire territory of Georgia, IDPs shall not be evicted from collective centers, except in cases, when: a) There is an agreement concluded with IDPs; b) Alternative living space, which does not deteriorate IDP's living conditions, is provided; c) Natural disasters or other events take place, envisaging certain compensation and are regulated by general procedure; d) IDP occupied the space arbitrarily, through violation of law.

As noted above, these legal provisions, identical to the provisions stipulated in the amended Law on Internally Displaced Persons of 6 April 2005, were effective from 2001 till 6 April 2005, i.e. in the period when Sh.Kvaraskhelia was evicted from his residence. It seems that representatives of the Prosecutor General's Office failed to fully and impartially look into materials of the case. In his letter addressed to the Prosecutor General's Office, the Public Defender stressed that members of the special unit sent to Sh. Kvaratskhelia's premises misappropriated his personal belongings, which constitutes a wrongful act under Article 182 of the Criminal Code of Georgia. As evidenced by the letter received from the Prosecutor General's Office, the latter failed to give a legal appraisal of the fact and start an investigation.

No document was presented to Sh.Khvaratskhelia concerning his eviction from the residence, such as judicial order, writ of execution, order by the Minister of Internal Affairs or any other official. Members of the special unit of the Ministry of Internal Affairs were not authorized to evict Sh. Kvaratskhelia from his residence. The Prosecutor General's Office indicated in the letter (No. 2/11-1-3/7576-j) sent to the Public Defender that: "from 1994 till 1 November 2004 Shalva Kvaratskhelia was in possession of a cottage and a plot of land located at 17, Avchala Street, Zahesi". That is to say, that the said person was in possession of the premises for ten years. In case he owned the cottage and the land illegally, representatives of the Ministry of Internal Affairs should have applied to court and only on the basis of the respective order by the court could they eject the tenant from the cottage. The Georgian legislation regulates property disputes, including the issue of revindication of an item from illegal possession. More specifically, under Article 172 ("Revindication of an Item from Illegal Possession and Demand for Putting an End to the Disturbance of Ownership") of the Civil Code of Georgia: " 1. The owner may revindicate the item from its possessor, except when the possessor has the right to possess it. 2. If encroachment on or other disturbance of the right of ownership occurs without seizure or withdrawal of the item, the owner may demand that the disturber stops the action. If the disturbance continues, the owner may demand putting an end to the action by filing a lawsuit in court".

Provisions of the Georgian law on IDPs were ignored by representatives of the Ministry of Internal Affairs, similarly to the relevant provisions of the Civil Code of Georgia, and eviction of Sh.Kvaratskhelia from the premises was carried out in violation of the law.

The acts by officers of the Ministry of Internal Affairs who evicted Sh.Kvaratskhelia from his residence located at 17, Avchala Street, Zahesi in the absence of the relevant legal grounds presumably constitute malfeasance in office provided for in Article 332 of the Criminal Code – "excess of official authority"; besides, these acts involve signs of offences provided for in Article 182 of the Criminal Code – "misappropriation", as well as in Article 160 of the Criminal Code – "breach of immunity of residence and other property". The materials at the disposal of PDO suggest that the investigative actions carried out by the Prosecutor General's Office were not complete, leading presumably to a neglect of official duty, an offence provided for in Article 342 of the Criminal Code of Georgia.

The Case of IDPs Residing in the Premises of "Tsisartkela" Kindergarten

The Public Defender was addressed by IDPs residing in the premises of the "Tsisartkela" kindergarten at 64, Guramishvili Street in Tbilisi.

The application, with enclosed documents and clarifications provided by IDPs indicate that IDPs have been residing in the said building since 1997. It was severely damaged during the 2001 and is totally unfit for human habitation at present. Since the IDPs had no alternative, they chose to stay in the wrecky building. The IDPs residing in the "Tsisartkela" kindergarten found themselves at litigation with the management of "Tsisartkela" JSC. The court delivered a decision under which IDPs had to vacate the kindergarten premises, and the adjoining carpentry shop. The Tbilisi City Court issued a writ of execution, ruling eviction of the IDPs from the said premises.

In case the court decision is executed, the IDPs will have no shelter. According to the IDPs, the Ministry of Refugees and Accommodation offered them verbally temporary accommodation in Khoni, Tsalka and Tetritskaro. However, this offer appears unacceptable for IDPs, as this would mean worsening of their living conditions, since over years they have managed to create acceptable social climate and integrate in the community. The areas offered by the Ministry are absolutely alien to them, with no prospects of employment, which means that they will have to pass through a complex process of adaptation and integration again. According to the Law of Georgia on Internally Displaced Persons: "The exercise of IDPs rights at their place of temporary residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-government bodies" (Article 5, Para 2).

The PDO contacted the Ministry of Refugees and Accommodation, and the Mayor of Tbilisi.

As pointed out in the letter by M.Akhvlediani, head of administration at the Mayor's Office of Tbilisi, the Mayor's Office expresses its readiness to cooperate with the Ministry of Refugees and Accommodation on this matter and to the extent possible, provide assistance to the persons concerned. As indicated in the letter by the Deputy Minister of Refugees and Accommodation, in case the Mayor's Office allocates dwelling space for the IDPs, the Ministry undertakes to accommodate them there. The letter from the Ministry contains an enclosure with response letters from Vake-Saburtalo, Gldani-Nadzaladevi and Ddidube-Chugureti district administrations, indicating that property in the districts of Tbilisi is administered by Tbilisi City Service of Property Management, and that there is no information on available dwelling space in those districts at present.

The Case of Valentina and Vezhana Patsatsia

On 11 April 2006, the Public Defender was addressed with an application by Valentina and Vezhana Patsatsia, IDPs from Abkhazia residing in Kutaisi.

According to the applicants, they had no temporary accommodation provided by the state and have lived in a rented apartment in Kutaisi since 1993. Their only source of income is their pensions and IDP benefits. After the rise in rentals, Valentina and Vezhana Patsatsia are unable to pay for the accommodation, which means that one day they may find themselves with nowhere to live in.

As indicated in the application, Valentina and Vezhana Patsatsia have repeatedly applied to various agencies, including the Ministry of Refugees and Accommodation, however, with no effect.

After examination of the application, the Public Defender sent a recommendation to George Kheviashvili, Minister of Refugees and Accommodation, and Giga Chogovadze, Acting Mayor of Kutaisi, to take all measures as prescribed by the law to provide Valentina and Vezhana Patsatsia with temporary accommodation, as under the Law of Georgia on Internally Displaced Persons: "The exercise of IDPs rights at their place of temporary residence is guaranteed by the Ministry of Refugees and Accommodation together with other executive authorities and relevant local self-government bodies".

Omar Kikvidze, Dputy Myor of Kutaisi informed the PDO in his letter (19.05.2006 No 02-1000) that Valentina and Vezhana Patsatsia had been offered living space in a collective centre, however the applicants had refused to move to the collective centre. Once other space fit for dwelling becomes available, it would immediately be offered to Valentina and Vezhana Patsatsia.

From the letter of Irakli Gorgadze, Deputy Minister of Refugees and Accommodation (01/01-17/3901) it followed that out of 93852 IDPs registered in Tbilisi, only 44564 are accommodated in an orderly way. The situation in terms of availability of housing in Tbilisi is extremely complicated, and accommodation can only be provided to Valentina and Vezhana Patsatsia in Georgia's provinces.

The Public Defender addressed the Minister of Refugees and Accommodation again to explain that the applicants resided in Kutaisi, and the Public Defender never recommended to provide them with accommodation in Tbilisi. The Public Defender requested to provide information, together with supporting documents, to show what kind of dwelling was offered to the applicants.

In his response letter (30.08.2006, 01/01-17/6061) Irakli Gorgodze, Deputy Minister of Refugees and Accommodation informed the PDO that the Ministry was ready to accommodate Valentina and Vezhana Patsatsia in Khoni or Baghdadi. In case the applicants so decide, they can approach the Office of the Ministry of Refugees and Accommodation for Imereti, Guria, Racha-Lechkhumi and Kvemo Svaneti (address: 27, Msvidobis street, Kutaisi).

The above information was made available to the applicants. Hence, examination of the application is completed.

The Case of IDPs Residing in "Kartographia" Premises

The Public Defender was addressed collectively by IDPs residing in the premises of the JSC Kartographia (located at 1, Mosulishvili street, Gldani, Tbilisi) and registered at this address (Sagiliani Pikria, IDP card 5631; Grigolava Fridoni, IDP card 1405: Sagiliani Zurab, IDP card 15630, etc. – in total, 67 signatures). Besides, the ruling of 29 October 2004 issued by the Supreme Court of Georgia (No AS-633-910-04) confirmed that IDPs were residing in the said premises lawfully.

According to the applicants, they have been residing in the above building for 4 years, paid for the repair of the premises, installed the roof, electric wiring and water pipes. The applicants request to grant them the preemptive right of acquisition of the premises at affordable rate during privatisation of the building. They indicated that the JSC Kartographia's founder is the state.

On 20 July 2006, the above applicants addressed the Public Defender orally to inform him that they were approached by a person who said he was the owner of the building and demanded that the IDPs vacate it.

The PDO requested the Ministry of Economic Development of Georgia to provide information on whether the JSC Kartographia building was alienated, and if so – to provide relevant documents and information on whether the IDPs' legitimate rights were considered in the process of alienation of property.

So far, there has been no response from the Ministry of Economic Development, which caused PDO to send a reminder.

The Case of Liana Darsania

The Public Defender was addressed by staff members of the former Council of Justice of the Abkhaz Autonomous Republic. According to the applicants, their arrears in wages have not been paid off despite the fact that the Ministry of Finance of Georgia transferred to the Ministry of Finance of the Abkhaz Autonomous Republic the amount required for payment of arrears to staff members of the Council of Justice.

The applicants specified that their arrears in wages accrued in the period 1999-2002, through unjustified reduction of wage rates for public servants.

The Auditing Chamber of the Abkhaz Autonomous Republic carried out an audit of documents of the Council of Justice and found arbitrary reduction of the payroll fund. The Ministry of Finance of the Abkhaz Autonomous Republic was instructed to pay off the arrears within the shortest period.

The Ministry of Finance did not challenge the decision. The existence of arrears was corroborated by the letter of 24 September 2003 sent by the Ministry of Finance of the Abkhaz Autonomous Republic to the Auditing Chamber where it acknowledged the accrued debt in respect of the Council of Justice and stressed that it would be paid off upon receipt of the transfer from the Ministry of Finance of Georgia. The existence of accrued debt was also mentioned in the letter of the Ministry of Finance to the Council of Justice (23 December 2003) stating that the Ministry deemed possible to budget the amount required to pay off the arrears in 2004.

According to the applicants, the Ministry of Finance of the Abkhaz Autonomous Republic failed to fulfil the regulation of the Auditing Chamber and its own promises, which led the former staff members of the Council of Justice to apply to the court.

On 11 March 2004, the Sukhumi City Court legitimised the settlement reached on 24 February 2004 between the Ministry of Finance of the Autonomous Republic and the Council of Justice, and dismissed the case. Under the settlement, the parties agreed to specify by mutual agreement the amount of arrears payable to the staff of the Council of Justice that the Ministry of Finance was expected to start repaying from March 2004. After establishing the amount payable, the parties were expected to draw up a repayment schedule.

The Council of Justice determined the amount payable to the staff and presented the repayment schedule to the Ministry of Finance. However, the Ministry representative refused to sign the repayment schedule, though the arrears were partially repaid. The execution of the court decision was suspended. This led to the issuance of the writ of execution, based on the court ruling of 11 March 2004. The case was transferred for execution to the Regional Enforcement Bureau of the Abkhaz Autonomous Republic that gave the Ministry of Finance of the Abkhaz Autonomous Republic a warning in writing inviting the Ministry to fulfil its obligation voluntarily, which the Ministry did not do.

In 2005, the Enforcement Bureau of the Abkhaz Autonomous Republic was abolished, which has led to failure in enforcement of court decisions.

In October 2004, the Council of Justice of the Abkhaz Autonomous Republic was abolished, too, with the arrears in wages not repaid up until now.

The PDO addressed the Chairman of the Government, the Ministry of Finance of the Abkhaz Autonomous Republic and the Department for Judicial Enforcement in connection with the issues described in the application.

Representatives of the Ministry of Finance informed the PDO that the amount required for repayment of arrears in wages to the staff of the Council of Justice has not yet been disbursed from the budget. The response from K. Agishbaia, Chairman of the Abkhaz Government appeared vague, whereas the Department for Judicial Enforcement has not responded at all.

The Case of Joni Jejelava

On 13 February 2006, the Public Defender's Office was addressed by Tamaz Bendeliani and Joni Jejelava, IDPs from Abkhazia. As pointed out by the applicants, from 1998, with permission of the housing cooperative's chairman, their families (Joni Jejelava's family – 4 persons, and Tamaz Bendeliani's family – 7 members) moved into non-dwelling space of 130 sq.m located at 8/7 Vazha Pshavela Avenue in Tbilisi. By decision of the Chamber of Administrative Cases of Tbilisi City Court (16 January 2006), both families were evicted from the premises without provision of any alternative housing for them. The court decision was challenged at Tbilisi Regional Court.

The applicants requested to examine the legality of the court decision and provide them with temporary housing.

On 16 February 2006, the Public Defender addressed a recommendation to the Ministry of Refugees and Accommodation requesting provision of alternative living space to the applicants in accordance with Article 5, Para 3 and Para 2 of the Law of Georgia on Internally Displaced Persons.

On 7 March 2006, the PDO was informed by the Ministry that the applicants were offered living space in Isani-Samgori district of Tbilisi, or in Khoni district in Western Georgia, which was rejected by the applicants.

On 13 March 2006, the response letter form the Ministry was forwarded to the applicants with a notification on completion of PDO's involvement on the above case. As far as the legality of the court decision is concerned,

the applicant was notified that under Article 14 of the Organic Law on the Public Defender of Georgia: "The Public Defender shall examine an application or complaint, provided that the claimant question the decision ... of the court entered into force". Since the court decision whose legality is questioned by the applicant has been challenged by him in the Regional Court, and since there is so far no decision by the latter entered into force, examination of this issue is beyond the competence of the Public Defender.

The Case of Aliosha Gvarmiani

On 9 November 2005, the Public Defender's Office was addressed by Aliosha Gvarmiani, residing in village Nakra, Mestia district. According to the applicant, the landslide in Nakra and the flooding of river Lekvera destroyed his house and auxiliary buildings and structures. This fact is corroborated by documents attached to the application. This notwithstanding, the so-called "compensation sum" allocated for landslide-damaged households in Mestia district was not paid to A. Gvarmiani. It is to be noted that A. Gvarmiani has 10 children, and is residing currently in his father's house located in the so-called "red zone", i.e. the zone prone to landslides.

On 14 November 2005, the Public Defender addressed a recommendation to the Ministry of Refugees and Accommodation, the President's Representative in Samegrelo-Zemo Svaneti and Governor of Mestia district, asking to relocate Aliosha Gvarmiani's family to a safe location.

In a response letter of 27 December 2005, the Ministry of Refugees and Accommodation notified the PDO that that compensation sums were allocated on the basis of Ordinance No 190 of 20 May 2005. Under the same ordinance, the President's Representative in Samegrelo-Zemo Svaneti was tasked to compile a list of persons left without homes. Aliosha Gvarmiani's name was not included in the list, for which reason he did not receive the compensation sum.

The Governor of Mestia states the opposite. In his letter of 23 March 2006, he informed the PDO that in 2005 the local administration asked the Ministry of Refugees and Accommodation to provide assistance to A. Gvarmiani's family, which was not done, and A.Gvarmiani was included in the 2006 list.

On 27 Febraury 2006, the PDO addressed a letter to the Ministry of Refugees and Accommodation requesting again to assist A.Gvarmiani.

In its response letter, the Ministry informed the PDO of its readiness to examine the issue concerning provision of assistance to A.Gvarmiani, provided that the Government instructs the Ministry accordingly.

In August 2006, PDO representatives met with a representative of the Ecological Migration Department of the Ministry of Refugees and Accommodation who said that A.Gvarmiani's name featured in the 2006 list as a damaged party (Category 1). Presently, the Ministry is purchasing housing for damaged persons.

It is important to note that A.Gvarmiani's wishes to exercise his constitutional right to choose his place of residence, and requests to purchase housing for him in his native village Nakra.

The Case of Gelashvili

On 29 May 2006, the Public Defender's Office was addressed collectively by IDPs residing at 15, Cairo street in Tbilisi. They complained that electric wiring in their premises was out of order, which made their living conditions worse.

After examination of the case, the PDO sent a letter to the Ministry of Refugees and Accommodation asking to address the problem described in the complaint, with the application attached to the letter for the Ministry to follow on it.

Recommendations

1. The suggestion is for the Ministry of Refugees and Accommodation; Ministry of Labour, Health and Social Security; Council of Ministers of Abkhazia, Supreme Council of Abkhazia to set up an interagency working group to elaborate draft amendments to the Law on Internally Displaced Persons, with better guarantees for the protection of IDPs' social rights incorporated into the draft, namely for increased benefits, timely access to effective and affordable health care, housing, etc. The Georgian law on IDPs and mechanisms for its practical implementation should be harmonized to the extent possible with the UN Guiding Principles on Internal Displacement.
2. The suggestion is for the Ministry of Foreign Affairs, Ministry of Refugees and Accommodation, Foreign Relations Committee of the Georgian Parliament and Ministry of Economic Development to carry out consultations with relevant international organisations and friendly states with a view to putting into effect, with the support of international organisations, self-employment programmes and granting soft loans to IDPs for small business development and agricultural activities.
3. The suggestion is for the Ministry of Finance and the Government of Georgia to make provision for additional funds in the draft budget for 2007 to secure protection of social and economic rights of IDPs left without homes and allocation of temporary accommodation for them.
4. The suggestion is for the Ministry of Finance, Ministry of Refugees and Accommodation and the Government of Georgia to make provision for increase of IDP benefits in the draft budget for 2007. The size of current IDP benefits – 14 GEL is not adequate to satisfy even the minimum needs. Therefore, it is desirable to have the benefit amount for IDPs increased.
5. The suggestion is for the Ministry of Finance, Ministry of Refugees and Accommodation and the Government of Georgia to make provision in the draft budget for 2007 for allocations towards necessary measures to ensure power supply and other utilities for IDPs residing in collective centres and provide for installation of individual meters in collective accommodation centres, in order for IDPs to make use of the voucher for increased tariff compensation issued by the Ministry of Labour, Health and Social Security.
6. The suggestion is for the Ministry of Refugees and Accommodation to start in due time the process of annual registration of IDP population.
7. It is recommended, within the shortest time possible, to draft proposals towards developing the State Strategy and Policy for IDPs, coordinate activities towards implementation of the strategy and make provision in the draft budget for 2007 for allocations to implement the strategy.
8. The suggestion is for the Ministry of Refugees and Accommodation, and Ministry of Economic Development to take adequate measures to consider legitimate interests of IDPs residing in collective centres, when those are subject to privatization or alienation.
9. The recommendation is for the Prosecutor General's Office to investigate, immediately and fully, all facts of violation of IDPs' rights.

8 PROTECTION OF REFUGEES' RIGHTS

In 2006, abuses against Chechen refugees were on decline, compared to 2005. True, a number of incidents did occur that currently are under examination, but there were no cases of kidnappings or other criminal offences committed against Chechen refugees.

Representatives of the Public Defender's Office travel periodically to Pankisi valley to meet with Chechen refugees and look at the situation on the ground. The PDO cooperates with the Chechen Refugees' Coordination Board. Chechen refugees are represented at the National Minorities Council set up with the Public Defender's Office, and take part in discussions on various issues.

Refugees from Chechnya are faced with severe social problems, such as access to healthcare, employment, education and others. Despite the relevant provisions of Article 5 of the Law on Refugees and recommendations made by the Public Defender, no cash benefits are paid to Chechen refugees by the Georgian State, whereas humanitarian aid provided by international organisations is insufficient, and often of poor quality, as reported by Chechen refugees. On top of that, differently from IDPs, Chechen refugees are not granted social benefits to cover electricity costs. Neither are they provided with travel documents. Because of non-availability of a respective norm in the Georgian refugee law, the Georgian authorities do not issue for Chechen refugees international travel documents. Chechen refugees face problems in getting money remittances in banks.

It is to be noted that many of Chechen refugees do not feel safe. They are grateful to the State and people of Georgia for giving them a helping hand and refuge in difficult circumstances. However, many of them think that in Georgia, too, they may become targets for watch, persecution and oppression by Russian secret services, which has led them to a decision to move from Georgia to a third state. Through UNHCR Office in Tbilisi, Chechen refugees try to address European states and USA, though, as reported by Chechen refugees, UNHCR often ignores their requests and fails to forward their documents to respective states. UN often invokes deficiency of documents submitted by refugees as a reason for refusal by the third countries to grant them asylum. Chechen refugees ask the UNHCR Office to provide assistance to detainees' families and minors. This issue calls for examination by competent bodies, as it falls beyond the competence of the Public Defender.

On 26 May 2006, representatives of the Public Defender's Office

2006

travelled to Pankisi and met with Chechen refugees. During the meeting, Chechen refugees spoke of their predicament, saying that they often lack food, medications and clothing. Five families residing in the kindergarten premises are faced with the risk of losing their residence, as local residents demand to restore the kindergarten.

As stated by Chechen refugees, they are continuously faced with hurdles from the Ministry of Refugees and Accommodation when seeking a refugee status in Georgia. Besides, the process of harmonization of the Georgian Law on Refugees with the UN Convention on the Status of Refugees drags on, which does not allow the Ministry of Refugees and Accommodation to issue travel documents necessary for the movement of refugees. As a result, refugees are not in a position to visit their family members and relatives residing in Azerbaijan, Turkey and other countries.

The Public Defender addressed the Ministry of Refugees and Accommodation concerning these problems and requested to examine the situation and inform the Public Defender of the measures taken to alleviate the situation.

The Ministry of Refugees and Accommodation informed the PDO of the agreement reached with the owner of the privatized premises housing the former kindergarten, according to which the building is provided by its owner for temporary use by the Ministry, hence the families residing there are no longer threatened with eviction.

In what concerns travel documents, the PDO was informed of a draft government resolution on refugee travel documents was prepared and is already submitted for examination to the Legal Department of the Ministry of Refugees and Accommodation.

The work is underway on a new draft of the Law of Georgia on Refugees. The Public Defender expressed his readiness to work jointly with the Ministry of Refugees and Accommodation on the draft law.

The Public Defender was addressed by Chechen refugees residing in Pankisi who pointed out social problems faced by refugees, including the problems related to access to education.

According to the applicants, the secondary school in Duisi runs the Georgian-language and the Russian-language sectors – with Georgian and Russian as the languages of instruction, accordingly. The Russian sector provides tuition to Chechen children. Teachers of the Georgian sector get their remuneration in accordance with the general procedure, while teachers of the Russian sector are compensated for their work by international organisations in kind – with flour, oil and other food products. As pointed out by Chechen refugees, conflicts between Georgian and Chechen children are not infrequent. As a result, Chechen refugees residing in Pankisi are reluctant to send their children to school, with an ensuing failure of the educational process and inability of refugee children to enjoy their right to education.

Under Article 7 (f) of the Georgian Law on Refugees: "State agencies and local self-government bodies and authorities are under an obligation to assist in placing children at the state day care centres and educational institutions".

Under Article 22, Chapter IV (Public Education) of the International Convention Relating to the Status of Refugees: "The Contracting States shall accord to refugees treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances".

The Public Defender addressed Mr. Alexander Lomaia, Minister of Education and Science with a request to examine and follow on the above facts. Ms. Bela Tsipuria, Deputy Minister of Education informed the PDO

that on 13 September the Ministry of Education contacted Tsitsino Pitskhelauri, Director of Akhmeta Resource Centre in order to address the issue, and got a response letter with explanatory notes from M. Sh. Margoshvili, director of Duisi secondary school, and M. Margoshvili, head of studies at the Russian-language sector of Duisi school.

From the letter of B.Tsipuria to the Public Defender it follows that there has been no serious conflict or confrontation between Chechen and Kist children; teachers of the Georgian-language sector get their work remuneration according to the established procedure, while teachers of the Russian-language sector are compensated in kind by international organisations. The Norwegian Refugee Council looked into this issue and requested UN to assist in providing for the payment of remuneration to teachers of the Russian-language sector similarly to the teachers of the Georgian-language sector. The issue has not been resolved yet. It is further stated in the letter of the Ministry of Education that the Ministry will follow-up on this issue and in case any problem arises, it will be addressed in accordance with the Georgian legislation.

The letter actually confirmed the information provided by the Chechen refugees.

The Public Defender was repeatedly addressed by Chechen refugees residing in Pankisi pointing to the problems they faced in collecting cash transfers from some commercial banks (one of them is the BasisBank). As pointed out by the applicants, when delivering cash transfers, in addition to refugee ID cards issued by the Ministry of Refugees and Accommodation, the banks required presentation of other identification documents, which for most refugees residing in Pankisi are limited, due to well-understandable reasons, to invalid passports of the Russian Federation. This leads to violation of refugees' property rights.

Under Article 8 (1) of the Georgian Law on Refugees: "The rights of refugees are protected by the State", whereas under Article 27, Chapter V of the International Convention Relating to the Status of Refugees: "The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document".

Hence, the refugee card issued by the Ministry of Refugees and Accommodation represents the person's identification document, and commercial banks' requirement to present additional documents is not legal.

According to the Organic Law on the National Bank of Georgia, Article 2, Para. 2 (b), one of the main responsibilities of the National Bank is to supervise the activities of commercial banks. The Public Defender addressed the President of the National Bank, Mr. Roman Gotsiridze with a request to follow on the issue. As a result, the National Bank of Georgia instructed all commercial banks active in Georgia to conduct, without any impediment, all transactions with money remittances for all persons having a refugee status in case the latter present a refugee ID card.

On the Case of Azer Ramis-oglu Samedov

Following the request of Azerbaijani authorities, in March 2006 Georgian law-enforcers arrested Azer Ramis-oglu Samedov, citizen of Azerbaijan. Azeri authorities accused him of involvement in non-authorized rallies and mass riots following the 2003 presidential elections.

On 14 April 2006, Azer Samedov was assigned a non-custodial restraint measure. Azer Samedov is leader of the Caucasian Centre for Freedom of Conscience and Religion, an international NGO registered in Georgia. As reported by international and Georgian NGOs, Azer Samedov, similarly to other opposition members in Azerbaijan, was persecuted by the Azeri authorities in connection with events following the 2003 elections in Azerbaijan. Persons arrested and kept in custody in connection with those events were continuously subjected

to physical abuse and torture. Hence, there is a risk that, if returned to Azerbaijan, Azer Samedov may, similarly to other persons arrested in connection with the events of 15-16 October 2003, become victim of reprisals and torture.

The Public Defender was also informed that on 17 April 2005, Azer Samedov applied to the Ministry of Refugees and Accommodation with a petition to grant him the status of refugee. According to the Georgian legislation, within three days of receiving the application, the Ministry shall take a decision concerning registration of the person concerned. In Samedov's case, this legal provision was not fulfilled even after 10 days of submission of the application.

The Public Defender concluded that the circumstances present in Samedov's case make him eligible for recognition as person under protection of the 1951 UN Convention Relating to the Status of Refugees.

The Public Defender addressed a recommendation to the Ministry of Refugees and Accommodation to register Azer Ramis-oglu Samedov as an asylum-seeker and grant him further the refugee status. As a result of this recommendation, the Ministry registered Azer Samedov as a person seeking the refugee status.

Later, the Ministry of Refugees and Accommodation denied Azer Samedov the refugee status. The Ministry regarded as unfounded the facts presented by applicant, and considered that Azer Samedov requested the refugee status in Georgia not because of fear of persecution, but because he wanted to use Georgia's territory as a "linchpin to pursue political struggle against Azerbaijan".

Azer Samedov challenged the decision by the Ministry of Refugees and Accommodation in court, pursuant to Article 4, Para. 5 of the Georgian Law on Refugees.

Recommendations

1. The recommendation is for the Ministry of Finance and Ministry of Refugees and Accommodation to put fully into effect provisions of the Georgian Law on Refugees. More specifically, under Article 7 (g) of the Law on Refugees: "The state agencies and local authorities and self-government bodies must regularly pay financial assistance to refugees from state budget in accordance with the Georgian legislation". The agencies concerned should take, in the shortest time, a relevant decision concerning allocation of cash benefits and allowances for Chechen refugees (on the same terms as for IDPs having the Georgian citizenship, in accordance with the provisions of Article 23 of the Convention Relating to the Status of Refugees[1]).
2. The recommendation is for the Ministry of Refugees and Accommodation to ensure harmonisation, in due time, of the Georgian Law on Refugees with the 1951 UN Convention, *inter alia*, for the purpose of issuing for Chechen refugees the necessary travel documents[2].
3. The recommendation is for the Ministry of Education and Science of Georgia to accord Chechen refugee children treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances, in accordance with Article 7 (c) of the Georgian Law on Refugees and Article 22 (Public Education) of the International Convention Relating to the Status of Refugees, and assist them in access to public pre-school and educational institutions.
4. The recommendation is for the Ministry of Foreign Affairs to request the United Nations High Commissioner's for Refugees' Office in Georgia to examine grievances expressed by Chechen refugees about the work of the Office.

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[1] Article 23 of the Convention Relating to the Status Refugees: "The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals".

[2] Article 28 of the Convention Relating to the Status Refugees: "The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory".

9 FREEDOM OF ASSEMBLY AND MANIFESTATIONS

Freedom of peaceful assembly is considered to be one of the most essential prerequisites of a democratic society. However, the right to freedom of assembly and manifestations, as well as the right to freedom of expression appears to be impaired in many cases.

Action in village Damia-Georarkh, Marneuli district

On 22 February 2006, the Public Defender was addressed by journalists of television companies LIDER TV and ANS TV (Azerbaijan), accredited in Georgia, concerning the violation of their rights. The Public Defender's sent his representative to Marneui district.

According to the journalists, on 22 February at about 1 pm, they were preparing an account on the protest action on the village of Damia-Georarkh, Marneuli district. In the course of the action, residents of the village blocked the highway. Police told the people to unblock the road, but participants of the action refused, after which the police used force to break up the protest action and open the road. In dispersal, participants of the action were physically assaulted by law enforcers and members of special force, which was filmed by Azeri journalists.

According to the journalists, law enforcers used force to take their video cassette away, and assaulted the journalists both physically and verbally.

Immediately after the complaint, representatives of the Public Defender went to Marneuli district to examine the circumstances of the case on the ground. In Marneuli, in the office of the district governor, they met with the journalists, senior representatives of the prosecutor's office, representatives of the Azerbaijani Embassy, chief and deputy chief of Marneuli police. In police premises, PDO representatives met with persons arrested during the action, who were kept in custody as suspects. PDO representatives examined arrest reports, and found that all suspects were arrested in compliance with procedural rules. The police denied their involvement in assaulting the Azerbaijani journalists and taking their cassettes away.

PDO addressed Sh.Rekhviashvili, prosecutor of Kvemo Kartli, urging him to initiate investigation of the facts described in the complaint. Besides, the facts described by the Azeri journalists were made known to T.Tomashvili, head of Human Rights Department of the Prosecutor General's Office.

2006

Presumably, the act against the journalists contained signs of offences stipulated in Articles 125, 150, 151, 153, 154, and 178 of the Criminal Code of Georgia.

According to letter No. 01/21/36 23-03, 2006 received from the Kvemo Kartli Prosecutor's Office: "On 22 February 2006 the Marneuli district procuracy opened investigation on Case No. 31068006 concerning excess of official authority by members of Marneuli district division of internal affairs, with signs of offence provided for in Article 333 (1) of the Criminal Code of Georgia. The investigation was opened based on the journalists' application, according to which they were preparing an account of a protest action in village of Damia-Georarkh, Marneuli district, held on 22 February 2006. The journalists alleged that they were physically assaulted by local police who took away their video cassettes with the filming of the action and interviews".

According to the procuracy, the investigation questioned the journalists, recognized as an aggrieved party in the case, as well as police officers who, according to the journalists, took their cassettes away. The journalists said their cassettes had been taken away by a policeman with the name "Beso". Police officers interrogated by the procuracy, denied their participation in the attack against the journalists. They said they had been warned by their seniors not to allow impairment of constitutional rights of any citizen. As far as policeman Beso is concerned, members of Marneuli police force said there did not know of any policeman with such a name working in Marneuli. Instead, they named police officer Beglar Kharshiladze, sometimes called "Beso", who could not participate in the attack as at the time of the action he was in hospital. The procuracy informed the PDO that they were supervising the investigation and promised to provide further information. Thereafter, the PDO has received no information from the Marneuli procuracy.

Two days later the Public Defender sent his representatives to Marneuli to attend court proceedings meant to assign the measure of restraint for residents of Damia-Georarkh arrested during the action. Before the proceedings, PDO representatives met with representatives of police and procuracy. They found that the procuracy motioned a 2-month preliminary detention in respect of 16 suspects, and was planning to offer a plea bargain to one woman arrested during the action. The judge released 9 suspects from the courtroom on bail of GEL 2000, and assigned 2-month detention to seven persons.

After the period of detention elapsed, the court assigned a new measure of restraint, this time the bail of GEL 2000. The decision of the Marneuli court was challenged by the procuracy in the appellate court. The appellate court satisfied the prosecutor's motion, giving the suspects as a measure of restraint 2 months in detention.

Representatives of the Public Defender visited detained Abgar-ogly Aimat, Vugar Askerov, Sabir Ataev, Famil Bandaliev, Abbas Askerov, Bakhman Musoev and Sakhab Abdulaev in custody. Later the court released the suspects.

According to police, Marneuli Governor's office and residents of Damia-Georarkh, participants of the action blocked the highway. However, according to some residents, including the persons arrested during the protest action, only one side of the highway was blocked. Participants of the action and journalists indicate also that the police used force even after the road was unblocked. Physical and verbal assault of ten journalists and impeding their professional activity contain signs of crimes provided for in Articles 125, 150, 151, 153, 154, and 178 of the Criminal Code of Georgia. Depriving the journalists of their video cassettes is against the Georgian legislation, as well as Article 10 of the European Convention on Human Rights.

The use of detention as a restraint measure for participants of a protest action is not a proportionate measure for the offence they are accused of, the more so as persons accused of much graver crimes (including policemen implicated in the use of torture against minors) are given bail as a restraint measure. It is to be noted that cases of arrest of persons participating in actions and their punishment under criminal or administrative proceedings are on the rise. Such practices undermine seriously the freedom of assembly and manifestation, as well as the freedom of expression (Articles 11 ad 10 of the European Convention on Human Rights).

The Trade Union of Teachers and Scientists

On 13 June 2006, the PDO was addressed by M.Gurchumelidze, General Secretary of the Trade Union of Teachers and Scientists. According to the applicant, local officials put pressure on teachers of Samegrelo-Zemo Svaneti Region to prevent them from expressing their free will and organizing a peaceful protest action against arrears in payment of teachers' salaries. The applicant pointed to press releases of the Ministry of Education and Science to prove the fact of pressure being brought to bear on the teachers.

In the letter to M.Gurchumelidze, the PDO requested access to copies of press releases referred to in the application, and meeting with the teachers put under pressure by officials. So far, there has been no response from the applicant.

Protect Action in Gurjaani

On 26 July 2006, the PDO was addressed by journalists of "Kakhetis Khma" newspaper. On 24 July 2006, a protest action was held in Gurjaani in front of the power distribution company's office. The action was attended by media representatives, including "Kakhetis Khma" journalists. Participants of the action blocked the office entrance and hindered the work. Gurjaani police took measures to restore normal work of the office. D. Chuburidze, brother of the company manager, was among the police and he disproportionately used physical force against participants of the action, assaulted the action participants and journalists, which resulted in damage of a camera. It is to be noted that D.Chuburidze is police commandant, which implies that his responsibilities are different from those of police officers, and he should not have been involved in exercising the police powers.

The procuracy of Gurjaani district opened an investigation. PDO representatives met D.Chuburidze and chief of Gurjaani police Sh.Bezhanishvili.

The Action in Signaghi

On 15 July 2006, a protest action was held in village Anaga, Signaghi district. The action was conducted peacefully, and attended by NGO and medial representatives. Some persons challenged the participants of the action, and physically attacked them.

PDO representatives went to Signaghi the same day to meet with the participants of the action. According to the latter, they had reasonable grounds to believe that break-up of action had been planned and organized by officials. The Signaghi division of internal affairs opened an investigation and interviewed several participants of the action, as well as eye-witnesses.

In accordance with the Organic Law on the Public Defender of Georgia, the PDO addressed Signaghi district prosecutor D.Kochlamazashvili, requesting detailed information on the investigation. In the letter of 17 July 2006, the prosecutor informed the PDO that the investigation brought charges against I.Nanobashvili (acting governor of village Vakiri), J.Demetrashvili (secretary of the governor's office) and V.Munjishvili. The case is being investigated.

The Action of the Equality Institute

The PDO examined the application filed by the Equality Institute. The application contained a copy of the complaint addressed by the Equality Institute to the Prosecutor General's Office on 28 June 2006, in which applicants described unlawful actions against them by law enforcers and requested to start investigation.

According to the applicants, during the protest action organised by the Equality Institute in Rustaveli Avenue in Tbilisi on 7 June 2006, persons dressed in civilian clothes behaves improperly and provoked a disorder. One of them physically assaulted one the action's participants. Besides, participants of the action were assaulted by police.

Later it became known to the applicants that a person in civilian clothes who used force against participants of the action was an officer of the Ministry of Internal Affairs, and he had also been noticed at the court trial on Girgvliani case. During the court proceedings, the said persons acted unlawfully and offended I. Kakabadze, one of the Institute's leaders.

As actions described in the application represent a criminal offence and the applicants had already addressed the Prosecutor General's Office with a similar application, the PDO stopped the examination of the case and addressed G.Latsabua, head of Investigative Department of the Prosecutor General's Office with a request to provide information on the measures taken in respect of the application. In the letter of 15 August 2006, the Prosecutor General's Office informed the PDO that investigation under Article 333 (excess of official authority) was opened on 29 June 2006.

Arrest of the Equality Institute Members

On 29 June 2006, members of the Equality Institute: Irakli Kakabadze, Zurab Rtveliahsvili, Jaba Jishkariani, Lasha Chkhartishvili and David Dalakishvili were arrested at the order of the chairman of Tbilisi Appellate Court outside the court premises, for organizing a demonstration in front of the court. Demonstrators demanded fair trial for founders and owners of independent TV 202.

Eka Tkeshelashvili, chairman of the appellate court, immediately sentenced the five persons to 30-day administrative detention on charges of disturbing the work of the court (Article 208 of the Criminal Procedure Code provides for liability for provoking disorder in the building of court). The arrested persons were transferred to the temporary detention facility of the Ministry of Internal Affairs.

With all due respect to the competences of the court in interpretation of legal norms, the Public Defender nevertheless considers that the court's interpretation of Article 208 was not correct, as the demonstration was held outside the building of the court.

Besides, it is important to note that Article 208, Para 6 of the Criminal Procedure Code is in conflict with the Georgian Constitution and the European Convention on Human Rights, as under the said article a decision on restraining freedom is rendered in the absence of hearing of the case and allows no appeal. Hence, the court should not have applied the said norm of the law.

The Action of TV Company "Trialeti"

The Public Defender's Office examined application No 0986-06 from the Trialeti TV concerning the protest action organised on 21 June 2006 in front of the State Chancellery. According to the applicants, the action was broken up by patrol police. Law enforcers assaulted the demonstrators physically and verbally, broke their video camera and took away filmed cassettes.

The Prosecutor General's Office opened investigation of the fact.

As unlawful actions by police represented a criminal offence and were investigated by the Prosecutor General's Office, on 21 July 2006 the PDO addressed the Prosecutor General's Office with a request to provide de-

tailed information on the progress of investigation. The response letter of 14 August 2006 from the Prosecutor General's indicated that the investigation concerned the excess of official authority, and participants of the action and patrol police officers were questioned concerning the circumstances of the case.

The Action at Tbilisi State University

The Public Defender's Office examined collective applications Nos. 1019-06 and 1230-06 from faculty members of Tbilisi State University concerning breaches of the law in the course of reform carried out at the University.

To examine the facts described in the application, PDO representatives got access to the relevant documents, spoke to journalists present during the events described in the application, as well as representatives of university administration, and applicants themselves.

In addition to other matters, the applicants described peaceful actions held at the University, faced with a disproportionate use of force by police and administration that led to violation of the participants' rights, as well as the Georgian law. The applicants demanded that criminal prosecution be initiated against G.Khubua, a.i. Rector of the University, and his deputy for excess of authority, abuse of authority and unlawful deprivation of liberty. According to the applicants, on 20 June G. Khubua ordered to disperse the peaceful action of faculty members. On 3-4 July, the a.i. Rector of the University, acting jointly with police, deprived the faculty members assembled at the university hall of their liberty, and did not allow them peaceful expression of protest.

According to G. Khubua, and other representatives of the university administration, some of the faculty members used force to attack the rector's office, after which the administration called police.

In case public order is disturbed and an institution turns into a scene for violence, or if a peaceful assembly turns into a violent action, any administration shall have the right to restore public order, either itself or with the help of police, and ensure unimpeded functioning of the institution. The incident of 20 June was investigated, and the court judged that actions of certain participants to be petty hooliganism.

It is to be noted that both sides have their own position concerning the events of 3 July at the University. According to the applicants, actions by administration could be interpreted as inhuman treatment and unlawful deprivation of liberty. All doors were locked, which led to shortage of air in the building, while persons locked there were not allowed to leave the premises. According to the administration, participants of the action attacked the rector's office, after which the administration called the police that vacated the room. Thereafter, participants of the action moved to the university hall. In order to prevent their coming back to the rector's office located in Building 1 of the university, all doors connecting the hall with University Building 1 were locked. The only door not locked was the back door guarded by police to prevent influx of too many people, which might have resulted in provocations. The administration alleged that they had information concerning possible provocations.

To examine the issue, PDO representatives interviewed journalists. According to the journalists, all doors leading to Building 1 were locked. The only door open was the entrance door, and if participants of the action or journalists came out, they were not allowed to return to the hall. As a result, one of the journalists had to stay there the whole night, as police would not let the support journalist group into the building. The journalists stated that food and water were brought into the building through little windows, using ropes, and that ropes were cut by patrol police.

The PDO consider that determination as to whether the events represented break-up of a peaceful action and preventing journalists from fulfilling their functions, or restraint of a violent action, shall be the prerogative of the investigation.

We think that peaceful assembly of the university faculty for the purpose of voicing protest cannot be interrupted by police, that locked the door and did not let anyone into the assembly room. On the other hand, if the action went beyond lawfulness, than it was possible for police to apply more stringent administrative measures, and even measures of criminal coercion.

Mzia Tsatsua Case

On 29 May 2006, the PDO Zugdidi Office was addressed by Mzia Tsatsua. According to the applicant, on 26 May 2006 activists of the "Fairness" political movement were holding a protest action demanding resignation of the local authorities. Gia Kalichava, chief of Zugdidi criminal police, together with police officers, physically assaulted participants of the action. Ms. Tsatsua was severely beaten, and received multiple bruises in the arm and leg area. Apart from physical violence against Mzia Tsatsua, G .Kalichava was encouraging police officers to liquidate her.

10 THE SITUATION OF MEDIA IN GEORGIA

According to Article 24 of the Georgian Constitution: "2. Mass media is free. Censorship is prohibited. 3. Monopolization of the mass media or the means of spreading information by the state, legal or natural persons is prohibited."

The above constitutional provision guarantees one the most fundamental rights, without which no free and democratic society can exist. The said right is reflective of the degree of democracy and the level of protection of human rights and freedoms in a country.

Representatives of the Public Defender's Office hold regular meetings in different regions of Georgia with media representatives, i.e. with owners of media outlets, as well as with editors and journalists. The meetings helped to identify the main tendencies of concern for the media. Journalists virtually in all regions of Georgia think that the present legislation is fairly liberal, but not always workable.

Analysis of the meetings and applications addressed to the Public Defender helped to identify the problems of particular concern for journalists and media owners:

- Facts of direct pressure on journalists;
- Lack of equality in treating different representatives of mass media;
- Lack of transparency in the work of tender commissions examining allocation of frequencies for TV channels;
- Lack of transparency in tender procedures;
- Non-disclosure of information and lack of access to information for journalists;
- Refusal by the authorities to participate in interviews;
- Lack of equality in attitude to media on the part of local authorities. Privileges for certain TV channels and printed media;
- Mandatory subscription to newspapers;
- Covert, indirect pressure;
- Refusal to provide access to public information or late access, which represents a violation of freedom to get information.

These problems are particularly acute in regions of Georgia.

Economic Problems

The situation of media in regions of Georgia is indicative of the situation with freedom of media in Georgia on the whole. In Western Georgia the most severe problem is media's lack of economic independence. Journalists in Kutaisi, similarly to their colleagues in

other regions of Georgia say the main factor to ensure freedom of media is economic independence. The main threats for the existence of various media outlets are also of economic character. A certain threat for media independence is the placement of business advertisements.

Independent business is not strong in Kutaisi, and it is mostly represented by branches of companies. Therefore ads are placed on central channels, which rules out any placement of independent company ads in the regions. Another factor impeding the placement of advertisements is reluctance on the part of businessmen who fear that their ads might attract tax police. This problem is rooted in the general economic situation in the country on the one hand, and in tax evasion by businessmen, on the other.

Similar problems can be seen in Poti. The situation is further compounded by the fact that local authorities account for some investments in the media market. For instance, the newspaper "Poti News" is a limited liability company with 100% state share. It publishes decisions, resolutions and ordinances by the Council and the Mayor's Office. Newspapers "Poti Newsletter" and "Resume" are in a similar position. There was no tender announced for the authorization to publish resolutions and ordinances. This issue was resolves through private discussion. Decisions and resolutions are published only in those newspapers that are close to the authorities. Similar service was offered by the newspaper "Tavisupali Sitkva" ("Free Word"), but the offer was rejected.

It is to be noted, however, that the situation is different in different regions of Georgia. For instance, in Kutaisi, with many media outlets, there is strong competition, and hence there are more economic problems.

In Poti media outlets are more dependent on money from local authorities. Therefore, it is difficult to expect that most of them (with few exceptions) would be free, independent and impartial. The few independent newspapers only survive through grants.

Economic problems are of less concern to media in Zugdidi, compared to other regions, and placement of ads does not represent a major problem, either.

In Georgia there are regions where newspapers are not published for weeks, and the only channel to disseminate information is radio and TV. Thus, for instance, in Zugdidi the most active media are "Atinati" Radio Station and "Odishi" TV Company.

There are frequent cases of police accusing journalists of libel, namely, denigration of police. Representatives of authorities often resort to intimidation of journalists.

Journalists in Zugdidi consider that it is owing to the present law that threats of bringing them before the court remain sheer words, and no case has been brought to the court. This indicates that even though local authorities often intimidate journalists, they nevertheless avoid litigating with journalists.

Such problem as dissemination of, and access to, information is almost non-existent in Zugdidi. According to the journalists, they are no longer targets for pressure or assault. However, there is a new problem, seen, incidentally, in other regions of the country, too: namely, complete negligence by the authorities towards journalists, or selective provision of access to information for those media representatives who are "friends" to the authorities.

Access to Public Information and its Dissemination

Journalists in all regions of Georgia are unanimous in that access to public information has become a difficult problem to overcome. Not infrequently, the authorities put up barriers and impede access to information. This

can be seen clearly when interviewing officials on incidents occurring in their region. It is very difficult to get any information or comments from the authorities. All too often the documentation offices refuse to accept applications requesting public information, giving absolutely absurd reasons. For instance, representatives of the PDO went to Gori Council together with a journalist in order to verify some information. Head of Gori Council Chancellery, Ms.Jalabadze, refused to register the journalist's application citing her headache as a reason. Besides, head of the chancellery had a special form prepared indicating that the requested information was not kept with the regional administration.

Despite the fact that the Administrative Code of Georgia guarantees access to information, this is not always the case.

Compared to the previous year, access to information in Gurjaani, for instance, has improved to a certain extent, while in Borjomi it is still difficult to get access to public information.

MEDIA IN THE REGIONS

In 2006, on the initiative of the Public Defender, meetings with media representatives were held across Georgia with a view to identifying problems and gaps of regional media. The meetings were attended by owners of both public and independent media outlets, as well as editors and journalists. These meetings helped painting a full picture of problems and needs faced by the media.

Attaining high degree of freedom, independence and impartiality of mass media

GORI

There are four newspapers published in Gori. In general, press is fairly strong, however, journalists are unanimous in that the main prob-lem for newspapers is their circulation, as the latter fails to cover publishing costs, whereas private entrepreneurs are reluctant to place their advertisements in local newspapers. Regional newspapers would not survive without foreign donors – this is journalists' and editors' shared view.

Relations between journalists and authorities in Gori concerning access and dissemination of information are fairly complicated, but the main threats in terms of freedom and independence of media are mostly of economic character.

GURJAANI

The most acute problem in Kakheti Region is lack of competitive environment. In parallel to media outlets founded with support of foreign donors there are newspapers and broadcasters, whose sources of financing are largely obscure and non-transparent. There are cases when the authorities finance certain media outlets that are afterwards presented as independent. Journalists wish that information is disseminated by public entities in a different way and form, without claiming that the media they use are independent. For instance, in Telavi a holding has been set up comprising three entities: "Our Newspaper", "Our Radio" and "Our Television". "Our Newspaper" bears an inscription saying it is free, while its editorial board is located in the town council premises. Likewise, the office of "Our Radio" is also located in the same council premises. Governor of Telavi, Mr. Mamatsashvili uses these media outlets as his "mouthpiece". Journalists say that formally there is no violation of the law, but "Our Newspaper's" level of independence is very low. The Council can of course finance a newspaper, but then it should not claim being independent.

Another problem in Kakheti, similarly to other regions of Georgia, is that private entrepreneurs are reluctant to place their ads in local newspapers. One businessman pointed out he did not want to feature in a newspaper for fear of problems this would create for him. According to journalist Roman Kevkhishvili, all businesses placing their advertisements with "Tanamgzavri" TV Company (Telavi) were visited by fiscal police. To attract financing, newspaper "Voice of Kakheti" reduced the rates for placement of ads, but small and medium-size businesses are still very reluctant about advertising, opting only for those media outlets that have good relations with the authorities. Businessmen do not speak openly about interference by the authorities, and only mention that privately.

The "Hereti" Broadcasting Company has problems with licensing. It is only allowed to broadcast for a certain period of tome. The company submitted its application for participation in a tender for allocation for a frequency, but failed, and frequency was allocated to another broadcaster, "Our Radio", that never uses that frequency for broadcasting. According to journalists, none of broadcasters meets the requirements stipulated in licensing procedures, but no one ever checks that. They also say that tariffs for broadcasting are expected to increase (presumably, to GEL 450 a month), which may seriously undermine regional broadcasters.

Problems related to tenders was the main theme in discussion with Maia Mamulishvili, Editor-in-Chief of "Kakhetis Khma" (The Voice of Kakheti) newspaper (Gurjaani). She spoke about the tender announced for subsidizing local press, and tender terms and conditions were published in newspaper "24 Hours". The tender commission included Mr. Mamatsashvili, governor of Telavi, and two other officials. The tender amount was GEL 24 000. The tender was awarded to "Our Newspaper" that did not even exist at the time of the tender, while the limited liability company that later established the said newspaper was fully owned by Nana Kabiashauri, former press secretary of Governor Mamatsashvili.

BORJOMI

Participants of the meeting in Borjomi said that journalists there were not protected. One of the journalists spoke of the pressure, though not strong, being brought to bear on journalists, while journalists do not know whom to address and only pin their hopes on themselves. Journalist K. Mishveladze spoke of telephone calls and visits, mostly from representatives of public administration, who are not pleased to see themselves featuring in articles.

Another problem in Borjomi and Akhaltsikhe is inadequate placement of ads in newspapers and broadcasting media. Journalists say there are virtually no advertisement placements in media; at the same time it is not possible to raise the price. Tristan Tsutskiridze, owner of Borjomi TV company said that non-existence of advertising on media is the result of poor management. Representatives from Akhaltsikhe said they had advertisements placed by international foundations, and over the recent period they also managed to attract business advertisements.

One specific feature of media work in Borjomi is that two newspapers published there are distributed for free. These are newspapers "Borjomis Khma" and "Report 2". Representatives of the former said the newspaper is supported by donations, however they were not prepared to indicate at least one person providing financial support to the newspaper.

According to Tristan Tsutskiridze, high tariffs introduced by the TV Centre represent a serious problem. "The new tariff may lead to closure of regional broadcasters. It turns out that 70% of broadcasters' income should go to the TV Centre. For instance, according to the new rule, Borjomi TV Company is expected to pay the TV Centre GEL 1350. Otherwise, the frequency provided will not be adequate, which would make both TV audience and the Regulatory Commission disappointed, and the latter is authorized to cancel your license". He

also said that D. Kitoshvili, Chairman of the Telecommunications Regulatory Commission is reluctant to cooperate with some of regional broadcasters, and has a selective approach. For instance, the license issued to Lomsia TV Company (Akhaltsikhe) was cancelled without even notifying the management of the company. Notification was only sent to the director 2 months later. Notification stated that license application had been submitted with a delay. At the same time, there is a TV Company in Kutaisi not broadcasting at all, while their license was never cancelled. A similar breach was made by Rustavi 2 TV Company, but no one has ever taken any radical measures against them.

The main threat for media independence in Borjomi and Akhaltsikhe is posed by economic problems. However, it is difficult to speak of the independence of those newspapers that are disseminated for free, while their source of funding is absolutely obscure.

KUTAISI

Journalists in Kutaisi, similarly to their colleagues in other cities, consider the main factor in terms of freedom of media is economic independence. Hence, the main threats for the existence of media outlets are of economic nature, too.

Fridon Kervalishvili, editor of newspaper "Kutaisi Version" said that tax privileges for newspapers would be in place until December 2006, but no one knew what would happen thereafter. According to Maia Metskhvarishvili, editor of another newspaper, the privileges did not mean much, and all newspapers are dependent on donors and business advertisements. However, the problem with ad placement is that there are no independent businesses in Kutaisi, only branches, and their advertisements are placed on national channels. No one is keen to spend money on advertising in regions, considering those are unnecessary costs. Similarly to other cities of Georgia, in Kutaisi, too, businesses are reluctant to place any advertisements for fear of fiscal police visiting them the following day. There was a case when the ferrous alloys plant placed an advertisement, and the fiscal police went there for inspection the following day. Some businessmen even say they would give money to media, but without any ad placement.

In Kutaisi, with many media outlets, the competition is fairly high. On the whole, dissemination of information does not represent any serious problem. The authorities do not exert any direct pressure on the media. Journalists said there were no longer beaten or intimidates (particularly, after the conflict between Bobokhidze and Imnaishvili). However, negligence of the media by certain officials is interpreted by journalists as pressure in its own kind.

POTI

In Poti, too, problems confronted by media stem from economic factors. Particularly destructive for media market are investments in the media by local authorities. The newspaper "Poti News" is a limited liability company with 100% state share. It publishes decisions, resolutions and ordinances by the Council and the Mayor's Office. Newspapers "Poti Newsletter" and "Resume" are in a similar position. There was no tender announced for the authorization to publish resolutions and ordinances. This issue was resolves through private discussion. According to Eliso Janashia, editor of Free Word newspaper, decisions and resolutions are published only in those newspapers that are close to the authorities. Similar services were offered to the authorities by other newspapers, too, but they were rejected.

The City Council and Mayor's Office bought time for advertising in TV Company "The 9th Wave", however, when advertisements go on air, the TV company's logo is removed. Advertisements are prepared by the com-

pany staff in cooperation with the information and communication service of the local authorities. According to journalists, the situation in the TV company in 2006 was better than earlier. Bars and restaurants are now more willing to place advertisements, but businesses for the most part are still reluctant to place advertisements with the media for fear of "interest" on the part of fiscal police. On the whole, in electronic media the situation with advertisements is now better than before.

According to journalists, in 2005 local media cost the authorities GEL 84 000, including subscription costs and advertising. However, representatives of independent newspapers say there is no subscription for their newspapers, therefore they find themselves in a more difficult situation.

Lastly, one can say that media in Poti are largely dependent on funds provided by the local authorities. Therefore, it is difficult to expect, with few exceptions, any high degree of their freedom, independence and impartiality. One newspaper in Poti, "The Free Word" is published with the financial support of the EURASIA Foundation, and it often publishes topical materials on local officials.

ZUGDIDI

A specific feature of the media market in Zugdidi is that there is no newspaper systematically published. Major workload in disseminating information is performed by "Atinati" Radio Station and "Odishi" TV Company. Local correspondents of the national TV companies are also active in Zugdidi.

There are problems with media independence. Nana Pajava (local correspondent of Imedi TV Company) stated that chief of regional police Mr.Gergaia accused her of libel and deliberate defamation of police, and demanded from the management of the radio station that she be dismissed. According to N.Pajava, Gergaia assaulted her verbally and made an attempt to assault her physically. The journalist informed the prosecutor's office about the fact, but chose not to file a case with the court.

In one case G.Kobalia's (MP, owner of Odishi TV Company) sister-in-law took part in an action in support of Igor Giorgadze, which was reported by N.Pajava in her account of the action. This was followed by threats from G.Kobalia and his sister-in-law. According to N.Pajava, he told Nona Kandiashvili (manager of Imedi TV) that N.Pajava was a drug user, and even threatened her with informing the president.

According to Geronti Kalichava (Atinati Radio station), when working with INTERNEWS, he recorded an interview with head of the public register concerning the return of Muslim Turks. Muslim Turks, allegedly, were going to be accommodated in buildings belonging to the Ministry of Defence, instead of IDPs from Georgia's conflict zones. The Ministry made no comments, but Geronti Kalichava received a telephone call for Nana Intskirveli who said she would sue him. Finally, the incident was resolved without the court.

When newspaper "Kolchis Version" published a humorous article "Intelligent Fispol" (Fiscal Police), the author of the article received a phone call on the following day, inviting him to the fiscal police for explanations.

Journalists in Zugdidi consider that it is owing to the law that all threats on suing them remain empty words, and no case has reached the court.

Economic problems are of less concern for media in Zugdidi, compared to other districts of Georgia, and placement of ads does not represent a serious problem either. For instance, "Atinati" Radio broadcasts advertisements once every 15 minutes, i.e. 4 times an hour. News programmes (10 minutes) go on air every hour. According to journalists, businessmen prefer to place their ads in music programmes, not in political talk shows.

In general, compared to printed media, electronic media carry more advertisements, though some businessmen are still reluctant to place ads with the media for fear of tax inspection.

Independence and impartiality of media in Zugdidi have to be examined through the prism of non-availability of a regularly published newspaper. The most popular media outlet is "Atinati" Radio that, given the specificity of radio broadcasting, cannot be and is not very sharp in its coverage. The "Zugdideli" magazine is also popular with the reader. "Odishi" TV is owned by G.Kobalia, MP. Media in Zugdidi do not create problems and too much headache for the authorities, hence, the authorities do not interfere with the work of the media, either. Interestingly, the competition for an anti-corruption programme on TV was won by "Odishi" TV, incidentally in the period when governor of Zugdidi was A.Kobalia, son of G.Kobalia, MP. According to the journalists, the impartiality of the competition was highly questionable.

BATUMI

The meeting with PDO in Batumi was attended by journalists from Batumi and Ozurgeti.

Nato Gogelia, correspondent of newspaper "Guria News" spoke of the interference by authorities into freedom of media. She described facts when powerful persons from power structures demanded that the journalists apologised with businessmen for the materials they published. Another case concerned journalist investigation concerning a cinema in Ozurgeti. Money for repair works were allocated from the Governor's fund, but the roof is leaky up until present. The Governor's assistant was asked to give details on expenditures. The assistant agreed, but told the journalist that the latter would be paid 8 GEL for the article, while he, the governor's assistant, would pay 15 GEL for not writing it. According to N. Gogelia, serious criminal authorities were involved in the case. During one week she was constantly intimidated by unknown persons, who were calling her all the time, knowing where she was, what she was wearing, etc. Investigation was initiated, but so far nothing has been elucidated.

At the meeting the journalists spoke of several court proceedings, one of them dealing with defamation of honour and dignity, against the "Batumeli" newspaper. The newspaper lost the case in the first instance court, but challenged the decision with the Supreme Court. The case was about director of an orphanage, who, as alleged by the author, had sold a child. The director filed a case against the journalist, claiming defamation of his honour and dignity.

According to Eter Turadze, "Ajara" newspaper is a state-owned limited liability company. The Mayor's Office allocated GEL 45 000 for information services, but no tender has been announced. The journalists further say that "Ajara" newspaper has GEL 260 000 from the regional budget, certain sums from the Mayor's Office, and another GEL 45 000 without any tender announced. The government of Ajara transfers these moneys to "Ajara" newspaper for publishing its resolutions and ordinances, further transfers come form the Supreme Council of Ajara for promulgation of its resolutions and decrees, as well as from six districts of Ajara. Subscription to the said newspaper is often mandatory for public entities. Journalists say that existence of such newspapers, strongly supported by the state, undermines the principle of equality. Speaking figuratively, such a newspaper strangles any independent media.

Among media outlets in Batumi, the most difficult situation is observed with "Channel 25", as it allegedly has a debt of GEL 275 000 with the state budget. In 2004, tax inspection found a debt of GEL 45000, but with all charges the sum allegedly amounts to GEL 275 000. According to Avtandil Gadakhabadze, the conclusion of tax inspection had been challenged for months, but so far there has been no court hearing to examine the complaint. According to journalists, interests of certain political forces underlie the case.

Journalists say that after the Rose Revolution tax regime has become simplified for printed media, and more complicated for electronic media that have to pay 5-6 different taxes. This undermines media independence.

The level of competition among media outlets in Batumi is fairly high, though there is clear distinction between truly independent media, and those governed by the state. Considerable allocations from the budget for the TV Company and newspapers are a serious impediment for development of media market in Batumi, and in wider Ajara.

In Ozurgeti, too, there is serious competition among local newspapers, with no mutual accusations of close alignment with the authorities. Therefore, it is difficult to judge of the level of independence and impartiality of media.

RUSTAVI

According to journalists from Kvemo Kartli attending the meeting with PDO, the region has certain specificities in terms of the work of journalists. Local authorities feel no need to impose any influence on public opinion. Journalists think this is because lack of respective culture in Kvemo Kartli. There is no opposing opinion in Rustavi. After the Rose Revolution there is no dissenting opinion. According to journalists, close proximity of Tbilisi and Rustavi has its pros and cons. One of the cons is that intellectuals chose to go to Tbilisi. President's Representative in Kvemo Kartli meets with journalists very infrequently. This notwithstanding, journalists in Rustavi are still faced with certain problems.

There are cases when press secretaries of official entities invite journalists for clarifications on the materials published. If journalists know they are going to be reprimanded, they never go. Often, respondents say that the information published by a newspaper is not true. According to the journalists, authorities in Rustavi are friendly towards journalists.

However, there are also cases when during public statements, meetings etc., some of the officials refuse to give interviews, or provide materials. In the past there was a case, when a journalist from MZE TV Company narrowly escaped death, as the car he uses had a mine installed in it, that was found quite accidentally. Investigation was started, and then closed, as law enforcers said the mine was not a combat one.

ENHANCING COOPERATION BETWEEN STATE STRUCTURES AND MASS MEDIA

GORI

The situation in Gori in terms of cooperation of state structures with mass media is particularly difficult. It is difficult, if not impossible, to get access to public information from regional administration and from Gori City Council. True, there is a person in charge of information – chief of staff Mr.Muralov, but journalists are alternately sent to various places for information, and in the final analysis it is almost impossible to get any information in writing. There were cases when Mr.Muralov agreed to provide information verbally, but not in writing. Requests for public information addressed to the City Council are not accepted, unless the governor sees them and allows to accept them.

On one occasion, chief of the chancellery helped journalists to obtain public information, but was strongly reprimanded for that. After that he asked journalists not to request public information, otherwise he would lose his job. Similar problems are observable in the regional administration. Chief of the chancellery, Ms.Jalabadze, refuses to register applications for issuance of public information. According to journalists, some time ago

Jalabadze had a prepared form she systematically used to respond to applications for access to public information. The form stated that the requested information was not kept with the regional administration.

The Governor systematically refuses requests for interviews, and tells journalists to follow his interviews given to Trialeti TV. When requests for information are refused, it is often indicated that the Governor spoke on the issue in an interview, and a reference to the interview is provided.

Journalists are not allowed to attend the Governor's meetings with the public, or the City Council meetings. The only journalist allowed to attend the above meetings is Maia Mgebrishvili, editor of newspaper "Lomchabuki". In her coverage of meetings she follows only those materials that are distributed by the Governor's press centre. Newspaper "Lomchabuki" has no problems with the regional administration, or with the City Council. According to the journalists working in the newspaper, they are only allowed to report on what the local authorities are pleased to hear. The newspaper's circulation is 350 copies; however, it is impossible to buy it, while all businesses are among subscribers. Journalists say that when refusing an interview, officials usually say that journalists can obtain information from press releases distributed by press services of different bodies. Thus, journalists are deprived of a possibility to ask questions, and get hold of the sought information.

Journalists say that officials should not only have an obligation to provide access to public information, but be brought to account in case they refuse.

GURJAANI

Journalists in Kakheti region say that in terms of access to information the situation has somewhat improved, though local press services have not yet learnt how to communicate with the media. There is no problem of access to information, though there are certain categories of information that are difficult, if not impossible, to access. Journalists say that internal affairs units do not allow them to access information. Sometimes it is impossible to get even the investigator's name. Police officers refuse to give any comments without permission, but journalists do not know whom to approach to get permission for interviewing a police officer.

Representatives of "Hereti" Radio said there had been cases when they were refused to access some information, however when requested after 15 minutes, for instance, on behalf of Radio Liberty, the information was provided. The governor's press service mostly works with central media.

BORJOMI

Journalists in Borjomi say they are faced with certain problems concerning access to public information. It is particularly difficult to access public information from the Ministry of Internal Affairs. Neither is it possible to get information from the town council, unless they request the governor to help them. Sometimes access to information is provided with a significant delay, when information is no longer relevant. Not infrequently, access to information is provided to Imedi or Rustavi 2 TV Companies, but not to regional media. Performance of press services is not satisfactory; journalists are rarely informed of upcoming events. According to journalists, press services do not know themselves what their functions are.

Access to information in Borjomi is somewhat better than in Akhaltsikhe. According to local journalists, official bodies try not to provide information in writing, and only respond verbally. There is no investigative journalism in Borjomi and Alkhaltsikhe, presumably, because of lack of funds, or probably interest towards this kind of journalism. Besides, investigative journalism requires special training.

Journalists also say they have no idea of the processes in neighbouring regions. The idea behind the regional arrangements was to provide the public with information on neighbouring regions. It is difficult for journalists

to obtain information. Besides, it is quite expensive. The information distributed by the press service is often uninteresting. Therefore, it is difficult for newspapers to cover the realities of the region, i.e. processes of interest for the public.

KUTAISI

In Kutaisi, like in some other cities, there is lack of constructive cooperation with the authorities. Oftentimes, public information is provided with significant delays. Documents that can be issued in one day, take ten days to be issued. Journalists say it is virtually impossible to get information from power structures. The prosecutor's office is very closed in this respect, with no filming of the building allowed. Representatives of the "Old Town" Radio say that police officers never take part in programmes, unless their participation is agreed in advance with head of administration of the Ministry of Internal Affairs, Shota Khizanishvili.

According to Maia Metskhvarishvili, in order to submit a request for information to the prosecutor's office, it is necessary to obtain a pass, that cannot be obtained without a telephone call to the chief, which makes the procedure very difficult.

As far as fiscal police is concerned, they themselves provide for journalists the information they wish to disseminate, and refuse to give any other information.

Journalists are only provided with single-entry passes to the Mayor's Office, therefore it is not easy for them to enter the office. After some newspapers published critical articles about the mayor, his press secretary prohibited journalists' access to the building without a pass. Editorial boards were officially notified about new procedures, under which the system of passes was introduced, allegedly, to ensure security. The bureau of passes is closed on holidays, as well as on the weekend. Therefore, journalists faced certain problems with access to the Mayor's Office. Regional Administration is located in the same building, and the administration's press secretary issued permanent passes for journalists. However, all the above clearly shows that problems with provision of information in Kutaisi often appear bizarre.

As far as information policy and local media are concerned, the authorities set up their own newspaper where resolutions and ordinances of local government are published.

POTI

Poti appears to be one of the most difficult cities in Georgia in terms of access to information and cooperation with the authorities. Poti saw an unprecedented thing: the mayor of the city declared a one-month moratorium for journalists, and refused to give any comments on any issue. However, according to journalists, the moratorium was applied selectively. On the day following his statement, the mayor granted an interview to TV "9th Sky". Nana Janashia said there were cases when the mayor simply prohibited his employees to give any information. According to the same journalist, public organs allow themselves the maximum time span of 10 days to issue public information. Members of the chancellery say they were told to behave in this way.

It is very difficult to obtain information from the Ministry of Internal Affairs, procuracy, mayor's office, tax inspection, etc. There were cases when requests for information got lost, despite their being registered. Besides, it is difficult to obtain information in Poti Port, too. The management of the port holds briefings at its own discretion; in other cases journalists are not accepted.

In December 2005, journalists asked for financial indicators for 2004-2005, but received no answer from the port administration.

ZUGDIDI

The situation in terms of access to information in Zugdidi is not different from other regions of Georgia.

Ana Sordia of "Odishi" TV Company says the only source of information on issues concerning Abkhazia are meetings in Chuburkhinji. It is difficult to get any information from power structures, and if journalists manage to get information, power structures will start inquiring as to the source.

Geronti Kalichava of Atinati Radio says the situation with radio is more complicated. The authorities treat them with negligence. They are prepared to give an interview to Radio Liberty, but not to "Atinati" Radio, even if the journalists are the same. Certain bodies give comments at their own discretion. If journalists ask for information in writing, they do not even bother to answer them.

Koba Narsia, chief of the internal affairs division in Zugdidi district, always answers in 2 words: "No comment!". There are no briefings organised by power structures for journalists. They are told to contact the press centre of the Ministry of Internal Affairs in Tbilisi. Journalists say the can contact the press service of the Ministry of Defence for high-profile events, but not for any piece of information. In Martvili, police took away from "Odishi" TV journalists their camera, and cassettes. Then they brought to "Odishi" TV both the camera and the cassettes, but did it separately. Journalists say there is no one to protect them, and are reluctant to apply to the court.

BATUMI

Journalists in Batumi and Ozurgeti say that relations with local authorities represent a serious problem.

Nato Gegelia (Ozurgeti) spoke about difficulties involved in obtaining information from law enforcements bodies. In case journalists manage to obtain information, law enforcers start enquiring how the journalists got hold of it. There was a case when a journalist was told that procuracy would open an investigation to fond out how certain information ended up in the journalist's hands. More specifically, the information concerned increased incidence of tumors in Anaseuli, while the hospital refused to provide the statistics, saying they did not have it. Presently, the Constitutional Security Department is trying to find out how the information marked "Classified" was made available to journalists.

N.Gogelia said that even information concerning results of neurological examination among employees of the Ministry of Internal Affairs was not made available to journalists. Instead, journalists were banned from entering the building of the ministry. According to police, they are not allowed to provide any comments, even on murders, unless the comments are agreed with the administration of the Ministry of Internal Affairs.

In another case, the governor's Office of Chokhatauri refused to provide information concerning the budget, with the refusal challenged in court.

A journalist who made photos of the president was deprived of his camera, and pictures were deleted.

It is difficult for journalists to enter governmental buildings, contacts with press services are a problem, and it is very difficult to obtain information from institutions of the healthcare system.

RUSTAVI

Journalists in Kvemo Kartli, similarly to their colleagues in other regions of Georgia, think that the most difficult problem is to get information form the Ministry of Internal Affairs. According to Mze TV Company, the press service of the Ministry of Internal Affairs blocks the information, rather than provides it. The information if given to a select few, while access to information for other TV companies is simply blocked.

David Mchedlidze of Radio Liberty said that on of the programmes had as its theme the criminal situation in Kvemo Kartli, and 60-80% of the story was about reluctance and refusal of law enforcers to meet journalists and provide information to them. Representatives of other media outlets said that law enforcers are highly reluctant to be interviewed by journalists.

PLAN FOR PROTECTION OF JOURNALISTS

GORI

The main guarantee for protection of journalists is their labour agreements. Such agreements in Gori are either non-existent, or deficient. In the newspaper "Khalkhis Gazeti" there are labour agreements, but they do not contain all provisions as stipulated by the Labour Code. Other newspapers do not have any labour agreements with their journalists. One of the journalists working with "Lomchabuki" newspaper says he assumes that he was appointed by order that he never saw.

There are also problems related to journalists' ethics. Journalists of "Kartlis Khma" newspaper feel unprotected vis-à-vis Trialeti TV that spreads wrongful information about "Kartlis Khma" journalists.

The problem of labour agreements can only be addressed through joint endeavour by journalists. As far as ethics-related issues are concerned, they can be discussed and to a certain extent addressed with the help of media councils. In case relations between journalists are beyond ethical norms, and amount to libel and defamation, journalists can only be protected by court.

GURJAANI

It appears that the issue of labour agreements in newspapers and "Hereti" Broadcasting Company working in Gurjaani are addressed to a larger or smaller extent, however, TV companies in Gurjaani and Telavi do not use any labour agreements to regulate their relations with journalists. The situation in this regards with newly established "Our Newspaper", "Our Radio" and "Our TV" is not clear as their representative were not present at the meeting.

The issue of journalists' ethics is very relevant in Kakheti. Sometimes competition grows into open confrontation. On the one hand, there is a problem of aggressive entry into the market of new radio, new TV and a newspaper that, according to journalists, have particularly warm relations with he governor of Telavi, which means that their is no fair competition. Problems are also present in journalists' relations. Several days prior to the meeting with PDO journalists had agreed on standards to follow in their work, and their agreement came as a result of support to the media given by Adenauer Foundation. The agreement was signed by 18 journalists in Kakheti region.

BORJOMI

The situation in Borjomi and Akhaltsikhe in terms of agreements between media owners and journalists is among the most difficult. Journalists consider labour agreements to be one of the guarantees of their rights, however in many media outlets there is no practice of concluding agreements with journalists. Looking at specific newspapers one can say that there are no agreements with journalists in newspapers "Samkhretis Karibche", "Borjomis Khma", "Borjomi". "Borjomi" TV Company has 6-month contracts with journalists that, according to TV Company owner, are in line with provisions of the labour law. Journalists in Borjomi and Akhaltsikhe are unprotected not only vis-à-vis media owners, but also from each other. They criticise each other, in full contravention of any norms of ethics. As far as Samtskhe-Javakheti TV is concerned, journalists there are united in an association, they support each other and know there is nothing between them to be an apple of discord, as every TV company has its own audience.

KUTAISI

In terms of journalists' protection, labour agreements are a serious problem in Kutaisi, too. "Imedi" Radio has 3-month agreements with journalists, more or less in line with the law (though with no specified amount of time at work). Upon expiry, they are extended. "Imedi" TV has agreements, too, indicating the right to holiday, but with no indication of the amount of time at work. Journalist Nana Tvalabeishvili (formerly, staff member of "Mze" TV) says she requested her remuneration when quitting the job, to which end she was asked to write an application, but with no indication of her salary. Journalists working at "Mze" TV say they have not had any holiday for 2 years already. According to "Imedi" TV journalists, such a concept as holidays is simple non-existent for journalists working in regional media.

"Rioni" TV has no labour agreements with journalists. Neither are any labour agreements concluded with journalist at "Mega" TV. Often times journalists get lower remuneration, but there is no use to complain, as journalists are not in a position to protect their rights and fear losing their jobs.

Journalists from "Akhali Gazeti" newspaper have 6-month labour agreements, but with no indication of the size of remuneration. "Public Broadcaster" regional bureau has one month contracts with journalists, with the size of remuneration indicated, but journalists are not allowed to use their break hours.

In "Kutaisi Version" newspaper there are no labour agreements with journalists, and they receive honoraria. In "Dzveli Kalaki" radio journalists have one-year labour agreements, stipulating 5-6 hour working day.

One of the main issues raised by journalists in terms of their rights is a differentiated attitude towards journalists working in Tbilisi and those working in regions on the part of media owners. Journalists in the regions have more workload and lower remuneration than their colleagues in Tbilisi. Besides, their working conditions are not adequate: regional offices do not have their own premises, oftentimes journalists prepare their materials in a car. There is also the concept "regional journalism" that clearly is of discriminatory character.

Journalists of the National TV working in Imereti Region say they have no chance to participate in workshops and seminars, upgrade their professional skills, as there is no one to substitute them when they are away.

POTI

In Poti the situation in terns of labour agreements is much better than elsewhere in Georgia.

In newspaper "Tavisupali Sitkva" journalists have one-year agreements, with honorarium-related issues specified. In "9th Wave" journalists have one-year agreements, with the rights and responsibilities of the parties specified. "Media Tribuna" newspaper also has one-year agreements with journalists. Esma Kurashvili of "Media Tribuna" newspaper says she defines the terms of agreement herself. With new employees she concludes a one-month agreement, however with others there are 6-month and one-year labour agreements. There are 4 persons on staff, but the newspaper has interns working for it.

Despite labour agreements, journalists in Poti are unanimous in that the agreement is no guarantee to protect a journalist. If the management wished to dismiss someone, no agreement would help. Also, the more demanding a journalist is, the fewer chances he has to find a job.

As far as the legislation is concerned, journalists think that the Law on Freedom of Speech and Expression is a liberal one, with certain mechanisms incorporated into the law to protect journalists, for instance decriminalisation of libel, also the fact that the burden of proof is no longer the responsibility of a journalist. There was a case when Esma Kurashvili of "Media Tribuna" newspaper had published an article about the chief of the sanitary surveillance service, the person said he would apply to the court, but he did not. The journalist thinks it is probably the law that "worked" in favour of the journalist.

There is a problem of relations between journalists from different media outlets, and it is not infrequent that they feel unprotected vis-à-vis each other. Esma Kurshvili says she would rather expect help and support from journalists from other regions, than her own. There is no such notion as corporate interest – this is emphasised by all journalists working in Poti. Not infrequently media owners play one part of journalists against the other, the one they are not able to control themselves. Journalists also say that they are not always adequately informed, they do not have adequate access to professional literature, theory of journalism, etc. Journalists in Poti consider they would feel better protected if they were given trainings on journalists' ethics and professional standards, in order to have them appreciated. and implemented.

ZUGDIDI

Lack of protection for journalists was the theme of comments by Nana Pajava, Radio Imedi correspondent in Zugdidi. Others feel more or less protected, in certain cases due the adequately structured system of labour agreements they have with their media owners.

Journalists of "Kolkhuri Versia" newspaper have a one-year agreement. On the other hand, the management of "Odishi" TV intended to conclude 2-year agreements with journalists working there, but journalists were opposed to the idea considering that the terms offered were fettering ones, so now there are no agreements at all.

BATUMI

According to Lado Manabde, founder of "Guriis Moambe" newspaper (Ozurgeti), following the meetings held by PDO in 2005, more attention is given to mechanisms for protecting journalists, such as labour agreements. All the three newspapers published in Ozurgeti now have agreements with journalists.

In TV "Channel 25" journalists have 2-3-month agreements, which is clearly not adequate. In "Batumeli" newspaper some journalists have labour agreements, while others are paid honoraria. In "Ajara" newspaper journalists used to have long-terms agreements, however, all of them now have one-month agreements, which makes them feel vulnerable.

As far journalists' ethics and media organisations are concerned, there are virtually none. In Ozurgeti, ethics-related problems are largely due to fierce competition between newspapers.

High level of professionalism may become the main mechanism for protection of journalists in Batumi, and particularly, in Ozurgeti, which will enable putting in place workable system of labour agreements, and dissemination of balanced and reliable information. It is to be noted that level of professionalism of journalists in Batumi is among the highest in Georgia. This is largely due to attention and support given by donors to free media in Ajara.

RUSTAVI

The situation in terms of journalists' protection in Kvemo Kartli is basically the same as in other regions in Georgia. According to journalists, in Kvemo Kartli there is not a single free newspaper – any newspaper published there is financed either by the state, or by the NGO sector.

As far as agreements are concerned, the situation varies from one media outlet to another. In Radio Liberty there are one-year agreements, similarly to InterNews. The same is true for public TV. In "Akhali Gardabani" newspaper there are no agreements. In Kvemo Kartli TV journalists have one-month agreements, with no indication of work duration. In Radio Imedi journalists have 3-month agreements.

There is no competition between media outlets in Kvemo Kartli, hence there are no ethics-related issues between journalists. As far as media council is concerned, it's good that such an organisation does exist, but the issue is how effective it is in its work.

Overall, one can state that Kvemo Kartli is among the most problematic regions in terms of freedom of media, which was confirmed by journalists attending the meeting with PDO representatives.

GEORGIAN TIMES versus Press Centre of the Ministry of Internal Affairs

The Public Defender was addressed by George Kapanadze, Editor-in-Chief of the newspaper "Georgian Times". According to the applicant, in connection with Sandro Girgvliani murder his deputy, Maia Margvelani, contacted Guram Donadze, Head of the Press Centre of the Ministry of Internal Affairs for comment. When Donadze learn who he was talking to, he verbally assaulted the journalist. The same is confirmed by Maia Margvelani who recorded the conversation.

In connection with the facts of abuse of journalists and failure to provide access to public information, on 7 March 2006 the Public Defender recommended the Minister of Internal Affairs to dismiss head of the Information and Public Relations Department.

On 7 March G.Donadze was dismissed from office on the basis of his own report.

Journalists versus Chief of Organizational Unit of Telavi Governor's Office

On 1 April 2006, the Public Defender was addressed by Roman Kevkhishvili, correspondent of TV Company "Tanamgzavri" (Telavi) and Gela Mtivlishvili, journalist of the regional newspaper "Imedi" (Kakheti).

As stated in the application, Roman Kevkhishvili was physically and verbally assaulted by Nikoloz Paradashvili, chief of the organizational unit of Telavi Governor's Office. The incident occurred in the premises of Telavi Governor's Office. Parna Makashvili, head of PR Department of Telavi Governor's Office called TV Company "Tanamzavri" and asked head of news service never to send R. Kevkhishvili to the Governor's Office again.

Gela Mtivlishvili, too, was verbally and physically assaulted in the premises of Telavi Governor's Office by Gala Papunashvili, a.i. Deputy Governor

PDO representatives went to Telavi and met with Roman Kevkhishvili, Parna Makashvili, Nato Megutnishvili, Nikoloz Paradashvili and Gela Mtivlishvili. The relevant documents were sent to Kakheti Regional Prosecutor's Office, Kakheti Main Department of the Ministry of Internal Affairs and the Human Rights department of the Prosecutor General's Office for follow-up. preliminary investigation on the case was initiated on the basis of Telavi Governor's Office application alleging that journalists assaulted representatives of local authorities. The PDO sent the relevant materials to Telavi Internal Affairs Division. According to B.Guliashvili, head of division, all persons involved in the incident, with exception of Gela Mtivlishvili, were interviewed in the course of preliminary investigation.

GEORGIAN TIMES versus Press Centre of the Ministry of Internal Affairs

The Public Defender was addressed by Sofo Zedelashvili, journalist of the newspaper "Georgian Times". According to the applicant, on 23 January 2006 she applied in writing to the Ministry of Internal Affairs, to the person responsible for issuance of public information, as well as to Guram Donadze, chief of Information and Public Relations Department of the Ministry. Despite expiry of the period provided for response by the General Administrative Code, the Ministry failed to respond.

On the basis of Article 21 of the Organic Law on the Public Defender of Georgia, the Public Defender addressed a recommendation to the Minister to examine the issue of responsibility of persons who failed to issue the requisite public information within the time period stipulated by the law.

Saba Tsitsikashvili versus Marlen Nadiradze, Deputy Representative of the President in Shida Kartli

On 22 March 2006, the Public Defender was addressed by journalist Saba Tsitsikashvili. According to the applicant, deputy of the President's Representative in Shida Kartli menaced and verbally assaulted him. Marlen Nadiradze refused to speak to the Public Defender's representative on this issue. The PDO sent the relevant materials for follow-up to Shida Kartli Main Department of Internal Affairs and Shida Kartli Regional Prosecutor's Office. From the letter of Gori Division of Internal Affairs it follows that S.Tsitsikashvili received a notification that the fact featuring in his complaint did not provide any valid grounds to initiate a criminal case.

Trialeti TV Company Case

The Public Defender was addressed by former employees of "Trialeti" TV Company and "Trialeti" newspaper. According to the applicants, their rights were violated by the company's Director General, Joni Nanetshvili and his brother Badri Nanetashvili, MP. More specifically, journalists allegedly had to do several jobs, getting no additional remuneration. They were compelled to do construction work. They were often told by the Director General to blackmail businessmen to force them pay for advertising and, in case they refused, to threaten them with preparing a denigrating story about them. Journalists who were unable to do that got reduced remuneration and were insulted by Badri Nanetashvili. According to one of the journalists, Badri Nanetashvili was forcing governors of four districts to transfer GEL 500 for TV services, and in case anyone refused, he commissioned journalists to prepare highly negative reports about the person concerned.

Journalists were not given any paid leave. When going on holiday, journalists were never sure if they would still have their jobs when they returned. They did not have any labour agreements, and new nothing about their salary. Lado Rcheulishvili, cameraman, said he did not sign any documents when hired and only had a verbal agreement with Badri Nanetashvili. Officially, the Director General of the company was Joni Nanetashvili; however all meetings were held with Badri Nanetashvili chairing, and verbally assaulting the journalists. No story or report

was allowed to go on the air unless agreed upon with him. According to journalists from "Trialeti" newspaper, Nanetashvili opened an Internet cafe with grant money earned by the newspaper, and journalists preparing materials for the same newspaper had to pay money for using the Internet. They were only given computers for two days when IREX representatives were visiting the region. The journalists said that in 2005 there was a programme in the Ossetian language funded, and several journalists, allegedly working for that programme, received monthly bank transfers of GEL 500 each which they then gave to Badri Nanetashvili.

According to journalist Tamar Okruashvili, she circulated information about B.Nanetashvili's actions through GHN Information Agency. After that "Trialeti" TV Company broadcasted a story saying Tamar Okruashvili was an instrument in the hands of regional prosecutor against free media.

Journalist Eter Sadagashvili said that on B.Nanetashvili's instructions she had threatened several times local businesses (Agara Sugar, Kaspicement, Gorkoni) to make them transfer money to the company.

PDO representatives met with the Director General of "Trialeti" TV Company, Joni Nanetashvili. He affirmed that the company did not have labour agreements with journalists, as they were hired on the basis of an order. He also said that journalists were not asked to sign a payroll, though he paid their income taxes. Besides, there were bonuses paid to journalists based on the number of reports prepared, etc. He affirmed that journalists did do additional jobs but that was only done voluntarily. Joni Nanetashvili denied any blackmailing of businessmen to force them pay money to the company. He also provided some explanations concerning journalists' leaves. According to J.Nanetashvili, he said that in case of contravention he made deductions from journalist's salary, and to spare their working for free he usually sent them for non-paid leave. Though, if they wished, they were allowed to continue working. Nanetashvili said that his employees hardly ever used their leaves. When necessary, they were released from work for 2 days or even one week. As far as the Internet is concerned, Nanetashvili said that journalists were not paying for the use of the Internet. Tato Sazandarishvili of "Trialeti" TV Company said that journalists Thea Kakiashvili and Tamar Okruashvili were dismissed from their jobs for "immoral" behaviour discrediting not only their TV company, but all journalists. He alleged that they were dismissed at the journalists' request.

With a view to looking closer at financial breaches in the TV company, the journalists approached Chief of Shida Kartli fiscal police, Zurab Arsoshvili. The PDO asked Z.Arsoshvili to provide information as to whether there had been any investigation opened into the case. He promised to provide information, but later said that all queries should be addressed to Head of Fiscal Police D.Kezerashvili.

Neither businessmen, nor governors affirmed the allegations of blackmailing.

According to Article 19 of the Labour Code in force at the time of application: "Admittance to a job shall be based on the order (ordinance) of administration of an enterprise, institution, or organisation. The employee shall sign a receipt after having familiarised himself with the order". Joni Nanetashvili said that journalists starting their work at "Trialeti" TV Company were not asked to present their work books, or to open ones. However, according to Article 21(1) of the Labour Code: "When concluding a labour agreement, administration of an enterprise, institution, or organisation is under an obligation to ask the incumbent to present his ID document, work book or a record concerning his previous employment...". According to Article 41 of the Labour Code: "A work book shall be opened for any employee working in an enterprise, institution, or organisation for more than 5 days". According to the applicants, when they asked to make a record on their length of service in their workbooks, they got a refusal.

Journalists said that when on leave, they never got their salaries. Furthermore, the administration used to send employees for a leave at its own discretion and initiative, forcibly, and journalists never knew whether they would have any job after they returned. According to Article 2 (3) of the Labour Code: "An employee shall have the right to rest during breaks, holidays and days-off, as well as during a paid leave". Article 65 further

stipulates that "Every employee shall be given a leave every year, with his job and salary retained". Article 72 stipulates that "Workers and employees shall be receive a leave every year for the duration established by the law". The same article further specifies that "It is prohibited not to give a leave to an employee for more than two consecutive years".

According to Joni Nanetashvili, journalists breaching the discipline were punished with a one-month salary deduction. However, according to Article 135 of the Labour Code: "Breach of discipline shall be punishable with a) reproof; b) reprimand; c) strict reprimand; d) dismissal.

On 17 March 2006, the Public Defender sent the relevant materials to the Chairman of Parliament and asked her to examine B.Nanetashvili's activity as being incompatible with the status of MP. A special parliamentary commission examined the issue and arrived at a conclusion that B. Nanetashvili's activities were not compatible with MP status. The Committee on Procedural Issues of the Parliament of Georgia agreed to this conclusion and the Parliament passed a decision to terminate B.Nanetashvili's powers as MP.

11 PROTECTION OF FREEDOM OF BELIEF AND TOLERANCE

PROTECTION OF FREEDOM OF BELIEF

Over the reporting period, the situation in terms of freedom of belief and religion was better than in the preceding year. On the one hand, there were fewer attempts to block religious rites and fewer cases of physical violence on religious grounds. On the other hand, law enforcement bodies showed a more adequate response in case of violations.

In the earlier half of 2006, the Public Defender's Office received 12 complaints concerning violence on religious grounds. Most of these cases concerned obstructing the spread of religious beliefs and distribution of religious literature of Jehovah's Witnesses through physical and verbal abuse. In two cases violence was directed against followers of other beliefs. Two complaints concerned religious discrimination at schools.

The Public Defender addressed recommendations to various departments of the Ministry of Internal Affairs, as well as to the Human Rights Department of the Prosecutor General's Office. It is to be noted that both entities demonstrate much greater attention to such cases than previously. However, investigation on some of the cases was closed , allegedly due to inadequate evidence.

In November 2005, Jehovah's Witnesses rented a hall for meetings in Rustavi. In October-November 2005, Paata Bluashvili, leader of an extremist group "Jvari" (Cross), and other members of the organisation intimidated the owner of the hall into abrogating the contract with Jehovah's Witnesses. Interestingly, in 2004 Bluashvili had been convicted for obstructing religious services and given 2-year conditional penalty. After investigation of the incident in November 2005, he was assigned preliminary detention and placed into custody. Bluashvili challenged the court decision giving him three months in preliminary detention, and the appellate court reversed the decision and released Bluashvili before court trial. In April 2006, the court reversed its decision and gave Bluashvili a custodial sentence. Bluashvili did not appear before the court, and is currently in search.

After a series of incidents in Kutaisi in October 2005, where local residents made violent attacks against Jehovah's Witnesses, investigation was opened on several cases. Two persons arrested for being involved in the attacks, offered public apologies to Jehovah's Witnesses. In April 2006, these two persons were acquitted of the charge at Jehovah's Witnesses' request.

On 18 February 2006, Tamaz Gvelesiani assaulted two of Jehovah's Witnesses, M. Kuprashvili and Ts.Bakhutashvili, both physically and verbally, and forcibly took away M.Kuprashvili's Bible. Vake-Saburtalo district division of internal affairs opened an investigation. Tamaz Gvelesiani admitted his guilt, repented, and gave M.Kuprashvili her Bible. The aggrieved persons stated that the incident was over.

Restrictions of Freedom of Religion and Discrimination

On 14 February 2006, Jehovah's Witnesses requested a permission to use a hall of Tbilisi Sports Palace for their 2-day religious assembly. On 22 February, the Sports Palace administration told Jehovah's Witnesses that they would only give them the leave to use the hall, if they secure from the state guarantees of security. A similar response was offered to Jehovah's Witnesses in 2006. It is to be noted that guaranteed security is the direct responsibility and obligation of the state. Currently, investigation is underway on these cases, with charges of discrimination.

Public Attitude towards Religious Minorities

The attitude of the public towards religious minorities and, particularly, the so-called non-traditional confessions, is negative in general. The position the Patriarchate takes towards religious minorities is often a determining factor in shaping the attitude of the public. For instance, the conference that the Universal Peace Federation was planning to organise in Tbilisi failed after the Patriarchate called this assembly a totalitarian sect, and called its congregation to boycott any meeting organised by the Federation. Thereafter, administration of various cinema and theatre halls, despite a tentative preliminary agreement, refused to rent out their premises to the Universal Peace Federation.

In this connection the Public Defender made the following statement:

"On 22 June 2006, the Public Defender was addressed by members of the Universal Peace Federation. According to the applicants, on 21 June 2006 they were planning to hold in Tbilisi, in the premises of Rustaveli Theatre a conference, to be attended by one of the leaders of the organisation.

The organisation carries out both religious and civic activities. The world knows about the movement by the name of its founder Sun Myung Moon – Moonism. The organisation works in many countries across the globe, and has never been said to violate human rights or abuse the law. Hence, democratic states do not obstruct or restrict its work.

In connection with the conference that the Universal Peace Federation was planning to organise in Tbilisi, the Patriarchate of the Georgian Orthodox Church made a statement voicing its negative position towards the organisation. The Patriarchate advised its congregation not to attend the conference. It is to be noted that such a position on the Patriarchate's part is fully logical, as the Church sees itself responsible to express its attitude and position towards one or another development, the more so if the position expressed concerns a religious movement or religious activity. However, the attitude of the administration of some cinema and theatre halls in Tbilisi towards the organisation is largely unacceptable and discriminatory. After the statement by the Patriarchate, the administration of Rustaveli Theatre refused access to the theatre hall for the organisation to hold its conference, despite a preliminary verbal agreement to that effect. The same attitude was demonstrated by administrations of the Musical Theatre that returned money to conference organisers, Marjanishvili Theatre and Amirani Cinema. As a result, the conference was not convened, and the visit of one of the organisation's leaders to Georgia cancelled.

We find that the attitude the administration of the above theatre and cinema halls demonstrated towards the Universal Peace Federation is discriminatory. The Public Defender urges the management of the above facilities to realise that the Georgian Constitution prohibits any inequality in treatment based on religion".

Illegal Construction in the Territory of Orthodox Church Ruins

The village of Tskaltbila, close to the town of Vale in Samtskhe-Javakheti region of Georgia, features ruins of a church – an archaeological monument of 12-13th cc. Two walls – up to 4 metres high on the eastern side and up to 1.5 metres high on the southern side, are preserved. On the western and northern sides only the groundwork is preserved.

About two years ago Catholics from among the village community built a basilica type Catholic chapel inside the church site. The site represents ruins of an Orthodox church, as corroborated by the documentation of the Ministry of Culture of Georgia, and informal interviews with residents of the village. According to village residents, several decades ago stones with Georgian inscriptions were found in large numbers in the territory adjoining the church. Later, the territory was used by the Soviet Army for construction, after which the stones disappeared. The Orthodox clergy learnt about illegal construction about two months ago, and approached regional and central authorities for assistance, with no response or follow-on by the latter.

Notably, Padre Anatoli, Catholic minister, denied his involvement in the building of a Catholic chapel, or in giving it the blessing.

Building of a chapel in the territory of the historic monument dating from the 12th century is seen as unacceptable also by Shamon Saghoyan, chief priest of Armenians of Akhaltsikhe, Adigeni and Borjomi regions of the Georgian Eparchy of the Armenian Apostolic Church.

Construction in the territory of a former Orthodox church, without any agreement with the Georgian Orthodox Church contravenes the Constitutional Agreement between the Georgian State and the Georgian Autocephalous Orthodox Church. Under Article 7 of the agreement, all Orthodox churches, monasteries, their ruins, and lands under them is the property of the Georgian Orthodox Church.

The Public Defender addressed the residents of Tskaltbila, authorities of Samtskhe-Javakheti region, representatives of the Armenian Diaspora in Georgia, Georgian Catholic and Orthodox Churches, the Ministry of Culture, urging them to take a decision that would lead to vacating the territory of 12th -13th cc. historical monument from illegally erected structures.

PROBLEMATIC ISSUES

- Discriminatory legal environment (see the Public Defender's Report for the 1st half of 2005 and Annex 2a, with excerpts from the US Department of State Report on Religious Freedom in Georgia);
- Demands by the Armenian Apostolic Church concerning the return of 6 churches (see the Public Defender's Report for 2005, and Annex 2a, with excerpts from the US Department of State Report on Religious Freedom in Georgia);
- Catholic churches used by the Orthodox Church, problems with construction of new Catholic churches (see the Public Defender's Report for 2004, and the US Department of State Report on Religious Freedom in Georgia);
- Chaos in terms of religious instruction in schools and discrimination by teachers (see the Public Defender's Reports for 2004-2005, and the US Department of State Report on Religious Freedom in Georgia);
- Manifestations of intolerance, xenophobia and violence by the majority;
- Discriminatory attitude towards religious minorities in Georgian-language media.

TOLERANCE AND INTEGRATION

Mass Media

In terms of correctness, Georgian media is beneath all criticism, and the prevailing attitude can only be described as discriminatory. The PDO Centre for Tolerance intends to make public the results of monitoring conducted with a view to study as to how ethnic and religious issues are covered in the media.

Presently, there is not a single TV or radio programme interested in covering issues concerning religious minorities and tolerance, the only exception being the 20-minute long weekly programme "Our Georgia" launched in the Public TV to cover issues pertaining to ethnic and religious minorities.

The Public, the State and Religions Councils

The trend over the recent period has been for religious minorities to respond to significant events and developments that are probably not immediately relevant to religion, and demonstrate to the public the immense potential the religion has in developing civic culture. In 2006, the Religions Council established with the Public Defender's Office made a number of important statements. Confessions present in Georgia expressed their support for the efforts made by the state to crack down on criminal authorities, they responded to the "cartoons war" whose repercussions reached many countries, including Georgia. The Religions Council held a meeting with media representatives covering the above issues, and discussed with them the need to abide by ethical standards relevant to the profession. The Religions Council stressed the inadmissibility of any restrictions for freedom of speech and expression, condemned the pillage of churches in Ruisi-Urbnisi Eparchy of the Georgian Orthodox Church, etc.

The Religions Council established with the Public Defender's Office held meetings with representatives of various governmental bodies, including Kote Vardzelashvili, Deputy Minister of Justice; Irina Tsintsadze, Deputy Head of the Penal Department; Eka Zguladze, Deputy Minister of Internal Affairs; and Nona Tsotsoria, Deputy Prosecutor General of Georgia. All these meetings were outcome-based. For instance, after the meeting with the Deputy Minister of Justice, several religious groups decided to undergo registration, a decision was made on signing a MoU between religious groups and the Penal Department, investigation of offences on religious grounds has become more effective, etc. Cooperation between the Religions Council and various public and state entities is also important because it is the first precedent in Georgia of non-discriminatory relations between the state and religious minorities.

The Georgian Orthodox Church is now more frequently involved in inter-religious meetings, and is often an initiator of such meetings and conferences. An Inter-Religious Council has also been established with the Patriarchate, and it brings together only the so-called traditional religious groups.

ANNEX 1

Statements Made by the Religions Council in 2006

1. New Year Greeting by the Religions Council

We, the representatives of churches, confessions and religious groups, members of the Religions Council established with the Public Defender's Office, are happy to have this opportunity to jointly congratulate all people in Georgia with the arrival of a new year, the year 2006.

New Year days, the wonderful span of time, abound in religious festivals and are full of joy and wonder.

It is an important achievement of our country that different religions can celebrate openly and freely their religious festivals. We express our gratitude to the President of Georgia and Georgian authorities for their support of this religious holiday, that has found expression in many sincere congratulations. At the same time we are hopeful that the authorities will demonstrate their good will to support holidays of other religious denominations, too.

Religious holidays celebrate victory over the evil, and remind us of renewal, warmth and care, love and devotion, freedom and belief, spiritual strength and dedication, life and humanity. It is these feelings and eternal values that determine the life of the humankind, and lead it towards a better future. They also determine our desire to support each other. At the same time, dedication to these values can help us address the most important issues in the life of our country: restoration of territorial integrity, reduction of poverty, elimination of corruption and criminal mentality, introduction of civic and legal culture.

The current epochal social and cultural changes, the process of civil integration, reforms launched by the government, many a success already attained instil hope that our country will be able to cope with the difficulties it faces. However, final victory can only be celebrated when the atmosphere of trust, mutual understanding, respect, cooperation and equality reigns in our society. We, members of the Religions Council established with the Pubic Defender of Georgia, once again offer our congratulations to the whole of Georgia on the occasion of the New Year, and wish all people peace, strength, economic progress and success in overcoming social problems.

May the year 2006 become the year of restoring territorial integrity and building the atmosphere of tolerance!

2. Statement of the Religions Council on Processes in Places of Deprivation of Liberty

We, the representatives of churches, confessions and religious groups, members of the Religions Council established with the Public Defender's Office, fully aware of the responsibility our service implies in penal establishments, affirm that we are always ready to support those who are today separated from their families, homes, those who are deprived of liberty and stay, for various reasons, in penal establishments.

At the same time we, the members of the Religions Council, proceed from the principles enshrined in our confessions and uniting us in the Council – we aspire towards establishing ethical, legal and civil consciousness. Hence, we state that the so-called criminal mentality is the basic science for one part of our society. "Traditions of the criminal world" can be particularly harmful for our youth, our future generation, leading them away from the process of building our future, and spiritual and moral development. Criminal mentality is grossly unacceptable for any religion, and we try to oppose any manifestations of it everywhere and, particularly, in penal institutions.

Our brothers, deprived of liberty, are particularly in need of spiritual and moral support. The society should no longer view the penitentiary system as a mechanism for punishment and isolation. Instead, the penitentiary system should provide for rehabilitation of people. But for it to be able to fulfil this mission, the state should undertake reforms that are not possible for as long as criminal mentality is all-pervasive, for as long as criminal authorities decide on the fate of prisoners, for as long as politicians and law enforcers strike deals with representatives of the criminal underworld.

The reform currently underway in the penitentiary system is a must. We support the efforts towards establishing justice and fairness, undertaken by the leadership of our country, as it is inadmissible to remain neutral in this situation, and thus encourage criminal ideology and those who spread it. At the same time we think that any violence and abuse of human rights by law enforcers are inadmissible either.

We, members of the Religions Council, urge our sisters and brothers who, for various reasons are in penal institutions today, to look closer at the reformation underway now and appreciate how necessary it is. We

should aspire all together towards a strong, peaceful Georgia, guided by fairness and equality. At the same time we are confident that loyalty to the so-called criminal traditions is incompatible with this aspiration, and what is more important – with freedom.

3. Statement of the Religions Council on the "War of Cartoons"

We, the members of the Religions Council established with the Public Defender's Office, express our concern over cartoons of Prophet Mohammed published in one of Danish magazines, and the rift between the western and Moslem world these cartoons led to.

We, the members of the Religions Council, respect freedom of thought, speech and expression, and oppose categorically any unwarranted restriction of this freedom, as we are aware that it is of paramount importance for building a democratic and pluralist society.

At the same time we think that devotion to his values should be imbued with responsibility for establishing the culture of tolerance, peace and mutual respect.

In this regard, of paramount importance is cooperation between representatives of religion and journalists. It is desirable for media representatives to be better informed of religious traditions and education, more appreciative of the need to respect religious diversity and ethical norms of journalism, as any mistake, willingly or unwillingly made in this area, offends religious people's most sacred feelings.

Today we, representing different religions, wish to once again demonstrate mutual solidarity and assure the world community that religions have an inexhaustible potential to establish the atmosphere of tolerance, dialogue, humanity and peace.

4. Statement on Pillage in Temples of the Georgian Orthodox Church

Over the recent period, several churches have been pillaged in Ruisi-Urbnisi Eparchy. Objects of worship sacred for the Orthodox Church were stolen or profaned. Despite several arrests by law enforcers, pillage continues. Religions Council expresses its concern over events in the Ruisi-Urbnisi Eparchy and once again reaffirms its respect to the Orthodox Church.

The Religions Council believes that Georgia's religious groups should express their support to the Orthodox Church, and condemn jointly the pillage and profanation of sacred objects.

The Religions Council is hopeful that law enforcers will do everything to find the perpetrators.

ANNEX 2

Excerpts from the report of the US Department of State on Religious Freedom

The Georgian Orthodox Church enjoys a tax-exempt status not available to other religious groups. The Concordat contained several controversial articles, giving the Patriarch of the Church immunity, granting the Church exclusive access to the military chaplaincy, exempting clergymen from military service, and giving the Church a unique consultative role in government, especially in the sphere of education. many controversial articles required from Parliament adoption of legal acts to ensure implementation of the Concordat.

The Roman Catholic and Armenian Apostolic Churches have been unable to secure the return of churches and other facilities closed during the Soviet period, many of which later were given to the Georgian Orthodox Church by the State. The prominent Armenian church in Tbilisi, Norashen, remained closed, as did four other smaller Armenian churches in Tbilisi and one in Akhaltsikhe. In addition, the Roman Catholic and Armenian Apostolic Churches, as with Protestant denominations, have had difficulty obtaining permission to construct new churches due to pressure from the GOC.

A law on education passed in April 2005 stipulates that teachers may no longer participate in prayers, proselytize, or preach any religion on school territory, or teach religion in public schools. While the course on Orthodox Theology was elective, students reported receiving pressure to take it, and almost all students did. students complained that teachers began most courses, including mathematics and science, by leading the class in a recitation of Orthodox prayers. Those who did not participate, including Muslim students, were sometimes punished. In many classrooms, teachers hung orthodox icons or pictures of Georgian Orthodox religious figures. Some schools reportedly have Orthodox chapels where students are encouraged to pray.

12 THE NATIONAL MINORITIES COUNCIL

The National Minorities Council established with the Public Defender's Office brings together representatives of different ethnic groups. With a view to promoting dialogue between the government and representatives of ethnic minorities, the Council organizes periodically meetings with government officials. The Council works closely with the State Council for Integration and Tolerance, as well as with other state entities.

With a view to monitoring implementation by Georgia of its obligations under the Council of Europe Framework Convention for the Protection of National Minorities, and fostering support by the state for its implementation, the Council organized a number of meetings, for instance, with Vano Khukhunaishvili, Chairman of the Parliamentary Committee on Regional Policy to discuss the law on local self-government; Eka Zguladze, Deputy Minister of Internal Affairs; Nona Tsotsoria, Deputy Prosecutor General, and Irina Tsintsadze, deputy Head of the Penal Department.

During the meetings, members of the Council representing various ethnic groups raised the issue of crime detection in Kvemo Kartli and employment of minority representatives in power structures. It was agreed that meetings between Council representatives and power structures would be held on a regular basis.

Representatives of ethnic minorities, present at the meetings could speak directly to representatives of ministries and departments, and obtain information they were interested in. In the course of the meeting with representatives of the Penal Department, members of the Council met with convicts, and visited the kitchen of Rustavi Prison No.6. Members of the Council expressed interest in the situation of minority representatives serving their sentences at penal institutions. It was decided that meetings between Council representatives and the Penal Department would be held regularly. Also, a verbal agreement was reached on concluding a memorandum on cooperation.

In September 2006, members of the Council met with the Mayor of Tbilisi and raised a number of issues, including about museums, cultural and educational centres and schools. It was agreed that minority artistic groups would be involved in cultural events held in Tbilisi, and the relevant service was instructed to act accordingly.

Ana Zhvania, Advisor to the President on Integration and Minority Issues did a lot to organise these

meetings. The Council plans to meet with the leadership of the Ministry of Culture and Sports, Ministry of Education, and other ministries and departments. It is to be noted that representatives of all ministries and departments are ready and willing to meet with members of the National Minorities Council.

The Council has four commissions: on media and information, on education and culture, on regional integration and conflict prevention and on legal issues. Commissions are made up of ethnic minority representatives. Presently the commissions work towards the implementation of the Framework Convention on the Protection of National Minorities. Working groups meet once a week jointly with experts of the European Centre for Minority Issues (ECMI), and discuss legislative and administrative measures to be put in place for implementation of the Convention. Members of the Council often travel to regions of compact settlement of ethnic minorities to take stock of the situation on the ground in Kvemo Kartli, Tsalka, Marneuli, Gardabani, Samtskhe-Javakheti, Akhalkalaki, Ninotsminda, Akhaltsikhe and Pankisi Valley.

Freedom of Media and Access to Media in Regions of Compact Settlement of Minorities

In the regions of compact settlement of minorities in Kvemo Kartli and Samtskhe-Javakheti, TV broadcasting is deficient, especially in border-line areas. Quality can only be attained through the use of satellite dishes that most of people cannot afford. The population of these regions have no access to Georgian information channels, and hence find themselves in information and cultural vacuum, which in turn is a serious impediment for them in the process of integration.

On Ethnicity in News Coverage of Offences

When covering criminal offences, media representatives or officials frequently indicate the offender's ethnic origin. Ethnic origin has nothing to do with fight against crime, or legal assessment and moral evaluation of an offence. It does not matter for justice or rule of law, or the crime victim and ordinary citizens what the offender's ethnic origin is. Indication of ethnic origin of an offender provides no additional means to detect or prevent crime. The only result of putting the finger on offender's ethnic origin is the shaping of a negative stereotyped image of one or another ethnic group. Therefore, it is inadmissible for officials to be putting their fingers on offenders' ethnic origin, and journalists should refrain from creating any stereotyped images.

Dukhobors in Ninotsminda Disrtict

The PDO monitoring group went to the village of Gorelovka of Ninotsminda district of Samtskhe-Javakheti Region of Georgia to examine the situation of Dukhobors.

According to Dukhobors, because of unbearable conditions they are compelled to leave Georgia and go to Russia. Frequently, tens of hectares of land they rented are taken away by people from other villages, they use the land for haymaking and take away the hay. Of 1700 hectares of land rented by Dukhobors, currently they actually have 300 hectares. Theft is widespread, and Dukhobors insist theft is committed by newcomers.

Not infrequently, Dukhobors and new settlers come into conflict with each other. New settlers enter the school where Dukhobor children study, and violate public order there, physically and verbally harassing those people who call them to order. There was a case when young Dukhobors were assaulted by new settlers. Dukhobors informed the district governor, police and regional administration of these facts, but with no visible result. Dukhobors say that the work of police in addressing these cases is largely ineffective, with no one implicated or arrested for violence against Dukhobors.

Dukhobors think that persons newly settled in Dukhobor villages have the support of persons holding high posts in district and regional authorities, and they deliberately commit actions to compel Dukhobors to leave Georgia.

Dukhobors are mainly involved in agriculture, namely livestock breeding, therefore the land issue is of particular relevance for them. After the collapse of Kolkhoz system, Dukhobors set up their agricultural cooperative farm, employing most of the village community. In 2002, Ninotsminda District Council signed with the cooperative a rental agreement under which the Dukhobors were given 1700 hectares of farmland, 1225 hectares of hay land, and 1300 of pasture land. However, in 2005 Ninotsminda Council questioned the validity of the agreement, alleging that the previous incumbents of the Council had not followed all legal procedures necessary for a rental agreement, hence the agreement was not valid. Despite the fact that the present Council thinks the agreement is not valid, it has not abrogated it, or applied to investigative bodies to start investigating the alleged fraud.

Of the land they have rented under the agreement (1700 ha plough land and 1225 ha hay land) the Dukhobors only managed to use 300 ha. According to them, the remaining lands were misappropriated by new settlers.

The Public Defender's Office will examine the issue and prepare its opinion on the issue of Dukhobors' land use, security, etc.

Cultural Heritage

The Dukhoobrs' sanctuary "Orphans' Home" located in Gorelovka, dates from the 19th century and is built in the Slavonic-Russian architectural style. The sanctuary is built of wood and comprises several structures. The sanctuary in Gorelovka is among the oldest Dukhobor sanctuaries, and is preserved in its original form. In case Dukhobors leave Gorelovka, or crime situation becomes worse, it might be difficult to retain the "Orphans' Home" – an original and remarkable part of the cultural heritage of the Russian-speaking minority – the Dukhobors. Therefore, it is necessary to take adequate steps to preserve the Dukhobors' cultural heritage.

Recommendations

1. When disseminating information on criminal offences public officials should refrain from pointing out the offender's ethnic origin. The same recommendation is also valid for mass media representatives.
2. The Government of Georgia should allocate the necessary resources with a view to improving the TV broadcasting quality in the areas of compact settlement of ethnic minorities.
3. The suggestion for the Ministry of Culture of Georgia and Samtskhe-Javakheti regional administration is to elaborate jointly with local Dukhobors a programme for preservation and maintenance of the "Orphans House" in the village of Gorelovka.

13 THE RIGHTS OF THE CHILD

On 2 June 1994, Georgia ratified the Convention on the Rights of the Child, and undertook commitments as envisaged by the Convention. Childcare in line with provisions of the Convention and better guarantees of child protection require more effective interventions by the state. Social protection for children remains an outstanding problem that implies on the one hand non-availability of basic conditions for children in vulnerable families, and unsatisfactory care for children in institutions for children deprived of parental care.

International agencies, such as the United Nations, EU, Council of Europe provide recommendations to ensure more effective implementation of the provisions of the Convention. The recommendations stress the need to strengthen the legislative framework, implying together with other interventions adoption of a special law on child care and protection.

The country has showed certain progress in the protection of the rights of the child, the legislature takes account of recommendations and comments by UN and EU. The declared will of the state to take active steps towards improving the care for children and ensuring better guarantees for their protection are clearly visible, and reflect the policy pursued by the state. One of graphic examples is the process of deinstitutionalisation of children, though to bring the process to successful fruition it is necessary to address many of the issues still unresolved.

There is no effective mechanism to assess the family and control the child's development in the event a child is returned to his/her biological family, or transferred to a foster family. Setting up such a mechanism is linked with establishing the social workers' service, which in turn depends for efficiency on high standards of academic qualifications of social workers.

The work carried out by the Public Defender's Office has elucidated once again the problems encountered in child protection, such as lack of an adequate legislative framework and the need to ensure effective work of executive authorities.

CENTRE FOR THE RIGHTS OF THE CHILD

Despite strong commitment and high standard of the work performed, the activities carried out by the PDO in upholding the rights of the child lacked coordination and coherence. Besides, international organisations and independent experts many a time recommended to set up within the Pub-

2008

lic Defender's Office a special unit responsible for implementation of the principles of the Convention on the Rights of the Child.

These recommendations, coupled with Georgia's commitment to become part of the European Children's Ombudsmen Network, led to the establishment, on 1 September 2006, of the Centre for the Rights of the Child affiliated to the PDO. The Centre is tasked to carry out all activities in terms of protecting the rights of the children that were previously performed by the Public Defender's Office. Of primary importance is monitoring of practices and research management.

The Centre aims to:

- Supervise implementation of the Convention on the Rights of the Child;
- Raise public awareness and education on the rights of the child;
- Promote changes and amendments in laws and procedures through preparing recommendations for legislative bodies;
- Promote integration of children in special care into the society;
- Survey children's interests and problems with involvement of children in the process;
- Coordinate activities of NGOs active in the child protection

The Centre plans to expand its activities along the following lines:

- Further specification in the monitoring of child institutions – creation of a data base of institutions, improving questionnaires, involving the relevant professionals etc.;
- School monitoring;
- Monitoring the implementation of recommendations given to different administrative bodies;
- Monitoring the process of deinstitutionalisation of children;
- Case studies – examining complaints on violations of the rights of the child.

Coordination Board

Many organisations in Georgia work to protect the rights of the child, however, the work is not adequately coordinated. There are problems in child care that are addressed concurrently by two or more NGOs, while many of urgent problems remain beyond any attention. Therefore, in June 2006, on the initiative of the Public Defender of Georgia, the PDO jointly with NGOs active in the field of child protection set up a coordination board to coordinate efforts towards protection of the rights of the child in Georgia.

The Coordination Board brings together about 40 NGOs active in child protection, all with differing focus of work. It is important for the PDO to cooperate closely with NGOs, to ensure effective, judicious and targeted use of available resources for the purpose of protecting children. Thus, the PDO will assist NGOs to carry out their work more effectively.

MONITORING OF CHILDREN'S INSTITUTIONS

In Georgia protection of children deprived of parental care if the responsibly of the state. Notably, the risk of impairment of human rights and fundamental freedoms is the highest in closed institutions.

This was reason behind the monitoring exercise of childcare institutions and rehabilitation centres launched by the Public Defender's Office in November 2005. The monitoring aims to look at the situation of institutionalised

children from the perspective of their rights, analyse and evaluate the findings, make conclusions, and finally present recommendations to various governmental entities.

The ongoing monitoring enables to obtain a clear picture of the situation with protection of the rights of the child across Georgia, and create a complete database of childcare institutions in the country.

Since November 2005, the monitoring has covered 48 out of 62 institutions existing in Georgia. Problems related to poor healthcare, malnutrition and inadequate education are found to be persistent in childcare institutions, and the situation there is among the direst in Georgia. The situation of children there is more or less the same across the country. Measures to address the situation are mostly formal in character, and in reality there has been very few, if any, positive changes in the situation of children.

The 2005 Parliamentary Report described comprehensively results of the monitoring of childcare institutions and pointed out those issues that called for immediate action. This notwithstanding, the situation in almost all childcare institutions remains as it was, the only change being that some institutions were simply closed within the framework of the deinstitutionalisation programme.

Deinstitutionalisation is a rational way out for children, however, it is a time-consuming process; meanwhile children continue living in institutions in literally unbearable conditions. Most of them will reach legal age without the reform impacting them. The state is under an obligation to ensure child welfare in all childcare institutions. Relevant bodies should realise that it is their responsibility to be guardians for children left without parental care, and take care of their education and development. PDO findings show that this is not the case and the situation in childcare institutions is daunting.

It is difficult to make a change, because relevant bodies seem to be little concerned about the situation in institutions, or the need to improve at least living conditions there.

Psychologists and social workers on the staff of childcare institutions should not be a rare exception. In most institutions there is no one to work with children in terms of looking at their families, examining the reasons of their placement in institutions, assessing the risks for child's mental and physical health stemming from institutionalisation, etc.

The monitoring group saw cases when lack of adequate care for children in institutions was presented as their families' fault. For instance, a nurse from one of childcare institutions in Samtredia blamed the child's mother for his pediculosis and dirt, adding that his mother had serious mental health problems that prevents adequate care of the child even on those days when she takes her child home (Saturday and Sunday).

One educator at Kaspi institution for children with disabilities said that father of one of their inmates, an alcohol-addict, forces his child to be begging in the street when he takes him from the institution, allegedly, home.

These and other cases clearly indicate that family situation of every inmate should be studied carefully, otherwise children will not be protected. It is necessary to have social workers addressing this problem. Only having clear picture of the specific situation of individual inmates will it be possible to ensure real protection for children. Currently, almost none of childcare institutions has a social worker on the staff. The same is true of psychologists.

Living conditions in childcare institutions are daunting – with extremely poor sanitary conditions, bedrooms, and general state of dilapidation. The situation is particularly difficult in the regions, where the level of socio-economic development is much lower that in the capital city, which is mirrored in childcare institutions. In the

Batumi institution, for instance, that was visited twice between January and June, the situation has not improved. There is no door between a bedroom for boys and the toilet, and this has not changed since January 2006. Apart from inadmissibility of such situation from the sanitary viewpoint, this results in inability to keep the rooms warm, etc. The Batumi institution was found to have no reserve of medications, even those necessary for first aid.

Adequate nutrition is also a problem, the more so as there are no standards concerning the minimum admissible level of nutrients to be consumed, and menu is compiled proceeding from the available budget that presently stands at GEL 2.1-2.5 per person per day.

The issue of teachers calls for attention, too. Their level of remuneration is lower than that of teachers at public schools, though their work requires a higher level of professionalism and motivation. It is necessary to provide trainings for teachers working at childcare institutions. They need to know what approach to follow in every individuals case, what affects or improved their situation, etc. An educator at the childcare institution in Akhalgori sincerely said she did not understand why she could not beat a child. Apart from usual problem similar to those in other institutions, the monitoring group came across an issue clearly indicating violation of children's rights there.

Case of L.Kojoev and I.Geladze, Akhalgori Childcare Institution

In June 2006, two members of Akhalgori district police committed an offence against two inmates of Akhalgori Child's Home – 16-year old Levan Kojdoev and 11-year old Jason Geladze. Two police inspectors-investigators, Dato Tatunashvili and Besik Orkodashvili, went to Akhalgori secondary school and without even informing teachers, took to police two boys – Levan Kojdoev and Jason Geladze, allegedly for their involvement in theft of electric wiring from Akhalgori post office, in order to get a confession from them. To extract a confession, police officers subjected the boys to physical and psychological pressure, but the boys did not confess, and after some time they were released.

The fact was witnessed by E.Zurabiani of the Childcare Department of the Ministry of Education of Georgia. After the Ministry stepped in, the Regional Prosecutor's Office initiated criminal proceedings against the perpetrators, and police inspectors Dato Tatunashvili and Besik Orkodashvili were arrested. They were charged under the Criminal Code Article 333, Para.3 (a), (b), (c) (exceeding official powers); Article 1441 (torture), Para 2 (a), (b), (c), (d); and Article 369 (falsification of evidence). By decision of Mtskheta District Court, both accused persons were given two-month detention as a restraint measure.

Representatives of PDO Centre for the Rights of the Child met with the victims and their teachers. It is important to note the attitude of teachers to the fact. Some of them know D.Tatunashvili and B.Orkodashvili personally, and do not think they committed an offence. The discussion suggested that if it had not been for E. Zurabiani sounding an alert signal, the incident would not have been followed on, as many did not simply understand what was wrong with police behaviour. The staff of Akhalgori Child's Home did not even know that interrogation of underage children in the absence of their family or representatives is prohibited, which is indicative of their low level of professionalism.

It is interesting to see childcare institutions established by the Patriarchate. PDO has not been able to carry out monitoring there, despite applications submitted by parents and relatives of children placed there. However, the PDO is not entitled legally to enter these institutions for monitoring and, hence, deprived of any possibility to follow on violations, if such occur at the institutions under the Georgian Orthodox Church.

The Public Defender was addressed for help by Manana Gelashvili living in Dzevri shelter. According to the applicant, her children are raised at one of children's homes under the Patriarchate. When she went to Zestafoni

orphanage where her children were said to be kept, she was not allowed to enter. One of the children was transferred to Ninotsminda, without even notifying the child's mother about that. On 7 April 2006, PDO representatives went to Ninotsminda, and on 11 April – to Zestafoni, to visit the orphanages. Both the orphanages are supervised by Priest Grigol Abuladze, however, PDO representatives were not able to meet him either in Ninotsminda, or in Zestafoni.

Many of the above issues were dealt with in the previous report. Failure by the state to address them means violation of the rights of inmates of childcare institutions. It may well be that presently the state is not in a position to offer them the highest standards of care, however the situation in childcare institutions as it is today is beneath all criticism, and the state should take steps to start addressing it.

The Public Defender's Office continues the monitoring exercise, and plans to give it a more systematic character in future. To this end, the PDO members have drafted a project on improving the monitoring of childcare institutions in Georgia.

STREET CHILDREN

In recent years the term "street children" has gained a strong footing in the society and is used to denote children living in the street and characterised by various forms of destructive behaviour, such as begging, theft, extortion, robbery, and prostitution. Many of these children suffer from toxicomany, they do not attend school and have serious personal problems. They are in need of socialisation, i.e. fully fledged integration into the society. One can safely state that street children represent the most vulnerable group in Georgia.

Results of the monitoring carried out by PDO show that most of the problems faced by vulnerable children are still not resolved, but the state is aware of the obligations it has vis-à-vis these children. However, the attitude of the state to "street children" is completely different. Given the street children's lifestyle, it is difficult to place them in institutions – most of them have parents (at least, one) who often push their children into begging and crime. These children live in the street since early age, have their income got through petty theft or begging, hence they are used to a certain form of "freedom", refuse to accept other forms of behaviour and defy any social control. State bodies responsible for care provision for children often say that placement of "street children" in respective institutions is linked with a whole number of problems.

Solution to these problems depends largely on how well the state can carry out preventive measures. These, in turn, should be based on knowledge of factors pushing children to the street (the role of parents, surroundings, etc.)

The UN Convention on the Rights of the Child stipulates that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

The Case of V.T., Minor

On 12 July 2006, the Public Defender's Office was addressed by G.Kokrashvili, representative of the Human Rights Information and Communication Centre who said that V.T. was subjected to torture by his parents. The child displayed multiple signs of injuries both on his body and in the head area. According to V.T.'s friends, the injuries were inflicted by his parents and by street gangs.

V.T. is a street child, and it was necessary to place him without delay in an institution to ensure his security. In order to examine the case, the PDO representatives met with the child's parents at Unit 5 of Gldani-Nadzaladevi

division of internal affairs. It appeared that V.T. has 3 minor brothers, but none of them attends school. V.T.'s mother said that neither she, not her husband had got secondary education, and it is not necessary for her children to get education. The family's neighbors and relatives said that the parents forced children to beg in the street near the railway station, which the child's mother did not deny and said it was due to a dire economic situation that they had to send their children to beg in the street. During the interview V.T.'s parents said they could not control their son's actions, as he was rarely present at home and lived in the street, together with other children. The parents agreed to have their son sent to Samtredia Child's Home, which is a closed type institution and it is practically impossible to escape from there. The parent's consent was certified by a protocol compiled in police. On 21 July, police brought V.T to the Social Adaptation Centre. It was necessary to have him transferred to Samtredia, as there was a risk of his escaping from the Social Adaptation Centre. As no other institution undertook to transport the child to Samtredia, this was done by PDO representatives. The Human Rights Information and Communication Centre addressed the Ministry of Education concerning V.T.'s case way back in February 2006 with a request to follow on the case, however nothing was done for four months. In the meantime, the child was repeatedly subjected to torture. It is necessary to investigate also whether V.T. was subjected to physical harassment by his parents, as attested by many witnesses.

The problem of toxicomany, widespread among street children, calls for close attention on the part of the state. There is no law or normative act in Georgia to ensure protection of children against this evil. There is no state programme of rehabilitation of such children, which makes a general picture bleaker by year, as children's health status gets worse.

Under Article 24 of the Convention on the Rights of the Child: " States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services". The rights enshrined in the said article are impaired in respect of street children.

It is necessary for the state to develop a more comprehensive and, at the same time, concrete legal framework to address the above problems, display political will and realize the responsibility it has for street children. It is to be noted that state structures have failed to put into effect even the existing mechanisms of protecting the rights of the child.

The monitoring process is very informative in terms of identifying problematic tendencies in the field of children's rights, but analysis of individual cases provided better practical experience. Practical work shows that time is an issue in coping with violations of the rights of the child, as response needs to be prompt. Otherwise the problem may become irreversible, as attested by examples presented in the report.

The Case of M.Z., Minor

In the course of monitoring at the Social Rehabilitation Centre in Gldani, the PDO representatives met with M.Z. (born on 15 July 1991). The said minor was placed at the Rehabilitation Centre on recommendation of U.Begiashvili, chief of Inspectorate for minors of Vake-Saburtalo district division of internal affairs. The child's mother, D.Z. was placed at Tbilisi psychiatric hospital, for which reason the child was for a certain period of time left without parental care and placed at the Social Rehabilitation Centre. After the child's mother returned home from the hospital, the child refused to return, as D.Z., mother of the child, often beat and abused him. To get a better insight into the case, PDO representatives interviewed neighbors who attested to the facts as presented by the child. It turned out that both D.Z. and M.Z. are patients of the Institute of Psychiatry, and they even underwent treatment at the hospital. According to the patients' anamnesis provided by the psychiatric hospital, the child shows mental retardation, resulting from serious mental health state of his mother.

However, after a one-month stay at the Centre, M.Z. decided to return home, but this could jeopardize the child's health and development. As the case required involvement of social workers, it was sent over to the Ministry of Education for follow-up.

It is to be noted that it took the Ministry quite long to examine the case. Meanwhile, the child continued living at home with his mother, though not obeying her, leaving home for night, etc. In other words, the child was transforming into a "street child". When mother realized the risk her child was running, she agreed to have M.Z. transferred to the Child's Home.

M.Z. was placed at Martkopi institution, where he feels much better and is undergoing the rehabilitation process successfully. The issue of his mother's, D.Z.'s legal ability and that of depriving her of parenthood rights has not yet been raised with any institution, which means that the child's welfare is again the matter of his mother's good will, and she has the right to take the child from the institution any time.

■

These cases are indicative of many tendencies. As noted above, children's going "into the street' is often resultant from family circumstances. Oftentimes parents are not only unable to provide normal care for their children, but themselves are implicated in abusing them, forcing them to become beggars, etc. Children often become "bread-winners" for their families. This, in turn, results in children's drop-out from schools and serious academic and personal retardation. Many of street children are illiterate. Pressure from parents to force their children to beg is a serious problem, as there is no effective mechanism in Georgia to protect them from abuse by parents or relatives. It is a blatant violation of the rights of the child. To avert such cases, the state should take adequate measures, providing not only for rehabilitation of children, but eliminating root causes of such a situation. The relevant bodies should examine closely the situation in child-abusing families, whose number has unfortunately increased, and their cruel treatment of children can even be qualified as crime (beating, torture, coercion, etc. by parents).

The Civil Code of Georgia (Article 1205) provides for deprivation of parenthood rights in the following circumstances: "Parents, or one of them, can be deprived of parenthood rights if they (or one of them) are found to systematically evade his/her parental duties, or abuse their parenthood rights, mistreat the child, have negative influence on children due to their immoral behaviour, or if parents are drug- or alcohol-addicts". Article 1210 of the Civil Code provides for separation of children from parents without depriving them of parenthood rights: "If leaving a child with one or both parents is harmful for the child for reasons not depending on the parents, the court may decide to separate the child from one or both parents without depriving them of parenthood rights, and have the children handed over to trusteeship or guardianship bodies".

Current legislation provides for respective entities of the Ministry of Education to follow up accordingly on parents pushing the child to live or beg in the street.

Article 171 (1) of the Criminal Code of Georgia provides for a penalty in the event of inciting a minor to begging or other antisocial behaviour. Up until present, the state has never resorted to such an action, which is once again demonstrated by the above cases. Needless to say, deprivation of parenthood rights is an extreme measure, but unless protection mechanisms are put in place, the problem of "street children" will never be resolved. The state is under an obligation to provide care for such children, which implies not only provision of free accommodation, but also punishing those persons who violate children's rights in such a manner.

The number of children living in the street is great; however, not infrequently, the money they get through begging, etc. is then spent to buy glue to smell, or given to various street gangs, or to parents who force them to be begging.

Thus, the charitable action of people giving money to street children is harmful for the child, and this fact needs to be properly understood and appreciated. It is necessary to put in place a mechanism to address this problem, help to reduce the number of "street children" and protect them from people exploiting them.

It is necessary for the state to develop an effective mechanism to protect children from the threat of "street business", representing a network of groupings exploiting children, forcing them to become beggars, thieves, etc. Children get used to the street, become involved in toxicomany, beg near traffic lights, etc. The problem is readily visible. If you stop a child and ask him/her why he is begging in the street, he/she will answer that his/her mother/father will not let him in unless he brings at least five Lari. Later these children get into adaptation centres, but with no use for most of them.

The issue of the so-called open-type centres for "street children" deserves special attention. One of such institutions is the Social Adaptation Centre under the Healthcare and Social Welfare Service of the Mayor's Office of Tbilisi. The Centre provides a night shelter for "street children", food, educational activities and, what is most important, a possibility to decide for themselves the period of their stay with the Centre. Such institutions are in a sense "children's hotels". Since these are open-type institutions, any adaptation programme is meaningless, as the child decides himself when he is going to leave the centre and return to the street. Certain deficiencies in terms of legal organisation of such institutions clearly indicate that it is necessary to improve the normative framework, and give substance to the existing legislation.

On 25 April 2006, representatives of the Public Defender's office carried out the monitoring of the Social Rehabilitation Centre located in 4, Kerch Street, Tbilisi. The Centre was established on 1 June 2005 within the framework of the programme implemented by the Healthcare and Social Welfare Service of the Mayor's Office of Tbilisi. The Centre was established at the recommendation of the Public Defender of Georgia. Since its opening in 2005 to February 2006 the Social Adaptation Centre provided services to 120 children between 8 to 19 years of age. At the time of the monitoring, there were 30 children at the Centre.

The Centre is an open-type institution, where children come and stay voluntarily. The administration has no right to force a child to stay at the Centre, or subject the child to physical or moral pressure. Therefore, there are many cases when children who came to the Centre in a most serious condition return to the street as soon as they start feeling better. The Centre is structured in a way to allow an inmate to undergo rehabilitation during 6 months, and then move to a specialised childcare institution, which is rarely done in practice. Over the existence of the Centre, 5 children have been moved to other institutions, and 26 children returned to their biological families.

Social educators, invited to the Centre after restructuring teach children to spend their time in a useful and interesting way, they provide basic education for them. The 2006 budget allowed the administration of the Centre to engage two correctional pedagogues, who teach children how to read and write, and do basic arithmetic. The Centre provides for its inmates basic vocational training, too. Children can go in for sports at their choice.

The Centre hosts children with difficult family history, due to which their absolute majority suffer from mental problems. Besides, more than a half of present inmates do not meet the eligibility criteria for social adaptation: one part is above 18 years of age, while others require placement in institutions for children with mental retardation.

The report prepared by the Centre says: "The Social Adaptation Centre for Children is the only state-supported institution of this kind in Tbilisi. Therefore most of street children get into this Centre. However, many of street children have a psychic condition or mental development level that clearly does not correspond to the purpose of the Centre. Such children need to be placed in specialised institutions. Social adaptation of street children is

accompanied with many difficult problems; therefore their placement with children directly meeting the eligibility criteria of the Centre is counter-productive for both categories of children".

One more problem found in the Centre is absence of birth certificates, which prevents children's enrolment in schools. The Ministry of Education has a special trusteeship body whose task it is to submit to the court lists of those children, whose birth certificates are not present in the Central Archive, in order for the court to rule issuance of birth certificates for the children concerned. The administration of the Centre applied to the Ministry of Education several times, but the problem has not been resolved.

Such institutions can be used to study root causes sending children into the street. This would enable identification of groups and families forcing children to get involved in begging and criminal actions. Up until present the state has turned a blind eye on this issue, which makes the situation of children more difficult. It is impossible to address the results, unless nothing is done to eliminate root causes.

APPLICATIONS

The main source of information about certain cases of Children's Rights Center is applications/letters from citizens received by Public Defender's Office. Despite the fact that the center has been recently opened, citizens actively address us about the facts of violations of children's rights. Analysis of the applications and cases that have been studied by the center on their own initiative under the reporting period, have shown that most of the problems are connected with social protection of destitute families, violation of children's rights at schools and the facts of family violence. Apart from applications, another source of information about the above problems is media.

One example of how the children's center responded to the above mentioned types of complaints is the parents' letter from the 23rd public school, concerning the violation of their children's rights by the school headmaster.

#23 Public School

According to the parent's information, at the end of the school year, 9th grade pupils took 10th grade transfer exams. As it was mentioned, the headmaster – Nato Gaboshvili forced the pupils with low marks to move the school. As a result, 27 pupils withdrew their papers from school and only a few protested against having to change the school. The headmaster continued to put pressure on the parents of the rest of the pupils to leave the school.

The Children's Rights Center requested the papers documenting examination procedures. It must be noted, that the teachers' council had not included any resolutions in the minutes, while according to the headmaster's official response, transfer exams had been conducted in compliance with the school's by-laws. As a result of the exams, 13 pupils were not able to overcome the minimum requirements and the school gave their parents a verbal recommendation. The headmaster explained that as per article 9 of the law on education, the basic education is compulsory, whereas the pupil afterwards has the right to continue studies in another secondary or vocational school.

According to article 7 of the "Education Law", the state shall ensure the pupil's right to get general education within the maximum proximity of their residence in state or their native language. The headmaster's claim contradicted the article mentioned above in demanding that parents transferred their children to another school. Article 9 of the same law states that pupils are guaranteed to have equal rights to general education.

After the Public defender's office got involved in the matter, the headmaster changed the position and on September 28, addressed the supervisory council with the request to leave the expelled pupils in the school. In its turn, the Supervisory council solicited the teachers' council for the above request. The Public defender addressed the Minister of Science and Education with the recommendation to hold debates on the issue of disciplinary responsibility of the public school headmaster.

DEINSTITUTIONALIZATION PROGRAM

From the Soviet legislation Georgia inherited the main axis of childcare system – children's institutions; these are – children's homes, specialized boarding-schools, Infants' homes and the latest development – "street children's homes". According to recent data, 80% of these children have parents, but they stay in these homes due to utmost poverty.

This is costly not only for the state, but the children pay for it a high cost too, as it is commonly known that those kids who are brought up in such institutions, frequently end up as homeless and are often involved in street crimes, take to drugs and become prostitutes. Today, the number of children in municipal and private homes has reached about 7000.

Consequently, the primary objective of the children's welfare program developed by the state is the process of de-institutionalization, the major principle of which is to replace the regime of children's home by allowing to bring up children in families, in other words, to return a child to a biological family, or by allowing their adoption.

International projects whose key priority is technical support and legal reinforcement of the program, greatly favor the introduction of this program. International projects also help the state to transfer the administrative functions of responsibility for children's welfare from the Ministry of Education to the Ministry of Health.

Successful implementation of de-institutionalization is closely connected with having institutions manned with highly qualified social workers.

Relationship of Public Defender's Office with the institution of social worker.

Public Defender's Office has to closely cooperate with social workers of respective agencies; their help is essential for the investigation of certain cases of human right violations.

In order to strengthen the cooperation between social workers and Public Defender's Office, the Ombudsman decided to get familiar with the activities of social workers in state administrative institutions – check their number in different agencies, the level of their education (basic, further qualifications), the principles of function sharing and job descriptions.

We addressed Ministry of Labor, Health and Social Welfare and the Ministry of Science and Education regarding the above issues.

Based on the information obtained from those agencies and social workers, the necessity of developing better planned and structured cooperation became quite evident. As well as that, it is necessary to improve coordination between Public Defender's Office and Children's Rights Protection Center.

It is worth noting that the care for the wellbeing of children was more focused on those who were staying in the institutions, whereas no sufficient legal basis exists for the protection of children in extreme poverty – they are the victims of sexual harassment and exploitation, economic violence and trafficking, children's pornography, street children. Among them are children who breach laws.

Children, who have broken the law, have to be thought of as victims rather than culprits – this approach to juvenile delinquents is a priority. International documents include a special provision for creating a separate legislation for minors. In Georgia this problem has not been settled yet – juvenile delinquents, as a rule, are tried according to common system, and they are detained in common isolation wards.

Reintegration of the delinquents in the society – their involvement in the normal rhythm of life, creating social conditions for their studies, entertainment and sound atmosphere has to be the country's key objective.

Serious work is needed to be carried out to make domestic legislation relevant to minimum standard rules of law administration on minors, developed by UN. There is only one prison for the minor in Georgia. Number of children in preliminary detention establishments is not known. In #1 preliminary detention isolator, 70-80 prisoners out of 300 are minors. There is no other statistics.

Code of criminal procedure of Georgia provides the protection of the rights of minors to get general education according to school program: "…a minor who is detained, arrested or is staying in the medical institution has to be allowed to get education according to general education school program", Code of criminal procedure of Georgia, Paragraph 136, article 3. The right mentioned is violated in #5 prison regime establishment, in which minors spend more than a year. It should be realized that, the problem concerns the under-age children, who after having served the sentence have to return to the society not as ignorant, indigent criminals, but we should make all efforts to take proper care of their rehabilitation. They should be given the chance to continue to live a proper life side by side with other citizens. However, today, the minors in prisons are deprived of the chance to enjoy children's rights convention and their right to get education according to general education school program which is guaranteed by paragraph 136 of the code of criminal procedure of Georgia. This is a harsh violation of their rights.

Elmira Bakirova's case

Elmira Bakirova addressed the Public Defender with the complaint that the execution of the court decision was procrastinated.

As is seen from court materials, after the divorce, there was a dispute between Elmira Bakirova and Ashlat Eminov about where their young son, Roman Eminov was to live.

In 2001, on court decision, Roman Eminov's was to live at his mother's – Elmira Bakirova's place. Ashlat Eminov's family ignored the court decision and he did not allow Elmira Bakirova to take the son with her, who at the moment of dispute was at his father's place. What is more, he took the child with him to Russia and did not return to Georgia for three years. Elmira Bakirova addressed various organizations for help many times, but in vain. Finally she addressed the Public Defender's Office, in 2005. Elmira Bakirova claimed that she had not seen her son for 5 years, as her father-in-law, Makhal Eminov did not allow her to do so. Based on the above mentioned decision, the enforcement order was transferred to the enforcement bureau in Kvemo Kartli. Thus, to obtain information, we addressed the head of the enforcement bureau, Mr. David Jachvadze, who explained that they had taken all measures to execute the case, but they could not enforce a judgment, as the son, Roman Eminov went against.

The above fact doubtlessly speaks for the weakness of the enforcement bureau and it seems that the enforcement department has no power to execute the court rulings even when it concerns child. It must be mentioned, that when speaking about the reason of not giving the child to his mother, the Eminovs always referred to the child's bad health conditions. As they claimed, the child would feel sick whenever they mentioned his mother to him and that he had no wish to have any relations with her; they also mentioned that the child was getting a psychiatrist's treatment. In order to investigate the problem, the employees of the Public defender's office visited Eminov's family in the village Pirveli Kassalo, in Marneuli region, to see personally how the child actually reacted when his mother was mentioned to him and also examine his living conditions.

As it was expected, the situation was rather deplorable, as the child was in the atmosphere where he would constantly hear negative things about his mother. The family would only provide food for him and they never thought about his development otherwise. Besides, they always suggested to him the hatred towards his mother. Despite the request of the representatives of the Public Defender's Office to show them the child, they never did so saying that he felt bad when he saw them. Grandfather explained that the child was nervous and needed constant treatment, although they could not manage to prove it, as they were not able to show doctor's prescription. When they were leaving, the child came out into the yard and the representatives of the office could see that the he looked rather calm and was smiling at them.

As the case could not be enforced, it was transferred to the enforcement department of the Ministry of Justice on December 25, 2005. The department then transferred the case to the investigation department of the Ministry of Justice on January 9. The investigator, Avtandil Neparidze was in charge of the investigation, who, a month later, i.e. on February 8, 2006, started the preliminary investigation into the case of non-compliance with the court ruling by Ashlad Eminov. E. Bakirova mentioned that the investigator had not done anything for several months and procrastinated the process on purpose. Elmira Bakirova also said that, the case had been procrastinated in all other administrative organs, as her father-in-law always managed to put pressure on any authorities in charge. As the case had been procrastinated in the investigating department as well, we addressed the head of the department, Mr. Pavle Kovziridze and requested that he notified us when the case was sent to him from the enforcement department on whether Alshat Eminov had been interrogated or not and how far the investigation had gone.

On April 4 of the current year, A. Neparidze, the head of the investigation department notified us in the letter that in the process of preliminary investigation, during 3 months, Elmira Bakirova, the victim, and Ashlat Eminov, the witness, were interrogated. The latter explained that the child was against meeting his mother, although he agreed to allow his ex-wife to have relationship with the child and arrange the meeting in any place she would choose. According to the evidence, A. Eminov was not against the enforcement of the court ruling. Consequently, it was impossible to bring a case against him. As for E. Bakirova, she tried to prove the opposit – she claimed that E. Eminov's family did everything not to allow her meet her son. Thus there was some reason to suspect that Ashlat Eminov was trying to escape amenability to criminal charge.

All things considered, we submitted a recommendation to the head of the investigation department, Mr. Pavle Kovziridze, and requested that he arranged the meeting of mother and son, in order to come up with the truth and find out if Ashlat Eminov prevented the enforcement of the court decision. Besides, the psychologist from Public Defender's Office was to be present at the meeting too.

The investigation mentioned above took place indeed, although the investigator did not fulfill his duty properly, as he carried out the investigation in a disorganized way. Because of a lot of Ashlat Eminov's relatives present at the meeting, the psychologist could not manage to talk to the child. The investigator allowed anyone to enter the room during the meeting that made it impossible to let the process go on smoothly.

On the psychologist's recommendation, the meeting decided that it was necessary to allow mother and son to adapt to each other under the supervision of a psychiatrist and a psychologist. While the investigator took the responsibility that he would assign Ashlat Eminov to bring the child to the consultation, that would help

the investigation to reveal the truth, i.e. the investigator would observe and see if A. Eminov really hindered the enforcement of a judgment.

With the regard to the above said, we asked the Center for Social-psychological Assistance "Ndoba" (trust) for a psychological aid, which agreed to help E. Bakarova and her son. The first appointment was fixed on May 5. However, the investigator, A. Neparidze did not ensure the Eminovs' arrival at the meeting, for the simple reason that he had forgotten about it. Consequently, the meeting did not take place on May 5, and was postponed to June 10. On that day Ashlat Eminov turned up together with his family, his close friends and a lawyer. As there were too many people present at the meeting the psychologist was not able to work this time either. It is interesting to note, that the investigator, Mr. Neparidze did not attend these meetings as he was not interested in the course of affairs at all. The next meeting was appointed on May 15 and A. Neparidze was requested to bring only Ashlat Eminov and Roman Eminov to the meeting. However, the meeting never took place, as the Eminovs did not turn up.

Such cold and indifferent attitude of the investigator caused some second thoughts that Avtandil Neparidze procrastinated the investigation deliberately and that he was unable to cope with his duties. For this reason we addressed the prosecutor's office and raised the question of his disciplinary responsibility, although our request was never met. The investigation process was halted again, despite our insistent actions.

According to the Civil Code of Georgia, parents have equal rights and duties towards their children, but in the given case, Roman Eminov's place of residence was decided to be mother's home, which has never been enforced so far. According to paragraph 82, article 2 of the Georgian Constitution, "judicial acts are compulsory to be fulfilled by every state organ and citizen on the whole territory of the country". Thus constitutional demands are being violated, which in its turn, means the violation of Elmira Bakarova's rights.

Although we are facing the fact of violation of Bakarova's rights, we were not able to help her and as she could not achieve anything through legal bodies, she decided to seek the justice with her own efforts to get her son back. Bakarova informed us that she arrived in the village with a birthday cake and presents on her son's birthday and she had to sit in the yard for two hours just to catch a glimpse of her son. She only saw him for a second, when he ran across the yard, and that was all. As she says, she is going to visit her son every week hoping that this way the child will get used to his mother and become closer to her.

Recommendations and Proposals for the Ministry of Science and Education of Georgia

- Start working on drafting a special law on childcare and children's protection
- Strengthen the efficient mechanism of the evaluation of the family and the control of the child's development (standards) when transferring the child to his/her own family or a foster family from children's home;
- Create a valid defense mechanism for children's protection to avert a possible harmful impact on a child that a parent might have due to various reasons;
- Ministry of Education, along with other programs has to outline its policy addressing the problems of "street children";
- Children should be protected against being forced to beg in streets for which the existing legislation needs to be improved.
- In the Ministry of Science and Education and its structural units, as well as in the Ministry of Healthcare and Social Protection, the term of procedure on execution should be reduced, especially when it concerns minors, as the prompt response in most cases plays a decisive role;
- Living conditions need to be improved in children's homes or asylums;
- Teachers' qualification needs to be enhanced in the above mentioned establishments;
- It is necessary to create standards in childcare institutions, as they currently do not exist;
- Develop a specific form for issuing birth certificate to children who have no such certificates.

14 GENDER EQUALITY ISSUES

Implementation of gender equality principles is one of the essential constituents of democratic processes. Every citizen – female or male – has equal responsibility before the law in the process of development of the political system that has to be transparent and accountable to people.

To achieve these goals it is necessary to ensure full and equal participation of female and male citizens in every branch and at every level of the state government.

The table below shows the representation of females in the legislative body in Georgia:

Election date	Name of the legislative body	Total number of MPs	Number of female MPs	% of female participation
1990	Supreme council	250	18	7,2%
1992	Parliament	222	14	6,3%
1995	Parliament	250	16	6,4%
1999	Parliament	235	17	7,2%
2004	Parliament	235	22	9,4%

In the fall of 2001, Nino Burjanadze became the first female speaker in the history of the Georgian Parliament. In 2004, Nino Burjanadze was elected the chairperson of the Parliament.

The executive power looks the following: as a result of the reorganization of the government in 1998 and 2000, there were two female ministers in the government. In 2003, before the Rose Revolution, out of 18 ministers there were only two women (Minister of Environmental Protection and Minister of Culture). After the Rose Revolution, in February of 2004, the cabinet of ministers had four women (Tamar Lebanidze – the Minister of Environmental Protection, Tamar Sulukhia – the Minister of Infrastructure, Eteri Astamirova- the Minister of Refugees and Resettlement, Tamar Beruchashvili – the Minister of European Integration. Later there was Salome Zurabishvili – the Minister of Foreign Affairs), thus female ministers made up 20% of the government that was a record breaking figure for Georgia. It is noteworthy that it was the first time that gender characteristics were given importance when completeing the government. By the beginning of 2006, the number of female ministers sharply reduced and only one woman remained (Zinaida Bestaeva – the State Minister of Civil Integration).

Women's participation in politics is one of the most important indicators of the country's democra-

tization process. Studying women's representation in local self-governing bodies gives a particularly interesting picture in this respect.

In Georgia women are rather poorly presented in local self-governing bodies: as a result of 1998 elections, women made up only 14% among "Sakrebulo" members.

After the elections in 2002, the number of women in "Sakrebulos" became even fewer and in the first level self-governing bodies they were only 11,9%. The level of women's participation varies from region to region. The lowest percentage is in the regions with ethnic minorities, especially, among Azeri population: for instance, Marneuli – 1,9%, Bolnisi – 4, 7%.

As a result of both elections, a very interesting trend has been outlined: the larger becomes the administrative unit, the lower is the percentage of women in local self-governing bodies. In 1998, in village "sakrebulos" the women constituted 15%, in regional cities and towns – 13%, in regional Sakrebulo – 9% and in big towns – only 7,4%. In 2002, in Sakrebulos of big towns the number of women did not go above 7%. Women's representation in leading positions of local self-governing bodies is extremely unfavourable. It can be said, that, wherever there is more power and resources, there are fewer women.

In 2002, women representation was drastically reduced in regional Sakrebulos, since according to a new election law, region's Sakrebulo has to be completed by chairpersons of village Sakrebulos and as women practically do not hold leading positions there, they are rather scarcely represented in the second level self-governing organs.

In 2006, the elections of self-governing bodies will be held according to a new law, which envisages the consolidation of self-governing units and sharp reduction of their number. This will increase political competition and lower the chances for women candidates. Thus, in order to increase women's representation in the self governing bodies, it is urgent to implement programs in support of women candidates in pre-election period. According to the latest data, 4 women were elected in Tbilisi Sakrebulo.

Gender equality today is becoming a key priority in Georgian politics and its aim is to create and ensure favorable conditions for the equality of women and men.

On July 24, 2006, Georgian parliament adopted the state concept on gender equality that was elaborated by a special working group composed of gender equality council and gender equality government commission members under the Chairperson of the Parliament of Georgia. The working group was assisted by UNDP project "Gender and Politics in South Caucasus", also, UN Female Foundation (UNIFEM), UNFPA and an international expert.

The aim of the concept is to advocate equal and efficient implementation of female and male rights and opportunities. It recognizes the principles of gender equality in all spheres of state and social life and determines the relevant activities to eliminate and prevent all forms of gender discrimination, also to achieve gender equality.

The development of state concept of gender equality and its adoption by the Parliament is linked with the implementation of international commitments.

Family Violence

Georgian legislation on elimination of domestic violence, protection of victims in a family is based on the Constitution of Georgia, International Agreements, Conventions and the law on "The elimination of vio-

lence in a family, protection of victims and rendering help", adopted by the Parliament on May 25, 2006, and is considered a significant step ahead.

The law defines the unity of actions, characteristic to family violence. It also gives the legal and administrative grounds for the disclosure of family violence and its elimination. As well as that, it guarantees the victims' social and legal defense.

The aim of the law is to create legal guarantees for the defense of family members' rights and freedoms, physical and psychological immunity and protection of family values by recognizing the equality of their rights. In addition, the law ensures the accessibility to justice for the victims in the family.

The same law includes the violence prevention mechanisms that imply analyzing, studying and evaluating the factors causing violence. It also introduces effective legal methods to reveal and eliminate facts of family violence. Furthermore, the law implies carrying out preventive measures towards those who fall under the risk-group of inflicting violence or those who have already committed such.

If the authorized organs had been restricted in their actions to operatively respond to problems and failed to protect the victims of violence before the law had come into effect, now, once the law has become effective, it is possible to issue a preventive order to restrict certain actions of a violator.

The Public Defender's Office jointly with the NGO – the Consulting Center "Sakhli" (Home), are carrying out monitoring over the activities of the above mentioned offices. The aim of the monitoring is to find out whether there exist any real mechanisms of victim protection and to support the effective implementation of such mechanisms. The materials we get through interviews and questionnaires will enable us to realize the factual situation and reveal any currently existing drawbacks. It will also be possible to evaluate the legal side of the problem and will contribute to the improvement of the mechanisms for victim protection (survey results will be included in the next report).

However, it is true that police and medical workers often lack the necessary knowledge to correctly identify, record and eliminate the facts of family violence. As a result, the victim is often unable to get the needed help and the culprits go with impunity. Consequently, it is very important to have target groups, particularly made up of the employees of the Ministry of Internal Affairs and Prosecutor's Office, who will get extensive training. What is more, training course curriculum should include the provisions of the above law in its study materials.

Pursuant to article 21, paragraph 3, of the law mentioned above, the Ministry of Interior has developed preventive order and minutes form, that will be agreed upon with the Ministries of Justice, Finance, Education and Science, and also with the General Prosecutor's Office of Georgia.

After the law becomes effective, then the major objective will be its administration and enforcement in real life. Certainly it is a very difficult task, especially that this is the law concerning the elimination of domestic violence, victim's protection and assistance, since the issue is tabooed and the society is not ready to speak about it publicly yet.

That the law becomes effective is not enough though. The major gain of the law is asylums and rehabilitation centers that will start functioning from January 1, 2008, which, in our opinion, is the negative point of the law as this will create difficulties in the work of legal officials.

The victim of the violence who has no close relatives or friends, in fact, has nowhere to go. Currently, there are only two shelters established by NGOs, which is certainly not enough.

The network of shelters should be created throughout Georgia. For all victims of violence, who will decide to terminate the relationship, safe accommodation, first aid and psychological help should be available.

It is also important to create rehabilitation centers for violators, where the latter would be temporarily accommodated, given psychological aid and treatment. Rehabilitation centers will favor the increase of work efficiency in terms of victim's protection and adequate response to family violence when such occurs.

Pursuant to article 21, paragraph 4, which reads: "Demand from the Government of Georgia to approve a special plan which will outline specific measures to be taken for victim's protection and assistance, in four months after the law is published".

According to the action plan mentioned above, which will be functioning in 2006-2008, a group of experts has to be set up composed of the representatives from state organs as well as from NGOs. The action plan has the following objectives: to create a comprehensive legal basis for victims' protection and assistance and for the elimination of existing drawbacks; to increase public awareness; to protect victims and render help to them; to create and develop information basis for storing the facts about the cases of family violence.

It is very important to envisage financial resources in the state budget to ensure family violence victims' prevention, protection and rehabilitation; otherwise, we will face the fact of having just another abortive resolution.

In accordance with the obtained information, 2263 facts of violence by the patrol police workers have been registered throughout Georgia in seven months of the current year.

	I	II	III	IV	V	VI	VII	Total
Tbilisi	216	190	195	166	218	230	212	1427
Imereti	48	18	21	16	17	-	18	138
Kakheti	14	8	7	25	17	-	25	96
Shida Kartli	20	20	22	25	9	14	15	125
Kvemo Kartli	60	58	30	51	57	55	68	379
Ajara	6	5	9	5	5	9	5	44
Samegrelo-Zemo Svaneti	12	3	7	7	7	8	10	54
Total	**376**	**302**	**291**	**295**	**330**	**316**	**353**	**2263**

Based on the number of reported cases in the main department of patrol police, the patrol-inspectors have the following statistical data of conflicts filed on the site of occurrence according to districts.

District	
Gldani-Nadzaladevi	343
Vake-Saburtalo	145
Didube-Chughureti	191
Isani-Samgori	583
Mtatsminda-Krtsanisi	165
Total	**1427**

The given figure does not reflect the real picture of the problem, as it is normally perceived as a personal, family problem and not as a severe social one. In addition, the existing situation requires a more in-depth study of the problem according to Georgian regions and Tbilisi districts. We consider it necessary to at least find the ways of establishing statistical records in order to show the society clearly that the problem persists and that it requires urgent solution.

Amnesty International published 2006 annual report "Georgia: family violation against women", which reads: "The government should demonstrate a strong political will and take concerted actions so that the positive impulse of the law on family violence gets developed further, once it has been adopted. Georgian Government is obliged to fulfill international commitments – to eliminate any revealed acts of violence against women, bring culprits to responsibility and ensure protection and reparation for the victim".

On September 13, 2005, Eter Chumburidze, the wife of a Member of Parliament, Giorgi Chakhvadze, asked us to help resolve the conflict between spouses. G. Chakhvadze did not allow her to see their two children (7 and 10), threatened to harm her physically and has offended verbally and physically several times. There is an expert's conclusion on the matter. We talked to Mr. Chakhvadze and explained that according to the Criminal Code of Georgia, E. Chumburidze had the right to see her children. After this, the representative of Public Defender's Office and G. Chakhvadze agreed that the latter would allow E. Chumburidze to see the children. Following the negotiations, G. Chakhvadze agreed verbally that E. Chumburidze would see the children. However, when the mother visited them, she was accused of the attempt of murdering G. Chakhvadze and finally, was arrested. As G. Chakhvadze indicated, E.Chumburidze pulled out a weapon as soon as she entered the yard and fired 4 times.

On May 12, 2006, the court found E. Chumburidze innocent and adopted the resolution on the termination of prosecution of the criminal case. Later, E. Chumburidze appealed the decision, namely, the second part of the court decision, which concerned the termination of the criminal case. But the court did not satisfy the appeal motivating it by non-existence of sufficient evidence. However, the origin of the weapon was still vague; there was no answer to essential questions: Who fired? Why was not anybody brought to responsibility for false denunciation?

Recommendations

- To ensure the provision of fundamental compulsory education to police staff, prosecutor's office staff and judges. When developing the course, the provisions of the law on"Elimination of family violence, protection and assistance of victims" should be included in the training course materials.
- Article 21, paragraph 4 should be complied and a special plan approved, which will determine specific activities to be taken for the elimination of violence in families and protection and assistance of victims.
- In the state budget of 2007, at least partly, certain funds should be included to provide prevention, protection and rehabilitation of victims, as it will be impossible to accomplish the above without financial support.

15 THE PROBLEM OF TRAFFICKING IN GEORGIA

Trafficking humans with the purpose of their exploitation is one of the most serious and widely spread varieties of crimes among internationally organized ones. The criminals gain a big profit from it at a very low risk. In the last years trafficking has scaled up globally. Civilized countries are more and more actively combating against this modern form of slavery which is a severe violation of human rights, a crime against the person's dignity and honor.

Despite the steps taken, trafficking still remains an urgent problem in Georgia. In the report of the US State Department it is mentioned that Georgia took a number of measures to combat trafficking in 2005, the state strengthened its efforts against trafficking, also the number of arrested criminals increased under the article of a law on trafficking, but despite all the above listed, the progress is not visible yet, as the number of criminals charged with trafficking is rather low. In 2005, only 27 cases were filed and only 9 were submitted to the court. The verdict of guilty was returned only on three criminal cases and criminal proceedings were initiated against nine people. Two out of them were sentenced to 5 years of imprisonment and the rest were given a suspended sentence. In the first half of 2006, 9 criminal cases of trafficking were investigated, 4 of them had been sent to the court and the verdict had returned on only 1 criminal case.

The State Department report indicates that Georgian Government does not take sufficient measures to protect and help trafficking victims. That is why, many of the victims, who have returned to Georgia, refuse to witness and help solve the crime.

The report also mentions that Georgia is the source of trafficking victims, it is a transit country, i.e. trafficking takes place in Georgia and victims from Ukraine, Moldova, Russia and other former Soviet states are trafficked through Georgia to Turkey, Greece, and Western Europe. That many Georgian victims are trafficked to Turkey is mostly due to the lack of a visa regime between the two countries. According to the data from IOM (International Organization of Migrant), at least 500 Georgian women fall victims to trafficking every year.

Trafficking also takes place inside the country, which is expressed in sexual exploitation, and forced labor. The victims are often trafficked to Abkhazia and the Autonomous Republic of South Ossetia and very often these uncontrolled territories serve as transit rout for trafficking.

2006

One of the major objectives in the combat against trafficking is to improve the legislative basis. On April 26, 2006, the law adopted by the Parliament of Georgia on "Combat against trafficking" complies with international standards. On July 25, 2006, a legislative package prepared by the Ministry of Justice of Georgia also considered making necessary amendments to different laws, among them to Criminal Procedural Code, Civil Procedural Code, Labor Code of laws and Immigration Laws. The main purpose of the amendments is to facilitate the disclosure of crime and fight against it, also to protect our citizens abroad.

The legislative package determines the basis of criminal charges for legal persons and the conditions of bearing responsibilities which is used along with other crimes with respect to trafficking pursuant to articles 1431 and 1432 of the Criminal Code. Along with making the existing sanctions regarding the crime mentioned above more stringent, it also imposes the rules on dismissal from office and deprivation of the right to carry out further activities.

Apart from the above, a new article 3441 is going to be added to the Criminal Code of Georgia. The article will define the responsibilities for illegal crossing of the state border by a migrant.

It is hard to ensure total anonymity of the victims of trafficking at this stage due to the current legislation of Georgia, as pursuant to the Code of Criminal Procedure, the victim is considered an affected party and a witness at the same time. Consequently, the demographic data of a victim are registered in the criminal case that can be accessible for the lawyers of the guilty party.

There is a close link between the readmission of citizens and trafficking problems. Often bilateral agreements on readmission are viewed as a pre-condition and the first step towards the way to signing bilateral agreements with other countries on labor rights and legal employment. In the Ministry of Foreign Affairs, a bilateral agreement on readmission has been drafted, in which labor migrants, legal mutual assistance, citizen's travel agreements and consulate conventions come under a single package.

On behalf of the country, bilateral agreement on readmission has been concluded with Italy (1997), Bulgaria (2002) and Switzerland (2005).

In order to conclude the bilateral agreement on readmission, negotiations and consultations with Czech Republic, Lithuania and Estonia were held in July of 2006. There is also a close cooperation with the Republic of Latvia, Federal Republic of Germany, Republic of Turkey, Benelux countries, Republic of Slovenia, Romania, Russian Federation and Sweden.

Among the structures responsible for the implementation of the above objective, besides the Ministry of Foreign Affairs there are listed the Ministry of Labor, Health and Social Welfare. From the supplied information, the role of the latter in the preparation of agreements and negotiations is not clear.

In very many countries the national policy of employment is mainly directed at the protection of own labor market and restricting the number of emigrant job seekers. For this reason, the foreign policy of many different developed countries makes provisions for restricting migration and complicating the procedure of entering the country for immigrants. Under such circumstances it is clear that illegal labor migrant, either potential or real, will become the victim of trafficking.

All this considered, the importance of concluding bilateral agreements on labor migration with other countries is quite obvious.

According to the information from the Ministry of Labor, Health and Social Welfare, taking existing international practices into account in the department of employment, a typical project of bilateral interstate agree-

ment on labor migration has been developed to create guarantees of legal labor opportunities for Georgian citizens in host states.

Ministry of foreign Affairs is carrying out negotiations with relevant structures of other countries on drawing up similar agreements. The process is going on with some impediments as not many countries show interest in drawing up such state agreements.

We must note that it was impossible to determine which countries have actually signed the agreement or which countries are involved in negotiations. Information from the Ministry of Foreign Affairs differs from the one we received from the Ministry of Labor, Healthcare and Social Welfare, which means that there is a weak coordination on the implementation of action plan between the structures in charge.

It is necessary to strengthen the control over implementation of the action plan, to reveal the problem by analyzing it and develop the recommendations for problem solution. Besides, it is essential to revise the action plan for the purpose of its optimization taking into account the works that have been carried out so far.

On September 1, 2006, on the President's order #534 it was approved to establish inter-agency coordination council in order to avoid trafficking. The council should support the relevant state organs in carrying out combat and rehabilitation activities efficiently and coordinate them as well.

Ministry of Justice carried out the legal expertise in April, 2006, on the draft law on "Labor Migration" prepared by the Ministry of Labor, Healthcare and Social Welfare and the Ministry of Foreign Affairs. The expertise revealed the following:

The draft law considered introducing permissions for labor force import-export, imposing quota system and fitting the regulatory norms of labor migration given in different legislative acts, into one legal framework. Pursuant to the requirements of the law on "Licenses and Permissions" (art.4), the article on introducing import-export labor permission has been taken out from the draft law.

The Ministry of Labor, Healthcare and Social Welfare expressed the opinion that after the changes mentioned above, the adoption of the law on "Labor Migration" does not make sense any more since the issues under the draft law on labor migration are already being regulated by other enactments. In our opinion, adoption of migration law is necessary, as it will be instrumental for determining state migration policy and fitting it into single legal framework.

To provide the public with operative information on the issues of trafficking, a "hot line" has been set up in the following establishments: General Prosecutor's Office of Georgia, Ministry of Interior of Georgia, Ministry of Justice, Ministry of Labor, Healthcare and Social Welfare of Georgia and Ministry of Foreign Affairs of Georgia (consulate department and the consulates in foreign countries). In order to provide an unimpeded functioning of "hotline" it is necessary to train operators to equip them with necessary knowledge.

One of the major objectives is to raise awareness of trafficking problem and illegal labor migration in the public. In the first place, the matter concerns the reduction of trafficking and illegal labor migration risks, which requires carrying out adequate educational activities. Namely, trafficking-related issues should be integrated in school programs; as well as that, an educational program needs to be developed for broader masses of the population.

In order to raise awareness of the public about labor migration and trafficking issues, the Ministry of Education and Science is planning and carrying out informative- educational activities on the issues of legal work and studies abroad. Besides, as we are informed, the Ministry of Education has incorporated such topics in the civil

educational programs that will help students to develop skills by acquiring information about trafficking and the ways of its combat.

In 2005-2006 academic school year, the ministry selected 100 pilot schools to deliver a new educational program. Teachers are being trained in all subjects as well as in civil education. The training programs for civil education teachers and social workers at the Ministry of Science cover the issues of trafficking combat.

Being the central organ of guardianship, the Ministry deals with the procedures of inter-country adoption, thus, it has to closely cooperate with the trafficking office of the Ministry of Interior. Such close cooperation will enable the Ministry to control children, subject to inter-country adoption or those deprived of parental care, or leaving the country. This cooperation will also be useful for revealing those indecent people, who, being involved in the above processes might have some kind of personal interest to make profit.

The Ministry of Healthcare and Social Welfare has developed psychological assistance program for victims of trafficking which is already operating. The program will provide medical and psychological aid to victims. The objectives of the program are to provide medical diagnostic examinations, necessary treatment and medication within the limits of the allocated sum for the identified beneficiaries;

Pursuant to article 9 of a Georgian law on combating trafficking in human beings, with the purpose of providing efficient protection and assistance to victims a legal entity of public law was established which is a fund for providing protection and assistance to victims and the affected persons. The fund is controlled by the Ministry of Labor, Health and Social Protection.

The aim of the fund is to compensate the affected persons and finance their protection, assistance and rehabilitation measures. 80 000 GEL was assigned for the state fund from the state budget in 2006. The instructions on the rules and regulations of paying out compensations as well as on its amount have been prepared. The compensation sum has been determined to be 1000 GEL. In 2007 budget 300 000 GEL has been allocated to the state fund for the protection and assistance of trafficking victims.

Cases of Trafficking in Zemo Abkhazia

As a result of the police operation in Kodori gorge, Ministry of Interior discovered several cases of trafficking. The victims were lured through different deals to Zemo Abkhazia, where they were forced to work, and there were also cases of violence against them.

After the above mentioned operation, members of the monitoring group from Public Defender's Office went to Zemo Abkhazia to examine the situation. The aim of the monitoring was to look into the problems related to trafficking and reveal some other facts as well. In different families in the gorge, even today there are several domestic servants. Some of them – Merab-N, Galina Ch, Vitali B, Anatoly B, Nikolai K were interrogated and asked to give evidence according to which no violence is used against them and neither have they any wish to leave the families.

To reveal cases of trafficking and detain criminals, the officials from the Ministry of Interior talked to all people who were working in the families in the gorge and who might have been trafficking victims.

16 PEOPLE WITH DISABILITIES

The existing policy towards the disabled people has been evaluated by the commissioner of people's rights of the European Council, Mr. Thomas Hamarberg, who discussed the possibility of having a new agreement in the sphere of people's rights. UN committee is drafting a convention to protect and support the rights and dignity of disabled persons. The draft has already been prepared.

The UN Convention endeavors to draw all these standards together under one document. This will facilitate the implementation of this ten-year plan, which has recently been adopted by European Council that is directed at supporting persons with disabilities and their full integration into the society.

On Hamberg's statement, the current norms of people's rights protection concern the disabled persons; among them are norms against all forms of discrimination. Several agreements among them, however, such as UNO convention on children's rights and Social Charter goes far beyond and speaks about positive measures, that need to be implemented to ensure full participation and integration of the people with disabilities into the society.

It should be noted that the situation in Georgia is rather alarming in this regard. Schools are not always suitable for children with disabilities, although the Ministry of Education has already made first steps towards introduction of inclusive education.

Specialized schools are often at a lower level than ordinary schools and they do not provide children with disabilities with sufficient opportunities so that they can withstand labor market competition. Job opportunities are also very low due to discriminative approach, as well as because of no accessibility to work place and public transport.

Charity is not enough to settle the problem. But it should be publicly recognized that people with disabilities have rights. Thus, it is necessary to develop a complex approach: support from certain individuals and the change in the attitude of the public.

The government has to make concrete steps and take responsibility for providing healthcare, rehabilitation and necessary assistance to the disabled, so that they were able to live independently in the community as much as possible.

People with disabilities should have equal access to education, employment, legal and social protection so that everyone can equally participate in public life.

2009

In the annual report of the second half of 2005, there was a general assessment of the existing situation regarding the legal conditions for people with disabilities and relevant recommendations were drawn up.

One of the recommendations was about the most urgent problem, such as non-existence of a single global policy concerning the disabled, which actually is directly linked with disabled persons' rights and guarantees.

The previous report mentioned the consulting council created at the Ministry of Healthcare and Social Welfare that had to determine a global state policy towards the people with disabilities. As we were informed by the Ministry of Labor, Healthcare and Social Welfare of Georgia, on the Minister's order #238/*o,* the council's authority would last as long as the activities outlined in the order would be accomplished but not later than 31 December, 2005. Therefore, consulting council is not functioning at present.

As for information about the council's performance of the tasks assigned to them by the mentioned order, we were told that the council had not submitted any legal document to the Ministry for consideration. It is worth mentioning, that most of the members of the council were the representatives of NGOs working on the issues of the disabled persons, there are disabled persons among them as well, who, on the explanation of the deputy minister, failed to use the right attributed to them by legislation, neither could they take advantage of the support of the ministry in elaborating the policy for the disabled, in which they themselves would have participated. The council's task was to abolish the "National council for coordination and support of the activities of NGOs of the disabled persons, established under the President of Georgia", and to draw up recommendations and proposals about the establishment of a new coordination council. Therefore, as the ministry explained, the above issue remains open. Consequently, the coordination council, being invalid in its functions has not developed a single state strategy for persons with disabilities, although it has been its competence. At present, the ministry is working on the possible solution of the issue.

We consider that the ministry, being an executive body, has to ensure proper and timely implementation of the state policy in this sphere more stringently. The fact, that the coordination council failed to perform their duties properly, does not provide grounds to the ministry to decline the responsibility for making timely solutions. Determining the global policy in the sphere of the disabled persons still remains the primary recommendation. We hope that we will not have to go over it again and again in our next report and if the existing problem is not fully settled, at least some necessary measures will be taken for its solution.

As for the elaboration of the assessment system of the extent of disability up to international standards, within the sub-programs of state programs of 2006 on labor, healthcare and social welfare of Georgia – "Elaboration of the system of the disability degree according to international standards" the "Common State Fund of Social Insurance" under the Ministry's control are implementing the following specific activities:

Real abilities of an individual, his/ her integration into the society and the environmental impact remains unconsidered while identifying the status of disability in Georgia nowadays. For this reason, the status of the disabled person does often correspond to his/her real state. There is no single system of scientific-practical significance reflecting the state of health, preventive measures, treatment, rehabilitation, eco-social and psychological problems at present. It is mostly impossible to achieve common consideration of clinical and social criteria. Consequently, an urgent need arises to elaborate such system of evaluations of the degree of disability, which would uniformly express the state of health of the individual (physical, psychological and social welfare) and his/her functioning.

On the comment made by the Ministry of Labor, Healthcare and Social Welfare, it is important to have a Georgian edition of international classifications provided and recommended by World Health Organization on functioning, degree of disability and health that current systems are successfully coping with. Having Georgian edition is especially important for further development of medical-social expertise and approaching mod-

ern demands that necessarily require working out theoretical and practical aspects. Introduction of ICF classificator is required by European Council that is also indicated in Thomas Herberg's report.

As the ministry states, "The state program 2006 in medical-social expertise" is being implemented, which, in compliance with current legislation, implies the identification of the disability status, also the development of the relevant system of international evaluation standards of disability degree (functioning, disability, international classification of health – ICF).

As for the existing legislation in this sphere, in 2004 annual report it was indicated that the current legislation should entirely be based on functioning, degree of disability and health (ICF) developed by World Health Organization.

The classification mentioned above was not functioning in Georgia, which actually made it impossible to solve the problems connected to identification of the disability, and issues directly related to it, such as rehabilitation, education and employment. Public Defender's 2004, 2005 annual reports provided recommendations on introducing the classification mentioned. Thus, we think it important to start making certain steps in this direction.

Another painful issue for the persons with disabilities is the problem of accessibility. Not one recommendation has been made in this regard by the Public Defender in annual reports of past years; however, the situation has actually never changed. The articles of law have never gone further the level of declaration, while they actually have to serve as guarantee of protection of the rights for people with disabilities. The previous report said that pursuant to a Georgian law on "Social protection of persons with disabilities", state bodies, enterprises, institutions and organizations create conditions to provide residential, public and enterprise buildings, use of transport and transport communications, information and communication facilities, free orientation and movement. It is inadmissible to plan and build settlement areas, erect various facilities, build and reconstruct, if they are not relevant to the needs and wants of the disabled. The state should ensure conditions for persons with disabilities in which they will have proper access to cultural-entertainment and sports facilities. They should also be supplied with sports equipment and any other necessities they require.

In accordance to the Criminal Code, denial of exercising the rights ascribed to the persons with disabilities due to their invalid state by law and/or international agreement is considered a crime, if such denial abuses their rights.

According to the Administrative Code of Violence, the avoidance of creation of conditions stipulated by law for people with disabilities, also disregard of their needs and wants while planning and constructing facilities, creates the basis for administrative proceedings.

The same code indicates that the report on administrative violence, as stipulated in articles 178(1) – 178(2), is written up by the relevant organs of the Ministry of Labor, Healthcare and Social Welfare. However, as it was found out, despite the fact, that the article was included into the code more than a year and a half ago, the Ministry of Labor, Healthcare and Social Welfare has not identified which agency should have the authority of drawing up the report on administrative violations.

Regarding the above, the deputy Minister of Labor, Healthcare and Social Welfare of Georgia informed us, that though it is true that pursuant to chapter 45 of article 239 of the code of administrative violations, the report on administrative violations as stipulated by articles 178(1) – 178 (2), should be kept by the relevant agency of the Ministry of Labor, Healthcare and Social Welfare of Georgia, it has been impossible to enforce the indicated enactment so far as chapter 16 of the code (subordination of cases of administrative violations) does not determine the agency that should be authorized to study the cases of administrative infringements on violations provided by articles 178(1) – 178(2).

We think that the Ministry should take certain measure to eliminate the existing drawback and create the precedent of enforcement of the article in question, which will significantly favor the protection of the rights of persons with disabilities.

As we were notified by administrative board, no court practices of applying articles 178(1) and 178 (2) exist at all. Thus, nobody has ever been given any administrative punishment by applying the articles mentioned. But after the comments of the ministry saying that the article above is invalid, the information does not cause any surprise.

As for the article in criminal code concerning the restrictions of the rights of the persons with disabilities, criminal cases under article 1422 of the Criminal Code of Georgia have not been submitted to the board of criminal cases.

Regarding the issue of accessibility to public transport, the municipal transport service of Tbilisi has notified us that public transport for the persons with disabilities is accessible, although the transport traveling on city routes are not equipped with ramps. Thus, the situation still remains unchanged since the previous report and it is hard to understand what the municipal service meant when speaking about the accessibility to public transport for the persons with disabilities.

As for installing special voice signals at traffic lights for visually impaired people, non-existence of which was mentioned in the report of the second half of 2005, the municipal transport service informed us that it was planned to install such devices at traffic lights on five central crossroads at this stage. Certainly, this is some progress, but of course five traffic lights are too few, especially that it is not difficult to do and it does not require a lot of funds either.

In the materials supplied for the previous year report by the head of Tbilisi City Council Welfare Service, it was indicated that on the territory of the city, it had been envisaged to provide wheel-chair access in underground passages for disabled persons to be implemented by the companies having won in a tender.

As we were informed by the City Council Welfare Service, wheelchair passages for the given period of time have been installed and are functioning in the following places:

1. In the underground passage of Vake Park;
2. In front of the statue of G. Tabidze in I. Chavchavadze Avenue;
3. In front of the hospital N9, in I. Chavchavadzr Avenue;
4. In front of the 1st building of the University in I. Chavchavadzr Avenue.

The previous report also touched upon the wheelchair access problems, where it was indicated that due to the angle of slope and some other technical problems, it was still difficult to use the existing ones too.

The City Council Welfare Service explained that making wheelchair access in underground passages had been included in the 2007draft budget, especially in central districts that are more crowded.

The companies who have won in the tender have included building the ramps on the pavements in their projects and they are working on it, parallel to road repair works. In this respect, the situation has improved since the previous report and recommendations have also been partly taken into consideration.

The previous report dealt with circumstances related to the access to education. In the information obtained from the Ministry of Education, it was indicated that there were 11 pilot schools functioning (Guram Ramishvili school, # 180, 61, 10, 6, 151, 130, 44, 60, 4, 2nd experimental school) in which inclusive education was intro-

duced. Only two (#180, #6) among them were equipped with necessary ramps and special lifts for disabled persons (lifts are not functioning, as the school does not have a mechanic on the staff), none of the schools had bus services for children.

The situation has not changed considerably, although certain activities are being planned. As the Ministry of Education and Science has informed us, the project on the introduction of inclusive education has started in ten pilot schools of Tbilisi. The project is being implemented by the financial support of the Ministry of Education and Research of Norway.

According to Ms Bela Tsipuria, the deputy minister of education, in the academic year of 2006-2007, physical and program adaptation will take place in the pilot schools. As for the situation today, in schools # 10 and #180, there are lifts, ramps and specially equipped toilets. School # 10 has a bus service too.

The project objective is to introduce inclusive education in 10 schools of the capital and to familiarize the state organizations with necessary procedures. Also, to develop state policy and strategy on inclusive education taking into account the acquired experience in the course of the project and after its accomplishment. The main objectives of the project are: carrying out preparatory works, selecting focus schools and groups, developing state policy on inclusive teaching, adaptation of schools, introduction and development of inclusive teaching in schools, raising the level of awareness, project monitoring and assessment, project completion.

On the information of Tbilisi City Council municipality service of education and culture, the following schools have been adapted to pupils with disabilities at the given stage: #10, #21 and #98, which provide proper conditions for the integration of children with disabilities into the public. N. Machaladze notes that in 2006, city council service of education and culture of Tbilisi implemented the program "Recording audio books for blind and visually impaired young people". As for the accessibility to cultural-educational establishments, the head of the city service explained that all the libraries under their subordination are accommodated on the first floor. As for theatres and concert halls, they are not equipped with special facilities for the persons with disabilities to move around (such as ramps, etc.).

According to information from the service of healthcare and social security of Tbilisi municipality, the following programs are to be carried out for disabled persons:

1. **Medical insurance program for vulnerable population**
   The program implies creating such healthcare and social security system, which will give the population real guarantees for the accessibility of medical aid, despite their social state and income. Municipal service at the first stage insures socially vulnerable population. Among beneficiaries of the program are people who are invalids from childhood (0-18 year- olds) and people with disabilities above 18.
   The program is implemented by the insurance company "GPI Holding".
   The program budget is 3 000 000 (three million) GEL.
   A number of state programs are also carried out in 2006.

2. **Provision of interpreter-dactylology's services to deaf, hearing impaired persons**
   The aim of the program is to provide deaf and hearing impaired persons with a qualified interpretation.
   The program is implemented by the Union of the Deaf of Georgia.
   The program budget is 16 000 GEL.

3. **Social Integration Support Program for the disabled children**
   The aim of the program is to integrate children into society, their psychological rehabilitation and their inclusion in common educational processes in school #10 in Gldani-Nadzaladevi district.
   The program is implemented by the Association "Anika".
   The program budget is 31 000 GEL.

4. Cultural activities program for handicapped children

The aim of the program is to integrate children into society; assist them with choosing professional orientation; raise public awareness about equal rights for persons with disabilities.

The program is implemented by the Union "Handicapped child, family, society" and the Union Children's Studio "A-D-C"

The program budget is 10 000 GEL.

5. Rehabilitation and inclusion Program for Children with disabilities

The aim of the program is to prepare pre-school age (3-7) children with disabilities, inclusive education; to give the children of 7-14 adaptive and life skills training; to give the adults of 14-18 labor skills training and integrate in the society.

The program is implemented by an educational- rehabilitation and social adaptation center "Aisi".

The program budget is 80 000 GEL.

In the corresponding order of the Minister of Labor, Healthcare and Social Security, it is indicated that as a result of the implementation of a sub-program, with the application of international classification of functioning, a transparent and flexible system will be developed based on modern concepts of assessment of disability degree. The action plan of transition of the existing system of medical-social expertise to the above system will also be elaborated.

The labor and social security department of the Ministry of Labor, Healthcare and Social Security of Georgia, provided us with the list of sub-programs and components under "2006 state program for supporting social integration and adaptation of persons with disabilities".

1. Sub-program of social integration of the persons with disabilities

1.1. Component of providing people with disabilities with orthopedic prosthesis;
1.2. Component of ensuring the development of centers supporting independent life of Persons with disabilities
1.3. Component of information provision for the people with impaired vision;

2. Expenditures for the institutional patronage of the disabled persons sub-program

2.1. Component of care and rehabilitation of the elderly and disabled persons staying at the institutions supported by state;
2.2. Component of development of community organizations for the disabled
2.3. Component of resort rehabilitation for the beneficiaries of institutional establishments

3. Sub-program of rehabilitation of children with disabilities

4. Sub-program for the provision of auxiliary facilities to the disabled

4.1. Component of provision of means for movement to the disabled,
4.1.1 Wheelchairs
4.1.2 Walking sticks (among them for the blind)
4.1.3 Crutches
4.2 Component of providing persons with impaired hearing with hearing aids;
4.3 Component of providing the deaf and mute persons with cochlear implant surgery;

As it can be seen from the list, the program envisages movement facilities and orthopedic prosthetic means. As for provision of medication to the persons with disabilities, it is not considered by the programs under the Ministry of Healthcare.

According to the explanation of the Ministry, within the framework of "2006 state program for supporting social integration and adaptation of persons with disabilities" it is planned to implement the rehabilitation component for the children with Pertes disease (i.e. aseptic necrosis of hip bone) in West Georgia. The program will provide treatment and rehabilitation for the children with Pertes disease in western regions that will help them to implement the strategies of the Ministry of Labor, Healthcare and Social Welfare as well as international norms in life, particularly the children with physical disabilities will live under such adapted conditions, where their dignity will be protected, they will gain confidence and they will not have difficulties with integration into the public.

Employment of the persons with disabilities still remains an issue. As we were informed by social protection and state employment agencies, from the beginning of 2006 until August 1, 265 persons with disabilities registered and applied, 33 among them were women. In that period, none of them could get a job.

APPENDIX

We attach below monitoring results prepared by "Mothers' Association of Handicapped Women and Children-Dea" within the European Union funded project "Inclusive Education and Society":

The aim of the monitoring: to identify the correlation of public buildings with the needs of the disabled persons.

Object of monitoring: Public buildings and facilities (Zugdidi)

"Mothers' Association of Handicapped Women and Children- Dea" carries out monitoring of buildings under construction or of reconstructed buildings and facilities in Zugdidi. The aim of the monitoring is to reveal whether the standards set up for the disabled persons are taken into account in the process of construction.

In this respect, it is especially important to monitor educational establishments. Right to education is one of the most important among human rights, and the main aspect of it is considered to be the access to education. It is necessary to take adequate measures to remove all legal and technical barriers to make education accessible for all persons with disabilities which in the first place means the accessibility to buildings and facilities.

On the order of 2003 of the minister of Urban Planning and Construction of Georgia, the following instruction was approved: "About residence area for the disabled", about "public buildings and facilities for the disabled persons – planning elements and viable space for the disabled persons". Code of Administrative Violation of Georgia imposes a fine if under any of the listed below circumstances the needs of the disabled have been ignored or not taken into account: having access to residential or public buildings, transport communications, information and communication means, having conditions for free movement, planning settlement areas and construction works, designing residential districts, making project- planning decisions, building and reconstructing houses or facilities.

From June of the current year, a large – scale reconstruction of school buildings started in the region. As a result of monitoring, it turned out that the process was going on with the violations of legal norms, as they were disregarded.

In schools #1 and #2 in Zugdidi, the monitoring results have shown that the needs of the disabled have been ignored throughout the entire process of building-reconstruction works, planning and implementation. Not only the whole complex of specific activities has been disregarded by the project, but even the paths leading to the first floor have been ignored as well. Moreover, in school #1, during construction works, it was planned to dismantle the leading path built on by the initiative of the association several years ago. Monitoring team managed to maintain it after long arguments and protests.

On verbal agreement, in school #1 the ramp was reconstructed from the front façade, a new ramp was also built on in the back of the building. In school #2, a new ramp is in the process of building, in the toilets of both buildings the handle system will be installed, although at this stage it is impossible to make more fundamental changes to the project. The ramp could not be built on at the main entrance of school #2, since this would have caused additional expenses for dismantling the part of entrance stairs. Thus, it will be built in the extreme end of the side wall, which, in our opinion, is a disability discrimination issue. There is one more evidence of violation – paragraph 3 of article 5 of a Georgian law on "Licensing the activities of educational institutions" was infringed, according to which, pupils and students of educational institutions must be provided with proper conditions for rest and physical development, **while the disabled pupils and students – must enjoy free movement and orientation**.

Reconstruction of school buildings mentioned above is carried out within the framework of the program of the Ministry of Education and Science of Georgia – "Iakob Gogebashvili"; the client is the Ministry of Education and Science of Georgia; cost-estimate and auditing were drawn up by Zugdidi construction companies and approved by the respective service of the Ministry of Education. Thus, the Ministry of Education and Science bears the responsibilities for project faults that were expressed in disregarding the needs of disabled persons. The approval of the project in that mode contradicts the course taken up by the Ministry of Education and Science which is directed at the introduction of inclusive learning in the system of education of Georgia.

Official statistics and investigations having been carried out throughout many years by the association prove that small number of the disabled pupils in Zugdidi (and not only) general education schools, is due to inaccessibility to school buildings, along with many other factors.

One of the examples of the violation of the right to education is the story of a beneficiary of the association, Lado O. Lado is 15 years old and lives in the village Saberio which is located in Georgian-Abkhazian conflict zone. Since he lost both of his lower limbs as a result of mine explosion he has never attended school again. The nearest school is 5 kilometers away from his house and is inaccessible in all ways. His family, being poor and homeless, cannot afford to move to Zugdidi. Neither Abkhazian, nor Georgian sides have ever paid any attention to him. He is one of those "invisible" children, who are never identified and whose needs are never considered in Georgia. The number of such children is quite high. Lado has a wish and ability to study. His dream is to become a cardiologist. Due to association's efforts, the Ministry agrees to appoint a tutor for the child through the existing foster care institution, so that he is able to continue studies in Zugdidi.

It is also noteworthy, that the monitoring group has studied the existing public buildings. Among new developments, the only exception is a reconstructed building of a hospital "Republic", which fully meets European standard requirements for the disabled persons and accessibility is one of them. The same is hard to say about other buildings in which the rights of the disabled are either completely ignored or partly considered and is limited to building on ramps. In the case of a pharmaceutical company "Aversi", it turned out that the construction company changed the project on its own will and submitted the building to the client without ramps. We addressed the chief architect of the city and asked him to fulfill the duty in compliance with the law and determine the term for the administration of the company in which they had to improve their faults, otherwise legal actions would be taken against them. But the address remained unanswered.

The existing problems in the sphere of the rights of persons with disabilities will not be settled by single actions, or the benevolence and efforts of some NGOs, construction companies, organizations or citizens. The issue has to become the subject of state policy and the state control needs to be exercised over law enforcement.

17 SOCIAL-ECONOMIC RIGHTS

Public defender's office has received many letters that clearly speak for the facts of violation of social-economic rights in Georgia. The spectrum of issues is rather wide – particularly, among them are violation of labor rights, problems related to paying out pensions, receiving social aids, violations of healthcare protection rights, etc.

World practices clearly show that in order to ensure economic, social and cultural rights, many states have adopted fundamental and in-depth legislation. Georgia is following the same path. A number of legal acts have been adopted, which should create social guarantees for Georgian residents at the legislative level.

The state bears the main responsibility for the implementation of human rights. In accord to article 2 of economic, social and cultural rights pact, every state assumes the obligation for taking measures for "gradual, complete accomplishment" of economic and social rights as recognized by the pact, by full utilization of all available resources. Similar principle applies to social sphere, when carrying out duties and obligations of international agreements of the state.

We do understand that the realization of all economic and social rights is not possible in a short time. That is why, this request should be considered a common goal, according to which, specific liabilities of participant states should be set up in the shortest possible timeframe and steps should be taken for their enforcement.

To be more specific, certain measures have been taken lately, that might yield positive results to the cause of changing social conditions in Georgia (international and local programs in healthcare and social spheres, support programs for employment and social protection, international social security and healthcare, etc.)

In 2006, Georgia joined the Social Charter of Europe, and before that – in 1995 it assumed the obligation on the fulfillment of social, economic and cultural rights as stipulated by international agreements. Both documents oblige the states to take certain regular measures for the enhancement of social-economic level, take steps towards establishing minimum standards and carrying out specific activities to raise the quality of social-economic standards.

States, international and non-governmental organizations and public in general, must develop a new vision of the issues of economic, social and cultural rights.

Public Defender's responses to appeals prove the above.

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From January 1 to July 1 of 2005, Public Defender's Office received 435 letters concerning the problems in the sphere of social, economic and cultural rights. 191 out of them concerned social issues, 69 among them referred to pensions and social aid; 102 were about labor issues; 12 – referred to medical aid problems.

Among social rights the most important is the right to proper standard of living, which implies that every person must have minimum means of subsistence – proper nutrition, clothes, residence and necessary conditions for care and the right to get assistance. In order to enjoy social rights it is necessary to ensure certain economic rights which cover property, labor and social security rights.

THE RIGHT TO ADEQUATE STANDARD OF LIVING

In existing literary sources of international law, the right to standard of living stands out as the core of social rights. The term "standard to living" – according to human rights declaration means "such standard of living for food, health, clothing, housing, medical care and necessary social security which is essential for maintaining health and well-being of himself and of his family", and pursuant to article 11 of the international pact on economic social and cultural rights, it includes "proper nutrition, clothing and housing". Despite the fact that there is more to standard of living, its major components still are food, clothing and housing. Nobody should live under such conditions where one's needs are satisfied through humiliation or restriction of freedom, for example, begging, prostitution, slave labor. Standard to living implies living in the given society above poverty line. According to the World Bank's statement, standard of living implies having necessary means to consume minimal food and acquire other basic commodities.

Public Defender's office considered the application which referred to the right of living and right to standard of living.

Case of M. T.

M.T. is the invalid of the second group and suffers from Tuberculoses. He lives in the Security Academy building. He did not have his own bathroom and the neighbors would not allow him to use shared bathroom. M.T. asked the local authority office – Gamgeoba to allot the spare space by his room. From the submitted materials we found out that Gldani-Nadzaladevi Gamgeoba refused to satisfy his request.

On February 27, 2006, Public Defender's representatives visited the building of former Security Academy at the address: #22, Kerchi Str. to have a look at M. T's accommodation. By his room there was a spare space indeed and it was possible to build a lavatory there and nobody was against it. The neighbors also confirmed the above. They drew up the report which was signed by one of the neighbors.

As we have already mentioned, pursuant to article 11 of the international pact "about economic, social and cultural rights" " the participant states of the pact recognize that each person has the right to standard of living for well being of himself and of his family, including food, clothing and housing". The same right is supported by article 25 of Universal Declaration of Human Rights.

Taken all things into account, we considered that the right to standard of living had been violated and M.T had the right to be provided with elementary living conditions. Based on the above, pursuant to sub – paragraph "b" of article 21 of the organic law on "Public Defender of Georgia", we filed the recommendation for Gldani-Nadzaladevi Gamgeoba and requested that they allotted the space for M.T where he would build the lavatory.

Public Defender's recommendation was satisfied and the citizen was allowed to build the lavatory.

Taliko Rukhadze's case

Citizen Taliko Rukhadze addressed the Public Defender's Office. The issue concerned social problems. The applicant indicates that she is a single mother with many children; she is also bringing up an orphan niece and a homeless child. Her flat is absolutely unsuitable for living and needs repairs, including roofing, which she cannot afford to fix due to scarce financial means.

As T. Rukhadze explained, she had addressed Batumi Mayor's office several times, but got no response.

We addressed Batumi municipal office on the matter and later, we were informed that after we applied to them, social agents studied T. Rukhadze's social situation and they granted her young child a monthly allowance in the amount of 60 GEL. As well as that, her family was provided with free food in the municipal canteen. This year, the family will be given pecuniary aid in the amount of 60 GEL.

As for roof repairs, the cost estimate based on the documentation amounts to 11260 GEL and in the event of paying 5% fee, the repairs will start in the second quarter of the current year.

Despite the above said, on June 19 of the current year, T. Rukhadze addressed Public Defender's Office the second time with the same problem. We contacted Batumi municipal office again and they informed us that the third entrance of the building was repaired in April, and the 4th entrance was to be repaired by the tender winner company "Maja" LTD. Thus, the repair works have already started by now.

They also mentioned that T. Rukhadze's claim did not correspond to the truth. We would like to note that in 2004, as an exception, water-pipe system was also repaired in T. Rukhadze's flat by the help of municipality.

Khatuna Berdzenishvili's case

Khatuna Berdzenishvili, a citizen from village Shuapartskhma in Chokhatauri region applied to Public Defender's Office. Her house was damaged as a result of natural disaster in January 2006. The citizen claimed that despite several complaints, Chokhatauri regional Gamgeoba did not issue a certificate that her house needed emergency repairs. Based on the complaint we transferred the inquiry to Gamgeoba and requested the information about the condition of Berdzenishvili's house. Gamgeoba informed us that the house was classed as the second category. We also were notified there is no item included in the current local budget dealing with the solution of the above problem.

Within its legal authority, the Ministry of Refugees and Resettlement, pursuant to part 6 of article 8 of its provision, is engaged in accommodating population from regions under the threat of natural calamities, their social protection and provision of shelter. Thus the Public Defender forwarded the proposal to the aforementioned ministry for response.

The letter in reply said that the Ministry of Refugees and Resettlement took into account Khatuna Berdzenishvili's disastrous living conditions and offered her to move to Tsalka region to the house bought by the ministry, to which the citizen Berdzenishvili agreed.

The citizen expressed her gratitude to Public Defender's Office.

Protection of the right to standard of living is considered the most problematic in international practices. According to statistics developed by UN, over 1 billion people in the world have no standard of living, and about 100 million people are homeless. The crisis of standard of living becomes even more severe due to forced displacement of millions of people from their homes.

According to the data of UN, half of the world's population cannot enjoy the full spectrum of the right to standard of living. The enforcement of this right, pursuant to article 11 of the International Pact "about economic, social and cultural rights", is the state responsibility. In the first part of the article mentioned, it is indicated that "participating states shall take relevant measures to ensure the enforcement of these rights".

Fulfillment of this duty must become a key priority of our country, as there are abundant facts of violation of the right to standard of living in Georgia.

The government has to take regular measures for the solution of the problem; certain funds should be earmarked in the annual budget of Georgia.

Public Defender's Office made certain steps in this direction. Apart from responding to specific cases, legal activities in social-economic sphere have also become more active by elaborating legal proposals and preparing certain conclusions on draft laws submitted in the Parliament.

To be more specific, we have presented a legal proposal to the Parliament concerning making amendments to the law "On Bankruptcy". The aim of the proposal was to ensure human rights protection by making changes and additions to the law "On Bankruptcy Proceedings". In particular, we referred to compensations to physical persons based on first priority lists for the losses they incurred due to company bankruptcy. As is seen from article 18 of the "Law on Bankruptcy", the state gives priority not to the protection of citizens' (parsons having no citizenship and foreigners) interests towards whom the damage was inflicted by the company, but to its own interests. Physical persons are compensated after legal persons settle the payments and fees, make international and bank settlements listed as the second and third state priorities. Indemnity of physical persons is implied under paragraph 5 of the first part of article 18 "and other". We consider that the indemnity requirement for physical persons should be a separate paragraph in article 18 and the priorities should precede paying out state, international organization or bank debts. It is noteworthy that the legal proposal was based on a specific case concerning pulling down houses of a certain part of the population by a bankrupt company in Chiatura region.

We consider it essential that the state finds the ways of settling social issues, as social assistance outlined in the draft law "On Social Assistance System" prepared by the Ministry of Labor, Healthcare and Social Welfare is considered as a "gift" for some reason, while all international agreements in this sphere ratified by Georgia, acknowledge it as human right.

Apart from the fact that social protection is the constituent part of social rights (so called second generation human rights), it also finds reflection in human rights agreements, that have been ratified by Georgia and hence, the state should guarantee the protection of these rights. Besides, in recommendations and documents developed by International Labor Organization (Georgia is the member), the state obligations in the sphere of social rights, social assistance being the part of it, are well- defined. For instance, the most essential document of International Labor Organization in the field of social security is the convention of 1952 (N102) on the minimum of social welfare (minimum standards). This, "menu"-type of document covers nine aspects of social welfare. These are:

(1) Medical care (part II);
(2) Sickness benefit (part III);
(3) Unemployment benefit (part IV);
(4) Old age benefit (part V);
(5) Employment injury benefit (part VI);

(6) Family benefit (part VII);
(7) Maternity benefit (part VIII);
(8) Invalidity benefit (part IX);
(9) Survivor's benefit (part X).

The list of different forms of social welfare is repeated in report presentation guideline principles of article 9 of the International Pact of economic, social and cultural rights, which speaks for the importance of ILO standards in realizing obligations for economic, social and cultural rights.

International convention on the elimination of all forms of racial discrimination under article 5 (e) (ig) requires the enforcement of social welfare and social assistance without any discrimination. International convention considers the right of ensuring social security regarding the elimination of all forms of women's discrimination in more details and identifies a number of forms of social security that should be provided to women without any kind of discrimination.

Article 13 concerning the right of social and medical care, considers those basic benefits for subsistence that are not envisaged by the concept of ILO social security. It must be noted that In European system of human rights – as minimum, social assistance right for the indigent, is recognized to be a genuine right. Article 13 (1) of European Social Charter brings forth this right as the one having the nature of being executed individually or by "court ruling". Article 13 itself is the biggest achievement in the international system of protection of social and economic rights, as it goes far beyond the old vision of assistance, from "Charity" stigma it is promoted to the rank of the right prohibiting social and political discrimination against recipients.

In the opinion of European Committee of Social Rights, essential downsides in social security affairs or the low level of assistance indicate that the participant country does not fulfill the duties.

In our opinion, that Georgia has joined European Social Charter is a big step ahead, despite the fact that covenants made during the ratification of social charter cause the restriction of a great number of rights. Below we will discuss the issue in more details.

Article 13 (1) of Social Charter of Europe concerns the right to social medical assistance (this article is not recognized by Georgia) highlights this right as the one having the nature of being executed individually or by "court ruling". Article 13 itself is the biggest achievement in the international system of protection of social and economic rights, as it goes far beyond the old vision of assistance, from "Charity" stigma it is promoted to the rank of the right prohibiting social and political discrimination against recipients.

Current legislation of Georgia identifies social benefits of specific character, although draft law on "Social assistance system" has been developed at the Ministry of Labor, Healthcare and Social Security, which considers a number of changes to be made to current legislation that will considerably deteriorate economic state of certain part of the population as a number of benefits are going to be removed. For example, in accordance with the draft law, social benefits will be annulled in stages towards the following citizens of Georgia: victims of political repressions, the deceased in the war for territorial integrity, lost, families whose members died of wounds, Chernobyl Nuclear Station victims, participants in military or civil activities and their family members, the injured after April 9 events.

It is a welcoming fact that law makers wish to unify social assistance catalogue under one single law, the recipients of which will be the representatives of the most indigent layer of the society, people without care, homeless, poor, permanent lawful residents in need of special care, poor families and people having no place to live.

Draft law outlines assistance for foster child, care of full age children, recipients of reintegration assistance which certainly deserves approval. But if we take into consideration paragraphs "j" and "p" of article 2 and 4 respectively, such assistance will be limited to persons in need of special care, indigent family or the homeless only. But it is possible that if foster families or the families with full age children are not indigent and belong to middle social layer they will not receive any benefits as specified in the draft law, for instance for raising an orphan child or a child deprived of parental care, or for those full age persons who have restricted abilities to take care of themselves.

After the enforcement of the law, social benefits will be stopped for those persons who belong to the families of victims of repressions, families whose members fought for territorial independence of Georgia, etc.

Under current law, the persons who fell victims to April 9 events are given benefits not because they are indigent or homeless, but because they are affected by psychological stress, physical and psychological injuries. The same refers to families of victims to Chernobyl events and those killed in the fight for territorial integrity, freedom and independence, lost, died from wounds. They are given benefits for serving their country.

We think it is a progressive step that 2007 budget still considers benefits for electricity bills (war participants and the persons equaled to them) by means of compensation: 2007 – 17,000.0; 2005 – 12, 942.9. 2006 – 14, 791.0. For families whose members fell victims to April 9 events the compensation is: 2007 – 25.0. 2005 – 25.0. 2006 – 25.0.

The second important issue, which will be regulated by the draft law presented above, concerns the rule of filing complaints against the resolution of receiving pecuniary social aid. In the sub-paragraph "e", of paragraph 3 of article 24 it is specified that "the decision made by ministry is final". It is seen from the article that the right to take the case to the court is restricted, which is a violation of human rights.

Finally, we consider that the draft law needs serious improvements and some of the provisions need a more detailed treatment.

In our opinion, the adoption of the draft law as it is will cause the deterioration of protection of social human rights in Georgia. Hence, on August 11 of the current year, the Public Defender addressed the Parliament of Georgia with relevant remarks that were presented to the committee concerned.

We need to single out the issues connected with social benefits. Under the reporting period, many cases were sent in the Public Defender's Office concerning the facts of human rights violations by the Ministry of Defense. Most of violations were related to the fact that the copies of appointments and dismissals orders of the ministry ex-employees were not issued. The administration of the ministry ignored the Public Defender's lawful request to issue the document proving their working practice among the ranks of Defense Ministry. The persons who could not obtain the orders had further problems in different instances, for example it became impossible for them to get a veteran's status upon their request, which would allow them to enjoy benefits.

Regarding the issue above, Public Defender addressed the Ministry of Defense with recommendation, requesting the issuance of copies of the mentioned orders several times, which was never satisfied. As well as that, there is no access to information on specific persons and the reasons, for which it is impossible to issue the copy of the order to ex-employees of the ministry, are unclear.

Roin Shonia's case

Roin Shonia applied to the Public Defender's Office with the complaint in which he claimed that his legal rights had been infringed by the Ministry of Defense. Shonia worked in Special Forces battalion of the

National Guard of Georgia as a commanding officer. His attempt, to find out whether he still was among the ranks of armed forces of Georgia, failed. In other words, if he was dismissed, then he required the statement of order on his dismissal (the copy of appointment-dismissal order). Public Defender's Office addressed the head of the department three times, however, the answer was that there were no references in the ministry about R. Shonia.

Simon Buzaladze's case

The citizen Simon Buzaladze addressed the Public Defender's Office. He required to be awarded the veteran's status. From Buzaladze's application and the materials attached, we learned that he was called up to military service in the National Guard in 1991 and served in Shavnabada Battallion. He took part in the fight for territorial integrity in Abkhazia. Despite our reiterative appeals to the department concerned of the Ministry of Defense about issuing to him the copy of appointment-dismissal order, our request and the citizen's lawful interest was never satisfied.

Boris Tsomaya's case

The citizen Boris Tsomaya addressed the Public Defender's Office. He took part in military actions for territorial integrity of Georgia from August 28 to October 4 in #101 volunteers' battalion of MoD.

B. Tsomaya filed the inquiry to MoD on issuing the appointment-dismissal order as he was to submit it to the department of veteran's affairs in order to be awarded veteran's status. However, he failed to obtain the document. On December 29, 2005, B. Tsomaya received a reply from MoD that the information about his appointment and dismissal order in the archive of the department of joint staff did not exist.

The materials contain the court decision dated December 17, 2001, stating that the fact that Boris Tsomaya was really engaged in military actions for territorial integrity of Georgia in Abkhazia, precisely in Gagra, from August 28 till October 4, has legal meaning.

The Public Defender addressed the Minister of Defense with the proposal to study the issue and make an adequate decision.

On July 25 we received a reply from the joint staff of MoD indicating that social department of joint staff of armed forces J-1 has reviewed Tsomaya's application and the attached materials several times and that the orders on appointment and dismissal of Tsomaya are not found in archive materials.
Thus, Public Defender's proposal has not been taken into account by MoD.

Mikheil Adamia

Mikheil Adamia's case concerned salary arrears and we filed the recommendation to the general director, Dean White of the united distribution company of energy resources, JSC.

The administration took the recommendation into account and paid M. Adamia 600 GEL.

Venera Tepnadze

VeneraGelashvili-Tepnadze appealed to the Public Defender's Office with the complaint concerning salary arrears of her deceased husband. We forwarded the inquiry to the general director of the state electro system of Georgia, Jo Corbet.

The recommendation was considered and the administration of the organization paid Tepnadze's family arrears in the amount of 500 GEL. They also notified that on the ruling of January 26, 2006, the rehabilitation plan of the company was approved and salary arrears would be paid out as soon as the company gets financially recovered.

Nunu Jinchvelashvili

Nunu Jinchvelashvili complained about unlawful annulment of social assistance to her (as she is a single pensioner). We appealed to Gldani-Nadzaladevi district office (Gamgeoba).

Public Defender's recommendation was considered and Jinchvelashvili was awarded social aid in the amount of 22 GEL.

Nunu Jinchvelashvili sent a letter of gratitude to Public Defender and the staff.

Levan Sadaghashvili

Levan Sadaghashvili appealed to Public Defender's office on June 08, 2006, complaining that despite the fact that he had pre-paid the phone bill, his phone had been cut since October of the previous year.

We addressed Mr. A. Iashvili, the general director of "Akhali Kselebi", LTD, with the inquiry.

On the basis of Public Defender's inquiry, the company calculated the sum during the period when the phone was switched off, the arrears were relieved and the telephone was switched on. Sadaghashvili sent the Public Defender and his staff a letter of gratitude.

Taliko Rukhadze's case

The citizen Taliko Rukhadze from Batumi addressed the Public Defender's Office with the issues concerning social problems.

We addressed Batumi municipal office head M. Beridze on the matter who, having studied Rukhadze's social situation, granted her young child a monthly allowance in the amount of 60 GEL. As well as that, her family was provided with free food in the municipal canteen. In the current year, the family will be given pecuniary aid in the amount of 60 GEL. The citizen was very grateful.

Recommendations about salary arrears that were not taken into account:

The following organizations did not consider paying out salary arrears to the following citizens :

State Border Guard Department of Ministry of Interior of Georgia - to Gulizar Vibliani

Ministry of Interior – Giorgi Mkurnalidze

Ministry of Finance – to former employees of land management of Akhmeta region.

RIGHT TO PROPERTY

Property right has been one of the most recognized and guaranteed rights among human rights of all times and under modern conditions it remains privileged. As a rule, the abuse of property right is considered a grave crime in criminal and civil codes of all countries and its violation is severely punished.

Right to property is the right that is most fundamentally protected and guaranteed. Pursuant to paragraph I of article 21 of Georgian Constitution, "Right to inheritance and property is recognized and guaranteed". The abrogation of the universal right of property, its acquisition, transfer and inheritance is prohibited.

1. Restriction of these rights is possible for the necessary social need in cases determined by law and by established right.
2. Sequestration of property for necessary social need is permissible in cases directly determined by law, by a decision of the court or through urgent necessity by organic law but only if full compensation is made.

For urgent social need it is permissible to restrict the rights outlined in paragraph 1 of article 21 of the Constitution, in cases determined by law and by established right.

Sequestration of property for necessary social need is permissible in cases directly determined by law, by a decision of the court or through urgent necessity by organic law but only if full compensation is made.

Article 17 of Universal declaration of Human Rights guarantees every person to possess property independently as well as share with others and prohibits its sequestration. Right to property is also guaranteed in respective articles of the International Covenant of economic, social and cultural rights and in the International Pact of civil and political rights.

First paragraph of article 1 of additional minutes of European Convention of Human Rights guarantees the right to use property peacefully and not the right to property.

As for state obligation – to respect the right to property, the state should not intervene in the person's right to property. Taken the above into consideration, concerning the balance between social functions of public and private interests, this obligation prohibits the state to abuse the person's rights to property willfully and lay an unjustifiably heavy burden on him/her. Similarly, this obligation requires that the state protects the person against the interference of a third party.

Article 21 of Georgian Constitution not only declares the right to property, but it is recognized as an inviolable right and willful sequestration of property is prohibited. By declaring this, Constitution lays the foundation for permanent existence of the right to property, but at the same time, the Constitution determines the possibilities of restriction of the right to property.

Protection of the right to property is guaranteed for physical persons as well as the entities of public and private law. Despite constitutional guarantees of protection of the right to property, the bodies that appear as guarantors often violate the rights themselves.

The right to property is often in close connection with other freedoms of a person, as it provides the major property basis for existence and activities of a human being. In accordance with the decision of Georgian Constitutional Court, "The right to property is the supreme humane value, it is a universally recognized right, which is the cornerstone for civic, social and legal state"[3].

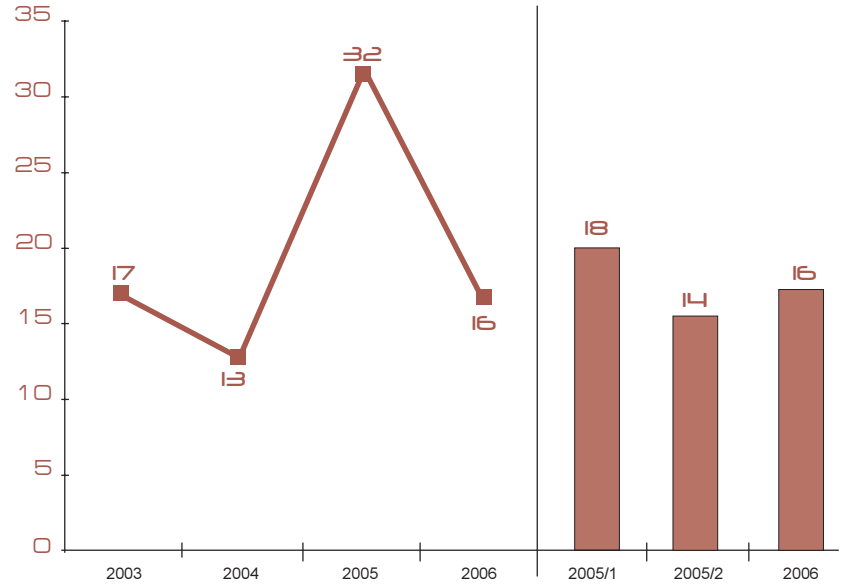
Besides, criminal law states criminal responsibility for damage or destruction of property belonging to others.

[3] Decision of Constitutional Court of Georgia #1/51, July 21, 1997

Despite such overall guarantees, the practices show that in Georgia, as elsewhere, these guarantees often are of formal character, for which reason they cannot fully ensure the work of mechanisms of protection of the right to property. Due to this reason, the number of criminal violations is not reduced but it significantly goes up.

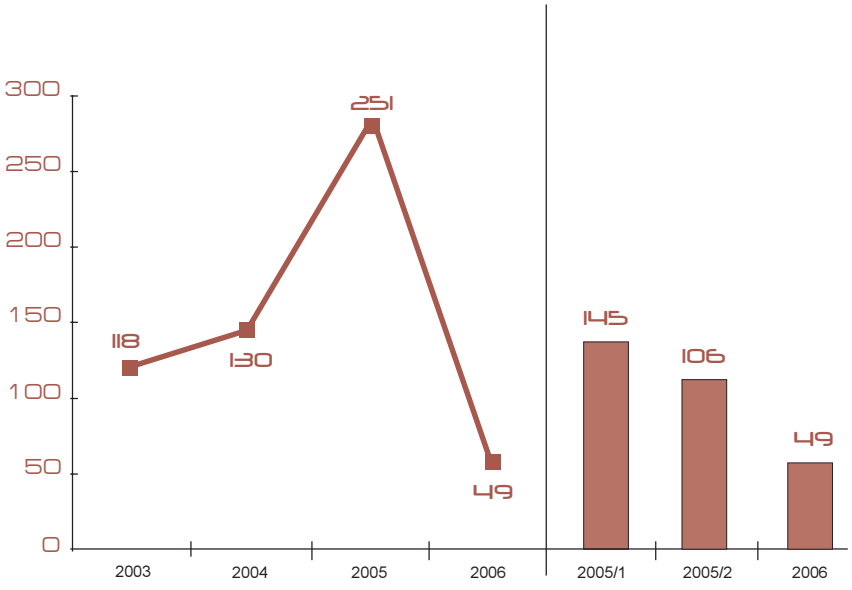
The analysis of Public Defender's Office activities shows that lately, the interest towards the Public Defender's Office among broad masses of population has tangibly increased. A good proof to this is an increasing number of complaints related to property rights protection.

LAND LITIGATIONS



The link between the right to living and property protection is quite evident. The flat, under person's possession is protected by the right of the person to property. Thus, right to property contributes to the enforcement of the right to living.

HOUSING PROBLEMS



The cases considered in the first half of 2006, also speak for the facts of violation of property rights.

A clear example of the above is a number of applications sent to the Public Defender.

Zurab Talakhadze's case

Zurab Talakhadze addressed the Public Defender's Office. From the application and the attached materials it became clear that Zurab Talakhadze, for the purpose of carrying out entrepreneurial activiities, possessed the building adjacent to N72 in Vazha Pshavela Avenue, which was Tamar Eriashvili's property. It must be noted, that the construction complied all the set norms that can be proved by a number of supportive documentation, such as the City's chief architect's resolution, expert conclusions, etc. Besides, the fact of possessing the property can be proved by the extract from public registry and with the presumption of registry's appropriateness, we should assume that Tamar Eriashvili could be considered a legitimate owner, as property inviolability is guaranteed by Georgian Constitution and laws. Thus, since willful abuse of the property is not allowed, nobody had any right to destroy Tamar Erishvili's property without any court ruling or a decision of the judge.

The applicant indicated that the building was dismantled by Tbilisi municipal service of supervision. We addressed them and requested the information about the legal grounds for pulling down the building. The municipal service informed us in writing that the building had not been dismantled by them. Later, it was ascertained that Tamar Eriashvili's property which she owned legitimately, had been destroyed and no document exists whatsoever in the bodies concerned. All things considered, we assume that the dismantling of a building was unlawful.

Irina Nergadze's case

Irina Nergadze's case also refers to illicit destruction of private property. On the basis of the data provided by Public Registry office, Irina Nergadze, together with the state, owned the space in the underground passage nearby #34a, Chavchavadze Avenue. The total space of the facility – 230 square meters was in the ownership of Nergadze, which is legally incorrect, since pursuant to article 150 of the Civil Code of Georgia, the building standing firmly on the land represents an essential part of the land and if the land is owned by two subjects, then the building has to be under joint ownership.

From the materials presented, it turns out that, initially Nergadze owned the space on the basis of lease agreement. She herself addressed the municipality of Tbilisi and requested to be allotted 160 square meters of the space for carrying out reconstruction works to the existing pavilion in the underground passage, in order to set up a trade center. Her request was satisfied, which is proved by the resolution of November 17, 1998 of the Tbilisi Municipality Office. While from the order of November 17, 1998 of the chief architect, it becomes clear, that the total area of the construction was determined to be 230 square meters, which goes far beyond the figure indicated in the premier's resolution and instead of a mini trade center, quite a big building was erected. This is the violation in itself. Besides, according to the construction passport, it was envisaged to build a one-storey building, while according to the draft approved by the chief architect on 17.11.1998 the building is a two-storey one. The Inspection of law protection of Tbilisi states, that it is impossible to obtain the original order and the copy is not signed by the architect, and consequently, the order presented to us is the one described above.

Pursuant to the Georgian law on "Declaring non-agricultural lands in the private ownership of physical and legal persons", Vake-Saburtalo district court recognized Irina Nergadze the owner of 230 square meters of the area and a joint owner with the state of the area of 182 square meters of land. The property was registered in the above manner, and as we have already noted, it does not comply with the norms stated by civil law of Georgia.

Despite numerous violations that took place while acquiring the property and carrying out construction, we consider that nobody had the right to destroy Irina Nergadze's property without permission, since proceeding from the presumption of lawful actions of the public registry office, the person is considered the owner unless the opposite is proved. Accordingly, no infringement upon private property can take place by law evasion, in order to observe the inviolability of human rights guaranteed by the Constitution. It should also be noted, that the city supervisory service states, that they have not pulled down Irina Nergadze's building, and there is no court ruling regarding the issue, thus, everything has been done illicitly.

The case of tenants residing at #50-52 in Tabukashvili Str.

Dimitri Gabunia, the lawyer, addressed the Public Defender's Office. The issue concerned the abuse of the rights of flat owners residing at # 50-52 in R. Tabukashvili Str.

The application said that Tbilisi Municipal Supervision Service was going to demolish the house mentioned above, as of a building that had been built against the norms requested by law.

The materials supporting the case establish the fact that the project of the building in question was approved by order #292 of June 3, 1998, and on December 31, 1998, the authorization #297 (see appendix, pp.1-2) on construction was issued from Arcmsheninspection. Later, some corrections were made to the project that was approved by order #133 of May 8, 2001 of the chief architect. No authorization documents on the construction of the corrected project were enclosed in the case. However, in the conclusion of the Institute of Construction Mechanics and Seismic Resistance named after Zavriev, it is specified that on February 15, 2002, the permission on construction had been extended with no fixed term by Arcmsheninspection (see appendix, pp. 2-3). Based on the above, on the order of April 3, 2003 of the chief architect, after the approval of a new corrected project, no authorization on construction had been issued. (See appendix, p.4).

From the notification of national bureau specialist of legal expertise of the Ministry of Justice, it was ascertained that according to position *2.5* of "snip 2.03.01-84" of construction norms and regulations, for the construction of the building, it was necessary to use concrete of b 25 class and not lower than that, which corresponds to 300 grade of concrete, while the data from radio physical construction laboratory "Binuli" conclusion revealed that in the tied reinforced concrete columns the concrete used is lower than grade 300, that may be dangerous for the building, especially under the influence of seismic processes. It is indicated in the conclusion that the low grade concrete cannot ensure the solidity of the building in compliance with construction norms and regulations, i.e. position *2.5* of "snip 2.03.01-84" is not observed (see appendix p.5).

Pursuant to clause 1 article 7 of Georgian law "On the enforcement of supervision over architectural-construction activities", "state supervision bodies take resolutions on architectural-construction activities on partial or complete dismantling of unlawfully constructed buildings, or on partial or complete suspension or dismantling of buildings under construction" according to part 3 of the same article, the resolution has to be justified and together with the identified requisites of administrative-legal acts has to include the reference of the body where it is possible to appeal the administrative-legal act, also the address of the body concerned and the term of appeal and the norm of the normative act which was violated during the construction. According to clause 4 of the article, during partial or complete dismantling of illicitly built buildings, the interested party should get familiar with the architectural-construction activities within 24 hours from the adoption of the resolution by state supervision bodies. To ensure familiarization with the act, it should be displayed prominently. The party has the right to appeal the resolution during 15 days after getting familiar with it. Besides, the appeal of the resolution on partial or complete dismantling of unlawfully constructed buildings suspends the enforcement of the resolution made by state supervision bodies. Thus, if the party appeals the administrative-legal act in accordance with the determined regulations, the final decision on dismantling of the building is taken by the court.

The complainants pointed out that they had got several verbal warnings about the possible dismantling from the supervisory municipal service but they knew nothing about the resolution.

Regarding the above case, we addressed Tbilisi municipal supervisory service and asked them to supply us with information on the matter, and we were informed that they had not been involved in the dismantling of the building in Tabukshvili street and that they did not have any information about it.

Nodar Maisuradze's case

The case concerns unlawful confiscation of property. From materials attached to the case, it became clear that on November 20, 1997, a lease agreement was entered between Gori Municipality Office and the representative of Treasury enterprise "Kv. Khviti" agricultural labor group, Nodar Maisuradze on leasing 230 ha of plot of land for 9 years. The agreement was registered in Gori land management department. Afterwards, on the basis of the Treasury enterprise "Kv. Khviti", by 100% of state share participation was established "Saltvisi-2" LTD, the first director of which was appointed Shurman Maisuradze, Nodar Maisuradze's father. After his death, the agricultural land was lawfully owned by N. Maisuradze who conducted his economic activities. In 2004, an authorized representative's office of the President of Georgia in Shida Kartli got interested in the leasing agreement. The governor M.Kareli, personally visited the village Kv. Khviti and told the population that N. Maisuradze owned the space unlawfully and Kareli transferred the leased plot of land to the population (there is a video recording of the fact).

On July 21, 2004, Gori Gamgeoba issued a resolution #147, in accord to which the lease agreement concluded between N. Maisuradze and Gori Municipal office on November 20, 1997, was annulled. Shortly after that the tender was offered for the space of land. Giorgi Kereselidze became the director of "Saltvisi-2" LTD. Nodar Maisuradze was not given any chance to yield the harvest which belonged to him. Meanwhile, the then leadership of "Saltvisi-2" LTD (Giorgi Kereselidze) willfully broke into the land and harvested 72 tons of wheat; according to official information (the complainant claimed it had to be 134 tons). After all these events, in 2005, this time the leadership of "Saltvisi-2" LTD, did not allow N. Maisuradze to enter the cropland. Moreover, on July 26, the road leading to village Kv. Khvity was blocked and the harvester threshers hired by N. Maisuradze could not reach the village. The next day, on July 27, the harvester-threshers of "Saltvisi-2" LTD harvested the crop and thus misappropriated 500 tons of wheat.

It should be noted that G. Kereselidze was only a de-facto director. The fact that after Shurman Maisuradze's (the first director of "Saltvisi-2" LTD, N. Maisuradze's father) death, on an official order of March 10, 2005 of enterprise management agency Zurab Zangaladze became a director, testifies the above. Thus, the factual director during a year was G. Kereselidze, who, as he states in one of his letters, was acting on the order of "senior bodies" (see appendix). All the above facts indicate that "Saltvisi-2" LTD was managed by the interested officials from local government.

Nobody had been punished for the above facts for a long time. A criminal case was initiated only a few months ago, and a few persons were arraigned. Certainly, none of them are from local government.

Garages in Dighomi and Batumi

On July 3 of the current year, we learned from one of the TV company programs that the local supervisory service of Batumi was going to dismantle garages at#11 Khimshiashvili Street in Batumi. The inhabitants of the block of flats were dissatisfied by the fact. In order to clear the issue, the official from Public Defender's Office visited Batumi and studied the circumstances, talked with population, listened to the explanations from the Mayor of Batumi M. Sh. and Irakli Tavartkiladze.

From visual examination of the site and the existing materials, we found out that garages were built in the yards of #9, #11, #13 blocks of flats in Khimshiashvili Street in 1993, the permission on which was issued by Batumi mayor's office (see appendix). Only a few garages were built without permission. The blocks of flats have a yard from one side and the garages are built in this very yard.

According to article 208 of Civil Code, "In blocks of flats the inhabitants have the right to own the flat and that part of the building, which is not intended for living (ownership of untenable space). Ownership of a flat and untenable space is considered personal property. The latter can only refer to isolated flats or some other isolated part of the building. The car parking space is considered isolated if it has been distinctly confined to the user for a long time".

Based on the above, the untenable space (the yard of the building) must be considered the inhabitants' property, especially if the borderlines have been marked off for many years.

On March 28, 2006, Batumi Mayor's office adopted two resolutions, one of which includes the provision on dismantling of unseemly buildings and facilities built with or without permission, and the second resolution states paying out compensation with regards to the above. Based on the above resolutions, the local service notified the inhabitants of #11 Khimshiashvili Street and allowed a three-day term to clear the space from any belongings they stored there; otherwise they would dismantle the facilities bearing no responsibility for the damage. It also contained the comment on the right to compensation.

On July 4 of the current year, the garages were dismantled at the address indicated above.

It must be noted, that the process of dismantling at the above address was going on by severe violations, as pursuant to clause 1 article 7 of Georgian law "On the enforcement of supervision over architectural-construction activities", "state supervision bodies take resolutions on architectural-construction activities on partial or complete dismantling of unlawfully constructed buildings, or on partial or complete suspension or dismantling of buildings under construction". In accordance to part 3 of the same article, the resolution has to be justified and together with the identified requisites of administrative-legal acts has to include the reference of the body where it is possible to appeal the administrative-legal act, also the address of the body concerned and the term of appeal and the norm of the normative act which was violated during the construction. According to clause 4 of the article, during partial or complete dismantling of illicitly built buildings, the interested party should get familiar with the architectural-construction activities within 24 hours from the day of adoption of the resolution by state supervision bodies. To ensure familiarization with the act, it should be displayed prominently. The party has the right to appeal the resolution during 15 days after getting familiar with it. Besides, the appeal of the resolution on partial or complete dismantling of unlawfully constructed buildings suspends the enforcement of the resolution made by state supervision bodies. Thus, if the party appeals the administrative-legal act in accordance with the determined regulations, the final decision on dismantling of the building is taken by the court. On May 26 of the current year the inhabitants of the house mentioned received a letter of warning. It should be noted that the resolution does not comply with the law and it is not possible to appeal.

The same normative acts were violated in Dighomi, when dismantling of garages in the yard of a residential building took place.

Chiaturmanganum

A group of people living in Chiatura region addressed the Public Defender's Office. Their main request was to compensate the inflicted material damage, as due to the activities carried out by Chiaturmanganum, their houses were damaged and destroyed. There is a court decision on the matter, which oblige Chiaturmanganum to compensate the material damage they inflicted.

Article 18 of Georgian law "On Bankruptcy proceedings" stipulates working out a bankruptcy priority schedule, which will list the priorities of satisfaction of demands, from which it is clearly seen that the state gives priority not to citizens' interest, but rather to its own interests. In the state list of priorities, as per clauses 2 and 3, physical persons are compensated after legal persons settle the payments and fees, make international and bank settlements as listed in the second and third state priorities. Indemnity of physical persons is implied under paragraph 5 of the first part of article 18 "and other".

Whatever constitutes the foremost welfare and fundamental human rights – the right to property, health, etc., is implied under damage of physical persons, and it is inadmissible to consider them under "and other requirements".

The Public Defender of Georgia considers that the indemnity requirement for physical persons should be a separate paragraph in article 18 and it should precede other priorities such as paying out state, international organization or bank debts.

Under market economy, the facts of company bankruptcy are not rare. Thus the amendment mentioned above will restore not only the rights of the persons who became victims as a result of Chiaturmanganum activities, but it will enable the state to recognize human rights and freedoms, especially those of physical person's property when any other similar case occurs.

With regard to facts of the abuse of property rights, Public Defender filed a recommendation to Prosecutor General of Georgia to duly respond to the matter and submitted existing materials on Irina Nergadze's and Zurab Talakhadze's cases. At the same time, Public Defender addressed Tbilisi City Hall with the recommendation on paying out compensations to these people.

The process of dismantling the building in Tabukashvili Street was going on with law violations that abused citizens' rights to property guaranteed by the Constitution. Thus, pursuant to clause "b", article 21 of organic law on "Public Defender", the latter addressed the mayor of Tbilisi with the recommendation to study the issue and respond adequately. Also recommendations were sent to the bodies concerned regarding dismantling of garages and demanded paying out adequate compensations.

With regard to Nodar Maisuradze's case, the Public Defender demanded to bring to justice those persons whose illicit action abused N. Maisuradze's right to property.

Public Defender's Office studied the issue on the compensation of material damage inflicted by Chiaturmanganumi Company and pursuant to article 21 of organic law on "Public Defender", addressed the Parliament of Georgia with the proposal of making changes to Georgian law on "Bankruptcy proceedings", with the purpose of its improvement.

The aim of legal amendments is to ensure protection of human rights by making amendments to Georgian law on "Bankruptcy proceedings", in particular, to determine priorities of compensation to physical persons in the case when enterprise goes bankrupt.

IMPORTANCE OF ENTREPRENEURIAL ACTIVITIES AND FREEDOM OF ENTREPRENEURSHIP

Development of private entrepreneurship and business is one of the major priorities of any country. Law maker determines that entrepreneur is free and any hindrance is inadmissible. Back at the first stage of entrepreneurial development it was pointed out that the state shall not interfere in the business of entrepreneurs, the state shall create a comprehensive basis for effective implementation of business activities and thus lay the foundation for the country's economic growth.

Case of restaurants

It is clear that tax audit is determined by the law which is not the case in the given issue. In paragraph 4 of article 98 of Tax Code it is specified that tax audit shall cover

1. Current audit procedures comprised of: taxpayers accounting, verifying accounting and reporting data, general analytical procedures;
2. Monitoring of taxpayer's economic activity (invigilation, stock-taking, control purchase, inspection) and lastly, tax audit (desk or field audit). Besides, paragraph 5 of article 98 specifies, "the procedures of tax audit should not disturb or restrain the normal rhythm of taxpayer's activity".

If after the audit, the taxpayer is proved to have a tax violation, the latter shall be obliged to pay a fine. There is no allegation of applying a lien to the objects, in this regard, the only mention is in article 114 of the Tax Code which says: "Representatives of the tax agency are entitled to lien those documents and inventories of the taxpayer, which are necessary for conducting the controlling field tax audit". As for inventories, the Code gives the following interpretation to them - they are raw materials, half-stock, spare parts and finished goods of international accounting standards that a taxpayer uses in his/her usual economic activity.

It should be noted here, that according to the second part of article 99 of the Code, tax agency is authorized to implement forms and methods of tax audit on taxpayer's/tax agent's or other responsible person's activity only on the basis of order of the judge, except:

1) Current audit procedures;
2) Observation procedures of taxpayer's activities
3) Desk tax audit;
4) Field planned audit;
5) Field control tax audit related to reorganization or liquidation of enterprise/organization;
6) Cases defined by article 114 of this Code;

In the latter case, the tax agency has the right within the urgent necessity, on the written order of the head of the agency, to carry out the urgent controlling field tax audit without preliminary notification. According to the law, urgent situation of tax agency occurs when the tax agency believes that a taxpayer plans to decline from fulfillment of tax liabilities by leaving the territory of Georgia, handing its own property to another person, destroying of documents verifying tax infringement, correcting or replacing or performing other actions. Tax agency is responsible to apply to the court within 48 hours after starting the urgent controlling field tax audit in order to get permission on conducting controlling field tax audit. Along with this, as per part 3 of article 114 of the Tax Code, members of tax audit group are not entitled to begin the procedures of urgent controlling field tax audit before they can receive permission from the court. Representatives of tax agency are entitled to lien those documents and inventories of the taxpayer, which are necessary for conducting the controlling field tax audit (article 114, part 4).

In December 2005, controlling field tax audit started in 6 restaurants in Mtskheta at the same time. For this reason, the above restaurants and parallel to those, the chain of "El Depo" restaurants were seized as well. As the media covered it, the seizure was implemented by financial police, which was also stated by the head of financial police, Davit Kezerashvili. The representatives of the Public Defender's Office visited the restaurants and studied the materials. As some of the restaurants stated, they were visited by Gori district tax inspectorate accompanied by financial police, although others noted that financial police had not been there. From the conversation with restaurants' administrations, we got the impression that they were intimidated and that is why they could not disclose full information, they were rather reluctant to discuss the matter. Although some of the entrepreneurs gave us certain information in private conversations, they mentioned that they would not

confirm their words officially. It is noteworthy, that as a result of seizure, all the restaurants incurred significant material losses, since each of them had been closed down for at least two weeks. It entailed the spoilage of food products and the loss of customers. The restaurants claimed that it took the tax agency a very short time to conduct the audit; actually they managed to do the job in one day. Thus, there was no need to close down the restaurants for two weeks and in some cases for the whole month, as all this impeded entrepreneurial activities.

As it is known, Tbilisi tax inspectorate seized club-restaurants and cafes: "Noa – Noa", "Music Hall", "Geo-stria", "Metelitsa", "Corona", City Management" and the Khinkali restaurant "Odishi".

In this regard, we addressed the above agency and demanded the comprehensive information about the legal basis of seizing the mentioned entities. In their written reply, nothing is mentioned specifically, but there is a general reference to article 114 of the Tax Code, which specifies that before they can receive the permission from the court, the representatives of tax agency are entitled to lien inventories of the taxpayer, and as we have already indicated, according to the Code, the inventories do not include the merchandise.

As the reply from the tax agency was not fully satisfactory, we addressed the Board of Administrative Affairs of the Tbilisi City Court and enquired whether the tax agency notified : "Noa – Noa", "Music Hall", "Geo-stria", "Metelitsa", "Corona" City Management" and the Khinkali restaurant "Odishi" in compliance with the regulations to conduct the audit (seizure) for being authorized on the basis of the obligatory order to do so and if they did, we demanded that we were given the copies of the materials of the case in question.

The Board of Administrative Affairs of the Tbilisi City Court informed us, that tax agency applied only to the following companies: "Noa – Noa", "Corona", "Geo-stria", "City Management" and the Khinkali restaurant "Odishi" for the authorization of the obligatory order on audit. The list does not include "Music Hall" and "Metelitsa" which seem to have been audited by tax agency without permission.

The administration of "Metelitsa" verifies that the restaurant was closed down during 4 days and that it was audited by tax agency.

It is clear, that all the companies must pay taxes, since decent entrepreneurial operation is the basis of the country's economic growth, but the fight against tax evasion should not circumvent the law. The tax agency verbally states, that it is practically impossible to audit a company in a full-fledged manner, without a lien. Thus, it may well be a setback of the law, but the fact is, that the law does not envisage the lien of the company.

Badri Manjavidze's case

On May 22 of the current year B. Manjavidze addressed the Public Defender about the attempt of the abuse of his property right by the supervisory service of Tbilsi municipal office.

On complainant's explanation, on May 13 of the current year, supervisory service of Tbilsi municipal office held a meeting to which he was invited to attend together with other owners, as the owner of a commercial shop in the underground passage. They got him acquainted with the resolution of the supervisory service of Tbilsi municipal office about the improvements of the site in the underground passage and required dismantling the shop windows. Besides, they were to be replaced with another material. He was explained that if he did not satisfy the request, the merchants in the underground passage would be demolished without any compensation.

Attached was the extract from public registry office, which testifies the ownership of the merchant by the complainant.

As the complainant stated, G. Saginashvili's (the deputy head of supervisory service of Tbilsi municipal office) demands were contrary to law.

Having considered the above situation, pursuant to clause "c" of article 18 of the organic law on "Public Defender", we sent a letter to the municipal office requesting adequate response and timely explanation of the matter. We have received the reply from the supervisory service of Tbilsi municipal office, which says that the service considers and protects the right to property and that no threat is posed to citizens' interests.

Preceding the reply was Public Defender's Office Officials' meeting with the employees of supervisory service of Tbilsi municipal office, which is documented in the minutes.

Schinhoffer's case

An Austrian businessman Schinhoffer arrived in Georgia to carry out economic activities. "Schinhoffer" is a famous sausage producer company in Europe, which was planning to expand the business in Georgia. It was planned to employ 3 000 people. Later it became known that the sausages due to poor quality were not suitable for marketing and consequently, their realization was banned.

To obtain more comprehensive information, we addressed the Ministry of Agriculture with the inquiry to submit all copies of the documents to us that would confirm the incompatibility of Austrian sausages to veterinary-sanitary standards. The Ministry informed us that with reference to the letter from the financial police of the Ministry of Finance of Georgia, the veterinary department of the Ministry of Agriculture tested the samples of sausages produced by Schinhoffer and the laboratory tests showed that the total amount of microbes in different sorts of sausages were above the norm. Due to these conclusions, "Schinhoffer" was banned to market its products.

Despite the above, today the product of the company is being successfully marketed in Georgia.

It can be said that some persons wanted to impede Schinhoffer's activities intentionally, which entails banning competition in the first place; besides, three thousand jobs have been lost and the fact was disapproved worldwide, as Schinhoffer products are known all over Europe. What is more, nobody has been punished.

THE LABOR RIGHTS

Labor right is one of the fundamental rights. The state is obliged to strengthen labor rights as well as other social rights provided by Constitution and ensure their enforcement.

Declaration of social rights starts from constitutional strengthening of labor rights in the Georgian Constitution.

Pursuant to article 30 of the Constitution of Georgia, labor is free. Every man has the right of free choice of jobs. Specific restrictions may be imposed only for the purpose of protecting specific person, connected with labor restriction of overtime and night shifts for women, pregnant women and minors.

Despite the fact that the first clause of article 30 of the Constitution of Georgia speaks about free labor and no indication of state obligation is provided, this does not rule out the state's positive obligation towards labor right. The obligation towards labor right derives from the nature of social rights. The interpretation of the first clause of article 30 of the Constitution of Georgia should correspond to the historic importance of labor right and its place in the Constitution, particularly with the general function and spirit of the system of social rights. The state aims to create such social-economic conditions under which the employment shall be provided to every person.

Constitutional right of labor is legally regulated in the Labor Code of Laws of Georgia. The formulation – labor is free – means, that each worker has the right to employment, which he/she chooses freely or which he/she agrees to do. Besides, it determines the citizen's right – to choose the sphere of activity or profession, also to enjoy state guarantees when unemployed.

With regard to article 30 of the Constitution, the state is bound to provide employment and fair remuneration of labor for everyone, despite some cases when the fulfillment of obligations mentioned are far from real possibilities since taking into account social and economic state of the country, the state cannot often afford to ensure employment for every citizen.

The Public Defender's response to problems of protection of peoples' labor rights is of no less importance. If we look through the number of applications and complaints, we will see that their number has drastically increased.

In state got involved in settling employment problems and the employment program was launched in 2006. We consider that the program will make a certain contribution in the solution of employment problem of Georgia.

On May 25, 2006, the Parliament of Georgia adopted a new "Labor Code of Georgia", on the basis of which the law of 2001 on employment was annulled. Accordingly, annulled were the definition of economic, organizational and legal foundations of the state policy of social protection of the unemployed, consequently, the identification of state competence in the sphere of employment; support to enjoy constitutional right of Georgian citizens and non-citizens to choose the type of work and profession and its implementation; determine legal principles in relations between job seekers and employers; determine additional state guarantees for Georgian citizens in the sphere of employment and low competitive labor resources etc. Taken into consideration that the concept of employment inalienably implies the concept of labor, the annulment of the law mentioned above creates a certain vacuum.

Currently, in effect is a Labor Code, which regulates the rules of hiring and dismissing; as well as that, issues related to labor rights are considered in the law "On Public Service".

On the data of the department of statistics, the unemployment trend in Georgia as per 2005, according to age looks the following:

უმუშევრები ასაკობრივი ჯგუფებისა და ქალაქ-სოფლის მიხედვით
UNEMPLOYED BY AGE GROUP AND URBAN-RURAL AREAS

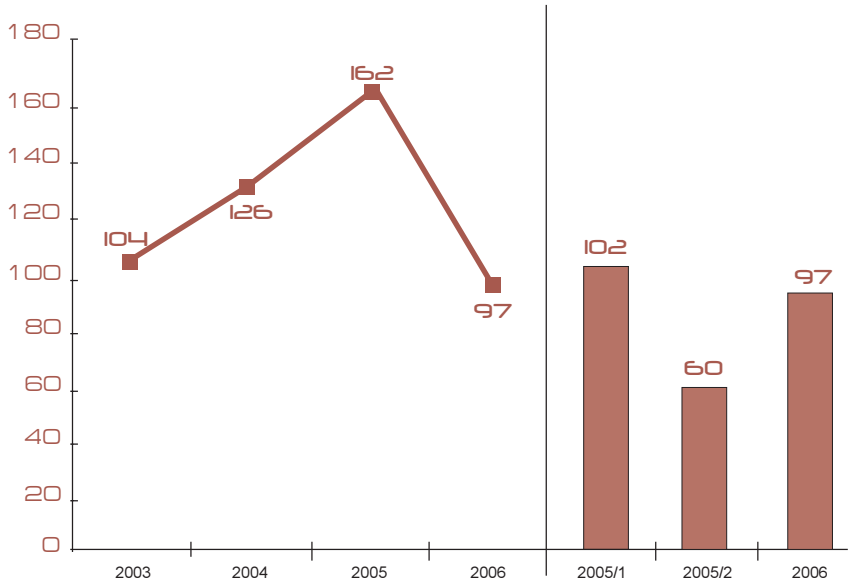
	სულ	მათ შორის ასაკობრივი ჯგუფების მიხედვით • Of which by age group										
	Total	<20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65+
	რიცხოვნობა, ათასი კაცი • Number, thousand persons											
სულ • Total												
2003	**235.9**	11.1	40.7	38.6	28.1	26.0	22.6	26.9	19.6	10.8	7.7	3.7
2004	**257.6**	12.9	37.3	42.7	40.2	30.1	26.9	26.6	17.3	12.5	6.8	4.3
2005	**279.3**	13.0	42.3	55.0	38.4	32.9	27.8	27.2	18.7	14.5	5.7	3.9
ქალაქი • Urban areas												
2003	**186.8**	6.3	28.0	27.4	22.0	22.4	19.3	24.3	18.4	9.7	6.5	2.7
2004	**207.4**	7.6	28.0	31.5	31.5	25.1	24.2	23.6	14.9	10.7	6.2	4.1
2005	**220.6**	8.5	26.7	41.0	31.1	27.2	23.5	24.8	16.8	12.6	5.0	3.4
სოფელი • Rural areas												
2003	**49.1**	4.8	12.7	11.2	6.2	3.6	3.4	2.6	1.3	1.1	1.3	1.0
2004	**50.2**	5.3	9.3	11.2	8.7	5.0	2.8	3.0	2.4	1.8	0.6	0.2
2005	**58.7**	4.5	15.6	14.0	7.3	5.6	4.3	2.3	1.9	1.9	0.8	0.5
	წილი, % • Share, %											
სულ • Total												
2003	**100**	4.7	17.2	16.3	11.9	11.0	9.6	11.4	8.3	4.6	3.3	1.6
2004	**100**	5.0	14.5	16.6	15.6	11.7	10.4	10.3	6.7	4.9	2.6	1.7
2005	**100**	4.6	15.1	19.7	13.8	11.8	9.9	9.7	6.7	5.2	2.1	1.4
ქალაქი • Urban areas												
2003	**100**	3.4	15.0	14.6	11.8	12.0	10.3	13.0	9.8	5.2	3.5	1.4
2004	**100**	3.6	13.5	15.2	15.2	12.1	11.6	11.4	7.2	5.2	3.0	2.0
2005	**100**	3.8	12.1	18.6	14.1	12.4	10.7	11.3	7.6	5.7	2.2	1.5
სოფელი • Rural areas												
2003	**100**	9.7	25.8	22.8	12.6	7.3	6.8	5.3	2.6	2.3	2.6	2.1
2004	**100**	10.6	18.5	22.4	17.3	10.0	5.5	5.9	4.7	3.5	1.1	0.4
2005	**100**	7.6	26.6	23.8	12.4	9.6	7.3	4.0	3.3	3.2	1.3	0.8

უმუშევრობის დონე ასაკობრივი ჯგუფებისა და სქესის მიხედვით, %
UNEMPLOYMENT RATE BY AGE GROUP AND SEX, %

	სულ	მათ შორის ასაკობრივი ჯგუფების მიხედვით • Of which by age group									
	Total	<20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65+
სულ • Total												
2003	**11.5**	18.6	27.5	20.2	13.6	12.2	9.2	11.3	10.1	8.2	5.8	1.3
2004	**12.6**	26.4	29.0	24.0	19.3	14.0	10.3	10.7	9.3	8.2	6.2	1.4
2005	**13.8**	24.4	29.7	29.4	19.9	15.5	11.5	11.6	9.7	8.8	6.0	1.3
მამაკაცი • Male												
2003	**11.5**	12.6	22.9	19.7	14.8	11.5	9.7	11.3	10.9	9.4	5.1	1.3
2004	**13.4**	25.6	25.0	22.9	18.0	12.9	12.7	11.2	9.6	11.1	8.1	2.5
2005	**14.8**	25.0	27.5	30.6	18.9	15.3	12.7	11.6	8.7	10.6	9.3	1.9
ქალი • Female												
2003	**11.5**	26.2	34.0	20.5	12.0	13.1	8.7	11.2	9.3	7.0	6.6	1.5
2004	**11.8**	27.9	35.2	25.9	20.6	15.0	7.9	10.1	9.1	5.5	4.3	0.4
2005	**12.6**	23.2	33.3	27.6	21.1	15.8	10.2	11.5	10.6	7.1	2.2	0.7

The number of applications related to labor rights sent in to the Public Defender's Office has increased lately. If in 2003 there were 104 complaints on the violations of labor rights, in 2004 this number increased up to 126, in 2005 – it was 162 and only in the first half of 2006 it reached 97.

LABOR RIGHTS



THE DATA REFLECT ABSOLUTE INDICATORS

If we look through historical data, we will see that the number of complaints on the violations of labor rights is increasing in 2006.

The contents of the applications clearly show the setbacks of the new Labor Code. We will draw a speciall attention to some of them:

The labor code should necessarily reflect the protection of workers' rights in the case if the entreprise is insolvent, especially that the issue is regulated by Convention #172 of 1992of the International Labor Organization.

The labor code does not clearly show the remuneration of labor for different specific professions. For example, whatever applies to an employee of a private company or production worker cannot apply to a teacher or scientific worker. We think it would be reasonable that the Code defined the cases of temporary or full-time remuneration.

Labor code has serious drawbacks regarding the protection of pregnant women's rights. This was a subject of hot public discussions. The code has no indication that pregnant women cannot be dissmissed from work while they are on maternity leave. The latter must not become a threat for losing a job for women.

As we have already mentioned, a new labor code considers dismissing pregnant women. Apart from the fact that this kind of disposition is not compatible with international standards, there is a contradiction between Labor Code and the law on „public service" too. To be more specific, according to paragraph 2 of article 111 of the Georgian law on „Public Service" stating that „the employee (woman) may not be dismissed during pregnancy or until the child is three years due to redundancy, long period of work disability, health problems or attestation results" can be an advantage for women employees. In this case too, without any objective reasons the rights of women employed in private sector are clearly more restricted than of those working in public sector.

„Labor agreement is concluded in writing or verbally for a definite, indefinite or work performance term"(article 6). We think the introduction of verbal form of service agreement in the Labor Code is contentious. Despite the fact that a verbal agreement between employer and employee is rather a widespread practice, its inclusion in the Code in such a form will violate employees' rights.

Under verbal agreements, the parties are deprived of the right to appeal to a court in case of breach. The Code, (chapter VIII, article 35) considers the right to safe and sound working environment, according to which the employer takes responsibility for supplying unbiased and understandable information to the employee about all those factors that may affect the employee's life and health or the safety of environment. When concluding verbal agreement, it is difficult to determine, whether the employee was warned about the above conditions or not.

It is also difficult to report about the remuneration to tax bodies. It would be vague, whether the employee or the employer pays income taxes to the budget. If the law maker still considers the introduction of verbal agreements necessary, then it should be indicated under what provisions it is not possible to conclude it and during which term it will be valid, or what guarantees the employees will have to protect their rights. Thus, if the amount of remuneration is not reported, then it becomes problematic to control tax returns.

In recent years, one of the major aspects of political-economic and social development of Georgia has been harmonization of Georgian legislation with that of European Union and maximum consideration of recommendations and political trends of the managing bodies of European Union. Rapprochement of Georgian legislation to European is important for preparing grounds for Georgia's integration into structures of European Union. In view of this, an agreement on "Partnership and cooperation" between the countries of European Union and Georgia was concluded in 1996, which represents the legal basis between EU and Georgia. In accordance with the agreement, the process of harmonization of legislation is an essential precondition for strengthening links and cooperation in the future.

According to #828-1 resolution of September 2, 1991, of the Parliament of Georgia, "All laws and enactments adopted by the Parliament of Georgia should correspond to standards and norms determined by European Union".

On the decision of June 14, 2004, of the Council of Ministers of European Union, Georgia became involved in the political life of neighboring countries. In July of the same year, on the basis of the decision of the government

of Georgia, a commission for Georgia' integration into EU was established headed by a prime minister. One of the priorities in the activities of the body is to support the implementation of the agreement on "Partnership and Cooperation"; Rapprochement of Georgian legislation to the legislation of EU remains the major aspects of the agreement.

In article 43 of the agreement, protection of the employees in their workplace is listed among priority spheres which has expanded today and comprises the entire labor legislation. The latter has to meet all those requirements and standards, which the managing bodies of EU demand from governments of member countries.

91/533 instruction of October 14, 1994 of the council on the labor agreements or relationships on the applicable conditions for work provided by employer and the obligation of the latter of informing employees about the above conditions provides the list of necessary items of the information to be supplied and the applicable methods to be employed used regardless the form of the agreement.

National program of harmonization of Georgian legislation with the legislation of EU adopted in September 2003, evaluated the then current labor legislation as partly compatible with European standards, despite the fact that it was archaic and some of the novelties in the sphere were disregarded. According to the national program of harmonization, a new Labor Code was to balance employers' and employees' interests. The program also covered specific recommendations on changes to be made to labor legislation.

Labor Code adopted on May 25, 2006, does not give enough consideration to above recommendations and on the one hand it contradicts the instructions of the EU, and on the other hand reflects them incompletely. More precisely, it refers to the rights of employees during labor relationship and in the event of the termination of such relationship (1), it also refers to the rights of some specific groups (such as pregnant women and minors) (2), provision of safe working conditions (3). As for the European Social Charter, inequality in labor relationships of employees based on legal status (4) directly contradicts the requirement of the Charter.

Pursuant to article 2 of the EU instruction, the employer is obliged to familiarize the employee with the following major terms:

- Titles of the parties
- Workplace
- Job title, category, position;
- Job description;
- The starting date of labor relationships;
- In the event of term agreement, the assumed length of employment term;
- The length of remunerable agreement or the rules defining remuneration;
- The terms of notifying dismissal by prior arrangement and defining the rules of such;
- Amount of remuneration and the terms of payment;
- Daily or weekly working hours;
- Collective agreement if such case occurs;

Article 3 of the above instruction, stipulates that the above information should be supplied in writing irrespective to the form of labor agreement. The term set for familiarization with labor terms and conditions is 2 months after starting labor relationships.

The employee should be notified about the changes in major terms within 1 month after these changes become effective (article 5 of the instruction).

The new Labor Code less attention is paid to the conditions and terms of under age employees and their duties. For example, it is not clearly seen from the code, how much time are students allowed to take exams. As for the

age of young employees, it fully corresponds to international standard. The instruction 94/33 dated June 22, 1949 of the Council of Ministers of EU on the protection of young employees in their work place, obliges the member countries to strictly regulate the terms of employment of minors.[4]

All type of work should be adapted to the physical and psychological capabilities of the under-aged (article 6).

Employer is obliged to carry out any preliminary evaluation of work-related threats, take relevant measures for their elimination and inform the young person and their legal representatives about those threats and the measures taken (article 6).

It would be expedient, if the Labor Code of Georgia envisaged the common practices of Europe. Particularly, it concerns the list of jobs contained in article 7 of the instruction that ban the 2employment of the youth. The list provides detailed items of those substances against which young people need to be protected. (Article 7, paragraph 2, subparagraph 2).

International standards strictly define working hours. The restrictions vary according to the type of work and age. In the countries of European Union, it is forbidden to hire young people in night shifts (for children it is from 20 to 6; for adults from 22 to 6 or from 23 to 7 hours). It also mentions exceptions and the terms of their application. In all cases, before and after hiring young people for night jobs, their state of health should regularly be under free control.

According to the standards of EU, if a young person works more than 4, 5 hours a day, the employer should allow him/her at least half an hour break. Depending on age, a young person should be allowed 12 or 14 hours of rest in twenty-four-hour period, two days or minimum 36 hours a week. In exceptional cases when it is impossible to allow 36 hour rest running, then some days or hours for compensation should be envisaged. Holiday for the young people studying at school should coincide with school vacations as far as possible.

As the Labor Code of Georgia states, the working capacity of a person is formed at the age of 16 (article 4, paragraph 1), If we take into account that this person has already completed compulsory education by this age, then it can be considered, that the requirement regarding age restriction is satisfied. The provisions of the instruction are also met by the fact, that hiring a person below the age of 16 is only possible on the consent of the person's legal representative or foster body, provided that certain conditions are satisfied (article 4, paragraph 4). As we have already mentioned, the age for employment as defined by the Code is 16. This does not contradict either the international organizations' standards, or Social Charter, which stipulates the minimum age of 15 years for the employment, except some cases when the children are employed for some light work in compliance with the law, the kind of work that shall not damage their health, morale or education. The legal representative or a foster body may require the termination of the labor agreement "if the continuation of work will inflict damage to the health, life or other important interests of the minor".

At this stage it is necessary to specify working conditions, namely, determine under what kind of heavy and harmful conditions it should be prohibited to hire young people; also the length of rest and breaks, supply of information to work related risks and free health examinations should be specified.

Labor Code of Georgia does not sufficiently envisage the requirements of the EU. According to paragraph 6, article 5, before starting labor relationships, "the candidate is entitled to receive full information about the amount of work, working conditions, his/her rights during labor relationships and remuneration". After labor relationships have started, in compliance with international standards the employer is obliged to issue a certificate on the employment upon employer's request, which will include information about the amount of work, remuneration and the length of labor agreement.

[4] The directive concerns young people under 18.

In both cases, the list of items of information to be supplied is incomplete and does not cover all information that the employee should receive according to the instruction of the EU. It is particularly true of the second case – the certificate on employment may not contain information about workplace, paid leave, payment terms, and work schedule.

Besides, the obligation to inform does not exist as such – the employee gets informed about work conditions only upon the request of the latter. This situation may be rather problematic under verbal agreement (article 6, paragraph 1) or if the person is hired on the basis of documents issued by employer (article 6, paragraph 3)

We would like to put a special emphasis on the obligation of preliminary warning of the employee in the event of termination of labor relationship.

Pursuant to article 4, paragraph 4 of the Social Charter of Europe the subscriber countries should "recognize the right of every employee to be notified about the termination of labor agreement". The terms of preliminary notification are included in general provisions of the agreement and it should be executed in writing, shortly after the job starts (not later than 2 month).

Article 38 of the Labor Code of Georgia concerns the termination of labor agreement on the initiative of one of the parties. If the initiator of such is an employer, the law does not envisage the obligation of preliminary notification of an employee, which is in conflict with international obligations, social standards of the EU and above provisions, recognized by Georgia.

The instruction dated November 11, 2003 of the Council of Ministers of the EU on some aspects of working time management includes provisions related to the length of work time.

According to the instruction, if working hours are more than 6 hours a day, the length of break and the rules of granting this time need to be specified (article 4). The employee should be given not less than 24 hours running between work days not including breaks (article 5). After the transition period is over (5 years after the instruction comes into effect) the length of a work day, including overtimes, should not exceed 48 hours a week (article 6).

The instruction includes provisions on organizing night shifts. The length of night shift in a 24 hour period should not exceed 8 hours (article 8).

Night workers are given additional guarantees in terms of safety and healthcare – they should get free medical check-ups at the expense of an employer or state. Those who will have health problems due to night work should be transferred to relevant job in day shift (9).

Labor Code of Georgia includes very scarce information about the rules of allowing breaks and their length. In article 13, paragraph "b" of the Code "the length of break", stipulates that the employer has the right to determine the length of break. As we can see, this is entirely up to employer. It is true that in chapter IV of the Code working hours, break and rest are defined but there is no fixed time-limit specified for rest, it is only indicated that ***"2. Between work days (shifts) the length of resting hours should not be less than 12 hours".*** It means that the employer and the employee will agree between each other on breaks. Determining the rule of rest hours (even in general) creates certain misunderstandings, especially when the agreement is verbally concluded.

Night shift workers have no determined benefits. It would be desirable to make changes to the law for the purpose of regulating the above issues. The Code only specifies that " under-aged, pregnant or women who have just given birth or are breast feeding cannot not be employed in night shifts (from 22 to 6 hours) and mothers with up to three-year –old child or persons with disabilities can be employed in night shifts on their consent" (article 18) .

According to article 1, paragraph 4 of Social Charter of Europe, the signatory countries must "effectively protect the right to make a living by voluntary choice of work". On the interpretation of Social Rights Committee of Europe, this obligation includes elimination of all kinds of discrimination irrespective to legal status of labor relationship.[5]

In Georgia there is a drastic difference between the employed in private and state structures. Generally, such inequality can be admitted only on the basis of work specificity and only concerning the issues that cannot be regulated equally due to the legal status of the entity.

According to the new Labor Code, the grounds for the termination of the labor agreement is a long lasting work disability, the term of which "exceeds 30 successive calendar days or if the general term exceeds 50 calendar days in 6 months". (Article 37 g.) According to paragraph 2, sub-paragraph g) of article 36, 30 successive calendar days of work disability and fewer than 50 calendar days in 6 months may become the basis for the termination of labor agreement. Although in this case too it is necessary that there was a special requirement for the employee (article 36, paragraph 3). Paragraph 1 –k, of article 100 of the law on "Public Service" reads that "an employee can be dismissed from work due to illness or injury if he/she does not appear at the workplace for 4 months in suuccession4 or for six months in a calendar year. Besides, "the employee must be notified in writing about the dismissal due to long time disability at least two weeks before the dismissal". (Article 108, paragraph 1).

In our opinion, such unequal rights for the employed in private and state sectors cannot be justified by any objective reasons.[6]

As we can see from the above, despite the advantages of the Labor Code of Georgia, it still needs improvement. Besides, Labor Code and the law "On Public Service" need reconciliation.

Labor and Person's Safety

Social and economic safety is an important aspect of safety. In this context, labor rights and occupational rights play an essential role in achieving people's safety.

A person employed for work has the right to require safe and sound work conditions as well as full compensation for health deterioration. A worker should also enjoy the right to rest which is as important as the above in the sphere of labor relationships. A worker should be remunerated in accordance with work load and quality of performed work without any discrimination.

It should be noted that a new Labor Code the right of labor safety is mentioned rather generally. Article 35 of chapter 8 of the Code is dedicated to safety issues. According to article 35, employer is obliged to provide maximally safe working environment for life and health of the employee.

The employer is obliged to supply the employee all available full, objective and comprehensible information about the factors that affect their life and health or the safety of environment within reasonable time; Employee has the right to refuse to perform the work, assignment or instruction, which is against the law, etc.

Provision of sound and safe conditions is the responsibility of work administration. Chapter XI of Labor Code determines the mandatory rules that the administration must adhere to. As we can see, the Georgian Labor

[5] E.g. #6/1999National Syndicate of Tourism professionals against France: recommendation of January 30, 2001 ResCHS(2001)1

[6] We won't mention the fact that different from private sector (Labor Code, article 36, clause 4) public servant retains occupational benefit, additional remuneration or other type of compensation. (Law on Public service, article 88) when his service is suspended. In our opinion, such inequality is caused by the attempt of private entrepreneurs to avoid contingencies, which to a certain extent justifies the fact of inequality.

Code commissions the employer to enforce this right. In article 35 of the Code it is specified that "The employer is obliged to provide maximally safe working environment for life and health of the employee. The employer is obliged to supply the employee all available full, objective and comprehensible information about the factors that affect their life and health or the safety of environment within reasonable time"

In Public defender's Office the statistical index of such cases is very low. There is only one case which was initiated by Public Defender himself.

On May 16 of this year, one of the officials from Public Defender's staff was driving his car in Vake district, near Mrgvali Baghi (round garden), on I. Abashidze Street, where he saw construction works going on. When concrete was being sawed there was a terrible dust and the workers were not wearing any special uniforms or protecting masks. Similar works were going on in Liberty Square during installing the monument.

At about11:30 on May 16, Public Defender's office staff representatives arrived at Mrgvali Baghi and Liberty Square and took photos of the working process. At the round garden they talked to one of the workers who said that he was the employee of "D and G Technologies" LTD. The works were being conducted on the order of urban amenities municipal service. The workers were making curbs. This job requires cutting the tiles with special machine (electric saw), which generates a lot of dust, while the workers are not wearing special masks and they have to breath it all. During the conversation the workers mentioned that they had the equipment – masks and goggles but since it was inconvenient to wear them while working, they preferred not to use them.

The monument of Liberty was built by "David and Company" LTD workers, where they weren't wearing masks either. Article 139 of Georgian Code of Labor laws of that time stated that "In all enterprises, establishments or organizations the safe and healthy conditions is to be provided by administration of the organization." Article 142 of the Code states that the administration of the organization is obliged to provide relevant technical equipment of the work place and create such conditions that are compatible with labor rules (safety technique, sanitary norms, etc.)

In the given case, that the workers were doing their job without special protective equipment posed a threat to their health and consequently the administration was to protect their safety.

Pursuant to article 12, clause "b" of the organic law on "Public Defender", we filed a recommendation for the administrations of "D and D Technologies" and "David and Company", as well as urban amenities service of the municipality to provide safe conditions. In particular, we requested to assign the person in charge to control workers' special equipment when using electric saw.

We did not hear any replies from either of them.

International standards oblige employer to introduce measures related with improvement of safety and health protection, evaluate and eliminate job-related threats regarding individual and collective safety. For this purpose, the employer should assign one or several employees to supervise and settle safety issues.

The employer should compile risk evaluation document which would include safety measures; Also should be compiled the list of production accidents that have caused to stop work for more than three days (EU Council of Ministers' instruction, art. 9); employer should also consult employees and their representatives about all issues concerning safety of labor (article 11).

According to standards of international organization of labor, legislation should indicate the volume of information about safety rules and job-related threats that is to be supplied to employees.

At the moment of hiring a person, changing workplace, equipping with new technologies employer should provide adequate preparation to employee in terms of labor safety (article 12).

In their turn, the employee is obliged to thoroughly observe safety, equipment use, etc. rules (article 13).

The instruction of June 12, 1989 of European Union is rather general. That is why, on the basis of the text of article 16, EU bodies adopted about 20 instructions of specific character, which reflect the measures to be taken against specific threats.[7]

As we have already mentioned article 35 of the Labor Code of Georgia sets general rules for labor safety and obliges employer to supply all available information related to labor safety and introduce reasonable measures to avoid production accidents. It would be desirable to extend the provisions through by-laws specifying on the one hand state and on the other hand employers' obligations with regard to defining safety rules in which minimum measures of safe labor will be outlined.

It is a welcoming fact that that the program of formation of labor safety rules has been factored into the budget of 2007. Unlike 2005 and 2006, when the state did not allocate any funds for the above cause, in 2007, 55.0 thousand GEL has been envisaged.

International standards on minimum requirements of providing equipment for safety and /or health protection include several appendixes, describing the rules of displaying safety regulations while doing dangerous work in details.

Although article 35, paragraph 8 of Labor Code of Georgia considers the definition of labor safety laws, but such document does not exist at present. Since old standards have been annulled, there is a complete vacuum in the sphere. Thus it necessary to develop legislation on labor safety regulations in the nearest future which will take into account the standards set out in the legislation of European Union.

Recommendations:

- We consider it necessary to improve the Labor Code of Georgia and take into account the obligations of Social Charter and other International Acts assumed by Georgia.
- To pay special attention to work conditions of the minor and protection of their rights. We think that at this stage it will be reasonable to determine those heavy, harmful and dangerous jobs, that should be prohibited for young people; it is obligatory to specify the length of rest and breaks for the minor, full information about job-related risks and the rights for free medical check-ups.
- It is essential to make a precise list of items to be included in the information for employees as well as information about work. Besides, obligation of information supply does not exist – the employee gets familiar with work conditions only upon the request of the latter. Such situation may become problematic under verbal agreements (article 6, clause 1) or in case if the person is hired on the basis of his/her own application and the documents are issued by the employer (article 6, clause 3).

[7] Instruction of the Council 89/654 on minimum requirements. Instruction of the Council 95/63 on minimum requirements of observing safety and health at work place when using equipment; Instruction of the Council 89/56 on minimum requirements of observing safety and health at work place on using individual protective means; Instruction of the Council 90/269 of observing safety and health when there is a threat of back damage when lifting loads by hand; Instruction of the Council 90/270 of observing safety and health when working with equipment having display screens; Instruction of the Council 97/42 of observing safety and health to protect employees against the risk of being affected by of carcinogenic substances; Instruction of the Council and European parliament 2000/54 of observing safety and health to protect employees against the risk of being affected by biological harmful substances at workplace. Instruction of the Council 92/57 on minimum requirements of introducing safety and health measures at construction sites; Instruction of the Council 92/85 on minimum requirements of equipping workplace with safety and/or health protecting means; Instruction of the Council 92/85 on minimum requirements on improving measures for the protection of safety and health for women who are pregnant, or just have given birth or are breast feeding; Instruction of the Council 92/91 on minimum requirements for the protection of safety and health for people employed in mining industry; Instruction of the Council 92/104 on minimum requirements for the protection of safety and health for people working in the open air or in mining industry; Instruction of the Council 92/103 on minimum requirements for the protection of safety and health for people working on fishing boats; Instruction of the Council 98/24 on minimum requirements for the protection of safety and health against harmful effect of chemicals; Instruction of the Council and Euro parliament 1999/ 92 on minimum requirements for the protection of safety and health against the risk of explosion at the workplace;

- We think it is unacceptable to include verbal agreements in Labor Code. In our opinion, such agreement will create more problems not only for the employee but for the employer as well.

A great number of issues have been considered at the Public Defender's Office related to violations of labor rights.

Nato Goginava's case

Nato Goginava addressed the Public defender with complaint.

After having studied the enclosed materials the following circumstances were revealed: the applicant has worked as the head of the department of Culture in the Gamgeoba (local authority office) of Khobi region since 1994. On May 5, 2004, on the order #18 of the head of Gamgeoba, D. Kukava, on the basis of clause 3, of article 99 of the Georgian law on "Public Service", N. Goginava was dismissed from work.

The complainant filed a suit in the regional court of Khobi region on regaining her post.

On the decision of June 23, 2004, of the court the claim was not allowed for having no grounded justification.

The complainant appealed the decision in Kutaisi court, where the appellant claimed the annulment of the decision and demanded to allow a new claim. On September 20, 2004, the appellant added a new claim for compensation for being forced to leave the job.

On the decision of September 28, 2004, of Kutaisi district court of administrative law and appeals chamber of tax affairs N. Goginava's suit was allowed. The decision of June 23, 2004 of Khobi court was annulled and on the new order Goginava's claim was met. Goginava gained back her post as a head of the department of culture, monument protection and sport; Khobi Gamgeoba was bound to pay out compensation in the amount of 270 GEL.

The ruling of Khobi appeal's court was sued by the Gamgeoba of Khobi region in the Supreme Court of Georgia. The appellant demanded annulment of the decision of September 28, 2004, of Kutaisi district court of administrative law and appeals chamber of tax affairs.

On the decision of 04 February, 2004, of the Supreme Court of Georgia, the appeal of Khobi Gamgeoba was partly met. The decision of September 28, 2004, of Kutaisi district court of administrative law and appeals chamber of tax affairs was annulled and a new decision was taken; Nato Goginava's suit was partly satisfied: the order #18 of May 5, 2004, of Khobi Gamgeoba was declared illegal and Goginava was reinstated to the equal position.

The ruling of May 18, 2005, of the Supreme Court of Georgia which considered Goginava's reinstatement to equal position, was given an interpretation in the third clause of the decision. The ruling indicates that N. Goginava shall be reinstated to equal position in Khobi Gamgeoba with the same salary.

Despite the address of the enforcement department of the Ministry of Justice of Georgia and the request of court executive official, Khobi Gamgeoba did not enforce the Supreme Court decision. Nato Goginava was not reinstated to equal position, but she was appointed as an advisor of Gamgebeli in the field of monument protection and tourism development.

Pursuant to clause 2, article 82 of Georgian Constitution, enforcement of judicial acts is compulsory for all state bodies and persons on the whole territory of the country.

Pursuant to clause 1 of article 17 of the law on "Enforcement Proceedings", "All law enforcement officer's requirements regarding employment duties are compulsory for all physical and legal persons irrespective of their subordination and organizational-legal form".

Proceeding from the above said, pursuant to clause "b" of article 21 of the organic law on "Public Defender", we addressed the head of Gamgeoba of Khobi region with the recommendation to enforce the court ruling which is in effect and reinstate Nato Goginava to equal position in compliance with the Supreme Court decision.

The term of reply to recommendation has not expired yet.

Cases of Gvineria, Kandelaki, Chichinadze

On May 5, of the current year N. Kandelaki, Ts. Gvineria, and Z. Chichinadze addressed Public Defender. The claimants were seeking help regarding the enforcement of court ruling about labor litigation.

The proofs produced in the materials showed that on the decision of February 22, 2006 of the Supreme Court of Georgia, the Ministry of Economic development was assigned to issue individual-administrative judicial act concerning applicant's appointment to the post. The ministry offered them posts, but in one case it was in Khobi and in the other – in Kaspi region.

Public Defender's office filed the inquiry twice, to find out if there existed equal post according to new staff schedule in the central office of the ministry of economic development before the dismissal of the claimants. We also were interested if the circumstances related to the above case had been studied fully and in compliance with the decision of the Supreme Court of Georgia. Staff schedule was requested too.

The staff schedule of the Ministry of Economic Development proved that there existed adequate post before the claimants' dismissal. As the Ministry did not exercise its discretionary right, we filed a recommendation to the Ministry of Economic Development in compliance with clause "b" of article 21 of the organic law on "Public Defender" to reinstate the claimants to relevant posts and inform us about the decision within the fixed terms.

We have not received any reply from the Ministry of Economic Development. The term fixed by the law has expired.

Gulnara Gapurova's case

Gulnara gapurova who has addressed the Public Defender's Office claims that she has worked as an electric engineer in the laboratory of Tbilisi Underground. Due to the reorganization of the Underground department, she was dismissed.

G. Gapurova is a single mother, she has an under age child to support and the family has no other source of income. According to then existing Code of Labor Laws of Georgia, article 36, when making redundancies, the advantage of retaining the job had to be given to those with high qualification and productive work performance. Under equal conditions the priorities had to be given to the persons who did not have any other bread winners in the family and single mothers.

Thus, we addressed the Department of the Underground with the recommendation, with the account of the Code of Labor Laws to restore the citizen's labor rights. The recommendation was taken into consideration and G. Gapurova was reinstated to her former job. The latter expressed her gratitude towards the Public Defender's Office.

18 THE RIGHT TO HEALTH PROTECTION

The inclusion of economic and social rights enforced by rule of law into the Constitution of Georgia creates the possibility of the development of effective means of their enforcement. That is why, we consider that more attention should be devoted to the improvement of current legislation in the social sphere, protection of humans' social rights and the guarantees of their realization.

MAIN TRENDS OF DEMOGRAPHIC DEVELOPMENT

Over the past decade, social-economic crisis, civil war, the flow of IDPs, increased rate of unemployment, high level of corruption, deterioration of life standards for the most of the population has affected negatively on main trends of demographic development.

The changes in the world demography have drastically altered the situation in all regions. The process of ageing of the population has no analogy in the history of humankind: the growth in the proportion of the aged people is followed by the decrease in the proportion of the youth. In the report of the UN "Ageing of the world population: 1950-2050" it is stated that by 2050, for the first time in the history of humankind the number of the aged people will exceed the number of young population. This historical change already took place in developed countries in 1998.

From economic standpoint, Georgia is a developing country, but similar to economically developed countries, birth rate is decreasing, death rate is going up by certain extent, birth rate is being more and more regulated, family formation is over in young women, number of families with one and two children is increasing. As a result, the proportion of young generation is going down and the proportion of the population over 60 is rising, i.e. population is becoming demographically old. These processes have become especially tangible in last years.

According to data from the State Department of Statistics, the indicator of natural growth in the country dropped from 7, 6 in 1990 to 0, and 8 in 1993, and in 2000 it was reduced to 0. In 2003-2004 the natural growth was 0, 1 and 0, 2 respectively, and by 2005 a slight growth was observed and reached 0, 6, and the birth rate achieved 10, 7. Georgia occupies 117th place according to the number of population, and 164th according to birth rate.

In comparison to 1985 the indicator of birth rate (18, 5) has decreased by 1, 6. However, it should

be noted that according to the data of the last 5 years the rate of decrease in birthrate has slowed down. In 2004 it was even higher than in the previous year.

In comparison with 1992, the number of permanent population has been reduced by 16, 9%. By 2006, the number of population was 4401 million (and in 1997 the similar indicator was 4 558, 4). The reduction is more conspicuously expressed among urban population (24, 9%) than among rural (16,5%). On conclusions of international experts (world demographic indicators, 2005), by 2020 population will decrease to 4440 million. As in the whole world, in Georgia too there is a tendency of ageing.

Small families have an important influence on demographic situation. The number of mothers with 3 and more children is decreasing more and more. If in 1960 the proportion of births of the third child was 36, 5%, nowadays (2004 data) this indicator has fallen to 8,5%.

To provide optimal age structure of the population is the major problem for the country's social policy to which the following issues are closely linked: the reduction of the risk of harmful factors affecting different age groups of children, improvement of their education and rest, nourishment, physical and psycho-emotional status.

Article 4 of the Georgian law « On Employment » defines a large family, as the one with three or more children.

In the tax code of Georgia (article 168) it is stipulated that large families living in the mountainous region shall not pay income tax (having three or more children under 18 to support) on taxable income up to 3000 GEL during one calendar year received by the person employed in the indicated region. As well as that, large families (three or more children) and homeless children get birth registration and adequate certificates get free of charge.

How does the state support the improvement of demographic data? Are there any healthcare programs devised specifically for large families?

It should be noted that neither in the budget of 2006, nor in the draft budget of 2007, is defined any specific assistance for large families, although large families may fall under some programs, such as children's medical care component, first aid medical care development project in particular, medical insurance for the population under poverty line, obstetrical assistance component (every woman as well as mothers of many children are paid 600 GEL).

2006 budget of the Ministry of Labor, Healthcare and Social Welfare of Georgia (as well as 2007 draft budget) specifies the monthly amount of money to be paid to large families with 7 and more under 18 children – 35 GEL.

(If, according to the "law on employment" a large family is considered the one with 3 and more children, then why should the material aid be given only to those with 7 and more children?!)

It is worth to mention the programs carried out by healthcare and social protection municipality service in 2006. In 2005-2006, the program of "single material aid for the birth of 4th, 5th and more children carried out by "Program for newly born children" (fin 2005 the program got the funding of 170 000 GEL and in 2006 – 140 000 GEL). Single material aid is given to families for the birth of 4th child in the amount of 400 GEL, fifth child – 500 GEL, 6th child – 600 GEL, etc. In 2006, another program for socially vulnerable, poor and large families' assistance program was funded (8 000 GEL, the program is over).

On the basis of the resolution of the permanent commission of healthcare, social issues, culture, education and sport of the Tbilisi Sakrebulo, large families (3 or more) are paid 5 GEL monthly per child. At the same time

they have 50% benefits on utility services (water and waste clearing). According to 2002 data, there are 5992 large families in Tbilisi, and the number of children is 20349, among them under 18 – 18582.

The list of assistances above will certainly give some benefits to families, but it cannot help much in bringing up and educating children. Neither will it give incentive to young families. Problems will always exist and so will the necessity of their solution. If the strategy for improvement demographic data does not change, if we do not fight against the causes, we will always have same results, the number of street children and homeless will increase, the ranks of poor large families will be constantly filled, and thus we will forever have "target groups to be financed within the project framework".

At the same time we are far from thinking that demographic problems will be settled by financing only large families, but by permanent assistance and support rendered to large families, the idea that their children are not only their concern but the state's as well will gradually gain the ground.

PROVISION OF HIGH QUALITY MEDICAL CARE

Having healthy population is one of the key indicators of country development and it corresponds with economic situation at the time. Sound start of human's life, further maintenance and strengthening their health puts the society under special conditions and determines its level of development.

The most important priority of country's social policy is elimination of social inequality and management of social risks. Consequently, the efforts of the Ministry of Labor, Healthcare and Social Welfare must be directed at creating such institutions that will enable any member of society to obtain social protection against each risk and provide a worthy life and social integration to those citizens who are not able to acquire such protection due to objective reasons.

According to Universal Declaration of Human Rights "every person has the right to have such standard of living, including food, clothing, housing, medical and social care, that are necessary for maintaining health and well-being of himself and his family…"

Each individual, society and state is interrelated and represents three constituent parts of a whole. The state takes responsibility to elaborate such policy that would create benevolent and supportive environment for health which will be helpful for each individual to make a health-oriented choice, provide social protection to persons with disabilities, old people and children and employment to persons with work abilities.

Economic development of a country and the health of population are tightly linked and all major health determinants depend on social-economic factors. That is why the main activities of state directed at improvement of health conditions of the population should include minimum medical financial and geographical accessibility of the population to a maximum possible extent, also at reduction of inequality and the development of human potential.

Given the existing demographic situation in the country, one of the most significant problems is children's health state. Many constituents of children's health are related to such parameters as are mother's health state, the development of the body in pre and perinatal periods, social and physical conditions in the first years of life. I.e. poverty and malign environment may not occur among those factors that will have a destructive impact on health during whole life.

In order to improve accessibility and quality of mother and child healthcare services the following strategic trends should be outlined:

- Provision of accessibility to a sustained chain of mother and child healthcare services and systematic integration of each strategic component (parents' education, threpsology, immunization, HIV/AIDS prevention, etc.);
- Adaptation of international standards provided by healthcare programs to mother and child care and their systematic integration. Elaboration of uniform state policy and standards with revision of relevant guidelines and protocols;
- Further raising of awareness in the population on the volume of services and guarantees (out-patient, in-patient, referential);
- Improvement of informational program management systems – improvement statistical database.
- Introduction of healthcare service monitoring and quality enhancement systems for children's healthcare (audit/re-audit);
- Strengthening governmental and inter-agency coordination.

Taking into account recommendations of the World Health Organization and practices of highly developed countries, as a result of on-going reforms in Georgia, the problem of physical accessibility to medical services and drugs has been practically solved. Now the most severe problem on the agenda is the problem of economic accessibility to healthcare services and the quality of medical care.

To achieve high quality medical care it is necessary to have relevant financing. How much is it possible?

In the last decade against the background global processes going on in the world, in Georgia, as well as in the countries of transition economies of Europe and Central Asia, a significant growth of poverty has been identified. The present volume of GDP is considerably lower than the one before the transition period due to changes that have taken place in political, economic and social life.

The dynamics of financing healthcare in Georgia clarifies that state expenditures since 1994 have increased by 20 times and in 2004, it amounted 37,3 GEL per capita (diagram 86), although this figure is 10-15 times lower than it was at the end of eighties. On the recommendation of WHO, for equal accessibility of population to minimal healthcare services the state expenditure has to amount to $ 34 per capita, i.e. at least 70 GEL.

Economic crisis having developed in Georgia since 1998, has considerably impeded economic growth as a result of which, the level of poverty grew conspicuously in the following years all over the country. Annual growth indicator of GDP in 1998-1999 dropped by up to 3%. In 2000, the indicator of average annual growth of GDP was even lower – 1, 8%.

In terms of economic growth, 2001 was marked for having a positive trend that was expressed in 4, 8% growth of GDP. The trend remained steady in the following years and in 2003 it leveled up with 1996, although in 2004 the rate of GDP growth fell again and inflation went up.

As is indicated in the draft law of Georgia on "2007 state budget", in 2005 the factual GDP growth was 9,3% and in nominal terms it was expressed in 11,6 billion GEL. In the whole structure of GDP, the dynamic trend of allocation of sums on healthcare and social services is diminishing – if in 2003 the allocated sum on healthcare made up 4,0% of GDP, in 2004 it was 3,5% i.e. GDP growth rate fell again, and in 2005 – the indicator was 3,4%. If we look at similar indicators, we will see that in England healthcare budget makes up 6% of GDP and in the USA – 14%.

At present, private formal and informal payments in Georgia constitute 80% of healthcare expenditures. Expenses on one occurrence of illness often bring family to destitution. If we take into account the fact that the level of unemployment is going up in Georgia (according to the data from the State Department of Statistics in 2001 it was 111%, and in 2005 – 13,8%). it is easy to imagine what hardships the part of the population might face when paying for medical services.

Despite the fact that according to preliminary forecast, in the next year's budget of Georgia the rate of GDP growth is 8, 0%, while nominally GDP had been determined to be 13, 6 billion GEL, at the end of 2006, the actual growth has to reach 14 billion GEL. In 2007, GDP will grow by 7,5% and in nominal expression it will amount to 16 billion GEL. This indicator fully corresponds to the rate of GDP growth envisaged by the economic development and overcoming poverty program. Against such growth of GDP there is no indication of proportional increase in funds allocated for medical and social services.

Assignations intended for medical care in 2007 made up 283,666.8 GEL which were directed at the following priorities: for the development of primary healthcare 46, 800 000,0 GEL making up 29,2% of 2007 assignations on healthcare. Within the program, 2007 funding exceeds twice the previous year's funding (2005 – 18, 720,3, 2006 – 21,400.0). Also the assignation for the medical insurance of the population below poverty line is 36 000.0 GEL (12,7%), which implies provision of first medical aid and medical care to the population below poverty line. The state program on in-patient assistance of the population is funded by 74 791.6 thousand Gel (26,3%), provision of specific medication for the population – by 9 670.0 thousand GEL.

If the population has to feel the concern of the state in terms of real improvements in accessibility of medical services, it is necessary to increase the proportion of state expenditures in GDP and state budget which will increase the state expenditure per capita and support the implementation of WHO recommendations.

MONITORING OF MEDICAL SERVICES AND SOCIAL ASSISTANCE FOR THE HIV/AIDS PATIENTS

About spread of AIDS

Pandemic of HIV/AIDS today is recognized a global threat and represents one of the most acute problems in modern medicine.

Among the goals of millennium development adopted by the UNO is to "fight against HIV/AIDS, malaria and other diseases".

HIV infection is the urgent problem in Georgia too. Despite a low number of cases of HIV/AIDS registered in Georgia, there is a potential of a large scale spread of the epidemic that has happened in some of the Eastern European countries, for example, in Russia and the Ukraine, as well as in Baltic countries. The cases of HIV/AIDS revealed in Georgia annually are few in number but the number has been increasing fast in the last few years. According to the data of October 17, 2006, 211 new cases have been revealed - 39 more than in the same period of time in the previous year (172).

In 2006, the indication of spread of HIV/AIDS per 1000 is 0, 14%. Despite the low indicator of HIV/AIDS cases in comparison to other countries' indicators, the past years are marked with fast growing trend of the above indicator. The first case of HIV/AIDS in Georgia was confirmed in 1989. According to the data of August 1, 2006, 1038 cases have been registered in Georgia; among them 519 are men and 219 – women. Most of the patients are between 29-40. 423 patients were infected by AIDS, 219 – died. As per February of the current year, the figure of the infected has grown by 123 in the last 6 months. Among them there the number of infected men has grown by 95 and women by 51. Cases of development of AIDS have grown by 51. Number of lethal cases has increased by 27.

Despite the figures given below, the registered cases do not reflect the real picture of the spread of HIV/AIDS in Georgia. On the assumption of WHO experts, today there must be up to 3,500 persons infected by HIV/AIDS.

The most HIV/AIDS cases are in Tbilisi (396 cases); followed by Mengrelia (167, out of which 166 – in Zugdidi), Ajara (152), Imereti (112), Abkhazia (32), Kakheti (38), Kvemo Kartli (33), Poti (22), Guria (25), Samtskhe-Javakheti (19), Shida Kartli (20). In other regions only a couple of cases are registered. Also 30 foreign citizens have been revealed, 17 went back to their countries.

In Georgia the first case of HIV/AIDS was revealed in 1989. If we analyze the data of the past 5 years, we will see that at present there is a trend of steady rise in new cases of HIV/AIDS:

2000	79
2001	93
2002	95
2003	100
2004	163
2005	242
Till August 1 of 2006 – 123.	

And according to two latest data (October 23, 2006), there were 1091 cases of AIDS registered in Georgia (852 men and 239 women), most of them between 30 – 40. The AIDS developed in 443 patients. 230 died. 214 patients are getting treatment.

The following modes of transmission of registered cases have been reported:

62.7%	–	injecting drug use
30.7 %	–	infected as a result of heterosexual contacts
3%	–	Homo-/bi sexual contacts
1.4%	–	Vertical transmission
0.9%	–	Blood transfusion
1.3%	–	Ways of transmission not identified

Such rate of spread of HIV/AIDS in Georgia is stipulated by the following factors: widespread drug addiction, high indicator of the spread of AIDS in the neighboring countries of Georgia, high frequency of sexually transmitted diseases, increasing migration of the population, lack of sterilizing/ disinfection means, limited use of condoms, low level of awareness of AIDS among the population. Georgian government recognized the HIV/AIDS the key national priority in 1990. A national program on HIV/AIDS was developed in 1993.

Georgian legislation on HIV/AIDS

A Georgian law on "AIDS Prevention" was adopted in 1995. Criminal Code of Georgia considers the initiation of criminal proceedings related to AIDS (article 131 – getting infected with AIDS). It is important that the law on "AIDS Prevention" **determines the establishment of a national program and a governmental commission**.

(Article 2. Governmental commission on AIDS. National AIDS control. Specialized service for HIV/AIDS control)

In the Georgian law on "AIDS Prevention" (1995) it is specified: (chapter 1, general provisions)

Article 1. Acquired Immunodeficiency Syndrome (AIDS). HIV infection. Concept. Spread. Importance of the problem.

AIDS is an infectious disease which is caused by the virus of immunodeficiency (HIV). According to modern classification the disease is called the infection of a person by immunodeficiency virus (HIV), and the term "AIDS" means the last stage of the development of HIV infection, it is when the patient develops the clinical symptoms of the disease. The nature of the spread of HIV/AIDS, its development and results belongs to the category of dangerous diseases. The epidemic of HIV/AIDS has posed a great threat to the whole humankind and the whole system of healthcare is now facing complex problems. Successful fight against HIV/AIDS is possible only if joint efforts of the governments and healthcare workers of all countries are applied. Georgian government has a due understanding of the problem and takes the responsibility for its control and prevention.

4. At the legal service of Public Defender's Office there is a sector for HIV/AIDS positive persons' protection functioning currently. (08.11.2000)

The inclusion of such article in the law significantly increases the responsibility of Public Defender for HIV/AIDS patients, although the fulfillment of the duty requires allocation of additional resources.

Scientific-practical center of clinical immunology and AIDS is implementing "National program of AIDS prevention and treatment" which is funded by global fund and unified state fund of social insurance of Georgia. There are 64 diagnostic laboratories under the subordination of special service of AIDS control throughout the country.

Within the framework of the state AIDS prevention program medical investigation for some risk groups is free (due to limited funding of the program the investigation is available only for persons with B and C hepatitis and prisoners) .

For other groups the investigation costs 10 GEL.

It must be noted that Georgia is the first country in the post-Soviet space, which carries out infected patients' treatment by 100%. The decisions on antiretroviral treatments are being made with the consideration of official recommendations of international society. Free treatment with antiretroviral medication has been provided since 2005 with the financial support of "Global fund for combating HIV/AIDS, malaria and TB in infected patients"; as for HIV patients' laboratory and instrumental investigation and symptomatic treatment, it is provided by unified state fund of social insurance of Georgia.

AIDS in penitentiary establishments

As for penitentiary establishments, the investigation of the spread of HIV/AIDS in the penitentiary system of Georgia has been going on since 1997. In the establishments of the mentioned structure, the study of the disease was voluntary, by free testing on HIV antibodies (article 3, clause 3 states that investigation of HIV/AIDS is voluntary for citizens), that was included in the "state program of HIV/AIDS prevention"

About 10.000 convicted and prisoners have been given pre-test consultations on HIV/AIDS. Among them voluntary blood tests on antibodies were taken by 9,439. The specificities of epidemic area have also been studied.

In 2005 HIV/AIDS was spread among 0, 15% of the general population and in the penitentiary system the figure was 1, 78%, i.e. exceeded 10 times the level of infection outside prisons. According to the investiga-

tions carried out by AIDS and clinical immunological center, from 1997 to 2005 inclusive, 67 HIV infected prisoners had been detected in the structures of penitentiary system of Georgia. Among them: 7 had died, 35 had been released and are under dynamic medical surveillance.

According to the latest information (October 23, 2006), at present there are 30 HIV/AIDS positive persons in the penitentiary system establishments (the data come from national center, results of final investigation carried out in September are not known yet), 13 out of whom are getting treatment.

It is important to note that the conditions in Georgian prisons are very grave, unbearable; sometimes one bed is shared by more prisoners than it really has to. Thus, HIV/AIDS patients' deplorable state is even more aggravated and in frequent cases it is impossible for such prisoner to get treatment in prison and needs to be moved to hospital. Prisoners with HIV/AIDS might get special assistance by global fund.

Prisoner D.L

Prisoner D.L.'s brother addressed the Public defender's Office. As it was stated in the application, the prisoner in prison N5 D.L. has HIV/AIDS – C3 category and chronic form of C hepatitis.

The prisoner was getting treatment in the medical institution of penitentiary department for convicts and prisoners until October 15. Afterwards he was moved to one of the cells of prison N5 and the next day, on October 16, to the medical unit of the prison.

Later the prisoner's health deteriorated so much that according to the conclusion of the Center of Clinical Immunology, infectious pathologies and AIDS, the patient had to be moved to hospital urgently to save his life.

Regarding the issue, we addressed the head of penitentiary department, Bacho Akhalaya with the recommendation to allow D.L to move to medical unit of convicts and prisoners, but no real result had been followed.

In accordance to law prisoners with HIV/AIDS are subject to early release.

Article 8, clause 21. HIV/AIDS is included into the list of those diseases the specific stage of which provides grounds for filing a court case in order to make a decision on prisoner's early release or/and for moving the prisoner to a specialized clinic. To determine the stage of illness, the materials are considered by the relevant medical commission (08. 11.2000)

In comparison with the existing statistical data in the world, the number of HIV positive prisoners in Georgian penitentiary establishments does not reach significant indicator, but interviews carried out parallel to testing revealed risk factors favorable for the spread of HIV infection in prisons and high risk behaviors of prisoners, providing grounds to assume that rapid spread of new cases of HIV infection can be anticipated.

It is noteworthy that the survey carried out by the institute of Narcology in two penitentiary establishments (250 men prisoners between 19-50 years old participated in the interview). The survey revealed that 70% of respondents have consumed drugs in their lives, and 41% consume drugs in prison. Most frequent cases are injecting drug use. Of those respondents who admitted having consumed drugs during last three months, 30% consume marihuana, 41% heroine, 18% Subbutex (injections), and 8% opium. 10% of the respondents regularly inject drugs every day or every other day.

The following data related to HIV were obtained: 87% of drug consumers use their own syringe after multiple use, 42% admit that they have often used syringes after others, 52% mentioned that others have used

their syringes. Thus injective drug use and the frequency of the usage of shared syringes there is a big threat of the spread of HIV and hepatitis in the penitentiary system of Georgia.

It is important that the Georgian law on "AIDS Prevention" it is indicated:

Article 8. The right to medical assistance and social protection of persons with HIV/AIDS

Clause 19. Persons with HIV/AIDS at penitentiary establishments have the same rights and duties as non-infected persons. They also have the right to get:

a) Medical assistance
b) Comprehensive and timely information on HIV/AIDS
c) Decision about the confidentiality of HIV/AIDS;
d) Protective means;

Clause 20. Relevant medical, psychological and social assistance service should be organized in penitentiary establishments for HIV/AIDS infected persons.

Proceeding from the current legislation of the country, certain measures are taken in penitentiary establishments with the regard to revealed cases HIV/AIDS. Prisoners must be kept informed about HIV/AIDS. Some activities are partly undertaken by Global Fund.

One of the primary directions in the work of Public Defender is the implementation of legal measures in penitentiary establishments against the spread of AIDS and their monitoring, (Article 2. clause 4. see above).

Six cases of AIDS in Kutaisi

In July 2005, a patient G.L., four years old, visited the Center of Clinical Immunology, infectious pathologies and AIDS with the diagnosis: chickenpox, hemorrhagic form, bilateral pneumonia.

During the medical investigation it turned out to be HIV/AIDS. In order to determine the presumable mode of transmission, child's parents had also been investigated, but they were not HIV/AIDS positive. By epidemiological investigation it was established that on December 29, 2000, G.L. was given a blood transfusion in the regional hospital of Kutaisi (at present "Kutaisi maternity and children's treatment-diagnostic regional center" JSC). As the AIDS center employees found out, having studied the case, the source of contamination was the donor – S. M., a man, 32. He was the staff donor and from 1993 to April 2001 he had donated blood 22 times to Kutaisi regional blood bank. Each time his blood sample was taken it had been investigated for HIV, B and C hepatitis and syphilis. On April 27 of 2001, the donor was rejected for having C hepatitis.

At present the donor lives in Moscow and it is impossible to carry out medical investigation and confirm whether the person is infected by HIV or not. From 1998 till March 2001 the donor's blood had been taken from Kutaisi blood bank for 19 recipients (people). Out of 19 recipients only 10 recipients were identified (among them 4 have died, but their death is not caused by HIV infection), 6 of them were tested on HIV. 9 recipients cannot be identified due to non-existence of relevant documentation.

5 recipients out of 6 turned out to be HIV positive, among them were 3 children and 2 adults (the blood was transfused to them in the period between December 29, 2000 and March 20, 2001) and 1 recipient did not have HIV infection (transfusion took place in 1998).

The results of preliminary investigation have shown that the donor's S.M.'s blood was tested on HIV/AIDS and C hepatitis at every donation with the methods of "Safe Blood" state program and none of the tests revealed HIV infection.

The letter from AIDS center explained that investigation had been carried out but HIV infection had not been positive:

The last test on April 27, 2001 did not show any antibodies in S.M. the donor's blood, since during the so called "window period", i.e. the gap, which may last for 3-6 months, or even longer in some rare cases, the disease cannot be identified (no antibodies can be found);

They also indicated that it was impossible to detect antibodies in the donor's blood because of low sensitivity of test-systems available in that period (in 2001, due to hard economic state in the country mostly cheap and low sensitive test systems were affordable).

I would like to report that the "Georgian law on AIDS prevention" specifies that the state realizes the threat of HIV/AIDS and for the purpose of solving problems related to it the following measures have been devised:

Article 2. Governmental Commission on AIDS.

National program for fighting AIDS and its prevention. The above implies that both, National program for fighting AIDS and its prevention and the Commission shall provide assistance for patients with HIV/AIDS.

As a result of blood transfusion in Kutaisi 5 persons were infected and identified. Unfortunately no information could be obtained about 9 people.

We would like to inform you that article 8 of the law on "the right of medical care and social protection of patients with HIV/AIDS", envisages assistance and benefits.

Article 8, clause 5: "Georgian citizens having been infected as a result of medical manipulations are allowed a pension in compliance with the rules set by Georgian legislation.

Article 8, clause 6: "In order to get regular check-ups, treatment and epidemic surveillance, HIV/AIDS positive persons living outside Tbilisi can use state transport from their residence to Tbilisi and back, four times a year for free. Transport costs shall be covered by local budget.

Article 8, clause 9: "Unemployed HIV/AIDS positive persons shall be given monthly pecuniary aid in the amount of double minimum salary. The costs shall be covered within the limits of assignations determined by social assistance program".

In the case of Kutaisi, 5 persons should get the benefits considered by the above law, which they have not received so far. As it was found out from the conversation with AIDFS center employees (Maya Tsintsadze) "often they have no money for transport to arrive and get timely consultations and medication, while these are free for them as it is covered by state and insurance programs and global fund". It is also important, that there are 3 children among them. Besides other benefits the following articles specify:

Article 8, clause 7: "Parents, foster person or a trustee have the right to stay in hospital with the young children (up to 14) who are infected by HIV/AIDS. During their stay in hospital, the above accompanying persons will be given allowance for work disability".

Article 8, clause 8: "HIV/AIDS positive persons under 18 shall be given monthly pecuniary aid in the amount of double minimum salary. The costs shall be covered within the limits of assignations determined by social assistance program".

Treatment of HIV/AIDS positive persons is jointly financed by State program and a Global Fund. State Program covers all laboratory and clinical investigation costs of all HIV/AIDS positive persons; as for the specific

treatment of AIDS (High activity antiretroviral treatment – ARV) – these costs (supply of medication and treatment efficiency monitoring) are fully covered by Global Fund Project.

All AIDS patients in Georgia, who according to laboratory and clinical investigation need treatment get it within the Global Fund Project. At present there are 205 such patients. In penitentiary establishments 13 prisoners are under treatment.

As for social assistance, despite the fact that the law considers such type of support for HIV/AIDS patients, in reality none of them have ever enjoyed this assistance. The Fund for support of AIDS patients and Georgian "Plus" group were actively working on the issue, although no active measures have been taken in this direction so far.

It is worth noting that the project "Nutritional Support Through Food Supplementation to People Living with HIV/AIDS (PLWHA)" funded by Food Program of UNO started in 2006. Until June 2007, the support will be given to those patients who are getting antiretroviral therapy, and from June 2007 till December 2008, the project will cover those who are being treated and all HIV persons in need of such support. For today it has been decided to supply 100 patients getting ARV treatment, with food products (10 kg. of white flour, 2 kg. of sugar and 1 l. of oil during a month).

From 2009, it is planned to implement the program within the framework of Global Fund. As well as that, an international organization "Karitas" is planning to provide the AIDS patients not only with food products, but with some additional medication, clothing and if necessary, sanitary services for bed-ridden persons.

Georgian law on "AIDS Prevention" points out HIV/AIDS control service in the 2nd chapter, and clause 4 specifies that "At the Public Defender's Office a legal sector for protecting HIV/AIDS patients is functioning. (08.11.2000).

The center for protection patients' rights at the Public Defender's Office cooperates with the Georgian scientific-practical center of clinical immunology and AIDS. it is planned to create a coordinating group for the protection of HIV/AIDS patients' social rights that will work out recommendations for the current law to make it genuinely effective for the cause of protection HIV/AIDS patients' social rights. Public Defender will also cooperate with Global Fund to ensure that social assistance and protection of patients' rights are provided in compliance with the law to disallow their alienation as it happened in Kutaisi, when HIV/AIDS infected mother and child were forced to move far away from their lodgings. They addressed the court. Basing their suit on Georgian law on patients' rights, article 10, clause "a"; they claimed a compensation for property and non-property damage. In this case they were to receive financial aid (in the amount of 2000 GEL). The issue is in the process of court examination and final decision has not been made yet. The family does not get any other aid envisaged by law.

Violation of HIV/AIDS patients' rights is the greatest barrier in the provision of preventive measures, rendering appropriate medical assistance and treatment to HIV/AIDS patients. To ensure legal protection of HIV/AIDS patients under the conditions of rapid spread of AIDS in Georgia becomes too urgent. AIDS patients need urgent aid and support and the procrastination of any processes related to financial aid or other, aggravates their life even more. Acceleration of the processes and setting appropriate levers in motion have to become the key priority of the state.

PROFESSIONAL RESPONSIBILITY OF DOCTORS

Patients' rights protection center analyses information supplied by State regulation agency of medical activities at the Ministry of Labor, Healthcare and Social Welfare.

According to 2005 data from medical quality and control inspection of the Ministry of Labor, Healthcare and Social Welfare, the council issuing certificates to senior and mid-level medical and pharmaceutical personnel

raised the issue of doctors' professional responsibility which referred to 228 doctors. 159 among them were notified in writing; the certificate was suspended for 18 doctors, and annulled in 8 cases. There were also revealed 164 facts of law transgression; the Ministry filed 158 cases of solicitation in the first instant courts on the inspection of entrepreneurs' activities; on the basis of judge's orders, 153 medical establishments were inspected as a result of which 30 illicit medical activities were revealed; also 44 illegal facts of medical practices; in 35 cases the question of responsibility of the heads of medical establishment was raised.

The data from the Supreme Court of Georgia report administrative infringements in the sphere of labor, healthcare and social welfare during 2005, followed by adequate sanctions. Out of total cases filed in the Supreme Court, law transgressions make up 2%. Also were reported cases of administrative transgressions and administrative responsibilities in the sphere of healthcare.

Administrative transgressions in the sphere of labor, healthcare and social protection have been examined. During 2005, Ajara region stood out with the highest indicator among other regions of Georgia (during 2005, 91 cases were examined). No cases were reported in 21 regions, only one was reported in 8 regions.

The data of 2006 of the inspection of medical quality and control of the Ministry of Labor, Healthcare and Social Welfare of Georgia:

As per September 20 of the current year, on agency's recommendation, the state certificate awarding council considered/ examined the issues of professional responsibility of 208 doctors.

Violations by medical personnel were investigated in 45 medical establishments concerning organization of medical assistance, administering and direct medical interference with patients. On the basis of detailed studies of cases, it was found that most transgressions took place in Tbilisi (25) state and private medical establishments.

In 126 instances, the question of professional responsibility of medical personnel was raised, while 72 cases from other regions were examined by the state certificate award council. 64 doctors were given written notification, state certificate was suspended to 27 doctors, and in one case the question of annulment of the certificate rose.

The question of professional responsibility of medical personnel was raised regarding the following violations: according to article 5 of the Georgian law on "Health protection", "Georgian citizens have the right to enjoy the benefits of medical assistance as is determined by regulations of state program of healthcare, which is conducted by legal entity of relevant medical activities irrespective property and organizational-legal form"; also in the case of violation of article 43 "a doctor or other medical personnel is obliged to: keep records in medical documentation". As well as that, in the case of violation, Georgian law on medical practices stipulates in clause 2 of article 7 the violations in the sphere of medical activities in which the doctor is awarded a certificate. Article 39 on medical practices, article 17 on patients' rights considers making information available to patients, where it is pointed out that the subject conducting independent activities is obliged to supply the patients with objective, timely and comprehensible information". Due to violations of this and other articles, the question of doctors' professional responsibility was raised in "Chiatura city hospital after G. Mukhadze". Patient's parent was not duly informed about the component of medical assistance to be provided to children patients under 3 years.

Pursuant to article 44 of the law on "Medical Practices", and article 22 on patients' rights, before rendering medical services the doctor should get an informed consent form in writing regarding all cases specified in the law.

According to the documents that have been examined, in 9 cases no informed consent in writing was received before surgical operations.

Due to violation of article 56,73, 74, 75 and 79 of the law on medical practices, the issue of doctors' professional responsibility was raised. The articles stipulate observance of recording medical documentation, professional responsibility of the subject conducting individual medical activities and sanctions for misconduct".

Among Tbilisi medical establishments, children's central hospital after M. Iashvili "Republic" can be singled out, as 26 cases of doctors' professional responsibility were raised at the same time there.

The issues of provision qualified medical assistance, patients' safety and comfort, also compatibility of licenses with current legislation in 2000-2004 were looked into. Various types of violations have been revealed and the professional responsibility of 26 doctors turned out to be questionable. The reason was transgression of Georgian law on healthcare protection, article 43 of which stipulates the "obligation of a doctor to keep records in medical documentation in compliance with determined regulations". Also, according to article 56 of Georgian law on "Medical practices", the provision on observance of medical records are being violated. Professional responsibilities of 23 doctors of the same hospital was raised in connection with the violation of provisions in article 7 stipulating "Independent medical practices", i.e. "the person may conduct medical activities only in the field of specialization indicated in the state certificate".

We need to mention the fact that in the clinical hospital of the State University after I. Javakhishvili, LTD, "the issue of doctors' professional responsibility was brought up, as according to Georgian law on "Medical practices" article 7, and article 56, medical records were incompletely conducted. Professional responsibility of 5 doctors among them were made answerable in compliance with article 44 of Georgian law on "Medical practices" stipulating that "before rendering medical services the doctor should get an informed consent form in writing regarding specific medical interference".

We should point out the fact that if during 2005, the facts of violations by doctors were responded in compliance with Georgian law on "Medical practices", chapter VII of which stipulates the provision on "the obligation of medical record keeping while conducting independent medical activities", also with chapter X ("professional responsibility of the subject conducting independent medical activities"). The information obtained (per September 20, 2006) does not specifically indicate any sanctions taken against the doctors mentioned, such as disciplinary or administrative penalties, corresponding written notifications, suspension or annulment of their certificates.

The analysis of materials obtained from medical activities' state regulation agency at the Ministry of Labor, Healthcare and Social Welfare as per September 20, 2006, made it clear that along with various violations in medical service provision practices at medical establishments, the facts of violations of patients' individual rights, such as different kinds of medical manipulations without informed consent, are also reported. As for the safety of realization of doctor- patients' other individual rights, such as immunity of personal life and confidentiality, also the right to seek alternative opinion, the right of choice of medical establishment and doctor are not considered "urgent" issues yet. The facts of violation of these rights are not being reported and consequently not responded. The enforcement of the above rights is the basis for the realization of a supreme human right to health.

Quality medical service provision is mainly based on the qualification of healthcare workers and the safety of patients at medical establishments.

Healthcare workers – are a team of professionals, who directly render medical services to persons in need of such services. Healthcare workers represent the core of the system. Despite this, a crisis in healthcare workers is observed worldwide and no country can be considered "immunized"! Crisis has been preconditioned by various complexities in the following spheres: medical education, post-diploma training, remuneration system, work environment and healthcare management. The processes listed above lead us to the lack of such essentials as

practical skills and experience. In the long run, the existing situation leads to changing professions by medical professionals, early resignation and international migration. The workforce of healthcare is undergoing a crisis and it is aggravated by specific circumstances in different countries and regions that find a negative reflection on human health. In order to overcome the crisis, it is necessary to join efforts at national, regional and international levels. The states, United Nations Organizations, healthcare professionals, non-governmental sector and public leaders should be involved in the process. There is a way to the solution of this complex problem and it is necessary to take actions today if we want to overcome the crisis tomorrow.

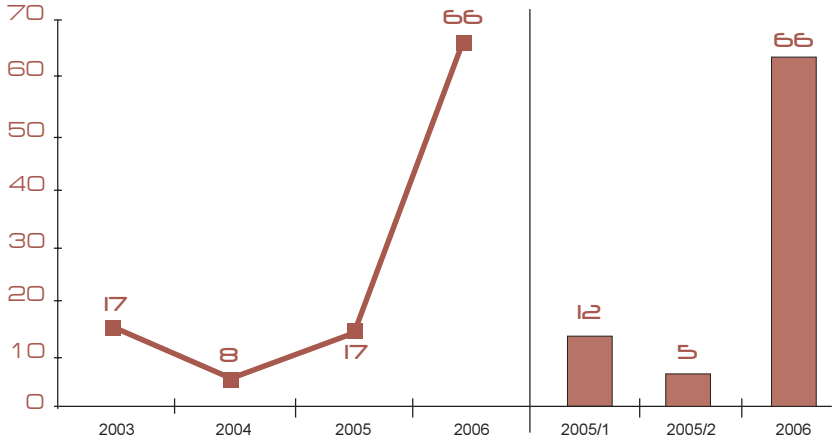
Patients' complaints

A great number of people address Public Defender's Office with social–economic problems, majority of them are below poverty line and they mainly require basic means for existence, although there are requests concerning medical assistance and benefits.

There are frequent cases of violence in the sphere of medical assistance. Based on letters considered by Public Defender's Office we can conclude that the rights of patients and invalids deserve more attention from the side of government at different levels.

As we can see from the diagram below, in the first half of 2006 in comparison with 2003-2005, the number of letters submitted to Public Defender's Office has considerably increased.

MEDICAL ISSUES



THE DATA REFLECT ABSOLUTE INDICATORS

On the basis of the submitted letters, the following trends have been identified:

- Telephone calls were recieved about information on who, where and how to address relevant entities, what kind of assistance it is possible to get within the program of the Ministry of Labor, Healthcare and Social Welfare of Georgia, what kind of social programs they might benefit from. The center sraff informed them about the questions concerned. The center conducts constant educational activities such as preparing booklets and brochures like"Patient's Page" or "Patients' rights and duties", that will be greatly helpful for citizens and potential patients.
- The questions were about the issues of rights. For example, whether it is possible to transplant adopted child's kidney to father. Since adopted child enjoys the same rights as biological one, according to the

Civil Code, despite the fact that there is no genetic relations between them, pursuant to article 3 of Georgian law on "transplanting human organs" which gives the term "genetic relative" the latter cannot be replaced by adopted child. This case proved the need of making addition and ammendment to the law.

Article 18 – For the purpose of transplantation it is only allowed to take a live organ from a donor, if the following terms are observed: b) donor and recipient are genetic relatives or spouses, or the organ is taken by donor according to cross-donor principle, which has been approved by the council of transplantation, ... it is possible to consider the addition to clause b) b : genetic relatives, spouses or an adopted child.

Telephone calls often were anonymous for different reasons:

- They did not believe that anybody would give them a real help and the call was made to find out within which framework Public Defender's Office could render assistance;
- Some were afraid to give their name as that would be followed by sanctions against them (the mother of a disabled child mentioned that municipal service of healthcare and social issues did not satisfy her demand to send her child to Borjomi on a holiday free, while they had used this benefit the previous year. Although then, together with her child there were children of different ranks of high officials "without disabilities", she did not mention her name being afraid that she would not be given her annual medication free any more)

From letters or during personal meetings, it became clear that patients are not always fully informed by doctors, thus their right to obtain information being violated. Insufficient information or giving informed consent before the surgery, so that patients do not know about the outcome of the operation often became the reason for complaint. It was also noted that the reason that they could not get full information was medical terms frequently used by doctors. The center's job was to help patients in understanding information, explaining all risks and complications referencing to international standards.

Patients often requested compensation of material and moral damage. ("Georgian law on protection of patients' rights" article 10. Patients or their legal representatives have the right to bring the case to court and demand: a) compensation of property or non-property damage caused by: a. a) violation of patient's rights; a. b) incorrect medical actions; a. c) other drawbacks in the functioning of medical establishment; a. d) incorrect supervision and regulation provided by the state;

Patients address Public Defender for help even in such instances, when their cases are under legal proceedings or when court decision exists.

Most of the letters were submitted by prisoner patients requesting medical assistance to be provided to them in penitentiary establishments. With the recommendation of Levan Labauri, the consultant of the center and with the help of the rehabilitation center for tortured victims "Empathy", these patients were investigated, and as requested, some of the prisoners were moved to hospital. The center for patients' rights protection is carrying out health monitoring of prisoner patients; the issue is discussed separately.

The case of *A. Sle – vi*, a person with disability, deserves special attention. It turned out that A. Sle – vi's aunt T. Ru., addressed the President of Georgia, M . Saakashvili for financial aid. The address together with supporting documents was sent to the Minister of Labor, Healthcare and Social Welfare, Mr. L. Chipashvili. The latter assigned the unified state fund of social insurance of Georgia to examine the case on July 05 of the current year (N1726/04-1/0088-06/1). We filed an inquiry to the Minister of Labor, Healthcare and Social Welfare, Mr. L. Chipashvili and the state fund of social insurance of Georgia informed us: "With reference T. Ru.'s letter, we would like to inform you that she is requesting assistance to be provided to her disabled nephew. The supporting documents are incomplete, doctor's conclusion on what kind of assistance is needed and in which clinic, is

not included in the papers. It is not within the competence of the state fund of social insurance of Georgia to regulate the above issue, namely to seek the appropriate clinic and determine the treatment". The above proves that A. Sle-vi.'s case has not been studied in the body concerned and consequently, it will get no response.

Judging by various claims from patients, their discontent is often caused by the fact that it is vague for them what kind of financing this or that program provides and to which category of population it is designated for. What components do they include? How does the selection of health examination take place in each specific case? Patients demand that they should be provided with comprehensive information by primary instances of medical establishments or clinics, as they have this legal right to demand so. (Georgian law on Patients' Rights, article 16). Ambiguity often causes doubts that can later become the basis for justifiable or unjustifiable complaints. It is possible to settle this problem if doctors supply the patients with full and comprehensive information or if the healthcare officials constantly educate population by providing information about the priorities in program financing.

Financial assistance for medical services rendered to the population by regional local self-governing bodies of Georgia (2005-2006)

Accessibility to qualified medical care is one of the major human rights to which every country should pay a due attention.

Georgian Parliament ratified Social Charter of Europe and its addendum, which indicates (article 11) that in order to effectively enforce the right to health protection, state and private organizations should take joint measures. As for the effective enforcement of social protection right (article 12), they should "create and sustain the system of social guarantees; take measures for its improvement".

Patients' rights center collected information about social assistance rendered to population in all regions of Georgia. More precisely, it considered sponsored operations, medication and medical-diagnostic investigations, sums allocated for kidney dialysis.

The aim of the survey was to obtain information about what kind of financing of medical services the population receives in each separate region of Georgia from the local budget.

We obtained information from 62 regions of Georgia. The data from those regions (Ninotsminda, Sighnaghi, Samtredia Mtskheta) which supplied information later are not included in our comparative analysis.

We also need to mention that in the replies from Ajara Autonomous Republic, Batumi, as well as from Kobuleti, Shuakhevi and Kedi Gamgeoba heads, it was indicated that social aid is not provided to individual citizens. Medical costs of the population are covered within the program financing. Thus, the analysis of Ajara Autonomous Republic includes only the data on financing medical care and medications by local budget of Khelvachauri and Khulo regions.

On the official information of the unified social insurance state fund of Georgia (within the state programs on out-patient and hospital aid in 2005), the funds were not transferred to Georgian regions according to the proportion of the population.

In some regions of Georgia (according to 2004 census) only a small part of the population are funded by state fund of social insurance within the state program for out-patient and hospital aid funding. These are the following:

Shida Kartli – the population makes up 11,9% of the entire population of Georgia, and the sum transferred by unified social insurance state fund was only 6,5%.

Kakheti – the population makes up 10, 8% of the entire population of Georgia, and they were financed by 4,9%.

Guria – the population makes up 3% of the entire population of Georgia, and the financing they received was 1%.

It is also important to note the fact that in some regions of Georgia financing by state fund of social insurance within the state program for out-patient and hospital aid funding exceeds twice the proportion of population of the region as compared to the entire population of Georgia. For instance: the population of **Racha-Lechkhumi** makes up 1, 3% of the population of Georgia and the region is financed by 2,8%.

The situation is similar in **Samtskhe-Javakheti** region, with the population of 6,6% and 12,6% funding.

In **Samegrelo-Zemo Svaneti** funding from state fund of social insurance is 25,7%, while the population is 16,9%.

It is also curious that financing by state fund of social insurance per capita is not even. Shida Kartli and Kakheti (9 GEL), Kvemo Kartli(8 GEL) get lower funding. The most funding is provided to Racha-Lechkhumi – 22 GEL per capita, followed by Ajara (16 GEL), Samtskhe-Javakheti (15 GEL), Imereti (14 GEL), Guria (13 GEL), Samegrelo-Zemo Svaneti, Mtskheta-Mtianeti, Shida Kartli (12 GEL).

All things considered, we can say that population is financed unevenly by state fund of social insurance within the state program for out-patient and hospital aid funding. This might be stipulated by the fact that some regions of Georgia get additional financing from private sector or other sources which once again emphasizes that Ministry of Healthcare, local governmental structures and private sector should work in a more coordinated way to provide population in regions with even and accessible medical services.

It is also important that the funds are unevenly allocated from local budget in the regions of Georgia per capita. And when compared state funding and local budget funding per capita the latter is much higher.

Financing Georgian population by state programs or local budget is provided unevenly. It is important to achieve equal accessibility to medical services, for which purpose the medical-social services of regions should single out specific needs of each separate region and set priorities in their financing.

With the purpose of provision of uniform medical services throughout the country, it is necessary to implement such measures that will reduce the inequality in the accessibility of state funding. It is important to develop such system of resource distribution, which will more accurately reflect the needs of the population. It is necessary to plan and implement financial aid for medical services on the basis of cooperation between the Ministry of Labor, Healthcare and Social Welfare and local governmental bodies.

Conclusions:

1. Assistance rendered within the state program for out-patient and hospital aid funding by Unified state fund of social insurance of Georgia in 2005 is characterized by uneven distribution of assistance:
   - In some regions of Georgia (Shida Kartli, Kakheti, Guria) assistance rendered by state fund of social insurance within the state program for out-patient and hospital aid funding is much less with the respect to the proportion of the population;

- Javakheti, Samegrelo-Zemo Svaneti) assistance rendered by state fund of social insurance within the state program for out-patient and hospital aid funding exceeds twice the proportion of percentage of the population;
- Funancing by state fund of social insurance per capita is uneven. (Maximum is in Racha-Lechlhumi-22GEL, minimum – in Kvemo In some regions of Georgia (Racha-Lechlhumi, Samtskhe-Javakheti – 8 GEL).

2. In Georgian regions funds allocated from local budget per capita is uneven (the highest figure is 479 GEL is Mtskheta-Mtianeti);
3. Medical care and medications in Georgian regions are provided unevenly, both, according to per capita and the size of population;
4. In Georgian regions funds allocated by unified state fund of social insurance and local budget do not supplement each other. However local budget funds are much higher.
5. Provision of medical services and medications are financed by 0, 6% in Georgian regions by local budget.
   - High indicator of financing by local budget in the regions of Georgia is observed in Racha-Lechlhumi, Kvemo Svaneti – 1,2%; Samtskhe-Javakheti – 1,1%; Samegrelo-Zemo Svaneti – 0,9%.
   - High indicator of financing by local budget in the raions (districts) of Georgia is observed in Poti – 4,6%; Borjomi – 3,8%; Oni – 3,5%.
   - Imereti region, Sachkhere is financed by fund "Kartu", which makes medical services equally accessible, and only 6 citizens were funded by local budget in 2005, each received 5550 GEL on average.

Recommendations for amendments to the Georgian law on "Patients' Rights"

Rapid development of medical science, introduction of high technologies and new methods brought forward a new vision of ethical and physical co-participation on the agenda. Thus it is necessary to strengthen the guarantees of protection of fundamental human rights and freedoms in healthcare sector for each individual citizen and determine specific rights and duties of healthcare service recipients in each specific case.

In different countries, provision of patients' rights is achieved at different quality levels. In any case, the existing Charter in the country or any other legal document strengthens the understanding of patients/citizens' rights' protection in different national context and it can become the tool for harmonization of healthcare national systems to the benefit of citizens' and patients' rights. The issue of harmonization is especially important against the background of latest European trends of free mobility and expansion process.

Supporting patients' rights is a dynamic process and its constant monitoring is very difficult. Medical progress and accompanying it events bring forth new objectives in the direction of patients' rights protection for the society, as well as for the legal system of the country. Despite the above, regular revision of the existing legislation and its adequate renewal has to become a priority in the healthcare system of the country in order to provide the citizens with guarantees of permanent protection of their rights and prevention of possible violations of these rights.

According to Georgian legislation, patients' rights are mainly regulated by the law on "Patients' Rights" as well as by the Georgian law on "Medical Care" and "Medical Practices". It is also worth noting that to the Georgian law on "Patients' Rights" (adopted in2000) no amendments have been made. Taken international practices and "European Charter of Patients' Rights" into account, the issue regulating doctor-patient relationships needs revision and supplementation.

With the purpose of considering amendments to the law on "Patients' Rights" doctors' professional associations have been invited to Patients' Right Protection center established at the Public Defender's Office.

Protection of Patients' Rights- International Practices

Over the last 10-15 years, the issues of patients' rights have become increasingly important at national and international levels. Many European countries have reflected the main principles of patients' rights protection in adequate legal acts and documents. As patients trust and depend on healthcare system and their professionals to a certain extent, due to the fact that it is a high risk system, their rights are often being violated. Besides, the rapid development of medical science, introduction of high technologies and new methods brought forth a new vision of ethical and physical co-participation on the agenda. Thus it is necessary to strengthen the guarantees of protection of fundamental human rights and freedoms in healthcare sector for each individual citizen and determine specific rights and duties of healthcare service recipients in each specific case.

Supporting patients' rights is a dynamic process and its constant monitoring is very difficult. Medical progress and accompanying it events put forward new objectives in the direction of patients' rights protection for the society, as well as for the legal system of the country. Despite the above, regular revision of the existing legislation and its adequate renewal has to become a priority in the healthcare system of the country in order to provide the citizens with guarantees of permanent protection of their rights and prevention of possible violations of these rights.

As has been mentioned, despite the differences between national legal systems of the countries, there are basic principles, that are shared and on which basis the protection of Citizens' rights in the sphere of medical services are guaranteed and patients' rights and duties are determined.

European Charter of Patients' Rights

Adoption of European Charter of Patients' Rights in November 2002, in Rome, must be considered the most innovative and large scale event on the way to harmonization of patients' rights in European countries. The Charter was brought forward for discussion, as a result of active and concerted work of civic society, national and European institutions and all interested parties. Taking into consideration the existing reality in the sphere of healthcare and the developing trends in Europe, a uniform approach has been developed and its adaptation to national level is the foremost obligation of relevant structures and general public of each country. It is noteworthy that the introduction of Charter documents and turning them into real tools requires joint work and efforts of healthcare professionals, management representatives, governments, legal and administrative bodies. 14 major rights of patients have been developed in European Charter of Patients' Rights that have derived from the European Union Charter of Fundamental Rights and the latter must be considered the first "building block" of European Constitution. European Union Charter of Fundamental Rights sets a number of inviolable universal rights that may not be restricted by the bodies of European Union or member states. Article 35 of the Charter defines the right on health protection- "the right to accessibility to preventive activities and the right to enjoy medical services and conditions to be provided in compliance with national legislation and practices".

The same article indicates that European Union is liable to provide "high level of healthcare" and in this context, health and healthcare is viewed as individual as much as a social product. The wording above dictates the governments' guideline standards, i.e. not to stop at "minimally guaranteed standards" in the sphere of healthcare but to set the aim of achieving highest standards, despite different capabilities of various service providers. Apart from article 35 mentioned above, the Charter also includes a number of such provisions that directly or indirectly concern patients' rights. For example: affecting the right to dignity (article 1); right to life (article 2) ; right to personal inviolability (3); right to safety (article 6); right to protection of personal data (article 8); right to inadmissibility of discrimination (article 21); right to cultural, religious and linguistic variety (article 22); children's' rights (article 24); adults' rights (article 25); right to social welfare and protection (article

34); right to environmental protection (article 37); consumers' rights (article 38); freedom to live and move(article 45);

14 rights set forth in the Charter of patients' rights are also connected to international declarations and documents that derive from WHO and the EU (Amsterdam declaration "Support of patients' rights in Europe" - 1994; Ljubljana Charter – "Healthcare Reform in Europe" – 1996; Jakarta declaration – Healthcare support in the 21st century" – 1997). As for the European Union, we should mention in the first place the convention adopted in 1997 – "About human rights and biomedicine", also recommendation (2000) 5, about the development of citizens institutions and patients' participation in the decision-making process, that hinder health protection. All the above listed documents envisage citizens' right to health, based on fundamental rights and therefore the Charter in fact is the part of the same process. 14 rights set forth in the European Patients' Charter have to be universal on the whole territory of Europe, which will make it possible to achieve the provision of the following principles:

- Definition of rights implies the concept that both citizens and healthcare providers realize their own rights and duties. This means that the right itself is in firm correlation with duties and responsibilities;
- The Charter is applicable to every citizen, irrespective of age, sex, religion, social-economic state, education or other factors that may affect the needs of necessary provision of medical services;
- The Charter does not cover ethical issues;
- The Charter defines the rights in conformity with European healthcare legislation. Consequently, it facilitates national adaptation of definitions or their further evolution that will keep pace with scientific knowledge and constant technological advances;
- 14 rights of patients' actually represent fundamental rights, and this is why they have to be recognized and valued irrespective of financial, economic or political restriction and corresponding criteria proceeding form them.
- Recognition and respect of the rights mentioned imply technical/organizational demands and establishing behavioral/professional models and their implementation. Therefore, it becomes necessary to carry out global reforms directed at functioning of national healthcare systems.
- Each article of the Charter is connected with a right defining and reflecting its applicability in every possible situation;

14 Rights of patients set forth in the Charter are the following:

1. Right to preventive measures
2. Right to access
3. Right to information
4. Right to consent
5. Right to free choice
6. Right to privacy and confidentiality
7. Right to respect of patient's time
8. Right to the observance of quality standards
9. Right to safety
10. Right to innovation
11. Right to avoid unnecessary suffering and pain
12. Right to personalized treatment
13. Right to complain
14. Right to compensation.

It must be noted that most of the 14 rights given above are reflected in the Georgian law on Patients' Rights. Each right is being considered with the reference to specific articles or is commented on.

I – RIGHT TO PREVENTIVE MEASURES

"Every individual has the right to a proper service in order to prevent illness".

Healthcare service is responsible to provide the enhancement of the level of citizens' awareness, to make accessible healthcare service guarantees for different risk groups of population free and at regular intervals, as well as the results of technical innovations for everyone.

This right is not specifically declared in the law on patients' rights, although Georgian law on "Health Protection", chapter III "Healthcare system management, organization and financing" and chapter XII "Protection of public health and primary healthcare" consider this issue.

II – RIGHT TO ACCESS

"Every individual has the right of access to the health services that his/her health needs require. The health services must guarantee equal access to everyone, without discriminating on the basis of financial resources, place of residence, kind of illness or time of access to services".

The person, who needs treatment and cannot afford so, has the right to enjoy free service. Everybody has the right to adequate service, irrespective of the fact whether he/she was delivered in a small or big hospital or clinic. Even if they do not have the right of residence, they may receive emergency or urgent out-patient or hospital services. Persons suffering from rare diseases have the same rights to get necessary treatment or medication as those with ordinary diseases.

Georgian law on "Patients' Rights"

Article 11. Equal accessibility to medical services is implemented through state medical programs.

III – RIGHT TO INFORMATION

"Every individual has the right to access to all information regarding their state of health, the health services and how to use them, and all that scientific research and technological innovations".

Healthcare service providers and professionals should supply the patients information related to their needs individually, taking into account their religious, ethnic or linguistic specifics. It is the duty of healthcare services to provide easy access to information, remove bureaucratic barriers, educate healthcare service providers, prepare and disseminate information. The patient has the right to direct access to his/her documentation or medical records, making copies, request explanatory notes on information in those papers, also request to correct mistakes if any. The patients in hospitals have the right to get comprehensive information continuously. Everybody has right to access to information on scientific research, pharmaceutics and technological innovations. Information may be coming from public or private sources but it has to meet the criteria of accuracy, transparency and reliability.

Georgian Law on "Patiente' Rights

Article 16

1. Every citizen of Georgia has the right to obtain comprehensive, objective , timely and understandable information about the factors that are favorable for maintaining their health or affect adversely on their health.

2. The state is obliged to make the information in the first clause of this article available to the citizen through mass media or individually upon their request, in conformity with Georgian legislation.

Article 18.

1. The patients has the right to obtain full objective , timely and understandable information from healthcare providers about the following:
   a) Available resources and the ways to their access, cost and forms of reimbursement;
   b) Patients' rights and duties as defined by Georgian legislation and by-laws of medical establishments;
   c) Intended preventive, diagnostic, treatment and rehabilitation services, risks accompanying them and expected efficiency;
   d) Results of medical investigations;
   e) Other, alternative versions of intended medical services, risks accompanying them and expected efficiency;
   f) Expected results if the intended medical services are rejected;
   g) Diagnosis and assumed forecast, also the course of treatment;
   h) The identity of medical service provider and his/her professional experience.

IV – RIGHT TO CONSENT

"Every individual has the right to access to all information that might enable him or her to actively participate in the decisions regarding his/her health; this information is a prerequisite for any procedure and treatment, including the participation in scientific research".

Healthcare service providers and professionals should supply patients with full information related to treatment or surgery to be carried out; information should include references to risks, possible discomfort, side effects and alternatives regarding treatment or operation. Information should be supplied in time (at least 24 hours ahead) so that the patient can take part in making the choice regarding the treatment. Healthcare service providers and professionals should use the patient's language and find understandable and acceptable ways of communication without technical means. In those situations where patient's legal representative is involved in giving informed consent in the event of under aged patient or if the patient is full aged but is unable to make decision, all efforts need to be taken to involve the patient in the decision making process. Consent must be accepted on the basis of the above. The patient has the right to refuse treatment or change his/her mind in the course of treatment, or discontinue it. The patient has the right to refuse to be informed about his/ her state of health.

GEORGIAN LAW ON "PATIENTE' RIGHTS

Article 22

1. Indispensable condition for the provision of medical service is getting informed consent form from the patient or in the event of his/ her incapacity of making such decision, from his/her relative or legal representative. Informed consent should precede medical service.
2. It is necessary to get informed consent in writing for the provision of the following services:
   a) Any type of surgery, except for minor surgical manipulations;
   b) Abortion;
   c) Surgical contraception-sterilization;
   d) Vascular catheterization;
   e) Hem dialysis and peritoneal dialysis;
   f) Extracorporeal/ in vitro fertilization;
   g) Genetic testing;

h) Gene therapy;
i) Radiotherapy;
j) Malignant tumor chemotherapy;
k) In all other cases if medical service provider considers informed consent necessary.

3. Informed consent while rendering medical services is required if the patient is incapable of making decision independently.

V – RIGHT TO FREE CHOICE

"Each individual has the right to freely choose from among different treatment procedures and providers on the basis of adequate information".

The patient has the right to decide which diagnostic investigation or treatment to take and which primary healthcare physician, specialist or hospital to apply. The obligation of healthcare services is to guarantee the enforcement of this right and inform the patient about different medical establishments and doctors who are able to provide the necessary services according to the results of their activities. Healthcare services should remove all barriers that are in the way of realization of this right. The patient who does not trust the doctor has the right to address another professional.

GEORGIAN LAW ON "PATIENTS' RIGHTS"

Article 8. Patient has the right to choose and change medical service provider any time.

VI – RIGHT TO PRIVACY AND CONFIDENTIALITY

"Every individual has the right to the confidentiality of personal information, including information regarding his/her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his/her privacy during the performance of diagnostic examinations, specialist visits and medical/surgical treatments in general".

All data and information concerning person's state of health and medical/surgical treatment, which the person has to undergo is to be considered personal and thus kept confidential. In the course of medical/surgical treatment, (diagnostic examinations, specialist visits, pharmacotherapy, etc.) inviolability of patient's private life should be particularly respected and should be carried out in an adequate atmosphere with the co participation of those persons whose presence is absolutely necessary (unless the patient straightforwardly states or requires the presence of others).

Georgian law on "Patients' rights"

Chapter V. Right to privacy and confidentiality

Article 27.
Healthcare service provider is obliged to observe confidentiality of patient's information in patient's life as well as after his/her death.

Chapter 28.
1. Disclosure of confidential information by healthcare service provider is admitted if:
   a) Patient's consent exists;
   b) Non-disclosure poses threat to the life and/or health of a third person (whose identity is known);

c) While using information for educational or scientific purpose the patient's identification is not possible;
d) It is in conformity with Georgian legislation.

2. Patient's consent on the disclosure of confidential information related to patient's health state to other persons participating in the process of providing medical assistance can be be implied.

Article 29

The interference into patient's family and private life of health service provider is prohibited unless:

a) It is required to interfere for diagnostic, treatment and care purposes. In these cases patient's consent is necessary;
b) Patient's family members' health and/or life is under threat.

Article 30.

When rendering healthcare services it is admissible that only persons directly involved in the process are present, unless the patient agrees or requires the presence of other persons.

VII – RIGHT TO RESPECT OF PATIENTS' TIME

"Each individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment".

Healthcare service providers are obliged to fix waiting periods, during which certain types of services have to be provided based on specific standards and depending on the quality of speed of medical assistance. Healthcare service providers should guarantee the service accessibility to each individual patient and its availability in the case of being on waiting lists. Each person who requires the above has the right to get consultations on waiting lists within the limits of inviolability of life principles. In case if healthcare services are not able to provide the service within the predetermined period of time, then seeking alternative relatively high quality services must be guaranteed and any sum paid by the patient due to the above reason must be reimbursed within reasonable time. Physicians should devote adequate amount of time to their patients, including the time which is necessary for informing the patients.

The law on "Patients' Rights" does not determine the approaches mentioned above, but we consider that for an employed person in our days, time management is the necessary attribute. Plus, if we take some good practices of time saving tools in Tbilisi private clinics, we will clearly see that realization of this right of the patient is quite realistic.

VIII – RIGHT TO THE OBSERVANCE OF QUALITY STANDARDS

"Each individual has the right of access to high quality health services on the basis of the specification and observance of precise standards".

The right to high quality health service requires that healthcare providers and professionals ensure satisfactory level of technical activities, comfort and humane relationships. The issue implies the specification and observance of precise standards that are determined on the basis of revision and evaluation of public and consulting procedures.

Georgian Law on "Patiente' Rights

Article 5

Each citizen of Georgia has the right to receive medical services from healthcare providers up to the standards that are recognized and introduced in the country.

IX – RIGHT TO SAFETY

"Each individual has the right to be free from harm caused by the poor functioning of health services, medical malpractice and errors, and the right of access to health services and treatments that meet high safety standards".

To guarantee the above right, hospitals and healthcare services should constantly monitor risk factors to make sure that all electrical appliances are safely functioning and that service staff are properly trained. All professionals of healthcare must be fully responsible for the safety of medical procedures at every phase of their provision. Physicians must be able to prevent errors through constant monitoring and training. Healthcare staff should report their seniors and colleagues about risks in order to provide maximum security and avert undesirable results.

Patient's safety is a broad concept that covers precise diagnostics, patient's safety during medical investigation and proper interpretations of results, also, adequate treatment, selection of medications and their efficiency. Despite the fact, that the law on "Patients' rights" includes articles that partly regulate the above issues, we still consider that a specific article (or articles) should be included in the law to ensure patient's safety.

X – RIGHT TO INNOVATION

"Each individual has the right of access to innovative procedures, including diagnostic procedures, according to international standards and independently of economic or financial considerations".

Healthcare services are obliged to facilitate and strengthen researches carried out in bio-medical sphere. Special attention must be devoted to rare diseases. Research results must be adequately interpreted.

The issue is related to a person's involvement into bio-medical research. In this direction the regulation mechanisms are declared in the Georgian law on **"Health Protection", "Medical Practices" and "Patients' Rights".**

Chapter V. Right to privacy and confidentiality

Chapter 28.

1. Disclosure of confidential information by healthcare service provider is admitted if:
   c) While using information for educational or scientific purpose the patient's data are presented so that person's identification is not possible;

Chapter VI. Right to genetic consultation and access to information in gene therapy.

Article 32.

It is only admissible to carry out testing for determining genetic predisposition to the disease or revealing the gene causing the disease, if it serves the following purpose:

b) Scientific research related to health protection.

XI – RIGHT TO AVOID UNNECESSARY SUFFERING AND PAIN

"Each individual has the right to avoid as much suffering and pain as possible, in each phase of his/her illness".

Healthcare service providers are obliged to take all available measures to ensure the provision of palliative treatment and facilitate the access of patient to the latter.

Articles of different laws of Georgian legislation on healthcare consider the above issues, but how necessary it is to include these definitions into the law on patients' rights, has to become the subject of further discussions.

XII – RIGHT TO PERSONALIZED TREATMENT

"Each individual has the right to diagnostic or therapeutic programs tailored as much as possible to his/her personal needs".

Healthcare services should create guarantees for carrying out flexible programs that will be oriented at individual persons to the highest possible extent; besides, there must be certainty that the criteria of economic sustainability will not overwhelm the person's right to health.

Georgian law on "Patients' Rights" specifies in article 5 that every citizen of Georgia has the right to receive medical services up from healthcare providers up to the standards that are recognized and introduced in the country.

Patients are prescribed treatments according to state standards which are regulated by internal rules of standard services and for which patients pay out of their pockets. Regulation of this right of patients requires the revision of financing in healthcare system.

XIII – RIGHT TO COMPLAIN

"Each individual has the right to complain whenever s/he suffered harm and the right to receive a response or other feedback".

Healthcare services should guarantee the enforcement of the above right; Patients must be informed about the procedures related to this right (by the help of the third party) and they must be able to realize violations and file their complaint. The latter must necessarily be responded by the leadership of healthcare services within the fixed period of time. The complaint has to undergo standard procedures and be supported by independent structures and/ or community; besides, it is inadmissible to restrict patient's right to apply to legal actions or come up with alternative decision.

Georgian law on "Patients' Rights"

Article 10

Patient or his/her legal representative has the right to appeal to the court and claim the following:

a) Compensation for property or non-property damage caused by:
   - a. a) Violation of patient's rights;
   - a. b) Medical malpractice and errors;
   - a. c) Drawbacks in the functioning of medical establishments;
   - a. d) Control and regulation conducted improperly by the state;

b) Suspension or annulment of the license to medical personnel;

c) Changes in the state medical and sanitary standards.

XIV – RIGHT TO COMPENSATION

"Each individual has the right to receive sufficient compensation within a reasonably short time whenever s/he has suffered physical or moral and psychological harm caused by a health service treatment".

Healthcare services should guarantee the compensation irrespective of the fact whether the final responsibility for the amount of loss or its cause (starting from lengthy delays ended with professional disregard) is defined or not. The latter is being regulated in conformity with article 10.

Realistic support for the protection of patients' rights

Based on the context of the above listed rights, there exists a certain correlation between patient's social and individual rights when part of rights can be viewed from social angle, as well as from individual. Realization of protection of patient's rights in European region should be firmly guaranteed by active public control and monitoring mechanisms. In this respect it is very important that the law envisages creating patients' organizations and their support, also backing up the activities of professional organizations in the sphere of protection of citizens' rights within the healthcare system. Individual citizens and citizens' organizations should be given the right to carry out activities regarding patients' rights interpretation. Individual citizens' and citizens organizations' function should be implementation of protecting activities. Citizens have the right to carry out their activities to protect their rights in the sphere of healthcare in the following directions:

- Free movement of persons for the purpose to inform public and private healthcare services, observing confidentiality;
- Citizens' rights protection audit in the sphere of healthcare;
- Prevention of possible violations of citizens' rights in the sphere of healthcare;
- Direct interference into facts of inadequacies of citizens' rights in the sphere of healthcare;
- Submission of applications reflecting information, claims and corresponding obligations to public and private healthcare service structures concerned so that they are considered and responded;
- Open, public dialogues between public and private healthcare structures.

Citizens have the right to public policy definition of citizens' rights protection, its implementation and evaluation based on the following principles:

- Principle of bilateral communication through planning or in other words exchanging information between citizens and institution by the definition of action plan;
- Principle of consultation during both phases of policy planning and decision making provided that institutions shall necessarily listens to citizen's public opinion and respond to them, i.e. before making decisions they should consult with them; also the institutions concerned should clearly state acceptable for them decisions that are do not correspond to and differ from opinions expressed by public.
- Principle of partnership, when introducing activities, which implies that every co-participating party/ partner (citizens, institutions and other private or corporate partners) undertake full responsibility and act by the principle of equal party and dignity;
- Principle of shared assessment, implying the concept, that the results of the activities of citizens' organization must be considered as the means for the evaluation of public policy.

In order to introduce 14 rights of patients it is expedient to bring forth for discussion those methodological recommendations that have practical significance in achieving this goal. Interpretation of 14 rights of patients and their application should be implemented at several different levels, namely – European, national and local levels.

Information and education:
Implies informing and educating citizens and healthcare system workers. Promotion of the concept of 14 rights can take place in hospitals, through specialized media means and in other healthcare institutions. It can also be promoted in schools, universities and in all those places where European principles of human rights are generally studied and discussed. Special attention needs to be paid to training and educating physicians, nurses, and other staff of healthcare system and interested parties.

Support:
Support and recognition of rights must be performed in the format of support from the part of healthcare system subjects and public organizations. Here it is necessary to define clearly the role of healthcare service

providers and professionals in the process of support, who will directly implement the realization of the rights in everyday practices.

Monitoring:
The 14 rights set forth can also be used for conducting monitoring of specific states in European region in the sphere of protection of patients' rights that has to be implemented by public organizations, specialized media means and independent authorized structures utilizing adequate means and mechanisms. Monitoring reports must be published at regular times; the current situation must by analyzed and new tasks outlined.

Protection:
Charter may be used for starting up activities directed at the protection of patients' rights for preventive purposes as well as for restoration of already violated rights. The activities mentioned can be shared between citizens' organizations, institutions and such structures as are Ombudsman's institution, ethical committees, alternative specialized commissions, law defending structures and courts.

Dialogue:
Dialogue can be carried out between interested parties on the basis of 14 rights in order to develop programs and policies necessary for patients' protection. Similar dialogues are possible between state bodies, healthcare public and private companies, professional associations and trade unions.

Budget:
Quotas necessary to guarantee patients' rights, share of the amount of funds to be allocated from healthcare budget and other possible means for specific situations, among them contingencies, have to be included into the budget during the process of budgeting. Adhering to quotas or deviating from established norms must be reflected in annual reports.

Legislation:
Patients' 14 rights must be entered into national and European legislation, desirably in full, to ensure legal guarantees of patients' protection and this has to be the major direction and priority of public policy.

Opinions and Proposals on Professional Medical Issues of Georgia

Prepare recommendations for the law on "Patients' Rights".

Medicine is a rapidly developed science and consequently, legislation needs revision and changes to make laws more effective in healthcare system and to regulate doctor-patient relationship.

Public Defender addressed Georgian Physicians' Association on February 23, 2006, to get familiar with the views of national and specialized associations about the current law of Georgia on patients' rights. At the consolidated meeting of professional association that took place in Public Defender's Office (March 28, 2006) a task-force was set up which included representatives from Public Defender's Office, patients' rights center, members of physicians' association and experts.

Patients' duties

Task force has researched and developed a number of documents on the basis of which patients' rights have to be defined. Below are given main principles related to patients' duties:

Regarding medical services rendered to patients the latter is obliged to:

- Supply the physician with full and precise information about any factor related to his/her health including any kind of treatment provided in the past or being provided at the given moment.
- Patient must inform the physician about the changes or symptoms in his/ her health state, including pain or some other signs, if any.
- Inform a physician or a nurse about when the changes or symptom (e.g.: pain) started, what this might result in and what measures can be taken to relieve them, how effective the prescribed treatment is (if such), whether this was the first symptom or a recurrent one;
- Patient should follow the advice and instructions given by the physician. If the patient refuses treatment or does not take advice and instructions, then he/she becomes responsible for the outcome;
- Patient is obliged to discover and inform physician about any details related to his/ her health safety which poses threat to the medical care rendered to him/her.
- Inform physician if he/she did not understand any details regarding treatment or care;
- Inform physician, nurse or any other healthcare provider if he/she is not satisfied by any aspect of care;
- Take part in planning the treatment;
- Supply timely information to medical staff or institution about health insurance;
- Pay any fees for medical services;
- Confirm, turn up or annul appointments, by notifying in advance;

In terms of personal conduct, the patient is obliged to:

- Behave tactfully and cooperate with physician;
- Respect others' rights and property;
- Observe internal laws and regulations, requirements and procedures of medical establishment.

With the purpose of supporting patients' rights we analyzed international documents and Georgian legislation and we consider it reasonable to make changes to the law of Georgia on "Patients' rights" in order to enforce citizens' right to access to qualified medical services.

Recommendations

1. I propose to the Ministry of Labor, Healthcare and Social Affairs to consider the issue on making changes to the law of Georgia on "Patients' Rights", taking into consideration provisions of European Charter of patients' rights;
2. I consider it expedient to make changes to the title of the law of Georgia on "Patients' Rights" and to change it into "Law of Georgia on Patient's' Rights and Duties". Relevant articles and paragraphs to be added.
3. Concepts in the first chapter of the law of Georgia on patients' rights should be given specific interpretation and explanations, also new concepts (with explanations) should be added to reflect 14 rights of patients and their duties.
4. Ministry of Labor, Healthcare and Social Affairs should start active cooperation with medical institute in order to include patients' rights and duties into undergraduate and post-graduate, as well as on-going medical educational programs.
5. At the initiative of the Ministry of Labor, Healthcare and Social Affairs, patients' educational-informational system has to be created that will enable patients to get familiar with their rights for which purpose it is necessary to use mass media means.
6. Facilitate the support of patients' unions and associations through conducting meetings, round tables;

THE CONCEPT OF FREEDOM OF INFORMATION

Transparency and freedom of information are main requirements of democratic state. Freedom of information implies access to information kept in state bodies and transparency of governmental organizations. Under the conditions of full transparency the public does not develop any doubts about indecent actions of public servants. The demand on the access to information concerns any public structure and also private legal entities financed by state or local budget.

According to General Administrative Code of Georgia, every citizen of Georgia, foreigner or legal person has the right to demand all information kept in public establishments unless it represents state, commercial, professional and personal secret. When requesting information, a person is not obliged to state the motive or purpose of obtaining such information.

General Administrative Code of Georgia sets forth specific rules and terms of making available public information. In order to obtain the desirable public information the person should submit the enquiry in writing to the public body concerned. In conformity with article 40 of General Administrative Code of Georgia, public entity is obliged to make public information available immediately or under certain circumstances not later than 10 days. One of the most important components of modern public life is the rapid exchange of information and that is why information should be made available promptly. The latter in the language of law means making information available immediately upon request, i.e. the application should be submitted to the addressee on the day of its registration that shall make information available in compliance with law. It must be noted that all public establishments are obliged to appoint a person in charge of availability of information. If it is impossible to make information available immediately due to its large volume or other reasons determined by law, the establishment can use a 10 day term provided that the applicant is immediately notified about the above in writing.

It is worth noting that the rules mentioned above are binding and they are mandatory for all public entities.

FACTS OF DELAYED ISSUANCE OF PUBLIC INFORMATION AND FOLLOW-ON BY THE PUBLIC DEFENDER

The case of patrol policemen

Citizens of Georgia, Koba Kelenjeridze, Mikheil Gogolashvili and

2009

Gela Gulua working as patrol-inspectors, addressed the Public Defender of Georgia. In the application they indicate that they are dismissed from work but despite their letter of inquiry orders of dismissal and service records have not been given to them.

According to the then effective Code of Laws of Labor , article 45, paragraph 5, employees who were dismissed from work were given their service records on the day of dismissal and in conformity with General Administrative Code, article 39, the person has the right to access his/her personal data kept in public institution. Complying with articles 40 and 41, public institution is obligated to make public information available immediately or refuse to do so.

Based on the above said, the Public Defender considered that Tbilisi patrol police had violated the complainants' rights, by non-observance of the rule of dismissal and availability of the requested information as set by law.

Thus, on the basis of the organic law on "Public Defender of Georgia", article 21, sub-paragraph "b", we filed the recommendation to the main department of patrol police to hand dismissal orders and service records over to Koba Kelenjeridze, Mikheil Gogolashvili and Gela Gulua.

Murad Burchuladze's case

Citizen Murad Burchuladze addressed the Public Defender of Georgia claiming that he had addressed Mtatsminda-Krtsanisi Gamgeoba (local authority office) several times with the request to permit him to get familiar with personal records of deputy head and public servants -members of the Gamgeoba and to obtain copies of necessary documents.

In the letter #b-104 7 dated 02 June, 2006, Gamgeoba refused to satisfy the request on the basis of article 271 of the "General Administrative Code". Article 27, sub-paragraph "h" of the Code specifies: "personal record – is public information which allows person's identification". Article 271 of the Code defines in which case it is considered a personal secret: "The issue whether to consider personal record a personal secret is decided by the person concerned unless the law specifies otherwise". As for personal records of executive officials, complying with article 44, "public organization has no obligation to make known information on personal confidentiality without the person's consent or unless specified by law, i.e. – without court decision, except for personal records of executive officials (or candidates to be appointed). Hence, Murad Burchuladze should not have had any problem in the availability of copies of personal record of the deputy head of Gamgeoba.

Public Defender considered that M. Burchuladze was refused to the access of the desirable information without any grounds and filed a recommendation in conformity with organic law of Georgia on "Public Defender" article 21, clause "b", to Mtatsminda-Krtsanisi Gamgeoba and requested them to respond adequately to the citizen's enquiry.

The recommendation was responded.

Nikoloz Turiashvili's case

Nikoloz Turiashvili applied to Public Defender claiming that he had addressed urban planning service of Tbilisi municipality asking for permission to obtain master copies of documents on the permit of construction at #107, Tsinamdsghvrishvili Street. The required documents were orders of the chief architect of Tbilsi #124 of March 27, 1992 and #20/454 of July 09, 2003, also permission #164 issued on June 03, 1998. According to

the first part of article 2, clause "l" of the "General Administrative Code", public information is "an official document (including drawing, maquette, plan, scheme, photo, electronic information, video and audio recordings) that are kept in public offices, or the information related to employee's occupation that has been received, developed or sent by public offices". Thus, the information requested was of public character and urban service violated the right provided by article 37, part 3 of the Code by not making information available to the citizen, as the article says: "every person has the right to request public information irrespective of its physical form or the form of keeping, also choose in which form he/she needs to receive the information if it exists in different forms. If there is any danger of destroying the master copy of documents, then public entity is obligated to ensure the familiarization with such documents under supervision or present the copy confirmed in compliance with determined rules".

On the basis of Article 21, clause "b" of the organic law of Georgia on "Public Defender" we filed a recommendation to the service concerned to avail Nikoloz Turiashvili of comprehensive information and complete master documents related to construction at #107, Tsinamdsghvrishvili Street, Tbilisi, in conformity with articles 38 and 40 of "General Administrative Code".

The request was satisfied.

The case of non-governmental organization – Strategic Research and Development Center of Georgia

Non-governmental organization – Strategic Research and Development Center of Georgia applied to the Public Defender. The issue concerned the delay in supplying information by Tbilisi municipality.

As it became clear from the submitted materials, on November 24, 2005, December 12, and also January 16, February 6, February 10 and April 12 of the current year the organization mentioned above applied to Tbilisi municipal office requesting information, which has been confirmed by signatures of secretarial office personnel on registration papers.

The requested information referred to the list of state procurement items carried out by Tbilisi municipal office, analysis projected and actual expenditures of the budget, etc.

Despite the fact that the term in which the information was to be made available expired, non-governmental organization – Strategic Research and Development Center of Georgia claimed that none of their requests had been replied.

According to General Administrative Code of Georgia the requested information is of public character, thus, in conformity with Article 21, clause "b" of the organic law of Georgia on "Public Defender" we filed a recommendation to the municipal office of Tbilisi to supply non-governmental organization – Strategic Research and Development Center of Georgia the requested information in the shortest possible time. We also requested to raise the question of responsibility of the person in charge.

We were informed by the municipal office that the requested information was sent to the center but with delay.

Eter Rusishvili's case

The case concerns the delay in supplying public information.

On January 26, 2006, Eter Rusishvili requested information form the Ministry of Environmental Protection and Natural Resources (application #q-42) on the copy of order of the contestants' attestation commission and also information concerning compensation. The applicant did not receive information within the determined term. We checked the case with the secretary office of the ministry and were informed that the letter #q-42 had not been responded.

As the requested information was public one, in conformity with Article 21, clause "b" of the organic law of Georgia on "Public Defender" we filed a recommendation to the above ministry to supply Eter Rusishvili the requested information. We also requested to raise the question of responsibility of the person in charge.

We were informed that the applicant's request was fully met.

Public Defender's Campaign on Freedom of Information

On February 7, 2006, Public Defender's Office held a campaign entitled "Everybody has the right to get familiar with public information existing in an administrative body". The campaign started from Ombudsman's office in which the public defender – Sozar Subari participated himself, the participants were marching down the streets and for the first time ever Sozar Subari displayed the poster in the Tbilisi Mayor's Office. Afterwards the participants moved on to the Ministry of Justice, then to the Ministry of Internal Affairs, Ministry of Environmental Protection and Natural Resources and finally, Ministry of Agriculture.

The reason for the campaign was regular non-observance of terms for public information supply. There were cases reported to Public Defender's Office when citizen' had not been supplied with existing information in the organization at all.

The campaign went on the next day and the posters were put up at public register's office and appeals court and in the nearest future the posters will be displayed in all public institutions throughout Georgia.

20 RIGHT TO EDUCATION

According to article 35 of the Georgian Constitution "Each citizen has the right to education. Freedom of choice in education is recognized". In the international literature on law it is mentioned that in order to enforce this right, the following obligations must be fulfilled: primary education must be provided free for everybody and it must be mandatory; secondary education must be available for everyone; if needed, free education and financial support should be gradually introduced. High education must be available according to one's means; free education should be introduced step by step; for persons with disabilities special programs must be developed; illiteracy must be eradicated.

Only after putting the above major provisions in place it will be possible to protect the right to education completely.

Proceeding from the principles of equality, every person has equal right to education. Educational institutions must be equally available for everybody. Any kind of discrimination is prohibited.

Education is one of cultural rights. According to Universal Declaration of Human Rights "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

Public defender's Office considered the case of a citizen, Mertsia Sulkhanishvili, concerning the right to education and the violation of the freedom of choice in education.

Mertsia Sulkhanishvili's legal representative, a citizen, Maya Muradidi, Mertsia Sulkhanishvili's mother, applied to Public Defender's Office. They had a complaint against the headmaster of school #155, Sergo Durglishvili.

We found out that on September 29 of the current year, M. Sulkhanishvili's mother withdrew the papers on her own wish to move the school, which was refused. After that, M. Muradidi addressed school # 155 to receive papers back but she was refused too for the reason that there was no more vacant place in the school.

We applied to the school headmaster, Sergo Durglishvili for explanation, who told us that if they admitted one more pupil to the class, the quality of studying would get worse, despite the fact that there are three 7th grade classes, and in two of them there are 28 and in one – 30 pupils.

2009

We consider that the response has no legal grounds and it harshly violates child's rights, since the freedom of choice of educational institution is guaranteed by the Constitution of Georgia and by corresponding laws and no restrictions are admitted. Thus, we recommended S. Durglishvili to allow Mertsia Sulkhanishvili to continue studies.

Our recommendation was not taken into consideration. After that we addressed the Ministry of Education and Science to respond and raise the question of S. Durglishvili's disciplinary responsibility. The administrative proceedings were assigned to general inspection. However, based on their conclusion, the minister of education and science issued the order which was a refusal to our recommendation. The important reason for the refusal was the law on "General Education", article 7, according to which "The state provides the right to education in his/her state or native language within the maximum proximity to the pupil's residence". As the order indicates, Mertsia Sulkhanishvili's house is nearer to school #22 than to school #155. Further, we requested those materials on which general inspection based its judgment and it turned out that the drawing of the territorial plan had been provided by school#155 that was confirmed by the school stamp, and the territorial plan did not have any official value, as it was unknown who had issued the plan. The drawing showed three points, one of which indicated #95 Tsereteli Ave. where there is M. Sulkhanishvili's flat, the second point showed school # 22 and the third one- school # 155. Visually, it is hard to say to which school is closer to is M. Sulkhanishvili's residence, as the distance is not indicated in meters. It should also be noted that school # 22 is in Dighomi, in M. Mirtskhulava Str., while both is M. Sulkhanishvili's flat and school # 155 are in Tsereteli Avenue. The representative of Public Defender's Office personally checked the distance and discovered that from Tsereteli #95 to school # 155 there is only one bus stop while to school # 22 there are two stops and some more distance to walk.

In order to double check the drawing, we addressed Tbilisi urban planning municipality service that informed us that territorial plan had been taken out from Nugzar Iakobashvili's book, called "Tbilisi Streets", which is a directory and is of informative character.

Thus, the plan has not been issued by official body and cannot be used as proof.

Finally, Mertsia Sulkhanishvili had to move to another school.

Monitoring results of Ajara (Batumi) Republic clinical psycho-neurological hospital, Kutiri psychic health center named after B. Naneishvili, Tsalka (Bediani) Psychiatric hospital and Poti close supervision psychiatric hospital.

21 PATIENTS' RIGHTS AND THEIR PLACEMENT AND TREATMENT CONDITIONS IN PSYCHIATRIC CLINICS

Introduction

Following the memorandum signed between Public defender and the Ministry of Labor, Healthcare and Social Welfare (2005), public council was established at the Office of Public Defender, which is aiming at implementing public monitoring for the protection of human rights in closed types of institutions.

In November-December of 2005, Monitoring Council and the monitors studied patients' rights and treatment conditions in Tbilisi Psychiatric Hospital named after A. Zurabashvili (so called Gldani Hospital) and in Psychiatric Hospital in Surami.

In 2006 the monitoring group studied the conditions in Ajara (Batumi) Republic clinical psycho-neurological hospital, Kutiri psychic health center named after B. Naneishvili, Tsalka (Bediani) Psychiatric hospital and Poti close supervision psychiatric hospital. 6 Psychiatric institutions have been studied in all, although we need to note that the visits for preliminary studies took place in the boarding house for the patients with disabilities, in Dzevri, as well as in psychiatric unit of therapeutic institution for convicts and prisoners of penitentiary department of the Ministry of Justice. Regular monitoring has been planned in the above institutions and this subject will be discussed in our next report.

Human and patients' rights monitoring is implemented by the members of public council, who have had special training in the monitoring methodology and results analysis. Three types of questionnaires are used for the monitoring (1.for administration, 2. for medical doctors and medium-level staff, and 3. for patients). The methods of obtaining information are: semi-structured interview, observation and photographic documentation.

Monitoring of psychiatric clinics

The law on "Psychiatric Assistance" was adopted on the initiative of health and social protection committee of the Parliament in the summer of 2006. Public Defender's Office and the existing public council took active part in discussions.

2006

The new law is one step ahead in terms of protection of psychiatric patients' fundamental rights. For example, for the first time in Georgia, the solution of involuntary treatment issues has become the prerogative of the court, which in our opinion will reduce violations. The law will become effective from 2007 and serious preparatory work is needed to be done for its implementation.

As monitoring results have shown, since the times of hardship in nineties, certain positive changes in terms of patients' care and improvement of life conditions have been taking place. But in general, the patients are under severe sanitary and living conditions, hospitals do not have sufficient resources to ensure efficient treatment of mentally disturbed patients, patients' rights are being violated in terms of the accessibility to information, contacts with outer world, appeal, the right to protect themselves against inhumane treatment and forced labor. Due to their mental state, they represent a predominantly vulnerable group of our society, their rights being violated.

Mostly patients from low-income families or homeless ones placed in hospitals. That is why, majority of them are chronic patients who do not need active drug therapy and consequently do not require staying in hospitals but due to the fact that, either their relatives cannot take care of them or they do not have any, they stay in hospitals for years without being discharged.

There are considerable differences between hospitals, especially in terms of living conditions. However, it is worth noting, that the concept of human of basic rights of mental patients is the key problem for all such establishments. It can be obviously seen, that the concept of human rights lacks the understanding among medical staff and naturally, among patients and their relatives as well.

Monitoring has clearly revealed that the quality of human rights' protection is directly proportional to the quality of mental health care and patients' treatment; or can be just the contrary to it (which stands closer to reality), the more mentally disturbed persons' rights are violated in psychiatric hospitals, the lower the quality of medical service, standards of treatment, etc. are.

Based on the situation described above, it can be assumed that the results of conducted monitoring in the light of human rights also reflect such basic medical problems as:

- Accessibility to appropriate and professional medical service;
- Possibility of differential treatment;
- Existence of adequate methods supporting rehabilitation and re-socialization;
- Practices of informed consent form, possibilities of treatment refusal and others.

Violations of patients' rights revealed as a result of monitoring

1. Supervision over involuntary treatment

While under involuntary treatment, the patient is unable to make a decision. Thus, the treatment is carried out without the patient's consent "reasoning from patients and public interests".

Monitoring has shown that patient stationed involuntarily is unable to protect his/her own right or to protest against the decision of having been stationed. Thus the fact that patient's involuntary stationing is not considered by independent body causes the violation of patient's right.

Some hospitals (for example, Bediani) require to be discharged of patients getting involuntary treatment, as they are cut off the center and do not have even minimum conditions for safety.

There is another extreme – Poti psychiatric hospital, according to the style of work and atmosphere in which patients are kept is more like a prison than hospital.

2. The right to receive information on treatment and disease

This right is violated for different reasons. For example, the relevant social services are not properly developed, the so-called "chronic" patients are staying in hospitals for years (e.g. 18 years), as they have "nowhere to go". Not only treatment terms are violated, but also the patient gradually finds him/herself in a "vicious circle": such lengthy isolation causes the loss of social contacts and the skills for living independently and thus, the so-called "hospital addiction syndrome" is being developed; a person is completely deprived of the ability and the wish of living outside the hospital. Therefore, what we get is the state of helplessness and despondency.

Hence, the patient's right – to get proper and efficient treatment in his/her family and close to the place of residence – is grossly violated.

The main form of treatment is drug therapy, but the choice of drugs is poor. Other forms of treatment such as psychotherapy, socio-therapy, art therapy, work therapy – are not included in service package, except for one – in Batumi psychiatric hospital art therapy is functioning rather successfully.

Patients are roughly aware of their rights, although in Batumi and Kutiri hospital there are information boards. In the main administrative building of Kutiri hospital the list of patients' rights is displayed. Nobody carries out special educational work, and again the exception is Batumi psychiatric hospital, where social worker is actively involved.

Hospital staff does not consider that patient should have understandable information about his/her health and treatment. In a number of cases they even say that this kind of information badly affects patient's health.

3. Rules on applying compulsory measures and responding to complicated situations (bylaws)

There are no bylaws that would regulate the relationships between patients and medical staff in terms of their duties and responsibilities in almost any of the hospitals. Wherever there is, it simply has a formal character. For example, in Kutiri: the majority of medical staff asserted that internal rules did exist, but nobody knew what they regulated, when or who they were drawn by and who was in charge of making changes to them. The monitoring has shown that in most hospitals, no written rules on dealing with problematic situations exist, and because of this, medical staff treats every individual case on their own accord, using their own experience, or they just carry out verbal instructions. This is why, there was no uniform answer regarding to how they react in the event when the patient is in the state of excitement or in any other extraordinary situation, on whose orders the patient must be fixated and for how long, whether it is possible to let the patients contact others or use the lavatory when they are physically constrained.

4. The right to be protected against severe and inhumane treatment

Due to insufficient financing, the existing conditions in hospitals are humiliating and hard for both patients and medical staff. Medical staff offices as well as wards are amortized and need repairs. Some repair works have been carried out in some of the hospitals, but they are incomplete and poorly performed.

As we have noted, there are no written rules on the use of forced actions, and the staff has had no training in this field.

The facts of injuries are quite frequent when applying compulsory measures, and such facts are not registered anywhere. Consequently they are not subject to analyzing.

5. Freedom of relationships

Patients in hospitals have no freedom of relationship that can be seen from the fact that they have no right to send or receive correspondence without being checked. The freedom to be visited by psychologist, have personal contacts or use telephone or mail services, watch TV and listen to the radio, read newspapers is refused to them. Patients' letters, often without their permission, are read by staff or they never reach the addressee.

6. Right to take part in elections

Public council of monitoring has carried out control over enforcement of patients' right to vote. Monitoring has shown that in the elections of self-governing bodies – Sakrebulo, on October 5, 2006, patients' right to vote were restricted in hospitals. Patients were unable to vote.

It is noteworthy that the right to vote is directly restricted by the system error, which has been made for instance in Tbilisi M. Asatiani hospital – patients' hospitalization procedure does not require their IDs, which directly hampers making election (special) lists in hospitals.

7. Public control

There is no culture of public control, as such. Public control, if any, carries a spontaneous character that results in the fact that hospitals are not equally paid attention to and this makes significant difference in the accessibility to medical services, quality, living conditions and enforcement of rights.

8. Right to appeal

Every patient should have the right to appeal procedures applied to him/her in conformity with internal rules. In those hospitals that were monitored, there is no mechanism for appeals and that is why, patients' claims either are not taken into account at all or they simply reach the "director's ear". Non-existence of such mechanism leads to violations of patients' rights.

Recommendation

Implementation of recommendations is a complex task and its solution requires joint efforts of governmental and non-governmental organizations, private companies, media and public

To the Government of Georgia:

To increase financing, in order to approach medical service and living conditions in psychiatric hospitals to international standards.

To the Ministry of Labor, Healthcare and Social Welfare:

To develop the concept of de-institutionalization and a strategic plan: shift the focus from closed type institutions to community-oriented services – by creating a consistent chain of psychiatric healthcare services.

Increase payroll fund of medical personnel;

To add patients' rights to the curriculum of post- graduate education;

To enhance management skills of the heads of psychiatric hospitals;

To elaborate appeals procedures and introduce the mechanisms in hospitals.

To the administration of psychiatric hospitals:

The recommendation implies that the management pays utmost attention to improvement of living conditions and communications. (Heating hospitals, bath, bed sheets, warm clothes and footwear, hygienic articles (soap, toilet paper, etc.), sufficient crockery (cups and saucers, spoons, etc.). need to be provided. Patients who stay in hospitals for years do not have items of furniture such as bedside tables/ wardrobes for keeping their personal belongings; neither pens and paper, books, newspapers, telephone, television, etc.);

Openness and transparency should be supported.

It is necessary to develop appeals procedures.

Encouragement of the Bar, both ex-users and professionals / e.g.: projects providing court hearings on severe violations of rights/Involvement of patients/users into social life of the hospital.

To draw up draft budget necessary for medical services and living conditions compatible with international standards and submit it to the Ministry of Labor, Healthcare and Social Welfare.

To arrange regular meetings of the heads of psychiatric hospitals in order to discuss problems and share experiences.

Administrations should necessarily develop the bylaws that would regulate the whole spectrum of standards of differential treatment and living conditions, among them are the following:

- Admission and discharge of patients;
- Management of cases of aggression and excitement (dosage of psychotropic drugs, procedure of fixating the patients).
- Principles of active treatment, terms;
- Rehabilitation using various methods;
- Cases of involuntary treatment;
- Regular check-up of patients to reveal physical injuries and identify their origin (when stationing patients, from the part of police);
- Provide patients' contacts with outer "world".
- Supply patients with information about their own rights;

Non-governmental organizations and donors should be requested to:

Prepare and conduct training for medical personnel on the issues of human rights and medical ethics;

Prepare and conduct special training for medical personnel – "How to cope with patient in the state of excitement and aggression", also treatment principles and methodology, etc.

Prepare and conduct training for patients' relatives and guardians as well as for patients (under remission) on the issues of patients' rights, raise awareness in public campaigns against existing problems.

22 LEGISLATIVE PROPOSALS

The legal center was established in 2006 at Public Defender's Office by the support of UNDP and Norwegian government. After the establishment of the center, the analysis of human rights legal issues has been dealt with more emphasis. The center carries out the analysis of draft laws as well as of laws currently effective. Based on the analysis, the center drafts conclusions and prepares the issues regarding existing controversial points in the legislation. With regard to several laws and draft laws, we have submitted our conclusions to the Parliament. These are the following:

1. We think our comments on the draft law submitted to the Parliament of Georgia deserve attention. The above refers to the implementation of changes to the law on "Imprisonment". Paragraph 1 of article 89 of the law does not envisage the number of short-term meetings of prisoners. Our office has studied international practices and prepared legal proposal regarding the issue. We will present our views and comments on making changes to the law of Georgia on "Imprisonment".

We share the opinion that, relieving judges from the excess function will simplify the procedure for prisoners to get permission for meetings. However, it should be noted that the in the changes to article 89 as are presented in the edited version of the law of Georgia on "Imprisonment", there is no consideration of minimum number of short-term meetings. The article in question may get an incorrect interpretation from the part of the enforcement agent (prosecutor, investigator) and the prisoner may not be allowed the right of short –term meeting, as the article does not define the exact number of meetings and the wording "can be given" can be practically understood as "can or cannot be given". It is also necessary to take into account that pursuant to article 162 of the Code of Criminal Proceedings, the term of imprisonment for the convicted and pre-trial prisoners can be extended up to 9 months and if in this period, the prisoner is not given the permission on short-term meetings, this will cause serious aggravation of prisoners' living conditions and the deterioration of their state.

As you know, the initial principle of prisoners' re-socialization and rehabilitation is the possibility of having contacts with their family members and close relatives through short and long-term meetings with them. Prisoners' contacts with

outer world significantly favor to the improvement of their welfare and their rehabilitation and reintegration into the society.

According to recommendations regarding 2 prison regulations (2006) of the European Council Committee of Ministers and UN standard rules on prisoners' treatment it is stated that prisoners should have the possibility to have regular contacts with their families, wife/partner, children and friends with good reputation through their visits. The above refers in particular to those persons, towards whom the court verdict of being guilty does not exist and according to article 40 of the Georgian Constitution and article 10 of the Code of Criminal Proceedings of Georgia these persons are plead innocent.

As for prisoners under preliminary detention, the committee against torture called upon the government to "ensure meetings with close relatives considering the issue as the matter of principle", without prosecutor's, investigator's or judge's permission[10].

Besides, it must be noted that the permission on meeting cannot be given within one day and the prisoner's relatives have to visit prosecutors or investigators several times, as they have to first submit the application on permission of the meeting, then in a few days they have collect the permission, which finally must be presented to a penitentiary establishment. All the above is related to costs, especially when prisoner's family members live in different regions of Georgia, it is rather difficult for them to make several trips to the prosecutor and due to the above procedures the family may lose the opportunity of meeting the prisoner, which will directly affect his/her state.

Based on the above, it would be reasonable if the issuing of permission for meeting for prisoners under preliminary detention will be entitled to the administration of the penitentiary establishment concerned.

Besides, we consider that the law has to define the number of short-term meetings, by all means, that will rule out the restriction of this right of prisoners. Thus, I consider it reasonable that paragraph 1, of article 89 of the law of Georgia on "Imprisonment" guaranteed at least two meetings per month for prisoners.

2. We must necessarily note the important problem which is connected with the independence of judges. Chapter XXXIX of the Criminal Code of Georgia provides the types of crimes of public servants. Among them, according to the first part of article 336, **passing an illegal sentence or any other court decision is penalized or punished by deprivation of liberty for four to six years, dispossession of the right to work for a period up to three years.**

   According to part two of the same article, passing an illegal sentence if the penalty is deprivation of liberty, shall be punished by deprivation of liberty from five to nine years, dispossession of the right to work or conduct some activities for a period up to three years[11].

   Under illegal sentence or other premeditated issuance of court decisions the article implies all court acts, among them verdict, ruling, and resolution, that have not been passed with the consideration of factual circumstances of the case and do not contradict material or procedural legal requirements.

   The responsibility for issuance of premeditated illegal sentence or for any other court decision under criminal, civil and administrative Code can be laid on the judge.

[10] Committee against torture " The report of the committee against torture to the government of Georgia about the visit of the European Committee of inhuman or offensive treatment and punishment during November 18-28, 2003, and May 7-14, 2004", article 134.

[11] Criminal Code of Georgia, article 336

According to the second part of article 336 of the Criminal Code of Georgia, same action if it refers to the illegal decision of a judge concerning deprivation of liberty shall cause grave consequences for bearing the responsibility. Under illegal decisions are implied illegal court acts that have been issued on criminal case.

To a certain extent, the article in question contradicts Georgian Constitution and the norms of Code of Criminal Proceedings and directly abuses the principles of independence of judges.

Pursuant to article 82 of the Constitution of Georgia, judicial power is independent and is performed only by courts.

Based on the above, the existence of article 336 of the Criminal Code, may pose a serious threat to the independence of the court.

According to the Code of proceedings of Georgia, the convicted person, victim, civil plaintiff or defendant have the right to require the hearing of the case in no fewer than two court instances. In appeals court the grounds for hearing the case is regional (city) court decision or other resolution, against which the suit is lodged referring to justifiability and legitimacy. Also, the appeals court sentence, ruling or any other issuance of the court can be appealed by the principle of the reversal of judgment, if in the appellant's opinion it is unjust.

Hence, the hearings in appeals and cassation instances provide the possibility to improve the erroneous judgments in higher instances. At the same time, pursuant to article336 of the Criminal Code of Georgia, under illegality it is implied: "the violation of procedural norms by a judge or judges, such as hearing the case without the defendant's presence, when such presence was obligatory, deprivation of the right of defense, refusal of hearing of the proposed evidences without any grounds, or if the verdict is passed by the group of court officials, who did not have the right to do so, when the case is not suspended by the court even when there are legal grounds for it, etc. Also illegal sentence can be considered the one which is incompatible with existing evidences, giving incorrect qualification to the crime, taking no account of the dangers of criminal actions while passing the sentence, etc. As for civil law, the illegality can be expressed in groundless refusal to the plaintiff's requirement, or on the contrary, satisfying them without sufficient grounds; incorrect definition of the sum to be paid; illegal reinstatement or dismissal from work; in essential violations of civil law, etc. As for the acts passed on administrative violations, if such act is illegal, and is premeditated by the judge, then depending on the circumstances, it is not excluded that the case is put to criminal trial. For example, it will be illegal if the facts of the case are distorted to erroneous administrative action, or is imposed such penalty, that is not envisaged by legislation, or does not correspond to the character of those erroneous actions, etc[12]".

As we mentioned above, the prerogative of checking the legality of court decision belongs to appeals and cassation courts, while the existence of article 336 creates the possibility of revision of the court decision by prosecutor's office as well, which makes the prosecutor's office the 4th instance body, that violates the principles guaranteed by article 84 of the Georgian Constitution, pursuant to which nobody has the right to make the judge accountable for a specific case and all those acts that restrict the independence of the judge are considered nullified.

The existence of article 336 of the criminal code of Georgia infringes the principles set forth in article 8 of Criminal Code of procedures of Georgia, which stipulate that court power is not accountable before legal and executive power. The fact that illegal sentence passed by the judge is being investigated by prosecutor's office, which is the constituent part of executive power also contradicts the above principle. The situation

[12] Private part of the Criminal code, 2005. Authors: Mzia Lekveishvili, Gocha Mamulashvili

becomes paradoxical, as according to procedural code, court power controls the legality and justifiability of decisions of investigators and procurators. Accordingly, when the latter is authorized to check the legality of made decisions by a judge, infringes the principle of power distribution[13].

Besides what was indicated above, articles 336 gives the opportunity to the Public Prosecutor's Office under existing personal or other interest, to influence the judge by posing threat of bringing a criminal action against him/her and interfere in the enforcement of justice, that in its turn, threatens the principles of independence and supremacy of court power.

On the other hand, article 336 of the Code of Criminal Procedures of Georgia – passing illegal sentence or other court decisions is expressed in premeditation that has to stand apart from court error, as the latter does not constitute the crime. "If the illegal sentence that is passed is due to the fact that the judge has no necessary professionalism or his indifferent attitude towards the evaluation of evidences or other, in this case, depending on the circumstances of the case, a disciplinary action can be brought against the person, or his/her action can be qualified as occupational indifference."[14] Hence, despite some existing controversial norms mentioned above, between Georgian Constitution and the Code of Criminal Procedures of Georgia, it must be noted that, at none of the stages of the procedure, the participant of the process, be it plaintiff or defendant, detained or convicted, is guaranteed against the premeditated illegal decision due to the judge being biased or having other personal interest and this can be followed by heavy consequences such as illegal deprivation of liberty, etc. In fact, if not the existence of article 336 of the Criminal Code, according to current legislation, the defendant who became the victim of premeditated illegal sentence, has no other effective means to protect his/her rights by starting investigation against the illegal sentence passed by the judge. Besides, it should be noted that if the investigation and then the court establish the real facts of premeditated illegal sentence or any other decision, then this can serve the grounds for the revision of illegal sentence or decision against the defendant due to newly discovered circumstances, that will undoubtedly serve the elimination of admitted illegality by justice and prevention of such in the future.

In our opinion, it would be desirable that the article mentioned worked more effectively in practice, which today is rather difficult, as under the existing situation in the court system, justice does not practically represent an independent mechanism and unfortunately is under the influence of Prosecutor's Office, which is why illegal sentence may be passed by them. Hence, it is natural, that the Prosecutor's Office will not start investigating objective reasons for illegal sentence if it has been the decision of a judge under immediate influence and pressure of the prosecutor.

It is interesting to know, what guarantees the judge's independence in foreign countries. In France such guarantee is the Constitution of France, pursuant to which, it is the President who takes care that justice does not fall under anybody's influence and pressure. Besides, judge's independence is also guaranteed by the law of 1958 on "The Status of Magistrate" which is of organic character and no law or legislative enactment can contradict it.

As well as that, judges in France get lifetime appointment and they are irreplaceable, which is one of the grounds for their independence. Also, the guarantee of judge's independence is delimitation of judge's position from administrative nomenclature and the introduction of the principle of specialization, which means the prohibition of rotation of the staff from government into court system.

There are other factors that guarantee judge's independence too. First of all, after the judge has been appointed, no disciplinary sanctions may be applied by the government. The supervision over their discipline is carried out by the supreme council of the Magistrate's office. A number of rights that judges enjoy are based on the principle

[13] Paragraph 5 of the Constitution of Georgia

[14] Private Part of the Criminal code, 2005. Authors: Mzia Lekveishvili, Gocha Mamulashvili

that they are irreplaceable, implying that it is inadmissible to move or promote a person from one position to another without the judge's consent. The independence of court instances is also determined, which implies that neither legislative nor executive power have the right to control the process of making court decisions or resolutions, by appealing to courts, requesting or giving orders. The more so as these bodies are not authorized to undertake the function of bearing the responsibility for dispute resolution, since it represents the competence of judicial power. It is inadmissible to apply disciplinary sanction to judges for the decisions they make. Disciplinary sanctions are applied in exceptional cases and are adopted collectively by the Supreme Council of Magistrates. However, to establish the judge's culpability when dealing with illegal decision, it is necessary to disclose the secrecy of judge's retirement to the chamber of deliberation and determine which judge is culpable in making premeditated illegal decision among the chamber. Practically it is rather difficult to carry out the above procedure, although, in any case, it is inadmissible to apply disciplinary measures, unless illegal sentence has been annulled by a higher instance court.[15]

International bodies also indicate the necessity of independence of judges and their accountability before independent bodies. Namely, in the document of the UNO "Basic Principles on the Independence of Judiciary" it is stated: "No irrelevant or illegal interference shall take place into court procedures, decisions made by courts shall not be subject to revision. This principle *does not restrict court supervision or alleviation or change of convicted sentences by competent authorities" (principle 4).*

Similar request is included in the European Charter adopted under the aegis of European Union on the status of judges, which states: "Everybody must enjoy the right to lodge a complaint to an independent body without any special formalities against improper enforcement of judicial acts". In the event of legal violations or non-enforcement of duties by the judge, the body will forward the case to the disciplinary body or recommend the body which is authorized to delegate such appeals.

The Charter takes into consideration the possibility of a person to appeal to the independent body (and not to the Prosecutor's office or any other executive body), if the justice is improperly enforced. The body has to be able to delegate the case to such disciplinary body, which is capable to exert jurisdiction on judges, or it has to be such organ, that is awarded authority by the internal state statute to do so.

3. We have also put forth the proposal concerning changes to the law of Georgia on "Bankruptcy". Pursuant to the law, in the event of bankruptcy the priority of compensation shall be given not to citizens, but to the state interests and other legal persons. The aim of the legal proposal is to ensure human rights defense by making changes and additions to the law of Georgia on "Bankruptcy Proceedings". This particularly concerns compensations to physical persons based on first priority lists for the losses they incurred due to company bankruptcy.

Article 18 of the "Law on Bankruptcy Proceedings" considers, that in the event of bankruptcy the court shall draw up table of declared requirements (bankruptcy table) in following regular succession of requirements: a) requirements for wages and rates of wages for three months before the opening of bankruptcy proceedings, if these requirements are not to be satisfied at first in accordance with Article 19.

a [1]) taxes and dues subjected to payment before the opening of proceedings, as well as the requirement by international organizations.(14.02.2002 N 1286)
b) not guaranteed requirements, including requirements by the banks for repayment of invested pecuniary credits and requirements by the supplier against the enterprise.
c) requirement by the organ of social insurance, medical or pension funds as well as by the unemployment insurance.
a) taken out (14.02.2002 N1286).
e) other requirements

[15] Justice in France S. V. Bobotov.

At the same time, it must be noted that the 2nd part of the same article indicates: *every next requirement shall be satisfied after the previous requirement is fully met. If the bankruptcy mass is not enough to fully satisfy one kind of requirements then the kind shall be met in proportion to their amount.*

The 5th part of article 18, under "other requirements" implies the compensation of material losses by the company to the population, incurred during production.

As is seen from article 18, the state gives priority not to the protection of citizens' (having no citizenship and foreigners/aliens) interests towards whom the damage was inflicted by the company, but to its own interests. The state implies that physical persons are compensated after legal persons settle the taxes and dues, make international and bank settlements as listed in the second and third state priorities. Indemnity of physical persons is implied under paragraph 5 of the first part of article 18 "and other".

We consider that indemnity requirement for physical persons should be a separate paragraph in article 18 and the priorities should precede paying out state, international organizations or bank debts. Thus, clause "a" of the first part of article 18 can have the following wording: "***requirements for wages and rates of wages for three months before the opening of bankruptcy proceedings, if these requirements are not to be satisfied at first in accordance with Article 19; also requirement of compensation of physical persons in the event of inflicting damage".***

Besides, clause "c" of the 1st part of article 18 which speaks about requirement by the organ of social insurance, medical or pension funds as well as by the unemployment insurance, should follow clause "a" and be inserted instead of "a1". This will enable the state to recognize the priority of human rights and freedoms, in particular, the right to property of a physical person.

4. Law of Georgia on "Road Safety" considered readjusting right wheeled cars to left wheel.

We would like to express our opinion on the above:

Changes proposed by draft law deal with using the principle retroactive force of the law which violates the so called factor of trust, that is guaranteed by paragraph 5 of article 42 of the Constitution saying that no individual has to answer for an action if it was not considered a violation of law at the moment it was performed. Citizens should believe that their lawful act is not later followed by undesirable legal consequence which was impossible to envisage at the moment it was performed.

In the law of Georgia on "Road Safety" of 1999, which regulates road traffic rules in Georgia, nothing is said about the prohibition of driving right wheel cars. Besides, in the third part of article 9 of the law, concerning the registration of transport means, its constituent parts, additional facilities, spare parts, it is indicated: "Registration of transport means that are home-made or assembled with aggregates or other components, equipped with additional details is prohibited unless provided the documents certifying safety requirements. Thus re- modeling the right wheeled car into the left wheeled requires not only its technical reconstruction but its registration as well, which is connected with additional costs. Besides, according to article 11, most of right-wheeled cars were to undergo the state technical inspection at regular periods of time. The inspection was to prove that the cars with right steering wheels were technically in good order. Part 13 of article 21, specifies that exploitation of remodeled transport means that have not been registered and undergone state technical inspection is prohibited. According to additions made in 1993 to UNO convention of 1949, 1968 on "road traffic" (Geneva), Vienna convention on "Road signs and signals", "Convention on recognition of the type of transport means", etc., recognize certain models (according to the position of the wheel), and do not recognize those transport means to which changes are made by hand to brakes, steering and electronic systems.

We welcome introduction of uniform standards of traffic in the country. But we need to note that the prohibitions mentioned above should be based on serious investigation, independent experts' conclusions, that will enable us to judge about threats that cars with right steering wheel may pose to traffic.

Besides, it is worth mentioning the fact that Georgia is the member of International Automobile Federation (FIA), which determines very strict automobile standards in terms of traffic, road safety. FIA admit vehicles both with steering wheel on the right and on the left, but prohibits such changes in the construction of brakes, steering and electronic systems that are not manufactured in factories. Besides, remodeling steering wheel (non-manufactured) may become the reason of deterioration of technical conditions of vehicles.

Based on the above, we consider that if changes take place in the future, they should concern vehicles with wheels on the right in Georgia, but before banning such vehicles, sufficient period of time must be allowed. Besides, the changes indicated above must not refer to vehicles that are already under exploitation.

5. Another change that has been prepared by Public Defender's Office, concerns additions to be made to article 69 of the Criminal Code. The defendant or his/her legal representative as well as participant parties should have the right to get familiar with materials and evidences at any stage of the case trial.

   Article 69 of Criminal Procedure Code provides the list of rights for defendants and his/her legal representative. Among them are – the right of defendant to get familiar with copies of materials and physical evidences after the indictment has been submitted to court. The current Code does not indicate the right of the defendant to get familiar with materials and physical evidence in that case when the criminal case investigation is being suspended at the stage of preliminary investigation. Thus, the defendant, who questions the objectivity of case, is unable to get familiar with materials (investigation minutes, material evidence, etc.) that the investigation body has obtained independently, without the motion of the defendant. Thus, the defendant is deprived of the possibility to appeal the case on suspension of investigation in the court with substantial argumentation.

   The aim of the draft law is to make amendments to article 69 of Criminal Procedure Code, which will ensure the right of defendant and his/her family member to get familiar with materials (minutes of proceedings, physical evidences, etc.) at the stage of preliminary investigation.

   Amendments to be made to article 69 of Criminal Procedure Code imply allowing defendant and his/her family member to get familiar with copies of materials and physical evidences at the stage of preliminary investigation.

6. Public Defender's Office reviewed the draft law on making amendments and additions to "State compensations and state academic scholarships". We have the following legal comments in this regard:

   The draft law indicates that clause 3 of article 8 of the law must have a new wording, namely: "The norms stipulated by this article also refer to the employees of financial police if they have been in service for minimum of 20 calendar years (minimum four years in financial police) and civil aviation for minimum of 25 years of service". It must be noted that, the latter requirement cannot be fulfilled as financial police has been in existence for only 4 years. Accordingly, those who will be dismissed due to retirement in compliance with article 20, clause "a" the law on "Financial Police", will not get pension, which is a harsh violation of social right.

   Thus, we consider that reference to the law regarding a four year service in the Financial police at this stage is not relevant and must be deleted from the law.

7. we think it is necessary to make a number of changes to the law on Public Defender in order to define its functions in a more detailed and precise way. We would like to mention hereby that the aim of legal changes is not to increase the functions of Public Defender and grant more authority. The necessity of making these changes is stipulated by those specific cases that are being reviewed at Public Defender's Office.

   Changes proposed by us to article 18 of the organic law on "Public Defender of Georgia", will facilitate the implementation of monitoring and remove the possibility of creating obstacles to the maximum possible extent. The changes proposed to be made to this article concern the following: the authorized representative of Public Defender will be entitled to carry out examination. The same article will stipulate the change which will entitle the Public Defender or its authorized representative **to require and obtain all necessary information, documents or other materials immediately, not later than within ten days** from state and local self-governing bodies, state and private enterprises, organizations and institutions, also from executive official and legal persons.

   Legal changes also envisage the right of Public Defender or its authorized representative to **require and obtain written explanation of issues under investigation from any executive official, public servant or their counterpart.** The amendment mentioned is based on practical activities of the Public Defender's office. Different from corresponding articles of the current law, the circle of those persons, who are authorized to supply information, has expanded as it currently includes public servants and their counterparts.

   The next amendment is justified by the fact that very often, in Public Defender's experience, it is problematic to invite a specialist and there is no easy access to military subdivisions, places of detainment, preliminary confinement and other.

   The proposed amendment also refers to the right of Public Defender or its authorized representative to get familiar with and make copies of materials, make abstracts of records from criminal, civil and administrative cases , towards which the resolutions are already effective.

   One important change is the right of Public Defender or its authorized representative to use audio, video or any other technical means when enforcing legal authority.

   The change to the law on Public Defender refers to an important issue as is **confidentiality of a meeting of Public Defender with the detained, pre-trial and convicted persons. The above change is based on the research concerning the protection of the right of confidentiality between the defender and prisoner. The research considered not only foreign practices, but also the practices of those international organizations, that regularly meet prisoners and the detained persons (CAT,CPT,ICRC, etc.)**

The issue below concerns a very important problem. In 2005, Georgia ratified "The facultative protocol of convention against torture and other cruel, inhuman or degrading treatment or punishment". Article 17 of the protocol specifies the mandatory implementation of protocol provisions within a year after the date of ratification at the national level, which implies creating one or several mechanisms of preventive measures at local level. Article 18 of the protocol states:

1. **The parties shall ensure functional independence of preventive mechanisms, as well as the independence of the personnel.**
2. **The parties shall take all necessary measures to ensure professionalism and relevant skills of experts of national preventive mechanisms. The parties shall also ensure maintaining gender balance and proper representation of ethnic or other minorities.**
3. **The parties shall ensure obtaining necessary resources for proper functioning of national preventive mechanisms.**

4. **When creating preventive national mechanisms, the parties shall take into consideration the basic principles of national institutions in the sphere of protection and strengthening human rights.**

The additional protocol requires special attention from government bodies "connected with the status and principles of state organizations, so that human rights principles are protected and identified". Otherwise, this practice is known as "Paris principles", which introduces necessary criteria for effective functioning of national institutions of human rights and is an effective resource for preventive national mechanisms.

The activities of Public defender are based on general provisions of Paris principles that will make the public defender's work more efficient regarding eradication of torture as provided in the protocol. Besides, the requirement of the additional protocol is to have a firm foundation for functioning of the national preventive bodies, so that there was no possibility of their dissolution or any chances that the state would change their mandate. According to Georgian legislation, "Declaration of emergency or war does not cease the activities of public defender and does not restrict his authority" (article 11), that complies with the requirement of the additional protocol of the UN convention against torture.

Based on protocol requirements, we consider that Public Defender's Office can undertake the functions of national preventive mechanisms in Georgia. As the functions of national mechanisms provided in the protocol such as – ***regular control of prisoners in order to strengthen protection against torture, and other cruel, inhuman or degrading treatment or punishment of prisoners; recommend the bodies concerned on improving prisoners' conditions and treatment, in order to avoid torture, and other cruel, inhuman or degrading treatment or punishment taking into consideration the relevant norms provided by UN; present proposals and comments regarding current legislation or draft laws,*** article 19 of the organic law of Georgia on "Public Defender" stipulates the above as one of the main functions of Public Defender. We would like to note hereby, that Public Defender is independent in his actions and enjoys immunity (article 5). Proceeding from the requirement of article 35 of the Protocol, in order to implement the functions independently, members of national mechanisms have to enjoy same privileges and immunity too. National mechanisms have the right to regularly visit penitentiary establishments and file the recommendations on the improvement of conditions and treatment of prisoners. National mechanisms are also granted additional mandate to submit their proposals and implement observations over the existing circumstances and legislation, exert their influence on the perfection of the legislation.

Besides, granting monitoring function to Public defender will be justifiable from financial point of view. As creating a new institute will require certain expenses from Georgia, while when Public Defender can be delegated such function creates the possibility that the state budget allocates certain funds just for monitoring purposes.

Increasing Public Defender's functions in the sphere of monitoring does not exclude establishing ***another body in the future*** by the state according to the obligations of the Protocol that have been undertaken by the state.

Taking into consideration international practices, we consider that Public Defender's report should be presented to the Parliament once a year – in March. Hence, the changes must be taken into account in the first part of article 218 of Parliament Regulation of Georgia.

23 CONSTITUTIONAL CLAIMS OF PUBLIC DEFENDER

1. In accordance with article 39, sub-paragraph "c, of the Organic law of Georgia on Constitutional Court of Georgia, Public Defender's Office prepared and lodged 2 constitutional suits.

On June 13, 2006, citizens addressed Public Defender collectively. They were represented by Suliko Mashia. The claimants indicated that they were the owners of "Georgian United Telecom" JSC . 95% of shares of the company are owned by one person, and according to the arbitrary act they are forced to sell their shares to the person mentioned. The citizens consider that their right to property provided by Constitution is infringed. Public Defender studied the case and considers that the contentious case is in contradiction with Constitution and restricts the citizens' rights without the pressing social need recognized by the Constitution.

The restriction mentioned above implies in the first place the existence of pressing social need, which does not exist in this specific case.

Right to property is also strengthened by a number of international documents ratified by the Parliament of Georgia, among them the Protocol of European Convention on human rights and fundamental freedoms. According to article 1 of the Protocol, "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

On June 24, 2005, Parliament of Georgia adopted the law on making amendments and addenda to the law on "Entrepreneurs". In accordance with paragraph 14 of article 1, 533rd article was added. By the arbitrary act the owner's right to possess and dispose property recognized and guaranteed by the Constitution is infringed, due to arising of the obligation for the shareholder to sell the shares under his ownership.

In accordance with clause 1 of article 6, Constitution of Georgia is the supreme law of the state. All legal enactments shall be compatible with the Constitution.

Based on the above, we demand to recognize article 533 on entrepreneurs as non-constitutional, as it contradicts paragraph 1 of article 21 of the Constitution of Georgia. Along with this, pursuant to paragraph 5 of article 25 of the organic law on Constitutional Court of Georgia, before making the final decision on the case, we demand to suspend the enforcement of arbitrary act, as the consequences might be irredeemable.

2006

2. On June, 2005, Kutaisi former Joint Stock Company "Kolkhuri Abreshumi" creditors applied to Kutaisi regional department of Public Defender. The citizens claimed that while working for "Kolkhuri Abreshumi" JSC, they received occupational injuries for which "Silkimpex-Georgia" JSC (one of the legal successors of "Kolkhuri Abreshumi") were to pay out pensions by Kutaisi court decision of December 3, 2002. Enforcement bureau was not able to execute the court decision for the reason that "Silkimpex-Georgia" JSC had tax arrears and was imposed a lien. Kutaisi regional department of Public Defender, on the basis of clause "c" of article 18 of the law of Georgia on Public Defender addressed Kutaisi tax inspectorate for the information on the amount of delinquent tax and to find out which part of the property was seized. Kutaisi tax inspectorate of the department of Finance replied on June 27, 2005, that pursuant to article 122 and the order #301 of the Minister of Finance dated May 4, 2005, according to the instruction "on the rule of keeping confidential information and the rules of access", they had no right to provide such information. The articles above and instructions are based on tax confidentiality.

Having studied the above issue, Public Defender considers that pursuant to part 1, paragraph "m" of article 39, part 9 of article 101, article 122 of Tax Code and the order #301 of the Minister of Finance of May 4, 2005, "on the rule of keeping confidential information on taxes and the rules of access" contradicts article 41 of Constitution and restricts constitutional right of citizens.

According to the norm of arbitrary case, tax confidentiality belongs to that type of confidentiality that is provided by Constitution and General Administrative Code.

In accordance to article 41 of the Constitution, citizen of Georgia has the right to access legal information and obtain it from any state organization. State influence during selecting the information is impermissible. As one of the aims of getting familiar with information is to prove its correctness, this right has to be protected against any interference of state bodies.

The first part of article 41 of the Constitution provides three types of secret information:

- State,
- Professional,
- Commercial secret.

Also, in conformity with part 2 of article 41 of the Constitution, personal secret and the observance of its confidentiality is given separately. According to the norm of dispute settlement, tax confidentiality is the type of confidentiality that is specified in the Constitution.

One of the types of secret information mentioned in article 41 of the Constitution is - "commercial secret" which is specified by General Administrative Code, article 272, which gives the exhaustive list of what can be considered "commercial secret".

As it is clearly seen from article 122 of the Tax Code, the contents of tax confidentiality go beyond the one given in the Constitution, article 41 on "Commercial secret information". If commercial secret information implies information of commercial and technical character or disclosure of such type of information that can be detrimental to competitiveness of a person, then the nature of tax confidentiality is completely different from the above concept. The term "tax confidentiality" given in article 122 of the Tax Code is alien to article 41 of the Constitution and thus, any information that constitutionally is not recognized as secret information must be open. The essence of tax confidentiality radically differs from commercial secret information, the aim of which is to protect the person's competitiveness.

Naturally, the constituent part of commercial activities is tax payments, but to single out tax confidentiality as a separate type of confidentiality and to interpret the article of Constitution in this manner, unreasonably

increases the importance of commercial secret mentioned in the 1st part of article and leads to its misunderstanding. The definition of commercial secret implies keeping the confidentiality of such information that has commercial value and includes information on commercial plans, formulae, process and means, or any other information. Under the latter- any other information, similar kind of information of commercial nature is meant that is used in production, processing or service. Under commercial secret information also is meant information that represents novelty or important technical outcome. "Other information" belongs to the same type of information, the disclosure of which may be detrimental to the competitiveness of a person. Besides, as we noted above, when providing information, the person indicates that it is his commercial secret.

As we can see, the concept of commercial information does not indicate that taxes and the amount of taxes must be made a secret. Thus, the person may not say that he does not want to reveal information related to taxes. Part 2 of article 41 of the Constitution mentions the records related to person's health, finances and other private issues, that have completely different contextual meaning, than is tax confidentiality. Regarding finances, information can be kept as confidential, only if it is required by the person.

Securing tax confidentiality are reinforced by different norms of the Tax Code, namely: clause "m" of part one, article 39: "Taxpayer has the right to require tax agency and their officials to keep their tax confidentiality; also, by part 9 of article 101 of the Tax Code that reads: "Identified information about the taxpayer from the registration moment is considered as tax secret unless envisaged otherwise by this code".

Tax secret is not personal secret which contains information about personal data. Whether such information is to be considered as secret or not, in conformity with General Administrative Code is decided by the person to whom it concerns. Article 41 states the state positive obligation to disclose the existing information about the citizen. Under "information" is meant only individual information connected with the person. The importance of this information is defined by the person.

"Commercial secret information" interpreted in clause "m" of part one, article 39 of Tax Code, also part 9, of article 101, article 41 of Constitution and article 27 (2) of General Administrative Code does not cover tax confidentiality given in article 122 of Tax Code and the order #301 of the Minister of Finance of May 4, 2005, "on regulation of keeping confidential information on taxes and the rules of access", where the essence of tax confidentiality is explained and which indicates that tax confidentiality is any kind of information about taxpayers which has become known to tax agencies during the performance of their functions determined by legislation (article 2. (a)). As is seen from its context, tax confidentiality is not the type of secret information that is recognized by the Constitution and it does not match any of the types of information mentioned in the Constitution, i.e. tax confidentiality may cannot belong to the state, commercial or personal secret. Thus making tax confidentiality secret information is non-constitutional and contradicts part 1 of article 41 of the Constitution.

Dispute resolution norms are also contradictory to article 24 of the Constitution.

Paragraph 1 of article 24 recognizes the main right of freedom of information, the major constituent of which is the guarantee of free access to information, i.e. everybody has the right to unimpeded access to information.

As we can see, the third part of article 24 of the Constitution envisages the following criteria of restrictions by the state:

- Restriction on the part of the state must be provided by law;
- Restriction must be an urgent necessity of the democratic society;
- It should be aimed at observing one of the laws of the Constitution – safeguarding the welfare – the guarantee of state and public security, territorial integrity, prevention of crime, and the defense of rights and dignities of others to avoid the revelation of confidentially received information or guarantee the independence and impartiality of justice.

Introduction of tax confidentiality does not meet any of the criteria of restrictions and consequently it is not envisaged by the main law of the state – the Constitution, it is not the pressing social need and is not aimed to safeguard the above welfare. Neither is it dictated by "pressing social need" (Decision of European Court of Human Rights issued on the case "Sunday Times against the United Kingdom")

In our case, the restrictions by the state will be considered reasonable only for the purpose of keeping secret information provided in article 41 of the Constitution. As for tax confidentiality, it is alien to article 41 of the Constitution, and cannot be restricted due to the reason that the article on tax confidentiality is itself non-constitutional.

We consider that articles 41 and 24 of the Constitution, also articles 19, 25, clause 5, 39 of the organic law on Constitutional Court of Georgia, articles 15,16 of the law of Constitutional legal proceedings are violated. Based on the above, we request that you consider the lawsuit and recognize clause "m", of part 1 of article 39, part 7 of article 101 and article 122 of the Tax Code of Georgia as non-constitutional.

24 LEGAL GUARANTEES OF POWERS OF PUBLIC DEFENDER

Public Defender's authority and activities is determined by the organic law of Georgia on "Public Defender of Georgia". In article 18 specifies that:

When conduction examination the Public Defender of Georgia has the right to:

a) Have free access to any state or local self-governing bodies, enterprise, organization and institution, among them military sub-division, penitentiary establishment.
b) Require and obtain all necessary information, papers and other materials from any state or local self-governing bodies, state and private organizations, as well as executive officials and legal persons.
c) get explanatory notes from any official regarding the issues under investigation;
d) Carry out expertise investigations by the help of state and/or private organizations and draw up conclusions; invite specialists for expertise investigations and consultations;
e) Get familiar with criminal, civil and administrative cases towards which decisions are effective.

Articles 23-24 of the same law determine specific terms, during which legal request of the Public Defender has to be fulfilled.

1. Every state or local self-governing body, officials or legal persons have to render help to the Public Defender of Georgia, immediately provide the required materials, documentation and other information that the Public Defender requires for the implementation of its activities.

2. In the process of examination or on the basis of Public Defender's request the state body or local self-governing body, officials or legal persons, whose decision is being examined or sued, are liable to provide explanatory comments on the issue under investigation.

3. Materials, documentation, other information and explanatory notes must be submitted within 15 days from the moment of request. If required, this term can be extended with the consent of the Public Defender.

4. The applicant must get familiar with materials (article 23).

State body, officials or legal persons, who receive recommendations and proposals from the Public Defender, are liable to review them within 1 month and inform the Public Defender about results in writing (article 24).

2009

If the above requirements are not fulfilled, the Public Defender has the right to apply administrative levers. In accordance to article 1734 of the

Administrative Code of Violation of Georgia, non-fulfillment of the Public Defender's legal requests will entail fines in the minimum amount from twenty to fifty of remuneration". I.e. non-compliance with the Public Defender's requirements will cause administrative responsibility. According to the same code, Administrative violations report is drawn up by the Public Defender, which is then is forwarded to the court according to the place of the commitment of the above.

In 2006, the Public Defender drew up 9 reports on administrative violations.

The case of the head of Tbilisi municipality service of urban planning, Nika Chkhaidze

On February 9, 2006, the Public Defender's Office sent a written notification to the head of Tbilisi municipality service of urban planning, Mr. Nika Chkhaidze, enclosing the drawing of the territorial plan with the request to inform who the plan had been drawn by and whether it was an official document. Whether it had been issued by urban planning municipal service; how much it was possible to determine which school is situated closer to the address # 95, Tsereteli Avenue -school #155 (address: #110, Tsereteli Avenue) or school # 22(address: #4, Alio Mirtskhulava Str.). The answer was to be proved by the drawing.

In accordance to part 3 of article 23 of the organic law of Georgia on Public Defender, "Materials, documentation, other information and explanatory notes must be submitted within 15 days from the moment of request. If required, this term can be extended with the consent of the Public Defender".

Despite the determined terms and requirements provided by the article mentioned above, the head of Tbilisi municipality service of urban planning, Mr Nika Chkhaidze violated the organic law of Georgia on Public Defender and did not comply with legal request of the Public Defender, which is the action stipulated in article 173 (4 prime) of the Administrative Code of Violation of Georgia, to which applies the fine from 20 to fifty of the minimum amount of remuneration.

Based on the above, in compliance with article 240 of the Administrative Code of Violation of Georgia, the Public Defender drew up the protocol on legal violations, which was forwarded to the board of administrative violations of Tbilisi court.

The court charged N. Chkhaidze with legal violation and imposed the fine in the amount of 45 GEL.

The case of the deputy of authorized representative of the president in Shida Kartli, Marlen Nadiradze

On March 22, 2006, a journalist Saba Tsitsikashvili addressed the Public Defender's Office claiming that the deputy of authorized representative of the president in Shida Kartli, Marlen Nadiradze threatened him and verbally insulted. The authorized representative of the Public Defender asked Marlen Nadiradze to provide him with explanatory comments in writing. In accordance with paragraph "c" of article 18 of the organic law on "Public Defender of Georgia", when conducting examination, the Public Defender is authorized to "obtain explanatory comments on the issues under investigation from any official", the first part of the article 27 of the law indicates that "The deputy Public Defender and office staff are entitled by the Public Defender to implement their duties pursuant articles 18 and 19 of the law". In the given case, the employee of the Public Defender's Office, Natalia Tsagareli was entitled by the Public Defender to perform the task. The latter met M. Nadiradze. According to part one of article 23 of the law, "Every state or local self-governing body, officials or legal

persons have to render help to the Public Defender of Georgia, immediately provide the required materials, documentation and other information that the Public Defender requires for the implementation of its activities".

Despite the requirements specified in the above articles, the deputy of the president's authorized person, Marlen Nadiradze violated the organic law on "Public defender of Georgia" and did not comply with the legal requirements of the Public Defender (the authorized person), which is the case of administrative violation of article 173 (4 prime), and is penalized by imposing a fine in the amount of minimum from 20 to 50 of the remuneration.

As Public Defender's work efficiency was deterred, the latter drew up the protocol on legal violation in compliance with article 240, which the infringer got familiar with.

The protocol was forwarded to Gori district court.

The case was reviewed by the judge, Tamaz Takhadze, who suspended the case due to non-existence of the evidence of violation, as the resolution was drawn up with violations of the law requirement it was nullified by the court of appeals. The protocol was then reviewed again by Gori district court and once again passed the resolution on non-existence of the evidence of legal violation.

The case of Rustavi Mayor, Davit Nadashvili

On April 11 of the current year, the Public Defender filed a written request to the Mayor of Rustavi, Davit Nadashvili and asked for information about the number of persons who died as a result of water pollution in Rustavi in 2000-2005. He also enquired whether the water that is supplied to population was suitable for drinking. The Public Defender also asked for the copy of the conclusion from a competent body verifying the data.

In compliance with part 3 of article 23 of the organic law of Georgia on Public Defender, "Materials, documentation, other information and explanatory notes must be submitted within 15 days from the moment of request. If required, this term can be extended with the consent of the Public Defender".

Despite the above, Rustavi Mayor violated the organic law of Georgia on Public Defender and did not comply with legal request of the Public Defender, which is the action stipulated in article 1734 of the Administrative Code of Violation of Georgia, to which applies the fine from 20 to 50 of the minimum amount of remuneration.

Based on the above, in compliance with article 240 of the Administrative Code of Violation of Georgia, on May 11 of the current year, the Public Defender drew up the protocol on legal violations, which the infringer got familiar with. D. Madashvili was given explanatory comments on the rights that were confirmed by the signature of the latter.

The protocol was forwarded to Rustavi district court.

The court charged N. Chkhaidze with legal violation and imposed the fine in the amount of 35 GEL.

The case of Isani Military Division, Gizo Navrozashvili, the lawyer

On May 31, 2006, Public Defender Office employees visited the Military Hospital where Giorgi Sharikadze, a soldier, was staying. He had injuries on his body and was almost unable to speak. Public Defender Office

employees asked the representative of military division Gizo Navrozashvili, the lawyer for explanations, who refused to give any comments. Regarding this fact, a report was drawn up that was signed by the employees of Public Defender's Office – Giga Giorgadze, Levan Jachvliani, Sergo Kekelashvili and Levan labauri. Also the citizens – Giorgi Samushia, Levan Samushia and Davit Sharikadze.

According to article 18 clause "c" of the organic law of Georgia on "Public Defender of Georgia" when conducting examination, the Public Defender is authorized to "obtain explanatory comments on the issues under investigation from any official". Part 1 of the article 27 specifies that "The deputy Public Defender and office staff are entitled by the Public Defender to implement their duties pursuant to articles 18 and 19 of the law". In the given case, Levan Jachvliani, the employer of Public Defender's Office was legally authorized to perform the duty. The latter met **Gizo Navrozashvili** According to part one of article 23 of the law, "Every state or local self-governing body, officials or legal persons have to render help to the Public Defender of Georgia, immediately provide the required materials, documentation and other information that the Public Defender requires for the implementation of its activities".

Despite the requirements specified in the above articles, the deputy of the president's authorized person, Gizo Navrozashvili violated the organic law on "Public defender of Georgia" and did not comply with the legal requirements of the Public Defender (the authorized person), which is the case of administrative violation of article 1734 and is penalized by imposing a fine in the amount of minimum from 20 to 50 of the remuneration.

Based on the above, in compliance with article 240 of the Administrative Code of Violation of Georgia, the Public Defender drew up the protocol on legal violations, which was sent to the infringer so that he could get familiar with it which the latter verified by signature, and indicated in his comments that he knew nothing about Sharikadze being in hospital. Consequently he was unable to explain anything and generally did not consider it reasonable to speak about Sharikadze, as at that moment he was in front of the hospital building. Thus he refused to comment.

The fact that administrative violation really took place was ascertained by the protocol drawn up by the employees of Public Defender's Office, signed by 7 persons. That Gizo Navrozashvili refused to comment, also speaks for the above.

The protocol was forwarded to Tbilisi district court.
The court charged N. Chkhaidze with legal violation and imposed the fine in the amount of 30 GEL.

The case of the director of penitentiary department clinic, Alexander Mukhadze

On September 21 of the current year, the Public Defender's Office filed a request (signed by Giga Giorgadze, the head of investigation and monitoring, an authorized person of the Public Defender) to the head of the clinic of the penitentiary department, Mr. Alexander Mukhadze, requesting explanatory comments on why expert-doctors were not allowed to enter the clinic to carry out expertise to prisoner Jemal Shavladze.

In accordance with paragraph "c" of article 18 of the organic law on "Public Defender of Georgia", when conducting examination, the Public Defender is authorized to "obtain explanatory comments on the issues under investigation from any official", the first part of the article 27 of the law indicates that "The deputy Public Defender and office staff are entitled by the Public Defender to implement their duties pursuant articles 18 and 19 of the law". In the given case, Grigol Giorgadze had a legal authority to represent the Public defender, which is recorded in the case.

In accordance to part 3 of article 23 of the organic law of Georgia on Public Defender, "Materials, documentation, other information and explanatory notes must be submitted within 15 days from the moment of request. If required, this term can be extended with the consent of the Public Defender".

Despite the determined terms and requirements provided by the article mentioned above, the director of penitentiary department clinic, Alexander Mukhadze violated the organic law of Georgia on Public Defender and did not comply with legal request of the Public Defender, which is the action stipulated in article 173 (4 prime) of the Administrative Code of Violation of Georgia, to which applies the fine from 20 to fifty of the minimum amount of remuneration.

Based on the above, in compliance with article 240 of the Administrative Code of Violation of Georgia, the Public Defender drew up the protocol on legal violations.

On October 19 of the current year, the employees of the Public Defender's Office visited the clinic to familiarize A. Mukhadze with the protocol. The latter told them that if hr remembered correctly he had already responded to the above and left the office for and went to the administrative office and did not come back for an hour. As it was impossible to find him in the building the copy of the protocol was submitted to the administrative office to be handed to A Mukhadze, and the original copy was forwarded to the court.

That the administrative violation took place is proved by the fact that the letter was sent to the clinic of the penitentiary department on September 21, 2006, which was handed over to the employee of the administrative office, G. Melikishvili. However the letter was not responded within the determined term of 15 days that hindered the work efficiency of the Public Defender.

On October 26, 2006, the board of administrative proceedings reviewed the protocol on violation and A. Mukhadze was proved an infringer and was imposed the maximum amount of fine.

25 RECOMMENDATIONS

1. Permanent commission of Penitentiary Administration Department is staffed with the employees of the department only, which in our opinion, is not reasonable, as there is little likelihood of objectivity. At the same time, we consider that the commission should not be staffed with the representatives of only non-governmental and other organizations that have never dealt with penitentiary system as this may cause more chaos in the system. Consequently, we recommend the Minister of Justice and the head of the penitentiary department to establish a mixed commission that will have the equal number of representatives from penitentiary department and persons from outside the system, among them non- governmental organizations. All issues connected to the regime should be within the competence of the commission. The above will serve making objective decisions of the most significant issues regarding imprisonment.

2. The state should provide minimum resources necessary for the functioning of public commissions (telephone, fuel, etc.);

3. I propose the Ministry of Justice of Georgia and the Parliament to adopt changes to the ;aw of Georgia on "Imprisonment" which will determine the right of long-term meetings for prisoners or its alternative version, increase the time for short-term meetings and expand the circle of persons to be admitted to these meetings, especially with regard to minor prisoners.

4. I propose the Ministry of Georgia and the Parliament, to decrease the term on issuing the permission on meetings and to issue the permission on the day of submission of the request.

5. Prohibit lawyers' search procedure before and after the meetings with prisoners (especially that the prisoner is being searched before and after the meeting with the lawyer).

6. Remove surveillance devices in lawyers' and prisoners' meeting rooms and make changes to the order of December 28, 1999 of the minister of Justice "On serving a term of imprisonment" and delete the last sentence of part 9 of article 10 of the order that reads: Prison attendant has the right to watch the meeting without listening to conversation".

7. Increase the amount of meeting rooms and provide unrestricted meetings with the defendants (to reasonable extent)

8. Penitentiary Administration Department should ensure provision of food for vegetarians and persons observing Lent. The above should be determined by the normative act;

9. If the establishment is unable to supply sufficient food ration to prisoner, then the latter must have the right to bring in their own food. In prisons / penitentiary establishments the restriction should be imposed on bringing in food products before the shops are opened; meanwhile, there must be a stricter control on products that are sent in.

10. Rustavi population does not drink tap water because of its poor quality. The relatives send in a limited quantity of water to (30 kg). As a result of Public Defender's e recommendation, the restriction has been lifted and currently it refers to mineral water only. We consider it reasonable to lift the latter restriction as well; it must be possible to send in mineral water in unrestricted quantities. Besides, having all the above considered, it is necessary to test water quality and if it proves hazardous for health, the prisoners must be supplied with drinkable water.

11. Penitentiary Administration Department should immediately ensure the observance of safety rules regarding electric wires.

12. Improve the conditions in single confinement cells of prisons;

13. Crowded prisons without any ventilation make the conditions unbearable and worsen prisoners' health. Artificial ventilation systems must be installed in all prisons;

14. Restrictions over sending in hygienic means must be lifted if the administration cannot provide such means itself;

15. In order to observe hygiene, there must be laundries functioning in every establishment;

16. Proceeding from the presumption of innocence, abolish compulsory uniforms for pre-trial and convicted prisoners.

17. Implement educational and employment programs in stages;

18. I recommend the Ministry of Education to devise special program for minor prisoners taking into account their intelligent quotient;

19. Ministries of Justice and Education should ensure the education of the minor in the shortest possible time at #5 common and strict regime prisons.

20. In penitentiary establishments there are many illiterate prisoners and it is necessary to work with them. We recommend Ministries of Justice and Education to enforce the norms of joint orders issued by them.

21. It is important to equip penitentiary establishments with modern educational manuals and literature. We recommend the Ministry of Justice to set up libraries in prisons.

22. The problem of security guards must be settled immediately. Prisoners must be accommodated in prisons so that the trials take place timely. Prisoners must be able to appear before the court without impediment.

23. I recommend the Minister of Justice to make changes to the orders#365, #366 and #367 (December 28, 1999) concerning the unrestricted right of the Public Defender and his authorized representatives to use photo, audio and video camera in any penitentiary establishment without permission;

24. We address the investigation department of the Ministry of Justice to investigate the case of Sh. Khachapuridze.

25. To carry out international monitoring in Abkhazia, in so called safety zone and Gali region in order to study the existing situation regarding human rights defense after Russian peace troops entered the zone. I propose to the Ministry of Foreign Affairs to carry out adequate work with OSCE, UN, European Council and other international organizations.

26. I recommend General prosecutor's Office to start investigation regarding criminal activities on the territory of Abkhazia and South Ossetia that are indicated in the report. Criminal proceedings must be taken (using Interpol channels) against Volmer Butba, Otar Turanba and all those who had been taking part in punitive actions against peaceful population, kidnappings, murders, rapes and other crimes.

27. I propose the Ministry of Refugees and Resettlement, Ministry of Healthcare and Social Welfare, Cabinet of Ministers of Abkhazia, Supreme Council of Abkhazia, to set up an inter-agency task force that will work on amendments to the draft law on IDPs. The draft law must contain more guarantees in the sphere of social rights defense of IDPs. Namely, increase of material aids, housing problems, timely, effective and accessible medical cares provision. The law on "IDPs" and its implementation mechanisms must be approximated to the "UN guidelines on IDPs" to a maximum possible extent.

28. I propose the Ministry of Foreign Affairs, Ministry of Refugees and Re-settlement, Foreign relations committee of the Parliament, Ministry of Economic Development to carry out consultations with international organizations and friendly states in order to launch self-employment programs with the support of international organizations, grant preferential credits to IDPs to start up small businesses and develop agriculture.

29. I propose the Ministry of Finance and the Government of Georgia to budget for additional sums in 2007 state budget in order to provide temporary housing and protection of social-economic rights for homeless IDPs.

30. I propose the Ministry of Finance, Ministry of Refugees and Re-settlement and the Government of Georgia to budget for additional sums in 2007 state draft budget to increase pecuniary aid to IDPs – 14 GEL, as this sum is hardly enough to satisfy basic means of subsistence. Thus it is desirable to increase the sum in the amount of 14 GEL subsidized by the government.

31. I propose the Ministry of Finance, Ministry of Refugees and Re-settlement and the Government of Georgia to budget for necessary expenses in 2007 state draft budget to provide electricity and other utility payments in compact settlements of IDPs and install individual meters. Carry out necessary measures to make "Vouchers of increased tariff" issued by the Ministry of Labor, Healthcare and Social Welfare available for IDPs.

32. I propose the Ministry of Refugees and Resettlement to start the process of registration of IDPs in time.

33. To develop proposals for state strategy and policy regarding IDPs in the shortest possible time and ensure the organization and coordination of those proposals, also budget for necessary sums for the implementation of the above in 2007 state draft budget.

34. I propose the Ministry of Refugees and Re-settlement and the Ministry of Economic Development to consider legal interests of IDPs in the process of privatization of compact settlements in which they are accommodated.

35. I recommend General Prosecutor's Office to fully and timely investigate the facts of infringements of IDPs rights.

36. I recommend the Ministry of Finance and the Ministry of Refugees and Re-settlement to ensure full enforcement of the law of Georgia on "IDPs" regarding Chechen refugees. In accordance with article 7 ("g") "State and local self-governing bodies are liable to allocate regular pecuniary aid to a refugee from the state budget, pursuant to Georgian legislation". I address those agencies to make decisions on granting benefits and pecuniary aid to Chechen refugees in the shortest period of time (as is stipulated in article 23 of the European Convention "On the status of refugees" regarding refugees who have Georgian citizenship).

37. I recommend the Ministry of Refugees and Re-settlement of Georgia to harmonize the law of Georgia on "IDPs" with 1951 Convention of the UN, so that Chechen refugees could be issued travel documentation.

38. I recommend the Ministry of Education and Science to provide beneficial conditions for refugee children of Chechen nationality that would not be at least worse than those for foreigners and support their admission to state pre-school and other educational institutions, in compliance with article 7, paragraph "f" of the law of Georgia on "IDPs" and article 22 (public education), chapter 4 of the international convention on "The Status of Refugees".

39. I recommend the Ministry of Foreign Affairs of Georgia to address the representation of UNHCR in Georgia to study the claims by Chechen refugees about the activities of this representation.

40. Public servants must restrain themselves from indicating the ethnic origin of a criminal when disseminating information about criminal facts. We also request that media representatives restrain themselves from indicating the ethnic origin of a criminal when disseminating information about criminal facts.

41. Georgian government should be requested to allocate sufficient financial resources for the purpose of improvement of broadcast quality of Georgian TV channels in the regions of compact settlements of ethnic minorities.

42. I propose the Ministry of Culture and Sport and Samtskhe-Javakheti regional Administration to preserve and rescue "Sirotski Dom" situated in the village Gorelovka and to develop and implement a relevant program regarding the above together with local Dukhobors.

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