Human Rights in Georgia

Report of the Public Defender of Georgia

Second half of 2006

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Contents

INTRODUCTION

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 second half of 2006, provides recommendations on measures to be taken with a view to remedying the situation, and describes the violations found over the reporting period.

The reporting period showed a marked increase in the number of applications referred to the Public Defender's Office. The total number of applications in 2006 was 3467, which is an increase of 1213 compared to 2005, and of 2187 compared to 2004. Notably, the number of applications referred to PDO in the second half of 2006 was greater compared to the earlier half of 2006. This points to increased visibility of PDO and enhanced trust by the public, which is corroborated by numerous survey findings.

Analysis of applications received by PDO in the second half of 2006 shows that the highest proportion of applications addressed issues related to criminal cases, while complaints concerning breaches of social and economic rights decreased in number, though insignificantly.

Importantly, there was an increase in the number of cases that PDO started to consider proactively, not as a result of an application, but on its own initiative.

At the same time, PDO continues intensive monitoring of custody cells in police, of penal institutions, psychiatric hospitals, childcare institutions and military units, particularly, at so-called "hauptwakhts", or guard-rooms. In December 2006, PDO made the monitoring findings public, and stressed that conditions of detention at four, out of six hauptwakhts present in Georgia, were equivalent to torture and inhuman treatment, after which representatives of the Public Defender have been denied access to haupwakhts to carry out monitoring. PDO has repeatedly addressed the Minister of Defence, as well as the Prime Minister and the Chairman of Parliament. Monitoring of human rights in the army is part of civil-military control, and no obstacles on its way can be acceptable, the more so in a country seeking NATO membership. Concurrently with armed forces in line with NATO standards, membership of the alliance implies building effective mechanism of civil control over the military.

Overall, in 2006 PDO representatives made 865 visits to police stations and preliminary detention facilities across the country (207 visits in the first half of 2006 and 549 visits in the second half of 2007), seeing 1454 persons in custody (321 and 1133 persons, accordingly).

The monitoring revealed 701 facts of breach in proceedings, with 261 persons in custody showing signs of physical injuries (178 persons in the first half, and 83 in the second half of 2006), and 32 persons (23 and 9, accordingly), i.e. 12% of persons with injuries reporting physical pressure by police. Notably, in the later half of the reporting period the number of persons expressing grievances about police behaviour decreased, which is indicative of downward tendency in the use of excessive force – a welcome fact in its own right. However, despite this positive dynamics, there is a persistent problem of inadequate response to the facts of abuse by law-enforcers, such as gross violations of human rights, violence, torture, falsification of evidence, as well as bringing perpetrators to account, the theme covered extensively in the Report.

Over the reporting period PDO prepared a number of constitutional complaints, as well as legislative proposals, aiming to establish a legal environment conducive to protection of human rights.

In the period of reporting PDO provided for translating the UN Convention on Persons with Disabilities, adopted on 13 December 2006 and open for signature from 30 March 2007. It is important for Georgia to ratify this convention in a timely fashion, as it is instrumental in eliminating discrimination of persons with disabilities and providing equal opportunities for them. Equal rights for everyone, as well as equality of opportunity for every member of society should become one of the guiding priorities for our state.

One of the new dimensions of this Report, differently from previous ones, is information on facts of abuse and discrimination perpetrated against Georgian citizens and Russian citizens of Georgian ethnicity in Russia. PDO also sought information on the number of Georgian citizens serving sentences in penitentiary establishments outside Georgia. Unfortunately, most of consulates failed to provide the information in a timely manner; however PDO is hopeful that the requisite information will be made available before the next report, which will give us broader scope for analysis.

One of very important problems, definitely on rise over the reporting period, is seizure of private property and its destruction.

Lawlessness and gross abuse of human rights are persistent in conflict zones. PDO is seeking involvement in the quadripartite monitoring format in place both in Tskhinvali Region and in Abkhazia - in order to get first-hand information on the ground and revisit all facts related to human rights. Regrettably, so far there has been no reaction to our proposal by the State Minister for Conflict Resolution – neither positive nor negative.

2 THE RIGHT TO A FAIR TRIAL

The problems in the judiciary described in the report covering the earlier half of 2006, were largely found persistent in the later half, too.

There still were reasons to question the independence of judges. Independent performance by judges of their functions only within law and without any interference is guaranteed by the Constitutions, though is not always found in practice.

The pressure on judges is one of the themes in the US State Department's report on human rights practices, which mentions, *inter alia,* that: "*Ex parte* discussions between lawyers and judges, and parties and judges were not infrequent, leading to establishing the Soviet type "justice by phone". It is reported that legal professionals including prosecutors, as well as parties to the proceedings employ these practices to exert pressure on judges in order to secure desirable judgements".

Independence of the judiciary, as well as the right of every person to have his/her case examined by an impartial tribunal is guaranteed both by the Georgian law (Articles 82, 84 and 85 of the Georgian Constitution; Articles 6, 7 and 8 of the Organic Law on General Courts; Articles 8 and 9 of the Criminal Procedure Code), as well as universal and regional international instruments (Article 10 of the Universal Declaration of Human Rights; Article 14.1 of the International Covenant on Civil and Political Rights; Article 6 of the European Convention on Human Rights; the UN Basic Principles of Judiciary Independence; the 2004 Declaration on Independence of Judges; the Bangalore Principles on Behaviour of Judges; the Declaration of UN High Commissioner of Human Rights on Independence and Impartiality of Judges and Lawyers, etc.).

Analysis of applications presented to the Public Defender's Office suggests that prosecutors' influence on the judiciary continues to be significant. This can be seen in assignment of often inadequate penalties for crimes of varying seriousness. The impression is that not infrequently judges satisfy motions and appeals by prosecution without going into details of the case, thus breaching grossly the rights of persons on the trial.

Apart from breaching Georgia's obligations under international treaties and agreements and the principle of independence of the judiciary, it is not infrequent that the Georgian judiciary also puts at risk the life and security of persons.

The court represents the only body for the administration of justice. The court shall be the primary

guarantor for the protection of human rights. It is the responsibility of the state to ensure competence, independence and impartiality of the court – a legitimate aspiration of every citizen in a democratic state.

Speaking of the impartiality of judges, the European Court of Human Rights in the judgements on such cases as Mehmed Ali Ilmaz v. Turkey, Inkali v. Turkey, Findlay v.UK, Daktaras v. Lithuania explained that there are two aspects of impartiality; 1) judges should be impartial in subjective terms, and 2) the court should be impartial also objectively; it is necessary to see if a judge has provided all necessary guarantees to rule out any legitimate doubts concerning impartiality.

Given below are some examples giving rise to reasonable grounds to suspect that judges made their decisions not out of inner faith and conviction, but rather succumbed to political will and prosecutor's wishes. On prosecutor's demand, a judge assigned a disproportionably large sum of bail to a person for a minor offence, which actually implied leaving him in custody, as the bail was only formal. On the other hand, disproportionably small sums of bails were given for grave crimes, such as described further:

The Case of K.Kobaladze and G.Jikuri

The Public Defender was addressed by L.Chachukashvili, defence lawyer of K.Kobaladze and G.Jikuri. According to the applicant, Kakuri Kobaladze, 32, with no previous criminal record, was accused of purchasing a Motorola V3 phone, acquired criminally, and incriminated committal of an offence under Article 186, para.1 of the Criminal Code ("Procurement or disposal of an object with previous knowledge of illegal acquisition" – punishable with fine or corrective labour for up to one year, or deprivation of liberty for up to two years). On 25 October 2006, judge M.Kharebava of the Chamber of Criminal Cases of Tbilisi City Court satisfied the motion by investigator L.Darakhvelidze of the Main Police Authority of Tbilisi, assigning to K. Kobaladze a bail of 170 000 GEL as a restraint measure and allowing one month for depositing bail, with staying in custody for 2 months up until payment of the full amount.

According to L.Chachukashvili, a third-year student G.Jikuri, 22, was also accused of purchasing a Motorola V3 phone, acquired criminally, and incriminated committal of an offence under Article 186, para.1 of the Criminal Code.

On 25 October 2006, Judge L.Shkubuliani of Tbilisi City Court assigned to K. G.Jikuri a bail of 100 000 GEL as a restraint measure and allowed 14 days for depositing bail, with staying in custody for 2 months up until payment of the full amount.

Under Article 159, Para.3 of the Criminal Procedure Code of Georgia, "Custody shall only be applied to persons accused of committing an offence punishable by deprivation of liberty for a period of 2 years or longer".

The persons in question are accused of committing an offence under Article 186, para.1 of the Criminal Code that is punishable by maximum of 2 years of deprivation of liberty. Under Article 168 (2) of the Criminal Procedure Code of Georgia, "The sum of bail shall be established based on the seriousness of the crime and financial capacity of a defendant".

The sum of bail was disproportionately high, to the extent that neither K. Kobaladze, nor G.Jikuri were able of paying it, hence in real practice they were given custodial penalty, not bail, as a restraint measure.

It is important to note that the market price for phones purchased by K. Kobaladze and G. Jikuri did not exceed 300 GEL. Further, G.Jikuri is a student, and it is obvious that his custody would imply disruption of his studies.

Both are from extremely poor social setting, and could in no way pay even one tenth of the bail sums.

In his 2006 Preliminary Observations and Recommendations for Georgia, the UN Special Rapporteur on torture stated that it is necessary to limit preliminary custodial measures in criminal proceedings, particularly for non-violent, minor and less serious offences, and instead introduce such measures as bail and recognizance.

The Case of Ineza Kobalia

Ineza Kobalia, owner of a drugstore, failed to renew her license after it expired, and received an administrative fine. At the same time, preliminary investigation started under article 192, Para 1 of the Criminal Code. On 17 November 2006, Ineza Kobalia was assigned a bail of 30 000 GEL as a restraint measure and allowed one month for payment of the bail.

Under Article 192 (illegal entrepreneurial activity), "Entrepreneurial activity carried out without registration or special permit (licence), or in contravention of license terms, leading to considerable damage, or resulting in high benefits shall be punishable with fine or deprivation of liberty for a period of one to three years".

On 15 December 2006, i.e. two days before the deadline, Ineza Kobalia submitted to the prosecutor's office an application with supporting documents on pledging property, instead of bail, including the audit report issued by Engur-Audit auditing firm. According to the report, the market price for property in village Samiskuri, Khobi district, owned by Omiane Kiria, Ineza Kobalia's husband, compared to market prices for equivalent property and considering depreciation, location as well as average annual income from tangerines, nuts and laurel, equalled USD 18 000, equivalent to 31 500 GEL. Thus, as of December 2006, the market price for the plot of land, owned by Omiane Kiria, together with buildings and structures, was 31 500 GEL.

Under Article 168, para.2 of the Criminal Procedure Code of Georgia, "After defining the sum of bail, an accused person, defendant or any other person acting on his/her behalf, shall have the right to pledge movable or immovable property equivalent to the sum of bail".

On 21 December 2006, i.e. six days after I. Kobalia's submission of the application, the prosecutor's office informed the defendant in writing that she failed to pledge immovable property equivalent to the sum of bail within the timeframe allowed by the judge, and instead presented the audit report, according to which average annual income from tangerines, nuts and laurel was included in the price for immovable property, whereas these items did not represent any immovable property and hence, could not be considered as part of price for property.

According to article 149 of the Civil Code (notion of immovable object), immovable objects include plots of land with mineral deposits underneath, plants growing on the plot, as well as buildings and structures installed firmly on the land. Also, under Article 168, Para 2 of the Criminal Procedure Code, the prosecutor defines a sum of bail. However, this by no means implies that it is within prosecutor's competence to valuate defendant's property. Instead, the prosecutor is supposed to rely on an audit report, or else to question the validity of the report according to the procedure established by the law and raise the issue concerning the liability of the valuer. In the case under question, the prosecutor's office seems to have undertaken auditing powers.

On 23 December 2006, Judge J.Morgoshia of Zugdidi district court satisfied the prosecutor's motion and decided to replace bail with a custodial measure of restraint. It was not possible to arrest I.Kobalia, as she suffered two strokes and is in severe condition up until present.

The examples clearly demonstrate how disproportionate are the bails assigned by judges to the seriousness of offences for which they are imposed. The underlying motives are largely unclear.

The Case of I.Sanadiradze

The Fiscal Police of the Ministry of Finance of Georgia initiated case No.92060883 against Ivane Sanadiradze and others for commission of an offence provided for in Article 210, Para 2(a) of the Criminal Code (punishable by fine or deprivation of liberty fro a period of four to seven years). The offence comprised performing a non-commodity transaction worth of 5025 GEL with an invoice.

On 15 July 2006, the Chamber of Criminal Cases of Tbilisi City Court imposed a bail of 2000000 (two million) GEL as a measure of restraint and allowed I.Sanadiradze one month for depositing the sum. The order of the Chamber of Criminal Cases of Tbilisi City Court was appealed at the Tbilisi Appellate Court that reduced the sum of bail from 2 000 000 (two million) to 500 000 (five hundred thousand) GEL. Needless to say, I. Sanadiradze failed to pledge the requisite amount and was left in custody.

In the course of assigning the measure of restraint by the Chamber of Criminal Cases of Tbilisi City Court I.Sanadziradze, defendant, had heart attack and was transferred to Tbilisi Clinical Hospital.

The Case of B. Tatuashvili and B.Orkodashvili

According to materials of the investigation, two members of Akhalgori district police – police inspectors-investigators, Bondo Tatuashvili and Besik Orkodashvili, went to Akhalgori childcare institution 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. Bondo Tatuashvili and Besik Orkodashvili were charged under the following articles of the Criminal Code:

Article 333, Para.3 (a), (b), (c) (exceeding official powers) – punishable with deprivation of liberty for a period from five to eight years;

Article 1441 (torture), Para 2 (a), (b), (c), (d) – punishable with deprivation of liberty for a period from nine to fifteen years;

Article 369, Para.2 (falsification of evidence) – punishable with deprivation of liberty for up to three years.

By decision of Mtskheta District Court, both accused persons were given two-month detention as a restraint measure. However, later, according to information from the Prosecutor General's Office, instead of detention as a measure of restraint they were subjected to bail of 5 thousand GEL each, a much lighter restraint by all criteria, and released.

Under Article 168, Para.3 of the Criminal Procedure Code, "bail, generally, is not applied to persons accused of committing an especially grave crime".

The Case of David Asatiani

On 8 January 2006, PDO got informed that the Investigative Department of the Ministry of Justice opened investigation into the fact of beating of D. Asatiani, defendant, kept at Rustavi Prison No.6 of the Penal Department.

PDO representatives visited D. Asatiani who said that on 3 January 2007 he was physically assaulted by convoy officers. According to E.Beselia, D. Asatiani's defence counsel, her client was physically assaulted by six officers of the quick response special unit under the Penal Department.

The Public Defender addressed the Investigative Department of the Ministry of Justice with a request to make information concerning the criminal case in question, as well as the investigation results, available to PDO.

According to the response letter of the Ministry of Justice, received by PDO on 17 January 2007, on 3 January 2007, at about 6 pm David Asatiani, defendant, was brought back to Rustavi prison No.6 from the trial. When examined, he displayed injuries. According to the defendant, he received injuries after he was returned from the court, as result of physical violence by officers of the special unit. The forensic report of 4 January 2007 points to multiple bruises in the spine area, not contradicting in terms of time with the date of incident, as indicated in the factual background of the case.

On 16 January 2007, M.Giorgadze and K.Gulbani, officers of the quick response special unit of the Penal Department, received charges under Article 333, Para 1 of the Criminal Code of Georgia (exceeding official powers resulting in substantial impairment of the rights of a physical or legal person or legitimate interests of the state – punishable with deprivation of liberty for a period of up to three years, and withdrawal of the right to hold an office for up to three years).

On 18 January 2007, the Chamber of Criminal Cases of Tbilisi City Court ordered imposing on M.Giorgadze and K.Gulbani a bail of 3 thousand GEL each as a measure of restraint.

Recommendations of the Committee for the Prevention of Torture (CTP) explicitly state that the state should give priority to establishing the human rights culture, to which end it is vital to institute zero tolerance to the use of force both by police and officers of penitentiary institutions.

The Case of D.Bagaturia and G. Dzimtseishvili

Underage Alexander Kovalchuk and David Zarandia were beaten and tortured by their class-mates (Vepkhia Ardbilava, Irodi Absandze and Isak Telia) at Zugdidi Prison No. 4 of the Penal Department of the Ministry of Justice. Violence continued for four days. The persons concerned were made liable under Article 144^3 (2) of the Criminal Code (inhuman and degrading treatment: subjecting a person to debasing treatment or coercion, or to inhuman and degrading conditions which cause severe physical or mental pain or suffering, committed by two persons or more – punishable with deprivation of liberty for a period from four years to six years and fine, with or without withdrawal of the right to hold an office and carry out activity for up to five years) Article 144^3 is applied when the act committed by a persons (persons) contains no signs of long and intensive suffering (torture).

On 4 December 2006, the Samegrelo-Zemo Svaneti Regional Prosecutor's Office opened preliminary investigation into the fact of neglect of official duty by prison administration of Zugdidi Prison No 4. On 19 January 2007, David Bagaturia and Guram Dzimtseishvili, officers in charge of the regime division at the prison, were made criminally liable for offence stipulated by Article 342 (1) of the Criminal Code (neglect of official duty – punishable by fine or deprivation of liberty for up to three years).

On 19 January, the judge of Zugdidi district court ordered assigning D.Bagaturia and G.Dzimtseishvili a bail of 2000 GEL each, as a measure of restraint.

The Case of Michael Svanidze

The Public Defender was addressed by Manana Oniani. In her application M.Oniani said that on 26 October 2006 law enforcers arrested M. Svanidze on suspicion of his involvement in murder of her son, Skender Khabuliani. M.Svanidze was accused of committing a crime stipulated in Article 108 of the Criminal Code (intentional murder – punishable with deprivation of liberty for a period of seven to fifteen years).

On 31 October 2006, Tbilisi City Court rejected a motion made by M.Svanidze's defence lawyer to assign the suspect a bail of 30000 GEL as a measure of restraint and satisfied instead the prosecutor's motion on arresting M.Svanidze. On 10 November 2006 Tbilisi Appellate Court retained the decision concerning the measure of restraint made by Tbilisi City Court. On 16 December 20006 Judge Sh.Guntsadze of Tbilisi City Court granted the defendant's motion on changing the measure of restraint from detention for a bail of 30000 GEL.

Under Article 168, Para.3 of the Criminal Procedure Code, "bail, generally, is not applied to persons accused of committing a grave or especially grave crime". Also, under Article 168, Para.2 of the Criminal Procedure Code of Georgia, "The sum of bail shall be established based on the seriousness of the crime and financial capacity of a defendant".

The above case meets none of the requirements of the law.

The Case of Varlam Pkhakadze

On 7 December 2006, Varlam Pkhakadze lost his life as a result of neglect of official duty and excessive use of force by patrol police inspectors Ivane Kapatadze, David Minashvili, Avalo Gabrichidze and Kakha Gabunia. Inspector of Patrol Police Ivane Kapatadze was charged with criminal offence under Article 114 of the Criminal Code (murder through excessive use of force when arresting an offender) and was given two-month detention as a measure of restraint.

Inspectors D.Minashvili, A.Gabrichidze and K.Gabunia were charged with criminal offence stipulated in Article 342 (2) of the Criminal Code, namely neglect of official duty, resulting in loss of life or other grave outcome). The Regional Prosecutor's Office made a motion requesting the court to assign the above police officers with a bail of 2000 each as a measure of restraint. The court granted the prosecutor's motion.

One more example, which leaves it absolutely unclear as to why the judge approved the plea bargain between the person known as an offender who committed an especially grave crime, and the prosecutor. The offender was released on probation and only had to pay fine.

The Case of Z.Gonashvili

Z.Gonashvili was owner and general director of a controlling interest of Super-Service-LI Ltd, in 2000 located at 5 Sanapiro street in Tbilisi. Z.Gonashvili's partner, M,Tabagua wanted to buy out the controlling interest owned by Z. Gonashvili, however the latter refused to sell one. M. Tabagua knew that T.Khangoshvili, residing in village Duisi in Akhmeta district, established a criminal group for the purpose of attacking and assaulting people.

In Noveber 2000, M.Tabagua contacted the criminal group, proposed to take Z.Gonashvili as a hostage and demand a certain sum of money as ransom. M.Tabagua reasoned that Z.Gonashvili did not have money for ransom and that he would request him, M.Tabagua, for help. Instead, M.Tabagua would take the assets of Super-Service-LI Ltd.

On 13 November 2006, Z.Gonashvili was in the centre of village Pichkhovani of Akhmeta district in his car, together with other people. They were attacked by T.Khangoshvili's gang carrying automatic weapons. The gang forced Z.Gonashvili to leave the car, threatening him with the use of firearms, put him into a car and kidnapped him.

Z.Gonashvili was brought to T. Khangoshvili's house in village Khalatsani of Akhmeta district and placed in a room where they kept T.Molakhshia. The gang demanded that Z.Gonashvili and his family paid USD 200 000 as ransom for release.

On 29 December 2000, M.Tabagua went to Pankisi Valley, where with the help of gang members and threatening to kill him, he forced Z.Gonashvili to write a release note on transfer of company assets to M.Tabagua. Instead M.Tabagua would have him released from captivity. M.Tabagua took the release note to Tbilisi and was trying to officially register the transfer of assets owned by Z.Gonashvili to him.

M.Tabagua and members of the criminal groups failed to realise their criminal plans, as on 11 January 2001 Z.Gonashvili and V.Makoev, also in captivity of the criminal group, took firearms away from one member of the criminal group and opposed it. The incident attracted attention of Pankisi residents who came to the site and handed the hostages over to police.

Apart from the crime described above, M. Tabagua illegally bought from an unidentified persons 50 pieces of 9 mm calibre Leger type cartridges and kept them in his residential house located inTskneti, Vake-Saburtalo district of Tbilisi.

M.Tabagua was charged with crime comprising a number of acts, such as: taking a hostage for mercenary motives with the help of an organised criminal group, keeping him for more than 7 days, the use of violence and threat of violence to coerce a person into an action for the sake of being released. Besides, M.Tabagua illegally bought and kept ammunitions.

On 16 February 2006, Judge L. Duishvili of Akhmeta district court approved a plea bargain between prosecutor G.Bachiashvili of Kakheti Regional Prosecutor's Office and the accused M.Tabagua. M.Tabagua was found guilty of offence stipulated in Article 144 (2) (taking a hostage for mercenary motives for more than 7 days, using violence and/or threat of violence to coerce a person into an action for the sake of being released – punishable with deprivation of liberty for a period of nine to fourteen years), Article 144 (3) (taking a hostage by an organised criminal group, to coerce an organisation or an individual to perform or not to perform an action – punishable with deprivation of liberty for a period of 13 to 18 years), and Article 236 (1) (illegal purchase and carriage of forearms – punishable with fine or deprivation of liberty for up to three years). M.Tabagua was sentenced to 5 years of deprivation of liberty. Based on Articles 63 and 64 of the Criminal Code, the judge reckoned the penalty as conditional 5 years with probation and imposed a fine of 30 000 GEL as additional penalty.

■

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.

The Council of Europe in its Recommendation Rec(2000)19, dealing with the role of public prosecutor in the criminal justice system, points out that the state should take all necessary steps to ensure that the legal status, competence and the role of prosecution side in the proceedings be defined in a manner to rule out any doubts concerning independence and impartiality of judges.

INADEQUATE QUALIFICATION AND COMPETENCE OF JUDGES, AND DERELICTION OF A DUTY BY JUDGES

On top of the extremely important issue described above, there is another problem in the judiciary, i.e. lack of professional competence among judges. Besides, not infrequently some of judges show neglect of their duty, the one implying a high degree of responsibility. To illustrate, let us consider some examples:

The case of Alexander L.

On 21 November 2006, Judge Luiza Kuparadze of Samtredia District Court meted out a penalty in the form of 30 days of administrative arrest to Alexander L. born on 14 November 2007. According to the ruling issued by Judge L. Kuparadze, Alexander L. was arrested in Samtredia on 21 November at 13:10 and checked for the use of drugs. Alexander L. was found to have used marijuana, i.e. committed an offence, stipulated by Article 45 of the Code of Administrative Offences.

Alexander L. has a previous conviction record. He was convicted for committing an offence under Article 177 of the Criminal Code and sentenced to 3 years of imprisonment, later changed for conditional penalty for the same term. It is this circumstance that guided Judge L. Kuparadze's decision not to apply a non-custodial penalty for Alexander L.

Under Article 32 (3) of the Code of Administrative Offences, "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." The judge appeared to grossly violate the relevant legal provision.

Based on the above, PDO concluded that L.Kuparadze's action contained signs of a crime stipulated by Article 342 of the Criminal Code (neglect of an official duty, i.e. failure by a public servant or his/her equivalent persons to discharge his/her official functions or inadequate discharge of functions resulting from dereliction of an official duty that led to material violation of the rights of a physical or legal persons, or legitimate interests of society or a state).

Considering these facts, the Public Defender suggested to the Prosecutor General that Alexander L. be released from unlawful detention, and requested to open investigation against judge L.Kuparadze for dereliction of an official duty.

The documents made available by the Prosecutor General's Office suggest that the latter acted on the Public Defender's request and opened preliminary investigation into criminal case No.74068449 concerning the unlawful decision of Judge L.Kuparadze of Samtredia District Court to prescribe administrative arrest as a penalty for underage Alexander L. – an offence stipulated in Article 336 (1) of the Criminal Code.

Interestingly, following the press conference convened by the Public Defender on 29 November 2006 to discuss the unlawful decision by the court, Judge L.Kuparadze who had issued the decision in question, applied to Kutaisi Appellate Court requesting revocation of the said decision.

Kutaisi Appellate Court examined the application and decided partially to meet the judge's request. Namely, the decision of 21 November 2006 made by Samtredia District Court was amended leading to revocation of administrative arrest prescribed for Alexander L. as a penalty and meting out a fine of GEL 500 instead.

According to Article 271 of the Code of Administrative Offences, "A ruling made in respect of an administrative offence, as well as a decision resulting from examination of the case dealing with an administrative offence on the scene, in accordance with the procedure established in Article 2341 of the Code can be challenged by a person to whom the decision refers, by an aggrieved party, or by a person compiling the administrative offence report".

A judge issuing a ruling can in no way be considered as included into the list of persons entitled to appealing against a decision. It is not clear what guided the president of the appellate court when the latter admitted the application submitted by Judge L. Kuparadze, and what norms the court invoked when it decided to amend the ruling of 21 November 2006, knowing that Article 278 of the Code of Administrative Offences explicitly stipulates that:

1. When examining a complaint or protest, the relevant body (or official) shall decide in one of the following ways:

a) Retain the contested ruling, and refuse to satisfy the complaint or protest;
b) Revoke the ruling and remit the case for further enquiry;
c) Revoke the ruling and terminate the case;
d) Revoke the ruling as a result of examination of the case dealing with an administrative offence on the scene in accordance with the procedure established in Article 2341 of the Code and release the person concerned from administrative penalty;
e) Change the measure of administrative penalty within the limits prescribed by the law.

In the case under consideration one can see the change of the form of penalty, not the measure, as prescribed by Article 278 (e) of the Code of Administrative Offences.

The following administrative penalties can be applied in the case of committing an administrative offence:

a) Warning;
b) Fine
c) Withdrawal of an item used as a tool for commission of an administrative offence, or an object of violation of customs rules, or means of transportation of goods;
d) Confiscation of an item, used as a tool for commission of an administrative offence, or an object of violation of customs rules, or means of transportation of goods;
e) Withdrawal of a special right (driving license);
f) Corrective labour;
g) Administrative arrest.

In this case one form of administrative penalty was changed for another form, namely administrative arrest was changed for fine, which is not in conformity with the existing law.

Importantly, Alexander L. was unlawfully kept in custody for 7 days, and later required to pay the fine.

The Case of Temur Mikia

On 14 July 2006, officers of traffic police Kakha Lataria and Temur Shurgulaia arrested Temur Mikia, an IDP from Abkhazia near the Nabadi bridge in Poti. Officers Kakha Lataria and Temur Shurgulaia transferred the arrested person to the premises of Poti Traffic Police without compiling any arrest report or any other requisite documents. After an hour and a half, Sh.Beraia, chief of the Criminal Investigation Department of Poti Police Authority handed over to Murtaz Migineishvili, deputy chief of the Criminal Investigation Department, a search warrant issued by Head of Poti Police Authority, Tornike Sajaia. On instruction from Sh. Beraia, M.Migineishvili and inspectors of police Emzar Sarsania and Kote Kharebava took Temur Mikia out of the building of the traffic police and went to Nabada bridge, where they framed up Mikia's arrest. They mimicked a seizure of a video allegedly stolen by T.Mikia, and compiled a report. Later they transferred T.Mikia to the premises of Poti Police Authority, though they failed to compile any arrest report - either near the bridge where they made a faked arrest, or in the premises of police.

Details of the investigative action were made known to George Kharchilava, Prosecutor of Poti. On the latter's instruction, Gogi Pachulia, deputy prosecutor of Poti, made a motion before the court to legitimize personal search performed by police. Judge Alexander Goguadze of Poti City Court made a decision legitimizing the investigative action performed by police.

M.Migineishvili was tasked with carrying out an enquiry into the case, and he presented materials of the investigation to Marlen Smagin, chief of Poti criminal police, who issued an ordinance on instituting a criminal charge against T.Mikia. When presenting materials of investigation to the chief of the criminal police, M.Migineishvili said that the file contained no arrest report or reports of officers who conducted arrest. Chief of the criminal police said that he would later have the arrest report added to the case file.

Thus, by the time when the search report was legitimised by the court, there was no arrest report in the file, which implies that the judge should not have legitimised the search based on urgent necessity.

At about 11.30 Marlen Smagin handed over to M. Migineishvili the case file, including the judge's ruling on legitimising the investigative action performed without a search warrant, invoking urgent necessity as grounds for legitimisation. M.Migineishvili interviewed T.Mikia, issued a decision on his detention and recognition as a suspect and took the suspect to the duty unit. At about 3 pm the officer of the investigative department A. Sikhuashvili, acting on instruction from Marlen Smagin, took T.Mikia out of remand facility and led him to M. Migineishvili's office.

At about 8 pm, on verbal instruction from M.Migineishvili, officers Eldar Mikadze, Hamlet Kapanadze and Kakha Akhalaia transferred T.Mikia to the investigative department of Poti Police, to the office of inspector Z.Khorava, where the suspect rushed to the window, broke the glass and jumped out from 6.2m to escape. However, he fell on the protective wiring of the temporary detention facility and then on the ground, inflicting himself multiple bodily injuries. T.Mikia was transferred to hospital where he died.

On 28 December 206, the Public Defender addressed a recommendation to the General Prosecutor's Office of Georgia and the High Council of Justice concerning the responsibility of the Deputy Prosecutor of Poti, Gogi Pachulia, and judge of Poti City Court, Alexander Goguadze.

It is the responsibility of a judge to take a decision based on materials of the case. The case file did not contain any arrest report, which implies that any further action in respect of T. Mikia was illegal. The judge's decision led to retaining T.Mikia in custody in contravention of the law, and ultimately to his death.

The Public Defender requested the High Council of Justice to initiate disciplinary proceedings on the case.

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Importantly, the High School of Justice has already been launched. The training schedule for 2007 has been defined. Two regional training facilities have been made operational. Candidates for judgeship will only be appointed as judges after having taken a full course of studies, both theoretical and practical, at the school. Their appointment will be without a time-limit. Currently the school is carrying out 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.

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.

In the period from 1 July to 31 December 2006, a total of 9418 motions on restraint measures (detention, recognizance, and bail) were made to courts. Of these, 5893 motions, or 62.2% concerned detention. It should be noted, however, that 5202 motions were granted, which constitutes about 88 % of all motions.

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. If in 2005 the overall number of motions for custodial restraint measures was 9042, in 2006 the number increased to 11761. Notably, in the second half of 2006 the number of motions for custodial restraint was higher (by 25 motions) compared to the first half of 2006.

The Public Defender believes 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, in the earlier half of 2006, as many as 2121 out of 2212 motions for bail and 216 out of 221 motions for recognizance were granted. In the later half of 2006, as many as 3362 out

of 3445 motions for bail and 80 out of 80 motions for recognizance were granted. These figures refer only to motions made by the prosecutor, whereas according to information available to PDO, motions made by the defence party are granted very seldom, if at all. Regrettably, PDO was not able to get hold of the relevant statistics in the Supreme Court of Georgia.

STATISTICS ON MEASURES OF RESTRAINT

	Prosecutor made a motion before the court on:	Granted:
2005	Bail – 736 Recognizance – 180 Custody – 9042	Bail – 710 Recognizance – 178 Custody – 7159
1 January – 30 June 2006	Bail – 2212 Recognizance – 221 Custody – 5868	Bail – 2121 Recognizance – 216 Custody – 5156
1 July – 31 December 2006	Bail – 3445 Recognizance – 80 Custody – 5893	Bail – 3362 Recognizance – 80 Custody – 5202

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 the later half of 2006 the first instance general courts awarded the verdicts of not guilty on 20 cases, the courts of appeal awarded the verdicts of not guilty on 8 cases, and the court of cassation awarded the judgement of acquittal on 2 cases.

STATISTICS ON ACQUITTALS

	First instance general courts	Courts of appeal	Court of cassation
2005	In respect of 64 cases and 79 persons	In respect of 7 cases and 8 persons	In respect of 11 cases and 11 persons
1 January – 30 June 2006	In respect of 12 cases and 17 persons	In respect of 5 cases and 5 persons	In respect of 4 cases and 5persons
1 July – 31 December 2006	In respect of 20 cases	In respect of 8 cases	In respect of 2 cases

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.). The above statistics remained unchanged over the second half of 2006. Proceeding from statistics, in the second half of 2006 there were no documented procedural violations in the course of investigation.

Concerning the issue of conditional release on parole, in the second half of 2006, as many as 86 petitions were examined, of which 40 were granted. In the earlier half of 2006, 290 out of 507 petitions were granted, constituting 57%. In the later 6 months of 2006, there were no petitions concerning a replacement of an unserved part of the sentence with a lighter penalty. In the first 6 months of 2006, as many as 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.

In what concerns the remission of a penalty as a result of illness, in the later 6 months of 2006 there were 5 petitions to that effect, of which three were granted. To compare, in the initial 6 months of 2006 there were 10 petitions to that effect, of which two were granted. In 2005, there were 15 petitions concerning remission of a penalty as a result of illness, of which five were granted.

In what concerns the remission of a penalty because of an old age, in the initial 6 months of 2006 there were no petitions to that effect reaching the courts. (In 2005 cases falling under this category were not included in statistical reporting forms).

Over 2006, first instance general courts received 2547 cases in respect of a plea bargain, and 13302 cases with indictment; of these 1330 cases ended in plea bargains (procedural agreements). Overall, a plea bargain was approved for 3791 cases, which accounts for about 35% of all cases. Plea bargain was denied on 10 cases.

LEGISLATIVE CHANGES

In the context of the judiciary it is important to note one aspect. In accordance with a constitutional amendment, judges will no longer be appointed by the President of Georgia. They will be appointed by the High Council of Justice without any time limit. This change is expected to foster and promote the judiciary independence.

Speaking of the impartiality of judges, the European Court of Human Rights in the judgements on such cases as Mehmed Ali Ilmaz v. Turkey, Inkali v. Turkey, Findlay v.UK, Daktaras v.Lithuania explained that in order to examine the issue on independence of the judiciary, one has to look at the procedure of appointment of judges, their term in office and the availability of safeguards from pressure and interference.

The Council of Europe in its Recommendation **No. R (94) 12 that the decision-making body on designation of judges should be other than government or other authority. In order to guarantee independence of judges, it is necessary to secure, through relevant norms that judges are elected by the judiciary and that they themselves decide on rules and regulations to govern their activity.**

Another matter of concern in the context of the judiciary is delayed examination of cases, which is largely a result of inadequate number of judges, which tells on the efficiency and effectiveness of the court. It is important to note lack of necessary technical conditions, though the situation in this respect has definitely improved and these issues are now part of the Action Plan for the Judiciary. Since 2006, work has been underway to renovate and upgrade the courts. This process will be completed in 2008. The judges' level of remuneration has also increased; the career-based principle for promotion of judges has been developed. However, unless the most important issue is addressed, that of judiciary independence, all these interventions will not lead to expected results.

3 PROSECUTOR'S OFFICE

Prosecutor's Office is a body that carries out criminal prosecution in accordance with the procedure and within the limits established by the law. To ensure proper discharge of this function, the Prosecutor's Office provides procedural guidance in the preliminary investigation phase, carries out preliminary investigation into cases of crime and wrongful acts, as provided by the criminal procedural law, oversees full and consistent observance of the law by law-enforcement and investigative bodies, supports the public prosecution side in the course of court proceedings, contests unlawful and unfounded verdicts and other decisions by court, etc.

Hence, one of the main responsibilities of the Prosecutor's Office is to ensure effective oversight of the compliance with the law in the course of investigation. This notwithstanding, members of public often apply to the Public Defender to point out violation of their procedural rights in the course of criminal investigation conducted by the prosecutor's office; also, the prosecutor's office fails to act on properly on breaches in the course of investigation. What is implied here is restriction of the right to legal defence, guaranteed by Article 42 of the Constitution of Georgia, as well as criminal procedure legislation; unlawful arrests, biased investigations, failure to properly assess the available evidence, impunity of perpetrators, and the like.

In carrying out its work, the Prosecutor's Office should be guided by principles of the rule of law, integrity and inviolability of person, respect for dignity of person, humanism, democracy, fairness and equality of rights. However, this is not always the case in practice.

The Criminal Procedure Code in its Article 18 provides for one of the main principles to be followed in criminal proceedings – i.e. full, impartial and comprehensive investigation of all circumstances of the case. 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 – both incriminatory and acquitting evidence for a suspect or defendant, as well as aggravating and attenuating circumstances. It is of paramount importance to follow this requirement in order to rule out conviction of an innocent person. A clear example of neglect of this essential principle by the prosecutor can be found in the following case.

The Case of David Badzgaradze

On 16 December 2006, at 23:30 officers of Isani-Samgori Police Department arrested David Badz-

garadze. He was accused of committing an offence under Article 179 (2) of the Criminal Code (robbery) and Article 363 (2) (unlawful appropriation of a document, seal, stamp or official letterhead) and assigned detention as a measure of restraint by decision of 19 December 2005 made by judge of the Chamber of Criminal Cases of Tbilisi City Court. The prosecutor's office sent an indictment to the court.

On 20 August 2006, Judge Nana Maisuradze of the Chamber of Criminal Cases of Tbilisi City Court issued the verdict of not guilty in respect of D.Badzgaradze. Prosecutor Nana Tsikhiseli of Isani-Samgori district prosecutor's office prosecuted an indictment in the course of the trial.

According to the indictment, on 16 December 2005 D.Badzgaradze allegedly committed an assault with intent to rob, stole an ID and other important personal documents. More specifically, it was alleged that on 16 December he contacted other persons, not identified by the investigation; they set up a criminal group with an intent to assault and rob other people, and get hold of their belongings. In the evening, at about 20:00 they went to the garden adjoining 401, Quarter 4, Varketili district, during which time D.Badzgaradze allegedly attacked with a knife Sofo Zurabishvili and grabbed her black purse.

The judgment of acquittal issued by the court demonstrated that on 16 December 2006, at 20:00 D.Badzgaradze was not present in Tbilisi. According to D.Badzgaradze's testimony, on 16 December 2006, at 17:00 he left Kutaisi together with his friend G.Lagadze to travel to Tbilisi. The purpose of their trip was to start working at a construction site, where his uncle M.Kvilitaia and his cousin R.Kvilitaia worked. He discussed with his uncle his trip to Tbilisi by phone, including by mobile phone immediately before his departure from Kutaisi. Also, he was supposed to collect his military card in Tbilisi. Upon arrival in Kutaisi from the village, D.Badzgaradze and G.Lagadze had lunch. The remaining money was not sufficient to cover the trip to Tbilisi, and they asked the driver to allow payment of 9 GEL for both of them, which the driver refused. After many requests, he sent the friends to the dispatcher of the bus station who appeared to be responsive to the request, accompanied them to the bus driver and asked him to drive them to Tbilisi for 9 GEL. In the bus both D.Badzgaradze and G.Lagadze took a nap, however they were awaken by a strong blow. When they got out of the bus, they saw that the bus drove into a man of about 40 years of age. D.Badzgaradze used his mobile phone to call patrol police. The accident happened at about 21:00 near village Okami (Kaspi district). After patrol police and ambulance arrived to the scene of accident, D.Badzgaradze and G.Lagadze helped to transfer the dead man into the ambulance car. Then they stopped a minibus travelling to Tbilisi and arrived in Tbilisi, to Didube bus station at about 23:00. Then they took underground to Marjanishvili square, where D.Badzgaradze was going to meet his uncle M.Kvilitaia. The latter wanted to invite them for dinner, but it was late and M.Kvilitaia proposed that they drop in the poker club to see his friend D.Dzodzuashvili, then buy food and go home. Immediately after they entered the poker club, police rushed in and arrested D.Badzgaradze.

The court did not question the verity of D.Badzgaradze's testimony, as other evidence collected on the case clearly pointed to his innocence, namely: the testimony of witness G.Lagadze that is identical to D. Badzgaradze's evidence; the evidence provided by witness I.Chelidze (bus driver), very similar to D.Badzgaradze's evidence; testimonies provided by witnesses M.Kvilitaia and R.Kvilitaia; a detailed list of incoming and outgoing calls made from D.Badzgaradze's GEOCELL mobile phone. After the accident, it was D.Badzgaradze who called patrol police. The list of telephone calls confirms that calls to 022 were made from D.Badzgaradze's phone four times: at 20:57, 21:00, 21:02 and 21:03, the latter call from the site of the accident was made after the time of attack on S. Zurabishvili committed in Tbilisi. That D. Badzgaradze did not get rid of his phone is corroborated by calls, made from his phone to his family: his wife, parents and friends. Besides, at the time of search he had a phone charger in his pocket, which is a strong evidence of the journey made to Tbilisi.

To prove D.Badzgaradze's culpability, the prosecution side presented testimony by S.Zurabishvili, the victim, and testimonies given by police officers. The judgement stresses that compared to other evidence existing on the case, these testimonies look highly questionable. For instance: "According to the testimony provided by the victim, one of attackers, D.Badzgaradze was wearing a hat. Despite the fact that the attack took

place at about 20:00 when it was completely dark in the public garden, the victim nevertheless managed to identify under the hat the colour of D.Badzgaradze hair, as well as his haircut style. Notably, S. Zurabishvili gave details of D.Bazgaradze's clothes and his haircut after he was presented to her; the victim is either erring in good faith, or is deliberately giving false evidence. As far as testimonies given by police officers are concerned, these can not be considered as conclusive evidence, as witnesses G.Takashvili, G,Gviniahvili and G.Paposhvili explain in their testimony that they arrested D.Badzgaradze based on description given by the victim. As far as witnesses E.Makhramov and A.Baindurashvili are concerned, their testimonies only corroborate the fact of attack against S.Zurabishvili, and not the involvement of D.Badzgaradze in the said attack".

Proceeding from the above, evidence cited in the indictment, testimonies given by the victim and the police, as well as testimony given by witnesses E.Makhramov and A.Baindurashvili were not verified and, hence, could not be invoked for incrimination. Thus, prosecutor N.Tsikhiseli appeared to have grossly violated provisions of Article 40 (3) of the Constitution of Georgia, according to which "A person can only be proven guilty if the evidence is incontrovertible. Every suspicion or allegation not proven by the right established by law must be decided in favour of the defendant", Article 10 (3) of the Criminal Procedure Code (an ordinance on charging a persons with criminal offence, an indictment and all other procedural decisions shall only be based on incontestable evidence) and Article 18 of the Criminal Procedure Code.

The prosecution contested the judgment of acquittal through the appeal procedure. Gross violation of the law by prosecutor N.Tsikhiseli led to eight months in custody for an innocent person of 21.

Since the action of prosecutor N.Tsikhiseli displayed signs of crime, the Public Defender sent to the Prosecutor General's Office relevant materials. The Prosecutor General's office decided not to open investigation before a final decision by the court.

On 1 February 2007, Tbilisi Appellate Court started examining D.Badzgaradze's case. Prosecutor N.Tsikhiseli moved for interviewing those witnesses who were together with D.Badzgaradze at the time of the accident. Interestingly, during the examination at Tbilisi City Court, D.Badzgaradze's defence lawyer made a similar motion and requesting to interview winesses of the accident, however the motion was not granted. Besides, Prosecutor N.Tsikhiseli moved for interviewing the clerk of the court – Sofi Akhalkatsi, giving as grounds for her motion errors allegedly present in the record of judicial proceedings. Namely: it is stated in the record that S.Zurabishvili alleged that D.Badzgaradze was wearing a hat. According to prosecutor N. Tsikhiseli, S.Zurabishvili never said that; quite the reverse, she stated that D.Badzgaradze was not wearing a hat. The appellate court granted partly the prosecutor's motion.

It is important to note that since the judgement of acquittal stated that "victim S.Zurabishvili was either erring in good faith when exposing D.Badzgaradze as one of the attackers, or deliberately giving false evidence", prosecutor N.Tsikhiseli started preliminary investigation into the fact of false evidence based on her own explanatory note, the investigation that was closed on 31 January 2007 under Article 28 (a) of the Criminal Procedure Code. Preliminary investigation into the criminal case was reopened by Isani-Samgori district prosecutor's office and ended up in D.Badzgaradze's recognition as a victim.

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According to Article 18 of the Constitution of Georgia "the freedom of a person is inviolable". Under Article 18 (3) of the Criminal Procedure Code "the court, the prosecutor and the investigator are under an obligation to release without delay an illegally detained, arrested or otherwise restricted person". According to Article 18 (1) of the Organic Law on the Prosecutor's Office "the prosecutor's office shall immediately take measures to release a persons illegally detained, arrested or otherwise subjected to coercive measures",

and under Article 395 of the Criminal Procedure Code "the court, the prosecutor and the investigator are under an obligation to terminate criminal prosecution and/or preliminary investigation once there appear the grounds provided for in Article 28 of the Code".

The Case of Mogeli Tkebuchava

On 21 January 2006, Mogeli Tkebuchava was arrested and charged with offence under Article 332 (1 and 3) of the Criminal Code (abuse of official authority). He was given a custodial measure of restraint. Later, his charges were changed, and the wrongful act he had committed was qualified as offence under Article 333 (1) of the Criminal Code (excess of official authority).

The offence M.Tkebuchava was charged with and convicted for, took place on 5 May 2000, and the relevant law in force at that time was the 1960 Criminal Code. Under that law, the statute of limitation for the offence committed was 5 years. Charges for offence committed on 5 May 2000 were brought against M.Tkebuchava on 20 January 2006, when the statute of limitation under the 1960 had already expired.

Poti City Court and Kutaisi Appellate Court (the Supreme Court refused to admit M.Tkebuchava's cassation, the grounds being that the decision of the appellate court did not differ from the case law of the Supreme Court) reasoned that since charges against M.Tkebuchava were brought under Article 333 of the 1999 Criminal Code, he was subject to the statute of limitation under Article 71 of the same Code (in this case – 6 years, the period that had not expired by the time when M.Tkebuchava was charged with the offence).The judgement of conviction stated that since Article 333 of the 1999 Criminal Code prescribed a lesser penalty (3 years of deprivation of liberty) than Article 187 of the 1960 Criminal Code (excess of official authority – punishable with 5 years of deprivation of liberty), the new law should be given retroactive force, and M.Tkebuchava's act was qualified as offence under Article 333 (1) of the new Criminal Code.

The Public Defender considers that position taken by the prosecutor's office and the court lacks sound legal basis for the following reasons:

Under Article 3 (1) of the Criminal Code: "A criminal law that annuls culpability for an action or prescribes a lighter penalty shall have a retroactive effect. A criminal law that introduces culpability for an action or prescribes a stricter penalty shall not have a retroactive effect". Under Article 3 (3) of the same Code: "if in the period of time between the committal of offence and issuance of judgement, the law changes several times, the lightest law shall apply". If a criminal law institutes a longer statute of limitation, the legal status of a person charged with offence will undoubtedly become graver. Hence, the new Criminal Code made M.Tkebuchava's legal position graver and the court, guiding itself by Article 3 (3) of the Crimianl Code, should have applied the lightest law, in this case, the 1960 Criminal Code, according to which the statute of limitation regarding liability for lesser crimes was 5 years.

In this context it is important also to invoke Article 42 (5) of the Constitution of Georgia according to which "No individual has to answer for an action if it was not considered as the violation of law at the moment it was performed. A law that does not lessen the responsibility or remit a punishment has no retroactive force". In the context of the criminal law this provision should be interpreted to imply that only those laws have a retroactive force that remit the penalty or annul responsibility. Any other interpretation would be against the Constitution. It is important to note that when discussing the retroactive force of the law, Article 42 of the Consitution makes use of the term "responsibility", and not "penalty" or "culpability for action", differently from Article 3 of the Criminal Code. It is not fortuitous that under the Criminal Code, the ground for exempting from criminal responsibility is the statute of limitation. The term "responsibility" used by the legislator in these two legal acts – the Constitution and the Criminal Code – has the same meaning and should be understood in a similar context. The provision of Article 42 (5) of the Constitution of Georgia according to which: "A law that does not lessen the responsibility or remit a punishment has no retroactive force" should be understood to extend to the criminal law, and any change made in the Criminal Code shall only be applied if it annuls or lessens the

responsibility (liability) of a person. Hence, any change that does not annul or lessen the responsibility of a person should not be interpreted as having a retroactive force, as stipulated in Article 42 (5) of the Constitution. In the case of M.Tkebuchava, the court decided otherwise: an increase in the statute of limitation (through interpreting the new law as having a retroactive effect in the case under discussion) led to the liability of the person concerned. Since expiry of the statute of limitation represents a ground for exempting a person from liability, invoking a provision that leads to an increase in the statute of limitation is contrary to the provision contained in Article 42 (5) of the Constitution.

By its content, Article 3 of the Criminal Code serves to protect the interest of a person charged with offence and introduces guarantees to ensure that new, stricter norms are not applied to an act committed before these norms came into force.

Proceeding from the above, the Public Defender considers that the interpretation given by the court in M.Tkebuchava's case is in conflict with the Constitution.

The opinion of the Public Defender on this issue is shared by Levan Bezhashvili, Chairman of the Parliamentary Committee on Legal Issues, and Elene Tevdoradze, Chairman of the Parliamentary Committee on Human Rights and Civil Integration. In his letter No.1462/4-10/242 addressed to lawyer E.Tsotsoria, L. Bezhashvili explained that "a person should be charged for an offence committed in 1992 in accordance with the criminal law in force at that period of time" (the 1960 Criminal Code); the statute of limitation should also be determined in accordance with the criminal law in force when the act was committed, i.e. again in accordance with the 1960 Criminal Code, as according to Article 42 (5) of the Constitution, if a new law leads to higher liability, it does not have a retroactive force. Therefore, in the case in question the issue of statute of limitation for bringing criminal charges against the persons shall be addressed in accordance with the criminal code in force in 1992". In her letter No.8349/4-2/1110 addressed to lawyer E.Tsotsoria, Elene Tevdoradze pointed out that "the statute of limitation for an offence committed in 1992 starts as prescribed by the criminal law in force at the moment of committal of the offence, i.e. by the relevant article of the 1960 Criminal Code; a criminal law leading to higher liability does not have a retroactive force".

The Prosecutor General's Office formulated its position in the case similar to M.Tkebuchava's case. More specifically, in his letter of 13 October 2005 to lawyer E.Tsotsoria, head of department M.Tsaava pointed out that "the issue concerning G.Sordia's exemption from criminal liability shall be handled in accordance with Article 49 of the 1960 Criminal Code. (The lawyer requested to consider G.Sordia's exemption from criminal liability due to expiry of the statute of limitation.)

According to Article 28 of the Criminal Procedure Code: "Criminal prosecution shall not be opened, and where opened, a criminal prosecution and preliminary investigation shall be closed if the statute of limitation for prosecution, as prescribed by the Criminal Code, has expired. Hence, considering Article 395 of the Criminal Procedure Code, the prosecutor or the court should have terminated criminal proceedings opened against M.Tkebuchava.

The Public Defender sent the relevant materials to the Prosecutor General's Office requesting to initiate preliminary investigation against persons, whose unlawful action resulted in M.Tkebuchava's unlawful detention. The Prosecutor General's Office did not share the Public Defender's line of reasoning and, hence, did not open an investigation.

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According to Article 42 of the Constitution, "the right to defence is guaranteed"; Article 11 of the Criminal Procedure Code provides for the right to defence for a suspect, an accused person, and a defendant. There-

fore, the body carrying out the proceedings is under an obligation to ensure the right of a suspect, an accused person, and a defendant to defence, and make it possible for the defence side to ensure defence, making use of all permissible means and tools. However, in real practice it is not infrequent that the avenues for defending legitimate interests of persons at the bar are restricted.

The Case of Irakli Batiashvili

The Division for Fight against Organised Crime, of the Special Operational Department of the Ministry of Internal Affairs carried out criminal proceedings against Irakli Batiashvili (Article 307 of the Criminal Code – high treason; Article 315 – conspiracy or riot with the purpose of violent change of the constitutional order; article 376 – failure to notify of the crime). Before Irakli Batiashvili was arrested, recordings of Irakli Batiashvili's telephone conversation with Emzar Kvitsiani were aired on TV. Irakli Batiashvili's lawyer, in accordance with Article 76 of the Criminal Procedure Code, made a motion before investigator Zurab Beitrishvili on permitting him access to the case file, including the recordings. The investigator granted the motion, but only partially, denying him access to the recordings recognised as physical evidence in the case. He said that the recordings were sent to the Operational and Technical Department of the Ministry of Internal Affairs for decoding. The Public Defender addressed a letter concerning this matter to G.Latsabidze, Deputy Prosecutor General; and R.Zhgenti, head of Department of Procedural Oversight on Investigation Conducted by Territorial Units of the Ministry of Internal Affairs, stressing that Article 76 of the Criminal Procedure Code explicitly provides the right for the lawyer to get fully familiar with materials of the case.

A.Khvadagiani, head of Division of Procedural Oversight on Investigation Conducted by Public Security Services of the Ministry of Internal Affairs informed PDO that I.Batiashvili and his lawyer S.Baratashvili were given access to the materials on 29 July 2006, and said that access to the recordings of telephone conversations, as well as video materials would be provided to them in accordance with the law, after they were decoded. It was promised that recordings of telephone conversations, as well as video materials would be presented to I.Batiashvili within the shortest period of time, as soon as the necessary technical conditions were put in place in Prison No.5.

Later the defence lawyer again addressed the investigator, moving for access to the following materials: 1. Copies of audio recordings of telephone communication between Irakli Batiashvili and Emzar Kvitsiani in the period from 23 July to 29 July; 2. Photocopies of decoded transcripts of telephone communication between Irakli Batiashvili and Emzar Kvitsiani in the period from 23 July to 29 July; 3. Photocopies of decoded transcripts of all telephone conversations referred to in the order concerning charges against I.Batiashvili; 4.A list of all incoming and outgoing calls made to and from I. Batiashvili's mobile phone in the period from 23 July to 29 July. Investigator Z.Beitrishvili made an order on granting the motion, again only partially: namely, I.Batiashvili would be given access to all materials relevant to the case once technical issues were fixed at Tbilisi Prison No. 7. The defendant and his lawyer were refused access to: 1. Copies of audio recordings of telephone communication between Irakli Batiashvili and Emzar Kvitsiani in the period from 23 July to 29 July; 2. Photocopies of decoded transcripts of telephone communication between Irakli Batiashvili and Emzar Kvitsiani in the period from 23 July to 29 July; 3. Photocopies of decoded transcripts of all telephone conversations referred to in the order concerning charges against I.Batiashvili. The investigator argued in his order that the defence side did not have the right to make copies of undercover audio recordings introduced into the case.

The Public Defender addressed a recommendation concerning this matter to G.Latsabidze, Deputy Prosecutor General, arguing that it is precisely these records that were used as incriminating evidence against I.Batiashvili, whereas restriction of access of the defendant and his defence lawyer to the evidence was in contravention of the law and meant violation of legal provisions such as: the right to defence guaranteed by Article 42 (3) of the Constitution; Article 84 (1) of the Criminal Procedure Code ("The defence lawyer shall use all legal ways and means of defence to identify circumstances exculpating the suspect or the defendant, or lessening his responsi-

bility, and shall be granted the necessary legal assistance"); Article 11 (1) of the Criminal Procedure Code ("Court or an official carrying out the proceedings are under an obligation to provide a suspect, an accused person or a defendant with the right to defence"); Article 76 (1 and 3) of the Criminal Procedure Code ("The defendant shall have the right to use all legal ways and means to defend himself from charges brought against him, and have adequate time and facilities to prepare his defence"). In his recommendation, the Public Defender requested that the rights guaranteed by the law be restored to I. Batiashvili and his defence, and the issue be raised concerning the responsibility of investigator Z.Beitrishvili.

In response to the recommendation, the Prosecutor General's Office informed PDO that the investigator granted the request of the defence party and made available to it: photocopies of decoded transcripts of telephone communication between Irakli Batiashvili and Emzar Kvitsiani in the period from 23 July to 29 July, as well as photocopies of decoded transcripts of all telephone conversations referred to in the order concerning charges against I.Batiashvili. It was also stated in the letter that CD with recordings of telephone communications were recognised to constitute physical evidence, and according to Article 76 (3) and Article 84 (3) of the Criminal Procedure Code, the defendant and his defence lawyer would be granted access to the physical evidence after an indictment was sent to the court. As far as investigator Beitrishvili's responsibility is concerned, the Prosecutor General's Office chose not to raise that issue.

Hence, the defence party was not given access to audio recordings. True, Article 76 (3) of the Criminal Procedure Code stipulates that the defendant and his/her defence lawyer shall be granted access to the physical evidence after an indictment is sent to the court. However, the same article stipulates also that the defence party shall have the right at any stage of criminal proceedings to get access to all evidence introduced in the case and have copies of case materials made at his own expense. Thus, based on the principles of criminal proceedings as provided for in Article 15 (adversarial character of the judicial process) and Article 18 (comprehensive, impartial and full investigation of all circumstances of the case) of the Criminal Procedure Code, the defence part should have been given access to physical evidence in order to be familiar with it.

It is important to note one more aspect in relation to I.Batiashvili's case: when speaking before the media, high-ranking officials publicly discussed I.Batiashvili's alleged culpability, thus violating the presumption of innocence provided for by the Constitution and the procedural law: "Any person shall be presumed innocent until proved guilty in accordance with the procedure prescribed by law and under the final judgment of conviction".

Notably, telephone conversations between I.Batiashvili and E.Kvitsiani, as presented in TV programmes, were not complete, thus leading to prejudged impression on I.Batiashvili's culpability. For instance, in the telephone conversation, as shown on TV, E. Kvitsiani was telling I.Batiashvili that he was contacted by G.Kupalba, deputy minister of defence in the *de-facto* government of Abkhazia, who offered him assistance with manpower against the Georgian government; however, that E.Kvitsiani's refused to accept the offer was not presented on TV.

According to Article 22 of the Criminal Procedure Code of Georgia, "a prosecutor, or an investigator with prosecutor's consent, shall open criminal proceedings in case there is sufficient ground for so doing". According to Article 271 of the same code, "preliminary investigation shall be conducted within a reasonable timeframe, but not longer then the statute of limitation prescribed by the criminal law for the respective offence". Proceeding from this legal norm, the investigative body is under an obligation to initiate criminal proceedings against a person if the body of available evidence is sufficient to give rise to reasonable grounds to believe that the person concerned has committed an offence. This notwithstanding, the prosecutor's office fails to follow these norms in respect of various agents of the state, such as judges. However, there has been many a case when ordinary citizens were charged with crime only on the basis of testimony given by the aggrieved party (see the case of D.Badzgaradze).

The Public Defender's Report for the first half of 2006 described an incident in Kutaisi, where Judge Ana Gelegva of the Kutaisi City Court committed underage Zurab Shalikiani to administrative arrest for the duration of 14 days. 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, supposed to be a **guarantor of the administration of justice** in the state, violated the relevant legal provision herself 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), on 14 June 2006 the Public Defender sent the relevant materials to the Prosecutor General's Office and made a recommendation to the Prosecutor General, Z. Adeishvili, to open an investigation. On 21 June 2006, 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. On 17 August 2006, PDO sent a letter to the Prosecutor General's Office with a query concerning results of the investigation. On 21 December 2006, the Investigative Department of the Prosecutor General's Office notified PDO that investigation into the criminal case continued.

The case in question required no investigation (the main evidence of culpability on the part of the judge was her unlawful ruling), and the judge should have clearly be held criminally liable, however, up until now the case is in the phase of preliminary investigation.

A similar case occurred in Samtredia district, Judge Luiza Kuparadze of Samtredia District Court meted out a penalty in the form of 30 days of administrative arrest to underage Alexander L. The Public Defender sent the relevant materials to the Prosecutor General's Office to act on the case. On 21 November 2006 PDO was notified of the commencement of preliminary investigation into an offence under Article 336 (1) (issuance of an unlawful judgement or other court decision). The investigation did not initiate any criminal proceedings against the judge.

It is important to note one more aspect in respect of prosecuting bodies. When the prosecutor's office opens investigation into wrongful acts committed by members of law-enforcement bodies, no criminal proceedings are initiated at a subsequent stage against concrete persons. And this despite the fact that the investigation often possesses sufficient evidence to support the accusation, or else the investigation, should it so wished, could expose the culpability of concrete persons as a result of full examination and investigation into the case. In this context it seems interesting to look at the following examples.

The Case of Amiran Robakidze

The Public Defender's Report for the first half of 2006 looked extensively into the case where 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. However, analysis of the criminal case gave rise to many doubts, including about the origin of arms and their possession by the defendants (for further details see the Public Defender;s Report for the first half of 2006). 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. 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 evi-

dence") and Article 333 ("excess of authority") of the Criminal Code, however no one has so far been made criminally responsible for the actions committed.

On 1 February 2007, the family of deceased Amiran Robakidze addressed the Public Defender with an application stating that the investigation opened 6 months before on charges of falsification of evidence and excess of authority. This notwithstanding, there had been no investigative action performed in order to establish the truth, and not a single person had been made criminally responsible for the actions committed.

The application also stressed that there was an attempt to temper the evidence, as forearms and ammunitions had been brought to the site after A.Robakidze's murder, which is convincingly proved by the following circumstances. On 24 November 2004, investigator Sh. Nikabadze of Didube-Chugureti district prosecutor's office examined the site and found in 30 cm from the BMW-type vehicle # AEB-710 a Kalashnikov type AK-74 model firearm #2672593, in combat position, with 27 charges. In 40 cm from the left side of the vehicle, two empty cartridges were found. According to original allegation of the investigation side, the firearms belonged to A.Robakidze and 2 cartridges were left after he fired a shot in the direction of G.Bashaleishvili. Later on, the police themselves abandoned this testimony.

Ballistic examination performed on 30 November 2004 concluded that 2 cartridges of AK-74 Kalashnikov model, withdrawn from the site had been shot from AK-74 model gun with the number #2672593.

Preliminary investigation and testimonies of defendant G.Bashaleshvili and witnesses I.Lobzhanidze, G.Chanturia, D.Abuashvili, I.Mikaberidze and A.Bartaia ascertained that on 24 November 2004 shots from automatic firearms were fired only by G.Bashaleishvili, from his Jericho system firearm #34301337. Neither Amiran Robakidze, nor other persons present on the scene of incident made any shots from automatic firearms.

This gives rise to a question – if the automatic submachine gun found on the site belongs to no one (neither to A.Robakidze, no to anyone else present on the scene), how did the gun end up on the scene, as did two cartridges found there?

On 7 February 2007, the Pulbic Defender addressed a letter to the Prosecutor General Z.Adeishvili, asking him to bring under his personal control the preliminary investigation into the facts of falsification of evidence and excess of authority, to ensure full and impartial investigation and establish the truth.

The Case of David Sakvarelidze

The Public Defender's Report for the first half of 2006 provided detailed information on a biased investigation into a road accident of 22 November 2003. On that day, 23-year old David Sakvarelidze and Eteri Tsuliashvili were killed in a clash accident between their private car and a military armoured personnel-carrier, and the latter's minor children Badri, Gocha and Sophiko Tsuliashvili were injured. Examination of materials related to the case indicated that the investigation was biased. Investigation into the case was terminated and renewed twice. Presently, the criminal case is being investigated by Tbilisi Police Department. Despite the fact that the investigation, as well as multiple appraisals by experts, point conclusively that the accident occurred through the fault of the personnel-carrier's driver, Avtandil Mamaladze, working at the Ministry of Internal Affairs.

On 10 November 2006, the Public Defender sent a note to Parliament of Georgia requesting setting up an *ad hoc* commission to look into the case and establish the truth. The Parliament did not find it appropriate to set up such a commission.

Special Operation of 2 May 2006

During a special operation carried out by police on 2 May 2006 on the right bank of Mtkvari River in a crowded area, the police overused force and 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).

In the course of investigation, on 10 August 2006, G.Mosiashvili, defence lawyer of Z. Vazagashvili's mother – Ts. Shanava recognised as the victim's successor, addressed I.Kadagidze, director of the Criminal Police Department of the Ministry of Internal Affairs, requesting access to video footage of the special operation. On 18 August 2006, investigator G.Kvinikadze of MIA Criminal Police Department responded in writing that Ts. Shanava and her lawyer were not party to the proceedings (by that time Ts. Shanava had already been recognised as the victim's successor), and hence were not expected to be granted access to video materials or any other information related to the case.

On 4 October 2006, lawyer G. Mosiashvili, petitioned with the body conducting the investigation into the case – the investigative unit of Tbilisi Prosecutor's Office, more specifically investigator V.Latsusbaia, and requested that video-materials be made available by the Ministry of Internal Affairs. On 31 October 2006, the investigator informed the lawyer that Tbilisi Prosecutor's Office had addressed the MIA press service with a request to provide the requisite video materials but received a response on 17 October stating that the press service of the Ministry did not have any video materials related to the special operation of 2 May 2006.

Thus, it is not clear whether there exists any full recording of the special operation. If yes, why was it not requested from the Ministry by the investigative body immediately after commencement of the investigation? If there is no video recording, then was caused its destruction? Clearly, examination of the video footage of the special operation would contribute to comprehensive, impartial and full investigation into the case and help to dispel any doubts concerning it.

Another example of a biased investigation by the prosecutor's office is furnished by the following case:

The Case of Zurab Kakheli

On 26 April 2004, Zestafoni Police Department opened investigation into criminal case No 5204062 against Zurab Kakheli accused of committing an offence under Article 236 (1) and (2) of the Criminal Code. The search conducted by police of Zestafoni in Z.kakheli's private car on 25 April revealed two sawn-off guns and six cartridges. According to the search report, sawn-off guns have identification numbers A35283 and 36478-60. The guns were sent for examination to Imereti Regional Main Police Department, to the criminological unit. Notably, the expert's report says that he examined guns with ID numbers 123599 and A35283, and found them fit for use. Despite the difference in ID numbers indicated in the search report and in the expert's report, investigator A. Machaidze (who already had the experts' report) issues an ordinance on recognising guns as physical evidence. Thus, the expert's report questions the lawfulness of the search (the sawn off gun No. 36478-60 found during the search was not sent to the expert, and its whereabouts are unknown) and leads to an assumption that the investigator might have opened the sealed-up evidence and replaced an unsuitable gun with the one fit for use.

According to Article 122 of the Criminal Procedure Code, "Physical evidence shall be kept by the body carrying out the proceedings in conditions ruling out any chance of it being lost or changing its properties". Hence, once a gun with a different number was sent for examination and the fact became known, it was necessary to immediately initiate criminal proceedings on charges of destruction or falsification of evidence and have the offence resolved "hot on the trail'. However, it was only on 11 November 2005, i.e. one year and seven months after the charges had been brought against Z.Kakheli (now in retrieval) that a separate criminal case No.5205344 was opened into the fact of destruction of physical evidence. Investigation into the case was conducted by Zestafoni Police.

On 19 October 2006, the Public Defender addressed G. Latsabidze, Deputy Prosecutor General concerning this matter. On 1 November 2006 G. Latsabidze ordered that investigation into the case be overseen by the

General Inspectorate of the Prosecutor General's Office. Preliminary investigation has not been completed, and no one has been called to account.

Representatives of the Public Defender's Office carry 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 and freedoms status in police stations and temporary detention facilities, and follow on violations when these are found. In connection with offences exposed as a result of monitoring, such as physical and verbal assault, psychological pressure, psychic coercion, etc., the Public Defender addresses the relevant authority requesting to open preliminary investigation into the facts and then follows up the course of investigation conducted by investigative bodies.

Monitoring of preliminary investigation revealed a number of tendencies, suggesting a certain pattern in the attitudes of investigative bodies to the facts of beating, torture and inhuman and degrading treatment of persons in custody or imprisonment. There are cases when investigation is merely formal in character and ends in dropping of a criminal case for absence of signs of crime in actions of police. Also, investigation into the facts of beating is not comprehensive and impartial, oftentimes not all of the necessary investigative actions are performed to establish the truth, no forensic examination is fixed to establish the character and severity of bodily injuries. If forensic appraisal still takes place, it is followed by framing-up of absolutely illogical versions by the investigation party to explain the origin of injuries found in the course of forensic examination. Suspicions on police involvement into the crime are allayed by police themselves. Persons in custody often change their initial testimonies and testify in favour of police, which is indicative of their unprotected ness and pressure by police. The procuracy, too, often turns a blind eye to unlawful acts by police.

The Case of G.Toritadze

On 30 June 2005, Vake-Saburtalo District Prosecutor's Office started investigation into criminal case No.0705870 concerning excess of official authority by officers of Vake-Saburtalo District Police Department – offence provided for in Article 333 (1) of the Criminal Code.

Preliminary investigation was triggered by materials sent by PDO to the Prosecutor General's Office, related to bodily injuries of G. Toritadze found by the PDO monitoring group on 5 April 2005 in the course of monitoring at the temporary detention isolator of the Ministry of Internal Affairs of Georgia. The report of examination points to hyperaemia and excoriation of skin on the right jaw, multiple scratches and excoriations on the surface of extremities. According to G. Toritadze, injuries were inflicted at the moment of arrest.

In the course of investigation it was established that on 5 April 2005 officers of Tbilisi Police Department, Special Operational Unit and Vake-Saburtalo District Police Department carried out a joint operation for the purpose of apprehending Gela Toritadze, suspected of committing a crime provided for in Article 179 of the Criminal Code (robbery). A search conducted in his apartment found firearms and ammunitions, kept illegally. G.Toritadze was charged with committing an offence under Article 236 (1) of the Criminal Code (illegal possession and carriage of forearms (except hunting gun), ammunitions, explosive materials and/or devices). Preliminary investigation into the case was completed and the case was sent to the Chamber of Criminal Cases of Tbilisi City Court for examination on merits.

G.Toritadze, inmate of Tbilisi Prison No.1, interviewed as a witness, alleged that when in custody at Tbilisi temporary detention isolator No.2, he was visited by members of the PDO monitoring group, and he told them that his injuries were inflicted by Baksadze at Vake-Saburtalo District Police Department. However, in reality he received those injuries when brought to the said department, where he accidentally hit his head against the open door. Since at that moment he was nervous and disturbed because of the arrest, he thought for himself that police did that to him intentionally, but now he understood it was accidental, not intentional, and no one assaulted him either physically or verbally. In what concerns scratches he displayed when at the temporary detention isolator, he said they appeared as he scratched his arms and legs. G. Toritadze said he had no complaints against anyone.

The investigator also interviewed as a witness K. Tkeshelashvili, inspector of Vake-Saburtalo District Police who said he participated in the operation to arrest the suspect, after which the latter was brought to Vake-Saburtalo District Police where the arrest report was compiled, after which G.Toritadze was transferred to the temporary detention isolator. According to the witness, police never assaulted G.Toritadze either physically or verbally at the moment of arrest or later, when he was brought to police. Neither did G.Toritadze resist the arrest. He, the witness, did not see if G.Toritadze hit his head against the door, as he was brought into the building by members of the special unit.

G.Tkeshelashvili's testimony was corroborated by other police officers: N.Gvimradze, M.Rukhadze and D. Bichinashvili who took part in G. Toritadze's arrest and personal search.

The letter from the Prosecutor's Office emphasized that G.Toritadze never expressed any dissatisfaction or complaints concerning treatment by police. Therefore, on 30 September 2005, a ruling was made on terminating preliminary investigation into the criminal case, as stipulated in Article 28 (1) of the Criminal Procedure Code (for absence of wrongful act).

According to the letter by the Prosecutor's Office, G.Toritadze was arrested for committing an offence under Article 179 (1) of the Criminal Code punishable by deprivation of liberty for five to seven years. Later he was charged with crime under article 136 (1) of the Criminal Code punishable with deprivation of liberty for up to three years. Hence, difference between sanctions prescribed for these two offences is clear. True, in the course of preliminary investigation it is possible to discover such facts that can potentially lessen or increase charges against a person, or fully exculpate him. Naturally, replacing G.Toritidze's heavier charge for a lesser one does not contradict requirements of the criminal procedure law, if it were not for absolutely illogical and absurd explanations concerning his bodily injuries. According to G. Toritidze, he accidentally hit his head against the door; scratches on legs were attributed to his act of scratching, etc. This leads to a logical question on whether his inconsistent answer resulted from the investigation having proposed certain privileges in exchange for his covering up the police officers.

The investigation did not question credibility of G.Toritadze's statement. However, in order to establish whether or not injuries resulted from running into the door and scratching or something else, it is not enough to have witnesses testifying. It is necessary to perform forensic examination. However, it seems the investigation did not find it necessary to have forensic examination carried out. It is possible for police officers to use force, but the use of force should not be excessive. To establish, whether or not it was excessive, it is necessary to conduct forensic examination. The current criminal procedure law no longer provides for mandatory examination that seems necessary for a number of reasons, including for identifying the character and severity of bodily injuries. Though, when a detained person displays bodily injuries and he says that police physically assaulted him, tracing the origin of injuries and establishing their character and severity is to be seen as important facts of the case. Hence, the investigative body is obliged to appoint forensic examination. Failure to do so would undermine one of the most important principles of the Criminal Procedure Code – the principle of comprehensive, impartial and full investigation of the case.

The case of Z.Kuchukhidze

On 23 October 2006, the Representative of the Public Defender visited Zurab Kuchukhidze, kept in custody in a temporary detention isolator, who displayed various injuries on his body. The report of external examination points to contusions in his face, chin and belly.

According to Z.Kuchukhidze, he was visiting Zugdidi together with his wife to attend funeral of their relative. In Gamsakhurdia Street, near the premises of Odishi TV Company, they noticed a patrol vehicle and slowed down. Patrol police officers asked his wife to show her documents and compiled a charge-sheet for violation of traffic regulations. Z.Kuchukhidze protested. At that moment a Mercedes type vehicle approached them, and the person in the car ordered the police to take him to police station. On their way to police station, police officers physically assaulted Z.Kuchukhidze. Then they brought him to the building of Samegrelo-Zemo Svaneti Patrol Police Department where they continued beating him. Chief of Patrol Police Department, G.Ninua, assaulted Z.Kuchukhidze both physically and verbally. When brought to a remand facility, Z.Kuchukhidze had multiple bodily injuries, for which reason the staff of the temporary detention isolator called an ambulance, had him examined by a doctor and recorded the injuries found.

On 25 October 2006, the Public Defender sent the relevant materials to the Prosecutor General's Office to act on the case. On 20 November 2006, Zugdidi District Prosecutor's Office informed PDO that on 23 October 2006, Zugdidi Prosecutor's Office started preliminary investigation into case No.5306918 concerning excess of official authority by officers of Samegrelo-Zemo Svaneti patrol police on 22 October 2006 (offence under Article 333 (1) of the Criminal Code), that was closed on 15 November 2006 for absence of crime in the act.

The letter from Zugdidi District Prosecutor's Office alleges that Z.kuchukhidze's wife, N.Kuchukhidze violated parking regulations. Patrol police officers came up to her, explained that she breached traffic regulations and started compiling a report of administrative violation. Z.Kuchukhidze was dissatisfied and he addressed them in rude language. The incident was witnessed by G.Ninua, chief of Samegrelo-Zemo Svaneti Patrol Police Department, who called a mobile team to rule out any further complications. The arriving police officers tried to calm Z.Kuchukhidze, however he was again dissatisfied and using rude language. Patrol police asked Z.Kuchukhidze to follow them to police station, which Z.Kuchukhidze refused to do. He hit patrol inspector D.Jikonaia, swore other police present there. Police officers had to use force to put him into the car, during which time Z.Kuchukhidze continued resisting them and bit inspector M.Chejia on the hand. Samegrelo-Zemo Svaneti Patrol Police Department started preliminary investigation into criminal case No.22060281 against Z.Kuchukhidze under Article 353 of the Criminal Code (putting up resistance, violence or threats against defenders of public order or other state agents – punishable with a fine, or restriction of liberty for up to three years, or deprivation of liberty for two to five years). Z.Kuchukhidze was subjected to custody as a measure of restraint. The letter also stated that Z.Kuchukhidze's bodily injuries fall within the 'slight' category.

In the course of investigation, Z.Kuchukhide requested an additional interrogation. He said that at the moment of arrest he was drunk, that he put up resistance to police, assaulted them physically and verbally and defied legitimate demands by police, which led to his arrest. He received bodily injuries as a result of his resistance to arrest; hence he had no complaints about the police.

G.Ninua, chief of Samegrelo-Zemo Svaneti Patrol Police Department, interviewed as a witness, said that on 22 October, when in line of his duty, he witnessed Z.Kuchukhidze resisting the police, during which time he lost balance and fell down. Police officers then used force to put him into the car and took him to the premises of Samegrelo-Zemo Svaneti Patrol Police Department, where Z.Kuchukhidze went on opposing them, again lost balance and fell down. When fighting with police, Z.Kuchukhidze bit police officer M.Chejia on finger and physically assaulted other police, inflicting light injuries.

It is to be noted that the evidence offered by Z.Kuchukhidze during additional interrogation to the effect that he had no complaints about the police and all bodily injures were self-inflicted gives rise to doubts and looks highly unconvincing. This fact only demonstrates that persons in custody are unprotected and it is very easy for investigation to put pressure on them. This explains why persons beaten by police at the moment of arrest generally change their testimonies and deny any facts of abuse by police. It seems, this was the case with Z.Kuchukhidze.

The letter from Zugdidi District Prosecutor's Office alleges that police officers who brought Z.Kuchukhidze to police station received light bodily injuries, though it is not clear from the letter that they were examined by forensic experts to determine the severity of their injuries.

Given the fact that many of the circumstances in the criminal case concerning Z/Kuchukhidze;s injuries looked doubtful, the Public Defender, invoking Article 18 (e) of the Organic Law on the Public Defender of Georgia, addressed Zugdidi District Prosecutor's Office with a request to make available to PDO copies of the materials related to the criminal case concerning unlawful actions by police against Z.Kuchukhidze. In its response letter, Zugdidi District Prosecutor's Office stated that Article 18 (e) of the Organic Law on the Public Defender of Georgia did not stipulate any obligation for relevant state bodies to make materials of criminal cases available to the Public Defender. Hence, the Public Defender can familiarise himself with materials related to criminal case No.5306918 at Zugdidi District Prosecutor's Office, whereas the latter is under no obligation to provide such materials to the Public Defender.

In this context it is important to point out that under Article 18 (e) of the Organic Law on the Public Defender of Georgia, the Public Defender enjoys the right to have access to criminal, civil and administrative cases, he decisions on which have entered into force. This means that whatever form of access the Public Defender opts for, be it access to cases on the ground, or having their copies made available to him, it is the responsibility of the prosecutor's office to provide all documents required for examination of the case, as requested by the Public Defender. Under Article 18 of the Organic Law, the Public Defender has the right to have access to criminal cases, which means that materials related to such cases shall be accessible for the Public Defender, so that in the process of familiarising with the materials he could make excerpts, etc. Hence, since the Public Defender is entitled to have access to the case file, it is only natural that he also has the right to have photocopies of those materials made. Besides, it should be noted that in the process of his work the Public Defender frequently contacts the prosecutor's office or other investigative bodies with a request to make copies of materials related to criminal cases available to him, and so far there has never been any problem about that. The reaction of Zugdidi District Prosecutor's Office can be interpreted as administrative violation, provided for in Article 1734 of the code of Administrative Offences, namely failure to meet the Public Defender's legitimate requirement. Therefore, in order to get access to materials related to the case, the Public Defender addressed Samegrelo-Zemo Svaneto Regional Prosecutor, however the latter responded with a letter, identical to the one described above.

The Case of G.Chitidze and L.Khvedelidze

On 31 August 2006, representatives of PDO visited G.Chitidze and L.Khvedelidze kept in custody at temporary detention facility No.2 of the Ministry of Internal Affairs who said that they were physically assaulted by police. On 6 September 2006, the Public Defender sent the relevant materials to Tbilisi Prosecutor's Office. According to the response from Tbilisi Prosecutor's Office, based on the report concerning the breach of law made on 31 August 2006 by PDO representatives, Didube-Chugureti District Prosecutor's Office opened investigation concerning excess of official authority by officers of Didube-Chugureti district police department during arrest of G.Chitidze and L.Khvedelidze, an offence under article 333 (1) of the Criminal Code. The

criminal cases were sent for follow-up to the investigative unit of Tbilisi Prosecutor's Office. Investigation found that on 30 August 2006, G.Chitidze and L.Khvedelidze, both drunken, verbally abused one man at a café-bar located in Tbilisi Central Railway Terminal, and then physically and verbally assaulted the police called to the site to defuse the situation. Both of them were transferred to Didube-Chugureti police station No.5, where G.Chitidze and L.Khvedelidze destroyed investigator's desk and chairs, and verbally abused police officers, after which they were transferred to temporary detention facility No.2 of the Ministry of Internal Affairs.

Police officers interviewed as witnesses did not acknowledge the fact of physical and verbal assault against G.Chitidze and L.Khvedelidze. Neither was it confirmed by G.Chitidze and L.Khvedelidze themselves who said that since they were drunk, they were unable to control their actions, resisted the police and assaulted them. G.Chitidze also said that injuries that he had mentioned in the report compiled by PDO, were self-inflicted in the police station where he, being in a drunken state, was banging his head against the wall.

The investigation into the criminal case was dropped for absence of a crime in the act. As far as G.Chitidze's and L.Khvedelidze's case is concerned, the investigation did not find it necessary have a forensic examination to appraise their injuries.

This case demonstrates one more interesting tendency employed by investigation; namely, in order to ward off responsibility from law-enforcers, it seems to frame up fairly unconvincing accounts concerning the origin of bodily injuries that persons in detention show.

In connection with facts of physical abuse and torture, it is important to note judgements of the European Court of Human Rights holding that: "When a person gets into a police custody in good state of health and is found injured when released, it is the responsibility of the state to give plausible explanation as to how those injuries were caused" (Ribitsch v.Austria, 4 december 1995).

The above cases give every ground to question the impartiality of investigation into facts of infringement of the rights of persons in detention. It is cleat that the investigative body is under an obligation to conduct comprehensive, impartial and full investigation into the facts of violation of the right of persons in custody to establish the wrongful acts by state agents and bring them to account, which in turn will lead to decrease in similar facts.

In the course of preliminary investigation the issue of recognition of concrete persons as victims is highly problematic. Not infrequently, investigative bodies of the prosecutor's office and the Ministry of Internal Affairs tend to misinterpret the provisions of Article 68 of the Criminal Procedure Code (recognition as a victim) and apply it improperly. To be more specific, investigative bodies are reluctant to recognise respective persons as victims or the victim's legal successors immediately after commencement of preliminary investigation, motivating their reluctance by the need to first carry out investigative actions to establish a crime in the act, and only based on that is it possible to decide on recognising a person as a victim or the victim's successor. Such interpretation of the law by investigative bodies is incorrect. Under Article 68 of the Criminal Procedure Code, victim is defined "as a public, legal or natural person who has suffered moral, physical or material damage as a result of a crime, or wrongful act by a mentally incompetent person, or mentally disabled person". According to Para 2 of the same Article: "In case of crime resulting in death of a victim, his/her rights are assigned to one of his/her close relatives". This means that once preliminary investigation starts (into the fact presumed as wrongful act), it is necessary to immediately recognise a respective person as a victim or the victim's legal successor. This problem is most frequently found in the course of preliminary investigation into the facts of death of suspects or defendants in the course of special operations conducted by the Ministry of Internal Affairs, physical abuse of detained persons, suicide in custody, etc. Since the investigative bodies choose not to

recognise respective persons as victims or victims' legal successors, they are not in a position to avail themselves of the rights provided for in Article 69 of the Criminal Procedure Code (the rights of victims and their legal successors), which, bearing in mind requirements of Article 18 of the Criminal Procedure Code (examination of facts should be comprehensive, impartial and full) gives rise to doubts as to the impartiality of investigation. When opening investigation into such facts, the investigative body itself should be interested to have duly authorised persons posing questions before the investigation concerning suspicious circumstances, and obtain adequate answers through appropriate investigative actions, which eventually will lead to better trust and confidence towards investigation. At the same time, if in the course of investigation it is found that thee are no grounds for recognising a person as a victim, the body carrying out the proceedings can issue a ruling, in accordance with Article 68 (8) of the Criminal Procedure Code, annulling the ruling concerning the recognition as victim. Therefore, the issue of recognition of a person as victim or the victim's successor should not pose a problem for the investigative body.

In this context, it seems interesting to look at several cases.

The Case of V.Gogisvanidze

On 12 September 2006, B.Kiria, the Public Defender's representative in Samegrelo-Zemo Svaneti Region met in Zugdidi prison No.4 with V.Gogisvanidze, defendant (Article 260 of the Criminal Code) and interviewed him. V. Gogisvanidze spoke about physical and psychological pressure on him by officers of Samegrelo-Zemo Svaneti Division of the Special Operational Department. On 22 September 2006, based on Public Defender's submission, V.Gogisvanidze underwent alternative forensic examination. According to the expert's report, V.Gogisvanidze displayed injuries in the eye area (bruises), also contusions and bruises in the arm, lumbar and thigh area, caused by a blunt object and falling within the category of light injuries, coincident in time with the date of his arrest.

The Public Defender sent the relevant materials to the Prosecutor General's Office for investigation to be opened into the case. On 10 October 2006, Poti District Prosecutor's Office opened preliminary investigation into criminal case No. 450639 concerning inhuman treatment of V.Gogisvanidze by officers of Samegrelo-Zemo Svaneti Division of the Special Operational Department – an offence under Article 1443 (1) and 1443 (2) of the Criminal Code.

The defence lawyer petitioned with the investigative body to recognise V.Gogisvanidze as a victim in the above case, however his petition was rejected. The defence lawyer applied to the Public Defender for assistance. On 7 Febuary 2007 the Public Defender addressed G.Latsabidze, Deputy Prosecutor General to have V.Gogisvanidze recognised as a victim, as prescribed by the law. The Prosecutor General's Office responded that if the investigative action confirmed the existence of the grounds, as stipulated in the Criminal Procedure Code, V.Gogisvanidze would be recognised as a victim.

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On 9 June 2006, the dead body of convicted prisoner N.Gvichiani, hanging on a bed sheet, was found in cell 39 of Rustavi Prison No. 6. The investigative department of the Ministry of Justice opened preliminary investigation into the fact of leading N.Gvichiani into committing a suicide – an offence stipulated in Article 115 of the Criminal Code. N.Gvichiani's mother, L.Kordzaia, repeatedly petitioned with the investigative body to have her recognised as a legal successor of the victim, N.Gvichiani. However, her petition was not granted. The Public Defender addressed G.Parulava, head of the Department of Procedural Oversight of Investigation at the Ministry of Justice to have L.Kordzaia recognised as the victim's successor, as prescribed by the law. No response has followed so far.

A similar request was contained in the application addressed to the Public Defender by G.Mosiashvili, defence counsel of Ts.Shanava, mother of Zurab Vazagashvili killed during the special operation carried out by police on 2 May on the right bank of Mtkvari River. Investigation into the criminal case, opened under Article 114 of the Criminal Code of Georgia (murder in overuse of power while detaining criminals), was carried out by investigator V.Latsusbaia of Tbilisi Prosecutor's Office who refused to satisfy the petition to recognize Ts. Shanava as the victim's legal successor. The Public Defender addressed the Prosecutor General with a recommendation to have Ts.Shanava recognised as the victim's successor, and following the recommendation the investigation recognised her as the legal successor of the victim.

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 395 of the same code, the court, or the prosecutor, is under an obligation to terminate criminal proceedings and/or preliminary investigation, once there appear grounds for dismissal of the case. Thus, if having conducted the investigative action, the investigative body fails to establish signs of a crime, it should issue a resolution on termination of the case. Despite this requirement of the law, there are cases when investigation is not initiated despite availability of information concerning an alleged crime.

The Case of B.Kvitsiani

On 6 September 2006, the Public Defender was contacted by B.Kvitsiani, IDP from Abkhazia, who stated that military police were forcibly evicting him from a residential apartment (25, K.Tsamebuli str., Tbilisi) allocated to him for temporary use by the Ministry of Defence. PDO representatives arriving at the site, were met by representatives of Tbilisi Authority of the Military Police Department who were effecting forcible eviction of B.Kvitsiani from his apartment under the guidance of M.Bakashvili, head of Tbilisi Military Police. It became clear from conversation with the latter that eviction was effected without any decision by the court or a writ of execution. According to M.Bakashvili, police were tasked to put an end to unlawful occupation of the premises. However, B.Kvitsiani's defence lawyer presented a warrant issued in 2002 by the Ministry of Defence on transfer of the property to B.Kvitsiani. Importantly, it is not within the competences of military police to follow on such issues (the statute of the Military Police Department of MOD General Staff does not provide for such a function of military police).

Based on these facts, the Public Defender concluded that military police officers, guided by M.Bakashvili, exceeded their official authority, thus committing an offence under Article 333 of the Criminal Code.

The Public Defender addressed Tbilisi Prosecutor's Office requesting to start investigation concerning respective officers. The response letter stated that: "On 23 October 2005 B.Kvitsiani was discharged from the Armed Forces of the Ministry of Defence of Georgia, for which reason the Ministry of Defence warned him to vacate the apartment (included in the fixed assets of the Ministry). On 6 September 2006 B.Kvitsiani was vacating the apartment voluntarily (which is not true). Therefore, no investigation was initiated in respect of military police officers, for absence of signs of a crime in their act".

The above facts demonstrates conclusively that oftentimes the prosecutor's office fails adequately to exercise powers and responsibilities vested in it by the law, which ultimately undermines citizens' trust towards this institution as a body carrying out and overseeing the investigation. When an overseeing body breaches ad neglects the law, its subordinate bodies feel free to abuse human rights and freedoms. This, in the final analysis, affects the quality of justice, the standard of protection of human rights and the rule of law in the country.

4 MINISTRY OF INTERNAL AFFAIRS

Police has a crucial role to play in maintaining public law and order in a country and protecting safety and security of its citizens. It is called to fulfil its duties and responsibilities in good faith, to prevent unlawful acts and ensure that residents of the state feel duly protected. Proceeding from their professional duty, police officers should serve their country with full sense of responsibility, upholding the law and protecting from lawlessness each and every person, despite the differences they may have. At the same time, when discharging their duties, police should respect person's honour and dignity, his/her fundamental rights and freedoms.

The Code of Police Ethics was approved by the order of the Minister of Internal Affairs. The Code represents unity of the most fundamental ethical and moral principles and is based on the standards enshrined in different international human rights instruments (the UN universal Declaration of Human Rights, the Declaration on Protection of Every Person from Torture and Other Forms of Cruel, Inhuman or degrading Treatment or punishment, the European Code of Police Ethics, the European Convention on Human Rights ad Fundamental Freedoms, and others). The principles enshrined in the Code of Police Ethics provide guidance for police both at the time of work, and beyond. These principles are: constitutionality, legality, responsibility, humanity, independence, impartiality, good faith and respect of each other in discharging official functions.

Regrettably, not infrequently the police, being a body called to serve public order and security and accountable to the citizens of the country, itself infringes on human rights. The Public Defender's Office receives applications and complaints from the citizens of Georgia in which they point to physical violence or verbal assault by police, unlawful arts, biased character of criminal investigation carried out by investigative bodies of the Ministry of Internal Affairs, their lack of impartiality.

According to Article 18 (4) of the Constitution: "The physical or moral coercion of a detained individual or individual otherwise restricted in freedom is inadmissible". True, compared to previous years, facts of violence by police have decreased both at the moment of arrest and after arrested persons are brought to police facilities (as corroborated by results of the monitoring carried out by the PDO monitoring group at police stations and temporary detention facilities). However, there are cases, still numerous, of police exceeding their authority and assaulting people in custody. Each and every fact of

2008

abuse by police that is brought to the attention of PDO is promptly acted on. PDO representatives visit persons in custody, interview them about the incidents, get hold of reports concerning physical injuries, or compile such reports themselves, provide for alternative forensic appraisal to establish the degree of harm to an individual's health, interview persons who witnessed an incident (when such are available), interview the police who took part in the arrest of a suspect (though they almost invariably deny any violence). The materials are then sent to the Prosecutor General's Office for investigation to be opened, and investigations are initiated under the respective provisions of the Criminal Code.

1. According to applicant Mzia Bliadze, on 24 July 2006 officers of Khashuri district police department of the Ministry of Internal Affairs arrested her son, G.Latsabidze, who was brought to the police station where police officers beat him and planted drugs. Concerning the injuries, the applicant referred to the forensic report issued on 26 July 2006 by the expert of the forensic examination service of the National Forensic Bureau under the Ministry of Justice stating that: "G.Latsabidze displays injuries in the form of contusions caused by a blunt object that fall under the category of light injuries not causing any significant harm to health. G.Latsabidze complains of headache and sickness. He is in need of neurological examination".

   The Public Defender sent the relevant materials to the Prosecutor General's Office for preliminary investigation to be initiated. In the response letter the Prosecutor General's Office informed the Public Defender that on 4 September 2006 Khashuri District Prosecutor's Office opened preliminary investigation into criminal case No.3806838 concerning the excess of official authority by members of Khashuri district police force during the arrest of G.Latsabidze – an offence under Article 333 (1) of the Criminal Code.

2. On 14 December 2006, PDO representatives visited Tbilisi Prison No.5 of the Penal Department and interviewed inmates Z.Zirakishvili and Z.Chanturia (charged with robbery). It follows from the interview that on 10 December 2006, at about 6 pm, Z.Zirakishvili and Z.Chanturia were travelling by taxi in the vicinity of Dzmoba street, when their car was stopped by police, who took them to Gldani-Nadzaladevi district police station No. 5. On arriving to the police station, they were verbally and physically assaulted by police. Z.Zirakishvili and Z.Chanturia stated that they could recognise the police officers who insulted and abused them. Reports of external examination of Z.Zirakishvili and Z.Chanturia were requested from Tbilisi temporary detention establishment No.2; the reports describe bodily injuries found during the examination and point out that Z.Zirakishvili and Z.Chanturia were physically and verbally assaulted by police officers.

   The Public Defender sent the relevant materials to the Prosecutor General's Office for preliminary investigation to be initiated. In the response letter the Prosecutor General's Office informed the Public Defender that on 26 December 2006, Tbilisi Prosecutor's Office opened preliminary investigation into criminal case No.10068261 concerning the excess of official authority by officers of Gldani-Nadzaladevi district police station No.5 during the arrest of Z.Zirakishvili and Z.Chanturia – an offence under Article 333 (1) of the Criminal Code.

There are cases when police officers display negligence towards breaches of the law and instead of offering due response, themselves feature as infringers of the law.

On 6 October 2006, the Public Defender was addressed by I.Absandze. According to the applicant, on 5 October 2006, during late hours he was in El-Depo snack bar where a stranger insulted him and assaulted him physically. The applicant immediately called patrol police and notified them of the incident. However, when patrol police arrived, they advised I.Absandze to go home, and when the applicant demanded that measures be taken against the assaulter, they verbally abused him.

The Public Defender forwarded I.Absandze's application for follow-on to the Patrol Police Department of the Ministry of Internal Affairs, that informed the Public Defender that the General Inspectorate of the Ministry of Internal Affairs carried out an inspection in connection with the fact described in the application; as a result, patrol inspectors Z.Gelashvili and G.Jabakhidze were dismissed from police, and D.Magradze demoted.

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Law enforcement officials have a vital role in the protection the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant of Civil and Political Rights and the European Convention on Human Rights. Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The means used by law enforcement officials shall be adequate to the concrete situation, in proportion to the seriousness of the offence and the specific character of the offence. Police officers are prohibited from the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk. The use of force and firearms shall conform to the requirement of respect for human rights.

The UN Resolution on Basic Principles on the Use of Force and Firearms by Law Enforcement Officials enshrines the basic general principles that member states should take into account and respect within the framework of their national legislation and practice. According to Principle 4: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms, They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result". The Declaration on the Police adopted by the Parliamentary Assembly of the Council of Europe in 1979 enunciates in Paras. 12 and 13 that in performing his duties, a police officer shall use all necessary determination to achieve an aim which legally is required or allowed, but he may never use more force than is reasonable. Besides, police officers shall receive clear and precise instructions as to the manner and circumstance in which they should make use of arms.

The use of firearms by police is regulated by Article 13 of the Law on police, as well as Para.4.2 of the Code of Police Ethics. However, failure to respect these norms continues to be an important problem in Georgia. There are cases when police make use of firearms definitely out of proportion with the circumstances, which leads to a loss of life.

The case of Varlam Pkhakadze

On 7 December 2006, at about 04:30, based on the notice received by patrol police, members of patrol crew No.31 were tasked to drive 48, Chavchvadze Street in Kutaisi, and apprehend thieves that, according to the notice given to patrol police, were in the basement of the building. Patrol police inspectors Ivane Kapatadze and David Minashvili arrived on the site. I.Kapatadze immediately rushed to the entrance door where he dashed against a person – Varlam Pkhakadze – coming out of the entrance door. Patrol inspector I.Kapatadze, whose intention was to apprehend V. Pkhakadze, fired three shots towards him despite the fact that the latter was not armed, neither did he put up any resistance to police. Incidentally, the other inspector, D.Minashvili was at the entrance door, ready to help his colleague. I.Kapatadze and D.Minashvili apprehended V.Pkhakadze and had him sat on the step near the entrance door. Shortly afterwards their colleagues from patrol police crew No. 27, Avalo Gabrichidze and Kakha Gabunia arrived. Despite the suspect being wounded, patrol police inspectors displayed full negligence and failed to provide emergency medical assistance, limiting themselves only to questions concerning the identity of the suspect and calling investigator. V.Pkhakadze, who received injuries, was only transferred to hospital after a group of investigators came, which means an elapse of a certain span of time.

The ruling of judge I.Lekveishvili of Kutaisi City Court (on assigning bail as a measure of restraint for D.Minashvili) states that "negligence by patrol inspectors and improper fulfilment of their functions led to delayed transfer of severely injured Varlam Pkhakadze (who suffered rupture of an artery as a result of gunshot injury) to hospital, failure to timely provide the necessary medical assistance, with resultant acute circular insufficiency and, ultimately, his death on 12 December 2006, 5 days after he was transferred to hospital". R.Kvernadze, Medical Director of Western Georgia National Centre of Intervention Medicine, states in his letter to the Public Defender that "the gunshot injury, significant loss of blood, delayed referral for hospital care, and traumatic hemorrhagic shock resulted in diffusive brain oedema, atonic coma, severe renal insufficiency and cardiovascular insufficiency".

Inspector of Patrol Police Ivane Kapatadze was charged with criminal offence under Article 114 of the Criminal Code (murder through excessive use of force when arresting an offender) and was given two-month detention as a measure of restraint.

Inspectors D.Minashvili, A.Gabrichidze and K.Gabunia were charged with criminal offence stipulated in Article 342 (2) of the Criminal Code (namely neglect of official duty, resulting in loss of life or other grave outcome). The Regional Prosecutor's Office made a motion requesting the court to assign the above police officers with a bail of 2000 each as a measure of restraint. The court granted the prosecutor's motion.

One more aspect is worthy of notice. PDO representatives interviewed residents at 48 Chavchavadze Street, where the incident took place. They said they were awakened by gun shots. When they looked out the window they could see several men brutally beating a man who was crying: "What are you doing? Why are you beating me? Why are you killing me?". Only afterward did they learn that the man was Varlam Pkhkadze.

Not infrequently, investigators of investigative units fail to fulfil procedural norms when carrying out investigation into criminal cases. Among the most common violations one has to note inconsistency between various procedural documents, restriction of the right to defence (denial of access to materials of the criminal case), failure to enlighten detainees about their rights, refusing detainees to contact their families (enjoyment of this right is of paramount importance for persons suspected of crime to ensure prompt access to a defence lawyer), failure to carry out one or another investigative action, etc. Each and every case of procedural violations that becomes known to PDO is promptly followed on. The Public Defender sends to the relevant body a suggestion concerning the issue of responsibility of the perpetrator.

1. Z.Chikviladze, defendant, addressed investigator L.Jgarkava, requesting access to the case file, as provided for by Article 76 (3) of the Criminal Procedure Code, and permission to make photocopies of the materials. However, his request was rejected.

   The Public Defender addressed the prosecutor of Didube-Chugureti district of Tbilili with a suggestion to raise the issue of responsibility of investigator L.Jgarkava. The Public Defender's suggestion was followed on, and investigator L.Jgarkava was subjected to strict disciplinary sanctions for breaches in the course of criminal investigation.

2. M.Gvalia was accused of murder attempt committed intentionally by two or more persons. The criminal case was investigated by I.Khoshtaria. Defence lawyer Z.Pitskhelauri petitioned with the investigator to have I.Lashkarashvili questioned as a witness, and witnesses Z.Kharatishvili and G.Ivaneishvili questioned additionally. However, the investigator refused to grant the petition. Z.Pitskhelauri made a similar petition with prosecutor T.Gurgenishvili of Tbilisi Department of Procedural Oversight of Investigations in Bodies

of the Ministry of Internal Affairs, who partially granted the petition and instructed the investigator to question I.Lashkarashvili. This notwithstanding, I.Khoshtaria completed the investigation without even interviewing I.Lashkarashvili, thus violating Article 55 (4) of the Criminal Procedure Code. On top of that, he withdrew from the case file the petition that defence lawyer Z.Pitskhelauri made with T.Gurgenishvili, as well as the latter's resolution.

The Public Defender addressed Tbilisi Prosecutor's Office with a suggestion to raise the issue of responsibility of investigator I.Khoshtaria. The Public Defender's suggestion was followed on, and investigator I.Khoshtaria was given a reprimand.

3. G.Ekvtimishvili was charged with robbery. From materials of the criminal case it followed that on 9 May 2006, at 7:15 M.Beridese, patrol police inspector filed a report on receiving a verbal notice from T.Mekvevrishvili on committal of an offence, stating that the police arrested D.Tandilashvili and E. Ekvtimishvili suspected of involvement in the offence. The same is stated in the report of inspector R.Dolishvili on receiving a verbal notice from radio station "Rioni" on committal of the offence. This notwithstanding, the report of arrest and personal search of D.Tandilashvili and E. Ekvtimishvili indicates that they were arrested at on 9 May 2006 at 7:45.

   Thus, it follows from the case file that arrest of the suspects was effected 30 minutes earlier than reported in the record of arrest and personal search. In connection with this procedural breach, PDO sent a notice to Tbilisi Prosecutor's Office; however the latter did not find any procedural breach in the case.

4. According to G.Gambarshvili, I.Pkhakadze was arrested on 17 December 2006 by officers of Mukhrani unit of police division No.2 of Kutaisi Police Authority. I.Pkhakadze was suspected of committing a robbery. At the police premises he was subjected to physical pressure in order to wring out confession (injuries are documented in the report). I.Pkhakadze was not allowed to communicate with his family. The defence lawyer came to the police station on 18 December at 12:45, and asked investigator K.Babukhadia to give him access to materials of the case and a copy of the record of arrest and personal search. Despite the fact that G.Gambrashvili presented a warrant and gave his identity, investigator K.Babukhadia and head of the investigative unit refused to grant his request.

   The Public Defender sent the relevant materials to the Prosecutor General's Office for follow-on. According to the response letter from the Prosecutor General's Office, Kutaisi District Prosecutor's Office opened investigation into the fact of physical assault against I.Pkhakadze by officers of police division No.2 of Kutaisi Police Authority – an offence under Article 1441 (2) of the Criminal Code.

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It is important to note also such breaches by police as dragging out the investigation, failure to act on the crime. It is the responsibility of police to establish causes and conditions conducive to a crime, take appropriate measures to eliminate them, investigate the crime and bring perpetrators to account. At the same time, investigation into facts and circumstances of am offence needs to be comprehensive, impartial and full. However, investigation is oftentimes only superficial, and information about the offence often goes unattended.

1. Applicant L.Epremidze pointed out that the investigative unit of Mtskheta district police department was investigating the case concerning the theft of 25-ton water tank in his possession, stolen in December 1999. The investigation into the fact of theft started in March 2000. The investigative body was intentionally dragging out the action necessary to establish the truth. On 27 March 2006, the Public Defender addressed Mtskheta-Mtianeti Regional Prosecutor's Office concerning partiality of the inves-

tigation and requested the prosecutor's office to look into the circumstances of the case. Mtskheta-Mtianeti Regional Prosecutor's Office informed the Public Defender that it procured and examined the documents present in the materials of the case. It was found that investigators Z.Khuroshvili and L.Gabisonia conducted the investigation superficially and failed to follow on written instructions from the Prosecutor General's Office and Mtskheta-Mtianeti Regional Prosecutor's Office. In this connection, the latter demanded that disciplinary sanctions be imposed on Z.Khuroshvili and L.Gabisonia. Mtskheta-Mtianeti Main Police Authority informed PDO that no administrative penalty was applied to investigators Z. Khuroshvili and L.Gabisonia, as by the time when the Regional Prosecutor's Office sanctioned the penalty, they were no longer on the staff of Mtskheta Police department.

The Public Defender made a query concerning the investigators' present jobs and found that Z.Khuroshvili works as an investigator at Tbilisi Patrol Police Authority, while L.Gabisonia works as an investigator of the Division of Fight against Murder and Crime against Human Dignity and Health of Tbilisi Criminal Police. The Public Defender sent the materials on their neglect of official duty to the administration of the Ministry of Internal Affairs for follow-up which informed PDO that by the order of the Minister of Internal Affairs Z.Khuroshvili and L.Gabisonia were given a strict reprimand.

2. On 10 July 2006, PDO Regional Office in Kutaisi was addressed by residents of village Mukhiani, Tskaltubo district. According to the applicants, facts of robbery in village Mukhiani became frequent, as did various threats. In order to clarify facts pointed out in the application and collect additional information, PDO representatives met with residents of village Mukhiani and interviewed them. According to the applicants, in summer 2002 several households were violently attacked at one and the same time. The police contented itself only with interviewing the victims and did not even open preliminary investigation. Hence, neither were perpetrators identified and punished. According to one of the victims, perpetrators left behind a bag full of ammunitions, which the village residents gave to police following their insistent demands, without following any procedure stipulated by the law.

Residents of the village were particularly frightened in June 2006 by threats communicated by phone. According to one of the applicants, unidentified persons were trying to extort money from his son, demanding to transfer money. In case of disobedience they were threatening to kill him and destroy his property. Similar messages were received by other residents of the village. The applicants were dissatisfied with complete omission by law enforcement bodies. They said that in June 2006 they approached Tskaltubo police for help; however the staff refused to register their application. Moreover, they refused to listen to the applicants, and told them to leave the police premises immediately.

PDO sent the relevant submissions to Imereti Main Regional Police Authority and the Regional Prosecutor's Office for Western Georgia.

According to the response letter from the Regional Prosecutor's Office for Western Georgia, investigation into the violent assault of residents of village Mukhiani, Tskaltubo district perpetrated on 6 June 2000, was opened on 10 August 2006, i.e. six years after the criminal incident. The reasons for delay are unknown. It is unclear whether any investigation into assaults perpetrated in village Mukhiani in 2002 has started. The Prosecutors' Office paid special attention to the withdrawal of the bag with ammunitions effected in contravention of the relevant provisions of the procedural law. According to the information made available to PDO, investigation into the facts of threats communicated by phone was only opened in respect of one case. Considering the information provided to PDO by Regional Prosecutor's Office for Western Georgia, Kutaisi District Prosecutor was tasked to step in and take relevant measures.

On 1 September 2006, Kutaisi District Prosecutor's Office informed PDO that based on the information provided by PDO Regional Office in Kutaisi and other relevant materials, on 23 August 2006 Kutaisi District Prosecutor's Office opened investigation into the fact of abuse of official authority by officers of Tskaltubo district police – an offence under Article 332 (1) of the Criminal Code.

In the conversation with PDO representatives, residents of village Mukhiani articulated their presumption that inaction by police might have been caused by mercenary motives. The fact that the prosecutor's office opened investigation under Article 332 of the Criminal Case confirms this presumption.

Deficiencies in the work of police can be eliminated through enhanced transparency and accountability. Facts of infringement of human rights by police should be known to the public, they need to be adequately assessed and evaluated, and followed on by the relevant authorities. This will contribute to increased trust of police by the public.

POLICE MONITORING

Representatives of the Public Defender's Office carry out regular monitoring of police stations and temporary detention facilities both in the capital city and in the regions of Georgia. Monitoring carried out in temporary detention facilities outside the capital city exposed many problems and infringements that call for systemic analysis and follow-up. One of crucial issues is technical condition of temporary detention facilities (that outside the capital are located at police premises). Even though some of the buildings have been repaired and renovated, and presently conditions there are relatively better than previously, hardly any of remand facilities has a shower, medical room, properly functioning water supply or ventilation. Another problem is provision of food for persons in custody, as well as heating. Where detained persons are not provided with food by their families, detention facilities' staff are compelled to provide food for them at their own expense, however in some instances this manifestation of good will by the staff is not possible, for objective or subjective reasons. This problem is particularly relevant for those persons who are kept in custody to serve administrative penalty.

Monitoring carried out in December 2006 resulted in the following findings.

At Tkibuli temporary detention facility, out of nine cells only three are fit for use. Others are in a state of dilapidation. The ceiling and floor are damaged, toilets are in a non-operational condition and require repairs, there are no basic conditions for personal hygiene. Water supply, heating and ventilation systems are not operational. In most cases water for inmates is supplied by the staff. Sanitary condition is highly unsatisfactory.

At Marneuli temporary detention facility there are three cells. The cells do not have toilets or water. They are located at the end of the corridor; however, there is no shower there either. A bulb, installed over the entrance door, is inadequate to ensure normal lighting. Two out of the three cells have no heating, and no glass in window-panes, hence, it is cold in the cells.

At Dusheti temporary detention facility there are four cells. The cells have no heating or ventilation. The only source of light is a bulb installed over the entrance door. The facility has no adequate toilet, and no shower. Besides, the facility has no water supply, as does the police building where it is located. The facility is in need of repair.

At Gardabani temporary detention facility there are five cells. The cells have no heating, and no glass in windows, hence it is cold there. There is no ventilation or showers. A bulb installed over the entrance door is inadequate to ensure normal lighting. The facility is in need of repair.

Monitoring carried out at the temporary detention facility in the premises of Samtredia district police discovered a surprisingly large number of inmates serving administrative detention. Their number varies daily between five to seven persons. There were cases when the number of detainees kept at Samtredia temporary detention isolator reached 17. Almost all of them were serving a twenty-day administrative detention pre-

scribed by Samtredia District Court for offences under Article 45 of the Code of Administrative Offences (illegal purchase or possession of drugs in small quantities, or use of drugs without doctor's prescription). Notably, the facility has only four cells, of which one is in a state of dilapidation and, hence, unfit for use. The problem of overcrowding at Samtredia temporary detention facility is particularly acute due to the fact that apart from administrative detainees, it is also used for placement of persons suspected of criminal acts.

The examination of Samtredia temporary detention facility, and information obtained from its staff as well as inmates show that the facility is in need of repair. There is no shower, or basic conditions for personal hygiene. Water supply, heating and ventilation systems are in poor condition. Wooden boards on which inmates lie almost all the time are damaged. The administration has no mattresses and beddings. A serious problem is provision of food, and where detained persons are not provided with food by their families, the staff are compelled to provide food for them at their own expense. However, despite good will, it is not always possible for objective or subjective reasons. Therefore, inmates are left to serve their penalties in virtually inhuman conditions.

Samtredia district police is no exception. Similar problems are largely found at police departments in other districts of the country. True, some of police buildings and remand facilities have been repaired, but hygienic conditions there leave much to be desired (as shower facilities are non-existent).

It is important to note that according to the recommendation of the CoE Committee for the Prevention of Torture (CPT) all activities and conditions in the prison will worsen if prison administration is required to accommodate more inmates than its capacity is. Though the Recommendation deals with penitentiary institutions, temporary detention facilities used for persons serving their administrative penalties can largely be seen as such, hence the above recommendation is readily applicable to the situation in temporary detention facilities, too.

Notably, remand facilities of the Ministry of Internal Affairs are used for the placement of persons sentenced by courts to administrative detention for administrative breaches. According to Recommendation R(87)3 of the Committee of Ministers to the member states of the Council of Europe on European Prison Rules: "In countries where the law permits imprisonment by order of a court under any non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall not be less favourable than that of untried prisoners." (para.99).

Concerning light and ventilation, the UN Standard Minimum Rules for the Treatment of Prisoners in Rule 11 says 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.

The CoE Committee for the Prevention of Torture stresses that lack of air and sufficient light creates degrading conditions of treatment. 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.

Also, according the UN Standard Minimum Rules for the Treatment of Prisoners, namely 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". According to Rule 13, "adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and

geographical region, but at least once a week in a temperate climate". Rule 15 further stresses that "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". Maintenance of cleanliness and personal hygiene is important for prisoners in order to maintain self-respect and dignity. Therefore, it is necessary to do everything to enable every prisoner to have a shower and maintain cleanliness, which is crucial for their health and dignity.

In what concerns bedding, according to international standards, 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.

Under Rule 17 of the European Prison Rules, "the sanitary installations and arrangements for access shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in clean and decent conditions".

With a view to addressing these problems, the Public Defender addressed the Minister of Internal Affairs about the need to have the premises of pre-trial facilities brought into close alignment with international standards and making the conditions of detention better (after that the temporary detention facility in Tkibuli was closed down).

■

When monitoring police offices, PDO representatives found another infringement, namely coercive subpoena of witnesses in contravention of procedural rules. According to Article 93 of the Criminal Procedure Code, "called in evidence can be any persons, who might have the knowledge of information necessary to establish circumstances of the case". Calling in evidence must be in conformity with the procedure prescribed by the law. Under the procedural legislation, a witness shall be summoned to appear before a prosecutor or an investigator with a subpoena. Subpoena shall be sent by land mail or with a courier. A witness can also be called by a telephone message, telegram, radiogram, fax or other means of communications. A subpoena, or other notification shall indicate as to who, for what purpose, to whom and at what address the person is summoned, as well as the date and time of appearing, as well as consequences of not appearing n the absence of valid reasons. Receipt of subpoena (notification) shall be confirmed by a signature of the person who is called in evidence. In the absence of the persons summoned to testify, a subpoena (notification) shall be handed over to an adult family member who confirms the receipt of notification by his/her signature, or a representative of local government or self-government body.

Not infrequently, witnesses are brought in breach of the above norms. Police officers go to a person to be interviewed as a witness (oftentimes, to his residence) and ask him/her to follow them to police without giving any further explanation – as to whom and why they are called. Often they give an overly simple answer – "we don't know, it is the boss, so they will find out and let you go". Oftentimes, people are taken to police forcibly. According to the Criminal Procedure Code, a witness, apart from having the right to know as to why he is summoned, also has the right to formulate his testimony himself; get access to the record of interrogation or other investigative action conducted with his involvement; request making additions or changes to it; make a statement concerning the use of unlawful methods by the investigation; take part in the investigative action, familiarize himself with the record and make statements that shall be included into the record; complain about unlawful action of the investigator with the prosecutor; refuse to give evidence incriminating himself or his close relatives; under Article 94 (1) of the Criminal Procedure Code enjoy the rights provided for in Article 366 (the rights of suspects, defendants and victims in the appointment and conduct of expert appraisal).

There are cases when persons summoned as witnesses are not in a position to enjoy these rights, as the investigator failed to enlighten them accordingly. Instead of summoning a witness and interviewing him, what often

happens in reality is coercively bringing him to police. When in the course of monitoring PDO representatives come across such cases, police try to allege that they have appeared voluntarily to testify, which is not true. For understandable reasons, the persons concerned are reluctant to acknowledge that (as they fear retribution by police). Persons brought to police through such means are not allowed to move freely, they do not have access to a lawyer to have his assistance, which leads to impairment of the right guaranteed in Article 18 of the Constitution, namely, that the freedom of a person is inviolable. Under Article 305 of the Criminal Procedure Code, the witness has the right to be interviewed in the presence of a lawyer, but the absence of the latter does not obstruct the conduct of an investigative action. The investigator is under no obligation to provide a lawyer for a person to be interviewed as a witness, differently from interviewing an arrested person. However, since a person is brought to police coercively (or through deception), he has no access to a lawyer, and assistance by a lawyer. When a person is summoned for an interview in compliance with the existing legal provisions, he has adequate time and facilities to find a lawyer, and exercise both his rights and responsibilities.

Coercive subpoena of witnesses is regulated by the Criminal Procedure Code (Articles 175 and 176). In case a person summoned as witness evades appearing before the investigator, the latter has the right to make a motion before the court which issues an order on coercive subpoena. The court's order (ruling) is handed over for enforcement to police. Only then can police coerce the witness to appear. Unless procedural norms are followed in bringing a witness to police, there is a considerable risk that he will be subjected to pressure.

It is interesting to look at some cases where a witness was actually detained, which constitutes violation of the law:

1. In the course of monitoring at Kutaisi temporary detention facility, PDO representatives met with G.J. who reported the following (he refused giving an official statement for fear of retribution from police):

   On 14 December 2006, at about 10-11 am, officers of Imereti Regional Division of MIA Special Operational Department came to G.J.'s home in Bagdadi district centre and told him to follow them. When asked where he was supposed to go, police officers answered G.J. that they wanted to find out something. He was put into a car and taken to Zestafoni. On their way, police officers offered him to cooperate with the Special Operational Department, which G.J. rejected. They were also coercing him to testify against one person, which he refused, too. This was followed by verbal insults. G.J. was brought to Imereti Regional Division of the Special Operational Department, where he was subjected to intimidation, psychological pressure and verbal assault. After several hours he was interrogated as a witness by an investigator. On the same day, at about 19:00 G.J. was taken for drug test, which appeared to be positive. Thereafter he was taken to Kutaisi Police Authority where following a telephone conversation between a judge and officers of the Special Operational Unit he was given administrative detention for the duration of 25 days. Then he was taken to Imereti Regional Division again, where he was kept for about three hours, after which he was transferred to the temporary detention facility.

   In this case, apart from many other breaches, it is important to note that a person brought to police as a witness was coercively tested for drugs. According to G.J., he had not been arrested under administrative procedure and he was taken to the drugs' clinic as a witness.

2. On 23 March 2006, in the course of monitoring at Zestafoni district police, PDO representatives found in the detention register that the time of arrival in police of one of detainees – M.Kvinikadze, was 20 minutes before the time of arrest, as indicated in the record, which was highly illogical. This gave reasonable grounds to suspect that M.Kvinikadze was arrested earlier than indicated in the arrest report. Investigator K.Gavtadze explained that preliminary investigation into robbery was opened, physical evidence obtained, the victim pointed to the perpetrator, and he, K.Gavtadze sent police officers to bring M.Kvinikadze to appear before the police. (Appearing before the police as a procedural action is no longer valid, it was abrogated in 2003.

A person brought to police is considered arrested). Police officers put M.Kvinikadze into custody without making a requisite record.

3. Mamuka Askurava, interrogated as a witness on 10 December 2006 at Ajara Main Police Authority, was subjected to psychological and physical pressure, which resulted in a concussion of the brain.

   According to M.Askurava, he was visited at home by police officers who told him that chief of police department wanted to talk to him, and that he would be brought back in half an hour. Already in the police it appeared that M.Askurava was brought for interrogation as a witness in the criminal case opened against his brother. M.Askurava said it was not clear what his status was when he was interrogated, he had not received any subpoena, and no one explained to him what his rights were (as brother of the defendant, he was not obliged to testify).

   On 11 December 2006, Ajara Prosecutor's office started investigation into the case concerning infliction of bodily injuries to M.Askurava – an offence provided for in Article 118 (1) of the Criminal Code. However, no criminal proceedings were initiated against any concrete person, despite the fact that M.Askurava clearly pointed to one of the perpetrators.

   The examples clearly indicate that summoning of witnesses by law-enforcement bodies in contravention of the relevant procedural norms is common practice.

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Over the recent period PDO representatives have seldom faced obstacles in the course of monitoring. Whenever it happens, it is mostly caused by a low level of legal culture and awareness on the part of the staff of respective institutions. More often then not they are not aware of the scope of powers that the Public Defender enjoys, and are reluctant to make a decision on allowing access to their facilities for PDO representatives without consulting their seniors. For instance:

On 23 October 2006, G.Kurbushadze, chief of temporary detention facility in Kobuleti did not allow PDO representatives to carry out monitoring. He declared that he was subordinate to the chief of Batumi temporary detention facility No.1 and could not decide independently on providing access to the facility for PDO representatives. Chief of Batumi temporary detention facility No.1, S.Beridze allowed access to Kobuleti facility only to G.Charkviani.

Despite presenting the credentials, enlightening on provisions of the Organic Law on the Public Defender of Georgia, and possible consequences of denying access to PDO representatives to the facility, G. Kurbushadze did not allow PDO representative K.Meskhidze to carry out monitoring of the facility. The act by S.Beridze and G.Kurbushadze constitute a violation of the Organic Law on the Public Defender of Georgia, punishable under Article 173[4] of the Code of Administrative Offences.

On 26 October 2006, the Public Defender made a report of administrative infringement by G. Kurbushadze, chief of Kobuleti temporary detention facility that was sent to Kobuleti district police. Judge I. Kadagidze of Kobuleti District Court examined the report of administrative infringement and relevant materials, found that G.Kurbushadze did violate the law and imposed on him a fine of 15 GEL (though the minimum sum of fine for this category of infringements is 30 GEL).

In some districts there is a persistent problem of police registers. More specifically, often the time of arrest and the time of arrival to police are indicated incorrectly. Sometimes this is caused by improper or incorrect com-

pilation of an arrest report, whose data are then entered into the police register. Oftentimes, there are corrections in the registers, mostly concerning the time of arrest and the time of arrival to police. Initially these deficiencies were attributed to non-availability of precise instructions. However, the instructions do exist, but they are often kept on office shelf, and not used by those for whom they are intended. Besides, police officers often note that registers are inspected by supervising prosecutors from whom they receive different instructions on how to complete the. The fact, however, is that there are no uniform regulations on keeping registers, which creates problems in some regions. It is necessary to draw up clear instructions on keeping registers of person in custody, and brief the respective personnel how they should be filled out.

In the course of monitoring carried out on 28 October 2006 at Ozurgeti district police it was found that there had been no record-keeping concerning persons in custody and persons transferred to prisons. Police staff told PDO representatives that registers had been taken away from the police station by representatives of the regional prosecutor's office on 18 August 2006 in relation with the investigation concerning the arrest and torture of B.Poladashvili. Instead, as reported by the police staff, they kept special record for each of detainees, where they entered basic information envisaged in registers. However, in the course of another monitoring carried out on 31 January 2007 in the same police, there was again no register.

The Public Defender's Office addressed a note to the administration of the Ministry of Internal Affairs requesting to provide for Ozurgeti district police a new police register for keeping records on persons kept in custody.

On 21 November 2006, representatives of PDO Office for Western Georgia were carrying out monitoring in Batumi police department No.2. Officer on duty, G.Davitadze, refused access to police registers for PDO representatives, saying that the chief of the department was not informed about the monitoring. He said that it was necessary to notify his chief about the monitoring in advance.

The Public Defender's Office addressed a note to the administration of the Ministry of Internal Affairs requesting to inform the staff of the ministry about the powers given to the Public Defender by the law, so that in future there are no obstacles on the way of monitoring.

Monitoring carried out by PDO representatives at police facilities in the second half of 2006 exposed infringements by law enforcement officials, resulting in disciplinary sanctions against 8 police officers:

1. Inspector-investigator A.Berdzuli of Gldani-Nadzaladevi Criminal Police was dismissed from the system of the Ministry of Internal affairs for breaching the term of administrative detention of G.Kebadze.
2. Investigator P.Gvilava of Zugdidi Police Department was given a reprimand for breaching the provisions of Article 145 (5) of the Criminal Procedure Code in the course of arresting B.Lemonjava as a suspect; namely, he failed to indicate in the report the grounds for arrest. Besides, he breached the provisions of CPC Article 138 (1), failing to notify B.Lemonjava's family of his arrest as a suspect.
3. Inspector-investigator L.Mamporia of Zugdidi Police Department was given a strict reprimand for breaching the provisions of CPC Article 138 (1) in the course of arresting Z.Kvaratskhelia as a suspect (Z.Kvaratskhelia's family was not notified of his arrest).
4. Arrested V.Alania was not given a copy of his arrest report; he was not informed of his rights. Inspector-investigator G.Gabelaia of Khobi district police department was given a warning for the procedural breaches.
5. Arrested D.Oniani was not given a copy of his arrest report; he was not enlightened about his rights. Patrol-investigator A.Janashia of Samegrelo-Zemo Svaneti patrol police was given a rebuke for the procedural breaches.

6. Examination of the police register at Dedoplistskaro district police showed that the register did not contain records indicating the time of transfer of persons under administrative detention from the police. Based on the conclusions of official inspection carried out by the General Inspectorate of the Ministry of Internal Affairs, inspector I.Gogoladze of Borjomi district police, and inspectors T.Natelashvili and T.Lapiashvili of Dedoplistskaro police were subjected to disciplinary penalties by the order of the Minister of Internal Affairs.

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Over 2006, representatives of the Public Defender's Office made 856 visits to police stations and temporary detention facilities both in the capital city and in the regions of Georgia (307 visits in the first half of 2006, and 549 visits in the second half of 2006), interviewing 1154 persons in custody (321 detainees in the first half of 2006, and 1133 detainees in the second half of 2006).

The monitoring revealed 701 facts of procedural breaches (110 in the first half of 2006, and 591 in the second half of 2006). Sometimes there were several procedural breaches found in respect of one person in custody.

Physical injuries were found in 261 detainees (178 detainees in the first half of 2006, and 83 detainees in the second half of 2006). Of these 261 persons, only 32 (23 detainees in the first half of 2006, and 9 detainees in the second half of 2006) acknowledged the fact of physical violence by police, which accounts for 12% of persons displaying bodily injuries. Notably, in the second half of 2006, the number of detainees complaining of police treatment decreased. Hence, the use of excessive force by police, compared to the statistics from the previous period, shows a tendency to decrease, which is a welcome fact.

In connection with violations in the course of monitoring of temporary detention facilities of the Ministry of Internal Affairs:

1. Preliminary investigation was opened into 28 facts of physical violence by police against detained persons (21 cases in the first half of 2006, and 7cases in the second half of 2006): of these, investigation on 26 cases was dropped for absence of a crime in the act, and 2 cases are in the process of investigation.
2. Preliminary investigation concerning procedural breaches was opened on 2 cases (both in the second half of 2006) that were later dropped for absence of a crime in the act.

In 2006, 31 police officers were subjected to disciplinary penalties for procedural beaches (23 officers in the first half of 2006, and 8 officers in the second half of 2006).

In connection with offences involving violation of human rights by police, the Prosecutor General's Office provided the following statistics:

– 4 officers were subjected to criminal proceedings on charges of torture (Article 1441 of the Criminal Code).
– 4 officers were subjected to criminal proceedings on charges of threats of torture (Article 1442 of the Criminal Code).
– 12 officers were subjected to criminal proceedings on charges of inhuman or degrading treatment (Article 1443 of the Criminal Code).
– 243 persons were subjected to criminal proceedings for abuse of official authority (Article 332 of the Criminal Code); of these 146 received judgement of conviction. (The information did not indicate the number of policeman charged for violation of human rights).
– 62 persons were subjected to criminal proceedings for excess of official authority (Article 333 of the Criminal Code); of these 55 received judgement of conviction. (The information did not indicate the number of policeman charged for violation of human rights).

The number of persons entered temporary detention facilities with bodily injuries in the second half of 2006 was 1605 (the number includes both persons receiving injuries when arrested, and those who had previous injuries): Tbilisi – 657 persons; Shida Kartli – 242 persons; Kvemo Kartli – 184 persons; Imereti - 154 persons; Ajara – 100 persons; Kakheti – 84 persons; Samegrelo-Zemo Svaneti – 70 persons; Samtskhe-Javakheti – 50 persons; Mtskheta-Mtianeti – 33 persons; Guria – 20 persons; Racha-Lechkhumi – 11 persons. In total, the number of persons with injuries in 2006 was 2962.

As far as persons with injuries who complained of physical violence by police, in the second half of 2006 their number was 105 persons, i.e. 6.5% of the total number of persons with injuries at temporary detention isolators (1605); in the first half of 2006 the number of persons with injuries was 1357, of these 86 complained of violence by police, i.e. 6% of the total number. Thus, statistics for the second half of 2006 is almost identical with the first half of 2006, though one should note that compared to previous years, the numbers are significantly lower.

In the second half of 2006, disciplinary sanctions applied to 714 members of police force, among these 117 were rebuked, 263 were reprimanded, 133 were strictly reprimanded, 9 were demoted in position, 174 were discharged from police service, 3 were demoted in title; and 6 officers were dismissed. (The information did not indicate the number of police officers subjected to disciplinary sanctions for violation of human rights).

In 2006, 18 persons (in the process of arrest) died when resisting law-enforcement officers: 14 persons in the first half of 2006, and 4 persons in the second half of 2006.

5 FISCAL POLICE

The Public Defender's Report for the first half of 2006 covered extensively the facts of human rights violations by fiscal police, such as such as disproportionate use of force when arresting persons suspected of offence, violation of procedural rights of persons in the course of criminal investigation, and others.

In connection with disproportionate use of force and illegal arrests by fiscal police (for details see the Report covering the first half of 2006: the case of N.Posuri, the operation in village Dirbi of Kareli district; the case of D.Naskidashvili), the relevant materials were sent by the Public Defender to the General Prosecutor's Office in order to open preliminary investigation and initiate criminal proceedings against possible perpetrators.

On 18 July 2006, the Shida Kartli Regional Prosecutor's Office opened investigation into a criminal case concerning the excess of official authority by officers of Shida Kartli fiscal police when arresting N.Posuri – an offence under Article 333 (1) of the Criminal Code. Investigation into the case continues.

On 21 February 2006, the Shida Kartli Regional Prosecutor's Office opened investigation into a criminal case concerning infliction of physical injuries to T.Mushkiashvili and N.Guliashvili (special operation conducted in village Dirbi) – an offence under Article 118 (1) of the Criminal Code. Investigation into the case continues.

On 21 June 2006, the Shida Kartli Regional Prosecutor's Office opened investigation into a criminal case concerning illegal arrest of M.Naskidashvili by fiscal police – an offence under Article 147 (1) of the Criminal Code. The preliminary investigation into the case was dropped on 21 October 2006 for absence of a crime in the act.

Notably, the second half of 2006 showed a decrease in the number of complaints on possible violations by fiscal police referred to the Public Defender's Office.

1. The Public Defender was addressed by residents of village Plavismani, Gori district. The applicants pointed out that on 29 June 2006, D.Giunashvili, resident of village Plavismani, was visited by officers of Shida Kartli fiscal police led by head of department, Z.Arsoshvili. D.Giunashvili was absent. The police officers made inquiries with D. Giunashvili's wife, and then they demanded the documents for a vehicle parked in the courtyard near the house, and took them away. On the following day, 30 June 2006, at about 12:00, two Opel type vehicles (wit plate numbers VOV-308 and CAL-

117) drove into the courtyard, the fact witnessed by I.Labari, asked by owners of the house to look after it in their absence. A minor child present in the house at the time of the visit, was locked up inside by police. I.Labari made a noise, with neighbours coming to the courtyard gate, but the police did not let them in. According to the applicants they could see the law-enforcers stacking cigarette cases in front of the garage. Finally, the neighbours actively trying to access the scene, managed to enter though it was late, as they could not prevent the illegal act by police that had already stacked 10 cases with cigarettes in D.Giunashvili's residence.

The Public Defender sent a letter concerning this fact to Shida Kartli Regional Prosecutor's Office for follow-on and examination of the case. According to the letter from the prosecutor's office, on 2 August 2006, based on the application of v. Plavismani residents, the Shida Kartli Regional Prosecutor's Office started preliminary investigation into criminal case No.8206864 concerning excess of official authority by fiscal police officers in D.Giunashvili's home in village Plavismani – an offence an offence under Article 333 (1) of the Criminal Code. Investigation into the case continues.

2. The Public Defender was addressed by citizen Gola Chubinidze. According to the applicant. In December 2004, Beriashvili fraudulently got hold of his Mercedes-Benz type minibus. Fiscal Police Department of the Ministry of Finance initiated criminal proceedings on this fact on 31 January 2006. The case is being investigated by M.Tsitsiashvili, investigator of Unit 3 of Tbilisi Fiscal Police Authority.

   On 30 April 2006, G,Chubinidze found his minibus and notified investigator M. Tsitsiashvili accordingly. The investigator compiled the official record and parked the car in the courtyard of fiscal police premises. Despite repeated requests of the applicant, the vehicle was not returned to the owner. According to Article 123 (1) of the Criminal Procedure Code, before the investigation is completed, the investigative body handling the case shall return to the owner or possessor: perishable items, essential items for every day use, cattle, poultry, other domestic animals, vehicles, if these objects are not attached or put under seal.

   The Public Defender addressed a recommendation to M.Gvaramia, head of the Department of Procedural Oversight of the Ministry of Finance at the Prosecutor General's Office to have the minibus returned to its owner, as prescribed by CPC Article 123 (1). The Public Defender's recommendation was acted on, and R. Nikolaishvili, head of Tbilisi Investigation Department of the Fiscal Police was instructed by the Prosecutor General's Office to return the vehicle to its owner, which was fulfilled.

6 HUMAN RIGHTS IN ARMED FORCES

Starting from the second half of 2006, the Public Defender's Office has started the monitoring of hauptwahts carried out across the country. The monitoring group of PDO Investigation and Monitoring Department carries out monitoring in accordance with Articles 18 and 19 of the Organic Law on the Public Defender of Georgia. In the course of monitoring the Public Defender (or his representative) has the right of unimpeded access to military units to examine the situation of the protection of human rights, meet with military servicemen kept in custody, check the documents related to their custody, etc.

In the event of disciplinary infringement by military servicemen, followed by imposition by the court of administrative arrest – one of the forms of disciplinary penalties – the military serviceman is placed in hauptwahts – administrative detention facilities within the system of the Ministry of Defence. It is to be noted that the maximum duration of administrative detention shall not exceed 30 days.

Overall, there are six hauptwahts in the system of the Ministry of Defence: the hauptwaht of Tbilisi-Mtskheta-Mtianeti regional department (Tbilisi), the hauptwaht of Kakheti Kvemo Kartli regional department (Vaziani), the hauptwaht located in the premises of Samegrelo-Zemo Svaneti regional police department (Senaki); the hauptwaht of Ajara regional department (Batumi); the hauptwaht of Samtskhe-Javakheti regional department (Akhaltsikhe); and the hauptwaht of Shida Kartli regional department (Gori).

The monitoring of these facilities (with the exception of the hauptwaht in Senaki, to which the monitoring group was not allowed access) carried out by the monitoring group of PDO Investigation and Monitoring Department in December 2006 found fairly similar violations there.

1. The hauptwaht of Tbilisi-Mtskheta-Mtianeti regional department: The building of the facility is in need of overhaul; it has one common cell and 11 solitary cells. The common cell has no heating; there are two windows, both with broken glasses; the walls are wet; the cell has no toilet or water supply points; there are ten large wooden platforms – plank beds; the cell has no internal lighting, the only source of light being a bulb outside the cell, which is not sufficient for providing adequate lighting. Of 14 solitary cells: 13 are in use (one has no door); in seven of them the plank bed is removed and is provided to inmates, according to internal regulations, only in night hours; in six cells the plank bed is lifted to the wall, the cells have no sanitation points or heating.

2. The hauptwaht of Kakheti Kvemo Kartli regional department: The facility has ten cells, of which are two-man cells and two are four-man cells. Overall, the general condition of the facility is satisfactory, with the heating system installed. There is no shower.
3. The hauptwaht of Shida Kartli regional department: The facility has five cells; there is no heating system installed, and heating is provided from the wood stove installed in the corridor. The cells have no windows, the only source of light is bulbs installed outside the cells, one per each of the cells; in the evening hours inmates are given wooden platforms to sleep on sleep, that are kept in the corridor during the day time. The cells are in need of overhaul, as is the entire building of the facility.
4. The hauptwaht of Ajara regional department: The facility has three common and six solitary cells; the cells have no heating, and it is cold inside; in evening hours inmates are given wooden boards that are installed on a concrete platform, and taken away in the morning. The building has no toilets and inmates are taken to the premises of military police. There are no showers, and inmates are taken for shower to the military unit in village Adlia, Khelvachauri district.
5. The hauptwaht of Samtskhe-Javakheti regional department: The facility has four cells, with no toilet or water supply points; there is no shower. Cells are lit from outside with bulbs installed in the corridor; they are heated with a wood stove installed in the corridor. In the evening hours inmates are given wooden platforms to sleep on, that are kept in the corridor during the day time. In the corner of outside exercise area there is a latrine and water tap. The cells are in need of overhaul, as is the entire building of the facility.

According to Recommendation R(87)3 (12 February 1987) of the Committee of Ministers to the member states of the Council of Europe on European Prison Rules: "In countries where the law permits imprisonment by order of a court under any non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall not be less favourable than that of untried prisoners." (Rule 99). According to Rule 24: "Every prisoner shall be provided with a separate bed and separate and appropriate bedding which shall be kept in good order and changed often enough to ensure its cleanliness".

According to the UN Standard Minimum Rules for the Treatment of Prisoners: " 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".

That inmates of hauptwahts are provided in the evening hours with wooden planks instead of beds for them to sleep on, indicates that hauptwahts can by no means be considered to ensure normal conditions of custody accommodation, which is a direct violation of generally accepted principles of the treatment of prisoners. It follows that a soldier has to spend the whole day on foot, as it is not humanly possible to sit on wet concrete floor, especially in winter season. Such regulations directly cause prisoners' unjustified physical pain and mental suffering, and such conditions in custody facilities constitute inhuman and degrading treatment and can be appraised as torture.

The UN Standard Minimum Rules for the Treatment of Prisoners in Rule 11 says 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. Long stay in a poorly lit room can be harmful eyesight. It is necessary to ensure sufficient lighting. Long stay in a room with only artificial light can also be injurious both to prisoner's eyesight and his mental health. Therefore, all cells shall be provided with sufficient artificial light alongside with the source of natural light.

Given the fact that the conditions in the hauptwahts of military police regional departments are in no way adequate for normal custody accommodation, and keeping persons in such conditions can be considered as inhuman and degrading treatment, the Public Defender addressed a recommendation to the Ministry of Defence of Georgia to carry out measures to address the problems found in the course of monitoring – such as to

ensure proper showers, toilets, lighting and heating, as well as to provide proper conditions for sleep in custody facilities of the ministry of Defence.

PDO held a presentation concerning the results of the monitoring and the recommendation sent by the Public Defender to the Minister of Defence, in order to inform the public about the situation in the hauptwahts of the Ministry of Defence of Georgia. Chief of the Military Police informed the Public Defender that his recommendations would be taken into consideration in the functioning of the hauptwahts. Also, on 19 December 2006, Deputy Minister of Defence, G.Sukhitashvili notified the Public Defender that in future the relevant structures of the Ministry of Defence would be ready to assist his representatives in carrying out the monitoring. The Ministry of Defence has thus expressed its readiness to remedy the existing problems, which is *per se* a positive development demonstrating the willingness of the Ministry to cooperate with PDO, which is very important.

PDO was planning to carry out systematic monitoring of the hauptwahts; however, in January 2007 PDO representatives were precluded from further carrying out the monitoring. Military officials present in the territories of Tbilisi-Mtskheta-Mtianeti, Kakheti-Kvemo Kartli, Ajara and Shida Kartli regional departments of MOD Military Police did not allow PDO representatives access to the hautwahts, despite the credentials and IDs presented, thus grossly violating requirements of the Law on the Public Defender of Georgia, and calling in question the actual willingness of the Ministry of Defence to make the system and the human rights situation there transparent for the public.

Despite the obstacles put on the way of monitoring by the Ministry of Defence, the Public Defender refrained from publicising these facts and instead addressed the Minister of Defence with a letter, expressing the desire for the Public Defender and the ministry to cooperate, and requesting to deliberate on the responsibility of officials who refused to grant PDO representatives access to the hauptwahts, which they are entitled to do by the law. The ministry informed PDO that in future PDO representatives would encounter no problems on the way of carrying out the monitoring of hauptwahts. However, in February 2007, when PDO representatives were visiting Samtskhe-Javakheti and Shida Kartli regional department in order to monitor the hauptwahts, they were again denied access.

It is important to note that institutions under the Ministry of Defence are the only place where PDO representatives, carrying out their functions in conformity with the provisions of the Organic Law, encounter problems in terms of unimpeded access to the hauptwahts. Under the Organic Law on the Public Defender of Georgia, the Public Defender's Office is the only institution authorised to monitor the human rights situation in the system of the Ministry of Defence. That representatives of the Public Defender are precluded from carrying out monitoring in the hautpwahts is a clear intention to prevent them from discharging effectively the functions prescribed to them by the law. This can be interpreted as an attempt on the part of the Ministry of Defence to make the system closed for the public, which in turn means violation of the principle of transparency in the system of the Ministry of Defence.

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The Public Defender's report for the first half of 2006 described facts of physical assault in military units (see the case of G.Sharikadze, the case of V Sarishvili). The military Police Department of the Ministry of Defence started preliminary investigation into those facts (Article 386 of the Criminal Code - abuse of relations between military servicemen). In connection with the case of V.Sarishvili, the Public Defender was informed that private Valeri Sarishvili was physically and verbally assaulted by his fellow servicemen B.Meparishvili, I.Revishvili, R.Silagadze, A.Maisuradze, R,Teteloshvili, U.Verulashvili and B.Cheishvili, and private Kutivadze extorted 50 GEL. The persons concerned were subjected to criminal liability under Article 181 (extortion), article 120 (intentional infliction of harm to health) and Article 186 of the Criminal Code. The case was sent with indictment to Akhaltsikhe district court and adjudicated with the judgement of guilty. Investigation into G.Sharikadze's case continues.

7 ALTERNATIVE LABOUR SERVICE

Under Article 1 of the Law on the Non-Military Alternative Labour Service adopted by the Parliament in 1997, the law represents a reasonable and humane compromise between the freedom of expression, freedom of conscience, belief and religion, on the one hand, and compulsory military service, on the other.

The right of a person to refuse enrolment in compulsory military service for reasons of his religious belief or convictions (the right to conscientious objection) is guaranteed by the Universal Declaration of Human Rights (Article 18) and the International Covenant of Civil and Political Rights (Article 18).

In 2000 the right to conscientious objection was enunciated in the European Union Charter on Fundamental Rights (Article 10.2). In 1990 at the Second Conference of the Organisation for Security and Cooperation in Europe the participating states agreed on the importance of civilian alternative labour service.

Resolutions 1987/46, 1998/77 and 2002/46 of the UN Human Rights Commission acknowledge and reaffirm the right to conscientious objection, as a legal means for enjoyment of the freedom of thought, conscience and religion.

This right was further expanded and refined in a large number of international or regional legal instruments: way back in 1987, in Recommendation R(87)8 the Committee of Ministers of the Council of Europe called upon the member states to bring national legislation in alignment with the principle providing for the right of a person to conscientious objection. Such persons can be made obliged to enrol in alternative service. The Recommendation also establishes minimum standards, such as the right to be registered at any time as a conscientious objector, the right to a fair trial, procedures of non-discriminatory examination of applications for enrolment in alternative service and, what is particularly important, the existence of non-military (civilian) military service.

This recommendation served as a basis for the adoption, in 2001, of Recommendation No.1518/2001 calling upon the member states to bring their domestic legislation and practice with the requirements of the relevant recommendations.

General Situation

Despite the legal recognition of the right to conscientious objection by most of the European states, the

existing legislation and practice in most cases fall short of the minimum standards set forth by Recommendations R(87)8 and 1518/2001.

By 2005, most of EU member states (29 out of 26) recognised the right to conscientious objection. In three countries (Azerbaijan, Belarus and Turkey) there is no legal framework for alternative labour service, despite the fact that the constitutions of Azerbaijan and Belarus adopted in 1990 contain provisions concerning the right to conscientious objection.

Georgia recognised this right in 1997 when the Parliament adopted the Law on the Non-Military Alternative Labour Service; however, the legal provisions on conscientious objection are not duly translated into practice. The Department for Alternative Labour Service was established under the Ministry of Labour, Health and Social Welfare, but abolished after three years, by the Ordinance of 22 January 2007 signed by the Minister of Labour, the functions of the department were transferred to the Department of Veterans' Affairs under the same ministry. Over its existence, the Department has called up for alternative labour service 368 conscripts, and in 2006 enrolled in alternative labour service were 209 conscripts.

In 2006, the break-down of persons serving in alternative labour service by ethnicity was as follows:

Georgians	176
Armenians	14
Azerbaijanis	11
Assyrians	4
Russians	4

By religion, Orthodox Christians account for 62%, whereas followers of other religious confessions account for 38% of persons serving in alternative labour service.

Of all persons in alternative service, only 8 serve in civilian segments of military units, whereas others are involved in reconstruction and rehabilitation of historic or cultural monuments, work in nature reserves and forest-parks, provide care for persons with disabilities, work in shelters for disabled and old-age persons, utilities, etc.

Currently, the functions of the department are fulfilled by one official – Deputy Chairman of the Department of Veterans' Affairs, without any additional support staff, funding or regional offices.

A serious impediment for the department is lack of financial resources. There is not a single cent included in the budget for handling the functions related to management of non-military alternative service.

As of today, the Deputy Chairman of the Department of Veterans' Affairs has received 8 applications: three have been submitted by members of Jehovah's Witnesses, and petitions for 5 conscripts have been submitted by different eparchies and clergymen.

■

The Council of Europe in its Recommendation 1518/2001 calls upon the member states to incorporate into their national legislation a provision enabling conscientious objectors to get registered at any time. The same requirement is contained in the UN Resolution 1998/77. In Georgia, similarly to other countries of Europe, it is stipulated by the law that application concerning conscientious objection can only be filed within 19 days after the conscription is announced (Article 7 of the Georgian law on alternative service).

The Public Defender believes that men due for call-up need to have a choice – to take up military service or alternative labour service. To this end, it is necessary for the department handling alternative service to be an efficient, institutionally sound and adequately financed body.

It is necessary to have a structural unit established by internal regulations of the Department of Veterans' Affairs that would be responsible for handling cases concerning call-up to alternative labour service and dealing with related issues.

On 13 February 2007, after the alternative labour service issues were made part of the functions and responsibilities of the Department of Veterans' Affairs, the department sent out written notices to military offices of local government bodies on the structural changes. Due to lack of funds and other technical problems, it is not possible to disseminate information concerning theses changes beyond Tbilisi.

Currently, the main problem confronting alternative labour service is economic predicament and lack of jobs.

Recommendations:

For the attention of the Department of Veterans' Affairs:

- It is necessary to set up, by the Regulations of the Department, an independent structural entity to deal with matters related to non-military alternative labour service, staffed with several experts.
- It is necessary to include into the departments' budget line additional cost items for the said structural unit to be in a position to properly carry out activities within its competences not only in the capital city, but also in regions of Georgia.
- Potential and actual employers should be made aware of their rights and responsibilities in the context of non-military alternative labour service. At the same time, it is necessary to create an electronic data base both on persons taking up alternative service, and potential employers.
- It is necessary to carry out an information and communication campaign at all levels of the society, to have conscripts and their families informed on their right under the law to take up non-military alternative labour service.
- It is necessary to carry out measures to enhance tolerance in the society, so that persons serving in alternative labour service are not seen by the society as evaders of conscription, and protect their legitimate right to take up alternative labour service.

The Case of Guram Tkemaladze

Guram Tkemaladze was subject to conscription. He is an Orthdox Christian and refused to take up military service, based on his faith and conscience. Based on the law, he requested being enrolled not for military service, but for alternative labour service, and applied to Adigeni district military office. His request was rejected without giving him any grounds for refusal. Besides, G.Tkemeladze was subjected to threats of having criminal proceedings initiated against him for evading conscription.

G.Tkemaladse filed an application with the Department of Non-military Alternative Labour Service that considered his application and made a motion with Adigeni district military office. Despite the motion, the military office again refused to grant G.Tkemaladze's request.

Representatives of the Public Defender's Office interviewed head of Adigeni district military office, T.Tumanishvili. He said that by decision of Conscription Commission, G.Tkemaladze was fit for military

service, and that he was called up for service in the Armed Forces on 11 August 2006, and received a notification from the military office on his obligation to appear before the military office on a concrete date. However, G.Tkemaladze failed to appear, giving as a reason acute respiratory infection.

On 31 August G.Tkemeladze came to the military office and submitted his application alongside with a directive on his call-up for non-military alternative labour service, issued by head of the Department of Non-Military Alternative Labour Service.

The matter was brought to the attention of J.Tsomaia, head of the Conscription Division of the Department for Regional Matters of the Government Chancellery, on whose instruction G.Tkemaladze personal file was transferred to Samtskhe-Javakheti Regional Military Police Department that remitted it to Adigeni district military office, as examination of the case was beyond the competence of military police.

According to the letter from Adigeni military office received by PDO on 8 September 2006, G.Tkemaladze has been enrolled for non-military alternative labour service, and his file was sent to the relevant department.

The Public Defender believes that applications by persons who adequately substantiate their refusal to take up military service and request being enrolled for alternative labour service should be handed over without any complicated procedures to the Department of Non-Military Alternative Labour Service that today is structurally subordinate to the Department of Veterans' Affairs.

The Case of Erekle Magradze

On 24 January 2007, the Public Defender was addressed by head of Isani-Samgori district military office, D.Davlashelidze who was asking to look into the case of Erekle Magradze. According to E.Magradze, he is member of Jehovah's Witnesses where he serves as a bishop and requests to postpone his conscription according to the provisions of Article 30 (l) of the Law on the Non-Military Alternative Labour Service.

The Public Defender's response states that the provision of the norm should be interpreted to cover a fairly broad circle of persons. This is suggested, *inter alia*, by the wording of the provision, that speaks of clergymen in general, as well as students of theological schools. The legislature in this case does not point to any specifying circumstances, or any religious denomination, hence it does not narrow down the application of the provision to any specific group of persons. This means that a follower of any religion can have his military service postponed if he is a clergyman, or student of a theological seminary.

Such an interpretation is consonant with constitutional standards of human rights. The Constitution of Georgia in article 14 speaks of equality of every person before the law irrespective of " … religion". This is a generic provision on prohibition of discrimination which protects every person so that he/she is not treated differently from others in identical circumstances. Besides, under article 9 of the European Convention on Human Rights and Fundamental Freedoms: "Everyone has the right to freedom of thought, conscience and religion". From this interpretation of the right to freedom of religion, any discriminatory treatment based on religion is inadmissible, as it would lead to very non-conducive environment for realisation of this right.

The letter further stated that this opinion is not binding and reflects the Public Defender's position.

E.Magradze was asked to present to Isani-Samgori district military office an official letter confirming that he is member of the Jehovah's Witnesses, and his order. E.Magradze's file has been sent to the Conscription Commission for review.

8 ALTERNATIVE LABOUR SERVICE IN THE RESERVE

Closely linked with the non-military alternative labour service is the issues of reserve service. The Law on Military Reserve Service was adopted by the Parliament on 27 December 2007.

According to the Explanatory Note to the Law on Military Reserve Service, the purpose of the law is to establish an adequately qualified reserve for the Armed Forces to strengthen the defence capacity of the country. According to Article 2 (1) of the Law: "The Armed Forces Reserve is established to support the Armed Forces during mobilisation, warfare and/or the state of emergency, or other extraordinary situation or proceeding from interests of national security". Article 4 (1) states that a person is called up for reserve military service in order to undergo combat training.

Article 8 of the Law defines the list of persons to be exempt from the reserve service, including "persons who served non-military alternative labour service".

It is to be considered that from 31 December 2006, by the order of the Minister of Labour, Health and Social Welfare, the Department for Non-Military Alternative Labour Service has been abolished. The functions of the department have been transferred to the Department of Veterans' Affairs where currently the requisite functions are fulfilled by one official – Deputy Chairman of the Department of Veterans' Affairs.

According to the data of the Department for Non-Military Alternative Labour Service, over the period of three years, as many as 368 conscripts were called up for non-military alternative labour service. This number is much lower than the total number of persons subject to call-up for the reserve military service.

The right of a person to refuse to participate in combat training for reasons of conscience, belief and religion is enshrined in the Georgian law. Therefore, it is the Public Defender's opinion that provisions of the Law on Non-Military Alternative Labour service should be interpreted to apply also to persons due to be called up for the reserve service.

Therefore, Article 8 of the Law on Military Reserve Service should be amended to include in the list of persons subject to exemption from the reserve service also conscientious objectors.

9 HUMAN RIGHTS IN THE PENITENTIARY SYSTEM

The Public Defender's Parliamentary Report for the first half of 2006 covered extensively both positive developments in the penitentiary system, and its deficiencies.

Over the reporting period the Public Defender's Office carried out regular monitoring of the situation in the penitentiary system. From 1 June to 31 December, 216 visits were made to penitentiary institutions, and visit records for 503 prisoners compiled;

June	53 prisoners
July	44 prisoners
August	153 prisoners
September	26 prisoners
October	67 prisoners
November	73 prisoners
December	87 prisoners

To this one has to add the number of prisoners whose visit records were not made, but who were interviewed by PDO representatives.

It is to be noted that most of the problems described earlier, still persisted over the second half of 2006, therefore it seems inappropriate to repeat what was said earlier. Therefore, we will stress only the most important factors.

Following the changes made to the Law on Imprisonment on 28 April 2006, the status of the standing commission to carry put public control of penitentiary establishments has been defined. In the first half of 2006, such commissions were only operational in three establishments, namely: Kutaisi general regime and strict regime prison No.2, Zugdidi Prison No.4, and Batumi Prison No.3. That public commissions have been established at Rustavi general regime and strict regime prison No.1, Geguti general regime and strict regime establishment No.8, Medical Establishment for Prisoners with Tuberculosis, Ksani general regime and strict regime establishment No.7, General and cell-type regime establishment for women and juveniles No.5, Tbilisi prison No.5, Medical Establishment for Prisoners and Rustavi Prison No.6 is a positive and welcome development.

At the same time, we wish to once again emphasise our position that commission members should be given the right to make visual and audio recordings during the visits if necessary.

Prisoners' Right to Visits and Video cameras in meeting rooms

The current legislation limits the time allowed for short-term visits, and long-term visits are for the time being abrogated. It is highly commendable that the draft penal code makes a provision for such visits.

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".

The recommendation has not been followed on by the Ministry of Justice. In addition to Kutaisi Prison No.2 and Tbilisi Prison No.7, video surveillance cameras have been installed in Rustavi Prison No.6. Video surveillance cameras undermine seriously the right of meeting confidentially with one's defence lawyer.

Recommendation: It is necessary to dismantle surveillance facilities installed in the meetings rooms of penitentiary institutions used for meetings between lawyers and their clients

Video Surveillance Camera in "Thieves-in-Law" Ward

Patients J.Sh. and M.Z. – the so-called "thieves-in-law" were placed in the Medical Establishment for Prisoners of the Penal Department, Ministry of Justice. Institution's director, A.Mukhadze, told PDO representatives that a video surveillance devise has been installed in the ward occupied by the "thieves-in-law".

The Law on Imprisonment, Article 8 (4) stipulates that: "In accordance with established rules, a penitentiary institution administration may employ audio, visual, electronic or other technical control facilities to prevent commission of a crime or other violation of law and to obtain necessary information on the convicts' behaviour. A penitentiary institution administration must warn the convicts in advance of the use of aforementioned protective and control measures".

J.Sh. was placed in the Medical Establishment for Prisoners of the Penal Department with the following diagnosis: hypertension, stage 2; instable stenicardia; ischemic heart disease, post-infarction cardio sclerosis. M.Z. is disabled, with spine lesion and, hence, lost sensitivity below the belt. None of them can move autonomously, they have to comply with the needs of nature in the ward that is being surveyed with a surveillance camera.

The above-mentioned legal act provides for the right for a penitentiary institution administration to employ audio, visual, electronic or other technical control facilities without any limitation as to the place where it is used, which implies that audio-visual control technical facilities can be installed both in a cell or carcer, and wards and toilets of a medical establishment.

The right of a prisoner to be protected from unfounded infringement of his privacy is addressed in the case of the European Court of Human Rights *Melone v UK*. The European Court of Human Rights found violation of Article 8 of the Convention. The Court stressed that "the law must give the individual adequate protection against arbitrary interference" (Malone Judgement, para. 67). "It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power". The law must indicate the scope of any discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity. According to the European Court of Human Rights, the law of England and Wales does not indicate with sufficient clarity the limits and means for the executive to have the discretion for interception (wiretapping) of telephone calls. This means that there is no minimum means of legal protection from infringement of the privacy that the citizens must have proceeding from the principle of the rule of law. The law regulating surveillance of a person deprived of liberty must be clear enough to give an idea to the person of those conditions and circumstances with which competent authorities can use a concrete measure of restriction of the right. The Court also stated that existence of law and practice permitting and establishing the system of surveillance of communications is a violation of human rights within the meaning of Article 8.

"Audio and video surveillance is a particularly serious restriction of privacy and should therefore be based on the law which should be particularly precise. It is important to have precise and detailed rules in relation with this matter" (*Krusine v. France*)

Conditions of imprisonment may sometimes amount to inhuman and degrading treatment. In this connection the European Court of Human Rights established in a number of cases violation of Article 3 of the Convention. In terms of Article 8 (4) of the Law on Imprisonment, the most relevant to it is the judgement of the European Court in the case *Peers v.Greece*.

The case concerns the applicant's arrest and detention in August 1994 on drug-related charges. Five days after his arrest, he was moved to Koridallos Prison as a remand prisoner, where he remained after his conviction in July 1995. He was kept in different prisons in Greece before he was released in 1998. The applicant complained that the conditions of his detention at Koridallos prison, including the psychiatric hospital and the Alpha and Delta wings of the prison, violated Article 3. He invoked Article 8 in complaining that the letters addressed to him by the European Commission of Human Rights were opened by prison authorities.

Although the Court considered that there was no evidence of a positive intention of humiliating or debasing the applicant, the absence of such a purpose could not conclusively rule out a finding of a violation of Article 3. The fact that the authorities had taken no steps to improve the unacceptable conditions of the applicant's detention denoted lack of respect for him. The Court tool particularly into account that the applicant had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cellmate. In the Court's opinion, these conditions diminished the applicant's human dignity and gave rise to feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore concluded that conditions of the applicant's detention in the segregation unit of the Delta wing of Koridallos Prison amounted to degrading treatment within the meaning of Article 3. The Committee for the Prevention of Torture, Inhuman and Degrading Treatment and Punishment, whose report was considered as evidence by the Court, gave negative evaluation of the situation in Greek prisons and in para. 109 of its Report made a recommendation for the state to ensure conditions for the use of toilets by prisoners. The Court relied on the principle established in the case law to the effect that in order for an action to be treated within the scope of Article 3, it should reach a minimum level of inhumanity. When defining such a level, it is necessary to consider the duration of treatment, its physical and mental outcome, in some cases the gender, age and health status of the victim (para.67).

The Court looked at the conditions in which the convict had to comply with the needs of nature, and concluded this to be inadequate treatment. The Court noted that for Article 3 to be violated, of decisive importance is not only the character of treatment, but also that such treatment has an intention of humiliating and debasing of a victim. If the treatment is by its character inappropriate and inadequate, however its intention is not debasing the object of treatment, than there is no violation of Article 3.

When appraising the intention of humiliating and debasing, the court considered the fact that the authorities had taken no steps to improve the unacceptable conditions of the applicant's detention, which denoted lack of respect for him.

Article 8 (4) of the Law on Imprisonment gives a penitentiary institution administration a discretion to install visual, electronic or other technical control facilities, including in places where convicts and prisoners satisfy their basic physiological needs. The said provision does not contain any reservation concerning the limitations and the scope of its use. The only conditionality is that the administration must warn the convicts in advance of the use of surveillance system. However, this limitation is no impediment for carrying out surveillance and control of those persons who can be no threat to the order in a penitentiary institution, or the safety of other prisoners. What is implied here is persons placed in the Medical Establishment for Prisoners who, given their condition, are often

unable to represent any threat whatsoever, whereas surveillance is conducted in respect of everyone. In the case in question the only criterion is that under surveillance are the so-called "thieves-in-law". At the same time, intrusion in privacy is performed by particularly harsh methods, namely visual surveillance at the time when a convict complies with the needs of nature.

The source of this evil practice is Article 8 (4) of the Law on Imprisonment that does not restrict the use of surveillance system in terms of place, or special circumstances or conditions. Such surveillance amounts to inhuman and degrading treatment, as is conducted through gross intrusion into privacy. The intention of such treatment is to humiliate and debase a person, expressly manifesting lack of respect for prisoners, as no one bothered to reason if the persons concerned, despite their grave illness, are capable of violating the law and jeopardising the safety of other prisoners. It is difficult to believe that a person with grave illness, that under the existing provisions is subject to various checks and inspections, could pose a serious threat at the moment of using the toilet, to the extent that it is necessary to conduct his visual surveillance in the process.

Food

Nutrition of inmates at penal institutions represents a particularly problematic issue. The penal Department tries to address it, including through the opening of shops inside establishments. Shops have been opened at penitentiary institutions No.6 and No.2 in Rustavi, and No.7 in Tbilisi. The prisoners have personal accounts in the bank, and can buy food and various items themselves.

Hygiene, Clothing and Bedding

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. However, the situation in most of penitentiary establishments in this regards is still very grave. In most cases, the essential hygiene products are provided by families, but there are those who are deprived even of that.

Most establishments have a serious problem in terms of bedding. As reported by prisoners, their bedding is not changed for months.

During the time of the visit of the Human Rights Commissioner, Mr. Thomas Hummarberg, prisoners at Rustavi establishment No.2 had no bedding at all.

Work and Education

Provision of work during sentence is of major importance for prisoners' rehabilitation. However, this issue does not represent the matter of any priority for the Penal Department, and prisoners are deprived of any possibility to enjoy the right given to them by the law.

Besides being of major importance of prisoners' rehabilitation, work programmes offer prisoners the possibility of engaging in purposeful activity. 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. In addition, prisoners whose families do not have sufficient financial capacity to transfer money to their accounts for them to use shops, can earn money themselves.

The launch of educational programmes at some of penitentiary institutions is a positive development. Thus, for instance, Kutaisi Prison No.2 offers an educational programme, in which prisoners can acquire computer

literacy, learn using PC. The program is implemented by the monitoring commission established with Kutaisi Prison No.2.

Overcrowding

Regrettably, overcrowding has been a chronic problem afflicting Georgia's penitentiary system, despite building new facilities. Overcrowding in cells in summer months led to acute shortage of oxygen, and prisoners had no air to breath, which was one of the factors causing death.

The situation as of July 1 and October 16, 2006 was as follows:

- Zugdidi common and strict regime establishment No.1: capacity – 950, number of inmates held as of **1 July – 1528**, and as of **16 October – 1885**.
- Common and cell-type establishment No.5 for women and juveniles:
  Juveniles' section: capacity – 108, number of inmates held as of **1 July – 124**;
  Women's prison: capacity – 118, number of inmates held as of **1 July – 167** and as of **16 October – 170**;
  Women's penal establishment: capacity – 220, number of inmates held as of **1 July – 269**, and as of **16 October – 357**;
- Ksani strict regime establishment No.7: capacity – 1010, number of inmates held as as of **16 October – 1298**;
- Geguti common and strict regime establishment – capacity – 900, number of inmates held as of **1 July – 968**, and as of **16 October – 1283**;
- Tbilisi Prison No.1: capacity – 620, number of inmates held as of **1 July – 841**, and as of **16 October – 993**.
- Batumi Prison No.3: capacity – 250, number of inmates held as of **1 July – 563**, and as of **16 October – 591**.
- Zugdidi Prison No.4: capacity – 305, number of inmates held as of **1 July – 382**, and as of **16 October – 348**.
- Tbilisi Prison No. 5: capacity – 2020, number of inmates held as of **1 July – 3774** and as of **16 October – 3971**.

That in Tbilisi Prison No 5, in the most overcrowded cells 1 bed accounts for an average 4 prisoners who must take turns to sleep, has to be viewedd within Article 3 of the European Convention (prohibition of torture) and can safely be interpreted as torture and inhuman treatment.

PRISONERS' BEATING AND TORTURE, AND DEGRADING TREATMENT

It is necessary to look into the facts of beating and torturing prisoners, their inhuman and degrading treatment, and disproportionate use of force against them.

Undressed Prisoners in Disciplinary Cell of Establishment No.6

It is particularly important to note the incident at Prison No.6, where prisoners were placed in a disciplinary cell undressed. The situation clearly was the one to be viewed as torture, inhuman and degrading treatment.

On 13 and 15 September 2006, PDO representatives were carrying out monitoring at Rustavi Prison No.6 and strict regime establishment. They met with convicts Genadi Tsurtsumia, Imeda Butkhuzi and Badri Ketsbaia, who were placed in a cell without any clothes, but underwear. Their clothes could be found outside the cell, in the corridor, near the desk of the duty officer

According to G.Tsurtsumia, he had been kept in a disciplinary cell for 16 days, without clothes, as his clothes were taken away by the administration. Despite his request, he was not given items for personal hygiene, such as a towel, soap, tooth brush and toothpaste, not even a pen and a paper. PDO representatives looked at the register of inmates placed in disciplinary cells, and found that G.Tsurtsumia was not recorded there at all. Members of the administration failed to present any order concerning G.Tsurtsumia's disciplinary punishment.

According to I. Butkhuzi, he had been kept in a disciplinary cell from 14 September. Members of the administration took away his clothes. He was not given a pen and a paper either.

According to Badri Katsbaia, he had been kept in a disciplinary cell from 11 September. Members of the administration took away his clothes, leaving him only in underwear.

The monitoring of disciplinary cells showed that none of them had any mattress and bedding, and prisoners had to sleep on wooden plank beds. The prisoners said that being without any clothes, they felt cold at night.

On 28 October 2006, PDO representatives visited Rustavi Prison No.6 and met with inmates Vazha Gegenava and Rudik Ovakian, who had been also kept in disciplinary cells in September 2006.

V.Gegenava reported that he was fully deprived of his clothes and placed in a disciplinary cell naked. His underwear was given back to him in about 2 hours, whereas the clothes – only after ten days, when his disciplinary punishment expired.

R. Ovakian reported being kept in a disciplinary cell for several hours, completely naked.

Both prisoners said they felt cold, but this notwithstanding, the administration did not give them their clothes. Article 26 (1) of the Law on Imprisonment prescribes the right for a prisoner to "a) be provided with garments"; Article 34 says that "A convict shall have adequate facilities to . . . observe personal hygiene without any prejudice to human dignity and honour". Under the Regulations for strict regime establishments (article 25, 1 and 5), "a convict shall be provided with adequate facilities for maintenance of personal hygiene, as well as with pen, notebook, newspapers and magazines".

The administration of the establishment alleged that the prisoners themselves refused wearing clothes, which is emphatically denied by the convicts. On 15 September, during another monitoring at the same establishment they were already wearing clothes; however, they said that clothes were given to them 15 minutes before the arrival of the PDO group.

Depriving prisoners of clothes, creating unbearable conditions, barring them from the use of facilities for maintenance of personal hygiene, as well as paper and pen for correspondence is contrary to the Georgian legislation and provisions of the international treaties ratified by Georgia (International Covenant on Civil and Political Rights – Article 7 and 10; Convention against Torture and Other Forms of Cruel, Inhuman and degrading Treatment and Punishment; European Convention for the Protection of Human Rights and Fundamental Freedoms – Article 3). The actions described above clearly amount to torture, inhuman and degrading treatment.

On 26 October 2006, the Public Defender sent relevant materials to the Prosecutor General's Office for it to start preliminary investigation. On 27 October, the investigation department of the Prosecutor General's Office opened preliminary investigation into possible excess of official authority my some members of administration of Rustavi Prison No.6 – an offence under Article 333 (1) of the Criminal Code.

Facts of beating prisoners still persist in the penitentiary institutions.

The Case of M.Kereselidze, O.Baboev, T.Shaveshov and G.Vashakidze

On 7 September 2006, representatives of the Public Defender's Office met with prisoners of Prison No.1 of the Penal Department: M.Kereselidze, O.Baboev, T.Shaveshov and G.Vashakidze. Accoridng to the prisoners, 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; Pavle Kovziridze, Chief of Investigative Department of the Ministry of Justice, and Tamar Tomashvili, head of the Human Rights Department of the Prosecutor General's Office.

On 20 September 2006, G.Gvarjaladze, a.i. head of the investigative department informed he Public Defender that preliminary investigation into the case started and the criminal case was sent for follow-on to the Prosecutor General's Office.

The Case of David Asatiani

Representatives of the Public Defender's Office met with defendant D.Asatiani who said that on 3 January 2007 he was physically assaulted by convoy officers.

B.Akhalaia, head of the Penal Department convened a briefing on the following day and said that the incident would be investigated very shortly.

Despite the fact that D.Asatiani was physically assaulted by six officers of the quick response special unit under the Penal Department, only two of them received charges, and were subjected to a disproportionately light penalty. Namely, M.Giorgadze and K.Gulbani, officers of the quick response special unit of the Penal Department, received charges under Article 333, Para 1 of the Criminal Code of Georgia (exceeding official powers resulting in substantial impairment of the rights of a physical or legal person or legitimate interests of the state – punishable with deprivation of liberty for a period of up to three years, and withdrawal of the right to hold an office for up to three years).

On 18 January 2007, the Chamber of Criminal Cases of Tbilisi City Court ordered imposing on M.Giorgadze and K.Gulbani a bail of 3 thousand GEL each as a measure of restraint.

The Case of B.Maruashvili

On 13 February 2006, the Public Defender was addressed by G.Khachidze, defence lawyer of convict B.Maruahsvili. According to the applicant, on 9 February his client, placed in Ksani strict regime establishment No.7 was physically assaulted by members of the administration, who also "Planted" a mobile phone. According to the lawyer, B.Maruashvili was unlawfully recognised as a suspect for alleged commission of a crime under Article 378 of the Criminal Code.

On 14 February 2006, PDO representatives met with B.Maruahsvili's cellmates: T.Chulukhadze, M.Bazadze and V.Akhaladze. They said that on 9 February, members of prison administration entered their cell – one of them was G. Kvaratskhelia – who told the inmates to get up and ordered B.Maruashvili to follow them, which he did. The convicts did not know where he was taken, as they never saw him back. They also said that no illegal object was withdrawn from B. Maruahsvili during the search in the cell.

On 15 February 2006, PDO representatives met with B.Maruahsvili placed in Tbilisi Prison No.5, who said he was transferred there from Ksani establishment No.7 on 10 February. He said that on 9 February, when he was held at Ksani, several persons came into the cell, among them Gocha Kvaratskhelia, some Alik and seven other members of prison staff. They searched B. Maruashvili, and having found nothing prohibited, took him out of the cell. He was verbally abused and physically assaulted by Alik. Then he was taken to some premises in the building of the establishment, where he was again beaten by Alik, who said he would tell the administration that he, B. Maruashvili, has a mobile phone. Then A.Arakelov, director of the establishment, entered and said they would increase his punishment, and recalled B.Maruashvili's escape from Rustavi Prison No.2, when one of staff members of the prison was killed. At that time A.Arakelov was director of Rustavi prison, and he lost his post due to the incident. Then they gave him a framed-up report and told him to certify with his signature that he had a mobile phone, which the prisoner refused to do.

The Public Defender sent relevant materials to G.Latsabidze, Deputy Prosecutor General for examination and follow-on.

The Case of M.Somkhishvili

The Public Defender was addressed by L.Jakobia, mother of prisoner M.Somkhishvili, defendant, held at the Medical Establishment for Prisoners, and M.Jishkariani, president of the Centre for rehabilitation of Victims of Torture "Empathy". The applicants stated that in the course of monitoring, M.Somkhishvili was found to have physical injuries that, according to him, were caused by multiple repeated beatings. PDO representatives met with M.Somkhishvili who confirmed the fact of beating.

The Public Defender addressed the Deputy Prosecutor General, the Investigative Department of the Ministry of Justice, and Human Rights Department of the Prosecutor General's Office requesting to follow on the case. According to information provided by the Prosecutor General's Office, on 20 October 2006, the investigative department of the Prosecutor General's Office opened preliminary investigation into case No.74068391 on the fact of beating defendant M. Somkhishvili – an offence under Article 333 (3) of the Criminal Code. On 25 October, 2006, forensic examination was conducted to look at and appraise the degree of severity of injuries, inflicted on M.Somkhishvili. Preliminary investigation was in process.

With a view to prevention of crime in the penitentiary system, the Ministry of Justice and the Prosecutor General's Office must ensure that no case remains outside investigation, and no perpetrator goes unpunished.

COMPLAINTS CONCERNING THE "PLANTING" OF PROHIBITED ITEMS WITH PRISONERS

Notably, several "thieves-in-law' were close to the termination of their sentence at Tbilisi prison No.7, when prohibited objects happened to be found in their cell. This lead to an increase of their penalty. It is difficult to assume that such an offence could happen shortly before the time o release.

The case of Akaki Landia, Malkhaz Mgaloblishvili and Giorgi Endzeladze

Lawyers of the Public Defender's Office presented copies of criminal case No 073060364 in processed by the investigative department of the Ministry of Justice. According to the documents, on 8 August 2006, in the course of examination at cell No.23 of Prison No. 7, officers of the security service found inmates of the cell: A.Landia, M.Mgaloblishvili and G.Endzeladze to have prohibited items, namely, knives that they were alleged to keep under mattresses. All the three persons are the so-called "thieves-in-the law". Their term in prison was expected to terminate for A.Landia – on 15 August 2006, M.Mgaloblishvili – on 29 October 2006, and G.Endzeladze – on 22 December 2006.

A.Landia, M.Mgaloblishvili and G.Endzeladze were subjected to criminal liability on account of signs of a crime provided for in Article 378 (1) of the Criminal Code (possession of prohibited items). The persons refused to admit the crime and used their right to silence. By decision of Tbilisi City Court of 12 December 2006, they were subjected to imprisonment. Preliminary investigation into the case ended on 22 August 2006. Indictment on the case was compiled on 24 August 2006 in accordance with Articles 48 and 416 of the Criminal Procedure Code. The case was transferred for consideration to the Chamber of Criminal Cases of Tbilisi City Court.

Several circumstances give grounds for doubt. Prison No.7 conducts regular check-ups, and it is next to impossible to have any prohibited items brought into the prison without "assistance" of the prison administration. Also, the objects happened to be found very shortly before the time of release.

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The facts of discovering prohibited objects with inmates of Prison No. 1 also look highly doubtful.

The Case of T.Kortua

On 12 December 2006, PDO representatives interviewed T.Kortua, serving his sentence in Tbilisi Prison No 1 of the Penal Department. According to T.Kortua, on 5 December 2006 members of the said penal institution planted a prohibited item (mobile phone SIM card) with T.Kortua and two other prisoners. The Public Defender sent the relevant materials for investigation to the Prosecutor General's Office and the investigative department of the Ministry of Justice.

From the information provided by the Prosecutor General's Office, the investigative unit started preliminary investigation on criminal case No. 74068471 on excess of official authority by staff members of Tbilisi Prison No.1 – an offence under Article 333 (1) of the Criminal Code of Georgia.

The Case of A.Gamkrelidze

On 8 December 2006, PDO representatives interviewed A.Gamkrelidze, serving his sentence in Tbilisi Prison No.1 of the Penal Department. According to A.Gamkrelidze and his lawyer G. Amashukeli, the prisoner was repeatedly threatened with the "planting" of a mobile phone or other prohibited item. A.Gamkrelidze said that on 6 December 2006, in late hours, members of the said penal institution conducted a search in his cell. They took out all the inmates out of the cell, and stayed there for some tie. Then they took A.Gamkrelidze to the administrative building, put a cell phone on the table and told him it was his phone. A.Gamkrelidze denied his having a phone at the prison. He was charged with commission of an offence provided for by Article 378 of the Criminal Code.

PDO representatives interviews A.Gamkrelidze's cellmates, T.Kortua and E.Melikyan, who gave a similar account of events.

On 12 December 2006, Public Defender sent the relevant materials for investigation to the Prosecutor General's Office. From the response letter from the Prosecutor General's Office it followed that the investigative unit started preliminary investigation under Article 333 (1) of the Criminal Code of Georgia.

PROVISION OF MEDICAL SERVICES IN THE PENITENTIARY SYSTEM

The Public Defender's Report for the first half of 2006 provided detailed description of the problems in the provision of medical services in penitentiary institutions. The situation has not changed way since 1 July 2006. The death rate among prisoners has almost doubled. Over 2006, 92 prisoners died, one their of them in the first half and two thirds in the second half of 2006.

Prisoners mostly suffer from viral hepatitis, tuberculosis, cardio-vascular and neurological diseases, to which the conditions existing in penitentiary institutions are highly conducive, such as sanitary and epidemiological situation, inadequate accommodation, overcrowding, as well as acute shortage of medical personnel and deficiency of the material and technical basis.

Representatives of the Public Defender's Office and the Centre for Rehabilitation of Victims of Torture "Empathy" carried out joint monitoring to examine the condition of medial service in the penitentiary institutions of Western Georgia and found a host of problems, such as:

1. Kutaisi Prison No.2 (cell-type and strict regime establishment) – 1) shortage of personnel; 2) inadequate or deficient provision of medications; 3) non-availability of a separate room for psychiatric patients in the medical ward; 4) inadequate dental service; 5) non-availability of a clinical laboratory, making it impossible to carry out timely and cost-effective diagnosis; 6) medical professionals and clinical and laboratory tests are in most cases provided at the expense of prisoners; 7) inadequate record-keeping in medical cards; 8) no documented informed consent to a medical manipulation; 9) several patients required forensic psychiatric examination. It is not clear why such patients end up in prisons or why they are not diagnosed and sent for forensic examination.
2. Zugdidi Prison No.4 – 1) shortage of personnel; 2) inadequate or deficient provision of medications; 3) non-availability of a separate room for psychiatric patients in the medical ward; 4) grossly insanitary conditions; 5) non-availability of basic surgical instruments; 6) non-availability of a clinical laboratory, making it impossible to carry out diagnosis.
3. Batumi Prison No.3 – 1) shortage of personnel; 2) inadequate or deficient provision of medications; 3) non-availability of a separate room for psychiatric patients in the medical ward; 4) inadequate dental service; 5) flawed transfer of medical information, which undermines continuity of medical services; 6) most of the forms for medical documentation (medical registers) were available, but they were virtually no record made in them; 7) the available medical equipment made it impossible to provide any meaningful medical assistance (intubation tubes, tracheotomy kits, laryngoscope, defibrillator, etc. were not available); 8) this prison accounted for a largest number of HIV positive patients compared to other institutions. According to the staff of the medical ward, 16 cases of HIV were recorded, and of these 3 patients died.

Proper medical examination of prisoners and their referral for treatment constitutes a persistent problem. Not infrequently, such examination is only provided after intervention by the Public Defender. Eighteen prisoners were given examination at the recommendation of the Public Defender and referred transferred or treatment to the Medical Establishment for Prisoners.

The Case of G.A.

The Public Defender was addressed by parents of prisoner G.A. concerned about the health condition of their son.

During the riot of 27 March 2006 at Tbilisi Prison No. 5, defendant G.A. was transferred to Tbilisi prison No.7, where he was visited several times by representatives of the Public Defender's Office and M. Jishkariani, president of Empathy Centre.

PDO sent a notice to the Penitentiary System Reform, Monitoring and Medical Service Department of the Ministry of Justice requesting to examine health status of the prisoner. From the answer of the Department it followed that on 3 May a commission of medical experts examined G.A's health status at Prison No. 7 and diagnosed him with calculous cholecystitis.

On 28 June G.A. was transferred for surgery from the Medical Establishment for Prisoners to Tbilisi Hospital No.1 with the diagnosis of calculous cholecystitis, post-surgical hernia, and chronic appendicitis. On 30 June he was given a surgery – lapatomy, cholecystomy and appendectomy, as well as post-surgical hernia plasty. He also underwent a tomography and was found to have a formation in the right maxillary sinus.

According to G.A.'s attending physician and the surgeon, for a certain period of time (2 weeks) the patient required hospital treatment and observation, as sutures were not yet removed. This notwithstanding, on 11 July G.A. was transferred by convoy from Hospital No.1 to Prison no.7, where he was not admitted and was sent to the Prison Hospital. The attending doctor T.Chartolani spoke to chief physical of the Prison Hospital, D.Asatiani, who said that control of such situation in a prison hospital would be extremely difficult from the medical perspective. So, on 11 July in the evening he was brought back to Hospital No.1.

Notably, no adequate treatment was provided to G.A. at the republican Prison Hospital, and it was only after the intervention by the Public Defender that he was taken for surgery to Tbilisi Clinical Hospital No.1. The Public Defender addressed for assistance M. Jishkariani, president of the Empathy Centre that covered the costs of surgery.

The Case of M.Ts.

The Public Defender was addressed by M.K. concerned about the health condition of his son, M.Ts.

On 4 August 2006, PDO representatives met with D.Asatiani, chief physician of the Medical Establishment for Prisoners, under the Penal Department. M.Ts. received a surgery on the right thigh and was in need of another surgery to remove metal pieces. M.Ts.'s family invited a specialist from the Anti-Sepsis Centre who concluded that the patient required a surgery. However, given the conditions at the institution, the invited doctor said it was necessary to have the patient transferred to a civilian hospital. According to D.Asatiani, since the transfer of M.Ts. to a city hospital was delayed for various reasons, and it was no longer expedient to continue his treatment at the Medical Establishment for Prisoners, he was transferred to Tbilisi Prison No. 5.

PDO representatives visited Tbilisi Prison No. 5 where they met with A.Esvanjia, chief physician of the prison's medical ward. He said that on 8 June he addressed G.Mikanadze, deputy Minister of Justice and requested to authorise him to have the patient transferred to a civilian hospital, but no answer followed.

Representatives of the Public Defender's Office met with M.Ts., and examined him. The medial surface of the right thing was damaged, with a metal rod visible that was introduced in the course of a surgery. According to

M.Ts., in 2004 he received a gunshot injury in the same area, which led to a comminuted bone fracture, after which he was operated on at Gudushauri medical Centre. M.Ts. said he also had a spine lesion. Motility in the extremity was preserved (in the foot area). He had pain and temperature sensation in the same area. M.Ts. was asking to have him transferred to a specialised hospital for surgery.

The Public Defender addressed on this matter the chairman of the joint medical expert commission, established under the Ministry of Labour, Health and Social Welfare who informed PDO that M.Ts. underwent a surgery at the Anti-Sepsis National Centre, and on 8 September was transferred to the Medical Establishment for Prisoners.

The Case of A.K.

On 30 October 2006, the Public Defender was addressed by E.K. with an application concerning the health status of convicted prisoner A.K., placed at the Medical Establishment for Prisoners where he underwent X ray, clinical and laboratory tests. However, he needed additional tests that the Medical Establishment for Prisoners could not provide. A.K. required additional tests in order to present to the joint medical expert commission of the Ministry of Justicem, and Ministry of Labour, Health and Social Welfare that would examine the issue of his remission from penalty.

On 1 November 2006, the Public Defender made a recommendation to B.Akhalaia, head of the Penal Department to ensure the transfer of A.K. to a specialised medical institution. The Public Defender was notified that convict A.K. was transferred to Tbilisi Hospital No.4 for examination and further treatment.

The Case of A.V.

On 26 September 2006, representatives of the Public Defender's Office visited the Medical Establishment for Prisoners of the Penal Department of the Ministry of Justice and met with prisoner A.V., who was in a very severe condition of health. There was a risk of his losing his right leg. According to physician M.Mchedlidze, A.V. required consultation by a neurosurgeon.

On 27 September PDO addressed M.Jishkariani, president of the Empathy Centre for Psychological Rehabilitation of Victims of Torture and Violence, and asked her to assist in providing a consultation for A.V. and his further treatment. Medical specialists examined A.V. and made the following diagnosis: complication following osteorrhaphy performed for gunshot fracture of the left thighbone, traumatic amputation of toes on the left foot, traumatic lesion of right minor femoral nerve.

According to M.Jishkariani's recommendation, in order to ascertain the diagnosis, define treatment tactics and determine the pertinence of a surgery, it was necessary to perform myography of the right thighbone, and microbiological investigation of the left foot.

On 18 October 2006, the Public Defender made a recommendation to B.Akhalaia, head of the Penal Department to ensure a convoyed transfer of A.V. to a specialised medical institution for myography. The Public Defender was notified that on 8 November A.V. was transferred to the neurological ward of the Academy for Post-Diploma Medical Education for myographic examination.

The Case of G.J.

On 3 October 2006, representatives of the Public Defender's Office visited the Tbilisi prison No.7 and met with prisoner G.J. who has undergone a surgery on the right thighbone, with a metal device attached. His thigh suppurated and he suffered from severe pain. G.J. required specific treatment, not available at the establishment.

PDO sent a notice to Prison No.7 for the prison doctor to carry out examination of G.J. and if necessary, to have him transferred treatment to the Medical Establishment for Prisoners. On 6 October G.J. was transferred to the said facility.

The Case of D.L.

The Public Defender was addressed by the brother of D.L., convicted prisoner, kept at Tbilisi Prison No.7. According to the applicant, his brother was in severe condition of health (with a tumor, for which reason he required urgent surgery) and required transfer to the Republican Prison Hospital for treatment.

On 26 October 2006, the Public Defender made a recommendation to B.Akhalaia, head of the Penal Department to ensure the transfer of D.L. to the Medical Establishment for Prisoners. The Public Defender's recommendation was followed on and on 11 November D.L. was transferred to the Medical Establishment for Prisoners.

The Case of J.Sh.

The Public Defender was addressed by defence counsel Sh. Shavgulidze, defending the interests of J.Sh., defendant. According to the applicant, his client was in a severe condition of health and placed at the Medical Establishment for Prisoners. At the request of defence, to examine his status an alternative forensic examination was appointed, and it was to be carried out by Forensic Centre "Vector"; however the experts were not allowed to enter the institution to carry out the appraisal.

The criminal procedure law guarantees for a party to perform alternative forensic appraisal and administration of the establishment where the prisoner is placed is under an obligation to ensure the prisoner's meeting with an expert, namely: Article 96 (6) of the Criminal Procedure Code says that "the right to procure the expert's report shall be granted also to a party", Article364 (1) says that "a party shall have the right, at its own initiative and with its own means to carry out an expert appraisal to establish the facts that, in his opinion, can be helpful in protecting his own interests. The expert institution is under an obligation to carry out an appraisal appointed and paid for by the party". According to Article 137 (1), administration of custodial institutions is under an obligation to ensure "a face-to-face meeting between an arrested or detained person, and a doctor or forensic expert". Under Para. 2 of the same article: "failure by administration of a custodial institution to perform its procedural function shall entail his liability, as prescribed by the law".

On 6 September 2006, the Public Defender made a recommendation to B.Akhalaia, head of the Penal Department to ensure access of forensic experts to the Medical Establishment for Prisoners. The Public Defender's recommendation was followed on, and experts were given access to the institution.

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There was a case when the Public Defender's recommendation was not acted on, and the right of a convicted prisoner to get additional medical assistance at his own expense was restricted.

The case of A.I.

The Public Defender was addressed by defence counsel Eka Surguladze, defending the interests A.I. kept in Prison No.7. According to the applicant, her client was in a severe condition of health, suffering from weakness, dyspnea, and systematically elevated temperature of 37.5-37.60 etc. Prison doctor told E.Surguladze that A.I. required roentgenography and thorough examination.

On 27 September 2006, the defence counsel addressed G.Kiknavelidze, director of Prison No.7 and requested to permit access to the establishment for physicians of Tbilisi Central Republican Clinic: phthisiotherapist, ultra-sonographist, roentgenologist and lab assistant in order to carry out examination of A.I.'s health status and prescribe treatment, as provided for in Article 137 of the Criminal Procedure Code.

On 10 October, when meeting PDO representatives, A.I. said that on 30 September 2006, he had undergone roentgenography and blood testing at the Medical Establishment for Prisoners. On 9 October 2006, the doctor of Prison No. 7 told him his illness was not confirmed. However, according to A.I., he was persistently suffering from weakness, dyspnea, and systematically elevated temperature of 37.5-37.60. He requested to provide medical assistance. Under Article 26 of the Law on Imprisonment: "The accused/convict shall have the right to enjoy health care service as needed".

According to Prison regime regulations (approved by the Minister of Justice by order No. 367), Article 27 (20) "The convict shall have the right, to enjoy any health care service of his choice, payable at his own expense, that is provided by healthcare professionals in a hospital type or treatment station type establishment". According to Article 27 (21): "In deciding on this issue, it is necessary to consider the opinion of prison medical service staff. The application shall be considered within three days, and the time is appointed for inviting a required specialist into the prison. When inviting a specialist, it is necessary to satisfy oneself that he is a holder of a license for medical activity".

Given the above, on 9 October 2006, the Public Defender made a recommendation to director of prison No.7 requesting to provide for access of medical specialists for the purpose of carrying out medical examination of convict A.I.

On 9 January 2007, I.Tsintsabidze, deputy head of the Penal Department, and later, on 12 January G.Kiknavelidze, director of Prison No.7, informed the Public Defender that A.I received a consultation from medical specialists of the Medical Establishment for Prisoners, and was transferred to the latter for specialist examination (ultra-sonography, roentgenology, blood and urine tests, etc.). Based on the results of examination, A.I. displayed no pathological changes, he was observed by a doctor, and in case of need would be given symptomatic treatment.

Hence, the Public Defender's recommendation was not acted on, and A.I. was restricted in his legitimate right to medical assistance and service.

The Public Defender took an interest in the health condition of prisoners kept in the psychiatric ward of the Medical Establishment for Prisoners. The psychiatric ward of the said institution was found to accommodate prisoners whose psycho-physical condition was extremely grave, however they were not offered any forensic psychiatric examination either at preliminary investigation or court trial phase, and the issue of their mental sanity was not finally ascertained.

1. I.B.
2. Z.M.
3. V.Ch.
4. T.G.
5. G.B.
6. K.N.
7. S.B.
8. T.M.

9. Z.J.
10. O.M.

On 17 October 2006, the Public Defender addressed M.Jishkariani, president of the Empathy Centre for Rehabilitation of Victims of Torture for assistance in examining mental health of the above prisoners.

M.Jishkariani stated in her response letter that within the framework of the programme on "Implementation of International Standards for the Prevention of Torture" that deals in one part with identifying and advocacy of prisoners with grave psychic pathologies, the Centre "Empathy" would examine mental health of the patients in case the administration of the Medical Establishment for Prisoners provides access to prisoners.

On 17 November 2006, the Public Defender's Office sent a notice to the head of the Penal Department with a request to assist in the earliest possible access of mental health specialists to the Medical Establishment for Prisoners in order to examine their health status.

Since no reply followed, on 26 December 2006 PDO sent a reminder to head of the Penal Department, with no reply again.

These facts are illustrative of the existence of inhuman conditions in the penitentiary system and inhumane attitude toward prisoners on the part of the staff.

The report of US State Department published in 2006 in relation to Georgia states that over the year the death toll in the penitentiary system increased. The Minister of Justice announced that 92 persons died in penitentiary institution in Georgia (of these four committed a suicide), whereas the number of deaths in 2005 was 46. Suicidal attempts and self-inflicted injuries can be viewed as protesting against existing conditions and violation of the rights of prisoners.

According to NGOs, including the Human Rights Watch, prisoners with mental problems were found to be in absolutely deplorable condition. Despite instructions from the court, such prisoners are not transferred to medical wards. Sometimes they are placed in isolation wards.

Notably, isolation wards at the Medical Establishment for Prisoners look more like a dungeon:

During the monitoring of isolation wards the Medical Establishment for Prisoners by PDO representatives on 15 August 2006 and 13 February 2007, they were found to be in appalling state. Conditions there appear to be similar to conditions at disciplinary cells of Tbilisi prisons No.1 and No.5. There are six such wards. As reported by the administration of the establishment, only one of these is not functional. The wards are damp, smelling, with litter on the floor, no glass in the windows, non-operational central heating, cold, with no partitioning of toilets from the rest of the room. The impression is that they have not been cleaned for a very long time. Conditions are grossly insanitary.

Given the fact that these wards are used for placement of persons with mental health problems during exacerbation of the disease, one has to note that they are running serious risks to life and health. Metal bars installed on the windows can easily been used to self-inflict injuries. Interestingly, the administration reasoned that if an inmate wishes to inflict damage to himself, he can hit his head against the wall, therefore it is not necessary to fix the bars. Isolation wards are the place where it is necessary to have walls with soft lining. In such conditions it is impossible to provide any treatment. However, long accommodation in such wards leads to further deterioration of their physical and psychological condition.

These ward were seen by Mr.Thomas Hammarberger, High Commissioner for Human Rights, though one has no note that for his visit, similarly to PDO recent visit, the wards were relatively cleaned.

It is important to look at a case where the Penal department and the administration of the Medical Establishment for prisoners showed negligence towards a prisoner in a serious psychic state. The prisoner required urgent psychiatric assistance in hospital conditions, which is not available in the Medical Establishment for Prisoners. It is impossible to provide specialised assistance even in the "psychiatric ward" of the establishment, as it is grossly against any international or national norms and standards. Because of the failure to have the patient transferred to a psychiatric care institution, his stay at the Medical Institution for Prisoners constituted an example of torture and inhuman and degrading treatment.

The Case of Giorgi Mikiashvili

On 29 October 2005, patrol police arrested in Tbilisi Giorgi Mikiashvili, charged under article 353 of the Criminal Code (resistance, threat or violence against persons guarding public order, or other state agents). The arrested person displayed physical injuries in the head area that, according to G.Mikiashvili were inflicted by police when beating him in the course of arrest. On 20 December, after the Public Defender took interest in the case of Giorgi Mikiashvili in connection with his mental incompetence, preliminary investigation was opened into the fact of excess of official authority by police – an offence under Article 333 of the Criminal Code. The investigation was later dropped for absence of a crime in the act. Mikiashvili was subjected to custody as a measure of restraint and placed in Tbilisi prison No.5. On 11 November, 2005 he was transferred from the prison to the Republican Prison Hospital and placed in the psychiatric ward. G.Mikiashvili's health condition was examined by psychiatrists of the Psychological Rehabilitation Centre "Empathy" (M.Jishkariani, G.Berulava, K.Chkoidze) who gave their expert report. Based on the report, G.Mikiashvili was diagnosed with grave delirium, closed cranial injury and concussion of the brain". Despite repeated warning by the experts of "empathy" concerning the need for patient to undergo comprehensive examination and further treatment, he was discharged from hospital. After three days, because his condition exacerbated again, he was brought back to the Medical Institution fro Prisoners.

On 15 August 2006, as reported by G. Mikiashvili, he was beaten by members of the administration of the medical establishment, including deputy director G.Butliashvili. According to Levan Labauri, medical doctor, assistant of PDO Centre for Protection of Patients; Rights who examined G.Mikiashvili, he displayed multiple bruises and excoriations, as well as a formation on the head. For safety reasons, G.Mikiashvili was transferred to the isolation ward. Notably, isolation wards are very similar to the so-called carcers, or disciplinary lock-up cells, with unbearable conditions, and their stay per se means torture and degrading treatment.

On 15 August 2006, the Public Defender held a press conference, where he said that G.Mikiashvili's treatment and his being kept in inhuman conditions tantamount to torture. On the same day the Public Defender addressed the Minister of Justice, Head of the Penal Department and the General Inspectorate of the Ministry of Internal Affairs. He also requested that experts of the independent forensic centre "Vector" be granted access to G.Mikiashvili, kept in the Medical Establishment in order to perform forensic examination of physical injuries.

The Ministry of Justice notified the Public Defender that the Investigative Department of the ministry opened investigation into the fact of inflicting injuries to G.Mikiashvili – an offence under Article 118 (1) of the Criminal Code, and that experts were granted access to the establishment.

On 16 August 2006, G.Mikiashvili was transferred, for safety reasons, to Rustavi Prison No.6 and placed in the medical ward. The establishment has no psychiatrist. In September G.Mikiashvili's condition deteriorated significantly (he damaged 8 beds, wall tilings, toilet, refused to take food, rejecting visitor from the family.

According to opinion of M.Jishkariani, psychiatrist, it was necessary to refer G.Mikiashvili to a specialised psychiatric clinic.

Since G.Mikishvili was in a grave psychic condition and failure to provide adequate treatment was equal to torture, on 31 October 2006 the Public Defender made a recommendation to Head of Penal Department, B. Akhalaia that G.Mikiashvili be referred for qualified psychiatric care to a general profile psychiatric hospital. The Public Defender made a recommendation to the Prosecutor General, Z.Adeishvili, for the prosecutor's office to make a motion before the court concerning a forensic psychiatric examination for G.Mikiashvili – so that its results could be used to decide whether it was possible to further keep G.Mikiashvili in a penal institution. On 13 March, the penal department informed the Public Defender that G.Mikiashvili was transferred to psychiatric hospital in Kvitiri.

On 28 November 2006, Judge M.Chokheli of Tbilisi Appellate Court, relying on the motion of defence, appointed forensic psychiatric examination for G.Mikiashvili. (Before that, Tbilisi City Court sentenced G.Mikiashvili to 18 months of deprivation of liberty, decision that was challenged by both parties – the prosecution requested 6 years of deprivation of liberty, while the defence requested his acquittal). On 23 January 2007, the report of forensic psychiatric examination was presented to the court. G.Mikiashvili was diagnosed with reactive psychosis. The court decided G.Mikiashvili would stay at psychiatric hospital in Kvitiri.

Presently, the patient's condition is satisfactory and found to improve, which shows once again that if he had been provided with qualified medical assistance earlier, his condition would not have exacerbated to the extent he was found to have.

■

It is important to address more seriously the issue of adequate medical services for persons in custody, as guaranteed by the Georgian law and international norms.

10

DEATH RATE WITHIN THE PENITENTIARY SYSTEM, AND CAUSATIVE FACTORS

In 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 died during the reporting period was 92 as reported by the Ministry of Justice, though when verifying the data, it was only possible to get the names of 89 prisoners. Of these, 37% of death cases (33) fall on the first half of the year, whereas in the second half of 2006 the figure almost doubled and was found to constitute 56 cases, or 63% .

The highest rate of mortality is found to fall on August, September and November. Considering the fact that of 10 prisoners who died in Marc, 7 cases of death have to do with the so-called riot in the prison, it becomes clear that death rate was higher in the second half of the year. The peak of mortality falls on August and September, which might be due to seasonal factors, at least to a certain extent.

It is important to note that of 56 death cases in the second half of 2006, 30 cases occurred at the Medical Establishment for Prisoners, of the Penal Department; 5 cases – at the Medical Establishment for Prisoners with Tuberculosis, of the Penal Department; 9 cases – at different penal institutions; and 12 cases – at medical institutions in Tbilisi and other cities of Georgia. The breakdown by months (second half of 2006) looks as follows:

January	February	March	April	May	June	July	August	September	October	November	December
6	3	10	6	3	5	8	12	14	6	10	6
Total in the first half - 33 37%						**Total in the second half - 56 63%**					

MONTH	PLACE OF DEATH			
	Medical Establishment for Prisoners	Medical Establishment for Prisoners with Tuberculosis	Penitentiary institutions of the Penal Department	Various medical institutions
July	5	-	2	1
August	4	-	2	6
September	4	3	3	4
October	4	1	1	-
November	9	-	1	-
December	4	1	-	1
Total:	**30**	**5**	**9**	**12**

Of penitentiary institutions of the Penal Department, most death cases were found to occur at Prison No.1 (4 cases), followed by Prison No.5 (2 cases); Batumi Prison No.3, Kutaisi Prison No.2 and Ksani establishment No.7 had one case of death each.

Place	Number
Prison No.1 of the Penal Department	**4**
Prison No.5 of the Penal Department	**2**
Batumi Prison No.3 of the Penal Department	**1**
Kutaisi Prison No.2 of the Penal Department	**1**
Ksani establishment No.7 of the Penal Department	**1**

It is interesting to look into causes of death among prisoners. According to official data, of 56 cases of death in the second half of 2006, 40 were caused by cardiovascular insufficiency (27 cases) and cardio-pulmonary insufficiency (9 cases). Fewer cases are attributed to heart failure (2 cases) and respiratory insufficiency (1 case). Relying on this statistics would mean that most of deceased prisoners suffered from various diseases of the cardiovascular system, which of course is not true. In this case cardiovascular insufficiency and cardio-pulmonary insufficiency are invoked as an easy way out to explain a high level of mortality in Georgia's penitentiary system, and needless to say, such interpretation is misleading as to actual causes of death. Speaking at the press briefing held on 10 August 2006, G. Mikanadze, Deputy Minister of Justice said that most of prisoners suffered from cardiovascular diseases. As pointed out above, in medical terms this wording is not indicative of any real causes of mortality in the penitentiary system. The information presented at the web page of the Ministry of Justice gives at least some idea of the disease that ended up in prisoners' death:

	Nosological Groups	Number
1	Intoxication of unclear etiology	**8**
2	Old-age senility	**2**
3	Tuberculosis (including other forms, not only lung)	**10**
4	Heart diseases (mostly various forms of ischemic heart disease)	**8**
5	Trauma and accident (including suicide)	**6**
6	Malignant diseases	**3**
7	Infectious diseases (including neurological infections)	**4**
8	Anemia (acute, chronic), including resultant from gastro-duodenal bleeding	**4**
9	Neurological diseases (including those with disturbance of brain circulation)	**7**
10	HIV/AIDS	**3**
11	Lung and pleura diseases (other than TB)	**3**
12	Vascular diseases and vascular complications	**3**
13	Diseases of digestive system	**3**

These data are illustrative enough to presume that mortality in establishments of the penal system is mostly caused not by acute cardiovascular or cardiopulmonary insufficiency, but by tuberculosis, intoxication of unclear etiology and comas, neurological diseases, traumas and accidents, etc. As far as cardiac diseases are concerned, ischemic heart disease was diagnosed only in 8 cases, however, given the accompanying nosologies it is not possible to safely assume as to what in reality caused the death.

Analysis of prisoners' morbidity, and in particular, the causes of death in penitentiary establishments is essential for mapping out effective preventive interventions, which would contribute to better health of prisoners and reduce morbidity among them. At the same time, a certain proportion of cases examined by PDO could have not ended fatally. Detailed examination of causative factors of death will help law-enforcement bodies to conduct effective investigation in relation to specific cases.

PDO carried out detailed monitoring of prisoner's post-mortem reports. To this, end, PDO addressed the National Forensic Expert Bureau with a request to provide access to expert conclusions on the cause of death of prisoners. Detailed analysis was carried out in respect of 29 reports.

General Analysis of Expert Reports

The following remarks are in order with respect to the introductory part of expert reports:

- In 18 cases there is no indication of the identification number of the order – 613, 603, 630, 632, 646, 645, 657, 658, 671, 677, 678, 679, 682, 720, 742, 749, 760, 795;
- In 15 cases there is no indication of the age of the deceased person – 603, 630, 1299/1-Ò, 677, 678, 679, 682, 742, 744, 745, 749, 750, 760, 771, 784;
- In 15 cases there is no indication of the time when medico-legal autopsy started – 603, 630, 658, 1299/1-Ò, 677, 678, 679, 682, 742, 744, 745, 749, 750, 760, 31;
- In 11 cases the autopsy was performed outside the 30-day term established by the law, and no indication was made of the cause of delay:

646	–	23.07	–	13.09,
97	–	31.07	–	6.09,
658	–	4.08	–	15.09,
1299/1-G	–	7.08	–	19.09,
677	–	9.08	–	6.10,
678	–	9.08	–	6.10,
679	–	9.08	–	6.10,
682	–	12.08	–	10.10,
742	–	2.09	–	12.10,
744	–	2.09	–	11.10,
745	–	2.09	–	10.10.

The following remarks are in order with respect to the descriptive part of expert reports:

- No indication of the length of the body – 677, 679, 682, 742;
- No indication of cadaver-related effects – 679, 682, 742;
- No indication of the groups of muscles with rigor mortis– 671, 677, 678, 795;
- In some reports size of the organs is not indicated, whereas the size indicated in twin organs is identical, which is not true;
- Generally, there is no indication of the weight of organs;

- In 8 cases no description is provided in respect of some internal organs – 657, 677, 678, 679, 682, 720, 742, 771;
- Not infrequently, the organ colour is not reflective of its pathology. Indication of the colour makes sense only if the introductory part of the report points as to whether the source of loght in the course autopsy was natural or artificial none of the reports makes any indication on this matter;
- 613 – the expert indicates that the body is cold. The descriptive part says that the time span between the death and commencement of post-mortem examination is not less that 4 and not more than 6 hours. However, it appears that the dead body was found at 7:30m whereas the examination started after 22:30, and it was impossible for the expert to see livores mortis as they are described.

In some reports there are gross errors in describing internal organs, for instance in 655, 1299/1, 682, 749, 750, 31.

Frequently, endocrine glands are not described properly. The reports almost invariably state that endocrine glands showed no pathological changes, and some reports do not mention them at all (657). In some of the reports pancreas is described among endocrine glands (744, 745, 760, 31, 784), instead of describing them in digestive system, as do classical manuals; in some cases it is not mentioned at all (677, 678,679, 720, 742, 771).

Not infrequently, medicolegal diagnosis is formulated unprofessionally. The diagnosis should start with a description of the immediate cause of death, main disease, followed by accompanying diseases and background diseases. This sequence is often ignored, and in some cases the formulation of diagnosis is beyond any criticism:

- 1299/1-g – Acute vascular insufficiency, acute myocardial ischemia, uneven blood distribution in the myocardium, bran oedema, grave inflammatory process in lungs, thickening of epithelium on brain skin (!). etc.
- 679 – Acute cardiovascular and respiratory insufficiency. Adenocarcinoma of lungs and liver. Coronary atherosclerosis. Cardiosclerosis. Post-infarction cicatrices in the myocardium, multiple cancer metastases in thoracic cavity and abdominal cavity. Necrotic areas in lungs.

In some cases, no additional examinations were carried out, with no indication as to the reasons:

- 657 – it was necessary to carry out histological investigation to confirm cancer diagnosis with a microscopic investigation;
- 1299/1-g – in his report the expert ignores investigation findings provided by a histomorphologist. Histomorphological investigation found diffusive haematomas in the lungs and haematomas in the brain, then the expert goes on to describe dark-colour discharge from the ear and concludes by saying that left ear tympanic membrane was injured (the injury itself is not described). He points to acute ischemia as a cause of death, failing to fulfil the assignment of the order and examine the presence of alcohol and narcotic drugs;
- 682 – No histological investigation performed, which according to the data, was crucial. The expert fails to fulfil the assignment of the order and examine the presence of alcohol and narcotic drugs;
- 742 – the question posed in the order as to whether the person had use alcohol or narcotic drugs before his death remained unanswered;
- 745 – the expert describes haematomas in neck area soft tissues, however, characteristic morphological changes are not pointed out;
- 750 – in the descriptive part the expert mentions splenomegaly, which is not corroborated by microscopic description;
- 760 – the question posed in the order as to whether the person had use alcohol or narcotic drugs before his death remained unanswered, neither was any material taken for chemical test to answer this question;

- 795 – histological investigation found croupous pneumonia, whereas in the conclusion the expert indicates bronchia pneumonia, which is an entirely different diagnosis. The expert fails to reason why he ignored the results of microscopic investigation.

In the period between 17 July to 19 September, 29 prisoners died in the Medical Establishment for Prisoners: of these 6 persons died with violent (non-natural) death, and 23 with endogenic (natural death).

TABLE: NUMBER OF DEATH CASES WITH CAUSES OF DEATH

No	Cause of death	Report No	Number of cases
	Violent (non-natural)		***6***
1.	Mechanical asphyxia	613,749	2
2.	Mechanical lesion	658,784	2
3.	Electrical trauma	630	1
4.	Chemical intoxication	646	1
	Endogenic (natural)		***23***
5.	Tuberculosis	603, 645, 670, 742, 745, 771	6
6.	Pneumonia	671, 677, 682, 720, 750, 795	6
7.	Heart pathologies	632, 97, 655, 1299/1-g, 678	5
8.	Cancer	657, 679, 760	3
9.	Cirrhosis	31	1
10.	Complications after medical intervention	708, 744	2
	Total		***29***

Endogenic death (due to disease) was caused by: TB in six cases (603, 645, 670, 742, 745, 771), pneumonia in six cases (671, 677, 682, 720, 750, 795), heart pathologies in five cases (632, 97, 655, 1299/1-g, 678), cancer in three cases (657, 679, 760), liver cirrhosis in one case (31) and complication after medical interventions in two cases (708, 744). It is important

One has to note particularly, that in summer month, with no epidemy spreading, in the 21st century six persons die of pneumonia! Patiens die of complicated forms of tuberculosis, chronic heart pathologies and what is particlularly alarming – of cancer, i.e incurable disease. Keeping such persons in penal istitutions is absolutely senseless, and we believe inhumane!

11 ENFORCEMENT OF COURT JUDGMENTS

Situation with enforcement of court judgments in a country is the best measure to assess the efficiency of its judiciary system. This is why the *Constitution of Georgia*, together with other laws of the country, contain provisions that are aimed at cultivating special reverence and abidance to the judiciary system and court acts.

According to the official statistics, during 2006, Enforcement Bureaus of the Enforcement Department executed the total of 25166 cases. As many as 10631 cases were terminated due to a variety of reasons, while 302 of the enforced cases involved claims against the state budget.

In total, the share of enforced cases against all cases on which court rulings were issued accounts to approximately 44%. Apart from recovery of arrears, these latter also included cases belonging to other categories (such as eviction, housing, reinstatement into a job, payment of alimonies, etc.) The share of enforced cases that involved claims against the state budget or state budget-funded organizations accounted for 12%. In monetary terms, this corresponds to 3 513 658. 92 GEL and 80443 USD.

The above demonstrates that the share of enforced cases involving claims against the state budget and budget-funded organizations is only a small fraction of the total number of enforced cases, accounting only to 12%. It is not surprising therefore, the largest number of complaints are concerned with enforcement. For instance, non-payment of arrears in wages appears to be one of the most frequent claims featuring in citizens' applications to the Public Defender .

The case of Zaur Amilkhvari

In 28 July 2006, citizen Zaur Amilakhvari addressed the Public Defender with a request to look into his claim involving a non-enforcement of a court judgment.

According to the application and the attached documents, on 12 January 2006, the Chamber for Administrative and Other Cases of the Supreme Court of Georgia ruled on partial annulment of the decision of the Chamber of Appeals of the Regional Court for Administrative and Tax Cases of 10 May 2005, and passed a new judgement. On 15 March 2005, the respective enforcement writ (#bs-991-577(2k-05) was issued, which partially satisfied Z. Amilakhvari's claim, and quashed Order #5-1407 of the Ministry of Finances of Georgia of 2 August 2004 "On the dismissal of Zaur Amilkhvari". The new court ruling

ordered the Ministry of Finances to reimburse to Mr. Amilakhavari the amount of aggregate lost wages from the day of his dismissal to the time of issuance of the individual administrative act.

The enforcement writ was presented to the Enforcement Bureau in due course. Nonetheless, the applicant claims, the said court decision has not been enforced to this day.

The Georgian Constitution and other legal acts prescribe that "acts of courts shall be obligatory for all state bodies and persons throughout the whole territory of the country" The Law of Georgia on Enforcement Proceedings entrusts the responsibility of enforcing of court judgements on the officer of court. An undue delay in enforcing a court judgement will initiate the process of coercive execution.

In view of the above, the Public Defender addressed a recommendation to the Enforcement Department pointing to the need to secure the enforcement of the relevant court ruling. The Department replied that on 28.03.06,, based on enforcement writ #bs-991-577(2k-05), their court officer O. Chalatashvili sent off a notice to the Ministry of Finance which set a three-month period for voluntary enforcement of the court decision. The amount in question was to be deposited onto the account of the special group of Enforcement Department of the Ministry of Justice of Georgia.

On 27 July 2006, the Department sent off a second notice to the Ministry of Justice, requesting to indicate the total amount of M. Amlikhvari's lost wages that accrued from the date of his dismissal until issuance of the individual act. The Enforcement Department received no reply to this.

Given the above, the Special Group of the Department was instructed to send off another notice to the Ministry of Finances containing a requirement to secure timely enforcement of the court decision at issue.

The case of Omer Meladze

Citizen Omer Meladze addressed an application to the Public Defender in relation to the non-enforcement of a court decision.

The application, together with the attached documents, indicates that on 11 September 2003, the Khelvachauri district court ruled in favour of Omer Meladze, satisfying his claim to be recognized as an individual household in the Kelvachauri district and, hence, be allocated a homestead land plot in the lowland area of Khelvachauri. The Sharabidze Sakrebulo (Village Council) of the Khelvachauri district was required to register the claimant as an individual household and allocate the established minimum size of the homestead land plot from the reform land fund.

The respective enforcement writ, #2-479, was issued on 9 July 2004 and was presented to the Ajara Enforcement Bureau, in full compliance of the established procedures. Nonetheless, according to the claimant, there followed no execution of the decision.

Having looked into this case, the Public Defender found no credible reason for the procrastination of enforcement of the above decision and sent off a recommendation to the Ajara Enforcement Bureau containing a requirement to secure execution of enforcement writ #2-479.

In reply to this recommendation, and with a view to securing enforcement of the above court decision, The Ajara Enforcement Bureau served the respective notice on the Sharabidze Local Council of the Khelvachauri district and held a special meeting at the Governor's Office. Both the Sharabidze Sakrebulo and the Governor's Office account for the non-enforcement of the said decision by the fact that the process of entry of lands into

the reform land fund register has been terminated. Both of them state they will fully satisfy requirements of the enforcement writ of execution once the process of land entry into reform fund resumes.

The case of Natela Menteshashvili

The Public Defender of Georgia received an application from Natela Menteshashvili stating that the Tbilisi Regional court judgment passed in respect to her claim had not been enforced.

The Regional court had satisfied N. Menteshashvili's claim, quashing the 20 July 2004 decision of the Tbilisi Vake-Sabirtalo district court and ruled that respondent Shota Martiashvii should pay the claimant the equivalent of 20,000 USD in Georgian laris. The court decision was entered into effect, and the respective enforcement writ, #2Ñ/143-05, was duly presented to the Enforcement Bureau. In her application, N. Menteshashvili claims the enforcement of the court judgement is being delayed intentionally: to this day no attachment has been laid on the respondent's property (house in Tskhneti, suburb of Tbilisi, 41 Aghmashenebeli street) and no coercive enforcement of the court judgement has been initiated.

Chapter 17 of the Law of Georgia on Enforcement Proceedings spells out the rights and responsibilities of the bailiff, according to which the bailiff is entitled to secure the recovery in favour of the creditor:

a.a. From the property of a debtor by means of laying an attachment on it or the sale of property. In the case the State property is concerned, a bailff shall duly notify the alocal agencies o the State property management;
a.b. From the wages, pension, scholarship and other incomes of a debtor;
a.c. From funds and property of a debtor that are maintained by other persons, as well as from the bank accounts of a debtor on the grounds of a collection order.

When the matter concerns money or property recovery, the bailiff shall commence the process of inventory of the property and lay attachment on the debtor's property (both movables and immovables) immediately upon serving the notice of voluntary enforcement on the debtor, in full compliance with of the rules prescribed by the law.

The Public Defender finds a grave violation of Natela Menteshashvili's rights, in view of the fact that the court judgement remains unenforced and the creditor's legitimate claim has not been satisfied to this day. Hence, he presented a recommendation to the Enforcement Department pointing to the need to secure enforcement of the court decision at issue in an expeditious manner.

According to the reply received for the Enforcement Department, at the present stage of proceedings, the movable property at the debtor's apartment has been inventoried and attached. All other respective measures will be taken upon receipt of the conclusion from an independent audit, and when the citizen's representative turns up.

The case of Tsenteradze-Kavtaradze

On 26 July 2006 Margalita Tsenteradze-Kavataradze addressed the Public Defender of Georgia in relation with the non-enforcement of a judiciary decision.

According to her application and the attached documents, on 15 October 2004, the Vake-Saburtalo district court issued an enforcement writ #2/791-04, which satisfied Margalita Tsenteradze-Kavtaradze's counter-

claim. The court ordered Giorgi Kavtaradze to pay an alimony in the amount of 50 laris per month in favour of his under-aged daughter, Keti Kavtaradze, and his ex-wife.

The enforcement writ was duly presented to the respective Enforcement Bureau, nonetheless enforcement has not taken place to this day.

In regard of the above, the Public Defender requested an explanation from the Enforcement Department. According to the Chairman of the Enforcement Department, the case had been in charge of bailiff Kakhaber Peikrishvili. The bailiff, with a view to securing enforcement of the court judgment, had served a proposal of voluntary enforcement on Giorgi Kavataradze. Following this, in order to assess the debtor's movable and immovable property, the bailiff made an enquiry at the Tbilisi Registration Office of the National Agency of Public Registry and the Information Centre of the Interior Ministry. As a result of the enquiry he found that the debtor owned no apartment at Building 14 of the Vashlijvari Settlement of Tbilisi. Apart from this, he determined that the debtor had made a transfer of the alimony amount of 200 laris to the respective bank account. In view of the Public Defender's letter, the Chairman of the Enforcement Department undertook a commitment to personally oversee the enforcement procedure of the case concerned.

The case of Goderidze, Javakhishvili and Bekauri

The Public Defender's Office was addressed collectively by Natela Goderidze, Manana Javakhishvili and Eleonora Bekauri regarding the non-enforcement of a court judgement.

From the application and the attached documents it follows that on 15 January 2004, the Chamber of Appeal for Entrepreneurial and Bankruptcy Cases of the Tbilisi Regional Court satisfied the claim of Mr. N. Goderadze, an authorized representative of a group of shareholders of company *Color*. The court ordered defendants P. Tokhishvili, T. Burduli, N. Papiashvili, G. Khutsishvili and A. Murjkneli to transfer the property in question to its legitimate owners, together with paying the associated state duty, in accordance with Chapters 53 and 49 of the Civil Procedural Code of Georgia.

The respective enforcement writ, #2/29, was issued on 20 May 2004 and duly presented to the Enforcement Bureau. Nonetheless, according to the applicants, the enforcement never took place over the years that followed.

In view of the above, the Public Defender sent off a recommendation to the Kakheti Enforcement Bureau pointing to the need to secure enforcement of court judgment #2/29. Despite the numerous reminder notices that followed after the initial recommendation, the Public Defender never received a reply. Meanwhile, the applicants still insist that the case remains unenforced.

The case of Zurab Khakhviashvili

On 10 October 2006, the Public Defender was addressed by Zurab Khakhviashvili regarding the non-enforcement of a court judgement

The application, along with the attached documents, indicate that on 13 February 2006, the Camber for Administrative Cases allowed the claim of Luba Khakhviashvili, Fedosia Verigina and Nargiza Verigina and ordered the Defense Ministry of Georgia to pay fixed amounts of compensation in favour of the plaintiffs. In particular: 1277.40 Gel – to L. Kakhviashvili, 1361.64 – to F. Verigina and 1363.74 to N.Verigina. The respective enforcement writ, #3/1898-06, was issued on 10 April May 2006 and duly presented to the Enforcement Bureau. Nonetheless, as the applicants point out, the enforcement never took place over the months that followed.

In view of the above, the Public Defender addressed a recommendation to the Enforcement Department pointing to the need to secure enforcement of the above case. According to the Chairman of the Enforcement Department, the case in question was given for processing to the Special Enforcement Group for Particularly Important Cases. The Defense and Finance Ministries had been served proposals of voluntary enforcement. The debtors appear to have ignored the proposal, due to which the case proceeded to the stage of coercive enforcement. In view of the Public Defender's recommendation, the Special Enforcement Group of the Enforcement Department has been instructed to secure timely enforcement of the above court judgement.

The case of Marina Nadareishvili

The Public Defender of Georgia was addressed by attorney M. Tsikvadze of the *Tsikvadze & Kupatadze* law firm in relation to non-enforcement of the court judgement on the case of Marina Nadareishvilil.

From the application and the supplied documents it follows that the Tbilisi Vake-Saburtalo district court, by its decision #2/937-02 of 15 March 2002, satisfied M. Nadareishvili's claim ordering the Interior Ministry to disburse the claimant a one-off compensation due to her son's death in a car accident during the time of his service in the army. The amount in question is 13,388.40 Gel.

The respective enforcement writ, #3/1898-06, was issued on 12 July April 2004 and was duly presented to the Enforcement Bureau. Nonetheless, the applicant claims, the enforcement never took place over the period that followed.

Having looked into the case, the Public Defender found a violation of the citizen's rights. In this connection, he presented a recommendation to the Enforcement Department pointing to the need of securing enforcement of the case in question.

A reply letter from the Enforcement Department of 1 August 2006 indicates that the enforcement writ - where Marina Nadareishvili is a creditor and the Interior Ministry the debtor - was passed for processing to the Special Enforcement Group for Particularly Important Cases. In view of the Public Defender's recommendation, the Special Group was instructed to secure enforcement of the case in question and launch the respective enforcement proceedings in a timely manner.

The case of Khochiashvii and Nateladze

On 18 August 2006, The Public Defender was addressed by J. Khochiashvili and G. Nateladze.

According to the documentation supplied in connection of this case, the applicants had formerly worked at the Dedoplistskaro Division of Agriculture and were dismissed from their position by resolution #52 of the Minister of Agriculture of 15 April 2005.

The applicants filed a claim with the Dedoplistksaro district court requesting reinstatement into their jobs, together with the compensation of all lost wages.

The Dedoplistskaro district court satisfied their claim by passing the respective judgement on 2 September 2005 and declared the Minister's resolution of 15 April 205 null and void. Hence, the court reinstated J. Khochiashvili and G, Nateladze into their positions and ordered the Dedoplistskaro Division of Agriculture to reimburse them their lost wages. The respondent did not appeal the court decision within the established timeframes. Accordingly, the decision was enacted and the respective enforcement writ, #07/123, was issued.

Pursuant to Government Resolution #145 on amendments and additions to the Articles of Organization of the Ministry of Agriculture and according to the order of Georgia's Agriculture Minister of 2 September 2005, #2-2000, all territorial bodies (i.e., district divisions) of the Ministry of Agriculture were to be closed down, and the deputy-minister of Agriculture was authorized to oversee the execution of this decision.

Based on the above, the applicants abandoned the job reinstatement claim, requesting just the compensation for the lost wages. Respectively, the court officer applied to the Dedoplistskaro Division of Agriculture with a request to include the above disbursement sum into the liquidation balance sheet. The liquidation commission ignored this request.

Following completion of the liquidation process, the enforcement instrument was returned to the applicants unenforced, on the grounds of Article 35, Section G of the Law of Georgia on Enforcement Proceedings. The basis for such an action appears to be official letter #2-1-16/1830 of the Ministry of Agriculture, in which the deputy minister, Begiashvili, states the Ministry has no knowledge as to who will be the legal successor of the abolished divisions.

In the reply to the Public Defender's letter, Mirian Dekannosidze, the first deputy minister of Agriculture, points out that the liquidation commission had drawn up no inventory act, because the said organization (which, in fact, had the status of an enterprise) had no property registered to its name as of the moment of liquidation. As far as the issue of legal successor is concerned, again, the Ministry explains that no legal successor of the Dedoplitskaro District Division (abolishment of the enterprise) had been appointed, because the Division had no property by the time of liquidation.

First of all, according to the Law of Georgia on Entrepreneurs, an enterprise is a legal person of private law with an established organizational and legal form determined by Chapter 2 of the said law, which carries out profit-oriented activities, independently and in an organized manner. In contrast, the Ministry's territorial bodies (divisions) were operating under the Ministry and had been established in accordance with the Law of Georgia on Legal Person of Public Law.

As regards the legal successor, Resolution #38 of the Georgian Government dated 21 May 2004 determines the structure of the Ministry of Agriculture incorporating the territorial bodies of the Ministry, which, indeed, – until issuance of resolution #145 by the Georgian Government – were district divisions.

The Georgian Government Resolution #19 of 28 January 2005 determines the financing mode of the territorial bodies of the Ministry of Agriculture which, in fact, were district divisions at that time. The divisions were financed from the state budget. Besides, Resolution #2-108 of the Minister of Agriculture contains a template of *Articles of Organization* of these territorial bodies, i.e., district divisions. The said Resolution provides that the territorial body of the Ministry of Agriculture is a district division, with heads of the divisions, their deputies and the personnel appointed and dismissed by the Minister of Agriculture. Pursuant to the same Resolution, the division reports to the Ministry, and in its activities is fully guided by the Constitution of Georgia, other laws of Georgia, decrees of the President of Georgia, orders of the President of Georgia, resolutions of the Government of Georgia, orders of the Minister of Agriculture, and other statutory acts.

In the light of the above, the issue of legal successor becomes quite evident. As the abolished divisions were, indeed, structural units of the Ministry, the responsibility for disbursement of the lost wages in question fully rests with their administrative body, i.e., the Ministry of Agriculture,.

Returning of the enforcement instrument is, in effect, a breach of the applicants' labour rights provided by the Constitution of Georgia and other legal acts of the country. In addition, pursuant to Article 82.2 of the Constitution of Georgia, "Acts of courts are mandatory on the whole territory of the country for all state bodies and persons". The court judgement remains unenforced, which constitutes a breach of the human rights provided by the acting legislation.

Proceeding from the above and in accordance with Article 21.b of Georgia's organic law on Public Defender, the Public Defender addressed a recommendation to the Enforcement Department suggesting that the Chairman should instruct the relevant officers to resume the enforcement procedure with regard to the above case and oversee the enforcement proceedings until the enacted court judgement is executed.

This recommendation has been fulfilled. The enforcement was resumed and the proceedings were started.

A collective application against Mayor's Office

Public Defender was addressed by a group of Tbilisi residents who suffered as a result of events of 1992-1993.

From the application and the supplied documents it follows that the said individuals had filed a suit at the Tbilisi regional court claiming that Georgia's Finance Ministtry and Tbilisi Mayor's Office should take a joint responsibility for the compensation of material losses in the amount equivalent to 4,606,845 USD in Georgian laris.

The applicants' claim was based on Presidential Decree #180 relating to the Program for restoration of dwelling houses and payment of compensation to individuals affected by the events of December-January 1991-2.

The Tbilisi regional court allowed the claim and ordered the Finance Ministry and Tbilisi Mayor's Office to pay the compensation in the amount equivalent to 4 606 845 USD in Georgian laris.

Tbilisi Mayor's Office and Finance Ministry appealed the said judgement at the Supreme Court of Georgia, which, upon consideration, dismissed their cassation claim and confirmed the judgment of the regional court.

In connection of this case, the total of 157 enforcement writs were issued and duly presented to the Enforcement Department of the Justice Ministry.

Applicants claim that while the Finance Ministry is clearly unwilling to enforce the judgement on a voluntary basis, the Enforcement Department is holding back the initiation of coercive enforcement.

In connection with the above, the Public Defender requested an official explanation from the Enforcement Department of the Justice Ministry, and asked for an exhaustive information as to why the coercive enforcement of the court judgement had been delayed. He also pointed to the fact of violation of human rights and to the need of initiating the relevant measures.

In its reply letter, the Enforcement Department noted that the case had been passed for processing to the Special Group of Particularly Important Cases. This latter, in accordance with Article 92 of the Law on Enforcement Procedures, had served a proposal of voluntary enforcement of the judgement on the said Ministries, which was not fulfilled by the debtors. The letter also points out that the case has now proceeded to the stage of coercive enforcement.

An ensuing letter received from the Department notes that the 2007 State budget envisages allocation of ten million laris specifically for the purpose of securing execution of court decisions and repayment of arrears. However, this will hardly suffice to ensure enforcement of all judgements. The State should take respective measures to meet its all obligations related to repayment of all arrears that accrued over years.

12 ENFORCEMENT OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The need to introduce an adequate mechanism for re-examination of certain cases following judgements of the European Court of Human Rights.

A certain number of European Court judgements relate to the non-enforcement of judgements passed by national courts, which is qualified as violation of the right to fair trial stipulated in Article 6 of the European Convention.[1]

One of the major obstacles in enforcing judgements of the European Human Rights Court is that Georgia has no mechanism of repeal or re-examination of enacted court judgements.

Due to the fact that legislation of many members states of the Council of Europe did not have a similar provision in their legislation, on 19 January 2000, CoE Committee of Ministers issued "Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights".

The major principle of the recommendation is that the court judgement should ensure full restitution of damages incurred by the injured party *(restitutio in integrum)* as a result of violation of the Convention. From the experience of Committee of Ministers, in certrain cases, re-examination of cases appears to be the only efficient means, to achieve *restitutio in integrum.*

The Recommendation applies "re-examination" as the generic term, also covering the mechanism for re-reconsideration of enacted court judgements. According to the same Explanatory Memorandum, although the text of the recommendation contains no indication as to who ought to be empowered to ask for reopening or re-examination, it would be logical to assume that this right should be given to the interested parties, i.e. those directly affected by the European Court decision.

In connection with the above, the first deputy Minister of Justice, Mr. Constantine Korkelia informed us that the intended amendments to Georgia's domestic legislation will serve the general basis for improving the situation with enforcement of European Court judgements. These changes will allow to reopen and re-examine cases based on the

[1] Judgement of 8 April 2004 "Asanidze against Georgia", judgements of 27 September 2005 "Ltd Iza & Mkrakhadze against Georgia" and Ltd AMat-G & Mebaghishvili against Georgia"; Judgement of 28 November 2006 Apostol against Georgia.

decisions of the European Court and also enable the creditor to receive a compensation for the delay in enforcement. In our view, this initiative of the Justice Ministry must be welcomed. We would only hope that the draft amendments will be prepared shortly so that their consideration is started as soon as possible.

As to the financial aspects of the matter, Mr. Korkelia notes the re-allocation of budget assignations among state creditors is beyond the competence of his ministry. Sadly, despite the many notices addressed to the Ministry of Finance, this latter has not as yet developed the required action plan for allocation of funds for the enforcement of court decisions for cases where the state and budget-funded organizations are respondents.

The 2007 budget envisages 10 million laris to cover the state indebtedness related to the non-enforcement of court decisions, which definitely, must be viewed as a positive development. However, this amount should not be seen as the upper limit of enforcement finds: earmarking a fixed compensation amount in the budget should not become an impediment to the enforcement of judgements if the aggregate indebtedness of state organizations exceeds the allocated sum.

Apparently, a clear plan of actions is absolutely essential, in order to set out the principles of repayment of state arrears, together with the respective time-frames and deadlines.

We recommend to the Finance Ministry to elaborate and present the said action plan within the shortest possible time, in order to secure repayment of all arrears associated with the enforcement of court judgements. This is an urgent requirement, particularly, if one recalls the fact that on 7 August 2006 the respective Georgian authorities already notified the Committee of Ministers that the said plan was already in the process of development.

Improvement of the system for enforcement of court judgements

In addition to the above problem, the European Court judgment against Georgia of 29 November, "Apostol v. Georgia", points to another shortcoming of Georgia's enforcement mechanism, running counter to the principle of a fair trial.

The above judgement questions the Law of Georgia on Enforcement Proceedings, particularly, compliance of its Articles 26 and 113 1 with the fair trial principle. According to Article 26 of the said law, a bailiff shall be entitled to refuse to enforce a judgement in case of non-payment by the creditor of the preliminary expenses provided by the law". According to Article 1131 "the fee shall be charged from the debtor at the time of serving the enforcement instrument".

In the opinion of the European Court, the imposition upon applicant of the obligation to pay expenses in order to have that judgement enforced is a purely financial restriction and therefore should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice.[2] The Court held that by imposing the enforcement-related fees upon the claimant the state failed to meet its positive obligation related to organization of a system for enforcement of judgements that is effective both in law and practice.[3]

Proceeding from the above, and based on recommendation (2004)5 of the Committee of Ministers of 12 May 2004 related to the verification of compatibility of draft laws, existing laws and the administrative proceedings of member states with the standards laid down in the European Convention on Human Rights, it appears expedient to make certain amendments to the Law of Georgia on Enforcement Proceedings so that, on the one hand, the advance fees imposed upon the creditor are determined based on the financial

[2] § 60
[3] § 64

solvency of the creditor, and on the other hand, the State should set forth reliable guarantees to eradicate the practice recognizing a non-payment of the fee as sufficient grounds for non-enforcement of a judgement.

Violation of procedural guarantees of the Convention

The issue of violation of procedural guarantees is not concerned solely with the non-enforcement of European Court judgements, although it is directly related to the observance of provisions of the European Human Rights.

The European Court may pass a judgement on the violation of the Convention, without having an actual proof corroborating that the violation in question has indeed taken place. The refusal of the country's competent bodies to investigate into suspected facts of violation or a dismissal of the respective claim will serve sufficient grounds for the Court to judge on the violation of the Convention. In the case of Georgia, a clear proof to this are judgements of 17 October 2006.

In its judgement *Danelia v. Georgia* the European Court found a violation of the procedural part of Article 3 of the Convention. Mr. Danelia contends he was subjected to torture and inhuman treatment while in police custody. Although, the supplied materials did not provide substantial evidence to prove that this violation had indeed taken place, the verdict was still against Georgia. This was due to the fact that Mr. Danelia's numerous applications requesting to study the facts in order to establish the alleged violations were ignored and no effective investigation was initiated which, in itself, is a breach of Article 3 of the Convention.[4]

Judgement *Gurgenidze v. Georgia* relates to the breach of Article 8 of the Convention. The European Court found a violation of the right secured by Article 8 of the Convention, due to the refusal of domestic courts to consider the case of an alleged violation of his right to respect for his private life. This, in effect, constitutes violation of the guarantees accorded by Article 8, even though the alleged violation was committed by private individuals, not the state authorities.

Proceeding from the above, we recommend that the State and administrative bodies should give careful consideration to the claims involving alleged violations of the human rights guaranteed by the Convention and investigate into such claims rigorously.

Recommendation:

- **Ministry of Finance shall elaborate the action plan within the shortest possible time in order to secure execution of enacted courts judgements that remain unenforced over years;**
- **In the light of recommendation (2004) 5 of 12 May 2004 of the Committee of Ministers, the judgement of the European Court of Human Rights of 28 November 2006, the Ministry of Justice shall elaborate draft amendments in the Law of Georgia on Enforcement Proceedings in order to bring the procedures for determination of the size of enforcement fee and rules of its payment in compliance with requirements of Article 6 of the European Convention of Human Rights;**
- **All applications and claims, relating to alleged violations of the principles of European Convention, should be considered and investigated with due care.**

[4] § 64-65

13 INFRINGEMENT OF THE RIGHT OF OWNERSHIP

The right to private property is one the most secured and guaranteed rights in Georgia. According to Article 21 of the Georgian Constitution "The right to inheritance and property is recognised and guaranteed. The abrogation of the universal right of property, its acquisition, transfer and inheritance is prohibited; Restriction of these rights is possible for the necessary social need 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."

The right to property is interpreted as an absolute right. This means that any individual shall refrain from infringing on the property right of another individual. Protection of private property is the prerequisite and the guarantee for the country's economic development.

Despite the provisions set out by the law, The Public Defender's Office received a great number of applications related to the violation of private property rights.

The case of Marina Bochorishvili

The Public Defender was addressed by Z. Popxadze on behalf of his confiders M. Bochorishvili and N. Tsereteli regarding violation of their property right.

The supplied documents indicate that Marina Bochorishvili , Vazha Zakarashvili and Nodar Tsereteli jointly own a plot of land and a building at 81 Gorgasali Street, Tbilisi. This is confirmed by an excerpt from the Public Registry. The supplied documents also include an approved architectural design and construction permit for the building concerned.

The applicant contends that a representative of the Municipal Supervision Service first gave an oral warning regarding a possible dismantling of the building. After that, on 9 October, M. Bochorishvili received a notice from the Municipal Supervision Service asking either to supply required documents or otherwise, the notice said, the building would be demolished.

The Georgian legislation sets out clear rules for dismantling buildings. In particular, these rules are described in Article 7, paragraph 1 of the *Law of Georgia on State Supervision over the Architectural and Construction Activity* which spells out that the state architectural and construction supervision bodies are entitled to take decision on termi-

nating the construction, as well as full or partial dismantling of a building constructed in violation of the law. Paragraph 3 of the same Article notes that the said decision must be adequately documented and should contain the reference number of the administrative/legal through which such decision was taken, together with an indication of the body with which this decision could be appealed, including its address and the deadlines for lodging the appeal, as well as a reference to the particular norm of a statutory act which was violated in the course of construction. According to Para 4 of the above Article, the party concerned should be informed of the resolution regarding full or partial dismantling of the building constructed in violation of the law within 24 hours following adoption of the resolution. 'Informing' means posting the text of the resolution in a conspicuous place. The Georgian legislation entitles parties to a dispute to appeal the resolution of the Architectural and Construction Supervision Service within 15 days. At the same time, filing such an appeal would automatically suspend implementation of the resolution of the Supervision Service until the said appellate body passes a decision. Hence, if the party lodges a claim regarding the resolution of the Supervision Service, the final decision on dismantling can only be taken by the court.

As noted above, the City Supervision Service sent a notice to one of the owners, which is not what's provided by the law.

Property right is guaranteed by the Constitution of Georgia.

The Civil Code of Georgia provides that "an owner is entitled at his discretion to freely possess and use his property (thing) which is not contrary to a law and other legal acts, do not allow the use of the property by other persons…".

Proceeding from the above, the Public Defender finds that the dismantling of the building at 81 Gorgasali Street was carried out in breach of the provisions of the law and violated the legitimate rights of the owner. Therefore, based on Article 21.b of the Organic Law of Georgia on Public Defender, the Public Defender addressed a recommendation to the Tbilisi Mayor's Office requesting to take respective measures with regard to the said developments.

Nevertheless, on 29 October 2006 at about 2:00 am, the building was dismantled. The dismantling was attended by a representative from the Public Defender's Office. The respective protocol was drawn up, in which the deputy head of Supervision Service states that the owners will be offered an alternative plot of land as a replacement.

On 8 January 2007, we received a rather ungrounded and incompetent reply from the City Supervision Service explaining the dismantling by the argument that buildings like the demolished one spoil the appearance of the city and do not fit into the master plan for urban development. The Supervision Service also noted that in the cleared land or an alternative plot provided as a replacement, the owners will have every right to construct a building suitable to the capital city, provided that the Urban Development Service of the Tbilisi Mayor's Office approves the design and a respective building permit is issued.

First of all, it should be noted that the inconsistency of any existing building with the general appearance of the city can by no means be used as an argument to restrict the owner's property right. Besides, it was the Mayor of Tbilisi to whom the Public Defender had addressed the recommendation. The law requires that the Mayor's Office itself should have considered the recommendation duly and sent the reply to the Public Defender within the period of one month. However, as noted above, the reply came from the Supervision Service, not from the Mayor. Hence, it would be fair to assume that the Mayor's Office gave little thought either to the drafting of the reply or to the documents attached to the recommendation, including papers directly proving the ownership of the building, an approved architectural design and the building permit. These documents attest to the fact that in the course of construction at 81 Gorgasali Street all requirements of the law had been

strictly observed. In addition, Marina Bochorishvili submitted an application to the Mayor's Office asking for a permit for the construction of a Coca-Cola kiosk in her plot of land, which was rejected. In this light, City Supervision's argument that the owner will be entitled to construct another building in the land at issue sounds rather unsubstantiated.

The case of David Asatiani

The Public Defender was addressed by D. Asatiani with an application pointing to the encroachment of his property right.

The supplied documents point to the fact that in 1997 Davia Asatiani purchased a pavilion in the Pushkin garden of the Freedom Square, Tbilisi at an auction. Following this, he carried out a reconstruction of the pavilion, which had been approved by the respective architectural service. According to excerpts from the Public Registry, David Asatiani is, indeed, the owner of the building (café-bar "Ia"), while the land on which the pavilion stands belongs to the State.

According to the applicant, he received a verbal notice from a representative of the City Architectural Supervision Service about the impending dismantling of the pavilion. Notably, registration of owners in the Public Registry was incorrect, as according to part 2 of Article 150 of the Civil Code of Georgia, "buildings, structures and things that are solidly connected with the land and are not designated for temporary use, which may be stipulated under a contract, may belong to the essential constituent part of a land plot".

Hence, from the very start, it was wrong to split the ownership of the building and the 16 sq. meters of the land on which the pavilion stood by registering the state as the owner of the land and giving the ownership of the building standing on this land to a private person. Although, according to Part 1 of Article 312 of the Civil Code, "The presumption of reliability and completeness is applicable to data of the public register, i.e. the register records are deemed to be accurate unless their inaccuracy is proved". The court did not deliberate on the accuracy of the Registry records, hence David Asatiani was considered the legitimate owner of the said building.

As stated above, The Georgian legislation sets out precise procedures for dismantling, fully ignored in this particular case.

The Supervision Service gave only an oral notice to the owner, which is not what the acting law stipulates. Proceeding from the above, the dismantling of the building in the Pushkin Garden of the Freedom Square in Tbilisi was carried out in violation of the provisions of the law, infringing upon the property rights of the owner. Hence, pursuant to Article 21, section b of the *Organic Law on Public Defender*, the Public Defender addressed a recommendation to the Mayor of Tbilisi to secure adoption of a judicial decision in regard of the said matter.

Public Defender's recommendation was largely ignored, and the property registered to Mr. Asatiani was demolished.

The reply was delayed and did not fit within the established deadlines and, again, it came from the Supervision Service, not from the Mayor's Office. The letter stated that Café-Bar "Ia" was made of the so-called light constructions, and hence cannot be regulated by Article 150 of the *Civil Code of Georgia* or by the *Law on State Supervision over the Architectural and Construction Activity*. It was also pointed out that Mr. Asatiani did not own the plot of land on which the building stood. He had rented this land and the renal agreement expired on 10 April 2005. Hence, the building could be and was dismantled.

In this connection, it should be noted that the case includes a copy of D. Asatiani's letter to the Mayor's Office, in which he requests an extension of the rental period. He never received a reply to this letter and the City Supervision Service provided no counter-evidence to disprove the above. Accordingly, pursuant to Article 559 of the Civil Code of Georgia, David Asatiani legitimately assumed that the rental agreement period was extended for an unlimited period.

Hence, there is every indication that D. Asatiani's right were indeed violated, as he was registered in the Public register as the owner of the building demolished by the Supervision Service authorities, and the court did not deliberate on the legitimacy of the ownership. The demolishing of the building was carried out against his will and without any legal grounds.

The case of company "Nia Ltd"

The Public Defender was address by partners of company "Nia Ltd" regarding an encroachment on their property rights.

The supplied documents indicate to the fact the "Nia Ltd", a legal person. owns a plot of land at 2 Dadiani Srt, Tbilisi, in the vicinity of the railway bridge, and a shop built on this land. This is substantiated by an excerpt from the Public Registry. The supplied documents also include an officially approved architectural design and the respective building permit.

Initially, an order was issued on approving the design of a temporary light-type pavilion to be built on the said land, which – based a special application from the Nadzaladevi district governor's office – eventually was changed to standard construction blocks, Consequently, the owners were granted a permit to continue the building process and use standard construction blocks for the building.

The applicants claim that a City Supervision Service representative gave them a verbal notice of the intended demolition of the building. Accordingly, they filed an application with the said service requesting to quote the legal provisions based on which the decision was taken on dismantling the building they owned.

In reply, the City Supervision Service notified the applicants (letter #20-5/02-3430) that no administrative proceedings had been started in connection with dismantling the building at 2 Dadiani Street. Following this, the applicants claim, they were given a second notice stating that the dismantling of the building would be carried out on 5 January 2007, the basis for this act being the verbal order of the Mayor of Tbilisi.

The Supervision Service again ignored the requirements concerning dismantling of a building as set out in the *Law of Georgia on the Supervision over the Architectural and Construction*. The said Service gave only oral notices to the owners, depriving them of any evidence to motivate their application to the court.

Proceeding from the above, on 26 December 2006, the Public Defender sent off another recommendation to the Tbilisi Mayor's Office, insisting that this issue should be dealt with in full compliance with the acting legislation. It was also recommended to consider the imposition of disciplinary measures upon those individuals who acted in violation of the requirements of the law.

On 16 January 2006, the owners of "Nia Ltd" addressed the Public Defender once again contending that the City Supervision Service would proceed with the demolition of their property on the same day, at 20:00, despite the above recommendation.

Representatives of the Public Defender's Office went to the site to attend the dismantling of the property. It turned out that dismantling works had already started, as the energy company had already cut off the electric supply, while the actual demolition of the structure took place on 17 January.

Following this, Tbilisi Mayor's administration sent off a reply dated 22 January, noting that the Mayor's Office had not issued a single legal act concerning demolition of the shop "Nia Ltd" at 22 Dadiani Street, neither had been any administrative proceedings started in this relation. The owners of the trading pavilion were given an oral notice about the intended demolition of the pavilion in the nearest future, in full accordance with the norms established by the law. Finally the letter said, "if, proceeding from the interests of the city, the City Service decides the said property should be demolished, the dismantling procedure will be carried out in full compliance with the law, so that no encroachment of the lawful rights of the owners will take place".

Interestingly, the said letter was dated 22 January 2007, whereas the building at issue had already been dismantled, back on 17 January, i.e. 5 days earlier.

The Public Defender submitted all relevant documents connected with the demolition of the privately owned building at issue to the General Prosecutor's Office for due consideration.

On 2 February 2007, the General Prosecutor informed the Public Defender that all materials and documents concerning encroachment on the property rights in connection with "Nia Ltd" had been passed to the Tbilisi Prosecutor's Office, together with an instruction to notify the Public Defender and the General Prosecutor of the ensuing judgement.

The case of a trading centre near the Tsererteli Metro Station

On 18 November 2006, the Tbilisi Supervision Service demolished the building of a trading centre located at 12 Poti Street, across from the Tsereteli metro station, owned by company "Votum Ltd".

Prior to this, representatives of the Supervision Service had given an oral notice to the owners of "Votum Ltd" about the intended demolition of the building. This is corroborated by the protocol drawn up by the Didube-Chughureti inspector of the Head Division of the Tbilisi Patrol Police on 14 November 2006.

On 29 February 2000, the Tbilisi Mayor's Office and "Votum Ltd" signed a 20-year lease agreement concerning the lease of a state-owned plot of non-agricultural land to "Votum Ltd". The legal basis for this agreement was Resolution of the Government of the City of Tbilisi #04.18.94 of 10 June 1999. Section One of the said resolution speaks about leasing out a plot of land with an approximate area of 150 sq. meters in the territory adjacent to the Tseretli Metro Station for temporary use for building and operating a trading centre (shop).

The above agreement provides for the right of the lessee to build a trading centre/shop, together with all auxiliary buildings and structures necessary for its operation. Although, the agreement did not specify the construction methods and terms to be applied in the building of the shop, Article 7, Section 3 of the Agreement provides for the right of the lessee to sub-lease the buildings and structures erected in the leased plot and owned by the lessee. Besides, according to Order #63 of 7 March 2000 of the Chief Architect of Tbilisi, 'Votume Ltd' and the City Mayor's Office have agreed on the construction design for the building to be built in the leased plot of land. On 9 March 2000, the Tbilisi Architectural and Construction Inspection issued the respective building permit, hence, officially approving the building as fit for operation.

According to Chapter 9 of the *Civil Code of Georgia*, "the private legal relations of legal persons of state bodies and public law with other persons are also governed under civil legislation, unless these relations, proceeding from the state or public interests, are governed by public law".

The Tbilisi Mayor's Office and "Votum Ltd" made an agreement in compliance with the civil legislation norms. Following this, services operating under Mayor's Office studied the architectural and engineering design of the structure to be erected, and issued the respective building permit. Hence, these acts are indicative of the Mayor's Office intent to enter into legal relations, where "Votum Lts" featured as a bona-fide holder of the building erected in the said plot, pursuant to Article 159 of the *Civil Code of Georgia*.

The plot of land at issue was leased out temporarily for building and operating of the trading establishment on 10 January 1999. The issued permit does not specify the period over which the lessee could make use of the said building. Accordingly, it would be fair to assume that the lessee could exercise the ownership of the property for the period equal to the term of agreement.

The *Civil Code of Georgia* specifies legal grounds for the abrogation of a lease agreement. According to the general rules, a lease agreement can be abrogated only in exceptional conditions, in particular, if one of the parties violates the terms of the concluded agreement, making an adequate management of the lease agreement impossible.

Article 12 of the Agreement made by the parties is concerned with dispute settlement. According to Section 1 of the said article "parties shall endeavor to settle any disputes arising from the present agreement by seeking a mutually acceptable settlement". According to Section 2 of the same article, in case the parties fail to achieve a mutual agreement, the dispute will be brought before a court for consideration."

The above provision was neglected by the Tbilisi Mayor's Office. The Tbilisi Supervision Service operating under the Mayor's Office demolished the immovable property without reaching any prior agreement on this subject. Consequently, this administrative body violated the principle of a proper exercise of a right, provided for by the acting legislation. Article 115 of the *Civil Code of Georgia* states: "A civil right shall be exercised properly. The exercise of a right with the purpose of inflicting damage to others is inadmissible". The legal norm points to the expediency of a dispute resolution through court proceedings. According to Article 8 of the *Civil Code of Georgia*, "participants in legal relations are required to exercise the rights and duties thereof in good faith" .

Accordingly, in case of a disagreement, the Tbilisi Mayor's Office was to file a claim with the court. In such a case, the issue of legitimacy of the said construction would have been considered and assessed by the court, through a careful and comprehensive study of all relevant circumstances, with all fairness and impartiality.

Given the above, the officials of the Supervision Service under the Mayor of Tbilisi, through their illegitimate actions, have violated the human rights protected by the acting legislation, in particular: the rights of the applicant as a *bona fide* holder and an entrepreneur.

Pursuant to Article 160 of the *Civil Code of Georgia* " a *bone fide* holder is entitled to claim the return of his holding from an illegal holder. This means that if a bona fide holder is dispossessed of the holding, he/she is entitled to claim the return (and putting the holding in its initial condition) of the holding from the new holder over the period of three years. This rule does not apply where the new holder has better right of holding. The demand for the return of holding may also be applied to the holder with a better right provided that he has acquired the holding with force or by fraud".

Article 6.1 of the Agreement states the lessor 's obligation to provide help to the lessee with disposing the leased plot of land. The Tbilisi Mayor's Office failed to fulfill its obligations under the said agreement, which entitles the applicant to the compensation of incurred losses.

The Public Defender found a violation of the aforementioned rights by the administrative body. Proceeding from this, and based on Article 21, subsection b of *the Organic Law of Georgia on Public Defender*, he addressed a recommendation to the Tbilisi Mayor's Office, demanding to reinstate the holding in its initial condition, or otherwise, if this is impossible, to pay a fair compensation for the destroyed property.

It is to be noted, that the Public Defender's reports for previous years contain a number accounts on cases related to dismantling of property where demolition was carried out in violation of the law, e.g., the cases of

Nergadze and Zurab Talaxadze, the case of the Dighomi and Batumi parking lots, the case of Nodar Maisuradze, etc. Nonetheless, the relevant authorities made no effort to follow up the indicated facts and take the respective legal actions, nor there has been a single instance where an individual who committed the offences and omissions associated with illegal demolition of private property was brought to justice.

UTG Case

On June 13, Suliko Mashia addressed the Public Defender with an application on behalf of the JSC "United Telecom of Georgia" (UGT) shareholders.

The claimant pointed out inconsistency of Article 53 of the Georgian Law on Entrepreneurs (Article 1) with the Constitution, and the resultant violation of human rights and freedoms. The said article defines mandatory share sale rule. Under the Law " if, as a result of share acquisition, shareholder owns more that 95% of voting shares of the joint stock company, this shareholder (for the purpose of this article "Buyer":) exercises right to buy out shares from other shareholders at a fair price, with the remaining shareholders entitled to fair price in exchange of shares.

As a result of case examination, the mentioned article of the Law on Entrepreneurs was deemed by the Public Defender as an abusive legislation in terms of human right protection. Namely the Right of Ownership, adopted and supported by Article 21 of the Constitution, is abused by Article 53 of the law, general right of acquisition, alienation or inheritance cannot be subject to abrogation.

Consequent to aforementioned, on September 19 of current year, under the "Organic Law on Public Defender", the Public Defender filed a suit to the Constitutional Court requesting to deem the Article 53 of the "Law on Entrepreneurs" unconstitutional.

The Constitutional Court admitted the case, the "Act Under Dispute" became ineffective and presently the case remains under consideration.

The Case of Lasha Morchiladze

On October 17, 2006 Lasha Morchiladze addressed the Public Defender with an application.

Claimant's explanatory notes and presented material revealed that claimant is the owner of 2475 sq.m site in Ozurgeti. In agreement with the regional and local managing bodies construction of two 5 tn water reservoirs is underway on the mentioned site. Undertaken action is deprived of all legal bases, since it commenced without preliminary agreement with the owner and offered no adequate remuneration.

L. Morchiladze referred the statement to Ozurgeti Regional Management on terminating illegal construction or ensuring adequate remuneration.

According to follow up from Ozurgeti Regional Management, (dated September 8, 2006) the act is justified by Makharadze (currently Ozurgeti) Public Deputies' Regional Board Resolution, adopted in 1983. Under the resolution, the site was allocated for water reservoir and water pipe route construction. Arguments of the Regional Management, pursuant to resolution, imply that the site should not be listed under the privatization fund list and its transfer to public ownership by the Land Committee constitutes the breach of law, therefore Morchiladze,s claim is unfounded.

Ozurgeti Regional Management follow up is deprived of all legal bases. Actions conducted on L. Morchiladze's site grossly violate the ownership rights supported by the domestic legislation of Georgia and international insturments.

Ownership and inheritance rights are adopted and supported Under Article 21 of the Georgian Constitution. General rights of ownership, acquisition, alienation or inheritance cannot be subject of abrogation.

Property stripping for urgent public requirements is authorized in direct law defined cases, under the Court ruling, or under the Organic Law defined urgent cases followed by adequate remuneration.

Management's position against the site inclusion in the privatization list and consequent transfer to private ownership is unfounded.

The legacy of site transfer was not subject of deliberation by adequate bodies. Nobody applied the court with the motion of verifying the legacy of Court Act, therefore no court judgement is rendered concerning the limitation of human rights in any form. Moreover, the Presumption of Certainty and Completeness of public registry records is effective for site. Under Article 313 Para 1, of the Civil Code of Georgia, data from public registry is deemed accurate unless contrary stated.

The present case evidences no public needs, neither remuneration term, offered by claimant is considered. The claimant's generally accepted lawful right to possess and use owned property and prevent its appliance by a third party is harshly violated by the local bodies.

Consequent to aforementioned, the Public Defender of Georgia, under Article 21 Para B of the Organic Law addressed a suggestion to governors of Guria and Ozurgeti concerning the examination of the case and restoration of claimant's violated rights.

Follow up from Procurator's Office of Guria corroborates the fact of reservoir construction. Moreover, letter revealed that construction is funded by the State Budget and Municipal Development Fund, with the project estimated at GEL 4,500,000, bearing vital importance in terms of social development.

Consequent to aforementioned, the President's State Governor's Office agrees with the statement given in the letter dated Sept 8, 2006 concerning the interpretation of site status as being urgent for the public. The purposeful meaning of site defined in 1983 is being realized by the aforementioned project.

The letter left many issues unanswered, namely the Public Defender focused on such fundamental issues as violation of ownership rights (all stated). Respond provided from Governor's Office disregards this issue by not mentioning a word in this respect. The Public Defender addressed the suggestion to the Governor's Office for adequate follow up concerning the remedy of human rights breach. According to claimant's explanation, he was interrogated in the court under ambiguous status, followed by house search.

LLC Adat Case

On August 17, M Otarashvili, chairman of association "Shareholders Rights and Corporate Management" addressed the Public Defender with an application

The materials attached to the case revealed that K Nikabadze, Prosecutor of Krtzanisi-Mtatzminda Regional Prosecutor's Office addressed N. Bakhtadze, the head of National Agency of Public Registry of the Justice Ministry with the letter No.01/18-1/6-1154 dated may 5, 2006, stating that due to criminal case No.0605924 effective in the company, consequential investigation interests shall be preserved by preventing the alienation of property owned by LLC "Adat" located on 103 Agmashenebeli AV.

Following the aforementioned letter, General Director of LLC Adati addressed the National Agency of Public Registry for the record on property, with his claim left disregarded. Such action was justified under the letter provided by Mtatzminda-Krtzanisi Regional Prosecutor's Office, dated may 5, 2006.

Chapter 24 of the Criminal Procedure Code of Georgia defines property seizure rule, prohibiting owners from disposing the property and if so required , from using the property. Seizure is legalised in support of action, criminal procedural force, presumable asset stripping, upon the prosecutor order or, in urgent cases, upon the prosecutor's ordinance.

Letter No.01/18-1/6-1154, dated May 5, 2006 provides no legal basis for restricting property alienation, therefore it contradicts the law. Moreover, content of the letter and action of public registry representatives resulted in breach of law-envisaged human rights.

Under Article 170 of the "Civil Code of Georgia", Owner exercises full authority to legally or otherwise possess, within the limited terms of agreement and use the property, prevent the use of property by others and dispose it, unless such action prompts the violation of neighbors' or the third persons' rights, or can be interpreted as an abuse of rights.

Under Article 37 of the Administrative Code of Georgia, all are entitled to claiming public information regardless of its physical form and maintenance terms and select the suitable way of getting it, if existent in different forms.

Claimant defined that restrictions of ownership rights and limited access to public information is common practice among prosecutors and representatives of public registry, with similar cases observed before.

Under Article 21, Para D of the Organic Law of Georgia on Public Defender and Article 38 of the "Organic Law on Prosecutors' Office" the Public Defender addressed a suggestion to the General Prosecutor of Georgia to consider the issue of disciplinary responsibility of N Nikabadze , prosecutor of Tbilisi Mtatzminda-Krtzanisi Regional Prosecutor's Office.

Suggestion was left unresponded within the law defined one month. Reminding letter is referred to General Prosecutor's Office concerning the aforementioned fact, although no reaction is made so far known to the Public Defender of Georgia.

Partnership "Amirejibi-89" case

On August 9, 2006, the Public Defender was addresses by Koba Davitashvili, MP, with an application and provided statement of partnership "Amirejibi-89" members, concerning the violation of human rights.

Case files reveal that Partnership "Amirejibi-89" owns area in Tbilisi on 26-32 Agmashenebeli Av, proved by record from public registry. Claimant pointed out on the construction of sport arena on the mentioned territory without owners' permission.

With the purpose of obtaining complete information, we addressed Isani-Samgori Regional Administration, which revealed that, for many years the area was turned into dump. In 2005 the area was cleaned and the City Service of Sport commenced construction of sport arena. It is to be noted hereby, that the ownership of the site was unknown at that time, until the official registration date in public registry as of April 24, 2006. Nowadays population of that region firmly opposes the demolishment of Sport Arena.

The Ownership Right is one of the strongly supported and guaranteed rights. Article 21 of the Constitution of Georgia defines the Ownership and Inheritance rights as adopted and supported, therefore general rights of acquisition, alienation or inheritance of property cannot be subject of abrogation.

Rights mentioned in the first point can be subject to restriction for the purpose of urgent public needs under the law-defined cases and stated rules.

Property stripping for urgent public needs is justified in direct law defined cases, upon the court judgement or for the purpose of urgent needs stated by the Organic Law and only upon adequate remuneration.

Under the Civil Code of Georgia, owner exercises full authority to freely possess, use and dispose owned object and prevent its abuse by a third party. Freedom of use implies the owner's right to utilize the object at his discretion.

Prior to commencement of construction, City Service of Sport should have learned who was the owner of the populated area. Since partnership "Amirejibi 89" was established under Resolution No.25119303 of the district board of 26 Commissar District of Tbilisi, dated December 20, 1989, and the related data were kept in technical archive, therefore Isani-Samgori Regional Administration statement concerning the registration of site in 2006 does not seem to be appropriate. Access to archive data was free for adequate bodies, clearly underlying that area on 26-32 Agmashenebeli Av does not represent the state ownership and partnership "Amirejibi 89" is considered as possessor. Therefore, claim from population concerning the demolishment of arena shall be disregarded, since it results in abuse of owners lawful interests.

Consequent to aforementioned, the case deals with the violation of ownership right of whose owning 26-32 Amirajibi street, for that reason, under Article 21, Para B of the "Organic law on Public Defender of Georgia", the Public Defender addressed recommendation to the Municipal Authorities to assign the Supervisory City Service of Municipal Authority to demolish sport arena in full observance of law requirements, in addition, to consider the issue of disciplinary responsibility of those, who acted in violation of human rights of the partnership members under Para D of the same Article.

The response from the Supervisory City Service implies the inability of the latter to legally follow up, by launching administrative action concerting the demolishment of sport arena. Since the case deals with the abuse of ownership right and property use, dispute generated between the parties is a subject of private law, which under Article 172 of the Civil Code shall be resolved by parties in court.

Afterwards, as became known from her own reasoning, Maia Kandelaki Chairman of partnership was summoned to the Supervisory City Service and offered interchange, in exchange of relegating the owned area to the State. Since no concrete offer was made, with the exception of unofficial, verbal promise, Maia Kandelaki disregarded the offer and therefore the said issue remains pending.

Neron Mamaladze's case

The Public Defender was addressed by citizen Mzia Patarashvili acting as representative of Neron Mmaladze, concerning the destruction of property owned by her assigner.

Case files revealed that on March 1, 1992 citizen Neron Mamaladze and partnership "Khurotmodzgvari-89" entered into agreement, with the latter undertaking the liability of erecting multistoried building on site, owned by N. Mamaladze, located on 9 Anagi St and in exchange the citizen would be granted a five-room flat. Construction was to be finished at the end of 1998, failure to meet the obligation in due time, resulted into violation of agreement terms. Hence, on January 16 N. Mamaladze addressed the court with the claim to repeal the agreement between the parties and to record the site in public registry on his name.

During case proceedings defendant filed a counter claim with the appeal to repeal the same agreement on the basis that Neron Mamaladze had never been the owner of the disputed site and was not authorized to enter into agreement concerning the land transfer. Moreover, he claimed freeing out the territory from other facilities at Mamaladze's expenses.

Judgement, rendered by Tbilisi Vake-Saburtalo Regional Court on March 24, 2005, partially satisfied Neron Mamaladze's claim, although partnership's, claim was fully met. The agreement made between the parties on March 1, 1992 was deemed repealed: N Mamladze was rejected from adopting and recording the 1400 sq.m property, located on 29 Shartava street, as his own property, since he failed to present the ownership proving documents. Therefore, "Partnership" was deemed a fair owner of disputed property, in view of the fact that, the site was transferred to the latter by Tbilisi Public Deputies' Board resolution.

N. Mamaladze submitted a cassation appeal against the court judgement with the claim to deem the part of court resolution abrogated, concerning the rejection of his ownership right on the site and putting him in charge of freeing out the area from facilities. Moreover, he claimed the court to satisfy his motion by rendering a new judgement and disregarding the partnership's appeal.

Appellate Court partly satisfied Mamaladze's appeal: Tbisili Vake Saburtalo Regional Court judgement point D, dated march 24, 2005, obligating N. Mamaladze to free out the site from facilities at his expens in connection with the commencement of construction activities by "Khurotmodzgvari-89", without compensation was deemed arrogated.

Applicant's aforementioned claim on returning disputed site and recording it in public registry on his name, was disregarded, due to absence of legal basis, since the mentioned site has never been recorded as the applicant's property.

Partnership "Khurotmodzgvari-89" counter claim against N Mamaladze concerning demolishment of facilities on the disputed area at his expenses was disregarded, for not being recognized as a fair owner and consequently claim on freeing the site was unfounded.

Cassational appeal was submitted by Union of Georgian Architectures, Partnership "Khurotmodzgvari-89" against the judgement rendered by the Chamber of Tbilisi Regional Court of Civil, Industrial and Bankruptcy Case of Court of Appeal, dated September 28, 2005,

The Cassation Chamber examined the case-files and viewed the court judgment, concerning the actual environment inaccurate, consequently resulting into wrong legal assessment. The Chamber considers the reasoning of judgement incomplete, therefore the judgement rendered by the Chamber of Tbilisi Regional Court of Civil, Industrial and Bankruptcy Case of the Court of Appeal, dated September 28, 2005, was disregarded and referred to the Chamber of Civil Cases of the Tbilisi Court of Appeal for reconsideration. Currently the Appellate Court considers N.Mamaladze's case over the demolishment of commercial building.

On July 25, 2005, Partnership "Khurptmodzgvari-89" registered the land, beneath N Mamaladze's commercial facility, on its name in public registry. N. Mamaladze filed a suit to the Chamber of Administrative Cases of Tbilisi City Court. Aforementioned case is under consideration.

Documents provided by Supervisory City Service of Tbilisi Municipal Authority evidences that the mentioned body send a note to partnership "Khurotmodzgvreba-89" on Nov 28, 2005 concerning the eradication of terms and reasons contributing to violation of law. Under Article 6, Para 1, of the Law on Supervision of Architectural-Construction Activities" the mentioned note serves as a warning for the owner to demolish the facility within 5 calendar days. The note also implies that under Article 170 of "Administrative Violation Code" partnership "Khurotmodzgvari-89" bears responsibility for notifying the Supervisory Civil Service of Municipal Authorities on undertaken actions within one month.

The form of administrative violation remains ambiguous, due to absence of concrete requirements in the act, apart from the aforementioned. In case of administrative violation, respective body draws up a minute and not

note. Similar document shall be deemed valid under the "Law of Georgia on State Supervision of Architectural-construction activities" if considered for act made by administrative-construction supervising bodies, issued for the purpose to remedy the violations concerning the architectural-construction activities, failure to meet requirements results into multiple sanctions, imposed by the law.

Under Article 6, Para 1 of note drafted by Supervisory City Service of Municipal Authorities, if violations are revealed in architectural-construcion activities, the State Architectural Construction Supervisory Bodies suggest the responsible party to voluntarily address the issee within the time required for remedy. If left disregarded, a special penalty shall be issued by the State Architectural Construction Supervisory Bodies.

Supervisory Civil Service provided no documents to the PDO, neither the act revels any concrete violation, as well as Article of Law on Architectural- Construction activities, evidencing the expediency of Note.

Following the expiry date defined in note, Supervisory Civil Service conducted demolishment, without objection from the owner of the site "Khurotmodzgvari -89" and indeed such action was carried out in agreement with the owner, although the fact remains apparent, that facility located on site did not belong to Khurotmodzgvari-89. Referring note to "Partnership Khurtmodzgvari" by the Supervisory Service is justified under Article 150 of the Civil Code of Georgia, interpreting the capital building, closely related to land, as an entire part of the land.

Presumably, Supervisory Service claimed demolishment of the facility from the owner, solely on the bases of record from public registry, without familiarizing who was the possessor of the facility.

Minute, drafted by PDO representatives Salome Vardiashvili and Giorgi Mshvenieradze states the contrary. The accuracy of the minute is proved by Supervisory Civil Service employee V Gvatua.

Under the minute, Supervisory Service employee defies the following: Commercial unit, possessed by N.Mamaladze hindered the use of land owned by partnership "Khurotmodzvnari -89", consequently partnership addressed the municipal authority with the claim to demolish the facility.

The said minute obviously revealed that Supervisory Civil Service of Municipal Authorities was aware on the real possessor of the facility

In case of claims towards possessor, Article 172, Para 2 grants the owner (Khuromodzgvari) right to address the Court with the claim to eradicate the impeding environment, although no such action was undertaken by the owner. In case of impediment, Partnership Khuritmodzgvari was entitled to legally exercise its rights by addressing law enforcers. Under Article 172, part 3, of the Civil Code of Georgia, "abuse or otherwise impediment of property ownership right, authorizes owner to claim eradication of such actions, if motion is not followed up, owner exercises full authority to undertake such action without court judgement, by presenting ownership proving documents issued by adequate body, unless presumable abuser is a legal owner or/and has documented right of using the property. As revealed, the authority to cease impediment, without court judgement, is granted to law enforcers and not to Municipal Supervisory Civil Service.

Despite many unanswered questions and contradictory official information received by the Public Defender from the Supervisory Civil Service of Municipal Authorities, it is to be noted, that demolishment of object owned by N. Mamaladze was conducted in full disregard of Law.

Unlike Maia Kandelaki's case, whereby Supervisory Service underlines its inability to intervene in dispute arisen between private persons, property owned by N. Mamaladze was demolished on the basis of Khurotmodzvgari statement, regardless of being aware on dispute between the parties. Nowadays, the Appel-

late Court shall deliberate of who shall be granted the ownership right and whether demolishment can be undertaken or not, at the background that this act has already taken place.

Hussein Ali's Case

The Public Defender of Georgia examined Hussein Ali's case and views that illegal action undertaken by law enforcers, wrong proceedings and prolonged investigation contributed to violation of Hussein Ali's ownership rights. Moreover, relation between the foreign investor and the State was significantly marred, in view of the fact that, development of sound relations with foreign investors bears utmost importance as one of the key priorities of the country.

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On April 6, 2006 and on September 1, 2006, the Public Defender of Georgia was addressed by Aleskandre Baramidze, representing interests of Husein Ali, concerning the violation of rights.

On September 6, 2006, David Lanchava, representative of Akhmed Iynise filed a suit against Husein Ali in Tbilisi Isani-Samgori Regional Court claiming payment of debt In amount of GEL 8 Mln. Baramidze noted, that the said file had never reached Hussein Ali.

The foremost court cession concerning the aforementioned was held on September 16, 2004, whereby Husein Ali was not summoned as defendant and received no notification.

Tamaz Melkadze, summoned by the Court instead of Husein Ali, submitted a faked Power of Attorney issued on August 16, 2001, notarized by Ketevan Chkhikvadze, giving full authority to Tamaz Melkadze to represent Hussein Ali in conducting civil issues in all instances of court, including right to close the case by reconciliation, disregard or partially or completely comply with the requirements.

False representative of Hussein Ali, Tamaz Melkadze admitted at the Court that Hussein Ali had a debt of USD 8 Mln to Akhmed Uinies.

Under judge Bakradze,s suggestion the Act of Reconciliation was drafted by the parties at the court cession, whereby Tamaz Melkadze, as a legal representative if Husein Ali transferred 90% share of Georgian Tobacco owned by Hussein Ali to Akhmed Iuness. The said "Act of Reconciliation" was approved by judge Bakradze at the same cession.

On September 17, 2004, the aforementioned changes, introduced by Iisani-Samgori Regional Court, were officially recorded at the public registry, whereby Akhmed Iunes turned a 90% charter capital holder of LLC "Georgian Tobacco Industry".

On September 18, 2004, Akhmed Iunes, 90% charter capital holder of LLC "Georgian Tobacco Industry" transferred his share to Avtandil Tzereteli. Samgori-Isani Regional Court judgement dated Sept 20, 2004 and adequate record in public registry made Avtandil Tzereteil a 100% charter capital holder of LLC "Georgian Ttobacco Industry".

Apparently, this is a case of fraud and consequently a crime is committed, since Iunes would not have presented his share to Avtandil Tzereteli. Another detail deserves attention, whereby the civil case examination and closure took 10 days, which usually requires month and even years.

On November 26, 2004, after becoming familiar with the fraud committed against him in September 2004, Hussein Ali addressed investigative bodies.

On the following day, after Hussein Ali submitted the application on Nov 27, 2004, a criminal case was initiated by the Fiscal Police Operative Departmet of the Ministry of Finance concerning the missappropriation of 90% share in LLC "Georgian Tobacco Industry" held by Hussein Ali. The criminal case was granted number No.9204822.

The aforementioned case-examination was slow and ineffective, although two undertaken expertise revealed the falsification of Hussein Ali,s signature on the Power of Attorney issued to Tamaz Melikadze and Notarized by Ketevan Chkhikvadze.

On July 1, 2005 Tamaz Melkadze and Ketevan Chkikvadze were indicted. Although, later on September 14, 2005 N. Salia, prosecutor of Procedural Management Agency of Investigation in Tbilisi Territorial Units of the Ministry of Finance at General Prosecutor's Office, made an ordinance on criminal case No.9204822 over termination of criminal proceedings and preliminary investigation.

On March 20, 2006 Chamber of Criminal Matters of Tbilisi City Court presiding judge Giorgi Goginashvili with his decree abrogated N. Salias's ordinance on criminal case No.9204822 dated Sept 14, 2005 concerning the termination of criminal proceedings and preliminary investigation and referred the case to General Prosecutor's Office of Georgia for reconsideration.

Ordinance, dated March 20, 2006 rendered by Chamber of Criminal Matters of Tbilisi City Court was sued by N. Salia the Prosecutor of General Prosecutor's Office of Georgia.

On March 23, 2006, Investigative Chamber of Tbilisi Court of Appeal presiding judge Omar Jorbenadze disregarded the claim filed by General Prosecotor's Office of Georgia and left the ordinance, deivered by the Colleqium of Criminal Matters of Tbilisi Civil Court presiding judge Giorgi Goginashvili effective.

Both the first instance court and Appelate Court prosecutors deemed the judgement, concerning the termination of criminal proceedings and preliminary investigation taken hastily, without fully exhausting the potential of undertaking all investigative actions and thus contradicting the obligation provided under Article 18 of the Criminal Procedural Court for the provision of objective and comprehensive examination of circumstances.

On March 24, 2006 repetitive graphical expertise was initiated, No.20/01/13-2568 resulting in the following conclusion:

1. Signatures on behalf of Hussein Ali, in English (in form of a text), appearing on the following documents: on the Power of Attorney, dated August 16, 2001 and registration record for notarial actions, number and date of notarial actions No.1-2510 20.08.2001 and signature of a person in charge of accepting notarized documents was performed by the same individual.

2. Signatures on behalf of Hussein Ali, appearing in the first point of conclusion is made not by Hussein Ali himself but by another person, keeping resemblance with the Husein Ali's original signature.

3. Signature on behalf of Hussein Ali, (short signature) appearing on the Power of Attorney, dated August 16, 2001 is made not by Hussein Ali himself but by another person, keeping resemblance with the Husein Ali's original signature.

On March 24, 2006 senior inspector of Unit 3 of Tbilisi Central Administration of Fiscal Police Investigative Department of the MOF, Aleksandre Jibladze rendered the judgement for indictment of accused Tamaz Mekladze and Ketevan Chkikvadze.

On April 13, 2006, defendant Tamaz Melkadze gave evidence by admitting guilt.

At the end of summer 2001, while being Head of Legal Department of LLC Georgian Tobacco Industry, an urgent need was prompted for protecting the interests of Canadian citizen Hussein Ali, 90% shareholder of LLC Georgian Tobacco Industry, at various court instances. Due to his absence in Georgia, I applied my friend, notary Ketevan Chkhikvadze with the request to forge the Power of Attorney on behalf of Hussein Ali, dated August 16, 2001. This document enabled me to protect Hussein Ali's interests and represent him at various court instances for many years. Lately, due to my personal viewpoint, I changed my attitude towards this person and together with others, whom I prefer to leave unidentified, decided to remove him from management of the industry if given a chance to do so. At the beginning of September 2004, I learned that David Lanchava, Akhmed Iune's representative, filed a suit against Husein Ali at Tbilisi Isani-Samgori Regional Court. On the basis of the aforementioned Power of Attorney: "I acted as Hussein Ali's representative at the court and without prior agreement with him, transferred 90% share held by the latter in exchange of USD 8 Mln. I express no desire to add more on my evidence".

- On April 13, 2006 from 13:00 PM to 14:40 PM Ketevan Chkhikvadze was additionally interrogated, whereby accused admitted guilt of forging the Power of Attorney and notarizing it at Tamaz Melkadze,s request.
- On the same day from 15:40 PM to 16:15 PM accused Tamaz Melkadze was additionally interrogated, whereby defendant admitted quilt.
- On the same day, at 16:15 PM Plea Agreement was made with both accused, signed by M .Chikvaidze, prosecutor of Procedural Management Agency of Investigation in Tbilisi Territorial Units of the Ministry of Finance at General Prosecutor's Office of Georgia, by the Head of Administration G.Kakulia, by the accused and their attorneys.
- Afterwards, on the same day, prosecutor of Procedural Management Agency of Investigation in Tbilisi Territorial Units of the Ministry of Finance at General Prosecutor's Office M .Chikvaidze made ordinance on the separation of the criminal cases against the accused T. Melkadze and k. Chikvaidze
- Later, on the same day, M .Chikvaidze, prosecutor of Procedural Management Agency of Investigation in Tbilisi Territorial Units of the Ministry of Finance at General Prosecutor's Office of Georgia addressed Giorgi Shavliashvili, Chairman of Chamber of Criminal Matters of Tbilisi City Court for solicitation and claimed the approval of Plea Agreement made with accused T. Melkadze and K. Chkhikvadze.
- Later, on the same day Chamber of Criminal Matters of Tbilisi City Court Prosecutor's Assistant Ia Shengelia, referred letter to the director of Tbilisi jail No.5 on summoning prisoners K. Chkhikvadze and T Mlkadze to court.
- Later, on the same day at 19:30 PM Chamber of Criminal Matters of Tbilisi City Court presiding judge L Murusidze opened the court cession for the purposed of K. Chkhikvadze's and T. Melkadze's criminal case examination. Shortly after declaring the cession opened, judge rendered a verdict and at 20:00 PM, the court cession was announced closed.
- The Court approved Plea Agreement and the accused T. Melkadze and K.Chkikvadze were found guilty and sentenced to 5 years of imprisonment with penalty in amount of GEL 10,000.

The following deserves attention:

The Procedural agreement was completed within a remarkably short span of time. In less than 4 hours, from 16:15 PM to 20:00 PM prosecutor and judge managed to do the following:

1. appealing minutes of Interrogation from prosecutors
2. familiarizing with the Minutes of Interrogation
3. making Judgement on Plea Agreement
4. agreeing with high instance prosecutor
5. drafting Plea Agreement minutes
6. delivering minutes to accused and their attorneys for familiarization and signature.
7. delivering minutes to high instance prosecutors for familiarization and signature.
8. rendering judgement on separation of the criminal cases against the accused.
9. drafting 2 solicitations, over rendering verdict on criminal case without adequate deliberations.
10. delivering solicitation, over rendering verdict on criminal case without deliberations to accused and their attorneys for familiarization and signature.
11. delivering solicitation to the court
12. familiarizing with the prosecutor's solicitation and case-files
13. assigning assistants, including summoning accused to the Court: bringing prosecutor to the court, opening and conducting the court cession
14. defying identity of the accused
15. hearing on prosecutor's solicitation and defendants' evidence: inspecting other procedural environment concerning the approval of Plea Agreement.
16. rendering final judgement
17. publishing the final verdict

The Public Defender voiced suspicion over the Plea Agreement made with accused T. Melkadze and K. Chkhikvadze in compliance with the aforementioned rules and over the consequential court judgement, which he shared at the press conference, held in September 21, 2006

Namely, execution of the whole procedure concerning the Plea Agreement and its approval by the court in less then 4 hours seems unfeasible for the Public Defender of Georgia. The way of drafting Plea Agreement without clarifying who ordered such action of accused triggers doubt. On the same day, the Public Defender addressed Deputy General Prosecutor Giorgi Latzabadze for further follow up. Despite repetitive applications on December 7, 2006 and on January 17, 2007, the question remains unanswered.

On May 24, 2005, R. Nikoleishvili the Head of Administration of Tbilisi Fiscal Police Investigative Department, was addressed by the Public Defender, under the Organic Law of Georgia on Public Defender", with the request to reclaim Hussein Ali,s Power of Attorney, dated Sep 16, 2004, which provided basis for Melkadze to represent him at the Courts, for the purpose of complete and objective investigation of the case.

On September 21, 2006 the Public Defender addressed Nino Burjanadze, Chairman of Parliament to exercise authority, granted by the Parliamentary Regulations and put the question of establishing temporary investigative committee for the purpose of revealing the facts of violation committed by the State Bodies and officials in connection with Husein Ali's case and for adequate follow up.

Response, provided by Elene Tevdoradze, Chairman of Human Rights and Civil Integration Committee of the Parliament of Georgia underlined the following:

Under Article 54 of the Regulations for the Georgian Parliament, the basis for establishment of temporary investigative committee is the existence of information on: a) illegal action of the state bodies and officials, posing threat to the Georgian State security, sovereignty, territorial integrity, to political, economic and other interests, b) excessive expenditure of the state and local budget, c) investigation which acquires vital importance for the state and the society.

Despite the high importance of the present case, none of the aforementioned basis are presented herein. Provided material more likely implies abuse of dominant position by individual law enforcers. Under Georgian legislation, breach of law by the prosecutor concerning the case proceedings, shall be subject to highest examination by the Georgian Justice.

Under the ordinance, dated December 20, 2006, the Chamber of Criminal Case of Tbilisi Court of Appeal, presiding judge T.Alania abrogated the verdict, dated April 13, 2006, filed by the Chamber of Criminal Case of Tbilisi Civil Court presiding judge L.Musuridze, approving the Plea Agreements with accused T. Melkadze and K. Chkhikvadze and the case was relegated to Fiscal Police for reconsideration.

Abrogation of the verdict, dated April 13, 2006 passed by Chamber of Criminal Matters of Tbilisi City Court was based on the statement made by K.Chikhvaidze and T. Melkadze, whereby both admitted providing willfully wrong testimony while being in custody, due to life-execution threatening menace realized on their family members by strangers.

Tbilisi Appellate Court verified no objective evidence concerning the fact of threat; moreover, life-threatening menace towards the accused also remains ambiguous. If such threat was real, why it does not exist now, at the background when investigation not only failed to reveal and defuse the source of such menace but also failed to find those doing so.

In this regard, ordinance rendered by the Chamber of Criminal Case of the Tbilisi Court of Appeal, dated December 20, 2006, reveals the following: " In view of judge, they can try to prove their innocence without the outside pressure, since nowadays such actions are not left without adequate follow up" – in other words, the court deems such issues fully addressed, although 8 months ago, in April 2006 such actions were fully unresponded. One fact remains apparent; the period between April 2006 to present saw no major changes in this regard.

On December 28, 2006 N. Salia, prosecutor of Procedural Management Agency of investigation in Tbilisi Territorial Units of the Ministry of Finance at General Prosecutor's Office rendered the ordinance concerning termination of criminal prosecution and preliminary investigation, due to absence of criminal activity.

On December 28, 2006, prosecutor N. Salia based his resolution concerning the termination of criminal prosecution and preliminary investigation on the same circumstances, which triggered him to render the similar ordinance on September 14, 2005. In doing so, he completely disregarded ordinance made on March 20, 2006 by the Chamber of Criminal Case of the Tbilisi Civil court, presiding judge Goginashvili and ordinance made on March 23, 2006, by the Investigative Chamber of the Court of Appeal judge Jorbenadze, providing basis for abrogation of prosecutor Salia's judgement dated September 14, 2000.

Prosecutor disregarded concrete assignments indicated in Goginashvili,s ordinance, dated March 20, 2006: Akhmed Iunis and other members, who could have provided valuable testimony, were not interrogated. Moreover, alternative graphical expertise, presented by Hussein Ali, was left without adequate assessment. In contrast, huge attention and consideration was granted to alternative graphical expertise presented by the accused.

Under the attorney's statement, prosecutor disregarded Hussein Ali's claim revealed in multiple statements and solicitation in connection with granting him or his representative the honored permission of attending the interrogation of accused and witnesses', the Right fully granted by the Procedural Code of Georgia. Interestingly, none of these documents concerning solicitation and suit are attached to the case-material.

Consideration shall be granted to other circumstances, whereby prosecutor Salia rendered judgement in 8 days, after Tbilisi Appellate Court abrogated the verdict, dated April 13, 2006. Apparently, such short time is grossly insufficient

for objective and complete inspection of circumstances. Consequently, prosecutor Salia,s ordinance on termination of criminal proceedings and preliminary investigation was accepted hastily, deprived of all reasoning and legal basis, as was the judgement, rendered on September 14, 2005. The same can be attributed to Plea Agreement made with T. Melkadze and K.Chkhikvadze on April 13, 2006 and verdict, passed on the same date.

Illegal action of law enforcers and investigative bodies enabled Avtandil Tzereteli to wholly alienate his 100% share in LLC "Georgian Tobacco Industry", including 90% of share illegally deprived from Hussein Ali. Nowadays "Coppola Venture Limited", a company registered in British Virginia Isles represents the 100% legal owner of the Company, such circumstances not only complicate but maybe wholly deprive Hussein Ali from the opportunity of returning his property.

Hussein Ali,s case acquires vital importance, whereby illegal action and presumably criminal act and inactivity of Georgian Justice and investigative bodies significantly abused the foreign investor's interests.

Badagoni Case

On November 14, 2006, mass media aired the fact that wine plant of the wine producing company LLC "Badagoni" was subject to the State control with the participation of Judges of Kakheti Regional Administration of Fiscal Police Investigative Department, the Ministry of Agriculture and " Samtrest" officials , which resulted into locking of reservoirs No.19 and No. 23, with the partial destruction of wine material from Reservoir No.23.

As is known, Inspection process was conducted in violation of Entrepreneur's Rights. Under Article 12 of the "Law of Georgia on Public Defender" the Public Defender, on his own initiative, launched the investigation concerning the aforementioned fact.

The Public Defender filed a written petition to Fiscal Police of Georgia, to the Ministry of Agriculture and Samtrest requesting information.

According to the letter, received on November 21, 2006 from the Investigative Department of Fiscal Police, Vine and Wine Department addressed the Kakheti Regional Administration of Fiscal Police Investigative Department on November 14, 2006 with the statement. The mentioned statement implies that, under the special order from Georgian Government, (no concrete persons are indicated) "Samtresti and General Inspectorate of the Ministry of Agriculture launched the state control on LLC Badagoni wine material and brand production, 40 samples were sent for assessment to Multitrest laboratory. The lab inspection results revealed the existence of counterfeited wine material. The letter is accompanied with the appeal, signed by Deputy Chairman Ms Ketevan Zhgenti.

Based on stated material, under Articles 261 and 263 of the Criminal Procedure Code, Kakheti Administration of Fiscal Police Investigative Department launched preliminary investigation concerning the counterfeited wine material, used by LLC Badagoni.

The case was subject of examination. Urgent circumstances revealed wine material, confirmed by Akhmeta Regional Court.

Letter, provided by Vine and Wine department implies that "Samtresti" conducts the state control on local wine and wine brand production on the legal basis, for the purpose of determining grape production, processing, technological procedure of wine and vine brand production, as well as the quality compliance with regulations and technical instructions applied in winery. Inspection results provide bases for making adequate resolution in terms of issuing or non-issuing of certificate.

The aforementioned letter also implies, that on November 13, 2006, Samtresti employees were repeatedly sent to LLC Badagoni wine plant for additional examination of analytical results received from Multitrust, although their attempt turned unsuccessful due to objections from the unit representatives.

In contrast, LLC Badagoni representatives underline the fact of wine destruction, kept in reservoirs, on November 14, by "Samtresti" representatives in presence of Fiscal Police. The mentioned fact is seized by TV cameras.

The "Law of Georgia of Food Safety & Quality" defines rules for the state control, the same Law Article R defines the concept of state control as "the action undertaken by – the state subdivision of the Georgian Ministry of Agriculture – the "National Service for Food Safety, Veterinary and Plant Protection" for the purpose of detecting the compliance of foodstuff and animal food with the adequate law requirements or for the purpose of eliminating the revealed inconsistency. Hence, the National Service for food Safety, Veterinary and Plant Protection represents the food safety controlling body.

As known from material, Vine and Wine Department is associated with Badagoni case, the direct address of which enabled the Fiscal Police to commence preliminary investigation. Since "Samtrest" is in charge of executing control over entrepreneurs activity and on food safety only in separate cases (like issuance of the certificate of consistency, export–invoice), we deem the action conducted by the representatives of the mentioned department as an abuse of dominant position, resulting into the harm insulted to the company Badagoni.

Under Article 24 of the same Law:

The state control on the foodstuff encompasses one of the below given items or their entirety

a) sampling within the stated rules and inspecting in the mentioned laboratory
b) revision of documentary material

However, Article 34 defines officials' rights in terms of conducting control

a) within the rules defied by the "Law of Georgia on the Control of Industrial Activities" enter and take samples for laboratory investigation from concrete units permissible for laboratory inspection
b) claim record book, document or other data, encountering information concerning the realization of the law on foodstuff or animal food. Make copies of these documents and ensure adequate records.
c) in case of reveled inconsistency prevent market offer of poor quality food and animal food.

Article 32 provides on urgent measures for the provision of foodstuff and animal food quality:

If evidenced, that foodstuff or animal food encompasses serious threat to human of animal health, and the existing means and resources are invalid in terms of its prevention, with the consideration of circumstances, within the legislation determined rules, the service is in charge of undertaking the following:

a) in connection with the local foodstuff or animal food:

a.a) suspend foodstuff or animal food market offer within defined timeframe
a.b) timely inform the population on temporary refraining from foodstuff or animal food appliance
a.c) determine special rules concerning the high risk containing foodstuff and animal food.
a.d) apply other applicable and urgent measures envisaged by the legislation of Georgia

b) in connection with imported foodstuff or animal food:

b.a) suspend food staff or animal food import from export country or from any part of this country or if required from transit country for definite time.

b.b) defy special requirements with export country, in connection with any region of this country or transit country concerning the high risk containing foodstuff or animal food.
b.c) apply other adequate, extraordinary temporary measures envisaged by the legislation of Georgia.

Article 3, Para 1 of Order No. 2-146 rendered by the Minister of Agriculture, defines methods for realizing the urgent measures concerning the "Rules of Unsafe Food destruction":

a) combustion on specially allocated area
b) burying on specially allocated area
c) placement in bio-thermal hope
d) placement in sewerage
e) denaturation

Part 5 and 4 of the same Article 4 defines the ways of destroying unsafe foodstuff or animal food, subject to adequate service resolution, within the Law determined rules. Decision on destroying unsafe foodstuff or animal food shall clearly state methods and terms of destruction, quantity of the destroyable material (weight/ volume, volume and number of bunch), as well as data on wrapping and branding (the unit volume of wrapping), with the distributor/manufacturer being accountable for the accuracy of date. Distributor/ manufacturer shall be immediately notified in writing over the decision concerning the destruction of unsafe foodstuff or animal food.

Under Para 7 of the same Article, destruction of unsafe foodstuff and animal food shall be conducted in presence of distributor/manufacturer's authorized representative. The Act of Destruction is executed into two copies by distributor/manufacturer, per annex 1, with one copy transferred to the authorized representative of the service and the other copy left to manufacturer/ distributor, which shall be kept within two years. Copies of the Act of Distribution, singed by manufacturer/distributor or their representative shall be provided to other interested parties".

Badagoni wine destruction process was performed in violation of the above mentioned rules.

The Minister's Decree warranties and grants the possibility of suing this judgement, although Badagoni was deprived of this opportunity.

In present case, adequate supervisory Body was entitled to temporary suspension of Badagoni production, before the end of investigation process and before proving the authenticity, however, the act of wine destruction was illegal. Moreover, as mentioned above, control was executed by unauthorized unit-Vine and Wine Department "Samtresti", whereas the only authorized unit is the National Service for Food Safety, Veterinary & Plant Protection. Wine material was destructed on November 14, 2006, while Samtresti chairman Vasil Managadze was on business leave and his Deputy Ketevan Zhgenti was in charge of duties. In the meantime, Petre Tsiskarishvili was newly appointed Minister of Agriculture, conducting control over the Legal Entity of Public Law "Samtresti". Petre Tzskarishvili commented on TV concerning the case, without familiarization with the circumstances surrounding the case. Apart from the evident facts of exceeding authority by certain people, unfounded announcements made on TV significantly damaged the reputation of the Company.

Derived from the aforementioned, under Article 21, Para G of the Law of Georgia on Public Defender", the Public Defender relegated available material to the General Prosecutor's Office for adequate follow up.

Schirnhoffer Case

Austrian businessman Schirnhoffer visited Tbilisi with the purpose of initiating industrial activities. "Schirnhoffer" is well-known European sausage producing firm, planning to expand the business net in Georgia.

In January-February, 2006 Austrian "Schirnhoffer" sent various sausages for realization to LLC "Schirnhoffer" in Georgia, delivery was executed by three car-refrigerators. The first batch entered on February 22, 2006, (33E7007/FP432), the second batch-on March 3, 2006 (33HZ930), and the third batch – on March 16, 2006(33HZ973). Cars, loaded with goods entered the customs "Natakhtari, assumed as the destination for unloading. Notwithstanding, that each car provided all required material immediately upon entrance, customs clearance had not taken place until April 10, 2006. Written appeals, addressed to the head of customs department, requesting elimination of impediment for timely meeting of the customs formalities was left unresponded. Failure to realize customs clearance of good imposed significant material loss to LLC "Schirnhoffer".

This was preceded by appeal (letter No.26-1/3642) of the head of Fiscal Police Department, dated December 27, 2005 addressed to the chairman of customs department requesting inspection of goods prior to customs clearance. Customs Head Merab Tavartkiladze, acting under the written order of the Head of the Fiscal Police, letter No.26-1/3642 , dated December 27, 2005, LLC did not provide internal customs form 1 to "Schirnhoffer", required for filling the customs declaration. This was confirmed by Merab Tavartkiladze himself, during the counter claim inspection.

In the meantime, on February 23, 2006 customs and veterinary department representatives opened the car–refrigeration No.33E 7007/FP432 (the first batch) and took samples from ten types of sausages, which were directed to the lab of the National Centre of Veterinary Diagnostics and Expertise of the Georgian Veterinary Department for Examination. The mentioned is approved by the letter of the Ministry of Agriculture. My official appeal was followed up by the aforementioned ministry, implying that Veterinary Service Department of the Ministry of Agriculture checked the sausages produced by Austrian firm "Schirnhoffer" on the basis of letter provided by the Ministry of Finance of Georgia.

LLC Schirnhoffer representative defined that notwithstanding their written appeals to the Veterinary Department and Ministry of Agriculture dated February 16, 2006 and March 6, 2006, requesting prevention of imported good inspection, having the International Quality Certificate and facilitating customs clearance, were left unresponded. The same faith was shared with another apply of LLC Shirnphori" addressed to Veterinary Department. The letter implied LLC Schirnhoffer's request for conducting referential (relative) examination of imported good and participation of Microbiology from Austria.

After exhausting all possible attempts to timely execute customs clearance, LLC Schirnhoffer was forced to refer the Court, by filing a sue on March 31, 2006 against the Customs department with the claim of customs clearance.

As stated by LLC Schirnhoffer representative, intervention of the President of Georgia contributed to final resolution of the problem. On April 10, 2006, at approximately 10 AM, Givi Aminranashvili, representative of LLC Schirnhoffer appeared at Natakhtari customs, per customs department head, Zurab Antadze's personal request and the problem was solved by immediate performance of customs clearance.

As made known by the Ministry of Agriculture of Georgia, the laboratory examination revealed the existence of more than acceptable amount of microbes in sausages. Therefore, the resultant conclusion banned LLC Schirnhoffer from marketing its products.

Notwithstanding this, product is still successfully traded in Georgia, with this being the case even in the past time.

The said fact underlines the willful act of concrete persons to hamper legal activity of LLL Schirnhoffer, evidencing the attempt to constrain competition. In addition, three hundred jobs were lost, and the image of Georgia was harshly undermined, since Shirnophor production is world wide known.

Although material revealed illegal hampering of entrepreneur's activities, resulting in both material damage and blemished reputation, no one was made criminally responsible for the actions committed.

14 PROTECTION OF THE ELDERLY, AND PENSIONS

According to the United Nations' data, there are 606 million of individuals worldwide over the age of 60, which accounts for 10% of the global population. By 2050, their number will increase to 1.6 billion and will account for 19% of the total world population. Presently, 62% of such population resides in developing countries, however by 2050, this figure will amount to 80%. Doubtless, social protection of the elderly in developing countries is a challenging task. However, it should be remembered that the lack of adequate action to address this problem may result in a situation where increasing numbers of elderly people will face the risk of being left below the poverty line.

Presently, provision of pensions in Georgia is regulated by a statutory act – the *Law of Georgia on State Pension,* which determines grounds for the origination of entitlement to the state pension, together with the size of the pension, and its administration body. The law also sets out the terms and conditions for assignment, allocation, suspension, resumption and termination of pension payments, and regulates other pension-related relations.

Pursuant to this law, the grounds for granting the pension are as follows:

a) reaching a pension age of 65
b) proven disability status condition
c) death of the breadwinner

The minimum monthly amount of the state pension is 28 laris.

The persons with a proven disability status are granted the pension in the amount of 35 laris. Similar amount is allocated to children with disability that require permanent attendance.

Every dependant that has lost the breadwinner is entitled to a pension.

a) in case of death of one of the parents – every dependant is assigned a state pension in the amount of 28 paris, regardless of the number of dependants left in the family after the death of the breadwinner.
b) orphans – are allocated a pension of 35 laris, regardless of the number of dependants left after the death of the breadwinner.

The Public Defender's Office has considered numerous applications in connection with violations related to the provision of pensions and the arrears of the administrative bodies to individual citizens. A number of applicants contend

they have been waiting for years for the compensation of arrears in wages. Quite frequently, the applicants claim that despite their extreme indigence, they fail to be enrolled into the poverty reduction social program. All of the above constitutes violations of the social protection rights of private citizens.

The case of Tiko Askilashvili

The public Defender was addressed by Zviad Vaniev from the town of Gori, in relation with the allocation of pension and provision of social help to Tika Aslanikashvili. According to the applicant, T. Aslanikashvili, age 82, resides in v. Tsedisi of the Gori region and is a widow of a WWII veteran. T. Aslanikashvili has not been allocated her due pension. Neither is she receiving any social help from the state. The local self-government bodies appear to ignore the situation, which prompted Z. Zaniev to address the President's administration with the aforementioned concern. This latter re-sent his application, together with the attached documents, to the Gori governor's office. However, to this day, the applicant has received no reply.

Based on the Z. Vaniev's application, the Public Defender sent an enquiry to the Gori Governor's Office. In addition, representatives the Public Defender's Office arrived in Gori to get a firsthand look at the situation.

In its reply letter #901 of 6 September 2006, the Gori Governor's Office states that T. Aslanikashvii will be assigned her due pension and social assistance, immediately after she submits her ID card to the respective body. However, the letter notes that T. Aslanikashvili appears to have no ID card. Hence, the Gori Governor's office undertook to help with the issuing of the ID.

As for the allocation of the state pension, the applicant received a written explanation stating that upon receipt of the ID card, T. Aslanikashvili should file an application at the Gori branch of Georgia's State United Social Insurance Fund of Georgia, which will secure the assignment of the pension to her.

The case of employees of the Dzevri nursing home

The public Defender's Office studied a collective application of the employees of the Dzevri nursing home regarding payment of their accrued arrears in wages. The applicants claim they have not received wages for 1998, 1999 and 2000. Neither have their received their 2003 December wages.

In view of the application, the Public Defender's Office addressed the Ministry of Labour, Health & Social Protection and the Finance Ministry. The latter sent a reply letter #04-02/8728 of 24 August 2006, noting that because the submission from the Ministry of Labour, Health & Social Protection contained no indication of arrears to be paid to the staff of the Dzegvi Nursing Home, the Finance Ministry has had no opportunity to take any respective decision in regard to the repayment of the said arrears in wages to the staff of the aforementioned organization.

In its reply letter #01-05/08/8393 of 13 September 2006, the Ministry of Labour, Health & Social Protection states that due to the long-drawn reorganization of the Department for Disabled Persons' Affairs of the Social Protection Ministry, in 2001, by orders #364 and #228 of the Ministry of Labour, Health & Social Protection and the Ministry of Finance, a joint commission was established with a view to assessing the financial liabilities of the Disabled Person's Department and inspecting the financial and accounting documents of the special reorganization commission of the said department. However, due to a number of reasons, including the personnel turnover caused by the restructuring of the Ministry, and the permanent time deficit of the commission members (holding top positions), the matter remained unresolved, which means that the size of debtor and creditor indebtedness of the Department for Disabled Persons' Department remains still unspecified. With a view to resolving this matter,

the Department suggested to the Finance Ministry that and inter-ministerial commission should be established to comprise the representatives of the two ministries. The commission will be tasked to inspect the financial accounts and balance sheets drawn by the reorganization commission of the disbanded department, together with drafting the conclusion about its legal successor and presenting the conclusion to the said Ministries. However, according to the same document, the Dzevri nursing home 1998-2000 creditor indebtedness is not on the balance sheet of the Ministry of Labour, Health & Social Protection. Hence, there is no repayment obligation in respect to these arrears.

The same reply letter sets out the reasons accounting for the non-repayment of the 2003 December arrears in wages.

Having received the reply, The Public Defender's Office sent an enquiry to the Ministry of Labour, Health & Social Protection about the intended timeframes of the establishment and operation of the said commission. The Ministry's letter #01-05/08/10667 of 21 November 2006 provided an additional information, according to which the draft joint resolution by the Labour and Finance Ministries regarding reorganization of the Department for Disabled Persons' Affairs, has already been prepared, and consultations are underway to finalize the draft. The commission will function for the period of three months following its formation.

The Public Defender will keep a close watch over the case until the rights of all claimants are fully restored.

The case of Mzia Bregvadze

The Public Defender's Office considered the issue relating to the compensation of losses by the Tbilisi State University due to Mzia Bregvadze's death in a car accident during performance of her job duties.

The documents supplied both by the University and Mzia Bregvadze's spouse, N. Chanturia, indicate that the court passed a guilty verdict on M. Chachanidze, the driver of the other car involved in the accident, but dismissed N. Chanturia's claim based on his own decision to drop the charges. In view of this fact, the University refuses to pay compensation to the family of the deceased, pointing to the fact that the injured party should have proceeded with the charges, rather than withdrawing the claim, which is incorrect.

Pursuant to Article 86 of the *Criminal Procedure Code* relating to the rights of a civil claimant, withdrawal of a civil claim shall not deprive the spouse of the deceased person of the right to claim compensation of losses from the University.

The case materials include Protocol #1 (form T-1) regarding the accident drawn up by the University on 8 June 2005, as well as conclusion by the Chief Labour inspector and a letter of his senior, A. Morchiladze, dated 27 June 2005 (# 24). According to this letter, the accident, indeed, can be classified as an employment injury and is subject to registration. Hence, the matter should be regulated by Decree of the President of Georgia #48 of 9 February 1999 on "*The rules for compensation of damages incurred to an employee in the course of performance of job responsibilities*". Section 2 of the Decree points out that the employer is materially responsible for causing a damage to the health of an employee and for the employment/industrial injury which occurred within the confines of the organization, as well as beyond it, during a trip, if the transport vehicle was provided by the employer. As to the size of compensation, this is regulated by Article 39 of the Decree, according to which in the case of death of an employee during performance of his/her duties, the size compensation to be disbursed to the deceased person's family should be equal to an aggregate amount of the wages of the deceased person for the period of ten years, to be paid as a one-off disbursement, as well as all funeral expenses. In the case of death of a public official, the burial expenses are fully born by the state or the local self-government body.

Proceeding from the above, and pursuant to Article 21, section b of *the Organic Law on Public Defender*, the Public Defender addressed a recommendation to the rector of the University pointing to the need to secure payment of compensation to the spouse of the deceased person, in compliance with Article 4 of Presidential Decree #48 of 9 February 1999 on "*The rules for compensation of damages incurred to an employee in the course of performance of job responsibilities*", and determine the compensation amount in accordance with Articles 39 and 51 of the same Decree.

Nonetheless, this recommendation was ignored.

The case of Badri Chubinidze

On 20 September 2006, the Public Defender was adddressed by Badri Chubinidxze with an application regarding arrears in wages. The applicant had worked at the Airport Division of the Transport Police Department of the Interior Ministry from 1995 until 2004. On 1 August 2004, he was transferred to the human resources department on account of a reorganization started at that time. On 15 February 2005, he retired due to a disability. The applicant contends he never received wages for 1998-2001, November 2004, plus wages for the several months he was with the HR department, although the arrears were to be repaid in 2005.

In view of the aforementioned, the Public Defender's Office sent a respective enquiry to the Ministry of Interior. Mr. Pruidze, the Head of Finance-and-Administrative Division of the Ministry's Personnel and Logistics Department, replied that the amount due to Mr. Chubinidze in wages was 965.72 Lari, the reimbursement for unused leave and dismissal compensation is 444.73, amounting to the total of 1410.45. This amount has been credited. However, the aforementioned arrears can only be repaid if the Finance Ministry additionally allocates the respective sum to the Ministry of Interior specifically for this purpose, as the Interior Ministry's budget envisages no such disbursement, and using moneys designated for other purposes for the repayment of Mr. Pruidze's arrears will result in the accumulation of new arrears.

Notably, this is a standard reply invariably sent by the Interior Ministry to any queries relayed to arrears in wages.

The case of Nodar Rezesidze

The Public Defender was addressed by Nodar Rezesidze with an application stating that from 1973 to 2004 he had worked at various structural units of the Interior Ministry. From June 2004, he was with the State Border Protection Department. While in this position, he was asked to retire due to the age. The applicant claims that since dismissal he received no social assistance or bonuses (additional pays and compensations) due to him, pursuant to the acting legislation. Neither has he received wages for September-October 2005 and his leave pay, despite the many applications he had addressed to the said Ministry.

Having studied the above issue, the Public Defender's Offices found the following: pursuant to Article 96 of the *Labour Code of Georgia* in effect at that time, in case of a dismissal, the organization should pay the dismissed employee the full amount of all indebtedness and payments owed to him up to the date of his dismissal. If the employee was not at work on the day of dismissal, the said amount should be paid no later than the following day after he/she submits the respective request for payment of the moneys owed to him.

Another fact to be taken into account is that N. Rezesidze had served in Azhari, a high mountainous village in Georgia. At that time, pursuant to Article 7 of Presidential Decree # 192 of 2 March 2005, military servicemen

and civilians serving in high-mountainous areas were entitled to a special bonus equal to an established percentage of the basic wage rate which according to section (d) of the aforementioned Decree was equal to 40% of the basic wage for 2500 m or higher above the sea level.

The abovementioned statutory acts provide adequate grounds for the applicant to request repayment of an additional bonus owed to him, given the fact he had served in a high-mountainous area.

Hence, Nodar Rezesidze's legitimate rights have been violated. In this connection, and pursuant to section 21.b of the *Organic law on the Public Defender*, the Public Defender addressed a recommendation to the Border Police Department requesting to secure the repayment of all arrears to Nodar Rezesidze without any further delay, including those in wages and bonuses due to him under the respective Presidential Decree.

The Border Police department reacted to the recommendation by stating that "Nodar Rezesidze served at the Ministry of Interior, which is not a structural part of the Armed Forces. Therefore, the additional payments and long-service bonuses will only apply to him for the length of the period over which he had served in the Armed Forces, not at the Interior Ministry. In effect, this reply questions the fact that the Ministry of Interior belongs to the category of law enforcement agencies and, hence, its employees shall enjoy all the rights and entitlements stipulated in *the Law of Georgia on the Status of Military Servicemen.*

In the light of the above, it would be extremely difficult to assure Nodar Rezesidze, as well as other individuals facing similar problems, that their fate is in safe and competent hands. A competent reply – even if undesirable – contributes to the feelings of lawfulness, fairness and security amidst the society. As it is, practically every state official in Georgia, if dismissed from his/her job, finds himself/herself on the other side of the fence, becoming a part of the socially unprotected population. Needless to say that every such individual should at least have an assurance that the State will take care of his/her social rights.

Time and again, the State has declared its commitment to repay fully arrears to all individuals formerly employed at state organizations. However, facts indicate that this arrears have not been paid to this day. Presently, there remain quite a number of individuals that had lost their jobs with state agencies and never received any compensation of arrears in wages. As a result, they keep being shrugged off from one state agency to another, and all they hear in reply is just obscure replies and hollow promises.

The case of Tamar Parchukashvili

The Public Defender was addressed by Tamar Parchukashvili in connection with the disbursement of lost wages.

The supplied documents indicate that T. Parchukashvili had been dismissed from her post of the head of the on-job training department of the Tbilisi Light Industry College, together with three other employees, by the director of the College, Abram Basel. This decision was declared null and void by Order #166 of 16 September 2004 of the Ministry of Education. Following this, Abram Basel lodged a claim at the Didube-Chughureti district court. On 1 October 2004, the court suspended enforcement of the said Order until passing a judgement on the case. On the basis of T. Parchukashvili's individual claim, the Tbilisi regional court judgement of 04 March 2005 quashed the earlier court decision. This resulted in the re-enactment of Order #166 of the Ministry of Education which was subject to immediate implementation. Despite this, reinstatement of the three dismissed employees into their jobs did not take place until 8 August 2005.

From that time on, the college employees have been requesting disbursement of their lost wages, but to no avail. Deputy Minister of Education T. Samadashvili's letter of 24 October 2005, #01-17-12/12454, notes that since the court had not deliberated either on the subject of the dispute or on the disbursement period,

the Ministry should make the respective decision proceeding from the acting legislation. Article 208 of the *Labour Code of Georgia* acting at that time provided that enforcement of the decision on reimbursement should be effected immediately. In case of a delay, the disbursement amount should cover the entire period until the date of enforcement, including the period over which the delay occurred.

Accordingly, pursuant to Article 214 of the *Labour Code* acting at time, the disbursement should have covered the period from 14 September 2003 to 14 September 2004, and pursuant to Article 208 – the ensuing period from 14 September 2004 until 3 August 2005. The creditor's indebtedness should have been reflected in the 9 month balance sheet of the college for 2005.

Proceeding from the above, the Public Defender addressed a recommendation to the Ministry of Education, which responded with a reply letter #01-16-07-1/21071 of 20 December 2006. According to this reply, on 13 September 2006, the Ministry of Education, already allocated an additional amount of 1500 laris to the budget of the Light Industry College, specifically for the purpose of disbursing the arrears in wages owed to T. Parchukashvili.

At the end of 2006, Tamar Parchukashvili was paid all arrears due to her, through the Treasury Service of the Finance Ministry.

The case of Tsiuri Zotova

The Public Defender was addressed by Tsiuri Zotova. The applicant points to the fact that she has a 2nd category disability, suffers from diabetes mellitus and lives in an abject poverty.

Zotova reported that the Poverty Reduction Program administrators visited her at home, although, despite her extreme indigence and difficult social conditions, she was not enrolled into the program while, the applicant reckons, she belongs to the neediest group of the population.

Based on Ts. Zotova's application, the Public Defender addressed the Ministry of Labour, Health & Social Protection. According to the received reply, this matter was re-sent for consideration to the Kvemo-Kartli regional Coordination Centre of the State Social Assistance and Employment Agency.

Reply #2/02-461/1 of 7 November notes that the social agent filled out a new application for Ts. Zotova'a, which will be followed by all the necessary actions, as envisioned by the law.

The case of Nvart Martirosyan

On 10 November 2006, The Public Defender was addressed by Nvart Martirosyan, a widow with three children. The applicant contends that she has a 1st category disability, and her family is having to lives in an extreme poverty. Hence, she had addressed the State Agency for Social Assistance and Employment. Consequently, the social agent came to visit her at home and filled out a declaration for her. Following this, she did not hear form the Agency despite the many enquiries she made at its Isani-Samgori district branch. Later on, with the help of the Public Defender, N. Martirosyan was issued a registration certificate, but it only included the applicant herself and the older child. The applicant claims that while the social agent was filling out the declaration she made sure that the names of the other two children, too, were entered into the declaration and produced their birth certificates to the Agent.

Based on this application, the Public Defender of Georgia addressed the Ministry of Labour, Health and Social Protection requesting a repeated study of N. Martirosyan's family social conditions to ensure that all four members of her family were entered into the unified database of socially vulnerable families, so that they all receive social assistance.

In its reply letter #2/02-550 of 13 December 2006, the Agency pointed out that although the applicant had filed an application for assistance for all four members of her family, the assistance was only approved for 2 persons, as out of her three children, two live in an orphanage, not with their mother. Hence, the social agent acted in full compliance with the Agency guidelines and entered only two family members into the declaration.

Consequently, the family received a medical assistance card and an allowance for its two members, Nvart and Andranik Martirosyan - 42 laris each.

HOUSING PROBLEMS

The Public Defender's Office has considered a number of cases associated with housing and living conditions. Quite often, applicants point to the extremely difficult, virtually intolerable conditions in which they are having to live.

Notably, one of the most important social rights of a person is an adequate standard of living, which implies that every person is entitled to at least a subsistence minimum: adequate food, clothing, living and care conditions, and assistance when required, together with necessary funds to afford basic consumption goods.

Adequate standard of living implies living above the poverty line in a given society.

All of the above is supported by Chapter 11 of the *International Covenant on Economic, Social and Cultural Rights* and *The Universal Declaring of Human Rights*. By joining these international instruments, Georgia undertook a commitment to secure implementation of the above rights.

In order to review the housing situation in Georgia, the Public Defender addressed the Tbilisi, Rustavi, Batumi and Kutaisi local self-government bodies and requested the 2006 information as to how many individuals applied to them with housing problems, how many claims were satisfied, and how much funds were allocated from the budget to address these problems.

In its reply letter, the Financial Service of the Mayor's Office notes that the 2006 city budget included 21,000,660 laris for the improvement of housing conditions, which was used for the capital repair of shabby dwelling houses, fixing damaged roofs, water piping and sewage systems, lifts, as well as payment of housing compensation to those dwellers whose houses were beyond restoration and were recognized uninhabitable, and other incidentals.

The Batumi City Management Service replied that in the 2006 local budget, 1,260,000 laris were allocated for the promotion of cooperative building societies programme. The Mayor's Office received 155 applications with a request to provide funds to overcome various housing problems, out of which 103 were satisfied. In 2004-2006, 20 families were moved to municipal apartments, while 60 families received housing compensation. Five families were provided with a temporary housing in a municipal building.

The Kutaisi city government body replied that in 2006, they had received 94 requests for housing, while 184 applications requested funds for the repair of damaged dwelling houses/apartments. The city budget envisioned only 1,131,500 laris to address such needs. Accordingly, only a handful of people received temporary accommodation, 29 apartment buildings were repaired, while repair works of another 39 apartment buildings are still in progress.

The city of Rustavi is in a particularly dire state from this point of view. The reply from Rustavi indicates that in 2004-2006 the local budget contained no allocations at all for housing, as "there was no such need".

According to the same source, in 2006, they received 98 applications from families in need of permanent housing. Given this fact, it seems rather puzzling why the said service deems there is no need for such budget expenditures.

According to the letter from the Akhmashenebeli Territorial Management Service, in 2006 the number of residents who requested housing amounted to 185. The number of residents that filed similar applications at the Shartava Territorial Management Centre was 141. None of these requests were satisfied, as the budget envisioned no funds for this purpose. The Rustaveli Territorial Management Centre received 67 applications. And, again, none of them were satisfied. The Gorgasali Territorial Management Service appears to be in a slightly better situation as it managed to scrape up some funds for this purpose. In 2005-2006, the said service satisfied 151 requests for a roof repair out of the total of 210 of similar requests; it also satisfied 68 applications requesting a repair of the water piping and sewage systems out of the total number of 75 of such applications. Broken glass was replaced in the entrance hall windows in 36 apartment buildings, and 17 families were given a temporary accommodation in dormitories.

While Housing is a ubiquitous problem in Georgia, improvement of living conditions is yet another challenging issue. Nonetheless, local self governments allocate very too little funds to address this problem. Sadly, in the case of Rustavi, the local self-government appears to see no need in allocating any money for this purpose.

The case of Lili Beroshvili

On 2 November 2006, the Public Defender was addressed by Lili Beroshvili in relation to the housing problem. According to the applicant, she is a pensioner, and has no place to live. Several years ago she submitted an application to the ex-Mayor, V. Zodelava, regarding this matter. The Mayor pledged to help and allocated an amount of 6000 laris for her to buy a flat. However, this amount turned out insufficient, due to the fact that prices for flats had gone up by the time. After that, she addressed his successor, Z. Chiaberashvili, who tasked the Tbilisi Dwelling Fund Rehabilitation and Management Service to look into this matter. Regardless of this, the problem was never resolved.

According L. Beroshvili, she is having to live at a rented flat, although she can hardly afford this. The applicant has to pay the rent from her miniscule pension, which hardly leaves any money to cover even very bare needs.

In view of L. Beroshvili's application, we addressed the Mayor of Tbilisi. It would seem, the Mayor's Office, has re-addressed our letter to the Mtatsminda Krtsanisi Governor's Office, which replied that the Governor's Office had no means to assist in this matter due to the fact at the present time they had no vacant municipal flats. The letter also notes that this matter falls directly within the competence of the Local Property Management Service under the Mayor of Tbilisi.

Given the above, we sent yet another letter to the Mayor of Tbilisi containing a request to task the respective local service to resolve the problem and inform the Public Defender's Office of the adopted decision.

The case of the Iashvili Street

On 19 April 2006, the Public Defender was addressed with a collective application from dwellers of an apartment house at 16 Iahsvili, Tbilisi.

The apartment house was damaged as a result of the 2002 earthquake, following which the Tbilisi Mayor's Office allocated a respective amount for the rehabilitation works. The reconstruction work was carried out. The ground floor of the house was fortified, while the first and second floors were left intact due to insufficient financing.

On 7 May 2006, the Public Defender requested detailed information from the Mayor's Office as to how much funds had been allocated for the rehabilitation work and what particular works had been conducted.

The Municipal Improvements Service provided a financial account, according to which the allocated funds had been expended basically for the rebuilding of the outhouse demolished during the earthquake and restoration of the damaged sewage system. Besides, the ground floor was fortified, while no repair work was done on the first and second floors.

The Public Defender's Office representatives studied the situation with the said dwelling house. The study revealed that on the first and second floors, residents are having to live in unbearable conditions. Among them are children and elderly people. The second floor is in a particularly dire state: one of the walls is completely destroyed, the floor is sagging down, and the remaining walls have developed bad cracks. The house may collapse any moment. Some of the dwellers have left the house and moved elsewhere, while those that have no choice are having to stay in the house. Apparently, the cannot afford any repair works. Photos taken at the site provide a shocking account of the situation.

According to Section 1 of Article 11, of *the International Covenant on Economic, Social, and Cultural Rights* „The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.". Article 25 of the *Universal Declaration of Human Rights* is also supporting these rights.

The international law features an adequate standard of living as the core of social rights. Term 'adequate standard' of living of a person is "a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services", while according to Article 11 of *The Covenant on Economic, Social and Cultural Rights*, it implies "adequate food, clothing and housing". Despite the fact that the adequate standard of living will cover a wider array of factors, its basic indicators will still remain food, clothing and housing.

In this particular case, the applicants, have no financial means of their own to improve the situation and achieve adequate housing conditions. Moreover, the house which is on the brink of collapse poses danger to the life and health of these people.

The Public Defender finds that the applicants' right to adequate housing has been violated. In view of this, and pursuant to Section 21.b of the *Organic Law on Public Defender*, the Public Defender addressed a recommendation to the Tbilisi Mayor's Office pointing to the need to review the situation and act on it accordingly by conducting a complete and adequate rehabilitation work on the dwelling house at 16 Iahsvili Street.

In reply, the Service for Management of the Historical Part of Tbilisi of the Mayor's Office replied that they have studied the case at issue and found that the building had been, indeed, badly damaged. The rehabilitation work will be forthcoming shortly.

The case of Nargiz Guliashvili

On December 2006, the Public Defender's Office was addressed by Nargiz Guliashvili. According to the applicant, she had lived at 35 Sakanela street, together with her orphaned grandchildren in a basement flat which was flooded during heavy rains and became uninhabitable. Following a TV coverage featuring her living conditions the family was moved to an alternative dwelling space.

Now, the applicant contends, the representatives from the Special Fund for the Liquidation of Earthquake Consequences pay her regular visits only to threaten that she will be evicted from the premises.

In view of this application, the Public Defender addressed the Chairman of the Special Fund for the Liquidation of Earthquake Consequences with a request to refrain from evicting the Guliashvili family until an alternative shelter is found for the family. Given the fact that the Fund will be closing down soon, the Public Defender also appealed to the Governor's Office of the Isani-Samgori district.

The Governor's Office replied that they are unable to resolve this issue, even by allocating a temporary shelter, due to the fact the Office has no vacant dwelling space available at present. At the same time, the letter notes that the Office is aware of N. Guliashvili's housing problem and pledged to provide a shelter to the said family at the earliest possible opportunity.

The case of Nino Tsiklauri

On 2 November 2006, the Public Defender was addressed by Nino Tsiklauri with an application, claiming that her house had been badly damaged during an earthquake. The ceiling and walls have developed bad cracks, the water piping and electric wiring are completely out of order. The applicant lives alone. She has a 1st category disability, is confined to bed and is need of constant medical treatment. She can neither invite workers to do repair works, not can she afford paying for it. Hence, the applicant requested an intercession from the Public Defender with the Mayor's Office to help her resolve this problem.

In this connection, the Public Defender's Office contacted the Tbilisi Mayor's Office which notified back that the Vake-Saburtalo Governor's Office has no funds in its budget assigned specifically for the repair works required in this particular case. Nonetheless, they have re-installed the water piping and electricity wiring and intend to complete the remaining works next year.

The case of Natalia Postilova

On 21 December 2006, the Public Defender was addressed by Natalia Postilova, age 92. The applicant states that she has a 1st category disability and requires constant medical attendance.

Given her extreme poverty, the applicant points out, she had applied for help to the State Agency for Social Assistance and Employment. The Agency representative visited her once and filled out a declaration. Since then the applicant never heard from the Agency.

In this connection, the Public Defender's Office contacted the Ministry of Labour, Health & Social Protection which replied that upon receiving the Public Defender's recommendation, they studied the issue in question. As a result, N. Postilova has been assigned a monthly allowance.

THE LEAST PROTECTED POPULATION

The case of Abo Bakhareishvili

On 19 July 2006,the Public Defender was addressed by Abo Bakhareishvili.

The application and the supplied documents indicate that on 6 April 2006, representatives of the gas supply company, "Tbilgazi", drew up a protocol (#002662) against the applicant obliging him to pay a fine, pursuant to Article 911 of the *Code of Administrative Offences,* based on the respective court judgement

According to the applicant he, indeed, had his gas meter installed without involving "Tbilgazi". However, he contends, this does not automatically incriminate him of a theft of natural gas. The applicant notes that

when the case was considered by the first instance court the only reason he did not appear before the court was that he had been served the summon with a delay, this being a gross violation of the *Procedure Law* on the part of the court. He contends that the Court of Appeal heard the case without due attention to the merits and particular circumstances of the case, and without full and impartial investigation.

Consequently, the court judgement was enacted and the respective enforcement writ was issued. The court officer set a deadline for voluntary enforcement of the court decision at 10 November 2006. Otherwise, the debtor was informed, his movable and immovable property would be sold from an auction.

The applicant belongs to the least protected social group. He is 82 and lives alone. His only immovable property is a one-room flat in Mgaloblishvili street in which he lives. The applicant has no worthwhile movable property subject to laying an attachment, pursuant to *the Law on Enforcement Proceedings*, – just personal belongings. Accordingly, the only valuable asset in possession of the applicant is the flat. Selling the flat from an auction would result in that the elderly person will be left homeless and in a helpless state.

Pursuant to Article 34 of the *Law on Enforcement Proceedings*, the enforcement can be terminated if the creditor abandons the recovery, or if the creditor and the debtor come to an agreement.

Due to the debtor's indigent social condition, the Public Defender addressed the Enforcement Department with a request to suspend the enforcement. Simultaneously, he addressed a request to the Mayor's Office to look into this matter and endeavor to find an alternative solution to the problem.

The recommendation was fulfilled. The Mayor's office allocated the necessary money to pay the fine imposed on A. Bakhareishvili.

EDUCATION

The case of Irakli Gurgenidze

The Public Defender was addressed by Madona Kirkitadze, stating that her son passed the unified national entrance exams at the Zestafoni National Assessment and Examination Centre without having attended the graduating class of the secondary school. In view of this fact, the Centre refused to issue him the respective certificate, motivating the decision by the fact that by the time her son sat for the exams he had not yet reached the age of 16, which age is required by Article 4, subsection 4 of Order #452 of the Minister of Education & Science of Georgia of 22 May 2006 *On the Statute of Certification of Long-Distance Learning*. This order provides that long-distance learners willing to obtain a secondary school leaving certificate shall be 16 or older at the moment of submission of the respective application.

Following this, Madona Kirkitadze applied to the Ministry of Education & Science, which, too, substantiated its refusal by referring to the same subsection of the said Order in its reply letter (#2/12755 07.08.2006).

Article 9, subsection 4 of the *Law of Georgia on General Education* states that long-distance students are entitled to receive general education. Rules and terms for long-distance education are established by the Ministry of Education & Science. By the time of passing this law, long-distance education issues were regulated by Order #207 of the Education Ministry dated 15 October 2003, which set no age restrictions for the enrollment of long-distance students into the 11th grade.

Therefore, Irakli Gurgenidze's enrollment into the long-distance program of the 11th grade was effected in full compliance with the legislation acting at the moment of enrollment. Given this circumstance, the above Centre's

refusal to issue a certificate to Irakli Gurgenidze is devoid of any legal grounds. According to Article 47, part 1 of the *Law of Georgia on Normative Acts* "a normative act is retroactive only if literally so prescribed by this normative act". Order #452 of 22 May 2006 of the Minister of Education & Science contains no indication to such retroactive action.

In view of the above, and pursuant to Article 21, section b of the *Organic Law on Public Defender*, the Public Defender addressed a recommendation to the Ministry of Education & Science requesting to instruct the National Assessment & Examination Centre to issue Irakli Gurgenidze a certificate of secondary education.

In its reply letter of 31 October 2006, the Ministry of Education states that the Ministry will secure the issuance of the said certificate to Irakli Gurgenidze.

15 REPORT ON THE VIOLATIONS OF HUMAN RIGHTS IN THE CONFLICT ZONES

The human rights situation in the second half of 2006 was extremely grim in the conflict zones of Georgia, particularly in South Ossetia and Abkhazia where the Central Government is unable to exercise its effective control. Incidents of human rights violations and abuses are frequent in the areas densely populated by ethnic Georgians and territories under the control of CIS Peacekeeping Forces, indicating the gross negligence and inaction on the part of the peacekeeping forces.

According to International Law, in an event of international or local conflict the rules stated under International Law are applicable. Based on the principle and responsibility to "secure observance of human rights and norms of the International Humanitarian Law" The peacekeeping forces are deployed on the territory of Georgia.

As much as these human rights issues pose as stumbling blocks to the peace in the region, it also provides an opportunity to create milestones in form of groundbreaking negotiations leading to peaceful resolutions. It is with this faith that the Government of Georgia is pursuing with all its efforts in the direction to resolve the conflicts.

To help achieve its objective of monitoring and evaluating of human rights abuses and freedom according to International Law, The Public Defender's Office deems it necessary to have its representative actively participating in peace negotiations, in particular its attendance in the four-sided weekly meetings in Chuburkhinji, Geneva process and working meetings of joint control commissions.

Permanent and active participation at the above meetings would strengthen the Office of The Public Defender in obtaining first hand information and facts at the ground level, facilitating to proper and adequate reaction when necessary. Spreading misleading information on the developments in the conflict zones is frequent and does not support or lead to complete and peaceful resolution of the conflicts.

With this in mind, the Public Defender appealed to the State Minister on Conflict Resolution as well as the international organizations involved in the process. The State Minister's position is still not known to the Public Defender.

It must be noted that it is easier for the Public Defender to learn about the situation in Tskhinvali Region. The Public Defender has contacts in Kokoiti and Sanakoev Administrations. He also has contacts with the international organizations carrying out their missions in the conflict zone. The cooperation is especially effective with UN Human Rights Office in Sukhumi.

It must be also noted that the de facto governments often neglect the recommendations of the international and non-governmental organizations with regards to the prevention of human rights violations, while there are no other human rights democratic institutions in these regions.

The Public Defender expresses its appreciation to the residents of the conflict zones, The Ministry of Internal Affairs, The Office of the State Minister on Conflict Resolution, Human Rights Office of the Internally Displaced from Abkhazia, Mr. Dimitri Sanakoev and the many that provide the Public Defender's Office with vital information about the instances of violations of human rights and freedoms in Abkhazia and South Ossetia as well as in the entire peace-keeping zone.

In this report, The Public Defender has attempted to give a precise legal evaluation to the incidents mentioned below according to the norms of the International Law, but since the existing situation is so complex that there are cases where a single human right abuse is in violation of numerous fundamental rights, making it difficult to come to the conclusion as to which political or civil right has been violated. For example, often inhumane treatment of an detained person is continuation of discrimination and illegal detains.

The Public Defender made a number of statements and appeals with regard to these facts.

16 INCIDENTS OF HUMAN RIGHTS VIOLATIONS IN ABKHAZIA

Instances of inhumane treatment, discrimination and trafficking, violations of civil freedoms and political rights and kidnappings are frequent on the territory of Abkhazia.

The feeling of discrimination and insecurity run high among the existing Georgian population, compounded with the lack of proper infrastructure and the unavailability of basic amenities has created obstacles for the internally displaced that seek to return back to their homes, violating the right of voluntary return with guaranteed security and dignity.

Under such circumstances the Government of Georgia is unable to carry out its responsibilities of providing security and implementing the rule of law, and the so called "law-enforcement agencies" on the territory of Abkhazia are in most cases criminals or in nexus with criminals encouraging and aggravating the lawlessness in the region.

The so called active Law on the Citizenship of the Republic of Abkhazia on the territory of Abkhazia was adopted by the de facto Parliament of Abkhazia in October 2005. The law defines the persons who have the right to get the "citizenship of Abkhazia", regulates the procedures of the adoption of the citizenship and lists the reasons according to which a person can be denied the citizenship. This law is directly affecting the ethnic Georgians who sporadically returned to the places of their original residence.

Despite the fact that the de facto Government of Abkhazia unilaterally agreed with the return of the internally displaced to the Gali Region in March of 1999 it did not bring about any substantive results. As for the territory beyond Gali, according to the statement issued by the top officials of the de facto Government, the safe and dignified return of ethnic Georgians cannot be guaranteed.

INSTANCES OF TORTURE, INHUMANE AND HUMILIATING TREATMENT

Torture and inhumane treatment is widespread and an established practice, which go unheeded and without any investigation.

On September 7, a group of 50 separatist law-enforcers headed by Otar Turanba, Deputy Head of Gali Regional Militia raided the village of Gumurishi in Gali Region; Temur Tsaguria was detained for avoiding obligatory military service and was moved to Gali Militia premises.

Mid March of 2006 Temur Tsaguria's father Gurgen Tsaguria, was

detained. He was accused of robbery and liaison with Georgian guerillas. Later G. Tsaguria was found hung in the cell. The family members are convinced that G. Tsaguria died as a result of torture.

On December 28 at 9a.m a group of 100 law-enforcers entered the villages of First and Second Otobaia. They forced into the homes of ethnic Georgians, beat them, confiscated their mobile phones, and smashed the doors, windows and furniture in their houses. They were allegedly trying to detain suspicious persons. They detained Jumber and Kakha Tsaragbaia and brought them out of their home without clothes, beat them and took them to the building of the local school where other detained persons were kept. There have been no reports of raiding in the other villages of Gali Region.

ETHNIC DISCRIMINATION

Ethnic Georgian Svetlana Chaladze-Britanova, resident of Gudauta Region and her family members were discriminated on ethnic grounds. As a result of the discrimination S. Chaladze-Britanova had to leave her home. She currently lives in Tbilisi with her children.

December 7 morning, Abkhazians stopped 3 children on their way to school. They prohibited them to talk Georgian at gunpoint. The frightened children had to take another road and later were able to reach the school.

RESPECT TO HUMAN RIGHTS AND INSTANCES OF ILLEGAL DETENTION

Illegal detention, kidnapping and taking of hostages are frequent in Abkhazia. This makes the Georgian population of Abkhazia feel more insecure, causing further obstruction to the process of return of the displaced, which is a violation of the right of the voluntary return with guaranteed security and dignity.

During the so called call for obligatory military service there is an undue pressure on the Georgian population forcing young Georgian men "to do the military service voluntarily in Abkhazia".

The situation gets extremely aggravated when harvesting hazelnuts and citruses.

Instances of insult, discrimination and human rights violations happen on daily basis on this territory; furthermore, Abkhazian "Militia" regularly raids the villages.

On July 8, unidentified people attacked the family of Gugava in the village of Shesheleti, Gali Region and kidnapped 4 persons with the purpose of money extortion. After the involvement of the local "Militia" and criminals the kidnapped persons were released in 4 days.

On July 19, unidentified armed people robbed a transport bus in Gali Region. Tagiloni Belkania a resident of the village was robbed. In the same village three masked armed men wounded 18 year old Romeo Shonia in the leg, a resident of the village of Akhali Abastumani, Zugdidi Region. This issue was raised at Chuburkhinji four-sided meeting. O. Turanba, Deputy Head of Gali Militia detained Badri Kobalia in the village of Lekhukona, Gali Region. He was moved to the "security service of Gali Regional Department". The reason for detaining Kobalia is not known. Juma Kutelia, Head of "Security Service of Gali Regional Department" requested certain amount of money from Kobalia's family in exchange to his freedom. Kobalia was released on August 3. As a result of the physical pressure his health condition deteriorated.

On July 26 a group of 10 Militia representatives headed by Otar Turanba raided the village of Dikhazurga. As a result Paliko Gvalia and Omar Kharchilava were detained. They were placed in the pre-trial detention facility

of Gali Militia. They were released on August 27. In a separate incident Dzigua's family was robbed in the same village on August 21.

On August 30-31, representatives of the separatist Ministry of Internal Affairs raided the villages of Tskhirshi, Rechkhi and Lower Bargebi. Accusing of providing support to Georgian guerillas they detained the residents of the village of Tskhiri: Nodar Nakopia (65 years old), Merab Nakopia (40 years old), Koba Nakopia (28 years old), Geno Tsitava (50 years old), Goneli Rodonaia (65 years old) and Gela Shapanski (40 years old). They were taken towards Sukhumi.

On August 31, a group of 120 Militia men of the Ministry of Internal Affairs raided the village of Lower Bargebi in Gali Region for the reason of checking passports. They detained about 10 individuals who did not have IDs. Among the detained were: Zviad Kvirkvelia, Levan Butbaia and certain Lukava. They were taken towards Gali.

On October 10, Abkhazians kidnapped two police officers Kakha Gogokhia and Badri Bakarandze in the village of Rike, Zugdidi Region, on the left bank of the river Enguri. After the involvement of Samegrelo-Zemo Svaneti Regional Police of the Ministry of Internal Affairs they were released.

On July 6, unidentified individuals attacked Zhora Ubilava's family in the city of Gali at Sabcho St.

On July 9, unidentified armed persons from Gali Region hijacked and looted a transport bus at the administrative border with Abkhazia in the village of Khalaghali, Tsalenjikha Region.

On July 11, two mines were discovered in the village of Kvishona in Gali Region. The reserve group of the "Russian military forces" moved the mines to Gali Militia premises.

On August 9, Achiko Mirtskhulava, a resident of the village of Tagiloni was robbed of his money and jewellery.

On August 20, Shota Gulordava was robbed of his money in the village of Upper Bargebi.

On August 27, Omar Khasaia was robbed in the village of Nabakevi. The robbers took 700 kg of hazelnuts. The following day on August 28, nine residents of the village of Sida, Gali Region, were looted. The looters took 1500 kg of hazelnut from them.

Otar Cherkhezia, Abkhazian from the city of Tkvarcheli illegally occupied the apartment of Raisa Tonia, a resident of Sukhumi. R. Tonia got in touch with O. Cherkezia to clear the matter. She presented him with the apartment certificate as a proof of ownership and asked him to vacate the apartment, in response O. Cherkezia insulted her and forcibly seized from her the apartment certificate and other documents along with her ID. Later she was forced into a car and driven towards Enguri Bridge. She was brought to the other side of Enguri River by force where she was told she had no right to return back to Abkhazia and threatened if she did so, her passport would be confiscated and she wouldn't be allowed back into Abkhazia. The same day four armed individuals shot at a transport bus in the village of Upper Bargebi, Gali Region. According to the explanation offered by the separatists, the case is under investigation. On the same day unidentified persons plundered a secondary school in the village of Tagiloni. 300 kg of hazelnut, other valuable materials including a joiner's machine were missing.

On September 11, unidentified individuals robbed Zaur Kiria in Gali Region.

On September 14, Mitusha Bigvava, a resident of the village of Nabakevi, Gali Region, was robbed at Engruri river bank close to the village of Khurcha, Zugdidi Region.

On September 16, Bondo Khadzania, resident of the village of Chuburkhinji, Gali Region was robbed. The robbers took 1700 kg of hazelnut.

On September 17, Iasha Todua a resident of the village of Otobaia was robbed near the village of Khumushkuri. The robbers took 700 kg of hazelnut.

On September 17, members of the Abkhazian guard post fired gun shots in the air near the villages of First and Second Otobaia.

On September 27 and 30 member of the Abkhazian guard post fired gun shots in the air in the village of Nabakevi. #209 guard posts of the "Russian military forces" did not have any reaction to that.

Members of the Abkhazian guard post in the village of Chuburkhinji, who were located close to #201 guard post of the Russian military forces fired from grenade launcher "RPG-7" towards Zugdidi. The shell exploded in the river, 300 MT. away from the Georgian guard post.

On October 1, in the village of Nabakevi unidentified assailants attacked passengers of a bus on its way to attend a funeral service; they robbed them of their money and mobile phones.

On October 6, four armed and masked persons attacked the family of Griko Gitolendia in the village of Upper Bargebi, Gali Region. The robbers wounded the Head of the family and his spouse.

On the same day, a group of unidentified persons robbed Zaza Mirstkhilava in the village of Tagiloni. The robbers took 780 GEL.

The above criminal incidents were raised at Chuburkhinji four-sided meetings in September but with no results.

On October 11 four women were robbed in the village of Nabakevi.

Three masked robbers attacked Maia Kolbaia in the village of Chuburkhinji and took 70 GEL.

On October 13, three robbers armed with machineguns attacked Ramin Gogokhia's family in the village of Dikhazurga, Gali Region. The latter fired from the hunter' rifle and the robbers fled. The following day on October 14, three robbers armed with machine guns and driving a UAZ-type car and attempted to rob Arshalion Chkhapelia's family in the village of Dikhazurga.

On October 16, armed robbers attacked Chichiko Chkhetia's family in the village of First Tagiloni. The family resisted the robber's attempts to ransack, and in the process one family member was captured and handed over to the Abkhazian Militia who came to their aid.

Three Abkhazian "border guards" from the village of Dikhazurga looted workers in village bordering with Tsalendjika and took mobile phones and 7 GEL.

On October 19, 30 meters of valuable cable was stolen from the transmitting guard post of Enguri hydro-power plant in the village of Saberio, Gali Region.

On October 23, Oner Dzigua's family was attacked by three masked criminals in the village of Dikhazurga, Gali Region. They tied up Oner and his wife and took 1, 5 tones of hazelnut.

The Upper villages of Gali fall under the administrative jurisdiction of Tkvarcheli Region bringing them under direct supervision of Tkvarcheli Militia. The Deputy Head of Police is known to personally conduct raids in the villages, detaining and harassing the peaceful population for the sole intention to extort money.

On December 2, "Military Komisariat" and the so called Militia conducted a joint raid in the villages of Dikhazurga and Saberio of Gali Region. They detained recruits and took them to Gali Militia premises and then sent them to do the obligatory military service in the Abkhazian Army.

On December 3, a group of local Militias entered the village of Tagiloni. They approached the house of the local resident Vakhtang Okudjava and asked him to bring his son Joni Okujava to Gali Militia, threatening to expel the entire family out of the Abkhazian Territory if they failed to comply. The same Militia is also responsible for having conducted several raids, including the one where Gela Tsulaia was extorted of 2500 Russian Rubles for taking hazelnut to Zugdidi.

On December 5, Guli Kardava, a resident of the village of Gudava was detained on Enguri Bridge by the so called customs officials. He was taking humanitarian assistance-medicaments from Georgia to Abkhazia. The customs officials on the Abkhazian side seized his documents and confiscated the medical consignment labeling them as smuggled goods.

On December 5, Gali Militia headed by Otar Turamba raided all the villages of Lower Gali. They detained two persons in the village of First Otobaia: Khvitia and Khalvashi who were taken to the isolator of Gali Internal Affairs Department. Witnesses claim that the detained individuals did not commit any crime and were illegally detained.

On December 11, four armed assailants attacked Omar Abashia's family in the village of First Gali in the Gali Region. Two of the robbers stayed in the yard while the other two entered the house and demanded money and valuables. One of the robbers wounded Omar Abashia in the chest before fleeing. He was in a critical condition and taken to the Zugdidi hospital to be operated upon. Abkhazian Militia did not react to this incident.

On December 11, Alik Khishba, the newly appointed Head of Otobaia Militia sub-office held a meeting in the village. A decision was taken to open up a farmstead book on each family and impose a fee of 1000 Russian rubles to each of them. The families were supposed to make the payment before the end of 2006.

On December 12, 24 years old Paata Kiria was detained in the village of Otobaia, Gali Region. His family was given an ultimatum to pay ransom of 1500USD for his release.

In the same village Gvaramias and his mother were severely beaten and the entire village population was deprived of their earning as the Militia took the tangerine stock which was intended for sale.

Three Georgian citizens: Avtandil Kachibaia, a resident of Senaki (born 22/10/1956); Mirian Kikacheishvili, a resident of Kutaisi (born 13/07/1976) and Lasha Sichinava, a resident of Senaki (born 13/09/1978) were detained on their way back to Georgia from the Russian Federation.

Acting upon the request made by The Public Defender, The Head of UN Human Rights Office in Sukhumi V. Stepanov visited the illegally detained prisoners and rendered assistance to them. According to the information provided by V. Stepanov, the detainees would be released by the end of March 2007.

On December 25, Otar Turnaba the Deputy Head of Gali along with two other occupants succumbed to severe injuries in a car explosion on the territory of the village of Megobroba, upon their arrival to the Sukhumi hospital Otar Turnaba was declared dead.

The same day Alika Khishba the Head of sub-office of Gali lower zone of internal affairs department and holder of two Abkhazian medals for heroism was killed at the same location. The attack happened between the villages of Otobaia and Nabakevi when A. Khishba was examining the place of the explosion.

Otar Turanba was well known for his cruelty towards ethnic Georgians. He was collecting taxes and treating the population of lower and Upper Gali mercilessly. In return the authorities promoted him to the rank of Deputy Head of the Gali Militia. He was in total control of the hazelnut and citrus business in Gali, procuring them by force at a very cheap price from the local population.

According to our information Turanba's assassination is related to the conflict of interest and failed negotiations between two business rivals. There is a citrus processing factory in the village of Achigvara, Gali Region. The owner of which is a Russian businessman. Prior to the incident, criminals came from Moscow to talk about dividing the share of business but they failed to reach an agreement.

The so called anti-terrorist group headed by Valmer Voumba entered the villages of the First and Second Otobaia of Gali Region. They detained Khvicha, Paata and Gocha Chitaias, Onise Bigvava, Mamuka Korkelia and Tengiz Korkelia the residents of Second Otobaia. The members of the Special Forces were using the detained individuals as human shields, as they walked behind them along the streets and entered people's homes for the purpose of interrogations.

50 citizens were detained in the village of Otobaia by 200 armed people headed by Eric Voumba and Vladimer Butba. The detained were moved to Gali Militia premises. Later 46 of them were released. Among the detained citizens from the village of Otobaia were: Robert Parulava, Temur Tupuria, Gela Gergedava from the village of Sida, and one more citizen of Zugdidi who was visiting his father-in-law. They were released too but Temur Topuria was kept in prison and severely beaten. After being finally released T. Tupuria was admitted to Zugdidi hospital.

Local Militia forces conduct frequent patrols in the streets of lower villages of Gali to check IDs. Russian peacekeeping forces did not react to any of these facts.

TRAFFICKING AND FORCED LABOR

Forced labor is widely prevalent in Abkhazia. In the beginning of August 2006, the Gali population was forced to dig trenches. This incident has been confirmed by Vladlen Stepanov, Head of UN Human Rights Office in Sukhumi.

Abkhazians forced the population of Achigvara village to work for free and for this reason six families left the village. They refused to return there until the restoration of jurisdiction of the central government. This fact was raised at the four-sided meeting in Chuburkhinji without any outcome.

RIGHT TO FREE MOVEMENT

A citizen of Georgia can access the territory controlled by Abkhazian de facto Government only with the permission of the de facto Government and its authorized agencies.

In order to go to Abkhazia, one needs a permit from the Central Office of Abkhazian de facto Security Service, which can only be obtained by a relative or an acquaintance of a person living in Abkhazia.

Georgian Guard post of the Ministry of Internal Affairs is located in the building of a former auto inspection post in the village of Rukhi before Enguri bridge, to facilitate crossing of the administrative border with Abkhazia.

Beyond which is traffic control barrier of Russian peacekeeping forces. They only check the vehicle.

After the Russian peacekeepers' post the Abkhazian border guards are deployed, they check the documents. Then there is the so called "Quarantine Service" followed by "Customs" where the customs officers examine the transported goods and impose taxes.

And finally there is the so called Abkhazian Security Service. They register people who return to Abkhazia, check and issue passes to those coming from Abkhazia for a fee of 50 Russian rubles. The population often takes the paths across the river but they are also controlled by the Abkhazians.

For the Georgians living in Abkhazia and wishing to travel to Georgia the so called Abkhazian Security Service established new rules of issuing passes. In particular, a person wishing to travel to Georgia should fill out a special form in the local Security Service Office and indicate demographic data of his family, his destination, the purpose of the travel and even the activities of his/her close relatives during the armed conflict in Abkhazia. People who regularly travel to Georgia need to take an additional interview with the Head of the Security Service. Despite these strict measures, certain numbers of people manage to avoid these formalities and get to the other side of Enguri.

In order to travel from Abkhazia to the other side of Georgia, a person needs to get a pass from the local office of Abkhazian Security Service, which one can obtain after undergoing some formal procedures including the interview. The cost of pass is 100 Russian rubles. Abkhazians charge 3 GEL or 50 Russian rubles for crossing Enguri Bridge depending on the load. If a person is carrying luggage then he/she pays 2 GEL or 30 Russian rubles per kg to the Quarantine Service. At the crossing places of lower zone of Gali Region the charge is 2 GEL. The payment for taking the luggage across the border is defined through the negotiations with the customs people irrespective of the type of luggage. The determining factor is the final destination of the goods crossing the border. If the destination is Gali market the payment is less but if it is Psou then the payment is higher. This is an unofficial payment and the money goes to the pockets of the customs people and the border guards.

It must be noted that only Georgians living in Abkhazia need to obtain special passes amounting 50 Rubles to cross Psou towards Russian Federation. The rest are exempted and allowed to travel freely without any passes.

Accessing Abkhazia from the Russian Federation across Psou is restricted for people holding Georgian passports. There are Abkhazian Security Service people at every post. Russian border guards take 300-400 USD at Psou border line and crossing Abkhazian territory costs 400-500 USD. Traveling is a little bit easier for the Georgian citizens residing in the Gali Region.

Often the so called border guards of the self-declared republic close the administrative border at Enguri Bridge as punitive measure, depriving the Gali population the possibility to cross Enguri Bridge, which is the violation of the right to free movement. In most cases Abkhazian border guards demand from 300 rubles to 1000USD for a single crossing.

On December 25, 2006 a tragic incident occurred as a direct consequence to the above restrictions, Gitolendias and his grandson, both residents of the village of Octobia left the village at 6am towards Zugdidi, they decided to cross the river to avoid harassment and the hefty illegal fee levied by the Abkhazian authorities. Unfortunately they were unable cross the river and drowned in the process.

On September 18 officials of Abkhazian guard post in the village of Tagiloni did not let the transport loaded with hazelnut pass towards Zugdidi, justifying it by the fact that the plan for collecting hazelnuts in Abkhazia was not fully met.

On September 27 Abkhazians in Chuburkhinji village refused to let a mission of the Georgian Eparchy travel towards the village of Ilori, Ochamchire Region. The purpose of the mission was to take the icon there

and pray for the reconciliation with Abkhaz people. The leadership of the "Russian military forces" also refused to let the mission pass.

On December 8 the representatives of Abkhazian side closed Enguri Bridge. For this reason the schoolchildren of the village of Saberio, Gali Region had to take a much longer route to reach the school in the village of Chkhoushia, Tsalenjikha Region.

On December 17 Abkhazians blocked the central bridge of Enguri. The members of Otar Turanba group in the upper villages of Gali dug up all the roads leading to Zugdidi. The Georgian schoolchildren had problems getting to school in the villages of Tsalenjikha Region.

Abkhazian police opened an additional guard post in the village of Saberio, imposing a fee of 300 rubles, which is approximately 18GEL to obtain the pass.

On December 18 in a major attempt to exhort money, the upper villages of Gali Region (Dikhazura, Saberio, Khalaghali) by the Abkhazians and the so called customs officials, with the help of the Russian peacekeepers' equipment blocked all the roads, constructed barbed wires, and also brought in additional forces to obstruct the movement of the population towards Zugdidi. They even limited the access to Gali Region.

RESTRICTING THE RIGHT TO EDUCATION

The situation in Georgian schools of Gali Region is far from good. The representatives of the Public Defender's Office met with the teachers of the villages in lower Gali zone. There are around 30 secondary schools in the Gali Region, in contrast to 58 schools before the war. Currently 3 852 pupils attend schools. 657 teachers and 137 technical personnel are on the payrolls of the schools. The material-technical base of the school as well as the educational system and standards do not correspond to the general educational system in Georgia. There are no contemporary manuals at the schools.

Education at 16 schools is conducted in Georgian language. The rest of the schools have Russian as the primary language and Georgian as a foreign language with limited hours. Teaching Georgian geography and history are prohibited at the schools. The teachers have to teach Georgian language unofficially and often risk their lives by doing so. To avoid any undesirable situation, they often fake reading Russian book with the Georgian book hidden in the background and keeping a close vigil for any unexpected visitor.

In 2005 by the decision of the so called Ministry of Education of Abkhazia (decision # 75, 03.06.05) education and working activity in Georgian language was prohibited in Gali Region. Signs in Georgian language were removed from the schools and the classroom exercise books are filled out in Russian language.

The Abkhazian administration invites students of Gali schools to enter the Abkhazian University or Russian high schools in different cities without any entrance exams. The teachers are paid an equivalent of 60-65 GEL in rubles at Russian schools.

Unfortunately, the administrative staff and the teachers of the Georgian schools in Gali Region are unhappy that during 2006 none of the school got any kind of compensation from the Georgian Government, although there were some schools that did receive some compensation only till the month of August.

On November 28, 2006 the teachers of several Georgian schools in Gali Region held a protest action at the Abkhaz-Georgian border demanding the due compensation and an increase in their salaries from the Georgian government.

PROTECTION OF THE RIGHT TO OWNERSHIP

In the existing situation where the displaced are unable to return back to their homes and claim their real estate, the right to ownership is severely effected and for those that did return to Abkhazia spontaneously, their ownership rights are not protected by the Law.

In the beginning of October 2006 Tsisana Mushkudiani-Shatirishvili and her husband Valiko Shatirishvili were expelled out of Abkhazia. When Abkhazia fell they took shelter with their Abkhaz relatives, later they returned to their home at the seaside and rented out the house for the season which brought in a certain amount of income.

On October 10 Valerian Shatirishvili (born 05/10/31, resident of Gagra, 157 Rustaveli St.) and Tsisana Mushkudiani-Shatirishvili (born 16.08.44. resident of Gagra, 16 Lenin St.) crossed Enguri central bridge and left Abkhazia after being held as hostages for 3 days. By their account, on October 7 two strangers, middle-aged Abkhazians forced entry into their apartment in Lenin Street during broad daylight, they physically assaulted the couple and took all their savings amounting to a sum of 100 000 Rubles, which they had gathered renting their house. The couple was then forced into a car and driven to Gudauta Region, where they were held in captivity in an abandoned house for 2 days in a row guarded by 2 Abkhazians.

Following their captivity, the couple was forced to sign on a notary document indicating the transfer of their house to the stranger on lease. On October 10, the couple was driven to Sukhumi, their IDs were taken from them and they were left on the Enguri Bridge.

The kidnappers warned of dire consequences for their children living in Russia and Ukraine if the Shatirishvilis decided to report or utter a word about the incident. They also told them that their passports would be returned to their relatives living in Adler within 2 weeks. The Shatirishvilis had Russian passports and were registered in St. Petersburg at the address of their daughter. Currently the couple lives in Tbilisi at 1 Ikalto St with their relatives.

In a similar incident, Tariel Esartia and Galina Taganova were also forcefully evicted from their premises. Being an ethnic Georgian Tariel Esartia was expelled from work. While, Galina Taganova an ethnic Russian appealed to all in the Government hierarchy for help, including the President's office of the Russian Federation but never received any reply or assistance. Presently the case is under the consideration of The European Court of Human Rights following the ruling against the petitioners T. Esartia and G. Taganova by the Court of the Self proclaimed Abkhazia.

After the replacement of the Gagra Administration Chief, who happened to be a relative of the person trying to illegally acquire T. Esartia's house and also the one who influenced the court to pronounce its judgment against Esartia, a decision was made to vacate the house of its illegal occupants and be returned back to its rightful owner Tariel Esartia.

But in a strange twist of incident, the illegal occupant ransacked and put the house in flames before finally departing

THE SITUATION IN THE DEPARTMENT OF CORRECTIONS

The Office of the Public Defender is not in a position to give a precise evaluation of the situation prevailing in the prisons located in Abkhazia, due to the lack of proper information.

We are unaware about the exact number ethnic Georgians held as prisoners and their respective condition within the boundaries of the prison wall, though, there have been talks by representatives of the de facto authorities on the terrible conditions at the prisons and detention centers on the territory of Abkhazia.

Levan Mamasakhlisi was under illegal detention for five years in Dranda Prison, Abkhazia. He was in a critical medical condition but without any medical assistance. As a result of the maltreatment he lost his right hand (from the tip of the fingers till the wrist) and all four fingers on the left hand. His lungs were in a critical state and he had eczema. L. Mamasakhlisi was in dire condition and in urgent need of expensive medications. As a result of the Public Defender's involvement the illegal prisoner was regularly receiving medications from "Aversi Ltd." through International Red Cross Committee.

In his effort to provide L. Mamasakhlisi the proper medical treatment, The Public Defender personally appealed a number of times to the UN Observer Mission in Georgia and International Red Cross Committee for their support to have the relevant doctors visit the prisoner for proper diagnosis and follow up treatment. As a result the UN representatives visited Mamasakhlisi at the Dranda Prison on a few occasions.

FREEDOM OF PRESS AND EXPRESSION

As a direct consequence of participating in a TV Interview and expressing her opinions, a student from Gali, Nino Kvekveskiri's parents were approached by the representatives of the Special Forces on October 24-25 demanding them to leave the territory of Abkhazia.

On December 4-5 the leadership of Abkhazian administration was actively preparing to take local Georgians for their participation in a meeting in Sukhumi. 4 buses were specially sent from Sukhumi. As a result of pressure and threats 250 people were taken to Sukhumi by force.

DEMOCRATIC INSTITUTIONS

According to the information available to the Public Defender there are three active international non-governmental organizations in Gali Region. They monitor human rights abuse and extend all possible support to the local population living under constant pressure threat in the conflict regions.

In most cases these organizations keep changing their names or close their offices because there is constant pressure on them from the separatist authorities.

17 INSTANCES OF HUMAN RIGHTS VIOLATION IN TSKHINVALI REGION

There are frequent instances of human rights violation of ethnic Georgians in Tskhinvali Region. The local de facto authorities do not react to these facts and the cases of robbery and other criminal activities are not investigated. The situation is further aggravated by the acts of killing and illegal detentions committed by the de facto law-enforcers.

DISCRIMINATION ON ETHNIC GROUNDS

As a result of the propaganda spread by the separatist regime, the population of the republic was divided into two by ethnic groups: Ossetians and Georgians. The Kokoiti authorities oppose all efforts taken towards the reconciliation of Ossetian and Georgian people and try to kindle discord.

A special group was created from within the representatives of the so called State Security Committee at the end of April 2006. The sole purpose of the group was to coerce Georgians visiting their relatives. A typical example of the Special Group Committee activities include, stabbing and wounding Gochashvili, a resident of the village of Upper Nikozi, beating the resident of the same village Galustashvili who was later admitted to the hospital and a failed attempt to hijack a Niva car from Mchedlishvili, although he was beaten up, his friend came to his rescue and saved him.

On June 12, 2006 Vania Gagloev and Mishik Tedeev, members of the so called division of the Ministry of Defense in Znauri Region, under the influence of alcohol assaulted two Georgians visiting their relatives in the village of Znauri because they spoke Georgian in the shop.

The so called representatives of the Ministry of Defense asked the "Militia" to put the Georgians in the pre-trial detention unit until further clarification of the matter. The de facto Minister Mikheil Mindzaev refused to heed, fearing that the Georgians being in critical condition may succumb to injuries and in the event their death in custody, the responsibility would lie squarely on the Ministry of Internal Affairs of Tskhinvali Government.

A decision was brought into effect by E. Kokoiti, from June 2006 which prohibited taking wood from Tskhinvali to other regions of Georgia. The execution of the decision was entrusted to the respective "services" as well as the armed units. As a direct result of the decision, the local Georgian population can not get enough supply of wood for winter.

As a result of the pressure by Ossetian side during 2006 few Georgian families left the village of Nedlati of Znauri Region. If the situation remains aggravated the rest of the population may leave the village as well.

Guram Bestaev a resident of Tskhinvali, Dagvirisi settlement (territory of the village of Tamarasheni) resides in the house abandoned by a Georgian. He is married to a Georgian from Eredvi. G. Bestaev is under constant pressure from Ossetians to leave the place with his wife. G. Bestaev is not a member of any armed group and has never been involved in an armed conflict, which he believes is the main reason for the threats. Tskhinvali "Militia" declares that it can not control armed groups.

Georgian population is forbidden to do any agricultural activity on the land close to the territories where Ossetians have dug trenches.

The Georgian population is always ignored in any distribution of humanitarian assistance, and at the same time, E. Kokoiti forbids the Georgian authorities to distribute humanitarian assistance.

By the decision of E. Kokoiti, from the beginning of 2006 sale of diary products from Georgian villages are prohibited in Tskhinvali.

From November 2006 Ossetian side introduced new "South Ossetian" passports for internal use. The passports were given to the local Ossetian population. Since the local Georgian population refused to accept these passports they do not have the right to participate in the so called elections and referendums including the one held on November 12, 2006.

Respect to Human Rights/Elimination of Facts of Illegal Detention/Persecution for Political Reasons/Torture, Inhumane and Other Types of Cruel Treatment.

The representatives of the so called authorities neglect the respect to human rights. The Public Defender is concerned about the occurrences of political and civil rights violations.

On November 10, 2006 Alan Parasteav, the former Minister of Internal Affairs of South Ossetia and the former Chairman of the Supreme Court was detained and tortured by the representatives of the State Security Committee. He was forced to testify that he had plotted to assassinate E. Kokoiti. The true reason behind his detention was his opposition to Kokoiti; A. Parasteav tried to prove to him that the chosen course of integrating with the Russian Federation was not the right political choice. He was also advising the so called "President" to hold talks with the representatives of the Georgian Government. For this reason there were serious confrontations between them a on a few occasions. Following the initial confrontation E. Kokoiti expelled him from the position of the de facto Minister of Internal Affairs.

In February 2005 A. Parastaev's son, Sergo Parastaev was detained in Tskhinvali on a false charge of car hijacking. S. Parastaev was detained on Kokoiti's instructions, which was related to his political confrontation with A. Parastaev. Kokoiti offered A. Parastaev to resign from the position of the Chairman of the Supreme Court in exchange of his son's freedom, which was rejected by A. Parastaev

A. Parastaev kept his position as the Chairman of the Supreme Court until July 2005 but was forced to resign as a result of blackmailing by Kokoiti and attempted murder of Sergo Parastaev in prison.

Giorgi Basiev and Oleg Bagaev, representatives of the Ministry of Internal Affairs of Northern Ossetia tried to detain Alan Chochiev in Vladikavkaz. A Chochiev declares that these persons came to his house and asked him to follow them for interrogation based on the document received from "South Ossetia" but the real reason was Chochiev's deportation to the "South Ossetia". A .Chochiev declares that this incident is related to the

different opinion that he has in connection with the referendum. He declared that no one would recognize the results of the referendum and that the authorities were purposefully misleading the population.

Repressive measures were taken against Dimiti members and friends following his decision to run for the so called "alternative" Presidential Elections:

- the so called "Government Agencies "created problems for Sanakoev's relatives (expelled them from work, applied psychological pressure etc). E. Kokoiti initiated a gathering of Sanakoev families where they condemned D. Sanakoev's activities and called him a traitor.
- As a result of the physical pressure D. Sanakoev's brother Tamerlan Sanakoev had to condemn his brother's actions.
- Members of the so called "Security Committee" went to the houses of the families who were loyal to the Georgian authorities. They visited the former Head of "Social Welfare Service" Elva Khetagurova and forbade her to have any contacts with the Georgian side. The Committee members took preventive measures to ensure that such people do not join D. Sanakoev.
- Those individuals who were mainly employed in law-enforcement agencies and were in close relations with D. Sanakoev were expelled from their jobs in the name of job cuts and restructuring.
- According to the information from the so called General Prosecutor Alexei Lipin, criminal proceedings were initiated against Uruzmag Karkusov, Vladimer Sanakoev and the"alternate" candidates for Presidency. These people were accused of creating extremist organizations, high treason and an attempt of coup.
- Relatives of D. Sanakoev living in Vladikavkaz are under constant pressure by the law-enforcers of the Northern Ossetia.
- Former Minister of Health of the"Alternative Government" Nina Khetagurova was detained at her residence by the law-enforcers of the "South Ossetia" and forced to declare that she was appointed to her position without her consent.

In November 2006 under Kokoiti's instructions, the houses belonging to the members of the Karkusovs alternative government was burnt in the village of Jvari.

On November 5-6, 2006, the Znauri Administration took the population of the region by force to Tskhinvali and issued citizen's passports to them. They were asked to fill out special forms requesting independence of Tskhinvali Region and its integration with the Russian Federation. Those who refused to accept the "passports" were threatened to be forced out of their homes. The people who threatened them are: Vazha Ikoev, member of the Public Army, Rostik Jagaev, Chairman of Dzagini Village Council and Oleg Piliev, Head of the Agricultural Department of Znauri Region.

On July 11, 2006 close to the village of Dzara armed Ossetians stopped and detained two OSCE military observers.

On September 5, 2006 masked Ossetians hijacked Georgian's truck, and robbed them of two electric saws and mobile phones. The Georgians were cutting wood. The robbers asked for 2 000 USD in exchange of their property.

On October 9, 2006 "Militia" stopped a bus in Tskhinvali and asked residents of the village of Avnevi Palmiro Zedgenidze, Mzia Kvinikadze and the bus driver Shavlego Kapanadze to get off the bus. After an hour S. Kapanadze and P. Zedgenidze were released but Mzia Kvinikadze was still held in captivity and released only after she paid a ransom of 500USD.

On September 27, 2006 at 9 a.m. unidentified masked people stopped Gori-Kekhvi shuttle bus in Tskhinvali and robbed the driver Tamaz Khetaguri.

On November 4, 2006 at Kokheti guard post a few armed persons stopped a truck loaded with wood. They beat the four Georgians, took the truck which was later returned to the owner without the wood.

On August 5, 2006 OSCE observers were detained near the village of Tbeti, they were monitoring the construction of illegal fortification.

On December 4, 2006 two members of the Ossetian battalion of the joint peacekeeping forces were detained. They were private Giorgi Deopaev and Sgt. Robinzon Guzitaev. Under the instruction of their commander Soslan Koziev they were escorting the truck with smuggled goods to the village of Tirdznisi.

On January 4, 2007 the law-enforcers of the self-declared republic detained three Georgians: Ramin Lekishvili, Lukhum Mildiani and Sandro Bukhuri who had gone to Tskhinvali to buy a truck. They were accused of bringing forged 100 000USD currencies to Tskhinvali.

SITUATION AT THE PRISONS AND DETENTION CENTERS

The information about the situation in prisons is not available to us. We do not know about the number of prisoners and their conditions in prisons. According to the information of the Public Defender there are about 7 ethnic Georgians in prison but we are unaware about the charges against them.

It must be noted that, it is extremely difficult to visit the prisoners in prisons and detention centers. A. Parastaev's lawyer was not allowed to visit the defendant in the prison.

DEMOCRATIC INSTITUTIONS/FREEDOM OF PRESS AND EXPRESSION

Under the totalitarian leadership of E. Kokoiti there is no democratic institution defending the public and its interests in Tskhinvali. The society is completely ignored from the political processes. Human rights institution of "President's" Representative is a mere formality.

E. Kokoiti exercises constant pressure on non-governmental sector and fully controls its activity. According to the information of the Public Defender there are representations of five active international non-governmental organizations there.

Due to difference of opinion E. Kokoiti declared the representatives of the non-governmental organizations Temur Tskhovrebov and Alan Jusoev as traitors.

In April 2006 the two winners of the amusement program of the independent TV "Alania" Luda Bestaeva and Albina Parastaeva were invited to Tbilisi by the TV Company "Alania". When returning to Tskhinvali Region the so called law-enforcers created serious problems to the girls. The de facto Government considered their action as an insult to the Ossetian people and declared the girls as traitors. It must be noted that Kokoiti authorities periodically block the transition of TV Company "Alania" which is normally broadcasted to Tskhinvali Region, especially when the news and analytical programs are being aired.

Irina Gagloeva, representative of "Information and Media Committee" in the Kokoiti Government makes her own decisions on the admission of journalists to Tskhinvali Region and asks for accreditation. These rules only refer to the Georgian and international media representatives.

On May 10, 2006 during Kokoiti's meeting with the pensioners and students, two ethnic Ossetian students, were expelled from the University for asking "incorrect" questions. The student at the meeting remarked

that instead of spending 15 000USD to bring Russian singer Abram Ruso it would be better to spend this money on pensioners and kindergartens. The students were later detained.

CHILDREN'S AND MINOR'S RIGHTS

On December 29, 2006 Sanakoev Administration held a holiday of festivity for the children in the village of Kurta. 200 children attended the festivity and received gifts. About 150 children from the villages of Akhalgori, Arnevi and Eredvi could not attend the festivity. Tskhinvali authorities barred them from participating and thus violated the agreement adopted on December 27 by the joint control commission. The children were freezing in buses at the guard post till 2:30 p.m. and later they were sent back home because of the refusal by the vice-premier Boris Chochiev. The Public Defender of Georgia attended this festivity. He condemned the fact of using the children as political weapon.

15 year old adults are regularly sent to Vladikavkaz for military training. There are frequent instances of minors joining the Public Army.

RIGHT TO LIFE

On July 9 at 7:15 a.m. Oleg Alborov, Chairman of the Security Council of the self-declared Republic died at his residence as a result of an explosion.

On July 14, 2006 at 9 a.m. 2 adults died as a result of an explosion near the house of Bala Bestauti.

On July 15, 2006 at the peacekeepers' guard post "Pauk" Russian peacekeeper private Kondratiev was seriously injured as a result of a mine explosion.

On August 7, 2006 three Georgian law-enforcers were wounded near the village of Avnevi.

On August 13, 2006 Russian peacekeeper was wounded as a result of a mine explosion near the village of Kekhvi.

On September 3, 2006 Ossetians from their controlled territory opened fire at a helicopter of the Georgian Ministry of Defense accompanying the Minister and several other individuals.

On September 8, 2006 armed Ossetians opened fire at the Georgian law-enforcers. One Georgian policeman Vakhtang Komakhidze and three Ossetians died, two Georgian policeman were wounded.

On September 24, 2006 Tamaz Khaduri, a resident of the village of Kveshi was shot. The criminals were Ossetians from the village of Artsevi.

On September 25, 2006 Khvicha Nikorashvili got injured as a result of a mine explosion near the village of Prisi.

On October 1, 2006 Beso Elizbarashvili, a resident of the village of Kveshi was shot in the village of Artsevi.

On October 9, 2006 Zurab Bliadze, resident of the village of Kekhvi got wounded and lost an arm as a result of a mine explosion near his village while collecting wood..

On October 9, 2006 at 11 p.m. armed attack was launched at the police post in the village of Kekhvi. The criminals were firing from grenade launchers and machine guns. As a result Gocha Gogidze and Shadiman Kazarian were wounded.

On October 11, 2006 at 4 p.m. criminals opened fire towards the village of Achabeti., Didi Liakhvi Region, the target was Achabeti secondary school and the Georgian peacekeepers' deployed. There were no casualties reported.

On October 11, 2006 at around 9 p.m. Ossetian illegal armed unit attacked the village of Achabeti. 14 years old Vano Otiashvili was wounded.

On October 26, 2006 at 3 p.m. father and son Shadiman and Bichiko Bliadze exploded on the mine. Shadiman Bliadze later died.

On November 5, 2006 a group of seven armed Militiamen of the village of Dmenisi attacked the family of Gasiev in the village of Vanati late in the evening. The group was headed by Nodar Bibilov (Chief of Dmenisi police). They physically assaulted the father and the son Gasievs and damaged their car.

On November 9, 2006 near the village of Minsateri 47 year old Avtandil Zoziashvili exploded on the mine.

On November 23, 2006 Deliza Shortava got injured and lost her arm as a result of an explosion in Tskhinvali.

On December 18, 2006 Ossetian armed persons opened fire at the police office of the village of Avnevi, which is located near the Russian peacekeepers' post.

On January 15, 2007 the peacekeepers' car exploded on a mine. As a result Lt. Pavle Chastikov, Head of Tsveriakho guard post and Private Sergei Seriakov suffered injuries.

18 SOCIO-ECONOMIC CONDITIONS OF THE INTERNALLY DISPLACED

Based on the data collected for the second half of 2006, the socio-economic conditions of the internally displaced have not improved. On the contrary, according to the information available to the Public Defender the conditions have deteriorated. The problems raised at the Public Defender's report on the first half of 2006 are still not resolved and none of the recommendations have been taken into consideration.

By the end of 2006, the project of "State Strategy on the Resolution of the Problem of Internally Displaced Persons in Georgia" was drafted according to the Decision #80 of February 23, 2006 and later approved on February 2, 2007 by the Government through Resolution #47. Unfortunately after a year's work on the strategy, no adequate action plans and programs were presented. But we welcome the strategic views of the problem resolution in this sphere.

It must be noted that the absence of strategy and inefficiency of adequate legislation does not take the responsibility away from the government over its obligations in accordance with the national as well as international legislation.

The Georgian legislation regulates the situation with the rights of the internally displaced (IDPs) by two legal acts. In particular:

a) Legal acts and the scope of their activity refer solely to the internally displaced. These acts regulate legal and social issues based on the specific circumstances of the internally displaced. The Georgian Law about the Internally Displaced and more than 200 by-law acts, normative as well as individual adopted since 1992 are meant under the acts.
b) Legal acts and the scope of their activities that are not limited by a group of people or displaced persons. These acts are applicable for the whole population of Georgia as well as internally displaced.

The principal legal act for the internally displaced was adopted in 1996, it defines the legal status of the internally displaced in Georgia, establishes their legal, economic and social guarantees, provides for the defense of their rights and lawful interests. Amendments and addendums were made to this law in 06.04.2005 and 09.06.206. Despite the amendments the norms in the given law are in most cases vague and not concrete, which create problems for the efficient use of the legal norms of the law.

The given law does not include important principles such as ensuring equity between the local popu-

lation and the internally displaced, and prevention of discrimination, though these principles are contained within the Constitution of Georgia.

The UN Guidance Principles on Internally Displaced establishes a general principle about equality of internally displaced with the rest of the people in the country.

The UN Guidance Principles about the internally displaced is a document containing recommendations for the elaboration of internal legislation in countries where problems of internally displaced exist. The absence of this principle and prevention of discrimination in the given law creates obstacles for the human rights defense of the internally displaced. The State's attempt to include the internally displaced in the same unified social system with the rest of the population did not bring in the anticipated results, because the specific circumstances of the internally displaced were not taken into consideration. For example IDPs cannot avail the benefit of "increased tariff reimbursement voucher" issued by the Ministry of Labor, Health and Social Affairs and signed by the Ministers of Labor, Health and Social Affairs and Energy, because IDP collective centers do not have individual meters for electricity. Many IDPs refuse to receive the assistance through the State Program for Socially Vulnerable Population (assistance program for the people below the poverty line) because they are not provided with complete information and explanation. They fear that if they can not get the IDP allowance they may lose the IDP status.

These and other facts indicate that despite the absence of discrimination between the IDPs and the local population, which is guaranteed by the Constitution, the IDPs cannot enjoy all the benefits and assistance like the rest of the population in the country.

Apart from the absence of any principle pertaining to the prevention of discrimination between the IDPs and the local population, The Law of the Internally Displaced even falls short in providing principle for the prevention of discrimination within the IDPs itself.

In this context the UN 4th guidance principle related to the internally displaced is especially important. According to it: "these principles should be used without any discrimination despite race, color of the skin, language, religion or belief, political or other opinions, ethnic or social origin, legal or social status, age, ability, property, birth and other indicators".

This principle deals with the prevention of discrimination not only between the IDPs and the rest of the population but among the IDPs as well.

The Law of the Internally Displaced does not prohibit discrimination thorough granting special rights and benefits to certain IDPs. Absence of such norm is legally inappropriate. In practice there are numerous cases of discrimination among IDPs. For example, unequal distribution of humanitarian assistance by the state agencies, violation of the principal of impartiality when granting benefits in the educational and health sector, unequal distribution of benefits (communal services, benefits on the use of electricity, water etc) among the IDPs of collective centers and private sector. The issuance of annual metro tickets in Tbilisi in 2004 was very discriminatory in natureas tickets were not issued to the individuals above 80 years old.

As for the legislation related to privatization, apart from vague and ambiguous it contains a number of flaws, According to the legislation, in the case of privatization of the collective accommodation center the rights of the IDPs may not be fully protected.

According to the article 4 of the State Resolution #157 of 2005 "On the Regulatory Measures of IDP Registration, Social Issues, Allowances, Humanitarian and Other Kinds of Assistance" the Ministry of Economic Development of Georgia was given the task to "ensure that during the sale of the IDP collective accommoda-

tion centers the article 5(4) of the Georgian Law on Internally Displaced about the guarantees granted to the IDPs by the State be taken into consideration and IDPs be moved out of the building according to the indicated norms and rules".

According to the Law about Internally Displaced, Article 5(4): "housing disputes shall be settled through the proper judicial procedure, therefore until the restoration of the jurisdiction on the respective territory of Georgia the IDPs shall not be expelled from their places of temporary residence unless:

a) Written agreement has been reached with the IDPs;
b) Alternate residence space is allocated with improved living conditions.
c) Natural disaster or other accidents, which entails specific compensation and is regulated by the general rules;
d) The space is occupied illegally in violation of the law.

The mentioned norm on deterioration in living conditions is very general and broad based which can be interpreted in many different ways. For example, it does not explain what the worsening or improving of living conditions actually means – are we talking about the size of the living space, its geographical location or are there other factors. The government may offer the IDP temporary living space in Tsalka or any other region in exchange to the space in the collective center in Tbilisi. This may be considered as compliance to the above norm (respectively the defense of the rights of IDPs). At the same time the context of this paragraph of the given decree practically confirms the possibility of privatization of the collective accommodation centers. According to the concluding part of the paragraph 4 the above rule does not apply to the facilities occupied by the IDPs illegally. If we are to suppose that under illegal occupation of space the legislator meant IDPs occupying the living space on their own without the government's consent or involvement, then most of the IDP collective centers today are occupied illegally. In most cases the reason for this is the Government and in particular the Ministry of Refugees and Accommodation did not have a clear policy in the area of IDP accommodation. This means that during the privatization of such collective accommodation centers, the rights of the IDPs are not protected.

The process of accommodation is developing chaotically and the particular government structures are in the role of observers despite the fact that there are normative acts of different power and hierarchy, which obligate the self-governance bodies and different state structures to submit unoccupied facilities to the Ministry.

It must be noted that the majority of the current normative acts correspond neither to the international standards nor to the real requirements of IDPs, and what makes matters worse, even those in place are frequently not adhered to. Till today there is a lack of coordination between the state agencies responsible for IDP problems. In one particular case the Public Defender wanted to get information about the IDP collective accommodation centers which were to be privatized. K. Damenia, Deputy Minister of Economic Development advised the Public Defender in his reply to apply to the Ministry of Refugees and Accommodation with this question. I. Giorgadze, the Deputy Minister of Refugees and Accommodation in his place advised the Public Defender to turn to the Ministry of Economic Development with this question.

The Ministry of Refugees and Accommodation paid 18108976 GEL to the IDPs in the second half of 2006 as IDP monthly allowance. The Ministry also paid 7129685,59 GEL for electricity and water supply and sanitation service for the IDPs in collective accommodation centers. There was an additional payment of 597 919, 80GEL made for other expenses of IDPs in collective accommodation centers. 166 300GEL was paid to the IDPs as one time annual allowance. Rehabilitation work was carried out at 60 collective accommodation centers and 5 collective accommodations center got gas supply. 79 Collective accommodation centers are equipped with electric meters. A pilot program was launched at one of the collective accommodation centers for the installation of individual electric meters for each IDP family and their registration. The Ministry ac-

commodated 12 IDP families in the regions. In the framework of the pilot program the IDPs went through the registration process in Rustavi.

246 458 IDPs are registered in the data base of the Ministry, among which 102 683 IDPs live in the collective accommodation centers. The Ministry plans to conduct complete and full scale registration of IDPs in spring of 2007.

The Ministry of Refugees and Accommodation transfers' money from the above mentioned amounts to sanitation service and to the water supply company "Tskalkanali" for maintaining constant water supply to the collective accommodation centers and to clean the facilities. By the information of the Ministry of Refugees and Accommodation money is transferred to these services without any delay. The problem with water supply at IDP collective accommodation centers is more or less resolved and although in certain districts of Tbilisi the sanitation service carries out its duties there are collective accommodation centers of other districts where garbage have not been removed for over 2 years. The situation in this respect is critical in the regions. Although the Government does allocate funds for communal services, the Ministry of Refugees and accommodation does not have agreements in place with the sanitation services providers in the regions. In other cases the agreements are in place, but the sanitation service providers do not carry out its obligation for certain subjective or objective reasons.

As for the water supply and cleaning in the regions, more than 50% of the collective accommodation centers have not had water supply for years. One of the reasons for that is the old pipeline system or absence of pipelines altogether. The IDPs and in some cases the international organization dug wells. In certain regions the water from the wells were examined and found to be hazardous to health. The sanitation service provider in most cases has not carried out any cleaning work. This further deteriorates the sanitation situation in the buildings inadequate for living, making it a breeding ground and the spread of infectious diseases. (People at collective accommodation centers of Zugdidi suffer from frequent infections).

With the inefficiency of the system to maintain proper sanitation comes a spontaneous question as to, whom and what is the purpose of the enormous sum money spent on?

The same can be said about the payment of electricity at the collective accommodation centers. An amount 12.4GEL is paid for electricity per IDP in Tbilisi collective centers and 8GEL per IDP in the collective centers of the regions. Many collective centers in the regions are equipped with electricity meters. The same is true about Tbilisi collective accommodation centers but in this case it is not only the collective accommodation centers that are connected to these meters but also facilities of other businesses such as bakeries, policlinics, laundries, laboratories etc.. This increases the cost which eats into the fund allocated for the IDPs. As a result there are frequent power failures due to non payment of electricity charges. The IDPs may try to monitor the payment process but technically it is not possible.

The payment of fixed amount for the use of electricity in the collective accommodation centers of the regions is paid against the ruling of the Constitutional Court Decision of 1/3/136 of December 30, 2002. According to the Court's Decision and the Resolution #15 of December 31, 2001 by the Georgian National Electricity Regulatory Commission regarding the rules of paying fixed amount for the electricity was recognized as anti-constitutional and the "the rules of paying fixed amount for the used electricity" was annulled.

There is no designated agency responsible to resolve this problem. The attempt of the Public Defender to clarify this matter proved futile, as different agencies passed on the responsibility to one another.

The right to free movement and free choice of living place stipulated in the Georgian Legislation is equally applicable to all the citizens of Georgia including the IDPs. But according to the current legislation the IDPs

enjoy special legal status and the common rules of residence registration system do not apply to the IDPs. There is a different registration system specially created for IDPs which is clearly not defined in the law. In certain cases this causes collision between the laws and is an impeding factor for the protection of human rights and freedoms. In one particular example, a citizen of Georgia deported from Russian Federation was granted IDP status only after the involvement of the Public Defender. The Ministry was refusing to grant IDP status for the simple reason that the person did not have a place of temporary accommodation. It must be noted that granting the IDP status should not be preceded by having the temporary accommodation place. The person can have the right to temporary accommodation place after receiving the IDP status.

The rules of annual registration of IDPs are very interesting from this point of view. These rules are defined by the resolution of the Ministry of Refugees and Accommodation. An IDP should personally visit the commission to obtain the certificate. The resolution does not mention anything about the IDPs living in a foreign country. These IDPs cannot obviously go through the registration process and according to the law their status is terminated.

It is possible though, to organize the annual registration and issue certificates for the IDPs who are temporarily in a foreign country for work or education purposes through the Georgian diplomatic missions and consulates. According to The Georgian Law about Georgian Citizenship Article 44 (2), "Georgian Diplomatic Mission or Consulate issues identification cards, registration certificates and passports for the Georgian citizens residing temporarily or permanently in the foreign country".

By proper implementation of this mechanism IDPs living abroad can retain their status. Thus avoid the situation of losing the status due to his/her unavailability during the annual registration period which incidentally also causes an artificial decrease of real number of IDPs.

Under the current scenario, The IDP who wants to keep the status must be within the country during the registration process, if he/she is already in the foreign country they must return for the registration process. The Article 22 of the Georgian Constitution stipulates:" everyone legally living in Georgia has the right to free movement within its territory and free choice of residence place; everyone living legally in Georgia can freely leave the country". Availing this fundamental freedom should not undermine or bring about any unwarranted changes in the legal status of a person

On one hand the law is incomplete and on the other hand is not adequately implemented. There was no mandatory registration held for the IDPs in 2006. Therefore the information available to the Ministry of Refugees and Accommodation is not up-to-date. It is not clear for the Public Defender why the Ministry chose not to register the IDPs who were evicted from the collective accommodation centers in Adjara. The Public Defender learned from the letter of the Ministry of Labor, Health and Social Affairs of Adjara Autonomous Republic that a number of IDP families were unhappy with the privatization process and the local authorities allocated them accommodation space in the facilities that belonged to the government. In a particular sanatoria "Kobuleti"- 72 families and former center for treating drug abusers- 42 families. Despite this fact the IDPs are concerned that the Ministry of Refugees and Accommodation have not yet registered them at their current addresses.

The Ministry of Refugees and Accommodation neglects not only the specific legal and normative acts but also other laws. In particular, ignoring the requirements of the General Administrative Code of Georgia and the Organic Law about the Public Defender, in the form of violation of terms and procedures of obtaining the information by the request of IDPs and dealing with their cases, ignoring the recommendations of the Public Defender and unjustified refusal.

There are frequent instances of IDPs complaining about their human rights being violated by the Ministry of Refugees and Accommodation. The Ministry of Refugees and Accommodation is responsible to protect the rights of the IDPs.

In many cases the Ministry does not carry out the responsibilities obligated to it by the law.

In a written reply to the Public Defender by the people responsible in the Ministry, It was stated that the Ministry is not responsible for protecting all the rights of the IDPs and suggested the IDPs to go through the judicial process to address their concerns.

We are seriously concerned about the attitude for the Ministry of Refugees and Accommodation towards the problems of IDPs in Gali. The IDPs who returned to Gali spontaneously and those who go there seasonally have lived in difficult situation and these circumstances are not taken into consideration. The registration book clearly shows the manner in which the Ministry deals with the problems of IDPs in Gali.

The Case of Registration of IDPs in Gali

On July 27, 2006 65 year old Levter Jobava, an invalid of second category IDP from Abkhazia and currently living at the University Hotel "Amirani", room 1010, Tbilisi sent an application to the Public Defender. According to him his mother Sasha Chekheria-Jobava born 14.03.1903 has a family with multiple children and her husband died in the Second World War. The applicant has a sister Shapiko Jobava, invalid born on 05.01.1937. The applicant claimed that his family members were registered as IDPs in Zugdidi and their permanent place of residence was the village of first Gali in Gali Region.

During the IDP registration in 2004 they could not go to Zugdidi for health reasons and because of that L. Jobava applied personally to the representatives of the Ministry, filled out the forms and left them with the representatives of the Ministry. He did not receive any reply from them. As a result S. Chekheria-Jobava and S. Jobava were not receiving IDP allowance and pension since they did posses the IDP certificate.

The Public Defender addressed the Ministry of Refugees and Accommodation with a recommendation to study the circumstances of the above case and inform him about the measures taken within the time limits established by the law.

The Deputy Minister of Refugees and Accommodation replied back on October 19, 2006 stating that according to the rules of the Ministry, a person was supposed to come personally to the recommendation commission to get the status. But they took into consideration the age and health conditions of Shapiko and Sasha Jobava and applied to the Adjara and Samegrelo-upper Svaneti department to allocate a recommendation commission to study the case

The Public Defender conveyed this information to the applicant and the case was closed. But on February 13, 2007 L. Jobava applied to the Public Defender again and spoke how the senior officials of the Ministry of Refugees and Accommodation disregarded his requests. After 4 months of applying to the Ministry the problems is yet to be resolved.

The Case of the IDPs Living in "Bambis Narti"

On August 18, 2006 the Public Defender got a collective letter from the IDPs living in "Bambis Narti" facility at 3 Trikotazhi St, Tbilisi. They had problems with the owner of the facility. In particular, on August 12 early in the morning the roof of the facility caught fire. The fire brigade managed to extinguish the fire. When the facility was examined there was an assumption that the fire was deliberately set to the facility by the representatives of its administration.

With the purpose of studying the case, the Public Defender applied to Gia Kodalashvili, Head of Gldani-Nadzaladevi District Municipal Service of Special Situations. He confirmed the information about the fire.

According to him the information was forwarded to the Internal Affairs Department of Gldani-Nadzaladevi District.

The Public Defender applied to Levan Chabukiani, Head of the Internal Affairs Department of Gldani-Nadzaladevi District to obtain information about the measures taken in connection with the incident.

D. Nikolaishvili, Investigator of the 9th Division of the Internal Affairs Department of Gldani-Nadzaladevi District explained in his letter that on August 12, 2006 a criminal proceeding was initiated at the 9th Division of the Department of Internal Affairs of Gldani-Nadzaladevi District within the article 187, (2) of the Georgian Criminal Code. Technical expertise was scheduled and operational-investigative measures were undertaken to investigate the case and find and the guilty.

Nazi Margania's Case

On July 27, 2006 Nazi Margania, an IDP from Abkhazia applied to the Public Defender with a letter. She lived in the Children's Clinical Hospital in Tbilisi. The applicant explained that her child N. Margiani was infected with hepatitis and needed expensive medications, which she could not afford being a widow and unemployed.

The Public Defender applied to Dalila Khorava, the Minister of Labor, Health and Social Affairs of Abkhazian Autonomous Republic and Mr. Maukla Kartsava, Head of Health and Social Affairs and Municipal Service at Tbilisi Mayor's Office.

Mr. Maukla Kartsava, Head of Health and Social Affairs and Municipal Service at Tbilisi Mayor's Office advised in his letter that the information about the allowances and assistance for the IDPs can be found at the official web page of the municipal service. We learned from the web-page that the assistance programs of the current year are closed but presumably the budget of 2007 will finance again the programs of the health, social Affairs and municipal service of Tbilisi for the benefit of the IDPs living in Tbilisi.

Dalila Khorava the Minister of Labor, Health and Social Affairs of Abkhazian Autonomous Republic wrote in her letter that the senior specialist of the Ministry visited N. Margiani at her home. We also found out from her letter that the necessary medications are not affordable because the Georgian Law on Georgia's State Budget for 2006 does not provide assistance on individual basis to its citizens. Although there are other programs, in particular: treatment of severe hepatitis at the hospital financed by the state, however treatment of chronic hepatitis in the hospital on certain nozology within components is co-financed with 90 GEL by the patient and in case of the second hospitalization co- financing is 20% on the patient's part.

Case of IDPs Living in Collective Accommodation in the Center of Kutaisi

On November 10, 2006 internally displaced Vepkhia Mikautadze, Marina Papava, Medea Ratiani and Zinaida Rigvava applied to the Public Defender with a collective letter. They explained in their letter that they had been living at various temporary accommodation places in Kutaisi at different addresses since 1993. The IDPs applied to the main Regional Department of Refugees and Accommodation, Kutaisi Office of Self-Governance for Refugees and Accommodation with regard to this issue but did not receive any reply. Because of the severe economic condition the IDPs decided to occupy the former facility of Military Prosecutor's Office at 20 Agmashenebeli St. in Kutaisi which is in a dilapidated condition. According to them they informed and requested permission from the local self-governance services: Acting President's Representative in Imereti, Human Rights Office, local Self-Governance Department of Refugees and Accommodation in Kutaisi, Representation of Abkhazian Government in Imereti, Kutaisi Independent MP in order to get

registration at the given address as IDPs in the collective accommodation center. Despite their pleas the local self-governance agencies did not take their request into consideration and sold the facility.

From the explanations provided by the applicants we found out that the citizens: Vepkhvia Mikautadze, Tamar Jalaghonia, Marina Papava, Medea Ratiani and Zinaida Rigvava applied to the Kutaisi City Court with a petition to get registration as IDPs in collective accommodation centers.

On October 16, 2006 the complaint of Vepkhia Mikautadze, Marina Papava, Medea Ratiani and Zinaida Bestaeva was satisfactorily addressed by the Court Decision. As a result Kutaisi Authorities, Ministry of Refugees and Accommodation of Georgia, Ministry of Economic Development of Georgia, Kutaisi Property Registration and Privatization Department were obligated to allocate living space for the above citizens. Despite this fact, the court decision was not implemented.

The representatives of the Regional Department of Public Defender's Office of Western Georgia applied to Kutaisi City Court and requested a copy of the execution writ in connection with the above court decision.

As a result the Public Defender's Office received a copy of the execution writ dated December 21, 2006 related to Kutaisi Court decision adopted and signed by Judge Ana Gelekva.

On January 16, 2007 the applicants were informed that they could apply to the above Court to receive a copy of the execution writ, following which they could address the Imereti Enforcement Bureau with an application attached to the execution writ for the implementation of the court decision.

Case of the Lezhavas

On November 21, 2006 Citizen Natela Makharoblidze applied to the Public Defender of Georgia. She mentioned in her letter that she was an IDP from Abkhazia and lived in Tbilisi at 5 Iumashev St. Her daughter Lali Lezhava with three children (Nato, Dato and Dimitri Lezhavas) lived in the same building. Tamara Manjavidze occupied their living space in exchange of 200 GEL. L. Lezhava had severed relations with her husband and was unaware about his whereabouts. She and her three little children lived in a booth under difficult living conditions. Because of the difficult socio-economic situation the children did not attend school; they did not have clothes, books and could not maintain minimal standards of private hygiene.

In her telephone conversation with the representative of the Public Defender T. Manjavidze mentioned that the building at 5 Iumashev St. was privatized and it belonged to her. As for the amount paid, it was not in exchange of real estate but as an act of goodwill and kindness with an intention to provide help.

For the purpose of clarifying the matter the Public Defender of Georgia applied with a letter to Irakli Gorgadze, the Deputy Minister of Refugees and Accommodation on November 30, 2006 and requested information confirming N. Makharoblidze's and L. Lezhava's registration at the collective center at 5 Iumashev St. (Georgian Cooperative Building).

In a separate letter on December 1, 2006 the Public Defender of Georgia addressed to Ilia Gotsiridze, the Chief of Privatization Policy Department of the Ministry of Economic Development and requested information about the circumstances in which the building at 5 Iumashev St. was privatized and whether the interests of IDPs were taken in to consideration in the privatization process.

Since the protection of the children's human rights could have been violated in the given circumstances the Public Defender of Georgia applied to Tamar Golubian, Head of the Children's Care Department for Special

Needs of the Ministry of Education and Science on December 5, 2006. The copy of N. Makharoblidze's letter was sent to this Office for further actions with a recommendation to assist the children in the circumstances of deinstitutionalization process through children's public and educational inclusion.

On December 5, 2006 the Public Defender applied to Giorgi Korkashvili, Isani-Samgori District Gamgebeli and asked to take respective measures within his competence to implement the children's right to education and resolve their social problems.

According to the reply of Giorgi Korkashvili, Isani-Samgori District Gamgebeli the District Administration could not allocate living space for L. Lezhava family. The District Administration did not consider other aspects of the case.

According to Berika Shukakidze, Acting Head of the National and Regional Programs' Department of the Ministry of Education and Science, Tbilisi Social Service was tasked to study the case of L. Lezhava's family. The letter from Berika Shukakidze has attachments of letters from social workers Ana Bakashvili and Tea Tkemaladze. We learned from this document that Nato Lezhava currently lives with her grandmother Natela Makharoblidze. She does not go to school like her brothers though the grandmother plans to take her to school starting from the second semester. After studying the case, the social workers decided to continue their work with the family of Lezhava. In particular, recommend the inclusion of Nato Lezhava in the subprogram "Children's Deinstitutionalization and Prevention of Children's Abandonment" of the Ministry of Education and Science. As for Dato and Dimitri Lezhavas, the recommendation is to remove them from the existing surrounding environment as fast as possible and offer them help within the competence of the Ministry.

On January 8, 2007 the Public Defender of Georgia applied with a reminding letter to Irakli Gorgadze, Deputy Minister of Refugees and Accommodation. From the reply received on 29.01.07 we found out that N. Makharoblidze and L. Lezhava are registered as IDPs in the data base of the Ministry of Refugees and Accommodation at 5 Iumashev St. in Samgori District.

On February 27, 2007 the Public Defender applied with a reminding letter to Kakha Damenia, the Deputy Minister of Economic Development. From the reply received on 01.03.07 we found out that the information about the privatization of the facility at 5 Iumashev St. is not in the archive of the Ministry.

The case is currently under the investigation.

The Case of IDP Traders in Delisi Subway

On December 12, 2006 Georgian citizens, IDPs from Abkhazia applied to the Public Defender with a collective letter.

The applicants explained in their letter that during the period of their displacement they lived in Tbilisi at collective accommodation centers. Due to dire economic conditions and with the purpose of earning money to support their families some of the IDPs started looking for jobs. In 1996 they started trading outside metro station "Delisi". The same year based on the verbal agreement with the city authorities spaces were allocated for them in the underground of metro station "Delisi". They continue their trading activities till date.

On December 7 the IDPs received verbal warning from the Administration of "Tbilisi Metropolitan Ltd" to empty the territory within 3 days or they would be forced to vacate the place. The applicants explained that by doing so their families would be left without any income and that they needed stable jobs. Many of them had credits from banks which would further aggravate their financial conditions.

The Public Defender accepted the application for action on December 18. The same day one of the applicant Laura Zhvania was asked to write a letter of explanation. From her letter we found out that there were 74 IDPs trading within the "Delisi" metro station.

On December 20, 2006 the Public Defender applied with a recommendation to Irakli Gorgadze, the Deputy Minister of Refugees and Accommodation. Protection of IDPs at the places of temporary accommodation is the responsibility of the Ministry of Refugees and Accommodation. The Ministry is responsible for the implementation of effective measures to resolve their problems. According to the Georgian Law on the Internally Displaced Article 5, (2) sub-paragraph "a" the Ministry is responsible for providing temporary employment to every internally displaced individual according to his/her qualification and profession."

According to the Article 8 of the same Law "the Ministry is responsible to resolve the issues of their employment and other social issues" together with the respective offices of executive bodies. Based on the circumstances the IDPs were at risk to be left unemployed and for this reason the Public Defender applied to Irakli Gorgadze, the Deputy Minister of Refugees and Accommodation to consider the issue of employment of the above applicants. The reply was received on 29.01.07. The Ministry forwarded the case materials to Mamuka Akhvlediani, Vice-Mayor of Tbilisi with the purpose of allocating alternative place of trading for the IDPs. In connection with this the Public Defender requested information from the Vice-Mayor's Office about the decisions adopted in this case and the implemented measures. The Public Defender's office has not received a reply yet from the Vice-Mayor's Office.

On December 25, 2006 the Public Defender applied to Lasha Makatsaria, Head of Municipal Supervision Service. His office was requested to resolve the issue of temporary employment of the IDPs within its competence. Later on February 6, 2007 the Municipal Supervision Service forwarded the Public Defender's letter in accordance to the subordination rule to Social and Cultural Municipal Services Office of Tbilisi.

On December 29, 2006 a warning (12/1131) notice by the General Director of "Tbilisi Metropoliten Ltd" was put up in the underground subway of Delisi metro station. By this document the IDPs were supposed to vacate the territory occupied by them by January 20, 2007. The IDPs were also told that after the expiration of the deadline the administration of "Tbilisi Metropoliten Ltd" would not be responsible for the possessions of the IDPs.

On January 12, 2007 the Public Defender applied to Tbilisi Mayor Gigi Ugulava. According to the resolution #2-6 adopted by the City Council on January 30, 2004 about restriction measures of outdoor trading the Mayor of Tbilisi was obligated to allocate alternative trading space for outdoor traders in the shortest period of time. The Public Defender stressed the point of timely resolution of the issue to avoid forceful eviction of IDPs from the territory of "Tbilisi Metropoliten Ltd.". The Public Defender addressed the Mayor of Tbilisi again on February 16, 2007 but has not received any reply yet.

On January 12, 2007 The Public Defender addressed Levan Koplatadze, Director General of "Tbilisi Metropoliten Ltd." with a request to postpone the measures of evicting the IDP traders from the territory until the competitive authorities resolved the issue of their employment.

On February 26, 2007 the Public Defender addressed Berdia Gvelebiani, the Chairman of Economic Reforms and Municipal Thrift Commission and asked for the normative acts, which regulate the activities of Tbilisi Metropolitan Ltd. and its administration. He also requested information about the competence of the latter, rules of election, accountability and a copy of the respective regulations.

On February 27, 2007 at 2 a.m. the representatives of the Municipal Supervision Service and patrol police forced the IDPs out of "Delisi" underground and in the process damaged their property (another application of the IDPs).

The resolution #2-6 adopted by Tbilisi City Council on January 30, 2004 about "Restriction Measures of Outdoor Trading in Tbilisi" was annulled by the Resolution #4-27 on December 29, 2007 even though it was in force for three years.

On February 26, 2007 the Public Defender addressed Tbilisi Vice-Mayor Mamuka Akhvlediani and requested information about the implemented measures for executing the resolution of the city authorities, the allocated alternative territory and detailed information about other related activities. The Public Defender addressed Zaza Begashvili, the Chairman of the City Council with the similar letter since article 12 (1) of the Law on the Capital of Georgia-Tbilisi stipulates that it is within the competence of the City Council to keep "control over the activities of the officials of Tbilisi Mayor's Office, Municipal Authorities and evaluate the Mayor's reports"

The Public Defender has not received replies from the above agencies.

The Case of IDPs residing in Overcrowded Settlements in Lilo

On September 19, 2006 the Public Defender received a collective letter from the IDPs residing in overcrowded settlement in Lilo.

According to the letter, IDPs residing at 21 Iumashev St. have had no electricity supply since 2002 due to the poor management of electricity payment. The applicants indicated that they had addressed the President of Georgia and the Ministry of Refugees and Accommodation but they did not receive any assistance, even though the premises is occupied by pensioners, war veterans, family with many children and 100 year old elderly. According to the applicants despite the fact that the Ministry of Refugees and Accommodation transferred 16000 GEL into the account of JSC "Telasi", the representative of JSC "Telasi" declared the given IDP collective residential facility as a "dead zone".

The Public Defender addressed with recommendations to Irakli Gorgadze, the First Deputy Minister of Refugees and Accommodation, Iuri Pimonov, Director General of JSC "Telasi" and David Mikautadze, Independent Defender of Customers' Interests at the Georgian National Energy Regulatory Commission.

David Mikautadze, Independent Defender of Customers' Interests at the Georgian National Energy Regulatory Commission confirmed in his written reply that the cost of the consumed electricity paid by the State on its part and additional payment made by the refugees do not cover even half of the accrued arrears. The Calculation is based on the data of one electricity meter. By the initiative of the Public Defender's Office several hearings were held together with the representatives of JSC "Telasi" and the IDPs. An agreement was reached on certain issues, in particular, equipping the collective accommodation facility with individual electricity meter to enable the Ministry of Refuges and Accommodation pay for the electricity consumed by the IDPs.

On November 27, 2006 we received a letter from D. Kartvelishvili, Director General of JSC "Telasi" "Energogasagebi" that the representatives of JSC "Telasi" carried out research work at residential facility at 21 Iumashev St. which showed that supply of electricity to the facility is technically impossible because JSC "Telasi" electricity lines do not pass at the given address.

On December 13, 2006 we received a letter from Irakli Gorgadze, the First Deputy Minister of Refugees and Accommodation stating that supply of electricity to the mentioned facility was problematic due to its territorial isolation. The closest facility was located in 2 km. away from the IDP residential premises. The Ministry of Refugees and Accommodation addressed the closest functioning facility and in particular Giorgi Karbelashvili, Chairman of the Supervisory Board of "Georgian Air-Navigation Ltd." with a request to connect electricity line of the IDP residential premises to the power system of "Georgian Air-Navigation Ltd."

On September 22, 2006 G. Edisherashvili the Director of "Georgian Air-navigation Ltd." sent a letter to the First Deputy Minister of Refugees and Accommodation Irakli Gorgadze informing that "Georgian Air-navigation Ltd." agreed to connect 0.4 k/w three phase electricity line to the 14th transformer sub-station on their account. It was necessary to create the project and obtain permission from the organizations whose territories would be involved in the laying of the electricity cable. Electricity should be supplied from the 14th transformer sub-station to the administrative building of sanatoria "Duzani" by the underground transmission cable (4X35 SQ/MM.). Besides that 0.4 k/w. distribution buckler and individual electricity meters should be installed at the IDP residential facility.

Based on the information provided by the "Georgian Air-Navigation Ltd." it was not clear to us what the concrete plan of action of the Ministry of Refugees and Accommodation would be in order to supply the IDP residential facility at 21 Iumashev St. with electricity.

As stipulated in the Georgian Law on IDPs the exercise of IDPs rights at their temporary residence is guaranteed by the Ministry of Refugees and Accommodation along with other Executive Authorities and relevant Self-Governance Bodies" (Article 5 (2)); According to the article 5 (11) and Para.2, subparagraph "f" of the same Law the above authorities assists the IDPs to resolve their social and domestic problems.

Based on the above, the Public Defender applied again to the Ministry of Refugees and Accommodation inquiring about the Ministries concrete plan of actions for the supply of electricity to the IDP residential facility at 21 Iumashev St. The Public Defender also sought for information if the Ministry included the funds in the budget of 2007 for the resolution of the above problem.

The case is in the process.

Problem of Electricity Supply to the IDPs Residing in the Premises of #4 Clinical Hospital

The Public Defender received a collective letter from the IDPs residing in the premises of #4 Clinical Hospital at 4 Gudamakari St. The IDPs informed that on November 28, 2006 power supply was disconnected to their facility without any prior notice. Following which JSC "Telasi" requested payment of 10,000GEL for the resumption of power supply.

According to the statement of the IDPs they have been dealing with this problem for two years. Electricity supplied to the IDPs was being plundered by the people living in the surrounding areas, including bakeries, shops, pharmacies and other legal or private persons. In connection with this violation the IDPs applied to the Energy Supervision and Fuel Quality Department, the "Telasi" District Office, and the Didube-Chugureti District Court. On December 30, 2004 Judge S. Kvaratskhelia took the decision to restore the supply of electricity to the IDP residential facility until the dispute over the past arrears was resolved. The IDPs took the court decision and the executive writ to the Enforcement Bureau. The supply of electricity to the premises resumed upon the presentation of the court documents, although till date JSC "Telasi" periodically disconnects power supply to the IDP residential facility

The Ministry of Refugees and Accommodation pays 5000GEL monthly to JSC "Telasi" to cover the electricity bill for the above facility which is not sufficient because of the above reasons, the electricity bill for the month of October alone amounted to 10,000GEL and in November 21,000 GEL.

For the resolution of this problem the IDPs applied to the Ministry of Refugees and Accommodation in September of the previous year. They were asking for solicitation on installation of second hand electricity meters in a corridor on their own expenses. The Ministry supported this suggestion but this initiative was not welcomed by the Administration of JSC "Telasi".

Cutting power supply for an indefinite period of time at IDP residential facilities may result in unforeseen incidents. According to the Georgian Law on IDPs "the exercise of the rights of IDPs at their place of temporary residence is guaranteed by the Ministry of Refugees and Accommodation together with other Executive Authorities and relevant Self-Governance Bodies" (Article 5 (2)).

The Public Defender applied to the Minister of Refugees and Accommodation, the General Director of JSC "Telasi", the Chairman of Georgian National Energy Regulatory Commission and the Independent Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission.

Based on this application the representatives of the above agencies held a meeting. The representatives of the Ministry of Refugees and Accommodation did not express their opinion at the meeting. By the suggestion of JSC "Telasi" it was decided to create initiative groups at the IDP residential facilities which would decide together with the IDPs the time schedule for electricity supply. This would resolve the problem of over usage of electricity.

The case is in the process.

The Case of IDPs Residing at Bagebi Hostel

The Public Defender received a collective letter from the IDPs residing at building #4 of Bagebi Hostel; they were informing that from July 15, 2006, electricity is being supplied to their facility in a very tight schedule for only 2 hours per day and it was creating problems with water supply. According to them the bill for the consumed electricity was not paid. This facility shelters pensioners and students who are not IDPs. Until now the residents of the facility have not gone through any registration process, which creates problems in differentiating electricity bill of the IDPs and the rest of the residents. Another pressing problem of the facility is poor sanitary conditions.

The Public Defender addressed D. Mikautadze, Independent Public Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission and I. Gorgadze, Deputy Minister of Refugees and Accommodation.

From the reply of D. Mikautadze, Independent Public Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission we learned that he had already addressed the Minister of Refugees and Accommodation G. Kheviashvili with the problem of equipping Bagebi Hostel with individual electricity meters. It was also learned that with the participation of the Ministry of Refugees and Accommodation and JSC "Telasi a joint commission was created which would study the arrears of IDPs towards JSC "Telasi". The facts about the illegal use of electricity would be studied at the site.

From the reply of I. Gorgadze, the Deputy Minister of Refugees and Accommodation we learned that the Ministry held consultations with the representatives of JSC "Telasi" with regard to the above issue with the participation of the representatives of the hostel administration and the concerned unregistered IDPs.

The administration of the hostel is willing to pay the electricity bills for the unregistered IDP residents of the hostel buildings #4 and #5, equivalent to the amount that was paid by the Ministry of Refugees and Accommodation. According to the requirement of JSC "Telasi" a letter of consent was signed in which the administration of the hostel and the IDPs agreed to pay the current arrear according to the established schedule and to prevent unauthorized resumption of electricity supply by the residents.

In regard to the poor sanitary situation, it was found out that the Ministry pays the respective service agency an amount of 1970GEL monthly according to the established rules for cleaning Bagebi Hostel.

In September 2006 the representatives of the Ministry, IDPs and the hostel administration conducted registration at buildings #4 and #5 which revealed that IDPs and the non IDP residents lived jointly on each floor sharing the same electricity meter. Due to this circumstance it was impossible to determine separate electricity bill for the IDPs.

The Case of IDPs Residing at "Specavtomeurneoba" Facility

The Public Defender received a collective letter from IDPs residing at 15 Shandor Petepi St. "Specavtomeurneoba" facility. According to the letter Roland Akhalaia, Khatuna Shengelia, Suliko Kvekveskiri and Giorgi Sichinava together with their family members have been residing at 15 S. Petepi St. since 2003. They did not settle at the given facility on their own will but based on the agreement with the owner. They are registered as IDPs at the Ministry of Refugees and Accommodation and duly receiving the allowances allocated for the IDPs including the payment of the electricity bill.

The IDPs were informing that they had installed the individual electricity meters and kept control over the consumption of electricity and consequently never had arrears towards JSC "Telasi". The Ministry of Refugees and Accommodation was regularly paying for electricity and other communal expenses, apart from that the IDPs also paid certain bills on their own and have receipts for the payments.

Despite this the JSC "Telasi" disconnected power supply to the facility in October 2006 without any prior warning.

David Liluashvili, Chairman of the Union of Georgian Democratic Principles and Human Rights Protection addressed the Public Defender with a letter about this issue. He said that the Ministry of Refugees and Accommodation had indifferent and inadequate attitude towards this issue because of certain technical and documentation problems.

In connection to the above, the Public Defender addressed I. Pimonov, General Director of JSC "Telasi", in addition a copy of the Public Defender's letter was forwarded to D. Mikautadze, the Independent Public Defender of Consumers' Interests at the Georgian National Energy Regulatory Commission.

From the information received from "Telasi" we found out that the facility does not have any arrears on the payment of electricity bills, but a case in which the Ministry of Refugees and Accommodation simply stopped paying the bills.

The Ministry of Refugees and Accommodation replied to the letter of the Public Defender on November 13, 2006 (01/01-171725) and explained that it had studied the information of the IDPs living at 15 S. Petepi St. but due to the lack of some required documents the Ministry had to stop paying communal bills for the IDPs living at the above address.

It has been a few months since the IDPs do not have power supply. There are elderly, children and war veterans living in the facility who cannot afford the alternate means of heating and because of the disconnection of power supply they are in a severe condition. The allowance paid to them by the government is not enough to purchase other means heating or food preparation.

Irakli Gorgadze, the Deputy Minister of Refugees and Accommodation informed in his letter (#01/01-17-7420) that the Ministry stopped paying communal bills for the IDPs based on the letter from Giorgi Giaushvili, the owner of the facility at #15 Petepi St. G. Giuashvili claimed that the IDPs were living in the facility without his permission and written consent. According to I Gorgadze the Ministry studied the information of the six IDPs living at #15 Petepi St. and did not find the necessary documents supporting their cause. According to the Ministry the owner of the building appealed to the court.

The Ministry of Refugees and Accommodation sent a letter to G. Giuashvili (01/01/176729) confirming that based on the information collected by the respective Departments of the Ministry it had stopped paying communal bills of the facility and the case was forwarded to the Prosecutor's Office for investigation.

The Public Defender after studying the case found out that on October 7, 2003 the owner of the facility and the Ministry of Refugees and Accommodation signed a lease agreement according to which the leaser transferred to the leaseholder (the Ministry) the former "Specautomeurneoba Ltd." one-storied facility (320 sq. /mt.) and the leaseholder took the responsibility of paying communal bills of the IDPs according to the established rules. The agreement was signed for a period of one year with the possibility of extension. The agreement was not annulled and the provisions of the agreement were in force till October 2006.

The Public Defender addressed the Ministry of Refugees and Accommodation with a request to obtain a copy of the administrative-legal act according to which the Ministry was paying the communal bills for the IDPs living at the above address. The Public Defender also requested a copy of the resolution annulling this act and the documentation according to which the IDPs got registered at the above address in 2003.

According to the Law on IDPs (article 9) "the rights of the internally displaced are protected by the State".

Additionally in the Article 5, (2) of the same Law "the exercise of the rights of IDPs at their temporary place of residence is guaranteed by the Ministry of Refugees and Accommodation together with other Executive Authorities and relevant Local Self-Governance Bodies".

Important legal guarantees are stipulated in the Georgian Administrative Code Article 601

Para. 4: where it states "it is inadmissible to annul the administrative-legal act contradicting the law if the act itself is empowering and the interested party has legal confidence towards the administrative-legal act, unless the administrative-legal act violates state, public or person's rights or interests".

Taking into consideration the legal regulation of the country it is clear that the Ministry of Refugees and Accommodation violated the right of the IDPs residing at 15 Petepi St.

In particular:
According to the Article 5, (2) of the Georgian Law on IDPs the exercise of the rights of IDPs at their temporary place of residence is guaranteed by the Ministry of Refugees and Accommodation together with other Executive Authorities and relevant Local Self-Governance Bodies. They provide for:

b) Monthly allowance during the period of displacement;
c) Assistance to IDPs in resolving social and domestic problems;
d) Temporary residence and food products within established norms.

The Ministry in contrary to fulfilling its obligations of protecting the rights of IDPs, neglected their rights and put the IDPs in a miserable situation.

The Ministry addressed the IDPs with a letter on November 13, 2006 (#01/01-171725) according to which the Supervision Department of Internal Affairs of the Ministry studied the information of the six IDPs registered at 15 Petepi St. and in the absence of the necessary documents for the registration at the given address the Ministry stopped paying for the communal expenses.

When studying the case the Ministry did not take into consideration the general requirements of the Georgian Administrative Code. In particular: Article 13 (1) of the same Law: "the administrative body has the

right to consider and take a decision on the issue only if the interested party, whose right or legal interest is being restricted by the administrative-legal act, is given the right to express its own opinion".

According to Para 2 of the same article: "the person concerned in the first paragraph of this article should be notified about the administrative proceedings and his participation should be mandatory."

The Ministry took a decision and stopped paying for the communal expenses of the IDPs without their knowledge regarding the time and place of the proceedings of the case, in effect the IDPs were deprived of the possibility to participate in the process, which constitutes a violation of the IDPs rights on the part of the Ministry.

According to the Georgian General Administrative Code, Article 601 Part 1: "An administrative-legal act can be annulled only if it contradicts the law or if the legally established requirements on drafting and promulgation of such act are substantially violated" Para. 2 of the same article stipulates the legal definition of "substantial violation": "Violation of the rules on drafting and promulgation of the administrative-legal act is considered a legal offense, in absence of which different decision would have been taken on the given issue:" Had the IDPs given the possibility to participate in the process of decision making in their case, there could have been an altogether different outcome.

Besides that the Ministry is unable to specify the administrative act according to which the above decision was taken, and based on which it acted illegally. In particular, the Georgian General Administrative Code, Article 5 (3) stipulates that:» promulgation of administrative-legal act through excessive use of the official authority and also activities carried out by the administrative body without judicial power is annulled". According to the Para.1 of the same article "the administrative body does not have the authority to carry out any activity contradicting the legal requirements". The Ministry in the given situation did not take this into consideration and acted against the legal requirements.

In conclusion, the Ministry of the Refugees and Accommodation violated the legal rights of the IDPs, which was expressed in the following:

1. The Ministry illegally stopped paying electricity bills and as a result JSC "Telasi" disconnected the power supply;
2. The Ministry took this decision, substantially and seriously violating norms of administrative proceedings ruling out the possibility of the IDPs to participate in the decision making process in a case, which was of legal and vital interest to them. This incident once again points out to the lack of transparency in the work of the administrative bodies.
3. The Ministry issued the IDP certificate within the proper timeframe. The certificate includes the information about the address of the IDP's temporary residence on which the IDP has certain rights. The IDPs have the expectation that these rights would by all means and unconditionally be protected by the designated authorities. In the given case the IDP certificate raises its holder's confidence in the Ministry. Despite the applicable similar legal regulations the Ministry did not fulfill its obligations.
4. The Ministry's decision to stop payment for the electricity bill of the IDPs gives us an impression that the issue was not thoroughly studied and the decision was based more on assumptions than facts.

By acting so the Ministry violated the Georgian as well as International Law.

Children, elderly and invalids are in depressing situation, which can become the reason an impending tragedy. It must be noted that after the Abkhazian armed conflict the internally displaced have become victims of new atrocity. The Ministry which is supposed to protect the IDP's rights on the contrary violates them. It is an unfortunate fact that the IDPs have to protect themselves from the Ministry of Refugees and Accommodation.

Based on the above arguments the IDPs appealed to the court. Currently the case is under consideration.

The Case of Oleg Mishin, Residing at the Republican Hospital

On September 21, 2006 the Public Defender received a letter from Oleg Mishin, an internally displaced from Abkhazia and currently residing at the Republican hospital. From the initial stages of the armed conflict in Abkhazia O. Mishin was fighting in "Samurzakano" battalion. On July 5, 1992 during the liberation of the village of Mishveli in Gali Region he was wounded in both his legs at the battlefield. He was rendered the first aid medical assistance in Gali and then admitted to the Tbilisi Republican Hospital, where he was operated upon few consecutive times. Like other wounded people he was allocated accommodation space at the hospital. After the improvement of his health condition he joined battalion "Saturin" which was later abolished in 2005. At the battalion he was rendered qualified assistance as an invalid of the first category and was sent for medical treatment to the hospital. Upon return he found his accommodation space at the hospital occupied by another patient. Following which he lived in rented space for certain period of time until a room was allocated for him at the Republican Hospital where he still resides currently.

On June 18, 2006 the IDPs residing at the Republican Hospital went through registration process because it was planned to evict the IDPs out of the hospital in exchange of monetary compensations. O. Mishin was not at the place during the registration process and not included the list. For this reason the commission refused to pay him the compensation which violated his legal rights. He addressed several times to the commission as well as the Ministry of Refugees and Accommodation and requested correction of the list and payment of the compensation. The above administrative bodies did not take into consideration O. Mishin's legal requirements. As we already mentioned, the applicant was fighting during the armed conflict and as a result of injuries he was granted the status of the invalid of the first category. According to the decision taken by the commission, the IDPs residing at the hospital received compensations based on the number of occupied rooms (10000 USD per room), for the Abkhazian war invalids of the first category an extra 1000USD was assigned. The commission neglected its own decision and instead of paying the compensation it offered O. Mishin a space at the IDP residential facility, which O. Mishin had never seen and its address was not given to him either. This fact seriously violates the Law and the common legal principles. Which according to the article 4 of the Georgian General Administrative Code: 1.everyone is equal towards the law and the administrative body. 2. it is inadmissible to restrict the legal rights, freedoms and legal interests or to impede with their implementation of one the party of the administrative-legal relations, also granting to them any privileges not provided for by the law or taking any discriminative measures against any of the parties. 3. In the occasion of identical case circumstances it is inadmissible to take different decisions in regard to different persons.

O. Mishin still claims the compensation in exchange of his room without which he will be left in the street. The above circumstances force him to stay in the building of the hospital until his issue is resolved. He has the legal grounds because according to the Law on IDPs Article 5 (4) "housing disputes shall be settled through the judicial procedure, therefore before the restoration of Georgia's jurisdiction on the respective territory of Georgia the IDPs shall not be expelled from their places of temporary residence unless:

a) A written agreement has been reached with the IDPs.
b) Respective space of residence is allocated where IDP's living conditions may not be worsening;
c) Force majeure or other disasters take place, which entails specific compensation and is regulated by the general rules;
d) Space is occupied voluntarily, in violation of the law.

According to the Article 9 of the same Law "the interests of the IDPs are protected by the State". According to the Article 5 (2) "the exercise of the IDP's rights is guaranteed by the Ministry of Refugee and Accommodation". The latter unfortunately does not guarantee the implementation of O.Mishin's rights.

O. Mishin appealed to the court with the above issue and currently the court is considering the case.

The Case of IDPs Residing in Upper Ponichala

On November 6, 2006 the Public Defender received a collective letter from the IDPs residing in Tbilisi, Krstanisi District, in an unfinished building #21 on the Upper Ponichala settlement. Having no other choice 74 IDP families settled in this building. According to the applicants they made certain repair works in the building but for the installation of electricity wires and creation of other domestic conditions it was necessary to get registered at the given address.

They addressed various official agencies a number of times. The Ministry of Economic Development of Georgia forwarded their letter to the Mayor's Office because the building was the property of the Municipality. According to the information of Tbilisi Registration Service of the National Agency of Public Registry, building #21 in Upper Ponichala settlement is not registered with the right of ownership. By the information of Mtatsmninda-Krtsanisi District Administration the building at the given address was in the process of construction but a few years ago the construction work stopped and it is not registered on the account of the District Administration.

The applicants noted that Levan Alapishvili, Head of the Local Urban Service of Property Management in the Mayor's Office suggested to the Vice-Mayor of Tbilisi Giorgi Meladze to raise this issue at the City Housing Commission meeting. The IDPs haven't received any relevant information yet.

It must be noted that the IDPs addressed the Public Defender with the similar letter on August 23, 2006. With this regard the Public Defender sent a letter to the City Premier Temur Khurkhuli requesting to study the case within the established time limits.

According to the letter by Levan Alapishvili, Head of Local Urban Service of Property Management in the Mayor's Office (10.06. 2006) in connection to the local self-governance elections on October 5, the issue of the IDPs residing at building #21 in Upper Ponichala would be raised after the empowering authorities of Tbilisi representative body and the formation of Tbilisi authorities the local Property Urban Service.

According of the letter (#3-05/3577) of January 10, 2007 by S. Kavtaradze, Local Urban Service of Property Management in the Mayor's Office, the IDPs addressed him with a collective letter in October 2005. The applicants were informing that they settled in the 9-storied unfinished building #21 in Upper Ponichala and wanted to get legal registration at the given address. In November 2005 the Local Urban Service of Property Management in the Mayor's Office did not satisfy this request. The Local Urban Service of Property Management was guided by article 14 of the resolution #12-7 of Tbilisi City Council adopted on September 9, 2003 about "the Rules of Creation and Management of Housing Fund in Tbilisi". According to this article "the citizens who have voluntarily occupied housing spaces and refuse to free them shall not receive accommodation space". S. Kavtaradze explained that despite this fact his office took into consideration the difficult socio-economic problems of the IDPs and took into consideration the second application of the IDPs received in March 2006. But since the applicants indicated #21 and #22 for the building address the other owner for the facility could not be identified. Respectively the office of the municipal service did not have the right to take any legal decision on this issue.

Based on the additional information, we found that in regard to this facility, Tbilisi Urban Planning Municipal Service issued a resolution #226 on October 3, 2006 about the project agreement on determining the boundaries of the plot of land of building #11 in Ponichala IV micro/reg., Mtatsminda-Krtsanisi District.

The territorial development agency "Tbilkalakproekti Ltd" completed the order #1119/06- of the determination of boundaries of the plot of land of the apartment block-"project of determination of boundaries of the plot of land of the apartment block #11 in Ponichala IV micro/reg." The IDPs paid 1,350 GEL (thousand three-hundred fifty GEL) for this project. The building occupied by the IDPs from Abkhazia is marked in the project.

According to the information of Tbilisi Registration Office of the National Agency of Public Registry under the Ministry of Justice, "building #11 in Ponichala IV micro/reg. is not registered with the right of ownership". The information has the drawing of the place as an attachment.

According to the Article 5 (3) of the Georgian Law on the IDPs "the State provides for the temporary residential space for IDPs. The Ministry facilitates accommodation of IDPs at the temporary residential places allocated to them by the State and local self-governance bodies". According to the article 8 of the same Law "the Ministry together with the Executive Authorities and the Local Self-Governance Bodies provides for the resolution of IDP accommodation, registration, social and other issues within its competence".

Based on the above legal norms and the identified building number, the Public Defender addressed the Vice-Mayor of Tbilisi with a recommendation to resume the administrative proceeding in regard to the above issue in shortest time possible. The Public Defender has not received a reply yet. Meanwhile the IDPs do not have adequate living conditions (electricity, water supply) because of absence of temporary registration.

The Case of IDPs Living in the Premises of "Sportnatsarmi"

The Public Defender received a collective letter from the IDPs of Samachablo and Abkhazia residing at #36 Ksani St.

According to the applicants 10 IDP families have been living on the premises of "Sportnatsarmi" plant, at the facility at #36 Ksani St. (currently territory of JSC "Lelo") by the agreement of the its Director General Roman Rurua.

According to the applicants the owner of the facility has been asking them to vacate the building for long time. The IDPs are unable to leave the place because they do not have any other place to go.

The Public Defender addressed the Ministry of Refugees and Accommodation with a recommendation to take measures for the protection of the rights of the IDPs.

According to the Article 5 (3) of the Georgian Law "the State provides for the temporary residential space for IDPs. The Ministry facilitates accommodation of IDPs at the temporary residential places allocated to them by the state and local self-governance bodies".

According to the article 8 of the same Law "the Ministry in coordination with the executive authorities and the local self-governance bodies provides for the resolution of IDP's accommodation, registration, social and other issues within its competence".

According to the Article 9 of the same Law "the State protects the rights of the IDPs".

According to the requirements of the international document "UN Guidance Principles about the Internally Displaced" the State is responsible to provide adequate living space for internally displaced and assist with adaptation at the temporary place of residence.

Since the above Ministry neglected the recommendation of the Public Defender, the Public Defender addressed the administrative body once again and requested for detailed information about the decisions and implemented measures taken. Till date we have not received any reply from the Ministry.

19 THE PROTECTION OF RIGHTS OF REFUGEES

The majority of the refugees in Georgia are from Chechnya. Most of them arrived in 1999. Part of them is Chechens by origin and the rest are Kists. According to the statistical data of the Ministry of Refugees and Accommodation, the number of Chechen refugees in Georgia has decreased from 2860 in January 2004 to 1320 in September of 2006.

Compared to the previous year the incidents of restricting the Chechen refugees have decreased. Kidnapping Chechen refugees or any other offenses against them did not occur. But the recommendations of the Public Defender from the report of the first half of 2006 were not taken into consideration and therefore the problems raised in that report were not resolved. Furthermore, due to inflation and rising prices of consumable items in the country the social conditions of the refugees further deteriorated. The State does not fulfill its responsibility to assist and support the refugees with social integration; it does not carry out other responsibilities provided for by the international legislation to safeguard the human rights of the refugees.

The Georgian Law on the Refugees has not been amended yet to bring it in compliance with the international legislation and create normal living conditions for the refugees in the country. This would have given the hope to the refugees of improving their living conditions and finding employment which would have changed the current situation of the refugees.

"Convention on the Status of Refugees" of 1951 and "Protocol of Status of Refugees" of 1967 define the concept of refugees, their rights and the responsibilities of State. The Georgian Law on the Refugees does not comply with the international legislation, at the same time the Government of Georgia does not fulfill the responsibilities obligated to it by its own legislation.

It must be noted that the territory of Pankisi Gorge is the main place of residence of Chechen refugees. The socio-economic situation in the Gorge is very difficult, which is especially harsh for the refugees due to widespread unemployment, poor sanitary conditions and malnutrition. The refugees are willing to work but as they declare, the local population employs only their friends and relatives. The refugees take this fact as discrimination on ethnic grounds. Employment of refugees still remains a problem. The reason the refugees live in such harsh economic conditions rather than living and working in big cities like Tbilisi or Batumi is due to restrictions placed by The Ministry of Refugees and Accommodation de-

manding the refugees to remain in Pankisi Gorge until attaining the citizenship of Georgia. According to the Georgian Law on the Refugees Article 5, part 1 the Ministry should provide accommodation and jobs for the refugees but the administrative body seldom applies this Law. Article 17 of the Convention about the refugees stipulates that "signatory states should create the most favorable employment conditions for the refugees legally residing on their territory, the citizens of the foreign countries should get the same treatment in similar conditions".

Article 26 of the Convention about the Refugees stipulates: that each signatory country grant the refugees legally residing on its territory, the right to choose the place of residence and to free movement within its territory, the same conditions that are usually applicable for the foreigners.

The Georgian Government did not raise the issue of possible local integration of Chechen refugees living in Georgia, which can be considered as an alternative way of resolving the problem. Local integration means granting certain long-term legal status to refugees, which would give them the opportunity to get shelter in the country, to stay in the country for an indefinite period and to fully participate in the social, economic and cultural life of the local society. There are many Kist refugees by origin related to Georgians and having managed to socially integrate in the society very well. They can present themselves as contributing members of the society if they are given the right to work and if favorable conditions are created for them such as by providing them professional training.

The refugees believe that their migration into a third country is the way out of the deadlock. The Georgian Government should take adequate steps for the integration of Kists in the Georgian society.

The Public Defender mentioned about the circumstance in his previous report, which points out to the inactivity of the Ministry of Refugees and Accommodation. Five families accommodated in Pankisi kindergarten faced the risk of being left without a shelter because the local population wanted the kindergarten to function again. Based on the information provided by the Ministry of Refugees and Accommodation an agreement was reached with the owner of the privatized kindergarten about temporarily giving the rights over the kindergarten to the Ministry. As a result, the refugees did not face the threat of eviction from the facility any more. But in December 2006 this issue was raised again. The Ministry chose not offer the Chechen refugees an alternative accommodation which deprived the local population of having its own functional kindergarten. With no action taken by the Ministry the relation between the local population and the refugees are uncertain and restrained.

The Chechen refugees believe that repatriation to the Russian Federation will not take place in the near future. Presently they live in one of the settlements of Pankisi Gorge. Unfortunately they do not have the capacity to return to their homes. Third countries in most cases refuse to their integration. Finding jobs for them in Georgia is a difficult process and getting Georgian citizenship is close to impossible. Majority of the refugees is traumatized after the war and still live in fear and uncertainty, hopeless about the future they fear being victimized in the political tussle between Georgia and the Russian Federation.

At the same time the international organizations believe that the return of the Chechen refugees to the Russian Federation is still full of risk. The UN High Commissioner for Refugees does not advise the refugees to return since the situation will not improve in the near future.

The European Commission combating Racism and Intolerance made the statement about unfair deportations of Chechen refugees in the Russian Federation and other countries and reminded the Governments of the principle, that a person should not be deported or extradited to a country where he is tortured and treated inhumanly (see the second report about Georgia of the European Commission against Racism and Intolerance, paragraph 65, June 30, 2006).

The granting Georgian citizenship to the refugees would be a very good solution, especially for the Kist population whose earlier generations were born in Georgia and presently live in Pansikis, but unfortunately this is a long-term process. In any case, the majority of the refugees do not wish to get the Georgian citizenship. According to them, when they initially arrived in Georgia they had an impression that getting the citizenship would be possible, but for years the Government did not take any actions in this respect and the refugees do not have any hopes that in the near future they may become the citizens of this country. Article 34 of the "convention about the status of refugees" stipulates that "the signatory countries should possibly ease assimilation and naturalization process of the refugees".

As for the migration of the refugees to the third countries, according to the information provided to us by the UN High Commissioner for Refugees, the number of refugees selected for expatriation decreased significantly after the terrorist attack of September 11, 2001. This was especially noticeable in the United States of America. In the circumstances of war against terror, restriction measures are applied against the global movement of people. Despite the efforts of UNHCR this tendency effected Chechen refugees in Georgia: in 2006 the third countries received 19 refugees (all from Chechnya, Russian Federation) while in 2005 113 persons (the majority being Chechens with the exception of six Iranians) were expatriated and in 2004 -155 persons were expatriated (the majority being Chechens and three citizens of Yemen).

With the possible extension of the process of the voluntary repatriation of refugees there are people who cannot return home because of their past. It is slowly getting clear that refugees living for years in separated camps without any hope for future are susceptible in getting involved in criminal and anti-social activities. This may harm not only them but also the local population apart from endangering the national and the regional security.

It must be noted that the Chechen refugees are not happy with the representatives of the UN High Commissioner of Refugees. The Ministry of Foreign Affairs has been addressed by the Public Defender in this regard.

The Chechen refugees living in Pankisi Gorge sent numerous applications to the Public Defender. According to them they were trying to address different countries of Europe and America through Tbilisi office of the UN High Commissioner for Refugees, but the office representatives were often neglecting their requests. The documents of the refugees were not forwarded to the respective countries and the refugees were frequently told the reason for that was incorrect drafting of the document, to which the applicants disagree. The Chechen refugees were also asking the UN High Commissioner for Refugees assistance towards the families of prisoners and young children.

The Public Defender indicated in the above letter that the significant number of Chechen refugees did not feel secure. Though they express their appreciation towards the Georgian Government and the Georgian people for providing them shelter and assistance they still think that they may become targets of Russian Special Services by being followed, restricted and persecuted. This is the main reason why the majority of them want to leave for the third country.

Since this issue required additional research beyond the scope of the Public Defender's competence, based on the Article 1 (1) of the regulations of the Ministry of Foreign Affairs of Georgia, which stipulates that: The Georgian Ministry of Foreign Affairs is a government body, which manages and coordinates the foreign relations of Georgia with the foreign states and international organizations", the Public Defender addressed the Ministry of Foreign Affairs to study the given circumstances.

The Ministry of Foreign Affairs in its place addressed the office of the UN High Commissioner for Refugees. The Ministry forwarded to us the information sent to them by the representative of the High Commissioner regarding this issue, according to which "the State according to the their established criteria may accept or

deny the cases presented by the UN High Commissioner for Refugees. According to the statistics of 2005 among 191 UN member countries only 16 countries participated in determining the annual expatriation programs and refugee quotas of UNHCR".

The refugees as a rule cannot return to their homes, nor do they wish to do so as they fear their lives may be endangered or they may be persecuted. In such circumstances the UN High Commissioner for Refugees helps them find new homes in a country where they may find shelter or in the third country where they can live permanently. If the refugees come across special problems in the country granting them the primary shelter or their lives are threatened they can opt for the possibility of expatriation to the third country.

The UNHCR representative also mentioned in his letter that through expatriation the refugees get legal protection, resident status and later citizenship from the governments who, based on individual case studies, agree to receive new members in their society.

It was said in the letter that "the High Commissioner for Refugees declares that he would be happy to consider together with the national partners including the Ministry of Foreign Affairs and the Office of the Public Defender the possibilities of granting the refugees wide range of social, economic and civil rights, which are enjoyed by the other members of the society of the receiving countries, and which is unilaterally implied by the convention of 1951 about the status of the refugees".

The Public Defender finds it reasonable to pay attention to the circumstances indicated in the second report about Georgia by the European Commission Combating Racism and Intolerance. In Particular: "the law-enforcing bodies keep the Chechen refugees under special attention and surveillance in order to combat organized crime and terrorism".

Therefore the European Commission Combating Racism and Intolerance addressed the Government of Georgia with a recommendation to take necessary measures to prevent any voluntary and discriminative actions, to resolve all humanitarian issues and to carry out campaign to change the stereotypes about the Chechen refugees among the Georgian officials, especially the police (see the second report about Georgia by the European Commission Combating Racism and Intolerance, page 69, 70, 71. June 30, 2006).

The Case of Iakha Dudaeva

Chechen refugee Iakha Dudaeva addressed the Public Defender with a letter. After the detention of her husband Magomed Makhoev, she was not in a position to afford renting an apartment. By her explanation, she and her four children were temporarily sheltered in the apartment of a refugee family Bakharchiev who were living in difficult conditions themselves. The applicant mentioned that because of such circumstances her children regularly fell sick.

I. Dudaeva applied to the office of the UNHCR in Georgia on number occasions for assistance to get housing space. She was offered an accommodation in Pankisi Gorge. She requested security guarantees for her family because, according to the applicant she was receiving letters threatening her to pay a ransom or her family members would be in danger.

I.Dudaeva explained that she informed the UNHCR office representatives about these facts. Although she was offered a room the issue of guarantee for security was not addressed.

According to the Article 8 (1) of the Georgian Law on the Refugees the State protects the rights of the refugees. According to the article 21 of the "Convention about the Status of the Refugees" the signatory states should create the most favorable conditions for the refugees legally living on their territory".

The Public Defender addressed the Ministry of Refugees and Accommodation to study the above circumstances and take adequate measures.

The case is in the process.

The Case of Luisa Kiloeva

The Public Defender received a letter from Chechen refugee Luisa Kiloeva. Since 1999 she had been living in Georgia, Pankisi Gorge. In September of the current year the UNHCR Office evacuated Kiloeva's family in an urgent manner to Tbilisi. According to the applicant the family was paid 240 GEL and refused of any further assistance by UNHCR

L. Kiloeva declared that she addressed the UNHCR Office in Georgia a number of times, she also appealed to the Ministry of Refugees and Accommodation of Georgia to assist her with accommodation and employment. It did not bring any results. Her problems still remain unresolved forcing her and her husband to live in the street for 2 weeks, until a stranger came by and decided to provide them shelter. The refugees are living in the facility with no electricity, water and gas.

The applicant also indicated to the other facts of violation of her rights by the representatives of the UNHCR Office in Georgia. Particularly, the incorrect procedures conducted for the family's expatriation to the third country.

According to the article 8 (1) of the Georgian Law on the Refugees the State protects the rights of the refugees. According to the article 7, sub-paragraph "a" the respective executive and self-governance bodies are responsible "to present a list of accommodation places recommended by the Ministry, it should also provide information about the living and employment conditions in these places". According to the article 21 of the "International Convention about the Status of the Refugees" the signatory states should create the most favorable conditions for the refugees legally living on their territory".

The Public Defender addressed the Ministry of Refugees and Accommodation to study the above circumstances and take adequate measures.

The case is in the process.

The Ministry of Refugees and Accommodation sent a single reply in response to the above two letters. According to the reply from the Ministry the fact that there were more than 200 000 refugees in the country, the Government of Georgia could not take the responsibility of providing financial assistance to all the refugees. "Assistance to Chechen refugees is rendered by UNHCR Office in Georgia together with other international organizations". The Deputy Minister of Refugees and Accommodation I. Gorgadze also noted that Iakha Duaeva and Luisa Kiloeva were offered accommodation space in Tsalka on the ministry's account but the refugees refused to accept it.

By the declaration of Iakha Dudaeva and Lusia Kiloeva the Ministry never offered anything as such to them

The Case of Vakhid Borchalov

Ucha Nanuashvili, Executive Director of "Human Rights Informational and Documentation Center" addressed the Public Defender with an application. Ucha Nanuashvili at his place received an application form Valiko Borchashvili (refugee certificate #014334-02) temporary place of residence-Georgia, the village of Jokolo, Akhmeta Region.

By the declaration of V. Borchalov, his son Vakhid Borchalov was called up to serve a mandatory military service in Georgian Armed Forces despite the fact that he was a refugee and not a citizen of Georgia. V. Borchalov also explained that Vakhid Borchalov was born on May 14, 1988 in Kiev and was registered at 8 Kosirio St. apt. 93, city Grozno. He did not have foreigner's resident certificate in Georgia and from 1999 lived in Georgia as a refugee from Chechnya (refugee certificate #014334-01).

The Public Defender addressed the Ministry of Refugees and Accommodation and requested information and documents confirming the refugee status of Vakhid Borchalov.

By the information of the Ministry, Valiko Borchalov was not registered in the database of the Ministry with a refugee status. The above refugee certificate number 014334-01 was registered on the name of Vakhid Borchalov. He was granted the refugee status based on the documents presented by him, in particular, the documents of his parents confirming their citizenship of the Russian Federation and their residence in Chechnya. He also presented a birth certificate issued in Ukraine.

Following the Ministry's protest, the local recruiting commission forwarded to the Ministry Vakhid Borchalov's biography and birth certificate issued in Georgia.

The Police Department initiated investigation on the fact of producing and using fake documents within article 362, Para.1of the Georgian Criminal Code. The case has two birth certificates of Vakhid Borchashvili issued in different countries.

By the explanation of I. Gorgadze, the Deputy Minister of Refugees and Accommodation in the case of confirmation of Vakhid Borchashvili's Georgian citizenship he would be deprived of the refugee status.

The case is under investigation.

20

REPATRIATION ISSUES RELATED TO THE EXILE OF THE POPULATION FROM THE SOUTH OF GEORGIA BY THE SOVIET REGIME IN THE 1940'S

At the end of 1944 the population of Samtskhe-Javakheti was exiled to Central Asia. On November 15, ninety thousand Turk Meskhetians, Khimshins, Tarakamels and Batumi Kurds were banished in a single day to the territory of Fergan in Uzbekistan, Tashkent and Samarkand, also to South Kazakhstan.

After the death of Stalin in 1953, there was a revival of hope among these people to return back home but unlike the other exiled people, the Turk Meskhetians were not given the opportunity to return home.

In June 1989 during the events in Feragan around 17 thousand Turk Meskhetians were deported to central Russia. In the 2 years to follow, around 70 thousand Meskhetians moved to Azerbaijan, Ukraine, Kazakhstan and Russia.

According to current information the number of Turk Meskhetians is in between 400-450 thousand. The exiled people from Georgia are ethnic Georgians. They are residing densely in 8 countries: Uzbekistan, Kazakhstan, Kyrgyzstan, Russia, Ukraine, Azerbaijan, Turkey, Georgia and the United States. They are very well integrated in Kazakhstan and Kyrgyzstan among the population as well as in the society and the state bodies. After the Feragan events very few of them remained in Uzbekistan, they are not involved in the local economy and their rights are violated till date. The Meskhetians who settled in Ukraine 15 years ago are also well integrated within its society with an average economic status and the majority of them have Ukrainian citizenship.

The same cannot be said about Meskhetians living in Russia The situation can be evaluated as positive only in the central part of Russia where the rights of Meskhetians' as an ethnic minority are not violated. In contrast the southern Russia, especially in Krasnodar area the Meskhetians and their rights are not protected. They often become the victims of chauvinism expressed by the local authorities and are pressured on ethnic grounds. 16000 Meskhetians live in this area. In the framework of the program of expatriation of the refugees to the United States 10 thousand people left Krasnodar area for the United States.

The difficult socio-economic situation and the repatriation issue of Turk Meskhetians exiled from Georgia in the 1940's by the Soviet Authorities are on the agenda again and it should be timely resolved. People exiled from Meskheti were torn apart from Georgia for decades, which estranged them from the people of Georgia.

2008

This supported to the creation of stereotypes and negative attitude towards the issue of the repatriation of Meskhetians.

The research of the European Center of Issues of Minorities revealed that 70% of the exiled Meskhetians wish to return to Georgia. Currently they are only asking for the right to return. By the same research presumably 8% of them will be returning, especially those who live in Uzbekistan and Krasnodar area where their situation is not favorable.

International Obligations

In 1999 Georgia assumed the following responsibilities in relation to the exiled population at the Council of Europe:

- Within two years of membership to elaborate legal basis defining repatriation and integration issues of the exiled people by the Soviet Regime;
- Conduct consultations with the Council of Europe about elaboration of the legal basis;
- Within three years of membership start the repatriation and integration process and within twelve years of membership to complete the repatriation process of Meskhetians.

The above responsibility assumed by Georgia is mentioned in several documents adopted by the Parliamentary Assembly, among them 1257 (2001), 1415 (2005) resolutions and 1570 (2002) recommendation. The resolution 1415 (2005) determined the amended terms of fulfillment of this responsibility and 2011 was decided to be the final date for the completion of the repatriation process. This means that the legal and practical issues of the repatriation process should be handled immediately otherwise the process will not be completed by 2011.

Through the final resolution of the Parliamentary Assembly 1477 (2006) about "the Implementation of the Adopted Resolution 1415 (2005) regarding the fulfillment of the requirements of the Council of Europe and the responsibilities assumed by Georgia" the Assembly appealed the Government of Georgia to do the following:

"…10.3 in relation with the population exiled from Meskheti: The State Repatriation Commission to continue its work; The Georgian Government to actively look for the international assistance and speed up the adoption of the relevant legislation to create adequate conditions for the completion of repatriation process by 2011; To fully implement the recommendations[1] in regard to the exiled people from Meskheti formulated in 1428 (2005) resolution by the Parliamentary Assembly;

The Commission Studying Repatriation Issues

In regard to the responsibilities assumed at the European Council, the President of Georgia adopted a Decree #144 in 02.03.2005 on the creation of the Commission studying repatriation issues related to the exiled population from the South of Georgia by the Soviet Regime in the 1940's. The Chairman of the Commission was Giorgi Khaindrava, the State Minister on Conflict Resolution.

By the decision of the Commission a special working group was formed, which studied the situation of the exiled Meskhetians at the place of their current residence. The group traveled to the South of the Russian Federation (Kabardo-Balkareti, Stavropol and Krasnodar areas, Rostov District), Azerbaijan (Baku, Saatli-

[1] Resolution 1477(2006), Committee on the honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Parliamentary Assembly, Council of Europe

Sabirabandi Region), Kazakhstan, Kyrgyzstan and Uzbekistan. The group studied the opinions and attitudes in Azerbaijan and Russia in relation to the expatriation issues of exiled Meskhetians. By the report of 2005 the files of the exiled are still kept classified and without any intergovernmental agreement it is impossible to retrieve the personal files of the exiled people form the archives and arrange them to create a data base. Most of the personal cases are in Uzbekistan (more than 30.000) but it was impossible to travel there.

In the beginning of 2006, by the initiative of the Commission and by the support of the European Center of Issues of Minorities, a working group was created, which resumed the work on the draft law created in 2000 about the repatriation of the exiled population from the South of Georgia by the Soviet Regime in the 1940's. Consultations were held in 2001-2002 on the same issue. The efforts of the working group did not bring about any legal results. The Commission stopped its work in 2006. The legal basis for the repatriation of the exiled population still does not exist, which raises serious doubts about the possibility of completing the process by 2011.

Draft Law about "the Repatriation of the Exiled Population from the South of Georgia by the Soviet Regime in the 1940-ies"

In March 2001 the Official Delegation of Georgia in Strasburg presented the draft Law prepared by the Young Lawyers Association. The UNHCR financially supported the elaboration of the draft Law and assisted with active consultations.

The document from the day of its elaboration till date went through the expertise of the Council of Europe twice. The representatives of the Ministry of Refugees and Accommodation of Georgia, the Ministry of Foreign Affairs of Georgia, the Office of the State Minister on Conflict Resolution of Georgia and international non-governmental organizations were involved in the consultations held in 2006. The Secretary General of the Council of Europe Terry Davis during his visit to Georgia in February 2007 noted that the presentation and discussion of the draft Law on Repatriation at the Parliament was one of the main obligations of the country.

The remarks included in the Final Report of April 25, 2006 by the experts of the Council of Europe should be taken into consideration during the discussions over the draft Law.

Special attention should be paid to the Article 5 (2) sub-paragraph "b", according to which the repatriation status is granted based on the presentation of the documents proving the citizenship. The problem is only 5-10% of the exiled population have the citizenship of their respective country. As for Meskhetians in Russia and Krasnodar area they do not have the citizenships at all.

Despite this, the Article 5 (1) should be precisely formulated so that the people already living on the territory of Georgia could address the local competent bodies to get the status of repatriate.

It would be desirable to provide favorable conditions for the repatriates in acquiring Georgian citizenship.

In order for the State to regulate the repatriation process the article 10 of the draft Law stipulates establishing annual repatriation quota. The need for the similar regulation is obvious to avoid economic problems caused by the massive influx of repatriates. It is also desirable to indicate the deadline of the repatriation process, which as we already mentioned is end 2011 and to establish annual quotas considering the deadline.

There are different opinions regarding the place of repatriation. The wish of the exiled population is to return to the places where they lived before the exile. But according to the draft Law and the State Policy the settlement of the repatriates will be within the entire territory of the country.

It is desirable to formulate the list of objective criteria needed in the selection of residence places for the repatriates. By making free choice between favorable and economically less attractive regions risk of corruption by the administration will be avoided.

It is important to define the financial part of the draft Law. In particular, article 11 should stipulate that the Ministry of Refugees and Accommodation covers all the expenses related to the repatriation process within the fund allocated from the State Budget. The issue of financing repatriation fund in article 12 needs to be clarified.

The above document, in case of its adoption will regulate legal aspects of repatriation process but it will not deal with the issues of the repatriates' social-economic integration. For carefully managing this process it would be wise for the Ministries of Refugees and Accommodation; Health, Labor and Social Affairs; Education and Science to elaborate long-term social-economic strategy for these people, which will later help central as well as the local authorities and administrative bodies to carry out coordinated activities and correctly define and implement the policy in regard to the repatriates. Elaboration of Georgian language educational programs can also be included in this strategy.

Negative attitude among the population of Georgia towards the repatriation of Meskhetians, is largely due to the lack of knowledge and information. In this case it would be desirable if the State could carry on informational campaign before the repatriation process, with the purpose of projecting the issue correctly and informing the population. The State commission had started the work on large media projects for forming public opinion, which was stopped at the end of 2006 with the dismissal of the Commission. The restoration of this Commission would help conduct the repatriation process smoothly.

21 DISCRIMINATION OF ETHNIC GEORGIANS BY THE RUSSIAN AUTHORITIES

Deterioration of diplomatic relations should not be reflected on the restriction of human fundamental rights and freedoms and should not turn into discrimination. Unfortunately deterioration of relations between Georgia and Russia was followed by widespread violations of human rights and turned into xenophobia and racism. Persecution and restriction of Georgians was happening all over Russia. Ethnic Georgians living in Russia even with Russian citizenship did not dare go out into the street because their physical appearance could have served as a reason for the law-enforcers to interrogate them, detain them illegally or for the aggressively inclined youngsters to insult or even kill them. Ethnic Georgians became the objects of deportation irrespective of their citizenship, age, profession or social status. Citizens of Russia who had ancestral links to Georgia were also not spared of being persecuted.

The deportation process was preceded by the extreme tension of Georgian-Russian relations. Russia imposed embargo in December 2005 on Georgian fruits and vegetables, in March 2006 on wine and in April 2006 on mineral waters. Russian authorities closed Upper Larsi border crossing point in July 2006.

The situation got extremely tense when the Georgian law-enforcers detained 4 Russian military intelligence officers on September 27, 2006 with espionage charges. (This is only one episode in the problematic relations between Georgia and Russia. These problems are deep-rooted) This incident was followed by recalling the Ambassador of the Russian Federation in Georgia and full economic blockade from October 2, 2006, Russia stopped all kinds of transport, communication and impeded with the postal and banking operations with Georgia.

There was pressure on small and medium scale business run by ethnic Georgians among them Russian citizens. Direct sanctions were given against ethnic Georgians and their businesses. Russian immigration service took a decision not to give any quotas to Georgians for living or working in Russia. This meant that employment of Georgian citizens on the territory of Russia was officially forbidden. Police sealed many enterprises, restaurants and shops belonging to the Georgians in different regions, among them in Moscow. The law-enforcers even checked the Georgian Orthodox Church in Moscow.

On October 4, 2006 Russian Duma adopted a special statement evaluating the actions of the Georgian Government in the conflict zones of Georgia as "State terrorism with respective conclusions and results".

2006

Russian Federation without any negotiations increased the price for gas from 110USD to 230 USD per 1000cubic/mt.

Full scale and all-embracing anti-Georgian campaign started. It was expressed through widespread searches, detentions, persecution and deportation of ethnic Georgians. This wave hit not only ethnic Georgians illegally residing in Russia but also ethnic Georgians with Russian citizenship.

One particular Georgian citizen from Cheliabinsk got in touch with the Public Defender of Georgia and informed him that he got warning from the local police like any other ethnic Georgian there. The police told him: "we have received instructions from Moscow to deport all of you from the country, but we know that the only fault about you is your origin and we are not going to punish you for that". But they added that they would abstain from any actions until they did not have problems themselves.

This whole anti-Georgian campaign was developing by the active participation and coordination of the state agencies. This is confirmed through the order given by the Head of the Internal Affairs State Department of Saint Petersburg and Leningrad District. He instructed the internal offices (with the purpose of raising the effectiveness of implementing the order #02-15 30.09.2006 (6.1; 6.2, 7) ….. "through involvement of all the staff of the structural units to implement large-scale measures on the territory of Russia for identifying illegal Georgian citizens and for deporting them./ Initiation of only deportation at the court for violating rules of residence/. The implementation of the given measures is agreed with the Federal Department of Migration Service of Saint Petersburg and Leningrad District and the decision is also agreed with Saint Petersburg and Leningrad District court……Report daily to the Internal Affairs State Department starting from 01.10.2006 about the implemented measures according to the agreed resolution #0215 30.09.2006 (6.1; 6.2, 7) form 078 with progressive results….."

This resolution deprives the right to fair court (European Convention, Article 6). Ethnic Georgians, among them those with legal status in the Russian Federation were detained illegally and deported from the country. The detained Georgians were restricted the right to lawyer, interpreter and the right to appeal. The court cases lasted very briefly and often without the attendance of the accused as they were kept in corridors or in cars transporting them to the court houses. There were cases when citizens legally arriving to Russian Federation were turned away from the airport.

Overall, the Administrative Court of the Russian Federation from October 1, 2006 to November 2006 made decisions on the deportation of 3297 ethnic Georgians with Georgian citizenship and Russian citizens with Georgian surnames. Among them more than 1500 deportations occurred before November 28, 2006. 440 deportees among them including minors were sent to Georgia by cargo planes without any seating arrangements.

Deported Georgians, including women and children had to return through the non-controlled Abkhazian territory. They became the victims of money extortion not to mention the security guarantees and satisfaction of the basic needs. Travel to the territory under Georgian jurisdiction cost 1000USD per person. The information was spread that on December 25, 2006 Georgian citizens Avtandil Kachibaia, Mirian Kikacheishvili and Lasha Sichinava deported from Russia were detained. By our information these individuals are in Sokhumi isolator, which is confirmed by the representative of UN Human Rights Office in Sukhumi.

48 years old Georgian citizen Tengiz Togonidze died in the bus traveling from Saint Petersburg to Moscow. He was under detention for five days together with the other Georgian citizens; later he was transported on a crowded bus to Moscow. Being an asthma patient Togonidze requested for better treatment at the time of his detention in Saint Petersburg but his request was denied. This incident can be acknowledged as inhumane treatment and murder.

52 years old Georgian citizen Manna Jabelia died in Moscow in #2 facility. She was not rendered medical assistance during the entire 2 months of imprisonment.

9 months pregnant Georgian citizen, after spending 2 days and nights in the streets, being in terrible condition for 2 weeks had a miscarriage after crossing the border by foot.

Internally displaced Georgian citizens got into similar situation. Their status was not taken into consideration. It must be noted that the IDPs holding old soviet passports were not persecuted but the ones holding legal Georgian passports were subject to deportation.

The wave of detentions and deportations hit the children as well. The administrations of many schools and high schools of the Russian Federation received instructions from the Ministry of Internal Affairs to forward them the information about the pupils with Georgian surnames, along with the information about the parents to determine their residence and work address.

On October 4, 2006 at 9 a.m. Georgian students were not admitted to the secondary school of the Russian Ministry of Defense in Tbilisi, Georgia. There were 80 students and 20 teachers. They were not provided with any explanation in connection to the action. The school administration did not make any comments either. A notice was put out on the gate stating that the "the citizens of Georgia are forbidden to trespass the school territory". According to the information available to the Public Defender's Office the school administration received special instructions to expel all citizens of Georgia from the school.

Similar instructions were received by the Russian schools under Trans-Caucasus Russian Group in Tbilisi, Batumi and Akhalkalaki (see the chapter on children's rights).

Rights of ethnic Georgians guaranteed to them by the international legal documents were violated in the Russian Federation. In particular: right to freedom and security, fair court, respect to person and family; such requirements as prohibition of torture and discrimination, and misappropriation of rights etc. were violated.

- Human Rights Universal Declaration-Articles 2;3;5;6;7;9;12;13;15;17;18;and 23;
- International Pact on Economic, Social and Cultural Rights. Articles 2, Para.2; Article 6, Para. 1; Article 11.
- International Pact on Civil and Political Rights. Article 5, Para. 1; Articles 12; 13; 16; 17; Article 20, Para. 2; Article 24, Para. 1; Articles 26 and 27.
- European Convention on Protection of Human Rights and Fundamental Freedoms. Articles 3; 5; 6; 8; 14; 17;
- Protocol of European Convention on Protection of Human Rights and Fundamental Freedoms, Article 1;
- Additional #1 Protocol of European Convention on Protection of Human Rights and Fundamental Freedoms. Article 1;
- Additional #4 Protocol of European Convention on Protection of Human Rights and Fundamental Freedoms. Articles 2; 4;
- Convention of the Commonwealth of Independent States (CIS). Articles 3; 5; 6; 7; 20 (2).

International Convention on Elimination of All Forms of Racial Discrimination was also violated.

International Organizations of Human Rights Protection and Monitoring expressed their concern with regard to the instances of human rights violations: illegal detentions of illegal migrants looking for shelter and deportations. These organizations are UN High Commissioner for Refugees, UN Special Reporter on the Protection of Migrants' Rights and Council of Europe.

The Human Rights Organizations advise the Governments to implement policy of returning the migrants (meaning detentions and deportations) which will be totally based on the respect and dignity of the citizens of the foreign countries.

The given document is based on the main principles which should be reflected in any of the acts concerning the return of foreign citizens and in all directives of the Council of Europe.

The standards of expelling foreign citizens should be common for the members of the Council of Europe as well as the so called transit countries, border zones and airport territories.

Voluntary return should always be the priority. It means adequate consultations and material assistance. For the return of the foreign citizens, voluntary return should be given the priority over forced deportation. A person should be given prior notice about the deportation and preparation time for departure to ensure safe return to the home country.

Helpless person should be protected from deportation. All actions should be carried out in accordance with the European Convention of Human Rights (article 5; no one is subject to torture or any other form of inhumane treatment or punishment), 1951 Geneva Convention about the Status of Refugees and its Protocol of 1967 (Convention about the Refugees) and with other requirements of International Legislation of Human Rights. All developed countries should acknowledge and avoid persecution of citizens.

International Legislation prohibits widespread persecution. (International Convention on Civil and Political Rights, Article 13; #4 Protocol of European Convention n Human Rights, Article 4; Statute of the European Union about the Main Rights and Freedoms, Article 19;

Decision about returning the foreign citizens back to their home country should only be taken after all the international tools of the protection mechanism are applied, reflected in Articles 3 and 8 of the European Convention about Human Rights and UN Convention, which is based on protection of refugees from torture, inhumane and humiliating treatment and detention.

According to the UN Convention, individuals below the age 18 are considered minors. It is forbidden to forcefully banish children from the country. According to the UN Convention of 1989 about the Children's Rights (children below 18 who are separated from their parents, home country or legal trustee, a trustee is assigned to them) the children should return to their home country based on their private interests and in safe conditions.

Persecution of persons **with severe illnesses** is categorically forbidden until the person can afford medical treatment upon the return to his country. ("really afford" is explained by #14 General Comment of UN Economic, Social and Cultural Rights Committee, Article 12; Medical service and items of basic necessity should be available for everyone without any discrimination under the jurisdiction of the State where the person is located. This regulation has four main and interrelated directives: every person has the right to access financial and any other information without discrimination).

Possibility of applying effective means should be given to the individuals subjected to proscription or deportation. Any subject of proscription or deportation should not be deprived of the right to appeal against the court decision. This is clearly explained in Article 8 of the European Convention on Human Rights and the Convention Combating Torture. Therefore all possible legal tools should be explored and applied for the citizens to return to their country in secure conditions.

Detention of a foreign citizen for further proscription is possible in extreme cases. According to the International Law about the Human Rights and Refugees the mechanism of detention can be applied in extreme

cases. This measure of punishment should not turn into a legal mechanism of policy for any given State. According to the European Convention on Human Rights, Article 5 (1) sub-paragraph "f" this method can be applied in extreme cases only. A person can be detained for short period of time based on a court decision. It is forbidden to detain helpless individuals, such as orphan children, families with children, pregnant women, breastfeeding mothers, traumatized persons and victims of torture (Article 37 of the Convention about the Children's Rights stipulates that detention of children is categorically forbidden. The UN Human Rights latest recommendation about the relevant criteria and standards prohibits detention of persons looking for shelter. February 1999). Part 6 of the recommendation-"Detention of ethnic minorities looking for shelter is categorically prohibited". Part 7-Any detention order should have an alternative measure, especially for the following category of people:» helpless elderly, victims of traumas and disabled individuals". Part 8-detention of women:» Pregnant women and breastfeeding mothers should be strictly protected they need special care".

According to the Para 5 of the same article state, the judge should ensure a fair trial process. The detained person has the right to appeal against the court decision. In case of incorrect decision the detained person should be freed immediately and the loss be reimbursed unconditionally. Persons looking for shelter unlike other accused (for criminal deeds) should be differentiated; men and women should be placed separately. But placement of couples together is possible. They should have the right to free judicial consultations, medical, psychological and social services, and right to meet family members, priest and the representatives of the non-governmental organizations at every detention facility. They also have the right to safe movement within the territory of the facility and satisfying basic hygienic needs.

It is inadmissible to deport one person from a family or separate the family members, (European Convention of Human Rights Protection and Main Freedoms, Article 8, right of respect to person and family). It is categorically forbidden to persecute children especially if a child has suffered serious physical or psychological trauma, has health related problems or if the child is in the educational process and the academic year is not finished yet.

Use of force for implementing punitive measures is possible only based on the permission from the Council of Europe. In regard to the deported persons the protection of dignity and the safety of the voluntarily returned citizens should be the priority. They should be transported to their country according to the 1957 Regulations of the Council of Europe, which means creating safe living conditions for the citizens, protecting their fundamental rights and freedoms, physical immunity, right to life and other basic rights.

If a person is not deported, then he/she should be granted a legal status in the country. If the decision on deportation or return is not implemented within the time frame established by the court then the ruling against a person is annulled and furthermore accommodation space is allocated for him/her with the possibility to enjoy all the rights like the other citizens of the country.

In regard to the facts of xenophobia and discrimination against ethnic Georgians in the Russian Federation the Public Defender made a number of statements and addressed Human Rights Organizations globally, including the UN High Commissioner for Human Rights, Human Rights Commissioner of the Council of Europe, OSCE, Ombudsmen and Public Defenders of all countries and members of European Network of Ombudsmen of Children's Rights requesting to react to the incidents of discrimination and violation of the rights of ethnic Georgians in the Russian Federation and the Russian Authorities to stop the policy of xenophobia and racism.

This is "the" case when all the human rights defenders should voice their opinion against the policy of xenophobia and racism. Keeping silence today means that tomorrow we will have to live in a Europe where xenophobia, hatred and racism towards foreigners become the rule of life. Whatever is happening to Georgians today, if it is not stopped soon it will happen to all other national monitories tomorrow"- said the Public Defender in his statement.

The Public Defender addressed the Human Rights Commissioner of the Russian Federation to protect within his competence the rights and freedoms of the ethnic Georgians on the territory of Russian Federation.

It must be noted that the policy of xenophobia and racism implemented against ethnic Georgians and other ethnic groups were condemned by a number of citizens and human rights organizations of the Russian Federation.

The Public Defender received a reply to his statement from an authorized official of UN Human Rights High Commissioner Maria-Franciska Ize-Charina that the UN Human Rights Commissioner's Office was carefully monitoring the development of the events and was using all possible means to raise the human rights issues, especially of the unprotected persons, such as children and migrants. The UN Human Rights High Commissioner got in touch with all the sides involved in this matter with the purpose of easing the severe impact on the lives of ordinary people. The UN Human Rights High Commissioner held consultations with the participating sides to make sure that the people were protected from violence and insult and that the current dispute should be resolved through constructive dialogue. Mari-Franciska Ize-Charina also mentioned that the High Commissioner would personally watch the developing events with all due attention.

These events were objectively and strictly reflected in the report about the Georgian-Russian relations by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe.

It must be specially noted that the deterioration of the diplomatic relations between the two countries were not followed by the incidents of human rights violations, discrimination and insult of the ethnic Russians neither by the Georgian authorities nor by the society in Georgia.

22 ASSISTANCE BY THE GEORGIAN AUTHORITIES TO THE DEPORTED PERSONS FROM THE RUSSIAN FEDERATION

The competence and the authority of the Public Defender of Georgia is effective within the territory of Georgia. Therefore the Public Defender does not have any other means but to make statements and appeals to protect the rights of the Georgian citizens in the Russian Federation. The Ministry of Justice of Georgia and the temporary Parliamentary Investigation Commission studying the cases of the deported persons from the Russian Federation were collecting the materials for further actions. The Public Defender forwarded authorities, with the applications and explanation letters received from the deported persons from the Russian Federation.

On the request of the Public Defender, experts of "Empatia" Psycho-Rehabilitation Center for Victims of Torture, Violence and Expressed Stressful Impact, visited adults deported from Moscow in October 2006 and sent the results of the preliminary medical monitoring to the Public Defender. This information was also forwarded to the Temporary Investigation Commission and the Ministry of Justice, which on its part was preparing an appeal to the Human Rights European Court.

Additionally, The Public Defender took a decision to keep a track over the verbally assumed responsibilities and implemented measures by the Georgian authorities towards the deported people. Unfortunately, by the information available to the Public Defender, the State did not take any active measures to help the affected people.

It must be noted that every deported person was indicating in his/her application that they were in Russia for the sole purpose of improving their difficult socio-economic condition.

By the information available to the Public Defender, a group was formed at the National Investment Agency implementing the Program for the Deported Persons from the Russian Federation. The Ministry of Refugees and Accommodation allocated additional financial resources and paid 100 GEL to every deported individual upon presentation of the deportation documents.

It must also be noted that the citizens of Georgia who lived away from the home country for many years were not aware about the specifics of the social protection mechanisms in Georgia and the procedures involved in addressing for assistance. There was no governing policy or any kind of coordination when providing explanation to the deportees.

In addition, they had problems at different administrative bodies. In

2006

particular a deported IDP was able to get an IDP certificate only after applying to the Public Defender. The same can be said about a deported IDP who got a one time allowance and a deported student who after the involvement of the Public Defender got information from the Ministry of Education and Science about the rules of transferring to a different educational establishment. In this case the deported IDP was a third year student, which means that she became a student before the Law on High Education was passed. Therefore she is not entitled to pass the unified national exams to move from one educational establishment to the other.

There are cases when the applicable legislation assistance to the deported persons is impossible. In such cases the Public Defender is not responsible to assist the deported citizens or adders every administrative body with recommendations. It is also not known to the Public Defender the agency designated to handle the given case because the State did not take any special measures to assist the deportees.

For example, how should the deported student move from one educational establishment to another if s/he became a student before the Law on High Education came into effect. The individual/institution to assist the student with the preparation for the unified national exams, because in most cases such persons do not have means to hire a tutor.

Who should help the deported citizen, 9 months pregnant with four children, who slept in the street for 2 days, spent two weeks in difficult conditions and crossed the border by foot and had a miscarriage. She was given one-time allowance of 50 GEL and was told that she could not benefit from the assistance to multi-children families because such assistance was given in Gurjaani Region to the families with more than five children.

How can a car have proper registration, when a deported person had to cross the territory of Abkhazia by the car fleeing for his life and could not cancel the registration of his car at the Russian Federation fearing he would be detained?

The Ministry of Refugees and Accommodation delays granting IDP status to a deportee because, the deportee is unable to provide the address of his/her temporary residence as s/he does not have a shelter.

In such cases the Public Defender goes beyond the responsibilities assigned to him by the Law and frequently conducts consultations with the deported people about who to apply with an application and what to hope for.

It must be noted that through the report about the Georgian-Russian relations prepared by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, it is known that the Government of Georgia was given recommendations. Among them was the urgent recommendation to provide immediate moral, legal and financial assistance to the deportees, and implementation of long term integration policy for the IDPs instead of one time, short-term immediate measures.

EMPLOYMENT

On February 1, 2007 the Public Defender addressed Irakli Giorgobiani, the Deputy Minister of Labor, Health and Social Affairs to provide him with precise information about the measures to be implemented and assistance to be rendered by the Ministry of Labor, Health and Social Affairs for 2007 for the deported people from the Russian Federation.

Respectively, on November 29, 2006, on December 19, 2006 and on January 11, 2007 the Public Defender addressed Levan Peradze, Director of the State Agency for Social Assistance and Employment under the Ministry of Labor, Health and Social Affairs and Merab Lomindaze, Head of the National Investment Agency and requested action from them with regard to the employment of deported persons from the Russian Federa-

tion. The Public Defender sent contact information of all the deported persons and information about their profession to the above agencies.

According to the reply by S. Beraia, Deputy Head of the National Investment Agency his agency within its competence was ready to contact the deported persons from the Russian Federation and provide assistance. Few deported persons confirmed in private conversations that they were contacted by the given agency. Although, by the information provided from the agency only one person was employed.

According to the reply from Levan Peradze, Director of the State Agency for Social Assistance and Employment under the Ministry of Labor, Health and Social Affairs a group was created at the National Investment Agency, which was responsible for implementing the program for the deported individuals from the Russian Federation. Even though, the Public Defender had mentioned in his letter to the Ministry that it had forwarded the similar letter to the National Investment Agency.

The same is confirmed by the letter of Vakhtang Tsetskhladze, Head of the President's Correspondence Handling and Analysis Department. A deported person addressed him with an application. The letter from V. Tsetskhladze said: "The President's Administration does not have the information about the measures to be taken by the Agency for Social Assistance and Employment under the Ministry of Labor, Health and Social Affairs. The agency was sent relevant reminder about that".

The Public Defender has not received a reply from the Ministry of Labor, Health and Social Affairs.

The Case of Tengiz Jgamadze

The Public Defender addressed Diana Zghenti; Head of the Consular Department of the Ministry of Foreign Affairs to study the case and within her competence render assistance to Citizen T. Jgamadze.

Tengiz Jgamadze is a displaced person from Abkhazia and deported from the Russian Federation. He lived in Saint Petersburg with his family for the purpose of improving his difficult socio-economic condition. A taxi driver by profession, he was leasing the car and after certain period of time was able to make the full payment of the lease.

According to T. Jgamadze his son was detained without any explanation and he was able to free him only after paying a considerable amount of money. On the third day of this incident his wife and he got detained. Vyborg District court of Saint Petersburg ruled administrative deportation for T. Jgamadze and his family from the Russian Federation. He was given 15 days to leave the country.

T. Jgamadze explains that he returned to Georgia with the help of ethnic Abkhazian living in Russia. He crossed the border at Psou paying certain amount of money before arriving to Zugdidi.

According to T. Jgamadze he did not cancel the registration of his own car in Russia on the advice of the above person because there was a possibility the car would be confiscated at the Russian border post. T. Jgamadze does not have accommodation place in Georgia and found temporary shelter for his family at the house of Indiko Kiria from Zugdidi Region.

The deported person requests for assistance to get registration for his car in Georgia.

The Public Defender addressed Giorgi Grigalashvili, Chief of Georgian Patrol Police to assist deported T. Jgamadze within the jurisdiction of the Law.

The Chief of the Patrol Police indicated in his reply that T. Jgamadze's car "Gaz-322132" was registered by the Russian Registration Service. For the registration of this car in Georgia it is registration in Russia should be canceled. Following which, the car is subject to customs clearance and it is only then that the mentioned vehicle can be registered at the Patrol Police Registration Service in Georgia.

Since the Vyborg District court in Saint Petersburg ordered deportation for the family of T. Jgamadze, he will not be able to return to Russia with his car to cancel the registration.

We have not received a reply from the Ministry of Foreign Affairs yet.

The Case of L. Nachkebia-Financial Assistance to the IDP

On December 7, 2006 Liana Nachkebia, IDP from Abkhazia sent an application to the Public Defender. According to the applicant, she lived and worked in Russian Federation for the past 10 years to improve her socio-economic situation. She was working as a sales person. On October 3, 2006 she was detained by the policemen of 43rd Police Office in Moscow, they physically assaulted her and took her to the Police Office. On October 17 she was deported from the country.

By the applicant's statement, upon her arrival to Georgia she applied to the Ministry of Refugees and Accommodation to receive social assistance. The Ministry did not react to her application. Finally L. Nachkebia addressed the Public Defender for solicitation to get financial assistance.

After the widespread deportations of the Georgian citizens from the Russian Federation the Public Defender applied to Irakli Gorgadze, Deputy Minister of Refugees and Accommodation to find out how the Ministry was going to assist the deported persons. From the reply of the Deputy Minister the Public Defender found out that the Ministry intended to use its fund for one-time annual assistance to help the deportees from Russia.

According to the General Administrative Code of Georgia, Article 12, Part 2 the Ministry of Refugees and Accommodation as an administrative body was responsible to deal with the application regarding the issue of its competence. According to the Article 100, Part 1 the Ministry was supposed to take a decision within a month after receiving the application and reply to the applicant about its decision in the manner established by the law.

In line with the above mentioned, the Public Defender forwarded all the materials available to him to the Ministry of Refugees and Accommodation.

After the appeal of the Public Defender, the deported citizen L. Nachkebia received financial assistance. By the letter of Irakli Gorgadze, the Deputy Minister of Refugees and Accommodation the Ministry was able to locate additional financial resources and paid 100 GEL to every deported person form the Russian Federation upon presentation of the deportation documents.

The Case of Nugzar Jalagonia-IDP Student

The Public Defender addressed the Minister of Education and Science of Georgia Aleksandre Lomaia on the case of Nugzar Jalagonia, IDP from Abkhazia and deported from the Russian Federation, 3rd year student of Judicial Faculty at Moscow "State Open University",

N. Jalagonia finished the Georgian Lyceum "Kolkheti" in Moscow and continued studies at Moscow "State Open University" judicial faculty. He successfully managed to complete two academic years.

Deported Jalagonia has student's certificate of the above University along with student's examination book #1704897 and mark-sheets of the two completed academic years #9117.

The applicant requests that he be given the opportunity to continue studies at the relevant educational establishment in Georgia.

It must be noted that the first letter and the available documents in this regard were forwarded to the Minister on November 24, 2006. The Public Defender was asking for the circumstances to be taken into consideration.

After sending the second letter on January 11, 2007 the Public Defender received a reply from the State Accreditation Service of the Educational Establishments of Georgia. N. Jalagonia was given detailed information about the transfer process to different educational establishment.

The Case of Khatuna Dzadzamia-IDP Student

The Public Defender addressed the Minister of Education and Science Aleksandre Lomaia regarding Khatuna Dzadzamia, IDP from Abkhazia and deported from Moscow, the fifth year student at the Institute of Foreign Languages of Moscow, Faculty of Philology.

Deported Dzadzamia has student's certificate #012 issued by the above institute on September 1, 2002 and the agreement signed on the same date about the training #112 specialist. The agreement is made between the parent of K. Dzadzamia N. Chaava and the Director of Moscow Institute of Foreign Languages. According to the agreement the Institute takes the responsibility to train the specialist and the parent takes the responsibility to pay the institute (an equivalent of 800 USD per semester in Russian rubles). Education period is defined as 2002-2007.

The applicant requests to be given the opportunity to complete her studies at the relevant educational establishment in Georgia.

The Public Defender sent the first letter to the Ministry on October 25, 2006 and the second letter on January 11, 2007 but has not received a reply yet.

The Case of Nugzar Jalagonia-IDP status

The Public Defender addressed Irakli Gorgadze, Deputy Minister of Refugees and Accommodation regarding Nugzar Jalagonia, IDP from Abkhazia and deported from the Russian Federation.

By the explanation of the applicant, in July 2006 he applied to the Ministry of Refugees and Accommodation (application #11543) to get IDP status but has not received a reply to his request yet and therefore does not have an IDP status.

In regard to the above issue the Public Defender addressed the Ministry of Refugees and Accommodation on November 24 of the current year.

By the reply (#06/01-17/8258) of L. Bregvadze, Head of IDP Department of the Ministry of Refugees and Accommodation we received confirmation that N. Jalagonia did not take the mandatory registration process of IDPs in 2003 and his IDP status was terminated according to the Law, although it is possible to restore the status upon presenting the necessary documents.

It must be noted that the Public Defender in his letter (#3303/05-2/1843-06/1) did not ask for the explanation as to when and why the IDP status of N. Jalagonia was terminated The Public Defender was only asking for clarification as to why N. Jalagonia did not receive a reply to his request about getting an IDP status. According to the Georgian Organic Law on Public Defender N. Jalagonia was supposed to get a reply about the decision taken and the implemented measures by the Ministry.

According to the General Administrative Code, Article 12, Part 2 the Ministry of Refugees and Accommodation as an administrative body is responsible to deal with the applications on the issues within its competence and according to the Article 100, Part 1 within one month from receipt of the application take the relevant decision. The applicant should be notified about the decision in the manner established by the Law.

According to the resolution #127, Article 2 (11) of the Ministry of Refugees and Accommodation "a person addressing the Ministry about getting an IDP status should be interviewed within ten days form the receipt of the application according to the Law on Internally Displaced article 1".

According to the Article 2 (20) if the application of a person does not correspond to the requirements stipulated in the General Administrative Code and in the paragraphs 3; 4;5; and sub-paragraph "b" of the above article then the Department and the Territorial Body should inform the applicant within three days of the receipt of the application about the faults in the application. Time allocated for the correction of the fault should not be less than 5 days and no more than 10 days. If the applicant asks for the extension of the time limit then the Department or the Territorial Body is authorized to extend it only once for up to 15 days. According to the article 23 "an IDP who does not attend the registration process in the established time frame should address the Ministry for the registration before the 10th day of every month. The Ministry conducts the registration within 10 days in the manner established by the law".

In the given case, the General Administrative Code as well as the requirement of the resolution #127 of the Ministry is neglected.

The Public Defender sent another letter to the Ministry, but the Ministry did not reply. The deported person confirmed in the private conversation that after the involvement of the Public Defender he received the IDP status. Later the Ministry confirmed the same that N. Jalagonia was granted an IDP status on December 12, 2006.

The Case of David Kalandia

The Public Defender addressed the Deputy Minister of Refugees and Accommodation Irakli Gorgadze regarding David Kalandia, (born 14.06.1968 in Abkhazia, Gulripshi reg. village Babushara) an IDP from Abkhazia and deported from the Russian Federation.

By the explanation of the applicant he lived in Moscow from 1995. In October of the current year he was deported from the country. He returned to Georgia where he does not have friends or relatives.

D. Kalandia noted that on November 6 of the current year he applied to the Ministry of Refugees and Accommodation of Georgia (application #15232) to get an IDP status. He was asked for a document about his place of residence along with a notarized letter from the owner of the residence supporting his claim. He presented all required documents but was told at the Ministry that he would be able to get the status in one month.

Article 3, subparagraph 2 of the Georgian Law on the Rules of Registration of the Citizens of Georgia and Foreigners Living in Georgia, the issuance of identification card (Residence Certificate) and passport of citizens of Georgia "the person's place of residence is considered the place chosen by the person". According to

the Article 5, subparagraph 1 of the same Law "for the registration a person is supposed to present an application, identity card (Residence Certificate) and a document on the ownership of the dwelling place or a letter of consent from the owner of the dwelling place, which is a written consent from the owner of the dwelling place or from the tenant of the dwelling place under the state ownership, based on this letter submit documents without notary registration certifying ownership or rental of the space". According to subparagraph 2 of the same article "a person without a dwelling place can undergo the registration process based on his/her current residential area without indicating dwelling address".

Article 11, subparagraph "c" of the Georgian Law on the Internally Displaced defines the term "IDP certificate" as "a document issued by the Ministry of Refugees and Accommodation to the internally displaced persons certifying that the person is internally displaced and has an IDP status". Subparagraph "f" defines the temporary dwelling place of an IDP as "a dwelling place chosen by an internally displaced during his/her displacement period or place of temporary accommodation". According to the Article 1 of the same Law, a displaced person is a citizen of Georgia or a person permanently residing in Georgia without the Georgian citizenship who was forced to abandon his permanent dwelling place and settle within the territory of Georgia because the lives, health and freedom of his family and himself were threatened as a result of an aggression from a foreign country, internal conflict or grave violations of human rights".

The resolution #127 (October 2, 2006) of the Ministry of Refugees and Accommodation defines the rules of recognition of an internally displaced person, granting IDP status and registration process. According to the Article 2 (6) of this resolution it is inadmissible to request any document or information, which is not related to "the circumstances described in the Article 1" of the Georgian Law on IDPs.

According to the Article 2 (11) of the same resolution "a person addressing the Ministry about getting an IDP status should be interviewed within ten days form the receipt of the application according to the Law on the Internally Displaced article 1". According to the Article 2 (20) if the application if a person does not correspond to the requirements stipulated in the General Administrative Code and in the paragraphs 3; 4;5; and subparagraph "b" of the above article then the Department and the Territorial Body should inform the applicant within three days from the receipt of the application about the faults in the application. Time allocated for the correction of the fault should not be less than 5 days and no more than 10 days. If the applicant asks for the extension of the time limit then the department or the territorial body is authorized to extend it only once up to 15 days. And according to the article 23 "an IDP who does not take the registration process in the established time limit should address the Ministry for the registration before the 10th day of every month. The Ministry conducts the registration within 10 days in the manner established by the Law".

As for renting a dwelling place, the Georgian Civil Code does not prohibit verbal agreement about renting a dwelling place.

Concluding from above mentioned, it is illegal to imperatively require a notarized document of a temporary dwelling place for issuing IDP status. If the temporary dwelling place of an IDP is a facility under the State ownership, request for a written agreement is possible by presenting a document on ownership or on rental without notary registration. In other cases address indicated by a citizen in the application form can be considered as a document of the dwelling place. Time limits defined by the Law and by the resolution should not be violated, especially when dealing with the deported persons from the Russian Federation.

The Ministry did not inform the Public Defender about the outcome but the deported person confirmed in the private conversation that after the involvement of the Public Defender he got the IDP status.

23 GEORGIAN CITIZEN PRISONERS AT THE DETENTION FACILITIES ABROAD

During the reporting period we requested information from all the consulates of Georgia in the foreign countries about the detained Georgian citizens. Unfortunately the responses were delayed and so far we have information from only six countries, which is not enough for making an analysis or draw conclusions. We hope that for the next report we will be able to collect more information.

Armenia

According to the situation of May 30, 2006, 18 citizens of Georgia were serving their sentences in the Republic of Armenia, among them 11 are between the ages of 20-35 and seven prisoners are between 33-55. The citizens of Georgia who were tried on the territory of the Republic of Armenia are serving sentences for theft, robbery and violation of customs rules.

Azerbaijan

According to the situation of June 30, 2006, 38 citizens of Georgia were serving their sentences in the Republic of Azerbaijan. 14 among them are between the ages of 20-35 and the rest are 35 to 55. Only one of them is a woman. The citizens of Georgia convicted in the Republic of Azerbaijan are serving the sentences for theft, robbery, drug abuse and murder.

Arab Republic of Egypt and Syria

According to the situation of April 19, 2006 Georgian citizens were not in the detention facilities of the Arab Republic of Egypt and Syria.

Ukraine

According to the situation of January 1, 2006, 254 Georgian citizens were serving sentences in the detention facilitates of Ukraine.

Russian Federation

By July 26, 2006 around 2000 Georgian citizens were serving sentences at the detention facilities in the Russian Federation. Among them 58% were between the ages of 18-40 and 21% were 41-61 years old. The Georgian citizens tried by the courts of Russian Federation are serving sentences for robbery and theft, 18% is serving sentences for drug smuggling, 2% of the convicts serving sentences for murder and the rest for petty crimes.

Austria

According to the information of 2005, 2614 Georgian citizens were in the detention facilities of Austria. Among them 1610 convicts are men and 3 women, 996 men and 5 women are accused. 80 % of the detained persons serve their sentences for theft and robbery. The majority of the detained are drug and psychotropic substance abusers. By the Legislation of Austria, the use of drugs is not punishable and in case of admitting the use of drugs, a person is sent for rehabilitation.

24 FREEDOM OF ASSEMBLY AND MANIFESTATION

Freedom of peaceful gathering and association with others is guaranteed by Article 11 of the European Convention, which is related to the political and social values of the democratic society.

The above right is guaranteed by the Constitution of Georgia, Article 25 and the Law of the Parliament of Georgia of 1997 "About Meetings and Expressions". The principle recognized by the Constitution is a possibility of the citizens to express their opinion and hear publicly together with other citizens. This principle also means respect to human dignity and personal freedom.

In the second half of the previous year, the authorities illegally interfered with the peaceful demonstrations on a few occasions.

Peaceful Protest Action of "Veterans' Darbazi"

On October 31, 2006 the members of the "Veterans' Darbazi" applied to the Public Defender. They were on hunger strike for the 5th day in a row, in front of the State Chancellery peacefully protesting against the abolishment of the benefits for the veterans.

According to the statement made by Chiora Tsiklauri, the Chairperson of the organization, on October 31 of the current year the representatives of the patrol police came and demanded the protesters to call off the protest action. They took the blankets and posters from them and forced them into the cars of patrol police. The protesters abided in order to avoid any further deterioration of the situation. The patrol police brought them to District Didi Digomi and left them in the vicinity of supermarket "Goodwill".

The members of the protest action returned to the surrounding territory of the State Chancellery and continued their hunger strike.

The same day, the representatives of the Public Defender visited the protesters. The patrol police was again demanding to call off the protest action. The policemen denied the fact of pressure being applied and calling for the dispersal of the protest action during the conversation with the representatives of the Public Defender. The policemen also declared that they were unaware of anything about calling off the protest action and moving the protesters to the territory of the supermarket "Goodwill" the previous day. Later the protesters identified the policeman heading the dispersal of the protest action and transferring them to the surrounding territory of the supermarket "Goodwill".

2006

The lawful request of the representative of the Public Defender to the policeman to write an explanation letter about this issue was declined. He also refused to identify himself, but one of his colleagues was addressing him as Dato. The given person left the territory of the State Chancellery in the patrol police car bearing registration numberWKW-376 and side number 7116.

After the protest action was over on November 1, the patrol police took the protesters to the Patrol Police Office with the purpose of inspecting them for drug abuse. When the protesters questioned the police for their actions, they were told that the police had received information about people under the effect of drug in the vicinity of the State Chancellery.

According to the statements made by the participants of the protest action, the Drug Expert Tamuna Machitidze was refusing to carry out the procedure claiming this was the violation of the Law and was asking for certain procedural document. The procedure started after David Todua, Chief of the Second Section of Mtatsminda Patrol Police assured her that this document was in the preparation process.

The checkup revealed that the protesters were not under the drug effect. Five of them were allowed to leave the building after being detained for three and a half hours and the remaining two left the building in four hours.

- According to the Article 247 of the Administrative Code of Infringements the administrative detention of an administrative offender should not last more than three hours.

The detained people during the check up on the use of drugs were asked to turn off their mobile phones and surrender their documents and IDs. Among the detained people three of them were invalids of the second category; one was an invalid of the first category and one person a patient of epilepsy. According to them, three of the detained felt sick and asked to have their blood pressure checked. Since there was no device for checking the blood pressure, they asked to call for an ambulance but were refused and told that they would be provided the necessary medications.

According to the protest action participants, the police did not fill up the administrative detention report and denied the protesters request for a lawyer, the police did not even provide any explanation to the detained people the reason of their detention. This is a case of deliberate illegal detention and inhumane treatment on the part of the police.

- By the Article 147 of the Georgian Criminal Code deliberate illegal detention is punishable with restriction of freedom for up to two years or with imprisonment between five to ten years. If the illegal act results in severe consequences then the imprisonment increases between nine to twelve years.
- Inhumane treatment is punishable according to the Article 144, (31) of the Georgian Criminal Code by imprisonment of 4 to 6 years.

On November 2, 2006 The Public Defender forwarded the materials available to him to Giorgi Latsabadze, Deputy Prosecutor General, to the Head of Human Rights Department at the Prosecutor General's Office and to Giori Grigalashvili, Chief of Patrol Police of the Ministry of Internal Affairs for further action. We requested copies of the detention report of the members of the "Veterans' Darbazi", transcript of the record book of 022 about the incoming calls on November 1, 2006 from the State Chancellery informing about the persons under drug effect on the surrounding territory of the State Chancellery and the telephone number from where the call was made. We also asked to identify the representative of the patrol police who refused to give an explanation to the representatives of the Public Defender on October 31, 2006 and more so, refused to even share his name; disciplinary measures provided for by the law should have been implemented against him.

On November 8, 2006 the Prosecutor General's Office sent a reply to us, stating that the materials sent by the Public Defender were forwarded to Tbilisi Prosecutor's Office for studying the case. Tbilisi Prosecutor's

Office based on the letter of the Public Defender initiated an investigation within article 333, Part 1 of the Georgian Criminal Code (excessive use of official authority).

We received a reply from Tbilisi Prosecutor General's Office on January 23, 2007 stating that the investigation was underway, at the same time we also found out that the policemen who moved the protesters to the territory of the supermarket "Goodwill" and the second time took them to check on the use of drugs were not identified. Identification of the policemen should not be a problem; it is enough to verify the information about which police car was patrolling on the given date in the surrounding territory of the State Chancellery. The explanation letters of the veterans forwarded to the Prosecutor General's office by the Public Defender indicated the name David Todua, as Chief of the Second Section of Mtatsminda Patrol Police. The Patrol Police Department of the Ministry of Internal Affairs has not replied to the Public Defender's letter of November 2, 2006, which violates time limits established by the Georgian Organic Law about "the Public Defender". On January 22, 2007 the Public Defender sent a reminder to the Patrol Police Department.

By the reply from the Prosecutor General's Office on January 23 we were informed that the representatives of the "Veterans' Darbazi" were interrogated in connection to the investigation of the above case. In particular Chiora Tsiklauri, Mamuli Chachanidze and Tamaz Tevdorashvili, who confirmed the fact that they were moved to the territory of the supermarket "Goodwill" but they could not identify the policemen and did not remember the license numbers of the police cars.

The representatives of the Public Defender got in touch with Chiora Tsiklauri. According to her she told the investigator about Todua's name, who was participating in the process of checking the veterans on the use of drugs. Chiora Tsiklauri also confirmed the fact mentioned in the letter from the Prosecutor General's Office, that interrogation of all the veterans was not possible since they were out of Tbilisi.

The investigation is still underway. Despite the fact that the name of the patrol police officer participating in the detention of the protesters is known to the investigators, as well as the license number of the patrol car, the investigation is not being conducted properly and the relevant measures are not being implemented to punish the guilty. Five months have passed since the incident occurred and the investigation does not have suspects, which makes us think that the investigation is not impartial.

Assault on the Members of "Veterans' Darbazi"

On November 3, 2006 the members of the movement of the war veterans Darbazi addressed the Public Defender again. According to them on November 3 at 12:30 p.m. Chiora Tsiklauri and David Gurieli were on their way towards the State Chancellery when they were attacked by two strangers, the men physically assaulted and insulted them. The assaulters were demanding them to stop protest actions: "stop protest actions or else things will get worse for yo…" The assaulters then fled to the Park of April 9. The witnesses, Tamaz Tevdorashvili and Megi Kochlamazashvili, Chiora Tsiklauri's spouse and the members of the same movement confirm the incident.

The same day the representatives of the Public Defender talked to the above four individuals and asked them to write explanation letters. As a result of the incident, Chiora Tsiklauri was slightly injured in the leg and David Tsiklauri suffered injuries on his elbow.

According to the applicants they related the incident to the patrol police and with their help they proceeded to Mtatsminda-Krtsanisi District Court.

The Public Defender assumes, this incident was directly related to the events of October 31 and November 1, 2006, and was designed to apply pressure the members of the veterans' movement to stop their protest actions.

On November 17, 2006 the explanation letters of the above persons were forwarded to the Prosecutor Generals' Office, the Human Rights Department at the General Prosecutor's Office and Tbilisi Prosecutor's Office.

On December 5, 2006 we received a reply from Tbilisi Prosecutor's Office informing that the materials were forwarded to Mtatsminda-Krtsanisi Internal Affairs Department, who on its part initiated an investigation of the criminal case #06063303, on the fact of deliberately causing physical injuries to Aleksandre (Chiora) Tsiklauri and David Gurielidze. (Within Article 118, Part 1of the Georgian Criminal Code). The investigators were given instructions on conducting thorough investigation. The final result of the investigation is not known yet.

The Public Defender evaluated the incident and the demand made by the patrol police for the war veterans to stop protest action on October 31, 2006 as a violation of the right to meeting and expression.

The right to meeting and expression is one of the fundamental right guaranteed by the Constitution, in particular Article 25 stipulates: "everyone with the exception of representatives of military forces, police and security services has the right to public meetings and expressions indoors as well as outdoors without prior permission".

According to Part 3 of the same Article, the authorities can stop public meetings and demonstrations only if it turns into an illegal action.

- According to the Article 161 of the Georgian Criminal Code illegal obstruction through misuse of power with the right to stage meeting or demonstration or to participation is punishable by penalty or by restriction of freedom for two years.

The above actions of the patrol police can be evaluated as the violation of the fundamental human right of restricting the expressing of opinion and the right to meeting. Its actions were aimed at threatening the participants and organizers to stop the protest action.

The important fact in the case of the veterans is that the patrol policemen refused to give any explanation to the representatives of the Public Defender. According to the Georgian Organic Law of about the "Public Defender", Article 18, subparagraph "c" "during the evaluation of a case the Public Defender has the right to receive explanation on the relevant issues from any official at any level". According to the Article 23, Part II of the same Law "during the evaluation of the case, the state body, ranking official or a judicial person whose actions or decisions are being scrutinized is obligated to provide explanation related to the issue as and when required by the Public Defender". According to the Article 27 "special Representatives of the Public Defender exercise the above authorities." The representatives of the patrol police violated the Organic Law by refusing to identify themselves.

Recommendation:

To the Ministry of Internal Affairs:

- The investigation should identify the representatives of the patrol police who moved the members of the "Veterans' Darbazi" to the territory of the supermarket "Goodwill" and on the following occasion to the office of the patrol police for inspecting them on the use of drugs.
- The patrol police representative who refused to give explanation to the Public Defender's representative should be identified. His actions violated the Organic Law of Georgia about the "Public Defender". Disciplinary measures should be implemented towards him.

Action of the Equity Institute

On the evening September 27, 2006, three representatives of the "Equity Institute" (Levan Gogichaishvili, Jaba Jishkariani and David Dalakishvili) were detained because they were inscribing "No to Violence» on the asphalt and painting the figure of crucifix in front of the State Chancellery

The patrol police representatives without offering any explanation forced them into the cars and drove them initially to the clinic of drug addicts for a check up (which revealed that they were sober) and finally to the pretrial detention isolator.

While conducting the check up at the clinic for drug abuse the relatives of the detained gathered in the yard (around 20-25 persons, among them Irakli Kakabadze) along with the media representatives. The relatives and friends of the detained tried to stop the police cars since the policemen were trying to conceal the location where they were going to take the detained, leading to a verbal confrontation. Irakli Kakabadze protested aloud and questioned the policemen: "why are you acting like soviet dogs?" Upon which he was also detained. On September 28, 2006 Irakli Kakabadze together with his friends were tried by the Administrative Cases Panel of Tbilisi City Court.

Judge Tamar Shushiashvili within Article 173 of the Georgian Administrative Code of Infringements ruled 15 GEL penalties for Levan Gogichaishvili, Jaba Jishkariani, David Dalakishvili and Irakli Kakabdze and recognized them as offenders. Article 173 of the Georgian Administrative Code of Infringements stipulates:

- Disobedience to legitimate orders or requirements of the law-enforcers or military servicemen while carrying out official duty is punishable by a penalty of paying 10 GEL or through community work between one and six months or by penalty equivalent to 20% of the offender's salary. If the punishment is found to be insufficient, taking into account the circumstances of the case and graveness of the offence, the penalty may be upgraded to 20 days of administrative detention.

The court concluded that "Irakli Kakabadze, Levan Gogichaishvili, Jaba Jishkariani and David Dalakishvili together with other people gathered in front of the State Chancellery on September 27, 2006 and painted the driveway, which is confirmed by the testimonials of the offenders and by the police report submitted".

According to the lawyer of the "offenders" some facts are not true about this ruling. In particular, neither Irakli Kakabdze nor the "other people" were in front of the State Chancellery. Only Levan Gogichaishvili, Jaba Jishkariani and David Dalakishvili were present. These three persons did not paint the driveway but inscribed an appeal "no to violence". This is confirmed by the police report.

The motivation part of the resolution reads: According to the Article 9 of the Georgian Law on Meetings and Expressions it is forbidden to hold meetings or demonstrations in the radius of 20 meters from the President's residence and other organizations."

By the statement of I. Kakabadze's lawyer this sentence is total absurd because:

1. Gathering of three people cannot be qualified as a meeting or demonstration;
2. No one measured the distance from the driveway (where they wrote the appeal) to the Chancellery, this issue was not researched at all;

During the court hearing the issue of measuring the prohibited distance was not raised, which is the main basis of prohibiting meetings and demonstrations. (Georgian Law on Meetings and Expressions, Article 9).

Article 10 of the European Convention protects the right to expression of every person. The State has the right to interfere in the freedom of expression guaranteed by the international norms in case of the three following circumstances: the interference should be guided by the Law; the interference should be aimed at protecting national security, territorial integrity, public safety and other values; Interference should be based on the need of the democratic society.

According to the legal standards established by the European Court when taking decision on this issue, priority should be given to the freedom of expression and not to proving more important interests by the State. (*Sunday Times v United Kingdom*).

Irakli Kakabdze's detention was based on what he told the policemen, which is an obvious violation of the "freedom of speech and expression" guaranteed by the Constitution, International Norms and the Georgian Law. The law enforcers did not have any legal basis to interfere with the demonstration of the right to expression. The practice of European Precedents Law establishes obligations for the politicians and statesmen to endure the criticism expressed towards them.

Theatric Action Staged by the Equity Institute and the Non-Governmental Organizations

On October 20, 2006 the police dispersed the theatric action staged by the poets, artists and the "Equity Institute" in collaboration with non-governmental organization "For Democratic Georgia" in front of the State Chancellery.

It is important to note that the action was approved by the authorities and the information regarding the specifics including its location and time was broadcast by media agencies the entire day. The permission of the City Municipality indicated that the organizers had the right to continue the musical action till 12 midnight. The participants brought the equipment to the location without any problems, prepared the stage and by their request the patrol policemen were located along the perimeter observing the entire process. The event began peacefully. The participants started reciting the poems followed by the musical concert.

At 7 p.m. the patrol policemen approached the organizers and asked them to stop the event, the reason given was the people in the neighboring areas were complaining it to be too noisy. The participants addressed the citizens on the microphone to come up to them if they were really bothered by the noise, failing which the patrol police was asked to present a written complaint of the concerned people in the neighborhood. The police could not present such a document and neither did the so called unhappy population show up. The event participants did not want to leave but the patrol policemen went up to the stage, turned off the power and confiscated the microphones. Finally, with the intention of avoiding confrontation with the police the organizers asked the audience to leave.

Article 19 (2) of the International Pact of the Civil and Political Rights protects the right of each individual to freedom of expression through any medium with the exception of the means established by the Law (radio, TV, electronic media, photography, music, graphics etc. according to the choice).

The requirement to dismiss the sanctioned action by the patrol police is an obvious and serious violation of the freedom of expression especially when the event participants did not violate public order and terms established by the Law. Such action should be evaluated as infringement of freedom of meetings and expression stipulated in the Article 161 of the Georgian Criminal Code.

Action at the Village of Damia-Georarkh, Marneuli Region

The Public Defender's report of the first half of 2006 included the incident which took place in the village of Damia-Georarkh, Marneuli Region. In particular, by the testimonials provided by the journalists of Azerbaijan TV Companies "LIEDER TV" and "ANS" accredited in Georgia. On February 22, 2006 during the protest action by the village population the policemen took video tapes from the journalists by force. The videotapes had the recording of the facts of physical assault on the part of the law-enforcers and Special Forces when dispersing the protest action.

The Public Defender addressed S. Rekhviashvili, Kvemo Kartli Regional Prosecutor about initiating an investigation. Additionally, The Human Rights Department of the General Prosecutor's Office was informed about the incident.

According to the letter received from the Prosecutor of Kvemo Kartli Regional Prosecutor's Office On February 22, 2006 a preliminary investigation was launched on the criminal case #31068006 on the fact of excessive use of official authority by Marneuli Internal Affairs Department officials (within Article 333, Part 1 of the Georgian Criminal Code).

On January 16 of the current year we requested additional information from the Regional Prosecutor's Office about the preliminary investigation. On February 2, 2007 we got the information that the representatives of Marneuli Internal Affairs Department that the ethnic Azerbaijani: Eldao Jalal Ogli Mamedov, Shirvan Anlar Aliev and Mamed Adil Ogli Mamedov were interrogated. According to their testimony, they were not aware of the protest action being video taped in the village of Damia-Georarkh because they did not see any journalists or cameramen on the location. They also said that they personally knew some people there and had direct conversation with the Azerbaijan population in the local language. Therefore if the journalists were really deprived of their video tapes and beaten they would by all means known about it from the population, but that was not the case.

By the information provided by Marneuli Regional Prosecutor's Office, the Chief of Marneuli Administration Amiran Shubitidze was interrogated as a witness, who confirmed that on February 22, 2006 he was in the village of Damia-Georarkh where he met with the local population and talked with them. He also confirmed the presence of journalists, but he did not witness the confiscation of videotapes from the journalists neither the physical assault on them, furthermore no one addressed him with this information. According to the information of the prosecutor's office, Lela Kharshiladze the camera operator of "Algeti TV", who was videotaping the events developing in the village too, did not know anything about it either. The investigation is underway.

The fact of confiscating videotapes from the journalists of Azerbaijan TV companies was not confirmed by the letter received from the Internal Affairs Regional Department. By the evaluation of the Public Defender the fact is far from reality. It is unbelievable that the local TV journalists were at the place to videotape the events and did not have tapes with them.

With the purpose of studying the facts of exercising the right to free meetings and expressions and their restriction by the authorities the Public Defender addressed the Prosecutor General's Office, Tbilisi City Court, and the Central Department of Patrol Police of the Ministry of Internal Affairs of Georgia requesting information about the number of cases of administrative infringements (hearings by the panel of administrative cases) in 2004-2006 of people participating in meetings and demonstrations.

In its response, The Panel of Administrative Cases of Tbilisi City Court stated that there were 26 court hearings on the participants of meetings and demonstrations in 2005-2006.

According to European practice, the legal evaluation of the meetings and demonstrations of the citizens is based on the theme of the gathering. It means that the State may restrict the exercising of this right if the appeals of the protesters are aimed at infringing internationally guaranteed values.

The constitutional-legal basis of the restriction of freedom of meetings and demonstrations are provided for in the constitution, the State does not disperse meetings or demonstrations unless it turns into an "illegal action". Article 13 of the Georgian Law on Meetings and Expressions stipulates that meetings or demonstrations turn into an "illegal action" if there are appeals "to condemn the constitutional order or change it by force, to infringe the country's independence and territorial integrity or if it promotes war, violence, discord on national, regional, religious or social grounds".

25 FREEDOM OF SPEECH AND EXPRESSION

Freedom of expression is a universal value because it has its own place in the system of human rights and freedoms.

On April 29, 1982 the Minister's Committee of the Council of Europe at the 70th session adopted a Declaration on Freedom of Expression and Information". The Declaration defines the freedom of expression and information as main element of the principles, such as true democracy, supremacy of law and respect to human rights, which is ultimately the important provision for person's social, political, economic and cultural development. The declaration obligates the States to implement such policy, which will protect the freedom of expression and information and promote independent media and pluralism.

In regard to the right of expression the European Court of Human Rights established a legal standard, which means giving priority to freedom of expression of a person at any stage of the activity compared to other more important interests of the State. Only in case of calling for violence the national competent bodies have the right to decide about the need for interference. The court demonstrates through its numerous decisions the protection of right to expression and media because this right is recognized by the International Law as the precondition for the development of democracy: "In democratic States the government competent bodies should tolerate criticism even if it is insulting and provocative" (*Ozgun Gundem v. Turkey).* The Article 10 (2) gives little possibility to establish restrictions on political views.

The Fact of Beating Vakhtang Komakhidze

The Public Defender's Parliamentary Report of 2004 described the incident of the physical assault on Vakhtang Komakhidze. According to our information on March 5, 2004 V. Komakhidze was driving from Shuakhevi to Batumi accompanied by a journalist from Batumi Mzia Amaglobeli. On the way he was stopped and asked to step out of his car at Khelvachauri post by the police. After Komakhidze stopped the car the Special Forces attacked him and severely beat him in front of the policemen. Among the assaulters only two persons did not wear the masks, the rest were masked and in uniforms. Komakhidze was forced out of the car and physically assaulted injuring his face, head and he suffered several concussions all over his body.

During the attack the journalists were deprived of their equipments, videotapes, mobile phones, watches and other items.

2003

Komakhidze was transported by journalist Nana Instkirveli of "Rustavi 2" to Batumi Hospital No. 1 and rendered first aid medical assistance. Within an hour after the incident the Member of Parliament Givi Targamadze visited Komakhidze with an ambulance car and brought him to Tbilisi.

One of the policeman, present at the incident was identified as Revaz Gvarishvili from his uniform badge which came off during the scuffle with M. Amaglobeli. The policeman confirms the fact that the police was instructed to stop Komakhidze's car.

The assault on Komakhidze was preceded by an incident the previous night when the camera operator of "Rustavi 2" was deprived of his equipment.

V. Komakhidze appealed to the General Prosecutor's Office about the incident and the investigation of criminal case was launched. The investigation identified V. Komakhidze and M. Amaglobeli as victims following which the case was forwarded to Batumi Prosecutor's Office for investigation where the victims were interrogated.

By the declaration of Vakhtang Komakhidze, in June the same year he received a call from the Chief of Police of Khelvachauri Region, Komakhidze was asked to meet him at his office. After the meeting Komakhidze recalls seeing the two unmasked assaulters in the corridor.

V. Komakhidze went to Batumi Prosecutor's Office and declared the above incident with the request to verify the information of the policeman Gvarishvili and others who did not deny the fact of assault.

After three years from this incident the case is still not properly studied. The investigation is very much delayed, policeman Gvarishvili and the two assaulters have not been officially interrogated and no relevant measures have been taken against them.

Broadcasting Company "Hereti" Against the Former Parliament Deputy

On October 13, 2006 Ramaz Samkharadze (Lagodekhi Region), Director of "Hereti" Broadcasting Company appealed to the Public Defender. According to him, on October 1 the radio station broadcasted in its analytical program "Mteli Kvira" information about the candidates running for the local self-governance elections, former MP David Kapanadze's name was also mentioned in the program. On October 9, 2006 David Kapanadze physically insulted Ramaz Samkharadze in Lagodekhi.

On October 12, 2006 the representatives of the Public Defender visited Lagodekhi Internal Affairs Department and held discussion with the Investigator Gia Lomidze. By the declaration of the Investigator, the preliminary investigation was already underway (within Article 118, (1) of the Georgian Criminal Code), experts were appointed and the persons named by the victim were interrogated.

The application by R. Samkharadze along with other relevant materials was forwarded from the office of the Public Defender to Lagodekhi Internal Affairs Department.

On December 11, 2006 we received a letter from Gurjaani Regional Prosecutor's Office mentioning that the preliminary investigation on the given case was terminated in the absence of complaint from the victim.

On January 9, 2007 the Public Defender addressed Malkhaz Ghughunishvili, Chief of General Inspection of the General Prosecutor's Office of Georgia indicating that by the information available to the Public Defender R. Samkharadze had appealed to Lagodekhi Internal Affairs Department, which is confirmed by the registra-

tion number at the Chancellery. This document together with the resolution of Gurjaani Prosecutor was forwarded to M. Ghughunishvili. We sent a similar letter to Malkhaz Chikviladze, Chief of General Inspection of the Ministry of Internal Affairs and Shota Khizanishvili, Chief of Administration, Ministry of Internal Affairs.

On January 24, 2007 we received a reply from the General Inspection of the Prosecutor General's Office informing that the resolution about terminating the preliminary investigation on the fact of physical assault of R. Samkharadze, Director of "Hereti" Broadcasting Company adopted by Prosecutor Giorgi Kokiashvili was annulled and the investigation has been resumed. By the resolution of the Deputy Prosecutor General the case was transferred from Lagodekhi Internal Affairs Department to the Regional Internal Affairs Department of Kakheti.

According to the letter received from the General Prosecutor's Office in response to the application of the Public Defender the possibility of imposing disciplinary measures against Prosecutor Giorgi Kokiashvili was not mentioned.

The Journalists of "Ghia Boklomi" Against the Representatives of the Office of the President's Representative

On December 5, 2006 Ilia Chachibaia, Chief Editor of Ghia Boklomi" (Open Padlock) newspaper "appealed to the Public Defender informing about the facts of his of illegal detention, threats, beating and pressure by the representatives of the Office of the President's Representative in Samegrelo-Zemo Svaneti in the Office of the President's Representative.

According to the explanation report of I. Chachibaia, on December 4, 2006 journalist Ilia Chachibaia visited the Chief of Press Service of the President's Representative to verify particular information. Chief of Governor' Zaza Gorozia's Security Dima Markoidze called him on the phone and asked for a meeting. After the meeting the journalist was driven to the Governor's Office by the car of the press secretary, he was threatened and demanded to identify the source of the information or his newspaper would be closed and he would be killed. As the victim and the witnesses declare the officials committed a number of illegal actions.

Article 11 of the Georgian Law on the Freedom of Speech and Expression provides for the right to protect professional secrets and its sources. Article 2 of the same Law defines the basis for interpretation, according to which "this Law should be interpreted according to the Constitution of Georgia and international legal obligations assumed by Georgia, among them European Convention on Human Rights and Basic Freedoms and Case Law of the European Court of Human Rights", apart from the relevant article of the International Pacts of European Convention on Human Rights and UN Civil and Political Rights about the freedom of expression. There are many examples of Case Law to prove that "protection of the a journalist's source of information is one of the main pre-condition for independent press as it is reflected in the legislations and professional action codes of the number of member countries and are guaranteed by several international documents about the sources of information for the journalists. Without such protection the sources will not be able to assist the press in informing masses on the issues of public importance. Strasburg Court made this statement on the case of Goodwin v. the United Kingdom, 1996. The court ruling on the case was followed by the recommendation of the Committee of the Ministers of the Council of Europe R (2000) 7, which called on the member States to include the principle of confidentiality of journalists' information sources in their legislations.

The materials available to the representatives of the Public Defender were forwarded for further reaction to the Deputy Prosecutor General and Human Rights Department at the Prosecutor General's Office. We received a reply from them stating that Zugdidi Internal Affairs Department of the Ministry of Internal Affairs initiated

the preliminary investigation of the criminal case on the illegal detention of I. Chachibaia and illegal obstruction to his professional activity. The investigation is underway.

On the Obstruction to Obtaining Public Information by the Journalist of "Ghia Boklomi"

The confrontation between the representatives of the President's Representative and the"Ghia Boklomi" newspaper continued after the above incident. In particular, on December 12, 2006 Ioseb Khoperia, Executive Director of the newspaper applied to the Public Defender informing him about the representatives of the President's Representative in Samegrelo-Zemo Svaneti hindering the activities of the journalists. This time it was about the President's visit to Zugdidi for the inauguration of Public School #3. The journalists of the above newspaper were not admitted into the school yard to record the President's speech, which according to the applicant was carried out under the instruction of Lali Gelenava, Press Secretary of Zaza Gorizia.

By the statement of I. Khoperia, L. Gelenava was upset at the fact that the journalists applied to the Public Defender about the incident of December 4. She registered the attendance of other journalists but not the journalists of the "Ghia Boklomi". When questioned about any restrictions set for media representatives, L. Gelenava replied "there were restrictions for print media. Five operators of TV companies had the right to enter the building and the representatives of the electronic media were allowed to stay in the school yard". It is legally inadmissible to classify the media representatives this manner, especially if it deals with obtaining public information. The President's security did not allow the journalist to video tape the event from outside the school yard. As a result the newspaper "Ghia Boklomi" was left without any information.

The representatives of the Public Defender obtained the explanation reports from the victims and the witnesses in this incident. Giorgi Dagargulia, Specialist of the Regional Department of the Public Defender's Office confirms the fact of threatening by of L. Gelenava on the phone to the journalists of the newspaper about blocking information for them and impeding with their professional activity. He personally witnessed the telephone conversation between I. Khoperia and L. Gelenava.

By the evaluation of the Public Defender, the provoking decision by the Press Secretary of the President's Representative to obstruct the process from obtaining public information violates the articles 19; 24 of the Georgian Constitution and the Georgian Law on the Freedom of Speech and Expression, it also infringes the right guaranteed by the international documents about the freedom of speech and opinion.

The above statement and the attached materials were forwarded to the General Prosecutor's Office for the adequate reaction.

On Kidnapping Ilia Chachibaia, Chief Editor of "Ghia Boklomi" Newspaper

On January 17, 2007 Ioseb Khoperia, Executive Director of "Ghia Boklomi' newspaper called Bagrat Kiria, representative of the Public Defender's Office in Zugdidi the Western Georgia and informed him about the kidnapping of Ilia Chachibaia.

By the explanation report of Ilia Chachibaia given to the representative of the Public Defender, on December 17 between 11 and 12 in the morning Ilia Chachibaia was walking along Rustaveli Avenue on his way to work in Zugdidi, close to the Public School #1 a black BMW without license plates stopped by and a stranger opened the door and asked him to get into the car. Chachibaia refused, which prompted the stranger to get off and force him to the back seat of the car.

Realizing that he was being kidnapped, I. Chachibaia managed to secretly send an SMS to I. Khoperia (help me, Ilia Chachibaia). Following which the stranger snatched the mobile phone from I. Chachibaia and checked the incoming calls.

Ilia Chachibaia was taken to the outskirts of the city at the remote wooden house. He tried to escape, but one of the kidnappers caught him and took him into the house by force. He was psychologically pressured and threatened. The representatives of the Public Defender visited this place and talked with the local population who testified that they did not see any suspicious activities; neither did they see a car of the above description, which they would have noticed by all means had it been there. They refused to give to give anything in written.

By the declaration of Ioseb Khoperia, as soon as he received the SMS he called from the telephone of his colleague Mari Chkhetia to I. Chachibaia's number which was turned off. Afterwards I. Khoperia called B. Kiria, the representative of the Public Defender and told him about the incident.

Ioseb Khoperia called the patrol police hot line. According to him 2 patrol police cars arrived within 10-15 minutes together with the representatives of Zugdidi police and the Prosecutor's Office.

In connection with the above incident, both I. Khoperia and I. Chachibaia were interrogated by the investigator of Zugdidi Police Department P. Gvilia.

According to the explanation of I. Chachibaia, after the incoming call of B. Kiria on his mobile phone the kidnappers put him in the car and drove him a certain distance before letting him off.

The materials obtained by the Public Defender were forwarded to the Office of the Prosecutor General for further reaction, which was then transferred to the Office of the Prosecutor General of Zugdidi Regional Office. Zugdidi Internal Affairs Department started preliminary investigation on the case of illegal detention of Ilia Chachibaia, Chief Editor of the newspaper.

Konstantine Kublashvili against Eka Beselia and Others

On October 21, 2006 the Council of the Ethics Procedural Commission adopted a decision about initiating disciplinary proceedings against the members of the Lawyers' Association Eka Beselia, Shalva Shavgulidze and Zurab Rostiashvili based on the complaint lodged by Konstantine Kublashvili, Chairman of the Supreme Court. The complaint was based on the article published at "Georgian Times" which according to the opinion of the complainant was insulting for the Court Authorities and a direct and bold attack on the Court System. K. Kublashvili was irritated by the following statements made by the lawyers: "the absolute majority of the judges execute the orders of the authorities", "above all the reason for unfair judgments is due their poor professionalism", "99% of the judges perform the orders of the authorities, some carry out the orders of the authorities and others of the Prosecutor's Office".

It is obvious that Mr. Kublashvili was not trying to defend his personal rights and freedoms when he was filing the complaint. The purpose for filing the complaint was to protect the Court Authorities. It is also clear that filing such a complaint in Ethics Commission is not a violation of any legal act and is the right of the author of the complaint. Although it must be said, that being in the rank of the Chairman of the Supreme Court such actions directly affect and reflect the attitude and the approach of the Court Authorities towards disputes related to the freedom of expression. Especially when it deals issues related to independence and impartiality of the Court, which is of much public interest.

The above complaint of the Chairman of the Supreme Court resembles the complaint of the Ministry of Agriculture of Adjara Autonomous Republic filed in Batumi City Court against "Batumi Press-Club" and Avtandil Gadakhabadze. The newspaper "Axali Versia" published an article in anonymity, which said: "Aslan Abashidze ruined the fishing industry, as if tramping it over with a tractor". Despite the fact that the article did not say anything about the Ministry of Agriculture of Adjara or the Minister himself, Batumi City Court ruled 1000 GEL penalty for the defendant to compensate for the moral damages done by the article.

The Human Rights European Court unilaterally established that the statements about inefficiency of the Court System, independence and impartiality of judges made in the context of debates are always important for the society and should not be kept away from the public discussions. The Human Rights European Court in the case of "*Lingens v. Austria*" for the first time underlined the function of the press as the society's watchdog. "Despite the fact that the press should not trespass the line established *inter alia*, to protect the reputations of others, it has the obligation to spread the information and opinions on political as well as on other issues of public interest".

In the case of "*Thorgeirson v. Iceland*" the Court declared that there is no difference between political discussion and the discussion on other issues of public interest in the Case Law. In the same case the Court underlined that an evaluative discussion does not require confirmation. According to the Georgian Law on Freedom of Speech and Expression, evaluative discussion is protected by absolute privilege, which takes the responsibility away from the author of the evaluative discussion completely and unconditionally. Ethics Commission indicated in the motivation part of the decision to the Case Law of the Human Rights European Court: "It is not always pleasant to hear when the judges, as important figures in the society are criticized, some of the remarks may be very interesting while others may mean nothing, but the judges are not tender flowers to fade by the severe criticism".

The Panel of the Ethics Commission of the Association of Georgian Lawyers referred to the articles 19 and 24 of the Georgian Constitution, Article 19 of the UN Human Rights Universal Declaration and articles 16, 20 and 23 of the Basic Principles of the Lawyers' Role, article 19 of the International Pact of Civil and Political Rights, Human Rights European Court, Standards[1] established by the Case Law of the European Human Rights Court and did not satisfy the complaint of Konstantine Kublashvili, the Chairman of the Supreme Court.

In the context of public debates over the independence and impartiality of the Judiciary, the reaction of the Chairman of the Supreme Court would have a negative impact in the first place on the implementation of the standards established by the European Human Rights Court and secondly on the disputes over the formation of the court practice on freedom of expression. In particular, it will be difficult for the Court to determine correlation, adequate to the Case Law of European Human Rights Court, between the freedom of expression and the interests of the impartial court taking the circumstances of case into consideration.

SITUATION WITH MEDIA IN GEORGIA

Article 10 on freedom of expression and information *inter alia*, stipulates freedom of spreading and receiving information. In the ruling of the European Court of Human Rights on the case of *Goodwin v. the United Kingdom,* press is recognized as one of the main elements of the democratic society which is of vital importance and subject to protection. With regards to media freedom, attention should be paid to three aspects, such as the

[1] Hendiside vs. the United Kingdom, 1976. Declaration 5493/72, Para.49; Sunday-Times v. the United Kingdom-declaration 6538/74; Skalka v. Poland #43425/98;Perna v. Italy #48898/99, Para. 39; Castel vs. Spain, Lingens v. Austria.

fundamental role of the freedom of expression; importance of media providing information and opinions of general interest to the society, which has the right to receive the information and the opinions.

The vital integral part of the freedom of media is the protection of journalists' information sources, which is recognized as a precondition of freedom of press by the European Human Rights Court.

General Situation

It was mentioned in the Public Defender's Report of the first half of 2006, with the purpose of studying the situation of media in Georgia, the representatives of the Public Defender were regularly meeting with the representatives of public media in Tbilisi and the regions. Number of problems was raised at the meetings with the journalists in all the regions. The most important among them was the problem of receiving information. As a rule the officials refuse to give public information or interview.

The Report of the State Department on the Human Rights Situation in Georgia indicated that apart from the absence of the adequate legislation, which determines freedom of speech and expression, the journalists have insufficient guarantees in respect to the protection of freedom of expression. The report dealt with the following facts:

On July 6, 2006 Eka Khoperia, anchor of the popular talk show "Tavisupali Tema" (Free Topic) at TV Company Rustavi 2 made a live announcement about leaving the company .The journalist's reason for such a decision was the interference and pressure from the representatives of the Authorities in her professional activity although she refused to disclose the names of the individuals responsible for her decision to resign. This was followed by the resignation of the Director of Rustavi 2 Nika Tabatadze and six other journalists.

■

The problem is unequal distribution of broadcasting frequencies. "Satellite" TV Company is broadcasting in Kakheti Region and covers Telavi and its surrounding villages. According to the local population it competes with "Gorda", cable TV which has 22 channels in its broadcasting package. The local authorities use one of the "Gorda" TV channels "MUZ-TV" twice a week on Thursdays and Saturdays to broadcast the information about the activities of the Regional Authorities. "Gorda" Cable TV does not include "Satellite" TV Company in its network causing a significant decrease in its viewer ship in Telavi. Currently the TV Company mainly broadcasts in the villages because the population does not have cable TV.

By the statement issued by the Director of "Satellite" TV Company Enri Kobakhidze, the main problem of their business is the lack of office space. For nine months they have been occupying two rooms in the office of the non-governmental organization "Center for Constitutional Defense". Ever since the former Director of the TV Company Zura Kumsiashvili and the 40% stake holder asked them to vacate the premises, the Satellite TV Company has been having problems in finding a suitable office space. According to the statements made by E. Kobakhidze and the journalists, the representatives of the local authorities threaten the owners of the facilities that wish to rent or lease their premises to Satellite TV Company. The owners of the facilities did not confirm this information during the conversations with the representatives of the Public Defender.

The company stopped airing its informational-analytical program "Dialogue" due to the lack of office space. According to Nato Megutnishvili, the author and the anchor of the program there were instances of pressure on the journalists from the authorities not to broadcast the program against their interests. "Satellite" journalists were refused interviews by the authorities and there have been a number of occasions when the

representatives of the Municipality humiliated them. The press service of Telavi City Council did not furnish them the public information about the activities implemented by the authorities. The journalists of the company "Satellite" declared that the representatives of the local administration openly threatened them and constantly misused their power.

Batumi local TV Company TV-25 has the similar problems. On January 22, 2007 the Public Defender met with Merab Merkvilidze, the founder of the TV Company. According to him the problems with broadcasting started on June 28, 2006 when about 10 cable TV operators stopped airing TV-25 programs in Batumi.

Later five cable TV operators included TV-25 in their network but three major cable TV operators (XXI, "ERA" and "BNZ") refused to do so.

In a private conversation with the management of TV-25 they mentioned commercial problems and in particular being demanded for payment by the major cable operators in exchange of including TV-25 in their network, contrary to the accepted practice when cable companies air the production of other TV companies they pay royalty for the rights of airing their productions. The management of TV-25 explains this as result of the authorities applying pressure over Cable TV operators.

As for the availability of public information, by the explanation provided by the representatives of TV-25, the press service of the local authorities created more problems for them when trying to obtain information than the officials themselves. For example in the summer when the President arrived in Batumi for the inauguration of the movie theater "International", the former Head of Adjara Press Service Tsetskhladze asked for accreditation only from the journalists of TV-25.

It must be noted that the dominance of cable TV operators in the regions creates serious problems for the local TV companies in the broadcasting arena. The latter have very limited viewers, confined to those who cannot afford the cable TV. The lack of viewer ships affects the market of commercial advertisements, which in turn causes financial problems for the regional broadcasting company. This may be followed by the widespread closure of local TV companies.

The development of cable networks should be followed by the adoption of adequate legal acts, which would regulate the broadcasting rights; the cable network when taking decisions about airing programs should take into consideration technical, legal, audience and other related factors.

In this regard, The Cable Communication Act passed in 1984 by the United States Congress is very significant. Its primary goal was to determine the obligation of issuing broadcasting license by the organizations to the cable operators. Later when the cable operators continued their activity from being the buyer of the program to the provider of the program it was necessary to make the adequate amendments to the Federal Legislation. In the United States and Europe this sphere is regulated by the local self-governance bodies. Presently the Federal Law requires the cable operators to include the local broadcasting companies within the package of their programs.

The Communications Federal Commission created regulatory legal acts for cable TV operators
to protect broadcasting companies because there was a genuine threat that cable TV companies would take over the viewers of the locally licensed TV companies and decrease their income by including broadcasters from beyond the locally available network in their cable system.

The Law of 1984 on the Policy of Cable Communications did not prove to be efficient in the opinion of many consumers and the Congress. In 1992 the Congress passed an act on Cable Television and Protection of the Consumers' Rights and on Competition", which defined the rules of obligatory inclusion of local broadcasting companies in the program packages of the cable TV companies. The Law of 1976 on the Intellectual Property

Rights regulated the inclusion of the local (regional) broadcasting companies in the network and the issue of paying the compensations. All these legislative acts determine the obligation of the cable system to include the local commercial and non-commercial TV companies in their package of programs.

The relevant acts passed by the United States Congress about regulating broadcasting of cable companies and intellectual property rights of the cable systems obligate the cable systems to include the local commercial and non-commercial TV companies in their system or get permission from them for broadcasting. In this way, the local TV companies are protected from immediate competition with cable operators. We think that a similar regulatory document should be passed in Georgia as well, to ensure the protection of the local TV companies in the circumstances of the growing influence of cable TV companies and increased competition.

After studying the problems "Satellite" TV company in Kakheti and Batumi TV company TV-25 the Public Defender addressed the Chairman of the National Regulatory Commission to study the issue related to the decrease in the area and viewer ship of the local TV companies, so that the dominant market position of the cable companies do not interfere with the development and activity of the local broadcasting companies.

We received a reply from the above organization informing us that the broadcasters defined their broadcasting packages based on the agreements according to the Georgian Law. Therefore the Commission was not responsible to obligate the broadcaster to include the programs of the local TV companies in its package. The broadcasting zones of these companies were defined by their licenses.

The letter of the National Regulatory Commission did not show the good will or the intention of the Commission to revise and regulate the broadcasting issues related to the cable operators and regional TV companies.

THE ISSUES OF ECONOMIC INDEPENDENCE

The two-year tax free privilege established for the press by the President's initiative expired on December 31, 2006. The press was tax exempted on income, property and on the revenue from the commercials until 2007. The property on the account of the persons directly used for the business of printing news papers and magazines were tax exempted too.

The parliamentary majority refused to extend this privilege.

As for the regions, funding new means of media by the authorities creates serious problems to the newspapers- they are not developing independently to exist on the local market, on the contrary in most cases they go bankrupt and close. Independent media in this regard faces real threat.

Legislative Basis, Issues of Journalist Ethics

The legislative basis regulating this sphere corresponds to the basic European standards, where broadcasting type, time and intervals are defined.

The draft project of Broadcasters' Ethics Code presented by the National Communications Commission caused large interest and difference of opinions. Unlike the Georgian Law on the Freedom of Speech and Expression", which is acceptable and liberal, the draft project of the broadcasters' ethics and its particular articles were unacceptable and incomprehensible for many representatives of the media.

By the declaration of the National Communications Commission the deadline for discussing the Code of Ethics was postponed till April. According to the media sources, the National Communications Commis-

sion elaborated new version of Broadcasters' Code of Ethics, which is a much smaller document and is different from the previous document in its context and essence.

It is important to determine norms of general ethics to ensure equal competition terms for all TV companies. The unified code of conduct is acceptable because it will regulate this issue. The licensed organizations should create internal regulation system. The current draft law in general by its context is not acceptable because it is impossible to work out the unified system of ethics, though the draft law includes such norms, which can be applicable for key aspects.

In respect to the draft presented as legislative initiative by the Parliamentary Committee on Legal Issues and New Rights Faction on the amendments and addendums to the Georgian Law on Broadcasting, the Public Defender made remarks. On December 29 the Parliament by #4319 Law adopted the amendments initiated only by the Deputy Chairman of the Committee on Legal Issues Giga Bokeria in a speedy manner.

According to the amendments and addendums to the Law on Broadcasting, the Article 14 (2) subparagraph "w13" stipulates the following: "Code of conduct is the normative act adopted by the commission, which defines the rules of service of the license holders". According to the presented legislative initiative, the broadcaster is obligated with one sole obligation to create an effective mechanism of self-regulation based on the normative act of Code of Conduct, which will ensure that complaints are effectively dealt and responded in a timely manner.

According to the Article 591 of the above draft law the reaction to the violations of articles 52, 54, 56 and 59 of the Law about "broadcasting" and the requirements of the code of conduct can be given within the internal mechanism of the broadcaster. "Article 52 of the Law on Broadcasting is about the obligation of making a statement in response to the incorrect or incomplete information aired by the broadcaster; Article 54 is about maximum exposure of different opinions without any discrimination; Article 59 deals with the obligation of airing the news and public-political programs at the peak broadcasting hours.

It is acceptable to locate the broadcaster's activity within its self-regulation mechanism but we are concerned that the disputes arising from the relations described in the article 56 can be resolved by the media internal regulation mechanism without the involvement of the State. Article 56 prohibits any form of war propaganda (Article 56.1), programs provoking racial, ethnic, religious or other types of discord or discrimination on these grounds, (Articles 2 and 3) prohibits pornography and protects the children from harmful influence. Freedom of expression in respect to protection of minor from harmful influence is an issue of big interest for the State. The State is obliged to provide normal physical and intellectual development for minor. This obligation means determining effective legal procedures and in case of necessity imposing sanctions on those who create serious threat to the normal development of the minor through propaganda of war and violence including the spread of pornographic material.

The Human Rights European Court with regard to the case "*Muller and others v. Switzerland*" declared «paintings reflecting sexual relations ...were freely accessible to public because the organizers did not establish entrance fee or age limit" (Para 36). Consequently the Human Rights European Court did not consider the ruling of the courts of Switzerland as violation of Article 10 in the exhibition organizer's case.

The State should also pay attention to the protection of the ethnic, religious or other monitories under its jurisdiction. The obligation to prevent any form of discrimination is the general principle of the International Public Law recognized by the civilized society. Article 14 of the Georgian Constitution and Article 14 of the European Convention about Human Rights and Basic Freedoms prohibit any form of discrimination. Article 10 of the European Convention on Human Rights does not protect Nazi type of statements, opinions and propaganda, which promotes to racial discrimination. Clear example to this is Strasburg Court ruling on the

case of "*Kuhnen v. the Federal Republic of Germany*" in which Germany initiated criminal proceedings against Kuhnen for publishing an article containing ideas of destruction of Zionists and foreign workers opposing the German superior racial pride. Strasburg Court indicated to the Article 17 of the Convention, which prohibits any actions aimed at destruction of the rights and freedoms provided for by the Convention. By the court explanation Nazism and discriminative appeals contradict the preamble requirement of the Convention about the basic freedoms strengthening effective democratic policy. The author of the second statement against Germany was a person whose form of expression was milder and academic. The author of the scientific publication doubted the existence of Holocaust and justified his claim with certain arguments. The Government of Germany imposed penalty of 16 billion German Marks to the author of the publication. The court could not determine the violation of the article 10 of the Convention in the actions of the State.

The above practice clearly demonstrates that the obligation of Georgia as the participant country of the European Convention on Human Rights and Basic Freedoms is to take effective and among them legislative measures to prohibit propaganda of violence and discrimination in any form to protect the minor from the negative influence, achieving this goal through the effective media internal regulation mechanism. According to the Article 53 (2) of the Georgian Law on Broadcasting the Code of Conduct defines the criteria for categorizing films with negative influence on children." Without the code of conduct legal sanctions would be used against those subjects who are negatively influencing the children.

We believe that the relations regulated by the Code of Conduct should be precisely defined and in case of their poor implementation, sanctions provided for by the law should be imposed on the broadcaster. We also think that the Article 2, Para. "w13" of the Georgian Law about on Broadcasting should be formulated the following way:

"w13) Code of Conduct – a normative act is adopted by the commission based on this law, which defines the rules of service by the license holders to protect the minor from the negative influence, to prevent propaganda of war and violence, racial, ethnic, religious or other type of discord or/and discrimination on these grounds, spread of pornographic material."

THE ISSUE OF LICENSING

The issue of the use of licensed products is defined by Bern Convention of 1986 on the Protection of Literature and Works of Art, which defines the rules for showing fiction productions. Georgia joined this convention on May 15, 1995. According to the report of the UN Economic and Social Issues Commission, the system of protection of intellectual property corresponds to the main multi-lateral agreements in this sphere, among them the most important is the so called "TRIPs" agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights). Article 9, Part 2, Para.1 of this document defines the rules of intellectual property rights on video production and together with Articles 1-21 of Bern Convention determines relevant measures for violation of this right.

In the television field the above issue is legally regulated. The first precedent of the action against the violation of rules of licensing is the civil lawsuit of "Imedi" TV Company against the "Rustavi 2" and "Mze", TV Companies which dealt with the illegal showing of fiction films.

"Imedi" TV Company against "Mze"TV Company

"Mze" TV Company for a long time was airing the films purchased by "Imedi" TV Company without its permission. On December 16, 2004 the TV Company 'Imedi" filed a complaint to Tbilisi District Court and demanded

compensation of 2500 USD for the loss caused by the violation of intellectual property rights. This was about the film "Tin Drum" showed by TV Company "Mze" on November 5, 2004 at 23:45 hours.

By the declaration of "Imedi" the exclusive right of public airing this film on the territory of Georgia belonged to TV Company Imedi. They bought this right from the company "OU CP Studio" on June 25, 2003 based on the licensing agreement. According to this agreement "Imedi" TV Company has the right to prohibit the use of the production by others (Article 37 (1) of the Law on Intellectual Property and Adjacent Rights).

By the declaration of the complainant, "Mze" TV Company violated Article 18 (2) sub-paragraph "f" o the Law on Intellectual Property and Adjacent Rights (property rights of the author of the production), Article 37 (1) (special license), Article 46 (2) (violation of intellectual property, adjacent and data base creator's rights). Article 59 (3) sub-paragraph "e" of the Law on Intellectual Property and Adjacent Rights and "Imedi" TV company demanded from the defendant a payment of compensation of 2500USD according to the article 59 (3).

On March 28, 2005 the District Court satisfied the claim of "Imedi" TV Company and imposed on company "Mze" the payment of the above amount. Company "Mze" appealed to the Supreme Court against the sentence ruled by the District Court. The Supreme Court shared some of the concerns of company "Mze". (Company "Mze" tried to prove that though it had that film listed in its program in reality it showed a different film). The Supreme Court annulled the ruling of the District Court and returned the case to Tbilisi City Court for determining the factual circumstances and taking new decision. Until now there has not been a court hearing on the given case.

"Imedi" TV Company against "Rustavi 2"TV Company

On November 15, 2004 "Imedi" TV Company filed a complaint in Tbilisi District Court and demanded compensation for the loss caused by the violation of intellectual property rights. "Imedi" claimed that "Rustavi 2" for a long period of time was airing films whose rights were purchased by "Imedi".

"Imedi" claimed that by airing the film illegally on "Rustavi 2" it did not get the anticipated income. "Imedi" had to postpone showing this film for as long period of time because airing the film recently shown by "Rustavi 2" would lower its rating. Low ratings would immediately result in decrease of income through commercial advertisements.

The District Court satisfied the claim of "Imedi" company in apsentia ("Rustavi 2" did not attend the court hearing) and imposed on "Rustavi 2" a payment of 2500USD. The defendant did not appeal the sentence but did not make the payment either. "Imedi" appealed to the Enforcement Department and as a result "Rustavi 2" fully paid the compensation amount.

Statement of "Imedi" TV Company at the National Communications Commission about Imposing Administrative Payment on "Rustavi 2"

"Imedi" TV company applied to the National Communications Commission in 2004 in order to impose administrative payment on "Rustavi 2" for airing without permission, the television products legally purchased by "Imedi".

In its decision the Commission noted that the exclusive right of public airing of the film two times was granted to "Imedi, Ltd "TV Company, based on the agreement signed with company "EATB-Film". "Rustavi 2"

violated the Law on Post and Communication, article 45 10 Para.1, and also the Law on Intellectual Property and Adjacent Rights", article 46, Para.2.

According to the chapter 6 of the Regulatory Rules of the Activities of the National Communications Commission" (rules of monitoring and inspection by the commission, proceedings of offenses) the commission started administrative proceeding in connection with the above fact against "Rustavi 2".TV Company

The National Communications Commission satisfied the claim of "Imedi" and imposed administrative penalty on "Rustavi 2" within Article 144 1 of the Administrative Code of Infringements "in the sphere of communication and post {…} violation of license terms is subject to penalty at 5.000 GEL". After certain period of time "Rustavi 2" paid the administrative penalty.

26 PUBLIC INFORMATION

According to the Georgian General Administrative Code the citizens of Georgia, foreigners and judicial persons have the right to request information from the public organizations if it is not state, commercial, professional or private classified information. A person is not supposed to indicate the reason or the motive for requesting the information.

Requirement for the accessibility of information is mandatory for any public organization or judicial person of private law funded from the state or local budgets.

The public wants to have its right to access the information to be protected at the highest level. The society is very much keen in the activities of the administrative bodies especially when it comes to utilization of budget funds and implementation of other measures. Most of the citizens are knowledgeable about the time limits of giving out public information and the often have justified claims when the public organizations violate norms established by the Law.

As we already mentioned any information at the public organizations if it is not classified according to the established rules is public and should be available for anyone.

The Georgian General Administrative Code establishes specific rules and time frames on giving out the public information. A person needs to present a written application to the relevant public organization to receive the information. According to the Article 40 of the General Administrative Code the public organization is supposed to give out public information immediately or in case of special circumstances within 10 days. One of the important components of contemporary life is quick exchange and flow of information, which is the reason why the public organizations should give out public information at the earliest.

The Public Defender's office studied a number of cases related to violation of the above time limits and unjustified delay in this process.

It must be noted that the leader among administrative bodies in this aspect is the Mayor's Office and its Municipal Services.

The Case of Zviad Kekelidze

Citizen Zviad Kekelidze applied to the Public Defender. As a veteran of the armed forces he had applied to the Mayor's Office and the City Council based on the Presidential Resolution #493, article 49 (November 5, 2004) about giving him gratuitous plot of land. The above offices forwarded Kekelidze's letter according to the competence to the Urban Planning Service of Tbilisi. Kekelidze's case file includes

a letter from the Urban Planning Service, which explains that based on the above Presidential resolution he has the right to get plot of land for free which could be used for individual housing or agricultural activity in the urban type of settlement up to 0.1 hectare for each family member and in rural settlement up to 0.25 hectare. But the capital Tbilisi is not categorized as urban type of settlement.

Kekelidze applied to the Urban Planning Service the second time on June 28, 2006 requesting explanation of this response. His letter was registered at the chancellery on June 29, 2006 by #k-264. Zviad Kekelidze was asking for a written explanation whether the Presidential Resolution of November 5, 2004 #493 included Tbilisi and if not where was he entitled to get the plot of land. He did not receive a reply in the timely manner established by the Law, thus article 37 of the General Administrative Code was violated "everyone has the right to request public information irrespective of its physical form and manner of keeping and everyone has the right to receive the information in the original form". The time limit established by the same Code was also violated.

In connection to the above and in accordance with the article 21, subparagraph "b" of the Georgian Organic Law on Public Defender, the Public Defender applied to the Chief of Urban Planning Service with the recommendation to send a reply to Z. Kekelidze based on article 40 of the General Administrative Code. The letter also requested to consider the responsibility of the persons who could not provide the applicant with the public information within the specified time frame based on the subparagraph "d" of the same article and the same law and the articles 78 and 79 of the Law on Public Service.

Through the letter #3093 of December 9, 2006 it came to our notice that the Urban Planning Service had prepared the reply to the requested public information sought by Zviad Tsetskhladze through his letter of August 25, 2006 within the established time limits. The same letter also said that the citizen was supposed to come personally to the Urban Planning Service to collect the written reply since the office does not provide for postal service. The Public Defender does not consider this to be correct and that is why he again addressed the Urban Planning Service indicating that according to the article 40 of the General Administrative Code the administrative body is responsible to provide the applicant with the public information. The Public Defender also asked in the same letter to rectify this fault.

The Case of Tengiz Mikadze

Citizen Tengiz Mikadze sent a letter to the Public Defender indicating that on October 19, 2006 he addressed the office of Organization of Public Services and Amenities of the Mayor's Office. The letter was registered the same day at the chancellery with the number 2806-01/6. The applicant was requesting for public information about whether the piece of land at #3 Javakheti St. in Tbilisi belonging to the apartment building was part of the "green line". According to the applicant he did not receive a reply for an extended period time and thus the time limits on giving out public information established by the Law was violated. Tengiz Mikadze also indicated in his letter to the Public Defender that he had addressed the Service of Organization of Public Services and Amenities with the administrative appeal to restore his rights. This appeal was registered at the chancellery with the same registration number as the letter of October 19. The administrative body violated the norm established by the above Code, article 79, Part 1 "the administrative body is supposed to register the incoming application according to the established rules on the day of its receipt and indicate the registration date and number on it". Tengiz Mikadze did not receive any response whatsoever indicating that his request was under consideration, neither was he informed about the time frame needed to process his application This indicates to gross negligence by the Service of Organization of Public Services and Amenities within Article 85 of the General Administrative Code, according to which" the administrative body is responsible to explain to the applicant about his rights and obligations, to enlighten him with the procedures of managing application, its method and time limits including the necessary requirements to file an application or appeal. The authority is also obligated to indicate and inform the applicant if any correction is needed in the application.

In connection with the above, The Public Defender addressed Tbilisi Service of Organization of Public Services and Amenities with a recommendation to provide Tengiz Mikadze with the public information requested by him and also

provide him with the obligatory legal assistance. The Public Defender in his letter also asked the authorities to look into the negligence of the people in carrying out their responsibility to provide public information within the time limit based on the articles 78 and 79 of the Georgian Law about "public service".

By the response received from the Service of Organization of Public Services and Amenities we found out that the above organization does not have technical documents of the "green lines" within District administrative boundaries of the capital and citizens should apply to the relevant district administrations to obtain this information.

It must be noted that in this particular case, the City Service of Organization of Public Services and Amenities was obligated to send a written explanation to the applicant and it failed to do so.

The Case of Giorgi Mkurnalidze

Giorgi Mkurnalidze, Director of Impeachment Initiation Center sent an application to the Public Defender informing him that on September 28, 2006 he applied the Mayor's Office with an application #0101, which was registered at the chancellery the same day with the registration number 11/15305. According to this letter the applicant was requesting information regarding the number and the location of walls the city municipality had allocated for putting up posters for the local self-governance elections. According to the applicant he did not receive a reply.

The requested information is public and anyone has the right to obtain it. The requirements and time limits for giving out public information established by the Law were violated; this action violated the rights of Giori Mkurnalidze. According to the Georgian Organic Law about the "Public Defender", Article 21, subparagraph "b", the Public Defender addressed the Mayor's Office with a recommendation to immediately give out the public information requested by Giorgi Mkurnalidze according to the article 40 of the General Administrative Code.

In his second application to the Public Defender, Giorgi Mkurnalidze indicated that he had applied to the City Municipality on several occasions for obtaining public information but to no avail. Thus the legal rights of the citizen were violated. For example:

1. Through his letter of September 19, 2006 11/4463 registered #078 19.09.06 he requested information regarding the application deadlines of the employment program "Start B Business with the Help of the Mayor's Office" of the City Municipality, whereabouts of the "Business Information Center", he also sought information about its legitimate hierarchy and the source of funding
2. Through the letter #079 of September 19, 2006 registered at the chancellery the same day with the number 11/14465 G. Mkurnalidze requested information about the amount of money spent from the city budget for issuing 100 GEL Gas vouchers to professors and teachers. He also requested information if the Mayor's Office had implemented similar programs in the past and there were plans to introduce the same program in the future.
3. Through the letter of September 19, 2006 #080 the applicant requested information about social, sport and cultural activities held in Tbilisi from August 25 to October 25, 2006, what were the planned activities for the future and the amount of funds allocated and spent for these purposes. This letter was received in the chancellery of the Mayor's Office on September 19, 2006 #11/14468.
4. Through the letter of September 19, 2006 #081 G. Mkurnalidze requested information from the Mayor's Office for the names of the companies providing car parking services in the capital, what type of contracts were signed with them and the justification for setting an hourly fee of 50 tetri. This letter was registered at the chancellery of the Mayor's Office with the number 11/44465 on September 19, 2006.

5. Through the letter of September 19, 2006 #083 the Impeachment Initiation Center requested information about companies that paved the road on Perovskaia Street, details of the work order issued and the amount paid for the services. The letter was registered at the chancellery of the Mayor's Office the same day with the registration number 11/14470.
6. Through the letter of September 19, 2006 #085 which was registered at the Mayor's chancellery with the number 11/14471 G. Mkurnalidze requested detailed information about the purchase of yellow public transport buses when, how many and at what cost they were purchased, whether the documents on their technical parameters were available and whether the air conditioners in them functioned, what funds were allocated for handling this issue and which office and official was in charge of purchase

According to the applicant he did not receive replies to any of the above letters. Eka Kvelidze, Leading Specialist of Managing Office Correspondences at the Mayor's Office explained in the telephone conversation that the letters of the Impeachment Initiation Center based on the context of the requested information were forwarded to the offices of respective departments including Public Services and Amenities, Sport, Culture and Transport at the Mayor's Office. After forwarding the letters to the above offices the correspondence handling office had no control over their fulfillment and the addressed Departments were responsible to provide the applicant with the requested information. In this particular case the Mayor's Office violated time limits established by the Law about giving out public information. In particular the requirement of part 1 of the Article 40 of the General Administrative Code that "the public organization is responsible to give out public information immediately or within 10 days unless the reply to the requested of the public information requires:

a) Obtaining and processing information from its subdivision or from another public organization in different location;
b) Finding and processing inter-related documents in big volume;
c) Consultation with its subdivision or different public organization.

Article 26, Part 3 of the Georgian Law about the "the capital of Georgia-Tbilisi" stipulates that "the Head of the Municipal service is responsible to report to the Mayor, Premier and the Head of the City Council". Based on that the Mayor's Office was supposed to request the information from the services reporting to him/her and provide G. Mkurnalidze with the public information that he requested according to the sub-paragraphs "a" and "b" of the above article and the above Code.

Thus based on the Georgian Organic Law on Public Defender, article 21, sub-paragraph "b" and "d" the Public Defender addressed the Mayor with the recommendation to immediately provide the Director of the Impeachment Initiative Center G. Mkurnalidze with the requested public information according to the article 40 of the General Administrative Code and to deal with the persons neglecting their responsibility to provide G. Mkurnalidze the requested public information in a timely manner according to the Georgian Law on Public Service", articles 78 and 79.

The Mayor's Office took the Public Defender's recommendation into consideration. After the complete study of the case the citizen was provided with the requested information and the person responsible for giving out public information was expelled.

The Case of Murad Burchuladze

Citizen Murad Burchuladze addressed the Public Defender with an application informing him that he had appealed to Mtatsminda-Krtsanisi District Administration on a few occasions for the permission to obtain the copies of personal files of the civil servants (members of the public administration)

The District Administration refused the applicant's request through the letter #b-1047 of June 2 based on the article 271 of the General Administrative Code.

According to the article 27, sub-paragraph "h" of the above Code "personal data is public information for the identification of a person". According to the article 271, ", personal information is not considered classified with the exception of the circumstances provided for by the law or by the decision of the person concerned." Moreover, according to the Article 44 of the same Code the public organization is responsible to keep the confidentiality of the information which is regarded as private and classified, it cannot release the classified information without the permission of the person concerned or the circumstances provided for by the Law and without the court decision., with the exception of the personal information of ranking officials

In the given case the District Administration did not ask the applicant if he had the written permission of the persons concerned. More so, the administration did not address any of the concerned staff members regarding their decision about disclosing their personal files as requested by the applicant, which indicates the fact that the administration took the decision on its own initiative to consider personal information of the colleagues as classified.

In a similar case, Gela Kvitaia applied to Vake-Saburtalo District Administration with an application to provide him with the registered addresses of the administrative staff. The District Administration refused the applicant's request through the letter #k-2787 of August 3, 2006 based on the article 37 (2) of the General Administrative Code, according to which "a person is supposed to provide written application to obtain public information. It is not required to indicate the reason or motivation in the application for requesting the public information. When applying for obtaining personal or commercial classified information the applicant with the exception of the circumstance provided for by the law, should present a notarized consent of the person concerned or a letter of consent approved by the administrative body."

But as we noted above, article 43, sub-paragraph "h" of the same Code the public organization is responsible "to immediately notify the person concerned at his current address about his personal information being requested by a third person or public organization". Vake-Saburtalo District Administration did not fulfill this requirement of the Law.

In connection with the above and according to the article 21, sub-paragraph "b" of the Georgian Organic Law on Public Defender, the Public Defender addressed the Vake-Saburtalo and Krtsanisi District Administrations with the recommendation to inform their colleagues in accordance with the rules established by the General Administrative Code about their personal information being requested and based on their replies implement measures established by the Law.

With regard to the recommendation by the Public Defender in the case of Murad Burchuladze, we received a reply from Mtsatsminda-Krtsanisi District Administration informing us that the administration met the citizen and provided him the written explanation, as for G. Kvitaia's case, based on the recommendation, the administration of Vake-Saburtalo District addressed to its colleagues for their written consent or refusal in giving out the information of their residence addresses. The members of the administration refused to give out this information according to their legal rights following which the applicant was informed along with the explanation as to why he would not be able to obtain the requested information.

The Case of the Center for Strategic Research and Development

On October 30, 2006 the Center for Strategic Research and Development addressed the Public Defender informing him that they had addressed the Cleaning Service of the Mayor's Office of Tbilisi on October 10, 2006 bearing reference #1-257 to obtain public information. The letter was registered at the chancellery of the Mayor's Office on October 11, 2006 bearing #228/1-03. The author of the letter was requesting for copies of the agreements signed with enterprises responsible for removing garbage in Tbilisi and the providers of containers and other equipments needed for the process of garbage removal. The applicant also requested the

information on the amount spent to purchase the equipment by the Mayor's Office and the asset value of the equipment. According to the applicant he did not receive a reply to the requested public information for an extended period of time.

The Public Defender considered the above as a violation of the requirements and the norms established by the Law which in turn violated the rights of Strategic Cente of Research and Development.The Public Defender appealed to the Cleaning Service with a recommendation to provide the applicant with the public information in a timely manner and to take necessary disciplinary action against the person who was unable to carry out the responsibility and obligation of giving out public information in a timely manner.

The Municipal Cleaning Service sent a reply according to which the recommendation was taken into consideration and the citizen was immediately provided with the public information, it also mentioned that after studying the case appropriate action would be taken against individual responsible for the delay in giving out the public information.

The Case of "Adati Ltd."

On August 17, 2006 The Public Defender received a letter from M. Otarashvili Chairman of the Association of Shareholder's Rights and Corporate Management". (Refer this case in the chapter of Right to Ownership).

From the attached materials the following circumstances were revealed: K. Nikatsadze, Prosecutor of Mtatsminda-Krtsanisi applied with the letter #01/18-1/6-1154 on May 5, 2006 to N. Bakhtadze, Head of the National Agency of Public Registry in the Ministry of Justice. The prosecutor was informing through the letter that the property at #103 Agmashenebli Ave. in Tbilisi should not be sold in the interest of the ongoing investigation of criminal case #0605924.

Following the issuance of above letter the General Director of "Adati Ltd" applied the National Agency of Public Registry with the purpose of obtaining extracts from the files of the above real estate from the registry, to which he was refused. According to the applicant the officials of the Registry justified their refusal based on the letter received from the prosecutor of Mtsatminda-Ksrtanisi District on May 5, 2006.

Chapter 24 of the Criminal Procedure Code defines the rules on Sequestration of Property, which forbids the owner to manage its property and in case of need to use it. Sequestration is only possible based on the decision of the Judge to any complaint filed in the court, including criminal procedure forced measure, possible confiscation of property or by the decision of the prosecutor in the circumstances of urgent necessity.

The letter of May 5, 2006 #01/18-1/6-1154 did not have the legal grounds to place restrictions on the property. Therefore it was illegal. Based on the content of the letter and the actions of the officials of the National Agency of the Public Registry the human rights of the applicable Law were violated.

According to the article 311 of the Civil Code of Georgia, "Public Registry is accessible by any interested person".

According to the article 37 of the General Administrative Code of Georgia "every person has the right to request public information despite its physical form or the condition of storing it, and to choose the form of receiving the public information, if it does not exist in any other form to get the information in the original".

According to Article 2, Para.1 of the General Administrative Code of Georgia, public information is "an official document in the form of, model, plan, photo, electronic information, video and audio recordings maintained at the public registry, received, processed, created or sent by the official of the public registry".

According to the article 28 "public information is open to all with the exception of the circumstances provided for by the Law and the established rules considering it as a state, commercial or personal classified information".

The National Agency of the Public Registry had no right to refuse giving out documents on the real estate to its owner because according to then prevalent legislation, the information was not classified by the State bodies.

In response to the above mentioned and according to the article 21, Para "b" of the Georgian Organic Law on Public Defender, the Public Defender appealed to the National Agency of the Public Registry with a recommendation to study the above case and to furnish the public information as requested by the applicant, The Public Defender also asked the authorities to consider disciplinary action against individuals responsible.

According to the reply received from the public registry the recommendation was taken onto consideration. The Chairman of the Public Registry instructed the relevant persons to furnish the information indicated in the recommendation.

The Case of Paata Gegelia

Citizen Paata Gegelia sent an application to the Public Defender. In his letter he was informing the Public Defender that despite a number of applications sent to the City Council and the Office of the Organization of Public Services and Amenities he did not receive the public information about the administrative act, according to which temporary stalls of Coca-Cola and Borjomi carried out outdoor commercial activities in Tbilisi.

The requested information was public and it should have been available to anyone, in regard to this issue the Public Defender applied to the Mayor's Office.

According to the letter received from the administration of the Mayor's Office "it did not have any information about the legal grounds for the commercial activities carried out by the temporary stalls of Coca-Cola and Borjomi in the streets of Tbilisi".

Once again it should be noted that the administrative body is responsible to reply to the applicant with a letter on the issue of his interest.

The Case of Irakli Kandashvili

On November 28, 2006 Irakli Kandashvili, the lawyer of the firm "Andronikashvili, Saxsen-Altenburg, Miurat and Partners" applied to the Public Defender with a letter. According to the lawyer, Aleksandre Baramidze and he applied to the Mayor's Office with the letter #11/14597 on September 20, 2006 to obtain public information. They were asking information regarding the agreement signed between "D and G Technology" and Tbilisi Mayor's Office for the civic work to carry out internal repairs to the roads along the right side of the river banks, including the streets of Kostava, Melikishvili, Kerchi, Kaloubani, Irakli Abashidze, the road leading to the children's town and Varketili (Zemo Plato). The applicants also wanted to get the information about the selection criteria involved according to which company was awarded the contract through the process of tender and requested the copies of all the documents related to the case. According to them, once their letter was forwarded for action to the Office of Organization of Public Services and Amenities they applied with a letter to this office on October13, 2006. The application was registered with the number 3275-07/7 on the same day. The office did not furnish the requested public information. Irakli Kandashvili and Aleksander Beridze addressed the General Inspection of the Mayor's Office with a complaint. The complaint was delivered to the

addressee on October 23, 2006 and was registered with the number 840 but the Inspection Department did not react to this complaint and neither to the one sent to them on November 8, 2006 about ignoring the previous complaint.

According to the article 37 of the General Administrative Code of Georgia "every person has the right to request public information despite its physical form or the condition of storing it and to choose the form of receiving the public information, if it does not exist in other form to get the information in the original. If there is a risk of damaging the original copy, the public registry is responsible to ensure the possibility for the applicant to be read from the original under supervision or provide a certified copy." According to the part 1 of the article 40 of the same Code "the Public Registry is obligated to give out information immediately or within 10 days unless the reply to the requested public information requires:

d) Obtaining and processing information from its subdivision or from different public organization in another location;
e) Finding and processing non inter-related documents in big volume;
f) Consultation with its subdivision or different public organization.

Article 26, part 3 of then applicable Georgian Law about "the capital of Georgia-Tbilisi" stipulated that "the Head of the municipal service reports and is responsible towards the Mayor, Premier and the City Council". Based on Para "a" and "b" of the above article and Code, the Tbilisi Mayor's Office was supposed to request the public information from its subordinate services reporting to him and hand it over to the applicants.

Concluding from the above, the Mayor's Office once again violated the requirements and deadlines in respect to furnishing public information, which in its turn violated the rights of the citizens. According to the article 21 para b of the Georgian Organic Law on Public Defender, the Public Defender appealed to Tbilisi Mayor's Office with a recommendation to immediately give out public information and copies of the requested documents to the applicants based on articles 37, 38 and 40 of the General Administrative Code of Georgia and also to consider the administrative complaint, the letter additionally requested action against the individuals who according to the article 78 and 79 of the Georgian Law on Public Service did not provide public information in the timely manner to the applicants and failed to fulfill the requirements for considering the administrative complaint.

The Case of Guria News

Nato Gelashvili, journalist of Guria news sent a letter to the Public Defender on July 13, 2006 related to the problems in obtaining public information. According to the journalist on April 17, 2006 she requested public information from the Central Department of Internal Affairs of Guria Region. She received neither the information within the time limit nor the refusal.

The journalist was interested in:

- Amount allocated to the Central Department of Internal Affairs of Guria region in 2005 and the expenditure report;
- Number of drug abusers registered at the Central Department of Internal Affairs of Guria Region (Lanchkhuti, Chokhatauri, and Ozurgeti District Offices) including the number of drug abusers and drug dealers detained;
- Statutes of the Central Department of Internal Affairs of Guria Region, and the Internal Affairs District Offices of Lanchkhuri, Chokhatauri and Ozurgeti;
- Information if the special Operations Department was functional in Guria Region and the person in-charge

The requested information is not classified and should be accessible to anyone. For this reason the Public Defender appealed to the Central Department of Internal Affairs of Guria and requested to provide the public information to the applicant.

The Central Department of Internal Affairs of Guria sent a reply informing that after the involvement of the Public Defender, the law-enforcers were provided explanations on the legal rights of getting public information (with the indication to the relevant articles of the General Administrative Code), the journalist was provided with the requested public information pertaining to drug related crimes, funds allocated from the state budget and the statutes of the Central Department of Internal Affairs of Guria.

In order to avoid problems related to access of public information it is necessary to add an article to the General Administrative Code imposing penalty on ranking officials for unjustified refusal of releasing public information, for blocking information or for discriminatively obstructing even a single journalist on obtaining public information and also for the violation of deadlines.

27 FREEDOM OF RELIGION AND TOLERANT ENVIRONMENT

During the reporting period, ensuring religious freedom and instilling tolerance have seen some extent of progress, although in some areas substantial complications were evident. (See Reports 2004, 2005, 2006 Part I).

Although, in comparison to the previous reporting period, the number of incidents of street violence based on religion remained nearly the same, it should be mentioned that the law enforcers responded more adequately; however in some cases the response to violence committed on religious grounds was initiated only after the involvement of the representatives of the Public Defender. Thus, it is difficult to positively evaluate the activities of low- and middle-level staff members of the law enforcement agencies.

The State took some positive steps to establish cooperation with the religious minorities. The meetings of the Religious Council were attended by the Deputy Prosecutor General of Georgia and the Deputy Minister of Internal Affairs. At the meetings the problematic issues were discussed and the need to strengthen the collaboration was noted. The Religious Council also met the Deputy Chairman of the Penitentiary Department. Following these meetings at the Public Defender's Office, the Chairman of the Penitentiary Department and the representatives of the Religious Council signed the Memorandum of Understanding.

Violence on Religious Grounds

In the second half of 2006, several cases of violence on religious grounds were recorded. Of these 7 cases were connected with the public propaganda practice of the religious sect Jehovah's Witnesses and in one particular case an attack on the premises belonging to Jehovah's Witnesses.

1. On October 21, in Varketili 3 at the entrance of Building 301 Vakhtang Sokhadze physically and verbally abused Jehovah's Witnesses sect members, K. Tsilosani and N. Khutsishvili when they were distributing religious pamphlets. The complaint was filed with the Isani-Samgori District Internal Affairs Department. The investigation is under way.

2. On October 26, in the village of Kveda Sakara, Zestaponi District, Gia Peradze physically and verbally abused Jehovah's Witnesses sect members Murman Ediberidze and Zaza Bochoidze when they were distributing religious pamphlets; as a result of which M. Ediberidze suffered minor injuries. The investigation of the case is under way.

3. On November 3, in the village of Khidari, Kharagauli District, Kh. Tsikolia and Kh. Buachidze were offering religious pamphlets to interested individuals. Resident of the same village S. Dvali, who was aware that the above individuals were members of Jehovah's Witnesses, forcibly searched their handbags for religious literature. Following which, he abused them physically and verbally, including the threat to rape. Kh. Buachidze was diagnosed suffering concussion of the brain and in need of relevant medical treatment. S. Dvali was arrested as a suspect and charged with the crime of oppressing on religious grounds as per the Georgian Criminal Code, Article 156, Part 2, Paragraphs A and D and as a measure of restraint, on the basis of Prosecutor's petition, in November 2006 was sentenced to imprisonment. The investigation is under way.

4. On December 7, in Kharagauli Giorgi Tabatadze along with two individuals met Jehovah's Witness Eduard Pelikyan in downtown Kharagauli; they abused E. Pelikyan physically and verbally since the person was a member of Jehovah's Witnesses. A suit was filed with the local police, but since the assailants pleaded pardon from both the police and the victim including the willingness to pay the compensation for any material damage the case concluded in reconciliation.

5. On November 2 2006 an estimated 50 people, including the teachers and students of the neighboring school gathered in front of the Royal Hall being constructed by the Jehovah's Witnesses, during the rally the school students hurled stones inside the Hall. The Patrol Police were called to the site of the incident. The gathering was organized by Rustavi resident Gogita Melikidze.

   It should be taken into account that on November 21 2006 the Investigation Section of Georgian MoIA Rustavi City Department initiated a preliminary investigation on the criminal case involving the incident of Jehovah's Witnesses sect members David Mskhiladze's and Shalva Khutsishvili's physical abuse by Gogita Melikidze. Since in both cases Giorgi Melikidze was the person involved, both cases were combined into one single case. On December 4 2006 G. Melikidze was indicted for committing the crime implied by the Georgian Criminal Code, Article 156, Part 2, Paragraph A, and on December 5 2006 according to the decision of the Rustavi City Court imprisonment was selected as a measure of restraint.

6. On November 16 2006 at around 10:00 or 11:00 PM, K. Ninikuri, G. Alasania, N. Tsikhelashvili, Sh. Mosiashvili and one more person unidentified by the investigation communicated each other for the purpose of carrying out criminal activity with the intention to assault, plunder and steal property from the office of Jehovah's Witnesses under-construction in Rustavi. They broke into shed's wooden door, when confronted by G. Ninashvili the night watchman of the premises of Jehovah's Witness, the assailants hurled stones, and then physically assaulted him on the head using their hands and legs; they damaged the kitchenware in the shed and took a mobile phone. As the assailants were aware that Ninashvili was a member of Jehovah's Witness, they forced him to inscribe on himself a sign of the cross.

   The Public Defender's representative was contacted by Jehovah's Witness within a few minutes of the assault notifying about the rampage and also indicated that the Patrol Police were called for help, but upon arrival the Patrol Police members hesitated to react on the night watchman's statement that the assailants could not have traveled far and could still be easily detained.

   The situation changed when the representative of The Public Defender's Office communicated this information to the senior officials of the law enforcement agencies. The four above mentioned persons were detained within an hour of the assault.

   On November 16 2006 the Investigation Section of Georgian MoIA Rustavi City Department initiated a preliminary investigation on the criminal case in connection to the incident of robbery and physical assault on Jehovah's Witness member G. Ninashvili, the crime implied by the Georgian Criminal Code,

Article 178, Part 2, Paragraphs A and B, Part 3, Paragraph A and Article 156, Part 2, Paragraph A. Upon the Rustavi City Court Decision, as a measure of restraint for the assailants, pretrial imprisonment was chosen.

7. On December 19 2006 Giorgi Didberidze and Levan Chubinidze addressed in writing the Public Defender of Georgia. As indicated, they were members of the religious organization Jehovah's Witnesses. On December 19, when they were distributing religious pamphlets in the street, they were abused physically and verbally on the basis of their religious belief by an unidentified individual. When G. Didberidze and L. Chubinidze visited the First Unit of the Tbilisi Isani-Samgori District Police Department to inquire about the assailant, they encountered the same unidentified individual in the police station. The incident was recurrent as they were again physically and verbally abused.

The police officers disclosed the identity of the unidentified individual to G. Didberidze and L. Chubinidze as Shalva Sanikidze, Chief of the "OUR" criminal investigation unit, and nobody attempted to stop the illegal action of this person. The police officers disregarded the fact of violation of rights of the members of a religious minority and did not react to the illegitimate actions even though the incident took place in their presence. The police officers did not offer any assistance to the citizens. On December 28 2006 representatives of the Public Defender's Office Beka Mindiashvili, Giorgi Gotsiridze and Tatuli Todua visited the First Unit of the Tbilisi Isani-Samgori District Police Department (address: 50, Trialeti Street, Tbilisi) in connection to the case of Giorgi Didberidze and Levan Chubinidze. They had a meeting with Deputy Chief of the Department Gela Abesadze. In the initial stages of the conversation G. Abesadze noted that he was unaware and ruled out the possibility of such an incident taking place. He also mentioned that he never met Shalva Sanikidze.

The Public Defender's representatives inquired about the list of officers on duty in the first half of the day on December 19 and requested their contact details for further clarification of the matter. According to the official record, during the day two individuals stayed in the building (reception area): an officer and a private. They were deployed in the reception room located at the entrance of the building next to the stairway. Besides the two that were mentioned, there were also other staff members in the building to attend phone calls. The time of call and the officer's departure to the site are indicated in a special register. In the register the identity the police officer visiting the site is also indicated. On December 19, Badri Kvitsiani and Gela Gurlikashvili were on duty in the reception room; additionally Giorgi Tabatadze, Pridon Chichua, David Kupriashvili, Lasha Chkhitunidze, Gela Gelashvili and Martin Kazarian (in all 6 persons) were there in the morning of the same day.

The Public Defender's representative spoke to Lasha Chkhitunidze, who denied the facts and insisted that the incident never occurred. He claimed that on December 19 he was in the building as he left the staff meeting. However he also added that on various occasions officers from other Departments visited this Department. Therefore it was possible that persons from the other departments may have witnessed the incident.

G. Didberidze and L. Chubinidze in their statement had indicated the "passport service", as they thought the mentioned word "OUR" could be this body. The Samgori Service of the Civil Registry Agency (the passport service) is located next to the police department. The Public Defender's representatives met with Chief of the Service Mamuka Butsureishvili to find out about Shalva Sanikidze's personality. M. Butsureishvili had worked as the Chief of the Service since 2005 and never had such a named staff member. All the more, he had never met a person with this identity; he also categorically denied having any knowledge about the incidents that might have happened on December 19.

The victims later found out that the investigative unit of the police department is often referred to the term "OUR" in slang. Merab Kaspelashvili was the Chief of the Investigation Section of the First Unit of the

Tbilisi Isani-Samgori District Police Department. Since it was beyond the jurisdiction of the Public Defender's representative, M. Kaspelashvili was not introduced to the victims to identify the personality. One thing is clear that the name "Shalva Sanikidze" is fabricated and fictitious and such a person had never worked in the mentioned body. In the conversation with the Public Defender's representatives victim Levan Chubinidze mentioned that he lived in the same neighborhood where the police department is located and he was well aware of the address of one of the police officers that witnessed the incident; however he did not know his name.

Victim Levan Chubinidze also indicated in the conversation with the Public Defender's representatives that after the incident he and his friend Giorgi Didberidze were stopped and warned by an individual driving an Opel vehicle who gave them a "friendly advice" to stop submitting complaints to different organizations or else they would have problems.

For relevant action, the statements of G. Didberidze and L. Chubinidze along with the notes of the meeting with the Chief of the Samgori Service of the Civil Registry Agency were forwarded to A. Giorgadze, Acting Chief of the Human Rights Department of the Prosecutor General's Office.

As Tbilisi Prosecutor G. Gviniashvili noted in his response to the Public Defender, control was established over the case, investigation is under way and if evidences were found, legal action would be taken against concerned individuals.

The Campaign against the Construction of the Assyrian Cultural Center

The Union of David the Builder Orthodox Congregation was rather active in 2006.On September 15-18 2006 a protest rally was held under their auspices against the construction of the Assyrian Cultural Center on Kavtaradze Street in Tbilisi. The reason for the protest rally was the assumption of the protesters that since the construction was headed by the Catholic Assyrian priest Binyamin, a functional Catholic Church was bound to be located within the Cultural Centre. The protestors demanded the construction be stopped, or be given an assurance by the priest Binyamin that the completed centre would only be utilized for civil and not religious purposes.

For this reason they started a signature campaign among Saburtalo residents. On September 17, an estimated 150 individuals gathered in front of the construction site on Kavtaradze Street demanding to suspend the construction works. The rally members believed the construction of the Catholic temple was an attempt of aggressive proselytism and converting the individuals into another belief, which, in their words, was violation of the international principles.

Prior to this incident, leaflets were distributed among the population. The residents of the building neighboring the Cultural Center under construction received the leaflets with the following message:

Keep off! Catholic aggression!

Dear fellow countrymen! Saburtalo residents! The Vatican is strengthening in Georgia the policy of aggressive proselytism and religious enticement and extensively widening the spheres of its influence at the expense of the Orthodox parish. A clear evidence of that is the construction of a huge Catholic temple on Kavtaradze Street. The local residents have no need or requirement for having such a large temple in the neighborhood. It is not intended for the Vatican's local personnel, but for a new congregation made up of enticed former Orthodox parishioners. Although The Vatican Envoy verbally denies the proselytism activity as proselytism is a violation of the international prin-

ciples, the establishing of new temples, educational institutions and the clear objective of the Vatican to achieve a greater influence than the Orthodox Church in Georgia are evidences of the contrary. The Mother Church teaches us that Catholicism, papism in essence, is a sinful teaching that has always been hostile to Orthodoxy. The Catholics have ruined the Georgian monasteries, killed monks and nuns, with false promises turning Orthodox believers into Catholics. Today along with spreading the anti-Orthodox teaching, they are introducing homosexual families and religious services offered for animals, etc which are absolutely unacceptable to us,. Our patriotic duty is to defend ourselves from Vatican's spiritual expansion and to safeguard the future generations from spiritual death, moral and physical degeneration. Let us demand the authorities: stop the construction of this Catholic temple, turn it into a civil non-proselytizing building and not to escalate the relations between the representatives of two religions as it happened in Serbia and Croatia, Western Ukraine and Northern Ireland. Let us perform our duty before the Mother Church and homeland.

On September 18 2006 the temple construction was even protested also by the Patriarch's Office:

Statement of the Patriarch's Office:

As media reported, a building of religious nature is being constructed on Kavtaradze Street. Padre Binyamin is in charge of the construction, Catholic Church's Assyrian clergyman. Therefore, it is logical that this building belongs to the Catholic Church, though, notwithstanding who is the owner of the building, it is unlawful as there are no legal bases to regulate the operation of the religious organization and the construction of the religious building. It would interesting to know the issuer of the permit, as the Orthodox Church, even having the legal rights, faces problems sometimes. We would also like to mention that not every Assyrian residing in Georgia is a follower of the Catholic Church. They have resided in our country for centuries and their substantial part is Orthodox. Thus, constructing the Assyrian Cultural Center by the Catholics and in other words presenting Assyrian culture as Catholic is groundless.

The statement made by the David the Builder Society is full of aggressive anti-Catholic stereotypes and is a classic example of the type of language used to create discord. It also contained the elements of threats: if the construction proceeded, Georgia could find itself in a Serbia-Croatia-type religious conflict.

On the other hand, the statement made by the Patriarch's Office did not contain such phrases, but there were some errors related to the legislation. In particular, the Georgian legislation does not provide for any type of legal restrictions for constructing the buildings for religious purposes. A great majority of the Assyrians residing in Georgia are truly Orthodox, though this does not mean that the Catholic Assyrians have no right to construct their own cultural center, even if a part of this building is used as a church.

The protest rallies against the construction of the Assyrian Cultural center were organized also in the middle of December. On that occasion several Orthodox Church clergymen joined the protest action. The rally members called upon the individuals employed in construction to cease their cooperation with the Catholic priest since it meant betrayal of the homeland and the Church.

It should be noted that the construction of the Assyrian Cultural Center was not opposed by the State. On the contrary, all necessary permits were issued and therefore this was a fully legitimate construction.

"The Disputed Churches", Intolerance, Appeals Containing Hatred

The topic of the so-called disputed churches has been repeated for years in the Public Defender's Reports, but the issue still remains unresolved. In general, the restitution of the church properties still remains a problem in Georgia.

The properties of churches were seized during the Soviet era. In 1991 the State issued a Decree, which authorized the handover of the Orthodox Churches on the territory of Georgia to the Georgian Patriarchy. The Supreme Council indicated in its Decree the list of churches, and although they were retained as the property of the State, the Patriarchy was empowered to use the listed churches for religious purposes. During the period of the handover, the status of the church remained unclear, making it impossible to transfer the property with a certain type of legitimate status. In parallel, the property status of other religious unions remained unchanged. A part of the property forfeited in the Soviet era still belongs to the State and it is problematic for the Armenian Apostolic Church and the Catholic Church to make use of this property.

In the 1990's a conflict arose between the churches. In Kutaisi, Batumi, Akhaltsikhe District and Gori Catholic churches currently function as Orthodox churches. Although in Kutaisi the Catholic Congregation complained about the misuse of the church, the Supreme Court did not approve the suit and found the Catholic Congregation as an unauthorized party (refer the Public Defender's Report for 2004).

The process of the disputed churches is related to illegal handling of historic heritage. For instance, in the village of Ivlita the church interior was changed, in Gori the frescos were removed from the walls, etc. In fact, this is an abuse and destruction of cultural heritage which has received very little or no response from the State.

Furthermore in the Report for the First Half of 2006, we indicated the fact in Akhaltsikhe District, village Tskaltbila where an Armenian church was built within the boundaries of the Georgian church, which contradicted the Constitutional Agreement; nevertheless this fact received no reactions from the local or central authorities.

The status of the property of the religious unions is unclear even at the legislative level. According to the Agreement concluded by the Georgian State and the Georgian Orthodox Church, a special commission should be set up, which would be tasked to create a list of Orthodox churches and its related properties on the territory of Georgia which historically belonged to the Georgian Orthodox Church, following which the listed properties would be returned to the Church. Nothing has been done so far on the issue. In fact, it is not even clear which particular property and what is the volume of the total properties to be returned to the Orthodox Church.

The situation with other religious organizations is uncertain as well. There is no joint commission authorized to make expert conclusions on the origin of the churches and elaborate recommendations to solve these and other related problems. The Commission on the Catholic-Orthodox Dialogue formed in 2004 never launched its activities. The Commission members managed to gather only once at the time of its formation.

In the second half of 2006, in the village of Ivlita in Akhaltsikhe District relations between a local Catholic priest and the Orthodox population escalated for the worse on a number of occasions. The basis of tension was Ivlita's former Catholic Church, where the Orthodox priest served. In 1991, the Ivlita residents made a decision at a public gathering to temporarily allow the Georgian Orthodox clergyman to serve in the church as in those days the Catholic congregation had no priest to conduct the church services in Georgian and according the decision reached by the locals the Orthodox priest was allowed to serve until the Catholic Church would commission a Georgian-speaking Catholic clergyman.

The relations between the Orthodox and Catholic communities strained after Georgian Catholic priest Zurab Kakachashvili was commissioned. For the Orthodox congregation, it turned unacceptable that the clergymen of both denominations were allowed to conduct the services in the temple.

In 2004 the Catholic community of the village along with the Catholic clergymen together with, the Georgian Patriarchy's Akhaltsikhe Eparchy Arch-Bishop Teodore Chuadze reached a verbal agreement on the Ivlita church and its territory, they agreed no construction of any kind would take place; the façade and interior

would remain untouched. This agreement was concluded after the action of Orthodox priest Ioane, who, along with the village residents cemented the Catholic graves in the church and dislodged the icons and ritualistic items from the Catholic Church.

In 2006 Ivlita Catholic community accused the priest Ioane of breaching the agreement: they claimed he initially started the construction of a chapel within the fence, before extending the construction beyond to an outer fence. Angered with this fact, the members of the village Catholic community addressed the Public Defender for help. The Public Defender's representative studied the situation in Ivlita and concluded that Priest Ioane was actually constructing the outer fence with the intention of building a restroom in the churchyard.

The Public Defender's representative communicated with Akhaltsikhe Arch-Bishop. The Arch-Bishop asserted that any construction beyond the inner fence would be stopped. The construction did stop, but for only two months. After a period of two months, Father Ioane built the intended restroom on the church fence sparking renewed confrontation in the village.

At the same time on October 25 2006, the TSU Akhaltsikhe Branch held a presentation of the book "The Truth about the Ivlita Church" by priest Gabriele Bragantini and Nugzar Papuashvili. The book is contentious by nature and contains critical comments on the work of historian Tina Ivliashvili, who claimed the Orthodox origin of the Ivlita church.

Within minutes of the presentation, Deacon David Isakadze, preceptor of the St. Marina Church in the village of Dighomi and members of the David the Builder Congregation Union entered the hall and tried to disrupt the meeting with insulting words. According to the witnesses, Deacon David Isakadze demanded in an aggressive tone that the Catholic priest renounce their Catholic faith and embrace the truthfulness of Orthodoxy, he also remarked "Inquisition, immolation and many other shameful deeds is Catholicism... Do you accept that you are heretic? If you do not wish to be called by that name, here and right away in our presence, accept the Holy Spirit that comes solely from the Holy Father", the deacon addressed to the Catholic priest.

This group revisited the branch the next day. They distributed leaflets among students, in which the Chairman of the David the Builder Congregation Union appealed to the population: "Dear fellow countrymen, Orthodox! Let us not allow the spread of Papism aggression against the Georgian Orthodox Church. Do not be deceived by the Papists' promises of prosperity and political patronage. Do not trade your souls for 30 pieces of silver, otherwise our country and the Georgian nation will not be able to avoid God's wrath."

On November 25 a similar incident occurred during the presentation of the book held at the conference hall of the Ilia Chavchavadze National Library. Even on that occasion members of David the Builder Congregation Union entered the hall with the intention to disrupt the presentation. Some of them verbally insulted priest Gabriel Bragantini. They again demanded the priest to recognize the truthfulness of the Orthodox belief. The representatives of the David the Builder Congregation Union tried to out-voice the speakers and get the microphones without permission. They attempted to escalate the situation to an extreme level of physical confrontation.

Xenophobic and extremist type actions and statements containing hatred are not punishable by the Georgian legislation. The extremist and insulting utterances of the members of the David the Builder Congregation Union are within the boundaries of freedom of expression, in accordance with the existing legislation.

Nevertheless, European Commission against Racism and Intolerance (ECRI) in its second report on Georgia (2006) recommended the Georgian authorities to consider the publication or distribution of materials containing racial insult and racist statements as criminal offence.

PROMOTING TOLERANCE

For the purpose of promoting tolerance and integration, The Tolerance Centre with the support of UNDP and the Norwegian Government is engaged in several activities.

The Center facilitates socio-cultural events which would serve as the basis for the process of integration within ethnic and religious minorities, and activities aimed at raising public awareness.

The Centre is also credited for the formation of the Religious Council (founded on June 16, 2005) and the Ethnic Minorities Council (founded in December 2005).

The Activities of the Tolerance Center in 2006

1. In 2006 the Tolerance Center conducted a series of three-day seminars on *Integration and Tolerance*, with the participation of young representatives of different religious and ethnic groups.

   During the seminars discussions were held on:

- The Georgian Constitution. A special focus was on articles such as the citizenship issues, basic rights and liberties.
- Major related UN documents, the European Convention on Human Rights, significant decisions of the European Court and Framework Convention for the Protection of Minorities.
- Culture of tolerance based on case studies. The participants also touched on the issues of tolerance, discrimination and ethnic and religious stereotypes.

   The seminar representatives had meetings with the clergymen representing the Catholic and Armenian Churches, as well as Islam and Judaism.

   The seminar allowed us to start working on the creation of the inter-denomination and inter-ethnic youth network, which will help unite the active members of the ethnic and religious minorities in Georgia.

   Similar seminars are planned for the year 2007.

2. The following events organized by the Public Defender and the Tolerance Center can be easily termed as successful in tolerance development:

a) The arts competitions organized in Tbilisi schools on the tolerance theme;
b) The competition for the best printed publication in the Georgian media on tolerance and integration issues;
c) A good initiative for bringing the youth of different religious denomination closer was the mini-football Tolerance Cup organized on November 12-17, 2006.

   The tournament consisted of participant teams from the Orthodox, Catholic, Armenian, Baptist, Lutheran, Evangelical-Pentecostal Churches, as well as the teams of the Muslim, Yezid and Jewish communities.

   It is worth noting that due credit should be given to the students of the Religious Seminary and Academy which addressed The Tolerance Centre with the initiative to arrange such a competition, following which the Center in collaboration with the Tbilisi Mayor's Office, Georgian Football Federation and the Youth Movement for Peace and Democracy organized the football tournament.

   The inter-religious football tournament was an unprecedented case in the world's history.

3. The Tolerance Centre at the Public Defender's Office publishes "Solidarity" monthly magazine. The magazine covers the activities of religious and ethnic groups in Georgia, issues of tolerance, inter-cultural dialogue, pluralism and problems of the most vulnerable groups of the society.

4. The Tolerance Centre conducted monitoring of the Georgian print media "Negative Stereotypes in the Print Media Pertaining to the Religious Minorities". The results of the monitoring are given in a separate chapter.

5. The Religious Council at the Public Defender's Office.

The Religious Council to this date unifies 24 Religious denominations. The core principle of the Council's functioning is the efficient protection of human rights, promoting the spirit of tolerance, active participation in the civil processes and coordination of social, humanitarian and environmental activities. The Religious Council has Cultural-Educational and Socio-Humanitarian Committees, which are active in the relevant fields. At the regular meetings of the religious Council current developments in the socio-cultural spheres are discussed. The Council members consider and submit recommendations and suggestions to the relevant agencies regarding the existing problems. The Council makes public the joint statements (see attachments).

On the Activities of the Religious Council in the Second Half of 2006

In the education sphere: The Cultural-Educational Committee had a meeting, at which the members discussed the issue of teaching religion and related problems at schools; a questionnaire was developed to identify the method of teaching religion at schools and the cases of discrimination on the religious grounds. The Council made a public statement in support of the reforms in the education system.

In the social sphere: The Socio-Humanitarian Committee adopted an action plan to support the libraries in the penitentiary system; books were collected for the penitentiary institutions.

As we noted, on September 28 2006 the Religious Council and the Penitentiary Department signed a Memorandum of Understanding aimed at protecting the rights of religious minorities in the penitentiary system. The meetings were held with the Deputy Prosecutor General of Georgia and the Deputy Minister of Internal Affairs.

The Information-Analytical Committee held a meeting that considered a project on compiling an encyclopedia on the religious diversity in Georgia. It was decided that by the end of 2007 a reference type encyclopedia in two volumes would be released. The first volume would describe the activities of all the religions existing in Georgia, while the second would focus on the activities of the national minorities.

The Religious Council went public in 2006 with an appeal to the leaders of Russia and world religions, which gave a critical evaluation of the persecution and discrimination of the people of Georgian origin in Russia.

28 CONDITION OF NATIONAL MINORITIES

In comparison to the reporting period of the first half of 2006, no special initiatives were noted in terms of improving the situation with the national minority rights, civil integration, and employment at the State Agencies and the quality of teaching the State Language. In general, the same situation was retained.

NATIONAL MINORITIES IN THE GEORGIAN EDUCATION SYSTEM

The education problems in the areas mostly populated by national minorities were linked to the quality of teaching the State Language, non availability of school textbooks, lack of material and technical base and other issues.

Despite the fact that much was done to improve the quality of teaching Georgian in Samtskhe-Javakheti and Kvemo Kartli schools, the high school graduates and residents of these regions are unable to communicate in literary Georgian, and simply speak using basic words. This naturally hinders the full participation of the youth from these regions in the country's public, economic and political life.

According to the information submitted by the organizations representing national minorities, in Kvemo Kartli and Samtskhe-Javakheti Georgian was often taught by the individuals that did not speak Georgian or, on the contrary, the language was taught by ethnic Georgians that could not speak the language that students communicated in. As an effect, in one particular case the children were unable to understand the curriculum given by their teacher only in Georgian, and in the other case they were not taught Georgian at all as the teachers did not speak Georgian. In Kvemo Kartli and Samtskhe-Javakheti there were schools, which offered Georgian language classes at the relevant level, but the number of these schools was insignificant.

Among the positive steps taken to improve the level of education of national minorities, was the translation and publication of textbooks in Russian, Azeri and Armenian languages developed in accordance with the National Plan on the Secondary Education System. Although this was a pilot project and it was not yet possible to translate, publish and adapt new textbooks for every grade, it would significantly promote the formation of the unified education area in the country. It is also welcomed that the project was implemented with the support of the Georgian businesses, the Georgian Industrial Group and Republic Bank.

As a positive result, a certain number of young persons representing the national minorities were trained and prepared for the Unified National Examinations funded by the State.

EMPLOYMENT OF THE NATIONAL MINORITIES IN THE GEORGIAN STATE AGENCIES

The rate of employment of the national minorities in the public service remains low. The national minorities were employed in the areas of their local settlement, but were insufficiently represented in the central authorities and the agencies in the other regions of Georgia. This issue should undoubtedly be addressed.

On Qualified Translation of Cases for the National Minorities into their Native Languages during the Court Proceedings

Representatives of the national minorities and their defenders often complained about the violations of the procedural norms by the representatives of the law enforcement agencies and courts during the court proceedings and investigation. In particular, the relevant legal documents were incompetently translated for representatives of national minorities at the stage of investigation and court hearings (sometimes the Azeri and Armenian translators were not available at all). This often caused the violation of their civil rights and mistrust towards the Georgian law enforcement agencies and judicial system, which negatively affected the process of civil integration and created a favorable environment for kindling internal tension. The courts employed Russian translators, but some Kvemo Kartli and Javakheti residents' knowledge of Russian was poor. It is necessary to offer them Armenian and Azeri translation of the investigation and court documentation.

Condition of Dukhobor Community Residing in Ninotsminda District

In the report covering first half of 2006 we noted the Dukhobors issue residing in Ninotsminda District. The Public Defender addressed with recommendations to different State Agencies regarding the issues of Dukhobor community's security, land ownership and the protection of cultural heritage monuments.

The representatives of the Public Defender traveled to Ninotsminda on a number of occasions to study the situation. On November 27 2006 a meeting was held at the Public Defender's Office regarding the problems faced by the Dukhobor community. The meeting was attended by Goga Khachidze, President's Representative in Samtskhe-Javakheti Region, Kakha Baidurashvili Chief of the Tax Department, representatives of the GYLA and European Center for Minorities and the Dukhobor community leaders. They discussed problems faced by the Dukhobor community, including the land ownership issue and the legitimacy of the origin of 4-million-lari tax liabilities of the Cooperative Dukhoborets, belonging to the Dukhobor community of the village of Gorelovka.

In order to study the details of the Dukhobors' land issues it was agreed to set up a working group consisting of representatives of the State Agencies and NGOs, with relevant joint activities preplanned. It was revealed that due to certain errors made, the responsible organization for the 4-million-lari tax liabilities was not the Cooperative Dukhoborets (as it was claimed by the Ninotsminda Tax Office) but the Soviet farm Dukhoborets, whose liabilities had been periodically paid by the Cooperative Dukhoborets and which was absolutely a different organization and not a legal successor of the Soviet farm.

A second meeting of the working group was held at the Public Defender's Office, with the participation of the representatives of the Justice Ministry, Tax Department, Ministry of Culture and European Center for Minori-

ties. With the joint efforts of the State Agencies' representatives it was possible to solve the dispute in favor of the citizens. It should be mentioned that it was the joint efforts of the Tax Department, Justice Ministry, Regional Administration, GYLA, European Center for Minorities and Public Defender which resulted in the solution of the liabilities issues levied on the Cooperative Dukhoborets and promotion of the land rights retention by the Dukhobor community.

Meeting with the Central Election Commission (CEC)

On July 25 representatives of the Ethnic Council met with the CEC Chairman and Kvemo Kartli Local Election Commission members at the Georgian Public Defender's Office.

The Council members and Commission members had a discussion. The meeting was also attended by the National Minority Council representatives from Akhalkalaki, Ninotsminda, Marneuli and Gardabani.

At the meeting, members of the National Minority Council and the CEC Chairman raised the issue pertaining to the need of translating the election materials (voter lists, legislation, etc) into the minorities' native languages in the regions of local settlement of national minorities. As a result, for the 2006 Local Elections, the representatives of the National Minorities Council at the Public Defender translated the voters' lists and the Election Commission Member's Guidebook (with UNDP support) into Armenian, Russian and Azeri and handed it over to the CEC for publication and distribution.

Regarding the Greeks Residing in Tsalka District

In comparison with previous years, the crimogenic situation substantially improved in Tsalka District, though, as it seemed, on the part of the eco-migrants resettled in Tsalka District there were periodic threats and insults to the Greek senior citizens living in different villages. As the Greeks explained, they did not report to the police fearing revenge. This issue is currently being studied and its results will be reflected in a special report.

COMPLAINTS ON POSSIBLE CASES OF DISCRIMINATION ON THE ETHNIC GROUNDS

The Arnold Stepanyan Case

On September 18 2006 Arnold Stepanyan, Director of the Multinational Civil Movement in Georgia, addressed the Georgian Public Defender. As he noted, Mtatsminda-Krtsanisi Internal Affairs Department investigated the incident of theft in the office of the above mentioned organization (crime implied by the Georgian Criminal Code, Article 177, Part 3, Criminal case No. 06061883), investigated by investigator L. Baduashvili. According to Arnold Stepanyan, during the interrogation related to the incident of theft conducted by L. Baduashvili and other staff members of the Department, he was forcefully demanded to disclose and indicate his ethnic origin in his testimony, in ways and means prohibited by the law.

On September 19 2006 the General Inspectorate of the Georgian MoIA and the Human Rights Office of the Georgian Prosecutor General's Office were notified about this fact and requested to take the measures defined by the law.

On October 2 2006 we were notified by the General Inspectorate of the MoIA that Arnold Stepanyan's request was forwarded to Tbilisi Mtatsminda-Krtsanisi District Prosecutor's Office for further action.

On October 23 2006 Tbilisi Mtatsminda-Krtsanisi District Prosecutor's Office notified through its response that as a result of their study of the mentioned incident, the fact of discrimination could not be proved, it also mentioned that the investigator in this case acted in accordance with the Georgian Criminal Code, Article 297, which defines that "the investigator should determine whether the person being questioned can speak the official language for legal office recording or determine the language he/she prefers and wishes to testify in".

On November 14 2006 the applicant was forwarded the responses received from the General Inspectorate of the MoIA and Tbilisi Mtatsminda-Krtsanisi District Prosecutor's Office and notified that considering the above we have concluded the study of the case.

The Romeo Muradyan Case

On October 26 2006 the Georgian Public Defender was contacted by Romeo Muradyan. As he stated, on the above day he was driving a vehicle near the Avlabari Subway Station when stopped by the Patrol Police officers. One of the officers insulted him verbally and physically on ethnic grounds.

The representatives of the Public Defender immediately rushed to the site. Since the applicant was transferred for medical examination, it was impossible to obtain his explanatory note on the given day. One of the witnesses, Giorgi Terzhanyan, who was accompanying Romeo Muradyan at the time of incident, submitted the explanatory note.

On October 27, Romeo Muradyan stated that he was questioned as a witness by the staff members of the Tbilisi Prosecutor's Office.

On December 6 2006 the Public Defender addressed the Tbilisi Prosecutor's Office in writing requesting information regarding the measures taken.

On December 18 2006 we were notified through a response that on October 26 2006, the Tbilisi Investigation Section of the Tbilisi Prosecutor's Office initiated a preliminary investigation, Criminal Case No. 10068212 on the fact of abusing power by the Patrol Police officers at the time of R. Muradyan's administrative detention, the crime defined by the Georgian Criminal Code, Article 333, Part 1. In the response it was also noted that R. Muradyan, the Patrol Police officers and incident witnesses were questioned and the investigation was under way.

The Georgian Public Defender addressed the Tbilisi Prosecutor in writing on January 22 2007, requesting information on the recent results of the investigation on the case.

No response has been received yet.

The Albina Zotovas Case

On June 5 2006 Albina Zotova addressed the Georgian Public Defender with a complaint (No. 0830-06). As she noted, the Administration of Foreign Languages Faculty of the Ilia Chavchavadze State University commencing on February 2006 without any justification terminated her special student scholarship on the ethnic grounds.

In June 2006, representatives of the Public Defender visited the Ilia Chavchavadze State University in order to study the case and met with the University lawyer Inga Sekhniashvili during which, they also read the documentation and legal acts pertaining to the above issue.

On August 18 and October 18 2006 the Georgian Public Defender addressed the University in writing requesting the above mentioned documentation. The Public Defender's correspondence included the letter from T. Kakuchia, Chief of the General Inspectorate of the Ministry of Education and Science, by which he forwarded Zotova's letter to the Ilia Chavchavadze State University for consideration and further action.

On November 22 2006 we received the documentation and normative acts from the University. We were also notified, the University Administration considered Zotova's complaint as baseless. From the response and attached documentation it was revealed that honors students do not automatically qualify for special scholarships. The candidacies were considered on individual basis during the Scholarship Commission sessions, and according to the provision, the student was required to submit a written application to the Dean to be considered in the process of selection. As the University Administration clarified, since Albina Zotova did not submit any such application, she was not considered for special scholarship.

In her complaint, Albina Zotova noted, she knew nothing about the selection process and accordingly she did not find the need to write an application. According to the University Administration, a notice on the selection process was put up in front of the Dean's Office.

The fact about the notice being put up cannot be verified at this point, although, after studying the documentation and normative acts, we can conclude there were no violations of complainant's rights.

On February 2 2007 the Public Defender forwarded Albina Zotova the response received from the Ilia Chavchavadze State University and informed in writing that the Public Defender's Office concluded the study of the fact.

It is a complicated task to prove a fact of insult on the ethnic ground and negative treatment of the individual because of his/her non-Georgian origin on the part of staff members of the public or private organizations. The fact that the investigation cannot often prove the facts of insult on the ethnic grounds should not be considered as an indication that such cases do not take place. This assumption is supported by the claims of the national minority representatives, which keeps a track and record of the abuses on the grounds of national minority origin.

Recommendations Elaborated by the National Minority Council at the Public Defender's Office

There are four functional Commissions in the Council: Media and Information, Education and Science, Regional Integration and Legal Commissions. The commissions performed demanding tasks between October-December 2006. The Commissions elaborated a package of recommendations for the implementation of the Framework for the Convention on National Minorities. These recommendations will be soon submitted to various public agencies for their consideration.

Festival of Georgian-Jewish Friendship

On the initiative of Rabi Abram Mikhelashvili, Chief Rabi of the Georgian Jews, it is planned to organize a unique event which will be held during the Jewish holiday of Hanukkah. The Public Defender's Office is actively participating in the preparatory activities for this event. Considering the history of the Georgian-Jewish relationship and the significance of this week, it is desirable to engage the public agencies in the implementation of the "Georgian-Jewish Friendship Week" festival.

Recommendation:

To the Ministry of Justice and the Supreme Council of Justice: Introduction of licensing and certification system applicable to the translators and interpreters involved in investigations and the court proceedings.

29 CONDITION OF ROMA IN GEORGIA

The Georgian Public Defender's Office initiated the study of the situation of Roma in Georgia and elaborated relevant recommendations.

Background

The Roma history is a history of constant struggle and oppression. The first Roma emerged around one thousand years ago in the Indian subcontinent. It is yet unknown why the Roma decided to travel and scatter all over the world. In Europe for centuries they were outlawed, enslaved, hunted, tortured and killed. Since1856 and the abolishment of Roma slavery, they have struggled for the protection of their social rights and wish to uncover their intolerable state to a world that is indifferent to their needs.

The Roma historically have remained one of the most oppressed national minorities, who have been treated badly in almost every country of the world on the basis of their ethnic, religious and linguistic origin. The Roma appeared in Georgia after the unification with the Russian Empire. Their main activities were trade, fortune telling and selling horses. The Georgian authorities paid attention to their problems in 1921: special residential areas were assigned, the Roma ensembles created, which represented their national culture and life. One of the most important facts was that the Roma were given the opportunity to obtain education at the same level as the representatives of other nationalities. Their education was conducted in Russian. After the break-up of the Soviet Union and the independence of Georgia, the Roma found themselves in a rather difficult situation. According to the data of the Georgian State Statistics Department, by 1989, in total there were 1744 Roma registered in Georgia. Out of which only 53 were registered in Tbilisi, 412 in Abkhazia, 126 in the Adjara Autonomous Republic, 251 in Kutaisi, and 32 in Rustavi. However these figures do not correspond to reality: there were more Roma in Georgia. The Statistics Department did not offer the census data for the Roma in 2002.

Roma are socially isolated; they distrust outside help and have their own arguments to support. They are isolated from economic, social, political and all other societal spheres. Being scattered around the world, the Roma lack even those basic necessities that majority of other nationalities have: they do not have their own State, formal history, national army, language (the languages the Roma speak are the dialects); usually the Roma convert into the religion of the country where they live. The reason for all this is their way of nomadic life. A study showed that most of the Roma in Tbilisi by their faith were Muslims, though in recent times the tendency of converting to Christianity was noticed.

Hence, the Roma are marginalized from the society and are not officially recognized as a minority. As the interviews during our study showed, each family residing in Tbilisi strove to pass the national traditions on to next generations and by doing so, preserve their ethnic and cultural ideals.

Legal Protection Mechanisms

In terms of human rights protection, for the international community the Roma issue is currently one of the most serious and acute. On May 20 1999 Georgia ratified the European Convention of Human Rights and Fundamental Freedoms; on April 27 1999 Georgia became the European Council member and made a commitment to protect national minorities, including Roma. On June 30 2000 Georgia signed the European Social Charter, which was ratified on August 8 2005. On October 13 2005 the Georgian Parliament ratified the Framework Convention for the Protection of Minorities. The Framework Convention is the first European multilateral tool aimed at the protection of national minority rights and creation of a tolerant environment in the society. In spite of Georgia's commitments and ratification of the major documents in the sphere, the State so far has not developed a specific policy to fulfill these commitments and protect the Roma rights.

Absence of Special Measures, Mechanisms and Information on Roma

The 2003 report on the Roma, developed by NGO the Center for Human Rights Information and Documentation, is the only report available on the community of Roma in Georgia. There is no State policy for the protection of their rights: from the above report it is clear that the most critical problem of homelessness and extreme poverty is in Tbilisi, particularly Samgori District. The Roma live in dilapidated houses and poverty is a characteristic of the entire Roma community. Most of the families live in cramped conditions with 8-10 people in one small room. Their housing conditions are unbearable. Nothing has been done to protect the Roma rights to life and health. Most of the Roma cannot afford health care services because of financial adversity.

They apply for medical services only in extreme conditions. The Roma are often the victims of illegal detention and subjected to inhuman treatment. There have been occasions when the police officers have consciously turned a blind eye on the Roma in the pre-trial detention cells, without providing them the basic need of food and water. It should be noted that in most cases the Roma avoid any kind of communication with the law enforcers.

A major problem concerning the Roma is that the childbearing deliver at home without any medical assistance. Thus, the newborns are not registered or given a civil status, and it is also the cause of Roma newborns not being granted the Georgian citizenship. The Roma cannot vote because they have no IDs. For the same reason they cannot participate in social and political life of the society and cannot legally cross the Georgian borders. In fact, there is no Roma folklores, since their traditional ensembles that contributed to the cultural life of the Roma society have ceased to function.

The Roma complicated social condition is predetermined by their unemployment. The Roma do not work formally as employees. They are mainly engaged in trade to support their families with multiple children. Unemployment is the core problem for the Roma. Almost every interviewed respondent voiced the desire to work; in addition, they have the problem of education. Only senior Roma and an insignificant number of young Roma received elementary educations (1-4 grades). Absolute majority of the Roma cannot converse in the State Language, the Georgian language, let alone writing and reading in Georgian. Out of 50 interviewed Roma only 5 could write and read elementary Russian, which is 10 percent of the interviewed group reflecting the low level of Roma education. Due to severe hardships parents have to make their children drop out of schools and make them work to support the families financially. The Roma also note that they are forced to pull

out their children from school because they do not have the means to afford school books and other related items.

As a result of the survey and interviews conducted, it is clear that in Tbilisi there are no mechanisms for the protection of the Roma. The interviews show that the Roma do not trust the Georgian State Agencies. Most of them believe that nobody can change their intolerable life. Maybe this is a reason why the Roma do not establish relations with the Georgian population and instead choose to live as a closed community. Most of Tbilisi residents are not aware of the problems of the Roma and nobody is trying to somehow improve their situation. The information received makes it clear that the majority of the Roma wish to live, study, work and be valuable and equal members of the society. However, due to the hostile attitude towards the Roma, their situation remains unchanged.

The survey also reveals that the majority of those who are thought to be Roma are not Roma. Many of those who are registered are listed as the Moldavians and belong to the Moldovan nationality with the remaining being Kurds.

The research evaluated and analyzed lack of a State policy regarding the Roma. In 2003, the Center for Human Rights Information and Documentation set up the Roma Protection Center. During 2003-2005 this was the only existing program for the Roma in Tbilisi (free legal consultation). The interviews we conducted in Tbilisi (Lotkini Settlement, Samgori District) showed that none of the Roma respondents knew about the legal consultation available.

Social isolation, extreme form of poverty, the critical level of unemployment and the problems related to housing are hindering the process of Roma social integration.

The Problems of Roma Residing in Kutaisi

According to the data of the Kutaisi local self-governance, 5 Roma households (some 50 persons) have lived for three years in tents installed near the Ilia Chavchavadze Bridge. These people have no basic housing conditions and live in situation devoid of proper sanitation, which may result in different diseases. A majority of them including children are engaged in the practice begging and support themselves with the alms received. These individuals cannot afford basic medical examination and care. Hence, there is a big risk and the possibility that these individuals are carriers of different infectious diseases.

The Roma start sexual life rather early which causes various psychological and health problems. Almost every childbearing woman delivers at home (in tents) and there is a great risk involved that confinement in these conditions may result in tragedy. Newborns are not registered by the relevant agencies. Eventually the statistics of both births and deaths is unknown.

Chemical substances abuse (toxicomania) is widespread among children; minors and teenagers; they often use different chemical substances (e.g. glue) as narcotics. For these reasons there is a big risk that their physical state is unstable and in need of medical assistance.

Almost none of them have any kind of IDs neither are they registered with the relevant agencies; making an identification of a person impossible.

Because of their life style and conditions, the children have no opportunity to get education (elementary education). None of them can speak proper Georgian or Russian, and the official agencies find it difficult to communicate with them when needed.

There is a high probability that minors and juveniles without proper attention from their parents can be exploited by others as well as their own community member as tools for committing crimes.

Conclusions and Recommendations

The State has no elaborate policy to ensure Roma security and integration. The Georgian authorities should study the Roma problems by promoting their development and integration into the society. The Georgian Public Defender deems that a monitoring group should be formed with the participation of both governmental and non-governmental organization members, which can facilitate the Roma security. The participation of Roma is required in this process. The State should take care of Roma education, medical care and social protection. An organization should be set up that would provide counseling and assistance. To ensure that Roma rights are upheld, their registration, issuance of birth and ID certificates are necessary. It is important to establish special programs for Roma employment and reduction of poverty.

30 CHILDREN'S RIGHTS

INTRODUCTION

The Convention on the Rights of the Child is based on four core principles:

Life – the children have the right to life and survival, the right to medical care and the safe use of water and sanitation system;

Development – children have right to education, individual development, development of their talents and mental and physical abilities to their fullest potential;

Protection – the children have the right to be protected from any type of discrimination and exploitation, war and poverty;

Participation – the children have the right to have their thought, freely express their views, and receive required information.

Every country that has ratified the Convention on the Right of the Child abides by these principles and is required to protect the children's fundamental rights at the national level.

The rights defined by the Convention on the Rights of the Child equally apply to all children without any exception. The State is required to protect the child from any form of discrimination and take every measure to uphold the child's rights. According to the Part 1, Article 1 of the UN Convention, "the child" means every human being below the age of eighteen until adulthood, or according to the national law applicable to the child, where the adulthood is attained at an earlier age.

In a number of countries the priority of the right of the child is supported by the specific measures in the legislative, administrative and executive agencies. The Convention on the Right of the Child reaffirms the inherent truth that ensuring the right of the child is the way to ensuring the development of the family, society and nation, and their better future.

Despite the fact that the Georgian legislation should imply the protection of the rights indicated in the Convention, there are issues that need to be immediately reflected upon at the legislative level;

It is also necessary to improve the role of the executive structures: their duties must be defined in detail.

The public awareness should be raised regarding this issue, since they can and should play a significant role in ensuring the rights of the child. Each of us should feel responsible for the children who, for various reasons, have to live in harsh conditions.

The facts involving the violation of the rights of the children, even

2009

if they are well-known, are often left without response from the State. Occasionally this is caused by the inadequacy of the legislative base, and sometimes due the executive branch unwillingness to fulfill its duties as required to by law.

The results of the activity performed by the Center of the Rights of the Child at the Office of the Georgian Public Defender exposed the facts of children rights violations, the analysis of which point to certain tendencies.

"Street Children"

"Children's Social Adaptation Center" Ltd was founded by the Tbilisi Mayor's Office upon the recommendation and with the support of the Georgian Public Defender. The Center has been functioning since June 1 2005. The Center of the Rights of the Children has been closely cooperating with the" Children's Social Adaptation Center".

The children and juveniles of various categories live at the Adaptation Center: children without care, orphans, tramps, difficult and obstinate children, victims of physical and sexual abuse, children in conflict with the law, drug addicts (using chemical substances), and alcohol addicts. Most of them have been diagnosed with the symptoms characteristic for post-trauma stresses, nervous tension, disturbance of sleep pattern, educational retardation, inability to pay attention and apply concentration, prone to conflicts, antisocial behavior, etc.

The Center is an open institution and it often happens when the children that have come to the Center in extreme conditions return to the street after partial recovery. This is true especially in the case of drug (chemical substances) and alcohol addicts.

According to the established practice, a patient should go through a 6-month rehabilitation period before being transferred to another specialized children's institution. However this does not take place in practice.

THE RIGHT TO EDUCATION

The studies of the Social Adaptation Center and other similar institutions revealed the problems, which are caused by insufficient protection of the street children by the State. The children of this category have mostly similar backgrounds and their problems have originated from their families. It is clear to everybody that the emergence of the street children as a new social phenomenon is a negative result of the transformations taking place in the country. Most of the street children have escaped various social abnormalities in the families caused by extreme poverty. Examination of individual cases displays that the families of these children do not or cannot realize their responsibility towards their children; these parents view their children as the sources of income. The more children they have, the more the income generated for the household. The biggest problem here is that the child's personality develops in an unhealthy social environment, while their parents do not have even basic knowledge of the social conditions necessary for the children's upbringing and development; these parents as children were often raised in similar conditions and families.

In these families numerous problems are noticed in terms of violation of the children's fundamental rights. One of the biggest problems is related to exercising the right of the child to education. Most of these children's parents did not receive any education. Some 14-15-year children that are brought to the Center are illiterate, and this, along with other problems, is one of the hindering obstacles for taking them to school. The children spend their entire time in the streets and bringing their life back to normal course is an extremely complicated task: the children brought to the Center cannot stay for long without street life as the values (or lack of values, better said) and the behavioral forms instilled very early in their childhood are the strongest social models. It is

unfortunate that these children are doomed to live in the street as they find the extremely vicious micro-culture of the streets the only social environment acceptable and suitable for them.

The street children that are brought to the Social Adaptation Centre suffer various forms of violations of their rights as indicated below:

1. **B.A.** Born on 17/01/1990; lived in a territory adjoining the Dighomi Massive bazaar with his mother Z.A.; BA never attended school and for years inhaled glue;. B's family resides in Gldani Massive. His father is currently convicted. He has brother M. 10 years old, though he attends school, he often begs in the subway during the night. Z.A. gives shelter at home to other homeless children who bring money and items obtained through various means. They sniff glue there. The local police are aware of the situation. The Center of the Rights of the Child at the Office of the Georgian Public Defender forwarded this case to the Gldani-Nadzaladevi District Educational Resource Center for further reaction.

2. **Brother and sister L.A., 12 years old, and M.A., 15 years old,** have their mother S.I. who made them drop out the school. L. has been noticed in pick pocketing and begging. He snatches purses out of passer-bys, kicking and insulting the relatively weaker ones. The mother pays no attention to the children. She appeared at the Social Adaptation Center before Christmas and wanted to take L. for some time; she said she wanted to transfer the child to another children's institution. The next day L. was noticed begging on the street in front of a restaurant with his mother walking nearby holding an infant in her arms.

In these cases, along other rights, the child's right to education is breached, which is ensured by the Georgian Constitution, the Law on General Education and other international acts. The information brought about such cases to the attention of the Public Defender's Office is forwarded to relevant agencies, though the response from the respective agencies often takes too long.

Besides the heartless attitude of the parents, the negative attitude of the responsible Government agencies by not responding adequately only adds to the woes of the street children. During any time of the day at every step, one encounters begging, idly tramping children but these facts are not paid due attention by the public and governmental agencies. Education is the right of the child that should be ensured either by his/her parent or any other responsible individual. Education is the only decisive factor in the process of these children's reintegration.

Educational retardation of these children and lack of basic social behavioral skills separates them from their peers, making their rehabilitation a difficult process.

A responsible person that takes the child brought up in such conditions to an ordinary school faces serious complications. An absolute necessity is to create special programs with trained professionals working primarily with this category of children.

A number of such problems are caused by the absence of conditions for activating the legislative mechanisms, besides the level of public awareness being too low.

Although there is no doubt that extreme poverty increases the number of the households, where the potential street children are raised, any highly developed country faces this problem. The problem should be solved at the source of its origin: family. The incorrect way of life of the family is the cause for the children leaving schools and going to the street. As one student's mother noted she did not go to school and neither saw the need for her child to do so.

The right to education is ensured by the Convention of the Rights of the Child, Articles 27, 28 and 31. The children have the right to education, individual development, and fully demonstrate mental and physical capabilities.

According to the Georgian Civil Code, "the parents are entitled and responsible to raise their children, take care of their physical, mental, spiritual and social development, raise them up to become worthy members of the society with prior consideration of their interests. The parents are responsible for upholding the rights and interests of their minor children. The parents' rights shall not be used against the interests of their children."

This provision makes clear that the parent is both entitled and responsible to take care of child's physical, mental and spiritual development. This is a primary responsibility of the parent. This provision is closely connected to the State's responsibility to provide each individual with elementary and basic education. This responsibility has been set by the State not only to itself but it also deems mandatory for everybody to get primary and basic education (according to the Georgian Constitution, Article 35, "primary and basic education are mandatory"). The provision applies to each and every citizen with no exception and it should be construed as the same fundamental responsibility as the State's adherence or fulfillment of other commitments set by the legislation.

The parents are responsible to take care of children's education to fulfill the State's commitments. The failure of the parent to fulfill this commitment should be construed as an attempt to evade the parent's responsibility, which, according to the Georgian Civil Code, may be the basis for depriving the parent's rights.

The Georgian Administrative Offences Code, Article 172, refers to failure of fulfilling the commitment to bring up and educate the children: " deliberate nonfeasance of the responsibilities to bring up and educate the children by the parents or legal guardians, as well as abuse of narcotic materials without medical prescription by the children or committing of felony (being present under the influence of alcohol in public places, also drinking alcoholic beverages) will result in parents' or legal guardians' warning or fining with the amount of 20 to 30 minimum wages".

It should be noted that the body that should impose fines on the parents or legal guardians for the noted activity is not clarified in the law. However from the above mentioned examples it is clear that one may often notice such behavior in the children's life. The presence of such deficiencies indicates that the applicable legislative norms are not comprehensive and require improvement to ensure their realistic application and implementation in real life.

Summarizing the above mentioned laws and facts, we may suppose that some rights guaranteed by the law are not upheld in reality as there are no appropriate implementation tools. Improving this situation would solve a number of problems starting at the time of its origin and would not be necessary to address the problems that cannot be solved. In other words, when we discuss the ways to solve the problems of children tramping and begging, naturally, we should first consider the factors causing and facilitating these phenomena. Ensuring the school attendance of the street children would allow us to integrate them socially, which is rather easier in the early years. For the children of this category it is very important for them to communicate with other children. As it is already known, the risk group children communicate only with each other and differ from other peers by their life style and development capabilities. The school allows these categories to come closer; besides that the hours spent at school reduces the time for street life thus decreasing the risks they are exposed to in the streets. With the assistance of teachers and social workers the risk group households will be better controlled. A qualified teacher will easily identify a child victim of family violence. The children will have an internal mode, acquire basic skills that they cannot acquire in their families and moreover from the street. Some aspects should be taken into account that may potentially be faced in this process. For instance, when bringing about such changes, the level of preparedness of the society to accept this category of children to the school should necessarily be determined. Training of the school personnel, students and their parents will be necessary to correctly integrate such children in the educational process. However if the below mentioned practice, direct requirement of the law, is instilled, the issue will not be so sensitive. Along with ensuring the legislative requirements, it is necessary to raise the public awareness. Each individual should realize his/her responsibility to-

wards these children, which constitute the so-called risk group. As the facts confirm, currently the public is cold-hearted towards this issue.

It should be noted here that the majority of the children that have lived in the street for an extended period of time, tramped or begged constantly face a serious problem: they have no elementary education and knowledge, something that will complicate their education by the ordinary school curriculum. In most of the cases it will be impossible to attach these children to the grades according their age since their knowledge does not correspond to the school requirements for the given age. Most of these children are substantially lagging behind the educational level of their peers at school. Bringing them to schools will be justified if there are special programs helping these children with such retardation.

In spite of the fact that this category for some reason lacks the opportunity to get education and ensuring their school attendance cause numerous problems, the priority rights should be taken into account, which imperatively imply that every child is equal before the law and each of them has the right to education, while the State is responsible to ensure this right.

Today there are no special programs facilitating the education for these children. The State has nothing to offer to these children who have spent most of their lives in the street, and to help them develop into valuable members of the society in future. Indeed, the way of child's rehabilitation lies in addressing such issues. It is necessary to help these children realize what they lacked living in the street and spending the entire day in begging.

Along with special programs, the teachers selected to supervise these children should also be retrained.

The State should elaborate a specific policy regarding these issues, which has not been seen till today. The non-fulfillment of the responsibilities and commitments set by the law leads us to irreparable consequences that are related to the lives of children, which in the future may produce the strata with greater criminal risk; as it is known, the majority of such children frequently find themselves involved in various criminal activities and are imprisoned, where their condition is further complicated.

These issues require the reorganization of number of executive agencies and amendments of existing laws. Leaving the problem unattended without providing solution should be considered as a violation of the right of the children to education on the part of the State, contradicting the Georgian Constitution and the Convention on the Rights of the Child which eventually will be negatively reflected on the prospect for the progressive development of not only the vulnerable social group but the entire society as a whole.

Recommendations

- It is necessary for the Ministry of Education and Science, Parliamentary Committees for Education, Science, Culture and Sports and Legal Issues to fulfill the commitments defined by the Law on Elementary and Basic education and to achieve that purpose, strengthen the available mechanisms, activate and develop additional tools.
- Local governments, the Ministry of Labor, Health and Social Affairs, Ministry of Education and Science and Ministry of Internal Affairs should start registering the risk group families and study their condition to avoid the estrangement of the child from the educational processes as an effect of his/her family condition.
- The terms of response of the governmental agencies should be strictly defined in the event of such facts. To ensure the normal development of the child the response should be to a maximum extent, prompt and effective.

- A governmental body (police, resource centers) should be tasked with ensuring the school attendance when the child is idle in the street or begging and tramping; later the causes should be investigated.
- The Ministry of Education and Science and school administrations should keep track of the school attendance of the children that belong to the risk group category.
- The Ministry of Education should elaborate special programs allowing the risk group children to get elementary and basic education.

BEGGING

Without studying the parent's situation, it is very difficult to solve the problem of the risk group children. The process of correction of children that are in the Center is rather complicated and linked to a number of problems. The children of this category are often addicted to toxic drugs and alcohol. The recovery of health damaged by sniffing glue takes time, but sometimes there are irremediable cases that have fatal results.

The children acquire bad habits in the street to escape suffering and starvation. Despite the harsh conditions in the street, the street children are inclined to run away from the Center; their majority prefers to live in the street, especially during summer. It is very difficult to offer an alternate activity to these children which would be of some interest. Keeping them in the shelter or other custodial facility is a very difficult task. For the "street child" the street is home, where he/she finds shelter, food and entertainment; this is enough for the child and more acceptable than the care offered by the public, which also means putting him/her into some kind of a moral mould.

Most of these children have parents, though they are the ones the children often escape from, which later turns into the reason why these children ultimately become the street children. Very often the parents of the street children also belong to the risk group, as they are beggars, alcoholics, prostitutes, etc.

The so-called "street children" may be divided into two groups: 1. the children that spend almost their entire time in the street either working or begging, but have shelter, home, parents and therefore do not have to live in the street; 2. the children whose only habitat is the street. This life style prompts them to commit crime and engage in prostitution. The risk is also higher for these children to become victims of violence.

Very often, as monitoring of the shelters for these children indicates, their parents are partly to be blamed. One may encounter these children at every step; special efforts are needed to protect them from violent parents. It can be said that such practice, especially institutionally formed, is not yet in place. The parents force their children to beg and later take money obtained. These are the parents who are interested in taking back the children from the State Institutions as the child is a source of their income. Despite maximum efforts of these institutions, the law prohibits the right to deny the right to take back the child, which further prolongs the process of the children's rehabilitation and sometimes make it impossible.

1. M.N.'s Case

Born on 07/03/1989; 18 years old M. is addicted to toxic drugs, was raised in the village "Kachreti" orphanage, which he abandoned without completing his schooling. Since then he has been in the street practically all the time where he started pick-pocketing and begging; he has a mother who resides in Bagebi Settlement and makes her living with begging too; she forces his sister N to beg, who has never attended school; the family even goes to the extreme extent of forcing M.s elder brother's 1-year-old child to beg. M. stays at the Children's Adaptation Center, he returns from the street at 1 or 2 AM. M. lost his teeth because of toxic drugs and on several occasions he was admitted with severe intoxication at the intensive therapy unit of Ivane Javakhishvili TSU Clinical Hospital (former Mikhailov Hospital).

2. L.'s Case

14 years old L has mother L.M., who is a chronic alcoholic and constantly demands the children to bring money. L. and her sister N. were in reality raised in the open air. They have never attended school. L does not return home at nights frequently as men of suspicious behavior gather at her mother's place. Other street children and juveniles also gather at her home. There they sniff glue and share the "loot". L. is often seen near the Akhmeteli Theater subway station. The local police precinct and patrol police are well informed.

3. G.G.'s Case

7-years-old G., his 11 years old sister and 16-years old brother G. Has alcoholic father who beats the children and sends them to beg in the street. Mother L.N. does not take adequate care of the children either. The children have never attended school. G. and G. are mentally retarded. The police patrols often bring these children to the Center during the day or at night. According to the police, the children feed from the trash dump; no IDs were found with them. Their mother does not remember the birth dates of her children and their names either, as it turned out that she gave birth not to 5 but 11 children. One of her children, 15 years old, is currently convicted, her daughter is married and the fates of others are unknown. G. and G. were transferred to the Public Boarding School No. 200, and G. to the Saguramo Children's House. In this particular case the problem is that the IDs needs to be issued for G. and G., which should necessarily be requested by their mother, who, on her part, has no ID. The Center for the Right of the Child forwarded this case to the Gldani-Nadzaladevi Educational Resource Center.

The above examples show that in Georgia, it still is a problem to expose such facts and address the mechanisms responsible for providing solution. According to the Georgian Civil Code, both citizens and legal entities, who are aware of the facts of violation of the rights and legal interests of the minors, are required to notify the guardian agencies, while the State itself is required to take measures provided for by the Georgian legislation. These measures are described in detail in the Georgian Civil Code, in particular: "the guardian body is entitled to address the court with the request of deprivation of the parental rights (of the parent) or the child (without the deprivation of the right of the parent), if the person is evading the fulfilment of the parental duties".

Although the duty of the citizens and legal entities is to notify the guardian agencies regarding the facts of violation of the rights and legal interests of the child, is guaranteed by the law, it would be better if the legislation also determines the relevant administrative punishment for non-performance of the duty.

According to the Civil Code, the only primary responsibility set for the parents is to take care of the child. This provision includes the parent's responsibility to take maximum care of the child's moral development and his/her development into valuable members of the society.

Unfortunately, the Georgian legislative acts do not define the term anti-social activity; this is the prerogative right of the body while considering the case in each particular incident to determine what is an anti-social activity based on the case materials and circumstances. In a given case the considering body may find tramping an anti-social activity, and in another case it may decide that a homeless person living in the streets is not performing an anti-social activity. In other words, for the proper decision on the issue, it is important to analyse a number of subjective and objective circumstances

As the existing practice shows, the parents (or legal guardians) often force their children to beg or work. This requirement often arises from the severe hardship faced by the parents and sometimes because the parents are alcoholics,and drug addicts, forcing the children take care of their subsistence themselves.

The facts confirm that the State Agencies have so far not responded adequately to the facts of violation of the rights of the children on the part of the parents. **The information submitted by the Ministry of Education**

and Science confirms that although this procedure is regulated by the Georgian Civil Code, for years its provisions have not been fulfilled. When one of the parents filed a suit in the court regarding the deprivation of other of the parental right, the territorial guardian agencies issued conclusions based on the relevant materials studied and the arguments of the complainant against the respondent parent were considered groundless and insufficient. This is the only case when the Ministry could provide information to the Center of the Right of the Child. In other cases they could not provide the statistical data on the procedures provided for by the Georgian Civil Code, 1198 prime, 1205 and 1210 Articles; this means that the relevant agencies neither addressed the court regarding the facts of violation of the right of the child requesting the punishment of the parent nor did they considered such cases themselves; nevertheless this is directly reflected on the child's life. Of course, the parent does not realize that he/she violated the universally recognized rights of the child and cannot see the signs of the crime in it, doing that openly and without any secrets.

Based on the statistical data of the Ministry of Internal Affairs, during the last 5 years criminal proceedings were instituted on 36 criminal cases, which were investigated and later resolved on the basis of the Criminal Code Article 171 "Involving minors in anti-social activity". Out of this 6 criminal cases were dealt with in 2006 on these charges.

A State policy is formed in this regard. The mechanisms the Parliament adopted defining the legislative acts are not applied in practice, which is the precondition for violating the right of the child; executive agencies do very little to solve this problem which is proved by the above mentioned facts.

It is often noted that the Georgian legislation does not offer the mechanisms to find and punish the individuals that force the minors to engage in the anti-social activities; in this regard it should be noted that, despite its shortcomings, the existing legislation actually allows the relevant agencies to take effective measures for eradicating the bad practice. Although the problem will not be solved only by depriving the parental (or other legal representative's) right or punishing the parent, but by putting these measures into effect, the conditions of the minors will definitely improve.

It is necessary to improve the legislative basis: prohibit the child's begging in the street. Besides that we deem necessary to raise the level of public awareness: each of us should realize that the money given to the child in the street does not serve any good purposes and it will ultimately be used by the child's asocial parent or other street groupings; but for the child this is a direct psychological message to remain in the street and continue this unacceptable activity. The steps taken in this regard to improve public education and legislation would definitely slow down the process of recruiting new "personnel" into the army of the risk group children.

It is desirable for the Ministry of Education and Science to ensure the public campaign and other effective mechanisms to avert the children from begging in the streets.

Leaving this problem without proper reaction predetermined the fact that Tbilisi is full of begging children; their rehabilitation and protection is becoming an even more complicated task with every passing time.

According to the Convention on the Rights of the Child, Article 3, , "In all actions concerning children, whether undertaken by public or private social Affairs institutions, courts of law, administrative authorities or legislative agencies, the best interests of the child shall be of primary consideration."

"2. States Parties undertake to ensure the child the protection and care as necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

"3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by the competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

VIOLENCE

The Georgian Parliament adopted the Law on the Protection from Family Violence. Taking into account the existing practices we may claim that the mechanisms for the implementation of the law have not yet been activated. The agencies that are tasked by this law to protect the individual from family violence should better realize their role in the implementation of the law.

It is not difficult to obtain information with the assistance of the above mentioned Centers on the facts of family violence. Most children that are brought to the Centers are the victims of family violence. However, in none of the cases, as we know, the violent family members were brought to justice.

1. M.P.'s Case

Born on 09/04/1992; the family lives in Zahesi in the slums. He has a brother (12 years old) and sister (2 years old). His father under the influence of alcohol beats his wife and children; M. has been diagnosed as mentally and educationally retarded, he practically did not attend school. He is involved in criminal activity, which is confirmed by the Zahesi police precinct. Similarly, his brother G. is in extremely grave situation. They need immediate transfer to the closed type institution since the children face a physical threat; the case for study was forwarded to the Gldani-Nadzaladevi Educational Resource Center and the Internal Affairs Department of this district.

2. S.B.'s Case

13 years old S.B did not attend school. Has mother I.B. and an infant sister. The child regularly runs away from home. She was raised in different shelters (Beghurebi, the Adaptation Center, the Home of Future). The reason for leaving the house was her mother's outrageous behavior. I.B. is diseased with alcoholism and, as the child notes, beats the children severely under the influence of alcohol. S. sells flowers and icons in the street. When the child escapes the house she tries to hide from the mother; she regularly runs away from the shelter and returns back only in extreme condition. S.'s mother often takes the child from the Center promising the administration to take care of her child; however after a while S. is back on the street. Currently the child is placed in one of the shelters, where she is under the control of the Public Defender's representative and her mother is unaware of her whereabouts.

Although, as usual, the neighbors of the family and the local police precinct are aware about this and many other cases of family violence, there have been no cases so far in the Center for the Rights of the Child to see any reaction on the part of a relevant body regarding the above mentioned issues.

"INTERNET CAFES"

Presently, combating to reduce the number of the street children is almost impossible. The above mentioned laws are not enforced, which being put into effect would more or less ensure the right of the child to education and protect him/her from begging, tramping and family violence; it may be claimed that by not taking the decisive measures on the part of the State the conditions are created for these children to spend their entire life in the street.

"The street children" collect money by begging, then spend it for glue or back home to the alcoholic parents.

The children that do not wish to return home easily find the places to stay in the street. Recently the cases are more frequent with the Internet cafe owners allowing the children to stay overnight on their premises for a

certain amount (5 lari). Several Internet café owners confirmed that in the conversation with the representative of the Center for the Rights of the Child.

Smoking cigarettes is not prohibited in the Internet cafes and the administration is not required to control whether a child is under influence of toxic drugs; this is a reason why these children often prefer the Internet cafes over the State Shelters.

This type of institution cannot ensure the security and health of the child and it is not responsible for it either. The Internet cafes are simply willing to give shelter for a certain amount of money to the children since they are not prohibited by the law for such actions. This is the principle reason for their lack of responsibility.

To increase the level of the child's protection and allow the State to ensure security of the risk group children, it should be specified which agencies have the right to give overnight shelter to the minors. Not any institution operating on the 24-hour basis should be responsible or allowed to do so, as it only adds to the heightening of the risk level. In a country, where despite constant monitoring and evaluation, the issues of care and responsibility is not organized even in the authorized shelters, in such situation not every 24 hour working institution should task itself with that the responsibility of providing shelter to street children. The number of "Internet cafes" is very high and on the rise, but so far there are no mechanisms of control over their activity.

The Georgian Law on the Protection of the Minor from Negative Influences, along with other restrictions, restricts the minors' access to restaurants, bars and night clubs and forbids their work;

Article 15. Restriction of minors' access to restaurants, bars and night clubs and forbidding of their work Forbidden:

a) allowing the minors access to bars and night clubs from 11 PM to 8 AM;
b) employing minors at restaurants, bars and night clubs.

Article 16. The right of the bar and night club managers
The bar and night clubs managers have the right to check the age of the bar and night club entrants with the full guarantees of the human rights.

As the study undertaken on this issue showed, these restrictions are insufficient for the protection of the minor's health and security: the law should be more specific in determining the precise and strict measures allowing us to fulfill the commitments undertaken by the State to the minors without guardianship and care. The law should specify the institutions allowed to give overnight lodging to the minors without theparents' (also guardians) approval.Failing which, the problem of the security of minors will be further complicated and hinder the process of the children's rehabilitation. The agencies controlling this process should also be specified.

It is clear that the Law on the Protection of the Minors from Negative Influences is not implemented today due to the non-existence of the relevant body responsible for the effective implementation of the law.

Recommendations

- Task the Georgian Government to put into effect the mechanisms implied by the law, which are protecting the children from the negative influence of their parents and violence of different types; the mechanisms of reaction should be improved;
- The Ministry of Internal Affairs should specifically define the mechanisms of reaction and the agencies, which are responsible for the protection of the children from violent parents. Also, the shortest possible terms of response should be set when the felony is obvious or/and there are grounds to believe its presence;

- The Parliamentary Committee for Legal Issues and the Committee for Education, Science and Sports should consider the issue of the necessity of effective regulation of the protection of the children from begging: the norms determined by the existing legislation are not sufficient for their protection.

  The Parliament should determine and approve the institutions entitled to provide overnight lodging for the minors without the permission of the parent or other guardian, and establish strict sanctions for its violation both in the Administrative Offences Code and the Criminal Code. Also, the body should be determined with the task to control the functions of these norms.

ANALYSIS OF THE COMPLAINTS SUBMITTED TO THE PUBLIC DEFENDER

The complaints submitted to the Public Defender for his attention allow us to note some tendencies, which were also reflected in the 2006 First Half Report; according to the complaints of the citizens, the most difficult problem noticed is severe economic hardship of the individual.

N.U.s Case

N.U. addressed the Georgian Public Defender and noted that she was raising two minor grandchildren; her daughter, the mother of one of her grandchildren, had serious health problems; the children had no father.

After the study of the case, it was determined that the grandmother raising the children was an invalid of the first category; the children had serious health problems; the family was below the poverty line and did not receive any assistance from the State. According to N.U's. information, the Gamgeoba advised her to transfer her grandchildren to an orphanage; the grandmother wished to take care of her grandchildren herself but at the same time realized that it was impossible due extreme poverty.

The Center for the Protection of the Rights of the Child at the Public Defender's Office on November 11 2006 addressed the Ministry of Education and Science requesting the Ministry social workers to study the condition of the above mentioned family and take a decision on the approval of Affairs assistance for the children, within the process of deinstitutionalization which is in the making and the Ministry's Program on the Deinstitutionalization and Prevention of Abandoning the Children without Care.

According to the response sent by the Ministry of Education and Science, the first assessment of the family revealed the following: children's grand mother N.U. had problems with mental health, but there was no confirming documentation to prove the ailment; the identity of the biological parents of elder daughter Kh.U was unclear: and it was found ou that Kh.U stayed 5 days of the week with this family.

The Ministry of Education and Science deemed that the case needed a more detailed study and only after that the decision would be made on establishing assistance to the children. Later the Center for the Rights of the Child received a notification stating that N.U.'s grandchild was provided with social assistance.

THE CHILDREN OF THE MENTALLY AILING PARENTS

The issue of children by brought up by the mentally retarded parents was raised for the third time at the Public Defender's Office. On some occasions the situation in these cases is grave and may have a negative affect on the child to an extreme level and later become irremediable.

Parent(s) mental illness poses a significant risk for the children in the family. In comparison to other children, the probability of these children acquiring mental illness or disorder is much higher. In case of both parents

suffering from mental illness, the risk is doubled. It is especially alarming in case of the following diseases: ravings syndrome, ADHD, schizophrenia and alcoholism.

Along with the risk of genetic transfer of the disease, a serious risk is posed by the factor of social behaviour, which implies the child imitating the parents' behavior as a social model. In psychology it is known that the child almost fully imitates the parents and other close relatives until the age of 12. The behavior of mentally or neurotically diseased parent is the closest model example (to be imitated); the child usually perceives such patterns of behavior as normal. For instance, in the case of father's (or mother's) alcoholism, there is a high probability that the child may imitate the model behavior of the parent and become alcoholic himself. The other problem being, the unbalanced state of the parent suffering mental disorder making it impossible to forecast his/her behavior. The unstable family condition may also become the reason for the child's personal problems and mental disorder. Mental illness of one (or both) parents may affect the couple's matrimony and parental capability, which, in its turn, is damaging for the child.

The situation is more complicated when the child has no other individuals taking care of him/her apart from the mentally diseased parent. In such circumstances the State needs to provide special care to the child along with the parent.

The child's healthy development would be ensured by individual or family psychiatric treatment. Besides that it is desirable to have a psychologist work with the child and assist the family in strengthening the positive elements present at home and child's natural abilities. This is possible through both the individual sessions with the child and applying the family therapy method. In such families the psychologist should work on developing the child's positive self-evaluation, instil strong motivation for education and focus on success at school, as well as ensuring support of the child by other family members, assist the child in developing constructive interests and facilitate in establishing and maintaining positive relations and friendly ties with the peers.

By applying these specialized approaches it is absolutely possible to reduce the influence of the parent's mental condition.

Unfortunately, the professionals and public pay very little attention to both the retarded parent and the victimized child; very often the fundamental interests of the child in such families are ignored.

Currently in Georgia the State does not take care of addressing this problem; the older system is not functioning and the new one is not in place yet; there is no specialized program to solve this particular problem.

The Center of the Rights of the Child at the Public Defender's Office detected 4 such cases in the last 6 months where the minors were being raised by the mentally disabled parents. The fact that the State does not focus its attention on the disabled parent, causes a number of problems:

- it is difficult to persuade the ailing mother (or father) that his/her medical treatment is beneficial not only for him/her but also for the child.
- it is often necessary to separate the parent from the child and it is a difficult task to assure the parent or guardian with mental disorder that his or her child is not being taken away for good..

Recommendations

It is desirable if the Ministry of Labor, Health and Social Affairs deals with these problems:

- A special program should be elaborated, which would meet the requirements of both the ailing individual and his/her child.

- The program should envisage the formation of an emergency group of social workers dealing with these problems and offer specialized training to them.
- Database should be set up to assist in resolving this problem: the statistical data on these types of cases should be registered from the psycho-neurological centers.

M.Ch.'s Case

The Public Defender was addressed by M.Ch. The children of M. Ch.'s daughter, 5-years-old A.K. and 2-years-old Z.Ch. were taken to the St. Barbare's Zestaponi Orphanage by their father Z.K.. M.Ch. noted that her daughter was in Ukraine when Z.K. took her grandchildren to the orphanage, she also mentioned neither she nor her daughter were aware of this incident. As it was noted in the complaint, even though it was the grandmother that raised and took care of the children from their births, she was not allowed to see the children by the orphanage administration. The grandmother explained that she had required conditions and the environment for taking care of the children and wished to raise the grandchildren in a family environment which was contradicted by their father.

For the purpose of studying the case, the complaint was resent to the Ministry of Education and Science. In the response received from the Ministry of Education and Science, it was noted that the case study required time as the children were in an orphanage under the auspices of the Patriarch's Office, where the Ministry social workers had limited access which was causing hindrance in the study of the case.

On February 20, in the response received from the Ministry of Education and Science indicated that the parents of A.K. and Z.Ch. rejoined and had a desire to return them back to the Institute. Accordingly, the social workers have already made the primary assessment of the family based on which at the February 2007 Board Meeting the decision would be made on the inclusion of the children as a reintegration case in the Subprogram on the Deinstitutionalization and Prevention of Abandoning the Children without Care.

In the Public Defender's Report on the First Half of 2006 the issue of the difficulties with exercising State control and mechanisms in the orphanage under the auspices of the Patriarch's Office was raised. Unfortunately, monitoring of these orphanages or even meeting the children is often impossible; which complicates and delays the study of the concrete cases and the reaction on the part of the State. The State is responsible to the children with special needs and therefore we consider it unacceptable for the State to have problems in this regard; the State should exercise its control over institutions taking care of the children.

In the above mentioned case the only body that could have solved the dispute related to the children's asistance was the Ministry of Education and Science. No other body has the right to consider the case without the conclusion of the social workers; such hindrances indicate the shortcomings of the legislative and executive mechanisms, which are clearly reflected on the child's well being.

The Case of School no. 197

A.M. addressed the Public Defender's Office, in which she noted the violation of the right of her 12-years-old child D.B. by the school authorities. A.M. indicated that school principal Nino Kipiani and school chaplain Ioseb Gogoladze forced her child D.B. to cut his long hair. A.M. associated this fact with her signature on the letter sent by the parents the previous year to the Inspectorate General of the Ministry of Education and Science, in which the parents requested the study of the contributions made to the school.

According to A.M., the main argument for requesting the hair cut by principal Nino Kakhiani was the school regulations prohibited the male students from having long hair and the female students from wearing pants.

The parent mentioned in the letter that the child was dismissed from the lessons and demanded to cut his hair, besides that the child was taken out of the classroom and held either in the teachers' room or library and not allowed to return to the classroom.

In connection with the facts laid out in the complaint, the Center for the Rights of the Child at the Public Defender addressed acting principal of the School No.197 Nino Kakhiani and, according to the Law on the Public Defender, requested the explanation.

In her explanation, the acting principal of the School No. 197 Nino Kakhiani noted that the regulations of the Ilia the Righteous Public School No. 197 were based on the principles of raising the children in accordance with the Christian traditions, which meant the student in his/her behavior, way of conversation and outward appearance should not flout the school's authority.

The principal also noted that upon her request, all male students studying in grades from 5 to 11 inclusively cut hair without any problem. On November 28 2006 the sanitary check revealed the fact of D.B.'s lousing among other students.

The acting principal explained that she did not consider the fact of taking student D.B. to the library as a form of punishment but it was done only with the purpose of discussing with the student the issue of haircut.

Nino Kakhiani mentioned during her conversation with the Public Defender's representatives that though the reason for demanding haircut was student's lousing, she personally deemed that the male student with the long hair did not correspond to the image of their school as the school is a messenger of Christian values. It should be noted that the female students were not demanded to cut hair despite the facts of lousing.

The Ilia the Righteous Gymnasium was founded in 1992. On September 15, 2005, the school was attached the status of the Public School No. 197. As the principal said, in future it is planned to change the status and it would function as "the Ltd Ilia the Righteous School at the Patriarch's Office".

It should be noted that currently the school has the status of the public school, and accordingly its functioning is based on the Law on General Education. In spite of this, the requirements of the school regulations presented by the principal contradicted the governing law. The demand of the principal to cut hair may be considered the violation of the Georgian Constitution, Article 38, and the rights and freedoms guaranteed by the international law (the UN Convention of the Rights of the Child, Article 2, Part 2). Also, in the Law on General Education it is directly indicated that use of the educational process in the public school for the purposes of the religious indoctrination, proselytism or forceful assimilation is unacceptable. The regulations of the Public School No. 197 contain such requirements, for instance, the mandatory Morning Prayer; besides that if the student disregards basic norms of the Christian life and behavior the school terminates the agreement with the student.

In conclusion, the school with a public status may not have the rules aimed at the limitation of the students' personal freedom and discrimination against individual students.

Abib Mekhtiev's Case

The Public Defender was addressed with a letter by Abib Mekhtiev, a convict of Kutaisi Prison No. 2, the Institution of High Security, who requested the information on his child. Mekhtiev noted that he had been convicted for 13 years and his child was abandoned by the mother at the age of 6 months. Abib Mekhtiev did not know the whereabouts and the living conditions of his child.

The representatives of the Center of the Rights of the Child obtained the information on Mekhtiev's child and after finding out that the child could be in the village of Tabakent, Marneuli District, visited and met with Tura Mekhtiev. As it was found out, Abib Mekhtiev's child Tura Mekhtiev lived with Abib Mekhtiev's brother's family and was fine. The applicant was sent the information on his child's whereabouts and living conditions with the photo enclosed.

S.I.'s Case

The Center for the Rights of the Child at the Public Defender received an information that G.I., born on July 25, 2005, required immediate medical treatment and the child's mother S.I refused to transfer the child to the clinic; the representatives of the Center for the Rights of the Child at the Public Defender called upon and spoke with the child's mother, who claimed that the child was admitted to Tbilisi Hospital No.3 but she decided to bring the child back home

S.I. lives in the Mukhiani dachas settlement and the house is a very small with shaky walls, without proper sanitation and no basic living conditions. The house does not have any heating systems and electricity. Living under these conditions would only do more harm to the child's health that is already ill.

The representative of the Center for the Rights of the Child at the Public Defender's Office tried to explain to S.I. that the child's health was threatened and it was better to hospitalize the child to the clinic; S.I. agreed and both the mother and the child were transferred to the hospital.

G.I. went though a 10-day in-patient treatment and the child's health condition improved substantially, but since the child's and mother's return to their home would only aggravate the child's condition, for the well being of the infant's health, they were transferred to the shelter where they would stay for 3 months.

In cases, where the child requires medical treatment and is being opposed by the parents, or when the parents fail to perform their duties, it is necessary to have the opportunity to provide the needed assistance to the child even without the consent of the parents or guardians.

In such case, the legislation determines the solution through the following mechanisms: "according to the Georgian Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence, Article 3, the action shall be considered violence: "family violence means the violation by one family member on another family member's Constitutional rights and freedoms through physical, psychological, economic, sexual violence or force."

According to the Georgian Constitution, Article 39, "The Georgian Constitution does not deny human and other universally recognized rights, freedoms and guarantees of the citizen and individual, which are not described here, but derive naturally from the principles of the Constitution".

This article implies that the Constitution accepts those rights and freedoms that are determined by numerous international agreements, to which Georgia is a party.

According to the Convention on the Rights of the Child, Article 23:

1. States Parties recognize the right of the child to enjoy the highest attainable standard of health and 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.

Hence, according to the Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence, such cases should be the subject of consideration by the law enforcement agencies.

I.S' Case

The Center for the Rights of the Child at the Public Defender's Office received an information that in the village of Giorgitsminda, Gldani District, a mother abandoned three infant children. After the on-site inspection and study of the situation, it was found out that the children were left without any basic attention and care with the bedridden great grandmother in a booth type construction It was found out that it was the second time the mother abandoned the children, which prompted the locals to inform the police.

the Public Defender's Office and Resource Center staffers transferred the children to the orphanage and according to the Georgian Civil Code, Article 11981, Paragraph 2, we addressed the guardian body (Gldani-Nadzaladevi District Educational Resource Center).

The children's great grandmother also required the transfer to the senior citizens home, though there were no accommodations available in any similar institutions in Tbilisi. Finally, we addressed the Mother Teresa's Sisters organization for assistance, which obliged to give refuge to the great grandmother, but unfortunately when we came to transfer the lady, neighbors informed us that she passed away the previous night.

M.M.'s Case

The Center for the Rights of the Child at the Public Defender's Office received an information about M.M, an orphan juvenile, residing in Varketili 3 micro region,. M.M. lived at the indicated address with his bedridden elder brother who was ailing with TB and in extremely critical condition. The staff members of the Public Defender's Office went and saw the conditions of the children. No basic conveniences were available in the apartment, the window panes were broken, the water tap out of order, no heating; the child did not attend school for years and had no ID nor a guardian.

Regarding this, we addressed the Isani-Samgori District Gamgeoba and the Educational Resource Center of the same district. Presently, we are aware that the child is allowed eat at the cafeteria for the vulnerable group. The Center for the Rights of the Child expects from the above mentioned agencies the information on further measures to be taken for solving the problem.

The Gldani-Nadzaladevi Educational Resource Center staff members timely performed their task and transferred the children that same day to the orphanage; it should be noted that this occurred upon the insisting request of the staff members of the Center for the Rights of the Child. However the process in case of M.M. is delayed, the child still has to live in unbearable conditions without a guardian; his condition is known to every relevant structure; this passivity is caused by the fact that the law does not specify terms and the means of response which add to the delay in the process.

The Public Defender has noted several times that specifying the terms of response is crucial in providing the required needs of the child in time, by not doing so the results are often tragic or a an irrecoverable situation without any remedies.

COMPLAINTS OF THE DEPORTEES

The anti-Georgian hysteria and widespread oppression and discrimination of the Georgian citizens in the Russian Federation were followed by the massive deportation of the ethnic Georgians from Russia. Among the deportees were juvenilesand children including infants. The deportation of the Georgian citizens from Russia was a gross violation of International Law. The human rights guaranteed by the international norms were violated.

During the study of some of the cases, the tendency of ignoring the international standards and rules against children was found. The Ministry of Interior of the Russian Federation under the motive of combating terrorism officially demanded from the Russian school administrations the lists of the ethnic Georgian children studying in their schools. One of the well known cases, which clearly reflected the xenophobic and discriminatory attitude towards the ethnically Georgian children, was forbidding the attendance of all the children with the Georgian passports in the Russian Ministry of Defense secondary schools located in Tbilisi, Akhalkalaki and Batumi. Depriving the children of the right to study on the basis of their ethnic or national origin breaches a number of international norms, and primarily, in the context of the protection of the rights of the children were breached, including the norms of the UN Convention of the Rights of the Child and the UN Convention against Discrimination in the Educational System.

According to the Convention of the Rights of the Child, Article 2, "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Some reports was made public by the media and official agencies, which clearly highlighted the cynical and humiliating approach of the Russian official structures towards the Georgians. In one of such cases, thirteen Georgian citizens were deported from Moscow. Most of them were women and children. The deportation was taking place live in a despicable humiliating manner in front of TV cameras and media representatives where the women were transferred to hospitals to publicly to check them for STDs (sexually transmitted diseases). The children were left alone in different hospitals without parents for extended period of time.

The European Convention of Human rights and Fundamental Freedoms in its Article 8 guarantees the right to protection of the personal and family life. In the democratic nations it is unimaginable to deport a single family member or separate from other family members. It is unacceptable to oppress the children, also when the child is in the process of receiving education; it is prohibited to isolate him/her from the educational process until the end of the scholastic year. Each particular case of the return of the child to the country of origin should be decided by the official agencies with the consideration of the child's personal interests and the return to the country of origin should occur in secured conditions.

The Center for the Rights of the Child at the Public Defender's Office was addressed by the citizens deported with infant children. In all four cases the major request was the assistance on the part of the State. However during the study of the cases it was found out how humiliating and degrading was the nature of their exile from Russia.

Lia Shioshvili's Case[1]

The Public Defender's Office was addressed by Georgian citizen Lia Shioshvili. She has 4 infant children. For eight years L. Shioshvili had lived in Podmoskovie, Russia. Her children used attend the Russian school. Because of the number of the children, the family received some social assistance which included some free food and medical services.

The Russian Federation deported the mother with her children, but her husband's whereabouts are unknown till today. It should be noted that Lia Shioshvili was on the ninth month of pregnancy at the time of deportation. She was refused assistance at the women's consultation center because of her ethnic background. After the deportation order, she decided to return with her own resources to Georgia, but the representatives of the Russian authorities got her off the bus in Dagestan. She spent that night with her children at the bus station.

[1] The citizen did not request the guarantees of anonymity

Later they found a room for overnight lodging for a certain amount. Because of lack of money the children were half-starved for two weeks. Eventually, Lia Shioshvili managed to cross the border by foot. The children caught cold en route. In several days upon return to Georgia, Lia Shioshvili delivered a child but the fetus was dead for several days before accouchement. The mother's health was also exposed to risk. Currently the family lives in Gurjaani District. The Gurjaani Gamgeoba allocated 50 lari as one time assistance. The house the family possessed before leaving for Russia is in hazardous condition.

Gvishiani Case[2]

The Public Defender's Office was addressed by Nato Kajaia who was deported with her minor grandchild from Russia. In Dagestan the grandmother was allowed to return to Georgia but her 12-years-old granddaughter was left in Dagestan, where she spent almost one month in absolutely unbearable conditions. It was only after the involvement of Georgian Consul Zurab Chapidze in Azerbaijan that it was possible for the child to return back to Georgia. The 12-years-old child had to stay with unfamiliar individuals and in an unknown environment. As the grandmother says, this period negatively affected the child's mentality; because of what the child had to undergo, he is still in a stressful condition and often behaves in an inadequate manner.

Nato Kajaia and her 12-years-old grandchild Gia Gvishiani are in extreme hardship today having no basic living conditions and no shelter.

Besides the above cases, 2 other citizens Giorgi Omanidze and Inga Esebua, who have minor children, addressed the Public Defender requesting assistance.

Lia Shioshvili and Nato Kajaia addressed the local administrations for support, but so far have not received any adequate assistance.

MONITORING

The staff members of the Center for the Rights of the Child at the Public Defender's Office in the reporting period carried out monitoring of 4 orphanages:

Sanatorium "Gazapkhuli"

On January 17-18 2007 the representatives of the Center for the Rights of the Child at the Public Defender's Office called upon the children's Sanatorium Gazapkhuli to carry out its regular monitoring.

They met with the director of the institution Laura Bichikashvili and other responsible individuals; checked the cafeteria, the children's bedrooms, isolator and medical wards.

The sanatorium consisted of two separate buildings; the cafeteria and playground are located within its territory.

The following problems were found after the two day monitoring:

The first building, which was designated for the children with different diseases of the respiratory tract, was in need of overhaul; the living conditions of the children were extremely bad; all sanitary arrangements were in deplorable condition, the lavatory pans and sinks were broken and out of order, no hot water and heating were

[2] The citizen did not request the guarantees of anonymity

provided, furniture was obsolete and broken, the bedrooms were not arranged correctly: the beds were obsolete and bed-covers were of poor quality;

In the medical room very small quantities of first aid medicine were found; in the registration journal of the ailing children the last note was dated on 2005; in 2007 only one note was made; the medicines prescribed were not found in the medical room; the shock equipment was not in the medical room, no infectious diseases registration journal was found, the case histories were incomplete and without analysis; no annual journal was present where the children's recovery should be indicated; the isolator at the medical room was turned into a warehouse.

No sufficient kitchen utensils and other necessary items were found in the cafeteria; the sanitary condition was not satisfactory because the repair works to the cafeteria were not performed for ages; the warehouse was not arranged properly; they did not register in the journal the condition of stale food; the sanatorium did not receive milk powder and other dairy products.

The building was supposed to accommodate 50 children; during the monitoring process 4 children were in the building. During the time of monitoring the number of personnel (teachers, caregivers, nannies, and nurses) exceeded the number of the children. The orphanage personnel needed basic training. The children had no toys and books. The building was not functioning as it was supposed to, it performed more the functions of a kindergarten for the impoverished families.

It should be noted that this was the situation found when the new director Laura Bichikashvili was appointed; due to her efforts the general situation in the sanatorium improved to a certain extent; for instance, before her appointment the sanatorium accepted the children on the basis of the Form No. 27 issued by precinct polyclinics. Therefore the majority of the children were not ailing with illnesses the sanatorium was initially designed for. The director changed this rule and requested the Ministry of Education and Science to issue the authorizations; this substantially reduced the number of unauthorized children in the sanatorium.

Therefore the purpose of the Sanatorium is to be decided since it does not correspond to its original purpose and retaining it in its present condition is impractical.

The second in-patient building was designed for the children with different osseous-articular diseases and is the only available in Georgia; therefore its value cannot be underestimated.

The building was relatively new but also needed repair. The furniture was to be completely changed and the rehabilitation gymnasium did not function due to the lack of equipment. The swimming pool was not operational. The children had no necessary medical and rehabilitation equipment: the number of crutches was insufficient and used in turns, the wheelchairs were obsolete; the medicines were purchased by the patients whenever possible.

The monitoring members talked with the Chief of the educational programs; the lessons were conducted; some lessons, according to the internal regulations, were offered to the different age children together;

The educational process required serious support: the children needed new textbooks and other school items; the teachers requested specialized training as they had to deal with the special needs children; the in-patient children required psychologist's assistance helping them in rehabilitation and reintegration;

According to the Organic Law on the Georgian Public Defender, Article 21, the Public Defender addressed with the recommendation to the Minister of Education and Science, Mr. Aleksandre Lomaia, to study the situation in the Sanatorium Gazapkhuli and take appropriate measures.

In the recommendation it is noted that the Sanatorium requires radical changes: the management reform is necessary, which, in its turn, would identify the correct ways for solving the problems there.

Children's Psycho-Rehabilitation Center "Beghurebi" at the NGO "Child and Environment"

On January 8 2007 the staff members of the Center for the Rights of the Child at the Public Defender's Office carried out monitoring of the Children's Center Beghurebi.

The Center is an open-type institution funded by the NGOs Save the Children and Cordaid.

The Center has the capacity to provide overnight lodging for 25 children. During the monitoring only 5 children were at the Center because of the quarantine.The Beghurebi centre provides assistance mainly to the street children.

The Center has 28 staff members; out of them 7 are caregivers, 5 teachers of informal education, 3 duty nurses, and the medical personnel: one doctor serving all Centers of the NGO "the Child and Environment". Twice a year medical examinations are conducted at the Children's Second Hospital. The Center is provided with medicines as much as their budget allows. The Gamgeoba provides the Center with humanitarian assistance.

Education: the children attend the Public School No. 42. The UNICEF presented the Center with a vehicle, which is used to transport the children. At the Center, the children are taught drawing, singing, computer literacy, they also have the drama group and stage performances.

The Center has two psychologists. They work with the children using the psycho-social rehabilitation program and the individual development plan (the teachers attended special training sessions).

The children are examined through the psycho-diagnostic method; the perception functions are checked by Vexler, Koos, Lourie and Raven tests; they determine age; the employment program is implemented; 5 children are already employed; they work together as waiters.

The Children's Psycho-rehabilitation Center Begurebi has two social workers; one, collecting information on the children (family, background) and the other studying the families.

Along with other programs functioning in the Center, a Parents Employment program funded by the Cordaid is implemented, the realization of which showed one general tendency: the employer does not wish to give jobs to this social groups representatives.

The psychologist noted significant problems in the children of the Center: educational retardation, a high level of aggressiveness, difficulties to switch to a system of acceptable values and low self-confidence of the children.

One fact should be particularly noted: at the Public School No. 42 there are no problems with the integration of the Center children with other school students. No single fact of violence was noticed. This is an exceptional case against the backdrop of general violence in schools and indicates the dedication and the professionalism of the staff members in both the School 42 and Center.

The Report on Monitoring Tbilisi School No. 202 for Blind Children

On November 13 2006 the staff members of the Center for the Rights of the Child monitored Tbilisi School No. 202 for the Blind Children:

At the time of the monitoring, 55 children attended the school which was divided into 14 groups one of the groups was for the students were blind and mentally retarded.

1. In the daytime the number of the children at school was about 45-55 and at night around 20-25.
2. The school belonged to the category of the blind children.
3. Personnel: 27 teachers, 1 medical nurse, 1 Ophthalmologist (part-timer), the positions of the pediatrician, dentist and administrator (3 in all) were removed.
4. The technical personnel numbered 40,5 including staff members: nurses, janitors and cooks.
5. Medical personnel: part-timer Ophthalmologist, who came once a week; one medical nurse who was also supervising the cafeteria.
6. Medical examinations: Insurance Company BCI conducted free complex medical examinations of the children in May.
7. Isolated room: a room for 2 girls and room for 2 boys were unoccupied. As we were told, these rooms were used only if needed.
8. A sufficient reserve of medicines was available and besides that the children had the Health Insurance Policies issued by the Mayor's Office, which included the examination by the pediatrician and neuropathologist.
9. Humanitarian assistance: The PSP Company provided the school with medicines. In May the Lithuanian charity foundation Soko presented the centre with 7 Personal Computers, 1 printer, electric guitars and other instruments for the musical band functioning at the school.
10. There was No fixed position for psychologist at the school. The intern psychologists worked at school.
11. Nourishments: they were allowed to spend 3 to 4 lari per child on food everyday.
12. They had medical therapy centre and worked on correction. 11-12 graders were taught to massage. The school had a singing choir, 2 English language groups, the children were taught music.
13. Sanitary condition: unsatisfactory – restrooms need immediate repair, no hot water, the laundry was arranged in an untidy manner, and the sanitary equipment was in extremely bad condition.
14. Heating: the school had central heating radiators but there was no boiler; the room for the boiler was built and the school staff expected assistance. However, as the school administration said, the school budget would not be sufficient to purchase diesel required to run the boilers.

The most noticeable problem was the physical condition of the school. The building had not been repaired for long and in a dilapidated; the sanitary arrangements were in terrible condition; no hot water; heating – the building was old with large rooms and windows; the laundry was not arranged well.

1. The Report on Monitoring Public School No. 200

On November 16 2006 staff members of the Center for the Rights of the Child monitored the Tbilisi School No. 200. The school was designed as a boarding school for the children with mental retardation.

An estimated 230 children attended the school; they were divided into 20 groups by the age and grades. The studies were until the ninth grade (basic education). The school also had educational groups for the children starting from age 4.

In the daytime 230 students studied at the school and 135 stayed at night (designed for 135). The personnel: Principal Marina Ujmajuridze, 33 teachers, 60 general staff members. Medical personnel: 2 doctors, 2 medical nurses, 1 sanitary assistant.

Medical examination was conducted once every year by a pre-planned program at the Pediatric Institute. The medicines were purchased by the school budget. The principal deemed that the increase of funding would be desirable. The school employed two psychologists, one full-timer and one part-timer.

Nourishments: they were allotted up to 3 lari per child everyday and prepared their food themselves

Education: 9 grades of mandatory education. According to the principal, they had knitting and labor groups, music choir, but during our visit nothing could be seen.

The sanitary situation was satisfactory: the WCs were clean but obsolete and with rank smell. The rank smell was also in the children's bed-rooms, which was explained by the principal that the problem was due to children's night enuresis.

In the bed-rooms, the same problem was seen everywhere: the rooms were overcrowded with beds, the norms of distance between the beds were violated and in most of the cases the beds were adjoining each other; in the girls' bed-rooms we found the beds for two persons. The principal explained saying that an organization donated these beds in the form of humanitarian assistance.

The process of deinstitutionalization was ongoing. 18 children returned to their biological families last year.

For various reasons 7 children left the institution (from October to November). They were the children with mental capabilities within the norm.

Conclusion:

There are three problems that should be noted:

1. The building is in need of overhaul (especially sanitary equipment);
2. There is no heating in the entire school apart from the smaller natural gas heaters installed in the classrooms which is not compliant with the norms set forth for the children's institutions: the gas exhaust remains in the room polluting the environment; in the rooms the gas smell was noticed;
3. Very often a child placed in the school with normal mental abilities has to undergo the process of psychodiagnosing to determine the level of his/her mental retardation. This issue dealt independently by the School Principal. The Ministry of Education and Science and the Ministry of Labour, Health and Social Affairs should pay attention to this issue.

Lack of Psychologists

In most of the orphanages monitored by the Center representatives, the staff lists does not specify the positions of the psychologists and social workers.

From our perspective, this is a shortcoming negatively affecting the quality of the care-giving institution; the orphanages are meant for children with special needs and care, which includes the children of impoverished families, children with physical and mental problems, children who are abandoned by their parents and those who have never seen their parents.

All of the above represent the children whose life does not proceed in a normal way and whose only care-giver and refuge is the State. As these children lack parental warmth and care, it is the State's duty to fill this vacuum through the services and expertise of the professionals in the field of children's care: psychologists, social workers and teachers of particular specialtiy.

The presence of the psychologists and social workers at the orphanages should not be a rare sight. The cases we studied directly indicates the lack of professionals involved in the process, for example, most of the institutions do not have the services of psychologists and social workers, working with the children and studying the

families. The authorities running the orphanages do not seek the true reasons of the child's placement into the institution, which is posing a threat to the children's psychic, physical health and his/her future in general.

Recommendations

- The Ministry of Education and Science and the Parliamentary Committee for Education, Science and Sports and the Committee for Legal Issues should ensure the implementation of the legislative commitments on elementary and basic education and for its implementation, the relevant mechanisms should be stricter, more active and develop additional resources.
- The local self-governments, the Ministry of Labor, Health and Social Affairs, the Ministry of Education and Science and the Ministry of Internal Affairs should start the registration of the risk group families and the study of their condition to prevent the alienation of the child from the educational process when the reason is the family situation.
- Determine the definite terms of the response on the part of the governmental agencies when the facts of begging by the children are revealed. To ensure the child's normal development the response should be to a maximum extent fast and effective.
- One of the governmental agencies (police, resource centers) should be tasked to ensure the child's school attendance in cases when the child is in the street begging or tramping during the school hours; later the causes should be identified.
- The Ministry of Education and Science and the school administrations should establish control over the school attendance of those children who belong to the risk group category and the group under the risk of falling in the risk group category.
- The Ministry of Education and Science should elaborate special programs that would allow the risk group children to get elementary and basic education.
- The Georgian Government should be tasked to activate the mechanisms that are already provided for by the legislation for protecting the children from the negative influence of their parents and various other types of violence; it is also necessary to improve the response mechanisms.
- The Ministry of Internal Affairs should specifically define the mechanisms of the response and agencies responsible for the protection of the children from violent parents. The shortest possible response terms should also be established when the crime is obvious and/or there is a reasonable suspicion;
- The Parliamentary Committee for Legal Issues and the Committee for Education, Science, Culture and Sports should discuss the issue of the effective regulation for the protection of the children from begging: the norms provided for by the legislation are not sufficient for their protection.
- The Ministry of Education and Science should ensure the public campaign and other effective mechanisms to avert the children from begging in the street;
- The Parliament should define and enforce legislatively the body entitled to provide the minor with the night lodging without the permission of the parent or guardian; strict sanctions in both the Administrative Offences Code and Criminal Code should be established for its violation. The body should also be defined responsible for the control over these norms.
- It is desirable if the Ministry of Labor, Health and Social Affairs takes care of those children that are raised by the mentally ailing parents; in particular:

1. A special program should be prepared, which would consider both the needs of the ailing person and the interests of his/her child;
2. The program should consider the creation of a special group of social workers dealing with these issues and offering specialized trainings to them;
3. Database should be created to monitor this problem: the psycho-neurological centers should register the cases of such type.

31

AMENDMENT VIOLATING THE PRINCIPLE OF INDIVIDUALIZATION OF THE CRIMINAL LIABILITY

On December 29 2006 the Georgian Criminal Code was amended and as a result "if the convict is a minor and insolvent, the parent, guardian or care-giver will be responsible for the payment if any fine is imposed on him/her" [1].

In criminal law only the court may pronounce the verdict of guilty if it finds the individual as an offender. When making a decision, the court will necessarily assess the kind of unlawful action committed by the individual and whether the individual acted illegally, upon which it will accordingly make the decision. Along with finding guilty, the court determines the punishment for the individual. The punishment is established only for the individual who committed the unlawful action and acted illegally. This principle of criminal law is known as the principle of individualized punishment.

[1] GCC, Article 42, Part 5[1]

1. The Principle of Individualized Punishment in the European and International Law

The principle of individualized punishment is enshrined in the constitution of numerous European countries.

The Italian Constitution, Article 27, Paragraph 1, says that "the responsibility for the criminal offence is individualized".

In France they related this principle to the Human Rights Declaration of 1789, which is of a higher rank than the Constitution in the hierarchy of the country's normative acts. Besides that the French Criminal Code, Article 121, codifies the principle of individual responsibility. According to this disposition, "the criminal liability may exist only for one's actions."

The Swiss Federal Court attaches the status of the public principle of criminal law to the principle of individualized punishment.

Paragraph 4 of **The Austrian C**riminal Code is related to this principle and says: "Only the offender shall be punished."

In the verdict of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia of July 15 1999, Prosecutor v. Dusko Tadics, 186, is said:

"The basic assumption must be that in international law as much as in national systems, the basis of

criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally been engaged or participated in some way or the other (*nulla poena sine culpa*). In national legal systems this principle is laid down in Constitutions, laws, or judicial decisions. In the international criminal law the principle is laid down as *inter alia,* in Article 7(1) of the Statute of the International Tribunal which states that:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute, shall be the *individually responsible* for the crime."

According to the court, this principle is often implicit, though there are cases when it is clearly voiced. For example, the verdict of R v **Dalloway (1847) 2 Cox CC 273**[2] in **Great Britain and the Belgian** Cassational Court verdict of October 6, 1952.

A number of decisions of the **German** Constitutional Court is based on the principle of individualized punishment, e.g. BverfGE 6, 389 (439) and 125 (133). Some decisions of the German federal Court particularly note that principle, e.g. BGHSt 2, 194 (200).

According to the **Statute of the Permanent International Criminal Court,** Article 25, Part 2[3], "A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute."

From the decision of the **Court of the European Union** C-210/00 Kaserei Champignon, it is clear that the indictment should be in compliance with the principle of *nulla poena sine culpa.* The defense subject was the norm setting the sanction despite culpability. The court claimed that the punishment set forth by this norm would be inadequate with the principle of *nulla poena sine culpa* only in case of punishment for criminal offence. In this concrete case the punishment was the administrative fine in which case the principle of individualized punishment was not effective. However it should be noted that currently serious discussion is under way regarding the extension of this principle to the administrative punishments.

According to the **Doctrine,** the same principle is being established by the European Convention, Article 6, Paragraph 2[4].

2. The Principle of Individualized Punishment in the Georgian Legal System

Although the principle of individualized punishment is not declared in the Georgian Constitution, according to Article 39, "The Georgian Constitution does not deny other universally recognized rights, freedoms and guarantees of the individual and citizen, which are not specifically stated, but naturally derive from the principles contained within the Constitution".

Besides that the Georgian Constitution, Article 40, Paragraph 1, recognizes the presumption of innocence, "Every individual is considered innocent until proven guilty through the proper procedures of law".

[2] According to this verdict, the defendant is guilty only if his activity or inactivity caused the felony. As the causal relation was not determined in riding the horse by Dalloway without bridles and the death of a three-years-old child, Dalloway was announced not guilty.

[3] Rome Statute of the International Criminal Court, July 17, 1998

[4] Jurgen Schwartze, professor of the national law, Department of International and European Law at the Freiburg University and Director of the Freiburg Europa-Institute, in the article "Legal Discussion of the European Administrative Procedures."

Taking into account the above, **the Board of the Georgian Constitutional Court by its Decision No. 1/51 of July 21, 1997,** recognized the individualization of punishment as one of the major principles and found the unconstitutional confiscation of the property as an additional punishment. In particular, the Court noted that "property confiscation by its results does not correspond to the main principle of individualize punishment as it is usually directed not only against the offender but also his/her innocent family members." As the court believed, the principle of the individualized punishment is one of the main Constitutional principles that derive from the Constitutional provisions. The Georgian Constitution is setting high standard of the fundamental human rights and freedoms and undoubtedly the principle of individualized punishment derives from its principles.

According to the Georgian Criminal Code, Article 40, the fine is a form of punishment that can be applied as both the primary and additional punishments.

According to the GCC, Article 40, the purpose of the punishment is to restore justice, prevent a new crime and reinstate the offender in the society. Accordingly, the punishment should affect only the offender, without causing any harm to other individuals However, the existing Criminal Code, Article 42, Part 51, the punishment may be levied on the individual who is not criminally liable and respectively will not facilitate the fulfillment of the purposes of the punishment: levying the fines on the parents, guardians and care-givers will in no way restore justice, and neither can it prevent a new crime nor facilitate the process of reinstating the offender in the society. On the contrary, it causes punishment to other individuals, contradicting the principle of individualized punishment.

Hence, we believe the Article 42, Part 51 of the Georgian Criminal Code, is unconstitutional as it contradicts Article 39 of the Georgian Constitution and the principle of individualized punishment included by the Constitutional Court into the rank of Constitutional Principles.

32 GENDER EQUALITY

The Georgian legislation recognizes equality of women and men when exercising civil or political rights. However, despite the declared principle of equality, the level of women's participation in the decision making process is still low. Women's participation in politics is one of the significant indicators of country's democratization. Studying the level of women's participation in local self-governances displays a particularly interesting picture.

As a result of the 2006 local elections, the women's participation decreased in the local self-governmental agencies. Out of 1,734 Sakrebulo mandates nationwide, 197 are won by women, which is 11,47% (after the 1998 elections this figure was 14%, and after the 2002 elections 11,9%).

	Region	Number of Sakrebulo members	Women	Majoritarians	Proportionally elected
1	Tbilisi	37	4 (10,8%)	3	1
2	Kakheti	209	26 (12,4%)	6	20
3	Kvemo Kartli	197	18 (9,1%)	9	9
4	Mtskheta-Mtianeti	110	16 (14,6%)	7	9
5	Shida Kartli	122	12 (9,8%)	6	6
6	Samtskhe-Javakheti	148	13 (8,8%)	5	8
7	Racha-Lechkhumi and Lower Svaneti	101	18 (17,8%)	6	12
8	Imereti	299	26 (8,7%)	15	11
9	Guria	98	10 (11,2%)	4	6
10	Samegrelo and Zemo Svaneti	242	28 (11,6%)	18	10
11	Adjara	129	11 (8,5%)	3	8
12	Liakhvi Election District	28	6 (21,4%)	1	5
13	Upper Abkhazia Election District	14	9 (64,3%)	2	7
	Total	**1734**	**197(11,47%)**	**85**	**112**

2008

Proportionally, out of 692 elected Sakrebulo members 112 are women, which is 16%, while out of 1,042 Sakrebulo majoritarian members only 85 are women, which is only 8,2%.

The level of women's participation in the local governments varies from one region to another. The women elected as majoritarian members exceed the number of those elected by party lists in Samegrelo (out of 28 elected women 18 are elected as majoritarians), in Imereti (out of 26 elected women 15 are majoritarians), in Kvemo Kartli (out of 18 elected women 9 are majoritarians). Through party lists most of women were elected in Kakheti (20 out of 26 members of self-governance are women), Racha-Lechkhumi and Kvemo Svaneti (12 out of 19 members of self-governance are women).

Going by the numbers, the highest number of women (28) was elected in Samegrelo-Zemo Svaneti, in Imereti and Kakheti the figure was 26 women elected, but the lowest number of woman was in Tbilisi (4). It should also be noted that the total number of Sakrebulo members in Samegrelo is 224, in Imereti 299, in Kakheti 209 and in Tbilisi 37.

In each of the 69 Sakrebulos in the country on an average there are 3 women, though in Batumi city, Gurjaani, Kareli, Vani, Samtredia, Akhalkalaki District Sakrebulos no women were elected. In Kutaisi and Poti city, Marneuli, Bolnisi, Dmanisi, Kazbegi, Aspindza, Lentekhi, Chiatura, Mestia, Khelvachauri and Khulo District Sakrebulos, one woman representative elected in each.

By percentage, most of women were elected in Upper Abkhazia Election District, 9 out of 14 (64,28%), next are Kvareli District, 5 out of 21 (23,8%), Tetritskaro District, 7 out of 30 (23,33%). From the city Sakrebulos, Rustavi had the highest percentage of women; where one every fifth is a woman, 3 out of 15 or 20%.

In the regions the highest percentage of women elected in Sakrebulo are in Racha-Lechkhumi and Kvemo Svaneti (17, 82%), in Mtskheta-Mtianeti (14, 55%), in Kakheti (12,44%) and the lowest percentages were in Samtskhe-Javakheti (8,78%), Imereti (8,70%) and Adjara (8,53%).

It should be noted that there is almost no participation of the woman representating the country's minorities in the process of decision making (out of 199 women Sakrebulo members only a few are ethnic minority representatives).

Taking into account the above figures, we may conclude that the women's voice is not heard adequately in the decision making process in our country and we have still to go a long way to democracy.

It should be noted that when we discuss the issue of self-governance and the role of women, one should not forget that till date Georgia has never had an effective self-governance in practice and the role of this institute in country's existence has been insignificant. This is why the public is not in a position to put into one context the issues of gender and self-governance.

In these circumstances a great deal of importance is attached to the political parties as the key subjects of the political process in making women's political participation more active.

The majority of Sakrebulo women members (176 or 89,34%) were either the National Movement members or were nominated by this party, as regards remaining 21 women (10,65%) 7 of them were Labor Party members, 6 – members of the Davitashvili, Khidasheli, Berdzenishvili block, 3 – Topadze, Industrialists, 1 – Salome Zurabishvili – Georgia's Way, and 4 were proposed by the initiative groups.

In Tbilisi local elections of October 5 2006 6 parties participated. In Tbilisi out of 130 majoritarian candidates 29 were women. In the party lists their distribution was the following:

	Party	Number of Women	Percentage
1	National Movement	11 women out of 50 members main – 10, reserve – 1	22% 50 – 10 (20%)
2	Labor	12 women out of 50 members main – 7, reserve – 5	24% 50 – 7 (14%)
3	Georgia's Way	23 women out of 50 members main – 9, reserve – 14	46% 50 – 9 (18%)
4	Election Block – "Davitashvili, Khidasheli, Berdzenishvili"	14 women out of 50 members main – 7, reserve – 7	28% 50 – 7 (14%)
5	Topadze, Industrialists	12 women out of 33 members main – 9, reserve – 3	36% 33 – 9 (27%)
6	Georgia's National Ideology Party	1 woman out of 7 members	14%

It is also important to view the same information by the ranking number of women in the party election lists. As it is obvious, the Salome Zurabishvili Party is leading in this aspect, with 4 being women among the the first 12 candidates, in the Election Block of Davitashvili, Khidasheli and Berdzenishvili 3 were women and in other parties between 1and 2

National Movement – 50 members	Labor Party – 50 members	Zurabishvili – Georgia's Way – 50 members	Election Block - "Davitashvili, Khidasheli, Berdzenishvili" – 50 members	Topadze, Industrialists – 33 members
5	8	2	2	8
12	14	4	4	13
14	15	7	12	14
16	19	12	14	15
17	29	13	15	18
18	33	17	17	21
24	37	20	19	22
26	38	22	20	26
45	39	25	23	27
48	40	27	26	28
	43	28	35	29
	49	31	37	33
		33	40	
		34	4	
		35		
		36		
		37		
		40		
		41		
		42		
		45		
		47		
		49		

The study of the Georgian political parties shows that the women in the political parties that are actively involved in country's political life are not strong enough to influence the formation of the party's priorities.

30% of political party members are women but most of them are ordinary party members whose potential is used only in the election preparation or performing other "unskilled laborer" tasks. On very rare occasions they are included among the first ten candidates in the party lists.

The public attitude should also be noted which is more critical and focusing on women politicians than the men politicians.

So far the number of women sensitive to the gender issues and motivated to work on the women's issues by raising the problems of women and gender in the Georgian political debate is negligible, The participation of women would make the Georgian politics more flexible and more compromising by promoting the culture of debate and raising the level of dialogue.

On July 24 2006 the Georgian Parliament adopted the State Concept of Gender Equality elaborated by a special working group, which included the members of the Gender Equality Board, the Chairperson of the Parliament of Georgia, Governmental Commission on Gender Equality and representatives of various Ministries. The plan was coordinated with all the Ministries involved in the process and was submitted to the Georgian Government. The Group working on the Concept was assisted by UNDP, the Gender and Politics in the South Caucasus Project, UNIFEM, UNFPA and international experts.

The Concept is aimed at promoting the equal and effective exercise of the rights and use of potentials of the women and men. It recognizes the gender equality principle in all spheres of public and private life and identifies the appropriate measures for the prevention and eradication of all forms of discrimination on the basis of sex, and also to achieve gender equality.

It should be noted that in the Decision of the Georgian Parliament on the approval of the State Concept of Gender Equality, the Georgian Parliament states: ".... in a period of 6 months after putting this Decision into effect, the Georgian Government shall elaborate and adopt the Action Plan for the Implementation of the State Concept of Gender Equality". Unfortunately, the Decision of the Parliament has not been yet implemented, which reflects the attitude of the State towards the problem.

Recommendations:

1. The Government should approve and wage the State Policy (action plan) to achieve gender equality in all spheres of public life. For achieving the plan financial resources should be allocated and a system of its implementation should be instilled;

2. The political parties should elaborate a certain procedure for selecting women candidates ensuring proportionally balanced participation of the men and women in the elections.

33 FAMILY VIOLENCE

The Georgian legislation on the prevention of family violence, protection and assistance to the victims of family violence is based on the Georgian Constitution, international agreements, treaties and the Georgian Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence that was passed by the Georgian Parliament on May 25 2006 which was a significant step forward in the direction of addressing the problem.

According to the Law, Article 21, Paragraph 4, "requests the Georgian Government to approve a special plan within a period of 4 months since the publication of this Law, which would determine the specific measures for preventing family violence including protecting and assisting the victims of family violence.

This action plan, which should be in effect from 2006-2008, was developed by a group of experts that included both the members of the governmental and non-governmental organizations. The action plan is mainly aimed at the performance of the following tasks: adopting the improved legislation and closing the existing gaps for the protection and assistance to the victims of family violence; raising the level of public awareness; victims protection and assistance; creation and improvement of the database on the cases of family violence.

Although the period of four months expired on October 9, the action plan not only was not approved but was not even considered. This means that the Parliamentary Law was breached and there was no political will to solve this problem. Consequently no funding was included into the 2007 State Budget for the prevention, protection and ensuring the rehabilitation of the victims of family violence. As a result, even if this plan is approved, it will be again an another ineffective document, which, will only hinder the implementation of the adopted law.

The Public Defender's Office and NGO Counseling Center (Sakhli) jointly conducted a survey of the patrol police officers and Mtatsminda-Krtsanisi IF Department's precinct police officers. The objective of the survey was to find out if there were effective mechanisms in place after the adoption of the law on the protection of the victims of family violence. The survey revealed the factors facilitating the increase of the efficiency in the activity of the police to implement the adopted law. The information obtained through conversations and questionnaires, allowed us to see the real picture and problems. In particular:

2008

1. The problem of executing the court decision involving the control over the protection or restriction orders for the victim from the violent family member.

   * *The restriction order* is issued by the police officers after detecting the fact of violence. The separation of the parties is a temporary measure for protecting the victim of violence. However the violator does not bear any responsibility when breaching this order.

   * *The protection order* is issued by the court determining the period the violator is forbidden to physically get close to the victim. According to the law, breaching the court decision entails criminal liability. However the detection and reaction to this breach is not often possible. There are cases when the victim (mostly because of unawareness) does not mind to continue having family relations with the violator.

2. The situation is further complicated by the fact that each precinct police officer is responsible for up to 5,000 residents, making it impossible for a police officer to individually serve and protect such a vast number of people

3. The victim faces the problem by being uncertain of his/her right and status on the property. The principle of equality recognized by the adopted law implies in its very beginning the right to material equality. However the victim is usually financially dependent on the violator and has to stay in the family to retain shelter.

4. Currently no asylums are available to accommodate the victims and offer assistance on temporary basis. The establishment of the rehabilitation center for the violators is also needed, where they could be treated.

5. The adopted law does not provide the actual tools to solve the conflict, as no real mechanisms are available to protect the victim from violator's threats, retaliation or repeated violence.

6. There is practically no social workers institution dealing with the issue. According to the law, the provision defining the social workers institution should be effected from July 1, 2008.

7. One of the main reasons for the problem going undetected and unresolved is the cost of medical expertise needed to determine the effect of such violence, although external injuries are treated free of cost once the matter is reported to the police, internal or psychological damage requires thorough analysis which the State is unable to ensure.

8. The low level of public cognizance about the adopted law implying that the level of awareness of the public, judges, prosecutors and police officers, medical personnel and media representatives should be raised.

9. Till today it has not been possible to adopt the Action Plan for 2006-2008 on the Measures for the Prevention of Family Violence.

The following recommendations are elaborated for the implementation of the law:

- Comprehensive database should be created, which includes the information on the cases of family violence; the data on the law enforcers trained in the issues related to family violence; information on the organizations tackling the problems of family violence and their activity;

- A group of experts dealing with the family violence issues should be formed to facilitate the comprehensive effectivness of the law;

- A special coordination board should be established ensuring the collection of the data on the shortcomings found in the process of the implementation of the law; performing the function of a mediator between the population and the law enforcement agencies and working on the further improvement of the law. It should also monitor the implementation of State Plan and reveal the shortcomings found in the process of court regulations on the family violence cases.

According to the information submitted by the Ministry of Internal Affairs, in 2005 the patrol police officers detected 3,254 facts (in the first half 1,785, and in the second half 1,469), and 3,665 cases (in the first half 1,910, and in the second half 1,755) in 2006.

The facts detected nationwide by the patrol police in the second half of 2006.

	VII	VIII	IX	X	XI	XII	Total
Tbilisi	212	250	214	280	129	46	1,131
Imereti	18	8	7	12	15	23	83
Kakheti	25	–	17	6	3	3	54
Shida Kartli	15	12	10	32	18	13	100
Kvemo Kartli	68	41	48	50	35	38	280
Adjara	5	3	9	3	11	12	43
Samegrelo-Zemo Svaneti	10	17	13	12	8	4	64
Total	**353**	**331**	**318**	**395**	**219**	**139**	**1,755**

The statistical data of the Tbilisi Patrol Police Main Department sorted by districts on the basis of the case materials drawn up by the patrol police and precinct officers on site after receiving notification.

District	
Gldani-Nadzaladevi	250
Vake-Saburtalo	136
Didube-Chughureti	199
Isani-Samgori	438
Mtatsminda-Krtsanisi	108
Total	1,131

The figures indicated do not depict the real picture as family violence is generally perceived by the public to be a personal and family problem and not an acute social problem. This picture requires a thorough study in the regions of Georgia and the districts of Tbilisi.

We believe that finding the ways of introducing statistics is necessary to show the problem in the society and the need to solve it.

Only in 28 cases were instituted preliminary criminal proceedings in Tbilisi City Court out of the detected 1,755 facts of violence in the second half of 2006 and only 11 of the 28 cases received Court decisions The Tbilisi City Administrative Cases Board received only 7 applications to issue the protection orders and only on 4 applications the orders were issued, while on the other 3 applications the proceeding were dropped.

The Tbilisi City Court of Civil Cases in 2006 heard no cases involving the compensation of damage as a result of family violence. The victim often does not realize that he/she has the right to demand the compensation for damage.

Recommendations:

- According to the law, Article 9, Part 2, "the criminal proceedings mechanism is used in the cases involving family violence with the signs of criminal offences". Till date there is no special provision included in the Criminal Code It should be included to criminalize this phenomenon.
- The mandatory methodical training/education of the members of the police, prosecutor's office and courts should be ensured. The provisions of the Law on the Prevention of Family Violence, Protection and Assistance to the Victims of Family Violence" should be included in the training course curriculum.
- Article 21, Paragraph 4 of the Law should be affected and the Government should approve the special plan identifying specific measures for the prevention of family violence and the protection and assistance to the victims of family violence.
- The Government in the budget 2007 should at least partly allocate the funds for the prevention, protection and rehabilitation of the victims, which are impossible without the funds.

34 WOMEN'S PENITENTIARY INSTITUTIONS

The Georgian Public Defender's Office actively cooperates with the administration of the Penitentiary Institution No. 5 of the Ministry of Justice for the purpose of studying and improving its situation.

In October 2006 the Georgian Public defender was addressed with a complaint by 40 convicted women from the Penitentiary Institution No. 5 of the Ministry of Justice. They complained about termination of the parole release procedure from March 2006.

According to the Georgian Criminal Code, Article 72, the convict "may be released on parole if the court deems that serving the entire sentence pronounced for his/her correction is not necessary." Accordingly, if the convict's behavior complies with all the requirements set forth by the legislation, the State should exercise the right given by the Georgian Criminal Code, Article 72, and the Georgian Law on the Confinement, Article 68, and encourage mutual relationship where both the State and the convict are equally responsible towards each other in their actions It is important that the State also performs the positive duties it is liable to, ensuring the rights and privileges of the convicts set forth by the law.

In 2006 no female convict was pardoned. 6 women were released on parole

The Penitentiary Institution No. 5 of the Ministry of Justice was designed for 220 convicts, while in reality there are more than 500 female convicts. The administration uses the lounges and warehouses as bed-rooms; the cells cannot be ventilated. This situation makes the state of the convicts placed in this institution very difficult.

The following factor should be taken into account that numerous convicts are serving their sentences in the penitentiary institutions, they are imprisoned because they are punished, but not to be punished there: confinement is the punishment itself. Therefore the conditions in penitentiary institution should not turn into an additional form of punishment. Any unnecessary inconvenience caused by the confinement should be minimized.

In the modern world, when dealing with the convicts the focus is on helping them, developing their personal potential and enabling them to smoothly return to the society. This idea is based on the conception that today's convict is tomorrow's free citizen.

We mean those changes that were made to the law, which abolished the meetings of prolonged duration; in our opinion, this means the breakage of those "loose ties"

2006

that connected the inmate with the outside world, in which he has to live after the release from the prison.

The problem of employment for the convicts still remains unsolved, even though there are means available in the form of a well refurbished knitting workshop, felt workshop and horticultural greenhouse within the confines of the institution. The reason of unemployment is lack of funding and orders placed on the goods made by the convicts. Most of the female convicts come from vulnerable families and solving this issue would allow them to earn some income and purchase the items of essential need.

Labor is a valuable tool to gain useful experience and an addition to the qualification which would help the inmates to find suitable employment and work honestly after their release. When teaching useful skills, special attention should be given on women's employment as the women are the only bread winners for the families. The penitentiary institution should facilitate the adaptation and later the inclusion of the former convict into normal life.

Another problem that needs to be addressed is the employment and the integration of former convicts within the society, which would facilitate the reduction of the recurrent crimes.

The UN principle of the minimum standards rule for the treatment of the convicts imply the minimization of despair specific for the convicts, encouragement of the convicts to be law abiding and financially independent individuals after their release, enabling the gradual return to the society, etc.

Recommendations:

- The situation in the penitentiary institutions should be considered and in cases when the convict meets the requirements set by law, ensure his/her right to exercise the right to privileges provided for by law.

35 PROBLEM OF TRAFFICKING IN GEORGIA

Trafficking of human is a serious problem for the international community. The number of the trafficking victims increases annually worldwide. The measures of the international community to combat trafficking are based on the three main areas: prevention of the trafficking crime, protection of the victims of trafficking and criminal prosecution of the persons committing the trafficking (traffickers). In recent years the Georgian Government has taken huge steps forward in all three directions, which was reflected positively in the U.S. State Department Report.

On December 29, 2004, the Georgian President approved the action plan for combating trafficking in 2005-2006 and for its effective implementation; the Temporary Inter-Agency Commission for Combating Trafficking was formed at the Georgian National Security Council.

On September 1 2006 the Georgian President by the Decree No. 534 approved the regulations and composition of the Temporary Inter-Agency Commission for Combating Trafficking, which would coordinate the anti-trafficking measures with the collaboration of Governmental structures, international organizations and local NGOs.

The study of the performance of duties implied by the action plan in 2005-2006 showed that despite its efficiency there were suggestions regarding the plan related to both its comprehensive fulfillment, as well as the correct and purposeful distribution of functions among the implementers.

For the effective measures to combat trafficking it is significant to improve and close the gaps in the existing legislation, which implies the creation of the comprehensive legislation for fighting against trafficking of human. In addition to the Law on Combating Trafficking of human which corresponds to the international standards, on July 25 2006 the legislative package developed by the Ministry of Justice was submitted, which implied relevant amendments and changes to different existing laws, including the Criminal Code, Civil Code and Labor Laws Code and Law on Immigration and Emigration. The main objective of the changes was to create the legal mechanisms for the protection of the victims of trafficking which would be efficient, facilitate the detection of this crime in Georgia and fight against it, as well as the protection of the Georgian citizens abroad.

Unfortunately, to uphold the rights of the consumers, the package which implied the amendments and changes to the existing regulating legislative acts ensuring the

rights and protection guarantees of the consumers by various companies offering employment, dating, tourism, education, and mediator services. was not adopted,

In regard to the development and introduction of the norms of behaviour for the staff members of the MoIA and Prosecutor's Office during the investigation of the crimes related to trafficking, taking into account the international standards in this sphere, it can be noted that the Code of Police Ethics and the Code of the Georgian Prosecutor's Office staff members developed respectively by the Ministry of Internal Affairs and the Georgian General Prosecutor's Office, define the general principles regulating the relations among the staff member of the above mentioned agencies and the norms of behavior. The Code of Police Ethics defines the police personnel's relations with individuals and organizations determining the responsibility for violating the norms of the Code. Both these Codes are general in nature and do not extend to special aspects that may arise during the crime of trafficking of people or other crimes in relation.

On December 22 2006 the Georgian Parliament ratified the European Council Convention on Action against Trafficking of Human Beings.

Georgia has signed the agreements upon readmission with Italy (1997), Bulgaria (2002), Ukraine (2004), and Switzerland (2005). The work is under way on signing the agreements with the governments of the Federal Republic of Germany, Benelux countries, Czech Republic, Slovenian Republic, Lithuania, Latvia, Estonia, Romania, Russian Federation and Turkey.

In connection with the agreements with the host countries and the creation of legal guarantees of labor and granting the quotas of workplaces, it turns out that this process is going on with difficulties as the majority of these countries do not express their interest in concluding these agreements. Italy was the only host country with whom the agreement successfully concluded on the creation of legal guarantees of labor and granting the quotas for workplace to the Georgian citizens. The Ministry of Labor, Health and Social Affairs was responsible among others for these issues and developed a sample draft of the international agreement for the Purpose of the Creation of Legal Guarantees of Labor for the Georgian Citizens in the Recipient Countries.

For the purpose of providing timely notification and information to the public on the labor migration and trafficking issues, "hot lines" were installed and functioned in all the responsible Ministries and trainings were imparted to the hot line operators with the assistance of NGO's.

The Ministry of Foreign Affairs was the only body to conduct some activities which included the planning and conducting informational and educational activities, including the notification on the legal tools available for studying and working abroad In particular, in August 2006 the order No. 209 designating the persons working on the issues of trafficking of human beings at the Georgian Diplomatic Missions and Consulates Abroad was issued, which obliged the persons working at the consulate departments on the trafficking issues to distribute to the public the relevant information in the host countries. Besides that, the Georgian diplomatic missions and consulates abroad and the Ministry of Foreign Affairs are prepared to offer consultation to the Georgian citizens on the issues of their legal employment abroad.

As for other agencies, according to the Ministry of Internal Affairs, as of yet they have only declared about their readiness to cooperate with the Ministry of Education and Science and the Ministry of Labor, Health and Social Affairs for pursuing the strategy. However it should be noted that neither the Ministry of Labor, Health and Social Affairs, nor the Ministry of Education and Science provided us with the information on their activity aimed at applying that strategy.

For the purpose of raising the level of public awareness on the issues of illegal migration of labour and trafficking, materials on the legal employment abroad and prevention of trafficking was distributed to the Georgian

Visa and Passport Service, Border Control Checkpoints and Consulate Departments In addition, Different international and non-governmental organizations conducted special trainings to judges, members of the Georgian General Prosecutor's Office, MoIA, Ministry of Labor, Health and Social Affairs, State Department of Border Guards and the Georgian Public Defender's Office.

When we discuss the issues of reducing the migration of illegal labors, the risk of trafficking and carrying out related informational and educational activities, we should emphasize the integration of trafficking related issues into the school curricula, training/retraining of the teachers of the relevant subjects and also the promotion of awareness raising programs for the general public.

In 2005-2006, the Ministry of Education and Science selected 100 pilot schools, where in 1st, 7th and 10th grades the educational process was carried out with a new educational curriculum. In parallel, training was conducted for all teachers including the teachers of civil integration.

Starting from 2006-2007 educational year, this program would be introduced to all public schools in Georgia, additionally according to the national educational plan, the issues related trafficking are more clearly reflected in the 8th grade subjects (history and geographic), 9th grade subjects (geographic standards) and 10-11th grades subjects (civil education standard).

According to the information we have, to evaluate the scale of illegal labor immigration and the problem of trafficking no unified database (information service) on the people engaged in organizing and facilitating illegal labor immigration and the crimes of trafficking of people has been created till date. The rules and conditions for the creation and use of the database based on the requirements of the Georgian legislation are not yet completed; this indicates insufficient efforts of the agencies responsible for this task.

Taking into consideration the trans-national character of trafficking, it is extremely important to develop the system of information exchange with the transit and destination countries, strengthen regular contacts and collaboration with these countries for the purpose of preventing the facts of trafficking along with the return of the victims to the countries of their origin and ensuring their safety.

The Georgian consulates abroad regularly organize meetings with the relevant agencies of the host countries (in most cases with the Ministries of Interior) with the purpose of exchanging information and accordingly the information is forwarded to the Georgian Ministry of Foreign Affairs.

Despite these steps taken the work in this direction should be continued.

The Law on Combating Trafficking implies the creation of the Fund for protecting and assisting the victims/affected, which would be aimed at ensuring the victims of trafficking with compensation and funding their protection, assistance and rehabilitation.

On July 18 2006 the President approved by the Order No. 437 the Regulations of the State Fund. The State Fund activity is supervised by the Ministry of Labor, Health and Social Affairs, which has already allocated 100,000 lari towards the Fund for the current year. Since July 20 2006 the asylum in Batumi has been functioning; its functioning was made possible by financial assistance of the USAID and GYLA in collaboration with the State Fund.

the Coordination Board at its first meeting on November 20 2006 approved the National Referral Mechanism ensuring effective partnership of the relevant subjects both at the national and international levels.

The National Referral Mechanism is made up of three sections:

1. Identify the victim of trafficking and give the relevant status.
2. Assist and protect the victims of trafficking.
3. Reintegrate and rehabilitate the victims of trafficking.

In the second half of 2006 the Ministry of Labor, Health and Social Affairs launched the program of psycho-medical assistance to the victims of trafficking aimed at providing with medical and psychological assistance the identified victims of trafficking.The program budget amounts to 20,000 lari.The limit established for medical diagnostics and medicines necessary for treatment per beneficiary is 300 lari, which can also be spent through co-funding.

The victim of trafficking who has been granted the victim status, who has been harmed morally and financially as a result of the trafficking is entitled to the compensation (in the amount of 1,000 lari) from the State Fund. The compensation pay-out does not depend on the cooperation of the victim with the law enforcement agencies.

The grave offence of trafficking of minors remains one of the most serious problems for the world. There is one category of children that are victims of trafficking and the other is the children having the potential to become the victims of trafficking. The other category consists of orphans, children without parental care, children of the parents with many children and single parents; the children whose parents are working abroad also become the victims of trafficking along with the children from extremely impoverished and vulnerable families. The data of the organizations working on the children's rights show that these are the children that become the victims of the growing trafficking trade domestically or internationally. They are engaged in begging, trading of small items, production of the pornographic material and prostitution, domestic service, illegal trading of narcotics and other criminal and anti-social activities. Despite the above mentioned, apart from being left without any protection provided on the part of the State, there is not even a roughly estimated statistics about them issued officially. The study of the cause and the scale of trafficking is necessary along with some appropriate measures which should be taken to protect specifically the interests of the children.

Being the principle guardian and caring body, the Ministry of Education and Science is in charge of deinstitutionalization of the children without parental care and prevention of children abandonment; the social workers are immediate implementers and to strengthen this institution the social workers should be offered special training. Additionally, the Ministry of Education and Science, which coordinates the procedures of international adoption, should actively collaborate with the Trafficking Service of the Ministry of Internal Affairs. This close collaboration would lead to a more effective control over the departure of children without parental care from the country for adoption purposes. The close collaboration would also help in detecting unscrupulous individuals engaged in the trade of trafficking

In 2007-2008 The Action Plan for Combating Trafficking was developed. In a meeting of The Coordination Board held on December 22 2006 the draft Plan was approved. The Plan was further submitted to the President for his approval.

We would also like to note that the Coordination Board should establish strict control over the fulfillment of the Action Plan for Combating Trafficking of humans, to detect and analyze the problems in the area and elaborate appropriate recommendations. There should be a stronger coordination between the responsible agencies in the implementation of the Action Plan.

It is necessary to establish close cooperation with the NGOs working with the victims, enabling a more precise evaluation of the situation.

Taking into account all the above mentioned, it is necessary for the Inter-Agency Coordination Board on the Measures against Trafficking of humans to regularly (once every 3 months) review the Action Plan based on the measures taken and with the purpose of its optimization.

Recommendations:

1. It is important for the State to develop its economic and social policy aimed at eradicating the causes of trafficking. The emphasis should be laid on developing the policy of employment aimed at securing the domestic labor market and limiting the number of foreign jobseekers;

2. Ensure accessibility of the documents adopted by the Inter-Agency Coordination Board on the Measures against Trafficking of humans for the governmental and non-governmental organizations dealing with the trafficking problem. Particular emphasis should be laid on the distribution of information to the regions of Georgia;

3. The Coordination Board and the State Fund for the Protection and Assistance to the Victims of/affected by Trafficking should jointly develop the methods of monitoring and define the criteria for evaluation;

4. The coordination Board should put greater emphasis on the cooperation with the NGOs and their engagement in the process of monitoring.

G.G.'s and O.Sh.'s Case

On January 8 2007 the Public Defender's Office was contacted by an individual who notified that in Sighnagi District, village Milori (Alazani valley) he and his friend with their respective spouses became the victims of trafficking. As the individual noted, with his help on January 4 2007 they managed to escape from village Milori and stayed in Lagodekhi at a rented apartment. The Public Defender's representatives traveled to Lagodekhi and brought back the victims.

The victims were identified in compliance with the general rules (questionnaire) for the identification of the victims of trafficking. The information obtained was submitted to the Permanent Group within the Inter-Agency Coordination Board, which made a decision on granting the status to the victims.

After the status was granted, the victims were transferred to the asylum, given safe shelter, food and clothing. They were provided with medical, psychological and legal assistance.

On January 9, 2001, in accordance with the Georgian Organic Law on Public Defender, Article 21, Subparagraph (c) , the related materials that the Public Defender possessed were forwarded to the Georgian General Prosecutor's Office and the Ministry of Internal Affairs for further action.

On January 11 2007 the Special Operations Department launched preliminary criminal proceedings on criminal case no. 090070041 regarding the fact of trafficking against citizens G.G. and O.Sh, the offence implied by the Georgian Criminal Code, Article 1431, Part 1, Subparagraph B.

Statistics for 2006 on the crimes involving trafficking in persons

143^1 and 143^2	2006
Investigation initiated	on 27 criminal cases
Indicted	15 persons on 13 criminal cases
Measure of restraint selected	for 15 persons on 13 criminal cases
Submitted to the court	13 criminal cases against 16 persons
Verdict pronounced	on 16 criminal cases against 19 persons

The criminal cases related to trafficking of humans on which the decision was made in 2006:

1. On May 19, 2005, Investigative Section of the No. 1 Regional Subdivision of the MoIA Border Guards Department launched investigation on the fact of trafficking of people of L.K.

   The preliminary investigation determined that Tamar Karchava offered unemployed L.K. to work as a waiter in the Turkish Republic and transferred her across the border with a fake ID; upon her arrival in Trabzon T. Karchava explained to L.K. that he paid 1,000 USD to the landlord as a rent for the apartment (L.K. lived at Nino Gabiskiria's as a tenant) Following which, T. Karchava took away L.K.'s fake passport and exploited her sexually. L.K. was detained by the Turkish authorities for not possessing a valid passport and later deported to Georgia.

   T. Karchava was indicted as charged offender and on May 16 2006 Tbilisi City Court sentenced T. Karchava to 8 years of confinement.

2. On January 11, 2005, Telavi District Prosecutor's Office initiated investigation on criminal case involving the alleged sale of R.B by Umuzukhrat Blusihvili. Later the case was forwarded to the Georgian MoIA Telavi Department for investigation.

   The preliminary investigation on the case determined that Umuzakhrat Bruishvili and Saida Ataeva brought R.B under the false pretext. to the Turkish Republic, sold her as prostitute to a Turkish citizen and by subjecting RB to severe psychological pressure, forced her to have sex with men for ten days. With help of one of the hotel's owner she managed to return to Georgia.

   U. Bruishvili was indicted as offender on March 29 2006 Tbilisi City Court sentenced him to 8 years of confinement and the Supreme Court rejected the appeal made by the offender.

3. On January 8, 2005, the Adjara Main Department of the MoIA initiated investigation on the criminal case involving the fact of trafficking by Tamila Lapachi and Merab Baladze.

   The preliminary investigation of the case determined that M. Baladze sent E.G., M.G., L.Ch., and N.Sh. under the false pretext of providing employment to the city of Gebze, the Turkish Republic, where they were met by T. Lapachi. T. Lapachi took their passports and sold them for a certain amount to a citizen of the Turkish Republic, with whom she forced E.G, M.G, L.Ch. and N.Sh. to have sexual intercourse with different individuals. One of the victims informed her friend of this fact and with the friend's assistance managed to return to Georgia. After some time the remaining individuals were given back their passports and allowed to return back to Georgia.

   T. Lapachi was detained at the time of illegal crossing of the border and was indicted as charged offender. In the absence of M. Baladze, a separate individual criminal case was lodged against the fugitive and placed accordingly in the wanted list

   On November 15, 2005, Khelvachauri District Court sentenced T.Lapachi to 8 years in confinement, though on the basis of GCC, Article 55, the Court later reduced the term to 4 years in confinement. In particular, the Court considered the fact that T. Lapachi was not convicted previously and is a young person who reconciled with the victims and compensated the damage. However after the appeal against the verdict, Kutaisi Court of Appeals considered the T.Lapachi case and made a decision on July 7 2006 leaving the District Court decision unchanged.

4. On January 6 2006 the Special Operations Department of the Georgian MoIA launched the investigation of the case involving the fact of trafficking of S.B.

   The preliminary investigation of the case determined that S.B. was in the city of Agchagoja, Turkish Republic, when after a deal, unknown to the investigation, Nazira Gojaeva took her to a cottage located in the resort area, where she locked S.B., took away the passport, restricted the opportunity of free movement and for 16 days forced her to have sexual intercourse with men.

   N. Gojaeva was indicted as charged offender and was found guilty by the Tbilisi City Court sentencing her to 6 years in confinement.

5. On September, 2005, the Fifth Division of the Special Operations Department of the Georgian MoIA initiated the investigation on criminal case involving the fact of Mariam Alpaidze trafficking T.G. and N.D. On October 6 2006 Adjara Office of the Special Operations Department of the Georgian MoIA launched the investigation on the criminal case for the fact of trafficking Ts.J. Later, due to subordination procedures, the case was forwarded to the Fifth Division of the Special Operations Department of the Georgian MoIA.

   The preliminary investigation on the case determined that M. Alpaidze with false promises took the above mentioned individuals to the Turkish Republic on separate occasions and sold them to a Turkish citizen for the purpose of their sexual exploitation.

   M. Alpaidze was indicted as charged offender and on July 29 the Tbilisi City Court sentenced her to 9 years of confinement.

6. On April 2006 Vake-Saburtalo Department of the Georgian MoIA launched the investigation on the criminal case involving Zaza Metreveli.

   The preliminary investigation on the case determined that Z. Metreveli decided to support the family by sexually exploiting his spouse N.K. He forced his spouse to have sex with men by the threats of taking away the children. At the same time, he regularly abused his spouse verbally and physically. Z.Metreveli accompanied his spouse as "pander" and pocketed the income received from his spouse's sexual exploitation.

   Z.Metreveli was indicted as charged offender and on August 10 2006 the Tbilisi City Court sentenced him to 6 years of confinement.

7. On August 19, 2004, the Bolnisi district Prosecutor's Office instituted criminal proceedings on the fact of trafficking of humans.

   The preliminary investigation on the case determined that Elnara Khasmamedova and her sister Gulnara Iskandarova on the basis of the deal took R.A., and minors A.P. and G.M. to the Turkish Republic fraudulently and forced them to have sexual intercourse with men. R.A., A.P. and G.M. managed to return to Georgia with the assistance of the law enforcement agencies.

   E. Khasmamedova and G.Iskandarova were indicted in absence and as a measure of restraint imprisonment was selected; they were put on the wanted list.

Due to E. Khasmamedova's unknown location, the case against her was separated into an individual criminal case, while G. Iskanderova was arrested as a suspect and later indicted.

On June 20 2006 the Bolnisi District Court sentenced G. Iskanderova to 15 years of confinement. After the appeal, the Tbilisi Circuit Court made a decision to leave the Bolnisi District Court's decision unchanged.

8. On May 18, 2004, the Second Subdivision of the Counter-Intelligence Department of the State Security Ministry of Georgia instituted criminal proceedings involving the fact of trafficking of people, production of fake passports and illegal crossing of the Georgian border by Zoya Aloyan and Marina Khatiashvili.

   The preliminary investigation on the case determined that Z. Aloyan, M.Khatiashvili and Maya Aloeva created an organized group with the purpose of trafficking people. With the help of fake passports they took N.Kh. and T.P. to Yerevan, the Armenian Republic, and later to Dubai, UAE. In the Dubai airport their fake passports were detected and N.Kh. and T.P. were deported to Georgia.

   Z. Aloyan and M. Khatiashvili were indicted as charged offenders. In addition, the criminal case on fugitive M. Khatiashvili was separated and she was put on the wanted list.

   On June 12 2006 the Tbilisi Circuit Court found Z. Aloyan guilty and sentenced her to 12 years of confinement. After the appeal, the Supreme Court left the verdict unchanged.

9. On June 10, 2004, the Tbilisi Department of the Georgian MoIA instituted legal proceedings on the fact of the selling of T.K. and I.B. by Khvicha Kirimeli.

   The preliminary investigation on the case determined that Kh. Kirimeli and some Turkish Citizens together created an organized group with the purpose of trafficking in people. Kh. Kirimeli took 3,000 USD from his accomplices in exchange to deliver several young women for the purpose of sexual exploitation. Kh. Kirimeli promising to find jobs, took T.K. and I.B. to the Turkish Republic, where their passports were taken away and they were forced to have sexual intercourse with men. After two weeks T.K. and I.B. managed to escape, contact the law enforcers and return to Georgia.

   Kh. Kirimeli was arrested within ten days and indicted as charged offender, and as a measure of restraint imprisonment selected.

   On October 31, 2005, the Tbilisi Circuit Court found Kh. Kirimeli guilty and sentenced to 8 years and 6 months in confinement. After the appeal, the Supreme Court left the decision unchanged.

10. On June 23, 2004, the Criminal Investigation Unit of the Adjara Autonomous Republic Department of the MoIA instituted criminal proceedings against Mamuka Mikeladze.

    The preliminary investigation on the case determined that M. MIkealdze and Zinaida Darchidze took I.A. ailing with cardiac disease to the Turkish Republic allegedly for the medical operation. They took away I.A.'s passport and sold her for the purpose of sexual exploitation to a Turkish man. Within one month I.A. managed to escape and return to Georgia.

    Z. Darchidze's action was separated from the case as an individual criminal suit, Z. Darchidze was arrested and the preliminary investigation against him was resumed.

    On October 10 2006 the Batumi City Court found M. Mikeladze and Z. Darchidze guilty. M. Mikelaadze was sentenced to 11 years and Z. Darchidze to 10 years in confinement respectively.

11. On June 26 2006 the Telavi Department of the Georgian MoIA instituted criminal proceedings against Lali Dzamukashvili.

The preliminary investigation determined that L.Dzamukashvili fraudulently took A.D. from the neighborhood of the Tbilisi Railway Station, to Telavi promising her to pay a certain amount of money for some office-type job. After the arrival in Telavi, she forced her to have sexual intercourse with the so-called "clients" and pocketed the income received. A.D. managed to escape and addressed the police for assistance.

L. Dzamukashvili was indicted and the Telavi District Court selected imprisonment as a measure of restraint.

On November 10 2006 the Telavi District Court sentenced L. Dzamukashvili to 9 years in confinement.

12. On July 14, 2005, the Gori District Department of the MoIA instituted criminal proceedings against Nana Tskhadadze.

The preliminary investigation on the case determined that N. Tskhadadze contacted Natela Markizashvili and asked for help in selling her newborn child. N. Markizashvili gave the child to Natela Bibilashvili, former staff member of the Tbilisi Hospital No.1 for the sum of 850 USD. Out of this amount she gave 800 USD to N. Tskhadadze.

On July 14, 2005, N. Tskhadadze appeared at the law enforcement agencies acknowledging her crime. She was arrested the same day, indicted and as a measure of restraint imprisonment was selected.

In two months N. Markizashvili was arrested and as a measure of restraint for her imprisonment was selected.

On November 20 2006 the Gori District Court sentenced to N. Tskhadadze 11 years in confinement, and N. Markizashvili and Bibilashvili were sentenced to12 years in confinement respectively.

13. On November 19, 2005, the Fifths Subdivision of the Special Operations Department of the Georgian MoIA launched the investigation on the criminal case for the fact of trafficking of A.L. and B.G.

The preliminary investigation on the case determined that Inga Maisuradze took A.L. and B.G. to Ankara, the Turkish Republic, where they were locked in a one-room apartment unfit for living. I. Maisuradze used force and sexually exploited for her personal benefit. I. Maisuradze used to regularly cross the Georgian border illegally using fake passport.

I. Maisuradze was indicted and as a measure of restraint imprisonment was selected.

The Gori District Court found I. Maisuradze guilty and sentenced her to 11 years in confinement. This verdict was appealed in the Court of Appeals but on December 8 2006 the Tbilisi Court of Appeals retained the verdict of the District Court.

14. On May 2006 the Special Operations Department of the Georgian MoIA launched the investigation on the fact of trafficking of citizen D.R of Uzbekistan.

The preliminary investigation on the case determined that D.R. met with "Nargiza"in Uzbekistan, who promised her to find a hair stylist's job at a barbers shop in Dubai, UAE. D.R. arrived in Tbilisi, Georgia,

and was met by "Marina". In two weeks, "Marina"'s spouse took D.R. together with other two young women to the airport and boarded them on a Dubai plane, where an unknown person took away their original passports and gave back in return fake Georgian passports.

D.R. was met in Dubai by Marina and an unknown woman who took her to "Samira"'s place; "Samira" took her to an apartment located in Sharjah and for the next18 months exploited her sexually. D.R. had no possibility to move freely or communicate with her friends and relatives. D.R. managed to escape the ordeal with the support of Yasir Malik. Within two months the police detained her for not having a valid passport; D.R. was deported to Georgia. The investigation revealed that "Marina" is Marina Oganesyan and not Marina Chkhikvadze as she was known to her victim

On December 12 2006 the Tbilisi City Court found M Oganesyan alias M. Chkhikvadze guilty and selected as a measure of punishment 11 years in confinement.

15. On February 17, 2005, the Counter-Intelligence Department of the Georgian Ministry of State Security launched the investigation on the criminal case against Nana Verdzadze.

The preliminary investigation on the case determined that N. Verdzadze promising to find a job took T.D. to the Turkish Republic and sold her for 1,200 USD to a Turkish man for the purpose of sexual exploitation. Within a period of time T.D eventually managed to escape and return to Georgia.

N. Verdzadze was detained, indicted and as a measure of restraint imprisonment was selected.

On July 25 2006 the Batumi City Court found her guilty and sentenced to 2 years in confinement for committing the crime implied by the GCC, Article 253, Part 1, regarding the forceful engagement in prostitution threatening with use of force or destruction of the property, by blackmailing or fraudulently. After the appeal, on December 13 2006 the Kutaisi Court of Appeals sentenced N. Verdzadze to 8 years of confinement.

36 THE RIGHTS OF THE PEOPLE WITH DISABILITIES

On December 13 2006 the UN General Assembly approved the Convention on the Rights of the People with Disabilities, which is an amalgamation of the existing international documents and implies a number of positive commitments for the member States. The Convention will be put into effect when the 20 member countries ratify it. The process of fulfillment of the Convention commitments is monitored by the Committee on the Rights of the People with Disabilities, to which the member countries are accountable.

Article 15 of the European Social Charter, ratified by Georgia is related to independence, social integration and the right to participate in the public life of the people with disabilities[1].

On April 5 2006 on the recommendation of the European Council, the Action Plan was adopted on the rights and comprehensive participation of the persons with disabilities aimed at specific measures in 2006-2015 to improve the quality of life of the people with disabilities in Europe.

The Georgian Law on the Social Protection of the People with Disabilities sets forth those main directions, which guide the social protection and integration of the persons with disabilities.

Despite all the above mentioned, in today's Georgia the rights of the people with disabilities are often largely ignored hindering the process of their integration into the public life. At a glance, it is ironical that against the backdrop of total violations of the rights of the people with disabilities, there is only a small number of specific cases related to the rights of the people with disabilities. These people are extremely reluctant to address the various responsible agencies requesting the protection of their rights. The primary reason for the apathy is their physical and social isolation, hopelessness and estrangement from the public.

1. The State Policy Regarding the People with Disabilities

The main problem related to the people with disabilities is lack of long-term and coordinated policy, which causes the isolation of these persons, who cannot participate normally in public life. With some exceptions, the people with disabi-

[1] It should be noted that in the official Georgian translation of the Charter's Article 15 the term used was "disabled/incapable" instead of the term "the people with disabilities", which, in our opinion, is significantly inaccurate and should definitely be corrected.

lities are confined to the places of their residence and have no opportunity to move freely and be active members of the society.

From our perspective, the ratification of the UN Convention of December 13 2006 will be a significant step forward for improving these people's conditions, and more so because this document focuses on the aspects that the democratic society should consider in its relation with the people with disabilities. Effectively, the elaboration of a single State Strategy will be easier, which will help the State Agencies to better plan their activity related to the people with disabilities. After ratifying this text the body will be considered responsible for the coordination of the activity connected to the people with disabilities and monitoring the fulfillment by various governmental agencies of their commitments in this sphere.

Therefore, the ratification of this Convention will first of all solve the organizational problems and will be less related to the recognition of the new rights of the people with disabilities that might have some cause for reluctance on the part of the State taking into account Georgia's financial capability. As we are going to see below, the rights implied by the Convention are already recognized by the Georgian legislation; however as the coordinating and monitoring body were not created or named, the problems related to the people with disabilities still remain unresolved.

Most importantly, the main purpose of the Convention is the recognition and instilling of the principle of equalityof the people with disabilities with all other people which can neither be rejected nor postponed by the democratic State due to financial constraints.

Besides the organizational issues, it is significant that the Convention will facilitate the better understanding of the international standards related to the rights of the people with disabilities, their appropriate interpretation and precise definition of these rights at the national level.

As we were informed at the Ministry of Labor, Health and Social Affairs, the Ministry of Foreign Affairs requested this body to study the Convention text and submit the conclusion regarding this issue.

The Public Defender's Office made the Georgian translation of the Convention, which will be submitted to the Ministry of Labor, Health and Social Affairs and the Ministry of Foreign Affairs, as well as all agencies and organizations interested in these issues. The Georgian translation of the Convention is enclosed to this report in the form of attachment.

Recommendation: ***The Public Defender recommends the relevant agencies of the Ministry of Foreign Affairs to initiate in the shortest period of time the necessary procedures for the ratification of the December 13, 2006.UN Convention on the Rights of the People with Disabilities***

1.1 Strategy

At the Ministry of Labor, Health and Social Affairs, currently a key body is in charge of the issues related to the people with disabilities; there is still no special service, which would adequately tackle these issues. As we noted in our previous reports, the consultative board formed at the Ministry, which was to define the State Strategy regarding the people with disabilities and develop the regulations for the National Board at the President of Georgia, Coordinating and Facilitating the NGOs of the People with Disabilities, or create another body, terminated its activity without any tangible result. The Board at the President was not abolished although its existence is a sheer formality.

It seems that currently the Department for Development of the Sectoral Policy at the Ministry of Labor, Health and Social Affairs is in charge of the issues related to the people with disabilities. As the staff members of the

Department explained, a strategy was developed in the frame of the USAID's Program on Ensuring the Equal Rights to the Disabled Persons in cooperation with the Health Ministry, which should be presented in July 2007. However the Public Defender was not able so far to get acquainted with this document. In response to our letter sent to Mr. Tsotne Beselia, Chief of the Division of Social Integration of the Department of Labor and Social Affairs, in which we requested information on the development of the strategy related to the people with disabilities, Mr. L. Peradze, Director of the State Agency for Social Protection and Employment, wrote to us that his Agency did not possess this document. Mrs. Vika Vasilyeva, Deputy Chief of the Department for Social Affairs at the Ministry of Labor, Health and Social Affairs, and Mr. Tsotne Beselia, Chief of the Social Integration Division of the same Department, were unable to confirm the existence of the strategy related to the people with disabilities in their conversation with the representatives of the Public Defender and UNDP, though they assured that there were plans for activity in the area and in the working plans for 2007 of the Department for Development of the Sectoral Policy the development of the strategy was included. Before this conversation, Mr. Amiran Datiashvili, representative of the Department for Development of the Sectoral Policy, talked with us in detail about the elaborated strategy, which was at the stage of the inter-agency consideration and assured that the strategy fully reflected all the problems concerning the people with disabilities.

Although the representatives of the Ministry of Labor, Health and Social Affairs confirmed the existence of the strategy verbally, in writing we were informed that this document was unavailable, eventually it was not clear whether this document was present or in the process of development.

Anyway, it is important not to make the development of the strategy and later potentially the action plan the cause for ignoring the rights of the people with disabilities, moreover the existing legislation and primarily the Georgian Law on the Social Protection of the People with Disabilities are sufficient basis at the initial stage for taking concrete steps or for the adoption of other specific normative acts.

Recommendation: ***resumption the activities of the National Board at the President of Georgia Coordinating and Facilitating the NGOs of the People with Disabilities for the purpose of coordinating the issues related to the Peoples with disabilities and organization of the inter-agency cooperation.***

1.2 Legislative Changes

On December 29 2006 significant changes were made to the Law on Medical-Social Examination of December 7, 2001.

Fore mostly it should be noted that till at least March 2007 no body was responsible to conduct the medical-social examination and determine the level of person's disability. According to the new Article 8 of the Law, instead of the Bureau of the Medical-Social Examination at the Social Insurance Unified Fund, the medical institutions would be making conclusions on the medical-social issues; however, taking into account that the law did not provide specifically for competent medical institutions in this area, we could presume that the competent institutions would be defined in parallel to the approval of the forms necessary for the medical-social examination. According to the Law, Article 63, Paragraph 2, the forms should be approved by March 1, 2007.

The changes caused several-months long vacuum in terms of defining the level of disability. Besides that on February 26 2007 the Parliamentary Health and Social Affairs Committee proposed another draft change to the above mentioned law, which would extend the validity of the existing status of disability until May 1. At least by this date the new standards for defining the disability status are not expected to be approved, leaving the people with disability status not having identified by this term deprived of the possibility to enjoy the benefits.

The new version of the Law on Medical-Social Examination does not imply the commitment for the development of the individual program of rehabilitation. The individual program of rehabilitation defined the mea-

sures of the person's medical, professional and social rehabilitation. In future, the replacement mechanism of the individual program of rehabilitation should necessarily be developed, which would ensure the measures of rehabilitation and reintegration for the people with disabilities.

Article 15, Paragraph 3 includes the option of the controlling body to request the people with disabilities to appear for revalidation and, according to Paragraph 4 of the same Article, "the status of the person with disabilities will be suspended for the person failing to appear". When dealing with the people with disabilities, it should be remembered that these people may not always be in a position to appear physically at the Agency as and when required.

Recommendation: ***To the Law on Medical-Social Examination, Article 15, Paragraph 4, the words "without reasonable excuse" should be added, the dates should be specified when the person with disabilities has the right to visit the Agency for revalidation and also specify the cases when the staff members of the Agency may visit the person at the place of his/her residence, as this happens during the institution checking (Article 46, Subparagraph J).***

As a result of excluding Article 18, in case of a job related injury when the person injured is unable to perform the job he/she performed earlier, the employer is not obliged to ensure his/her professional retraining. Taking into account that currently there are no documents specifying the safe working conditions and as a result of the above change, in case of a job related injury the employer bears no responsibility, it is very obvious that under such circumstances the workers will often find themselves in unprotected working conditions, while the employer will make the most out of this law by saving the expense on providing the workers with the necessary safety mechanisms

Mrs. Vasilyeva and Mr. Beselia said at the meeting with the representatives of the Public Defender and UNDP that a project was being developed that would include the issue of one time or monthly compensation as agreed between the employer and employee in case of the job related injury.

Recommendation: ***A mechanism defining the partial or full responsibility of the employer should be created for the job related injury cases to cover the costs associated with the injured person's rehabilitation and retraining. In the process of developing the above mentioned project, the amount of the compensation defined not by the employer but with the consideration of the injured person's condition and needs should be included. The document should also provide for the possibility to review the amount of compensation if the person's condition deteriorates, if this deterioration is associated with the same trauma that caused the payment of the initial compensation.***

The note of Article 51, Paragraph 2, that "in exceptional cases (in remote and inaccessible areas) the medical-social examination is conducted in the person's absence, with his/her or representative's permission" should be specified, in particular, it should be indicated what kind of documentation will be used as the basis for making the expert conclusion and in what form should it be expressed, the person's or his/her representative's consent to this examination. Without any clarification, this vagueness will be the reason for the bureaucratic complications, and the interests of the people with disabilities may confront the willfulness and contrariness of the administration.

Recommendation: ***Based on the legislative change or normative act, the rules and procedures for the examination in absentia implied by the Law on Medical-Social Examination, Article 51, Paragraph 2, should be made more precise.***

2. Social Rights of People with Disabilities

2.1 Social Protection

Financial Benefits and Privileges

According to the Law on the Social Protection of the People with Disabilities, Article 24, Paragraph 1, "the people with disabilities are assisted financially (pension, benefit, etc), technically and other means, including providing vehicles, wheelchairs, prosthetic-orthopedic items, books with editions printed in special fonts, acoustical apparatus and alarms, as well as medical, social and professional rehabilitation and household services."

In addition, according to Paragraph 3 of the same Article, "the provision of medical treatment, various technical equipment and household services of the people with disabilities is free or on preferential basis, as defined by the Georgian legislation."

According to the people with disabilities, the main problem they face is poverty and unemployment. Prior to 2006 the invalids of the first group received 22 lari as assistance. Additionally, the social privileges were established which included the expenses for public utility services and the right to free travel by municipal transport. From 2006 onwards,the social privileges for the people with disabilities were abolished and only the disabled individuals whose family was below the poverty line in the database would be entitled to the benefits. Thus, by abolishing the program for the protection of the people with disabilities, their social and economical conditions were further deteriorated.

Besides that, the benefits based solely on the socio-economic condition without taking into consideration of the level of limitation of the person with disabilities contradict the requirements of Article 24 the Law on the Social Protection of the People with Disabilities.

Recommendation: ***The Ministry of Labor, Health and Social Affairs should develop a special system of assistance and privileges to the people with disabilities that would be based on the level of limitation of the person with disability and his/her personal needs.***

HEALTH CARE AND REHABILITATION

According to Article 25, the Law on the Social Protection of the People with Disabilities:

"1. Provision of the people with disabilities with technical and other means is based on the program of individual rehabilitation for free or on preferential terms.
2. If the State Agencies are unable to provide the people with disabilities with the technical and other means implied by the program of individual rehabilitation, or if the people with disabilities have purchased them with their own resources, they are to be given the compensation as defined by the Georgian legislation."

The Ministry of Labor, Health and Social Affairs program of social rehabilitation for 2007 includes the provision with prosthetic and supporting equipment to the affected persons, but, as they explained at the Ministry, providing with the supporting items for free will only be for those people with disabilities that are below the poverty line. For others these items should be purchased by their family members; however it is evident that not every family omitted from the database of the households below the poverty line will have the capacity to purchase the supporting items on the own expense for the people with disabilities.

A similar situation can be seen in the free health care policy for the people with disabilities, where only those people that gather less than 100,000 points according to the socio-economic assessment are eligible for the health care policy.

The people with disabilities themselves believe that it is necessary to create the rehabilitation center focused on their needs. It is desirable if the Ministry of Labor, Health and Social Affairs takes this request into consideration and, in accordance with Article 16, the Law on the Social Protection of the People with Disabilities, include the creation of this center or opening of the relevant department at one of existing institutions. in the optimization plan

When assessing the level of disability, it is still impossible to instill the WHO system of the International Classification of Functioning, Disability and Health (ICF). As the Ministry notes, the ICF classification introduction should be preceded by the presence of the social workers institution. And as a result the switchover to the WHO standards is postponed for indefinite period.

Recommendation: ***The Labor, Health and Social Affairs Ministry should develop the system of privileges for the provision with supporting equipment and health insurance of those people with disabilities omitted from the database of the households below the poverty line. The methodology of the assessment of the level of disability corresponding to the international standards should be developed.***

2.2 Employment

According to the Law on the Social Protection of the People with Disabilities, the State should create for the people with disabilities the conditions necessary for the realization of their creative and entrepreneurial capabilities. In the long-run it is financially profitable for the State to focus on the employment of the people with disabilities and subsequently their engagement in the active life, rather than paying for their assistance. It is obvious that the key criterion is not financial but social integration and the belief of the people with disabilities in their own abilities.

In accordance with Article 11, Paragraph 3 the Law on Medical-Social Examination, a list was drawn up containing the Diseases, Anatomical or Mental Defects that enable the people with disabilities to work in special conditions (Decree No. 1/N, the Ministry of Labor, Health and Social Affairs).

The people with disabilities face far greater challenges when seeking employment than others. Most of them are unemployed. Although the primary reason for their unemployment is the lack of job opportunities, if the State creates the relevant favorable conditions, the employment of at least a part of these people would be possible. Unfortunately, till 2007 no program envisaged the measures aimed at facilitating the employment of the people with disabilities.

According to the explanation offered by the Ministry of Labor, Health and Social Affairs, the issues related to the employment would be transferred to the Ministry of Economy and therefore the employment related programs would not be developed by the Ministry of Labor, Health and Social Affairs. It is necessary to define the specific body responsible for the employment issues in the shortest period of time and develop a scheme of measures facilitating the employment of the people with disabilities.

3. Adapting Environment and Infrastructure to the Needs of People with Disabilities

The main obstacle to leading a normal life for the people with disabilities is the infrastructure which is not adapted to their needs. Despite the fact that the Georgian legislation implies the adaptation of the environment to the needs of the people with disabilities, no noticeable changes were seen. Due to the lack of the adapted infrastructure, the people with disabilities are unable to move independently, which, in its turn, is responsible for their estrangement and exclusion from public life.

LEGAL OBLIGATIONS

The European Social Charter, Article 15, Paragraph 3, implies the commitment of the member States to facilitate the comprehensive social integration and participation in public life of the people with disabilities, which, according to the same text, includes the removal of obstacles for travel and communication and the provision of transportation and dwelling.

Chapter 2 of the Law on the Protection of the People with Disabilities is entirely dedicated to the creation of a social and civic infrastructure used by the people with disabilities without any obstacles. According to Article 8 of the Law, "design and construction of the inhabited areas, developing the residential neighborhoods, making the design decisions, the construction and reconstruction of the buildings, including the educational, cultural, sports and recreational facilities, airports, railway stations, sea and river transport / travel facilities, communications and individual information facilities are unacceptable unless these buildings and facilities meet the needs and requirements of the people with disabilities."

Despite this legislative requirement, the requirements of the people with disabilities are often not met and most of the buildings and facilities constructed recently do not meet the needs of the people with disabilities. The streets are not equipped with special elements allowing the people with disabilities to move independently.

There is no landscape plan allowing the blind persons to independently find their way and move on the streets of the cities and inhabited areas. The only audible traffic system in Georgia is installed in Ponichala in the area of centralized residence of the people with the visual disabilities. According to the information given by the Union of the Blind Persons, the Mayor's Office promised to install more than 10 audible traffic systems. For which, the representatives of Mayor's Office requested the Association of the Blind Persons to present the desirable locations for the installation of the specialized traffic lights. Despite the development of this map and its submission, this promise is yet to be fulfilled.

Most of the sidewalks, buildings and facilities are not adapted to the needs of the people with disabilities. No ramps, signs in Braille font or in other forms understandable to the people with disabilities are in the institutions entrances. It is often seen that even the buildings, where the organizations related to the people with disabilities are located, there are no elevators installed or other means of making their movements' easier.

It should be noted in this regard, that the building where the Public Defender's Office is located is not adapted to the movement of the people with disabilities either. Because of this, we had to hear many a time complaints on the part of these people. However as the Public Defender rents this building from the Writers Union, which, in turn, has a dispute over the ownership with the Ministry of Culture, before the property right is eventually determined, our body is not entitled to make any unilateral decision on the issues of its adaptation.

The request of the blind people is to have the signs in large-size font on the side of the buses near the doors to make it possible for the people with some eyesight to see the bus number without any outside help. For the blind persons' independent travel, it is also necessary to have the equipment for audible announcement of the routes and stops in the buses.

For the future purchases of the buses for the municipality pool, the requirement should be included implying the purchase of only those vehicles that are equipped with specialized entrances. With the implementation of the above, the people with disabilities that have to move in wheelchairs will be enabled to make use of public transport without outside help.

It is significant to make the adaptation of different constructions to the needs of the persons with disabilities at the stage of designing. In this case the adaptation will not be associated with substantial expenses, something this cannot say about the later alterations.

Sanctions

As we noted in the previous report, one of the reasons for ignoring the legislative requirements is the inadequacy of the sanctions mechanism.

According to the Administrative Offences Code, Article 178 1, avoiding the creation of the conditions adapted to the people with disability determined by the legislation entails the punishment in fine of the amount between 300 and 500 lari. Article 178 2 of the same Code for ignoring the needs and requirements of the people with disabilities when designing and constructing buildings and facilities sets forth the punishment in fine of the amount between 500 and 800 lari. According to Article 239, Paragraph 45 of the Code, the relevant agencies of the Georgian Ministry of Labor, Health and Social Affairs should draw up the report on the administrative violation implied by Articles 178 1 and 178 2 of the Code.

Despite the specific indication of the law, till date, there is no specified department within the Ministry of Labor, Health and Social Affairs responsible for drawing up the report on this administrative offence. As a result, the sanctions implied by the Administrative Offences Code have never been applied. Nevertheless presumably the fine between 300 and 800 lari is not going to be effective, particularly in the large-scale constructions.

Thus, besides the selection of the responsible department at the Ministry of Labor, Health and Social Affairs, it is desirable to establish more effective sanctions for violating the rights of the people with disabilities making the exercise of these rights more realistic.

Recommendation: ***A special department should be immediately formed or the existing department tasked to fulfill the requirement set forth in Articles 178 1 and 178 2, within the Ministry of Labor, Health and Social Affairs, according to Article 239, Paragraph 45, of the Administrative Offences Code,***

The changes to the Administrative Offences Code should be prepared increasing the fines for avoiding the creation of the conditions determined by the legislation for the people with disabilities and establishing the additional sanctions for recurrent non-performance. Accordingly, it should be also clarified that payment of the fine does not exempt from the obligations.

4. The Right to Education

The Inclusive Program

From December 2006, the 18-months pilot program was launched with joint funding of the Ministry of Education and Science and the Norwegian Government aimed at the introduction of the system of inclusive education in 10 Tbilisi schools The schools were selected based on their geographic location and the number of children (preference given to schools with high number of students). The program is aimed at the gradual inclusion of the children with disabilities to the schools according to the level of their disability.

The main objectives of the program:

- Physical adaptation of the selected schools: ramps installation, rest rooms arrangement, transportation with a special school bus;
- Retraining of the teachers: training of the existing teachers and recruiting special personnel if needed;
- Training of parents: it is worth mentioning that the parents of the children with disabilities also need training, who often incorrectly perceive their children's condition and unintentionally hinder their children's inclusion;

- Raising public awareness: special TV programs, clips, commercials, etc will be prepared.
- Development of the manuals for teachers with recommendations on how to work with the children of different abilities and how to adapt the school curriculum to the children's individual abilities.

In the frame of the program a multi-discipline board will function, which includes the representatives of the Ministry of Labor, Health and Social Affairs, Ministry of Education and Science, NGOs and experts. The objective of the board is to elaborate the primary directions in the sphere of inclusive education and form the State concept of inclusive education.

Along with the board, a multi-discipline team is to be formed; the members include, coordinator and psychologists, speech therapists, neurologists and occupational therapists. This team will perform the functions of monitoring and assessment. It will be this team's authority to make decision on the inclusion of the child into the program of inclusive education, determine the regularity of school attendance by the child and general monitoring over the program implementation.

Inclusion of the Children with Hearing and Visual Disabilities

As we were notified at the Ministry of Education and Science, the above mentioned program does not imply the introduction of inclusive education for the children with hearing and visual disabilities.

In connection to the children with hearing disabilities, the reason mentioned was that the employment of the deaf-and-dumb teachers would increase expenses, but since the State allowance for the children with disabilities does not include additional funding, the employment of a specialized teacher is unaffordable by the school. The Association of the Deaf Persons trains these teachers and only one child at the Public School No. 60 had such a teacher paid by foreign grant. It is desirable if the State in future focuses on the facilitation of inclusive education of the children with hearing disabilities. Moreover the Law on the Social Protection of the People with Disabilities, Article 5, makes the State responsible to create the necessary conditions for the use of the sign language.

Occasionally, the textbooks are printed in Braille for the children with visual disabilities; however it would be desirable if the publication of these textbooks are on regular basis and also the Georgian versions of the special softwares developed, allowing the children to utilize modern technologies and new methods of teaching, like the rest of the children.

Measures Needed to Introduce Inclusive Education

This program is a step forward in the sphere of integration, although we should not forget that it is supposed to last only for 18 months and will be implemented in only 10 Tbilisi schools. We do hope that the future State Program developed in the frame of the current program will imply wider and longer-term measures in terms of inclusive education that will cover the entire territory of Georgia.

Besides that the mechanism of identification of the children with disabilities should be created and not just within some specific programs but in the form of normative act. Similarly, the form of normative act should be given to the regulation of the process of teachers retraining. As a result it will be easier to develop the adequate action plans and implementation.

Greater focus should be given on the education of those children that are unable for some specific reasons to get involved in the general educational process. Article 18 of the Law on the Social Protection of the People with Disabilities is regarding raising and education of the children with disabilities at home and implies the assistance of relevant educational institutions in the educational process. Besides that the legislation should

regulate the financial guarantees and privileges for the parent or guardians, though presently such a normative act does not exist.

The fact should be emphasized that in the inclusive education process is not included in vocational education; however for further social integration of the person with disabilities this issue is of much importance. The Ministry of Education and Science should develop the system of secondary-vocational education for the juveniles with disabilities with the consideration of the desire and abilities of the juvenile.

In regard to higher education, the Ministry notified us that the adaptation of the examination system to the people with different abilities was underway. For that purpose, the Examination and Evaluation Center would allocate funding. According to the Ministry of Education and Science, currently 6 individuals with visual disabilities are getting higher education. It would be desirable if similar conditions are also created for the people with hearing disabilities for obtaining higher education.

5. Participation in Public Life

Access to Information

For the persons with disabilities, especially those who are unable to move independently, timely access to the information resources and information is of great importance.

By the order of the Association of the Blind Persons, special voice software which allows the blind persons to use the computer, internet, read newspapers and electronic editions was translated into Georgian. Currently the software is being improved and adapted to the Georgian language. It would be desirable if the State participates responsible for the evaluation and development of the software could accelerate the process of its introduction.

The blind persons also complain that besides the publication of textbooks inBraille or in the format of audio, they have no access to specialized texts, such as the legislative collections, encyclopedias, dictionaries, etc. The first step in this regard was taken by the Central Election Commission, which published 40 copies of the Georgian Election Code in Braille.

In comparison, the people with hearing disabilities lack the opportunity to listen to news on TV. It would be desirable if the information broadcasting of the Public Broadcaster is televised in the sign language too; this would be a positive step in facilitating the instilling and using the sign language.

Exercising Civil Rights

Ensuring the exercising of civil rights of the people with disabilities is of great importance for their comprehensive participation in the public life. The primary request of the people with disabilities is to engage their representatives in the decision making process related to their issues. The Ministry of Education and Science tries to engage the representatives in the process of introducing inclusive education, which is in stark contrast to the attitude of the Ministry of Labor, Health and Social Affairs on this issue. We hope the general strategy on the people with disabilities will imply the creation of a coordinating mechanism that will be attaching importance to the suggestions of the people with disabilities and their representatives.

For the integration of the people with disabilities ensuring comprehensive and independent exercising of their election rights is of much importance. The Election Code, Article 52, Paragraph 2, makes the Central Election Commission responsible to ensure for the voters with visual disability the opportunity to fill the electorate

forms independently. Despite this responsibility, for the local elections in 2006 electorate forms printed in Braille was insufficient

According to the people with disabilities, the public is generally benevolent, though probably due to lack of information and awareness of the public about the problems of the people with disabilities should be blamed for expressing its compassion occasionally in a humiliating and irritating manner, which makes the people with disabilities feel estranged. To avoid such situations, it is important to promote and organize informational and educational activities, which will be of help to both, the able and the not so able, to respect each other and their equal place in the society.

37 GENERAL SITUATION WITH HUMAN RIGHTS AT PSYCHIATRIC INSTITUTIONS

The Public Monitoring Board formed at the Public Defender, which exercises public control over the human rights protection at the psychiatric institutions, studied all seven psychiatric institutions in Georgia. The monitoring results in each of the seven psychiatric institutions were reflected in the report submitted by the Board and the Public Defender's Parliamentary Report for 2006.

The analysis allowed the Public Monitoring Board to generalize the problems.

The Monitoring Results:

Monitoring in the psychiatric institutions showed that:

- the Concept of the Human Rights Protection is developed at an extremely low level in the psychiatric clinics;
- all the rights (with no exception) of the patients at the psychiatric clinics are violated (the right to information; the right to quality, acceptable and accessible medical care; the right to communicate with the outer world; the right to respect of one's dignity; the right to the protection from forceful labor, cruel and inhuman treatment; the property right; the right to respect one's personal life; the right to vote; the right to the protection from discrimination and the right to file complaint).
- in the majority of the clinics both, the personnel and patients are in unbearable conditions;
- the clinics resources are scarce (both material and human) for the implementation of effective management;
- no professional training programs are available for the psychiatric nurses. The social workers service is not developed;
- the majority of patients are treated longer than needed in reality, as the problems associated with patient's leaving the hospital and further treatment are not solved;
- the legal issue of patient's involuntary treatment is not organized;
- the psychiatric clinics for compulsory treatment with strict control are extremely disorganized in terms of both the proper functioning of the security service and applying the medical methods;
- the hospitals lack public control and monitoring over the patients' rights.

LEGISLATIVE LOOPHOLES:

- Legislative Guarantees on Psychiatric Assistance

The Georgian Parliament passed the Law on the Psychiatric Assistance on July 14, 2006. In the transitional provision of this legislative act, in particular Article 28, which imperatively defined the responsibility of the Ministry of Labor, Health and Social Affairs to elaborate and publish by January 1 2007 a number of normative acts. Their total number was ten, and this gives us a clear impression about the huge volume of legal acts which was to be created for the comprehensive and effective implementation of the Law on the Psychiatric Assistance.

Article 28 is the only provision in the Law, which was to be put into effect immediately at the time of the publication, according to Article 30, Part 2 of the same legislative act.

As of today, when the law is formally in effect, its effective implementation is under threat due to the lack of a number of fundamental acts. The fate of the medical personnel is also unclear, who has to perform the tasks regulated by the law in accordance with a non-existent instructions and rules.

With the request to immediately close the gaps, The Public Defender addressed in writing on January 22 2007 the Georgian Minister of Labor, Health and Social Affairs, Mr. Lado Chipashvili, however, so far we have not received any response from the Ministry.

- Exercising the Right to Marriage

On February 12 2007 The Public Defender addressed in writing tothe Parliament Speaker, Nino Burjanadze, asking her to initiate relevant procedures for announcing invalid Subparagraph E of Article 1 of the Georgian Civil Code, according which "the marriage is not allowed between the persons when at least one of them is found incapable because of insanity or derangement by the court."

According to the Georgian legislation, the person with mental illness may be found incapable by the court on the basis of the application of the interested party. In such case, the person is automatically deprived of all legal rights (to conclude agreements, make payments, give the informed consent for the medical involvement, dispose the property, etc). These rights are exercised through the guardian appointed by the local health care body. However the right to family (marriage) cannot be exercised by other person (legal representative).

> *- according to the Universal Declaration of Human Rights, Article 29, Paragraph 2: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general Affairs in a democratic society".*
>
> *- the European Convention on Human Rights and Fundamental Freedoms, Article 12, guarantees the right of marriage to the men and women in the age of marriage. The only reason for restricting this right can be the age, no other restriction is acceptable and the States are responsible, in accordance with the national laws, ensure the exercise of this right.*

We believe that Article 1120 of the Georgian Civil Code is contradicting the requirements of international law on the human rights and subsequently it should be changed. In most Western European countries the incapable people are allowed to get married, while those in Eastern European counties, where this right is still restricted, active work is underway to bring the legislation in conformity with the human rights international standards.

It should be noted that the Georgian Constitution does not imply the restrictions on the right to marriage based on incapacity.

We believe the exercise of the right to marriage by the incapable persons cannot harm the legal interests of this person or those of other persons. The presence of the guardian institution is the guarantee to rule out to a maximum extent the cases of marriages for intentions. The family environment is a significant step and tool for rehabilitation and integration into the society of these people. Moreover, incapacity is not a permanent status and it may be removed if the health condition improves.

- **Terminology of the Civil Code**

The Georgian Civil Code instills a rather incorrect and to some extent derogatory terminology regarding the recipients of the psychiatric assistance and other persons with mental retardation calling them "insane" and "deranged" persons*. "Insanity" [disease of the soul] is a term that was used earlier and is not used by medicine, as regards "derangement" [weak brains], other correct and modern terminological equivalents could also be found. The experience of other countries and the attitude of the international organizations is much more positive and tolerant. Unlike them, the terms used in the Georgian legislation regarding the persons with these medical problems can be understood as humiliating, which should not be the case at the legislative level. We believe it is necessary to change this attitude and in order to achieve this according to the WHO ICD and the UN Convention on the Rights of the People with Disabilities; "insanity" should be replaced with the term "mental disorder" and "derangement" replaced with the term "mental development retardation".

- **Exercising the Right to Vote**

The Public Monitoring Board monitored the exercise of the election rights of the patients. The monitoring showed that during the local (municipal) elections on October 5 2006 the election rights of the patients in the clinics were restricted as they were not allowed to vote in the elections.

On October 5 2006 the representatives of the Public Defender and the members of the Public Monitoring Board at the Public Defender visited the four following institutions:

- Asatiani Tbilisi Psychiatric Scientific Research Institute;
- Republican Psycho-Neurological Hospital Ltd. located in Daba Kakhaberi, Khelvachauri District;
- Surami Psychiatric Hospital;
- Academician Bidzina Naneishvili Psychiatric Health Center located in the village of Kutiri, Khoni District.

It was found as a result of the monitoring that the voters were able to exercise their right only in the Academician Bidzina Naneishvili Psychiatric Health Center located in the village of Kutiri, Khoni District, where the precinct election commission members brought the mobile voting box and the patients voted for the contesting candidates by the proportional rule, though even this procedure went on with gross violations of the law. In the process of preparing the list annex, the list handed over by the medical institution administration to the district election commission was incomplete, as it did not contain the ID information. Also, in the process of voting there was a gross violation of the law, because the voters voting through the mobile boxes had no documents confirming identity, as required by the Election Code.

* (*Translator's note*) Literally in the Georgian language the terms are "the person whose soul is diseased" and "the person whose brains are weak", which are outdated and found mainly in literary texts.

In the case of other institutions, in Batumi, Republican Psycho-Neurological Hospital Ltd. located in Daba Kakhaberi, Khelvachauri District, the administration did not even draw up the list (special list) of the patients with the right to vote and accordingly the patients were not included on the annex voter list. As the Chief of the medical institution explained, the district election commission did not request for the list and therefore it was not handed over. Nevertheless it should be noted that the institution was required by the law to draw up that list and submit it to the district election commission.

There was a similar situation in the Surami Psychiatric Hospital, where the administration did not draw up the special list, and the patients were unable to exercise the right to vote.

The Asatiani Tbilisi Psychiatric Scientific Research Institute was addressed by the district election commission several days prior to the submission deadline and reminded that, according to the Election Code, the institution was to draw up the special list and hand over to the district commission 6 days before the election. The list was drawn up and forwarded to the district election commission. The list had all the patients at the institution mentioned, which was around 300, but like in the case of Kutiri, the list did not contain the patients ID information In such situation the district election commission did not allow the voters cast their votes in the elections.

It should be noted that participation in the elections was directly restricted by the systemic error, which was made, for instance in Asatiani Tbilisi Hospital: to hospitalize a patient no ID is required either of the patient or his/her guardian; this directly affects the process of forming the patients (special) lists by the hospitals administrations.

On October 9 2006 we applied in writing to Guram Chalagashvili, Chairman of the Central Election Commission, to organize a working meeting for the discussion of these systemic problems. In a response received on March 7 2007 this body confirmed its readiness to take part in the discussion of these issues.

Recommendations

Monitoring in the psychiatric hospitals showed that, despite the tendency of increased funding of the psychiatric hospitals, the current material and technical base and human resources cannot ensure the protection of the human rights and quality accessible medical treatment of the individual at the psychiatric hospitals.

To the Georgian Parliament:

The recipients of the psychiatric services in Georgia constitute the risk group of torture and other cruel, inhuman and degrading treatment. In order to take the preventive measures defined by the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, the Commission for Public Control of the Closed Institutions should be formed and the relevant article amended to the Law on the Psychiatric Assistance. However before the consideration of this issue, we feel it is necessary to create the national mechanism for control over the closed institutions, as defined by the same document. Hence, the work on the formation of the Commission of Public Control is suspended upon our initiative before the decision is made on the matter. This will allow better distribution of the rights and obligations and avoid possible parallel performance of the same tasks.

To the Ministry of Labor, Health and Social Affairs:

a) *Independently:*
The living conditions in the hospitals are breaching the rights of the patients and medical staff. The ongoing reforms in the area of medical services should improve the living conditions in the psychiatric hospitals.

b) *With the administrations of the psychiatric hospitals:*
In those psychiatric hospitals, where the patients undergo compulsory medical treatment, modern security system equipment should be installed, a healing environment should be created and proper medical and rehabilitation methods should be practiced, it is also necessary to change the rules of the "movement" (the so-called mode) in these institutions, new standards should be instilled to ensure the fair and timely trial which would avoid the patients staying at the hospitals for an extended period of time.

To make the psychiatric services quality and accessible and provided in the manner respecting the patient's dignity and rights, it is necessary to create the standards for medical treatment and rehabilitation, provide new services (community based differential services) and increase the level of professional knowledge and skills of the human resources (managers, doctors, nurses, social workers, including the security personnel in case of compulsory treatment) with the consideration of the universal principle of human rights.

To the Administrations of the Psychiatric Hospitals:

The management of psychiatric hospitals needs to be revitalized, efficient and effective internal regulations should be developed ensuring the organized functioning of both the medical personnel and the protection of the patients' human rights.

To ensure the human and patients rights in the psychiatric hospitals the rights related activities should be considered and the medical personnel and patients should regularly be informed of the rights.

The hospitals should facilitate the introduction of transparent and efficient procedures.

Request the NGOs and Donors:

To support those groups that will fight for the protection of their own and other patients' rights.

The representatives of the judiciary, prosecutor's office and medical fraternity should be acquainted with the new Law on the Psychiatric Assistance to stamp out existing stigma; to change the attitude and perception about the recipients of the psychiatric services it is necessary to organize media campaigns. The educational campaigns should be planned with media representatives for the proper understanding of the new law and the issue human rights in the field of psychiatric treatment.

38 DELINQUENCIES AT THE TIME OF MEDICAL SERVICES

(COMPARISON OF THE DATA FOR 2005-2006)

According to the report of the State Agency for Regulating the Medical Activity at the Georgian Ministry of Labor, Health and Social Affairs, the State Regulation Agency forwarded 166 cases (out of this number, 2 cases were detected in 2007) to the preliminary courts with the request to inspect the enterprises. To the court was submitted the requests for the inspection of 81 medical institutions in Tbilisi (high numbers are among the following institutions: 7 scientific-research institutes, 18 medical centers, 27 hospitals, 10 emergency and urgent medical services, etc.), and 76 regional medical institutions (11 medical centers, 31 hospitals, 22 out-patient institutions, dispensaries and polyclinics, etc.). It should be noted that in 157 cases the request were approved and in 7 cases rejected. In 2005 by the same indicator the requests were approved in 158 cases. In fact, the situation did not change.

APPLICATIONS TO THE PRELIMINARY COURT WITH REQUESTING THE INSPECTION OF THE ENTREPRENEURIAL ACTIVITIES

2006

In 2006, on the basis of Decree No. 269, the Agency studied the issue of violations in more than 289 enterprises. Out of this number on the basis of the court order 157 medical institutions (84 medical institutions in Tbilisi and 73 regional medical institutions) were studied, while in 2005 on the basis of the court order153 medical institutions were studied.

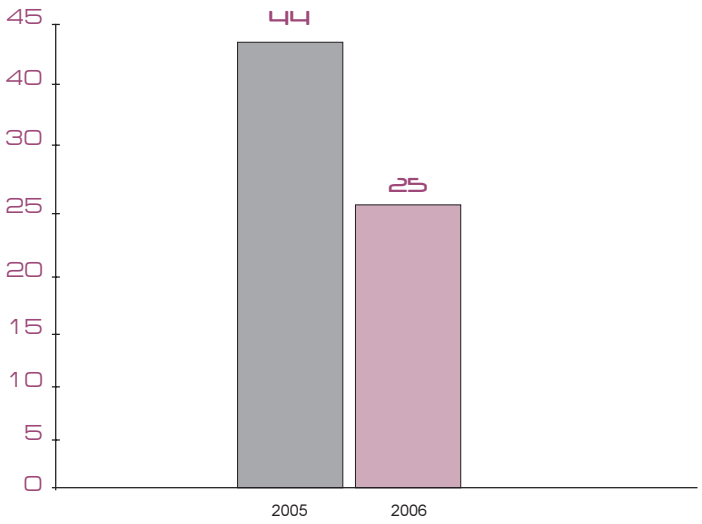
INSPECTION OF THE MEDICAL INSTITUTIONS
ON THE BASIS OF THE COURT ORDER

Without the court order the facts of illegal medical and doctors activity were studied in: 132 medical institutions (67 medical institutions in Tbilisi: 3 scientific-research institutes, 8 medical centers, 21 hospitals, 19 out-patient clinics, dispensaries, polyclinics, 7 diagnostic, prophylactic and rehabilitation institutions, etc.; in regions 65 medical institutions: 6 medical centers, 23 hospitals, 18 out-patient clinics, dispensaries and polyclinics, 6 gynecological wards). In fact a slight tendency of growth was noted.

In 2006, the Agency studied the quality of the medical services offered in 114 cases, among them 96 cases on the basis of the individuals complaints, out of which in 45 cases the complainants were the patients. In the data submitted by the State Agency for Regulation, it was not specified what concrete indicators were applied during the study and what kind of problems were found.

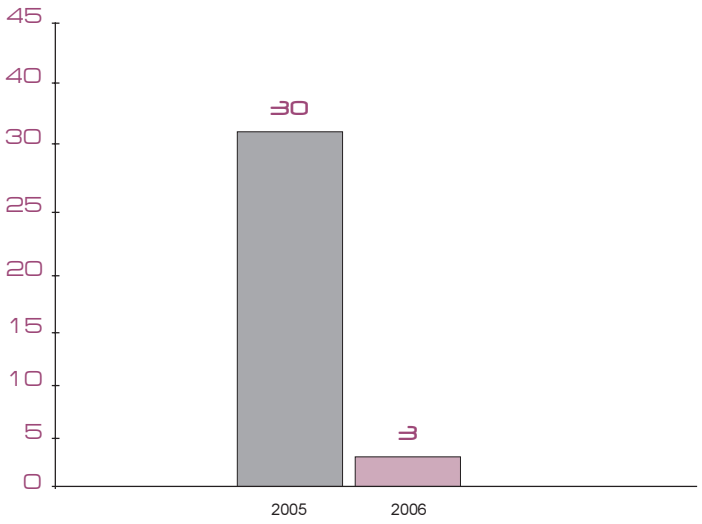
The statistics for 2005-2006 show that in the reporting period for 2006, 25 facts of illegal doctors activity (in Tbilisi and regions: 7 hospitals, 7 out-patient clinics, dispensaries and polyclinics and 3 gynecological wards, etc.) were found. In comparison to the year 2005, this indicator is lower by 43,2 percent.

THE CASES OF DOCTORS' ILLEGAL ACTIVITIES



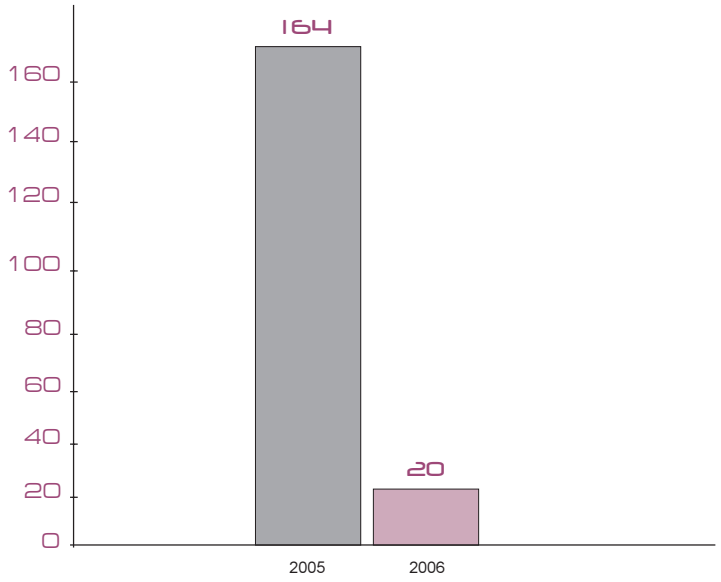
The facts of illegal medical activity also decreased by 90 percent (1 emergency and urgent medical service, 1 diagnostic, prophylactic and rehabilitation institution and 1 gynecological ward; in all, 3 cases, while in 2005 there were 30 cases).

THE FACTS OF ILLEGAL MEDICAL ACTIVITY FOUND DURING THE INSPECTIONS



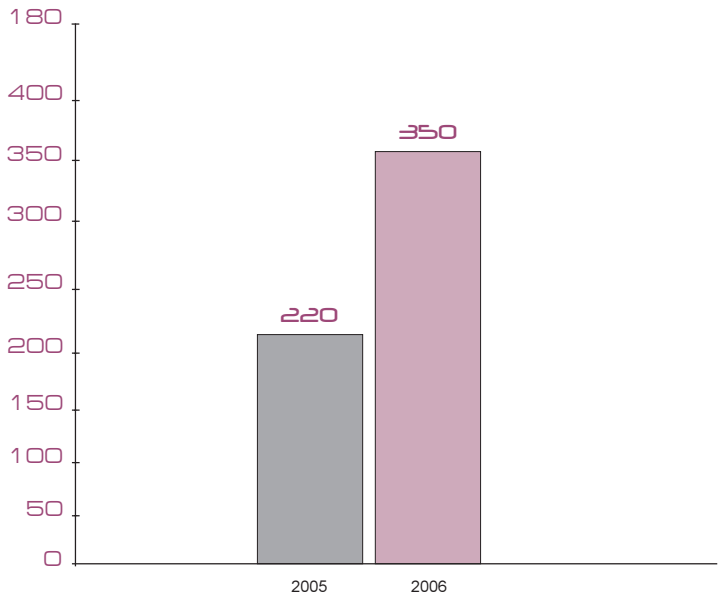
In 2006, 28 reports were drawn up on the administrative violation of illegal doctors and medical activities. Out of this number in 8 cases the judge fined the persons performing illegal activities, in 8 cases did not penalize, and in the remaining 12 cases the results of the consideration were unknown (the incidents of illegal medical and physician activities were found in 20 medical institutions in Tbilisi and in 8 regional medical institutions). In comparison with the previous year figures, such occurrences reduced by approximately 83 percent (in 2005 164 instances of administrative violations were found).

THE FACTS OF ADMINISTRATIVE VIOLATIONS



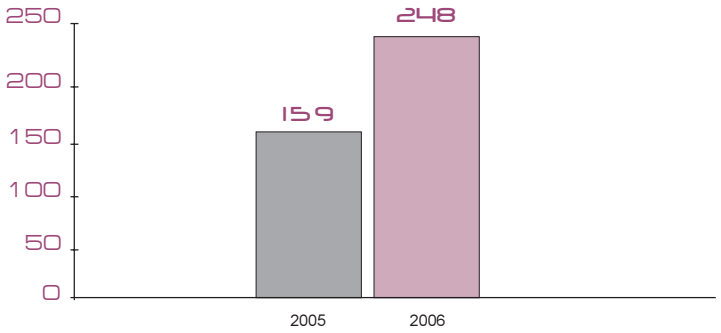
During the reporting period of 2006, based on the inspection carried out the agency, the issue of professional conduct of 385 doctors was raised before the Board Awarding State Certificates which in comparison with the previous year with 228 registered cases, showed an increase of 56.5 percent.

THE ISSUES OF PROFESSIONAL RESPONSIBILITY OF THE SENIOR AND MID- LEVEL MEDICAL AND PHARMACEUTICAL PERSONNEL RAISED BEFORE THE BOARD AWARDING THE STATE CERTIFICATES

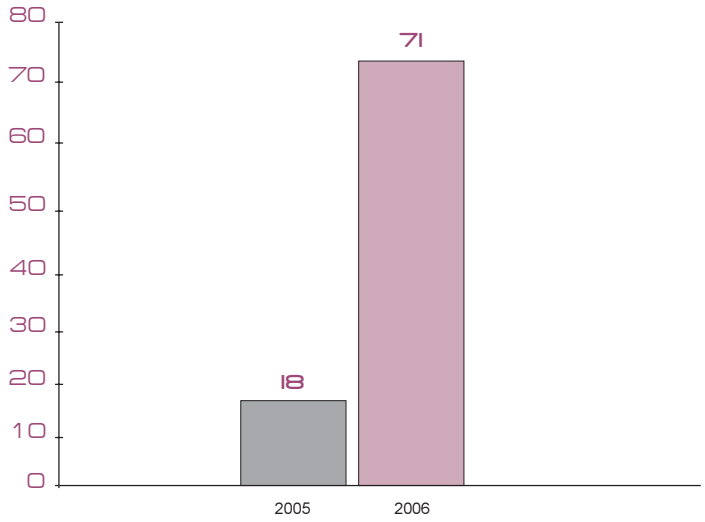


Despite the sharp decrease in the number of illegal doctors and medical activities in 2006, there was a significant increase in the number of sanctions issued by the Board on the problem of professional responsibility of the doctors. In total, 248 written warnings were issued to physicians which in comparison to 2005, is an increase of 55,9 percent; in Tbilisi 139 physicians and 68 physicians in the regions. The highest figure was noted in the hospital type institutions. The State Certificate of 71 physicians was suspended compared to 18 cases in 2005; in Tbilisi 43 physicians and 19 physicians in the regions. The court initiated proceedings against 4 regional physicians for the annulment of their certificates, in compared to 8 such cases in 2005.

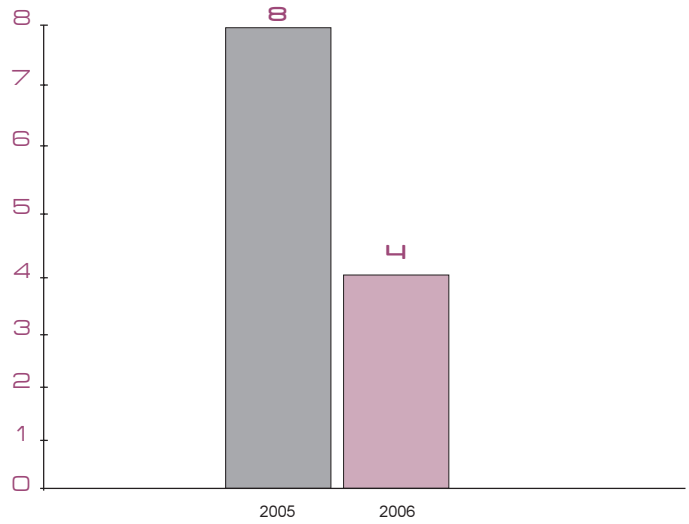
WRITTEN WARNINGS ISSUED:



CERTIFICATES SUSPENDED

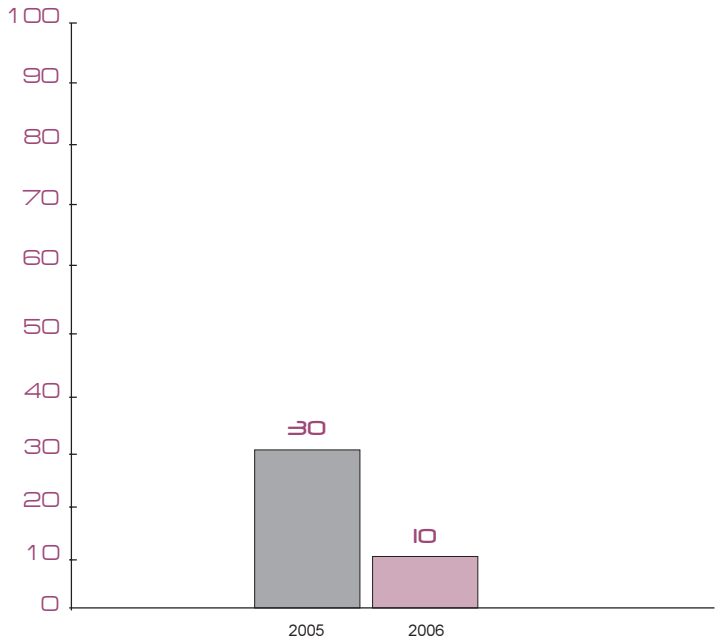


REQUEST ON THE ABOLISHMENT OF THE CERTIFICATE



In, comparison with 2005, there was a 25 percent decrease seen in the reporting period of 2006, involving cases related to the issue of managerial responsibility of the Heads of medical institutions (in 2005 – 30 cases, in 2006 – 10 cases, including 6 in Tbilisi and 4 in the regions).

THE ISSUES OF MANAGERIAL RESPONSIBILITIES
OF THE CHIEFS OF MEDICAL INSTITUTIONS



During the current reporting period, the agency issued licenses to 56 medical establishments in 115 medical fields, 46 establishments were denied the license in 64 medical fields and the licenses of 3 establishments in 9 medical fields were cancelled (upon their own request). Based on the inspection, licenses were issued to 25

medical establishments of various medical activities in Tbilisi in the 1st and 2nd quarter of 2006 (3 scientific-research institutes, 7 medicinal centers, 4 hospitals, 4 diagnostic, preventive and rehabilitation establishments etc). 13 medical establishments were denied the license (3 hospitals, 2 scientific-research institutes etc). The licenses of two medical establishments were cancelled (1 – regional hospital, 1 – Tbilisi diagnostic-preventive and rehabilitation establishment). At the same time 29 medical establishments were issued licenses in the regions (12-hospitals, 9 medicinal centers etc). 34 medical establishments were denied licenses (14 hospitals, 5 medicinal centers etc). With the purpose of issuing license 4 medical establishments were inspected in Tbilisi in the 3rd quarter of 2006 (1 medicinal center, 1 OB-gynecological department, 2 diagnostic, preventive and rehabilitation establishments), and for the same purpose 6 medical establishments were inspected in the regions (2 medicinal centers, 2 hospitals, 1 diagnostic, preventive and rehabilitation center and 1 dental clinic). In the 4th quarter of 2006 five medical establishments were inspected with the same purpose in Tbilisi (1 medical-research institute, 2 medicinal centers, diagnostic, preventive and rehabilitation establishment and 1 policlinic) and 20 medical establishments were inspected in the regions (3 medicinal centers, 5 hospitals, 2 emergency medical services etc).

During the current reporting period 11 citizens applied to the agency requesting public information. All the applicants were given responses within the time frame established by the law.

Based on the analysis of the above listed facts, the following tendencies were noticed in connection to the occurrence of legal offenses in the sphere of medical service: despite the decline of illicit medical activities and the decreased number of exposed administrative lapses including instances involving senior officials of medical establishments being held accountable for their acts, there was a significant rise in the number of cases where the Council had to deal with issues related to the professional conduct of doctors and the suspension of their State Certificates.

As an indicator, the written warning issued by the Council saw a rise of 55.9% and the suspension of State Certificates increased by 72.6% compared to the previous year. It must be stated that most of the medical lapses and wrongdoings occurred at the Hospitals, this fact was further established by the decision of the Court identifying the Hospitals as the main establishment where such activities were most commonly noticed.

Information Regarding the Professional Responsibilities of Doctors (Termination of Licenses)

The Georgian Law about "medical activity" regulates the issues of professional responsibility of people conducting independent medical activity. According to the article 73 of the law "professional responsibility of a person independently carrying out medical activity is a responsibility established by the law, which is related to the violation of medical standards and ethical norms of examination, care and treatment of a patient". Based on the same law the types disciplinary measures against conducting incorrect medical activities are: a) written warning; b) suspension of State Certificate; c) annulment of State Certificate; d) limiting prescription of narcotic, psychotropic drugs and other substances containing alcohol; e) other measures provided for by the Georgian legislation. The council granting State Certificates takes the decision about professional responsibility provided for in the sub-paragraphs "a" "b" "c" for senior and mid-level medical and pharmaceutical personnel. The strictest form of disciplinary measure-annulment of certificate is judged by the Court based on the application by the Council. Any decision taken by the Council can be appealed at the Court.

During 2006 the Council approached the Court 3 times with the solicitation of annulling State Certificate issued to the individuals conducting independent medical activity. The Public Defender sent a letter (#225/01 12/02/07) to Gia Tvalavadze, Head of State Agency regulating medical activities under the Ministry of Labor, Health and Social Affairs requesting the information about the above-mentioned three cases. The Head of the agency replied (017/32-4440) informing the Public Defender that the Council approached the court with a solicitation of annulling State Certificate for the following:

1. The violation and the non compliance of the licensing terms by "Kutaisi Regional Blood Bank". According to the Georgian Law on the Donors of Blood and its Components and the Resolution #299/m of 6.08.01 by the Minister of Labor, Health and Social Affairs on the Establishment of Sanitary-Hygiene and Epidemic Requirements to Blood Transfusion Establishments. According to the article published in the "Kronika" newspaper (17-25 October, 2005 #41 206) -"5 people tested positive for AIDS", in addition, according to the study of the results of blood transfusion of a patient Mariam Kintsurashvili who got infected with HIV/AIDS. The doctor responsible in this case was Dr. Mirian Kvirikadze.
2. "Outpatient hospital Asureti-Jorjiashvili" Ltd. For its non compliance with the licensing terms and quality of medical services rendered within the framework of State Health Programs. The doctor held responsible in this case was Dr. Mikheil Tetruashvili.
3. Chiatura JSC "city hospital after Acad. G. Mukhadze"- For the poor quality of medical service rendered to patient T. Kurtanidze leading to his demise. The doctor responsible in this case was Dr. Natela Brolashvili.

The Agency also provided the archived minutes of the meetings of the Council for granting State Certificates to the senior and mid level medical and pharmaceutical personnel, which revealed the following:

- By the decision of the council's #1 meeting on 06.03.06, the issue of annulment of State Certificate in medical specialty issued "public health and health organization" to the former Director of "Kutaisi Regional Blood Bank" Ltd. Mirian Kvinikadze was raised at Kutaisi City Court.
- By the decision of the council's #9 meeting on 19.10.06 the issue of annulment of State Certificate in medical specialty issued "public health and health organization" to Mikheil Tetruashvili, Director of "Outpatient Hospital Asureti-Jorjiashvili" Ltd was raised at Tetritskaro District Court.
- By the decision of the council's #9 meeting on 19.10.06 the issue of annulment of State Certificate in medical specialty issued "general pediatric" to doctor Natela Brolashvili, of Chiatura JSC "City Hospital after Acad. G. Mukhadze" was raised at Chiatura District Court.

We have not received any information from Kutaisi, Chiatura and Tetritskaro District Courts regarding its rulings in the above cases. Despite the fact, that from January 2007 "public health and health organization" is removed from the list of medical specialties and therefore it is not mandatory to have State Certificate for conducting medical activities in this sphere. As a result the implemented sanctions against the above two individuals conducting independent medical activity can be considered as ineffective. The Ministry of Labor, Health and Social Affairs should consider effective sanctions against the persons found responsible in causing harm to the patients' health as a consequence of his/her administrative and organizational activities.

The First Precedent of Studying the Case by the Ministry of Health of a Patient who Died in the Facility of the Department of Corrections

In 2006 the first precedent was marked in the activity of the Sectoral Regulatory Agency under the Ministry of Labor, Health and Social Affairs. It was related to the death of a prisoner Oleg K.. The agency studied the medical service rendered to the patient. According to the information from the agency, it came to our notice, that the evaluation by the Sectoral Regulatory Agency of medical activities regarding the quality of medical service rendered to patient Oleg K was found efficient, while the service of the medical organization was evaluated as inefficient and unsatisfactory in terms of the quality in the management of patient's medical documents.

The administration of #8 high security prison under the Department of Corrections of the Ministry of Justice; M. Dzotsenidze, Director of Kuatisi Ltd. Emergency Medical Service 03; K. Kheladze, Director General of JSC "Dzotsenidze Regional Clinical Hospital"; A. Abuladze, Director of "Chkhobadze Treatment and Rehabilitation Regional Clinical Center for Disabled and Elderly" Ltd. and S. Beshkenadze, Director of JSC "Imereti Regional Infection Pathology Center" were requested to:

- Study the violations and lapses revealed by the commission and take active measures to eliminate them;
- Implement strict disciplinary measures against the persons whose activities caused the violations and lapses revealed by the commission.

The material collected by the agency was forwarded to M. Chogovadze at the Regional Prosecutor's Office for his action. A report was sent to Varlam Mosidze the Deputy Minister of Labor, Health and Social Affairs, and L. Chipashvili the Minister of Labor, Health and Social Affairs was reported about the results of the study.

The Public Defender requested the final report of the forensic medical expert on the death of the 54 year old prisoner from the *Levan Samkharauli National Forensic Bureau* under the Ministry of Justice. It came to our notice that, the decision about conducting forensic medical analysis to the deceased was taken by the investigator M. Sanikidze, from the investigative department of the West Georgia of the Ministry of Justice on 31.07.2006. The examination was conducted (expert's conclusion #97) by forensic medical expert I. Grigorashvili (work experience-26 years). The document does not say anything about the location where the analysis was conducted. According to the analysis report the examination started at 16:30 on July 31, 2006 and concluded on September 6, 2006. The analysis report also mentioned that on July 31, 2006 at 12 midnight the prisoner unexpectedly felt sick, his blood pressure fell and he had symptoms of vomiting and diarrhea. He was moved to the intensive care unit of Kutaisi Regional Clinic at 2 a.m. by the emergency staff. By 10 a.m. the situation was still difficult because the Ministry of Justice did not have an agreement with the clinic for rendering medical service and as per the requirement of the clinic the patient Oleg. K was moved to Chkhobadze Medicinal and Rehabilitation Regional Clinical Center for Disabled and Elderly. At around 11:30 a.m. with the purpose of diagnosing the patient with the presumed diagnoses of intoxication, he was moved to Kutaisi Infectious Hospital where by the preliminary estimation the patient died from heart failure at 12:05 p.m.

Forensic medical diagnosis read as: severe cardiovascular insufficiency, severe coronary sclerosis, post-infarction focal scars of myocardium, bronchopneumonia, focal emphysema, liver cirrhosis and nephrosclerosis.

External examination-corps is cold (?). Corps torpidity is obvious in every muscle (?).

Remarks on the expert's conclusions:

1. Adequate medical assistance was not rendered.
2. It is doubtful that after 4-5 hours from death the corps was cold and torpidity was obvious in every muscle.
3. In the description section, the sizes of lungs are not indicated and the sizes of kidneys are indicated together.

The conclusive part of the document says that "the reason for death is severe cardiovascular failure, severe coronary sclerosis, and post-infarction focal scars of myocardium, bronchopneumonia, focal emphysema, liver cirrhosis, and nephrosclerosis. Despite that it is not clear what caused the clinical signs (myocardium infarction) described in the medical records and conclusion report of the state regulatory agency of medical activities. The question remains unanswered, why was it necessary to transport the patient within short period of time to 4 different medical establishments? Was the infectious disease pathologically confirmed? (Expert opinion was not taken at all) what caused shocking situation? Heart failure caused by coronary sclerosis does not explain rise in temperature, low blood pressure, diarrhea, toxic infection etc. It would be interesting in the absence of infectious disease, why the patient was moved to infectious hospital? If separate pathological test was not carried out on the infectious disease, intoxication and myocardium infarction, then why wasn't the possibility of Doctor's mistake being raised?

The sectoral regulatory agency for medical activities under the Ministry of Labor, Health and Social Affairs actively cooperates with the Public Defender's office from 2006. We always receive complete answers to our

queries and correspondences in a timely manner from the agency which is important for monitoring implementation of the "right to health". But there are spheres where the agency needs to cooperate more actively with us. The Public Defender's office sent a letter to the State Regulatory Agency of medical activities describing the alarming and hazardous situation in the medical facilities of the department of corrections, Based on the Georgian Organic Law about "Public Defender", the Public Defender requested from the head of the agency to study the quality of medical service rendered to the patients at the above medical facility and the observance of recording medical documents. The agency has not replied to this request in the timely manner.

The Case of the Patient Murman O.

Citizen Ketevan C. applied to the Public Defender with the request to study the case of her husband Murman O.

From the attached materials it came to our notice, that Ketevan Chantladze sent a letter to the Ministry of Labor, Health and Social Affairs on September 13, 2000 #05/35-101. In her letter she was requesting the commission to study the quality of medical service rendered to her husband at the Urology National Center and the targeted expenditure of the money transferred to the center for the medical treatment. This case was studied on July 28, 2000 by the Health and Social Affairs Municipal Service.

The study of medical records of patient Mumran O. revealed that the patient experiencing the symptoms of disuria visited the National Urology Center on December 2, 1999. The preliminary diagnosis was urolithiasis disease. As a result of clinical-diagnostic examination the patient was diagnosed with "renal cavernous tuberculosis with side decease-left renal segment stone» on December 7, 1999.

We found out from the patient's medical history that Murman O. visited the same clinic in 1996 where he was diagnosed with tuberculosis of urinary tract and referred to the specialized clinic.

On December 9, 1999 the patient consulted with Professor L. Managadze and the visiting professor from Germany R. Hohenpheler, With the purpose of ascertaining final diagnosis the patient was asked to undergo uretherocystoscopy, trans-urethral biopsy and urethero-renoscopy.

The patient underwent the above operations under peridural anesthesia on December 13, 1999. The operation confirmed the clinical diagnosis: "renal cavernous tuberculosis, left renal segment stone". Professor L. Managadze consulted the patient again on December 20 and on December 23 the patient had consultation with TB specialist V. Katsitadze. The diagnosis remained unchanged followed by the anti-tuberculosis treatment initiated by the TB Specialist. On January 18, 2000 the patient underwent percutan nephrostoma and later discharged from the hospital on January 25.

Because of nephrostoma dislocation the patient visited the clinic again on February 23 and underwent nephrostoma the same day. He was discharged from the clinic on February 28.

The patient revisited the clinic for the third time on May 22. He had consultation with Professor L. Managadze and Professor R. Hohenpheler, in which it was decided that the patient would continue taking anti-tuberculosis treatment course for the following 9 months. The patient was discharged from the clinic on May 29.

It must be noted that the patient was simultaneously registered and taking treatment course at the institute of tuberculosis and pulmonology from March 6, 2006 to July 12 for the diagnosis: right renal fibro cavernous tuberculosis, nephrosclerosis, urethero hydronephrosis, obliteration of the ureter, right nephrostoma, left renal cavernous tuberculosis, pyelonephritis, and chronic insufficiency of sub-compensated kidney. For further conservative treatment he was referred to III tuberculosis center for 2 months. The patient was advised that later he would have to take control urology-radiology examination to decide about the operation.

Total cost of medical examinations and treatment at the urological center amounted to 1716,75 GEL. The expenses were as follows:

- Medications – 96,75
- Clinical analysis – 252,00 GEL
- Operation – 1008, 00GEL
- Consultations Fees – 359,25 GEL

The accounting office of the clinic returned 66 GEL to patient's spouse for the purchase of medications on their own expense.

A total of 1437 GEL was transferred on different occasion for the patient's treatment from the State medical insurance company and health and social affairs municipal service, which has a shortfall of 345,75 GEL compared to the actual cost of medical assistance rendered at the clinic. 937,00 GEL was transferred from the State medical insurance company to the account of the National urology center #440 28.12.2000 (for operation: pyelolithomy). Health and social Affairs municipal service transferred 500 GEL to the account #68 25.02.00 of the urology clinic for cystenostomy.

It must be noted that the patient Murman O. was given qualified medical service at the urology center. Based on clinical-diagnostic examinations he was diagnosed and treated, but unfortunately there were faults in this process:

- The patient visited the clinic on December 2 with the diagnosis of urolithiasis disease. On December 7 he was diagnosed with renal cavernous tuberculosis. The TB specialist initiated his treatment not before December 23. The patient was supposed to be moved to the specialized clinic (like in 1996), instead he remained in the same clinic for the next 54 days. The urology center does not have the license for treating tuberculosis diseases (information: 18.09.00-department of standardization, norms and licensing under the Ministry of Labor, Health and Social Affairs).

- If the focus was on treating urolithiasis diseases during the treatment, then the requested amount of 937 GEL for pyelolithotomy by the clinic on December 28 was a delayed request. The patient did not undergo this operation as well as cystenostomy for which the urology center requested 500 GEL on 25.02.00.

If the request for the payment was legitimate and treatment course changed later the patient or his family members were supposed to be informed about it. The discrepancy between the expenditure and the information provided was the reason for the patient and family members' protest. It must be said that the faults were found in recording medical documents of medications.

Comparing the prescription in the medical card (#1622) and medications given to the patient from I urological department we found out that 59% of the prescribed medications were not given out from the clinic's internal pharmacy. Among them essential medications for the clinic (such as: lidokaine, glucose, streptomycin).

After examining pharmacy's log books and the log book of the urological department we found out that number of medications (vitamins, glucose, syringes, noshpa), purchased by the patient's family were available at the clinic during that period.

The log book was checked on the use of Dimedrol (medication under special control) for the patient. According to the prescription 7 ampoules of dimedrol were used on the patient and according to the log book 9 ampoules were used (but money was requested for 7).

- The use of dimedrol is not registered in the patient's medical history;
- The rules of purchasing, possessing and using narcotic drug morphine hydrochloride are violated. In particular the patient was given morphine on 02.12.99 and on 24.12.99 and according to the records the Department had this medication available in October (therefore paragraph 6 of the resolution #361/n of the Minister of Labor, Health and Social Affairs is violated).
- There is no log book in the department on narcotic drugs and medications under special control (such log book was functional till 11.99).
- Medicament "phloxsan" from the stock of humanitarian assistance was not issued to the patient Murman O. According to the Pharmaceutical Department this medicament is not registered (information from the department of medicament and pharmaceutical activity 19.09.00 #1401/922).
- There are no records in the prescription or log books of Murman O. regarding the 50% reduction of medications. Therefore it is not clear how many medicines were used.
- The accounting card indicates 76,13 GEL requested for the medications (with the exception of 2 ampoules of dimedrol) which corresponds to the cost of medications issued to the patient from the facility.
- Patient Murman O. was again hospitalized at the urology center on 23.02.00 till 28.02.00, medical card #234. Diagnose: urinary tract tuberculosis. He took the treatment course. The picture is analogical: 50% of the medications were not issued from the clinic's internal pharmacy. The patient was prescribed dimedrol from 24.02 to 28.02 (4 ampoules). This medication is not registered in the records.
- The patient was hospitalized for the third time from 22.05.00 to 29.05.00, medical card #683, diagnose: urinary tract tuberculosis. Prescription of medications is not registered in the medical card.

Other faults were revealed as well which were corrected at the place and the management of the clinic was advised to pay more attention to the observance of conducting financial and medical records.

The Public Defender's office applied with a recommendation to Isani-Samgori District Prosecutor's Office to provide expertise. At the same time the investigation started on the financial violations which were mentioned in the report of Lira Topuridze, head of the controlling body of the Ministry of Labor, Health and Social Affairs. According to the report 500 GEL for cystenostomy and 937 GEL for pyelolithotomy were allocated from the State Budget but the patient did not undergo any of these operations. There is a serious doubt that this money was appropriated. The report of Lira Topuridze also mentioned that when comparing desiccations prescribed to the patient we found out that 59% of the medications were not issued from the clinic's internal pharmacy but were purchased by the family of the patient. Most of those medications were available at the clinic during the given period of time. Despite our request the prosecutor's office of Isani-Samgori district did not pay attention to the above circumstances. Meri Goglidze, Deputy Prosecutor of Isani-Samgori district prosecutor's office indicated that according to the studied materials the patient Murman O. was rendered qualified medical service. The letter #01/20-08-484-07 of Isani-Samgori prosecutor's office said that the medical treatment of M. Odiashvili at the urological national center amounted to 1716, 15 GEL which included the cost of medications, tests, operations and consultation fees.

The Public Defender's letter of 30.01.07 had attachment of two copies of medical history created at different medical facilities at the same time. In particular the medical history #683 of Murman O. at the urological national center and extract from the medical history of Murman O. from the Scientific-research Institute of tuberculosis and Pulmonology. According to the medical history of the urological national center Muramn O. was undergoing treatment during May 22-29, 2000. According to the extract from the medical history of the Scientific-research Institute of tuberculosis and pulmonology Murman Odiashvili was taking treatment course there from March 6 to June 12, 2000. Therefore the patient was undergoing medical treatment at two medical facilities simultaneously

On November 15, 2000, the deputy prosecutor V. Grigalashvili from Isani-Samgori district prosecutor's office paid attention to this circumstance. He instructed the head of the investigation department M. Metreveli to

study the circumstance and find out which medical establishment created false medical history. The Public Defender's office sent a letter on 30.01.07 to the district prosecutor's office requesting information about the findings of the investigation. The letter from the district prosecutor's office (13/02/2007 #01/20-08.484.07) did not provide us with the requested information. The Public Defender's letter (30.01.07) had an attachment of a letter from the department of medical and social expertise #45. According to the letter the senior expert of the expertise policy section of the same department Lali Papulashvili's wallet and the file containing the medical history of Murman O. was stolen at the minibus #50. According to the letter Lali Papulashvili notified Gldani-Nadzaladevi district 4th police station about the theft. The Public Defender's letter had an attachment of the letter #551/1-640 from Gldani-Nadzaladevi district 4th police station which does not confirm that Lali Papulashvili notified the police about the theft.

The letter of Isani-Samgori district prosecutor's office (13/02/2007 #01/20-08.484.07) indicated that on February 5, 2007 Isani-Samgori Internal Affairs Department sent a letter to the Minister of Labor, Health and Social Affairs urgently requesting for specialists. It is not clear to us why the investigation requested for specialists when the provision of specialists is within the competence of the national expertise bureau.

Furthermore, the patient Murman O. was at the VIA-Vita Ltd. center of treatment of dialysis by effective methods from January 31 to February 4 of the current year. His condition was evaluated as very serious: chronic insufficiency of kidney (terminal stage). He was prescribed haemodialysis 3 times a week. Carrying out medical examinations on a patient in this condition is critical for his recovery.

The Public Defender's recommendation is still neglected. The investigation is delayed and there is an impression that the investigator and the prosecutor are not interested to determine the truth about the case. The following questions to the investigators, as to why were there two medical histories at the same time on a single patient, which one of them was false?, was the State Funds allocated for Murman O's treatment spent efficiently? And why the expertise was delayed?., still remain unanswered.

39 CONSUMERS' RIGHTS

(NUTRITION POLICY AND THE EXISTING SITUATION)

In 1992 the conference organized by the International Health Organization elaborated a declaration and an action plan on the nutrition problems. By adopting the declaration the member countries (Georgia among them) assumed the responsibility to elaborate national plan of action in shortest period of time and ways for its speedy implementation.

The conference took into consideration the fact that the elaboration of nutrition policy for the benefit of health improvement was relatively a new phenomenon for many member countries.

Taking the above into consideration, the conference included the strategies in the nutrition policy to help elaborate national plans. These strategies are:

- Inclusion of nutrition goals in the sphere of program and policy development ;
- Protection of consumers through improved quality control of food and security;
- Prevention and treatment of infectious diseases;
- Support to breastfeeding;
- Taking care of the targeted groups of homeless and socially vulnerable;
- Prevention of insufficiency of certain micro-elements in food products;
- Promotion of the healthy way of life and healthy nutritional diet;
- Evaluation, analysis and monitoring of the situation in the field of nutrition;

It would fair to say that our country does not have a nutrition policy and that it is being effectively implemented or that all the above listed strategies exist and function as they should, although in the recent years aided by the reform in the public health system, the public health protection department and the State inspection of sanitary-hygiene, rules and norms were established with the purpose of promoting healthy way of life, prevention of infectious diseases and improving food quality and security. The above organizations could have contributed to the development of healthy nutrition policy and rational utilization of resources in this sphere.

The State program promoting health and establishing healthy way of life was elaborated (1999-2005). One of its goals was to establish the habits of correct nutrition. This implied:

- Elaboration of nutrition ration norms and standards;
- Indication of the chemical and other ingredients on the locally produced food products.
- Print brochures and other materials about healthy diet.

The directions included in the program are partly implemented. Sanitary-hygiene normative acts and

standards should be elaborated on regular bases. Sanitary-hygiene production technologies change on a constant basis, new products are produced and introduced at regular intervals and living conditions change, therefore standards for certain nutrition ingredients change as well. This means that the country should elaborate and update them on regular basis taking into consideration the changes and the requirements, but unfortunately it's been two years this process has not been updated due to lack of funds.

It must be noted that the millennium development goals in Georgia include (goal 1) elimination of extreme poverty, and the particular task indicates that by 2000-2015 the number of population with unbalanced nutrition ration should decrease to half. The indicators for achieving the above goal are:

- Number of underweight children (up to five years old);
- Indicator of consumed food energies by the socially vulnerable;
- Use of micro-elements in regard to the recommended daily diet;
- Share of the expenditure on domestic products;

One of the goals of the above strategy is the improvement in the quality of food and security.

With this purpose the Public Health Department elaborated a State Program for the Prevention of Health Problems Caused by the Deficiency of Iodine and other Micro-Elements". During the implementation of the Program a number of violations were revealed in the area of nutrition of the population, which poses threat to their health (deficiency of iodine, iron deficiency anemia, deficiency of number of vitamins etc). Unfortunately due to variety of reasons (inconsistent financing etc.) the program could not reveal all the violations in the area of nutrition of the population.

Later in March 2005 in the framework of improving food quality and security, and the elaboration of the national strategy the European Program of Food Security of the World Health Organization, the Georgian Ministry of Labor, Health and Social Affairs together with the Organization of Food and Agricultural Products and Irish Administration held a seminar to create State level working group of food security. The group was supposed to include the representatives of all the ministries and institutions involved in the area of food security. They were supposed to prepare the country profile and the national food security strategy. In 2006 according to the law the "national service of harmless food, veterinary and plants protection" was created.

One of the strategic directions is the prevention and treatment of infectious diseases which is mainly carried out by the national center of disease control.

As for the below listed strategies like support in breast feeding and taking care of homeless and socially vulnerable, these activities are carried out by the international organizations (UN and UN Children's' Fund), pediatric institutions and with the support of humanitarian society.

I would be unfair to say that the strategy of prevention of insufficiency of certain kinds of food micro-elements is neglected. There has been a lot of work done in this area to prevent the diseases caused by the insufficiency of iodine.

There is a research being carried out to reveal the violations among the population caused by the insufficiency of iron and to elaborate preventive measures. At the same time, it is desirable to have a research in this area which is more intensive and in a larger scale.

It must be noted that there are positive signs in this respect. The non-governmental organization "Improved Research Alliance in Georgia" held a presentation at the parliament of the national program of overcoming anemia.

Nothing has been done to develop such strategies as promotion of healthy way of life and correct nutrition ration; evaluation, analysis and monitoring of the situation in the area of nutrition.

A lot needs to be done today in the aspect of healthy nutrition (conducting correct nutrition policy). Economic, legislative and material base needs to be elaborated.

- The work towards the improvement of normative base in the field of food production and its realization has been initiated, but it is not enough. The country lacks a number of important normative documents without which it is impossible to achieve the result. In parallel with the elaboration of new documents the existing base needs to be revised constantly.
- The existing social-economic condition in the country has an impact on the population's health and nutrition. It is widely accepted that once in every 5-6 years the State should study the situation in the area of nutrition and health to reveal violations, improve nutrition structure and regulate the share of products used extensively. Research of such scale has not been carried out for the last 20 years in our country apart from several pilot researches (with the support of public health department). Such researches would help us reveal the deficiency level of food substance, develop correct regional programs of nutrition, improve nutrition structure and increase the production of products of high nutritional and biological value.
- With the purpose of elaborating nutrition norms, the issues of the population's health and nutrition needs to be studied (based on age and profession: army units, adults' and children's groups, penitentiary system etc);
- It is equally important to improve the State control system over the quality of food products and raw materials. In this case the recommendations and the requirements of the international organizations (World Trade Organization, World Health Organization, and World Food Organization) need to be taken into consideration.
- Changes in the composition of food products consumed reflect on the population's health condition and on the children's and adults' anthropometric indicator very fast. We don't have a country wide anthropometric research indicator not only for the last 10 years but from the 80-ies of the past century. This fault needs to be corrected and an anthropometric data base of the country's current generation should be created to do comparisons in the future.
- A laboratory should be established to keep control over food products and raw materials produced through genetic engineering. Food products should not harm people's health.
- Urgent measures should be taken to develop nutrition norms for pre-school and school children and to improve the relevant normative acts for organizing correct nutrition.
- The nutritional diet provided at the medical-preventive facilities is substandard. With the purpose of studying the situation in this area, a research was carried out supported by he Sanitary-hygiene Scientific-research Institute after G. Natadze and the Department of Standardization and Norms. The findings of the research are unfavorable with a few exceptions (The Center for Treatment of Tuberculosis and Lungs Diseases). Nutritional diet needs to be improved at all medical facilities and these establishments need to employ qualified staff.

The implementation of the above strategies is possible through joined efforts of the management of different segments, international organizations, non-governmental organizations and private sector.

PROTECTION OF CONSUMERS' RIGHTS IN GEORGIA
(CONSUMERS AND SAFETY OF FOOD PRODUCTS IN GEORGIA)

In 1991 UN General Assembly adopted a resolution on the Guiding Principles for the Protection of Consumers' Interests" which includes eight main principles on the protection of consumers' rights:

- Right to security;
- Right to be informed;
- Right to listen;
- Right to choose;
- Right to be reimbursed;
- Right to education;
- Right to healthy environment;
- Right to basic needs;

In the developed countries of the world the consumers' rights are protected based on the above eight principles.

The consumers' rights in Georgia are guaranteed by the Georgian Constitution, Article 30 (2). In addition, based on the Constitution the consumers' rights are protected by the civil code, the Georgian Laws about "protection of the consumers' rights", "certification of production and service", "standardization"', "food safety and its quality" and other normative acts.

For years the Georgian anti-monopoly service, "Sakstandart", sanitary-epidemiology supervisory service, Ministry of Environment and Natural Resources and some other agencies were conducting supervision over the consumers' rights and food security. Until 2003 "Sakstandart" comprised of standardization, accreditation, meteorology, certification, control and supervisory departments. This organization was responsible for setting standards, accredit ting of laboratories, determining the types of meteorological equipment and conducting supervision and control over the consumers' market.

Based on the assumed responsibilities towards the World Trade Organization, World Bank and the European Union "Sakstandart" was supposed to be relieved from all other functions and focus upon updating and setting standards, bring them to the consumers and register them, which did not happen because of the abolition of this organization.

The national service of harmless food, veterinary and plants protection under the Ministry of Agriculture and is in charge of the issues of harmless food and its quality. The spheres field energy and communications are supervised by the Georgian National Regulatory Commission and the service of the consumers' rights protection at the Georgian National Communications Commission. But as we already mentioned the unified supervisory body in many areas has not been created. For example the rights of the consumers in industrial-domestic, construction, children's toy, clothes and other spheres are not protected.

In December 2005 the Parliament of Georgia adopted the law "about food safety and its quality". According to the first article of this law "the law aims to protect the health, life and economic interests of the consumers in regard to the food and takes into consideration the effective functioning of the local market and its diversity".

According to the results of the monitoring of the consumers' market held in the current year by the non-governmental organization "union XXI century", out of 50 types of examined products only 3 satisfied all the requirements. The following types of violations were revealed: terms of storing and selling; violation of relevant standards and sanitary-hygiene requirements; outdated products or no information on expiration date; absence of labels in Georgian language (violation of the article 6 of the law about "protection of consumers' rights").

If we compare the results of the monitoring of 2004 and of the current year we will see a very unfavorable situation:

	2004	2005
Certificate of adequacy or safety document	13%	0
Violation of selling conditions	87%	60%
Label in Georgian language	20%	42%
Violation of expiration date	27%	34%

As we can see from the chart the improvement is only seen in the decrease in violation of storage conditions (from 87% to 60%) which is the result of the increased number of super markets where storage conditions are more or less safeguarded.

Labeling

According to the article 6 of the Georgian Law about "the protection of consumers' rights" "manufacturing dealer is supposed to provide the consumer with the necessary, true and complete information about the product (Para 1) and "the information should be provided to the consumer in the Georgian language" (Para 2). In order to get a clear picture of the situation in the consumers' market we should analyze the results of the monitoring.

Despite the requirement of the law the market is full of products without Georgian labels. It may be argued that according to the recently added article 36 1 Para 3 "Until June 1, 2008 State control over safety of food/ animal food is conducted in special situations according to the rules established by the Government of Georgia". What does "special situation" mean or what is considered to be the "special situation?"

The purchase of 24 types of products without Georgian labels during monitoring is a "special situation" (one can ascertain at any super market that 80% of the imported products don't have labels in Georgian language). The most obvious is the fact that compared to 2004 (when the supervisory agencies to some extent were functioning) the number of products without Georgian label became twofold. It must be noted that the monitoring was held only on the food products. The situation with industrial and household products, construction materials, children's toys and clothes and other items is much worse. Information in Georgian language is not available for household equipment and other products, which is mandatory. This is a violation of the Article 6 of the Georgian Law about "the protection of the consumers' rights"

Certificate of Adequacy

Article 361 Para 5 of the Georgian Law "about food safety and its quality" stipulates that "until February 1, 2007 the Government of Georgia shall establish rules of issuing hygiene certificate of food and food related products and shall ensure the smooth functioning of this system" according to which Georgia shifts to hygiene package certification. Unfortunately there is no State Agency at the consumers' market requesting document of product adequacy in the form of adequacy certificate or application or declaration.

Selling Conditions

The monitoring covered Tbilisi, Rustavi and Marneuli markets including several big super markets. According to the conditions of storage and selling the supermarkets in most cases met the specified terms which is not true in the case of markets. (Although, there are lots of instances at the super markets of salespersons selling unwrapped bread without gloves).

The situation is the same at every market. There is total unhygienic situation. The conditions of selling meat and meat products, diary products, fish, pastries with cream and eggs are violated. Food products are sold in the open air. Different products that should not be kept, transported or sold together are next to each other on the counters, such as food products and detergents etc. Food products are not protected from dust and other type of pollution. It is impossible to determine expiration date for many products or the products are actually expired or full of emulgators and other artificial additives.

Metrological Services are practically not functioning; scales used during the sale are not checked.

Food Additives

Food additives are natural ingredients or chemical substances which are added in small quantities to food products with the purpose of increasing its cost, improving its appearance or prolonging its expiration date. Together with these positive qualities some of the food additives cause side effects which lead to different diseases in people, which is the reason why the leading scientific institutes of the world are conducting regular researches in this direction.

There is a list of potentially dangerous food additives which may lead to different diseases. Use of 6 types of food additives is forbidden in Georgia but according to the product label it is not possible to learn about the ingredients of the product.

Comments about the amendments to the Georgian legislation in regard to food safety

According to the amendments to the Georgian Law on Food Safety and Quality enforcement the regulations defined by the Law regarding the safety of food products has been postponed, which refers to the deadlines – earlier specified in Articles 22, 23 and 30 for the enforcement of the regulations on January 1, 2009.

The above articles deal with the inspection, its general principles and annual reporting and planning of the services. The draft law envisaged postponing the deadline till January 1, 2009, however the amendments (29.12.2006) indicate a date of June 1, 2008. Also Article 361 Para 3 stated that the State control over safe food/animal food was to be conducted in special situations according to the rules established by the Government of Georgia until January 1, 2009. According to the amendments made (29.12.2006) the term was changed to June 1, 2008.

Article 36, Para 8 refers to the implementation of the findings, threat analysis and introduction of critical letter system of control (29.12.2006) which was postponed till January 1, 2010 based on the amendments.

It must be noted that the Law on Food Safety and Quality was adopted a year ago, on December 28, 2005, though the enforcement of its certain articles was postponed.

Currently when the Georgian markets are full of products of uncertain origin and it is practically impossible to do threat analysis it would preferable to limit the deadlines for the purpose of ensuring safe food products for the population. There is a legislative initiative of a draft law about amendments to the Georgian law about "implementation of biological agro-industry" (adopted on June 25 2006 should come into force on March 1, 2007). The amendments deal with the article 18 to postpone the enactment of the Law from March 1 to October 1, 2007.

Article 13:

1. State Certificate is a certificate approving the right to private veterinary activity, which defines the scope and deadlines of private veterinary activity.
2. The form of the State Certificate is approved by the Ministry of Agriculture in agreement with the Ministry of Education and Science.

The explanatory report stated that the "accreditation of the biological agro-industry assessment entity is quite difficult and lengthy process, by the experts' estimates the process could last till March or April while the terms of establishing bio-industry should correspond to the given law and the requirements defined by the relevant standards which is unrealistic due to lengthy procedures. That is why we think it is advisable to postpone the enforcement of the Law from March 1, 2007 to October 1, 2007."

Assessment of food products by the biological agro-industry and its further improvement is very important however, it is not clear why the Law was adopted in a hurry. It is also not clear to us why the explanatory report refers to the "experts' estimation" while concluding that the experts did not take part in the elaboration of the draft Law.

We think that postponing the enforcement of the Law until October will result in the absence of supervision over the products of biological agro-industry for one more year. It must be noted that it was possible to involve the experts and the specialist of this field in the formation process of the unified national accreditation center.

The amendments in the above two laws are partly related to the amendments to the law about "State Certification rules of veterinary doctors" (adopted on October 24, 2004, came into force on April 1, 2005). According to the article 49 the Ministry of Agriculture passed the following resolutions:

1. "About approving qualification training programs of veterinary doctors in regard to State Certification";
2. "About creating certifying council of veterinary doctors";
3. About approving the list of private veterinary specialties and veterinary high schools of State Accreditation";

The above by-law-acts created legal basis for certifying veterinary doctors. It was technically impossible to certify all the veterinary doctors by December 31, 2006 and by the presented draft law the certifying deadline was given until December 31, 2007 and from January 1, 2008 veterinary doctors without State Certificate for private veterinary activities will be forbidden to continue their activities.

This means for another year the issue of veterinary estimation of food products will not be improved and regulated by the law. Providing population with healthy food is guaranteed by the right to health according to the Georgian Constitution. In connection to the above, we can easily conclude that the local consumers' market presently is full of harmful products of local and foreign origin that in most cases endanger heath and life, needless to say anything about the protection of the citizens' rights guaranteed to them by the Constitution and other normative acts (Article 30, Para 2 of the Georgian Constitution, Articles 336, 342-248 of the Georgian Civil Code; Law on the Protection of Consumers' Rights etc).

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