PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

2016

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საქართველოსთვის

The European Union for Georgia

PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

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Introduction

This document is the report by the Public Defender of Georgia on the protection of human rights and freedoms in Georgia in 2016. The document has been developed under Article 22.1 of the Organic Law of Georgia on the Public Defender and submitted to the Parliament of Georgia.

The Report reviews a wide spectrum of human rights, emphasising the positive and negative trends identified in the reporting period. Furthermore, it brings together the key recommendations made by the Public Defender for the various branches of the government.

It is noteworthy that the Parliament of Georgia took into account the substantial part of the recommendations made by the Public Defender of Georgia in his Report of 2015 and, by the relevant resolution, tasked public entities to take concrete measures. To this end, the implementation of the Public Defender's recommendations is monitored by the Human Rights Protection and Civic Integration Committee of the Parliament of Georgia. Unfortunately, numerous most significant recommendations remain unfulfilled which creates serious risks in terms of human rights protection in the country.

The Public Defender of Georgia welcomes the statutory approval of the procedure for the parliamentary control of hearing and fulfilment of the Public Defender's recommendations. This was accomplished by the eighth Parliament of Georgia in the reporting period through an amendment made to the Rules of the Parliament. However, the Parliament of Georgia should not be making selective choices among the recommendations made by the Public Defender and modify them in the parliamentary resolution. It could so happen that some of the most critical recommendations directed to the Government of Georgia and aimed at securing a higher standard of human rights protection were not displayed in the parliamentary resolution. This will in turn weaken the parliamentary control of the executive. It is, therefore, desirable that the Parliament of Georgia reproduced the recommendations, in the way they were presented in the Report, in the resolution taken after the hearing of the Public Defender's Report.

In the course of the reporting period, the number of applications lodged with the Public Defender's Office continued to be high. In 2016, 8827 applications/appeals were received, which is a high indicator and shows both awareness about the Public Defender among the population and their heightened expectations from this institution.

In the reporting period, there were incidents where several state agencies, including the Ministry of Internal Affairs of Georgia and Tbilisi City Court, failed to submit the information and materials requested by the

Public Defender. The absence of the data processed in the form as requested by the Public Defender was the reason cited for the failure. This is evaluated as a wrong practice. Such approach, apart from amounting to breach of law, significantly hampers the activities of the Public Defender and cannot be justified.

In the course of 2016, the Georgian authorities, stemming from the obligations, undertaken at international and national levels, continued reforms in the justice system and law enforcement bodies. However, there are still numerous challenges such as the absence of effective mechanism for civic monitoring of the security system.

Within the third wave of the justice reforms, the Parliament adopted, with a significant delay, the law providing for one of the key recommendations of the Public Defender on introducing electronic case-management in the court system. However, this provision will be enforced only from 2018.

In the reporting period, considerable criticism was expressed concerning the legislative amendments adopted that could undermine the Constitutional Court's prompt and effective functioning.[1] The Plenum of the Constitutional Court declared a number of legislative amendments as unconstitutional[2], which is positively assessed.

In 2016, the Public Defender proposed to the Parliament of Georgia and the State Constitutional Commission to extend the authority of the Constitutional Court. According to the initiative of the Public Defender, as an exception, within a year after the enforcement of the law at stake, it would be possible to appeal legally binding judgments of the courts of general jurisdiction before the Constitutional Court of Georgia. This would, in a way, reflect the public demand for restoration of justice. However, the Parliament of Georgia limited its deliberations to a parliamentary committee and the Public Defender's proposal was not followed up further. At this stage, neither the draft law of the Constitutional Commission contains a positive feedback on the issue.

The imposition of the undertaking not to divulge information on the defence by the Office of the Chief Prosecutor of Georgia in the high-profile so-called *Cyanide Case*, whereas the prosecution itself made public various details of the case, should be assessed as a breach of the equality of arms.

The Public Defender welcomes the amendments made to the Imprisonment Code, under which, as of 1 September 2016, the Public Defender/Special Preventive Group may take photos in penitentiary establishments.

The Public Defender positively assesses the decrease in the total number of accused/convicted persons[3] in the reporting period. However, this number is still high in comparison to the average European indicators. It is important that the penal policy of the country should be aimed, to the maximum degree, at using non-custodial measures, rehabilitation of convicts and their social integration, especially in those cases where minor crimes have been committed.

Prevention of violence among prisoners, taking effective actions against criminal underworld of the prison and maintaining good order remains a serious challenge in penitentiary establishments. This is preconditioned, among other factors, by scarcity of rehabilitation and re-socialisation activities in penitentiary establishments. The infrastructure of the closed-type establishments does not allow its inmates to follow sport or be engaged

1 See the statement of the Public Defender of Georgia, 16 May 2016, available at: http://www.ombudsman.ge/ge/news/saxalxo-damcveli-exmianeba-parlamentis-mier-sakonstitucio-sasamartlostan-dakavshirebit-migebul-sakanonmdeblo-cvlilebata-pakets.page [Last visited on 3 February 2017].

2 See judgment of the Constitutional Court no. 3/5/768, 769,790, 792 of 29 December 2016, available at: :http://www.constcourt.ge/ge/legal-acts/judgments/3-5-saqartvelos-parlamentis-wevrta-djgufidavit-baqradze-sergo-ratiani-roland-axalaia-levan-bejashvili-da-sxvebi-sul-38-deputati-saqartvelos-moqalaqeebi-erasti-djakobia-da-karine-shaxparoniani-saqartvelos-moqalaqeebi-nino-kotishadze-ani-dolidze-elene-samad.page [Last visited on 3 February 2017].

3 As of December 2016, the total number of accused and convicted persons went down by 382, in comparison to the similar period of 2015.

in other activities; this negatively affects their health and wellbeing. The rising number of incidents of placing prisoners in solitary confinement cells as a disciplinary penalty and uneven application of disciplinary penalties in general remain problematic.

The administration of penitentiary establishment is still authorised to visually observe a prisoner's meeting with the Public Defender/members of the Special Preventive Group, which violates the principle of confidentiality underlining these meetings.

Monitoring conducted in 2016 showed that the problem of ill-treatment of arrestees by police is still a pressing issue. Compared to 2015, in the reporting period, the number of persons placed in temporary detention isolators is reduced; however, there are a higher number of complaints against police, and incidents where persons with bodily injuries were placed in the isolators. In the past four years, the average number of placement of arrestees with injuries, as well as the complaints lodged by inmates against police, is the highest in 2016. Furthermore, in 2016, the number of incidents of inflicting injuries during arrests or thereafter has also increased in comparison to 2015.

One of the problems that persisted in the reporting period is the notorious practice of 'interviews' conducted in police vehicles or police stations without the consent of the persons concerned, which was dealt with in the 2015 Parliamentary Report of the Public Defender. Those persons who recently left a penitentiary establishment, or those who are perceived as a risk group by police, due to their criminal past or other reasons, are the main target of this practice.

Practising the so-called 'interviews' does not ensure citizens' safety during their interaction with police. The case of D.S., who committed suicide, could serve as one of the examples. In the letter supposedly written by him, found after his death, D.S. wrote about psychological pressure exerted on him by police in order to close a drug case. The case of D.S. should be investigated thoroughly and effectively in order to establish the truth in this matter.

As the result of the inspections carried out by the Special Preventive Group, it was revealed that in a number of cases the time of admission of persons to a police station precedes the time of their formal arrest. In such cases, usually, a person is summoned as a witness, certain investigative actions are conducted with his/her participation and, after the lapse of certain time, the person is formally arrested. However, the person is not read his/her rights (among them, right to a legal counsel) when he/she is brought as a witness to a police station, his/her personal items, including mobile phone, are taken away. This way, these persons are purposefully restricted in their rights to contact their family and call a lawyer.

It is an alarming trend that, out of the studied case-files, almost in half of the cases arrestees did not have a lawyer at all.

The Public Defender welcomes the approval of the Instructions on Medical Assistance of the Inmates of Temporary Detention Isolators, introduction of a five-day term for the consideration of complaints lodged from temporary detention isolators, the statutory regulation of the provision of inmates with envelopes for confidential complaints as well as the determination of minimum term for storing video-recordings. However, it is still a problem in 2016 to have adequate coverage of external and internal premises of police divisions by video cameras.

The Public Defender observes that, along with the positive changes, the negative trends identified in 2015 still unfortunately continue to persist in 2016. The data processed by the Special Preventive Group shows that the use of excessive force, physical and psychological violence exerted after arrest, failure to provide arrestees with adequate safeguards and shortcomings in documenting bodily injuries remain a challenge for the police system.

Therefore, the Public Defender observes that it is particularly important to introduce strict control on policing and increase their accountability. It is necessary that police officers receive a clear message from their superiors that violation of human rights will not go unpunished.

In 2016, similar to 2015, the number of incidents of alleged ill-treatment by police exceeded the number of incidents of alleged ill-treatment by the employees of the penitentiary system. Compared to the previous year, the number of referrals of the incidents of alleged ill-treatment for instituting investigation by the Public Defender to the prosecutor's office has decreased by one third. However, unfortunately, the work of the Prosecutor's Office of Georgia done in terms of investigation of the crimes of torture, inhuman and degrading treatment and bringing those responsible to justice is still ineffective. In the past four cases, criminal prosecution was instituted in none of the incidents of alleged ill-treatment, referred by the Public Defender. Accordingly, similar to the years of 2013-2015, the recommendation of the Public Defender is the same concerning the creation of an independent investigative body for ensuring effective investigation of the incidents of alleged ill-treatment by law enforcement officials and in the penitentiary system.

Unfortunately, legal aid at the state's expense is not provided for torture victims, either at the legislative or administrative level.

In the reporting period, the Public Defender paid significant attention to the incidents of violation of human rights occurred because of the repressive anti drug policy. For changing the existing practice, the Public Defender applied to the Constitutional Court and requested the examination of the constitutionality of the regulations of the so-called street drug testing as well as the constitutionality of deprivation of liberty for drug related crimes as an inhuman punishment.

The year 2016 was punctuated with incidents of violation or threats of violation of the right to respect for private and family life. In the course of several months, the video recordings depicting private life of public figures were continuously disseminated through social networks and various websites; various public figures discussed the threats made towards them about the dissemination of videos depicting their private life. The Office of the Chief Prosecutor of Georgia has not established to date the persons responsible for the dissemination of those video recordings on the Internet or those making the threats. Adequate measures have not been taken regarding the incident, in August, of dissemination of the recording depicting torture. The availability of these recordings in real time causes moral suffering to those in the recordings and degrades their dignity.

The Public Defender of Georgia assesses the performance of the Office of the Chief Prosecutor of Georgia as insufficient in terms of investigating the aforementioned cases, and calls upon the Office to act promptly and effectively and bring those who produced, obtained and disseminated the video recordings depicting private lives, before justice.

Considering the large scale of the incidents of infringement of the right to respect for private and family life, the Public Defender of Georgia observed especially closely the legislative amendments on covert investigative actions elaborated by the Parliament of Georgia in the aftermath of the judgment of the Constitutional Court of Georgia. Under the amendments adopted on 1 March 2017, the LEPL Operative Technical Agency of Georgia was set up to conduct covert investigative actions. While the agency formally enjoys certain elements of independence, it remains under the authority and effective control of the State Security Service, which contradicts the judgment of the Constitutional Court of Georgia adopted on 14 April 2016.

Besides, there is still a provision, preserved in the Law of Georgia on Electronic Communications, allowing the state authorities to have uninterrupted possibility to copy personally identifiable information and receive contents of communication in real time. The authority of a trust group – a mechanism of parliamentary

control envisaged by the legislative amendments- is considered to be ineffective by the Public Defender. One member selected by the trust group carries out inspection only twice a year, which practically excludes the participation of parliamentary opposition in this parliamentary control mechanism.

Accordingly, the above-mentioned amendments do not comply with the judgment of the Constitutional Court and cannot be considered as a safeguard against substantial threat of arbitrary interference in an individuals' right to respect for private life. The steps taken by the authorities, after the large-scale amnesty, concerning the persons arrested and criminally prosecuted for political reasons, are considered by the Public Defender of Georgia to be unsatisfactory. The process of restoration of justice cannot be limited to a single act of amnesty, as it is important for the persons of the aforementioned category not only to have their dignity and reputation restored, but also be compensated for the damages illegally inflicted by the state.

Despite the legitimate expectation of the public, no legal remedy has been introduced to date, which would allow the persons concerned to have the courts' legally binding final judgments be reviewed for, *inter alia,* the restitution of property and compensation of moral damages caused by unlawful convictions.

Despite numerous addresses, the outcomes of the investigations carried out regarding the high-profile criminal cases attracting significant interest of the public are unclear. The same is pointed out by the Public Defender in his parliamentary reports of 2013-2015. These cases concern, *inter alia*, the events unfolded around the village of Lapankuri.

In 2016, the Office of the Public Defender implemented the project of **Monitoring Parliamentary Elections**. No such violations have been identified that could substantially influence the outcomes of the voting. The majority of the violations were related to the qualification of the members of election commissions. However, violent incidents at some of the precincts or on the premises adjacent to the precincts were alarming. The massive police forces, locally deployed, failed to tackle these incidents promptly.

In 2016, there was no large-scale violation of the right to peaceful assembly. However, there were a few exceptions where the state failed to ensure the security of peaceful demonstrators, among them, in the village of Kortskheli of Zugdidi Municipality, on 22 May 2016. No person has been prosecuted for this incident to date.

The Public Defender denounces the delayed response of the law-enforcement authorities to the incident that took place in Batumi on 11-12 March 2017. In this incident, the protest demonstration quickly escalated from a peaceful assembly into a violent confrontation, causing damage to health and destruction of property.

The Public Defender of Georgia observed, in the reporting period, the court hearing of the TV Company Rustavi 2 case, as well as the events unfolded in the Public Broadcaster. The Public Defender considers these cases in the context of media freedom and emphasises that unjustified interference of the authorities in the freedom of expression is inadmissible.

It is necessary to promptly initiate the new draft law on Freedom of Information, which on the one hand will set up a mechanism to monitor ensuring access to information and freedom of information and on the other hand will determine sanctions for illegal refusal to impart public information.

The structural problems with regard to **freedom of religion**, tolerance and equality remain the same. Religious minorities wishing to erect religious or other buildings still face barriers when dealing with local self-government bodies in charge of issuing construction permits. **National minorities** are still less involved in the process of decision making on the important events of the country and related issues. Despite reflecting the issue in the

State Strategy and Action Plan for Civic Equality and Integration, school manuals, with certain materials of stereotypical contents, remain a significant challenge.

2016 remained steadily hard for the **victims of conflicts** both on the territories controlled by Georgia and the occupied territories. However, unlike the previous years, the incidents of murder and disappearance were reported. The futile negations held regarding these incidents clearly show the absence of genuine cooperation among the parties. Therefore, investigation is delayed and the truth has not been established. Closing down control points of Abkhazia's demarcation line is assessed as a step backwards. This has negative ramifications for the local population, including children's rights to movement, health-care and education.

Despite numerous important infrastructural and social projects implemented by the government, the recommendations of the Public Defender concerning including the population of Gali in the referral programme, acknowledgement of the documents issued by the *de facto* authorities, and rehabilitation/ compensation of the residential houses damaged as the result of military actions still remain unaccomplished.

Despite the steps made forward towards providing **internally displaced persons** with accommodation, their settlement remains a serious challenge. Numerous internally displaced persons still live in an environment that is dangerous for life and limb. Despite the fact that, in the reporting period, the settlement of victims of natural calamities continued, the absence of a unified legislative basis remains a problem.

The absence of an effective mechanism responsible for the monitoring of **labour rights and safe labour environment** remains to be one of the most acute problems of the reporting period. This needs urgent action from the Parliament and the Government of Georgia. According to the data of 2016, as the result of work-place accidents, 58 persons died and 85 were injured. In the opinion of the Public defender, it is imperative to set up immediately a mechanism – Labour Inspectorate- to supervise labour safety and labour conditions.

The applications on violation of the right to property that reached the Office of the Public Defender in the reporting period concerned **the problems related to the registration of land/immovable property**. The introduction of the new projects for land registration is a step forward and it is necessary to implement them in a comprehensive manner.

The right to respect for c**ultural heritage** is not adequately realised in the country. When conflicting with large private economic interest, decisions are made to the detriment of cultural heritage. To this date, there have not been any tangible outcomes of the investigation on the destruction of the ancient gold mine of Sakdrisi-Kachaghiani. Similarly, the destruction of archaeological items in the process of construction of Ruisi-Rikoti highway has not been investigated yet.

The existing system of assessment of **impact on environment** needs changes. Noise pollution and effective mechanisms for fighting it preclude the existence of healthy environment. The legislation does not provide for any measures of responsibility for such incidents, which should be addressed promptly.

The absence of comprehensive statutory definition of a homeless person; absence of statistical data on **homeless persons,** hence, the obscurity of the scales of homelessness; non-existent infrastructural resources in this regard; scarcity of finances allocated, etc., remain problematic. The existing system of **social benefits** needs overhaul due to the shortcomings of the program.

The political significance of the topic of repatriation of the persons forcefully removed from South Georgia remains a subject of active discussion to date. Despite the possibility of simplified procedure of naturalisation, only a few persons, having the status of repatriates, acquired citizenship.

Compared to previous years, the number of asylum seekers has decreased in Georgia in 2016. The adoption of the new Law on International Protection in 2016 is assessed positively. It is, in principle, in compliance with international provisions. However, the Law lays down an unreasonably long term for the consideration of an application on international protection.

Despite the positive changes effected by the state in 2016, the provision, protection and respect for the **child's rights** remain problematic. The measures aimed at eradicating violence against children, extreme poverty and other violations of the child's rights are not sufficient. Apart from the invisible children that are left beyond the state care, the protection of the rights of the children that are in the state's care has not improved either.

The state faces challenges in terms of high indicators of violence against children within family and educational and care institutions. Children's poverty and inadequate living conditions are among the insurmountable problems, which in turn cause problems in terms of providing children with necessary food and improving their dire living conditions.

Despite the fact that almost three years have passed since the adoption of the Law of Georgia **on Elimination of All Forms of Discrimination**, there are still problematic issues that create obstacles for its effective implementation. One of the challenges is the need for making the so-called first wave amendments to the Law. In 2015, the legislative proposal of the Public Defender in this regard was initiated by the Committee of Human Rights and Civic Matters of the Parliament of Georgia.

One of the significant challenges in terms of fighting discrimination is raising awareness about equality issues in the society and formation of a tolerant environment.

The grievous situation in the country in terms of **the rights of women and gender equality** has not substantially changed in the reporting period. The indicator of the women's participation in the decision making process is still critically low. The lack of intersectional approaches in the activities carried out by the state is problematic, which, in turn, prevents from recognising the problems of the women of various experiences and increases the degree of their vulnerability.

The increased number of applications on violence against women and domestic violence highlighted even more the structural deficiencies serving as a significant obstacle in the process of effective follow-up and eradication of the problem. The low awareness in the society about early marriages and child marriages and indifference are still problematic and frequently result in undermining the best interests of the minors and the violation of the right to equality.

The situation concerning the rights of LGBTI persons is especially of serious concern. The steps taken by the state to address the existing homophobic and transphobic perceptions and to improve the protection of the rights of LGBTI persons are still minimal and formal. Unfortunately, LGBTI persons are unable to create agendas on the protection of their rights and legal status. It is noteworthy that state authorities should make maximum efforts to contribute to the prevention of violence caused by hate and eradicate homophobic expression as well as ensure unconditional realisation of the constitutional rights and freedoms of LGBTI persons.

One of the major challenges that the state faces is the social security for **persons with disabilities,** realisation of their right to reasonable accommodation and employment. Besides, it remains problematic to ensure the availability of physical environment, infrastructure, transportation and information. The process of inclusive education is punctuated with shortcomings. A significant number of children with disabilities, especially in the regions, are not involved in this process. The quality and continuity of teaching is problematic.

As of 2016, two years have passed since the ratification of the UN Convention on the Rights of Persons with Disabilities. However, there are still challenges in terms of effective implementation of the Convention. Despite numerous recommendations from the Public Defender, the Optional Protocol to the Convention has not been ratified yet. No substantive amendments have been made to the national legislation in terms of ensuring its compatibility with the requirements under the Convention.

The situation existing in the country in terms of protection of **the rights of the elderly** still fails to address the modern challenges and comply with international standards. It is still problematic to provide reasonable accommodation and support in the process of the realisation of socio-economic rights. The situation existing in residential establishments for the elderly remains challenging. No tangible changes have been made by the local self-governments for the protection of the rights of the elderly. The needs of the elderly residing in the jurisdictions of municipalities are not adequately studied and programmes that would be tailored to address their interests are not planned.

HUMAN RIGHTS SITUATION IN CLOSED INSTITUTIONS (NATIONAL PREVENTIVE MECHANISM)

INTRODUCTION

This report presents the results of the monitoring carried out by the National Preventive Mechanism in the reporting period in penitentiary establishments, police divisions, temporary detention isolators, small family-type children's homes,[4] boarding houses for persons with disabilities, as well as the outcomes of the joint return operations of migrants. The monitoring has been conducted with the financial support of the European Union.[5] Besides, in 2016, with the support of the Open Society Georgia Foundation, the project of Promoting Health-Care Rights in Penitentiary System was carried out in penitentiary establishments.[6]

In the reporting period, the Special Preventive Group for the assessment of the situation in the country in terms of prevention or punishment of torture and other cruel, inhuman or degrading treatment carried out 35 visits[7] to 12 penitentiary establishments;[8] 58 visits to 58 police divisions; 31 visits[9] to 27 temporary detention isolators; 11 visits[10] to 11 small family-type children's homes; 6 visits[11] to 6 boarding houses for persons with disabilities. Furthermore, the employees of the Office of the Public Defender of Georgia at the Prevention and Monitoring Department carried out monitoring of five flights within the joint return operation of migrants from EU member states.[12]

During monitoring, the representatives of the Public Defender inspected the physical environment existing in closed type establishments and protection of the rights of persons placed therein. Special emphasis was made on the treatment of these persons.

4 The monitoring outcomes are reflected in the 2015 Parliamentary Report of the Public Defender, see Chapter on Children's Rights Protection, available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on 28.03.2017].
5 Within the European Project – Support to the Public Defender's Office, II.
6 The publication of the report reflecting the results of the research conducted within the project is planned for 2017.
7 At various occasions, in accordance with the necessity, the employees of the Gender Equality Department, Child's Rights Centre, Department of Criminal Justice and Equality Department of the Office of the Public Defender of Georgia also took part in the monitoring.
8 Members of the Special Preventive Group interviewed 650 prisoners.
9 Members of the Special Preventive Group interviewed 60 arrestees.
10 Monitoring in small family-type children's homes was conducted jointly with the Child's Rights Centre of the Office of the Public Defender.
11 Monitoring was carried out with the participation of the employees of the Office of the Public Defender of Georgia at the Department of the Protection of the Rights of Persons with Disabilities and members of the Monitoring Group of Implementation of CPRD. See the monitoring results in this report, under Chapter on Monitoring of Boarding Houses of Persons with Disabilities.
12 The employees of the Prevention and Monitoring Department interviewed 206 citizens of Georgia returned to Georgia.

SITUATION IN PENITENTIARY INSTITUTIONS

GENERAL OVERVIEW

According to the report prepared by the Council of Europe, on 1 September 2015, the total number of inmates in Georgia was 10,242, including 54 minors. This means that prison population rate per 100, 000 inhabitants amounted to 274.[13] It is noteworthy that these figures are higher in comparison to the situation of penal institutions of Georgia on 1 September 2014 (227 prison population rate per 100,000 inhabitants).[14] According to the annual Council of Europe survey, Georgia is among the countries with the highest incarceration rates.[15]

It is a positive development that by December 2016, in comparison to the same period of 2015, the total number of remand and convicted persons decreased by 382. The Public Defender deems it necessary that the Criminal Justice policies should be aimed at the application of non-custodial measures, rehabilitation of convicts and their reintegration into the society. The large number of prisoners, as well as the large size of penitentiary establishments, creates substantial challenges in terms of maintaining order and security in the penitentiary system and ensuring adequate conditions and services.

Therefore, the Public Defender positively assesses the introduction of the new category of a non-custodial sentences – home detention[16]- for juvenile offenders who have been found guilty of less grievous offences, and the execution of punishments imposed on minors through electronic monitoring without resorting to their isolation from the public. The Public Defender welcomes the introduction, in the Parliament by the Ministry of Corrections, of the draft amendments about setting up the new type of an establishment of deprivation of liberty in the penitentiary system that will ensure preparation of convicts for their release. In accordance with the said draft amendments, the local council of the Ministry of Corrections of Georgia will be entrusted, upon the written request of a convict and where the statutory grace period has been served, to commute the rest of the sentence with a more lenient sentence – home detention.

It is essential for the prevention of torture and ill-treatment that the state does not allow impunity. The state has a duty to respond appropriately to incidents of alleged torture and ill-treatment. Accordingly, as in the years of 2013, 2014, and 2015, the position of the Public Defender remains the same concerning the creation of an independent investigative body for ensuring effective investigation of incidents of ill-treatment allegedly committed in penitentiary establishments.

13 Council of Europe, Annual Penal Statistics, SPACE I– Prison Populations, Survey 2015, available in English at: http://wp.unil.ch/space/files/2017/03/SPACE_I_2015_Report_170314.pdf [Last visited on 20.03.2017].

14 Council of Europe, Annual Penal Statistics, SPACE I– Prison Populations, Survey 2014, available in English at: http://wp.unil.ch/space/files/2016/05/SPACE-I-2014-Report_final.1.pdf [Last visited on 20.03.2017].

15 Council of Europe, Press release - DC031(2017), available in English at: https://wcd.coe.int/ViewDoc.jsp?p&Ref=DC-PR031%282017%29&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true [Last visited on 27.03.2017].

16 The Juvenile Justice Code, Article 69.

In 2016 the Public Defender submitted three proposals for launching investigation on alleged physical abuse of inmates. During the visits made in 2016, the members of the Special Preventive Group obtained information on isolated incidents of ill-treatment.

In the reporting period, it is still a problem that the definition of torture in the Criminal Code of Georgia does not comply with the definition given by the UN Convention against Torture. Besides, the Georgian legislation and practice do not provide legal aid for the torture victims at state expense.

Ensuring respect for confidentiality of interactions between health-care professionals and prisoners remains problematic in penitentiary establishments. In most of the penitentiary establishments, during placement of a prisoner in the establishment, administration personnel are present at his/her medical examination by a health-care professional.

The Public Defender of Georgia welcomes the adoption of the new procedure for documenting prisoners' bodily injuries in penitentiary establishments. It is, however, noteworthy that the new procedure of registering prisoners' bodily injuries was not enacted in the reporting period. Registering injuries, as in previous years, was punctuated with irregularities, therefore failing to ensure effective identification of the incidents of alleged treatment and their documentation.

Furthermore, it is noteworthy that the issues related to independence and qualifications of medical personnel remain problematic in 2016. This raises misgivings regarding the impartiality of health-care professionals when dealing with the alleged ill-treatment of inmates, when they are obliged to register injuries and notify investigative authorities. The Public Defender's position remains the same regarding determining the duty of a health-care professional to notify the Office of the Chief Prosecutor of Georgia when identifying the incidents of ill-treatment. The Public Defender deems that, irrespective of an inmate's consent, the decision about notifying investigative authorities should be taken by a health-care professional with the due consideration of interests of the inmate and the public.

Furthermore, the lack of involvement of a convict in the risk-assessment procedure is problematic.

In the Parliamentary Report of 2015, the Public Defender gave his recommendation to the Minister of Corrections of Georgia to enable convicts to furnish additional documentation to the multidisciplinary team at any stage of assessment, if they believed this would lead to a desirable outcome. However, this recommendation has not been fulfilled.

It is a positive development that the duration of placement of inmates in de-escalation rooms decreased in 2016, in comparison to 2015. However, there have been isolated incidents where prisoners were placed in de-escalation rooms from 20 to 36 days.

The Public Defender positively assesses the amendments made to the statutes of penitentiary establishments under which the maximum term of placement for prisoners in de-escalation rooms is limited to 72. However, it is noteworthy that a statute authorises the administration of a penitentiary establishment to place an inmate in a de-escalation room for unlimited time, which can again result in long-term isolation of prisoners. The recommendation of the Public Defender remains the same about introduction of the statutory limit of the term of placement of prisoners in de-escalation rooms to a maximum term of 24 hours.

The environment and conditions in the de-escalation rooms are not safe and do not minimise the risk of self-harm. In these rooms, visual surveillance systems are installed so that toilet areas are within the camera's scope. When in de-escalation rooms, prisoners are not given access to shops, telephone calls and correspondence, and visits are not allowed either. The decision on placement in a de-escalation room is taken by an establishment's director and joint multidisciplinary assessments are not conducted, i.e., psychologists, social workers, medical doctors or other personnel of the establishment's units are not involved in preventing/decreasing the above-mentioned risks. Therefore, prisoners have the feeling that de-escalation rooms are used for punitive purposes.

The introduction of 120 hours (five days) as the minimum term for storing video recordings is welcomed by the Public Defender as a step forward. The recommendation of the Public Defender, however, still remains the same that it is necessary to store the said recordings at least for ten days and the recordings from de-escalation rooms should be stored for one month. Furthermore, it is necessary to ensure unimpeded access to these recordings for members of the Special Preventive Group.

The outcomes of the inspection of penitentiary establishments carried out by the Special Preventive Group in 2016, similar to those in 2015, showed that in accordance with the established practice, the decisions ordering surveillance contain scarce information and is formulaic. In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Parliament and the Minister of Corrections to amend the Imprisonment Code and the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of stipulating that meetings of remand and convicted persons with the Public Defender and members of Special Preventive Group are confidential and eavesdropping or surveillance of any kind are impermissible. This recommendation, however, has not been fulfilled.

Serious threat in terms of ill-treatment of prisoners is posed by criminal subculture existing in penitentiary establishments, which often becomes the reason for violence and oppression among inmates.

The Public Defender negatively assesses the policy of the Ministry of Corrections concerning the high risk prison facilities. According to the established practices, these are penitentiary establishments based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. Such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and reintegration into the society.

It remains problematic that the limitations imposed on the convicted persons placed in high risk prison facilities are unsubstantiated and not based on individual risk assessment of a particular prisoner. For instance, in accordance with the existing regulations, a director has discretional powers to place a prisoner separately from other inmates for a considerable time. There is no maximum term defined in the statutes of the high risk prison facilities for isolation of prisoners and surveillance is ordered in every case of placement. The inmates of high risk prison facilities do not have any possibility to carry out meaningful activities that are of interest for them. The legislation allows the inmates placed in high risk prison facilities fewer visits and telephone calls than the prisoners in other penitentiary establishments.

In 2016, isolation of prisoners in solitary confinement cells in penitentiary establishments without following statutory regulations remained a structural problem. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure mandatory review of solitary confinements after 14 days of the application of this measure and in the same intervals afterwards. This recommendation has not been fulfilled.

The Public Defender welcomes installation of a scanner at establishment no. 5 and amendment of the statute of penitentiary establishment no. 5 to the effect of providing remand/convicted persons with the right to undergo full body search with a scanner.

The Public Defender observes that the regulations under the statutes of penitentiary establishments according to which full bodily searches may be administered in all occasions of the first arrival, temporary leave and return to the penitentiary establishment is a blanket provision allowing routine and unjustified strip-searches. Furthermore, apart from full strip-search, it is problematic that the law does not differentiate between full strip search and body cavity search and procedures are not prescribed for each type of bodily search. It is also problematic that prisoners' short and long term visitors are requested to undergo mandatory partial strip searches when entering a penitentiary establishment, which runs counter the legislation in force.

The Public Defender welcomes the implementation of infrastructural projects in penitentiary establishments in 2016. However, some of the establishments are still challenged with the lack of adequate natural and artificial ventilation, light and heating; sanitation and hygiene standards are not complied with either. The provision of prisoners with clothing according to the season and items of personal hygiene, exercise of the right to stay in the open air and equipment of yards remain problematic.

There is no privacy ensured in barrack-type dormitories at establishments nos. 14 and 17; smokers and non-smokers live in the same area; following sanitation and hygiene rules is difficult and the risk for spreading infectious diseases is high. Furthermore, such accommodations pose additional and serious challenges in terms of security.

It remains problematic in 2016 to ensure that living space of 4 m^2 is made available for each prisoner. Besides, in establishments nos. 2 and 8, remand and convicted persons are placed together in some occasions which is in breach of the Imprisonment Code.

In 2016, compared to the previous year, there has been 16% increase in the number of imposition of disciplinary penalties on prisoners. Despite the fact that in some of the establishments fewer disciplinary penalties were applied, the indicator for the use of these measures alarmingly increased in establishment no. 3 (2 disciplinary penalties per prisoner, in 2015; 9 – in 2016); establishment no. 6 (in 2015, 1 disciplinary penalty was imposed on every second prisoner and in 2016, 2 disciplinary penalties per prisoner); and establishment no. 2 (increase by 2.5%). Besides, in comparison to 2015, in 2016, the number of placement of prisoners in solitary confinement cells increased by 40.4% in establishment no. 2, which is noteworthy. For the sake of fairness, it should be positively mentioned that, in total, the number of incidents of placement in solitary confinement cells decreased in the penitentiary system by 23%. However, the Public Defender is, at the same time, alarmed that, in the reporting period, there were again incidents of placing prisoners with mental health problems in solitary confinement cells in some establishments.

In the course of 2016, according to the prisoners at establishments nos. 3, and 6, there were incidents where the personnel attempted to incite them so as to impose disciplinary penalties on them or to place them in de-escalation rooms. The prisoners have the feeling that their transfer to de-escalation rooms serves punitive purposes whenever they violate the statute of an establishment and not for security reasons. The inspection of documentation in establishments nos. 3 and 6 revealed that in some of the periods spent by a prisoner in a de-escalation room, a disciplinary report had been applied.

Usually, according to the existing practice, a disciplinary penalty is applied without an oral hearing and an order on its application is only substantiated with explanations and reports submitted by the personnel. Prisoners practically do not participate in disciplinary proceedings. This increases the risk for the imposition of arbitrary disciplinary penalties.

The Public Defender welcomes conducting an official inspection by the Inspectorate General of the Ministry of Corrections of Georgia in establishment no. 7 concerning the incidents of the complete ban on contacts with relatives, identified by the Special Preventive Group in 2015. As the result of the inspection, a disciplinary penalty was imposed on the director of establishment no. 7 and its lawyer. It is a positive fact that in 2016, there were no incidents of imposing full bans on contacts with relatives in establishment no. 7. The Public Defender hopes that the Inspectorate General, within the systematic monitoring, will continue the examination of the practice of the use of disciplinary penalties in order to prevent their arbitrary imposition.

According to the Ministry of Corrections' report on its annual activities of 2016, the individual sentence planning (ISP) mechanism has been successfully implemented for juvenile convicts. In 2015, the ISP approach was also introduced in establishments nos. 5, and 16. In 2016, the Ministry of Corrections launched a pilot programme of Individual Sentence Planning at establishments nos. 6, 12 and 17. Individual sentence planning

will have covered all penitentiary establishments by 31 December 2017, which is welcomed by the Public Defender of Georgia.

In 2016, various rehabilitation activities were carried out in penitentiary establishments; some of them are still ongoing. In the course of the year, prisoners could take part in cultural and sporting events, pursue general/professional education and study various trades. In this regard, establishment no. 5 sets the best example. Despite the attempts to enhance rehabilitation component, there are still significant challenges in this regard. There is a lack of rehabilitation activities in most of the penitentiary establishments, especially in closed-type and high-security prisons; besides, the indicators of prisoners' participation in ongoing activities are low. Due to language barriers, foreign prisoners find it difficult to communicate with prison administration, including social workers, and therefore are virtually unable to be involved in rehabilitation activities.

The number of personnel in social units remains insufficient. E.g., two psychologists deal with 1,218 prisoners in establishment no. 2, and 1,922 prisoners in establishment no. 17. Only one psychologist works with 1,152 prisoners in establishment no. 14, and 1,706 prisoners in establishment no. 15.

In the context of positive management of prisoners' behaviour, unfortunately, it should be mentioned that against the background of the increase in the number of the use of disciplinary penalties, in 2016, the cases of giving incentives prisoners decreased by 37.2%. The Public Defender reiterates that positive management of behaviour through the forms of incentives is most significant for weakening the influence of the criminal subculture, correction of anti social behaviour, rehabilitation and finally public re-socialisation.

In terms of employment in establishments, it should be negatively assessed that in 2016, compared to 2015, the number of employed prisoners decreased by 28.1%. Similar to 2015, the majority of the prisoners involved in the economic services had to work against their will on the weekends, days off and, if needed, at night. It is noteworthy that prisoners in detention centres, closed-type and high-risk prison facilities have not been able to be involved in meaningful activities that are of interest for them; they still spend 23 hours a day in their cells. Their outdoor stroll is limited to an hour a day and takes place in a cell like yard. There are no conditions for physical exercise in these yards, which also has ramifications for the inmates' health.

According to the prisoners of establishments nos. 6 and 8, they often decline to exercise their right to leave their cell as they are offered a walk either at 7 a.m. or 8 a.m. In establishment no. 8, considering the number of yards and prisoners, as well as the established procedure of taking prisoners for a walk, it is impossible to ensure that all prisoners are taken outside within the three-hour period allocated by the daily schedule. According to the prisoners of establishment no. 18, they are only taken to a yard twice a week for only 15 minutes. Such conditions can have negative ramifications for prisoners' health.

The Public Defender of Georgia gave recommendations to the Minister of Corrections of Georgia on numerous occasions to set out and introduce a new pattern for registering traumas in accordance with Istanbul Protocol, which would enable entering information on bodily injuries that is more detailed.

The steps made in terms of organisation of health care in the penitentiary system are positively assessed, namely, job descriptions have been defined for the Medical Department staff and the procedure for documenting bodily injuries that complies with Istanbul Protocol has been approved. Besides, with the view of improving medical services, the system for quality management has been statutorily regulated.

The number of medical personnel has not changed in 2016. Accordingly, the availability of doctors/nurses remained problematic. The availability of assisting personnel and paramedics in establishment no. 18 was also problematic. The examination of the issue of consultation provided to prisoners revealed that regularity and frequency of the visits of the doctors providing consultation was not adequate in a number of establishments. Besides, there are problems concerning specialised doctors' visits in the beginning of a year before the contracts between the Medical Department and the specialists are finalised.

It should be positively pointed out that upon electronic registration incidents are promptly confirmed by the Medical Department. However, there are number of cases where a prisoner's transfer to a medical establishment for providing medical service was delayed. There have been cases where a prisoner has been awaiting a transfer to a medical establishment since 2014 or 2015.

The steps made towards the implementation of the public health-care standards in the system of the penitentiary health-care system are welcome. In particular, the standards of medical service have been approved; the procedure for processing statistical data, the terms of processing and submitting of statistical data in the penitentiary system have been approved. It should be negatively assessed that there have been no steps made towards elaboration of activities and their timetable for the transfer of the penitentiary health-care to the Ministry of Health, Labour and Social Affairs of Georgia.

Mental health-care remains one of the challenges of the penitentiary health-care. Provision of adequate mental care remains problematic. In order to identify persons with mental ailments and provide them with adequate psychiatric assistance, it is necessary to enhance cooperation with psychologists and social workers, apart from improving the accessibility of a psychiatrist.

The introduction of suicide prevention programme in all establishments of the Penitentiary Department should be positively assessed. It is, however, important, to assess the effectiveness of the suicide programme in order to identify the programme's shortcomings and make the necessary amendments for addressing them.

In 2016, the majority of the prisoners placed in penitentiary establishments expressed their indignation concerning the quantity, quality and taste of the food given to them. The shops of the penitentiary establishments do not have the list of the products they offer in print to facilitate making choices. Besides, the prices in the shops of penitentiary establishments are higher by 10-20% than outside. It is problematic that a prisoner is allowed to receive maximum five kg of fruit in a single parcel, which is not enough.

Juvenile convicts are mostly placed in rehabilitation establishment no. 11 for the underage. Juvenile remand are placed in penitentiary establishments nos. 2 and 8. In a number of cases, for security reasons, a juvenile is transferred from a rehabilitation establishment to penitentiary establishments nos. 2 or 8. The Public Defender emphasises that juvenile offenders should serve in a rehabilitation establishment and they should not be transferred to a closed-type prison facility for indefinite term and without reasoning. This significantly compromises rehabilitation and runs counter to the best interest of juvenile convicts.

Female prisoners are placed in establishment no. 5 and also in establishment no. 2. The Public Defender welcomes the draft amendments to the Imprisonment Code and other relevant normative acts that have been prepared by the Ministry of Corrections allowing a mother, with the consent of the Director of the Penitentiary Department, to leave a penitentiary establishment on days off (weekends) in the period of a year after her child left the establishment.

As mentioned, female prisoners are placed in establishment no. 5 and also in establishment no. 2. In the latter establishment, similar facilities and services tailored to the women's needs, available in establishment no. 5, are absent.

The Public Defender positively assesses the improvement of transportation for female convicts and repair works in establishment no. 5. However, there is still a problem concerning sanitation and hygiene conditions in the cells of prison facility, which remain unsatisfactory. The cells need to be repaired; there is no hot water in toilets and prisoners have to hand wash their clothes with cold water straight under taps.

It is noteworthy that, unlike establishments nos. 6, and 8, the prisoners serving a life sentence in establishment no. 7 were not allowed to exercise the right to long visits. In 2016, there were no diverse and systematic rehabilitation activities in those establishments where prisoners serving a life sentence are placed. Besides, these prisoners have fewer meetings and telephone calls than allowed under the legislation in force.

As of December 2016, there were foreign nationals from 35 countries and stateless persons in the penitentiary system of Georgia. The Public Defender welcomes printing a brochure on the rights of foreign prisoners in various languages. However, due to the limited number of publication, sufficient copies are unavailable for all foreign prisoners. The foreign prisoners, due to their language barriers, face problems in communication with personnel, including the medical staff. Foreign prisoners, unlike other prisoners, cannot participate in the activities available in their establishments. According to the foreign prisoners, due to the cost of phone calls abroad, they cannot afford to talk frequently with their family members. Besides, sending letters and receiving parcels appear to be costly for the foreign prisoners. The dietary needs of various religions are not taken into consideration when preparing food in establishments. Therefore, they frequently refuse to eat the food offered to them.

It should be positively mentioned that after 1 January 2016, remand persons no more need permission of an investigator, a prosecutor or a court for short visits, correspondence and telephone calls.[17] However, there are still problems concerning the detention conditions of remand persons. In particular, rehabilitation activities are not provided for the remand placed in penitentiary establishments. They spend 23 hours in their cells so that they do not have any possibility to be engaged in worthwhile activities in which they would be interested. Besides, in establishments nos. 2, and 8, in numerous cases, remand and convicted persons are placed together in some occasions. This is in breach of the Imprisonment Code and unjustifiable for security reasons as well. Furthermore, the Public Defender observes that it is important to ensure each remand is provided with 4 m^2 living space. This proposal was made to the Parliament of Georgia in 2015 Parliamentary Report. However, this proposal has not been followed.[18] Similarly, the proposal of the Public Defender concerning allowing remand persons to have long visits has not been followed.

It was still a problem in 2016 that during placement of prisoners their place of residence was not taken into consideration. Short visits are held in rooms with window partitions. This does not allow a prisoner to have any physical contact with family members. It is noteworthy that the infrastructure allows video visits only in five penitentiary establishments.

It should be positively mentioned that, in 2016, the prisoners placed in penitentiary establishments nos. 8, 9, 18, and 19 were allowed to have long visits in other establishments with the requisite infrastructure. However, it remains problematic to provide the long visit infrastructure in closed-type establishments[19] and medical establishments.[20]

The convicts of the high risk prison facilities are not allowed to have long visits. This is a blanket restriction which does not allow an exception for securing a legitimate aim. It should be positively mentioned that the Minister of Corrections of Georgia introduced a new initiative according to which convicts placed at the high risk prison facilities will be allowed to two long visits. The Public Defender expresses his hope that this initiative will soon be provided for by the Imprisonment Code, which will be a step forward.

Telephones are so installed in the closed-type establishments that it is impossible to make a phone call in a confidential environment. Besides, it is still problematic for the prisoners placed in de-escalation rooms to send correspondence to or call the Public Defender. During the monitoring visits made to establishments nos. 5, 8, and 11, the representatives of the Public Defender tried several times to call the hotline (1481) of the Office of the Public Defender but the calls could not go through. It is also noteworthy that prisoners cannot call the Office of the Public Defender or other organs of inspection at night.

The Public Defender welcomes the steps made towards informing prisoners of their rights, including the right

17 Until 2 January 2016, an remand person could use one short-term visit only with the permission of either a prosecutor, or an investigator; could use the right to correspondence and telephone calls with the permission of an investigator, a prosecutor or a court.
18 Under Article 15.3 of the Imprisonment Code, living space per remand person in a prison facility should not be less than 3 m^2.
19 Penitentiary establishments nos. 7, 8, 9.
20 Penitentiary establishments nos. 18 and 19.

to lodge an application/appeal as well as the procedures for their consideration. In particular, handing out information booklets on the rights of remand and convicted persons and delivering training sessions in several establishments should be positively assessed. Despite these efforts, informing prisoners adequately remains a challenge in penitentiary establishments.

According to the assessment made by the Special Preventive Group, the function of social services aimed at exercising the right to apply/appeal by prisoners should be enhanced. Laws or information on the rights and duties of prisoners is not available in the cells. It is problematic to collect the number of registration confirming an open letter from a closed-type establishment and sending an appeal with due respect for confidentiality.

The Public Defender welcomes the increase in the number of inspections carried out by the Division of Systemic Monitoring of the Inspectorate General in comparison to 2015. However, the Public Defender observes that unannounced monitoring is more effective as it is the surprise factor that allows more problematic areas to be identified.

In terms of ensuring security at a penitentiary establishment, it should also be taken into consideration that security encompasses many other elements such as personal screening of an remand/convicted person and periodic inspection of the premises of an establishment and buildings and constructions located there.

It is important that the establishments should maintain the existing well-qualified resources. To this end, salaries should be adequate and working conditions should be favourable to remunerate hard and labour-consuming work. The health-care personnel of the penitentiary establishments do not have medical insurance. The working conditions of on-duty doctors and nurses, paramedics, psychologists, and social workers are quite hard. The establishments' personnel are not provided with transportation and food; they do not benefit from advice as to how to avert professional burnout.

The Public Defender welcomes the implementation of the certified compulsory retraining module for the penitentiary personnel. However, it can be concluded, based on the study of the programmes, that the methodology of the module is general and needs further improvement.

SITUATION IN PENITENTIARY ESTABLISHMENTS IN TERMS OF PREVENTION OF TORTURE AND ILL-TREATMENT

It is essential for the prevention of torture and ill-treatment that the state appropriately responds to the incidents of alleged ill-treatment in penitentiary establishments and alleged ill-treatment by law-enforcement officers, so that perpetrators do not act with impunity.

In the Parliamentary Reports of 2013, 2014 and 2015, the Public Defender proposed to the Parliament of Georgia to establish an independent investigative body to ensure effective investigation of incidents of deprivation of life, torture, inhuman and degrading treatment allegedly committed by law-enforcement bodies, as well as on the premises of penitentiary establishments. This recommendation has yet to be fulfilled. The position of the Public Defender, therefore, remains the same; there is a standing problem in Georgian legislation and practice of institutional independence in investigating alleged crimes committed by law-enforcement officers as well as alleged crimes committed in penitentiary establishments.

Under Article 17.2 of the Constitution of Georgia, no one shall be subjected to torture, inhuman, cruel or degrading treatment and punishment.

Under Article 7 of the International Covenant on Civil and Political Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Under Article 10 of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The United Nations Human Rights Committee 'believes that here the Covenant expresses a norm of general international law not subject to derogation.'[21]

International human rights law pays special attention as to how the rights of those deprived of their liberty are protected in respective establishments. The state must take all adequate measures to ensure that the suffering inherent in punishment is not exceeded.[22]

The European Court of Human Rights has held on many occasions that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. Under this provision, the state must ensure that a person is detained in conditions which are compatible with respect for his/her human dignity, that the manner and method of the execution of the measure do not subject him/her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his/her health and well-being are adequately secured.[23]

It is particularly important to protect inmates in closed establishments from torture, inhuman or degrading treatment or punishment, as well as to safeguard their right to life. Inmates are under exclusive control of the state and, therefore, the respective authorities are under the obligation to take all steps that are reasonably expected of them to prevent real and immediate risks to an individual's physical integrity, of which the authorities had or ought to have had knowledge.[24] In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms and the standards established by the case-law of the European Court of Human Rights, the prohibition of torture and ill-treatment and the right to life impose on the state both a negative obligation (to refrain from violating a right) and a positive obligation (to secure a person's right).

Prevention of torture is a global strategy that is aimed at substantially minimising risks and creating the environment in which torture and ill-treatment are expected to a lesser extent.

The positive obligation taken up by the state to protect persons from torture and other forms of ill-treatment obviously includes taking the very preventive measures conducive to the protection of persons from ill-treatment. The necessity of the aforementioned preventive measures is pointed out in international human rights treaties, the judgments of the European Court of Human Rights, numerous reports of the European Committee for the Prevention of Torture and the UN Committee against Torture. Accordingly, there should be such guarantees at the national level, both in legislation and practice that secure unconditional protection of individuals from ill-treatment.

Article 144[1] of the Criminal Code of Georgia does not encompass the instances where torture is committed through the tacit approval of a state official or other officials. Accordingly, in the Parliamentary Report of 2015, the Public Defender proposed to the Parliament of Georgia to amend Article 144[1] of the Criminal Code of Georgia to ensure that the definition given in the UN Convention against Torture was accurately reflected in the Georgian legislation.[25] In particular, according to the Public Defender's recommendation, Article 144[1]

21 General Comment no. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31, August 2001, para. 13.a).

22 *Kudla v. Poland*, application no. 30210/96, judgment of the Grand Chamber of the European Court of Human Rights of 26 October 2000, para. 94; see also, *Valašinas v. Lithuania*, application no. 44558/98, judgment of the European Court of Human Rights of 24 July 200, para. 102.

23 *Davtian v. Georgia*, application no. 73241/01, judgment of the European Court of Human Rights of 27 July 2006, para. 36.

24 Pantea v. Romania, application no. 33343/96, judgment of the European Court of Human Rights of 3 June 2003, para. 190; and Premininy v. Russia, application no. 44973/04, judgment of the European Court of Human Rights of 10 February 2011, para. 84.

25 For the purposes of the UN Convention against Torture, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

of the Criminal Code of Georgia should criminalise torture committed through the acquiescence of a public official or other person acting in an official capacity.[26] It should be pointed out that this proposal has not been fulfilled. As the Public Defender observed in the Parliamentary Report of 2015, the provision of legal remedies is an essential aspect of the protection of the victims of torture and ill-treatment. It is noteworthy that the protection of the victims of torture and ill-treatment was one of the main objectives of the 2015-2016 Action Plan on Fighting against Torture. The task to attain this objective involved analysing the legislation in force, its further improvement to provide victims with effective legal aid and legal protection.[27]

In accordance with the Law of Georgia on Legal Aid, only indigents are as a rule entitled to free legal services, unless otherwise stipulated by law. The mandate of the public law entity Legal Aid Service does not envisage the provision of free legal services to victims of torture at the places of deprivation or restriction of liberty. Accordingly, in the Parliamentary Report of 2015, the Public Defender of Georgia proposed to the Parliament of Georgia to amend the Law of Georgia on Legal Aid to provide alleged victims of ill-treatment with adequate legal services at the expense of the state in all cases.[28] This recommendation has not been fulfilled yet.

It is noteworthy that according to the information provided by the Investigative Department of the Ministry of Corrections and the Office of the Chief Prosecutor of Georgia, not a single staff member of a penitentiary establishment was convicted in 2016 for ill-treatment.

In 2015, the Public Defender prepared four proposals concerning alleged ill-treatment by the staff of the Penitentiary System.[29] In 2016 the Public Defender submitted three proposals related to the alleged physical abuse by the staff of the penitentiary establishments.

During the visits made in 2016, the members of the Special Preventive Group obtained information on isolated incidents of ill-treatment. In particular, inmates reported psychological pressure (threat and intimidation) and physical violence from the administration of an establishment. According to the inmates, in some cases, the penitentiary establishment personnel address them rudely, raise their voice without any apparent reason and attempt to create a conflict situation. As inspections revealed, there were isolated cases of violence among inmates in some penitentiary establishments. The Public Defender of Georgia did not bring these cases to the attention of investigative bodies as the inmates refused to take legal actions.

Medical screening of inmates during their admission to closed establishments should be observed with medical confidentiality. It is of decisive importance that an inmate should be examined and interviewed, in connection with alleged ill-treatment, only by a health-care professional without the presence of the penitentiary establishment's personnel.[30]

It is noteworthy that in the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections of Georgia to set out express instructions to guarantee confidentiality of interactions between health-care professionals and inmates and secure its practical implementation. This recommendation has not been fulfilled. Furthermore, as the inspections conducted in 2015-2016 show, during admissions of inmates to the most of the penitentiary establishments, the personnel of the latter were present at the medical screening. Sometimes, the administration personnel were present at inmates' medical examination and registration by a health-care professional of the injuries sustained in a penitentiary establishment. Accordingly, in these penitentiary establishments the confidentiality of interactions between an inmate and a health-care professional is not observed.

26 The Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, 2015, p. 28.
27 2015-2016 Action Plan on Fighting against Torture, Inhuman, Cruel or Degrading Treatment or Punishment, p 21, available at: http://police.ge/files/MONITORING/Documents/Action%20Plan%2015-16.pdf.
28 The Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, 2015, p. 28.
29 *Ibid.*, p. 386.
30 Council of Europe, 23rd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 1 August 2012 – 31 July 2013, para. 75.

In the opinion of the Public Defender, the trust factor between an inmate and a health-care professional is of paramount importance in terms of documenting the incidents of alleged ill-treatment, which is unfeasible without their confidential communication.

The practice of 2016 concerning documenting the injuries on an inmate's body does not differ from that of 2015. When admitting an inmate to a penitentiary establishment, he/she is immediately met by a health-care professional and if there are injuries on the inmate's body, they are documented. After the identification of injuries, the medical services rendered are entered into a file in accordance with a general rule and kept in the inmate's medical history. Furthermore, similar to the previous years, in 2016, there was a Journal for Registering Injuries of Remand/Convicted Inmates, in which the medical personnel documented injuries found on inmates. Brief description of injuries and information about their origin were entered into the following columns: Self-Harm, Regular Injuries and By Other Person. Health-care professionals did not assess the compatibility of information submitted by an inmate concerning the origin of an injury with its nature.

According to the information submitted by the Ministry of Corrections of Georgia,[31] the 2015 and 2016 statistics of the bodily injuries found on inmates in penitentiary establishments are as follows:

Number of Bodily Injuries of Inmates in Penitentiary Establishments										
Establishment	Self-Harm		By Another Person		Regular		Unspecified		Total	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
No.2	533	624	100	129	236	246	7	6	876	1005
No.3	0	180	0	9	16	23	3	0	19	212
No.5	21	19	0	7	202	275	0	0	223	301
No.6	353	387	0	3	27	68	0	246	380	701
No.7	110	9	0	0	5	4	2	1	117	14
No.8	771	482	79	36	396	215	54	0	1300	733
No.9	0	0	0	0	6	9	0	0	6	9
No.11	1	2	3	0	40	22	0	0	44	24
No.12	2	2	1	1	9	5	0	2	12	10
No.14	2	10	6	0	105	181	0	0	113	191
No.15	42	6	2	0	214	162	0	4	258	172
No.16	0	0	0	0	15	24	0	0	15	24
No.17	56	15	3	4	168	216	3	2	230	237
No.18	172	128	0	0	30	0	0	28	202	156
No.19	57	28	4	0	21	32	15	4	97	64
Total	2120	1892	198	189	1490	1482	84	293	3892	3853

The above data shows that there was no significant change in the total number of bodily injuries identified in penitentiary establishments in 2016, in comparison to 2015. It is worth mentioning that in penitentiary establishments nos. 8 and 15, the number of bodily injuries has been decreased, which is a positive development. It is, however, noteworthy that there has been an increase in the number of bodily injuries (including those sustained from other persons) in establishment no. 2. Furthermore, in establishment no. 6, the origin of bodily injuries could not be identified in 246 cases. There was no such fact registered in 2015. The similar tendency is observed in medical unit no. 18 for remand and convicted persons (28 cases).

Similar to the previous years, documenting bodily injuries found on the inmates at penitentiary establishments remains problematic in 2016. The Public Defender of Georgia gave recommendations to the Minister of

31 Letter no. MOC 71600192429 of the Ministry of Corrections of Georgia, dated 10 March 2016 (registered under no. 3159/16 at the Office of the Public Defender of Georgia).

Corrections of Georgia on numerous occasions to set out and introduce a new pattern for registering traumas in accordance with Istanbul Protocol, which would enable entering more detailed information on bodily injuries.

There has been a positive development concerning the fulfilment of the above recommendations as Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016 approved 'The Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment.'[32]

Under the new procedure, if during providing medical services, a health-care professional notices either physical injury or emotional change of any kind, and/or other circumstances which could raise suspicions in an objective observer concerning possible torture and other cruel, inhuman or degrading treatment, medical personnel should make maximum effort to obtain information from the patient on the abovementioned. The same Order approved the new pattern for registering injuries allowing a health-care professional to indicate the location of injuries with the help of illustrations. The same Procedure also stipulates that when registering injuries, in case of a patient's consent, a health-care professional is obliged to take a colour photo of the injury.

The Public Defender of Georgia welcomes the fact that the issue at stake has been legally regulated and considers that the approval of the above-mentioned procedure is clearly a step forward. It is, however, noteworthy that the new procedure of registering inmates' bodily injuries was not enacted in the reporting period.[33] Registering of injuries was conducted, as in previous years, in accordance with the procedure in force, therefore failing to ensure effective identification of the incidents of alleged treatment and their documentation.

Furthermore, the Public Defender of Georgia believes it is necessary to make certain amendments to the aforementioned procedure for the effective identification of alleged ill-treatment. These considerations are discussed below.

Firstly, it should be pointed out that Article 6 of the Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment as approved by Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016, in cases where a health-care professional has suspicions about torture and other cruel, inhuman or degrading treatment, he/she has to inform the Investigative Department of the Ministry of Corrections.

The Public Defender welcomes the fact that the obligation of a health-care professional to inform investigative authorities has been statutorily stipulated. However, the Public Defender still believes that initiating and conducting investigation by the Investigative Department of the Ministry does not fulfil the obligation to carry out an independent, impartial and effective investigation.

In the Parliamentary Report of 2015, the Public Defender of Georgia issued a recommendation to the Minister of Corrections with regard to informing investigative authorities on alleged ill-treatments. It was recommended to provide in a respective sub-legislative normative act for the obligation of a penitentiary establishment's doctor to notify directly the Office of the Chief Prosecutor of Georgia upon receiving information of, or finding, an inmate who could have been possibly subjected to ill-treatment.

According to the Ministry of Corrections, the practice of notifying the Investigative Department of the Ministry is dictated by the regulation on Determining Investigative and Territorial Jurisdiction of Criminal Cases as approved by Order no. 34 of the Minister of Justice, dated 7 July 2013. In accordance with the aforementioned regulation, the investigators of the investigative unit of the Ministry of Corrections of Georgia have the jurisdiction over crimes allegedly committed on the premises of penitentiary establishments within the system of the Penitentiary Department.

32 In accordance with the Order, the procedure will be in force as of 1 April 2017.
33 Will be in force as of 1 April 2017.

Stemming from the above-mentioned, the recommendation at stake has not been fulfilled and, therefore, the position of the Public Defender on this issue remains the same. Furthermore, the Public Defender deems it necessary that the respective sub-legislative normative act is amended to the effect that the Office of the Chief Prosecutor of Georgia is in charge of investigation of alleged torture, inhuman or degrading treatment of inmates.

Under Article 2.2 of the abovementioned procedure, a health-care professional should obtain a patient's informed consent before medical screening. Article 2.5 stipulates that a patient's objection to medical screening should be confirmed by his/her signature. In those cases, where a patient objects, medical screening should not be done.

It should be pointed out in this context that inmates of penitentiary establishments are a vulnerable group, especially when they are subjected to ill-treatment. In the existing conditions, the victims of alleged ill-treatment lack adequate statutory and administrative legal safeguards, which would decrease the risks of repression in case of filing a complaint. Therefore, the above-mentioned provisions contains a risk that in those cases, where a victim of alleged ill-treatment does not feel protected and does not have the expectation that those who violated his/her rights will be adequately punished, he/she might be reluctant to notify investigative authorities.

Under the Istanbul Protocol, prison doctors are the primarily providers of medical treatment but they also have the task of examining detainees arriving in prison from police custody. In this role or in treating people within a prison, they may discover evidence of unacceptable violence which prisoners themselves are not in a realistic position to denounce. In such situations, doctors must bear in mind the best interests of the patient and their duties of confidentiality to that person, and the moral arguments for the doctor to denounce evident maltreatment are strong, since prisoners themselves are often unable to do so effectively. Where prisoners agree to disclose, conflict does not arise and the moral obligation is clear. If a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in eliminating the practice of ill-treatment.[34]

Therefore, the Public Defender stresses that, irrespective of an inmate's consent, the decision about notifying investigative authorities should be taken by a health-care professional with the due consideration of interests of the inmate and the public.

Furthermore, it is noteworthy that the issues related to independence and qualifications of medical personnel remain problematic in 2016. According to the findings of the monitoring conducted by the Special Preventive Group, there is certain dependence of the medical personnel on the prison administration. This raises misgivings regarding the impartiality of health-care professionals when dealing with the alleged ill-treatment of inmates, when they are obliged to register injuries and notify investigative authorities. The Public Defender deems it necessary that the Ministry of Corrections of Georgia should take appropriate measures for ensuring adequate independence of medical personnel. In the context of professional independence of medical personnel, the transfer of prison health care to the Ministry of Health, Labour and Social Affairs of Georgia is important.[35]

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To lay down clear instructions with the view of ensuring the confidentiality of doctor-inmate interaction and ensure their practical implementation;

34 The Istanbul Protocol, para. 72.

35 The importance of the issue is also stressed by the CPT in its report on the visit to Georgia. The CPT is of the view that the transfer of prison health care to the Ministry of Labour, Health and Social Affairs would certainly help increase the professional independence of prison health-care staff.

- To amend the Procedure for Registering Injuries of Remand/Convicted Inmates at the Penitentiary Establishments of the Ministry of Corrections Sustained as the Result of Alleged Torture, and Other Cruel, Inhuman or Degrading Treatment, as approved by Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016 with the view of
  - determining the obligation of health-care professionals to notify the Office of the Chief Prosecutor of Georgia where they obtain information or conclude that an inmate could have been subjected to ill-treatment;
  - Entitling health-care professionals to decide about notifying the investigative authorities with the due regard to the interests of the inmate and the public.
- To draft amendments to the Imprisonment Code of Georgia for determining the obligation of health-care professionals of penitentiary establishments to notify the Office of the Chief Prosecutor of Georgia, whenever they obtain information or conclude that an inmate could have been subjected to ill-treatment.

To the Minister of Justice of Georgia:

- To draft an amendment to the Criminal Code of Georgia for criminalising torture committed through the acquiescence of a public official or other person acting in an official capacity and to submit the draft amendment to the Government of Georgia for its initiation in the Parliament;
- To draft an amendment to the Law of Georgia on Legal Aid so that adequate legal aid is secured for the alleged victims of ill-treatment in all cases and to submit the draft amendment to the Government of Georgia with the view of its initiation in the Parliament; and
- To amend Order no. 34 of the Minister of Justice, dated 7 July 2013, which approved Determining Investigative and Territorial Jurisdiction of Criminal Cases, for authorising the Office of the Chief Prosecutor of Georgia to investigate alleged crimes of torture, inhuman and degrading treatment of inmates.

Proposals to the Parliament of Georgia:

- To amend Article 144[1] of the Criminal Code of Georgia for criminalising torture committed through the acquiescence of a public official or other person acting in an official capacity
- To amend the Law of Georgia on Legal Aid so that adequate legal aid is secured for the alleged victims of ill-treatment in all cases; and
- To amend the Imprisonment Code of Georgia for determining the obligation of health-care professionals of penitentiary establishments to notify the Office of the Chief Prosecutor of Georgia, whenever they obtain information or conclude that the an inmate could have been subjected to ill-treatment.

ORDER AND SECURITY IN THE ESTABLISHMENTS OF DETENTION AND DEPRIVATION OF LIBERTY

Under Article 10 of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The

United Nations Human Rights Committee 'believes that here the Covenant expresses a norm of general international law not subject to derogation.'[36]

Maintaining security and order is a fundamental right in the places of deprivation of liberty. Stemming from the human rights protection provisions, maintaining security is an integral part of the commitments taken by the state with regard to human rights protection.[37]

The objective of maintaining control and security is best attained in a humane and just prison system. Therefore, it would be wrong to assume that treating prisoners with humanity hinders safeguarding security and order in prisons. On the contrary, it is fundamental to ensuring that prisons are secure and safe. Good practice in prison management has shown that when the human rights and dignity of prisoners are respected and they are treated fairly, they are much less likely to cause disruption and disorder, and more likely to accept the authority of prison staff.[38]

In every country, there will be a certain number of prisoners considered to present particularly high security risks and hence require special conditions of detention. The perceived high security risks of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psychiatric profile.[39]

Categorisation of convicted persons necessitates providing them with special conditions of deprivation of liberty. The perceived high security risk of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psychiatric profile.[40] This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT, as the need to take exceptional measures vis-à-vis such prisoners, brings with it a greater risk of inhuman treatment.[41]

Under Rule 27 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, 'discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.'[42]

As is well established in the Court's case-law, during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty. It follows, in general terms, that severe measures limiting Convention rights must not be resorted to lightly; more particularly, the principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned.[43]

Under Article 66^2 of the Code of Imprisonment of Georgia, 'for the purpose of serving a sentence, a high risk prison facility is used for highly dangerous convicted persons whose personal qualities, criminal influence, motive of the crime, consequences of the unlawful actions and/or conduct demonstrated in the prison facility poses or may pose a serious threat to the prison facility or to other persons, and to the state or public security

36 The United Nations Human Rights Committee, General Comment no. 29, States of Emergency (Article 4), August 2001, para. 13.a).
37 Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, submitted to the UNGA, 5 September 2006, para. 51.
38 United Nations Office on Drugs and Crime, Handbook on the Management of High-Risk Prisoners, 2016, p. 10, available at: http://www.unodc.org/documents/justice-and-prison-reform/HB_on_High_Risk_Prisoners_Ebook_appr.pdf [Last visited on 09.03.2017].
39 Council of Europe, 11th General Report on the CPT's activities, 1 January - 31 December 2000, para. 32, available in Georgian at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680696a75 [Last visited on 10.02.2017].
40 *Idem.* [Last visited on 07.03.2017].
41 *Idem.*
42 United Nations Standard Minimum Rules for the Treatment of Prisoners, 1997, Rule 27.
43 *Khoroshenko v.* Russia, application no. 41418/04, judgment of the Grand Chamber of the European Court of Human Rights of 30 June 2015, para. 141.

and/or to the law enforcement authorities.'[44] It is noteworthy that under Order no. 106 on Penitentiary Establishments, issued by the Ministry of Corrections of Georgia, the penitentiary establishments nos. 3, 6, and 7 have been assigned the status of high risk prison facility.

The Public Defender negatively assesses the policy of the Ministry of Corrections concerning the high risk prison facilities. According to the established practices, these are penitentiary establishments based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. Such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and eventual reintegration into the society.

It is noteworthy that in accordance with the statutes of the high risk prison facilities, inmates are placed in single or double cells. This falls within the discretion of a director of the establishment. The Public Defender believes that the existing regulation vests the directors of high risk prison facilities with the right to take arbitrary decisions about placing an inmate for a considerable time in a single cell and limit contact with other prisoners.

The Public Defender stresses the need for the amendment of the statutes of the high risk prison facilities for ensuring that placement in a single cell is based on individual assessment of the risks a particular inmate poses and reasoned decision. Furthermore, such decisions should be reviewed within reasonable intervals and placement in a single cell should be compensated by additional measures such as contact with the outside world, accessibility to rehabilitation activities, library and television /radio.

Under Article 54 of the Imprisonment Code, the decision to conduct surveillance and control is made if other means proved to be ineffective. However, Article 121 of the Imprisonment Code allows visual and/or electronic surveillance and control of convicted persons placed in high risk prison facilities. The above-mentioned shows that the system of static security is the main means to attain security in these establishments. The Public Defender of Georgia has numerously observed in his reports that the security system may not be based only on static security and it should take into account effective implementation of dynamic security concept.

The monitoring conducted by the Special Preventive Group showed that surveillance is carried out with regard to every prisoner admitted to a high risk prison facility. Each remand and convicted person admitted into the establishment is placed in a special cell equipped with electronic surveillance. In each case, there is an order issued to allow surveillance based on the Security Service motion and the report of an official in charge of legal regime of the facility. The aforementioned orders are, however, stereotypical and never based on individual risk assessment.

The Public Defender observes that the legislation should not allow routine surveillance and control through visual and/or electronic means only because the establishment is a high risk prison facility. It is important that the aforementioned restriction should only be used with the due account for individual assessment of security risks posed by an inmate, proportionality and necessity. Otherwise, such measures will amount to unlawful and arbitrary interferences in the private life of an individual.

The absence of specific, maximum terms for extending solitary confinement as a security measure in high risk prison facilities shows the danger of arbitrary continuation of such measures for unlimited time. This practice shows differential treatment in high risk prison facilities in comparison to other penitentiary establishments.

European Committee for the Prevention of Torture points out in its report that the number of visits should not depend on the type of the facility and the crime committed. It is important that prisoners sentenced to life

44 The Code of Imprisonment of Georgia, Article 66[2].

in prison should be allowed more short and long visits which will enable them to maintain close ties with their family members and facilitate their rehabilitation.[45]

It is noteworthy that in terms of maintaining contacts with their families, the inmates placed in closed penitentiary establishments and high risk prison facilities receive differential treatment in comparison to inmates of other establishments. In particular, convicted persons, placed in either high risk prison facilities or closed penitentiary establishments, are only allowed one short visit and as an incentive one additional short visit in a month.

The inmates placed in high risk prison facilities face even more restrictive conditions in terms of use of telephone. They are allowed to have one telephone conversation at their expense. This conversation should last no more than 10 minutes and is allowed only once a month. As an incentive, they can have another telephone conversation lasting no more than 10 minutes at their expense.

The Public Defender observes that the establishment type and the nature of the crime committed should not condition allowing visits. It should also be pointed out that the law should allow the inmates of high risk prison facilities the same amount of visits and telephone conversations as afforded to the inmates placed in other penitentiary establishments. The limitation of the number of short visits and telephone conversations should be preconditioned by specific links between such contacts and the crime committed.

The existence of strict security regime in the high risk prison facilities is evident due to the particular increase in the number of disciplinary penalties imposed in 2016 in penitentiary establishments nos. 3 and 6.

The Public Defender observes that under the conditions of enhanced security measures, the administration of a high risk prison facility should use maximum efforts to ensure that the regulations applying to regular penitentiary establishments are also extended to high-risk inmates. In order to compensate the existing regime, the latter category of inmates should more actively benefit from rehabilitation activities.

It is of paramount importance that there are diverse rehabilitation activities tailored to inmates' individual necessities and aspirations in the high risk prison facilities. The results of the monitoring carried out in 2016 showed that the inmates of high risk prison facilities do not have any possibility to carry out meaningful activities that are of interest for them.[46] Such a situation creates unhealthy and stressful environment in an establishment, which in turn has negative ramifications for the relations between inmates and prison staff as well as maintenance of order and security. Most importantly, the objectives of convicted persons' social rehabilitation and prevention of reoffending cannot be attained in such conditions.

According to the letter received from the director of no. 6 establishment, the reason behind the absence of professional and vocational education, and other rehabilitation activities, was that establishment no. 6 is a high risk prison facility.[47] The Public Defender negatively assesses such an approach and observes that it once again shows the dependence of the system on the high risk prison facilities in violation of international standards.[48]

It is noteworthy that in the course of the reporting year only two inmates participated in a rehabilitation activity carried out in high risk prison facility no. 7. There were eight rehabilitation activities in establishment no. 3 in which four convicted persons took part.

It is of paramount importance that high risk prison facilities and closed penitentiary establishments offer diverse and regular activities to their inmates in order to contribute to the positive changes in their behaviour and their rehabilitation. Hence, it is necessary that, with due account of security interests of the establishments, various activities should be carried out.

45 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015, available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last visited on 14.03.2017].

46 See further information under the chapter on daily schedule of and rehabilitation activities in penitentiary establishments.

47 Letter no. MOC7 17 00040633 of the Director of penitentiary establishment no. 6, dated 17 January 2017, registered under no. 03-3/205 at the Office of the Public Defender of Georgia.

48 UN Nelson Mandela Rules, see Rules nos. 91, and 92.

In accordance with the European Prison Rules, 'good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities….'[49] The aforementioned regulation implies introduction of such systems of order and safety that would allow maintaining balance between security and the programs designed for social reintegration of inmates. This also implies inclusion of various components necessary for the effective management of prisons.

Apart from nonexistent rehabilitation programmes, it is of concern that inmates placed in high risk prison facilities and penitentiary establishments spend 23 hours a day in their cells. Their outdoor stroll is limited to an hour a day and takes place in a cell like yard. Conditions that allow physical exercise in these yards are absent, which also has ramifications for the inmates' health.

The Public Defender welcomes the legislative amendment prepared by the Ministry of Corrections, which is aimed at decreasing the duration of administrative detention. However, the adoption of the draft law would mean increasing the term of administrative detention for the inmates of high risk prison facilities up to 150 days. This once again shows the preferences given to repressive approaches especially against the background of the Public Defender's position that favours the abolition of administrative detention, as it is an ineffective method for ensuring order and security in penitentiary establishments.

The measures of static security in high risk prison facilities, as well as their blanket prohibitions, restrictions, very limited rehabilitation activities that stem from the high risk status given to these establishments, ran counter to the spirit of the recommendations given to the States by the Committee of Ministers of the Council of Europe, calling upon the States to apply, as far as possible, ordinary prison regulations to dangerous prisoners and to apply security measures only to the extent to which they are necessary.[50]

Security implies prevention of violence among prisoners, fire and other emergencies, creating safe and working environment for inmates and prison staff as well as prevention of self-harm and suicide. For the aforementioned objectives, the following components of security can be highlighted:

Aspects of physical security include the architecture of prison buildings, the strength of the walls of those buildings, the bars on the windows, the doors of the accommodation units, the specifications of the perimeter wall and fences, watchtowers and so on. Procedural security includes those methods and procedures that are in place for prison security. It implies the rules for preventing escape and maintaining order in prisons.[51] One of the best practices of maintaining security is the concept of dynamic security. Dynamic security refers to actions that contribute to the development of professional, positive relationships between prison staff and prisoners based on dignity and mutual respect in how people treat each other, and in compliance with international human rights principles and due process; it also implies activities aimed at future social reintegration. According to the United Nations Prison Incident Management Handbook, prison staff members need to understand that interacting with prisoners in a humane and equitable way enhances the security and good order of a prison.[52]

The positive relationship between prison staff and prisoners is a necessary precondition for maintaining order and security in a penitentiary establishment. In order to attain such positive relationships, it is important that prisoners understand that the existing rules and procedures are safe and aim at creating a humane environment. Prisoners should be aware that they are treated fairly and their rights are being protected.

49 Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states On European Prison Rules, Rule 49.

50 Council of Europe, Committee of Ministers, Recommendation of the Committee of Ministers R (82) 17 to Member States Concerning Custody and Treatment of Dangerous Prisoners, adopted by the Committee of Ministers on 24 September 1982 at the 350th meeting of the Ministers' Deputies, available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Umluvy/vezenstvi/R_82_17_treatment_dangerous_prisoners.pdf [Last visited on 07.03.2017].

51 Andrew Coyle, International Centre for Prison Studies, 'A Human Rights Approach to Prison Management', 2009, available at: http://www.prisonstudies.org/ [Last visited on 10.02.2017].

52 The United Nations Prison Incident Management Handbook, 2013 paras. 21-22, available at: http://www.un.org/en/peacekeeping/publications/cljas/handbook_pim.pdf [Last visited on 10.02.2017].

Ensuring security and safety in prisons in the conditions of positive relationships between prison staff and prisoners is a starting point. In some cases, however, it is practically impossible not to resort to force and other measures of coercion. Control of prisoners also includes elements of static security such as the use of prison security infrastructure and equipment and the use of force to manage and respond to prison incidents if needs be.[53]

In accordance with the Code of Conduct for Law Enforcement Officials, law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.[54] This implies that additional security measures should be the last resort. The use of force and other measures of coercion may only be based on appropriate procedures and best practices existing in place.

Inspections carried out by the Special Preventive Group in penitentiary establishments in the reporting period revealed the problems in the implementation of security measures and surveillance by prison administration not only in high risk prison facilities but also in other penitentiary establishments as well.

Apart from the above-mentioned problems, serious threat in terms of ill-treatment of prisoners is posed by criminal subculture existing in penitentiary establishments, which often becomes the reason for violence and oppression among inmates.

Criminal subculture has its origins from the beginning of 20th century in Georgia as well as other post-soviet countries. To this day, it is manifested by informal rule aiming at maintaining 'Order' by a certain group of privileged prisoners.

The authority of criminal subculture is used in the informal categorisation of prisoners. This way, certain group of prisoners enjoying a privileged position establish informal rule through repressive methods, which often cause violence among prisoners and are manifested in punitive measures towards those prisoners that disobeyed the said informal rule.

Considering the fact that it is within the interest of administrations of penitentiary establishments to maintain order, there is a temptation on their part to allow to a certain degree, or even foster, informal rule in their facilities. In 2015, in penitentiary establishment no. 17, the treatment inflicted by the privileged prisoners upon one of the inmates was qualified by the investigative authorities and court as torture. It is noteworthy that in this case the court also held the director of the penitentiary establishment as guilty on the account of exceeding official powers, which was manifested in allowing unlimited movement for privileged prisoners within the premises of the establishment at night hours. Those very privileged prisoners tortured the victim at night.

It is necessary that the Ministry of Corrections of Georgia understands the challenges posed by the existence of criminal subculture in penitentiary establishments and elaborates the strategy to overcome these problems. The issue needs to be addressed by a complex approach comprising relevant legal actions to be taken against those inmates violating the rights of other prisoners.

The Public Defender observes that for changing the existing situation it is necessary to take task-oriented complex measures, including the practical implementation of dynamic security concept, fighting impunity, enhancement of rehabilitation services, creation of adequate prison conditions, raising awareness among prisoners, offering incentives to inmates and giving them opportunities to be involved in various meaningful activities. All these measures taken together will weaken the authority of criminal subculture in penitentiary establishments. It is also necessary to take measures aimed at overcoming criminal subculture under the conditions, where inmates' rights and safety are secured. Violent and repressive methods should not be applied in order to avert possible torture and other cruel, inhuman or degrading treatment or punishment.

53 *Ibid.,* para. 13.

54 The United Nations General Assembly, Code of Conduct for Law Enforcement Officials, 5 February 1980, A/ RES/34/169, available at: http://www.refworld.org/docid/48abd572e.html [Last visited on 09.02.2017].

Protection of human rights and security in penitentiary establishments necessitates a complex and systematic approach. The following important organisational aspects[55] should be taken into account: relevant normative regulation; accountability; personnel's operational capacity and competence (correlation of the number of personnel and inmates, organisational structure, personnel's skills and experience, the Code of Conduct for the staff, establishment's statute, and disciplinary proceedings); elements of dynamic security (interactions with inmates, monitoring, collecting information and knowledge of each inmate's personality, conflict management, mediation, etc.); and provisional plan for the management of incidents and emergencies. The aforementioned and other relevant issues are further discussed in the subsequent chapters.

RECOMMENDATIONS

Too the Minister of Corrections:

- To take all the measures to ensure to the maximum extent, with due attention to security interests, accessibility of rehabilitation activities and contact with the outside world in high risk prison facilities, similar to the practices in the regular penitentiary establishments;
- To take all the measures to ensure that security systems in high risk prison facilities are not based only on static security and dynamic security concept is actively implemented;
- To take all the measures to ensure that prisoners are more actively involved in rehabilitation activities as a compensation for special security regime;
- To take all the measures to ensure that limitations/prohibitions imposed on a convicted person are not preconditioned by the mere fact that this person is placed in a high risk prison facility; instead limitations/prohibitions should be imposed individually, based on an adequately reasoned decision by taking into account the assessment of imminent risk posed by a particular convict;
- To amend statutes of the high risk prison facilities to the effect that convicted persons are placed in single cells based on an adequately reasoned decision taking into account the assessment of imminent risk posed by a particular convict, subject to review in reasonable intervals;
- To take all the measures to ensure that that placement of convicted persons in single cells are compensated by maintaining contact with the outside world, accessibility of rehabilitation activities, library, and TV and radio; and
- To overcome criminal subculture and informal rule in penitentiary establishments
  - ensure elaboration of the strategy on overcoming criminal subculture which should contain systematic and regular activities based on the study of criminal subculture existing in a penitentiary establishment;
  - prevent informal rule in penitentiary establishments;
  - ensure enhancement of prison personnel's accountability, competences and operational capacities;
  - ensure optimum correlation of the number of personnel and inmates for practical implementation of dynamic security;
  - ensure enhancement of personnel's skills in terms of interactions with inmates, conflict management, mediation, and conduct compatible with the Code of Ethics; and

55 *Idem.,* [Last visited on 09.02.2017].

- Ensure enhancement of rehabilitation services in penitentiary establishments, adequate prison conditions, raising awareness/education among inmates and the system of fair incentives, and inmates' involvement in various daily and meaningful/interesting activities.

CLASSIFICATION OF PRISONERS

The types of detention and penitentiary establishments are determined by Article 10.2 of the Code of Imprisonment of Georgia.[56] Article 46.4 of the Imprisonment Code[57] provides for the authority of the Director of the Penitentiary Department to place a prisoner in a particular establishment. Order no. 70 of the Minister of Corrections, dated 9 July 2015, provides for the types of risks posed by convicted persons, risk assessment criteria, procedure for risk assessment and re-assessment, conditions of and procedure for transfer of prisoners to the similar or other type of establishment, as well as the terms of reference of the risk assessment team.

In the Parliamentary Report of 2015, the Public Defender gave his recommendation to the Minister of Corrections with regard to the above-mentioned procedure. It was suggested, in particular, to introduce an obligation of a penitentiary establishment or the Penitentiary Department to inform a convict about the initiation of the risk-assessment process by a multidisciplinary team. Furthermore, convicts should be enabled to furnish additional documentation to the multidisciplinary team at any stage of assessment, if they believe this will lead to a desirable outcome. It should be noted that this recommendation has not been fulfilled.

RECOMMENDATION

To the Minister of Corrections of Georgia:

- To amend the Procedure for the Assessment and Re-assessment of the Risks posed by a Convict, Risk Assessment Criteria to the effect of determining the obligation of a penitentiary establishment or the Penitentiary Department to inform a convict about the initiation of the risk-assessment process by a multidisciplinary team. Furthermore, convicts should be enabled to furnish additional documentation to the multidisciplinary team at any stage of assessment, if they believe this will lead to a desirable outcome.

SECURITY MEASURES, MANAGEMENT OF INCIDENTS AND EMERGENCIES DE-ESCALATION ROOMS

In 2015, within the framework of the reform of the penitentiary system of Georgia, relevant ministerial orders approved the statutes of all penitentiary establishments. In accordance with the respective statutes, de-escalation rooms were operating in penitentiary establishments nos. 2, 5, 8, and 18; safe rooms were operating in establishments nos. 3, 6, and 7.

56 The prison facilities are: low risk prison facility; semi-open prison facility; closed type prison facility; high risk prison facility; juvenile rehabilitation facility; and special facility for women.

57 By a decision of the Director of the Department, a convicted person may be transferred for serving the rest of the sentence to a prison facility of the same or different type in cases where he/she regularly violates the internal regulations of the facility; is ill and/or in cases where it is necessary to ensure his/her safety after taking risk factors into account; also in cases of reorganisation, liquidation or overcrowding of the facility or in circumstances specified in Article 58(1) of this Code; or in other important, reasonable circumstances and/or in the case of the consent of the convicted person. A risk assessment team assesses and periodically re-assesses the risks of a convicted person.

On 9 August 2016, the statutes of establishments nos. 3, 6, and 7 were amended and the procedure of transfer of inmates to safe rooms was replaced by the procedure of transfer to de-escalation rooms.[58]

According to the information received from the Ministry of Corrections of Georgia, the numbers of inmates placed in the de-escalation rooms are the following: penitentiary establishment no. 3 – 116 inmates; penitentiary establishment no. 6 – 90; and penitentiary establishment no. 8 – 145.

It is a positive development that the duration of placement of inmates in de-escalation rooms decreased in 2016 in comparison to 2015. However, there were isolated instances where inmates were placed in such rooms from 20 to 30 days. On one occasion identified in penitentiary establishment no. 3, a prisoner was placed in a de-escalation room for 36 days.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in their Report to the Georgian Government on the visit to Georgia in 2014, observed that the maximum time limit at the material time for placement in a 'de-escalation room' (four days according to their information) was way too long. The CPT recommended that 'it should preferably be limited to a few hours and, in any event, not more than 24 hours'.[59] Furthermore, the Committee highlighted the importance of the strategy of de-escalation and observed that the lack of a genuine de-escalation strategy results in some inmates finding no other means of communicating their grievances than through hunger strikes, acts of severe self-harm and even attempted suicides.[60]

The Public Defender considers that the placement in a de-escalation room should be an instantaneous measure of urgent nature and it is impermissible to subject inmates to the conditions existing in these rooms for a long term as such placement could amount to inhuman and degrading treatment. The administration of a penitentiary establishment should resort to other measures, among them, involvement of a multidisciplinary group (a psychologist, a social worker, a medical doctor, and if needs be a psychiatrist) and provision of adequate help to inmates.

In the Parliamentary Report of 2015, as well as the penitentiary establishments monitoring reports of 2016, the Public Defender of Georgia recommended numerous times to the Minister of Corrections of Georgia to limit statutorily the placement of inmates in de-escalation rooms to a maximum term of 24 hours.[61]

As the result of the amendments made on 9 August 2016 to the statutes of penitentiary establishments nos. 3, 6, and 8, the maximum term of placement for prisoners in de-escalation rooms was limited to 72 hours, which is positively assessed by the Public Defender. However, it is noteworthy that a statute authorises the administration of a penitentiary establishment to place an inmate in a de-escalation room for unlimited time, which can again result in long-term isolation of prisoners.

In accordance with all the above-mentioned statutes, a de-escalation room should be equipped with a safe mattress, surveillance camera, remotely controlled and damage-resistant open toilet, tap, light and adequate ventilation.

The respect for an inmates' private life in de-escalation rooms was of concern in 2016 and remains so in 2016. Surveillance systems in de-escalation rooms in establishments nos. 3, 6, and 8 are installed in such a way that the toilet is in the field of view of cameras, which is impermissible as it can amount to inhuman and degrading treatment.

58 In the reporting period, de-escalation rooms were operative only in penitentiary establishments nos. 3, 6, and 8.

59 See Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf (2015), para. 94.

60 *Ibid.,* para. 54.

61 See the Annual Report of the Public Defender of 2015, p. 44, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on 02.11.2017].

It was revealed during the visits to establishments nos. 3, 6, and 8 in the reporting period that sanitation and hygiene conditions were absent in the escalation rooms: there was no mattress on the floor, windows would not open and therefore there was no natural ventilation.

It is noteworthy that the environment and conditions in the de-escalation rooms are not safe and do not minimise the risk of self-harm. According to the information provided by the Ministry of Corrections, cushioning material is not available in Georgia for lining the walls in de-escalation rooms. The Ministry searched for companies manufacturing the material in various countries and presently is in negotiations to make a purchase. The Public Defender of Georgia positively assesses the efforts made by the Ministry of Corrections for adequate equipment of the de-escalation rooms and expresses his hope that the works will be soon completed.

It should also be pointed out that the items of personal hygiene and washing detergents are given to inmates of de-escalation rooms in limited quantities. Furthermore, the inmates placed in de-escalation rooms have to keep their clothes with prison personnel and this way they have limited access to their own clothing.

According to prisoners, apart from their hard daily conditions, when in de-escalation rooms, they are not given access to shops, telephone calls and correspondence, and visits are not allowed either. It should also be noted that according to the information received by the Special Preventive Group in penitentiary establishment no. 3, verified in relevant documentation, despite serious health condition of one of the inmates, he was not transferred from a de-escalation room to a medical unit and the medical personnel did not provide him with assistance as frequently as it was needed.

It is the observation of the Public Defender that somatic and mental health is not taken into consideration when placing inmates in de-escalation rooms. Therefore, long-term isolations in de-escalation rooms could provoke self-harm and suicide. It is noteworthy that in penitentiary establishments nos. 3, 6, and 8, incidents of inflicting self-harm were registered. This questions the effectiveness of these measures in terms of preventing harm to the life and limb of inmates. E.g., from January to May 2016, the inmates of penitentiary establishment no. 3 placed in de-escalation rooms inflicted self-harm in nine occasions. It is therefore evident that the mere placement in de-escalation rooms will not be an effective measure to prevent self-harm. To the contrary, the existing conditions of the de-escalation rooms, combined with isolation, are very likely to provoke self-harm in prisoners.

The inspections showed that in those cases where administration is satisfied that an inmate poses risk to him/herself or others, the use of security measures, including placement in a de-escalation room, is the only intervention. It should be noted that the decision on placement in a de-escalation room is taken by an establishment's director and there is no joint multidisciplinary assessment conducted - psychologists, social workers, medical doctors or other personnel of the establishment's units are not involved in preventing/ decreasing the above-mentioned risks.

As the results of the visits made to establishments nos. 3, 6, and 8 revealed, the inmates in these facilities have the feeling that their transfer to de-escalation rooms was punitive in purpose and occurs whenever they breach the establishment's regulations. According to them, the placement has nothing to do with ensuring their safety.

The group inspected the documentation in establishment no. 3 and found out that out of 51 instances of placement, in 22 cases, disciplinary measures (restriction of telephone calls, visits and correspondence) were imposed on the prisoners placed in a de-escalation room. The Public Defender stresses that it is impermissible to resort to security measures for punitive purposes as such measures should only serve the statutory objective, which is ensuring the safety of people in a penitentiary establishment.

Under the conditions, where there are adequate rehabilitation and psychological services are not available in penitentiary establishments, the prisoners found themselves locked up in cells almost round the clock for 23 hours. The Special Preventive Group concludes that long-term placement of inmates in de-escalation rooms

could amount to cruel, inhuman and degrading treatment and this measure increases the risk of self-harm or inflicting harm to other persons.[62]

It is noteworthy that the basis for the application of placement, its procedure and legal safeguards are not stipulated in law; they are governed by the sub-legislative normative act issued by the Minister. Due to the fact that placement in a de-escalation room is a restrictive measure by its nature, it is important that this measure should be governed by law. In the Parliamentary Report of 2015, the Public Defender proposed to the Parliament of Georgia to provide statutory regulation for the basis of placement of inmates in de-escalation rooms, its procedure and a maximum reasonable term not exceeding 24 hours. It was also proposed by the Public Defender that the official in charge of placement, as well as reasoning standards for the application of the measure and appropriate legal safeguards should be governed by law. It should be pointed out that the aforementioned proposal has not been fulfilled.

Apart from the above-mentioned, in his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that video recordings from de-escalation rooms were stored for at least a month. However, this recommendation has not been fulfilled and the recordings are stored in accordance with a general rule – for no less than 120 hours.

It should be reiterated that placement in a de-escalation room is a coercive measure aimed at maintaining order and safety, application of which is characterised by increased risks of inciting self-harm or use of force against other inmates. This, in turn, increases the risk of ill-treatment. In accordance with the existing regulations, the recordings of visual and/or electronic surveillance are to be archived based on a decision of a particular official in case of a breach of the legal regime. The commission of an alleged crime, death of remand/convict or any other act that could result in any of the aforementioned outcome are such cases. The Public Defender, therefore, observes that the surveillance recordings from de-escalation rooms should not be archived based on the decision of a particular official; instead, these recordings should be automatically archived in all cases. It is possible that, at the material time, there was no basis for archiving recordings in accordance with the regulations in force; however, after the lapse of certain time, an inmate might lodge a complaint and allege the violation of his/her rights in a de-escalation room. It should be also taken into consideration that these recordings will serve as a safeguard against false and unsubstantiated accusations against administration.

In the light of the above-mentioned, the position of the Public Defender remains the same. Placement of inmates in de-escalation rooms should occur only within the scopes of clear statutory regulation and where there are sufficient legal safeguards against human rights violations by such measures. Such placements should only be allowed if there are statutory provisions in place determining the authority of the officials to place an inmate in a de-escalation room, reasoning standards of application of the measure and maximum term limited to 24 hours.

Proposal to the Parliament of Georgia:

- To regulate by law the grounds for placement of inmates in de-escalation rooms, its procedure and a maximum reasonable term not exceeding 24 hours; to specify by law the official authorised to order placement, standards for reasoning for such decisions, and legal safeguards for the protection of prisoners when applying this measure.

62 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the visit to Georgia in 2015. The special Rapporteur pointed out that he was informed the permitted time frame and practices of solitary confinement varied between days, weeks and even months and this could amount to cruel, inhuman or degrading treatment or even torture, para. 85. The report is available in English at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/273/24/PDF/G1527324.pdf?OpenElement) [Last visited on 10.09.2017].

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure drafting legislative amendments to the Imprisonment Code of Georgia for determining grounds for placement of inmates in de-escalation rooms, its procedure and a maximum reasonable term not exceeding 24 hours; to determine the official authorised to order placement, set standards for reasoning for such decisions and legal safeguards for the protection of prisoners when applying this measure; and to ensure the submission of the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia;
- To determine by a sub-legislative normative act storage of video recordings from de-escalation rooms for a minimum period of 1 month;
- To secure rigorous observance of requirements of statutory requirement during placement of inmates in a de-escalation room through supervision and control;
- To ensure amendment of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings as approved by Order no. 35, dated 19 May 2015, to the effect that the recordings of visual and/or electronic surveillance in de-escalation rooms are stored in all cases for no less than a month; and
- To ensure safe environment in de-escalation rooms, including lining the walls and floors with soft material.

SURVEILLANCE THROUGH VISUAL AND/OR ELECTRONIC MEANS

The grounds for surveillance and control of remand/convicted persons through visual and/or electronic means are determined by Article 54.1 of the Code of Imprisonment.[63] The Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings is approved by Order no. 35 issued by the Minister of Corrections of Georgia on 19 May 201.

Under Article 3.5 of the above-mentioned Procedure, 'electronic surveillance and control of remand/convict persons cannot be extended to showers, toilets, rooms for long visits, except for the procedure and cases prescribed by Georgian legislation.' With regard to the aforementioned reservation, as early as on 19 December 2014, the Public Defender of Georgia proposed to the Minister of Corrections to add toilets in prison cells to the list of places that cannot be placed under surveillance. This proposal has not been fulfilled. The European Committee for the Prevention of Torture (CPT) regularly reiterates in its reports, based on visits to various countries, that it is essential 'that the privacy of detained persons be preserved when they are using a toilet and washing themselves.'[64]

The Special Preventive Group visiting penitentiary establishments revealed that prisoners' right to private life is not respected in establishment no. 6. In particular, in the majority of cells, visual surveillance systems (video cameras) are installed so that toilet areas are within the camera's scope. The Special Preventive Group therefore concluded that inmates' privacy was not respected in the establishment.

63 In the case of a reasonable belief, based on security and other lawful interests of remand/convicted or other persons, to prevent suicide, self-injury, violence against remand/convicted or other persons, damage to property, and to avert other crimes and offences, the administration may conduct surveillance and control through visual and/or electronic means. Electronic surveillance is conducted with audio and video devices and/or other technical means of control. The administration may, through electronic means, record the process of surveillance and control, and the information received as a result of this process.

64 See" http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf p. 19, para. 31, also: http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf p. 30, para. 60 [Last visited on 12.03.2017].

The European Committee for the Prevention of Torture (CPT) has numerously emphasised the importance of reasoning standards of the decisions about surveillance and control through visual and/or electronic means. The Committee has repeatedly pointed out that the use of surveillance without adequate reasoning can amount to violation of an inmate's right to private life.[65]

Furthermore, the Public Defender observed in the Parliamentary Report of 2015 that, to provide prisoners with sufficient legal safeguards, it was necessary to indicate in surveillance orders those facts and circumstances that warranted the surveillance measure in each particular case. The reason as to why other measures are considered to be ineffective should also be indicated in those orders. In each individual case, risks should be assessed in detail and the decisions about surveillance should clearly show that such measure is the last resort. It should be noted with regret that this recommendation has not been fulfilled.

The outcomes of the inspection of penitentiary establishments carried out by the Special Preventive Group in 2016, similar to those in 2015, showed that decisions ordering surveillance contain scarce information and the wording is stereotypical. This issue is discussed in detail in the 2015 Parliamentary Report of the Public Defender of Georgia.[66]

Apart from the reasoning standards of decisions ordering surveillance through visual and/or electronic means, it is also important to have these decisions periodically reviewed. Under Rule 51.1 of the European Prison Rules, 'the security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.' Under Rule 51.4, 'each prisoner shall then be held in security conditions appropriate to these levels of risk.' Under Rule 51.5, 'the level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.'

The Public Defender welcomes the fact that the Minister of Corrections of Georgia fulfilled the recommendation on amending the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of providing the obligation on reviewing decisions on surveillance.[67] However, against the background where those decisions are of stereotypical nature, it is meaningless to issue a formal new decision with the same standard of reasoning.

It is also noteworthy that in the Parliamentary Reports of 2014 and 2015, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to determine the reasonable term of storage of video surveillance recordings (for no less than 10 days).

On 20 March 2017, Order no. 35 of the Minister of Corrections of Georgia, dated 19 May 2015, approving the Procedure, was amended to the effect of providing for 120 hours (five days) as the minimum term of storing video recordings. This change is welcomed by the Public Defender as an obvious step forward. It is however to be noted that the practice studied by the Public Defender has shown that it is necessary to store the recordings at least for ten days. The Public Defender also deems it necessary to ensure unimpeded access to these recordings for members of the Special Preventive Group.

Apart from the foregoing, Article 8 of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings merely repeats the relevant provision of the Imprisonment Code and states that administrations are entitled to monitor inmates' meetings

65 Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 December 2012, para. 52, available in English at: http://www.cpt.coe.int/documents/ukr/2013-23-inf-eng.htm [Last visited on 12.03.2017].

66 The Report of the Public Defender of Georgia of 2015 on the Situation of Protection of Human Rights in Georgia, p. 46.

67 Under Article 4.1 of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings, decisions on conducting surveillance and control through visual and/or electronic means is taken by the director of a penitentiary establishment. The decision is issued in the form of an Order when there are relevant grounds for ordering this measure. Orders are issued for the period the grounds continue to exist but no more than three months.

with the persons[68] referred to in Article 54.6 of the Code. This monitoring is conducted visually, through observation and recording with technical means from a distance but out of hearing of those monitoring. This was another issue that the Public Defender brought to the attention of the Parliament and the Minister of Corrections and recommended to amend the Procedure to the effect of stipulating that meetings of remand and convicted persons with the Public Defender and members of Special Preventive Group are confidential and eavesdropping or surveillance of any kind are impermissible. This recommendation, however, has not been fulfilled.

The Public Defender requests to amend the above provision with regard to the Public Defender and the members of the Special Preventive Group both in the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings and the Code of Imprisonment. The request is based on Article 19.3 of the Organic Law of Georgia on The Public Defender of Georgia under which 'the meetings of the Public Defender of Georgia/a member of the Special Preventive Group with detainees, prisoners or persons whose liberty is otherwise restricted, convicted persons, persons in psychiatric facilities, old people's and children's homes shall be confidential. Any kind of eavesdropping and surveillance shall be prohibited.'

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To make a legislative amendment to the Imprisonment Code to the effect of inserting express reference to the confidentiality of the meetings of the Public Defender of Georgia/members of the Special Preventive Group with remand/convicted persons as well as prohibition of any kind of wiretapping or surveillance; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia;
- To amend the Order issued by the Minister of Corrections approving the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of inserting express reference to the confidentiality of the meetings of the Public Defender of Georgia/members of the Special Preventive Group with remand/convicted persons as well as prohibition of any kind of wiretapping or surveillance;
- To amend the Order issued by the Minister of Corrections approving the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of adding toilets in cells to the list of places where surveillance is prohibited;
- To draft legislative amendment to the Imprisonment Code to the effect of inserting express prohibition of surveillance in toilets in cells; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia;
- To amend the wording of the Ministerial Order approving the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of providing information about the circumstances warranting the necessity and indispensability of surveillance and control through visual and/or electronic means;
- To take all reasonable measures to ensure that surveillance through electronic means is conducted only in those cases where other measures proved to be ineffective and for the duration strictly

68 President of Georgia; President of the Parliament of Georgia and the Members of the Parliament authorised by the former; Prime Minister of Georgia; Officials of the Office of the Prosecutorial system vested with the relevant capacity; Public Defender of Georgia; Minister of Corrections and other persons authorised by the former; Members of the Special Preventive Group.

necessary in view of particular circumstance; also to ensure that the decisions on conducting surveillance through electronic means are adequately reasoned; and

- To determine by a relevant order a reasonable time (no less than 10 days) for storing the recordings of video surveillance and ensure unimpeded access of the members of the Special Preventive Group to these recordings.

Proposals to the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of inserting express reference to the confidentiality of the meetings of the Public Defender of Georgia/members of the Special Preventive Group with remand/convicted persons as well as prohibition of any kind of wiretapping or surveillance; and
- To amend the Imprisonment Code to the effect of inserting the prohibition of surveillance of toilets in cells.

SEPARATION OF PRISONERS FOR SECURITY REASONS

Article 57.1.b) of the Code of Imprisonment of Georgia provides for the grounds of separation of prisoners.[69] The grounds and procedure for the application of this measure are governed by the respective orders issued by the Minister of Corrections approving the statutes of penitentiary establishments. These statutes provide for the similar procedure for all penitentiary establishments.[70]

The statutes of high risk prison facilities and other establishments provide for different terms for the extension of the duration of separation. In particular, in accordance with the statutes of high risk prison facilities, if needs be, separation of a prisoner from other prisoners may be extended with the decision of the director of an establishment for a reasonable term, until the danger that warranted the isolation does not exist. In accordance with the statutes of other penitentiary establishments, if needed, the term of separation of a convict from other convicted persons may be extended based on the decision of the director of a penitentiary establishment for another thirty days. If these security measures prove to be ineffective, the director of a penitentiary establishment motions before the Director of the Penitentiary Department on transferring a convict or person endangering the former to another prison facility. If there are relevant grounds for this measure, it is not necessary to exhaust the initial term for filing the motion.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure the amendment of the penitentiary establishments' statutes to the effect of determining the maximum term for separation. This recommendation, however, has not been fulfilled.

The inspections conducted by the Special Preventive Group in the reporting period reviewed that the separation of inmates is widely practiced in penitentiary establishments. In 2016, in accordance with the above procedure, establishment no. 3 separated 1 inmate; establishment no. 6 separated 108 inmates; establishment no. 8

69 To avoid self-injury, or damage to other persons and property, to prevent crimes and other offences in the penitentiary institution, to prevent the non-compliance by an remand/convicted person of a lawful demand of an employee of the Special Penitentiary Service, to repel attacks, to suppress collective disobedience and/or mass unrest, the following security measures may be applied, on the basis of a justified decision, to remand/convicted persons: a) isolation from other remand/convicted persons.

70 In particular, the decision about placing a convicted person separately from other convicts for a reasonable time is made by the director of a penitentiary establishment following the request of a convict or on the director's own motion if the statutory grounds are met. In the absence of the director of a penitentiary establishment, an official in charge orders separation of a convict from other convicts for a maximum of 24 hours. The Director decides on the separation of a convict from other convicts in the form of an Order.

separated 115 inmates; establishment no.11 separated 1 inmate; establishment no. 14 separated 46 inmates; establishment no. 15 separated 38 inmates, establishment no. 17 separated 151 inmates; establishment no. 18 separated 6 inmates; and establishment no. 19 separated 6 inmates.

Solitary confinement of inmates without legal basis and in violation of the above procedure was also systematically practised in penitentiary establishments in 2016. Certain inmates have been separated for years in solitary confinement cells in penitentiary establishments nos. 6, 7, and 9. Some of these prisoners have not used long visit at all. One of them has been in solitary confinement since 2005 and serves a life sentence.

The European Court has consistently stressed that the suffering and humiliation involved must not in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his/her liberty may often involve such an element. Under this provision the state must ensure that a person is detained in conditions that are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him/her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his/her health and well-being are adequately secured.[71] The Court also observes that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions as well as of specific allegations made by the applicant.[72]

At the same time, the European Court opined in *Pretty v. The United Kingdom*[73] that the concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Article 8 also protects the right to personal development, and the right to establish and develop relationships with other human beings and the outside world.[74]

The European Committee for the Prevention of Torture underlines that it 'pays particular attention to the convicts under conditions close to separation, despite the reason for placing them under such conditions (disciplinary reasons, the result of their "dangerous" or "difficult" behaviour, interests of criminal investigation, their personal request). The principle of proportionality requires balance between the requirements of the case and the use of the regime of separate placement of the prisoner, which may have grave results. The mere fact of such a placement may in some cases amount to inhuman and degrading treatment. In case, such a measure must be short-term.' [75]

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, in his report on the mission to Georgia in 2015, discussed the practice of isolation of prisoners in penitentiary establishments of Georgia. The Special Rapporteur wrote that he was informed that, in practice, inmates may spend several months in this form of solitary confinement, and is of the opinion that this may constitute cruel, inhuman or degrading treatment and even torture, and may indeed risk exacerbating the conditions that make these inmates a risk to themselves or others in the first place.[76]

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure mandatory review of solitary confinements after 14 days of the application of this measure and in the same intervals afterwards. This recommendation has not been fulfilled.

71 See *Valašinas v. Lithuania*, application no. 44558/98, judgment of the European Court of Human Rights of 24 July 2011, para. 102; also, *Kudla v. Poland*, application no. 30210/96, judgment of the para. 94.

72 See *Dougoz v. Greece*, application no. 40907/98, para. 46, ECHR 2001-II.

73 *Pretty v the United Kingdom*, application no. 2346/02, judgment of the European Court of Human Rights of 29 April 2002, para. 61.

74 *Burghartz v. Switzerland*, application no. 16213/90, judgment of the European Court of Human Rights of 22 February 1994, para. 47; and *Friedl v. Austria*, application no. 15225/89, judgment of the European Court of Human Rights of 31 January 1995 para. 45.

75 The Report of the European Committee for the Prevention of Torture, 1998 Report following the visit in Finland, CPC/Inf(96)28).

76 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, A/HRC/31/57/Add.3, para. 85.

The Public Defender's position remains the same that it is important to introduce relevant legal safeguards so that separated inmates do not find themselves in conditions that aggravate the suffering inherent in detention and solitary confinement.

In case of the above convicted persons, it is unclear what the terms of solitary confinement are and upon existence of what circumstances its need ceases to exist. It is likewise unclear why it is impossible to attain the objective sought by the director of a penitentiary establishment – safety of inmates – by means of placing the prisoner concerned with other convicts or transferring to another establishment.

The Public Defender brought this issue to the attention of the Minister of Corrections in his Parliamentary Report of 2015 and recommended to the Minister to ensure immediately that the inmates separated forcefully and in breach of the statutory requirements about grounds and procedure of the application of this measure are placed with other prisoners. The Public Defender also recommended to the Minister to ensure the introduction of the relevant legal safeguards so that separated inmates do not find themselves in conditions that enhance the suffering inherent in detention and solitary confinement. These recommendations have not been fulfilled.

It is impermissible to ignore the approach taken by international human rights law according to which the state has an obligation to review periodically the necessity and proportionality of the measures applied for the safety of a convicted person. Under rule 51.1 of the European Prison Rules, 'the level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.'

In the case of *Ramirez Sanchez*, the European Court of Human Rights emphasised that solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits and reasons for a prolonged measure of solitary confinement. The Court found a violation of Article 13 of the Convention in this case. It noted in particular that prisoners in solitary confinement did not have any remedy available to challenge the original measure or any renewal of it.[77]

As the Public Defender stated in the Parliamentary Report of 2015, the separation of prisoners by prison administration without adequate reasoning and for indefinite period under the pretext of ensuring their safety is in breach of both domestic legislation and the standards established by international instruments. It also undermines the possibility of rehabilitation of the inmates of given penitentiary establishments and such actions may amount to torture or inhuman or degrading treatment.

The position of the Public Defender remains the same that it is impermissible to isolate indefinitely a person in the circumstances where the statutory merits and reasons for such measures are not complied. Indefinite isolation of prisoners violates their basic rights guaranteed, inter alia, by Articles 3, 8, and 13 of the Convention for the Protection of Human Rights and Fundamental freedoms.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To amend the statutes of high risk prison facility and specify the maximum term of separating prisoners from other prisoners;
- To provide for mandatory review of the decision on separation of a prisoner in 14 days after the application of the measure and in the same intervals afterwards;
- To establish relevant legal safeguards to ensure that separated prisoners are not placed under conditions that aggravate suffering inherent in detention and isolation;

77 Ramirez Sanchez v. France, application no. 59450/00, judgment of the European Court of Human Rights of 4 July 2006, paras. 145, 152.

- To ensure through supervision and control that prisoners are isolated against their will only for security purposes and based on the grounds and procedures stipulated by the statutes of respective penitentiary establishments; and
- To ensure immediately that the prisoners separated from other inmates against their will and without the merits and procedures provided by the statutes of penitentiary establishments are placed with other prisoners.

USE OF SPECIAL MEANS

According to the information submitted by the Minister of Corrections of Georgia, in 2016, penitentiary establishments used only handcuffs out of the available special means. In particular, 53 cases of use of handcuffs were identified in establishment no. 2; establishment no. 3 used handcuffs in 82 cases; and establishment no. 8 in 16 cases.

In comparison with 2015, handcuffs were used in fewer cases in establishments nos. 3 and 8, in 2016. Handcuffs were not used in 2016 in establishments nos. 15 and 17. In comparison with 2015, there were more incidents involving the use of handcuffs in penitentiary establishments nos. 2 and 6 in 2016.[78]

In the Parliamentary Report of 2015, the Public Defender proposed the following to the Parliament to Georgia:

- To amend the Imprisonment Code to the effect of inserting prohibition of the use of tear gas indoors;
- To amend the Imprisonment Code to the effect of determining types of nonlethal weapons; and
- To amend the Imprisonment Code to the effect of inserting prohibition of the use handcuffs for pinning down a person onto a solid surface.

The above recommendations have not been fulfilled. The Public defender emphasises that the fulfilment of the recommendations at stake is important for securing human rights and legal safeguards when using special means of restriction.

It is noteworthy that the statutes of high risk prison facilities allowed routine use of handcuffs without any justification. The statutes stipulated that removal of a prisoner from the cell and movement on the premises of the establishment before reaching the place of destination during the daytime was only allowed with the use of handcuffs. Following the recommendation of the Public Defender, in December 2016 and January 2017, the statutes of the high risk prison facilities were amended to the effect of changing the aforementioned provision. The statutes in force stipulate that the use of handcuffs is only allowed where a convicted person resists the special penitentiary office's representative and/or disobeys his//her orders, endangers his/her own or another person's life and limb, damages or attempts to damage property of the state or another person and/or there is a reasonable belief for any of the circumstances to arise. The Public Defender welcomes the aforementioned amendment and positively assesses it.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure drafting an amendment to the Imprisonment Code providing the following issues and submitting of the amendment to the Government for its initiation in the Parliament:

78 There were 15 cases of using handcuffs in establishment no. 2; 123 cases in establishment n. 3; 22 cases in establishment no. 6; 55 in establishment no. 8; 1 in establishment no. 15; and 3 in establishment no. 17.

- The types of nonlethal weapons;
- Prohibition of the use of tear gas indoors; and
- Prohibition of the use of handcuffs for pinning down a person onto solid surface.

Proposals to the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of inserting prohibition of the use of teargas indoors; and
- To amend the Imprisonment Code to the effect of determining the types of nonlethal weapons.

SCREENING PROCEDURES

In accordance with the Nelson Mandela Rules, the laws and regulations governing searches of prisoners and cells shall be in accordance with the obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.[79]

Due to their intrusive nature, all body searches can be degrading, even humiliating. They should therefore be used only when strictly necessary to maintain order or security in the prison for the persons themselves and for other detainees and staff.[80]

The Committee emphasises that strip-searches should only be conducted on the basis of a concrete suspicion and in an appropriate setting, and be carried out in a manner respectful of human dignity.[81]

In the case of *Wainwright v. the United Kingdom,* the European Court of Human Rights observed that there is no doubt that the requirement to submit to a strip-search will generally constitute an interference under the first paragraph of Article 8 and requires to be justified in terms of the second paragraph, namely as being 'in accordance with the law' and 'necessary in a democratic society' for one or more of the legitimate aims listed therein.[82]

The Georgian legislation, namely the Code of Imprisonment[83] and sub-legislative normative acts issued based on the former, allows strip-search.[84] The statutes of penitentiary establishments specify that strip-searches of remand and convicted persons may be full and partial.

Partial strip search is conducted before and after an remand/convicted person's visits to a dactyloscopy technician, a health-care professional, an investigator; before and after meetings with close relatives or other

79 The United Nations General Assembly, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Resolution was adopted by the General Assembly of the United Nations on 8 January 2016, A/RES/70/175, Rule no. 50,

80 Association for Prevention of Torture (APT), Detention Focus – Body Searches, available in English at: http://www.apt.ch/detention-focus/en/detention_issues/6/ [Last visited on 10.02.2017].

81 Council of Europe, European Committee for the Prevention of Torture, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 Marc to 3 April 2014, published on 29 January 2015, available in English at: http://hudoc.cpt.coe.int/eng#{"fulltext":["squat"],"CPTSectionID":["p-bgr-20140324-en-23"]} [Last visited on 10.02.2017].

82 *Wainwright v. the United Kingdom,* application no. 12350/04, judgment of the European Court of Human Rights of 26 September 2006, paras. 42-43.

83 The Code of Imprisonment of Georgia, Article 75.4

84 Article 22.2 of the statute of penitentiary establishment no. 5.

persons; during transfers to other cell; as well as other instances based on a decision reached by a director or another authorised official.

Unlike partial strip-search, the statutes of penitentiary establishments provide for full bodily searches of remand/convicts for all occasions of the first arrival, temporary leave and return to the penitentiary establishment.[85] Furthermore, in accordance with the statute of a penitentiary establishment, full strip-search may also be conducted in other cases based on a decision reached by a director or another authorised official.

The Public Defender observes that the regulations under the statutes of penitentiary establishments under which full bodily searches may be administered in all occasions of the first arrival, temporary leave and return to the penitentiary establishment is a blanket provision allowing routine and unjustified strip-searches. The Public Defender is of the opinion that the legislation in force should not allow routine strip-searches and bodily inspections may only be based on individual assessment of the risks posed by a particular inmate, taking into account the principles of proportionality and necessity. It is also important that full bodily searches are only administered in exceptional cases and with adequate written justification. This is essential to avoid unjustified interferences in the right to privacy.

As the result of examination of one of the cases concerning full bodily search of convict G.O. before transportation to a court, the Public Defender found that there was unnecessary and disproportionate interference in the right to private life.

The representatives of the Public Defender of Georgia visited the Ministry of Corrections of Georgia on 9 September 2016, where they examined the recording of visual surveillance administered with regard to G.O. which also included the recording of the full strip-search. After the examination of the video recording, minutes were duly drafted.

It is revealed from the minutes of surveillance that full bodily search of G.O. was administered from 12:16 until 12:24 on 7 September 2016. In this time, there were at least six staff members present apart from the convict in the special quarantine chamber.[86] G.O. hands over the items from his pocket and in accordance with the statute of the penitentiary establishment, the staff members examine the items, clothes and shoes both manually and with the help of metal detectors. According to the minutes, At 12:21:36, the convict, at the request of the staff, drops his trousers up to his knees and raises his hands, after which a staff member examines him with a metal detector from waist down to the knees. At 12:21:51, the convict is instructed to remove clothes completely from the mentioned part of the body. After a dispute that approximately lasts for a minute, he follows the instruction. It is to be pointed out that if not for G.O.'s objection, other members of the staff were not going to leave the quarantine chamber.

It is evident from the above case that the strip search conducted therein could not reasonably be considered as necessary and proportional. Nothing in the actions of the prison staff indicates that there was any suspicion that the convict possessed any illegal item or he had breached the law in any way. The strip search was not aimed at a more detailed inspection of the respective part of the body. The minutes show that the staff member did the same (up and down movements with metal detector from the waist down to the knees) before strip search and afterwards.

Stemming from the above-mentioned, the Public Defender found that the request for bodily search did serve a legitimate aim. Special consideration is given to the fact that there were six persons in the cell without any legitimate ground. In such conditions, intrusion into the intimate sphere of a prisoner may additionally amount to inhuman and degrading treatment.

85 Oder no. 149 of the Minister of Corrections of Georgia approving the Procedure for Providing Convoy for Removal/Transfer of Remand/Convicted Persons, Article 29.

86 According to the minutes drafted by the representative of the Public Defender of Georgia, the entrance of the quarantine chamber is not in the field of vision of the camera installed in the chamber. Therefore, there could be other persons too in the chamber. See, the annexed minutes, p. 2.

The European Court of Human Rights found in several cases that strip searches amounted to inhuman treatment since no compelling reasons have been adduced to find that this measure was necessary and justified by security reasons. In addition, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder in prisons, they must be conducted in an appropriate manner.[87]

In terms of ensuring security at a penitentiary establishment, it should also be taken into consideration that security encompasses many other elements such as personal screening of an remand/convicted person and periodic and spontaneous inspections of the premises of an establishment and buildings and constructions located there.[88] Therefore, security considerations may not always be the basis only for strip searches. It should also be taken into account that in those cases, where a prisoner is under control of the personnel, the high degree of the control from the administration should be borne in mind. This concerns e.g., transfer of an inmate to a courtroom or a hospital.

During full body searches, every reasonable effort should be made to minimise embarrassment and ensure respect for the dignity of a person. The CPT emphasises that prisoners who are searched should not normally be required to remove all their clothes at the same time.[89]

These searches must be conducted in private, in a separate room, away from the eyes of inmates and others. There must be adequate conditions of hygiene and cleanliness.[90] It is important to clean and sterilise the place before each search.

The Public Defender deems that, apart from full strip-search, it is also problematic that the law does not differentiate between full strip search and body cavity search and there are no procedures prescribed for each type of bodily search. It is therefore impossible to determine which measure should be used in a particular situation. This lack of distinction increases the risk of unjustified resort to invasive measures even more.

The Public Defender considers it necessary that statutes of the penitentiary establishments should clearly differentiate between strip search and body cavity search and stipulate a specific procedure for each measure.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to replace aggressive (invasive) bodily search with an alternative such as scans in establishment no. 5.

The above recommendation was based on the monitoring carried out in establishment no. 15 in 2015. According to the results, women prisoners were ordered to strip and perform squats. The women prisoners explained that these procedures were degrading and morally damaging. Furthermore, due to the fact that these procedures were obligatory to be carried out whenever leaving/returning to the prison, the women prisoners refused to leave the establishment even for getting medical services or appearing before a court.

The Recommendation of the Public Defender on the use of scans as an alternative measure to the full bodily search of women prisoners was based on the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), under which alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches to avoid the harmful psychological and possible physical impact of invasive body searches.[91]

87 *Iwańczuk v. Poland*, application no. 25196/94, judgment of the European Court of Human Rights of 15 November 2001; *El Shennawy v. France*, application no. 51246/08, judgment of the European Court of Human Rights of 20 January 2011; *Valašinas v. Lithuania*, application no. 44558/98, judgment of the European Court of Human Rights of 24 July 2011.

88 Statutes of the Penitentiary Establishments.

89 Council of Europe, European Committee for the Prevention of Torture, Report to the Czech Government on the visit to Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1-10 April 2014, para. 85, published on 31 March 2015, available in English at: http://hudoc.cpt.coe.int/eng#{"fulltext":["squat"],"CPTSectionID":["p-cze-20140401-en-30"]} [Last visited on 10.02.2017].

90 Association for Prevention of Torture (APT), Detention Focus – Body Searches, available in English at: http://www.apt.ch/detention-focus/en/detention_issues/6/ [Last visited on: 10.02.2017].

91 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 6 October 2010, A/C.3/65/L.5, Rules nos. 19-20.

The Public Defender welcomes the steps taken in fulfilling the above recommendation. In particular, a scanner was installed at establishment no. 5 and the statute of penitentiary establishment no. 5 was amended to the effect of providing its women prisoners the right to undergo personal screening with a scanner.

The monitoring carried out in 2016 showed that, in no. 5 penitentiary establishment for women, scanning was not used as the alternative method of search. In particular, scanning was used as an additional, and not as an alternative measure, along with the full bodily search. This is in clear violation of the standards established by the Bangkok rules. The Public Defender observes that in cases, where scanners are used as an alternative method of screening, additional measures should not be used.

During the visits of the Special Preventive Group, carried out in 2016 in various penitentiary establishments, prisoners pointed out the problem of full (strip) body searches and squats. According to the prisoners, these procedures were degrading.

According to the information received from the Ministry of Corrections, a scanner has been purchased for establishments nos. 2, 6, 8, and 17. However, as it turns out, this equipment is not designated for screening remand/convicted persons.[92]

The Public Defender recommends to the Minister of Probations to ensure the use of scanning as an alternative method of screening in all penitentiary establishments and have the relevant obligation in place by the statutes of penitentiary establishments.

In contravention to the statements made by the Ministry of Corrections at various meetings, according to which the representatives of the Ministry attributed strip searches to the need to document injuries. Hereby the Public Defender wishes to emphasise that the aforementioned statement is inaccurate since strip search in its nature is a completely different procedure that has nothing to do with documenting injuries. Strip search by the security unit personnel of an establishment aims at seizing banned items, materials and food products. Whereas, documenting aims at registering by a health-care professional, in confidentiality and with the informed consent of the patient concerned, the incidents of alleged torture and other cruel, inhuman or degrading treatment.

The series of monitoring carried out by the Special Preventive Group revealed that there is no uniform practice with regard to the screening of the persons authorised to enter a penitentiary establishment. According to the information obtained during the monitoring, those visiting short-term and long-term are inspected differently. Short-term visitors are inspected while dressed, with a pat down on their clothes and by using a metal detector. Long-term visitors have to remove clothes from different parts of body at a time (apart from underwear) and are inspected with a metal detector.

Several prisoners at establishment no. 5 expressed their indignation to the members of the Special Preventive Group that visiting minors were strip-searched. Under the Nelson Mandela Rules, body cavity searches should be avoided and should not be applied to children.[93]

In this context, it should be noted that in accordance with the statutes of penitentiary establishments, screening of those authorised to enter implies inspection of personal items and clothes. It is also stated that the inspection of a visitor may only be carried out when there is a reasonable suspicion that the person concerned intends to smuggle illegal items, material and food products in or take illegally purchased valuables from the penitentiary establishment.

The aforementioned regulations state nothing about the obligations to carry out full searches or scanning of those who are authorised to enter a penitentiary establishment. However, according to the well-established

92 Letter no. MOC 717 00104588 of the Ministry of Corrections of Georgia dated 2 February 2017 (registered under no. 03-3/1748 in the Public Defender's Office).

93 The Nelson Mandela Rules, Rule no. 60.2.

arbitrary practice, both short and long-term visitors of prisoners are obliged to undergo full searches in a brazen breach of the legislation in force.

The existence of the practice of using scans as a screening method of those authorised to enter a penitentiary establishment and the full search as an alternative method is further proved by the fact that the members of the Special Preventive Group themselves were subjected to the screening procedure.

In accordance with the Imprisonment Code, the members of the Special Preventive Group do not need to present a special authorisation to enter and their admission is governed by a different rule. However, the members of the Special Preventive Group agreed to undergo illegal and unjustified inspection requested by the prison staff. The members agreed so that they could document the practice of illegal and unjustified inspection of those who are authorised to enter a penitentiary establishment. The interesting circumstances of this incident are described below.

On 26 January 2017, in establishment no. 5, the members of the Special Preventive Group were requested to undergo full bodily search. The director of the establishment explained to them that they had to undergo inspection with a special scanner when entering and leaving the premises of the establishment. When the Group members declined, the administration offered them full bodily search as an alternative. The director, the deputy director and the establishment's lawyer invoked some ambiguous order that was put up in a visible spot at the entrance. According to the document, if a person at the control area of the penitentiary establishment refused to undergo screening with the use of a scanner, he/she had to undergo full search when entering and leaving the establishment.

As it was found out later, the document put up in the visible sport was not an order but a draft order, which has not been approved to date. For the monitoring purposes, the members of the Special Preventive Group obliged with the requests and underwent screening with a scanner. In the noon, when temporarily leaving and returning establishment no. 5, due to their refusal to go through screening by the scanner, the members of the Special Preventive Group were requested to undergo the following inspection. In an isolated room equipped with a surveillance camera, the female members of the group were asked to remove their shoes, turn their pockets inside out and stretch their brassieres to allow inspection; while dressed they were patted down manually and checked with a metal detector. The male members of the group were asked to remove their shoes, turn their pockets inside out and have them examined. The members of the Special Preventive Group were told that considering their status an exception was made and as an alternative to screening by a scanner full body search was used, which implies taking off the clothes.

The Public Defender observes that the above incident proves the fact that the provisions of the statutes of penitentiary establishments concerning those entering the establishments are not followed in practice. The utmost concern of the Public Defender is caused by the fact that prisoners' short- and long-term visitors are subjected to routine checks of their personal items and clothing rather than basing inspections on reasonable suspicion. Particularly alarming is the fact that those entering the penitentiary establishment are illegally requested to undergo partial (strip) searches.

After the above-mentioned incident, the Public Defender addressed the Minister of Corrections in a letter and requested an appropriate follow-up.[94] In response to the letter, the Public Defender was notified by the Ministry of Corrections that efforts on improving legal regulations were underway in the Legal Department to avoid similar incidents in future.[95]

The Public Defender points out that the whole idea of National Preventive Mechanism is based on unimpeded access of the members of this mechanism to the places of detention, deprivation of liberty and other places

94 Letter of the Public Defender of Georgia sent to the Minister of Corrections of Georgia on 13 March 2017 (registered under no. 03-3/3330 at the Office of the Public Defender).

95 Letter no. MOC 917 00201654 of the Ministry of Corrections dated 16 March 2017 (registered under no. 03-3/3330 at the Public Defender's Office).

of restriction of liberty and carrying out spontaneous monitoring (without prior notifications) of these places, which in turn aims at preventing torture and ill-treatment. The objective and spirit of both the Optional Protocol of the United Nations Convention against Torture and the Organic Law of Georgia on the Public Defender of Georgia clearly show that unrestricted access of Special Preventive Group members to all places of detention and their installations and facilities is essential for the effective fulfilment of their mandate and functions.

In this regard, the Imprisonment Code (Article 60.1.g) is in full compliance with international regulation, as under the Code, the members of the Special Preventive Group do not need any special permission to access penitentiary establishments; a different procedure regulates their admission.

Therefore, a member of the Public Defender's Special Preventive Group, due to his/her mandate, is not to be requested to undergo inspection of any kind. Moreover, they are not to be obliged to undergo screening by a scanner or full body search. However, as the practice has been established, the members of the Special Preventive Group showed good will and agreed to be subjected to inspection with metal detectors despite having no such obligations.

In the light of the above-mentioned, the Public Defender stresses the importance of the fact that the personnel of the Ministry of Corrections should be adequately informed about the legal regulations in force to avert obstruction of the National Preventive Mechanism and unreasonable restriction of the rights of ordinary citizens.

The Public Defender emphasises the importance that the Inspectorate General of the Ministry of Corrections should pay special attention to the monitoring of inspection of the visitors to penitentiary establishments. It is important in terms of eradicating arbitrariness of the personnel and ensuring that inspection is carried out in accordance with the existing legislation and international standards.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure the review of the legal framework governing screening of remand/convicted persons to bring it in compliance with international standards and striking a fair balance between the safety/security and human rights protection interests;
- To ensure that full body search of remand/convicted persons is carried out only based on individual risk assessment of a particular prisoner, with due account to the principles of proportionality and necessity; furthermore, when requesting full body search it is necessary to offer scanning as an alternative screening method which will be defined by the statutes of penitentiary establishments;
- To take all the measures to ensure that the statutes of penitentiary establishments clearly differentiate between strip-searches and body cavity searches and appropriate procedures are determined for each measure;
- To take all measures that during full body searches stripping different parts of body at once is not requested and the so-called 'doing squats' practice is eradicated;
- To take all the measures to eradicate the practice of full body search of minors visiting inmates in establishment no. 5 for women prisoners;
- To take all the measures to ensure that where scanning has been used as an alternative method of screening, other measures of inspection are not additionally used;

- To ensure monitoring by the Inspectorate General of the procedures for admission of visitors to a penitentiary establishment for averting arbitrariness of the personnel and that the inspection is carried out in accordance with the legislation in force and international standards; and
- To take all measures to ensure that the personnel of the Ministry of Corrections are adequately informed that the Public Defender/members of the Special Preventive Group, due to their status, are not required to undergo inspection of their personal items and clothing, and to undergo scanning, and full body search.

PERSONNEL: WORKING CONDITIONS, TRAINING AND ACCOUNTABILITY

In accordance with the Nelson Mandela Rules, the prison administration shall provide for the careful selection of every grade of the personnel, since it is upon their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.[96]

The penitentiary establishments employ personnel in administrative, social security, security, legal regime and special registration units. Furthermore, there is a health-care unit employing civil servants of the ministry's civil service and visiting specialists.[97] The personnel of the administrative and social security units are civil servants and the Law of Georgia on Civil Service applies to them. Officers and privates of the special penitentiary service are the personnel of security, legal regime and special registration units.

Due to the fact that penitentiary establishments had been a part of a military system for years, the management of which was based on the punitive and strict regime concept, according to perceptions formed in the public over years, working in a penitentiary establishment was not prestigious.

The Public Defender positively assesses the division of civil and penitentiary services as a step forward. Against the existing background, the Public Defender deems it necessary that the Ministry of Corrections should actively pursue the policy of recruiting new staff. This should imply actively informing the public about job openings at penitentiary establishments and working conditions in prisons. The Public Defender observes that active dissemination of information about the working conditions in prisons will promote the public's interest in the penitentiary system and attract potential human resources.

In parallel to attracting and recruiting professional resources, it is important that the establishments should maintain the existing well-qualified resources. Salaries should be adequate to attract and retain suitable men and women and working conditions should be favourable to remunerate hard and labour-consuming work.[98]

The monitoring carried out by the Special Preventive Group revealed that the health-care personnel of the penitentiary establishments do not have medical insurance. The working conditions of on-duty doctors and nurses are quite hard as they have to work busy night shifts. Paramedics attending to serious patients and doing hard work receive low remuneration.

Psychologists and social workers face hard working conditions in the penitentiary establishments. Considering the high demand for psychologists and social workers and the volume of work they perform in penitentiary establishments, it is important to take additional measures for recruiting adequate human resources.[99]

96 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 74.1.
97 See the statutes of penitentiary establishments.
98 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 74.3.
99 Further details see in subchapter – Daily Schedule and Rehabilitation Activities.

Most of the penitentiary establishments are located outside the city. The personnel, however, are not provided with transportation; appropriate meals for staff are not provided in these establishments. Therefore, the personnel have to buy mostly dry food from these establishments' shops at their own expenses.

Despite stressful and strained working environment, the personnel of penitentiary establishments do not benefit from advice as to how to avert professional burnout. There are no training sessions on stress management for staff.

Under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. This implies the obligation of the state to elaborate a human rights oriented curriculum.

Under Rule 75 of the Nelson Mandela Rules, 'All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner. 2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service. 3. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.'

Under Rule 76.1, 'training … shall include, at a minimum, (a) relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates; (b) rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment; (c) security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation; (d) first aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.'

According to the information received from the Ministry of Corrections, in 2016, 1,205 members of legal regime unit, 236 staff members of the security unit, 15 staff members of fast response unit and 76 staff members of the special registration unit have undergone a certified course.[100]

The Public Defender welcomes the completion of the certified course of mandatory retraining for the personnel in legal regime, security, fast response and special registration units.

The Office of the Public Defender requested the information from the Ministry of Corrections, on 20 January 2017 by letter no. 03-4/910, regarding ongoing educational programmes and training sessions. The copies of detailed syllabi were requested through the aforementioned letter. As the result of the examination of the course descriptions sent by letter MOC 617 00143412 of the Ministry of Corrections on 23 February 2017 and its annexes, the methodology of curricula is of general nature and needs further improvement. The course syllabus does not give information about the teaching format to be used during each session and what particular topics are going to be covered within each session. There are references only to international and national legislation without further details on specific topics under each session.

100 Letter no. MOC 617 00143412 of the Ministry of Corrections of Georgia, dated 23 February 2107 (registered under no. 03-4/910 at the Office of the Public Defender of Georgia).

Despite the fact that the training program starts with the methodology, there is no detailed methodology mentioned under any of the session. It is therefore hard to make out what methodology is used for this training programme. There is no specific information about the teaching format in terms of any of the sessions, whether these sessions are going to be conducted in the form of lectures or interactive discussion; and whether a session is going to include group work or presentations of case-study. While there is an examination provided as a means to check knowledge obtained, the training programme does not specify the format of that examination.

It is not clear from the training programme if any of the sessions includes feedback. There is no information, in particular, whether participants evaluate sessions and provide information about their further educational needs. It is also important to have the session evaluated by trainers and receive information whether they are satisfied with the training outcomes and what additional resources are needed to improve the programme further.

The Public Defender welcomes training sessions, conducted for the health-care professionals of penitentiary establishments, funded by the Council of Europe and the European Union concerning documented injuries in accordance with recently established forms. The health-care professionals interviewed by the Special Preventive Group positively evaluate the training session. They mentioned, however, that they still have numerous questions concerning documenting procedures.

The Public Defender deems it important that the Ministry continues regular retraining of health-care professionals. It is also important that the Medical Department ensures active communication with the doctors of establishments in order to have their questions promptly answered. It is also important at the same time that the guidelines are accessible for health-care professionals.

The inclusion of human rights issues in the training programme should also be noted. The time allocated for teaching human rights does not sufficiently ensure covering theoretical and practical discussion on human rights. The three hours allocated for human rights in the training programme are more likely aimed at providing a general overview of the issues rather than comprehension of principles.

It should be positively assessed that for the personnel of penitentiary legal regime, the training programme provides for the sessions on national and international monitoring mechanisms, professional ethics, dynamic and static security. It is, however, a negative fact that similar topics are not included in the sessions for the personnel of security unit.

The Public Defender emphasises the importance of including the topics of management of violent offenders through the means of preventive and diffusing techniques such as negotiation and mediation in the certified training programme.

In accordance with the information submitted by the Ministry of Corrections, in 2016, the personnel of the penitentiary establishments underwent additional training sessions on the following topics: Preventing Suicide, Comprehending a Crime by Adults; Initial Training Course for the Personnel of Penitentiary Office Appointed for Probation Term; Juvenile Justice, Psychology, Methodology of Interaction with Juveniles; Positive Thinking; Management of High Risk Prison Facilities; Organising Elections (ToT); Organising Elections in Penitentiary Establishments; The Right to take Photos in a Penitentiary Establishment; Suicidal Adult Assessment Protocol (SAAP); and Working with Asylum Seekers, Refugees, Stateless Persons and IDPs in Penitentiary Establishments.

The Public Defender welcomes conducting the above training sessions. However, it is also important to include in the programme such topics as the personnel's rights and duties in the discharge of official responsibilities, including respect for the dignity of all prisoners, prohibition of torture, other cruel, inhuman and degrading treatment or punishment; concept of dynamic security; the use of force and means of restraint; management

of resistance and preventive and diffusing techniques of negotiation and mediation; psycho-social needs of prisoners and appropriate dynamics of prisons; and social care and assistance, early diagnostics of mental health problems.

The Public Defender recommended in 2015 concerning the evaluation of effectiveness and sustainability of training outcomes as well as elaboration of effective mechanisms for supervising the practical use of obtained knowledge and skills.

According to the information received from the Ministry of Corrections, the Systematic Monitoring Division of the Inspectorate General is in charge of monitoring the practical application of the knowledge and skills obtained through trainings. The Public Defender welcomes the fact that the Monitoring Division of the Inspectorate monitors the practical application of obtained knowledge. The Public Defender, however, deems it important that the methodology of each programme and training session should provide for the evaluation and examination of the practical application of the knowledge received by trainees. This should include evaluation of the personnel through observation of their participation in various simulated practical situations and role-plays.

Accountability of penitentiary personnel is essential for ensuring human rights, security and order in penitentiary establishments. Prison management should create a set of internal indicators, processes and structures that enable internal and external assessment and monitoring of the performance of the prison as a whole, staff performance and the ability of the prison to maintain good order. The creation of such a legal framework will enhance transparency, accountability and credibility of penitentiary establishments.[101]

The Law of Georgia on the Special Penitentiary Service defines principles, rules and competences of the Special Penitentiary Service of the Ministry of Corrections, the status of its employees, the system of continuous professional training, legal, security and social protection safeguards. Furthermore, Order no 144 of the Minister of Corrections of 19 October 2015 approved Disciplinary Regulations for officers and privates (hereinafter referred to as 'employees') of the Penitentiary Service of the Ministry of Corrections, incentive rules, the Code of Ethics defining grounds of disciplinary responsibility and for incentives, types of disciplinary penalties and incentive measures, and rules for imposing disciplinary penalties upon the employees. The Code of Ethics defines standards and rules of behaviour that facilitate reinforcement of principles of fairness and responsibility, adequate performance, human rights protection, and enhance public trust and respect.

It is regrettably noted that the administrations of penitentiary establishments have not elaborated the evaluation system of performance that would include predetermined indicators. This issue was addressed by the Public defender in his Parliamentary Report of 2015. The recommendation was issued for the notice of the Minister of Corrections to set up legal regulation to evaluate both the administration of a penitentiary establishment as well as each member of the staff in terms of performance and ability to maintain order, based on predetermined indicators and other data of internal and external monitoring. This recommendation has not been fulfilled.

It is also noteworthy that in the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to elaborate clear and mandatory job descriptions, standard operational procedures and guidelines for incidents management to ensure adequate performance and accountability of the penitentiary personnel. In 2015, job descriptions of penitentiary personnel were being drafted in the Ministry of Corrections, covering rights and duties of each position of employees. However, these job descriptions have not been approved by the Ministry to date.

The position of the Public Defender remains the same that due to the absence of such guidelines and lack of necessary qualification of the staff, the personnel faces difficulties in taking decisions promptly which increases the risk of use of excessive force and ill-treatment.

101 The United Nations Prison Incident Management Handbook, 2003, p. 13.

As regards individual accountability of the staff members, apart from accountability to immediate supervisor, alleged breaches of personnel are examined by the Inspectorate General of the Ministry of Corrections. The Office of the Public Defender requested information from the Ministry of Corrections on disciplinary breaches and penalties imposed on penitentiary personnel in 2015. The office of the Public defender of Georgia has not received this information yet.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To take all measures for executing the policy of attracting new resources, and widely inform the public on job openings and working conditions in penitentiary system ;
- To take all measures to ensure that the personnel have worthwhile remuneration and adequate working conditions, and hard and labour-consuming work is adequately compensated;
- To take all measures to ensure that the personnel is provided with transportation to penitentiary establishments;
- To take all measures to provide personnel with advice on professional burnout and stress management issues;
- To take all measures to ensure that within the methodology of training programme, when defining a session, to provide information on specific topics to be covered and teaching format to be used during each session;
- To take all measures that each session is based to the maximum degree on interactive teaching methods, among them, group work, presentations and case-study;
- To take all measures to ensure that the training programme determines examination type and format;
- To take all measures to ensure that the training programme provides for getting adequate feedback from participants, in particular, participants should be able to evaluate training sessions and identify their further needs;
- To take all measures to ensure that the training programme provides for getting adequate feedback from trainers; in particular, trainers should be able to evaluate training sessions, their outcomes and identify what additional recourses are needed for the future improvement of the programme;
- To take all measures to ensure that the training programme allocates more time for human rights so that personnel of penitentiary establishments are able to cover and comprehend important topics of theory and practice of human rights;
- To take all measures to ensure that the training programme covers the topic of management of violent offenders through preventive and diffusing techniques such as negotiation and mediation;
- To take all measures to ensure that there are training sessions conducted for penitentiary establishments, covering personnel's rights and duties when discharging official capacities; prohibition of torture, or other cruel, inhuman and degrading treatment of punishment, concept of dynamic security, use of force and means of restrains, management of violent offenders through the preventive and diffusing techniques such as negotiation and mediation, psycho-social

needs and adequate dynamics of prison facilities, social care and assistance, and early diagnostics of mental health problems;

- To take all measures to ensure that there is a methodology within each training programme and training sessions which allow evaluation of practical application of knowledge obtained by participants and evaluation through observation of their participation in various practical simulated situations and role plays;
- To introduce legal regulation allowing internal and external monitoring based on pre-determined indicators and evaluation of the capacity to maintain order in a penitentiary establishment and performance by administration and personnel; and
- To create clear job descriptions, standard operational procedures and guidelines for managing incidents for maintaining adequate performance and accountability of the employees of penitentiary establishments.

PRISON CONDITIONS

Physical Environment, Sanitation and Hygiene Conditions

In comparison to previous years, in a number of penitentiary establishments, physical environment, sanitation and hygiene conditions have been considerably improved. However, the situation in some of the penitentiary establishments still needs serious improvement and compliance with international standards. Notwithstanding the existing difficulties, the state is under an obligation to promptly eradicate shortcomings and create adequate prison conditions.

Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.[102]

Living Space

In accordance with the Imprisonment Code, living space standard per a convicted person in all types of prison facilities shall not be less than 4 m^2;[103] and living space standard per an remand person in a detention facility shall not be less than 3 m^2.[104]

It was revealed during the visits made in 2016 that all prisoners are not provided with 4 m^2 of living space in establishments nos. 2, 7, 8, 12, 14, 15, and 17. In establishment no. 7, e.g., prisoners enrolled in economic service, live in two cells (two inmates in each cell). The space of one cell is approximately 5 m^2 and another is 7.5 m^2.

Certain prisoners[105] live in double cells in establishment no. 8. The size of a cell is approximately 7.38 m^2 (isolated WC is 1.36 m^2). The cell is 4.74 m in length and 1.55 in width which is in violation of the above provisions.[106] In total, there are 14 cells in the establishment.

102 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 5.2.
103 Article 15.2.
104 Article 2.3.
105 20 prisoners as of 1 March 2017.
106 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf, (2015), para. 48, available in English at : http://www.cpt.coe.int/en/documents/eng-standards.pdf [Last visited on 13.02.2017].

The European Committee for the Prevention of Torture recommended to the Georgian authorities to continue their efforts to ensure that the minimum standard of 4 m² of living space per prisoner in multi-occupancy cells (not counting the area taken up by any toilet facility located within the cell) is duly respected in all penitentiary establishments.[107] The Public Defender of Georgia numerously addressed, in his Parliamentary Reports, the issue of providing the minimum standard of 4 m² of living space per prisoner.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to take all measures ensuring each prisoner with the minimum standard of 4 m² of living space in establishments nos. 2, 3, 7, 8, 12, 15, and 17. It should be noted that the recommendation was fulfilled only with regard to establishment no. 3. According to the information received from establishment no. 3,[108] in the course of 2016, the cells on the ground floor have been remodelled into single or double cells and unnecessary inventory has been removed from the cells. Accordingly, presently all prisoners in establishment no. 3 are ensured with 4 m² of living space. As regards the establishments nos. 2, 7, 8, 12, 15, and 17, the problem has not been resolved. Besides, in establishments nos. 2 and 8, remand and convicted persons are placed together in some occasions, which is in breach of the Imprisonment Code.

In establishment no. 2, the space of solitary confinement cells, except for those in D wing, is 4.5-5.5 m². These cells are cramped in violation of the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[109]

In establishments nos. 14 and 17, some prisoners live in the so-called barrack-type accommodations.[110] In establishment no. 14, there are three two-storey buildings, where prisoners live in common dormitories for 26, 59 and 70 persons respectively. As regards establishment no. 17, there are common dormitories for 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 30, 32 and 34[111] persons. The cells designed for multiple inmates are of barrack type. In establishment no. 17, living space per prisoner in cells meant for 20 and more persons is up to 2.5 m². The situation is no better in cells designed for less than 20 prisoners.

There is no respect for private space in barrack-type dormitories; smokers and non-smokers are accommodated together; it is hard to follow sanitation and hygiene rules and the risk for spreading infectious diseases is high. Furthermore, such accommodations pose additional and serious challenges in terms of security.

Paragraph 6 of the Draft Law of Georgia on Amending the Imprisonment Code provides for the new wording of Article 15.2 of the Code, according to which living space standard per convicted person in medical and prison facilities shall not be less than 4 m². The provision in force refers to all types of prison facilities. It is also noteworthy that the amendment does not concern the provision according to which living space standard per an remand person in a detention facility shall not be less than 3 m².[112] The Public Defender is of the opinion that placement of remand/convicted persons in such conditions is in breach of the standards established by the European Committee for the Prevention of Torture (CPT).

The CPT developed a strict standard for the minimum amount of living space that a prisoner should be afforded in a cell. According to this standard, 6m² of living space should be afforded for a single-occupancy cell. 4m² of living space should be afforded per prisoner in a multiple-occupancy cell. As the CPT has made clear in recent years, the minimum standard of living space should exclude the sanitary facilities within a cell.

107 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014 , CPT/Inf, (2015), para. 48.

108 According to letter no. MOC 717 00043478 of the director of establishment no. 3 of the Penitentiary Department of the Ministry of Corrections of Georgia, dated 18 January 2017.

109 'Whilst confessing that it was a "difficult question", the Committee from the outset of its work has expressed its thoughts on what it considers to be a reasonable size for a police cell "intended for single occupancy for stays in excess of few hours", this being a desirable objective, rather than a minimum standard: cells should be of the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.'

110 There are tens of prisoners placed in barrack-type dormitories. In such conditions, it is impossible for prisoners to have respect for private space.

111 The total living space per 34 persons of establishment no. 17 amounts to approximately 77 m².

112 See, Article 15.3 of the Imprisonment Code.

When devising the standard of 4m² of living space, the CPT had in mind, on the one hand, the trend observed in a number of western European countries of doubling up 8 to 9m² cells that were originally designed for single occupancy, and, on the other hand, the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

CPT has decided to promote a desirable standard. According to CPT, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, regarding multipleoccupancy cells of up to four inmates by adding 4m² per additional inmate to the minimum living space of 6m² of living space for a single-occupancy cell.[113]

Therefore, the Public Defender of Georgia observes that the penitentiary establishments should afford the following standards: multiple occupancy cells for up to four inmates by adding 4m² per additional inmate to the minimum living space of 6m² for a single-occupancy cell.

Physical Environment

In accordance with the Nelson Mandela Rules, all accommodation provided for the use of prisoners and, in particular, all sleeping accommodation shall meet all the requirements of health, with due regard being paid to UN Standard Minimum Rules for the Treatment of Prisoners; climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.[114]

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 circulation of fresh air irrespective of whether there is artificial ventilation; (b) sufficient artificial light shall be provided s for the prisoners to read or work without injury to eyesight.[115]

The cells in establishment no. 3 have their small windows rather high and the walls are half a metre thick. Therefore, sunrays do not reach the cells properly. There is no sufficient natural light and ventilation in accommodation cells. The windows in de-escalation and solitary confinement rooms would not open. Accordingly, natural ventilation is not available for prisoners in these cells.

The small windows in the cells of establishment no. 7 are covered by several layered grating (75x43 cm), due to which neither air nor sunrays can properly reach into cells. The ventilation system of the establishment cannot ensure artificial airing of the accommodation cells.[116] There is insufficient natural light in the cells.

Artificial ventilation is not installed in the sanitary facilities of accommodation cells of establishment no. 6 and ventilation in the cells is insufficient. It is stifling and smells bad in the cells. Common showers in the second accommodation building are only ventilated naturally. There is no natural ventilation in the short visits booths (windows are locked with a padlock).

There is a malfunctioning artificial ventilation system in the accommodation, waiting (quarantine) cells and investigative rooms of establishments nos. 5 and 8 as well as in the room for meeting with lawyers in establishment no. 15. Similar conditions were observed in accommodation, waiting, solitary confinement rooms and shower rooms at establishment no. 2. Artificial ventilation system is not installed at all in the solitary confinement cells at establishment no. 8.

Dampness is noticeable in some cells of penitentiary establishments nos. 2[117], 8, and 17. The waiting rooms of establishment no. 8 are partially underground and, therefore, there is insufficient light and ventilation in

113 See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Living space per prisoner in prison establishments", Strasbourg, 15 December 2015, paras. 9-18; available at: <http://www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf> [Last visited on 22. 02. 2017].

114 Rule 13.

115 Rule 14.

116 The cells located on the ground floor are especially problematic.

117 Dampness was particularly obvious in the ground and first floor cells of accommodation buildings.

these cells; the windows would not open in de-escalation rooms. Hence, natural ventilation is not accessible for prisoners. The light switches and plugs are ripped out in shower rooms and electricity system fails to comply with safety rules. Artificial light is insufficient. There are no benches and hangers for personal items (clothes, towels, etc.) in the shower rooms.

Artificial ventilation system is not functioning in the accommodation cells of penitentiary establishments nos. 9, and 15. The existing ventilation system in the accommodation cells of establishment nos. 17 similarly cannot provide proper ventilation. There is no artificial ventilation in the cells of closed type building of the same establishment and natural and artificial light is insufficient.

The central heating system in establishment no. 15 does not provide sufficient heating in the cells. There is a concrete floor in accommodation cells in penitentiary establishments nos. 2, 3, 5, 6, 8, 14, and 15, which may have ramifications for prisoners' health.

It is necessary to repair electrical equipment in all the accommodation cells of the main accommodation building of establishment no. 12 since the wiring does not comply with safety rules.

In 2015, in the Parliamentary Report, the Public Defender recommended to the Minister of Corrections to ensure adequate ventilation in the accommodation cells in penitentiary establishments nos. 2, 3, 6, 8, 9, 12, 15, and 17; to ensure instalment of central ventilation system in the investigative rooms in penitentiary establishments nos. 5, and 8; and to ensure adequate natural and artificial ventilation in confinement, quarantine, investigative and showers rooms at penitentiary establishments nos. 2, 5, 6, 12, 14, 15, and 17.

The aforementioned recommendations have not been fulfilled.

Sanitation and Hygiene Conditions

In accordance with the Imprisonment Code, the premises allocated to an remand/convicted person shall comply with hygiene and sanitary norms established by a joint order of the minister and the Minister of Health, Labour and Social Affairs of Georgia, and shall ensure the preservation of the health of an remand/convicted person.[118]

The sanitation and hygiene conditions of both solitary confinement and quarantine cells, as well as shower rooms, in establishments nos. 2, 8, 15[119], and 17 are unsatisfactory.

There is dampness in the majority of cells in establishment no. 2. The nightstands in some accommodation cells (on the ground floor of building C) are corroded. Inmates have to keep their clothes, personal items and kitchen utensils in the said conditions.

There are insects in some cells in establishments nos. 2, and 8. The sanitation and hygiene conditions in the solitary confinement cell of establishment no. 3, accommodation cells of establishment no. 5 (detention facility), establishments nos. 7, 12, and 14 (closed type building) are unsatisfactory.

The accommodation cells in establishment no. 12 are outdated and need repairs. The sanitation and hygiene conditions in corridors and staircases of the accommodation building of establishment no. 15 are unsatisfactory. There are cigarette boxes, cigarette butts and other waste scattered around the corridors and staircases.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that sanitation and hygiene standards are complied with in the de-escalation rooms of establishment no. 8 and to take measures to ensure hygiene in the corridors and staircases of the accommodation building

118 Article 15.1 of the Imprisonment Code.

119 The recommendation concerning isolation of WC of solitary and quarantine cells in establishment no. 15 was also made in the Parliamentary Report of 2015. It seems, however, that the recommendation has not been fulfilled.

of establishment no. 15. Out of the said recommendations, the one concerning the de-escalation rooms in establishment no. 8 has been fulfilled.

Sinks in some of the cells in establishment no. 6 are blocked. Water flushing tanks are not there in toilets. Sewers in some of the cells of detention facility in establishment no. 5 are out of order causing water to back-up.

Water is blocked in the drains of shower rooms in establishments nos. 2, and 5. Some of the showers do not have valves in the shower rooms in establishment no. 8.

In 2015, the Public Defender recommended to the Minister of Corrections to take all the measures to eradicate the water supply problem in establishment no. 3. The recommendation, however, has not been fulfilled yet. Water is still supplied to prisoners according to the schedule in the said establishment.

Privacy in Toilet Areas

Under Article 3.5 of the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings approved by the Order of the Ministry of Corrections of Georgia of 19 May 2015,

'Electronic surveillance and control of remand/convict persons cannot be extended to showers, toilets, rooms for long visits, except for the procedure and cases prescribed by Georgian legislation.'

With regard to the aforementioned reservation, as early as on 19 December 2014, the Public Defender of Georgia proposed to the Minister of Corrections to add toilets in prison cells to the list of places that cannot be under surveillance. This proposal has not been fulfilled. The European Committee for the Prevention of Torture (CPT) regularly reiterates in its reports, based on visits to various countries, that it is essential 'that the privacy of detained persons be preserved when they are using a toilet and washing themselves'.[120]

According to the CPT standards, ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a human.[121]

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.[122] As a rule, an remand/convicted person shall be provided with a shower twice a week and with a barber's service at least once a month. The administration may not require an remand/convicted person to have his/her hair shaved off unless so requested by the doctor or caused by hygienic necessity.[123]

The monitoring has revealed that the water closet is not isolated in solitary confinement and safe rooms[124] of establishment no. 3, safe rooms of no. 6, and de-escalation rooms of establishment no. 8. There are visual surveillance systems (video cameras) installed in cells so that toilet areas are within the camera's scope. Privacy is, therefore, not respected in these establishments. Similar situation is seen in quarantine and solitary confinement cells in the accommodation building of establishment no. 15.

The toilet areas in the cells of establishment no. 7 are small; there is no ventilation and flushing tanks are not installed. While toilets are isolated from the rest of the cell, unpleasant smell escapes from the open area above the upper part of the door and stays in the cell due to non-existent ventilation. The toilet areas vary from 0.4

120 See http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf p. 19, para. 31, also: http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf p. 30, para. 60 [Last visited on 20.01.2017].
121 P. 25, para. 49.
122 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 15.
123 Article 21.2 of the Imprisonment Code.
124 Presently de-escalation rooms.

(0.63X0.69) m^2 to 0.5 (0.62X0.78) m^2. According to prisoners, some of them, due to their physical appearance, are unable to answer the call of nature in normal conditions as the toilet areas are cramped.

Sometimes, prisoners have to leave the door open and answer the call of nature in such degrading conditions. It is noteworthy that there are beds right in front of the toilet area and it is practically impossible to have a private moment.

Similarly, in establishment no. 6, while the toilet area is isolated from the rest of the cell, unpleasant smell escapes from the open area above the upper part of the door into the cell. There are visual surveillance systems (video cameras) installed in all safe cells and the cells accommodating high risk prisoners, so that toilet areas are within the camera's scope. Therefore, privacy is not respected.

Prisoner's Personal Hygiene/Clothing/Bedding

Under the European Prison Rules, prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.[125] To this end, the prison authorities shall provide them with the means for doing so, including toiletries and general cleaning implements and materials.[126] Special provision shall be made for the sanitary needs of women.[127] Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.[128] Such clothing shall not be degrading or humiliating.[129] All clothing shall be maintained in good condition and replaced when necessary.[130]

Under Article 22.1 of the Imprisonment Code, if an remand/convicted person does not have his/her personal clothes, the administration shall provide him/her with special uniforms according to the season, which shall not be degrading to human dignity.

According to prisoners interviewed in establishment no. 2, the administration does not provide them with clothing suitable for the climate and mostly other prisoners (sharing a cell with them) help them out. According to foreign prisoners in establishment no. 5, they did not have additional clothing upon admission. The administration has not provided them with clothing suitable for the climate. As the foreign prisoners explained, other prisoners helped them out with clothes.

According to prisoners in establishments nos. 2, 6, and 18, they are provided with the items of personal hygiene upon admission to the respective establishment only upon request. On number of occasions, they are told by the administration that there are no more personal hygiene items left in stock. In establishment no. 2, e.g., only one or two bars of soap would be given to a cell upon request despite the fact that there are more than two prisoners in the cell. The prisoners placed in de-escalation rooms in establishment no. 8 are not given the items of personal hygiene (tooth brush, tooth paste, bedding, towel, and a pillow).

The visit to establishment no. 2 revealed that the female prisoners face problems in terms of accessibility to items of personal hygiene. Sanitary pads are not given to them and body and face care products are inaccessible. There is no hot water running in the accommodation cells of the buildings A, B, C and D of the detention facility[131] of establishment no. 5.

125 Rule 19.5.
126 Rule 19.6.
127 Rule 19.7.
128 Rule 20.1.
129 Rule 20.2.
130 Rule 20.3.
131 The following reside in this facility: convicts under quarantine regime; convicts serving sentence in closed-type institutions; prisoners in solitary confinement cells/in cell-type accommodations; convicts serving life sentence; convicts who were transferred to the detention facility upon their request.

The Right to Time in the Open Air

In accordance with the European Prison Rules, every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.[132] When the weather is inclement, alternative arrangements shall be made to allow prisoners to exercise.[133] In accordance with the Imprisonment Code, an remand/convicted person has the right to stay in the open air at least one hour a day (enjoy the right to walk in the open air).[134]

The yards in establishment no. 2 are partially covered; there are long wooden benches and waste bins in the yards; and surveillance cameras are installed.

The conditions in yards of penitentiary establishments nos. 2, 6, 8, 9, 5,[135] and 17[136] do not enable prisoners to exercise properly. There is no exercise equipment in the yards. There is only one pull up bar installed in the yard of establishment no. 3. It is important to provide the yards with sporting equipments in penitentiary establishments so that prisoners could do physical exercises.

The football stadium in establishment no. 14[137] is ill-equipped; there is no synthetic turf on asphalt; there are no goals; and basketball backboard is damaged.

The prisoners of establishment no. 7 complain about the location and organisation of yards. They are small and located in a place with virtually no natural ventilation. The walking area is only 13 m^2 (4.2x3.1). There are, in total, four such walking areas in the establishment. The walking area is surrounded by approximately three-metre high walls and covered by gratings and metal mesh. Due to this and because the area is wedged among buildings, sunrays and fresh air do not reach it.

The Public Defender issued recommendations regarding the organisation of yards in establishments nos. 3, and 8 in the Report of 2015 too. It has not been fulfilled yet.

According to the information submitted by the medical personnel of establishment no. 3, prisoners of the said establishment experience lower back pain (which they call 'prison bed syndrome') due to immobility and lying in a small bed[138] in the same position. Furthermore, the prisoners suffer from gastric and intestinal ailments also caused by immobility and disorderly dietary and sleeping arrangements; prisoners have frequent headaches, which the medical personnel relate to the lack of fresh air/oxygen. According to the medical personnel, there are frequent occasions of prisoners having rashes, which they were unable to treat medically. The doctors assume that the rashes are caused by the conditions existing in cells and lack of fresh air since inmates in closed type establishments do not spend more than one hour in the open air[139] and there are problems related to natural and artificial ventilation in the cells.

In his Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections to close establishment no. 7 due to the dire living conditions there. While, in 2016, the number of prisoners has considerably decreased in the said establishment, it continues to be operational. Therefore, the recommendation of the Public Defender concerning its closure remains the same. Despite the infrastructural and dire living conditions, according to information received from the establishment's director, [140] no repairs were conducted in establishment no. 7 in 2016. According to the statements of the representatives of the Ministry of Corrections, it is planned to close establishment no. 7 in the near future.

132 Rule 27.1.
133 Rule 27.2.
134 Article 14.1.g).
135 Detention facility.
136 Closed-type building.
137 In the yard of establishment no. 6.
138 Size of the bed is 63x189 cm.
139 Under the Imprisonment Code, an remand/convicted person has the right to stay in the open air at least one hour a day (to enjoy the right to walk in the open air).
140 Letter no. MOC 2 1700041592, dated 18 January 2017.

Infrastructure

There is no infrastructure for long visits in penitentiary establishments nos. 7, 8, 9, 18, and 19. The Public Defender recommended to the Minister of Corrections regarding this issue more than once. Except for the prisoners of establishment no. 7, the prisoners of other establishments listed above are periodically transferred to other establishments for long visits. It is, however, necessary that the appropriate infrastructure for long visits is provided in the above establishments.

In the investigative and meetings rooms of penitentiary establishments,[141] apart from representatives of investigative authorities, prisoners meet lawyers, clerics, representatives of the Public Defender and international organisations. The law ensures the confidentiality of conversations with these persons. As there are surveillance cameras installed in these rooms, the majority of prisoners believe that visual and audio recordings of their conversations are made by these cameras installed in investigative rooms, which negatively affects their openness and discourages them to certain degree during the conversations.

In the Parliamentary Reports of 2013, 2014, and 2015, the Public Defender recommended to the Minister of Corrections to designate a room in all penitentiary establishments, where the Public Defender/members of the Special Preventive Group would have a possibility to meet a prisoner at any time without eavesdropping and surveillance of any kind. The recommendation has not been fulfilled to date.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure improvement of infrastructure in penitentiary establishments. Concerning the Recommendations Determined by the Resolution of the Parliament of Georgia Adopted with Regard to the Report of the Public Defender of Georgia on Human Rights Situation in Georgia in 2015, the Ministry of Corrections of Georgia submitted detailed information about infrastructural projects implemented in penitentiary establishments in 2016 as follows:

According to the information submitted by the Ministry, repairs have been carried out in penitentiary establishments nos. 3, 2, 5, 6, 8, 9, 12, 14, 16, 17, and 19. The works on gratings, doors and windows and facade are underway in the main regime building of the Laituri penitentiary establishment, which is under construction.

The cells located on the ground floor of penitentiary establishment no. 3 have been repaired; the bunk beds of remand and convicted persons have been reconstructed into one-level beds, which will eradicate the problem of overcrowding in the cells.

The cells, shower rooms, and short visit rooms have been repaired in establishment no. 2; four de-escalation rooms have been provided; the evacuation staircases in the regime building D have been reconstructed; the additional security barrier around the premises of the establishment, the so-called 'buffer zone', have been set up; medical rooms have been repaired; and new dental rooms, x-ray room, sterilisation room, etc., have been arranged. New, completely refurbished rooms have been arranged for the convoy service located in the establishment.

The new building for long-term visits started functioning in penitentiary establishment no. 5. Shower rooms, cells, medical rooms, the administrative building, etc., have been completely repaired; fitness rooms have been provided.

Modern cells, including for disabled prisoners, shower rooms have been arranged in penitentiary establishment no. 6; a modern electronic surveillance system has been installed.

141 In establishment no. 8, one room is designated for the representatives of the Red Cross and it allows meeting with prisoners without eavesdropping. The representatives of the Public Defender use this room as well.

A bread baking building has been set up in establishment no. 8; medical rooms have been refurbished according to the relevant standards, dental rooms, x-ray room, sterilisation room, etc., have been arranged. Works on providing infrastructure for long visits will begin in the near future.

Shower rooms and medical rooms have been completely repaired in establishment no. 9; dental and sterilisation rooms have been arranged; the establishment's pharmacy has been repaired; the parcels room has been repaired too and rooms for personal screening have been arranged at the entrance of the establishment.

The accommodation building for those prisoners involved in economic services has been completely repaired; shower rooms and dining-room have been set up.

The premises of establishment no. 14 have been equipped with modern electronic surveillance systems and new rooms for electronic surveillance have been set up. Construction works on public reception rooms have been completed. Presently, equipment and amenities services on the building and yard are underway; medical room located on the premises of the establishment has been completely repaired; construction work on bread bakery on the premises of the establishment has been completed; administrative building has been refurbished, among them, the rooms of external security service have been repaired.

The bread bakery in establishment no. 16 has been refurbished and it is already functional. Medical rooms have been arranged according to the relevant standards; construction works on a gym on the establishment premises have been completed; there is infrastructure for culinary courses in the dining room; and shower rooms have been repaired.

Dining room project documentation has been drafted for establishment no. 17; complete overhaul works on the dining room are underway; medical rooms have been refurbished; the additional security barrier around the premises of the establishment; and the so-called 'buffer zone', has been arranged.

Accommodation rooms for those prisoners involved in economic services have been completely repaired in establishment no. 19.

The works on gratings, doors and windows and facade are underway in the main regime building of the Laituri penitentiary establishment which is under construction.

The Public Defender welcomes the overhaul of infrastructure and repairs of accommodation facilities in penitentiary establishments in 2016. It is noteworthy that in comparison to the previous years, the physical environment, sanitation and hygiene conditions in a number of penitentiary establishments have been improved. However, the conditions existing in penitentiary establishments still require considerable improvement and needs to be brought closer to international standards.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To shut down establishment no. 7;
- To ensure 4m² of living space is provided per prisoner in a multiple-occupancy cell in establishments nos. 2, 7, 8, 12, 14, 15, and 17;
- To ensure in establishments nos. 2 and 8 that remand persons are isolated from convicted persons at least by separate living spaces;
- To take all measures for abolishing barrack-type accommodation facilities in establishments nos. 14, and 17;

- To ensure that adequate artificial ventilation is installed in the accommodation and waiting cells of establishments nos. 2, 6, 5, and 8; in waiting, solitary confinement rooms and shower rooms of establishments nos. 2 and 8; in investigative room of establishment no. 8; and in the room for meeting with lawyers in establishment no. 15;
- To ensure artificial ventilation is installed in the accommodation cells of establishments nos. 8, 9, and 15; and in shower rooms and short visits rooms in establishment no. 6;
- To ensure natural ventilation is provided in the de-escalation cells of establishment no. 8 and accommodation cells of establishment no. 17;
- To ensure adequate heating is provided in the accommodation cells in establishment no. 15;
- To ensure the concrete floor in accommodation cells of penitentiary establishments is replaced with other healthy material;
- To take all the measures to ensure that adequate sanitation and hygiene conditions are provided in the accommodation, solitary confinement and waiting cells in establishments nos. 2, 8, 15, and 17;
- To ensure sanitation and hygiene standards are upheld in solitary confinement cells of establishment no. 3 and accommodation cells of establishments nos. 5[142] 7, 12, and 14[143];
- To ensure that the outdated accommodation cells in establishment no. 12 are repaired;
- To ensure that sanitation and hygiene standards are upheld in the corridors and staircases of accommodation building in establishment no. 15;
- To provide nightstands in the accommodation cells in establishment no. 2;
- To ensure that water closets are arranged outside the camera scope and isolated enough to provide privacy, in the closed type cells in establishment no. 15; solitary confinement cells and safe cells[144] in establishment no. 3; accommodation and safe cells of establishment no. 6 and de-escalation cells in establishment no. 8;
- To take all measures to ensure proper functioning of drains in establishments nos. 2, and 5;
- To repair water regulation devices in the shower rooms of establishment no. 8 as well instalment of switches and plugs in accordance with safety standards in establishments nos. 8 and 12;
- To ensure adequate artificial lighting in the shower rooms of establishment no. 8;
- To provide benches and hangers in the shower rooms in establishment no. 8;
- To take all measures to provide prisoners in establishments nos. 2, and 5 with clothing according to the season;
- To take measures to provide prisoners with items of personal hygiene in establishments nos. 2, 6, 8, and 18;
- To provide female prisoners with the necessary hygiene items in establishment no. 2;
- To take all measures that the cells for female prisoners are provided with hot water in establishment no. 5;

142 Detention facility.
143 Closed-type building.
144 Presently de-escalation rooms.

- To provide the yards in establishments nos. 2, 3, 6, 8, 9, 5,[145] and 17[146] with exercising equipment;
- To adequately equip the stadiums of establishment no. 14 with artificial turf, goals, and basketball backboard;
- To set up yards in establishment no. 8 so that all convicts are able to exercise the right to stroll;
- To take all measures to eradicate water supply problem in establishment no. 3;
- To provide infrastructure necessary for long visits in establishments nos. 8, 9, 18, and 19; and
- To designate one room in all penitentiary establishments where the Public Defender/members of the Special Preventive Group will have the possibility to meet a prisoner at any time without eavesdropping and surveillance of any kind.

DAILY SCHEDULE AND REHABILITATION ACTIVITIES

In accordance with the Nelson Mandela Rules, every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily, if the weather permits.[147] In accordance with the Imprisonment Code, [148] an remand/convicted person has the right to stay in the open air at least one hour a day (enjoy the right to walk in the open air).[149] The prisoners accommodated in semi-open establishments can usually move freely around the walking areas of their respective accommodation building; whereas the inmates of closed-type establishments have the right to spend no more than one hour in the open air.

It should be stressed that the prisoners of closed-type establishments spend 23 hours a day in cells and their walk for only an hour in a cell-type yard with no exercise equipment may have ramifications for their health. It is, therefore, necessary that there should be adequate conditions for spending time in fresh air and exercise in penitentiary establishments. Besides, the daily duration of spending time in the open air should be increased. Due to inadequate arrangement of the walking areas, prisoners forego their right to spend time in the open air in a number of cases. The Public Defender discussed this issue in the Parliamentary Reports of 2014 and 2015; however, this problem continues to exist in penitentiary establishments.

There are 560 accommodation cells in total in establishment no. 8,[150] out of which, 25 cells are occupied by the prisoners enrolled in economic services. These prisoners do not exercise the right to open air.[151] There are 90 yards in the establishment. The prisoners are taken out according to the cells. In accordance with the establishment's schedule, walking starts from 9 a.m. and continues until 12 noon. In accordance with this schedule, in 3 hours prisoners from only 270 cells manage to leave their cells and have a walk outside.[152] Prisoners from other cells are unable to exercise this right.

According to the prisoners of establishment no. 8, they often decline to exercise their right to leave their cell as they are offered a walk either at 7 a.m. or 8 a.m. Besides, as the convicts from establishment no. 8 are transferred to other establishments on Saturdays, they cannot use their right to walk on this day either. The refusal expressed by the prisoners is registered in the journals of the accommodation buildings of the

145 Of the detention facility.
146 Of the closed-type building.
147 Rule 23.1.
148 Article 14.
149 Para. 1.g).
150 As of 1 March 2017, there were 2 324 prisoners in establishment no. 8 and only 16 cells were vacant.
151 The prisoners enrolled in economic service can freely move on the establishment premises during the day, therefore they do not need to have a daily walk in the yard.
152 Within this period, excluding the time spent on taking prisoners out of cells and bringing them out in the yard.

establishment. The refusals are registered according to the cells without stating the time frame when the walk was offered (only a date is entered). According to well-established practice,[153] a prisoner should not stay alone in either a cell or a yard, which means that a prisoner's wish to have a walk outside depends on his/her cellmate. The Public Defender considers it impermissible and a prisoner wishing to have a walk outside should be given this possibility in any event.

In establishment no. 6, too, prisoners are offered to have a walk at 7 a.m. or 8 a.m., due to which, as the prisoners explain, they decline to go out into a yard. According to the prisoners of establishment no. 18, they are only taken to a yard twice a week for only 15 minutes.

According to the recommendations given in the Parliamentary Reports of 2014 and 2015, the prisoners in establishment no. 8 were to be given a possibility to exercise their right to walk in the open air during the period defined by the daily schedule. However, the same problem was raised, in the reporting period, with regard to establishments nos. 6 and 18.

The Public Defender has repeatedly emphasised in his numerous reports that the conditions in penitentiary establishments should ensure prisoners' public re-socialisation and reintegration. During serving a sentence, a convict should receive or enhance education and skills that are desirable and accessible; they should be enabled to take part in sporting, art, intellectual or other activities. All this is necessary so that a convict who served his/her sentence returns to the public as a wholesome personality.

Under the Nelson Mandela Rules, the purposes of a sentence of imprisonment or similar measures that deprive a person's liberty are primarily to protect society against crime and reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.[154]

Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.[155] Every prison shall seek to provide all prisoners with access to educational programmes that are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.[156] A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners.[157]

According to the Ministry of Corrections of Georgia's published[158] report on its annual activities of 2016,[159] the Individual Sentence Planning (ISP) mechanism has been successfully implemented for juvenile convicts since 2009. In 2015, the ISP approach was also introduced in establishments nos. 5, and 16. In 2016, the Ministry of Corrections launched a pilot programme of the Individual Sentence Planning at establishments nos. 6, 12 and 17. ISP will have covered all penitentiary establishments by 31 December 2017, which is welcomed by the Public Defender of Georgia.

Individual sentence planning implies the development of individual sentence plans for convicts. The purpose of individual sentence planning is to carry out proper assessment of individual risks of possible recidivism, create appropriate healthy environment in a penitentiary establishment and promote inmates' participation in rehabilitation programmes. Individual sentence planning implies evaluation of the inmates' needs in parallel to serving sentence in order to determine his/her specific requirements for psycho-social/rehabilitation programmes. The outcomes of the programme will have an impact on the risk assessment of an individual convict and decision about his/her early release.[160]

153 According to the establishment personnel, this practice is aimed preventing suicide.
154 Rule 4.1.
155 Rule 105.
156 European Prison Rules, Rule 28.1.
157 *Ibid.,* Rule 106.1.
158 Available at: http://www.moc.gov.ge/ka/saqmianoba/angarishebi
159 Available at: http://www.moc.gov.ge/images/catalog/items/zzzz.pdf, p. 32.
160 Available at: http://www.moc.gov.ge/images/catalog/items/zzzz.pdf, p. 32.

In 2016, various rehabilitant activities were carried out in penitentiary establishments; some of them are still ongoing. In the course of the year, prisoners could take part in cultural and sporting events, pursue general/professional education and study various trades. In this regard, establishment no. 5 sets the best example.

Activities Carried out in Establishment no. 5	Number of Participants
Psycho-Social Rehabilitation Programmes	
Atlantis	16
Preparations for release	11
Coping with the difficulties in the family	6
Cognitive skills	18
Training session on stress	6
Sporting /Cultural Activities	
Competition in intellectual skills and creativity	100
Activity – A Woman Hoping for the Future	150
Pantomime	12
Play – The Man Who Adored Literature	100
Play – Until the Prince Kills Himself	100
Play – Come and Visit, I am Settled Here and I have Stopped the Sun	33
Participated in a programme – Knowledge is Money	2
Club of the Funny and Inventive People	100
Re-write the Knight in the Panther's Skin	3
Evening of poetry	50
Literature competition	4
Musical concerts	150
Movie show	80
Professional/Vocational Courses/Training Sessions	
Training programme for guides (tourism)	11
Training of hotel personnel	9
Hotel manager	10
Tour-operator course	9
Lecture on Conversations on Translation	40
Lecture/seminar on religious and theological topics	90
Rights of remand/convicted persons	176
Training session on fighting human trafficking	36
Training session on reproductive health	7
Sewing	12
Stylist	28
Felt	13

Course to study massage	18
Course to study the Georgian language	24
Course to study the English language	28
Course to study the German language	17
Computer graphics	4
Course to study computer office programmes	10

Apart from the activities given in the above table, establishment no. 5 also arranged a movie show and conducted concerts.

In the course of 2016, the inmates of rehabilitation establishment no. 11 were involved in the process of pursuing general education. The detailed information on the activities conducted within the said establishment is given in the below table:

Name of the Rehabilitation Activity	Period	Participants
Psycho-Social Rehabilitation		
Preparations for release	January-March, May-July	18
Art therapy	January-March, April-May	15
Stress Management	February	4
Anger Management	April	4
Music therapy	April-October	17
Development of useful skills	April-October	6
Cultural Activities		
Funny quiz	1.11.2016	6
What? Where? When?	2.1.2016	9
	2.10.2016	10
	4.23.2016	11
	5.30.2016	11
	8.24.2016	8
	11.29.2016	9
Movie quiz + What? Where? When?	8.31.2016	8
Intellectual game ETALONI	3.16.2016	9
	6.22.2016	5
	9.12.2016	7
	10.3.2016	11
	12.7.2016	11
	12.8.2016	11
New Year quiz	12.30.2016	11
Readers' club	Once a week	-
Until the Prince Kills Himself	6.15.2016	11

Poetry evening, meeting with poets	11.4.2016	13
Presentation on Georgian Junkers	2.25.2016	9
Activity dedicated to the Children's Day	6.1.2016	11
Activity dedicated to the mother tongue	4.25.2016	4
Presentation on 26 May – the Day of Regaining Independence		2
Sporting Activities		
Checkers club	Once a week	16
Cess club	Once a week	22
Fitness exercises	5.4.16-20.12.16 three times a week	15
Football club	10.5.16-24.12.16 Twice a week	13
Table tennis club	3.30.2016	8
	4.6.2016	8
	8.18.2016	8
	8.22.2016	8
	11.25.2016	8
Tournament in checkers	4.14.2016	7
	9.2.2016	5
Friendly game in football	12.1.2016	9

Apart from the activities given in the tables, in the course of the year, the juveniles could meet celebrities and watch numerous movies (fiction/cognitive).

Find below the information about the activities conducted in detention and closed penitentiary establishments.

Rehabilitation Activities Conducted in Detention and Closed Penitentiary Establishments	**Number of Inmates Involved in Activities According to Establishments**			
	no. 2		**no. 8**	
	Adult	Juvenile	Adult	Juvenile
Sporting Events				
Tournament in checkers	8	-	-	-
Tournament in table tennis	-	-	8	-
Tournament in arm-wrestling	-	-	18	8
Tournament in checkers	-	-	26	8
Weight lifting tournament	-	-	14	-
Vocational/Professional Course				
Wood carving	8	-	-	-
Embroidery	7	-	-	-
Enamel	4	-	-	-
The English language Course	12	-	22	-
The Georgian language Course	11	-	14	-

Computer graphics course	13	-	7	-
Computer office programmes course	-	-	19	-
Driving licence (Theory)	19	-	26	-
Management of a family guesthouse	6	-	-	-
Introduction to Juvenile Justice Code	-	3	-	-
Introduction to history of Georgia	-	6	-	-
Seven wonders of the world	-	4	-	-
Rights of remand/convicted persons	-	-	40	-
Psycho-Social Rehabilitation				
Atlantis	6	-	-	-
Art therapy	-	8	-	5
Healthy lifestyle	-	5	-	-
Cognitive and social skills	-	4	-	-
Module on penitentiary stress management	-	1	-	-
Training module on anger management	-	3	8	-
Library therapy	-	-	-	11
What? Where? When?	-	-	12	-

Apart from the data given in the tables, various social activities were carried out in penitentiary establishments, among them, prisoners met celebrities, had evenings dedicated to poetry and competitions in literature.

It was only possible to study foreign languages and attend IT classes in establishment no. 9.

In establishments nos. 2, 8, and 11, juveniles were involved in the process of receiving general education. Unfortunately, it should be noted that female prisoners in establishment no. 2 did not benefit from rehabilitation activities of any kind.

It should be pointed out with regard to juvenile rehabilitation programme available in establishment no. 2 that a psychologist uses the method of art therapy. An anti-social behavioural prevention programme is available here. Juveniles are shown films that are not thematically selected and there is no ensuing discussion on the films, while it could indirectly work towards the moral evolvement of beneficiaries, change of their attitude towards crime, contribute to their personal growth and increase of self-esteem, as well as improvement of social adaptation and competences. It is clear that the activities carried out in 2016 in penitentiary establishments nos. 2, 8, and 9 need further improvement.

As regards the activities in high risk prison facilities, in 2016, there were only two prisoners involved in rehabilitation activities in establishment no. 7. In one case, the work of one prisoner was exhibited and in the other case, a prisoner took part in a literature competition with an original poem. In the course of the year, a suicide prevention programme involving seven prisoners was implemented in establishment no. 6. Besides, there was a checkers tournament engaging twelve convicts. As regards establishment no. 3, there were only eight rehabilitation activities carried out there in 2016, among them were the following courses: hotel management, guide (tourism), IT support specialist, computer graphics, web specialist, small business management, driving licence and web design. Four convicts took part in these programmes.[161]

161 Response received from establishment no. 3 on 18 January 2017, letter no. MOC 7 1700043478.

The availability of diverse rehabilitation programmes tailored to the individual needs of prisoners is particularly important in high risk prison facilities. According to the information given above, the degree of involvement of prisoners in rehabilitation programmes in these facilities is very low. This creates an unhealthy environment in these establishments and negatively affects the relationship between prisoners and administration, as well as order and security. Without rehabilitation programmes, the objectives of re-socialisation and prevention of reoffending cannot be attained.

It is necessary that prisoners in closed-type establishments, at least in their cells, are given a possibility to be engaged in the activities that are interesting for them and has art, labour or comprehension value. It is important that individual sporting activities were encouraged, even within the limited possibilities of the establishments. For example, upon request, prisoners should be able to have additional time to spend in the open air where they could individually exercise. To this end, basic sporting equipment could be provided in the yards.

As it was mentioned in the Parliamentary Reports of the past years, despite establishments nos. 18, and 19 being medical establishments, prisoners are placed in various units of these establishments for long periods. Accordingly, it is important to implement certain rehabilitation activities in these establishments too. The Public Defender pointed out in his Parliamentary Report of 2015 that while both establishments made steps towards the implementation of rehabilitation activities, it was necessary to offer prisoners more and diverse programmes. In 2016, the prisoners in establishment no. 18 participated in psycho-social rehabilitation course offered by the social worker and psychologist of the establishment on the following topics: strategies to overcome suicidal impulse, development of skills for coping with emotion and stress (13 beneficiaries); and art therapy course (four convicts in a group) and movie show. The prisoners of establishment no. 19 were able to learn icon carving and wood carving (3 convicts) and participated in art therapy course (16 convicts).

Rehabilitation Activities Conducted in Semi-Open Penitentiary Establishments	Number of Inmates Involved in Activities According to Establishments			
	no. 12	no. 14	no. 15	no. 17
Vocational/Professional Course				
Church singing courses	13	-	-	-
Course on psalm reading	13	-	-	-
The Georgian language course	-	-	-	14
The English language course	74	-	13	26
The German language course	20	-	-	19
Computer graphic	14	-	20	18
Software access	-	-	10	19
Computer office programmes study	8	-	-	6
Web design study course	-	-	12	17
Guide (tourism)	24	-	-	-
Hotel manager	7	-	-	14
Small business manager	41	-	6	15
Lecture – Conversations on Translation	18	-	-	-
Educating equals and HIV/AIDS	30	-	-	-

Lecture/seminar on religious and theological topics	89	-	-	55
Training session on the rights of the remand/convicted persons	-	-	-	49
IT support specialist	16	-	5	8
Driving licence (theory)	22	-	14	44
Wood carving	-	-	-	33
Icon carving	-	-	-	7
Tour-operators	7	-	4	-
Electrician	-	8	-	-
Tile layer	-	9	-	-
Mason	-	8	-	-
Carpenter	-	3	-	-
Psycho-Social Rehabilitation				
Preparation for release	23	-	-	10
Penitentiary stress	-	-	-	13
Anger management	10	-	-	-
What? Where? When?	12	-	-	-
Impact of positive behaviour on family relationships	16	-	-	-
Development of positive thinking skills	-	-	-	8
Library therapy	9	-	-	8
Cognitive and social skills programme COSO	26	-	-	-
Nursing a trauma	12	-	-	-
Theatrical troop	-	-	-	15
Art therapy	-	-	-	11

Apart from the activities given in the table above, the following activities have been carried out in semi-open establishments: meetings with celebrities,[162] evening of poetry,[163] concerts,[164] movie showing,[165] Re-write the Knight in the Panther's Skin,[166] celebrating the World Book Day,[167] chess tournament,[168] football match,[169] world record tournament in weightlifting,[170] exhibition of convicts' works,[171] and meetings of Christian clerics with Muslim convicts.[172]

As the tabled data shows, the rehabilitation activities carried out in penitentiary establishments nos. 14, and 15 in 2016 are scarce and the degree of the convicts' participation is low. Therefore, the rehabilitation process in these establishments is unsatisfactory. In 2016, various activities were carried out in low risk prison facility no. 16; tournaments in table tennis, football and volleyball, chess, and basketball were some of the activities that were

162 Establishments nos. 12, 17.
163 Establishment no. 15.
164 Establishment no. 12.
165 Establishments nos. 12, 14, 15, and 17.
166 Establishment no. 12.
167 No. 14.
168 No. 14.
169 No. 17.
170 No. 17.
171 No. 17.
172 No. 17.

carried out. The convicts had the possibility to meet celebrities; watch numerous movies, learn wood carving, playing guitar, doing clay work, cooking, painting, computers, running a small business, hotel management, IT, and learn Georgian, English and German. Apart from the above-mentioned, the convicts were involved in various psycho-social rehabilitation programmes such as preparation for release, development of cognitive and social skills, human development in social environment, anger management and stress management, everyday life risks and human resources, a step towards changes (understanding crime), etc.

Unfortunately, foreign prisoners of penitentiary establishments, due to linguistic barriers, face difficulty in communication with personnel, including social workers and, therefore, they are virtually unable to be involved in rehabilitation activities. While foreign prisoners are offered to take the courses in learning Georgian language, such courses are not regularly conducted. For instance, the monitoring visits made to establishment no. 2 revealed that foreign prisoners had not been informed at all about their right to participate in rehabilitation programmes.

In his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to take all the measures to ensure that diverse rehabilitation activities are carried out in all penitentiary establishments. He also recommended promoting, to a maximum degree, the social units of penitentiary establishments in planning and conducting various activities with adequate participation of prisoners; to ensure that when planning such activities, the interests of prisoners are taken into account and the forms of incentives should be used more often to ensure more involvement. Unfortunately, this recommendation has not been fulfilled. As the result of the monitoring visits, it was found out that the number of personnel in social units is still insufficient.

	Average Number of Prisoners per Year	Number of Social Workers	Number of Psychologists	Head of Unit	Composition of the Social Service
No. 2	1 218	6	2	1	**9**[173]
No. 3	101	3	1	1	**5**
No. 5	266	7	2	1	**11**[174]
No. 6	209	10	3	1	**14**
No. 7	29	1	1	1	**3**
No. 8	2 370	20	6	1	**26**
No. 9	39	1	1	1	**3**
No.11	16	5	2	1	**8**[175]
No.12	280	3	1	1	**5**
No.14	1 152	11	1	1	**13**[176]
No.15	1 706	13	1	1	**15**
No.17	1 922	11	2	1	**14**
No.18	103	3	1	1	**5**
No.19	101	4	1	1	**6**

173 The table depicts the data as of December 2016; the composition of social units would change in the course of the year.
174 One librarian is including in the staff of a social service.
175 Apart from the staff given in the table, two employees of the social service (a psychologist and a social work) were on maternal leave.
176 There is a vacancy for a social worker in establishment no. 14.

As it is shown from the data in the above table, only two psychologists deal with 1,218 prisoners in establishment no. 2, and two psychologists deal with 1,922 prisoners in establishment no. 17. Only one psychologist works with 1,152 prisoners in establishment no. 14, and 1,706 prisoners in establishment no. 15. Six psychologists work with 2,370 in establishment no. 8, which means one psychologist has to deal with approximately 400 prisoners.

It should be noted that apart from individual meetings with prisoners, psychologists prepare character references for prisoners within the early conditional release procedure, take part in the planning and implementing of rehabilitation activities. Furthermore, they are involved in the suicide prevention programme and have to draft the requisite psychological conclusions within this programme. Some of the psychologists have been regretfully observing that they do not have the requisite resources for psychotherapeutic work.

As regards the employees of social units, while their number in social units exceeds that of psychologists, as monitoring shows, they also face hard working conditions. There is a high demand for social workers among prisoners. In addition, according to some of the prisoners, social workers are unable to perform their duties adequately. It is the assessment of the Special Preventive Group that it is imperative to enhance qualifications of both psychologists and social workers, as well as to ensure the presence of requisite number of psychologists and social workers and creation of adequate working conditions for them.

The psychologists working in penitentiary establishments do not have adequate space where they would be able to work with a convict in a peaceful, therapeutic environment. This problem is especially acute in establishments nos. 2, and 3. The psychologist at establishment no. 2 has to work in a social unit, the library and the meeting room for lawyers.

In some of the establishments, psychologists do not have a logbook to register the applications and the number of single psycho-diagnostic consultations. According to the explanation given by the psychologists, they attempt to conduct psycho-corrective work with prisoners but no documentation is processed to register the number of sessions, working instruments applied and if there is any positive dynamic as the result of the activity.

According to the response of the Ministry of Corrections, in the first quarter of 2016, social activities needs assessment for planning rehabilitation works was conducted in penitentiary establishments. 1193 convicts took part in the enquiries. Based on the needs assessment, the first taught stage of 2016 was planned. The second stage of the enquiries was conducted in September and 894 convicts took part in it, which in turn will be a basis to plan the following taught stage. According to the total data of 2016, 1325 convicts took part in professional and educational programmes.[177]

The Public Defender welcomes the steps made by the Ministry of Corrections towards the implementation of rehabilitation activities. However, it should be noted that rehabilitation activities were scarce in penitentiary establishments nos. 3, 6, 7, 8, 9, 14, 18, and 19; rehabilitation activities implemented in penitentiary establishments nos. 2, 8, and 15 were not diverse and the degree of prisoners involvement was unsatisfactory.

It is noteworthy that, in accordance with the change suggested in the draft law on the Amendment to the Imprisonment Code, which has been introduced to the Parliament of Georgia, a convict placed in an establishment for preparation of release or a low risk prison facility will have the right to obtain the first academic degree of higher education (bachelor's degree). The Public Defender welcomes this legislative amendment.

Under paragraph 61 of the draft law, amending Article 88 is suggested to the effect of limiting the right of a convict to participate in educational process within the period of serving a disciplinary penalty. The Public Defender observes that promotion of educational process should be a priority in the penitentiary system. Therefore, if a convict is involved in the educational programme, he or she should not be restricted in this right while serving a disciplinary penalty.

177 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

In accordance with the Nelson Mandela Rules, every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.[178] Prisoners shall be kept informed regularly of the more important items of news by reading newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorised or controlled by the prison administration.[179]

It is noteworthy that there is a library functioning in all penitentiary establishments. While there is no space for a library in establishment no. 7, the establishment still has some stock of books. There is a problem in a number of establishments regarding books in foreign languages. For instance, there are only Russian and Turkish books in establishment no. 3; there are English and Russian books in establishments nos. 9, 12, and 14; there are Russian, Armenian and Azerbaijani books in establishments nos. 7, and 19; there are English, Russian, and German books in establishments nos. 16, and 18; there are English, Russian, Turkish, German books in establishment no. 2 and there are English, Russian and Azerbaijani books in establishment no. 6.

Unfortunately, establishments nos. 7, 9, and 14 are not provided with magazines and newspapers, and there is only one magazine *Batumelebi* available in establishment no. 3. Magazines and newspapers are not provided in the establishment.

In accordance with one of the positive amendments made to the Imprisonment Code that was pointed out in the Parliamentary Report of 2015 by the Public Defender,[180] an remand/convicted person has the right to carry out individual activities under the supervision and, with the permission of the director of the penitentiary institution. They will have the inventory necessary for those activities and be able to sell the items (manufactured articles) produced as a result of individual activities with the support of a penitentiary institution.

Through the abovementioned changes, in 2016, the prisoners engaged in individual activities in penitentiary establishments were given a possibility to sell their work (crosses, enamel and felt works). These works are sold in online shops[181] and the sums obtained through sales are directly deposited in the personal bank account of the respective remand/convict.

Apart from the working of the Imprisonment Code, on 4 July 2016, Order no. 85 of the Minister of Corrections approved the Procedure for Employment, Determining the List of Work to be Performed by an Remand/a Convict on the Premises of a Penitentiary Establishment and Outside and its Remuneration. The said order determined the issues related to the employment of remand/convict persons both on the premises of the penitentiary establishments of the Ministry of Corrections and outside, the conditions and terms thereof (including enrolment and striking off the jobs), remuneration, as well as the list of those works (including small-scale repair works in the establishments and delivery and acceptance procedure for these works) for which it is possible to employ remand/convicted persons.

In 2016, the prisoners enrolled in economic services at penitentiary establishments had to do work such as delivery of parcels, distribution of food to prisoners, church service, washing, provision of food and other additional items from the establishment shops, cleaning and tidying up, and working in a library. Employed convicts were remunerated for their work in the form of a salary determined according to their positions.

Remuneration for Economic Services	Net Salary	Gross Salary
Head of Service Group	250	200
Deputy Head of Service Group	225	180
Service Personnel	200	160

178 Rule 64.
179 *Ibid.,* Rule 63.
180 Imprisonment Code, Article 14.1e).
181 The works of convicts can be bought at: https://online.moc.gov.ge/.

See below the information on prisoners employed[182] in penitentiary establishments in 2015 and 2016.

Number of Prisoners Employed in Establishments	No. 2	No. 3	No. 5	No. 6	No. 7	No. 8	No. 9	No. 12	No. 14	No. 15	No. 17	No. 19	Total
2015	101	21	37	26	4	247	7	32	92	60	219	27	**873**
2016	81	7	36	30	4	109	4	26	100	66	92	28	**583**

10,333 and 9,601 prisoners were serving sentence in penitentiary establishments in 2015 and 2016, respectively. In 2015, 8.4 % of prisoners were employed out of the aforementioned number and it was 6.1 % in 2016. Unfortunately, it should be noted that in 2016, the number of employed prisoners decreased by 28.1%, in comparison to 2015.

In penitentiary establishments, enrolment of convicts in economic service is regulated by Order no. 157 of the Minister of Corrections of Georgia on Approving the Procedure for Performance of Economic Services by Convicts and their Remuneration. In accordance with the said order, enrolment of a convict in economic service at a penitentiary establishment is made official by the order of the establishment's director following a written application of the convict.[183] Such orders do not specify the details of the work to be completed, despite the fact that this is a requirement of Article 6[184] of the Labour Code of Georgia and an essential term of a labour contract. The failure to determine the type of work convicts have to do exposes them to the risk of performing such assignments that was unknown before employment.

In 2015, in his Parliamentary Report, the Public Defender recommended to the Minister of Corrections to ensure that respective orders or other attached documents expressly stipulate the job description when enrolling a convict in economic service. However, the monitoring visits made to establishments in the course of 2016 showed that the majority of the prisoners involved in the economic services had to work against their will on the weekends, days off and, if needed, at night. Therefore, it is imperative that orders or other attached documents on enrolling prisoners in economic services expressly stipulate the job description.

Besides, it is important that a uniform registration form is elaborated with the work schedule of convicts working in economic service and work performed by hour for all establishments. It should also consider the remuneration of overtime work in accordance with the labour legislation. Keeping such a journal will enable establishing the hours spent by each convict in economic services, whether they do overtime and how overtime work is remunerated.

During the monitoring visits made to penitentiary establishments in 2016, it was found out that some of the convicts in economic service have to carry heavy loads every day; e.g., they have to take pots full with food to the third floor in penitentiary establishment no. 2.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To take all necessary measures to ensure that the inmates of closed-type establishments are able to spend in the open air more than one hour a day;

182 Unlike other penitentiary establishments, no prisoners have been employed in penitentiary establishment no. 11 (for juveniles) and establishment no. 18 (medical) due to the specific nature of these establishments.

183 Order No. 157 of the Minister of Corrections of Georgia on Approving the Procedure for Performance of Economic Services by Convicts and their Remuneration, Annex 1, Article 2.4.

184 Paragraph 9.d).

- To enable the inmates of establishments nos. 6, 8, and 18 to spend time in the open air every day; to this end, it is advisable to review daily schedules taking into account the prisoners' necessities;
- To take all necessary measures for conducting more diverse rehabilitation activities in all establishments of the Penitentiary Department; to promote the social units of establishments to a maximum degree in planning and conducting various activities with adequate participation of prisoners; to ensure that, when planning such activities, the interests of prisoners are taken into account; also in order to ensure more involvement, the forms of incentives should be used more often;
- To ensure all convicts are given equal opportunities to be involved in rehabilitation activities tailored to their individual necessities;
- To take all necessary measures for recruiting the necessary number of psychologists and social workers in all establishments of the Penitentiary Department;
- To take all necessary measures for arranging offices for psychologists in establishments nos. 2 and 3;
- To take all necessary measures for involving female convicts of establishment no. 2 in rehabilitation activities;
- To take all necessary measures for involving foreign prisoners in rehabilitation activities;
- To take all necessary measures for implementing Individual Sentence Planning (ISP) in all penitentiary establishments;
- To take all necessary measures for providing the libraries of penitentiary establishments with the requisite number of new books, newspapers and magazines in various languages;
- To ensure that when enrolling a convict in economic service, respective orders or other attached documents expressly stipulate the job description;
- To ensure a uniform registration form is elaborated for all establishments with the work schedule of convicts working in economic service and work performed by hour; also to consider the remuneration of overtime work in accordance with the labour legislation; and
- To take all measures for adequate safe working conditions for the prisoners enrolled in economic service.

REGIME, DISCIPLINARY RESPONSIBILITY AND INCENTIVES

As the Georgian legislation does not determine which disciplinary penalty should be imposed on an offender in each particular case, in his Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to elaborate a guideline on the use of disciplinary penalties. This would enable the uniform imposition of disciplinary penalties in all establishments of the Penitentiary Department. This recommendation was preconditioned by uneven practice of the use of disciplinary penalties, which in the opinion of the Public Defender unjustifiably increased the risk for arbitrariness of the administration of penitentiary establishments.

The practice of imposition of disciplinary penalties at the establishments of the Penitentiary Department of the Ministry of Corrections is given in the below table:

Establishment	Average Number of Prisoners during the Year		Placement in a Solitary Confinement		Other Penalties		Total	
	2015	2016	2015	2016	2015	2016	2015	2016
No. 2	1 487	1 218	143	240	153	377	296	577
No. 3	161	101	85	15	219	909	304	924
No. 5	292	266	1	3	66	31	67	34
No. 6	123	209	16	14	46	466	62	480
No. 7	70	29	0	0	255	46	255	46
No. 8	2 578	2 370	556	391	1 616	1 717	2 172	2 108
No. 9	44	39	0	0	3	2	3	2
No. 11	37	16	0	0	0	0	0	0
No. 12	270	280	6	14	13	18	19	32
No. 14	1 234	1 152	134	57	2	3	136	60
No. 15	1 804	1 706	114	114	287	206	401	320
No. 16	51	89	3	3	10	16	13	19
No. 17	1 949	1 922	126	60	65	43	191	103
No. 18	104	103	0	0	125	78	125	78
No. 19	129	101	17	9	9	6	26	15
Total	**10 333**	**9 601**	**1 201**	**920**	**2 869**	**3 918**	**4 070**	**4 838**

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that disciplinary penalties were used as a last resort. However, the data in the above table shows that, in 2016, the statistics of disciplinary penalties in penitentiary establishments have been increased on average by 16%, whereas the number of placements in solitary confinement cells has decreased by 23%.

The indicator for increased imposition of disciplinary penalties in establishment no. 3 is alarming: two disciplinary penalties per prisoner, in 2015; and 9 in 2016. The similar indicator has increased alarmingly in establishment no. 6 as well: in 2015, a disciplinary penalty was imposed on every second prisoner; and in 2016, two disciplinary penalties per prisoner were imposed. Compared to 2015, the number of disciplinary penalties increased by 2.5% in establishment no. 2. Besides, in comparison to 2015, the number of placement of prisoners in solitary confinement cells increased by 40.4% in establishment no. 2 in 2016.

The Public Defender positively assesses the decrease in the number of imposition of disciplinary penalties in 2016, compared to 2015, in penitentiary establishments nos. 5, 7, 8, 14, 15, 17, 18, and 19, as well as in the number of the placement in solitary confinement cells in establishments nos. 3, 8, 14, 17, and 19. No juvenile has been punished in disciplinary proceedings in establishment no. 11 in the course of the year and disciplinary penalty was imposed on 2 inmates only in establishment no. 9.

In 2016, the solitary confinement cells in establishments nos. 7, and 9 did not function; therefore, disciplinary penalties in the form of placement in solitary confinement were not imposed on any of the prisoners. There are no solitary confinement cells in rehabilitation establishment no. 11 for juveniles and medical establishment no. 18 for remand and convicted persons, due to the specific nature of these establishments.

Under Article 88.2 of the Imprisonment Code, an remand/convicted person placed in a solitary cell may not enjoy short and long visits, telephone conversations or purchase food products.

The European Committee for the Prevention of Torture recommended 'that the Georgian authorities take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts.'[185] With regard to this issue, in 2012, the Public Defender proposed to the Parliament of Georgia to amend the Imprisonment Code and in the Parliamentary Reports of 2013, 2014 and 2015 expressly pointed out the necessity to amend the Article concerned. However, the proposed change has not been made to Article 88 of the Imprisonment Code to date.

According to the information received from penitentiary establishments, the director of establishment no. 14 uses the placement in a solitary confinement almost in all cases of imposition of a disciplinary penalty. According to the statistics received from this establishment, in 2016, 60 disciplinary penalties were imposed in total. Out of this number prisoners were placed in solitary confinement cells in 57 cases; and in the other 3 cases, they received a reprimand. Similarly, in 2015, out of 136 cases of imposition of disciplinary penalty in this establishment prisoners were placed in solitary confinement cells as a disciplinary penalty in 134 cases.

While the there is a considerable decrease in the number of use of disciplinary penalties in establishment no. 14, the orders of the director of the establishment remain in breach of the requirements of the Imprisonment Code,[186] under which, placement in a solitary cell shall be imposed as a disciplinary measure only in special cases. The Public Defender also pointed out this problem in his Parliamentary Report of 2015; however, the situation still has not changed in the establishment concerned in 2016.

Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered the direct result of his or her mental illness or intellectual disability.[187] According to the 2007 Istanbul Statement on the use and effects of solitary confinement,[188] the use of solitary confinement should be absolutely prohibited for mentally ill prisoners. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.[189]

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections not to allow placement of mentally ill prisoners in solitary confinement cells. However, in 2016, the incidents of placing mentally ill prisoners in solitary confinement were identified in penitentiary establishments nos. 2, 6, and 8.[190]

For instance, in establishment no. 2, out of the total number of 240 cases of placing prisoners in solitary confinement, prisoners having mental problems were placed in solitary cells in 29 cases. Inmate P.F. is diagnosed with mixed and other personality disorders (F61) and, in the course of the year, was placed in a solitary confinement cell on 7 occasions for 5, 7, 10, 14 days. In the reporting period, inmate M.O., diagnosed with mental disorder due to brain damage and dysfunction and to physical disease (F06), was placed in solitary confinement on 6 occasions; once for 10 days, twice for 5 days and thrice for 14 days. D.A., diagnosed with mental and behavioural disorders due to use of cocaine, residual and late-onset psychotic disorder (F14.7), was placed in solitary confinement on two occasions.

185 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 5 to 15 February 2010, para. 115, see the link: <http://www.cpt.coe.int/documents/geo/2010 27-inf-eng.htm> [Last visited on 20.02.2017].
186 Imprisonment Code, Article 88.1.
187 The Nelson Mandela Rules, Rule 39.3.
188 International Psychological Trauma Symposium (2007), the Istanbul Statement on the use and effects of solitary confinement.
189 The Nelson Mandela Rules, Rule 45.2.
190 Seven incidents of placing mentally ill prisoners in solitary confinement were identified in penitentiary establishment no. 8.

In establishment no. 6, in the course of the year, out of 14 occasions of placing inmates in solitary confinement, prisoners diagnosed with disorders of personality and impulse control (F60.3), mental and behavioural disorders due to multiple drug use and use of other psychoactive substances (F19), persistent delusional disorders (F22) were placed in solitary confinement in four cases.

According to the prisoners at establishments nos. 3 and 6, there were incidents where the personnel attempted to incite them so as to impose disciplinary penalties on them or to place them in de-escalation rooms.

As it was revealed as the result of the visit to penitentiary establishment no. 3, the prisoners have the feeling that their transfer to de-escalation rooms serves punitive purposes whenever they violate the statute of an establishment and not for security reasons. The Special Preventive Group revealed, as the result of the inspection of documentation in establishment no. 3, that in the course of the first five months of 2016, in 22 cases out of 51 occasions, a disciplinary penalty was imposed on prisoners in the period of their transfer to a de-escalation room or with a day's interval.[191] In 11 cases of 22 occasions, prisoners had various mental disorders such as persistent delusional disorders (F22), organic personality disorder (F07.0); in two cases - sleep disorders not due to a substance or known physiological condition (F51); and in seven cases, disorders of personality and impulse control (F60.3). Accordingly, the prisoners' behaviour could have been caused by their mental health condition, which was later the basis of the disciplinary penalty imposed on them.

In the opinion of the Special Preventive Group, instead of providing the above eleven persons with the adequate psychiatric service, they were placed in de-escalation rooms and additionally imposed disciplinary penalty on them. Moreover, a psychiatrist did not see these inmates during their time in a de-escalation room. They were provided with psychiatric consultation in some cases before their placement in a de-escalation room or, in other cases, within several days after leaving the de-escalation room.

It is noteworthy that the environment and conditions in the de-escalation rooms are not safe[192] and do not minimise the risk of self-harm.[193] This is confirmed by the incidents of prisoners inflicting self-harm when placed in a de-escalation room.

The similar situation is witnessed in establishment no. 6, where in the course of the year a disciplinary penalty was imposed in 90 cases out of 173 occasions on prisoners in the period of their transfer to a de-escalation room or with one-day interval.[194] Moreover, seven cases out of the 90 occasions, prisoners from de-escalation rooms were directly transferred to solitary confinement cells for punitive reasons.

In the opinion of the Special Preventive Group, it is impermissible to resort to security measures for punitive purposes as such measures should only serve the statutory objective, which is ensuring the safety of people in a penitentiary establishment.

Under the European Prison Rules, punishment shall not include total prohibition of family contact.[195] Under the Imprisonment Code, the right to telephone conversations, the right to receive and send private correspondence, and short visit privileges may not be restricted at the same time.[196] It was pointed out in the Parliamentary Report by the Public Defender of 2015 that it was revealed based on the study of the case-files on disciplinary penalties in establishment no. 7, on 19 occasions in 2015, prisoners of this establishment were fully banned from contacting the outside world[197]; out of this, two prisoners on two occasions. In one case, convict K.D. was prohibited from contacting the outside world for 91 days in total. It should be pointed out that as the result of the monitoring visit of the Special Preventive Group members to establishment no. 7 on

191 One day before the placement in a de-escalation room and the next day after removal from the room.
192 According to the information provided by the Ministry of Corrections, there is no cushioning material available in Georgia for lining the walls in de-escalation rooms.
193 The floor and walls in de-escalation rooms are not coushioned with soft material.
194 One day before the placement in a de-escalation room and the next day after removal from the room.
195 Rule 60.4.
196 Article 82.5.
197 Short visit privileges, the right to telephone conversations, the right to receive and send private correspondence.

19 June 2015, the Public Defender recommended to the Minister of Corrections to take all necessary measures to ensure that imposition of disciplinary penalty was not followed by the full ban on contacting family. The similar recommendation was given in the Parliamentary Report of 2015 as well.

As the result of the inspection conducted by the Inspectorate General of the Ministry, a disciplinary penalty was imposed on the director of establishment no. 7 and its lawyer on the account of the failure to comply with the requirements of Article 82.5, Article 66^5.2, Article $66^5$1.b), Article 82.4, and Article 82.l) of the Imprisonment Code. Besides, due to the aforementioned violations, in accordance with Article 60^1.1, 60^1.3, 60^1.7.a), and 60^1.8 of the General Administrative Code of Georgia, 14 Orders of the director of establishment no. 7, taken with regard to ten convicts on application of disciplinary penalty, were annulled.[198]

The Public Defender hopes that the Inspectorate General, within the systematic monitoring, will continue the examination of the practice of the use of disciplinary penalties in order to prevent their arbitrary imposition.

The Public Defender welcomes the Inspectorate General of the Ministry of Corrections of Georgia conducting an official inspection and expresses his hope that similar inspections will be regularly conducted in all establishments of the Penitentiary Department. It is a positive fact that, there were no incidents of imposing full bans on contacts with relatives in 2016 using disciplinary penalties in establishment no. 7.

Stemming from the above-mentioned, it is imperative to amend Article 82 of the Imprisonment Code and abolish all kinds of bans on contact with outside from the categories of disciplinary penalties such as restriction of the right to telephone conversations,[199] restriction of the right to receive and send private correspondence,[200] and prohibition of short visit privileges.[201]

Concerning the ban on the contact with outside world, the Public Defender made proposals regarding the Draft Law of Georgia on Amendment to the Imprisonment Code.[202] In particular, in the opinion of the Public Defender, paragraphs 9.a) and 10.c) of the draft law are problematic. Under the provisions concerned, a convict serving a disciplinary penalty or administrative violation cannot have video visits and long visits. Due to this amendment, convicts at penitentiary establishments will be restricted in these rights for 6 months after serving a disciplinary penalty and for a year - in case of placement in a solitary confinement cell as the term of a disciplinary penalty is extended to 6 months after it is served. Where placement in a solitary confinement cell has been imposed, the term of the penalty is extended to a year after it is served.

The Public Defender observes that maintaining prisoners' contact with their family should be encouraged and ensured to a maximum degree. Therefore, enhancing contacts with the outside world should be considered as a guiding principle. The same position is taken by the European Committee for the Prevention of Torture.[203] Furthermore, the UN Special Rapporteur on Torture noted with concern that inmates are only entitled to a long visit once every six months, an entitlement they may lose in the event of disciplinary measures.[204]

The Public Defender observes that despite the fact formally a prisoner is not limited in long visits as a disciplinary measure, this limitation is a consequence of a disciplinary offence and is practically an additional punishment for the offence for which a concrete punishment was already imposed.

198 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

199 Imprisonment Code, Article 82.1.h).

200 *Ibid.,* para. 1.i).

201 *Ibid.,* para. 1.l)

202 See the legislative initiative of the Government of Georgia on the Draft Law of Georgia on Amendment to the Imprisonment Code and other Related Amendments, drafted by the Ministry of Corrections of Georgia, 02. 02. 2017, available at:< http://info.parliament.ge/#law-drafting/13389> [last visited on: 23.02.2017].

203 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 18, para. 51 available in English at: http://agent.echr.am/resources/echr//pdf/ba2e032f91eb6673220a419b698fd89c.pdf [Last visited on 22.02.2017].

204 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia in 201, A/HRC/31/57/Add.3, para. 97.

To change this practice that has been well established in the penitentiary system, the Public Defender proposed to the Parliament of Georgia to delete from the Imprisonment Code the provision prohibiting long visits for certain period for the convicts that have been imposed with a disciplinary penalty. The Public Defender welcomes the fact that his proposal was accepted by both the author of the draft law (the Ministry of Corrections) and the Parliament during committee deliberations. When this report was underway, the change provided in the draft law on the Amendment to the Imprisonment Code was already adopted in the first hearing, which is positively assessed. The Public Defender hopes that this change will also be adopted in the subsequent hearings and eventually enforced.

The European Committee for the Prevention of Torture pointed out among its standards that a prisoner should be informed in writing of the reasons for the measure taken against him, given an opportunity to present his/her views on the matter, and be able to contest the measure before an appropriate authority.[205]

It is also in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice; any grey zones in this area involve the risk of unofficial (and uncontrolled) systems developing. Usually, according to the existing practice, a disciplinary penalty is applied without an oral hearing and an order on its application is only substantiated with explanations and reports submitted by the personnel. Prisoners practically do not participate in disciplinary proceedings. This increases the risk for the imposition of arbitrary disciplinary penalties.

It is therefore imperative that prisoners are adequately informed about the disciplinary procedure and their rights. Prisoners should be afforded sufficient time and opportunity to defend themselves, hire lawyers and offered explanations. Prisoners should be able to bring witnesses and adduce evidence (among them, they should be able to request surveillance recordings and their examination), and pose questions to those employees whose reports served as the basis for instituting disciplinary proceedings.

Under the Nelson Mandela Rules, prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.[206]

In 2016, in total, 4,838 disciplinary penalties were imposed on prisoners in penitentiary establishments. Out of this number, 43 decisions[207] were contested before a court. In 2015, prisoners contested 38 decisions.[208]

Out of the above-mentioned 43 cases of contesting the decisions about disciplinary penalties by prisoners, on 7 occasions a court partially upheld a claim and fully upheld a claim on 4 occasions. Furthermore, 9 claims have been rejected; 7 claims have not been admitted for the consideration of merits; on 2 occasions, claims have not been admitted due to a defect in application; in 4 cases, proceedings were discontinued; the outcomes of three cases are unknown; and the consideration of 7 claims is still pending.

Stemming from the above-mentioned, it can be concluded that while, compared to the previous year, the practice of contesting disciplinary measures by prisoners before a court is slightly increased. Prisoners still rarely challenge decisions about imposition of disciplinary penalties. This can be preconditioned by several factors such as lack of information about their rights, failure to involve prisoners in disciplinary proceedings, lack of legal aid, court fees, and most importantly by hopelessness. Such a situation increases the risk of arbitrariness on the part of the administration of a penitentiary establishment.

The European Committee for the Prevention of Torture observes that the possibility to listen to radio and watch television should not be regarded as a privilege and should be afforded to each prisoner.[209] Under

205 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 19, para. 55, available in English at: http://agent.echr.am/resources/echr//pdf/ba2e032f91eb6673220a419b698fd89c.pdf [Last visited on 20.02.2017].

206 Rule 41.4.

207 7 decisions from establishment no. 2 were contested before a court; 8 from establishment no. 3; 2 from establishment no. 5; 22 from establishment no. 6; 2 from establishment no. 7; 1 from establishment no. 9; and 1 from establishment no. 16.

208 From establishments nos. 2, 3, 5, 7, and 9.

209 Available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last visited on 20.02.2017]

Article 20.2 of the Imprisonment Code, 'remand/convicted persons, except for those placed in a solitary cell, may be granted the right to listen to radio and watch TV during non-work times, as determined by the internal regulations of the detention/prison facility. With the consent of the administration and according to the restrictions of the detention/prison facility, a remand/convicted person or a group of remand/convicted persons may have personal radio or TV sets if their use does not violate the internal regulations of this facility or disturb other remand/convicted persons. Remand/convicted persons may purchase these devices at their own expense or receive them in the form of a parcel.'

Under Articles 63.e),[210] 66.e),[211] and 66[4].e)[212] of the Imprisonment Code, the right to use a personal television or radio set is a form incentive. The same provision features in the statutes of penitentiary establishments approved by the orders of the Minister of Corrections of 2015. The Public Defender observes that the use of television and radio sets should not depend on the good will of the administration. All remand and convicted persons should have the right to use television and radio sets without prior authorisation and the director of an establishment, only in certain exceptional cases and based on clear statutory grounds, can restrict this right for certain period by a substantiated decision.

Furthermore, in such conditions, where prisoners share one television or radio set in a cell, deprivation of these items as a disciplinary penalty can amount to collective punishment if the other prisoners in this cell are not allowed for certain period to purchase a television/radio set. The use of this penalty[213] may have particular ramification for the well-being of an isolated prisoner (placed in a solitary confinement cell). Considering the scarce availability of rehabilitative, sporting and cultural activities in closed type penitentiary establishments, a television/radio set is the main enjoyment and source of information for prisoners. It should be positively mentioned that, in 2016, only two instances of deprivation of television/radio took place in establishment no. 2.

In 2015, the Public Defender proposed to the Parliament of Georgia and requested to determine the possession of a television and a radio as a right instead of a privilege and to strike off the possession of a television and a radio from the forms of incentives. To this end, the Public Defender proposed amending the relevant provisions of the Imprisonment Code (Article 63.e), Article 66.f), and Article 66.e). Furthermore, the Public Defender proposed the amendment of Article 82 of the Imprisonment Code to the effect of prohibiting the possession of a television/radio as a disciplinary sanction. Unfortunately, these changes have not been made to the relevant provisions of the Imprisonment Code to date.

In 2015, administrative detention was imposed on 3 prisoners (each several times) only in establishment no. 7. On 8 occasions, administrative detention was determined for 1 day; on 1 occasion, it was determined for 3 days. The ground for administrative detention, on all three occasions, was covering the electronic and surveillance eye with an object. As regards 2016, it should be positively mentioned that there were no administrative detentions imposed on any prisoners.

Paragraph 64 of the draft law on Amendment to the Imprisonment Code proposes a new wording of Article 90 of the Imprisonment Code to the effect of limiting the term of administrative detention (the proposed amendment uses the term *disciplinary detention*). The Public Defender welcomes decreasing the term of administrative detention. This issue is discussed in detail in the Parliamentary Reports by the Public Defender of 2014 and 2015.[214]

210 Subparagraph e).
211 Subparagraph f).
212 Subparagraph e).
213 Article 82.1.d) of the Imprisonment Code: a type of disciplinary measures is: d) restriction of the right to use allowed items for not more than six month.
214 See the Parliamentary Report of 2014 by the Public Defender, p. 81, available at: http://www.ombudsman.ge/uploads/other/3/3509.pdf [Last visited on 22.02.2017]; the Parliamentary Report of 2014 by the Public Defender, p. 83, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on 22.02.2017].

It is the position of the Public Defender that disciplinary detention as an ineffective method of ensuring order and security of a penitentiary establishment should be abolished altogether. This standard was established by the European Court of Human Rights in the case of *Ezeh and Connors v. the United Kingdom.*[215]

Furthermore, the Public Defender observes that, in case disciplinary detention is maintained as a form of punishment in the Imprisonment Code, it is imperative to provide all procedural safeguards that are afforded in criminal proceedings to inmates. Under the case-law of the European Court of Human Rights, deprivation of liberty liable to be imposed as an administrative punishment is, in general, a penalty that belongs to the 'criminal' sphere for the purposes of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[216] Therefore, the person facing proceedings on imposition of administrative (disciplinary) penalty should be afforded the minimum rights under Article 6.3 of the Convention. Among others, he/she should have adequate time and facilities for the preparation of his/her defence.

The maximum term of 72 hours stipulated by the provisions of the Imprisonment Code, both those in force and suggested under draft laws, is not enough for a convict to get in touch with a lawyer, plan defence strategy, obtain evidence and prepare defence position to present it before a court.

Therefore, the Public Defender observes that administrative (disciplinary) detention, as a punishment, should be abolished altogether. In case, this punishment is still maintained, its maximum duration should be limited to 15 days and convicts should be afforded the possibility to avail themselves fully of procedural safeguards provided for in the criminal procedure.

The administration of a penitentiary establishment may use various incentives with regard to those prisoners who show exemplary behaviour and good faith towards the fulfilment of their duties. The decision about giving incentives to prisoners is taken by the director of an establishment. As an incentive, a prisoner can be commended, afforded short and long visits, exempted from a reprimand or other disciplinary penalty, etc.

Under the Imprisonment Code, the participation of a convicted person in rehabilitation programmes shall be taken into account when assessing the degree of his/her rehabilitation and when granting an incentive to him/her.[217]

See the statistics of giving incentives to prisoners in penitentiary establishments in 2015 and 2016 in the below table.

Penitentiary Establishments	Number of Occasions of Giving Incentives 2015	Number of Occasions of Giving Incentives 2016	Number of Occasions of Giving Incentives to Participate in Rehabilitation Activities in 2015	Number of Occasions of Giving Incentives to Participate in Rehabilitation Activities in 2016
No. 2	270	95	17	0
No. 3	47	7	10	0
No. 5	147	51	26	33
No. 6	127	99	12	3
No. 7	0	5	0	0

215 *Ezeh and Connors v. the United Kingdom*, applications nos. 39665/98, 40086/98, judgment of the Grand Chamber of the European Court of Human Rights of 9 October 2003, para. 88. In this case, the Government's central submission was that the necessity of maintaining an effective prison disciplinary regime had to weigh heavily in determining where the dividing line between the criminal and disciplinary lay. The European Court noted that other sanctions were available to governors at the relevant times and considered that it had not been convincingly explained why these other sanctions would not have an impact comparable to awards of additional days in maintaining the effectiveness of the prison disciplinary system, including the authority of the prison management.

216 See, e.g. *Campbell and Fell v. the United Kingdom,* applications nos. 7819/77 7878/77, judgment of the European Court of Human Rights of 28 June 1984.

217 Imprisonment Code, Article 117.2.

No. 8	359	243	0	0
No. 9	6	8	0	0
No. 11	42	24	31	16
No. 12	33	33	0	0
No. 14	184	59	0	0
No. 15	579	463	11	32
No. 16	52	38	0	11
No. 17	462	292	0	0
No. 18	8	19	0	0
No. 19	8	24	0	0
Total	**2 324**	**1460**	**107**	**95**

According to the data in the table above, it is evident that the occasions, where prisoners were given incentives in penitentiary establishments, decreased by 37.2 in 2016

According to the explanation given by the Ministry of Corrections, in 2016, 1325 convicts took part in professional and educational programs in total.[218] Out of this number, in 105 occasions, prisoners were given incentives to participate in rehabilitation activities. Accordingly, it turns out that out of 1325 convicts only 8% were given incentives for participating in rehabilitation activities, which is a rather low indicator. Furthermore, it is unclear why incentives were not given in other cases.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections to ensure that the incentive forms were more frequently used in establishments nos. 3, 7, 9, 11, and 19. However, the cases of giving incentives even went down in establishment no. 3 in 2016. The incentive indicator increased in establishments nos. 7, 9, 18, and 19. The same indicator remained the same in establishment no. 12. As regards other establishments, the incentive indicator decreased there in 2016, which is negatively assessed.

The Public Defender observes that frequent incentives will weaken the influence of the criminal subculture in penitentiary establishments and will contribute to prisoners' re-socialisation. It is, therefore, imperative to strengthen the incentive system in all penitentiary establishments and, among others, enhance the incentives of prisoners for taking part in rehabilitation activities.

RECOMMENDATION

To the Minister of Corrections of Georgia:

- To elaborate guidelines for the use of disciplinary penalties in order to ensure uniform practice of the imposition of disciplinary penalties in all establishments of the Penitentiary Department;
- To take all necessary measures to ensure that prisoners are adequately informed about the disciplinary procedure and their rights; that they are afforded sufficient time and facility to defend themselves; have lawyers and are given explanations; can bring witnesses and adduce evidence (among them, they should be able to request surveillance recordings and their examination); can pose questions to those employees whose reports served as the basis for pending disciplinary proceedings;
- To ensure disciplinary penalties are used as the last resort;

218 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

- To ensure placement in a solitary confinement cell, as a disciplinary penalty, is used only in exceptional cases;
- To take all necessary measures to ensure that prisoners with mental problems are not placed in a solitary confinement cell;
- To take all necessary measures to ensure that during imposition of a disciplinary penalty, contact with family is not completely banned;
- To take all necessary measures to ensure that a multidisciplinary group, with its relevant strategy, works with prisoners in de-escalation rooms and disciplinary penalties are not imposed on these prisoners during their time in de-escalation rooms;
- To ensure that the Inspectorate General, within the systematic monitoring framework, examines the practice of placement in de-escalation rooms for preventing placement of prisoners in de-escalation rooms for punitive reasons (as an alternative to placement in solitary confinement cells as a disciplinary penalty);
- To ensure drafting amendment to the Imprisonment Code under which prisoners imposed with a disciplinary penalty will not be restricted to use video visits; to introduce the draft amendment to the Government for its imitation before the Parliament;
- To ensure drafting amendment to the Imprisonment Code to the effect of abolishing administrative (disciplinary) detention as a form of punishment; in case this form of punishment is maintained, to ensure that its maximum duration is limited to 15 days; to introduce the draft amendment to the Government for its imitation before the Parliament.
- To ensure increased use of incentives in all establishments of the Penitentiary Department;
- To take all necessary measures to ensure increased use of incentives for participation in rehabilitation activities;
- To ensure that the Inspectorate General, within the systematic monitoring framework, regularly inspects penitentiary establishment for preventing arbitrary and illegal imposition of disciplinary penalties, disproportionate use of penalties as well as full ban on the contact with the outside world;
- To ensure drafting an amendment to the Imprisonment Code to the effect of deleting the restriction of the right to telephone conversations, the right to receive and send private correspondence, as well as forfeiture of short visit privileges as a disciplinary penalty; to introduce the draft amendment to the Government for its imitation before the Parliament;
- To ensure drafting an amendment to the Imprisonment Code under which a prisoner placed in a solitary confinement cell is not restricted in short and long visits, telephone conversations, purchasing food; to introduce the draft amendment to the Government for its imitation before the Parliament;
- To ensure drafting an amendment to the Imprisonment Code under which the possession of a television/radio is a prisoner's right and the use of this right does not depend on the consent of the establishment's director; to introduce the draft amendment to the Government for its introduction before the Parliament; and
- To ensure drafting an amendment to the Imprisonment Code on prohibiting the use of television and radio as a disciplinary penalty and to introduce the draft amendment to the Government for its initiation before the Parliament.

Proposals to the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of deleting the restriction of the right to telephone conversations, the right to receive and send private correspondence, as well as forfeiture of short visit privileges as a disciplinary penalty;
- To amend the Imprisonment Code to ensure that a prisoner placed in a solitary confinement cell is not restricted in short and long visits, telephone conversations and purchasing food;
- To amend the Imprisonment Code and guarantee the possession of a television/radio is a prisoner's right and to ensure that the use of this right does not depend on the consent of the establishment's director;
- To amend the Imprisonment Code and prohibit the ban on the use of television and radio as a disciplinary penalty;
- To amend the Imprisonment Code to the effect of ensuring those prisoners imposed with a disciplinary penalty are not restricted in their right to video visits; and
- To amend the Imprisonment Code to the effect of abolishing administrative (disciplinary) detention as a form of punishment; in case this form of punishment is maintained, to ensure that its maximum duration is limited to 15 days.

CONTACTS WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture places a particular emphasis in its recommendations on ensuring contacts with the outside world for each person deprived of his/her liberty. Restriction of this right in any form should be based on weighty security considerations and problems related to existing material resources.[219]

Under Paragraph 24.1 of the European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. Under Paragraph 24.5 of the Rules, prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. Under Article 46.3 of the Imprisonment Code, a convicted person shall, as a rule, serve his/her sentence in a prison facility of the relevant type, located closest to the place of his/her residence or to the place of residence of his/her close relative, except as provided for by paragraph 4 of this article.

Under Article 46.4 of the Imprisonment Code, by decision of the Director of the Department, a convicted person may be transferred for further service of the sentence to a prison facility of the same or different type in cases where he/she regularly violates the internal regulations of the facility; is ill and/or in cases where it is necessary to ensure his/her safety taking into account risk factors; also in cases of reorganisation, liquidation or overcrowding of the facility or in circumstances specified in Article 58.1 of this Code; or in other important, reasonable circumstances and/or in the case of a consent of the convicted person.

The monitoring visits conducted by the Special Preventive Group in the reporting period revealed that the use of the right to meet with family members is affected by several factors. There is a window shield in the

219 Operative parts of the General Reports of the European Committee for the Prevention of Torture (CPT), Strasbourg, 18 August 2000, p. 37.

meeting room; the place of the residence of the family is not taken into account during placement of prisoners; problems related to ensuring a confidential environment during a visit of a family member; besides, prisoners are not allowed to have a long visit and a video visit if there is a disciplinary penalty and/or administrative detention imposed on them.

Short Visits

The European Committee for the Prevention of Torture in its report to the Georgian Government on the visit to Georgia in 2014[220] observes that all convicts should have an equal possibility to maintain family contacts irrespective of the type of penitentiary establishment in which they are serving sentence.

A juvenile convict may enjoy 4 short visits a month and 2 additional short visits a month as an incentive.[221] A prisoner serving a sentence in a low risk prison facility may enjoy 4 short visits a month, and 2 additional short visits a month as an incentive.[222] A prisoner serving a sentence in a semi-open type prison facility may enjoy 2 short visits a month, and 1 additional short visit a month as an incentive.[223] A convicted woman may enjoy 3 short visits a month, and 1 additional short visit a month as an incentive.[224] A prisoner serving a sentence in a closed type prison facility may enjoy 1 short visit a month, and 1 additional short visit as an incentive.[225] A convict serving a sentence in a high risk prison facility may enjoy 1 short visit a month, and 1 additional short visit as an incentive.[226]

The Public Defender observes that the number of short visits allowed for prisoners serving sentence in closed type and high risk prison facilities is extremely limited. One short visit in a month cannot ensure maintaining solid ties between convicts and their family members. Therefore, it is imperative to amend the Imprisonment Code for allowing more short visits for prisoners serving sentence in closed type and high risk prison facilities. The Public Defender recommended concerning this issue to the Minister of Corrections in the Parliamentary Report of 2015. However, this recommendation has not been fulfilled by the time of submission of this Report.

Under Article 17.7 of the Imprisonment Code of Georgia, a short visit is held for one to two hours. A short visit shall take place only under the visual control of a representative of the Administration, except as provided for by the legislation of Georgia.

It is noteworthy that in the majority of penitentiary establishments, short visits are held in rooms with window partitions. This does not allow a prisoner to have any physical contact with family members. However, in exceptional cases, such as serious health condition of a convict, meeting with a child under seven, etc., a short visit allowing immediate contact may be arranged with the consent of the director of an establishment. Despite the fact that in some cases it is necessary to have physical partitions in place, it is important to ensure that the immediate physical contact should be the rule. Any decision allowing restriction of physical contact should be reasonable, justified and proportionate with the attainment of the aim sought by the restriction. Besides, the decision on restricting physical contact should be subject to regular revision. Otherwise, interference in the right to respect for private and family life of prisoners will be unjustified. The Public Defender has been making recommendations to the Minister of Corrections regarding this issue for years. Unfortunately, this recommendation has not been fulfilled to date.

220 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf, 2015, available in English at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069 61f8 [Last visited on 22.02.2017].
221 Juvenile Justice Code, Article 87.1.a).
222 Imprisonment Code, Article $60^2$2.b).
223 Imprisonment Code, Article 62.2.b).
224 Imprisonment Code, Article 72.5.
225 Imprisonment Code, Article 65.1b).
226 Imprisonment Code, Article 66^3.2.b).

The penitentiary establishments do not allow short visits on weekends. Within the monitoring conducted in establishment no. 15, the Special Preventive Group members talked with parents and spouses of the convicts waiting at the public reception room of this establishment. According to them, it is important to allow short visits in the days off, as they often have to take leave during the working days, which causes them problems with their employers.[227]

As of 1 January 2016, an remand person may enjoy not more than 4 short visits a month.[228] This is clearly a positive change and is positively reflected on maintaining family ties as well as stress reduction. This right may be restricted based on a resolution of the investigator or prosecutor. For the purposes of investigation and safety, an employee of the facility who carries out a visual surveillance of a short visit of an remand person may immediately terminate the visit.

Long Visits

Convicts' right to use long visits contributes to their right to respect for private and family life by maintaining close ties with their family and contributes to reintegration process with the family and society after release.

A convicted person serving a sentence in a low risk prison facility may have 6 long visits a year, and 3 additional long visits a year as an incentive.[229] A convicted person serving a sentence in a semi-open type prison facility may enjoy 3 long visits a year, and 2 additional long visits a year as an incentive.[230] A convicted person serving a sentence in a closed type prison facility may enjoy 2 long visits a year, and 1 additional long visit as an incentive.[231]

There is no infrastructure for long visits in penitentiary establishments nos. 7, 8, 9, 18, and 19. It should be positively mentioned that, in 2016, the prisoners of establishments nos. establishments nos. 8, 9, 18, and 19 were periodically transferred to other establishments for long visits. As regards the prisoners of establishment no. 7, they are not transferred to other establishments for long visits.

In the Parliamentary Reports of 2014 and 2015, the Public Defender of Georgia recommended to the Minister of Corrections to ensure requisite infrastructure for long visits in penitentiary establishments.

Concerning the Recommendations Determined by the Resolution of the Parliament of Georgia Adopted with Regard to the Report of the Public Defender of Georgia on Human Rights Situation in Georgia in 2015, the Ministry of Corrections of Georgia submitted that the necessary measures under underway for arranging the infrastructure in establishment no. 8, which is welcomed. However, it remains problematic to provide infrastructure for long visit in closed-type establishments[232] and medical establishments.[233]

Maintaining family ties is a fundamental human right, which means that the visit of family members is not prisoners' privilege. Under Rule 43.3 of the Nelson Mandela Rules, disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited period and strictly for the maintenance of security and order.

Under Article 17^2.6 of the Imprisonment Code, convicted persons placed in a high risk prison facility shall not be granted the right to a long visit. This clause of the Imprisonment Code prohibiting convicts in high risk prison facilities to use long visits is a blanket restriction not leaving room for factoring a legitimate aim.

227 In 2016, in total 38,897 short visits were made to penitentiary establishments; In 2015 – 40,897 short visits. In 2016, compared to 2015, along with the decrease in the total number of prisoners, the indicator for the use of short visits decreased too.
228 Imprisonment Code, Article 77.
229 Imprisonment Code, Article 6022.e).
230 Imprisonment Code, Article 62.2.e).
231 Imprisonment Code, Article 65.1.d).
232 Penitentiary establishments nos. 7, 8, 9.
233 Penitentiary establishments nos. 18 and 19.

In the case of *Khoroshenko v. Russia*, the Grand Chamber of the European Court of Human Rights held that the prison regime that only allowed two short visits during ten years was in violation of a prisoner's right to respect for private and family life. The Court has particularly pointed out that, as is well established in the Court's case-law, during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty. The principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned.

In its Report to the Georgian Government on the visit to Georgia in 2015, the European Committee for the Prevention of Torture reiterated its view that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts and only for the shortest time possible (days rather than weeks or months).[234] The prohibition of the Imprisonment Code is more punitive than security-related. Accordingly, it is imperative to make the necessary amendment to the Imprisonment Code for comprehensive reflection of the above principles therein.

As it has become known for the public, the Ministry of Corrections shares this position and it is planned to amend Imprisonment Code to the effect of allowing convicts serving sentence in high risk prison facilities one long term visit in a year and one additional visit as an incentive.[235][2] The Public Defender welcomes this initiative and considers it a step forward. It is, however, needs mentioning that, while this information was made known during the deliberations on draft law on Amendment to the Imprisonment Code in the Parliament of Georgia, there was no such change displayed in the draft law in the period this Report was being prepared. The Public Defender expresses his hope that this initiative will be realised within the draft law on the Amendment to the Imprisonment Code and eventually the convicts in high-risk prison facilities will be able to avail long visits.

Concerning the use of long visits, it should be noted that in those cases where a convict has been placed in a solitary confinement cell to serve disciplinary penalty, the prisoner forfeits his/her right to long visits for a year. Under Article 17^2.6 of the Imprisonment Code, convicted persons placed in a high risk prison facility, and convicted persons who are in quarantine, or those upon whom disciplinary measures and/or administrative detentions are imposed, shall not be granted the right to a long visit. The Public Defender observes that there is clearly a wrong interpretation of the aforementioned provision as this paragraph applies to the cases where a disciplinary penalty is imposed on a convict (the term of the disciplinary penalty has not expired). Accordingly, the restriction of the right to long visit should not apply to those cases where the penalty has been served even if the convict is still deemed to be a person upon whom disciplinary penalty is imposed.

The Public Defender reiterates that maintaining family ties is not a privilege of a convicted person, therefore, enhancing contacts with the outside world should be considered to be a guiding principle. The same position is shared by the European Committee for the Prevention of Torture.[236] Furthermore, the UN Special Rapporteur on Torture noted with concern that inmates are only entitled to a long visit once every six months, an entitlement they may lose in the event of disciplinary measures.[237]

The existing practice amounts to disproportionate restriction of a convicted person's contacts with the outside world. In particular, in case of imposition of any disciplinary penalty on a convict, it means that he/she is automatically restricted in the right to video visits and long visits from 6 months up to a year (depending on a disciplinary penalty). This restriction does not serve any legitimate aim and is practically an additional punishment.

234 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 5 to 15 February 2010, CPT/Inf, 2015, para. 119, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806961f8 [Last visited on 24.03.2017].

235 http://www.moc.gov.ge/ka/pressamsakhuri/akhali-ambebi/article/22394-kakha-kakhishvili-msjavrdebulebi-ojakhthan-kavshirs-sheinarchuneben [Last visited on 28.03.2017].

236 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 18, para. 51.

237 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia in 201, A/HRC/31/57/Add.3, para. 97.

The Public Defender addressed the issue in 2015 Parliamentary Report as well.[238] Accordingly, the Public Defender again reiterates that no restriction of the contacts with the outside world as a disciplinary penalty or an ensuing consequence to this measure should be allowed.

Paragraphs 9.a) and 10.c) of the draft law on the Amendment to the Imprisonment Code do not essentially change the above situation and those convicts upon who disciplinary penalty or administrative detention have been imposed are restricted in the right to video visits and long visits. The convicts at penitentiary establishments will be restricted in these rights for 6 months after serving a disciplinary penalty and for a year - in case of placement in a solitary confinement cell as the term of a disciplinary penalty is extended to 6 month after it is served and where placement in a solitary confinement cell has been imposed, the term of the penalty is extended to one year period after it is served.

For changing the practice that is well established in the penitentiary system, the Public Defender proposed to the Parliament of Georgia to delete the provision of the Imprisonment Code that prohibits convicts upon which a disciplinary penalty has been imposed to have long visits for a certain period. The Public Defender welcomes the fact that during the committee deliberations, the proposal of the Public Defender has been shared by both the authors of the draft law (the Ministry of Corrections) and the Parliament. During the period this Report was being developed, the draft law on Amendment to the Imprisonment Code that has been passed within the first hearing already contains the change at stake, which is positively assessed. The Public Defender expresses his hope that this change will be adopted in subsequent hearings as well and will eventually be enforced.

The Public Defender positively assesses the exemption of those guests that are registered in the unified base of socially vulnerable families from the statutory fees for long visits.[239] However, dire economic situation of families still prevent some of the prison population to exercise their statutory right to long visits.

Along with to the decrease in the total number of convicts, similar to short visits, the number of long visits also decreased in 2016 in comparison with the indicators of 2015.[240] It is noteworthy that establishment no. 2 received 963 long visits in 2015 and 548 in 2016. The study of disciplinary penalties showed that placement in a solitary confinement cell was used in 240 cases. Accordingly, those upon whom disciplinary penalty was imposed could not use long visits.

Video Visits

The significance of video visits[241] in terms of maintaining a convicted person's contact with the outside world is important as not only family members but also friends and closed ones can use it.

Under Paragraph 2 of Order no. 55 of the Minister of Corrections of Georgia of 5 April 2011, video visits can be made no more than once within ten calendar days, within the working hours from 10:00 to 18:00. A single video visit to a convict should not exceed 15 minutes. The amendment made to the Imprisonment Code on 27 April 2016 is positively assessed as it stipulates that video visits for convicted persons shall be held free of charge.[242]

It is noteworthy that infrastructure is available for video visits only in five penitentiary establishments (nos. 5, 11, 15, 16, and 17). In 2016, 369 video visits were made in total.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure that requisite infrastructure for video visits is available in all penitentiary

238 2015 Praliamentary Report by the Public, p. 81, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf.
239 Order no. 132 of the Minister of Corrections of Georgia, of 22 July 2014, paragraph 4.
240 In 2015, 5,959 visits were made and in 2016, 5,731.
241 Imprisonment Code, Article 17^1.
242 Imprisonment Code, Article $17^1.4$.

establishments. According to the information received from the Ministry of Corrections,[243] it is possible to arrange video visits in establishments nos. 5, 8, 11, 14, 15, 16, and 17. It should be positively mentioned that requisite infrastructure for video visits was provided in establishments nos. 8, and 14. The Public Defender welcomes the efforts of the Ministry and observes that the requisite infrastructure for video visits should be provided in all penitentiary establishments.

Telephone Conversations

The right to telephone conversations is one of the most important entitlements of an remand/convicted person and contributes to prisoners maintaining close ties with their family members and friends. Under Article 14.1.a.d), an remand/convicted person has the right to telephone conversations and correspondence.

A convicted person serving a sentence in a low risk prison facility may enjoy an unlimited number of telephone conversations during one month at his/her own expense, each lasting for not longer than 15 minutes, and telephone conversations of unlimited duration at his/her own expense as an incentive.[244] A convicted person serving a sentence in a semi-open type prison facility may enjoy 4 telephone conversations a month at his/her own expense, each lasting for not longer than 15 minutes, and, as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes.[245] A convicted person serving a sentence in a closed type prison facility may enjoy 3 telephone conversations a month at his/her own expense, each lasting for not longer than 15 minutes, and, as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes.[246]

A convicted person serving a sentence in a high risk prison facility may enjoy 1 telephone conversation a month at his/her own expense, lasting for not longer than 10 minutes, and, as an incentive, 1 additional telephone conversation not longer than 10 minutes at his/her own expense.[247] Prisoners serving their sentence in a high risk prison facility, in their conversations with the members of the Special Preventive Group, expressed their indignation concerning the mere 10 minute telephone conversation in a month. Against the background, where the prisoners of a high risk prison facility are not allowed to a long visit and can only have one short visit in a month, one telephone conversation will not enable them to maintain adequate contact with their family. It is therefore imperative to make relevant changes to the Imprisonment Code and increase the number of telephone calls for the prisoners of this category.

According to Letter no. MOC31700081256 of the Ministry of Corrections of 20 February 2017, there are two, so-called 'old' and 'new', telephone companies that provide services for prisoners in penitentiary establishments. The telephones of the so-called 'old' provider are gradually switched off in the penitentiary establishments.

When making calls from 'old' telephones, the prisoners face problems regarding conversation limits. In particular, if a prisoner does not use talking limit on a telephone card, the rest of the limit is blocked. Accordingly, he/she will have to purchase a new card, which involves extra expenses. The telephone cards also get blocked whenever a prisoner fails to talk after dialling the number (telephone line was cut off, or wrong number was dialled or, other reasons)

As regards telephone calls made from the 'new' phones, according to prisoners in a closed type establishment, they could only call five telephone numbers previously agreed with the administration within a month. In an open type establishment, ten such telephone numbers could be called. It was possible to replace the phone numbers only after a month; a prisoner could not call the numbers which had not been previously notified to

243 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.
244 Imprisonment Code, Article 60^{2}2.c).
245 Imprisonment Code, Article 62.2.c).
246 Imprisonment Code, Article 65.1.c).
247 Imprisonment Code, Article 66^{3}2.c).

the administration, as well as the numbers that were not registered to the persons, prisoners wanted to reach. According to the convicts, the restrictions also applied to calls made to public agencies, including the Public Defender, as well as to the calls made to lawyers. Regarding this issue, the Office of the Public Defender addressed the Ministry of Corrections with the letter no. 11-2/9578 on 19 August 2016. According to Letter no. MOC01600728661 received from the Ministry of Corrections on 25 August 2016, the Ministry had selected a new telephone company through a tender and it is obliged to redeem all the shortcomings identified in providing telephone services until now and offer quality services to prisoners. To this end, the company works in beta phase and to provide quality services it needs the list of pre-determined telephone numbers. This is a temporary measure and will discontinue as soon as the beta phase is completed. It should be noted that the company that must eradicate the existing shortcomings in providing telephone services, in reality creates even more significant problem that prevent prisoners from exercising their statutory right. Concerning this issue, the Office of the Public Defender again sent letter no. 03-1/1084 to the Ministry of Corrections on 24 January 2017. According to Letter no. MOC3170008156 of the Ministry of Corrections received on 20 February 2017, the so-called 'new' provider completed beta phase and remand/convicted persons are able to use the services of both 'old' and 'new' companies, in accordance with the procedure determined by legislation of Georgia.

It should be positively mentioned that in penitentiary establishments, except for high risk prison facilities, prisoners do not have to indicate the pre-determined amount of telephone numbers. However, it should be noted that during the monitoring visits made to establishments nos. 5, 8 and 11, the representatives of the Public Defender tried several times to call the hotline (1481) of the Office of the Public Defender but the calls could not go through. It is also noteworthy that prisoners cannot call the Office of the Public Defender or other organs of inspection at night.

CPT emphasises that effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both inside and outside of the context of the prison system, including the possibility to have confidential access to an appropriate authority.[248]

There are frequent occasions in practice where prisoners placed in solitary confinement cells cannot call the Office of the Public Defender.

Under Article 88.2 of the Imprisonment Code of Georgia, 'an remand/convicted person placed in a solitary cell may not enjoy short and long visits, telephone conversations or purchase food products.' During the monitoring visits made to penitentiary establishments, prisoners mentioned to the members of the Special Preventive Group that the restriction on telephone conversations was also extended to the phone calls made to the Office of the Public Defender and other inspection agencies. Access to the Public Defender is a significant safeguard against ill-treatment, especially for those placed in solitary confinement as their complete social isolation involves great risks of ill-treatment. Under Article 98.5 of the Imprisonment Code, an remand/convicted person may, at any time, file a complaint with the Public Defender of Georgia/Special Preventive Group. Furthermore, under Article 82 of the Code, the restriction of the right to receive and send private correspondence for a disciplinary violation shall not apply to the correspondence the addressee or sender of which is the Public Defender of Georgia. It should be pointed out that there is no similar clause concerning telephone calls. It is imperative to amend the legislation to allow a prisoner placed in a solitary confinement cell to reach the Public Defender in any form, including by telephone.

Placement in a de-escalation room is not the ground for automatic restriction of any statutory rights of an remand/convicted person.[249] However, in practice, a prisoner placed in a de-escalation room is completely restricted in terms of contacts with the outside world. For instance, during the visit to establishment no. 8, prisoners mentioned in their conversation with the Special Preventive Group members that they are unable to

248 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, para. 54, p. 19.

249 Orders nos. 119, 116, and 117 of the Minister of Corrections of Georgia of 27 August 2015, Article 17.4.

send correspondence, use telephone and have visitations during their time in a de-escalation room. Furthermore, during the visit[250] made to establishment no. 3, the Group studying the documentation of the establishment revealed that in 44% of placements in a safe room, disciplinary penalties were imposed on the prisoners (restriction of telephone conversations, visits and personal correspondence) during their time in the safe room.

The Public Defender observes that it is impermissible to resort to security measures for punitive purposes as such measures should only serve the statutory objective of ensuring the safety of people in a penitentiary establishment. Furthermore, a multidisciplinary group should be actively working with a prisoner placed in a de-escalation room, in accordance with a relevant strategy.

The prisoners in semi-open type establishments face particular problems when making phone calls, as there are not enough telephone devices available. In their conversations with the Special Preventive Group members, the prisoners said that they had to stand in lines for telephones and often some of the prisoners are unable to exercise their statutory right in time. As regards the closed-type penitentiary establishments, as the telephone devices are placed in guard's room, it is impossible to have a confidential conversation.

Correspondence

In 2016, 19,821 personal correspondences in total were dispatched form penitentiary establishments.

Under Article 16.1 of the Imprisonment Code, an remand/convicted person, as determined by this Code, has the right to send and receive an unlimited number of letters, except as provided for by this Code. Under Article 16.4 of the Code, the correspondence of an remand/convicted person is subject to inspection, which includes visual inspection without reading its content. In cases of extreme necessity, when there is a well-grounded belief that the dissemination of information will pose a threat to public order, public security or rights and freedoms of other persons, the administration may read the correspondence and, if necessary, not send it to the addressee. The sender shall be immediately notified of this action.

Paragraph 7 of the draft law of Georgia on Amendment to the Imprisonment Code proposes the new wording of Article 16 of the Code to the effect of prohibiting correspondence among remand/convicted persons placed in penitentiary establishments. The Public Defender does not approve of such a blanket restriction. Communication among remand/convicted persons placed in penitentiary establishments can be restricted only in exceptional conditions, upon the existence of concrete facts and circumstances that are substantiated in each individual case. Besides, it should be noted that the explanatory memorandum of the draft law does not explain the necessity warranting the adoption of such a restrictive provision. The Public Defender of Georgia observes that the blanket restriction proposed by the draft law is disproportionate in relation to the aim sought by the author of the draft law.

The Means of Mass Media

In the Opinion of the European Committee for the Prevention of Torture, the possibility of prisoners to be able to listen to radio and watch television should not be deemed to be a privilege but instead should be a right for all prisoners.[251]

An remand/convicted person may have access to the press and other mass media. As a rule, radio and TV programmes are broadcast in a detention/prison facility.[252]

250 Visit was made on 23-25 May 2016.
251 Available at :< http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last visited on 20 January 2017].
252 Imprisonment Code, Article 20.1.

Access to the means of mass media has particular importance for maintaining contact with the outside world. It is similarly important that a prisoner had information about the social events outside a penitentiary establishment. During the monitoring visits made to penitentiary establishments, prisoners mention to the members of the Special Preventive Group that they do not have access to some of the top-rated Georgian channels. Besides, representatives of ethnic minorities cannot listen to the TV programmes in the language that is understandable to them.

As regards the press, according to the analysis of the official information received from penitentiary establishments, establishments nos. 7, 9, 12, and 14 are not at all provided with newspapers and magazines. There are mostly church magazines available in establishments and establishment no. 3 only received newspaper *Batumelebi*. However, this newspaper is not published anymore. It should be noted that there are newspapers available in Azerbaijani and Armenian in establishments nos. 8, 11, 17, 18, and 19. There is a newspaper in Azerbaijani available in establishment no. 6 and a newspaper in Turkish in establishment no. 5. It is imperative that newspapers and magazines provided in establishments are diverse and available in various languages so that all prisoners could read them.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure that, when deciding about placement of a convict in a penitentiary establishment, the place of residence of his/her family should be taken into account for facilitating the unimpeded exercise of the right to visits;
- To ensure short visits without window partitions;
- To ensure requisite infrastructure for long terms in all penitentiary establishments;
- To ensure drafting an amendment to the Imprisonment Code with the effect of increasing the number of short visits allowed for prisoners serving sentence in closed type and high risk prison facilities; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To ensure drafting of an amendment to the Imprisonment Code with the effect of regulating the right to long visits for prisoners serving sentence in high risk prison facilities; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To ensure drafting of amendment to the Imprisonment Code with the effect of increasing the number of short and long visits; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To ensure drafting of amendment to the Imprisonment Code with the effect of increasing the number of telephone calls allowed for prisoners serving sentence in closed type and high risk prison facilities; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;
- To draft an amendment to the Imprisonment Code for ensuring that prisoners placed in solitary confinement cells can use their right to call the Office of the Public Defender or other organs of inspection; to introduce the draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia;

- To take all necessary measures to ensure that prisoners placed in penitentiary establishments can call without impediment the hotline of the Office of the Public Defender or other organs of inspection at any time of the day, if needs be;
- To ensure that prisoners' statutory right to make phone calls is fully respected in all penitentiary establishments;
- To ensure that telephones in closed type establishments are installed at such places where personnel cannot overhear prisoners' telephone conversations;
- To ensure there are more telephones provided in the semi-open type establishments to enable all prisoners to exercise their statutory rights;
- To ensure that there is requisite infrastructure for video visits in all penitentiary establishments;
- To take all necessary measures to ensure the availability of the Georgian channels that are in demand and top-rated in penitentiary establishments; and
- To take all necessary measures for taking into account the interests of various linguistic groups when selecting TV channels.

THE MECHANISM FOR CONSIDERING APPLICATIONS/COMPLAINTS IN THE PENITENTIARY SYSTEM OF GEORGIA

The prohibition of torture is absolute, not allowing any exception or derogation. However, the realisation of the right not to be subjected to torture can be undermined when it comes to those who due to their being vulnerable are most likely to be susceptible to become victims of torture and inhuman treatment without safeguards to their right to prompt and impartial consideration of their complaints against representatives of the state authorities.

The Public Defender, in the Parliamentary Report of 2015, pointed out that an effective mechanism of monitoring and consideration of applications/complaints in penitentiary establishments ensures respect for prisoners' rights and is a fundamental safeguard against ill-treatment. Therefore, in 2015, the Public Defender recommended to the Minister of Corrections to ensure adequate awareness of prisoners about their rights in general, as well as the right to lodge an application/complaint and consideration procedure in particular.

The Public Defender welcomes the steps made towards the fulfilment of this recommendation. In particular, it should be positively mentioned that, in the course of 2016, there were training sessions held in penitentiary establishments about the rights of the remand/convicted, the procedure for lodging complaints as well as disciplinary and administrative proceedings.[253] The Public Defender welcomes the improvement of the practice of displaying information about prisoners' rights on various premises of establishment and disseminating brochures in several establishments. Among them, the publication of special brochures on prisoners' rights for foreign inmates is positively assessed.

Despite the above-mentioned, there are still considerable problems concerning adequate degree of awareness among prisoners in penitentiary establishments and the Public Defender's recommendation cannot be considered to have been fulfilled without eradicating these issues.

253 Letter no. MOC 317 00036373 of the director of penitentiary establishment no. 5, dated 16 January 2017 (registered under no. 03-3/193 in the Office of the Public Defender of Georgia); Letter no. MOC 317 00037804 of the director of penitentiary establishment no. 16, dated 17 January 2017 (registered under no. 03-3/210 in the Office of the Public Defender of Georgia); Letter no. MOC 617 00046221 of the director of penitentiary establishment no. 8, dated 20 January 2017 (registered under no. 03-3/273 in the Office of the Public Defender of Georgia).

In particular, access to information brochures on the rights is not ensured in all penitentiary establishments. The existing practice of dissemination of information about prisoners' rights does not ensure their adequate awareness about their rights in general as well as the right to lodge an application/complaint and consideration procedure in particular. In the opinion of the Special Preventive Group, it is less likely that, considering the stressful situation during admission to a penitentiary establishment, a prisoner could concentrate on the list of the rights and duties and memorise the imparted information. Therefore, the existing practice, whereby an remand/convicted person is given information about his/her rights and duties on the single occasion of admission to a penitentiary establishment, is more of a formal nature and fails to ensure the awareness of a prisoner about his/her entitlement appropriately. It is, therefore, imperative that prisoners had access on later stages too to the information about their rights in general as well as the right to lodge an application/complaint and consideration procedure in particular.

The Public Defender deems it important that a social worker should be more involved in the process of explaining prisoners about their rights and ensuring their adequate awareness. In particular, the social worker, a few days after a prisoner's admission to a penitentiary establishment, should explain to him/her the rights and duties in detail; should submit information about lodging an application/complaint and procedure for its examination; explain the competence of a social worker; and submit all necessary key documents. Within reasonable intervals, social workers should carry out individual and group works with prisoners on the topic of their rights and duties, and the procedure of lodging an application/complaint as well as its examination.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Corrections to improve the procedure for lodging prisoners' applications/complaints. To this end, the Public Defender recommended to the Ministry to increase the role of social workers in drafting the wording of applications/complaints and selecting its relevant recipient; to provide a translator for the prisoners without the command of the Georgian language; and to develop and disseminate to prisoners brochures containing practical information in various languages explaining in detail and in simple terms the procedure for lodging an application/a complaint as well as for its consideration.

The Public Defender of Georgia observes that this recommendation has not been fulfilled. The monitoring conducted by the Special Preventive Group revealed that prisoners face difficulties in formulating their claims and define the recipients for their complaints. This is particularly problematic when prisoners are unable to properly read and write in Georgian. According to the existing practice, in such cases, prisoners ask other inmates for help. In the opinion of the Special Preventive Group, social workers should be more involved in the process of lodging an application/a complaint to enhance the practical realisation of these rights by inmates. Social workers should extend qualified assistance to inmates. Those prisoners who do not have the command of the Georgian language should be provided with a translator's services. Furthermore, brochures containing practical information in various languages explaining in detail and in simple terms the procedure for lodging an application/a complaint as well as for its consideration should be developed and disseminated to prisoners.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Corrections to make accessible for prisoners in cells all legislative acts and information about the procedure for lodging an application/a complaint as well as for its consideration

The Public Defender considers that this recommendation has not been fulfilled. In particular, the statutes of penitentiary establishments still contain a statutory prohibition for remand/convicted persons about keeping any papers, including official documents exceeding 100 pages. This does not include copies of court sentences and decisions, one copy of receipts for money, items and valuables that have been handed in for storage.

During the monitoring carried out by the Special Preventive Group, some of the prisoners complained about the lack of access to normative acts in penitentiary establishments.[254] There have been occasions where prisoners applied to the Office of the Public Defender of Georgia and requested a particular normative act.

The Public Defender considers it imperative to ensure prisoners' access to automatically updated and codified bases of normative acts and to register the acceptance and delivery of normative acts by prisoners in penitentiary establishments.

In 2015, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to take all necessary measures to ensure that prisoners always received the registration number of their applications/complaints lodged in a timely manner. In the opinion of the Public Defender, this recommendation has been partially fulfilled. In particular, the monitoring conducted by the Special Preventive Group in 2016 showed that the majority of the prisoners were informed about the registration number of their applications/complaints lodged. However, some of the prisoners in the closed-type penitentiary establishments mentioned that in cases where they sent an open letter, no registration number was provided. In such cases, it is difficult to track the letter, whether it was registered or dispatched to the respective recipient. Besides, the monitoring showed that in penitentiary establishment no. 3, registration number is only provided to a prisoner if the latter submits an application and requests it. Such practice is impermissible. The statute of penitentiary establishment no. 3 stipulates that an application is registered with an administrative unit of the penitentiary establishment and the registration number is given to the remand/convicted person having lodged the application.[255] The statute nowhere stipulates the need for submitting a separate application by the prisoner to obtain the registration number.

During the monitoring conducted by the Special Preventive Group, some of the prisoners expressed their concern that despite having had submitted a letter to a social worker, they did not have any information about this communication. According to the prisoners, they do not have a written document by which they would be able to prove the fact that the letters had been handed to social workers.

As the fact of handing open letters to social workers is not corroborated by any written document that would be accessible for the prisoners submitting those letters, it is difficult to establish whether a prisoner gave correspondence to a social worker. Therefore, the Public Defender of Georgia deems it reasonable to ensure that during delivery and acceptance of an open letter by a social worker, there should be two copies of a document certified by a stamp. The following information should be written in the presence of the prisoner in this document: a) the name and surname of the author of the letter; b) the name and surname of the social worker to whom the letter has been submitted; c) the date of submission of the letter; d) the recipient of the letter; and e) the number of pages of the letter. Both copies should be signed by the prisoner and the social worker concerned. One copy should be given to the prisoner and another should remain with the social worker.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to take all necessary measures for ensuring free accessibility of envelopes for confidential complaints at such places (e.g. a library) where the prisoners would not be dependent on the establishment's personnel to obtain envelopes, and prisoners could take them without being identified by the administration. The Public Defender also recommended ensuring the availability of certain number of envelopes for prisoners in cells.

254 In order to inspect the issue at stake, monitoring was conducted in penitentiary establishments and the results show that there are indeed problems related to the accessibility of legislative/normative acts in establishments. For instance, as of 12-13 January 2017, when the Special Preventive Group visited penitentiary establishment no. 6, its library had four copies of the establishment's statute; ten copies of the changes made to the statute on 27 December 2016; ten copies of the Imprisonment Code (not updated); four copies of the Constitution of Georgia (as of 2016); one copy of the statute of the closed-type penitentiary establishment; one copy of Order no. 70 of the Minister of Corrections of Georgia of 9 July 2015; one copy of the Criminal Code of Georgia (as of 2005); and one copy of the Code of Criminal Procedure of Georgia (as of 2006, hence, invalidated). As of 17 February 2017, there was only one old copy of the Imprisonment Code in the library of penitentiary establishment no. 11.

255 Order no. 109 of the Minister of Corrections of Georgia on approving the statute of penitentiary establishment no. 3 of the Ministry of Corrections of Georgia, Article 63.3.

The Public Defender observes that this recommendation has not been fulfilled. In particular, the monitoring of the Special Preventive Group conducted in penitentiary establishments in 2016 showed that sending a confidential complaint from closed-type penitentiary establishments is still problematic. In particular, it is impossible to obtain the requisite envelope for writing a confidential complaint without being identified. A prisoner has to apply to a social unit to get the envelope.

The monitoring visits made to penitentiary establishments showed that in closed-type establishments prisoners do not have the possibility of writing a complaint confidentially in those cases where they need the assistance from a social worker in writing an application. This is caused by the fact that social workers do not enter cells and they speak with the inmates through a small window in the cell door. Even if the social worker enters the cell, due to security reasons, a staff member of the security/legal unit would accompany him/her. These circumstances violate the confidentiality of the contents of a complaint and give rise mistrust towards the social services of penitentiary establishments.

Despite the recommendation given by the Public Defender of Georgia in the Parliamentary Report of 2015, it was still problematic in 2016 for the prisoners of closed-type penitentiary establishments to use complaints box without the surveillance of an accompanying person (staff member of either security or regime units). Similarly, in a number of penitentiary establishments, complaints box is within the scope of surveillance cameras.

During the interviews carried out within the monitoring visits by the Special Preventive Group in 2016, some of the prisoners would mention that after the submission of a confidential complaint, the registration numbers and the respective code of an envelope were not displayed near the complaints box.[256] The practice in penitentiary establishments remains the same, whereby prisoners are given registration number directly in their cells, which makes it possible to identify the author of a confidential complaint.

It is impossible to obtain an envelope for writing a confidential complaint without being identified. It is a clear violation of confidentiality that when requesting the envelope a staff member of the social service registers the envelope code and the prisoner's name and surname.

The Public Defender welcomes the increase in the number of inspections carried out by the Division of Systemic Monitoring of the Inspectorate General in comparison to 2015. However, the Public Defender observes that spontaneous monitoring is more effective as it is the surprise factor that allows more problematic areas to be identified. During planned monitoring, the personnel of penitentiary establishments have more time to cover up breaches, if there are any.

It is noteworthy that the Ministry has not published until now the report on monitoring conducted in 2016. Accordingly, this report will be assessed after its publication.

The Public Defender made a recommendation in the Parliamentary Report of 2015 concerning determination of reasonable terms by the Imprisonment Code for consideration of applications/complaints of medical nature by the Medical Department of the Ministry of Corrections of Georgia. This recommendation has not been fulfilled to date.

The Public Defender also made a recommendation in the Parliamentary Report of 2015 concerning introduction by the Imprisonment Code of reasonable terms for the consideration of applications/complaints by the Inspectorate General of the Ministry of Corrections of Georgia. This recommendation has not been fulfilled yet.

256 In accordance with the statutes of penitentiary establishments, no later than the second working day from dispatching a complaint, the registration number and the respective envelope code shall be displayed near the complaints box.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To take all necessary measures to ensure that prisoners are handed information on their rights, including the right to lodge an application/complaint and the procedure for lodging an application/ complaint, as well as for its consideration. To this end ensure handing special brochures to prisoners;
- To take all necessary measures to ensure that, a few days after a prisoner's admission to a penitentiary establishment, a social worker explains to him/her the rights and duties in detail; provides information about lodging an application/complaint and procedure for its examination; and explains the competence of social workers and provides all necessary key documents. Within reasonable intervals, social workers should carry out individual and group works with prisoners on the topic of their rights and duties, and the procedure of lodging an application/complaint as well as its examination;
- To take all necessary measures to ensure the availability of brochures containing practical information for all foreign prisoners, in a language they understand, explaining in detail and in simple terms the procedure for lodging an application/ complaint as well as for its consideration;
- To take all necessary measures to ensure that prisoners can fully realise their right to lodge an application/complaint; to this end to increase the role of the social worker in drafting the wording of applications/complaints and selecting its relevant recipient; and to provide a translator for the prisoners who do not have the command of the Georgian language;
- To take all necessary measures to ensure prisoners' access in penitentiary establishments to automatically updated and codified bases of normative acts; to ensure all that prisoners have access in their cells to the Imprisonment Code, the statute of the establishment and updated and codified copies of other normative acts, at the same time to ensure that the acceptance and delivery of normative acts by prisoners is documented;
- To take all necessary measures to ensure that prisoners are always provided with the registration number of an application/a complaint in a timely manner;
- To take all necessary measures to ensure that during delivery and acceptance of an open letter by a social worker there are two copies of a document certified by a stamp. The following information in the presence of the prisoner should be written in this document: a) the name and surname of the author of the letter; b) the name and surname of the social worker to whom the letter has been submitted; c) the date of submission of the letter; d) the recipient of the letter; and e) the number of pages of the letter. Both copies should be signed by the prisoner and social worker concerned. One copy should be given to the prisoner and another should remain with the social worker;
- To take all necessary measures to ensure that after dispatching confidential complaints, the registration numbers are always placed by complaints box;
- To take all necessary measures to ensure that complaints boxes are placed at easily accessible areas where there is no visual and/or electronic surveillance and control and accordingly the chances for identifying a complaining prisoner are less ;
- To take all necessary measures to ensure free accessibility of envelopes for confidential complaints at such places (e.g. a library) where the prisoners would not be dependent on the establishment's personnel to obtain envelopes, and prisoners could take them without being identified by the administration; to ensure availability of certain number of envelopes for prisoners in cells;

- To take all necessary measures to ensure that a social worker assists in composing a confidential complaint without the presence of security personnel;
- To take all necessary measures to ensure that the personnel of penitentiary establishments are prohibited to write down the code of an envelope and prisoners details when providing him/her with an envelope;
- To take all necessary measures to ensure that the practice of opening envelopes containing responses to confidential complaints before handing to the recipient prisoners;
- To take all necessary measures to ensure that the responses in closed envelopes are handed to the recipient prisoners confidentially so that the establishment's administration could not read their contents;
- To ensure drafting of amendment to the Imprisonment Code with the effect of determining reasonable terms for the consideration by the Medical Department of the Ministry of Corrections of Georgia of applications/complaints of medical nature; to ensure its submission to the Government of Georgia for its initiation before the Parliament of Georgia; and
- To ensure drafting of amendment to the Imprisonment Code with the effect of determining reasonable terms for the consideration of applications/complaints by the Inspectorate General of the Ministry of Corrections of Georgia; to ensure its submission to the Government of Georgia for its initiation before the Parliament of Georgia.

Proposals to the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of determining reasonable terms for the consideration of applications/complaints of medical nature by the Medical Department of the Ministry of Corrections of Georgia; and
- To amend the Imprisonment Code to the effect of determining reasonable terms for the consideration of applications/complaints by the Inspectorate General of the Ministry of Corrections of Georgia.

PENITENTIARY HEALTH-CARE SYSTEM

The right to health is an inclusive right[257] extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, adequate supply of safe food and nutrition, housing, healthy occupational and environmental conditions, access to health-related education and information, and gender equality.

The right to health also includes the right to be free from interference, such as the right to be free from non-consensual medical treatment and experimentation, torture, or other cruel, inhuman and degrading treatment or punishment. In includes the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health, appropriate treatment for prevalent diseases, illnesses;

257 Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights and World Health Organization, available at: http://www.ohchr.org/Documents/Publications/Factsheet31.pdf [Last visited on 17.03.2017].

ensures accessibility of essential drugs, reproductive health, equal and timely access to basic preventive, curative, rehabilitative health services and health education; and access to goods and services that are scientifically and medically appropriate and of good quality.[258]

Preventive health care has particular importance for the realisation of the right to health, which implies promotion of health and general living conditions, nutrition, sanitation, physical and mental activity, implementation of target-oriented activities in prisons aimed at prevention of pathologies such as infectious diseases, mental health, substance-dependence and violence.

The Special Preventive Group, within the monitoring conducted in penitentiary establishments in 2016, paid particular attention to the effectiveness of the penitentiary health care system and existing challenges. During the monitoring, the group interviewed prisoners and personnel of the penitentiary establishments and inspected situation in the medical units of penitentiary establishments. It is noteworthy that the Public Defender, with the financial support of the Open Society Georgia Foundation, carries out research on the promotion of the right to health in penitentiary establishments. The report on this issue is underway and will be published.

Financing the Georgian Penitentiary Health Care, its Organisational Aspects and the Reforms Accomplished

In 2016, significant structural changes were made; in particular, the Medical Regulation Division was separated from the Medical Department of the Ministry of Corrections and moved under the Inspectorate General of the Ministry as the Division for Controlling the Quality of Medical Services. The terms of references of the Division are stipulated in the statute[259] of the Inspectorate General of the Ministry of Corrections and have been in force since 26 December 2016.

The work performed by the Medical Regulation Division of the Medical Department of the Ministry of Corrections is positively assessed. The Division inspected nutrition, sanitation and hygiene conditions, medical units, x-ray equipment, waste management, and processing of medical and archive documentation.

The approval of job descriptions for the Medical Department staff of the Ministry of Corrections is positively assessed. The job descriptions clearly stipulate the duties and functions of the personnel of structural and territorial units of the department.[260]

The Public Defender of Georgia welcomes the approval of the procedure for documenting bodily injuries that could have been caused due to torture and other cruel, inhuman or degrading treatment in penitentiary establishments. The procedure has been developed based on the recommendations of the Istanbul Protocol.[261] Besides, for improving the quality of medical services and ensuring patients' safety, the system for quality management has been regulated statutorily,[262] which is also positively assessed.

According to the information received from the Ministry of Corrections of Georgia, the cost of equivalent medical services for remand and convicted persons amounted to 2,178,441 GEL in 2016, which is lower by 1,854,193 GEL compared to 2015. As regards the administrative expenditure of the Medical Department, according to the received information, in 2016, the administrative expenditure (salaries of the medical personnel, office expenditure, etc.) has been allocated from the programme code of equivalent medical services for remand and convicted persons to another programme code of another administrative expenditure of the Ministry. Therefore, the information about the said expenditure has not been provided.

258 General comment no. 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.
259 Approved by Order no. 55 of the Minister of Corrections of Georgia of 25 June 2015.
260 Approved by Order no. 2255 of the Minister of Corrections of Georgia of 6 May 2016.
261 Approved by Order no. 131 of the Minister of Corrections of Georgia of 26 October 2016.
262 Approved by Order no. 2361 of the Minister of Corrections of Georgia of 6 May 2016.

Medical Infrastructure of Penitentiary Establishments

There are 37 first aid health-care groups and 2 medical establishments providing medical services in penitentiary establishments. In 2016, there was still a problem with providing medical services in former cells of medical units, which adversely affects the quality of provided services. In medical rooms, ventilation remains out of order and the veneer of the walls and the floor does not allow wet cleaning and hence observance of sanitation and hygiene standards.

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure compliance of medical units of penitentiary establishments with the standards afforded in the country. It was recommended, among others, to ensure availability of adequate equipment in these units and control of medical equipment, adjustment of ventilations system and laying antistatic linoleum flooring. According to the information received from the Medical Department of the Ministry of Corrections,[263] the items and equipments in all penitentiary establishments that are out of order, or in need of repairs or replacement, have been inventoried. Based on the inventory, medical units are being gradually equipped with new purchases (items and equipment). The monitoring visits carried out by the Special Preventive Group have revealed that there are cases where it is impossible to place the purchased items in penitentiary establishments as there is not enough space. It should be noted that, during the visit made by the Special Preventive Group to penitentiary establishment no. 18,[264] the biochemical analysis equipment of the establishment was out of order and, therefore, the test material had to be taken to a civil hospital for analysis. This is again related to additional time and costs.

In 2015, the Public Defender of Georgia also recommended to the Minister of Corrections concerning bringing the medical units in compliance with the standards afforded in the country. According to the response received from the Medical Department of the Ministry of Corrections, dentists' rooms in penitentiary establishments nos. 2, 5, 6, 7, 8, 14, 16, 17, 18, and 19 have been repaired and equipped in accordance with the general standards. Repair and reconstruction works in other penitentiary establishments are underway and they are being gradually equipped. These changes are welcome. It is however imperative to repair medical units completely. It is also noteworthy that there is no tap in the dentist's room in establishment no. 11. Therefore, it is impossible to have the used instruments washed on the spot. The personnel use running water from the personnel's toilet.[265]

During the visit[266] of the Medical Regulation Division to penitentiary establishment no. 5, the two rooms arranged for x-ray examination were inspected. There is a sink installed in the examination room; however, hot water is not provided. The walls are not covered with barite to block x-ray emissions. Besides, the surface is rough and therefore impossible to be wet-cleaned. Where films are developed, there is no container to collect the waste liquid, which the waste disposing company would remove. The requisite means designed for radiation safety are not used in the working process. Besides, an x-ray technician/x-ray laboratory technician, after the examination, does not register a patient's individual effective dose in a specified sheet (in the section of effective dose registration) or x-ray examination registration journal. It should be noted that there is no such journal present in any of the penitentiary establishments.

The visits of Medical Regulation Division to penitentiary establishments have showed that there are no x-ray rooms in penitentiary establishments nos. 7, 11 and 12. In penitentiary establishment no. 7, x-ray scan is performed in a small manipulation room and films are developed and dried in a similarly small dentist's room. In establishment no. 11, x-ray scan is performed in a corridor wedged between AIDS room and the space arranged for juveniles for computer use. In penitentiary establishment no. 12, x-ray scans are performed in the first aid

263 Letter no. MOC01700166123 of the Medical Department of the Ministry of Corrections, dated 6 March 2017.
264 17-18 January 2017
265 Order no. 309/n of the Minister of Health, Labour and Social Affairs of Georgia, dated 5 November 2002 Approving the Sanitation Rules for Ambulatory and Polyclinic Establishments of Dental Profile, Article 8.
266 20 October 2016.

room and films are taken to establishment no. 19 for development. The x-ray rooms in theses penitentiary establishments fail to comply with any of the requirements set for x-ray scan rooms.[267] In particular, adequate space and a sink with cold and hot water plumbing are absent; there is no space arranged for developing films; the intensity of exposure of the patients and personnel to radiation is not controlled with an individual dosimeter; and individual radiation safety and transportation safety means are not used in the working process. The Public Defender observes that this problem should be addressed promptly and an x-ray room should be arranged in all penitentiary establishments.

The arrangement of a medical waste storage room in penitentiary establishments in 2016 is positively assessed. However, there are certain problems in this regard. For instance, in penitentiary establishment no. 3, medical waste was stored in the toilet of the medical unit of the establishment and there was horrible smell in that area. A specially arranged room to store the containers of medical waste in penitentiary establishment no. 11 is absent; therefore, the medical personnel's toilet is used for this purpose. According to the information received from the Medical Department of the Ministry of Corrections, rooms are not arranged for storing medical waste in penitentiary establishments nos. 7 and 12. It is noteworthy that a contractor company removes medical waste once a week from the penitentiary establishments.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure the compliance of medical units of penitentiary establishments with the general standards in the country, including the equipment of this units and control of the medical equipment; adjustment of ventilation system and laying antistatic linoleum flooring;
- To take all necessary measures for arranging and equipping x-ray rooms in all penitentiary establishments; the equipment should include individual dosimeter controlling the dosage of the patients' and personnel's exposure to radiation, and all items and materials necessary for developing films; and
- To ensure that waste storage rooms are arranged in all penitentiary establishments, equipped with a large urn, a sink for washing hands and running water at required temperature.

Accessibility of Medicines

The timely provision of medicines is a necessary precondition for successful treatment. A remand/convicted person has the right to use necessary medical services. If necessary, a remand/convicted person shall have access to medical products allowed in a penitentiary institution. If so requested, a remand/convicted person may purchase at his/her own expense medical products with similar properties or more valuable medical products than those procured by the penitentiary institution. In the case of a reasonable request, with the permission of the Director of the Department, a remand/convicted person may invite a personal physician at his/her own expense.[268]

There is a dispensary in all penitentiary establishments and there is a person in charge of a dispensary in each penitentiary establishment.[269] Drug stocks are provided every month by the Logistics Department of the Ministry of Corrections. In those cases where a medicine is not on the basic drugs list of the penitentiary

267 Resolution no. 317 of the Government of Georgia, dated 7 July 2016: Technical Regulations – Approving the Radiation Safety Requirements in the Sphere of Medical Radiation.
268 Article 24 of the Imprisonment Code.
269 Pharmacist/a person with higher medical education.

health-care, the medicine is bought through simple purchase procedure based on the individual request of a senior doctor.[270] Drugs are taken from the drugs stock based on a doctor's prescription.

The basic drugs list of the penitentiary health-care system[271] determines the list of those medicines, which the Ministry of Corrections took commitment to provide at its own expense. The Medical Department of the Ministry of Corrections spent 2,210,020 GEL on medicines and other medical expenses in 2016. It is noteworthy that compared to 2015, the sums spent on medicines is less by 1, 65, 214 GEL.

In the Parliamentary Report of 2015, the Public Defender pointed out the problem of replacing prescribed medicines as well as the deficit of medicines in penitentiary establishments, including the medicines for cold.[272] The same problems persist in 2016 as well.

It is noteworthy that penitentiary establishments order three-month stock of drugs in November. The reason for this practice is the difficulty related to drug supply at the end of the year caused by tender related issues. During a visit[273] to penitentiary establishment no. 3, the members of the Special Preventive Group inspected the supply of drugs prescribed for patients. The members of the Special Preventive Group established that in general the drug supply is satisfactory. However, there were certain shortcomings identified. It has turned out that whenever a particular medicine was out of stock, a doctor would cancel the prescription or replace the prescribed medicine with another drug that was available at the material time in the given penitentiary establishment.

During the visits made by the Medical Regulation Division in 2016 to penitentiary establishments nos. 2, 5 and 7, the balance between the remaining and issued medicines was inspected. The inspection results showed that, on several occasions, the precise quantity of drugs issued was not registered in the relevant documentation. For instance, in establishment no. 2, a nurse failed to document the use of 30 pills of apalin in the drug registry journal.

During the visit[274] made by the Medical Regulation Division in 2016 to penitentiary establishment no. 5, it was found out that among the medicines stored on the drugs shelves, there was expired pharmaceutical product called ultracaine 1.7 ml (no. 100) that had expired in Jun 2016; three boxes of digoxin 0.25 mg (no. 40) was to expire in November 2016. The person in charge of the drug stock did not have any information regarding this. It should be noted that among the expired medicines, there were drugs (moditen depo no. 5, pletoz 50 mg, trenatal 5ml, and symbicort aerosol 60) which could have been issued in case of timely notification to the drug stores of other penitentiary establishments. The person in charge of the drug stores could not present any information in writing which would certify the supply of the medicines being in surplus, or with a short shelf-life, to the drug stores or health care professionals of other penitentiary establishments. It should be positively mentioned that there is a practice of exchanging information among penitentiary establishments regarding the medicines in surplus. Persons in charge of drug stores sends the list of medicines in surplus to other penitentiary establishments every month and upon request provides drugs to those establishments in need.

In 2015, the Public defender of Georgia recommended to the Minister of Corrections of Georgia to take necessary measures for ensuring that prescribed medicine was made available for prisoners. Furthermore, to ensure that doctors, upon necessity, were free to prescribe brand name drugs. According to the response received from the Ministry of Corrections on 25 November 2016, various health-care professionals prescribe medicines to prisoners in accordance with the basic drugs list elaborated within the penitentiary health-care system. In this list, the drugs are named according to the active ingredient for a particular disease. This

270 Order no. 2547 of the Government of Georgia, dated 30 December 2014, on Simple Purchase Procedure of State Purchase of Medicines, Medical Products and Care products by the Ministry of Corrections of Georgia issued in accordance with Article 10^1.1 and Article 10^1.2.d) of the Law of Georgia on State Purchase.
271 Approved by Order no. 31 of the Minister of Corrections of Georgia, dated 22 April 2015.
272 The Parliamentary Report of 2015, p. 91, see at: http://www.ombudsman.ge/uploads/other/3/3891.pdf.
273 2-4 February 2017.
274 20 October 2016.

means that both the active ingredient of the drugs with a generic name and other medicines with the same composition; both drugs have the same composition and treat the same disease. The difference is only in the name of the producing country and the name of a drug. Health-care professionals are not limited to prescribing the medicine that is on the basic drugs list elaborated by the penitentiary health-care system. Upon necessity and within their competence, doctors can also prescribe medicines that are not on the basic drugs list of the penitentiary health-care system. In such cases, a senior doctor files an individual request with the Medical Department of the Ministry of Corrections and the requested medicine is bought through a simple purchase procedure.[275] A convict, in case of refusal to take provided medication, can, according to a doctor's prescription, buy at his/her own expense the medication of the same clinical indications, among them, a medicine of a particular brand.

As the monitoring of penitentiary establishments showed, medical personnel mostly prescribes to prisoners those generic medicines that are already available in the given penitentiary establishment, at the state's expense. It is imperative that prisoners are allowed to purchase, with a doctor's consent, a particular brand of medicine that corresponds to the initially prescribed medicine, in the given penitentiary establishment's drug store or, if there is none, to get it through family members. It should be pointed out that there is a drug store in penitentiary establishments nos. 8 and 15 where prisoners can buy medicine on their own. As regards receiving medicine through a parcel, according to the information received from the Ministry of Corrections, the elaboration of the procedure for sending medicines in a parcel is under consideration.

RECOMMENDATION

To the Minister of Corrections of Georgia

- To take necessary measures to ensure that prisoners have unimpeded access to prescribed medicine; to ensure that doctors are not limited to the medicines available in a penitentiary establishment and upon a prisoner's request, with a doctor's consent and at the prisoner's expense, make immediately accessible medicines of particular brands; in those penitentiary establishments where there is no drug store, introduce a clear procedure for sending in medicines in a parcel; and
- To take necessary measures to organise the provision of medicines in to eradicate shortcomings in the existing practice of supplying penitentiary establishments with drugs; to this end, to ensure that particular attention is paid to the analysis of the use of drugs in the previous period and these results are taken into account both during the wholesale purchase of drugs and when supplying a particular penitentiary establishment.

Accessibility and Quality of Medical Services

Accessibility of Doctors and Helping Staff

Under Article 12.1 of the International Covenant on Economic, Social and Cultural Rights, the States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[276] In accordance with CESCR General Comment No. 14, the right to health contains the following four elements: availability of medical services in sufficient quantity; accessibility of medical services; acceptability of medical services; and quality medical services.[277]

275 The Law of Georgia on State Purchase, Article 10^1.
276 The United Nations, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.
277 Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000.

These principles equally apply to all those persons in custody. The persons deprived of their liberty maintain their fundamental rights related to health. A prison health care service should be able to provide medical treatment and nursing care, appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community.[278]

When a state deprives people of their liberty, it takes on the responsibility to look after their health in terms of both the conditions under which it detains them and the individual treatment that may be necessary.[279] Under the European Prison Rules, enforcement of custodial sentences and the treatment of prisoners necessitate ensuring prison conditions that do not infringe human dignity and prepare them for their reintegration into society.[280]

Under the case-law of the European Court of Human Rights,[281] Article 3 of the Convention (prohibition of torture) imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty; e.g., by providing them with the requisite medical assistance. The lack of appropriate medical care may amount to treatment contrary to Article 3.[282]

According to the information submitted by the Medical Department of the Ministry of Corrections of Georgia, as of 31 December 2016, there were 9,334 prisoners (remand/convicted persons) in the penitentiary system; there were 190 doctors (among them 15 senior doctors) and 265 nurses employed in penitentiary establishments. It should be noted that the total number of medical personnel did not change significantly.[283]

The number of doctors and nurses employed in the penitentiary system is given in the table below:

N	Establishment	Doctor	Nurse	Person in Charge of Drugs Store
1.	no. 2 Establishment	11	16	1
2.	no. 3 Establishment	6	5	1
3.	no. 5 Establishment	7	9	1
4.	no. 6 Establishment	7	11	1
5.	no. 7 Establishment	4	4	1
6.	no. 8 Establishment	28	44	1
7.	no. 9 Establishment	4	9	1
8.	no. 11 Establishment	3	4	1
9.	no. 12 Establishment	3	6	1
10.	no. 14 Establishment	10	11	1
11.	no. 15 Establishment	10	18	1
12.	no. 16 Establishment	2	5	1
13.	no. 17 Establishment	10	19	1

278 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards p. 40, para. 38, available in English at: http://agent.echr.am/resources/echr//pdf/ba2e032f91eb6673220a419b698fd89c.pdf [Last visited on 10.02.2017].

279 World Health Organisation, A WHO guide to the essentials in prison health, Health in prisons, available in English at: http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf [Last visited on 10.02.2017].

280 Council of Europe, Recommendation *Rec (2006)2* of the Committee of Ministers to member states on the European Prison Rules, *11 January 2006,* Preamble.

281 *Dybeku v. Albania*, application no. 41153/06, judgment of the European Court of Human Rights of 18 December 2007, para. 41.

282 *Poghosyan v. Georgia,* application no. 9870/07, judgment of the European Court of Human Rights of 24 May 2009, paras. 47-49.

283 In 2015, 191 doctors (among them 15 senior doctors) and 261 nurses were employed in penitentiary establishments.

In 2016, the correlation, according to penitentiary establishments, of the number of prisoners and number of doctors and nurses employed as staff members in penitentiary establishments is given in the table below:

No.	Establishment	Correlation of the Number of Prisoners[284] and Doctors	Correlation of the Number of Prisoners and Nurses
1	no. 2 Establishment	106	73
2	no. 3 Establishment	7	7
3	no. 5 Establishment	35	27
4	no. 6 Establishment	30	19
5	no. 7 Establishment	4	4
6	no. 8 Establishment	80	51
7	no. 9 Establishment	10	4
8	no. 11 Establishment	4	3
9	no. 12 Establishment	95	47
10	no. 14 Establishment	119	108
11	no. 15 Establishment	174	98
12	no. 16 Establishment	48	19
13	no. 17 Establishment	189	99

The above table shows that, in penitentiary establishments nos. 2, 14, 15 and 17, the correlation of the number of prisoners with the number of doctors and nurses is high. It should be mentioned that when calculating the correlation, the schedule of shifts of doctors and nurses is not taken into account.

According to the European Committee for the Prevention of Torture, staffing levels should ideally be equivalent to roughly one medical doctor for 300 prisoners and one qualified nurse for 50 prisoners.[285] In 2014 and 2015, the Public Defender of Georgia recommended to the Minister of Corrections to ensure sufficient number qualified doctors and nurses in all penitentiary establishments for timely and adequate provision of medical services. According to the response received from the Medical Department of the Ministry of Corrections,[286] based on the recommendation of the International Committee of the Red Cross,[287] the correlation of doctors and prisoners in small establishments is from 50 to 150; and from 300 to 500 in large establishments. The Public Defender of Georgia does not share the position of the Minister of Corrections and observes that there should be sufficient number of doctors and nurses provided in all penitentiary establishments so that each remand/convicted person receives timely and adequate medication services.

The European Committee for the Prevention of Torture[288] points out that, while in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime. The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay. It is noteworthy that prisoners mentioned, during their conversations with the members of the Special Preventive Group, the problem of unavailability of medical personnel as well as the lack of attention on their part. According to

284 The correlation given in the table is calculated according to the number of prisoners (remand/convicted persons) in penitentiary establishments as of December 2016.

285 Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007, para. 52, available in English at: http://www.cpt.coe.int/documents/grc/2008-03-inf-eng.htm [Last visited on 22.03. 2017].

286 Letter no. MOC31600966804 of the Medical Department of the Ministry of Corrections of Georgia, dated 25 November 2016.

287 1 general practitioner serving no more than 500 remand/convicted persons.

288 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, 2015, para. 34, p. 39.

prisoners, they often have to wait for the preliminary medical assistance. Besides, prisoners mention that, after prescribing medication, the medical personnel do not show further interest in their health condition.

The Case of G.Ch.

According to G.Ch., on 2 July 2016, he was placed in a de-escalation room in penitentiary establishment no. 6. According to G.Ch., this was not the first occasion of him being placed in the de-escalation room.[289] The prisoner stated that for several days before being placed in the de-escalation room and during the stay in this room, he unsuccessfully requested for a doctor and a social worker. Three days after the return from the de-escalation room, G.Ch. became unwell and lost consciousness. The medical personnel administered emergency medical aid and the patient regained consciousness. G.Ch. told the medical personnel that he experienced shortness of breath and pains in the chest.

The representative of the Public Defender of Georgia examined the medical record of the patient and established that, on 8 August 2016, the convict was visited by the primary health-care unit's doctor and failed to give an accurate diagnosis. The doctor symptomatically administered Sol. Ketzi 1.0 ml, Sol. Drotaverini 2.0, scheduled an x-ray examination of the chest and a general blood test. On 9 August 2016, the patient received a surgeon's consultation; the patient again complained about shortness of breath and chest pain. The surgeon did not give a diagnosis, instead he recommended to the patient to consult a cardiologist and a general practitioner.

On 11 August 2016, in accordance with the planned procedure, the convict was brought to medical establishment no. 18 of the Penitentiary Department of the Ministry of Corrections to undergo white line hernia operation.[290] At the same establishment, the patient underwent pre-surgery examination which established the presence of left-side spontaneous pneumothorax [291] J93.0 and bullous emphysema[292] (both lungs) J43.9. Therefore, the patient did not undergo the planned white line hernia operation and was transferred promptly to the academician O.Ghudushauri National Medical Centre, where G.Ch. underwent the surgical procedure called left pleural effusion drainage. After the procedure, G.Ch. was placed in the general surgical unit and was discharged on 14 august 2016.

According to the medical form NIV-100 issued by the academician O.Ghudushauri National Medical Centre on 14 August 2016, the patient was recommended to abstain from physical work for a month and undergo x-ray examination after seven days. The x-ray examination conducted on 26 August 2016 revealed no pathologies in the pleural cavity. G.Ch. communicated the explanations given by the doctor at the public hospital, according to which a cyst ruptured the lung. The trauma caused the fluid to leak into the lung and it collapsed. According to the doctor, such a grievous trauma could be also caused by the placement in a de-escalation room. It should be noted that upon the return to the penitentiary establishment, G.Ch. again was placed in the de-escalation room.

The Office of the Public Defender of Georgia, on 2 November 2016, referred in writing to the Inspectorate General of the Ministry of Corrections of Georgia.

289 There is no sensor insulation in this room; sufficient natural or artificial ventilation is absent. The floor is made of concrete and covered with a thin layer of raw rubber. There is dampness in the room. The toilet area is not separated from the rest of the space and the sink is installed almost in the middle of the room. Besides, the room is equipped with video surveillance covering the sink and the adjacent area. The tap in the cell is out of order and water is constantly running. The convict was not provided with a mattress, a blanket, toilet paper, tooth paste and a toothbrush, soap or other staples.

290 Letter no. 81600753850 of the Medical Department of the Ministry of Corrections of Georgia, dated 5 September 2016.

291 Characterised by abnormal accumulation of air in the space between the lungs and the chest cavity that can result in the partial or complete collapse of a lung. The air re-entering the pleural cavity causes the formation of stretched (ventilated) pneumothorax, which causes the massive lung collapse and shifting the mediastinum and compromising hemodynamic stability. The signs and symptoms are the following: without the presence of underlying lung disease acute onset of chest pain and shortness of breath, cyanosis, tachycardia, possible decrease of arterial blood pressure, on percussion - h**yperresonant sounds, breathing sounds are weakened or absent** See at: http://www.medgeo.net/2009/07/12/spontaneous_pneumothorax/ [Last visited on 23.03.2017].

292 Bullous emphysema is a chronic obstructive pulmonary disease characterised by damaged alveoli that distend to form exceptionally large air spaces, especially within the uppermost portions of the lungs. See at: https://www.medgeo.net/2009/06/22/emphysema/ [last visited on23.03.2017].

According to Letter no. MOC41600999557, dated 7 December 2016, the infrastructure of the de-escalation room of penitentiary establishment no. 6 has been examined. It is noteworthy that the response received from the Inspectorate General does not address those major problems and key breaches that have been identified in the case of G.Ch. and focuses on the problems related to the toilet of the de-escalation room.

Apart from the accessibility of medical personnel, the issue of the assisting personnel is also problematic. During the visit of the Special Preventive Group made to establishment no. 18,[293] the patients in the long-term care unit complained about the performance of the paramedics employed by the establishment. According to the patients, the male paramedics are on duty only twice a week and in other days there are female paramedics on duty.[294] According to the patients in the long-term care units, they prefer to be helped by the same sex paramedics in those procedures that involve stripping. Apart from this, female paramedics cannot help them to get up from the bed and sit down in a wheelchair. According to one of the prisoners, he has been unable to wash for two months. Another prisoner states that he has had to clean himself by wet towel for more than 2 years. He also claimed that he had to keep refusing therapeutic massage as he could not get on the massage table on his own.

According to the statistical data posted on the official website of the Ministry of Corrections of Georgia, in 2016, doctors provided consultation on 40,646 occasions. It should be positively mentioned that, compared to 2015, the number of consultations provided is higher.[295] However, as the result of the inspection carried out in 2016 regarding the consultations given by doctors to prisoners, it was revealed that regularity and frequency of the visits of the doctors providing consultation was not adequate in a number of establishments. Besides, there are problems concerning specialised doctors' visits in the beginning of a year before the contracts between the Medical Department and the specialists are finalised.

Timely delivery of consultations remained a problem in 2016. In a number of cases, prisoners have to wait for months to get an appointment with a doctor. It should be noted that the appointments for consultations are only entered in the consultation logbooks and there is no such entry in the medical records of a patient. There is a problem related to communication among doctors in the penitentiary establishments with preliminary health-care units. In particular, whenever a prisoner registered with one preliminary health-care unit is transferred to another preliminary health-care unit, the information about the previous doctor, with whom the appointment was made, is not shared with another doctor. Therefore, prisoners do not receive consultation in a timely manner. It is important to register any information regarding an appointment for a consultation in the medical records of a prisoner.

The Public Defender recommended to the Ministry of Corrections to approve a standard special form which would register the name and the surname of a patient, the date when the need for medical consultation was established (and who established this need), the details of the specialist needed and the columns for the date and following recommendations. Furthermore, the Public Defender recommended to the Ministry of Corrections to ensure that the forms are comprehensively filled. It should be positively mentioned that, since August 2016, special journals were provided to the medical units of all penitentiary establishments with the sections for entering the information about prisoners' appointment for a consultation and the data about the consultations. It should be positively mentioned that these journals in several penitentiary establishments are filled correctly. However, in some of the penitentiary establishments the journals only refer to the dates of consultations. For instance, there are only entries on the dates of consultations in the journals of penitentiary establishments nos. 3 and 5.

The problem of receiving dental service remains problematic. The dental doctors working in penitentiary establishments do not have assistants. Besides, there are other problems in penitentiary establishments nos. 2 and 8. In particular, there is one dentist in establishment no. 2 providing dental services. Even in those cases,

293 17-18 January 2017.
294 According to the Medical Department of the Ministry of Corrections of Georgia, there are 4 paramedics in establishment no. 18.
295 In 2015, doctors gave consultation on 37 445 occasions.

when prisoners have an acute toothache, they have to get in line and wait for a week or more. In penitentiary establishment no. 8, the officers on duty, without medical education or qualification, draft the appointment schedule for those patients wishing to see a doctor. The orthopaedic consultations are punctuated with certain delays. It should be noted that contracts are concluded several times a year with the clinic that manufactures prosthetics. The manufacturing of prosthetics is delayed until the contracts are finalised.

Medical Referrals

According to the information received from the Medical Department of the Ministry of Corrections of Georgia,[296] the first link, which is in charge of the primary health-care, is at a penitentiary establishment. It determines on its own the need for specialised medical service for prisoners and requests referral of a patient by registering the request in a software; from the moment of the registration, the Medical Department processes the request, and when there is sufficient justification for the referral and the request is in compliance with national guidelines (if needs be, with international guidelines as well), the request is confirmed and assigned a registration number.

From the moment of the registration, according to a numerical order, the registered request is agreed with a provider of medical service and referral is being made to that provider. If a referral is denied, the denial is registered in the system and the primary link of the health-care at the penitentiary establishment is notified about the reasons for the refusal. According to the information received from the Medical Department of the Ministry of Corrections of Georgia, in 2016, 4,605 requests were registered in the unified electronic database; after their considerations by the Medical Department, 600 requests were denied. Compared to 2015, the number of requests registered in the unified electronic database is almost halved and, accordingly, the number of denied requests is less.[297]

Only the patients within planned health-care are assigned a digital number and put on the wait list. Emergencies are not put on the wait list. The digital wait lists of the Eastern and Western Georgia are separate and managed independently. The referrals for inpatients and outpatients are separately managed as well.

According to the information received from the Medical Department of the Ministry of Corrections of Georgia, in 2016, 59 medical establishments of the public sector were contracted to provide medical services for prisoners. Besides, the tuberculosis treatment and rehabilitation centre (establishment no 19) and the medical establishment for remand and convicted persons (establishment no. 18) provided medical services for prisoners. The implementation of planned referrals is negatively affected by the incidents of self-harm, hunger strike and arbitrary discontinuation of treatment by prisoners, as well as capacity of public hospitals.

In 2016, in total, 5,861 referrals were made. It should be positively mentioned that compared to 2015, there is an increase in the number of referrals for planned outpatient medical treatment. In 2015, 3,804 patients were referred,[298] and in 2016, 4,903 patients were referred.[299] However, there is a decrease in the number of referrals for planned inpatient medical treatment in 2016, compared to 2015. In 20151131 patients were referred for planned inpatient medical treatment,[300] and in 2016, 956 patients were referred.[301] As regards emergency

296 Letter no. MOC01700166123 of the Medical Department of the Ministry of Corrections of Georgia dated 6 March 2017.
297 In 2015, 9,016 requests were registered in the unified electronic database; 589 requests were denied.
298 In 2015, within the planned outpatient medical treatment, 2,783 prisoners were transferred to the hospitals of the public sector and 1,021 prisoners were transferred to the medical establishment for remand and convicted persons (establishment no. 18).
299 In 2015, within the planned outpatient medical treatment, 3,034 prisoners were transferred to the hospitals of the public sector; 1,150 prisoners were transferred to the medical establishment for remand and convicted persons (establishment no.18); and 721 prisoners to the tuberculosis treatment and rehabilitation centre (establishment no 19).
300 In 2015, within the planned inpatient medical treatment, 733 prisoners were referred to the medical establishment for remand and convicted persons (establishment no.18); and 398 prisoners were referred to the hospitals of the public sector.
301 In 2016, within the planned inpatient medical treatment, 499 prisoners were referred to the medical establishment for remand and convicted persons (establishment no.18); 320 prisoners were referred to the hospitals of the public sector; and 137 prisoners were referred to the tuberculosis treatment and rehabilitation centre (establishment no 19).

incidents, in 2016, 1,474 patients were referred for emergency inpatient/outpatient medical treatment. This indicator is 8% more than the similar indicator of 2015 (1349 incidents).

The Medical Department of the Ministry of Corrections of Georgia determines the sequential order of the wait list according to the territorial principle, medical indications and inpatient/outpatient medical treatment.[302] When assigning a number to a patient on the wait list, individual needs of a particular patient are not taken into account; the sequential order does not depend on clinical factors but instead on the factors such as the number patients on the wait list and the capacity of medical establishments. In the Parliamentary Report of 2015, the Public Defender recommended to the Ministry of Corrections of Georgia, for improving the medical referral system, to differentiate the digital wait list based on the acute and chronic nature of diseases, progress dynamics of diseases, the effect of these factors on the health condition of a patient and other factors. Unfortunately, the Ministry of Corrections failed to follow these recommendations made by the Public Defender of Georgia.

The Medical Department of the Ministry of Corrections processes the requests on first-come, first-served basis, taking into account the seriousness of the incident and the time needed for dealing with it in a qualified manner. Therefore, the Department does not take into account such cases where the health condition of a patient on the wait list is gradually deteriorating but not to such a degree as to qualify for emergency medical treatment. It should be also pointed out that some diseases progress rapidly and in life threatening situations, medical service could be delayed. It should be positively mentioned that, in 2015, the prompt-delayed medical intervention was added to the existing categories of medical interventions (planned and emergency medical treatments). However, it is not approved by the order of the Minister of Corrections of Georgia. It is imperative that the standard of urgent medical intervention is added to Order no. 31 of the Minister of Corrections of Georgia, dated 22 April 2015. Furthermore, Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, approving the Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre should be amended to the effect of adding a clause on urgent medical intervention.

Within the monitoring conducted by the Special Preventive Group in the penitentiary establishments of the Penitentiary Department, the Group inspected the timely administration of medical referrals. Since the second half of 2016, there have been no problems associated with the timely confirmation of registration by the Medical Department of referral requests. However, remand/convicted persons have alleged during their conversations with the Special Preventive Group members that the transfers for medical treatment are often delayed and the prisoners do not have any information when they are going to receive needed medical service. Furthermore, there are prisoners waiting for medical treatment since 2014 and 2015.

- Prisoner P.M. received the consultation of an otolaryngologist on 15 May 2015; it was established that the patient needed nasal bridge resection. The medical notes were written on 16 June 2015 and sent to the Medical Department for confirmation on 18 June 2015. The Medical Department confirmed the above-mentioned. On 7 March 2016, the patient received an additional consultation from a cardiologist and was recommended for surgical treatment. It is noteworthy that by the time of the visit of the Special Preventive Group on 23 February 2017, the convict still had not undergone the above surgery.

- On 23 June 2015, prisoner D.T. received the consultation of a surgeon who diagnosed the prisoner with postoperative ventral hernia. The medical note was written by the doctor on the same day and sent to the Medical Department for confirmation on 24 July 2015. In its turn, the Medical Department confirmed the request on 26 October 2015. By the time of the visit of the Special Preventive Group on 23 February 2017, the convict still had not undergone the above surgery.

302 The Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre approved by Order no. 55 of the Minister of Corrections of Georgia dated 10 April 2014, Article 1.5.

- On 3 September 2015, prisoner Z.P. received consultation with a surgeon who diagnosed him with chronic appendicitis. The medical note was written on 7 September 2015 and sent to the Medical Department for confirmation on 14 September 2016. In its turn, the Medical Department confirmed the request on 14 December 2015. By the time of the visit of the Special Preventive Group on 23 February 2017, the convict still had not undergone the above surgery.

- On 29 November 2015, prisoner G.B. received consultation with a surgeon who diagnosed him with right sided inguinal hernia. The medical note was written on 30 November 2015 and sent to the Medical Department for approval on 1 December 2015. The Medical Department, in its turn, approved the request on 14 December 2015. By the time of the visit of the Special Preventive Group on 26 January 2017, the convict still had not undergone the above surgery.

- On 18 December 2015, prisoner N.Ts. was recommended by a surgeon for umbilical hernia repair surgery. The doctor wrote the medical note and uploaded it in the system the same day. The Medical Department approved the request on 19 April 2016. However, by the time of the visit of the Special Preventive Group on 23 February 2017 the convict still had not undergone the above surgery.

- On 16 May 2015, prisoner M.S. received an angiologist's consultation and was recommended for duplex scan-phlebectomy. The doctor wrote the medical note on 18 May 2015 and uploaded it in the system on 19 May 2015. The Medical Department confirmed the incident on 17 December 2015. However, by the time of the visit of the Special Preventive Group on 26 January 2017, the convict still had not undergone the above surgery.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure that the decisions about administration of referrals were only taken by the Head of the Medical Department of the Ministry of Corrections after consultation with the director of a respective penitentiary establishment concerning security issues related to the prisoner's transfer. The Public Defender recommended abolishment of the rule whereby the provision of medical service depends on the will of the director of a penitentiary establishment and the director of the Penitentiary Department. The Ministry of Corrections of Georgia unfortunately failed to fulfil the aforementioned recommendation.

In 2014 and 2015, the Public Defender of Georgia recommended to the Ministry of Corrections of Georgia to amend Order no. 55 of the Minister of Corrections of Georgia of 10 April 2014 to the effect of stipulating the out of turn transfer of the prisoner in need for additional examination in the short period (the next few days) or upon partial examination, while referred to a public sector medical establishment for outpatient medical treatment. The Ministry of Corrections of Georgia does not share this approach. According to the response of the Ministry, the prisoner referred to a public sector medical establishment for outpatient medical treatment and in need for additional examination in the short period (the next few days) or upon partial examination is transferred according to the patient's condition and in accordance with a doctor's recommendation. If needed, the prisoner is transferred out of turn/urgently.

Under Article 3.s[1]) of the Law of Georgia on Health Care, emergency medical care implies medical care without which a patient's death, disability, or serious deterioration of health status is inevitable. Order no. 01-25/n of the Minister of Health of Georgia of 19 June 2013, on Determining the Classification of Medical Interventions and Minimum Requirements for the Primary Health Care Establishments comprises four kinds of interventions. They are as follows: emergency (critical) intervention is the intervention aimed at saving life, an organ or a limb through simultaneous reanimation and usually starts in several minutes after reaching the decision to intervene. Prompt-urgent intervention stands for intervention during the condition that started acutely and/or clinically deteriorated, posing a threat to life. This condition is related to the threat of losing life, an organ or a limb and intervention is directed at fixing a fracture, managing pain and other serious symptoms. Usually, the decision about intervention should be reached no later than 24 hours after the first phase of

maintenance treatment is complete. Prompt-delayed intervention is an early intervention in the circumstances where a patient is in a stable condition, when there is no immediate threat is posed to life, an organ or a limb but still intervention should be planned within several (2-5) days. Planned intervention is planned at the convenience of a patient, a doctor and a medical establishment. It should be positively mentioned that the prompt-delayed medical intervention was added to the existing categories of medical interventions (planned and emergency medical treatments). However, there is no prompt-urgent intervention provided.

Equivalence and Quality of Medical Services

In the Parliamentary Report of 2015,[303] the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to take all necessary measures to enhance the mechanism of controlling the implementation of the public sector healthcare standards in the penitentiary health care system; to introduce the effective system of statistical data collection and analysis; to pay more attention to the results of the statistical data analysis when drafting the action plan of the penitentiary health care system; and to ensure effective management of the procurement procedure and analysis of cost efficiency.

The Public Defender commends the steps taken by the Ministry of Corrections towards the implementation of public sector health care standards in the penitentiary health care system. According to the response received from the Medical Department, the standard of medical services have been elaborated and approved by the Minister of Corrections. The practice of presenting monthly statistical data to the Disease Control National Centre, in accordance with the standard forms existing in the country, has been introduced. According to the correspondence received from the Medical Department, Order no. 8467 of the Minister of Corrections of Georgia, dated 30 December 2015 approved the regulations in the penitentiary system for managing and processing statistical data, terms of presenting it and the competent authorities in charge.

Despite the accomplished changes, problems related to the control of the adequate utilisation, disinfection and sterilisation of medical waste, equipment of research labs and manipulation rooms with adequate ventilation system and complete introduction of the categories of medical interventions existing in the public sector health care persist.

In 2015, the Public Defender recommended to the Minister of Corrections of Georgia and the Minister of Health, Labour and Social Affairs of Georgia to elaborate, through inter-agency cooperation, the plan for the complete integration of penitentiary health care with the national health care system. The Public Defender points out that the elaboration of the plan for the complete integration of penitentiary health care with national health care system implies the elaboration of activities and their timetable for the eventual transfer of the management of the penitentiary health-care to the Ministry of Health, Labour and Social Affairs of Georgia.

The Public Defender also observes that, in any event, considering the specific features of the penitentiary health care system, it is imperative to implement, within possible short terms, the major basic standards of the public health care sector to ensure gradually the equivalence of the penitentiary health care services with national health-care system.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure sufficient number of doctors and nurse in all penitentiary establishment for the provision of timely and adequate medical services;

303 For detailed information, see, the Parliamentary Report of 2015 by the Public Defender of Georgia, pp. 100-103.

- To ensure the visits by medical consultants to the penitentiary establishments are made frequently enough for the timely and adequate provision of medical services;
- To ensure that, when determining the sequence of a medical referral in the electronic database, the nature of a disease and dynamics of its progress are taken into account for the provision of timely and adequate medical services; to amend Order no. 55 of the Minister of Corrections of Georgia dated 10 April 2014 to this effect;
- To amend Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, to the effect of stipulating that the decisions about administration of referrals of prisoners to the medical establishments of public health care system and medical establishments of the penitentiary health care system are only taken by the Head of the Medical Department of the Ministry of Corrections after consultation with the director of a respective penitentiary establishment concerning security issues related to the prisoner's transfer. The Public Defender recommended the abolishment of the rule whereby the provision of medical service depends on the will of the director of a penitentiary establishment and the director of the Penitentiary Department;
- To amend Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, approving the Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre to the effect of stipulating the reasonable terms for the consideration by the Medical Department of a reasoned motion by a doctor for registering a patient in the unified electronic data basis in order to avert unjustifiable delays in providing medical services;
- To amend Order no. 55 of the Minister of Corrections of Georgia, dated 10 April 2014, approving the Procedure for Transferring Remand/Convicted persons to the General Profile Hospitals, the Medical Establishment for Remand/Convicted Persons and the Tuberculosis Treatment and Rehabilitation Centre to the effect of stipulating the out of turn transfer of the prisoner in need of additional examination in the short period (the next few days) or upon partial examination, while referred to a public sector medical establishment for outpatient medical treatment;
- To ensure the medical establishment for remand and convicted persons (establishment no. 18) has sufficient number of assisting personnel (paramedics) so that patients receive adequate care; and
- To take all measures to ensure the effective management of the procurement procedure and analysis of cost efficiency as well as evaluation of the quality of services provided within the penitentiary health care, based on pre-determined and valid indicators.

To the Minister of Corrections of Georgia and the Minister of Health, Labour and Social Affairs of Georgia:

- To elaborate, through inter-agency cooperation, the plan for the complete integration of penitentiary health care with the national health care system.

Independence and Competence of a Doctor; Confidentiality and Informing a Prisoner

In accordance with Recommendation no. R(98)7 of the Committee of Ministers of the Council of Europe, doctors who work in prison should provide the individual inmate with the same standards of health-care that is delivered to patients in the outside community. The health needs of the inmate should always be the primary concern of the doctor. Clinical decisions and any other assessments regarding the health of detained persons

should be governed only by medical criteria. Health-care personnel should operate with complete independence within the bounds of their qualifications and competence.[304] It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.[305]

The issues related to independence and qualifications of medical personnel remain problematic in 2016. For ensuring the independence of the medical personnel employed in the penitentiary health care system, it is necessary that the medical personnel should not the subjects of the Ministry of Corrections of Georgia. Furthermore, even within the penitentiary health care system, it is important to make efforts towards enhancing the degree of professional independence and qualification. It is important to ensure continuous professional training of medical personnel and enhancement of various training modules and set up an effective mechanism for assessment and supervision of sustainability of training outcomes.

It is important to review the legal framework governing penitentiary health care for ensuring the rigorous observance of the principles of professional ethics to a maxim degree by the medical personnel of the penitentiary system. It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.[306]

In 2016, certain subordination of the medical personnel to the administration of a penitentiary establishment remains a problem as it violates the principle of confidentiality and obstructs the process of provision of medical services.

In terms of professional independence of medical personnel, it is particularly important to ensure in long term perspective, integration of the penitentiary health care with the public health care. As regards the short term perspective, it is imperative to ensure strict supervision over observance of the principles of professional ethics by the medical personnel and adequate response to breaches.

The practice existing in the detention and closed type prison facilities, whereby a prisoner has to address non-medical personnel for an appointment of consultation with doctor remains problematic; in most cases, a doctor examines a patient and provides consultation in a cell. This contradicts the principle of confidentiality as the complaints of the prisoner are thereby also communicated to other prisoners and non-medical personnel.[307] Except for emergencies, a medical examination and consultation should be conducted separately in a doctor's office with due respect for confidentiality.[308] Furthermore, medical manipulations are not conducted in a confidential environment. For instance, according to the prisoners in penitentiary establishment no. 2, injections, taking blood for tests and other medical procedures are usually done in a guard's room on the residential floor, in the presence of the non-medical personnel on duty, which again violates the principle of confidentiality of medical services.

The principle of confidentiality is also violated by Article 24.2 of the Imprisonment Code,[309] under which upon admission to a penitentiary institution, an remand/convicted person shall undergo a medical examination and the relevant report shall be prepared and kept in his/her personal file.

304 Council of Europe, Recommendation no. R (98) 71 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison, adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies in Strasbourg), paras. 19-20.

305 The United Nations Principles of Medical Ethics, 1982, principle 3, available only in English at: http://www.un.org/documents/ga/res/37/a37r194.htm [Last visited on 18.03.2015].

306 The United Nations Principles of Medical Ethics, 1982, principle 3, available only in English at: http://www.un.org/documents/ga/res/37/a37r194.htm [Last visited on 18.03.2015].

307 Para. 51, Extracts from the general reports of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT/Inf (93)12).

308 *Ibid.,* para. 35.

309 *Ibid.,* paras. 50-51.

The maintenance of medical documentation in penitentiary establishments remains a problem. It should be mentioned that, in general, the unity of medical notes of prisoners is not observed and it creates the danger of losing the medical documents. In penitentiary establishment no. 3, in the medical note on convict G.G. son of Guram, born on 1985, there was a medical document that belonged to another person having the same name and surname – G.G. son of Ghvtiso, born on 1954. Furthermore, in a number of cases, there are no references in the recordings such as the name of the doctor who provided consultation to a prisoner, the date of giving the consultation or diagnosis.

According to Order no. 198/n of the Minister of Health, Labour and Social Affairs of Georgia, dated 5 July 2002, approving the Procedure of Storing Medical Records in Medical Establishments, all completed medical documentation should be stored in medical archive of the given medical establishment.

During the visit of the Division of Medical Regulation to penitentiary establishment no. 5[310], the room arranged for medical archive was inspected and it has turned out that the major requirements for keeping archives are not observed, viz., temperature, humidity, and fire extinguishing devices.

The visit of the Division of Medical Regulation to penitentiary establishment no. 7[311] revealed that a medical archive room was not there. The piles of old, so-called archived documents are placed on two small open shelves in the medical unit. Besides the fact that the requirements for keeping archives are not observed in the room, the documentation is not archived according to the requisite form and not organised in an alphabetical order and by years. The documents are not placed in folders. Designated rooms for archives are not provided in penitentiary establishments nos. 11[312] and 12 either. In penitentiary establishment no. 11, medical documentation is kept in a drug store. The documents are placed on wooden shelves according to years and in an alphabetical order. They are placed in folders. In penitentiary establishment no. 12, according to the senior doctor, medical notes are kept in personal case-files of prisoners.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure contribution to the professional independence and qualification of medical personnel through continuous professional training and enhancement of various training modules and setting up an effective mechanism for assessment and supervision of sustainability of training outcomes;
- to ensure strict supervision by the Medical Department of the Ministry of Corrections of Georgia over observance of the principles of professional ethics by the medical personnel and adequate response to breaches;
- To ensure to a maximum degree confidentiality of doctor-inmate interaction without the presence of non-medical personnel by installing a call-button in closed type penitentiary establishments and introducing the obligation for medical personnel to inspect cells daily, etc.;
- To take all necessary measures to ensure that all medical examination and consultation is done confidentially in a doctor's room except for urgent and exceptional cases;
- To take all necessary measures to ensure the involvement of prisoners in medical services through informing them about the medical services to be rendered in the process of medical treatment; to ensure accessibility of the information related to prisoners health care, including preventive health care;

310 20 October 2016.
311 03.10.2016.
312 The inspection of the Medical Regulation Division of penitentiary establishment no. 11 was conducted on 08.11.2016.

- To take all necessary measures to ensure that medical documentation is kept with due respect of confidentiality; and
- To ensure the amendment of Article 24.2 of the Imprisonment Code to the effect of deleting the provision, under which the report of medical examination of an remand/convicted person upon his/her admission to a penitentiary institution shall be kept in his/her personal (non-medical) file; to ensure submission of this draft amendment to the Government of Georgia for its initiation before the Parliament of Georgia.

Proposal to the Parliament of Georgia:

- To amend Article 24.2 of the Imprisonment Code to the effect of deleting the provision, under which the report of medical examination of an remand/convicted person upon his/her admission to a penitentiary institution shall be kept in his/her personal (non-medical) file. This report shall always be kept in a medical note of the prisoner.

Mental Health and Substance Abuse

Mental healthcare is one the major challenges of the penitentiary healthcare. According to the information received from the Medical Department of the Ministry of Corrections of Georgia, the number of prisoners with mental health and behavioural disorders increased insignificantly compared to 2015. This indicator amounted to 1,031 by December 2015 and 1,079 by December 2016.

Getting an appointment with a psychiatrist remains a problem. In a number of cases, the medical personnel, despite prisoners' requests, do not give them appointments as they think the prisoners are pretending. Because of this, prisoners are frequently denied adequate psychiatric treatment.

Apart from the need to improve the accessibility of a psychiatrist, it is also imperative to deepen their cooperation with psychologists and social workers to improve the indicator of identification of the prisoners with mental health problems and give them timely and adequate psychiatric care. It is also important to ensure that patients with acute psychosis receive psychiatric treatment in psychiatric and not in penitentiary establishments.

According to the information received from the Ministry of Corrections, in 2016, psychiatrists gave 10,682 consultations.[313] By December 2016, there were 1154 prisoners with mental health problems (F00-F99) in penitentiary establishments. In 2016, involuntary inpatient psychiatric treatment was administered to 45 prisoners and 58 prisoners were placed for compulsory psychiatric treatment in a hospital.

The assessment of a prisoner's mental health condition should be given particular importance during the primary medical examination upon the admission of a prisoner to a penitentiary establishment. Besides, the prisoners inclined towards auto-aggression, suicide and substance abuse should be a special target group for mental health screening. At the same time, it is necessary to assess the mental health condition of those prisoners that systematically manifest antisocial behaviour and there is a suspicion that such behaviour could be caused by their mental health condition.

In the Parliamentary Report of 2015, the Public Defender of Georgia pointed out the importance of the creation of an effective mechanism for the identification of mental health problems to ensure that, instead of imposition of a disciplinary sanction for self-harm, violation of the regime and other disciplinary offences, timely and adequate treatment was given to the prisoners with mental health problems. The Public Defender

313 The data on establishment no. 18 is not taken into account.

emphasised that the approach to the prisoners inclined to self-harm and other behavioural disorders had to be therapeutic and not punitive.

The prevalence of mental health problems among prisoners is mostly caused by the problems related to substance abuse and excessive use of psychoactive agents in the penitentiary system. In 2016, 351 prisoners were involved in methadone detox programme, and 315 in 2015.

In 2014 and 2015, the Public Defender recommended to the Minister of Corrections of Georgia to ensure the implementation of opioid dependence treatment through replacement maintenance therapy. However, this recommendation has not been fulfilled. According to the response received from the Ministry, opioid dependence treatment through replacement maintenance therapy is envisaged by the State Action Plane for 2016-2017, among others, for the penitentiary system as well. However, the correspondence of the Ministry of Corrections fails to show the process underway and the steps taken in this direction.

The Public Defender commends the introduction of the psychosocial rehabilitation programme Atlantis for the convicts in penitentiary establishments nos. 2 and 5. This is a therapeutic model for the convicts suffering from alcohol, narcotics and other psychoactive substance abuse. It is noteworthy that the infrastructure for the rehabilitation programme Atlantis is also provided in penitentiary establishment no. 6. However, the programme is not implemented in these establishments. The Public Defender observes that the psychosocial rehabilitation services tailored to the needs of prisoners suffering from mental health problems and substance abuse should be accessible in all penitentiary establishments.

In the process of mental health care, it is important to protect the interest of a person, respect for his/her dignity and provision of care in a maximum humane environment. The UN Human Rights Committee has stipulated in its General Comment[314] that the use of prolonged solitary confinement may amount to a breach the prohibition of torture, other cruel, inhuman or degrading treatment. UN Subcommittee on Prevention of Torture (SPT) pointed out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommends that the State Party should severely restrict the use of solitary confinement as punishment for persons deprived of their liberty. Solitary confinement should not be used in the case of minors or the mentally disabled.[315] According to the Istanbul statement of 2007 on the use and effects of solitary confinement,[316] the use of solitary confinement should be absolutely prohibited for mentally ill prisoners.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Corrections not to allow the placement of mentally ill prisoners in solitary confinement cells. Unfortunately, there were still incidents of placing mentally ill prisoners in solitary confinement in 2016.[317]

The Special Preventive Group inspected the documentation in establishment no. 3 and found out that during the first months of 2016, out of 51 instances of placement in de-escalation rooms, in 22 cases, disciplinary measures were imposed on the prisoners during their stay in the de-escalation rooms or within the interval of one day.[318] Out of 22 instances, in 11 cases, prisoners had various mental disorders; among them, in one case, the prisoner had persistent delusional disorder (F22) and organic personality disorder (F07.0); in two cases, sleep disorders not due to a substance or known physiological condition (F51); and in seven cases, disorders of personality and impulse control (F60.3). Accordingly, the prisoners' behaviour could have been caused by their mental health condition, which was later the basis for the disciplinary penalty imposed on them.

314 CCPR, General Comment 20/44, April 3, 1992.
315 UN Subcommittee on Prevention of Torture (2010), report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the republic of Paraguay (par 184).
316 International Psychological Trauma Symposium (2007), The Istanbul Statement on the use and effects of solitary confinement.
317 See in detail under the subchapter Regime, Disciplinary Responsibility and Incentives.
318 One day before placement into a de-escalation room and the next day after removal from the de-escalation room.

The above-mentioned 11 prisoners placed in the de-escalation room have not been visited by a psychiatrist during their stay in the room. They received psychiatric consultation in some cases before their placement in a de-escalation room or within a few days after removal from these rooms.

The environment and conditions in the de-escalation rooms are not safe[319] and do not minimise the risk of self-harm.[320] This is confirmed by the incidents of self-harm inflicted by the prisoners when they were placed in the de-escalation rooms.

It is imperative to take all necessary measures for avoiding the future placement of prisoners suffering from mental health problems in de-escalation rooms and their provision with timely and adequate psychiatric help. Besides, it is particularly important to develop psychosocial rehabilitation services.

Deaths and Suicides

In 2016, 17 prisoners died in the penitentiary establishments. Unfortunately, the number of deaths in the penitentiary system has increased.[321] According to the Information received from the Medical Department of the Ministry of Corrections, the reasons for deaths were registered as follows: myocardial infarction, suicide, congestive heart failure, acute insufficient blood flow to the brain (brain ischemia), thromboembolism, oesophageal perforations due to foreign body, and septic shock. Similar to the previous years, the majority of prisoners died from congestive heart failure. It is imperative to pay attention to the screening and early diagnosis of cardiovascular and respiratory system in order to enable the provision of timely and adequate medical services in the future.

In 2016, the suicide prevention programme was introduced in all establishments of the Penitentiary Department. The statutory regulation of the suicide prevention programme[322] is positively assessed. However, the number of suicides in penitentiary establishments has not changed compared to 2015.[323] As regards suicide, this indicator is higher in 2016. In 2015, there were only 2 incidents of suicide and 5 in 2016. Moreover, out of these incidents, two prisoners had been involved in the suicide prevention programme.

A psychologist of a given establishment or its psychiatrist takes the decision about the provision of multidisciplinary assistance to an remand/convicted person and involvement in the suicide prevention programme. When taking the decision about the provision of multidisciplinary assistance to an remand/convicted person, the psychologist fills out the form in annex 4.[324] After a prisoner is involved in the suicide prevention programme, in accordance with the pre-determined schedule, the members of a multidisciplinary group meet with him/her. According to the data of December 2016, 15 prisoners were involved in the suicide prevention programme.

The members of the Special Preventive Group inspected the documentation of the beneficiaries of the suicide prevention programme. The study of the recording reveals that the multidisciplinary group works with prisoners in terms of emotional venting, change of values and the mechanisms of coping with stress, which on its own is positive. However, it was established during the study of the documentation that in a number of cases, the prisoners involved in the programme have problems in terms of maintaining contacts with family and friends; they do not have adequate number of contacts with their family members or have strained contacts with them. This significantly affects their psychological and emotional condition. For instance, the Special Pre-

319 According to the information provided by the Ministry of Corrections, there is no cushioning material available in Georgia for lining the walls in de-escalation rooms
320 The floor and the walls in the de-escalation rooms are not cushioned.
321 In 2015, 12 prisoners died in the penitentiary system.
322 Approved by Order no. 13 of the Minister of Corrections of Georgia dated 11 February 2016.
323 142 attempts in 2015; 141 attempts in 2016.
324 Suicide Prevention Programme approved by Order no. 13 of the Minister of Corrections of Georgia dated 11 February 2016, Article 10.

ventive Group inspected the documentation of one convict involved in the suicide prevention programme. It was clear from the documentation that the convict was particularly anxious about the lack of contact with the family. According to the multi-assessment report, under the head of placement and supervision of the prisoner it is mentioned that the prisoner should be placed in a company of supporting cellmates to feel comfortable. However, it is not clear from the documents what steps were made by the social services towards ensuring that the prisoner had an additional short or long visit or could make a phone call. It should also be mentioned that the objective of the suicide prevention programme would not be accomplished only by supporting conversations. It is therefore important to assess the effectiveness of the work done within the suicide prevention programme to identify shortcomings and make necessary changes for eradicating these problems.

The death of convict N.B. is noteworthy in this context. The convict allegedly committed suicide on 15 August 2016. The Office of the Public Defender of Georgia studied this case. The examination of the case of convict N.B. revealed that N.B. did not receive adequate medical service in establishment no. 17; the medical note was not processed properly. The risks for suicide, mental and narcotic status was not fully assessed; the patient was given psychotropic drugs without need and only based on the prisoner's request; and he was involved only in a short term replacement therapy course, but unsuccessfully.

On 19 September 2016, the Public Defender of Georgia sent proposal no. 15-11/11031 to the Office of the Chief Prosecutor of Georgia concerning the death of convict N.B. The circumstances revealed, based on the study of medical and other documentation kept in penitentiary establishment no. 17, that the personnel of the establishment possibly committed the act under Article 342 of the Criminal Code of Georgia – official negligence. According to response no. 13/65056 received from the Chief Prosecutor's Office on 11 October 2016, the Investigative Department of the Ministry of Corrections of Georgia started investigation on criminal case no. 073150816002 under Article 115 of the Criminal Code of Georgia, on the incident of driving convict N.B. to suicide. According to the correspondence from the Chief Prosecutor's Office, the circumstances of the incident were investigated comprehensively and upon the establishment of the requisite legal ground, the investigation would be continued under Article 342[1] of the Criminal Code as the subjects of this provision were, according to the notice given to this Article, the personnel of the Medical Department of the Ministry of Corrections of Georgia. These persons were deemed to have the same status as the personnel of the special penitentiary service of the administrative personnel of the establishment of deprivation of liberty. Therefore, their failure to perform their function duly in accordance with the regulations of their office falls within the competence of the Investigative Department of the Ministry of Corrections of Georgia.[325]

It is noteworthy that there are specific circumstances in the above cases that could be indicating alleged official negligence on the part of the medical personnel of penitentiary establishments. Accordingly, the investigation conducted by the Investigative Department of the Ministry of Corrections does not discharge the obligation of ensuring independent, impartial and effective investigation since the Investigative Department is not an institutionally independent investigative authority in this case.

The Public Defender observes that in all cases of the death of a patient, involving a possible suicide and specific circumstances indicating commission of a crime by a staff member or medical personnel of the establishment, the investigation should be conducted by the Office of the Chief Prosecutor of Georgia.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure screening of prisoners' health condition and to ensure that the prisoners having mental health problems are provided with timely and adequate psychiatric assistance;

325 Order no. 34 of the Minister of Justice of Georgia dated 7 July 2013 on Determining Investigative and Territorial Jurisdiction in Criminal Cases, Article 8.

- To ensure that the patients suffering from acute psychosis are treated in a psychiatric establishment and that outpatient services are implemented;
- To take all necessary measure to ensure that the prisoners suffering from mental health problems are not placed in a solitary confinement cell;
- To ensure implementation of opioid dependence treatment through replacement maintenance therapy;
- To ensure that assessment of the effectiveness of the work done within the suicide prevention programme to identify shortcomings and make necessary changes for the eradication of these problems; and
- To ensure the creation of psycho-social rehabilitation services tailored to the needs of the prisoners suffering from mental health problems and substance abuse.

Proposal to the Chief Prosecutor of Georgia:

- To ensure independent and impartial investigation of all incidents of suicide.

Managing and Preventing Highly Dangerous Contagious Diseases

According to the data received from the Ministry of Corrections of Georgia, in 2016, tuberculosis screening tests were performed 57,658 times (in 2015, 58,208 times). The tests revealed 45 new and 45 repeated cases of tuberculosis.

By December 2016, 41 prisoners (in 2015, 38 prisoners) were infected with multi-drug-resistant tuberculosis. 9 incidents of discontinued treatment have been revealed (in 2015, 16 incidents). In the same year, 8 patients resumed discontinued treatment. The fact that, in 2015, 156 patients were referred to a public sector clinic for examination/treatment of related diseases is positively assessed. There are no significant changes in this regard, compared to 2015.[326]

In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Corrections of Georgia to eradicate problems related to activities aimed at controlling infections and treatment of related diseases in establishment no. 19. According to the response received from the Ministry of Corrections, since 2016, the National Centre for Tuberculosis and Lung Diseases has continuously supplied establishment no. 19 with respirators (for everyone) and sterile gloves (only for the personnel in direct contact with the patients involved in the course of treatment with new medications). Disposable masks and gloves are provided by the Ministry.

In 2015, the Public Defender recommended to the Minister of Corrections to ensure that all prisoners suffering from tuberculosis were transferred to the tuberculosis treatment and rehabilitation centre. It should be positively mentioned that, in December 2016, 57 prisoners out of the 65 prisoners in penitentiary establishments and involved in tuberculosis treatment course were placed in the tuberculosis treatment and rehabilitation centre (establishment no. 19); other prisoners were placed in various establishments due to the security considerations. According to the information submitted by the Medical Department of the Ministry of Corrections, there are adequate conditions for anti-tuberculosis treatment in these establishments and remand/convicted persons suffering from tuberculoses are treated in accordance with the state programme guidelines under the supervision of the health-care professionals of the relevant specialisation. The Public Defender regretfully observes that his recommendation has not been fully accomplished.

326 This number amounted to 152.

According to the information received from the Ministry of Corrections of Georgia, in 2016, 6,618 prisoners underwent hepatitis B and C testing (in 2015, this number amounted to 5,500). It should be positively mentioned that the hepatitis screening indicator has been increased and more prisoners are involved in the hepatitis C treatment course. In 2015, only 308 convicts received the treatment and in the course of 2016, 970 prisoners were treated for hepatitis C.

In the Parliamentary Report of 2015, the Public Defender of Georgia recommended to the Minister of Health, Labour and Social Affairs of Georgia to make antivirus treatment available for remand persons for corresponding medical indications. The Public Defender recommended to the Minister of Corrections of Georgia to ensure treatment with sofosbuvir for foreign nationals and stateless persons, placed in penitentiary establishments, having corresponding medical needs. It should be positively mentioned that presently the beneficiaries of the programme are remand and convicted persons placed in penitentiary establishments regardless of whether they have a document certifying Georgian citizenship.[327]

In 2016, there was an increase in the number of prisoners screened for HIV/AIDS. In 2016, 7,809 prisoners underwent screening for HIV/AIDS. In 2015, 5,500 prisoners underwent screening for HIV/AIDS. As regards the prisoners involved in antivirus treatment for HIV/AIDS, by December 2016, 68 patients were involved in the programme. 15 prisoners rejoined the same year.

The penitentiary system still faces challenges in terms of full observance of statutory requirements for infection control, such as cold chain, and disinfection and sterilisation of medical instruments, objects and materials designated for multiple uses.

The Medical Regulation Division, during its visit to penitentiary establishment no. 5[328], inspected the central sterilisation room which has been recently arranged and refurbished. The surgical and manipulation instruments as well as dental instruments are sterilised in the central sterilisation room. There is a designated staff-member in charge of disinfection and sterilisation. However, at this stage, the process of disinfection and sterilisation in the dentist's room is punctuated with shortcomings that need to be addressed to ensure that the procedures are in full compliance with the prerequisite standards. Personnel with special training in infections control are not there; there are no paper towels for drying hands in the room where procedures are done; there is no requisite space arranged for preliminary sterilisation of instruments; this space, should be equipped with a sluice sink, a table, shelves, etc. At this stage, the instruments are not categorised into critical, semi-critical and non-critical tools. There is packaging equipment in the sterilisation room.

It was revealed during the visit[329] of the Medical Regulation Division to penitentiary establishment no. 7 that there is no separate sterilisation room in establishment no. 12 either. Sterilisation is done in the so-called dry-air steriliser in the dentist's room. At this stage, the process of disinfection and sterilisation in the dentist's room is punctuated with shortcomings that need to be addressed to ensure that the procedures are in full compliance with the prerequisite standards. Designated personnel with special training in infections control are not there in the penitentiary establishment. At this stage, the dental equipment is being sterilised right in the dentist's room in the so-called dry-air steriliser; there are no paper towels for drying hands in the room where procedures are done. There is no requisite space arranged for preliminary sterilisation of instruments; this space should be equipped with a sluice sink, a table, shelves etc.; the instruments are not categorised into critical, semi-critical and non-critical tools; no so-called packaging is done before sterilisation; there are no instructions on the preparation and use of disinfectants posted in the procedures room. According to the dentist, there are no so-called sterilisation indicators; therefore, the sterilisation cycles are not verified by periodic use of indicators. Despite the fact that there is a recently purchased autoclave in the storage room of the establishment, due to the lack of space it is not used.

327 Resolution no. 169 of the Government of Georgia dated 20 April 2015 on Approving State Programme on Hepatitis C Management.
328 20 October 2016.
329 03.10.2016.

There is no central sterilisation room in penitentiary establishment no. 11.[330] The sterilisation of instruments is done by a dentist. There are no designated personnel with special training in infections control in the penitentiary establishment. There are no paper towels for drying hands in the room where procedures are done. There is no requisite space arranged for preliminary sterilisation of instruments; this space, should be equipped with a sluice sink, a table, shelves etc. There is no sink to wash hands in the room where procedures are done; there are no instructions on the preparation and use of disinfectants placed in the procedures room; the tool packaging equipment is brought into the dentist's room but it is not used due to the lack of space. The walls are not wet cleaned.

There is no separate sterilisation room in establishment no. 12 either. Sterilisation is done in the so-called dry-air steriliser in the dentist's room. The dentist has undergone continuous medical training programme – control of infections related to dental services. There are also shortcomings in the disinfection and sterilisation procedures conducted in the dentist's room in penitentiary establishment no. 15.[331] It is imperative to ensure that there are sterilisation rooms arranged in accordance with the requisite standards in each penitentiary establishment.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure that all prisoners suffering from tuberculosis are placed in the tuberculosis treatment and rehabilitation centre for adequate treatment of tuberculosis incidents;
- To ensure the full observance of infection control standards in each penitentiary establishment; and
- To ensure the accessibility of information related to preventive health care for prisoners.

Food and Drinking Water

Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality, well prepared and served[332]. The food norms in penitentiary establishments are determined by the joint order of the Minister of Corrections of Georgia and the Minister of Health, Labour and Social Affairs of Georgia.[333] The same order has approved the special (dietary) nutritional needs of prisoners.

The Special Preventive Group, during the monitoring visits, inspected the best before dates for food products in the penitentiary establishments' dining hall; breaches have not been identified. However the majority of the prisoners placed in penitentiary establishments expressed their indignation concerning the quantity, quality and taste of the food given to them.

The National Food Agency conducts food /animal food safety, veterinary and phytosanitary control. State control is carried out through the following mechanisms: inspection, monitoring, supervision, document check and taking samples.[334]

Regarding inspecting the dining halls of penitentiary establishments, the Public Defender of Georgia sent letters nos. 03-1/4437 and 03-3/10205 to the National Food Agency. According to correspondence no. 09/363

330 The inspection of penitentiary establishment no. 11 was carried out by the Medical Regulation Division on 8 November 2016.
331 The inspection of penitentiary establishment no. 15 was carried out by the Medical Regulation Division on 28 July and 9 August 2016.
332 The Nelson Mandela Rules Rule 22.1; the European Prison Rules, Rule 22.1-22.6.
333 Approved by Order no. 88-no. 01-34/n of 13 August 2015.
334 Order no. 2-3 of the Minister of Agriculture of Georgia of 14 January 2011 approving the Statute of LEPL National Food Agency.

received from LEPL National Food Agency on 10 June 2016, an inspection was carried out in penitentiary establishment no. 6 on 17 February 2016. However, the inspection results are not known. According to correspondence no. 09/7238, received from the National Food Agency on 23 September 2016, penitentiary establishment no. 9 was inspected on 13 September 2016. No violations have been identified.

The National Food Agency needs permission of the Ministry of Corrections for visiting penitentiary establishments. Therefore, visits to penitentiary establishments are made based on the prior notification of the Ministry. Therefore, there is a high probability that on inspection days the dining hall personnel prepare better quality food than before and after inspections. Such probability questions the credibility of the findings of the National Food Agency. The Public Defender of Georgia commends the practice of the National Food Agency for inspecting dining halls of penitentiary establishments. However, the Public Defender wishes to emphasise that any inspection should be carried out unexpectedly, without any prior notification and inspections results should be made accessible for any interested party.

Prisoners shall, subject to the requirements of hygiene, good order and security, be entitled to purchase or otherwise obtain goods, including food and drink for their personal use at prices that are not abnormally higher than those in free society.[335] There is a shop in each penitentiary establishment where prisoners may buy additional food products and primary hygiene products. According to prisoners, they do not have the list of the products (with prices) available in shops. They also complain about the lack of products and high prices. The Special Preventive Group examined this issue and found out that the shops of penitentiary establishments do not have the list of products they could provide to prisoners. The Group also compared the prices of the products in the shops of penitentiary establishments with the prices in the shops outside establishments and this comparison showed that the prices in the shops of penitentiary establishments are higher by 10-20%. The dire economic situation of the prisoners in penitentiary establishments should also be taken into consideration.

Under the Imprisonment Code, with the permission of the Director of the Department, an remand/convicted person may receive additional food products and articles of prime necessity in the form of a parcel.[336] In accordance with the statutes of penitentiary establishments, prisoners can receive all kinds of fruit, except for berries, grapes, melon and watermelon, not more than 5 kg in total in parcels,. It should also be pointed out that prisoners receive mostly apples, bananas and pears in parcels. Considering the fact that fruit is only given in the form of compote in the menu of prison establishments, receiving the maximum of 5 kg fruit in a parcel is insufficient. This is particularly problematic for those prisoners whose families do not live in the nearby or who cannot afford to send fruit frequently.

Under the European Prison Rules, clean drinking water shall be available to prisoners at all times.[337] The problem of uninterrupted water supply is still not solved in penitentiary establishment no. 3, where prisoners get water according to schedule. It is imperative that all penitentiary establishments take measures for ensuring uninterrupted supply of drinking water. Penitentiary establishment no. 17 has 24-hour supply of drinking water and has a 60-ton reservoir too. In case of water cuts, water is supplied from an auxiliary tank according to schedule. However, the prisoners in this establishment claim that drinking water has a specific taste from time to time. According to the administration of the establishment, water is supplied by LTD Rustavi Water and its quality is not inspected at the spot. It is imperative to ensure that the quality of the drinking water supplied to penitentiary establishments is regularly controlled. The Public Defender observes that the National Food Agency, in parallel to the dining halls of penitentiary establishments, should also inspect the quality of drinking water.

335 The European Prison Rules, Rule 31.5.
336 Article 23.6.
337 Rule 22.5.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure amendment of the statutes of penitentiary establishments to the effect of increasing the total amount of fruit;
- To take all necessary measures for ensuring adequate provision of shops in penitentiary establishments; also to ensure that the products available in the shops are reasonably priced;
- To take all necessary measures to ensure that the list of the products (and the prices) available in the shops of penitentiary establishments are accessible to prisoners;
- To take all necessary measures to solve the problem of water supply in penitentiary establishment no. 3; and
- To ensure that permission to entry is issued for the National Food Agency for a reasonable period (e.g., for six months) so that the representatives of the agency could conduct inspections in penitentiary establishments unexpectedly without prior notification.

To the Head of the National Food Agency:

- To ensure that regular visits are made to penitentiary establishments without prior notifications and dining halls and drinking water are inspected and inspections results are made accessible for any interested party.

SPECIAL CATEGORIES

Juvenile Prisoners

An remand minor who has been detained as a pre-trial restriction shall be placed in the juvenile section of a detention facility, and a convicted minor who has been sentenced to imprisonment shall be placed in a juvenile rehabilitation facility. Services in detention and prison facilities where remand or convicted minors are placed shall meet the requirements for the health care of minors and respect the dignity of minors.[338] According to the commentary to the Beijing Rules, if a juvenile must be institutionalised, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to 'open' over 'closed' institutions.[339]

A convict who has not attained the age of 18 at the moment of admission to a penitentiary establishment shall be placed in rehabilitation establishment no. 11 for juveniles.[340] Juvenile remand/convicted prisoners are also placed in penitentiary establishments nos. 2 and 8.

Despite the fact that juvenile prisoners are placed in an isolated residential building at penitentiary establishments nos. 2 and 8, they still can interact with adult prisoners, for instance, when an remand or convicted juvenile

338 Juvenile Justice Code, Article 79.1.
339 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985, Rule 19, see at: http://www.un.org/documents/ga/res/40/a40r033.htm [Last visited on 15.03.2017].
340 Imprisonment Code, Article 68.1.

is brought to meet with a lawyer or a legal representative. Besides, the adult convicts who are enrolled in economic services take food to each cell, despite the fact that they perform this function under the supervision of a staff member.

An remand or convicted minor may be temporarily transferred to a different facility based on an order of the director of the Penitentiary Department and only if this is necessary for his/her security or the security of other minors.[341] In 2016, in total, 9 convicts were removed from establishment no. 11. Out of this number, 6 convicts were removed when they attained the age of 18. 3 convicts were transferred from establishment no. 11 to establishments nos. 2 and 8 due to the security reasons. It is noteworthy that none of the convicts that were transferred to another establishment on the account of becoming of age had completed 12 years of education.

At the same time, in accordance with Article 90.3 of the Juvenile Justice Code,[342] with the view of completing the studies, five convicts who attained the age of 18, applied to the administration with the request to be allowed to stay in the rehabilitation establishment and all of them were granted.

Regarding the legitimacy of the practice of transferring juveniles from establishment no. 11 to establishments nos. 8 and 2, the Public Defender recommended to the Minister of Corrections of Georgia on 13 April 2016.[343] In his recommendation, the Public Defender emphasised that juvenile convicts should serve in a rehabilitation establishment and they should not be transferred to a closed-type prison facility for indefinite term and without reasoning. This significantly compromises rehabilitation and runs counter to the best interest of juvenile convicts. The Public Defender called upon the Minister of Corrections to ensure that each juvenile serves the sentence in a rehabilitation establishment no. 11 with due respect to their rights and best interests. The Public Defender also pointed out that juveniles should be transferred to other establishments on the account of security reasons only as a measure of last resort, after alternative and more lenient statutory measures have been exhausted; such transfers should be adequately reasoned as a temporary measure.

In response to the above recommendation, the Public Defender of Georgia was informed that the removal and transfer of certain convicts to another establishment was caused by altercations that had taken place among juveniles and it was due to the extreme necessity as a more lenient punishment would not be effective.[344]

In the rehabilitation process of juvenile convicts, the particular importance should be attached to their involvement in rehabilitation and educational activities. The learning process in establishments nos. 2 and 8 only ensures the continuance of education; rehabilitation activities are not as diverse as in establishment no. 11.

It should be positively assessed that, in 2016, no disciplinary sanctions were imposed on juvenile convicts. As regards incentives, 24 convicts were officially commended for good behaviour and involvement in rehabilitation activities. This is a positive practice and it is important to be continued and enhanced in the future.

The Public Defender welcomes the adoption of the Joint Order of the Minister of Justice of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia, which determined the Methodology, Procedure and Standard for Preparing an Individual Assessment Report.[345] Under the said order, the maximum term for accomplishment of individual sentence planning is 12 months. In order to ensure its effective accomplishment, once in three months, the plan is revised; after six months, an interim report about

341 Juvenile Justice Code, Article 89.

342 To re-socialise a convicted minor, or to provide general education and vocational training, a convicted person who has attained the age of 18 may, upon his/her personal application, be kept to serve his/her sentence in the same facility where he/she was serving the sentence before reaching the age of majority. The decision on this matter shall be made by the director of the Penitentiary Department based on the petition of the director of the facility.

343 Recommendation of the Public Defender of Georgia to the Minister of Corrections of Georgia, 13.04.2016, no. 10/3382.

344 Letter no. MOC91600339130 of the Ministry of Corrections of Georgia, dated 25.04.2016.

345 Joint Order no. 132N95N23 of the Minister of Justice of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Corrections of Georgia, dated 15 March 2016 approving the Methodology, Procedure and Standard for Preparing an Individual Assessment Report.

progress/regress is drafted; the final report is written after a year; one month before the completion of the plan, its outcomes are assessed, revised and/or replaced by a new individual plan.[346]

The study of the documentation of juvenile convicts revealed that assessment and individual sentence planning works for each beneficiary. However, plans are of general nature and particular activities are not specified. For instance, there are frequent entries such as 'meeting with a psychologist' or 'meeting with a social worker'. However, there is no purpose, or topic, etc., specified. Therefore, it is impossible to see the full picture and the work identified by specialists.

The Public Defender emphasises the importance of the individual sentence planning for juveniles and observes that following the plan and its possible modification should be a constant process that would be tailored to the needs of a particular juvenile convict.

In accordance with the recommendation of the Committee of Ministers of the Council of Europe,[347] an individual plan shall be drawn up listing those plans in which the juvenile shall participate. The objective of this plan shall be to enable juveniles from the outset of their detention to make the best use of their time and develop skills and competences that enable them to reintegrate into society. It is noteworthy that, in the reporting period, the majority of prisoners participated in numerous programmes. In the course of the entire year, establishment no. 11 offered convicted persons various psychosocial programmes, cultural and sporting activities.[348]

The Public Defender commends the adoption of a joint order of the Minister of Education and Science of Georgia and the Minister of Corrections of Georgia, which approved the Regulations for Receiving Complete General Education by Remand and Convicted Juveniles and Educational Process in Penitentiary Establishments of the Ministry of Corrections of Georgia. The order regulates in detail the procedure for receiving general education by juvenile prisoners. [349]

There is a school functioning in establishment no. 11, which is linked with one of the public schools in Tbilisi. The sub-program of minors' general education is provided at the school. This enables minors to complete the programme as an external student and move to another step, as well as to receive a certificate after the completion of certification exams.

Unlike establishment no. 11, the educational programme in establishments nos. 8 and 2 is not linked to any of the public schools. Therefore, a document certifying the obtaining of general education is not issued. The above special educational programme aims at ensuring continuous education until the juveniles' stay in the establishment as remand. Therefore, prisoners do not show keen interest towards the learning process and often skip lessons.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty emphasises the importance of the contact of juveniles with the outside world: 'Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society.'[350] In rehabilitation establishment no. 11 for juveniles, the convicts have statutory rights to short, long and video visits and telephone calls.

346 *Ibid.,* Annex 3, Articles 6, 8.

347 Council of Europe, Recommendation CM/Rec(2008)11of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, adopted by the Committee of Ministers on 5 November 200 *at the 1040th meeting of the Ministers' Deputies, Articles 79*.1, 79.2; see in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last visited on 15.03.2017].

348 See in details about the rehabilitation activities carried out in establishment no. 11 in subchapter *Daily Schedule and Rehabilitation Activities*.

349 Order no. 110/n/N124 of the Minister of Education and Science of Georgia and the Minister of Corrections of Georgia, dated 1 September 2016, approving the Regulations for Receiving Complete General Education by Remand and Convicted Juveniles and Educational Process in Penitentiary Establishments of the Ministry of Corrections of Georgia.

350 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990, Article 59.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To take appropriate measures to ensure that all juvenile prisoners are placed in the rehabilitation establishment for juveniles;
- To take all necessary measures to ensure that a juveniles is transferred to another establishment if it is necessary due to security reasons and after alternative measures have proved ineffective; such transfers should be adequately reasoned as a temporary measure; and
- To take all measures to ensure that remand and convicted juveniles placed in establishments nos. 2 and 8 have the same opportunities for receiving education as the juveniles placed in establishment no. 11.

Protection of the Rights of Women Prisoners in Penitentiary Establishments

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) invite Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans.

Women prisoners, apart from establishment no. 5 are also placed in establishment no. 2. In 2016, in semi-open and closed-type special penitentiary establishment no. 5 for women,[351] the average number of women prisoners amounted to 266.[352] In the course of 2016, there were 55 remand and 46 convicted women[353] in closed-type penitentiary establishment no. 2.

The Special Preventive Group found out during the monitoring that similar facilities and services tailored to the women's needs, available in establishment no. 5, are absent. Penitentiary no. 2 does not accommodate the specific needs of women prisoners and does not provide the same conditions as in establishment no. 5. Despite the recommendations made by the Public Defender in the 2015 post-visit report[354], the involvement of women prisoners in rehabilitation activities remains problematic to date. Furthermore, the recommendation of the Public Defender on creating requisite conditions in penitentiary establishment no. 2 for sports activities as well as organising regular and diverse sports activities also remains unfulfilled to date.[355]

Despite the recommendation made by the Public Defender in the Parliamentary Report of 2015, the situation regarding women's reproductive health care is still problematic in penitentiary establishment no. 2. There is no gynaecologist in the establishment and prisoners have to wait for a long time for a gynaecologist's visit. Similar to 2015,[356] the provision of women with sanitary pads remained problematic in the reporting period.

In 2016, within the National Preventive Mechanism, the Special Preventive Group together with the Department of Gender Equality of the Office of the Public Defender of Georgia carried out monitoring at penitentiary establishment no. 5. The visit was aimed at inspecting the fulfilment of the recommendations made in 2015,

351 Order no. 116 of the Minister of Corrections of Georgia on approving the Statute of penitentiary establishment no. 5 of the Ministry of Corrections of Georgia (hereinafter the statute of penitentiary establishment no. 5).

352 Minister of Corrections of Georgia, 2016 Report on Statistics of the Ministry of Corrections of Georgia (hereinafter, the Ministry's report), available at: http://www.moc.gov.ge/ka/saqarthvelos-sasjelaghsrulebisa-da-probaciis-saministros-sistemis-statistikis-2016-tslis-angarishi [Last visited on 10.02.2017].

353 Letter no. MOC 117 00037938 of the director of penitentiary establishment no. 2, dated 17 January 2017 (registered under no. 03-3/200 in the Office of the Public Defender of Georgia) (hereinafter letter of penitentiary establishment no. 2).

354 Report of the Public Defender of Georgia on the visit to penitentiary establishment no. 2 (1-2 July 2015), available at: http://www.ombudsman.ge/uploads/other/3/3294.pdf [Last visited on 19.02.2017] (hereinafter 2015 post-visit report on establishment no. 2).

355 Letter of penitentiary establishment no. 2.

356 Report of the Public Defender of Georgia on the visit to special penitentiary establishment no. 5 for women (19-20 February 2015), available at: http://www.ombudsman.ge/uploads/other/3/3285.pdf [Last visited on 19.02.2017] (hereinafter 2015 post-visit report on establishment no. 5).

identification of the needs of women prisoners and making recommendations based on the needs assessment. To this end, the monitoring group relied on the domestic legislation and the standards established by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

The Public Defender of Georgia welcomes the steps made towards the fulfilment of the recommendations made in 2015. The Public Defender positively assesses the improvement of the transportation of women prisoners through the renewal of the auto park of the division of external protection and convoy of the Penitentiary Department.

Furthermore, the Public Defender commends the repair works done in penitentiary establishment no. 5 in 2016. Two special cells were arranged in the prison facility and two cells for the persons with disabilities; the examination/search room for remand and convicted persons was repaired; maintenance works were done in several wards, rooms and offices of the medical unit, including the offices of the personnel; and the repair works done in the shower room and hanging a curtain on the shower cubicle for privacy reasons are also positively assessed.

The Public Defender positively assesses the activities aimed at re-socialisation and public reintegration that have been carried out in penitentiary establishment no. 5. In this regard, the training sessions on preparation for release, coping with family related difficulties, and developing cognitive and social skills should be mentioned. The conduction of sporting and cultural activities, vocational, trade and educational training sessions are positively assessed.

It should be positively assessed that, in 2016, the number of imposition of disciplinary sanctions is almost halved. Furthermore, the fact that, in 2016,[357] compared to the previous year,[358] the number of giving incentives for participating in rehabilitation activities has increased is also welcomed. According to the data of 2016, short visits have not been restricted.

Despite the positive developments, there are problems that considerably affect the situation of women prisoners.

Despite the fact that the majority of the women prisoners are not high risk prisoners, the security measure such as full body search is used routinely, without any justification and individual risk assessment.

According to the information submitted by the director of penitentiary establishment no. 5, full body (cavity) search/examination was used towards 1574 prisoners upon admission to the establishment and upon leaving the establishment, 1469 prisoners were subjected to full body (cavity) search. The full body search includes strip search and cavity search conducted by a health-care professional.[359]

According to the letter received from the director of penitentiary establishment no. 5, in 2016, during the full body (cavity) search/examination of remand and convicted persons, no illegal objects were found within the body.[360] The fact that in the course of the entire year no illegal objects were found during the full body (cavity) search of the remand and convicted persons shows that there is no need for excessive security measures in the establishment.

During conversations with the Special Preventive Group members, the majority of prisoners stated that on each occasion of entering the establishment, they were offered to either undergo full strip search or, as an alternative, an internal, gynaecological search. According to the prisoners, in such cases, they are compelled to

357 Letter no. MOC 317 00036373 of the director of penitentiary establishment no. 5, dated 16 January 2017, (registered under no. 03-3/193 in the Office of the Public Defender of Georgia) (hereinafter letter of penitentiary establishment no. 5).
358 In 2015, 26 convicts were given incentives to participate in rehabilitation activities.
359 Order no. 116 of the Minister of Corrections of Georgia on approving the statute of penitentiary establishment no. 5 of the Ministry of Corrections of Georgia, Article 22.4, and Article 22.9.
360 Letter of penitentiary establishment no. 5.

opt for strip search. According to the information given by the women prisoners, strip search in practice means taking clothes off from all parts of the body at the same time. Furthermore, they are forced to do squats when naked, including during menstrual periods. Some of the prisoners also stated that together with strip search they had to undergo additional scans.

Apart from the fact that there is no justification based on individual circumstances when subjecting a woman prisoner to full body search, the method of conducting these searches is problematic as well. During a full body search, the request to take off clothes from all parts of the body simultaneously is in violation of international standards.[361] Furthermore, request to 'do squats' has no legal basis, and therefore such requests are illegal.

According to the women prisoners, instruments used for their medical examination are not sterilised. The cover of the gynaecology chair is not for single use; doctors are not provided with disposable gloves either.

Prisoners complained to the members of the Special Preventive Group that minors visiting the establishment are strip-searched. According to one of the prisoners, the children visiting her in the establishment were made to remove their underwear and do squats, which offended the children a great deal. It should be stressed that requiring children to strip search violated international standards.[362]

Under the Bangkok Rules, effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff that have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods such as scans shall be developed to replace strip searches and invasive body searches to avoid the harmful psychological and possible physical impact of invasive body searches.[363]

In the Parliamentary Report of 2015, the Public defender of Georgia recommended to the Minister of Corrections to replace aggressive (invasive) body searches with alternative methods such as scans. The Public Defender commends the steps made towards the fulfilment of this recommendation. The installation of the scanner in the establishment is positively assessed. However, as it turned out during the monitoring, the scanner as an alternative method of body search is not always used. It should be stressed that the use of a scanner as an alternative method does not imply its use along with the full body search, but as an alternative to the full body search (strip search and gynaecological search) and other additional search methods should not be used after scans.

As regards the infrastructure of the penitentiary establishment, adequate artificial ventilation in the residential cells is absent. The sanitation and hygiene conditions of the cells in the prison facility are unsatisfactory and the cells need repairs. There is no hot water running the in the cells, prisoners have to hand wash their clothes right under the tap, in cold water. For personal hygiene, they heat water by a water boiler. According to the prisoners in the prison facility, their time in shower is limited (as the prisoners allege they are only given 15-20 minutes). The prisoners complain about the quality of the drinking water.

The walking yards in the prison facility are visually not different from cells. There is no space for the prisoners in the prison facility for physical activities and exercise.

The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon

361 Council of Europe, Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, published on 31 March 2015, para. 85, available at: http://hudoc.cpt.coe.int/eng#{"fulltext":["squat"],"CPTSectionID":["p-cze-20140401-en-30"]} [Last visited on 10.02.2017].

362 Under the Nelson Mandela Rules, body cavity searches should be minimised with respect to visitors and should not be applied to children.

363 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 19, 20.

release so that they can lead a law-abiding and self-supporting life. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners. [364]

Under the Bangkok Rules, prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organisations, shall design and implement comprehensive pre-release and post-release reintegration programmes which take into account the gender-specific needs of women.[365]

During the monitoring visits made by the Special Preventive Group, the prisoners living in building A told the group members that they were not treated in the same way as the prisoners accommodated in buildings B and C. The residents of building A faced problems in terms of regular access to a computer, gym, and a salon unlike those accommodated in buildings B and C. It is noteworthy that the same problem was communicated to the Special Preventive Group during its visit to the penitentiary establishment in 2015 (19-20 February). Therefore, the respective recommendation has not been fulfilled to date.

The Public Defender of Georgia observed in his recommendation given in 2015 that the process of successful re-socialisation requires a complex approach, which implies the elaboration of a well thought plan comprising both the activities of a general nature and individual approach. According to this plan, the main aspects of re-socialisation cannot be determined based on the crime committed, imposed sentence, the personality of an offender and his/her psychological state of mind and behaviour.

The Public Defender welcomes the steps made towards the introduction of individual sentence planning for women prisoners. However, plans are of general nature and particular activities are not specified that should be accomplished in the process of women convicts.

The individual plans do not give the full picture about prisoners' needs and the work planned or accomplished as the result of identification of problems by specialists. Therefore, the position of the Public Defender remains the same regarding the elaboration of a well-thought action plan and individual approaches during selection of programmes for re-socialisation purposes.

It should be emphasised that an important component of rehabilitation is psychological support to prisoners. Under the Bangkok rules, particular efforts shall be made to provide appropriate services to women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.[366] It should be mentioned that the penitentiary establishment does not employ a clinical psychologist; psycho diagnostic researches are either absent or any other individual and group psychotherapeutic activities are not conducted.

The Nelson Mandel Rules consider employment as one of the means of prisoners' re-socialisation. Sentenced prisoners shall have the opportunity to work and/or participate actively in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals. The organisation and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons to prepare prisoners for the conditions of normal occupational life. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.[367]

364 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 4.
365 The Bangkok Rules, Rule 46.
366 The Bangkok Rules, Rule 42.4.
367 The Nelson Mandela Rules, Rules 96-99.

Under the Nelson Mandela Rules, so far as possible the work provided shall be such that it will maintain or increase the prisoners' ability to earn an honest living after release. The Public Defender of Georgia positively assesses the fact that penitentiary establishment no. 5 is the front-runner in terms of offering targeted and diverse rehabilitation programmes to prisoner. In this regard, the practice of offering vocational and trade courses is to be mentioned.

The Public Defender positively assesses the increase in the number of prisoners employed in economic services in penitentiary establishment no. 5 in 2016,[368] compared to 2015.[369] The Public Defender, however, observes that the establishment should introduce the practice of offering prisoners work that will help them enhance their qualification and use the obtained experience after release.

In their conversations with the members of the Special Preventive Group, several prisoners placed in penitentiary establishment no. 5 mentioned the indifferent and nonchalant attitude of the medical personnel. According to some prisoners, doctors do not explain to them and do not give any information about the progress of their diseases and related risk factors. Some of the prisoners complained about the accessibility of medicines.

The Public Defender of Georgia commends the provision of the requisite infrastructure for long visits in penitentiary establishment no. 5. It should be pointed out that 58 long visits were made to penitentiary establishment no. 5 in 2016.

The Public Defender negatively assesses the draft amendment proposed by the Ministry of Corrections of Georgia concerning the use of a family visit by a woman prisoner based only on the submission of the director of a penitentiary establishment and the consent of the Director of the Penitentiary Department.

The Situation of Mothers and Children

In accordance with the Bangkok Rules, 'decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.'[370] After the visit to establishment no. 5 in 2015, in his post-visit report, the Public Defender of Georgia recommended to ensure that separation of a child from its mother was not based only on formal rules and that psychological state of a child and the stage of its development should also be taken into account.[371]

The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

Taking into consideration the best interests of a child, women prisoners should be allowed to find a custodian for their children. In such cases, the Bangkok rules even allows release for a reasonable period – 'prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children'. The best interests of the child should be taken into consideration during taking any

368 In 2016, there were 36 convicts employed in the economic services of the penitentiary establishment, see, letter of penitentiary establishment no. 5.

369 In 2015, there were 17 convicts employed in the economic services of the penitentiary establishment, see, the Report of the National Preventive Mechanism on its visit to special penitentiary establishment no. 5 for women (19-20 February 2015), p. 12, available at: http://www.ombudsman.ge/uploads/other/3/3285.pdf [Last visited on 10.02.2017].

370 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Rule 52.

371 Report by the Public Defender of Georgia on the Visit to Special Establishment no. 5 for Women (19-20 February 2015) available at: http://www.ombudsman.ge/uploads/other/3/3285.pdf [Last visited on 19.02.2017].

decision and it should be counterbalanced with the public interests related to the penitentiary system.[372]

In his post-visit report, the Public Defender of Georgia requested the revision of the procedures for the removal of children from the establishment and their improvement with due account to the best interests of a child. The purpose of the recommendation was to ensure the adaptation of a child with the outside world and minimise the trauma related to separation from its mother.[373]

The Public Defender commends the draft amendments to the Imprisonment Code and related legislative acts aimed at laying down the regulations governing mothers leaving the penitentiary establishment.

Under the draft amendment, upon attaining the age of three, a child will leave the establishment of deprivation of liberty so that the child could adapt to the outside world and minimise the child's trauma due to separation from mother. These changes will be made to Article 72 of the Imprisonment Code, namely a women convict that has a child up to three years of age in the establishment and due to attaining the age of three, the child was removed from the establishment, the mother will be allowed, based on the decision of the Director of the penitentiary establishment, to leave the establishment on weekends in the course of one year. When making the decision, the following factors will be taken into consideration: the threat to the public posed by the convict, her personal attributes, criminal record, the nature of the crime, its motive, objective and the outcome, the behaviour in the process of serving the sentence and other circumstances that will be taken into account by the establishment's director.

The Public Defender positively assesses the determination of the draft law of the obligation to start work for the elaboration of the procedure and conditions in the transitory provisions whereby a child will leave the establishment of deprivation of liberty upon attaining the age of 3. The Public Defender will observe the elaboration of the above procedure and its implementation.

Under the Bangkok Rules[374] and the Nelson Mandela Rules,[375] children in prison with their mothers shall never be treated as prisoners. In 2016, 32 children were placed in the unit for mothers and children at establishment no. 5.

The environment provided for such children's upbringing shall be as close as possible to that of a child living outside the prison.[376] The living conditions and hygiene situation of the residential building for mothers and children are satisfactory. The Public Defender positively assesses the accomplishment of the recommendation made in 2015. The Public Defender commends the refurnishing and accomplishment of repair works in the residential building for mothers and children.

The Public Defender of Georgia positively assesses the fact that children are provided with planned medical treatment, with adequate food and means of hygiene. A paediatrician pays planned visits once a week, but it is also possible to call in a doctor; the paediatrician orders food for children according to their needs. The provision of mothers and children with food and hygiene items is positively assessed.

The Public Defender of Georgia negatively assesses the fact that a psychologist cannot work with mothers in the establishment. There are no specific psychological educational sessions on developing child upbringing and care skills. Due to the absence of the trained staff, psycho diagnostic researches are not conducted.

372 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Rule 52 2. 3.
373 Post Visit Report by the Public Defender of Georgia.
374 The Bangkok Rules, Rule 49.
375 The Nelson Mandela Rules, Rule 29.2.
376 *Ibid.,* Rule 51.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To take all necessary measures to ensure that women prisoners in establishment no. 2 are provided regular consultations on reproductive health care with a gynaecologist;
- To take all measures to ensure that women prisoners in penitentiary establishment no. 2 are provided with sanitary pads;
- To take all measures to ensure that rehabilitation activities tailored to the needs of women prisoners are offered to them in penitentiary establishment no. 2;
- To take all necessary measures to ensure that upon admission to a penitentiary establishment the search of women prisoners are conducted in the manner not degrading to their dignity;
- To take all measures to ensure that hot water is provided to women in cells for hygiene procedures;
- To take all measures that individual sentence planning for women prisoners contain specific activities which should be implemented in the rehabilitation process of convicted women;
- To ensure introduction of the practice of offering prisoners work that will help them enhance their qualification and use the obtained experience after release;
- To take all measure to ensure that in the process of separation of the mother and the child, psychological state of a child and the stage of its development is taken into account to a maximum degree and decisions are made based on the best interests of the child;
- To take all measures to ensure that psycho-diagnostic researches are conducted in the establishment and psychologists counsel mothers with a up to three-old child;
- To take all measures to ensure that women prisoners with a up to three-old child can benefit from special psychological educational sessions on developing child upbringing and care skills; and
- To take all measures to ensure that the prisoners living in building A, similar to the prisoners accommodated in buildings B and C have access to a computer, gym, and a salon.

The Persons Sentenced to Life Imprisonment

The persons sentenced to life imprisonment are placed in establishments nos. 6, 7 and 8 of the Penitentiary Department. These persons fall under the category of particularly vulnerable group. Accordingly, the treatment shall be such that will encourage their self-respect and develop their sense of responsibility.[377]

In accordance with the Recommendation of the Committee of Ministers of the Council of Europe, to prevent and counteract the damaging effects on life caused by long-term sentences, prison administrations should seek, inter alia, to offer adequate material conditions and opportunities for physical, intellectual and emotional stimulation and allow contacts with the outside world to the maximum degree.[378]

It should be noted that despite the recommendation made by the Public Defender in the Parliamentary Report of 2015 to the penitentiary establishments, accommodating the persons sentenced to life imprisonment, they

377 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 65 and 66.

378 Council of Europe, Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, Adopted by the Committee of Ministers on 9 October 2003, paras 21-25, available at: https://www.coe.int/t/dghl/standardsetting/cdpc/(Rec%20_2003_%2023%20E%20Manag%20PRISON%20ADM%20Life%20Sent%20Pris%20%20REPORT%2015_205).pdf [Last visited on 02.03.2017].

did not carry out diverse and systematic rehabilitation activities in 2016. In particular, in the course of the reporting period, rehabilitation activities were not at all carried out in penitentiary establishments nos. 6 and 7. According to the letter of the director of penitentiary establishment no. 6, as the establishment under his charge is a high risk prison facility, no rehabilitation activities aimed at receiving professional education, or learning a trade, etc., have been carried out for the prisoners placed at the establishment due to security reasons.[379]

As regards establishment no. 8, several persons sentenced to life imprisonment took part in educational and professional programmes (English language courses, driving courses, and Georgian language course) which is commendable. However, it is hard to consider the above-mentioned programmes to be regular, purposeful, and diverse activities that are tailored to individual needs. Therefore, the recommendation of the Public Defender of Georgia remains the same, namely, the persons sentenced to life imprisonment should be given an opportunity to participate in purposeful and diverse activities aimed at rehabilitation as well employment opportunities.

Under the recommendation of the Committee of Ministers of the Council of Europe, particular importance should be paid to ensuring that prisoners sentenced for life and other long-term sentences are given incentives to participate in drawing up their individual sentence plans.[380]

In 2015, the Public Defender of Georgia, recommended to the Minister of Corrections of Georgia to ensure the introduction of individual sentence planning for the persons sentenced to life imprisonment. The Public Defender commends the introduction of pilot programme of individual sentence planning for the persons sentenced to life imprisonment in establishment no. 8. However, the conversations held by the Special Preventive Group members with convicts revealed that the majority of them did not know anything about this programme.

The Special Preventive Group examined individual sentence planning for several persons sentenced to life imprisonment. The plans give general information about a convict's criminal record, dependence on alcohol and drugs, life style, values and interests. However, the plans are of general nature and do not contain specific actions that have to be carried out in the rehabilitation process of the persons sentences to life imprisonment. The individual plans do not give a full picture about the needs of a convict or the activities that have already been implemented by a specialist after the identification of the challenges, or the activities that are planned to be carried out in the future.

It is imperative that persons sentenced to life imprisonment are given an opportunity, under requisite supervision, to communicate with their family members and friends, both through correspondence and visits within regular intervals.

The European Committee for the Prevention of Torture emphasises in its report that the number of visits should not depend on the type of an establishment and the crime committed by a convict. It is imperative that life-sentenced prisoners are given more short and long visits that would facilitate maintaining strong ties with their family and contribute to their rehabilitation.[381]

Life-sentenced prisoners may enjoy 1 short visit a month and 1 additional short visit as an incentive.[382] Furthermore, life-sentenced prisoners may enjoy 2 long visits a year and 1 additional long visit as an incentive.[383]

379 Letter no. MOC7 17 00040633 of the head of penitentiary establishment no. 6, dated 17 January 2017 (registered under no. 03-3/205 in the Office of the Public Defender of Georgia).

380 Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies).

381 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2015, available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last visited on 14.03.2017].

382 Imprisonment Code of Georgia, Article 65.1.b).

383 *Ibid.,* Article 65.1.d).

The Public Defender observes that the number of visits should not depend on the type of an establishment and the crime committed by a convict. It should be taken into account that maintaining strong family ties is particularly important for life-sentenced persons and it can have a positive impact on the process of rehabilitation as well. Therefore, the Public Defender of Georgia observes that it is imperative to increase the number of short and long visits for the persons sentenced with life imprisonment.

The Public Defender commends the provision of the persons sentenced to life imprisonment with infrastructure designed for long visits in establishment no. 6. The practice of transferring life-sentenced persons from penitentiary establishment no. 8 to establishment no. 6 for long visits is also positively mentioned. However, the Public Defender emphasises that it is necessary to provide appropriate infrastructure for long visits in establishment no. 8 as well. Unfortunately, life-sentenced prisoners in establishment no. 7 could not use long visits in the course of the reporting year.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To take all necessary measures to ensure that the persons sentenced to life imprisonment are provided with diverse and systematic rehabilitation activities;
- To take all necessary measures to ensure the introduction of individual sentence planning tailored to the needs of the persons sentenced to life imprisonment;
- To take all necessary measures to ensure that that the persons sentenced to life imprisonment are given an opportunity to be employed if they wish so;
- To take all necessary measures to ensure that the persons sentenced to life imprisonment have maximum support in maintaining family ties; and
- To ensure drafting an amendment to the Imprisonment Code to the effect of increasing the number of short and long visits for the persons sentenced to life imprisonment; to submit the draft law to the Government of Georgia for its initiation before the Parliament of Georgia.

Proposal to the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of increasing the number of short and long visits for the persons sentenced to life imprisonment.

Remand Prisoners

In the reporting period, remand prisoners were placed in penitentiary establishments nos. 2, 3, 5, 6, 7, 8 and 9. In December 2016, there were 1,104 remand prisoners; among them were 42 women and 3 minors.

The Imprisonment Code stipulates the obligation of a designated person, immediately upon the admission of an remand person to a facility, to allow him/her to read written information about his/her rights and obligations, including the procedure for filing complaints and appeals provided by law.[384] However, monitoring conducted by the Special Preventive Group revealed that remand persons do not have adequate information about their own rights.

384 Imprisonment Code, Article 97.1.

Under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), untried prisoners shall be kept separate from convicted prisoners.[385] However, despite this requirement, during the monitoring visits conducted by the Special Preventive Group, remand and convicted persons were placed together in establishments nos. 2 and 8.

Under the Imprisonment Code,[386] living space standard per an remand person in a detention facility shall not be less than 3 m^2. Under the recommendation of the European Committee for the Prevention of Torture, living space standard per each prisoner shall not be less than 4 m^2.[387] Therefore, the Public Defender of Georgia observes that the penitentiary establishments should afford the living space of minimum 4m^2 per each prisoner.

Despite numerous recommendations made by the Public Defender of Georgia, the remand prisoners placed in penitentiary establishments are not provided with the living space of minimum 4m^2.

There are no rehabilitation programmes for remand prisoners in penitentiary establishments. The only activity that remand prisoners can benefit from is one-hour walk in the daytime.[388] As the monitoring conducted by the Special Preventive Group showed, remand persons, while spending all the time in a cell, do not have any opportunity to be engaged in activities interesting to them. The Public Defender of Georgia observed in the Parliamentary Report of 2015 that involvement of remand prisoners in rehabilitation programmes would have a positive effect on their health and well-being. The Public Defender recommended to the Minister of Corrections concerning these issues. However, this recommendation has not been fulfilled to date.

Under Rule 99 of the European Prison Rules, unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners, like other convicted prisoners, shall avail visits and shall be allowed to communicate with family and other persons. The United Nations Special Rapporteur on torture in the report on his mission to Georgia in 2015 pointed out the presumption of innocence of remand prisoners and stressed the importance of maintaining their family ties.[389]

Under the Imprisonment Code of Georgia, an remand person has the right to a short visit, correspondence and telephone calls.[390][1] Before 1 January 2016, remand persons needed the permission of an investigator, a prosecutor or a court for short visits, correspondence and telephone calls. Since 1 January 2016, these limitations have been lifted. However, in exceptional cases, an remand person may be restricted in his/her right to use short visit based on a reasoned resolution of an investigator or a prosecutor. [391][2] An remand person may be restricted in his/her right to correspondence and phone calls based on a reasoned decision of an investigator or a prosecutor.[392][3]

In 2016, remand persons were restricted in their rights to short visits, correspondence and telephone calls on 336 occasions.

The Public Defender stresses that it is imperative to restrict the contacts with the outside world only in exceptional cases. It should be used for the legitimate interests of investigation and under no circumstances should it amount to an additional punishment. Therefore, in order to avert any abuse of power on the part of an investigator/a prosecutor, every such restriction should seek legitimate interests of investigation and should be expressly reasoned.

385 Rule 112.
386 Imprisonment Code, Article 15.3.
387 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2015, available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last visited on 22.02.2017].
388 Imprisonment Code, Article 14.1.g).
389 Report of the Special Rapporteur of the United Nations, 6 November, 2015.
390 Imprisonment Code, Articles 77 and 79.
391 Imprisonment Code, Article 79.
392 Imprisonment Code, Article 79.

The Imprisonment Code in force does not provide for the right of remand prisoners to long visits. In the opinion of the Public Defender of Georgia, this restriction is unjustified and in breach of the well-established case-law of the European Court of Human Rights.[393] Therefore, the Public Defender observes that the Imprisonment Code should be amended to the effect of determining the right of remand prisoners to long visits with due account to the interests of investigation.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To increase the time remand prisoners can spend daily in the open air;
- To take all necessary measures to insure the involvement of remand prisoners in rehabilitation activities;
- To ensure drafting of an amendment to the Imprisonment Code to the effect of determining a minimum living space of 4 m^2 for remand prisoners; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia; and
- To ensure drafting of an amendment to the Imprisonment Code to the effect of determining the right of remand prisoners to long visits; to submit the draft amendment to the Government of Georgia for its initiation in the Parliament of Georgia.

Proposal to the Parliament of Georgia:

- To amend the Imprisonment Code to the effect of determining minimum living space of 4 m^2 for remand prisoners; and
- To amend the Imprisonment Code to the effect of determining the right of remand prisoners to long visits with due account to the interests of investigation.

Particularly Vulnerable Persons[394]

LGBTI persons fall under the category of particularly vulnerable. Therefore, in those penitentiary establishments where persons deprived of their liberty are under full control of the state, the risks for discriminatory treatment, violence and stigmatisation are even higher.

In accordance with the recommendation of the Committee of Ministers of the Council of Europe, the Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by

393 *Varnas v. Lithuania*, application no. 42615/06, judgment of the European Court of Human Rights of 9 July 2013. As to the reasonableness of the justification of difference in treatment between remand detainees and convicted prisoners, the Court acknowledges that the applicant in the present case had been charged with belonging to a criminal association and to an organised group involved in multiple car thefts. However, it also finds that the security considerations relating to any criminal family links were absent in the present case. The Court observed that the applicant's wife was neither a witness nor a co-remand in the criminal cases against her husband, which removed the risk of collusion or other forms of obstructing the process of collecting evidence. The Court eventually found that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (the right to respect for private and family rights) of the Convention.

394 See this issue in detail in the Parliamentary Report by the Public Defender of Georgia of 2015, especially vulnerable groups, p. 134, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf.

other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.[395]

According to the outcomes of the monitoring conducted by the Special Preventive Group of the Public Defender of Georgia, the prisoners enrolled in maintenance services, in charge of cleaning services, usually are not self-identified LGBTI persons. However, they are associated with LGBTI persons by other prisoners and this causes the difference in treatment. The prisoners in charge of cleaning services are referred to with offensive language by other prisoners and sometimes even the administrative personnel. This, in the opinion of the members of the Special Preventive Group, is caused by the influence of the criminal subculture existing in penitentiary establishments.

The prohibition of discrimination takes on particular importance when an inmate is subjected to difference in treatment. Under the well-established case-law of the European Court of Human Rights, where the distinction in question operates in this intimate and vulnerable sphere of an individual's private life, particularly weighty reasons have to be advanced before the Court to justify the measure complained about.[396] Furthermore, an inmate should be separated from other prisoners, he or she should be placed in a location that meets his/her medical needs and well-being.[397] The authorities have an obligation, which was incumbent on them under Article 14 of the Convention taken in conjunction with Article 3, to take all possible measures to determine whether a discriminatory attitude had played a role in adopting the measure totally excluding the applicant from prison life.[398]

Unfortunately, under the existing circumstances in penitentiary establishments, the prisoners employed in maintenance services, prisoners in charge of cleaning services, are stigmatised, isolated from the everyday life of the rest of the establishment and are marginalised. At the same time, there is a high risk of subjecting them to violence. There is an impression that the personnel of an establishment follow the informal rule of prison and turn a blind eye to the existing situation.

In the Parliamentary Report of 2015, the Public Defender of Georgia made numerous recommendations to the Minister of Corrections of Georgia concerning the measures that would contribute to the eradication of these problems. However, none of these recommendations has been fulfilled. With regard to the 6[th399] recommendation made by the Public Defender, according to the response received from the Ministry of Corrections,[400] enhancement of social work is one of the priorities of the Ministry, since this work makes one of the most significant contributions to the process of a convicted person's rehabilitation and re-socialisation, which later decreases the incidents of recidivism. In 2016, as the result of the efforts of social workers and psychologists of the penitentiary establishments, it was possible to involve the convicted persons enrolled in maintenance services in the same rehabilitation activities that are offered to other convicted persons. According to the communication from the Ministry, presently some of the penitentiary establishments can already offer all convicted persons the same space for similar activities. In all penitentiary establishments, depending on the existing infrastructure, there is a place where remand/convicted persons can have confidential meetings with a psychologist. In 2016, psychologists and social workers of penitentiary establishments managed to involve 30

395 Council of Europe, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, March 31, 2010, § 4;

396 *X v. Turkey*, application no. 24626/09, judgment of the European Court of Human Rights of 9 October 2012, para. 50; Alekseyev v. Russia, applications nos. 4916/07, 25924/08 and 14599/09), judgment of the European Court of Human Rights of 21 October 2010, para. 108; *Kozak* v. Poland, application no. 13102/02, judgment of the European Court of Human Rights of 2 March 2010, para. 83.

397 *Martzaklis and others v. Greece*, application no. 20378/13, judgment of the European Court of 9 July 2015, para. 71.

398 *X v. Turkey*, application no. 24626/09, judgment of the European Court of Human Rights of 9 October 2012, para. 55.

399 To take all necessary measures to enhance the support of psychologists and social workers with the prisoners employed in the economic service towards their acceptance among prisoners and for the prevention of self-isolation and self-harm. It is important to address specifically during the conversations with prisoners the notorious influence of the informal rule of the prison that contributes to violence among prisoners, as well as insults, stigmatisation and marginalisation.

400 The Opinions of the Ministry of Corrections of Georgia on the Recommendations Determined by the Resolution of the Parliament of Georgia regarding the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia in 2015.

representatives of the particularly vulnerable group of prisoners enrolled in maintenance services in various psychological and rehabilitation programmes.

The Public Defender commends the steps made by the Ministry of Corrections towards involving the convicts falling under of particularly vulnerable categories in rehabilitation programmes. However, it should be pointed out that the situation in the penitentiary establishments in this regard has not changed compared to the previous year. As the Public Defender observed in the Parliamentary Report of 2015, stemming from the unwritten (informal) rules of the prison, the prisoners in charge of cleaning services and accommodated separately (barred out) are not allowed to have any physical contact or verbal communication with other convicts. According to the established rules, it is prohibited to speak with them, take an object handed by them, shake hands with them or acknowledge them in any way, use the items used by them and, in general, be in the same area with them. Accordingly, these prisoners are less involved in the existing rehabilitation or other activities implemented in penitentiary establishments. The administration explains such classification in terms of security reasons. It is considered that this is the only way to protect prisoners' interests and the regime of the penitentiary establishment.

Redeeming this situation necessitates considerable efforts from the Ministry of Corrections of Georgia. In the first place, it is necessary to acknowledge the problem in a timely fashion and start searching for the means for its solution. It is imperative to make coherent and decisive steps towards the eradication of the informal rule of the prison and establishment of the human rights based approach of the prison management.

Since none of the recommendations given last year have been fulfilled, for the protection of the rights of LGBTI persons, considering their special importance, the Public Defender of Georgia once again calls upon the Minister of Corrections of Georgia to tackle in full seriousness the accomplishment of the said recommendations.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- To ensure the elaboration of a strategy and guidance principles aimed at preventing discriminatory treatment of LGBTI prisoners on the account of sexual orientation and gender identity and eradicating discriminatory segregation;
- To ensure there are specific activities aimed at raising awareness among the personnel of penitentiary establishments about the rights of LGBTI persons, international standards and possible risks associated with the placement in closed institutions;
- To take all necessary measures, with regard to personnel, such as through enhanced control over the exercise of their rights and fulfilment of their duties in good faith, as well as through the use of disciplinary sanctions to prevent discriminatory and degrading treatment and treatment leading to stigmatisation of vulnerable persons in penitentiary establishments;
- To take all necessary measures to ensure that LGBTI prisoners, prisoners enrolled in maintenance service and in charge of cleaning services, are involved, in safe circumstances, in various rehabilitation, educational, sporting, cultural and other activities planned by penitentiary establishments;
- To ensure the involvement of the representative groups of the NGOs and other CSOs working on the rights of LGBTI persons in the process of elaboration and implementation of special programmes;

- To take all necessary measures to enhance the support of psychologists and social workers with the prisoners employed in the maintenance service towards their acceptance among prisoners and for the prevention of self-isolation and self-harm. It is important to specifically address during the conversations with prisoners the notorious influence of the informal rule of the prison that contributes to violence among prisoners, as well as insults, stigmatisation and marginalisation;
- To take all necessary measures to ensure that all convicts equally use the yard of a penitentiary establishment; and
- To take all necessary measures to ensure the involvement of the prisoners enrolled in maintenance service and LGBTI prisoners in rehabilitation programmes.

Representatives of Ethnic and Religious Minorities, Foreign Citizens and Stateless Persons

Foreign citizens and representatives of ethnic or religious minorities placed in penitentiary establishments fall under the category of particularly vulnerable prisoners. The particular problem is linguistic barrier because of which majority of prisoners do not know anything about their statutory entitlements. Under the European Prison Rules, linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.[401]

Under the Nelson Mandela Rules, the information shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.[402] This implies provision of information about prison law and applicable prison regulations; his or her rights and obligations, and all other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.[403]

As of December 2016, there were foreign nationals from 35 countries and stateless persons in the penitentiary system of Georgia. By the end of December 2016, their number amounted to 338 (3.6% of the total number of remand and convicted persons.[404]

It should be pointed out that in penitentiary establishment no. 8, where in the course of 2016, 153 foreign prisoners/stateless prisoners were held annually on average, the services of an interpreter were used only 8 times in a year.[405] Whereas in establishment no. 2, where the average annual number of foreign prisoners/stateless prisoners amounts to 50, the services of an interpreter were used 129 times a year.[406] Furthermore, in establishment no. 5, where the average annual number of foreign prisoners/stateless prisoners amounts to 36, the services of an interpreter were used 112 times a year.[407]

However, in penitentiary establishment no. 9, where the average annual number of foreign prisoners/stateless prisoners amounts to 24, the services of an interpreter were not used at all during the year.[408]

401 European Prison Rules, Rule 38.3.
402 The Nelson Mandela Rules, Rule 55.
403 *Ibid.,* Rule 54.
404 The Ministry of Corrections of Georgia, the Unified Report on Penal Statistics, December 2016, available at: http://www.moc.gov.ge/images/temp/2017/02/08/93746902cb8a5fb18b5c2f521e458623.pdf [Last visited on 18.02.2017].
405 Letter no. MOC 617 00046221 of the director of penitentiary establishment no. 8, dated 20 January 2017 (registered under no. 03-3/273 at the Office of the Public Defender of Georgia).
406 Letter no. MOC 117 00037938 of the director of penitentiary establishment no. 2, dated 17 January 2017 (registered under no03-3/200 at the Office of the Public Defender of Georgia).
407 Letter no. MOC 317 00036373 of the director of penitentiary establishment no. 5, dated 16 January 2017 (registered under no. 03-3/193 at the Office of the Public Defender of Georgia).
408 Letter no. MOC 917 00044181 of the director of penitentiary establishment no. 9, dated 18 January 2017 (registered under no. 03-3/193 at the Office of the Public Defender of Georgia).

It can be concluded based on the presented data that there is no uniform practice of using the services of an interpreter in penitentiary establishments. In some of the penitentiary establishments, despite having a large number of foreign prisoners/stateless prisoners, the insignificant number of occasions where the services of interpreters were afforded shows that interpretation services are not adequately provided in these establishments.

The foreign prisoners, due to their language barriers, face problems in communication with prison personnel. It is especially problematic to maintain communication with the medical staff. Despite the fact that on some occasions an interpreter is called in, usually foreign prisoners face problems in communication with the personnel of their penitentiary establishment.

The Public Defender welcomes printing a brochure on the rights of foreign prisoners in various languages. However, due to the limited number of publications, sufficient copies are unavailable for all foreign prisoners. The Special Preventive Group members found out in their conversations with foreign prisoners that the convicts were not adequately informed about their rights in the language they would understand. The majority of them were not given the information translated in the language they would understand about their rights.[409] Informing foreign prisoners about their rights is similarly problematic in penitentiary establishments. The Public Defender stresses that imparting this information to prisoners is important for ensuring prisoners follow the regime existing in the given penitentiary establishment and observe discipline.

Under the European Prison Rules, prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.[410] It should be noted that despite the recommendations made by the Public Defender of Georgia in the Parliamentary Report of 2015, the dietary needs of various religions are not taken into consideration when preparing food in penitentiary establishments. Therefore, they frequently refuse to eat the food offered to them. It is, therefore, imperative to take into account the religious factor when preparing the menu.

Foreigners can experience particular isolation in prison as they may not speak the language or receive many visits from family and friends. Access to the outside world therefore takes on a heightened importance for them; for instance, maintain contacts with relatives, friends, representatives of consular services, various civil societies and volunteers. Telephone calls for detained prisoners in some cases are the only means to maintain ties with relatives. Under the recommendation of the Committee of Ministers of the Council of Europe, indigent foreign prisoners shall be assisted with the costs of communicating with the outside world.[411]

Detaining authorities should seek alternate ways to ensure that foreign nationals are still able to maintain contact with their community; for example, providing additional or accumulated time to use the telephone, enabling them to call at hours that take into account the time differences, and where resources allow, financial assistance to cover the cost of international phone calls. Detainees should be charged the cheapest possible call rates for international calls.[412]

The members of the Special Preventive Group found out from the conversations with foreign prisoners that foreign prisoners face challenges in terms of communicating with their family members. According to the foreign prisoners, they cannot afford to talk frequently with their family members due to the cost of phone calls abroad. Besides, sending letters and receiving parcels appear to be costly for the foreign prisoners. It should be noted that due to geographical distance, foreign prisoners are practically deprived of the possibility

409 The visits made by the Special Preventive Group in 2016.

410 European Prison Rules, Rule 22.1.

411 Council of Europe, Recommendation CM/Rec(2012)12 of the Committee of Ministers to Member States concerning foreign prisoners, adopted by the Committee of Ministers on 10 October 2012 at the 1152nd meeting of the Ministers' Deputies, para. 22.4, available in English at: http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2012)+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f [Last visited on 13.02.2017];

412 Association for the Prevention of Torture (APT), Detention Focus; telephone contact with the outside world, available at: http://www.apt.ch/detention-focus/en/detention_issues/6/ [Last visited on 10.02.2017].

to enjoy long and short visits with their relatives. The similar problems are faced by those citizens of Georgia whose family members reside outside the country.

The Public Defender observes that the Ministry of Corrections of Georgia should ensure that foreign prisoners, as well as those citizens of Georgia whose family members leave outside the country, should be able to make international calls and send correspondence at reasonable and accessible prices. The costs of the indigent prisoners for maintaining contacts with the outside world should be subsidised by the state.

Under the Imprisonment Code, if an remand/convicted person does not have his/her personal clothes, the administration shall provide him/her with special uniforms that are not degrading to human dignity, according to the season.[413] The monitoring conducted by the members of the Special Preventive group revealed that the provision of some of the foreign prisoners with clothing according to the season remains problematic.

During the monitoring visits, the Special Preventive Group found out that foreign prisoners, unlike other prisoners, could not participate in the activities available in their establishments. The foreign prisoners interviewed by the Special Preventive Group members claimed that there are no rehabilitation programmes run by penitentiary establishments for them stating language barriers as the main reason for that.

While there are the Georgian language courses offered by penitentiary establishments for foreign prisoners on some occasions, however, it should be noted that it is impossible to learn language within three-month and six-month courses; moreover, these courses are not systematic. According to some of the foreign prisoners, despite their wish, they were not given an opportunity to participate in the Georgian language courses.

RECOMMENDATIONS

To the Minster of Corrections of Georgia:

- To take all necessary measures to ensure that foreign prisoners are adequately informed in the language understandable to them;
- To take all necessary measures to ensure that prisoners placed in all penitentiary establishments are handed a brochure about their rights and duties;
- To take all necessary measures to ensure that prisoners, if needs be, are provided by interpretation services;
- To take all necessary measures to ensure that foreign prisoners, as well those citizens of Georgia, whose family members leave outside the country, are able to make international telephone calls and send correspondence at reasonable and accessible prices;
- To take all necessary measures to ensure that the costs of the indigent prisoners for maintaining the contacts with the outside world are subsidised by the state;
- To take all necessary measures to ensure that foreign prisoners are provided with the clothes according to season; and
- To take all necessary measures to ensure that foreign prisoners can participate in rehabilitation programmes.

413 Imprisonment Code, Article 22.1.

THE SITUATION IN AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS

INTRODUCTION

The present chapter deals with the findings of the monitoring conducted by the National Preventive Mechanism in police divisions and temporary detention isolators within the Ministry of Internal Affairs of Georgia.

In 2016, monitoring was carried out in 58 police divisions and 27 temporary detention isolators. Apart from the monitoring visits, the members of the Special Preventive Group had meetings in regions with local lawyers and NGO representatives. The Special Preventive Group obtained information regarding protection of the rights of arrested persons and the situation in the regions. In total, six such meetings were held in 2016.

The members of the Special Preventive Group studied the arrestees log books in police divisions and registration journals of detained persons maintained in temporary detention isolators; visually examined the administrative buildings of police divisions; and interviewed division personnel.

The monitoring group members inspected isolators' infrastructure and interviewed personnel, detained persons, studied case-files in temporary detention isolators. For obtaining systematised information from case-files, the monitoring group used a specifically designed questionnaire.

In 2016, similar to 2015, the group members examined the case-files of all arrestees placed in isolators from 1 January 2016 until the day of the visit. The questionnaire was filled only in those cases where a particular case-file raised suspicions about the circumstances of an arrest, localisation, number and nature[414] of injuries. In total, 950 such case-files were studied. The qualitative analysis of the data obtained through the pre-designed questionnaire was performed using the Statistical Program (SPSS). For interviewing police officers, the Special Preventive Group used a pre-designed questionnaire. Furthermore, the Group requested additional information about involvement of lawyers and contacting families in particular cases. The monitoring group examined 439 case-files through the random sampling method.

In the course of preparing the report, six proposals sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2016 have also been applied. These proposals relate to the incidents of alleged violence by police officers against arrestees. In the process of the drafting the report, the data obtained from the Ministry of Internal Affairs have also been analysed; desk research of Georgian legislation and international standards was also performed.

414 The questionnaire would not be filled in if an arrestee only had scar marks, scabs or minor scratches.

GENERAL OVERVIEW

In 2016, the number of detained persons in temporary detention isolators is less in comparison to 2015. However, there is an increase in the number of placement of arrestees with injuries as well as the complaints lodged by them against the police. For the past four years, the average number of placement of arrestees with injuries as well as the complaints lodged by them against the police is the highest in 2016. Furthermore, in 2016, the number of incidents of injuries inflicted during arrests or thereafter has also increased, in comparison to 2015.

The monitoring revealed a trend of not registering injuries in arrest reports but described in external examination report; or external examination reports describe more bodily injuries than arrest reports. While this could be caused by shortcomings in examination and documentation of bodily injuries during arrest, there are serious misgivings that injuries might have been inflicted under police control.

During the study, those cases where analysed considering the arrest circumstances, it can be assumed with high probability that police would resort to force. However, it is clear that police officers are reluctant to indicate the use of force in arrest reports, which increases suspicions that they could have used excessive force and ill-treatment.

The Public Defender regretfully observes that there were incidents revealed in 2016 where persons were held in police custody when the measure was unlikely to be necessary. This is an extremely alarming practice as this is the situation where there is a high risk of physical violence and psychological pressure being exerted by the police. Accordingly, the Public Defender observes that it is necessary to transfer arrestees to temporary detention isolators as soon as possible as these are relatively secure places.

The Public Defender observes with regret that the Chief Prosecutor's Office maintained the previous practice of instituting criminal proceedings. Instead of instituting criminal proceedings regarding incidents of alleged torture and inhuman or degrading treatment; investigations are launched under Article 333 (abuse of official power) of the Criminal Code.

One of the problems that still persisted in the reporting period was the notorious practice of 'conversations' conducted in police vehicles or police stations without the consent of the persons concerned, which was dealt with in the 2015 Parliamentary Report of the Public Defender. As the members of the Special Preventive Group became aware, those persons who recently left a penitentiary establishment or those who are perceived as a risk group by police due to their criminal past or other reasons are the main target of this practice. The Public Defender observes that public order and security should not be maintained through unreasonable restriction of fundamental human rights.

As the result of the inspections carried out by the Special Preventive Group, it was revealed in a number of cases that the time of admission of persons to police station precedes the time of their formal arrest. In such cases, usually, a person is summoned as a witness, certain investigative actions are conducted with his/her participation and after the lapse of certain time, the person is formally arrested. However, the person is not read his/her rights (among them, right to a legal counsel) when he is brought as a witness to a police station; his/her personal items, including a mobile phone are taken away. This way, these persons are deliberately limited in their rights to contact their family and call a lawyer.

It is an alarming trend that out of the studied case-files almost in half of the cases arrestees had no lawyer at all. Besides, in those cases, where an arrestee did have a lawyer, the latter was involved in the proceedings after the lapse of certain time from the arrest (in one or two days).

In terms of accessibility to legal consultation, it is important to increase the number of legal aid lawyers employed in the bureaus of the Legal Aid Service. Requisite finances should be allocated to this end so that those persons who cannot afford to hire a legal counsel are promptly provided with effective legal services.

The Public Defender of Georgia positively assesses the approval of the Instructions on Medical Assistance of the Inmates of Temporary Detention Isolators. The Instructions are in compliance with the CPT standards and reflect the Public Defender's recommendations made in the past years concerning timely and adequate medical services, medical ethics and documenting injuries, which is a step forward. At the same time, the Public Defender emphasises the importance of the accurate and comprehensive implementation of the Instructions. The Public Defender also calls upon the Ministry of Internal Affairs to consider creating additional safeguards for isolators' medical personnel by transferring the system to the Ministry of Health-Care.

In the opinion of the Public Defender, the confidentiality of the initial medical examination of persons placed in isolators remains a challenge. Usually, there is a notice in external examination reports and examination is conducted by a doctor, which means that a health-care professional and the isolator's staff member jointly carried out screening and medical examination of a person placed in a temporary detention isolator.

The fact that the minimum term of storage was defined in the reporting period is assessed positively. During video surveillance, information is recorded automatically. The recorded material is stored in a central control room for no less than 24 hours. When the memory of the recording device is full, fresh information is recorded on the same device after erasing the existing information. However, the Public Defender believes that the storage of recordings for 24 hours does not ensure attaining the objective sought and, accordingly, all measures should be taken so that the recordings are stored for a reasonable time.

It is still a problem in 2016 to have external and internal premises of police divisions covered adequately by video cameras. Video cameras are not installed either on external or internal premises of some regional police divisions. In a great majority of those divisions, where internal premises are covered by video surveillance, the cameras are mostly installed at the entrance, in front of the place allocated for an on-duty operative. This does not ensure complete surveillance of the internal premises of the administrative buildings.

The Public Defender welcomes the introduction of a five-day term for the consideration of complaints lodged from temporary detention isolators, as well as the statutory regulation of the provision of inmates with envelopes for confidential complaints.

The Public Defender considers it most important to regulate the police work schedule not only in terms of protection of police officers' labour rights, but also in the respect that it has significant effect on adequate treatment of arrestees by police. The police officers working long hours without adequate break are likely to get exhausted and be under stress. This, in turn, would adversely affect their psycho-emotional condition and, hence, behaviour.

The Public Defender welcomes the fact that there is a mandatory special education programme for the youths recruited by law-enforcement bodies, junior lieutenants, district inspectors, detective-investigators and patrol-inspectors.

It can be concluded as the result of examination of the syllabuses of the study programmes that the major human rights topics are included. The Public Defender, however, considers that a single training on important human rights issues and the duration allocated for human rights topics in the curriculum cannot ensure theoretical and practical comprehension of key human rights problems within special educational programme of law enforcement officers. The Public Defender considers it important that the methodology of each study programme and training session included examination and assessment of participants through observation of their involvement in various practical simulated situations and role-plays. Furthermore, in the opinion of the Public Defender, close attention should be paid to teaching police officers on use of force so that they could correctly assess particular situations and use adequate methods of the use of force that have been pre determined.

The Public Defender welcomes the renovation of the infrastructure and living conditions at the temporary detention isolators of the Ministry of Internal Affairs in 2016. However, the existing conditions in temporary detention isolators still need considerable improvement and bringing closer to international standards.

The Public Defender observes that, along with the positive changes, the negative trends identified in 2015 still unfortunately persist in 2016. The data processed by the Special Preventive Group show that the use of excessive force, physical and psychological violence exerted after arrest, failure to provide arrestees with adequate safeguards and shortcomings in documenting bodily injuries remain a challenge for the police system. Therefore, the Public Defender observes that it is particularly important to introduce strict control on policing and increase their accountability. It is necessary that police officers receive a clear message from their superiors that violation of human rights will not go unpunished.

SITUATION IN TERMS OF PREVENTION OF TORTURE AND OTHER ILL-TREATMENT

No one shall be subjected to torture[415] or inhuman or degrading treatment or punishment.[416] Under Article 10 of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. The United Nations Human Rights Committee 'believes that here the Covenant expresses a norm of general international law not subject to derogation."[417]

According to the well-established case-law of the European Court of Human rights, with respect to a person deprived of liberty, recourse to physical force which has not been made strictly necessary by his/her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.[418] Furthermore, in the opinion of the European Court, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.[419]

In those situations where injuries have been inflicted during arrest, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive.[420] Furthermore, police officers should use minimum force during arrests so that physical injuries are not inflicted on an arrestee. Under the domestic law, to perform police functions, a police officer may use suitable and proportionate coercive measures only in the case of necessity and to the extent that shall ensure achievement of legitimate objectives.[421] The form and extent of a coercive measure shall be defined based on a given situation, the nature of an offence and individual peculiarities of the offender. In addition, a police officer must try to cause minimal damage while carrying out a coercive measure.[422]

415 Under Article 1 of the UN Convention against Torture, for the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

416 The Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3.

417 General Comment no. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31. August 2001, para. 13(a), accessible in the UN official languages at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en> [last visited on 24.03.2017].

418 *Labita v. Italy*, application no. 26772/95, judgment of the Grand Chamber of the European Court of Human Rights of 6 April 2000, para. 120.

419 *Salman v. Turkey*, application no. 21986/93, judgment of the Grand Chamber of the European Court of Human Rights of 27 June 2000, para. 100.

420 *Rehbock v. Slovenia*, application no. 29462/95, judgment of the European Court of Human Rights of 28 November 2000, para. 72.

421 The Law of Georgia on Police, Article 31.1.

422 *Ibid.,* Article 31.4.

It is important to bear in mind the landmark case against Georgia, where the European Court found the violation of Article 3 in its substantive limb on the account of ill-treatment of the applicant by Tskaltubo police officers of the Ministry of Internal affairs and in procedural limb on the account of the failure of the prosecutor's office to conduct effective investigation.[423]

The Office of the Public Defender of Georgia requested statistics from the Ministry of Internal Affairs of Georgia. The number of persons placed in temporary detention isolators, the statistics of bodily injuries found on the detained persons of temporary detention isolators and the number of complaints filed against police according to years are shown in the below tables.[424]

no.	Data According to Years	2013	2014	2015	2016
1	Number of persons placed in TDIs	16553	17087	16416	13081
2	Persons with injuries	7095(42.9 %)	6908(40.4 %)	5992(36.5 %)	6417 (49 %)
3	Complaints filed against police	111 (0.8 %)	198 (1.1 %)	168 (1 %)	193 (1.5 %)

According to the data in the above tables, in 2016, compared to 2015, the number of persons placed in temporary detention isolators decreased by 20.3 %. At the same time, in 2016, compared to 2015, the number of cases, where persons were placed with injuries increased by 12.5 %. There is an increase by 25 (12.9 %) in the number of complaints lodged against police. Besides, the average number of complaints against police *vis-a-vis* the number of persons placed in temporary detention isolators is 1.5% in 2016. The similar indicator in 2015 was 1%.

It is particularly alarming that, in 2016, the average number (juxtaposed to the total number) of persons placed in isolators that have bodily injuries and who filed complaints against police is the highest within the past four years.

Number of Incidents of Inflicting Bodily Injuries in 2015 and 2016	2015	2016
Before arrest	5635	6009
During arrest	243	254
After arrest	52	53
Before arrest - during arrest	47	76
Before arrest - after arrest	10	20
During arrest - after arrest	4	2
Before arrest - during arrest - after arrest	1	3
	Total: 5992	**Total: 6417**

The analysis of the official statistics received from the Ministry of Internal Affairs of Georgia given in the above tables shows that, in 2015, the total number of incidents involving inflicting injuries either during or after arrests amounts to 357. This is 5.9 % of the total number of the incidents. The similar indicator is 408 in 2016 and accordingly amounts to 6.3% of the total number of incidents. The number of incidents involving inflicting injuries either during or after arrests increased by 51 (12.5%) in 2016, compared to 2015.

Within the monitoring, information was requested from the Ministry of Corrections of Georgia regarding the statistics of persons admitted to penitentiary establishments with bodily injuries. The statistics are given in the below tables:[425]

423 *Dvalishvili v. Georgia*, application no. 19634/07, judgment of the European Court of Human Rights of 18 December 2012.
424 Letter no. MIA 1 17 00306720 from the Ministry of Internal Affairs of Georgia of 7 February 2017 (registered in the Office of the Public Defender on 9 February 2017 under no. 1935/17).
425 Letter no. MOC 3 17 00074038 of the Ministry of Corrections of 30 January 2017.

Year	Placed in Total	Injury Before Arrest	Injury During Arrest	Injury After Arrest	Not Registered	Incidents in Total
2015	6294	818 (86 %)	88 (9.2 %)	37 (3.9 %)	8 (0.8 %)	951 (100 %)
2016	5287	764 (79.3 %)	91 (9.5 %)	103 (10.7 %)	5 (0.5 %)	963 (100 %)

The analysis of the data received from the Ministry of Corrections shows that, in 2015, 15.1% of the remand persons admitted to penitentiary establishments had bodily injuries and 18.2% in 2016. In 2016, compared to 2015, the average number of those incidents where arrestees stated that bodily injuries were sustained before arrest, decreased by 6.7% juxtaposed to the total number of admissions with bodily injuries.

The percentage proportions of injuries inflicted during arrest remain practically the same. Particularly noteworthy is that the average number of injuries inflicted after arrest increased by 6.8%. In 2015, injuries after arrest were reported by 37 persons placed in penitentiary establishments, and in 2016 such injuries were reported by 103 remand persons. It stems from the aforementioned that number of such incidents increased by 64.1% in 2016, which is alarming.

According to the analysis of the data submitted by the Ministry of Internal Affairs of Georgia regarding admission of persons with bodily injuries to temporary detention isolators, the total number of incidents where bodily injuries were inflicted after arrest amounts to 67 in 2015; 78 in 2106. This means the numbers have increased by 14.1%, in 2016. As regards the average number of such incidents juxtaposed to the total number of the admissions of arrestees with bodily injuries to isolators, it amounted to 1.1% in 2015 and 1.2% in 2016. It is obvious that these numbers are significantly less than the similar data on remand persons with bodily injuries placed in penitentiary establishments. It is evident that according to the data of the Ministry of Internal Affairs of Georgia, in 2016, 78 arrestees (both in criminal and administrative proceedings) in total reported injuries after arrest, whereas 103 remand admitted into penitentiary establishments reported bodily injuries sustained after arrest.

The analysis of the case-files studied during the monitoring conducted in the reporting period showed numerous significant trends. The incidents of injuries studied during the monitoring are given in the below tables:

no.	Isolator	Arrestees at the Time of Monitoring	Number of Questionnaires[426]	Time of Conducting Monitoring
1.	Kakheti Regional TDI (Telavi)	224	47 (21 %)	07.2016
2.	Sagarejo TDI	92	30 (32.6 %)	07.2016
3.	Sighnaghi TDI	96	13 (13.5 %)	07.2016
4.	Kvareli TDI	194	53 (27.3 %)	07.2016
5.	Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti Regional TDI (Kutaisi)	92	36 (39.1 %)	06.2016
6.	Zestaponi TDI	124	16 (12.9 %)	09.2016
7.	Baghdati TDI	141	22 (15.6 %)	09.2016
8.	Tchiatura TDI	71	13 (18.3 %)	09.2016
9.	Samtredia TDI	169	34 (20.1 %)	09.2016
10.	Ambrolauri TDI	31	4 (12.9 %)	09.2016
11.	Samegrelo and Zemo Svaneti regional TDI (Zugdidi)	183	15 (8.2 %)	08.2016

426 With the view of obtaining systematised information from case-files, the monitoring group used a specifically designed questionnaire.

12.	Zugdidi TDI	125	7 (5.6 %)	08.2016
13.	Senaki TDI	187	12 (6.4 %)	08.2016
14.	Poti TDI	161	17 (10.5 %)	08.2016
15.	Khobi TDI	126	14 (11.1 %)	08.2016
16.	Chkhorotsku TDI	126	7 (5.5 %)	08.2016
17.	Mestia TDI	13	2 (15. 4 %)	08.2016
18.	Ajara and Guria Regional TDI (Batumi)	1381	162 (11.7 %)	12.2016
19.	Kobuleti TDI	284	22 (7.7 %)	11.2016
20.	Ozurgeti TDI	110	22 (20 %)	11.2016
21.	Lanchkhuti TDI	28	2 (7.1 %)	11.2016
22.	Borjomi TDI	49	13 (28.3 %)	10.2016
23.	Akhaltsikhe TDI	155	14 (9 %)	10.2016
24.	Tbilisi no. 1 TDI	279	23 (8.2 %)	05.2016
25.	Tbilisi no. 2 TDI	2774	349 (12.6 %)	07.2016

According to the analysis of the above table, out of those isolators where the average number of the noteworthy incidents identified by the Special Preventive Group and documented with the questionnaires is not less than 20% in terms of the total number of detained persons placed in temporary detention isolators at the time of the monitoring visits, the most noteworthy incidents were revealed in Imereti, Ratcha-Lechkhumi and Kvemo Svaneti regional TDI in Kutaisi (39.1 %), Sagarejo TDI (32.6 %), Borjomi TDI (28.3 %), Kvareli TDI (27.3 %), Kakheti Regional TDI in Telavi (21 %), Samtredia TDI (20.1 %) and Ozurgeti TDI (20 %).

Within the study, the dynamics have been studied, compared to 2015. See in the below tables, the comparison of the percentage, proportions according to TDIs, between the noteworthy incidents revealed in the regions during monitoring conducted in 2015 and 2016.

no.	Isolator	2015	2016
1.	Kakheti Regional TDI (Telavi)	14.7 %	21 %
2.	Sagarejo TDI	15.8 %	32,6 %
3.	Sighnaghi TDI	4.8 %	13.5 %
4.	Kvareli TDI	9.7 %	27.3 %
5.	Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti Regional TDI (Kutaisi)	15 %	39.1 %
6.	Zestaponi TDI	10 %	12.9 %
7.	Baghdati TDI	11.3 %	15.6 %
8.	Tchiatura TDI	22.8 %	18.3 %
9.	Samtredia TDI	12.6 %	20.1 %
10.	Samegrelo and Zemo Svaneti regional TDI (Zugdidi)	11 %	8.2 %
11.	Zugdidi TDI	8.6 %	5.6 %
12.	Senaki TDI	6.7 %	6.4 %
13.	Poti TDI	9.9 %	10.5 %
14.	Khobi TDI	10.8 %	11.1 %

15.	Chkhorotsku TDI	9 %	5.5 %
16.	Ajara and Guria regional TDI (Batumi)	10.4 %	117 %
17.	Kobuleti TDI	16.9 %	7.7 %
18.	Ozurgeti TDI	16.9 %	20 %
19.	Lanchkhuti TDI	0	7.1 %
20.	Borjomi TDI	39.7 %	28.3 %
21.	Akhaltsikhe TDI	23.9 %	9 %
22.	Akhalkalaki TDI	5.3 %	0

Based on the analysis of the above tables, the following should be assessed positively: the percentage proportions of the noteworthy incidents decreased in 2016, compared to 2015 in the temporary detention isolators of Akhaltsikhe (by 14.9 %); Borjomi[427] (by 11.4%); Kobuleti (by 9.2%); Tchiatura (by 4.5%); Chkhorotsku (3.5%); Zugdidi (by 3 %); and Samegrelo and Zemo Svaneti Regional TDI in Zugdidi (by 2.8%). The Special Preventive Group has not revealed noteworthy incidents in Akhalkalaki temporary detention isolator.

In 2016, the percentage proportions increased by more than 5% in Imereti; Ratcha-Lechkhumi and Kvemo Svaneti Regional TDI in Kutaisi (by 24.1%); Kvareli TDI (by 17.6%); Sagarejo (16.8%); Sighnaghi (by 8.7%); Samtredia (by 7.5%); Lanchkhuti (by 7.1%); and Kakheti Regional TDI in Telavi (by 6.3%).

Within the study, the situations existing in 2015 and 2016, in five regions, were compared to each other. See the data in the below tables:

Region	2015	2016
Samegrelo and Zemo Svaneti	9.1 %	8 %
Imereti, Ratcha-Lechkhumi and Kvemo Svaneti	14.2 %	19.9 %
Kakheti	11.9 %	23.6 %
Guria	15.4 %	17.4
Ajara[428]	11.2 %	11 %
	Total: 11.7 %	**Total:** 13.9 %

The analysis of the data above shows that the situation is practically the same in 2015 and 2016 in Ajara and Samegrelo-Zemo Svaneti, whereas the trend in the increasing number of noteworthy incidents is evident in Kakheti (by 11.7 %); Imereti, Ratcha-Lechkhumi and Kvemo Svaneti (by 5.7%); and Guria (by 2%) regions. In total, there is an increase in these five regions by 2.2%.

It should be pointed out that, in 2016, the number of noteworthy incidents in Kakheti, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti region is considerably higher. Besides, according to the analysis of the documented incidents in two temporary detention isolators in Tbilisi, 8.9% of the case files examined in 2016 were considered as noteworthy by the Special Preventive Group. This indicator practically equals the number of noteworthy incidents of Samegrelo-Zemo Svaneti but at the same time lower in comparison to other regions.

427 In 2016, persons arrested by Borjomi police were placed in Khashuri TDI too. In September 2016, Borjomi TDI was closed. The Special Preventive Group did not visit Khashuri TDI in 2016. The incidents indentified only in Borjomi TDI do not give full picture as to how many incidents were noteworthy out of the total number of the arrests made by Borjomi police.

428 In 2016, persons arrested by Borjomi police were placed in Khashuri TDI too. In September 2016, Borjomi TDI was closed. The Special Preventive Group did not visit Khashuri TDI in 2016. The incidents indentified only in Borjomi TDI do not give the full picture as to how many incidents were noteworthy out of the total number of the arrests made by Borjomi police. Therefore, the data on the Samtskhe-Javakheti Region are missing from the tables.

As the result of processing the information collected in the regions of Georgia, it was found out that, there is a reference to a bodily injury in the arrest reports of 391 cases (68.7 %); in 2015, it stands at 419 cases (58.5 %). The same, i.e., bodily injury, is mentioned in external examination reports in 569 cases; in 2015, 716 cases. Accordingly, there is no reference in arrest reports of 178 cases (31.3%) to the bodily injuries that are documented in external examination reports; in 2015, 297 cases (41.5 %). Similarly, in temporary detention isolators in Tbilisi, bodily injuries are registered in external examination reports in 367 cases. In 233 cases (63.5 %), bodily injuries are registered in arrest reports; and in 134 cases (36.5 %), no bodily injuries are documented in arrest reports. While this could be caused by shortcomings in examination and documentation of bodily injuries during arrest, there are serious misgivings that injuries might have been inflicted under police control. Similarly, the study shows that in 232 cases (40.8 %) that have been examined in the regions of Georgia, the external examination reports document more bodily injuries than arrest reports; in 2015, 418 cases (58.4 %). As regards Tbilisi, this indicator stands at 145 (39.5 %).

According to the explanations given by police officers, the full documentation of bodily injuries in arrest reports is negatively affected by the existing procedure of body examination and lack of requisite light. Therefore, within the study the Special Preventive Group analysed, there is a possible effect of sufficient light or its absence on documenting bodily injuries in arrest reports. It was found out that in approximately 1/4 of the cases (in 2015, in 1/3 of the cases) arrests were made during daytime. It was also found out that of the fraction of 1/3 of arrests where bodily injuries are only documented in external examination reports, arrests were also made during daytime. It should be pointed out that the study showed 33 incidents in the regions (50 incidents in 2015) and 20 incidents in Tbilisi, when a person was arrested in the daytime and injuries in the head, face and eye-socket areas are only documented in the reports of external examination drafted by the personnel of a temporary detention isolator. In 53 cases mentioned above, if a person had an injury during arrest, this injury should have necessarily been noticed by a police officer making the arrest.

The Special Preventive Group studied the location of injuries. The data[429] compiled based on the external examination reports drafted in temporary detention isolators in Tbilisi and the regions are given in the below table:

Location	Regions 2015	Regions 2016	Tbilisi 2016
Head area	14 (1.9 %)	4 (0.7 %)	2 (0.5 %)
Face area	82 (11.4 %)	48 (8.4 %)	26 (7 %)
Eye-socket area	39 (5.4 %)	37 (6.5 %)	21 (5.6 %)
Various body parts (apart from head, face and eye-socket areas)	263 (36.7 %)	117 (20.6 %)	67 (18 %)
Head and face areas	7 (1 %)	5 (0.9 %)	4 (1.1 %)
Head and eye-socket areas	4 (0.5 %)	3 (0.5 %)	0
Head area and various body parts (apart from face and eye-socket area)	20 (2.8 %)	24 (4.2 %)	14 (3.8 %)
Head, face and eye-socket area	2 (0.3 %)	8 (1.4 %)	3 (0.8 %)
Head and face areas and various parts of the body	12 (1.7 %)	18 (3.2 %)	13 (3.5 %)
Head and eye-socket areas, also various body parts	1 (0.1 %)	8 (1.4 %)	6 (1.6 %)
Face and eye-socket areas, also various body parts	51 (7.1%)	55 (9.7 %)	37 (9.9 %)
Face and eye-socket areas	31 (4.3 %)	35 (6.1 %)	19 (5.1 %)

429 For the purposes of the study, the location of injuries was generalised and grouped. As the injuries in the head, face and eye-socket areas were the main focus of the study, these parts were mentioned separately.

Face area and various body parts (apart from head and eye-socket areas)	136 (19 %)	136 (23.9 %)	112 (30.1 %)
eye-socket area and various body parts (apart from head and face)	41 (5.7 %)	63 (11.1 %)	40 (10.8 %)
Head, face and eye-socket area also various body parts	13 (1.8 %)	8 (1.4 %)	3 (0.8 %)
	Total: 716	**Total:** 569	**Total:** 367

The analysis of the data given in the above table shows that, in 2016, in 81.7 % of the total cases studied in Tbilisi, and in 79.4 % of the total cases studied in the regions, injuries are localised separately and with other injuries in the head, face and eye-socket areas.[430] This indicator is higher by 16.1 % than the indicators of 2015 (in 2015, it was 63.3%), which is noteworthy.

The Special Preventive Group studied whether the external examination reports registered the time of inflicting bodily injuries. See the below table:

Time of Sustaining Injury	Regions	Tbilisi
Before arrest	427 (73.9 %)	314 (84.4 %)
During arrest	121 (20.9 %)	46 (12.4 %)
After arrest	22 (3.8 %)	9 (2.4 %)
N/A	8 (1.4 %)	3 (0.8 %)
	Total: 578	**Total: 372**

As the analysis of the table shows, according to the records of the external examination reports, the average number of indicating bodily injuries inflicted during arrests are 8.5% higher than the similar numbers in Tbilisi. Besides, there are a higher percentage of those cases in the regions, compared to Tbilisi, where an arrestee claimed that a bodily injury was inflicted after arrest.

Time of Sustaining Injury	2015	2016
Before arrest	581 (78.5 %)	427 (73.4 %)
During arrest	116 (15.7 %)	121(20.8 %)
After arrest	11 (1.5 %)	22 (3.8 %)
N/A	32 (4.3 %)	8 (2.1 %)
	Total: 740	**Total: 578**

The analysis of the data in the above table shows that in 2016, compared to 2015, there is an increased percentage of inflicting injuries during and after arrests. Moreover, there is a slight decrease in the number of cases where the time of inflicting injuries is not documented in external examination reports.

The Special Preventive Group studied how many persons had complaints against police by the time of their admission to a temporary detention isolator and in how many cases an entry concerning a complaint/or its absence was missing from the external examination reports.

430 The findings of the study showed that out of 950 incidents studied in 2016, an arrestee was taken to a hospital in 31 cases due to injuries sustained before admission into a temporary detention isolator. In ten cases, arrestees explained that they sustained injuries during arrest; in four cases – after arrest. In three out of the said incidents, the arrestees who alleged injuries during arrest have complaints against police; in three cases, arrestees alleged injuries after arrest and have complaints against police; in one case, an arrestee made a complaint but time frame of the injury was not indicated in the external examination form; also in one case, recording in an external examination form, either about time frame of sustaining injury or complaints, is absent.

Complaints against Police	Region 2015	Region 2016	Tbilisi 2016
Complaints	69 (9.3 %)	87 (15 %)	24 (6.4 %)
No complaints	626 (84.6 %)	482 (83.4 %)	345 (92.8 %)
N/A	45 (6.1 %)	9 (1.6 %)	3 (0.8 %)
	Total: 740	**Total:** 578	**Total:** 372

The analysis of the above table shows that compared to 2015, the percentage of arrestees expressing complaints against police increased by 5.7%, which is noteworthy. It is also evident that, compared to the previous year, the number of cases, where there was no entry about complaints against police in external examination forms, decreased by 4.5% in 2016. As regards Tbilisi, the percentage of complaining against police is less by 8.6 % compared to the similar indicator in the regions.

Within the framework of the monitoring, the Special Preventive Group, based on the information submitted by the Ministry of Internal Affairs of Georgia, analysed the time of inflicting bodily injuries in those cases where an arrestee had complaints against police. The data is given in the below table:

Complaints against Police in 2015 and 2016	2015	2016
Before arrest	8	2
During arrest	90	96
After arrest	34	37
Before arrest – during arrest	23	42
Before arrest – after arrest	8	12
During arrest – after arrest	4	2
Before arrest – during arrest – after arrest	1	1
	Total: 168	**Total:** 193

It should be pointed out that according to the data submitted by the Ministry of Internal Affairs of Georgia, the number of cases, where an arrestee had complaints against police and it is documented in the external examination report, increased by 25 (by 12.9%) in 2016, compared to the previous year.[431] The noteworthy trend in considerable increase in the number of incidents, where arrestees complained against police, was revealed as the result of the analysis of the cases studied by the Special Preventive Group in the regions. In particular, compared to the previous year, the number of cases where arrestees complained against police officers increased by 18 (by 20.7%) in 2016.

The Special Preventive Group studied the number of complaints arrestees had against police officers and how many out of the complainants had bodily injuries before arrest, during and after arrest. See the table below:

Time of Sustaining Injury	Complaints against Police (Regions)						Total	
	Complaints		No Complaints		No Entry			
	2016	**2015**	**2016**	**2015**	**2016**	**2015**	**2016**	**2015**
Before arrest	10	9	414	543	3	29	**427**	**581**
During arrest	59	50	60	57	2	9	**121**	**116**
After arrest	16	8	6	3	0	0	**22**	**11**
N/A	2	2	2	23	4	7	**8**	**32**
Total %	**87 15 %**	**69 9.3 %**	**482 83.4 %**	**626 84.6 %**	**9 1.6 %**	**45 6.1 %**	**578 100 %**	**740 100 %**

431 The average number of complaints against police juxtaposed to the total number of persons admitted to temporary detention isolators with injuries was 2.8% in 2015 and 3% in 2016.

According to the data given in the table and its analysis, 16 arrested persons in 2016 (in 2015 – 8 persons) that had claims against police, according to their own explanations, received bodily injuries after arrest; 59 (in 2015 – 50 persons) received injuries during arrest. It is noteworthy that 66 arrested persons (in 2015 – 60 persons) received injuries either during or after arrest but they did not press charges against the police. In 44 cases out of 66 cases (66.7%), arrested persons had injuries, separately and with other traumas, in the head, face and eye-socket areas.[432] Accordingly, the fact that these arrestees have no complaints against police is less convincing. In these cases, it is supposed that the arrestees do not have complaints due to self-censoring caused by fear, stress and ambiguity as the risks of intimidation, pressure, insult and other ill-treatment are the highest at the initial stage of deprivation of liberty. Individuals are most vulnerable at this stage. For instance, B.Ts. who was arrested on 16 August 2016 under Article 19-177 of the Criminal Code had injuries in the area of both eyes and bruise near the right eyebrow, lacerations on forehead, nose, ear, left eyebrow, and left thumb; scratches on the right shoulder and left wrist; redness on the nose and left shoulder; and swelling on the lower lip. The arrestee explained that he received the said injuries during arrest, however did not lodge a complaint against police officers.

Code	No Complaints		No Complaints	
	Region	Tbilisi	Region	Tbilisi
CAO[433]	62 (71.3 %)	8 (33.3 %)	333 (69.1 %)	133 (38.5 %)
CC[434]	25 (28.7 %)	16 (66.7 %)	149 (30.9 %)	212 (61.4 %)
	Total: 87	**Total: 24**	**Total: 482**	**Total: 345**

The above table shows that 14% of the persons arrested in criminal proceedings (in Tbilisi – 5.7%) have complaints against police and 15.5% (in Tbilisi - 7%) of those arrested in administrative proceedings have complaints against police. The cross tabulation also shows that out of 400 cases of administrative arrests, 77 (19.2%) allege sustaining injuries during and after arrest. 56 (31.5%) out of 178 criminal arrests allege sustaining injuries during and after arrest. This latter indicator is higher by 12.3%. The combined information obtained from various sources during the monitoring shows the tendency that some of the persons arrested in administrative proceedings are reluctant to state, during filling out the external examination report in a temporary detention isolator, that they sustained a bodily injury during or after arrest. They are afraid that unless they act like this they will be 'making police an enemy' and will be facing problems afterwards. It is also noteworthy that those persons arrested in administrative proceedings that claim sustaining injuries from police either during or after arrest usually are not shy to complain against police (66.2 % of cases), unlike those arrested in criminal proceedings (42.8 % of cases). Stemming from the above-mentioned, and additionally considering the fact that in the cases of administrative arrests studied by the Special Preventive Group, the participation of a lawyer is a rare exception; the risk of ill-treatment against those arrested in administrative proceedings is high. Therefore, it is imperative to enhance work towards prevention of ill-treatment during administrative arrests.

The circumstances of arrests were also studied. The aim of this study was to establish whether arrests were preceded in examined incidents by insulting citizens and physical altercations, disobedience to legal requests by police and resisting police, if there were incidents of verbal abuse and whether police used force. Below are only given those noteworthy tendencies with respective data that has been identified in 2016, compared to 2015.[435]

432 In 2016, 33 persons were arrested in Tbilisi. According to their own explanations, they sustained injuries either during arrest or after, but they do not have claims against police. In 13 incidents, out of the 33 incidents, the injuries were located in the areas of head, face and eye-sockets, separately and along with other traumas.
433 The Criminal Code.
434 The Code of Administrative Offences.
435 See additional information in the Parliamentary Report by the Public Defender of 2015, pp. 181-238, available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on 23.03.2017].

Based on the arrest reports, the study showed that in the great majority of cases incidents of altercation with other citizens or an arrested person insulting other citizens were never registered. At the same time, it is noteworthy that the study showed that police officers indicated verbal abuse from arrested persons in 258 cases (44.3%); in 2015- 171 cases (23.1%). Accordingly, the average number of such incidents of the total number of cases that have been studied almost doubled in 2016. The similar indicator in Tbilisi[436] is less by 12.9% compared to the regions.

In the regions, there have been 384 cases (66.4%) of disobedience to legal requests by police and resisting police; (in 2015- 227 cases (30.7%). According to arrest reports, arrested persons verbally abused police officers in 241 cases (in 2015- in 74 cases). As regards Tbilisi, in 2016, there were 225 cases (60.5%) of disobedience to legal requests by police and resisting police. In 110 cases, according to arrest reports, arrested persons verbally abused police officers making arrest.[437] In such cases, the likelihood of the use of force by police and accordingly the risk of the use of disproportionate force is high. It is noteworthy that the police officers interviewed during monitoring felt very emotional that offenders verbally abused them. According to them, it is very difficult for a Georgian man to bear with swearing and they have to tolerate all this abuse.

The Special Preventive Group examined within the study conducted what bodily injuries were identified on arrestees in those cases where police officers were assaulted. In Tbilisi, in 81.7 % of the studied cases in 2016, arrestees have injuries separately and together with other traumas in the head, face and eye-socket areas; in the regions the number stands at 79.4% of the studied cases. This indicator exceeds the numbers registered in 2015 (63.3 %) by 16.1% which is noteworthy.

The analysis of the 578 cases studied in the regions shows that out of 384 cases, where arrest reports indicated disobedience/resistance, in 6 cases, there is a full description of the act of disobedience/resistance (in 2015 - 3 cases [1.3 %]); in 199 cases (51.8 %) , reports partially describe the circumstances (in 2015 - 4 cases [1,8 %]); in 46.9 % cases, police officers do not elaborate on the circumstances of disobedience/resistance (in 2015 - [96.9 %]); as regards Tbilisi, only in one case (0.4%) there is a full description of the circumstances; in 126 (56%) cases, the circumstances are partially described; and in 98 (43.6%) cases, there is no description in arrest reports altogether.

In 578 cases studied in the regions, there is a reference to use of force only in 33 (5.7 %) cases, (in 2015 - 46 cases [6.2 %]); in Tbilisi, out of 372 cases, there is such a reference in 16 cases. Out of the 33 cases of reference to the use of force, the method of the use of force is fully described in arrest reports only in 2 (6.1 %) cases (in 2015 - 4.3 %); in 10 (30.3 %) cases, there a partial description (in 2015 – 6.5. % cases); in 21 cases (63.6 %) cases, there is no reference to the method of the use of force (in 2015 - 89.2 % cases). As regards Tbilisi, only in one case there is a partial description of the method of the use of force.

It is noteworthy that during the study, there were cases analysed where, considering the circumstances of arrest, it can be supposed with a high probability that police would have to resort to force. Out of 384 cases of disobedience/resistance, the study showed such 344 (89.6 %) cases. However, police officers indicated the use of force only in 33 cases. Similarly, in Tbilisi, considering the circumstances of arrest studied based on the case-files, it can be supposed with a high probability that police would have to resort to force in 203 (90.6 %) cases out of the total number of 224 cases of disobedience/resistance. However, the use of force is registered only in 16 cases. It is obvious that police officers are reluctant to register the use of force in arrest reports, which strengthens the misgivings that they could have used excessive force and subject arrestees to ill-treatment.

Within the study, the Special Preventive Group analysed the cases in gender prism. Out of the 372 cases documented in Tbilisi, injuries were found on 10 arrested women. Out of these cases, 2 women claimed that

436 In Tbilisi - 117 incidents (31.4 %).

437 The percentage correlation of the incidents of resisting police in Tbilisi and in the regions is almost zero; as regards the average number of the incidents of verbal abuse out of the total number of disobedience/resistance, the average number in regions (62.8%) exceeds the similar indicator in Tbilisi (48.9) by 13.9%.

injuries were inflicted during arrest. In one of these cases, the woman arrested under Articles 166 and 173 of the Code of Administrative Offences of Georgia complained about the police actions. The arrestee had injuries in the face area and on different parts of the body.[438] According to the arrest report, she disobeyed legitimate requests of the police and resisted them. Despite the fact that the arrest report says nothing about the use of force during the arrest, the circumstances of the case indicate the high probability that police would have to resort to force. The arrestee additionally alleged during filling out the external examination report upon admission to a temporary detention isolator that two police officers had insulted her verbally and physically, that they were hitting her with hands on the body. In the second case of sustaining an injury, the woman arrested under Articles 166 and 173 of the Code of Administrative Offences of Georgia did not complain against police.

Out of the 578 cases studied in the regions, in 7 cases, arrested women had bodily injuries. Out of these cases, 2 arrestees had complaints against police officers. In one case, the woman arrested under Articles 166 and 173 of the Code of Administrative Offences of Georgia claimed that during the arrest police officers had insulted her verbally and physically.[439] In another case, the woman arrested under Article 173 of the Code of Administrative Offences of Georgia explained that she sustained bodily injures before arrest. She, however, complained that police officers had verbally assaulted her.[440] In one of the cases, the woman arrested under Article 173 of the Code of Administrative Offences of Georgia alleged that she had sustained bodily injuries both before and after arrest. She, however, did not complain against police and additionally explained that the injury on her wrist had been caused because of the handcuffs.[441]

The Public Defender of Georgia observes that police officers have to be particularly cautious when it comes to the use of force against women. Furthermore, it is imperative to follow rigorously professional ethics in verbal communication with arrested women and not to address them in a language perceived as degrading by the arrestees.

During the monitoring conducted in 2016, the Special Preventive Group paid particular attention to the study of application of Articles 353[442] and 353[1] of the Criminal Code of Georgia,[443] and Article 173[444] of the Code of Administrative Offences of Georgia.

According to the official information received,[445] in 2015, investigation was started under Article 353 in 162 cases; 161 cases were examined in a court; 9 persons were acquitted; and 244 persons were found guilty. Out of this, in 113 cases plea bargain agreement was concluded with 187 persons. Investigation under Article 353[1] was started in 24 cases; 25 cases were examined in a court; 2 persons were acquitted; 41 persons were found guilty; out of this, in 17 cases, plea bargain agreement was concluded with 34 persons in 17 cases.

Similarly, in 2016, investigation under Article 353 was started in 100 cases; criminal prosecution was started against 172 persons and discontinued with regard to 6 persons; 113 cases were examined in a court; 10 persons were acquitted; 151 persons were found guilty; out of this, plea bargain agreement was concluded in 73 cases with 114 persons. Investigation under Article 353[1] was started in 15 cases; criminal prosecution was started

438 According to the external examination report filled out on 20 April 2016 in Tbilisi temporary detention isolator no. 2, the following injuries were documented on the arrestee: excoriations, scratches, bruises, and hyperaemic areas on the face and on the entire body, as well as small size hematomas.

439 According to the external examination report filled out on 1 May 2016 in Ozurgeti temporary detention isolator, a small size hyperaemic area was documented on the arrestee's forehead.

440 The external examination report was filled out on 5 March 2016 in Telavi temporary detention isolator.

441 The external examination report was filled out on 16 July 2016 in Baghdati temporary detention isolator.

442 Resistance, threat or violence against the official securing public order or other representative of the authorities.

443 Attack on a police officer, or other representative of the authorities and/or public agency.

444 Disobedience to the legitimate order or request by a law enforcement office, military officer, officer of the Special Service of the State Protection or enforcement police officer, or commission of an illegal act against any of these officials.

445 From the Ministry of Internal Affairs of Georgia: the data of 2015 - Letter no. 293573 of 6 February 2017; the data of 2016 - Letter no. 293333 of 6 February 2017; from the prosecutor's office: the data of 2015 –Letter no. 13/9693 of 11 February 2017; the data of 2016 – Letter no. 13/3327 of 17 January 2017; from the Supreme Court of Georgia: the data of 2015 and 2016 – Letter no. p-27-17,p-28-17 of 3 February 2017.

against 22 persons and discontinued with regard to 1 person; 21 cases were examined in a court; 7 persons were acquitted; 19 persons were found guilty; out of this, plea bargain agreement was concluded in 14 cases with 14 persons.

The analysis of the above data shows that, compared with 2015, the cases instituted under Article 353 were less by 62 and cases instituted based on 353[1] were less by 9 in 2016. Despite the downward tendency, it is noteworthy that, in 2015, 96.4 % were found guilty out of those charged with Article 353; and in 2016, 93.8 % were found guilty. Out of this, in 2015, plea bargain agreement was concluded with 76.6 % of the remand persons; and in 2016, with 75.5% of the total number of the remand persons charged under Article 353. The extremely low number of acquittals and the high number of concluding plea bargain agreements shows the high risk of abusing Articles 353 and 353[1] of the Criminal Code of Georgia. This is confirmed by lawyers and NGO representatives interviewed within the focus groups all over Georgia.

One of the incidents revealed by the Special Preventive Group during the monitoring conducted in 2016 is noteworthy as an example. On 8 April 2016, at 19:55, in the administrative building of Adigheni district division, police officers arrested L.D. under Article 353[1].1 of the Criminal Code of Georgia.[446] According to the arrest report, L.D. 'was physically resisting police officers, swearing and cursing in bad language'. According to the arrest report, L.D. was searched from 20:00 to 20:15, with L.D. again resisting physically the police officers. Despite the scarce references in the arrest report, the members of the Special Preventive Group revealed from conversations with police officers and lawyers of focus groups that before being arrested in criminal proceedings, L.D. was brought for a drug test, and the test result was negative. It was not established that L.D. had been using drugs. According to police officers, L.D. was outraged for being subjected to drug test and therefore rushed into the yard of the Adigheni District Division, swearing and requesting to meet with the Head of the Division. Having crossed the yard, L.D. came up to the on duty guard and physically assaulted him. In the opinion of the Special Preventive Group, this version of the events is less convincing. As it was revealed during the discussions with lawyers and NGOs in Akhaltsikhe, they knew about this incident and opined that most probably L.D. was incited by police and the incident could be related to L.D.'s business.

In the opinion of the Special Preventive Group, individuals are even more vulnerable when being arrested under Article 173 of the Code of Administrative Offences of Georgia.[447] In accordance with the practice, well established over years, judges, rely on the explanations of police officers in a vast majority of the cases. Furthermore, those arrested in administrative proceedings usually have no lawyer and in such cases, they avoid 'making enemies' out of police.[448] In such cases, the risk of arbitrariness on the part of police is high. During the monitoring, the Special Preventive Group revealed one incident that is a clear example of police arbitrariness.

In the course of the monitoring, during the discussions held with lawyers and non-governmental organisations' representatives, one incident was identified as the abuse of Article 166 and 173 of the Code of Administrative Offences of Georgia on part of police officers. According to the received information, police officers claimed during court hearings that the arrested person, who had been prosecuted in administrative proceedings, was cursing and swearing in Zugdidi. That person tried to flee having noticed police. According to police officers, they approached the person to clear up the situation, introduced themselves and requested an ID. The citizen responded with abusive words and did not obey the legitimate request to stop cursing and swearing. According to the police officer, who drafted the report, he suspected whether the citizen concerned was under the

446 Attack on a police officer or other representative of authorities, and/or their official or residential buildings, or transport means, and/or their family member in relation to the official capacity of the police officer or other representative of authorities.

447 In 55.7% of the cases studied by the Special Preventive Group in Tbilisi and regions, a person was arrested under Article 173 of the Code of Administrative Offences of Georgia, separately and jointly under other Articles of the Code.

448 For instance, according to the external examination report, on 17 August 2016, Z.K. arrested under Article 173 of the Code of Administrative Offences of Georgia was registered to have the following injuries: an open wound in the area of the left eye-socket, bruise and swelling, redness on the nose, excoriations to the left of the forehead and on the right of the back of the head. The arrested person alleged that the injuries were sustained during arrest; he however did not lodge any complaint against police.

influence of drugs and brought that person to a criminal forensic agency. The drug test was negative and it was not established that the person concerned was under the influence; however, that person was arrested in administrative proceedings on the account of another administrative offence.

The statements given by police officers at the court hearing and the circumstances indicated were not established. The arrested person adduced video recording before the court and the recording clearly proved that there were no such circumstances as alleged by police officers. It is noteworthy that the person was arrested initially under Article 173 of the Code of Administrative Offences of Georgia and only subsequently Article 166 was added to the administrative offence report. In the opinion of the Special Preventive Group, this incident expressly shows the arbitrariness of police officers and purposeful and illegal prosecution of a citizen.

In the opinion of the Special Preventive Group, the cases, where police resorts to the means of coercion, gives rise to misgivings about the use of disproportionate force and ill-treatment, the failure to describe the method of the use of force in the arrest reports and to establish a clear link between the method of the use of force and the injuries found on the bodies of arrested persons. Besides, in a number of cases, the nature of a bodily injury and its location further increases suspicions about ill-treatment. For instance,[449] according to the arrest report of 24 January 2016, K.Dz.[450] under Article 173 of the Code of Administrative Offences of Georgia, resisted police when they used handcuffs. The police used a special technique of restraint which caused K.Dz. to fall down and injure his lip and face. It should be pointed out in this case that the police failed to indicate how the resistance put up by K.Dz. was manifested and which technique did they use that caused K.Dz. to take a fall. It cannot be established based on the entries of the arrest report whether it was possible to use handcuffs without inflicting bodily harm.

During the conversations held with police officers within the monitoring, the Special Preventive Group members paid particular attention to the use of proportionate force during arrest. During the interviews, police officers tried to demonstrate the methods of the use of force (special technique) in standard situations.[451] The Special Preventive Group, however, was left with the impression that the methods described by those police officers were their improvisation rather than the methods taken from uniform special training programme designed for police forces on the use of force. The Public Defender, while taking into consideration the extremely complex, stressful and dangerous nature of policing, stresses that sporadic training in the methods of the use of force does not ensure development of the adequate skills of police officers. Therefore, the Public Defender observes that training on the methods of the use of force should be of regular nature so that eventually police officers could adequately assess particular situations, the use of the adequate methods they previously trained on and arrest a person without harming his/her physical health or where it is absolutely necessary only inflicting minimum injuries.

Within the study, the Special Preventive Group examined how much time was spent by police to bring arrestees to police stations and the duration of overall periods spent under police control. See the data in the below table:

449 According to an arrest report, on 3 May 2016, during arrest made under Article 353 of the Criminal Code of Georgia, force was used against V.J. for the resisting police. According to the same report, the following injuries were documented on the body of the arrestee: excoriations on the area of the right wrist, and bruises on the left arm and wrist. According to the external examination report (drafted in Kakheti regional temporary detention isolator), the following injuries were identified on the body of the arrestee: excoriation on the right elbow, a scratch on the left shin, redness on the nose and both ears, bruises on the upper muscle of both arms, scratches and redness on wrists, bruise on the upper part of the back and a scratch. According to the arrested person, these injuries were inflicted during the arrest.

450 The external examination report is drafted on 24 January 2016 upon admission to Zestaponi temporary detention isolator.

451 One of such standard situations is placing a person in a police car. This, according to the explanation of police officers, is problematic in most cases. In the opinion of the Special Preventive Group, there is a high risk for use of force by police in such cases. For instance, according to an arrest report, on 21 June 2016, R.S. was swearing in a street and was breaching order. R.S. did not obey police request, became aggressive and abused police officers verbally. R.S. resisted police during arrest and therefore police forced the citizen into a car. According to the arrest report, there were the following injuries documented on the body of the arrestee: swelling, which according to the arrestee was caused by dislocation when walking. There was a scratch that was caused during shaving. According to the external examination report (drafted in Chkhorotsku temporary detention isolator), there was excoriation on the cheek and eye-socket area; there were a hematoma and hyperaemia in the eye-socket area. The arrestee complained of pain in the ankle area.

Duration of the Period under Police Control	Region	Tbilisi
1-3 hours	337 (59.8 %)	183 (50 %)
4-6 hours	139 (24.6 %)	121 (33.1 %)
7-9 hours	53 (9.4 %)	41 (11.2 %)
10-12 hours	21 (3.7 %)	17 (4.6 %)
13-15 hours	9 (1.6 %)	3 (0.8 %)
16-18 hours	4 (0.7 %)	0
19 hours	1 (0.2 %)	0
20 hours	0	1 (0.3 %)
Total:	**564**	**366**

The duration of the periods under police control in the regions and Tbilisi are not essentially different. In the regions, in 31% of the cases given in the table, individuals were arrested in criminal proceedings (out of this 44 % in the daytime and 63.6 % at night); in 69 % of the cases given in the table, individuals were arrested in administrative proceedings (out of this 18.5 % in the daytime and 81.5% at night). In Tbilisi, the average number of individuals arrested in criminal proceedings amounts to 38.8 % (out of this 48.6 % in the daytime and 51.4 % at night) and 62.2 % have been arrested in administrative proceedings (out of this 18.4 % in the daytime and 81.6 % at night).

Within the study, the Special Preventive Group also examined the time of bringing individuals to the nearest police stations. In the regions, in the majority of cases (55.8 %), an arrestee was brought to the nearest police station within half an hour from the moment of arrest; in approximately 1/5 of the cases (26.2 %) within an hour; in 7.3 % of the cases – within two hours; and in isolated cases, particularly in 8 cases, the time of bringing individuals to police stations is from 3 to 5 hours. As regards Tbilisi, here too, in the majority of the cases (52.6 %), individuals are brought to police stations within half an hour and in 1/3 of the cases – within an hour; in 5.2 % of the cases – within 2 hours; and in 7 cases within 3-5 hours.

The Special Preventive Group also examined, within the study, in how many cases arrested persons spent a night[452] under police control.[453] It has turned out that in 39 cases out of the total number of cases studied in the regions, and in 18 cases out of the total number of the cases studied in Tbilisi, arrested persons were under control of police at night. Out of these 57 cases, persons were arrested in administrative proceedings in 16 cases, and in 41 cases in criminal proceedings. The Special Preventive Group is not aware of the reasons that warranted spending a night under police control in the above cases when it was possible to place these persons in temporary detention isolators. The Public Defender observes that keeping arrested persons under police control for a long time (especially at night) is an extremely risky practice as the risk of exerting physical violence and psychological pressure by police on arrested persons is high under such circumstances. Therefore, the Public Defender stresses that it is imperative to place an arrested person in a temporary detention isolator as the latter is a relatively safer place.[454]

During the monitoring, the Special Preventive Group examined the conditions under which arrested persons are held in police stations. Police officers stated in interviews that arrested persons were kept under constant supervision. Against these claims, on 11 August 2016, the members of the Special Preventive Group, who were inspecting the administrative building of Chkhorotsku District Division of the Ministry of Internal

452 Under Article 17.3 of the Criminal Procedure Code of Georgia, the night is the time from 22:00 to 6:00. For the purposes of the study conducted by the Special Preventive Group, the cases where individuals spent a night under police control were those cases where an arrested person was under police control from 22:00 to 6:00, for no less than six hours.

453 In the night hours (from 22:00 to 6:00) the time spent under police control for less than 6 hours: for 5 hours - 65 cases; for 4 hours - 91 cases; for 3 hours - 143 cases; 2 hours - 219 cases; and 1 hour - 152 cases.

454 These issues are discussed by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his report on the mission to Georgia in 2015. The report is available in the official languages of the United Nations at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3 [Last visited on 22.03.2017].

Affairs of Georgia, found two arrested persons left on their own without any supervision. One person was in a staff room and another in a room for district inspectors. As the examination of the relevant documents and conversations with police officers revealed, these individuals were arrested in criminal proceedings at 05:49 and brought to the police station at 07:55. By approximately 14:00, the planned investigative actions were complete and the arrestees were supposed to be admitted to a temporary detention isolator. However, they were placed in a temporary detention isolator at approximately 17:00.

In the opinion of the Special Preventive Group, it is also problematic that whenever there is a complaint registered by an arrested person, it is impossible to examine the reasonableness of the claims through video surveillance system. Surveillance cameras were not installed on those premises of police administrative buildings where arrestees are held.[455] The Special Preventive Group is devoid of any possibility to[456] inspect proactively and verify through video surveillance system the conditions under which arrested persons, witnesses and persons without any procedural status are held in police stations.

The incident that took place in Akhaltsikhe shows the particular vulnerability of citizens when they are under police control. In particular, on 24 October 2016, the members of the Special Preventive Group of the Public Defender of Georgia, during a visit to Akhalkalaki District Police of Samtskhe-Javakheti Police Department of the Ministry of Internal Affairs of Georgia, revealed that there were citizens in the administrative building of police with whom their relatives could not get in touch (in total eight persons). Furthermore, the members of the Special Preventive Group saw how police officers took several individuals from the police building and took them somewhere by a car.

In order to clear up the situation, the member of the Special Preventive Group inspected the logbooks of arrested persons maintained in the guard's room of the police station. As it has turned out the arrests of the above citizens were not indicated in the logbook at all. Subsequently, the members of the Special Preventive Group inspected the building of the police station and found in various rooms another two persons, one of whom was a minor.

The members of the Special Preventive Group requested the head of the division to explain the status of the above persons as well as the legal ground for holding them in the police station. However, the head of the division did not impart any information to the group members and advised them to contact the public relations officer of the Ministry of Internal Affairs.

Later the members of the Special Preventive Group found out that there was another person in the police building. It has turned out that apart from the three persons mentioned above, there were another 5 persons in police custody that had been taken away by police officers for conducting various investigative actions before the Special Preventive Group entered the police building.

The members of the Special Preventive Group found out that the above-mentioned 8 persons were not officially arrested and they were brought as witnesses in the police station. However, these persons were actually restricted in their movements and the police officers did not allow them to leave the police building. Furthermore, the police took away their mobile phones and restricted their contact with family members and relatives. It is noteworthy that 5 individuals out of the 8 were residents of Akhalkalaki that were picked up in the night hours on 22 October, and 3 individuals, among them, one minor, lived in Rustavi. As it has turned out, Rustavi police officers first brought the minor to police station no. 1 of Rustavi police in the morning hours; on 22 October and in the night hours transferred that person to Akhalkalaki District Division. This incident

455 See for additional information subchapter *Audio and Video Recordings*.

456 During monitoring, the Special Preventive Group often comes across suspicious and noteworthy incidents, where despite the fact that an arrested person does not register his/her complaint against police in external examination reports, there still is a high probability of physical violence taking place after arrest. For instance, on 8 July 2016, according to an arrest report, certain G.Ch. who acted aggressively, swearing at police officers at the administrative building of Gurjaani District Division, resisted legitimate requests of police and inflicted self-harm by hitting with a metal pole from the left side on the first floor of the building. The external examination report registered the following injuries on the arrestee's body: bruises and redness in the areas of the left eye-socket, left cheek and the nose; redness in the area of the left ear; old scar wounds on the forearm; and old scar wounds and redness in the area of the right clavicle. The arrestee did not register any complaints against police officers.

expressly shows the vulnerability of a citizen when in police custody and the manner in which witnesses are arrested and subjected to self-incrimination without the safeguards of due process. The self-incriminatory statements later become the legal grounds for formal arrests and deprivation of liberty.

When assessing the situation in terms of prevention of torture, inhuman or degrading treatment in the system of the Ministry of Internal Affairs of Georgia, it is important to analyse the incidents studied by the Public Defender of Georgia. In 2016, the Public Defender referred the proposals to the Chief Prosecutor of Georgia to start investigation with regard to six incidents of alleged torture, inhuman or degrading treatment of arrested persons by police (in 2015, 11 proposals were referred). There were multiple bodily injuries documented on arrestees.[457] It is noteworthy that in two cases, minors were assaulted verbally and physically; the threat of sexual violence was also used. In another two incidents, the threats of sexual violence were used against I.J. and G.A. In both the incidents of possible violence against minors[458], the objective of the violence was getting a confession.

In the Parliamentary Report of 2015, the Public Defender of Georgia, for eradicating the above problems and identified negative trends, recommended to the Minister of Internal Affairs of Georgia to take all necessary measures to ensure prevention of torture, inhuman or degrading treatment and violations of human rights by police. Some of the suggested measures were adequate training, enhanced accountability and strict supervision. Unfortunately, the negative trends in terms of human rights protection are maintained in the Ministry of Internal Affairs of Georgia in 2016 as well. Therefore, the Public Defender stresses that in the short-term perspective, it is particularly imperative to introduce strict control over policing and enhance the accountability of police officers. It is imperative that police officers receive a clear message from their superiors that violation of human rights will not go unpunished.

The Public Defender observes with regret that the Chief Prosecutor's Office maintained the previous practice of instituting criminal proceedings, according to which instead of instituting criminal proceedings regarding incidents of alleged torture and inhuman or degrading treatment, investigation is launched under Article 333 (abuse of official power) of the Criminal Code. The Public Defender of Georgia reiterates its position and calls upon the prosecutor's office of Georgia to start investigation in such circumstances under Articles 144^1 and 144^3 of the Criminal Code of Georgia.

RECOMMENDATIONS

To the Minister of Internal Affairs of Georgia:

- To take all measures to ensure prevention of torture, inhuman or degrading treatment and violations of human rights by police, among them, through adequate training, enhance accountability and strict supervision; and
- To ensure regular training of police officers in the methods of the use of force (the use of special techniques).

To the Chief Prosecutor of Georgia:

- To ensure the effective (implying comprehensive and full) investigation of the incidents of alleged torture, inhuman or degrading treatment of arrested persons by police; and

457 Two arrestees were diagnosed with concussion.

458 According to the official letter received from Terjola District Division of the Ministry of Internal Affairs of Georgia, in one of the cases, 3 minors were brought to Terjola District Division of the Ministry of Internal Affairs of Georgia for identification in accordance with Article 18.b) of the Law of Georgia on Police. The Members of the Special Preventive Groups of the Public Defender of Georgia studied the case-file and revealed that the minor was in police custody for approximately 8 hours (from 22:00 to 6:00). During this period, the minors were not given any possibility to contact their family members.

- To ensure that upon identification of the elements of alleged torture, inhuman or degrading treatment of arrested persons by police investigation is started under Articles 144[1] and 144[3] of the Criminal Code of Georgia.

THE KEY SAFEGUARDS AGAINST ILL-TREATMENT

Informing Arrested Persons about their Rights

Under Article 5.2 of the European Convention on Human Rights, everyone who is arrested shall be informed promptly in a language which he/she understands, of the reasons for his/her arrest and of any charge against him/her. Any person arrested must be told in simple, non-technical language that he/she can understand the essential legal and factual grounds for his/her arrest to be able, if he/she sees fit to apply to a court to challenge its lawfulness.

According to the position of the European Committee for the Prevention of Torture, it is imperative that persons taken into police custody are expressly informed of their rights immediately in a language they understand. In order to ensure that this is accomplished, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Furthermore, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.[459]

The legislation of Georgia guarantees an arrestee with the right to be informed of his/her rights.[460] However, one of the problems that still persisted in the reporting period was the notorious practice of 'conversations' conducted in police vehicles or police stations without the consent of the persons concerned, which was dealt with in the 2015 Parliamentary Report of the Public Defender.[461]

Furthermore, the Public Defender recommended to the Minister of Internal Affairs of Georgia to ensure the discontinuation of this practice where an individual is actually deprived of his/her liberty.[462] However, as the Special Preventive Group learned from various sources, among them, from police officers, that the 'conversations' are still practiced. In particular, a person is called in police without giving him/her any procedural status, delayed for certain period (several hours), and asked various questions. No information is given about the rights in these cases; there are no documents drafted concerning entering and leaving police division or station that would certify the status and purpose of this person's stay with the police. The Criminal Procedure Code is familiar with the institute of enquiry, however, in such cases, information is given voluntarily and a person is explained about his/her rights before the procedure.[463]

The United Nations Working Group on Arbitrary Detention emphasises that any confinement or retention of an individual accompanied by restriction on his or her freedom movement, even if of relatively short duration, may amount to de facto deprivation of liberty.[464] Therefore, if a person is under control of law-enforcement officers, this is already to be considered as depravation of liberty and it is imperative that the person arrested is given information from the very outset about his/her procedural rights. Conversely, the persons summoned for the 'conversation' are not given any information as to the procedure at stake, their status and purpose of bringing them in police. They are not given any explanation about the rights they can exercise in this situation.

459 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 12, para. 44.
460 Criminal Procedure Code of Georgia, Article 38.1-2; the Code of Administrative Offences of Georgia, Article 245.1.
461 The Parliamentary Report by the Public Defender of Georgia of 2015, p. 204, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on 10.03.2017].
462 *Ibid.,* p. 214.
463 The Criminal Procedure Code, Article 113.1-2.
464 The United Nations, Human Rights Council, Report of the Working Group on Arbitrary Detention (24 December 2012), para. 55, available in English at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf [Last visited on 10.03.2017].

The Public Defender observes that the risky practice of the so-called 'interviews' does not ensure citizens' safety during their interaction with police. The case of D.S., who committed suicide, could serve as one of the examples. In the letter supposedly written by him, found after his death, D.S. wrote about psychological pressure exerted on him by police in order to close a drug case. The case of D.S. should be investigated thoroughly and effectively in order to establish the truth in this matter. It is at the same time imperative that the state should pay special attention even to isolated cases like this and prevent police officers from using such methods and exerting psychological pressure on citizens.

As the members of the Special Preventive Group became aware, those persons who recently left a penitentiary establishment, or those who are perceived as risk group by police due to their criminal past or other reasons, are the main target of this practice. Some of the police officers explains this practice by the considerations of securing public order and safety and argues that the interviews with these persons are conducted within the operative and investigative actions and the obtained information is given to the Ministry of Internal Affairs through classified channels. The said information is classified and Special Preventive Group members do not have access to it. Therefore, the Special Preventive Group was devoid of any chance to consider if these persons had been summoned to police legally and in what circumstances information had been obtained from them.

The Public Defender observes that public order and security should never be maintained at the expense of unreasonable restriction of fundamental human rights. Bringing an individual without any legal grounds and procedural safeguards for 'conversation' amounts to this very interference and is impermissible.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, in his report on the mission to Georgia in 2015, stressed that taking a person for 'conversation' without explicit and freely given consent not only restricts that person's right to liberty and security but also heightens the risk of torture and ill-treatment.[465]

The Public Defender considers that the practice of getting persons in police stations or into cars for 'conversation' gives rise to the high risk of illegal arrests and ill-treatment. Persons taken into police custody should be expressly informed immediately of all their rights.[466]

As the result of the inspections carried out by the Special Preventive Group, it was revealed that in a number of cases the time of admission of persons to police station precedes the time of their formal arrest. In such cases, usually, a person is summoned as a witness, certain investigative actions are conducted with his/her participation and, after the lapse of certain time, the person is formally arrested. However, the person is not read his/her rights (among them, right to a legal counsel) when he/she is brought as a witness to a police station, his/her personal items, including mobile phone, are taken away. This way, these persons are purposefully limited in their rights to contact their family and call a lawyer. This gives rise to a suspicion that these persons have been illegally deprived of their liberty since they were not officially arrested at the moment they were brought in by the police, they have not read their rights and at the same time they were not free to leave the police station, or police division. The Public Defender observes regretfully that before the full enforcement of the new procedure of witness interrogation, the possibility given to the police to question a person as a witness allows them to have unlimited opportunity to investigate to obtain desirable statements from the persons who are actually deprived of their liberty and do not have minimum procedural safeguards. This may be followed by the formal arrest of the person within hours. Therefore, within this period, when the risk of self-incrimination is high, it is of principal importance that police expressly explains the status, the list of rights and duties, among them, the right to call a lawyer. The Public Defender wishes to stress that whenever

465 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, A/HRC/31/57/Add.3, 2015, para. 43, available in the official languages of the UN at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3 [last visited on 10.03.2017].

466 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 6, para. 37.

bringing a person to police administrative buildings under any status, the person should be explained the rights clearly in the language he/she understands, as well as the purpose of bringing him/her to police. It is at the same time imperative that whenever the status is changed (e.g., when a person is brought in police as a witness and is eventually charged), the person should be read his/her respective rights again and given the possibility to exercise these rights.

Besides, during meetings with the Special Preventive Group, lawyers practising in the regions stated that investigators actively use district inspectors for obtaining information on particular cases. District inspectors enjoy the trust of the locals and they manage collecting information at places of residence, in private circumstances and later bring these persons as witnesses to police divisions. It should also be mentioned that in such cases, citizens are not informed of the circumstances that could follow from giving information to the district inspectors as they deem that this was one of their routine visits.

Furthermore, the lawyers discuss problems regarding drug testing. In those cases where a person refuses to undergo a drug test, he/she is usually arrested in administrative proceedings in accordance with the procedure provided for by the Code of Administrative Offences of Georgia.[467] Later, this person is brought for a drug test that delays the release up to 12 hours. In such a case, the person is particularly vulnerable and the risk of ill-treatment is especially high. Besides, arrested persons are not read their rights, including their right not to submit biological material for testing. The submitted information is of general nature and related to the category and type of the testing. Therefore, the arrested persons, as the result of pressure and intimidation, sign the document as if they are submitting that material willingly. Besides, the procedure of taking biological sample is conducted in a degrading environment.

Under the legislation of Georgia, when admitting a person to a temporary detention isolator, the head of shift at the isolator or another authorised official notifies the person in writing about his/her rights and duties, the procedure for lodging a complaint, the requirements stipulated by the statute and procedural safeguards. The person concerned certifies this with his/her signature. In those cases where an arrested person does not know the state language, this information is submitted in his/her native language or another language that he/she understands. The illiterate, blind or those with impaired eyesight, persons with a disability should be given the information orally; the information is communicated to deaf and mute persons with the help of the respective interpreter. The juveniles to be placed in a temporary detention isolator should be given the information in the form that makes this information comprehensible for them.[468]

According to the information of the Ministry of Internal Affairs, each person placed in a temporary detention isolator is read their procedural rights in the language they understand; the rights related to their stay in a temporary detention isolator are explained as well. According to the Ministry, to this end, there are documents translated in various languages that are kept in isolators and they are handed to the person placed in an isolator. Having read the text, the person placed in the isolator signs the document which is kept in his/her case-file. One copy is given to the detained person to keep with him/her in the cell.

The members of the Special Preventive Group revealed in several temporary detention isolators that the list of the rights to be given to persons to be placed in the isolator was incomplete and did not contain those rights that can be exercised in an isolator. In some cases, detained persons claimed they did not have the right to shower and therefore could not use this right.

The Public Defender of Georgia observed in the Parliamentary Report of 2015 that each person brought to a temporary detention isolator should be explained clearly and in the language that he/she understands not only the procedural rights, but also all the rights and duties related to his/her stay in the isolator. These rights are usually read upon a person's admission to a temporary detention isolator when this person is stressed and

467 The Code of Administrative Offences of Georgia, Article 45.

468 Order no. 423 of the Minister of Internal Affairs of Georgia, dated 2 August 2016, approving Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, annex no. 2, Article 3.9-11.

most likely unable to comprehend his/her rights fully. Therefore, it is imperative that these persons should be given the list of the rights when they are admitted to their cells so that they could later read their own rights in a relatively calmer situation.

According to the information submitted by the Ministry of Internal Affairs of Georgia, the obligation to hand the copy of the rights and duties to an arrested person has been stipulated in the Additional Instructions Governing the Activities of Temporary Detention Isolators of the Ministry Of Internal Affairs of Georgia approved by Order no. 692 of the Minister of Internal Affairs of Georgia, dated 8 December 2016. This is welcomed by the Public Defender of Georgia. Within the framework of the next monitoring, the Special Preventive Group will be paying particular attention to the practical implementation of these instructions.

Notifying Family

The UN Committee against Torture emphasises the right of arrestees to contact relatives.[469] European Committee for the Prevention of Torture also emphasises an arrested person's right to have his/her arrest notified to a third party from the very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards.[470] The rationale of the said right is to inform the family (or third party) of an arrestee about the arrest and his/her whereabouts in time.

Under Article 177.1 of the Criminal Procedure Code of Georgia, within three hours from the arrest of a person, a prosecutor, or upon the latter's instruction, an investigator shall notify the arrestee's family or third persons about the arrest. Article 245.1.c) of Code of Administrative Offences of Georgia provides for the right of arrested persons, upon their wish, to have the arrest and their whereabouts be notified to a relative named by them.

The practice of informing family or a lawyer about arrest by police is different. In some cases, a police officer allows an remand to contact his/her family with his/her own phone or a police officer calls the number given by an remand and notifies his/her family.

The analysis of the case-files studied by the Special Preventive Group in regional police divisions shows that only in 56% cases of the studied case-files families were contacted within the statutory term of three hours. In other cases, families were notified within the period of 3-24 hours, or a police division failed to present a document on informing families, or a Special Preventive Group was notified in writing that a family had been contacted but the exact time of contact remained unclear for the Group members. In 4.2% cases of the studied case-files, families have not been contacted at all.

The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced if a single and comprehensive custody record were to exist for each person arrested. The following aspects should be recorded on the comprehensive custody record: all aspects of his/her custody and action taken regarding them such as time of deprivation of liberty and reasons for that measure; time of informing the arrestee about his/her rights; signs of injury, mental illness, etc; time of informing the next of kin/consulate and lawyer and their visit; time of offering food; interrogation time; time of transfer or release, etc.). Furthermore, the detainee's lawyer should have access to such a custody record.[471]

469 UN Committee against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, para. 13, available in English at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf [last visited on 10.03.2017].

470 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, p. 15, para. 43.

471 *Ibid.,* p. 7, para. 40.

It is noteworthy that a register documenting the number of persons requesting contact with relatives, how many were allowed to contact, who got in touch with relatives, what information was notified, etc., is not maintained either in police divisions or in temporary detention isolators The absence of this register renders the exercise of the right to contact relatives dependent on the good will of the police, which increases the risk of arbitrariness. Therefore, the Public Defender considers it important that each case of contacting relatives should be documented and police divisions should maintain some kind of a register to enter each such request and follow-up actions.

Besides, during the meetings with the Special Preventive Group, the NGOs and lawyers practising in the regions stated that police divisions purposefully delay contacting families as it is used as a leverage to obtain desirable statements or ensure that certain investigative actions are conducted.

The right to contact relatives is directly related to the right to access to legal counsel, since involvement of a lawyer is most likely guaranteed by an arrestee's family. Therefore, it is important to ensure that an arrestee's relatives are immediately notified about the arrest and whereabouts of the arrested person so that they could chose a lawyer promptly and get involved in proceedings.

Access to a Lawyer

The possibility for persons taken into police custody to have access to a lawyer is a fundamental safeguard against ill-treatment, especially in the initial hours of arrest.[472] A lawyer should be present at all investigative actions carried out in respect of an arrestee. This, on the one hand, significantly decreases the risk of ill-treatment and, on the other hand, minimises the likelihood of lodging unsubstantiated charges against a police officer on the account of ill-treatment.

It is also important that the meetings between arrestees and their lawyers are confidential, without any possibility of eavesdropping by law enforcement officials. Under the Order of the Minister of Internal Affairs of Georgia, upon presenting certain documents by a lawyer (an identification card and a requisite order), a person placed in an isolator has the right to meet him/her without the presence of another person, without limiting the number and duration of meetings.[473]

The Public Defender has held before[474] that access to a lawyer should be guaranteed in the shortest time possible after arrest as the risk for intimidation, pressure, insult and other ill-treatment is especially high at the initial stage of restriction of liberty, when a person is especially vulnerable. However, the analysis of the studied cases shows that in those instances where an arrestee had a lawyer, the latter was involved immediately after the arrest only in 7.8% of cases. Usually, a lawyer gets involved in the case after one or two hours from arrest (in 26.1% cases, a lawyer got involved within 24-36 hours from arrest, and in 30.6% of cases within 36-60 hours). Accordingly, in most of the cases, arrested persons are in police custody without a lawyer, which increases the risk of subjecting them to ill-treatment.

The study of the cases also shows that, in police divisions, various investigative actions, .e.g., interrogations are conducted from the moment of arrest until the involvement of a lawyer. Despite the fact that the right to a lawyer is guaranteed both in administrative[475] and criminal proceedings,[476] the monitoring revealed that the persons arrested in administrative proceedings never exercise their right to a legal counsel. As regards those arrested in criminal proceedings, in 46% of the studied cases, arrestees did not have a lawyer when they were

472 Standards of the European Committee for the Prevention of Torture, p. 13; para. 41.
473 Annex no. 2, Article 8.2 of Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016 on Approving Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.
474 The Parliamentary Report of the Public Defender of 2014, p. 208; see at: http://www.ombudsman.ge/uploads/other/2/2439.pdf [last visited on 10.03.2017].
475 The Code of Administrative Offences of Georgia, Article 255.
476 The Code of Criminal Procedure of Georgia, Article 38.5.

under full control of police or were placed in temporary detention isolators. Accordingly, the study conducted in regions about involvement of lawyers in criminal proceedings showed that in 54% of studied cases, a lawyer was involved from various stages. A lawyer was involved at the initial stage of proceedings only in 3% of cases; in 27% cases, a lawyer was involved after charges were brought; in 18% cases, a lawyer was involved from the stage of interrogation; during concluding plea bargain 3.5% and at the stage of other investigative actions in 2.5% of the studied case-files.

Out of the studied case-files, in which an arrestee had a lawyer at least at some stage of the proceedings, the indicator of involvement of a lawyer in entire proceedings was separately processed. According to the findings, in the majority cases (37.1%), a lawyer was involved at the stages of interrogation and bringing charges; in 26.6% of cases, only at the stage of bringing charges; in 13.5% of cases, at the stages of charging, interrogation and conducting some other investigative action; in 10.1% cases, a lawyer was involved only at the interrogation stage; in 6.8% cases, only at the stage of concluding a plea bargain; in 0.4% cases, lawyers were involved in the interrogation and other investigative actions; also in 0.4% cases, lawyers were involved at the stages of charging and concluding a plea bargain; and in 2.5% cases, lawyers were involved at the stages of charging and other investigative actions. In all the above case-files, a lawyer was involved in all investigative actions only in 1.3% studied case files and in other 1.3% cases, a lawyer was involved apart from the above investigative actions in some another investigative action.

Under the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,[477] the rights of an arrested person include the right to contact a lawyer and the right to meet a lawyer. Contact with a lawyer should be provided within a reasonable time from the time admission to an isolator. In those cases, where they know who the lawyer is and his/her contact details, isolators' personnel themselves contact him/her; and in those cases, where they do not, the arresting authority provides the contact with a lawyer.[478]

Out of 178 case-files studied in the regions, in 123 (69.1 %) cases, a lawyer visited an detained person in an isolator; out of 143 case-files studied in Tbilisi, a lawyer visited in an isolator in 80 (55.9 %) cases.

According to the information provided by the Ministry of Internal Affairs of Georgia, the detained persons placed in temporary detention isolators exercise their statutory rights, such as access to a lawyer, adequate medical service, appeal etc., fully.

According to the data collected and processed by the Special Preventive Group, there are problems related to the exercise of arrested persons' right to a legal counsel in criminal cases in the regions. Out of the studied case-files, almost in half of the cases (46%), detained persons did not have a lawyer at all. The Public Defender is appalled by these statistics. Besides, even in those cases, where an arrested person had an access to a lawyer, the latter was usually involved after the lapse of certain time from the moment of arrest.

One of the reasons for declining to exercise the right to a lawyer is the cost of legal consultation. The European Court of Human Rights has held that the State is responsible not only to provide an arrested person with a legal counsel but also in case of a manifest failure by the counsel appointed under the legal aid scheme to provide effective representation; Article 6 § 3 (c) of the Convention requires the national authorities to intervene.[479]

Under the Law of Georgia on Legal Aid, legal aid is provided in cases directly prescribed by law; also, under the procedure established by this Law if an remand, convicted and/or acquitted person is insolvent.[480] Therefore, legal aid lawyers are involved in criminal proceedings in one of the following cases: 1) if a person is insolvent; 2) if a person is eligible for mandatory defence; and 3) the Director of the Legal Aid Office, based on the

477 Annex 2 to Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016 Approving the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.
478 *Ibid.,* Article 8.1.
479 *Güveç v. Turkey*, application no. 70337/01, judgment of the European Court of Human Rigths of 20 January 2009, paras. 130-131.
480 Law of Georgia on Legal Aid, Article 5.1.

criteria predefined by the Legal Aid Council, decides that legal aid should be rendered to a person who is not a member of a family registered in the unified database of socially vulnerable families.[481]

LEPL Legal Aid Office has 12 bureaus in Georgia (one in Tbilisi and eleven in various regions). As of 31 December 2016, there were 92 legal aid lawyers specialising in criminal law employed in the Office. Most of the lawyers were employed in Tbilisi Bureau.[482] Besides, Legal Aid Office provides free legal services through contracted lawyers who are not staff members of the Office.

In 2016, legal aid lawyers had to be involved in 10973 cases; in 9233 cases, these were staff members of the legal aid bureau; in other 1740 cases, it was necessary to involve contracted lawyers.[483]

In 6800 cases, legal aid layers were involved right at the investigative stage, in other cases, they were involved at the trial stage or during execution of sentence.[484]

Accessible legal consultation and assistance especially in those cases, where an remand is arrested, is one of the main safeguards of the principles of fair trial and rule of law. Besides, involvement of a lawyer at the early stage of proceedings is an important mechanism of protection from torture and other forms of ill-treatment. The Public Defender welcomes the involvement of legal aid lawyers in criminal proceedings as early as the initial investigative stage. However, the Special Preventive Group is unaware specifically at which point of investigation the lawyers get involved.

The Public Defender reiterates the importance of providing a lawyer to an arrestee within the shortest time possible after arrest in those cases where he/she cannot pay the fees for legal services.

In accordance with the Statute of the LEPL Legal Aid Office, in cases of mandatory defence, the head of a legal aid bureau assigns a lawyer upon request. In those cases, where circumstances of the case do not necessitate reaching a decision immediately, there is a two-day term for taking a decision on assigning a legal aid lawyer to the proceedings.[485]

According to the information submitted by the Legal Aid Office, a lawyer is assigned to a criminal case practically immediately. The two-day term is used mainly in those cases where there is no need to immediately take a decision and a beneficiary's interests are not essentially compromised.[486] The Public Defender welcomes the practice of immediate assignment of a legal aid lawyer; however, he observes that the involvement of a lawyer in the proceedings after two days from arrest could essentially compromise the rights and legitimate interests of an arrested person.

According to the information received from the Legal Aid Office, in 2016, 39.6% of the Office's budget was expended on the remuneration of the lawyers employed within the bureaus. It implies that there are sufficient financial resources available for the services of the existing number of legal air lawyers. However, the Public Defender observes that future increase in human resources of the office is desirable.

In 2016, the lack of human resources was never a reason for a refusal to assign a lawyer to criminal proceedings.[487] However, the Public Defender observes that under such conditions, where one lawyer conducts 100 criminal cases on average in a year, the quality of legal services and effectiveness of legal aid could be seriously questioned. This under no circumstances implies questioning the professionalism of lawyers themselves. Increasing the number of legal aid lawyers in bureaus of the Office would contribute to the better administration of justice.

481 *Ibid.,* Article 5.3.
482 Letter no. LA91700003629 of the Director of LEPL Legal Aid Office of 24 February 2017, pp. 1-2.
483 *Ibid.,* pp. 4-5.
484 *Idem.*
485 Statute of LEPL Legal Aid Office, Article 21.
486 Letter no. LA91700003629 of the Director of LEPL Legal Aid Office of 24 February 2017, p. 6.
487 The grounds of refusal of involvement of a legal aid lawyer in criminal proceedings, see, Letter no. LA91700003629 of the Director of LEPL Legal Aid Office of 24 February 2017, p. 7.

Besides, it is problematic to document an arrestee's request for a lawyer. When an arrested person requests a lawyer, there is no mechanism in the form of either a report or other registered document that would show whether he/she was provided with one or this right was arbitrarily refused by police under a false pretext. The Public Defender raised this issue in the Parliamentary Report of 2015 as well.[488] However, the situation has not changed in this regard. Therefore, the Public defender once more emphasises that each request of an arrested person for a lawyer should be documented and there should be some mechanism in place that would register every such request and the subsequent follow-up.

Access to a Doctor

Immediately upon arrest, arrestees should be given requisite medical assistance, which implies services rendered by a qualified health-care professional without any undue delay. Under the well-established case-law of the European Court of Human Rights, Article 3 of the European Convention imposes a duty on a State to ensure that arrestees are provided with the requisite medical assistance.[489]

A person in police custody should be given access to medical service from the very moment of arrest, which decreases the risk of ill-treatment. During medical examination, the health conditions should be described in detail and the findings of the examination should be accessible for an arrestee or his/her lawyer. In accordance with the standards of the European Committee for the Prevention of Torture, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).[490]

The Public Defender positively assesses Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016[491], which approved Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia. These Instructions apply to all isolators with an operational medical unit.[492] In the opinion of the Public Defender of Georgia, the Instructions comply with the CPT standards.[493] The Instructions reflect the Public Defender's recommendations made in 2014-2015 concerning timely and adequate medical services, medical ethics and documenting injuries, which is positively assessed.[494]

In accordance with the above-mentioned Instructions, medical assistance should be accessible for persons in temporary detention isolators at any time of the day and night. When placing a person in a temporary detention isolator, upon written informed consent, an arrested person is interviewed immediately and adequately examined by an on-duty doctor of the temporary detention isolator for the assessment of health condition. Upon admission to an isolator, an arrested person should also be informed about medical services available there, as well as the rules for benefiting from these services. The request for consultation with a health-care professional of an isolator should be fulfilled without limitations and delay. An detained person should be

488 Parliamentary Report of the Public Defender of 2015, p. 209, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [last visited on 10.03.2017].

489 *Kudla v. Poland*, application no. 30210/96, judgment of the Grand Chamber of the European Court of Human Rights of 26 October 2000, para. 94; *Kalashnikov v. Russia*, application no. 47095/99, judgment of the European Court of Human Rights of 15 October 2002, para. 95.

490 The Standards of the European Committee for the Prevention of Torture, p. 15, para. 42.

491 Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016, annex, Article 1.2.

492 Presently there are such medical units in the following eight isolators: Tbilisi no. 1. TDI, Tbilisi TDI, Ajara and Guria Regional TDI, Shida Kartli and Samtskhe-Javakheti Regional TDI, Kvemo Kartli Regional TDI, Kakheti Regional TDI, Imereti, Ratcha-Lechkhumi and Kvemo Svaneti Regional TDI, Samegrelo-Zemo Svaneti Regional TDI.

493 23rd General Report of the CPT, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2013, para. 74.

494 See the Parliamentary Report of the Public Defender of Georgia of 2014, p. 218, also, the Parliamentary Report of the Public Defender of Georgia of 2015, p. 214.

provided with the same quality of medical services in temporary detention isolators as free citizens in public health-care sector.[495]

According to the established practice, in those isolators with no operational medical units, upon admission to such temporary detention isolators, an ambulance is called in and its doctor examines an arrested person.

The above Order also provides for detailed instructions for documenting injuries and states that injuries should be described in accordance with the so-called Istanbul Protocol.[496]

The Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators provide for the form of medical examination to be provided to a person placed in an isolator upon admission. There are detailed instructions for health-care professionals as well as the tables for general information on a patient and his/her illness record. In the medical examination form, special attention is given to information about torture, inhuman treatment or sexual violence; information on alleged violence is entered in relevant rows and columns. Besides, under the said Instructions, a health-care professional has a duty to indicate in a graphical image of human anatomy the injuries found on an detained person, document them by taking photos and attach the material to the medical examination form.[497] Furthermore, a doctor is obliged to open the medical case-file of a person upon his/her admission to an isolator and enter the findings of medical examination in a relevant form. Besides, doctors have the duty to give medical examination to detained persons, upon informed consent, when they are taken out from an isolator. In such case, a doctor fills in an additional form that is similar to the initial medical examination form. These forms will be annexed to the medical case-file of a patient.[498] Under the Instructions, the medical unit carries out the following actions: examination of a person to be placed in an isolator; registration of the injuries found; and if necessary, with the consent of the patient, submission of the information on the injuries to relevant authorities.[499]

The Public Defender welcomes such regulation[500] and states that comprehensive medical examination upon admission and leaving at an isolator of an arrested person will significantly diminish risks of ill-treatment and contribute to the identification and documentation of incidents of alleged ill-treatment before both admission and staying in an isolator.

In the opinion of the Public Defender of Georgia, the recently approved Instructions enable health-care professionals to effectively identify and document the incidents of alleged ill-treatment during initial admission to temporary detention isolators as well as in all other instances; e.g., when an detained person is given medical services immediately after violent incidents in an isolator, or if he/she is taken out of an isolator for any reasons and is returned. Instructions also require observance of ethical standards such as medical confidentiality, medical examination after informed consent of a patient and submission of information about alleged ill-treatment, based on a patient's consent, to the competent authorities.

At the same time, the Public Defender emphasises the importance of the accurate and comprehensive implementation of the Instructions. As the Minister issued the Order by the end of 2016, the Special Preventive Group could not inspect the practical implementation of the Order within the monitoring carried out in the reporting period.

495 Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, annex, Article 3.

496 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the so-called Istanbul Protocol.

497 Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, annex 4.

498 *Ibid.,* annex, Article 7.2.

499 *Ibid.,* Article 25.

500 The Public Defender, in his Parliamentary Report of 2015, discussed the problem of incomplete documentation of injuries on persons placed in temporary detention isolators and emphasised the importance of the use of comprehensive and unified standards for documenting injuries that would be in compliance with the requirements of the Istanbul Protocol.

The Public Defender observes that all medical examinations should be carried out without eavesdropping and visual surveillance from non-medical personnel save those cases where either a doctor or a patient requests to make an exception. This should not be made into a practice though. In those cases where a doctor is not willing to stay alone with an detained person due to security issues, alternative measures should be introduced as the presence of an isolator's staff member at the medical examination can be a reason for incomplete documenting of health condition as well as origin of injuries.

According to the Instructions, in those cases where a health-care professional requests the presence of a staff member, medical examination should be carried out of the hearing of the non-medical staff, maintaining a reasonable distance.[501]

The findings of the monitoring show that the initial medical examination of an arrestee is usually carried out in the presence of an isolator's personnel due to the reason that a doctor is afraid to stay alone. In such cases, the close presence of the staff has its ramifications for openness of the arrestee (the real reason behind injuries, complaints against police, etc.). It is the observation of the Special Preventive Group that this practice is of routine and regular nature, which is further confirmed by the recordings of detained persons' medical case-files. Usually, there is a notice in external examination reports that an examination was conducted with a doctor, which means that screening and medical examination of a person placed in a temporary detention isolator was jointly carried out by a health-care professional and the isolator's staff member.

The below table lists incidents of admission to temporary detention isolators where an ambulance doctor does not indicate either absence or presence of bodily injuries (no recording) whereas an external examination report either indicates an injury or describes it and an ambulance doctor indicates that no injuries have been found on the body of a person in police custody.

Isolator	No Recording	Not Found
Kakheti Regional TDI (Telavi)	20	5
Sighnaghi TDI	0	3
Kvareli TDI	5	7
Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti Regional TDI (Kutaisi)	6	5
Zestaponi TDI	0	2
Baghdati TDI	3	0
Tchiatura TDI	0	1
Samtredia TDI	8	3
Zugdidi Regional TDI	5	2
Zugdidi TDI	2	1
Senaki TDI	3	1
Poti TDI	1	1
Chkhorotsku TDI	3	3
Khobi TDI	1	1
Batumi TDI	13	9
Kobuleti TDI	5	1
Ozurgeti TDI	6	1
Lanchkhuti TDI	0	1
Borjomi TDI	2	1
Total	83	48

501 *Ibid.,* Article 4.6.

The study of case-files show that the situation on documenting injuries in isolators by ambulance doctors has been improved compared to the previous year.[502] However, it is important that ambulance doctors always fully described injuries. They could be given special instructions in this regard.

During the monitoring carried out in 2016, the Special Preventive Groups did not receive any information about any bias on the part of medical personnel in isolators. The Public Defender of Georgia still observes that it is important that adequate medical assistance is provided by independent and impartial doctors in temporary detention isolators. This would enable detained persons to report openly and freely to doctors any injury or complaint that they could have during arrest or thereafter. It is an opinion of the Public Defender that relationship with the medical personnel that is under the Ministry of Internal Affairs would raise the feeling of fear and despair in detained persons and they would fear that their health condition would not be described adequately and alleged ill-treatment from police could remain unaddressed.[503]

It should be noted that a person in temporary detention isolator, if needs be, has the right to request medical examination throughout his/her stay in the isolator and to this end, contract an expert with his/her own financial resources.[504]

RECOMMENDATIONS

To the Minister of Internal Affairs of Georgia:

- To ensure discontinuation of the practice of calling persons to police stations and divisions and ' interviewing' them without any procedural guarantees;
- To ensure that all persons brought to police stations and divisions are registered indicating their status, the time of entering/leaving administrative buildings;
- To ensure all the persons entering, under any status, police administrative buildings to be expressly told in a language understandable about their status, as well as the purpose of their being brought to police and their rights;
- To ensure that in all cases the information about arrest of a person is communicated to family/ relatives/consulate;
- To ensure that the request of a person in police custody to call his/her family or lawyer is documented through maintaining relevant register;
- To ensure that a person brought as a witness to a police station or division is explained in a physical and psychological pressure-free environment his/her right to a lawyer and upon request ensure unimpeded involvement of a lawyer in the proceedings;
- To ensure that medical units are set up in all temporary detention isolators and Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 applies to all temporary detention isolators;
- To ensure effective implementation of Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016;

502 In 2015, out of 740 studied case-files, in 264 cases (35.7 %), an ambulance doctor did not indicate either absence or presence of bodily injuries and in 67 cases (9%), refused the existence of injuries, whereas the personnel of temporary detention isolators indicated the existence of bodily injuries in external examination reports. In 2016, out of 578 studied case-files, the same indicators are 83 cases (14.4 %) and 48 (8.3 %) cases respectively.

503 The Parliamentary Report of the Public Defender of Georgia of 2015, p. 213.

504 Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, Article 5.1.4.

- To ensure that non-medical staff attends medical examination of persons placed in temporary detention isolators only in exceptional cases and not regularly; and
- To examine the possibility of transfer of medical personnel employed in temporary detention isolators from the system of the Ministry of Internal Affairs to the Ministry of Labour, Health and Social Affairs for ensuring institutional independence and impartial activities.

To the Government of Georgia:

- To ensure increase of the budget of the LEPL Legal Aid for increasing the human resources in the bureaus of the Office; and
- To take all necessary measures to ensure that in cases an ambulance is called in temporary detention isolators, doctors document fully the bodily injuries found on persons in police custody.

PROCEDURAL SAFEGUARDS

Audio and Video Recordings

The electronic recording depicting all aspects of detention and the actions implemented in relation to it represents an important additional safeguard against the ill-treatment of detainees.[505] Both the Committee against Torture[506] and the European Committee for the Prevention of Torture welcome introduction of video surveillance systems in police establishments of Member States.

During videotaping, certain standards such as protection of personal data, processing and storage of the recorded material, supervision by the same sax personnel when it comes to the facilities of female prisoners; if an interrogation is videotaped, all those present and not only an arrestee should be recorded, etc., should be borne in mind.

Under Article 27.1 of the Law of Georgia on Police, to ensure public security the police may, as provided for by the legislation of Georgia, place/install self-operating photo and video devices on their uniforms, on roads, along external perimeters of buildings, use self-operating devices already installed and under the possession of other persons to prevent crime, to protect a person's safety and property, public order, and to protect minors from harmful influence.

Under Article 24 of the Law of Georgia on Police, special police control of a person, an item, or a vehicle shall be conducted if there are reasonable grounds to believe that a crime or other offence has been or will be committed. During a special police control, a police officer shall be equipped with switched-on video recording device fixed on his/her uniform.

It is noteworthy that only the patrol police officers of the Ministry of Internal Affairs conduct audio-video recording by body cameras.

The term for the storage of recordings depends on technical specifications but should not exceed three years.[507] The Public Defender, in his Parliamentary Report of 2015, recommended[508] to the Minister of Internal Affairs

505 See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, (CPT/Inf/E (2002) 1 - Rev. 2015), para. 36, available in English at: http://www.cpt.coe.int/en/docsstandards.htm [Last visited on 29.03.2017].
506 CAT general comment N2 on art. 2 UNCAT, para.14.
507 Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015.
508 Report of the Public Defender of Georgia on the Situation of Human Rights in Georgia, 2015, p. 218, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf.

to set forth the obligation for patrol police officers to use body cameras when communicating with citizens, as well as the procedure for the storage of the recordings and the terms for their storage. This recommendation has not been fulfilled. The Public Defender observes that the use of body cameras by police should be mandatory during any kind of communication with citizens and the recordings should be stored for a reasonable time.

It is important that not only the officers of patrol police department but also detective-investigators and district inspector-investigators should be equipped with body cameras and in-car video systems. In the Parliamentary Report of 2015, the Public Defender recommended[509] the Minister of Internal Affair regarding this issue; however, this recommendation has not been complied.

During interviews, some police officers stated that sometimes they record citizens' aggressive behaviour with their personal mobile phones. The Public Defender emphasises that video recording is impermissible without certain normative regulation. In Public Defender's opinion, the fact that police officers record incidents once again indicates to the interest of the police officers themselves to record their communication with citizens. However, the Public Defender stresses the importance of making such recordings in accordance with legislation. It is important to store adequately the recorded material to prevent its arbitrary use in the future. The procedure for making video recordings and processing the material as well as the terms for its storage should be in compliance with the national standards and legislation on the protection of personal data.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Minister of Internal Affairs to ensure that all police divisions were equipped with video surveillance systems in external and internal premises.[510] According to Letter no. 555482 of the Minister of Internal Affairs of Georgia, received on 4 March 2016, in 2014-2015, video cameras were purchased for structural sub-units of the Ministry and their installation was scheduled for 2016. The Public Defender's Office requested through letters nos. 03-1/8104 and 03-2/234 information from the Ministry of Internal Affairs about equipment of external and internal premises of police divisions as well as temporary detention isolators with video cameras. On 17 January 2017, the Ministry informed the Office in letter no. 105466 about external surveillance video cameras as of February-March 2016.

As showed by the information provided by the Ministry and the outcomes of the monitoring carried out by the members of the Special Preventive Group, it is still a problem in 2016 to have external and internal premises of police divisions covered adequately by video cameras. Video cameras were not installed either on external or internal premises of Chkhorotsku, Martvili, Senaki, Tsalenjikha, Mestia, Borjomi, Akhaltsikhe and Adigheni district divisions. In the great majority of those divisions, where internal premises are covered by video surveillance, the cameras are mostly installed at the entrance, in front of the place allocated for an on-duty operative.

After an arrestee is taken into a building, it is impossible to establish where and in what conditions he/she is kept in the police division and whether he/she was subjected to physical or psychological violence.

The Public Defender of Georgia considers it necessary that the buildings of police divisions were equipped with surveillance cameras and video recordings were stored for a reasonable time. This would be an additional safeguard against ill-treatment of an arrestee. Besides, it is important that the entire process, in each case, is video recorded starting from the arrest to the admission to a temporary detention isolator, for as long as arrestees are under the police control.

Video surveillance is carried out in all temporary detention isolators. However, for the purposes of adequate protection of arrestees from ill-treatment, it is important to ensure that video surveillance in temporary detention isolators is recorded and stored for a reasonable time. Upon request, the recordings should be available for the members of the Special Preventive Members. In his Parliamentary Report of 2015, the Public

509 *Idem.*
510 *Idem.*

Defender recommended to the Minister of Internal Affairs to ensure that video surveillance in temporary detention isolators was recorded and stored for a reasonable time.[511] The fact that the minimum term of storage was defined in the reporting period is assessed positively.[512]Information is automatically recorded during video surveillance. The recorded material is stored in a central control room for not less than 24 hours. When the memory of the recording device is full, fresh information is recorded on the same device after erasing the existing information. However, the Public Defender believes that the storage of recordings for 24 hours does not ensure attaining the objective sought and accordingly all measures should be taken so that the recordings are stored for a reasonable time.

RECOMMENDATIONS

To the Minister of Internal Affairs of Georgia:

- To ensure that surveillance cameras are installed in all police stations;
- To ensure that in all cases of police arrests an uninterrupted video recording is made of the process starting from the arrest to the admission to a temporary detention isolator, including arrest, reading of rights, carrying out investigative actions and transportation of an detained person;
- To set forth the obligation of patrol police officers to record with a body camera the communication with citizens and the procedure and terms of storing the recordings;
- To set forth the obligation of detective-investigators and district inspector-investigators to record with a body camera the communication with citizens and procedure and terms of storing the recordings;
- To ensure that the recordings from video surveillance installed in temporary detention isolators are stored for a reasonable time; and
- To ensure all the recordings are stored for a reasonable time.

Comprehensive Processing of Documentation

During the visits carried out in 2016, the members of the Special Preventive Group examined the case-files of the detained persons of temporary detention isolators, as well as journals kept in police stations and units. The examination of the above documentation revealed various breaches and shortcomings, redeeming of which is necessary for comprehensive processing of documentation.

Annex no. 6 to Order no. 605 of the Minister of Internal Affairs of Georgia of 8 August 2014 approved the form of the Journal for Registration of Detained persons; Annex no. 7 to the same Order approved the form of the Journal of Registration of Detained persons Transferred to Prison (Temporary Detention Isolator). During the examination of these journals, both in 2015 and 2016, the staff members of the police stations and units were asking the members of the Special Preventive Groups about how they were supposed to fill in certain tables. It has turned out that the personnel of the Ministry of Internal Affairs fill in the journals erroneously. Besides, these journals are outdated and need revision and redesign.

According to the explanation given by the personnel in charge of maintaining the journals at police stations and divisions of the Ministry of Internal Affairs, they were trained to process the journals of registering detained

511 *Idem.*

512 Article 11.7 of the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Minister of Internal Affairs of Georgia of 2 August 2016.

persons and journals of registering detained persons transferred to prison (temporary detention isolators) comprehensively. However, in 2016, the monitoring conducted by the members of the Special Preventive Group showed that the aforementioned documentation is still maintained erroneously. In particular, in some cases the following cannot be established: the time of arrest, the date and time of admission to a police division; the situation of an arrestee; their numbering in the journals is mixed up; there are no indications where and under which circumstances an offence was committed; and in some cases, columns in the journals are not filled at all.

In 2016, the shortcomings in maintaining journals were identified in the police departments of Samegrelo-Zemo Svaneti, Samtskhe-Javakheti and Guria; in district divisions of Khobi, Zestaponi, Tkibuli, Borjomi, Adigheni, Akhalkalaki, Terjola, Kharagauli, Ambrolauri, Baghdati, Lanchkhuti, Oni, Tskaltubo, Khoni, Aspindza, Khelvachauri, Martvili, Chkhorotsku, Samtredia, Tchiatura, Sachkhere, Lentekhi, Tsageri, Akhaltsikhe, Ozurgeti, Kobuleti, Ninotsminda, Poti, Mestia, and Chokhatauri. The Special Preventive Group did not find any shortcomings in the entries of 2016 in the journals for registering detained persons and journals for registering detained persons transferred to prison (temporary detention isolators) of Ajara Police Department, Batumi City Police Division, District Divisions of Tsalenjikha, Senaki, Zugdidi and Vani.

It was revealed during the visits made by the Special Preventive Group that special journals are not maintained at police stations and divisions of the Ministry of Internal Affairs to register visitors.[513] E.g., when a person appears in a police division/station as a witness, his/her visit is not registered in the standard form journal. It is important to register in detail the date and time of entry/leaving as well as the purpose of the visit of citizens to police stations and divisions in order to ensure that later the voluntary nature of their visit and its duration as well as purpose of the visit are not questioned. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs of Georgia regarding this issue. This recommendation, however, has not been fulfilled to-date.

The Georgian legislation sets forth the forms of reports to be drafted on arrests made in criminal and administrative proceedings. Under Article 175.2 of the Criminal Procedure Code of Georgia, the following should be mentioned in the arrest reports: who, where, when, under what circumstances and on which basis of the Code has been arrested; the physical condition of the arrestee; what the charges are; exact time of his/her admission to police station or other law enforcement body; the list of the rights and duties under the Code; and the objective reason(s) due to which it was impossible to draft the report immediately upon arrest.

During the visits made in the reporting period, the members of the Special Preventive Group examined how comprehensively the law enforcement officers draft reports and it was revealed that there are frequent shortcomings in drafting arrest and body search reports. In particular, the following data is not mentioned in reports: the circumstances under which a person was arrested; whether he/she resisted police; whether proportional force was used and in which manner; and whether arrest was made in peaceful environment without resisting police.

In accordance with Article 245.5 of the Code of Administrative Offence of Georgia, the following is stated in the arrest report drafted in administrative proceedings: the date and place of drafting the report; the position, name and surname of the official drafting the report; data about an arrestee; and time and ground for arrest. The report is signed by the official who drafted the report and the arrestee. If the arrestee refuses to sign the document, it is mentioned in the report.

Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 on Approving the Procedure of Drafting Administrative Offences Report, Administrative Arrest Report, Body Search and Objects Search Report, Penalty Receipt, Temporary Driving Licence, Explanation and Notice and Submitting them to the Authority Examining an Administrative Case approved the form of administrative arrest report.[514] This report,

513 Except for several divisions, were the External Security Office notes down the information.
514 Annexe no. 9.

unlike the report of arrest in criminal proceedings, does not require registering the time of drafting arrest report,[515] the injuries on the body of an arrestee and description of the circumstances of arrest (whether there was resistance, whether proportional force was used and in which manner; whether arrest was made in peaceful environment without resisting police). In the light of the foregoing it is necessary to improve the form of administrative arrest report by adding relevant columns for registering the time of drafting arrest report, the description of injuries on the body of an arrestee, and the circumstances under which a person was arrested. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs of Georgia concerning improving the form of administrative arrest report. This recommendation, however, has not been complied with to-date.

After an arrest, the physical examination should identify any trace of violence that could have been inflicted as the result of torture or ill-treatment and should be duly described and documented. As the European Court of Human Rights has repeatedly stated, where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment.[516]

The study of the information collected nation-wide showed that there were references to a bodily injury in 391 (68.7 %) cases of arrest reports (in 2015, in 419 [58.5 %] cases), and in 569 cases of external examination reports (in 2015, in 716 cases). Accordingly, in 178 (31.3 %) cases (in 2015, 297 [41.5 %] cases), there is no reference of those bodily injuries in arrest reports that are indicated in external examination reports. Similarly, in Tbilisi isolators, bodily injuries are indicated in external examination reports in 367 cases and in arrest reports in 233 (63.5 %) cases, therefore the reference to bodily injuries are missing in 134 (36.5 %) arrest reports. It is noteworthy in this context that the administrative arrest form does not impose an obligation on the arresting official to indicate the bodily injuries found on an arrestee. This is one of the reasons that approximately three fourths of those cases, where bodily injuries that are indicated in external examination reports are missing from arrest reports, are administrative arrests.

During the study of the information, the similarity of the number and location of bodily injuries in external examination reports and arrest reports was also examined. It was found out that there are identical recordings only in one fourth of the cases, which again indicates the shortcomings in processing documentation.

Regarding the similarity of the number of injuries see the below table.

Similarity of Recordings on Injuries	Region in 2015	Region in 2016	Tbilisi in 2016
Identical recordings	194 (29.6 %)	100 (26 %)	53 (23.5 %)
More injuries recorded in arrest report	36 (5.5 %)	50 (13 %)	28 (12.4 %)
More injuries recorded on external examination report	425 (64.9 %)	234 (61 %)	145 (64.1 %)
Total	655	384	226

Of the 234 studied cases in regions, where the number of injuries in external examination reports is higher, in 150 (64.1 %) cases (in 2015, 69.1 % cases), a person was arrested in administrative proceedings and in 84 (35.49%) cases (in 2015, 30.9% cases) a person was arrested in criminal proceedings. In the studied 145 cases in Tbilisi, where the number of injuries in external examination reports is higher, in 94 cases (64.8 %), a person was arrested in administrative proceedings, and in 51 (35.2 %) cases, a person was arrested in criminal proceedings.

In 2016, the study of the forms filled in during the monitoring conducted in Tbilisi and the regions, shows that the number of injuries in arrest reports and external examination reports do not coincide in 76.6% cases and

515 The time of arrest is implied.
516 Colibaba v. Moldova, *application no. 29089/06, judgment of the European Court of Human Rights of 23 October 2007, para. 47.*

in the rest of 23.4% cases, the data is identical. In 2016, in Tbilisi, there were more than 15.7% occasions than the cases in regions, where the number of injuries did not coincide in external examination reports and arrest reports.[517] In Tbilisi, there are 16.1% less cases than the cases in the regions, where the recordings in external examination reports and arrest reports coincide.

It is noteworthy that the on-duty staff members in police stations usually transfer the data on arrested persons' bodily injuries from arrest reports into registration books. They do not document injuries of arrestees separately.

The study of 578 cases in the regions of Georgia showed that out of 384 cases, where resistance to the police was indicated in arrest reports, in 6 cases (in 2015, 3 [1.3 %]) the resistance is fully described by detailing what manifested as resistance; in 199 (51.8 %) cases (in 2015, 4 [1.8 %] cases), reports partially describe resistance incidents; and in 46.9 % cases (in 2015, [96.9 %] cases), police officers do not describe at all. As regards Tbilisi, only in 1 case (0.4 %), police resistance is fully described and in 126 (56%) cases, the description is partial; in 98 (43.6 %) cases, there is no description at all in arrest reports.

In 2016, in comparison to 2015, the law enforcement officers indicated more comprehensively the nature of resistance to police, which is a positive development.

In the 578 files studied in the regions, the incidents of use of force are indicated only in 33 (5.7 %) cases (in 2015, 46 [6.2 %] cases); in Tbilisi, out of 372 files, in 16 cases (4.3 %). Out of 33 cases of use of force, the method of the use of force is fully described only in 2 cases (6.1 %), (in 2015, 4.3% cases); in 10 cases (30.3 %), reports have partial descriptions (in 2015, 6.5 % cases); and in 21 cases (63.6 %), there is no reference to the method of use of force, (in 2015, 89.2 % cases). As regards Tbilisi, the method of the use of force is partially described only in one case.

The analysis of the study conducted by the Special Preventive Group showed how the factor of adequate light affected documentation of injuries. It was found that, in 2016, approximately in 1/4 of the cases (in 2015, in 1/3 of the cases) arrests were made in the daylight.

In 1/3 of the cases, where injuries were indicated only in external examination reports, arrests were made in the daytime. The study revealed 33 incidents in the regions (in 2015, 50 incidents) and 20 incidents in Tbilisi, where arrests were made during daylight and injuries in the head, face and eye-socket areas are only indicated in the external examination reports drafted by the isolator personnel. In 53 such cases, if a person had an injury, it had to be reported by police officers making the arrests.

It was revealed within the study that out of 578 case files studied in regions in 2016, in 9 (1.6 %) cases, in the relevant column of external examination report, personnel of a temporary detention isolator failed to indicate whether an arrestee had a claim against police, (in 2015, in 45 [6.1 %] cases). Out of 372 cases studied in Tbilisi, two such incidents have been revealed.

Within the study, it was examined whether there was a reference to the time of sustaining injury in the external examination reports. See the below table.

Time of Sustaining Injury	Regions In 2015	Regions in 2016	Tbilisi in 2016
Before arrest	581 (78.5%)	427 (73.9%)	314 (84.4%)
During arrest	116 (15.7%)	121 (20.9%)	46 (12.4%)
After arrest	11 (1.5%)	22 (3.8%)	9 (2.4%)
N/A	32 (4.3%)	8 (1.4%)	3 (0.8%)
Total	740	578	372

517 70.6% in regions, 86.7% in Tbilisi.

As the table data shows, in 2015, there was no reference to the time of inflicting an injury in the external examination reports drafted in regions in 32 (4.3%) cases. This data has been decreased by 2.9 % in 2016, which is positively assessed. In 2016, only in 11 (1.16 %) cases, the personnel of temporary detention isolators failed to indicate the time frame when an injury was sustained.

RECOMMENDATIONS

To the Minister of Internal Affairs of Georgia:

- To take all necessary measures, including inspection to ensure comprehensive processing of documentation;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 on Approving the Procedure of Drafting Administrative Offences Report, Administrative Arrest Report, Body Search and Objects Search Report, Penalty Receipt, Temporary Driving Licence, Explanation and Notice and Submitting them to the Authority Examining an Administrative Case, to the effect of adding to the following information to be registered in administrative arrest report: the time of drafting arrest report, the description of injuries on the body of an arrestee, the circumstances under which a person was arrested; whether he/she resisted police; and whether proportional force was used and in which manner;
- To amend for revising and renewing the form of the Journal for Registration of Detained persons, approved by Annex no. 6 to Order no. 605 of the Minister of Internal Affairs of Georgia of 8 August 2014, and the form of the Journal of Registration of Detained persons Transferred to Prison (Temporary Detention Isolator) approved by Annex no. 7 to the same Order; and
- To elaborate a unified form of the journal for all police stations and divisions registering the date and time of entry/leaving as well as the purpose of the visit of citizens to police stations and divisions.

Proposal to the Parliament of Georgia:

- To amend Article 245.5 of the Code of Administrative Offences of Georgia to the effect of adding to the following information to be registered in administrative arrest report: the time of drafting arrest report; description of injuries on the body of an arrestee; the circumstances under which a person was arrested; whether he/she resisted police; and whether proportional force was used and in which manner.

Complaints

The essential component of the fight against torture is the right, afforded to all persons, to prompt and impartial examination of the complaints against representatives of State authorities. The said principle cannot be enforced practically without setting up legal remedies allowing lodging and examining relevant complaints by arrested persons.

For the above legal remedies to be accessible there should be simple and clear procedures in place governing the lodging and examining of complaints. It is important that procedures were easily comprehensible and accessible for both arrested persons and law enforcement authorities. Significant safeguards for arrestees'

right to lodge a complaint are defined by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[518]

Order no. 423 of the Minister of Internal Affairs of Georgia of 2 August 2016 approved the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia. The same Order invalidated Order no. 108 of the Minister of Internal Affairs of Georgia of 1 February 2010, which approved the Model Statute and Regulations of the Activities of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia. The right to lodge a complaint was also defined by Ministerial Order no. 108 of 1 February 2010. However, Article 30 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, additionally defined the term of examination of complaints by the Minister of Internal Affairs and the Director of a temporary detention isolator. This term should not exceed five days, which is welcomed by the Public Defender of Georgia.

It is noteworthy that 2015 was marked with the problem of nonexistence of the procedure allowing persons placed in temporary detention isolators the right to lodge a confidential complaint. If an detained person wished to complain, the complaint had to be sent electronically. This means, the complaint had to be scanned and uploaded electronically by an employee of the temporary detention isolator. This procedure did not allow the confidentiality of a complaint. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs to ensure the introduction of a procedure allowing lodging confidential complaints with the temporary detention isolators.

Article 23.6 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, defined that an detained person of a temporary detention isolator, upon request, should be provided with the necessary amount of the relevant stationery such as paper, envelopes for confidential complaints, writing utensils, etc., for drafting applications, complaints and other motions. The Public Defender welcomes the statutory regulation of the providing detained persons with envelopes for confidential complaints.

Besides, it is noteworthy that a specific procedure was not determined for notifying the prosecutor's office about detained persons' bodily injuries. In the Parliamentary Report of 2015, the Public Defender recommended to the Minister of Internal Affairs of Georgia to ensure determination of clear instructions by a relevant sub-legislative normative act on notifying the prosecutor's office if, during admission to a temporary detention isolator, injuries were found on an detained person's body.

It should be noted that the procedure for notifying investigative authorities about the incidents of alleged ill-treatment varies depending on whether there is a medical unit operational in a temporary detention isolator.

Under Article 6.4 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, in the isolator, where there is no operational medical unit, the shift supervisor calls in an ambulance for the first medical inspection of the person to be placed in the isolator. In such cases, after the medical examination, the isolator staff member drafts a report on the external examination in accordance with the medical note filled in by the ambulance team. The following is indicated in the external examination report: external condition of the person to be placed in a temporary detention isolator, possible signs of bodily injury, where and under which conditions and by whom these injuries have been inflicted, and whether the person complains about anybody, which is later confirmed by a signature. In those cases where the person complains about anybody or the injuries have been freshly inflicted, the Director

518 Under Article 2 of the Convention, each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
Under Article 13, 'each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.'

of the isolator is obliged to inform immediately the Office of the Chief Prosecutor of Georgia and the Inspectorate General of the Ministry.

It should be noted that, in accordance with this rule, in those cases where an arrestee does not allege ill-treatment, the Director must notify investigative authorities regarding the bodily injury if the Director considers this is a freshly inflicted injury. It is, however, unclear in which situations and according to which criteria the injuries should be considered fresh. Moreover, Directors of temporary detention isolators are not requested to have medical education. Therefore, for ensuring there are effective legal safeguards in place, it is necessary that the respective normative act clearly defined the procedures and criteria for sending notification to investigative authorities.

In this regard, the following incidents identified during the inspections of temporary detention isolators by the Special Preventive Group are noteworthy: despite numerous visible injuries on the face and around an eye-socket, notifications were not sent from Tbilisi temporary detention isolator in 17 cases; and in 111 cases from regional temporary detention isolators. There have also been cases where detained persons stated that they sustained injuries during and/or after arrest (four cases in total).

As regards isolators with an operational medical unit, under Article 6.3 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia approved by Order no. 423 of 2 August 2016, the non-staff member of Department's medical office, who has the respective qualification, conducts the initial medical examination and drafts a form on medical examination of the person placed in an isolator. If the health-care professional suspects torture and ill-treatment, he/she is obliged to notify the Director of the isolator who in turn will notify the Office of the Chief Prosecutor of Georgia and Ministry's Inspectorate General.

Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approved the Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, which only applies to the isolators with an operational medical unit.

Under Article 7 of the Instructions, during admission to an isolator, a person, after his/her informed consent, undergoes initial medical examination by the on-duty health-care professional of the isolator. The initial medical examination is the obligation of the on-duty health-care professional of the isolator. During the initial medical examination, the person is questioned about his/her health condition and visually examined for comprehensive documentation of bodily injuries; the data about the health-condition are also registered. During the initial medical examination, health-care professional, among other things, should pay special attention to the physical injuries and the documentation of their traces.

Under Article 25 of the Instructions, during the admission of a person to an isolator, the medical unit of that isolator carries out medical examination of his/her body, registering injuries and if needs be, with the consent of the detained person, notifies competent authorities about the injuries. During placement in an isolator, any trace of violence found out as the result of medical examination should be documented in detail, along with the relevant statement of the detained person and findings of a doctor. The similar approach should be taken always when an detained person receives medical services after a violent incident in the isolator or whenever, due to some reason, he/she is removed from the isolator and taken back.

The same Instruction approved the medical examination form (annex no. 4), which also includes the instruction of its use. In particular, in accordance with the Instructions, a health-care professional should obtain information about alleged ill-treatment and document the relevant medical evidence during a medical examination. The existence or absence of injuries related to alleged ill-treatment should be documented with photographs. The Instructions also set out the obligation of a doctor, in case of misgivings about ill-treatment, to submit the filled in form to investigative authorities. The said Instructions also require filling in tables with the information submitted by the detained person being examined as to whether he/she was subjected to violence

or ill-treatment and in case of a positive answer – when, where, in which manner and by whom. The form requires documenting the evidence of both physical and psychological violence. The instructions also contain illustrations of the human body, on which a health-care professional should indicate the visible injuries and their nature. The examining health-care professional should assess violence, whereby assessing compatibility between an injury and alleged method of inflicting it. There are several options and the health-care professional should choose and elaborate on one out of the following findings: not compatible – the trauma would not cause the indicated injury; compatible – the trauma would cause the indicated injury, however the latter is not specific and could be caused by many other reasons; compatible by high probability – the trauma could cause the indicated injury, the number of other possible reasons is not too high; and diagnosed - the indicated injury could only be caused by the trauma concerned and other reasons are excluded.

The Public Defender considers the approval of the above regulations and implementation of Istanbul Protocol standards to be clearly a step forward. However, the Public Defender points out certain changes (further discussed below) that are necessary to be made to the said regulations in order to ensure effective identification of the incidents of alleged ill-treatment.

The clause of Article 6 of the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Minister of Internal Affairs of Georgia of 2 August 2016, contradicts Article 25 of the Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016. In particular, in the first case, the health-care professional who suspects ill-treatment should notify the Director of an isolator, who in turn notifies investigative authorities. In the second case, the health-care professional is obliged to send the notification him/herself.

It is, therefore, necessary to amend the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, to the effect of determining that it is the obligation of a health-care professional to notify investigative authorities and thus bring the regulations in compliance with the standards established by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016, approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia and Istanbul Protocol;

The position of the Public Defender remains the same concerning the creation of an independent investigative body. The Public Defender considers it of utmost importance to set up a mechanism that will be in charge of effective investigation of incidents of torture and alleged ill-treatment of detained persons by law-enforcement officers. The Public Defender observes that until the setting up of the aforementioned body, the incidents of alleged torture and ill-treatment should be investigated by the Office of the Chief Prosecutor of Georgia. Therefore, the Public Defender considers that notifications on alleged ill-treatment of detained persons are sent from temporary detention isolators to the Office of the Chief Prosecutor of Georgia instead of the Inspectorate General of the Ministry of Internal Affairs.

Furthermore, the findings of monitoring carried out both in 2015 and 2016 show that the Chief Prosecutor's Office does not adequately study and investigate the issues related to the complaints filed by detained persons of temporary detention isolators. The Office of the Public Defender of Georgia requested information from the Office of the Chief Prosecutor of Georgia regarding follow-up actions carried out with regard to the notifications on bodily injuries found on the detained persons of temporary detention isolators.

According to the information received from the Office of the Chief prosecutor of Georgia,[519] in 2016, 240 complaints were filed in total from temporary detention isolators with the prosecutor's office.[520] Out of this, investigation was instituted in 60 criminal cases (in 59 cases under Article 333 of the Criminal Code of Georgia

519 Letter no. 13/13869 of the Office of the Chief Prosecutor of Georgia of 1 March 2017.
520 Complaints of arrested persons have been lodged in 193 cases, in 2016.

and in one case under Article 144[1]); and 66 notifications have been examined. 15 notifications were annexed and studied in the criminal case of the detained person concerned; seven notifications were studied within the administrative proceedings pending before the detained person concerned; three notifications were sent to the Inspectorate General of the Ministry of Internal Affairs of Georgia; one case was sent to the State Security Agency and Anti Corruption Agency of the Ministry of Internal Affairs, and to the Division of Procedural Supervision of Investigation and Monitoring of Operative-Investigative Activities. In the cases of seven notifications, the detained persons refused to talk with the representatives of the Prosecutors' Office and in the cases of three notifications, the persons concerned could not be questioned as they could not be located; based on 138 notifications, prosecutors interviewed detained persons of temporary detention isolators. However, they did not confirm any assault inflicted by police officers and hence investigation was not instated.

The fact that, during enquiries, arrested persons denied being assaulted, was cited by the Prosecutor's Office as the reason for not instituting investigation in 138 cases; the fact that arrested persons refused to take part in prosecutorial enquiry, was cited in seven cases. The Public Defender believes that investigation should have started in independent criminal cases even if there were no formal complaints from arrested persons as the refusal to complain could have been a result of self-censoring, fear, stress and obscurity. It should also be borne in mind that at the initial stage of restriction of freedom, the risks of intimidation, coercion, assault and other ill-treatment are higher and the person concerned is especially vulnerable.

The position of the Public Defender remains the same concerning the creation of an independent investigative body and observes that it is of utmost importance to set up a mechanism authorised to investigate alleged torture and ill treatment of arrested persons by law enforcement officers.

Recommendations

To the Chief Prosecutor of Georgia:

- To ensure that investigation is conducted by the investigative unit of the Office of the Chief Prosecutor of Georgia in separate proceedings in case of receiving notifications on alleged ill-treatment of arrestees by police, including in the absence of formal complaint of alleged victims.

To the Minister of Internal Affairs of Georgia:

- To ensure express provisions in the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, on the procedure and criteria of notifying bodily injuries to investigative authorities;
- To ensure that the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, amended to the effect of determining that it is the obligation of a health-care professional to notify investigative authorities and thus bring the regulations in compliance with the standards established by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 approving Instructions on Medical Assistance of the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia and Istanbul Protocol; and
- To ensure that notifications on alleged ill-treatment of detained persons are only sent from temporary detention isolators to the Office of the Chief Prosecutor of Georgia.

Inspection and Monitoring

The importance attached to the protection of the rights of the persons subjected to arrest or any form of restriction of liberty, as well the adequate internal and external inspection is pointed out in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[521] and the standards of the European Committee for the Prevention of Torture[522].

The Inspectorate General of the Ministry of Internal Affairs of Georgia carries out internal inspection of the Police of Georgia. Under Article 2 of the Statute of the Inspectorate General, approved by Order no. 123 of the Minister of Internal Affairs of Georgia dated 23 February 2015, the objectives of the Inspectorate General are as follows: control over the steady fulfilment of the requirements within the Ministry's system, set out in Georgian legislation; identification and adequate follow-up on the incidents of breach of ethics, disciplinary provisions, as well as inadequate fulfilment of official duties and commission of particular offences.

According to the information submitted by the Inspectorate General of the Ministry of Internal Affairs,[523] the statistics of official inspection and imposed disciplinary penalties in 2015 and 2016 are as follows:

	2015	2016
Number of Official Inspections	22447	11196
Number of Disciplinary Penalties Imposed	2630	2294

The above data shows that the number of inspections was almost halved in 2016; the number of imposed disciplinary penalties was also decreased by 336.

The data on official inspections conducted regarding breaches of citizens' rights is as follows:

	2015	2016
Number of Confirmed Incidents of Human Rights Violations	172	149
Number of Disciplinary Penalties Imposed as a Result		
Recommendation Notices	0	14
Notices	19	43
Reprimands	44	60
Strict Reprimands	68	25
Demotions	5	1
Dismissals	36	4
Suspensions	0	2

76 applications/complaints were filed with the Inspectorate General concerning incidents of alleged violations of the rights of persons arrested or subjected to restriction of liberty in any other form. In 61 cases, the allegations were not confirmed; 13 cases were referred to the prosecutor's office and investigation is pending

521 Under Article 11 of the Convention, each State Party shall keep interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction under systematic review for preventing any cases of torture.

522 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 12th General Report on the CPT's activities covering the period 1 January to 31 December 2001, [CPT/Inf (2002) 15], para 50:
"The inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Furthermore, it should examine all issues related to the treatment of persons in custody."

523 Letters nos. 31700195320 and MIA 61600048372 of the Ministry of Internal Affairs of Georgia dated respectively 25 January 2017 and 9 January 2016.

in two cases. As regards 2015, allegations were confirmed in two cases and a disciplinary penalty – reprimand- was imposed.

Apart from official inspections, Inspectorate General of the Ministry of Internal Affairs of Georgia is authorised, within the competence determined by the Criminal Procedure Code of Georgia, to conduct investigations and procedural acts on the criminal cases referred by the Chief Prosecutor of Georgia or an official authorised by the latter.

In the reporting period, in the Inspectorate General, investigations were pending on 31 criminal cases. Six cases were related to the alleged violations of citizens' rights, namely, theft – one case; fraud – four cases; and battery – one case. Out of the above six cases, criminal prosecution was instituted in four cases and conviction followed.

As regards 2015, investigation was pending in 42 criminal cases. Seven cases were related to the alleged violations of citizens' rights, namely, abuse of official power – one case; theft – two cases; rape – one case; hooliganism – one case; and fraud – two cases. Out of the above seven cases, one case was terminated; criminal prosecution was instituted in two cases; conviction followed in one case; and criminal instigation is pending on another case. No acquittals have been reached.

As already mentioned above, the position of the Public Defender remains the same concerning the creation of an independent investigative body. The Public Defender observes that until the setting up of the aforementioned body, the incidents of alleged torture and ill-treatment should be investigated by the Office of the Chief Prosecutor of Georgia.

As regards the monitoring of placement in temporary detention isolators, this is the function of the Temporary Detention Department of the Ministry of Internal Affairs of Georgia. The temporary detention isolators fall within the system of this department.

Under Article 6.a) of the Statute of the Department of Human Rights Protection and Monitoring, approved by Order no. 1006 of the Minister of Internal Affairs of 31 December 2015, it is the statutory task of the department, for enforcing a decision of a competent authority, to place the persons, arrested and/or detained in administrative proceedings, in temporary detention isolators and safeguard their rights. To this effect, there is a Monitoring Office functioning within the department, which controls the protection of the rights of the persons placed in isolators; monitors the protection of the rights of the persons placed in isolators by isolators' personnel; monitors living and hygiene conditions of the isolators' detained persons; and within its competence, follows up on the applications, information, and or alleged violations identified as the result of monitoring.

As regards external monitoring, under Articles 18 and 19 of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender of Georgia and his special representatives (including a member of the Special Preventive Group) are authorised to inspect temporary detention isolators and police stations in order to examine the human rights situation of detained persons.

In this respect, the fact that, during monitoring, the members of the Special Preventive Group of the Public Defender were given unimpeded access and the possibility to freely move around in the district divisions and temporary detention isolators of the Ministry of the Internal Affairs is positively assessed. Within the visits, the personnel of all divisions and isolators, in accordance with statutory requirements, extended full cooperation to the representatives of the Public Defender and assisted in comprehensive monitoring.

It is also noteworthy that, in the Parliamentary Report of 2015, the Public Defender emphasised the importance of unimpeded access of the members of the Special Preventive Group to the video surveillance systems installed in police stations and temporary detention isolators. To this effect, the Public Defender

recommended to the Minister of Internal Affairs to ensure unimpeded access of the Special Preventive Group to the aforementioned video surveillance systems.

According to the position of the Ministry of Internal Affairs taken concerning the fulfilment of the above recommendation, video surveillance in the temporary detention isolators is conducted from the central control room located in the Temporary Detention Isolators Department of the Ministry. Admission to the said room is determined by an order of the Minister of Internal Affairs. As regards the access of the members of the Special Preventive Group to the video surveillance recordings, they have this right under the Law of Georgia on the Protection of Personal Data.

It should be pointed out in this context that admission to the central control room is determined by Article 11 of the Statute of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Ministry of Internal Affairs of Georgia of 2 August 2016. Namely, the following are authorised to enter/stay in the central control room: the Minister and Deputy Minister in charge of the Department; Director of the Department; Deputy Directors; employees of the Department's Monitoring Office; and any other person, based on interest in protecting human rights or official necessities, in accordance with a ministerial decision, based on a reasoned written motion of the director of the department.

As regards the video surveillance in the internal and external premises of police building, under Article 27 of the Law of Georgia on Police, to ensure public security, the police may, as provided for by the legislation of Georgia, place/install self-operating photo and video devices on their uniforms, on the roads, and along external perimeters of buildings, and use self-operating devices already installed and under the possession of other persons for the following purposes: a) to prevent crime and to protect a person's safety and property, public order, and to protect minors from harmful influence; b) to ensure observance of road traffic regulations; c) to prevent, detect, and suppress illegal crossing of the state border of Georgia, and to ensure safety of persons at the border; and d) to detect threats to persons and property at border crossing points in a timely fashion.

Under Paragraph 3 of Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data therein, the data on persons and means of transport entering and leaving administrative buildings of the Ministry is processed in accordance with Order no. 1084 of the Minister of Internal Affairs of Georgia of 10 October 2008 approving the Procedures for Admission of Employees and Visitors to the Buildings and Premises under the Protection of the Ministry of Internal Affairs of Georgia. The term of storage of the said data is three years.

Under Paragraph 4, the Ministry processes the recordings of the video cameras installed on internal and external premises of administrative buildings in accordance with Article 27 of the Law of Georgia on Police and Order no. 1035 of the Minister of Internal Affairs of Georgia of 23 December 2013 on Implementation of Certain Measures of Security by the Ministry of Internal Affairs of Georgia. The term of storage of the said data depends on technical specifications but should not exceed three years.

Under Paragraph 5, the recordings of the video surveillance cameras installed on the roads and external premises of buildings are processed by the Ministry in accordance with Article 27 of the Law of Georgia on Police. The term of storage of the said data depends on technical specifications but should not exceed three years.

It should be pointed out that unlike temporary detention isolators, the procedure of conducting video surveillance and recordings in the police administrative buildings is not determined, neither is the group of persons authorised to examine the said recordings.

Therefore, it is evident that an unimpeded access of the members of the Special Preventive Group to recordings is not determined and accordingly the recommendation of the Public Defender has not been fulfilled.

RECOMMENDATIONS

To the Minster of Internal Affairs of Georgia:

- To ensure that Article 11 of the Statute of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of the Ministry of Internal Affairs of Georgia of 2 August 2016, is amended to the effect of adding a representative of the Public Defender/a member of the Special Preventive Group to the group of persons authorised to enter the central control room; and
- To ensure the adoption of the relevant sub-legislative act guarantying unimpeded access of a representative of the Public Defender/a member of the Special Preventive Group to the recordings from video surveillance cameras installed on internal and external premises of the Ministry's administrative buildings.

WORKING CONDITIONS AND TRAINING OF EMPLOYEES

There are 7667 male and 886 female officers employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia.[524]

Despite the fact that there are a small percentage of women employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia, there are regions where there are no female employees at all or their number is too small.[525]

The Public Defender considers it important that the law enforcement authorities offered equal opportunities for employing men and women. Recruitment of women in the law enforcement bodies is important to ensure that female arrestees get gender specific treatment and undergo appropriate search procedures.

The Office of the Public Defender requested the Ministry of Internal Affairs of Georgia in writing to submit the information about the working schedule of those employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia. This information, however, has not been provided.

The employees of police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia mostly work 24-hour shifts and their shift is in every three days. Some of the police officers work a 24-hour shift in every two days. Considering tourist seasons and other activities, there are frequent occasions where police officers work every alternate day.

During interviews with the Special Preventive Group members, some officers mentioned that considering their labour-consuming and tiresome job, it would be important to decrease the workload.

The working hours of female law enforcement officers usually cover the period from 9 a.m. until 6 p.m. (Monday-Friday). If necessary, a female officer may be called in at any time of the day and night to do such police work as a body search or external examination of female arrestees in police stations, attending a convoy during placement of an arrestee in a temporary detention isolator, as well as participation in an activity carried out by an operative group for arresting a person/persons.

524 Letter no. MIA 517 00374701 of the Ministry of Internal Affairs of Georgia dated 15 February 2017.

525 For instance, there are 50 males and no females employed in the unit of detectives and district inspectors of the Khulo District Division of the Police Department of the Autonomous Republic of Ajara. Out of 12 employees, there are no females in the unit of detectives and district inspectors of the Kazbegi District Division of the Police Department of Mtskheta-Mtianeti Police Department. There are 35 male officers and 1 female officer in the unit of detectives, police and district inspectors of the Sachkhere District Division of the Police Department of Imereti, Ratcha-Lechkhumi and Kvemo Svaneti.

The Public Defender considers it most important to regulate the police work schedule not only in terms of protection of police officers' labour rights, but also in the respect that it has significant effect on adequate treatment of arrestees by police. The police officers, working long hours without adequate break, are likely to get exhausted and be under stress. This, in turn, would adversely affect their psycho-emotional condition and, hence, behaviour.

The Public Defender observes that the objectives of control, security and protection of human rights are better attained in the environment where a citizen's dignity is respected. Fair, legal and polite treatment of citizens is not only critically important for ensuring the good environment; it also significantly contributes to maintaining public order. In the society where citizens' rights are protected, the authority of police and respect to it is acknowledged.

With the view of ensuring police attains the objectives of public safety and human rights protection, it is important to base police work on human rights approach. This is feasible only if human rights topics are integrated to a maximum extent in police training and re-training programmes. These programmes are implemented at regular intervals and allow theoretical and practical examination of knowledge with credible means.

The Public Defender welcomes the fact that there is a compulsory special education programme for the youths recruited by law-enforcement bodies, junior lieutenants, district inspectors, detective-investigators and patrol-inspectors.

It can be concluded from the examination of the syllabuses of the study programmes that the major human rights topics are included. The Public Defender, however, considers that a single training on important human rights issues and the duration allocated for human rights topics in the curriculum cannot ensure theoretical and practical comprehension of key human rights problems within the special educational programme of law enforcement officers.

According to the information received during monitoring by the Special Preventive Group members, in some cases, district inspectors are recruited so that they have not undergone special professional educational programme for training district inspectors. The Public Defender considers this practice impermissible.

The results of the monitoring conducted by the Special Preventive Group members show that the majority of the persons employed in law enforcement bodies are not aware of topics such as the standards of interviewing citizens (interview basis, venue, submitting detailed information to citizens about the applied police measure, obligation to explain procedural rights concerning each measure, and prohibition of arbitrary arrests); informing an arrestee about his/her rights and their exercise (informing his/her family, and access to a lawyer and a doctor); the standards of use of physical force, special means and measures of coercion (about the use of different amount of force and special means in different situations); obligations arising in the situations where physical force, special means and measures of coercion have been used (comprehensive documentation of injuries inflicted and drafting a report and informing competent authorities); use of non-violent methods (mediation, effective communication, management of conflict situation and citizens' aggression); use of firearms in accordance with statutory requirements; giving first aid; procedures for admission and inspection of arrestees (inspection of transgender/LGBT persons); procedures and standards for documenting injuries, inspection, search, superficial inspection, special inspection and examination; procedures and techniques of questioning arrestees; questioning a minor/witness/person volunteering to give a statement; specifics of questioning the persons under the influence of drugs, alcohol, etc., and persons with mental disorders; code of conduct for police officers, penalties to be imposed for the breach of disciplinary provisions, inadequate performance of official duties, specific violations; and processing documentation (arrest reports, filling in and processing journals at police stations)

The Public Defender, in the light of the foregoing, considers that police employees should be retrained periodically. It is important to elaborate short-term police retraining courses for police personnel. It is possible to conduct these courses as distance learning and extend them to each employee in a year. Besides, it is important to ensure that law enforcement officers have access to the retraining course material, which will help them to study issues related to policing and human rights independently.

It is revealed from the letter received from the Ministry of Internal Affairs[526] that it is not required to have undergone any special study course for the employment at a temporary detention isolator. The letter also shows that since 2016, retraining of temporary detention isolators' personnel has been started in the Academy of the Internal Affairs, within training and retraining educational programme for the employees of temporary detention isolators of the Ministry of Internal Affairs of Georgia.

According to the submitted information, until now, twenty employees of temporary detention isolators of the Ministry of Internal Affairs underwent the said programme and the entire personnel of isolators will have completed the programme by 2017. The Public Defender welcomes this initiative and will be actively monitoring its implementation.

According to the information provided by the Ministry of Internal Affairs of Georgia, in the course of 2016, the personnel of temporary detention isolators participated in training sessions on the following topics: documenting injuries in accordance with Istanbul Protocol; creating healthy environment and preventing diseases in temporary detention isolators; training-retraining education programme; and training on emergency assistance.

According to the information provided by the Ministry of Internal Affairs, within the retraining programme for the personnel of temporary detention isolators, it is envisaged to cover the topics on the particularities of communication with persons with mental disorders. The Public Defender welcomes this initiative and considers it important to have it included in the retraining programme training sessions on particularities of communication with juveniles.

The Public Defender considers it important that the methodology of each study programme and training session includes examination and assessment of participants through observation of their involvement in various practical moot situations and role plays.

RECOMMENDATIONS

To the Minister of Internal Affairs of Georgia:

- To take all necessary measures, including revision of working schedules, for minimising the risks of aggravating psycho-emotional condition and professional burnout of police officers due to hard working conditions;
- To take all measures to create equal opportunities for women and men to be employed in police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia as well as equal working conditions;
- To take all measures so that district inspectors are not appointed without undergoing the special professional educational programme for district inspectors;
- To take all measures for ensuring periodical retraining of law enforcement officers. It is important to elaborate short-term police retraining courses for police personnel. It is possible to conduct these courses as distance learning;

526 Letter no. 247190 of the Ministry of Internal Affairs of Georgia dated 1 February 2017.

- To take all measures to ensure that law enforcement officers have access to the retraining course material and material of any other study courses;
- To take all measures for including training sessions on particularities of communication with juveniles in the retraining programme for the personnel of temporary detention isolators; and
- To take all measures for ensuring that personnel of temporary detention isolators are not appointed without undergoing the educational programme designed for the employees of temporary detention isolators.

SITUATION IN TEMPORARY DETENTION ISOLATORS

In 2016, the members of the Special Preventive Mechanism monitored 27 temporary detention isolators of the Ministry of Internal Affairs. Monitoring was conducted in the following regions: Kakheti, Imereti, Samtskhe-Javakheti, Guria, Ajara, Samegrelo, Ratcha-Lechkhumi, Kvemo and Zemo Svaneti and Tbilisi. During the above monitoring visits, the members of the Special Preventive Group examined physical environment of the isolators, interviewed the personnel of temporary detention isolators and studied the documentation in the case-files of the persons arrested in 2016. The members of the Special Preventive Group were guided by instruments elaborated in advance.

In 2016, Gardabani temporary detention isolator was not operational. Borjomi, Lentekhi, Khobi, Zugdidi, Tetritskaro, Terjola, and Chokhatauri temporary detention isolators were also closed off in 2016. Rustavi and Kutaisi temporary detention isolators were under reconstruction during the entire year.

According to the information submitted by the Ministry of Internal Affairs of Georgia, in 2016, 13,081 persons were placed in the below temporary detention isolators. The data on the placement of detained persons in each temporary detention isolator in 2015 and 2016 respectively are given in the below table.

no.	Name of a Temporary Detention Isolator	Number of Detainees in 2015	Number of Detainees in 2016
1	Tbilisi no. TDI	417	690
2	Tbilisi and Mtskheta-Mtianeti TDI	5,556	4,836
3	Mtskheta TDI	379	341
4	Dusheti TDI	29	27
5	Telavi TDI	503	333
6	Sagarejo TDI	224	160
7	Sighnaghi TDI	189	153
8	Kvareli TDI	359	307
9	Gori TDI	581	566
10	Khashuri TDI	325	233
11	Borjomi TDI	118	49
12	Akhaltsikhe TDI	214	203
13	Akhalkalaki TDI	36	54
14	Rustavi TDI	356	109
15	Tetritskaro TDI	34	5
16	Tsalka TDI	29	6
17	Marneuli TDI	545	653

18	Kutaisi TDI	1,104	397
19	Lentekhi TDI	11	5
20	Zestaponi TDI	330	183
21	Baghdati TDI	64	172
22	Tchiatura TDI	146	82
23	Samtredia TDI	325	211
24	Ambrolauri TDI	25	40
25	Zugdidi regional TDI	366	304
26	Zugdidi TDI	661	125
27	Senaki TDI	288	328
28	Khobi TDI	143	126
29	Poti TDI	219	264
30	Chkhorotsku TDI	162	101
31	Mestia TDI	16	17
32	Batumi TDI	2,039	1,515
33	Kobuleti TDI	355	308
34	Ozurgeti TDI	153	132
35	Lanchkhuti TDI	82	31
36	Chokhatauri TDI	28	15
Total		**16,416**	**13,081**

It is noteworthy that, in 2016, the total number of persons placed in temporary detention isolators decreased by 20.3 %.

According to the information submitted by the Temporary Detention Isolators Logistics Department of the Ministry of Internal Affairs, in 2016, various renovation works have been conducted in temporary detention isolators of the Ministry of Internal Affairs; sleeping boards were replaced by individual beds in Kvemo Kartli[527] regional temporary detention isolator. The isolator was completely overhauled and equipped with the necessary furniture; toilets were isolated and temporary detention isolator for disabled persons adapted. A walking yard and medical rooms were also arranged in the same isolator.

Kvareli temporary detention isolator was completely overhauled as a result of renovation works. Toilets were isolated. Apart from renovation works, medical rooms were arranged in Kvemo Svaneti[528] regional temporary detention isolator and Imereti, Ratcha-Lechkhumi temporary detention isolators.

According to the received information, in 2016, medical rooms were arranged in five temporary detention isolators in Mtskheta-Mtianeti[529] Regional temporary detention isolator, Shida Kartli and Samtskhe Javakheti regional,[530] Kakheti regional,[531] Samegrelo-Zemo Svaneti Regional,[532] Ajara and Guria regional[533] temporary detention isolators.

New ventilation systems were installed in Tbilisi no. 2 temporary detention isolator and Kvemo Kartli regional detention isolator,[534] Imereti, Ratcha-Lechkhumi and Kvemo Svaneti regional temporary detention isolators, Baghdati, Ambrolauri, Dusheti, Akhalkalaki, Kobuleti and Tsalka temporary detention isolators. The existing

527 Rustavi.
528 Kutaisi.
529 Mtskheta.
530 Gori.
531 Telavi.
532 Zugdidi.
533 Batumi.
534 Rustavi.

ventilation systems were repaired in Tbilisi no. 1 temporary detention isolator, Ajara and Guria, Ozurgeti and Lanchkhuti temporary detention isolators.

Apart from the above-mentioned, new heating systems were installed in Imereti, Ratcha-Lechkhumi, and Kvemo Svaneti regional temporary detention isolators, Tchiatura, Rustavi, Dusheti and Tbilisi no. 2 temporary detention isolators; the existing heating systems were repaired in Shida Kartli and Samtskhe-Javakheti regional temporary detention isolators.[535]

The Public Defender welcomes the renovation of the infrastructure and living conditions at the temporary detention isolators of the Ministry of Internal Affairs in 2016. However, the existing conditions in temporary detention isolators still need considerable improvement and bringing closer to international standards.

Living Space

According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'the issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.'[536] Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,[537] living space per person placed in a temporary detention isolator should not be less than 4 m^2.[538]

There are seven cells for seven detained persons in Tbilisi no. 1 temporary detention isolator. The space of the cells is around 10m^2-11m^2. There are three cells for three detained persons in Samtredia temporary detention isolator, which are around 11m^2–13m^2. There are three cells for four detained persons in Ozurgeti temporary detention isolator the size of which is approximately 6.3 m^2. There are four cells for three detained persons in Sagarejo temporary detention isolator, the space of which is around 9 m^2 – 9.65 m^2.

It is noteworthy that when the temporary detention isolators, mentioned above, are fully occupied, each detained person will not be provided with 4 m^2 living space. This is in violation of the standard set out in the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.[539]

Physical Conditions

According to the standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'all police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench)'...[540]

535 Response by letter no. MIA 8 17 00412954 dated 20 February 2017.
536 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), p. 8, para. 43, available at: http://www.cpt.coe.int/en/documents/eng-standards.pdf [Last visited on 13.02.2017].
537 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.
538 Article 26.2.
539 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.
540 The Standards of the European Committee for the Prevention of Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para. 42, available at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [last visited on 26.03.2017].

The windows in the cells of Akhaltsikhe and Tbilisi no. 1 temporary detention isolators would not open. The cells, therefore, are not naturally ventilated; sunrays cannot reach into the cells and accordingly sufficient natural light is not available there. There is insufficient artificial ventilation in the temporary detention isolators of Akhaltsikhe. There are metal plates with holes covering the windows in the cells of Ozurgeti, Tchiatura, Sagarejo and Samegrelo-Zemo Svaneti regional temporary detention isolators. These plates prevent adequate ventilation and lighting of the cells.

Sufficient natural and artificial ventilation is absent in the temporary detention isolators of Poti and Akhalkalaki. There is a problem in terms of natural light and ventilation in Batumi (Ajara and Guria's regional) temporary detention isolator too. Sufficient natural ventilation, natural and artificial light are not available in the cells of Ambrolauri and Sighnaghi temporary detention isolators. The natural light in the cells of Zestaponi and Akhalkalaki temporary detention isolators is insufficient.

In some temporary detention isolators, personnel from the outside regulate the light and artificial ventilation in cells. For instance, personnel from the outside regulate light in the cells of Ambrolauri, Tchiatura, Zestaponi, Poti, Sagarejo, and Samegrelo-Zemo Svaneti (regional) temporary detention isolators. Artificial ventilation in the cells of Ozurgeti temporary detention isolator is controlled from the outside.

There are sleeping boards instead of individual beds in the temporary detention isolator of Akhalkalaki. There are no tables and chairs in the cells.

Sanitation and Hygiene Conditions

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,[541] the living conditions in temporary detention isolators should comply with sanitation and hygiene standards; ensure safety of detained persons and maintain their health; should not violate the dignity of a person and respect the right to private life.[542] Detained persons placed in a temporary detention isolator should be provided with the following items of personal hygiene: sanitary paper, soap, tooth brush, tooth paste, towel, as well as the place to keep them. A person serving an administrative detention should be additionally provided with a shaving kit; female prisoners placed in temporary detention isolators should be given other additional items of hygiene according to their gender-specific needs.[543]

The sanitation and hygiene conditions in the temporary detention isolator of Poti and Samegrelo-Zemo Svaneti regional temporary detention isolator are unsatisfactory. There is dampness in cells; traces of mould and dampness are noticeable on the walls and there is a strong smell in cells. There is dampness in Batumi (Ajara and Guria's regional) temporary detention isolator. The sanitation and hygiene conditions in temporary detention isolators of Zestaponi and Akhaltsikhe are unsatisfactory and need renovation works.

The mattresses in the cells of Tbilisi no. 2 temporary detention isolator are damaged and need to be replaced. During the visit to Tchiatura temporary detention isolator,[544] it was noticed that there were no towels in stock and during the visit to Ambrolauri temporary detention isolator; [545]disposable forks were not in stock.

There were items of personal hygiene in stock (tooth brushes and tooth pastes) during the visit[546] to Zestaponi temporary detention isolator. However it was found out that none of the detained persons had been provided with those items. Moreover, they had no information about those items. None of the three detained persons had a towel and there were only two towels in stock.

541 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.
542 Article 26.1.
543 Article 27.2.
544 14.09.2016.
545 15.09.2016.
546 13.09.2016.

Unfortunately, temporary detention isolators are not provided with sanitary pads and isolators' staff members buy those items with their money for female detained persons.

Food and Drinking Water

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,[547] the food designated for the detained persons placed in isolators should contain the components necessary for life and health; it is prohibited to decrease the number of calories as a measure of punishment.[548] Each detained person should be provided with three meals a day.[549] The sick detained persons, detained persons with express and significant disabilities and juveniles should be provided with nutrition adequate for their situation.[550]

The Daily Nutrition Standards for the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia[551] determines a daily ration for detained persons placed in temporary detention isolators[552], as well as for juveniles,[553] pregnant women and nursing mothers, those suffering from tuberculosis, dystrophy, ulcerated beriberi and malignant tumours.[554] As the monitoring revealed, the detained persons of temporary detention isolators are only given dry food ration consisting of[555] bread, canned soup, canned beef, pâté, sugar and tea (for single use).

It is noteworthy that the majority of isolators in the regions do not get the rationed bread for detained persons. These isolators do not even have contracts concluded on bread supply. There are cases where isolators' staff members buy bread for detained persons with their money. The detained persons get food mostly from parcels. It should be also borne in mind that sometimes detained persons do not have anyone to send in food and bread. A person serving an administrative detention can be placed in an isolator for up to 15 days. It is particularly important to provide them adequately with food and living conditions.

The food provided to detained persons in Tbilisi temporary detention isolators nos. 1, and 2 is different. In these establishments, food is prepared in a kitchen which is positively assessed.

The detained persons placed in Tbilisi temporary detention isolator no. 1 are provided with three meals a day in accordance with the menu drafted one week in advance. The main menu is composed of grains, tea, bread, vegetables, meat and fish. The food is prepared in the kitchen located in the same building designed for service personnel.

One cook who is specifically in charge of detained persons' food prepares meals according to statutorily required number of calories.[556] The food is placed in special containers and delivered to detained persons in their cells.

The case-files of 284 detained persons were studied during the visit of 10 November 2016 to Kobuleti temporary detention isolator. In three cases, detained persons had poisoning from the food provided in the temporary detention isolator.

For instance, on 23 June 2016 (at 2:51 a.m.), E.E. was arrested by the police officers of 3rd Unit of Batumi City Police Division. The same day, at 06:41a.m, he was placed in Kobuleti temporary detention isolator. According

547 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.
548 Article 28.1.
549 *Ibid.,* Article 28.3.
550 Article 28.3.
551 Approved by Order no. 457 of the Minister of internal Affairs of Georgia of 5 May 2005.
552 Annexe no. 1.
553 Annexe no. 3.
554 Annexe no. 2.
555 Annexe no. 4.
556 The Daily Nutrition standards for the Detained persons of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia approved by Order no. 457 of the Minister of internal Affairs of Georgia of 5 May 2005.

to the minutes recorded by the ambulance team called in the temporary detention isolator, the patient suffered general weakness, dizziness, nausea and diarrhoea. The team diagnosed food poisoning and transferred[557] the detained person to Kobuleti hospital. According to medical notes made in the hospital, the patient suffered nausea, vomiting, diarrhoea and abdominal pains (diagnosis – food poisoning).

The facility personnel stated during the interview, conducted by the Special Preventive group, that E.E. did not receive a parcel from relatives in the period concerned. In the temporary detention isolator, he had pâté and drank tea.

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,[558] each detained person should have access to unlimited amount of clean drinking water.[559]

There are no sinks in the cells of temporary detention isolators. There is a water pipe 20 cm above the WC in Ambrolauri temporary detention isolator. This is uncomfortable and unhygienic both for washing hands and face, and drinking. A similar situation is found in the temporary detention isolators of Tchiatura and Zestaponi.

There is no water in the cells of Tbilisi no. 1 temporary detention isolator. The isolator's personnel give detained persons drinking water with glasses/bottles in their cells in Tchiatura, Samtredia and Tbilisi no. 1 temporary detention isolators.

Privacy at Water Closets

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner, as well as to have a bath or shower.[560]

Water closets are absent in Sighnaghi, Sagarejo, Akhaltsikhe, Akhalkalaki, and Tbilisi no. 1 temporary detention isolators. Detained persons placed in these establishments use a common water closet of the respective isolator.

There are semi-isolated water closets in Ambrolauri, Tchiatura, Zestaponi, Samtredia, Ozurgeti, Poti, Batumi (Ajara and Guria regional isolators), and Tbilisi no. 2 temporary detention isolators. This is especially problematic in double cells and the cells with multiple occupancy, where an detained person is not alone and has to comply with the needs of nature in the presence of others.

There is no flushing device in the water closets of the cells of Samtredia, Ozurgeti, Poti, Ambrolauri, Zestaponi, and Tchiatura temporary detention isolators. Instead, there is a narrow pipe approximately 20-30 cm above the floor, which cannot flush properly. There is a flushing pipe installed one metre above the floor in Batumi temporary detention isolator. This is uncomfortable and unhygienic for both flushing a toilet and washing hands and face.

The toilets in temporary detention isolators of Zestaponi, Poti, and Batumi[561] (Ajara and Guria regional isolators) can only be flushed from outside cells, by taps installed in corridors. Therefore, when an detained person needs to flush the toilet, he/she has to call a staff member and asks to open the tap.

557 On 25.06.2016 at 11:22 a.m.
558 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.
559 Article 28.5.
560 The Standards of the European Committee for the Prevention of Torture, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, para. 42, available at http://www.cpt.coe.int/lang/geo/geo-standards.pdf [last visited on 26.03.2017].
561 Eight toilets are regulated from outside, the other two are regulated in cells.

The Right to Access to Open Air

Under the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia,[562] only those persons who have been ordered by a court to administrative detention as an administrative penalty for more than one day are allowed to walk in the open air.[563] Detained persons are taken into a yard from 10 a.m. until 6 p.m. according to the schedule drafted by the director of an isolator. The duration of the walk is no less than an hour.[564] Unfortunately, walking is allowed for those arrested in criminal proceedings.

There are no benches in the yards of temporary detention isolators. Tbilisi temporary detention isolator no. 1 does not have a yard and therefore does not admit those serving administrative detention. There are no yards provided for temporary detention isolators in Ambrolauri, Akhaltsikhe, Sighnaghi, and Sagarejo.

The yards of Akhalkalaki, Samegrelo-Zemo Svaneti (regional) and Tbilisi no. 2 temporary detention isolators are only covered with an iron net which makes walk impossible in rainy/snowy weather.

As the visits carried out in 2016 revealed, the following issues remain problematic in temporary detention isolators of the Ministry of Internal Affairs: insufficient heating, lack of natural and artificial light and ventilation, non-isolated water closets, absence of sinks in cells, insufficient nutrition, and items of personal hygiene. Besides, there are sleeping boards instead of individual beds in some of the temporary detention isolators. It should be pointed out regrettably that the above problems were also identified by the Public Defender in his Parliamentary Report of 2015. However, these recommendations have not been fulfilled.

In accordance with the changes made into the Code of Administrative Offences of Georgia, the term of administrative detention decreased from 90 days to 15 days, which is undoubtedly assessed as a positive change. It is however, to be noted that the existing conditions in temporary detention isolators are unfit for accommodating persons imposed with administrative detention.

RECOMMENDATIONS

To the Minister of Internal Affairs of Georgia:

- To ensure that central heating is installed and adequate natural/artificial light and ventilation is provided in the cells of all temporary detention isolators;
- To ensure that water closets are completely isolated in all temporary detention isolators;
- To ensure that each detained person is provided with an individual bed in temporary detention isolators;
- To ensure that there are sanitation and hygiene standards observed in all temporary detention isolators;
- To ensure that all detained persons are provided with items of personal hygiene including sanitary pads;
- To provide new mattresses in all temporary detention isolators;
- To ensure that 4 m^2 living space is provided per detained person in temporary detention isolators;

562 Approved by Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016.
563 Article 32.1.
564 *Ibid.* Article 32.2.

- To ensure that benches are installed in all temporary detention isolators, the spots sheltered from rain and sun are arranged and waste bins are provided;
- To amend the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia approved by Order no. 423 of the Ministry of Internal Affairs of 2 August 2016 and give the right to time in the open air to those arrested in criminal proceedings; and
- To provide all detained persons with adequate and nutritious food, including dietary food.

MONITORING OF THE JOINT RETURN OPERATIONS

Since 2014, the Prevention and Monitoring Department of the Office of the Public Defender of Georgia has been monitoring the joint return operations to Georgia of Georgian citizens who do not, or no longer, fulfil the conditions for entry into, to be present in, or residence on the territories of one of the Member States of the European Union.

The joint return operations are conducted based on the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorisation (hereinafter 'Readmission Agreement'). The main objective of the Readmission Agreement is to strengthen cooperation between the High Contracting Parties in order to combat illegal immigration more effectively and safe and orderly return of persons from Europe to Georgia or *vice versa*.

The Readmission Agreement imposes the obligation on the High Contracting Parties to determine administrative and procedural aspects of the return. Besides, the agreement provides for the general principles, according to which, human rights and freedoms should be respected and the processing and treatment of personal data in a particular case shall be subject to law.

Council of Europe's twenty guidelines on forced return takes into account the risks that can accompany the execution of forced return and calls upon the States to be guided by these Principles. The Committee of Ministers emphasises the obligation of the States imposed by Article 1 of the European Convention on Human Rights, namely, member states shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention.[565]

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) is in charge of coordinating the joint return operations. It has elaborated the Code of Conduct for joint return operations[566] and the Guide for Joint Return Operations which set out the principles governing joint return operations with the view of respecting human rights and fundamental freedoms in the process.

It falls within the jurisdiction of the State submitting an application on the readmission of Georgian citizens residing without authorisation on the territories of one of the Member States of the European Union, to decide about the process and ensure respect for human rights in this process (taking a decision, execution,

565 Council of Europe's Twenty Guidelines on Forced Return, September 2005, Principle 16, available in English at: http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf [Last visited on 14.06.2017].

566 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Code of Conduct for joint return operations coordinated by frontex, Article 7, available in English at: http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf [Last visited on 14.06.2017].

arrest, appeal right, etc.); whereas, the Georgian party (escort provided by the officials of the Ministry of Internal Affairs of Georgia) ensures 'safe and orderly return' of the persons after they have been transferred on board of an aircraft.

In the course of 2016, the employees of the Prevention and Monitoring Department of the Office of the Public Defender, on five occasions (10 March, 15 April, 7 June, 27 September, and 29 November) carried out monitoring of joint return operations of 206 citizens of Georgia residing without authorisation on the territories of one of the Member States of the European Union.

The representatives of the Public Defender at the special place arranged in the airports of Dusseldorf (Germany) and Athens (Greece) observed the process of check-in, loading luggage, escorting on board by the representatives of the respective EU member state, and the transfer of the persons to be returned to Georgia by the escort of the Ministry of Internal Affairs of Georgia, flight and admission to Georgia.

In 2016, all joint return operations were mostly carried out in a peaceful environment. However, there were important issues identified during the return operations, which need adequate follow-up.

Under the Code of Conduct for joint return operations coordinated by Frontex, prior to the joint return operation, the relevant Participating Member State of the European Union, with due respect for personal data, should inform the Organising Member State in advance about any medical condition of a returnee which would need special care and attention.[567]

Under the Council of Europe's Twenty Guidelines on Forced Return, persons shall not be removed as long as they are medically unfit to travel. Member states are encouraged to perform a medical examination prior to removal of all returnees, either where they have a known medical disposition or where medical treatment is required, or where the use of restraint techniques is foreseen. A medical examination should be offered to persons who have been the subjects of a removal operation that has been interrupted due to their resistance in cases where force had to be used by the escorts. Host states are encouraged to have 'fit-to-fly' declarations issued in cases of removal by air.[568]

Under the Code of Conduct for joint return operations coordinated by Frontex, the returnees are to be removed only as long as they are 'fit-to-travel' at the time of the joint return operation. The Organising Member State must refuse the participation in a joint return operation of a returnee who is not fit-to-travel.[569]

The monitoring of joint return operations revealed incidents where the doctor within the escort of the Ministry of Internal Affairs of Georgia was not duly notified about the health condition and diagnoses of some of the returnees.

The Public Defender observes that the medical personnel of the Organising Member State's escort should have prior information about the health condition of returnees. It will assist the personnel to make provisions for the special needs of returnees and be ready to give adequate medical assistance.

The CPT has observed that a constant threat of forcible deportation hanging over detainees who have received no prior information about the date of their deportation can bring about a condition of anxiety that comes to a head during deportation and may often turn into a violent agitated state. In this connection, the CPT has

567 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Code of Conduct for joint return operations coordinated by Frontex, Article 7, available in English at: http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf [Last visited on 15.03.2017].

568 Council of Europe's Twenty Guidelines on Forced Return, September 2005, Principle 16, available in English at: http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf [Last visited on 4.03.2017].
Guide for Joint Return Operations by Air coordinated by Frontex, Warsaw, 12 May 2016, p. 21 available in English at: http://frontex.europa.eu/assets/Publications/General/Guide_for_Joint_Return_Operations_by_Air_coordinated_by_Frontex.pdf [Last visited on 17.06.2017].

569 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Code of Conduct for joint return operations coordinated by Frontex.

noted that, in some of the countries visited, there was a psycho-social service attached to the units responsible for deportation operations, staffed by psychologists and social workers who were responsible, in particular, for preparing immigration detainees for their deportation[570]

The monitoring of joint return operations revealed incidents where some of the returnees had mental disorders and abstinence syndrome.

The monitoring of joint return operations revealed that the provision of telephone contact of returnees with their family is problematic.

It is noteworthy that during the execution of joint return operations, due to the absence of specific regulations on ensuring returnees' telephone contact with their family, the representatives of the Public Defender were submitting information to the authorities of the relevant Participating Member State and Frontex representatives, who within their competence ensured the returnees' contact with their families.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Georgia:

- To take all measures to ensure, through coordination with the organisers of joint return operations and the competent authorities of the relevant Participating Member State of the European Union, that the prior information is obtained about health conditions and diagnoses of returnees;
- To take all measures to ensure, through coordination with the organisers of joint return operations and the competent authorities of the relevant Participating Member State of the European Union, that returnees contact their family;
- To ensure that a psychologist is included in the Ministry of Internal Affairs' escort, who will provide psychological assistance to returnees if needs be; and
- To take all measures that, if according to the prior information on the returnees there is a person with mental disorders, a psychiatrist is included in the escort of the Ministry of Internal Affairs, who will provide adequate psychiatrist assistance.

570 Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 7 to 17 September 2003, p. 56, available in English at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695808 [Last visited on 13.02.2017].

HUMAN RIGHTS PROTECTION IN THE DEFENCE FIELD

In 2016, the Department of Human Rights Protection in the Defence Field carried out monitoring in the Department for Coordination of Military Mobilisation and Draft at the Ministry of Regional Development and Infrastructure of Georgia; Aviation Brigade of the Georgian Armed Forces; Military Weapons and Equipment Maintenance Base of the Logistic Support Command of Georgian Armed Forces; External Protection Units of penitentiary establishments nos. 5, 6, 8, 15, 16, 17, and 19; Special Tasks Divisions I and III of the Special Tasks Department of the Ministry of Internal Affairs of Georgia; and Unit I of Division II of the Department of Protection of Premises of the Ministry of Internal Affairs of Georgia. Monitoring visits were made to the State Service of Veterans Affairs and Clinical Hospital of War Invalids and Veterans.

In the reporting period, the recommendation of the Public Defender of Georgia to bring Order no. 441 of the Minister of Defence of Georgia of 4 April 2014 in compliance with Article 14 of the Law of Georgia on the Status of a Military Serviceman was not fulfilled. The recommendation is aimed at ensuring that, if needs be, transfer of an apartment into possession, motioned by a military serviceman's application, should be granted based on the decision of a commission and should not depend on the recommendation of the Head of the General Staff.

As regards the recommendation to the Ministry of Defence about the orders concerning lay-off and striking off members professional military personnel that they should be reasoned and refer to a specific reason of dismissal, it has been fulfilled; contributed by judgment no. 1/4/614,616 of the Constitutional Court of Georgia of 30 September 2016.

It should be pointed out that the measure of structural/staff optimisation carried out in the Ministry of Defence in 2016 resulted in the dismissal of several tens of military and civil staff members. Out of the laid-off military servicemen, based on personal application, in agreement with the Ministry of Defence, in December 2016, 208 military servicemen were dismissed and were given a single financial allowance according to their rank.[571] Within the reorganisation/optimisation scheme, 97 public servants were also dismissed from office and given due compensation of a month' salary in accordance with the legislation in force.[572]

571 Order no. 105 of the Minister of Defence of Georgia, dated 19 December 2016 on Amending Order no. 560 of the Minister of Defence of Georgia, dated 26 September 2007 on Labour Remuneration for the Military Servicemen, the Persons Awarded Special State Rank and Public Servants of the Ministry of Defence of Georgia.

572 Order no. 583 of the Minister of Defence of Georgia of 2011.

PROTECTION OF THE RIGHTS OF CONSCRIPTS

The protection of the rights of conscripts, including the coordination and supervision of drafting, is discussed in detail in the Parliamentary Report of 2015.[573] There were changes made in this field in 2016 that are worth mentioning.

Under Order no. MOD 21600000605 of the Minister of Defence of Georgia of 27 June 2016,[574] conscription within the system of the Defence Ministry of Georgia was suspended. The following challenges were cited as the reasons for the suspension of conscription that stood in the way of effectiveness of compulsory military service: incomplete training course, the duties and functions of the conscripts, social problems caused by conscription, etc. At the same time, military conscription still continued within the Ministry of Internal Affairs of Georgia, the Ministry of Corrections of Georgia and the Special Service of State Protection. Order no. MOD 41600001020 of the Minister of Defence of Georgia of 29 November 2016[575] invalidated Order no. MOD 21600000605 of the Minister of Defence of Georgia of 27 June 2016 and conscription within the system of the Defence Ministry of Georgia was restored. Other countries' experiences and cost cutting were adduced as arguments for resuming conscription. According to the new order, for the effectiveness of compulsory military service, the preliminary military training for conscripts will be extended to 3 months, conscripts will undergo training during their stay in military units as well, their monthly salary will be increased up to 50 GEL, and they will be allowed to use days off.[576]

In the reporting period, the recommendations of the Public Defender made in 2015 concerning the amendment of the Law of Georgia on Military Duty and Military Service were not fulfilled. In particular, the Public Defender recommended the amendment of Article 21 of the Law of Georgia on Military Duty and Military Service to the effect of determining the terms of notifying conscripts about the dates of appearing before conscripting units as well as the amendment of Article 30 of the Law of Georgia on Military Duty and Military Service to ensure the right to education of conscripts.

Similar to 2015, in 2016, the situation in the Department for Coordination of Military Mobilisation and Draft at the Ministry of Regional Development and Infrastructure of Georgia remained essentially the same. Confidentiality of conscripts is not respected during medical examinations; diagnoses and health problems of conscripts can be heard by outsiders and other conscripts; the procedure for medical examination is the same; and conscripts are not examined in a comprehensive manner. A psychiatrist interviews a conscript for approximately 10 minutes, during which the doctor asks questions about mental problems, medication,

573 http://www.ombudsman.ge/uploads/other/3/3891.pdf, p. 348.
574 Order no. MOD 21600000605 of the Minister of Defence of Georgia of 27 June 2016.
575 Order no. MOD 41600001020 of the Minister of Defence of Georgia of 29 November 2016.
576 Order no. 104 of the Head of the General Staff of the Armed Forces of Georgia, dated 9 February 2017 issued based on Order no. 111 of the Minister of Defence of Georgia in 2017.

and origins of injuries that could be found during visual examination. Psychiatrists practically depend on the answers given by recruits and they only observe how adequate these answers are; there are no comprehensive tests made to examine the state of mental health.

The effects of this method of health assessment are later manifested in the life of the conscripts. The soldiers that are declared fit for military service by a military commission, due to various health problems, are unable to perform their duties and commanders of military units have to send them back for medical examination and dismiss from compulsory military service. Such incidents are confirmed by Letter no. MOD 61700172671 of the Ministry of Defence of Georgia[577] according to which, in 2016, 94 conscripts were declared unfit for military service due to various diagnoses, among them, the following mental health problems:

- Emotional instability of a person - 22
- Mild mental retardation, moderate behavioural disorder - 7
- Severe mental retardation, sever behavioural disorder - 1
- Emotional instability of a person, mitral valve prolapse without regurgitation - 1
- A depressive episode of moderate severity, attempted suicide -2
- Mixed personality disorder - 3
- Mixed anxiety-depressive disorder - 2
- Anxiety neurosis, pressured speech - 1
- Generalized anxiety disorder - 1
- Infiltrative tuberculosis of the right lung in destroying phase – 3
- Anxiety phobic disorder - 2
- Panic disorder (*episodic paroxysmal anxiety)* – 1
- Organic personal disorder - 1
- Mild mental retardation with psychotic episodes, signs of hypoxic-ischemic encephalopathy - 1
- Unspecified personal disorder – 2
- Histrionic personality disorder, myopic astigmatism in both eyes - 1
- Viral Hepatitis B, gastroduodenitis, reflux esophagitis - 2
- Histrionic personality disorder - 1
- Emotional instability of a person, thymus hyperplasia - 1
- Acute Polymorphic psychotic disorder without symptoms of schizophrenia - 1
- Schizotypal personality disorder- 1

Apart from mental and emotional disorders, the physical conditions that are medically examined in conscription units have been served as the ground for dismissal from compulsory military service. However, it seems that health-care professionals could not diagnose these diseases under the existing procedure of medical examination. This has its objective reasons too. In particular, cardiologic examination is carried out only when a conscript indicates a problem. Internal organs cannot be examined due to the absence of ultrasound equipment. However, an ultrasound scan is necessary for identifying a number of diseases. Abdominal cavity, renal and genital systems should be scanned to enable the identification of more pathologies before conscription. In order to diagnose tuberculosis, conscripts undergo X-ray examination and, in case of doubt, laboratory tests. However, there has been a case, where, after conscription, a military serviceman was diagnosed with tuberculosis.

577 Letter no. MOD 61700172671 of the Ministry of Defence Letter.

As early as in 2013, the head of the permanent military medical expertise commission, functioning with the Central Conscription Commission, presented the problematic issues persisting in the decision making process regarding conscripts[578] that appear during their medical examination. The head observed that it is imperative to equip the military medical expertise commission adequately. However, the situation has not improved to date.

Earlier, conscripts had to walk barefoot from a changing room to a doctor's room. It is positively assessed that this situation has been addressed and now they are given shoe covers. Following the recommendation of the Public Defender, there is a partition provided in the doctor's room and, if a conscript wishes, he can stay there alone with a doctor during full body examination. However, voices can still be overheard.

The recommendation of the Public Defender made in 2015 concerning individual approaches towards conscripts has been partially fulfilled.

Concerning one of the recommendations of the Public Defender made in 2015, regarding the revision of Order no. 360 of the Minister of Defence of Georgia of 1996 to bring it in compliance with the international classification of diseases, a working group had been set up in the Ministry of Defence of Georgia. The working group is currently elaborating the revised draft order and the fulfilled recommendation of the Public Defender made in 2015 will be manifested in the final edition of Order no. 360, which governs the determination of the conscripts' fitness for military service.[579]

According to the established practice, after the finalisation of the examination of conscripts, in the conscription units, priority is given to the representatives of the Ministry of Internal Affairs and the State Security Service. The conscripts are selected based on their physical traits; linguistic barriers are also checked. The rest of the conscripts are allocated to the External Protection and Convoy Division and the Ministry of Defence. Therefore, conscripts are not sent to agencies on an equal basis. This practice gives rise to a risk for uneven development of armed forces and raises questions about the rationale of compulsory military service for the country.

It is noteworthy that this practice is not governed by any law or sub-legislative act.

578 The Minutes of the Central Conscription Commission of 25 March 2013.
579 Letter no. MOD 01700162973 of the Minister of Defence of Georgia, dated 20 February 2017.

The recommendation of the Public Defender of Georgia made in 2015 about creating a psychologist's job in all military bases has not been fulfilled. However, according to the Letter of the Ministry of Defence of Georgia, dated 17 February 2017,[580] the Social Affairs and Psychological Support Department was set up on the bases of the Psychological Selection and Monitoring Department of the General Staff of the Armed Forces of Georgia and the Wounded and Injured Military Servicemen Support Department of the Ministry of Defence of Georgia. One of the structural units of the department is the Division of Psychological Support. The latter incorporates the Division of Psychological Selection and Psychological Monitoring. In accordance with the annual plan and the schedule of frequency of visiting military units, the Psychological Selection and Monitoring Department actively carries out meetings with military service members, both within the structural subunits of the Ministry as well as the territory of the department. These meetings consist of preventative and clinical interviews aimed at early identification and eradication of problems; educational lectures and training sessions; researches related to psychological conditions; monitoring psychological situation of military servicemen, etc. It is significant that for prevention, timely identification and eradication of psychological problems, respective notifications are sent to every unit, containing information about contacting a specialist upon finding out symptoms of psychological problems. Based on the application of a sub-unit, specialists (a psychologist or a psychiatrist) visit military units and examine military service members who reportedly suffer from psychological problems. If needs be, for observing and providing psychological assistance, psychologists are seconded to the respective subunits. Any officer of the Ministry of Defence has the possibility to contact a psychologist/psychiatrist on a hotline.

AVIATION BRIGADE OF THE GEORGIAN ARMED FORCES

In the reporting period, the representatives of the Public Defender monitored the situation of conscripts in the Aviation Brigade of the Armed Forces.

The Logistics Battalion in the Aviation Brigade of the Armed Forces of Georgia consists of staff, contracted military servicemen and conscripts. Conscripts make up the Guard Company of the Logistics Battalion. They have to be on 24-hour guarding and sentry duties.

The living conditions are generally satisfactory. Requisite infrastructure in terms of both accommodation and receiving education is provided; there is a medical centre and dispensary with the necessary medicines.

580 Letter no.MOD 61700156787 of the Minister of Defence of Georgia.

The kitchen and diner are clean and refurbished. In the course of the year, the conscripts are provided with a military uniform and footwear appropriate according to the season. However, footwear is of low quality. No sporting clothes and shoes have been provided, in violation of Order no. 936 of the Ministry of Defence of Georgia, dated 30 November 2011.[581]

At the time of the monitoring, conscripts have been drafted for approximately 3-4 months and served at the concerned military base. There were Georgian, as well as Azerbaijani and Armenian military servicemen. Due to the lack of knowledge of Georgian, ethnic Armenian and Azerbaijani soldiers face communication problems. The conscripts themselves act as interpreters and therefore those soldiers who do not have the command of Georgian cannot have confidential conversations with their superiors.

According to the military servicemen, they are satisfied with the living conditions of the barracks. They are also satisfied with the quality and quantity of the food provided and can request additional portions as well. The provided food is diverse and allows selection of a menu according to religious or other preferences.

The conscripts have the possibility to observe personal hygiene. However, there have been complaints that they do not have washing machines and have to hand wash their military uniforms and clothes in sinks with cold water or in showers. Contacts with family members are maintained both in person (on weekends it is possible to have visitors) and through telephone conversations. However, the conscripts have to hand in their mobile phones at the battalion telephone storage facility. If needs be, the conscripts can use their personal phones with the permission of a sergeant or the commander of the company (military unit of 100 soldiers) otherwise the use of phones is prohibited. If needs be, family members can contact conscripts on a sentry's phone. They use holidays according to the schedule drafted with their participation.

The major reason for dissatisfaction among conscripts is that they were provided with wrong information at the drafting units of the municipalities. According to the conscripts, they were told at the drafting units that they would have to serve once in three days; however, in reality, they found themselves in a barracks regime. Therefore, there have been several incidents where certain conscripts inflicted self-harm in order to be exempted from compulsory military service.

According to the correspondence from Dmanisi[582] and Bolnisi[583] municipalities, information on the rights and duties of conscripts is only given in Georgian at the respective *Gemgeoba* services of mobilisation, military census and conscription, whereas these municipalities are mainly populated by ethnic minorities.

Conscripts also expressed their indignation at not having the possibility to undergo physical training; they do not have gym and sports equipment; they only have parallel bars in a yard and there is no obligation to pass physical norms.

According to an employee of the infrastructure service, it is problematic to provide cleaners with cleaning and sanitary means. They have to write reports for the notice of the Head of the Infrastructure Service of Krtsanisi District; the Head of the Infrastructure Service of Krtsanisi District has to write to the Eastern Centre and the purchase is made by the Minister of Defence, which too is delayed.

There are seven cleaners on the premises who have to clean the 9800 m^2 territory and they do not have enough brooms, buckets, disinfectants, cleaning liquids and powders. Four months prior to the start of the monitoring, they received 7 brooms, 10 garbage bags, 1 cloth and 3 disinfectants. These supplies were clearly insufficient and they were still awaiting new supplies. The Monthly remuneration of a cleaner amounts to 240 GEL.

The electricity system on the territory of the Aviation Brigade is out of order which causes frequent power cuts.

581 Order no. 936 of the Ministry of Defence of Georgia, dated 30 November 2011, clause no. 3/1.
582 Letter no. 07/261 of Dmanisi Municipality of 26 January 2017.
583 Letter no. 11/500 of Bolnisi Municipality of 27 January 2017.

MILITARY WEAPONS AND EQUIPMENT MAINTENANCE BASE OF THE GEORGIAN ARMED FORCES

Monitoring was conducted on Military Weapons and Equipment Maintenance Base of the Force Logistic Support Command of Georgian Armed Forces. Apart from staff and contracted military personnel, there is a guarding company (military unit of 100 soldiers) that is staffed with conscripts. They have to be on 24-hour guarding and sentry duties.

The conditions and infrastructure on this base are unsatisfactory. Due to the unbearable stench, the barrack latrine is closed down. The latrine located in the yard also smells badly. According to the conscripts, despite the fact that the latrine is cleaned on a daily basis, the smell does not go away because of the outdated and out of order sewage pipes.

There is a crumbling ceiling in the diner and the kitchen of the base; walls are damp and peeling. Therefore, it is difficult to observe appropriate hygiene standards under such conditions. The building needs refurbishment. The uninsulated electricity wires are over the walls in the kitchen warehouse, which is dangerous for life and limb.

There is one chapel for Christian soldiers in the barracks. A praying room is also arranged for Muslim soldiers.

There is no legislation database (the Codex Programme) software on the military bases and therefore lawyers often cannot look up necessary legislations. This prevents them from performing their duties effectively.

INCIDENTS OF DEATH REPORTED IN MILITARY SERVICE

In 2016, according to the data of the Ministry of Defence of Georgia,[584] 10 incidents of death and 66 incidents resulting in bodily injuries were reported on the premises of the military units of the armed forces of Georgia; 14 incidents were reported outside of those premises.

In 2016, the Office of the Public Defender on its own initiative started examination of the incidents of death of six conscripts. Among them, three servicemen were enrolled in the mandatory military service of the Ministry of Defence of Georgia and three in professional military service. Out of these incidents, one was declared as suicide and investigation was discontinued; in the rest of the five cases, investigation is pending. The Military Police Department is in charge of the investigation under the supervision of the Office of the Chief Prosecutor of Georgia. Out of the five above-mentioned cases, three criminal investigations are pending under Article 116.1 of the Criminal Code of Georgia (unintentional deprivation of life); one criminal case concerning the death of two military servicemen is investigated under Article 116.2 of the Criminal Code of Georgia; and one criminal case is investigated under Article 276.5 (violation of the safety rules for transport movement or exploitation).

It is noteworthy that investigation on the three incidents of death that took place in 2015 is still underway. Among those incidents, one is particularly significant. Investigation in that case is being conducted under Article 117.2 of the Criminal Code of Georgia criminalising intentional grievous injury to health that resulted in deprivation of liberty. No one has been charged in this case. As regards the other two cases, they are investigated under Article 115 of the Criminal Code of Georgia (driving to suicide). Due to the nonexistence of a final judgment to this day, the family members of one of the deceased are contesting the accuracy of the qualification of the act.

584 Letter no. MOD 31700196465 of the Ministry of Defence of Georgia of 1 March 2017.

The fulfilment of the recommendation of the Public Defender made in 2015 concerning abolishing military prison is positively assessed. Similar to the Ministry of Defence, under the amendment of 24 August 2016, the military prisons under the Ministry of Internal Affairs of Georgia were abolished.[585] It is also a positive event that in the Department of Protection of Strategic Premises, there was no extra service of duty in 2016.

SPECIAL TASKS UNITS I AND II OF THE SPECIAL TASKS DEPARTMENT

Special Tasks Units I and III of the Special Tasks Department of the Ministry of Internal Affairs of Georgia are staffed with regular military servicemen (sergeants) and conscripts. The major task of the conscripts is to serve 24-hour guard and sentry duties. They also participate in maintaining order during sporting and cultural events.

The conscripts underwent the preliminary military training (quarantine) at the spot, in the military unit. During a 21-day quarantine period, the conscripts underwent preliminary military training; they practiced drill, firing drill, assembly and disassembly of firearms and studied their rights and duties under statutory regulations. In the course of the last week of the training, they did practical shooting with firearms, one solder firing 9 rounds. Furthermore, in the course of a year, the conscripts are periodically taken out for planned shooting exercises.

The Units are composed of Georgian as well as ethnic Azerbaijani and Armenian conscripts. However, there is no communication problem as Azerbaijani and Armenian soldiers have sufficient command of the Georgian language. According to the management, the representatives of the military unit select conscripts on the drafting day, exactly according to the command of the Georgian language.

Items of personal hygiene (soap, toothpaste, toothbrush, razor and toilet paper) are handed out monthly in sufficient quantities. They undergo a daily physical training. The conscripts are given sporting clothes and shoes and military uniforms and shoes are handed out twice a year, according to the season. The monthly salary is 27 GEL.

The holidays due are used according to the schedule drafted in the company, usually for 5 days twice a year. If needs be, it is possible to have additional holidays due to family reasons, for 7-10 days.

585 Resolution no. 411 of the Government of Georgia of 24 August 2016 concerning amendment of Resolution no. 615 of the Government of Georgia of 3 November 2014 approving Military Disciplinary Statute.

The living barracks are in good condition. There are surveillance cameras installed in barracks, which are always on. There is a corner with church items of the Christian faith in the barracks. According to the superiors, the solders of other faiths have not requested for similar arrangements but it is possible upon request.

The diners as well as kitchens are clean. There is a weekly menu posted on the wall also indicating calories – 2000-3000 calories; a doctor examines food quality before the meal.

Soldiers' 100% medical insurance package is covered by the Ministry of Internal Affairs of Georgia. There are medical centres in the military units. In these centres, only outpatient service is provided. The solders needing inpatient services are transferred to public clinics. Medications are always available in sufficient quantities. The requested medicines are received within three days after a scheduled request. A logbook for injuries and outpatients is kept and every injury sustained by solders is entered therein. There is also a physiologist on the bases conducting psychological tests and interviews with soldiers and individual conversations with soldiers, based on the test results. In case of a trauma or an injury, the medical unit sends a report to the medical base; the report is forwarded from the military unit to the Inspectorate General and if needs be, the Inspectorate General will institute enquiry on the circumstances causing the injuries. There is a doctor on duty or a nurse in the evening shift in the medical unit. A hospitalisation logbook is maintained as well in the medical unit and the referrals to civil clinics are registered therein.

There is a laboratory, bandage room and a dentist's room in Unit I. The dentist's room has modern equipment. There is an isolator equipped with an iron bunk bed and a single bed in the medical unit. The building and the wards need refurbishment; walls are cracked and crumbling from dampness, which makes it difficult to maintain hygiene and cleanness for patients.

The conscripts had been drafted 10 months before the representatives of the Public Defender of Georgia started conducting the monitoring. The conscripts were satisfied with the existing living conditions existing military unit, and the quality and quantity of food; they had the right to request unlimited food portions. The food is diverse. The daily ration includes vegetables, dairy products, meat, seafood and cereals.

Mobile phones cannot be used in the military unit. If needs be, the conscripts use sergeants' mobile phones and their family members can contact the sergeants. Saturdays and Sundays are the visitation days. The major forms of incentives are unplanned holiday and the letter of commendation. A conscript can be sent to additional guard duty[586] or ordered to do physical exercise, or prohibited from smoking cigarettes for certain period.

According to the military servicemen, there are incidents of collective punishments, which can be a reason for disagreements and conflicts among solders.

UNIT I OF DIVISION II OF THE DEPARTMENT OF PROTECTION OF PREMISES OF THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

There is a company of 100 servicemen in Unit I, which is staffed by conscripts. They serve a 24-hour duty once in three days and spend the rest of the time at home. The duty comprises of two shifts. Salary amounts to 25 GEL per month.

The subsistence costs are borne by the Ministry of Internal Affairs. Transportation costs are not covered. There is no medical centre in the military unit and, if needs be, an ambulance is called in. The soldiers' 100% medical insurance package is covered by the Ministry of Internal Affairs of Georgia. The items of personal hygiene are handed out monthly in sufficient quantities; seasonal clothes and shoes are given twice a year. The

586 Resolution no. 615 of the Government of Georgia of 2014.

conscripts are given instructions every time before the start of the guarding duties. There is one corner in the barracks for Christian soldiers to pray. There is no such corner for the soldiers of other faiths. According to the superiors, such corners can be arranged upon request.

There are Georgian servicemen, as well as ethnic Armenian and Azerbaijani servicemen, in the company of the unit. Both Armenian and Azerbaijani servicemen have sufficient command of Georgian and do not face problems in communicating.

The conscripts had been drafted for 3 months at the time of the monitoring period. The conscripts underwent the preliminary military training (quarantine) for 7 days in Ortatchala, Tbilisi. During the training, the conscripts practised drill and learned how to use firearms. However, they were not taught assembly and disassembly of firearms either during the training or afterwards.

The soldiers are content with the quality and amount of the food. The quality of military uniform and shoes is satisfactory as well. They are not allowed to use telephones in the military unit but if needs be, the soldiers can use a telephone of their superiors.

In the reporting period, the Public Defender's Office became aware that the compulsory military servicemen, serving in one of the military units of the Department of Protection of Strategic Premises of the Ministry of Internal Affairs that took an oath on 26 September 2015, completed their military service on 2 October 2016 instead of 26 September 2016. The management of the military unit explained to the representatives of the Public Defender of Georgia that a new group of conscripts could not be taken to the base on time which caused the compulsory extension of the contracts of the military servicemen that were about to be discharged from the service. However, it is noteworthy that there is no legal basis that justifies discharging military servicemen with a week's delay.

The Department of Protection of Strategic Premises of the Ministry of Internal Affairs violated Article 32.I.a) of the Law of Georgia on Military Duty and Military Service by arbitrarily extending the conscripts' term of military service.

UNITS NOS. 5, 6, 8, 15, 16, AND 19 OF THE EXTERNAL PROTECTION DIVISION AND CONVOY OF THE PENITENTIARY DEPARTMENT

The said units of the External Protection Division and Convoy of the Penitentiary Department are staffed with the conscripts and regular (appointed) military servicemen (sergeant-officers). Their duty is to provide external protection to the penitentiary establishments. The military servicemen rest for two days after their shift and resume their 24-hour guarding duty on the third day. They are given seasonal clothes twice a year. Every day, before starting their 24-hour guarding duty, the staff is given instructions about the guards' rights and duties, and security standards.

There are iron bunk beds in the resting shift room. The mattresses spread on the beds in units nos. 5 and 6 are torn and filthy, wrapped in old covers. The soldiers use their own covers they bring from home for every shift. The living conditions in the resting shift room in unit no. 6 are unsatisfactory, namely, the windowpanes are cracked and glued together with an adhesive tape; the wall plaster is crumbling and the wooden floor is old.

Requisite equipment is there in the diners. The soldiers keep the food they bring from home in a fridge. During the monitoring conducted in November, the central heating was not on.

There is only cold water in unit nos. 6 and 8; servicemen have to wash their hands with cold water which is particularly problematic in winter.

The soldiers underwent preliminary military training in Geguti, where they learned assembly and disassembly of firearms and practiced drill. In the last week of the training, they had a practical shooting exercise where each soldier fires 15 rounds. There was no physical exercise and training after the training.

The monitoring revealed that in all the above units of the penitentiary system, conscripts serving in these units do not undergo physical training; no unit staff has undergone any training after training. Their monthly remuneration amounts to 52.8 GEL. Once in three days, they have to reach a military unit by transport and bring their food in containers for which the aforementioned sum of 52.8 GEL is not enough. According to the conscripts, the majority of the families these soldiers come from have the status of socially vulnerable.

There are no medical rooms in the units. If a solder falls ill or sustains an injury of any kind, an ambulance is called in; in case of emergency, first aid help can be given by a medical unit of a penitentiary establishment. Any incident that takes place in the unit is recorded by a duty officer in a respective report and communicated to the Penitentiary Department of the Ministry of Corrections of Georgia.

Apart from Georgians, ethnic Azerbaijani and Armenian servicemen are there in the units of external protection and their majority do not speak Georgian. As official interpreters are unavailable, Azerbaijani and Armenian servicemen who can speak Georgian act as interpreters. The soldiers, who do not know Georgian, cannot have a confidential conversation with their superiors.

The military servicemen are not allowed to use mobile phones. If needs be, they can use the mobile phone of their superiors. Family members of a serviceman can contact the soldier through the unit's sentries.

There are students among the conscripts that are exempted from duties on the examination day upon presenting a respective notice from an educational establishment.

UNIT NO. 17 OF THE EXTERNAL PROTECTION DIVISION AND CONVOY OF THE PENITENTIARY DEPARTMENT

Unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department is the only barrack-type establishment in the penitentiary system. It is staffed with conscripts and regular military servicemen. The duty comprises of three shifts.

The conscripts have three meals a day. Once in a month they are given items of personal hygiene.

There are Georgian, ethnic Armenian and Azerbaijani military servicemen in the Unit. The majority of Azerbaijani soldiers do not have the command of Georgian and therefore face communication problems with both other soldiers and superiors.

The physical training of the soldiers is limited to the morning workout.

There is a medical unit and a health-care professional conducts daily medical examination of the personnel before they leave for duty and at any time of the day. Soldiers are provided with first aid in the medical unit; if needs be, an ambulance is called in and the soldiers will be taken to a provider clinic of the town. Soldiers are accompanied with the medical unit doctor to the provider clinic. 80% of medical insurance is covered by the state and the officers of the military unit pay the remaining 20%, as soldiers often do not have money to pay for insurance.

Conscripts hand in their mobile phones at the military unit and if needs be, they can use the mobile phone of either the head or the deputy commander of the company. The visitation days are Saturday and Sunday.

There are concrete tiles on the kitchen floor; walls are damp and peeled; there is a plastic bag instead of glass in windows; and exhaust fans are not working.

In the barracks building, there are three dormitories equipped with central heating and air conditioning. There is natural light in the dormitories; ventilation system is out of order. Individual cupboards for soldiers to store their personal belongings are not provided.

There is one chapel for Christian soldiers in the barracks. A praying room is not arranged for Muslim soldiers; they can pray in the yard.

There is a shower building in the yard. Individual faucets in shower booths are not provided and it is impossible to regulate temperature. The temperature for all shower booths are regulated by a faucet installed in a changing room. There is no ventilation. There are twelve sinks with mirrors, and four sinks are out of order. Only cold water is available.

There are four sinks at the entrance of a toilet room and none of them is working. There is no ventilation in the toilet room.

Some of the conscripts are satisfied with the conditions existing in the military unit. They are satisfied with the quality and quantity of the food and not restricted from requesting additional portions. However, according to some of the soldiers, the food is often of low quality, gravy and fruit juices are watery and tasteless.

The soldiers underwent training in Geguti, where they learned assembly and disassembly of firearms, shooting, the rights and duties of a guard and practised drill. Soldiers had no physical training either in the quarantine or in the military unit. According to several soldiers, they expected they would undergo physical training and practises, however, according to them, their service does not resemble a military service.

Soldiers mentioned that sometimes they have group punishments and have to do exercises or squats. There has been an incident where an offender was made to look at others exercising for his offence. Such actions cause confusion and conflicts among military servicemen.

The common problem of soldiers is that they cannot use their holidays. Several soldiers have been serving for eight months but have not used their holiday yet.

Under Article 11.6 of the Law of Georgia on the Status of a Military Serviceman, a conscript shall be allowed to a holiday for two weeks for the entire period of his military service, except in the 12th month of the compulsory military service.[587]

The concepts of holiday envisaged by the Law of Georgia on the Status of a Military Serviceman and the holiday guaranteed under Order no. 46 of 1 March 2013 are confused in the establishment. Holiday is given to the military servicemen not as a guaranteed holiday but as a measure of incentive. According to the established practice, if a soldier does not display exemplary behaviour, he may not to be allowed to use holiday.

587 The Law of Georgia on the Status of a Military Serviceman, Article 11 - Work Time and the Right to Rest.

PROTECTION OF VETERANS' RIGHTS

THE STATE SERVICE FOR VETERAN AFFAIRS

In 2014, the Department of Veteran Affairs was separated from the Ministry of Defence of Georgia, and transformed into an independent agency called LEPL State Service for Veteran Affairs. The Service is presently located in a building located at 89 Gorgasali Street, Tbilisi. The building is assigned to the Ministry of Defence of Georgia. The State Service for Veteran Affairs employing 90 persons is only allocated 12 rooms. Due to the inadequate space, there are 7-8 persons in each room who have to work in shifts. There are approximately 120,000 cases archived in the Archives Division and there is no space for storing more cases. There is no air conditioning, enough natural light or fresh air in the building. The gathering in the rooms causes health problems (allergy and asthma).

As of today, the State Service for Veteran Affairs is given the right to use, for the term of its functioning and for allocating the Service, a plot of 4,230 m^2 of non-agricultural land located at 75 Gorgasali Street, Tbilisi, and two buildings on that land. Both buildings need renovations and repairs and therefore the State Service of Veteran Affairs has not been able to move its offices there.

However, according to the information submitted to the Office of the Public Defender of Georgia,[588] the 2017 budget of LEPL State Service for Veteran Affairs allocates 1,270,000 (one million two hundred and seventy thousand) GEL for the renovation and repairs of the administrative building and the adjacent area of the Service. Furthermore, under resolution no. 2709 of the Government of Georgia, dated 29 December 2016, a simplified electronic tender procedure has been announced for public purchase of rehabilitation and construction services for the aforementioned real property.

The situation of the war veterans and armed forces veterans residing on the premises of LTD Real Invest at 71 Ketevan Tsamebuli, Tbilisi, remains the same. The Public Defender discussed this issue in detail in his 2015 Report. The buildings, where war veterans are settled with their families, are dilapidated and unfit for living. LTD Real Invest prohibits tenants to refurbish the accommodations with their own funds. Gas, electricity or water supply to the tenants is absent. To this day, the state has been unable to provide alternative accommodation for these families.

It is worth mentioning that there are no settlements for veterans in the country that have been set up based on a legal document of a competent agency/official. However, in various regions of Georgia, war veterans and armed forces veterans occupy certain buildings either arbitrarily or based on a document giving them the title to the property although the State Service for Veteran Affairs does not have any systematised information

588 Letter no. 186/02-02-22/03-01 of LEPL State Service for Veteran Affairs of 25 January 2017.

on this type of residences.[589] It is important that the State Service for Veteran Affairs had accurate data and registered the residences and residential conditions of the veterans that are within its jurisdiction to be able to forward this information to the government and concerned persons, if needs be.

The decision of the *Sakrebulo* of Tbilisi Municipality of 6 December 2016[590] is positively assessed. This decision fulfils the recommendation made by the Public Defender in 2015 about extending transportation allowances to the war veterans and armed forces veterans, not only those registered in Tbilisi but also all veterans referred to in the resolution, irrespective of the place of their registration.

Unfortunately, the recommendation made by the Public Defender in 2015,[591] concerning amending Resolution no. 4 of the Government of Georgia of 11 January 2007[592], was not fulfilled. The recommendation concerned making the situation of the persons benefiting from subsistence allowance equal and to allow all persons having veteran status to benefit from this allowance as it was provided by this resolution until the amendment effected on 1 September 2012.

THE HOSPITAL FOR VETERANS

In the Parliamentary Report of 2015, the Public Defender described in detail the dire situation of LEPL V. Sanikidze Clinical Hospital for Veterans in Tbilisi. Due to the poor conditions, the hospital is not functioning anymore and Clinic Lantseti remains to be the provider for veterans.

On 24 June 2016, the 100% share of the hospital clinic owned by the state was given to the LEPL State Service of Veterans Affairs for management.[593] Due to the physical situation of the clinic,[594] it is impossible to run the hospital at this stage. There was no sum allocated in the budget of 2016 for the functioning of the hospital. There was an attempt to refurbish one of the wings, but the hospital failed to meet even one standard envisaged in Resolution no. 385 of the Government of Georgia approving the Procedure and Terms for Issuing Medical Activity Licence and Permits for In-patient Establishments. Both veterans and the hospital's medical staff express their protest at shutting down the hospital. Another demonstration was held in 2017.

RECOMMENDATIONS

To the Ministry of Defence of Georgia:

- To distribute all conscripts equally at all military bases the clothes envisaged in Order no. 936 of the Minister of Defence of Georgia, dated 30 November 2011;
- To pay attention to the quality of the shoes handed out to the military servicemen; to replace the low-quality shoes made in China with good-quality and durable shoes;
- To provide the Aviation Brigade of the Georgian Armed Forces with a washing machine for clothes;
- To ensure that necessary disinfectants and cleaning materials are provided promptly to the logistics service of the Aviation Brigade of the Georgian Armed Forces, upon request;

589 Letter no. 1357/02-02-22/04-01 of LEPL State Service for Veteran Affairs of 01 August 2016.
590 https://matsne.gov.ge/ka/document/view/2669691.
591 http://www.ombudsman.ge/uploads/other/3/3891.pdf, p. 376.
592 https://matsne.gov.ge/ka/document/view/8122.
593 Letter no. 1845/02–02–22/02.03 received from the State Service for Veteran Affairs.
594 See http://www.ombudsman.ge/uploads/other/3/3891.pdf p.370.

- To review and elaborate effective means of communication with logistics services of military bases;
- To address promptly the dire conditions in the latrines of the Military Weapons and Equipment Maintenance Base of the Force Logistic Support Command of Georgian Armed Forces;
- To have the diner and the kitchen of the Military Weapons and Equipment Maintenance Base of the Force Logistic Support Command of Georgian Armed Forces refurbished;
- To provide the lawyers of the military bases with the Codex Programme;
- To bring Order no. 441 of the Minister of Defence of Georgia of 4 April 2014 in compliance with Article 14 of the Law of Georgia on the Status of a Military Serviceman to ensure that, if needs be, transfer of an apartment into possession, motioned by a military serviceman's application, is granted based on the decision of a commission and not dependent on the recommendation of the Head of the General Staff; and
- To abolish the fine clause in the contracts of professional military servicemen and to make more focus on raising morale and awareness of military values to ensure that people stay in the military service not based on financial considerations but on personal desire.

To the Military Police of the Ministry of Defence and the Office of the Chief Prosecutor of Georgia:

- To ensure timely and effective investigation of the deaths occurred in 2015–2016 at the military bases; and
- To provide comprehensive information, within the statutory limits, to the family members of the deceased at the military bases about the progress of criminal investigation.

To the Ministry of Internal Affairs of Georgia:

- To review the expedience of surveillance cameras installed in the dormitories of the barracks at the Special Tasks Department of the Ministry of Internal Affairs of Georgia;
- To refurbish the medical unit in Special Tasks Unit I of the Special Tasks Department of the Ministry of Internal Affairs of Georgia; and
- To ensure that the Department of Protection of Strategic Premises of the Ministry of Internal Affairs of Georgia follows the terms of dismissal of conscripts from compulsory military service in accordance with Article 32.I.a) of the Law of Georgia on Military Duty and Military Service.

To the Ministry of Corrections of Georgia:

- To ensure that the mattresses on the beds in the resting rooms for military servicemen in units nos. 5 and 6 of the External Protection Division and Convoy of the Penitentiary Department are replaced with new ones and bedcovers are distributed;
- To ensure that the sinks in units nos. 6 and 8 of the External Protection Division and Convoy of the Penitentiary Department are supplied with warm water;

- To ensure that ventilation is repaired in unit no. 15 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that military servicemen in unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department use their holidays in accordance with Article 11.6 of the Law of Georgia on the Status of a Military Serviceman;
- To introduce 100% insurance package for the conscripts in unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To repair kitchen and exhaust fans in unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that the ventilation system is repaired in the barracks of unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that individual cupboards are provided for military servicemen in unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that temperature regulating faucets are installed in the shower rooms at unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that ventilation is repaired in the shower rooms at unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that sinks are repaired in the shower rooms at unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that flushing toilets are repaired in unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To examine the food quality in unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department;
- To ensure that the recruits undergo adequate training elaborated for military servicemen according to schedule; and
- To ensure that military servicemen are provided with food and transportation during their guarding duty.

To the Ministry of Regional Development and Infrastructure of Georgia and the Ministry of Health of Georgia:

- To provide the central drafting commission with x-ray equipment and other relevant medical equipment for comprehensive medical examination of recruits.

To the Department of Coordination of Mobilisation and Drafting of the Ministry of Development and Infrastructure of Georgia:

- To introduce individual approach towards recruits in drafting units. A recruit should appear before the medical commission alone or with a person named by him;

- The changing rooms and medical units at drafting units should be arranged so that recruits should not have to walk in a corridor; and
- To ensure that those eligible for draft undergo comprehensive medical examination, especially in terms of mental health, with the view for establishing their fitness for military service; to ensure that the eligible for draft undergo relevant tests for establishing their mental condition; and to ensure that reasonable time is afforded for each recruit.

To the Ministry of Defence of Georgia and the Ministry of Corrections of Georgia:

- To ensure that there is an interpreter provided periodically at the military bases to allow the military servicemen without the command of the Georgian language to have confidential conversations with their superiors if they wish so.

To the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia, the Ministry of Corrections of Georgia and the Special Service of State Protection:

- To change the existing practice of selection of military servicemen from the central drafting units and to allow all agencies to take conscripts to military bases in equal conditions.

To the Ministry of Corrections of Georgia and to the Ministry of Internal Affairs of Georgia:

- To eliminate the practice of collective punishment.

To the Services of Military Census and Drafting of Municipality *Gamgeobas:*

- To ensure that the representatives of military units explain comprehensively to conscripts their rights and impart accurate information to them about the compulsory military service. Particular importance should be paid to ethnic minorities who do not know the state language and it should be ensured that they have the information imparted to them in the language understandable for them.

To the Military Units of Dmanisi and Bolnisi municipalities:

- To post on the information desks the information on the rights and duties of conscripts in, apart from Georgian, Azerbaijani and Armenian languages;

To the State Service of Veterans' Affairs:

- To register the buildings occupied by war veterans and armed forces veterans either arbitrarily or based on a document giving them the title to the property.

To the Parliament of Georgia:

- To determine in Article 21 of the Law of Georgia on Military Duty and Military Service the terms of notifying conscripts to appear before drafting units and how early the notice should be sent; and
- To amend article 30 of the Law of Georgia on Military Duty and Military Service for ensuring the right to education. Namely, if an individual is registered for the unified national examinations after the second year from finishing the school, drafting should be delayed until he passes examinations. If an individual passes the examinations, his drafting should be delayed until the end of the studies.

To the Ministry of Defence of Georgia, the Department of Coordination of Mobilisation and Drafting of the Ministry of Development and Infrastructure of Georgia:

- To ensure that Order no. 360 of the Minister of Defence is reviewed and the list of the diseases is brought in compliance with international classifications; to envisage clearly the diseases resulting in various degrees of fitness for military service.

To the Government of Georgia:

- to provide alternative accommodation for the war veterans and armed forces veterans residing on the premises of LTD Real Invest at 71 Ketevan Tsamebuli, Tbilisi; and
- to amend Resolution no. 4 of the Government of Georgia of 11 January 2007 and ensure making the situation of the persons benefiting from subsistence allowance equal and to allow all persons having veteran status to benefit from this allowance as it was provided by this resolution until the amendment effected on 1 September 2012.

THE FAILURE TO COMPLY WITH THE LEGAL REQUESTS OF THE PUBLIC DEFENDER

The Organic Law of Georgia on the Public Defender of Georgia determines the powers, the major principles and forms of the activities of the Public Defender of Georgia. Under Article 2 of the said Organic Law, 'the Public Defender of Georgia shall monitor the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction.'

The legislation in force also determines the legislative safeguards for the activities of the Public Defender of Georgia. Namely, the powers of the Public Defender and the safeguards for the Public Defender's activities are stipulated in and guaranteed by the Constitution of Georgia:

'The Public Defender shall have the right to reveal facts of violation of human rights and freedoms and inform corresponding bodies and officials thereof. Impediments to the activities of the Public Defender shall be punishable by law. The powers of the Public Defender shall be determined by an organic law.'[595]

The legislation in force also determines the means for the follow-up to be used by the Public Defender within his statutory powers. Namely, under Article 18 of the Organic Law of the Public Defender of Georgia, when conducting an inspection, the Public Defender of Georgia may freely enter any state or local self-government body, enterprise, organisation, institution, including, military unit, penitentiary institution and other places of detention and restriction of liberty; request and receive, immediately or not later than 10 days, from state and local self-government authorities or from officials all certificates, documents and materials necessary for conducting an inspection; request and receive written explanations from any official, officer, or equivalent person on the matters to be examined by the Public Defender; conduct expert examinations and/or prepare conclusions by means of state and/or non-state institutions; invite specialists/experts to perform expert and/or consultation works; and obtain information about criminal, civil and administrative cases, the decisions in which have entered into force.

All state and local self-government authorities and officials or legal persons shall be obligated to assist the Public Defender of Georgia in every way, submit immediately materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers.[596]

The fulfilment of the statutory powers by the Public Defender of Georgia depends significantly on the fulfilment of the obligations imposed on those persons that must furnish all necessary materials, documents and other information that are necessary to the Public Defender of Georgia for the study of certain issues.

Therefore, in order to ensure unimpeded fulfilment of the statutory powers by the Public Defender of Georgia, the legislation in force determines certain terms for the state authorities and local self-government

595 The Constitution of Georgia, Article 43.2-3.
596 The Organic Law of Georgia on the Public Defender of Georgia, Article 23.1.

bodies, public officials and legal entities within which they have to comply with the legal request of the Public Defender. Namely:

> 'Materials, documents, other information and explanations shall be given to the Public Defender of Georgia, upon request, unless request for the materials, documents and other information is received in writing. In this case, documents and other information shall be delivered to the Public Defender of Georgia within 10 days.'[597]

Furthermore,

> 'State and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.'[598]

The failure to fulfil the obligations defined by the Organic Law, as well as any obstruction of the activity of the Public Defender of Georgia, shall be punishable by law, shall be entered in the report of the Public Defender of Georgia and become a subject of special discussion by the Parliament of Georgia.[599] Furthermore, the failure to comply with the legal requests of the Public Defender is an offence under Article 173^4 of the Code of Administrative Offences of Georgia, the penalty for which is prescribed by the same Code.

Based on the above statutory provision, in the reporting period, the Office of the Public Defender of Georgia started proceedings on account of administrative offences in six cases.[600] A report on one case of administrative offence was submitted to a court. This was a case against the Director General of LTD Georgian Post. Under the resolution of Tbilisi City Court of 23 May 2016, the claim of the Public Defender was rejected.[601] The Director General of the Georgian Post was not held responsible for an administrative offence. Under the resolution of Tbilisi Court of Appeals of 17 September 2016, the appeal of the Public Defender in the same case was declared inadmissible.[602]

Under the legislation in force,[603] a decision of a court of appeal in the case of an administrative offence is final and not subject to appeal.

Recommendation

To the State Authorities, the Local Self-Government Bodies, Public Agencies, Public Officials and Legal Entities:

- It is imperative that the persons who received the legal request of the Public Defender of Georgia should duly ensure the unimpeded fulfilment of the obligations provided for in the Organic Law of Georgia on the Public defender of Georgia.

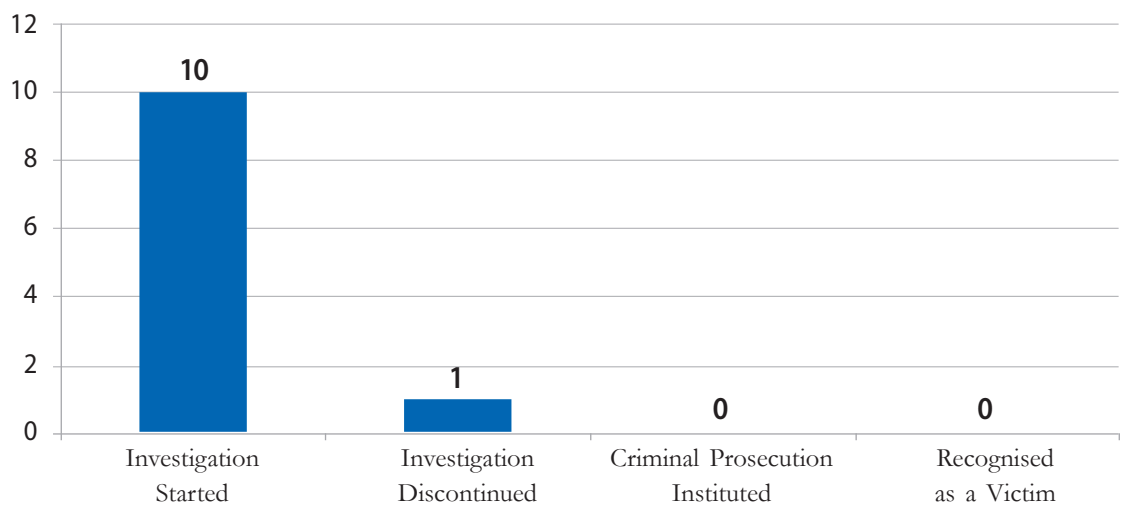
597 The Organic Law of Georgia on the Public Defender of Georgia, Article 23.3.
598 The Organic Law of Georgia on the Public Defender of Georgia, Article 24.
599 The Organic Law of Georgia on the Public Defender of Georgia, Article 25.1.
600 Among them: 5 cases concerning the violation of the term determined by Article 23 of the Organic Law of Georgia on the Public Defender of Georgia for the submission of the information necessary for the examination of a case; 1 case concerning the failure to comply with the legal request of the representative of the Public Defender (delay in ensuring a meeting of the representative of the Public Defender with a person arrested in administrative proceedings) – Article 18.a) of the Organic Law of Georgia on the Public Defender of Georgia.
601 Case-file no. 4/2682-16.
602 Case-file no. 4/a-814-16.
603 The Code of Administrative Offences, Article 276.5.

PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT

Torture and ill-treatment are absolutely prohibited and the state has the positive obligation to identify and investigate such actions. Georgia has undertaken this commitment and this chapter reviews how the country is honouring its obligations.

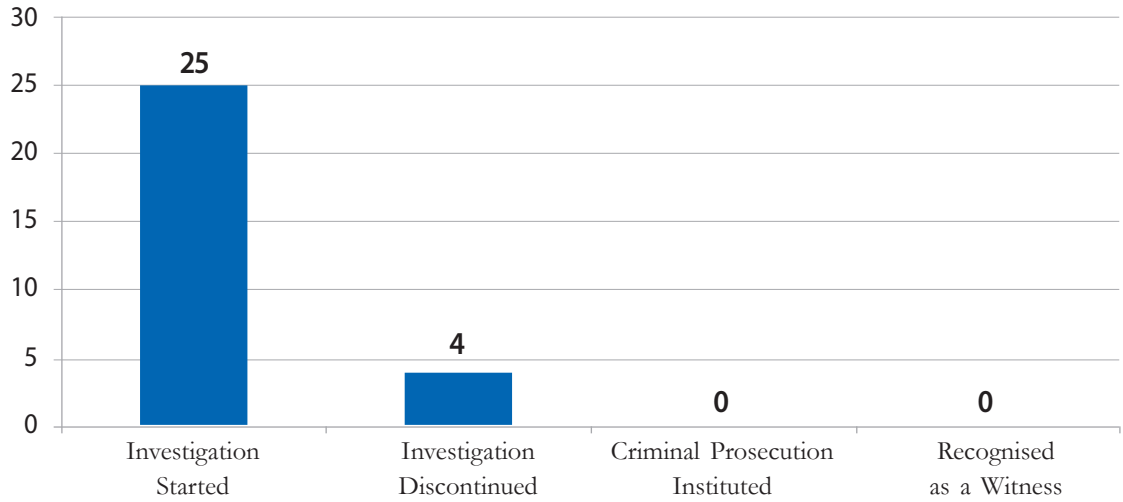
Based on the analysis of the study conducted by the Public Defender's Office, it can be concluded that alleged ill-treatment by police and penitentiary personnel remains one of the pressing issues for the county. Similar to the previous years, in 2016, investigation of the incidents of ill-treatment still was ineffective. No accused person was identified, nobody was granted a victim status in any of the cases studied and referred by the Public Defender, and in some cases, investigations started with delay.[604] The qualification of a treatment under the relevant article of the Criminal Code remains a significant problem.

No. 1. The Results of Investigations Started Based on the Suggestion Made by the Public Defender in 2016



604 See diagrams nos. 1 and 2.

No. 2. The Legal Outcomes of Investigation of the Alleged Incidents of Ill-Treatment, Identified in 2016 and under the Consideration of the Public Defender



Against the background of identified trends, the necessity for setting up an independent investigation agency vested with investigative and prosecutorial powers remains topical. The Public Defender of Georgia has been pointing out this necessity since 2014.

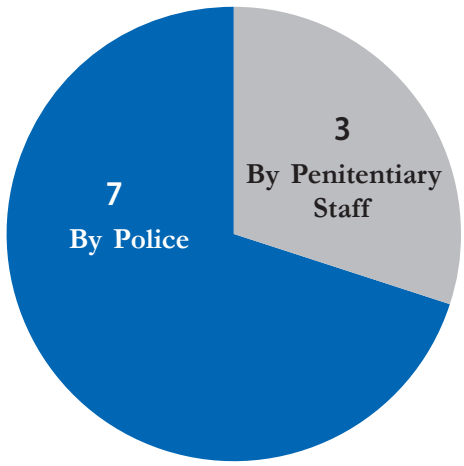
In 2016, the number of incidents of alleged ill-treatment by police exceeded the number of incidents of alleged ill-treatment by penitentiary personnel. The same trend persisted in the last year too. It is noteworthy that, in comparison to the previous year, the number of the occasions where the Public Defender called upon the Prosecutor's Office to start investigation decreased by 1/3.[605]

In 2016, on ten occasions, the Public Defender requested the Prosecutor's Office to start investigation in the incidents of alleged ill-treatment and, in 25 other occasions, requested information on pending investigations in the incidents that applicants had referred to the Office of the Public Defender. No one was given the status of either a victim or accused in any of the 35 cases. In five cases, investigation was discontinued due to the absence of *corpus delicti*.

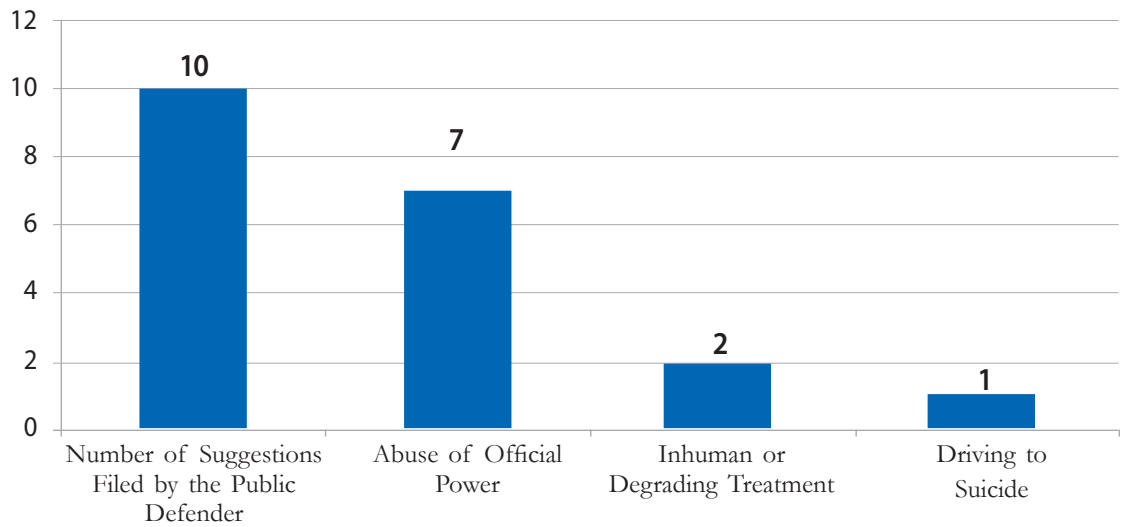
Out of ten suggestions to start investigation, seven cases concerned alleged ill-treatment by police and four cases concerned actions committed by penitentiary employees.[606] Two cases concerned incidents that took place in the regions (Imereti and Guria). It is noteworthy that only in two cases investigation started under a special article of the Criminal Code of Georgia - Article 144[3] (degrading or inhuman treatment); in seven cases, investigation started under Article 333 of the Criminal Code (abuse of official power); and, in one case, under Article 115 (driving to suicide).[607]

605 In particular, in 2015, the Public Defender submitted to the Prosecutor's Office 15 suggestions about starting investigation.
606 See diagram no. 3.
607 See diagram no. 4.

No. 3. Suggestions Filed by the Public Defender of Georgia in 2016 Concerning Starting Investigation



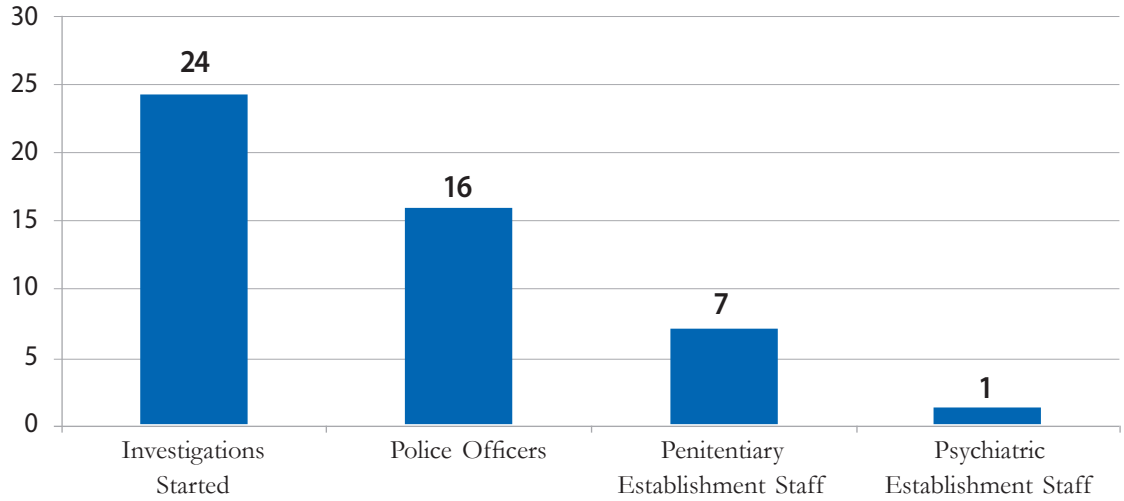
No. 4. The Classification of Investigations Started Based on the Suggestions of the Public Defender Filed in 2016



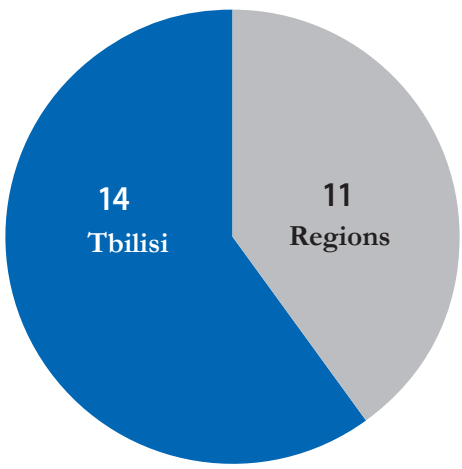
Out of 25 incidents of alleged ill-treatment, about which the Public Defender requested information, 16 concerned illegal actions allegedly committed by police; seven – by penitentiary employees; and 1 by LEPL Academician B. Naneishvili National Centre for Mental Health (Khoni district).[608] Out of these 25 incidents, 11 cases were reported in the regions.[609] Out of the 25 incidents, no investigation was started in one incident (on the part of a representative of the Prosecutor's Office) as the Prosecutor's Office itself notified the Office of the Public Defender of Georgia in writing that there had been no applications filed regarding this incident.

608 See diagram no. 5.
609 See diagrams nos. 6 and 7.

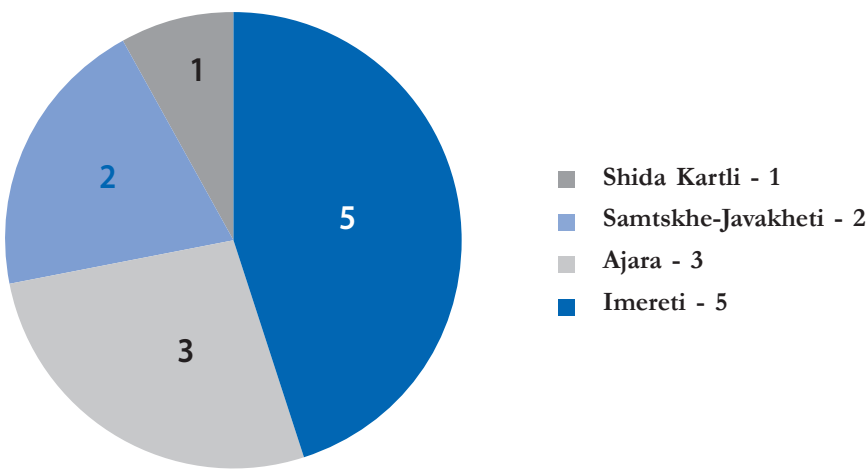
No. 5. The Alleged Perpetrators Involved in the Alleged Incidents of Ill-Treatment, Identified in 2016 and under the Consideration of the Public Defender



No. 6. The Number of Investigations on the Alleged Incidents of Ill-Treatment Identified in 2016 and under the Consideration of the Public Defender



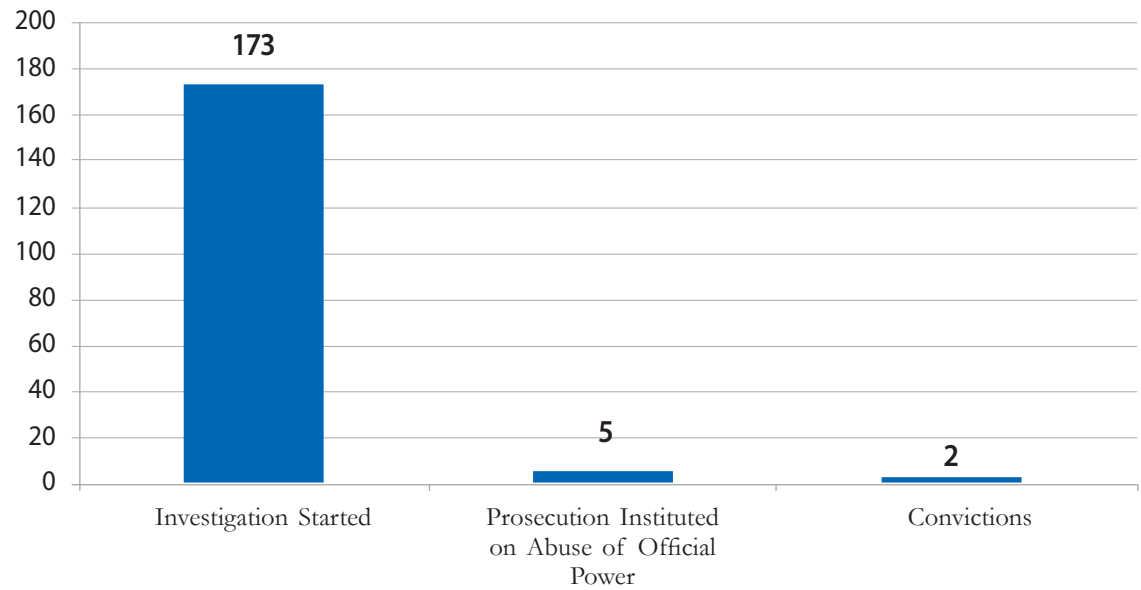
No. 7. The Alleged Incidents of Ill-Treatment According to Regions, Identified in 2016 and under the Consideration of the Public Defender



The Public Defender requested information also about investigation instituted in the incidents of alleged ill-treatment in 2016. According to the information submitted by the Chief Prosecutor's Office, investigation of alleged ill-treatment by police started in 173 incidents and out of these cases, criminal prosecution was instituted only in 5 cases. Out of these 5 cases, 2 cases were finalised with convictions.[610] It is noteworthy that in none of these cases, prosecution was instituted on the account of ill-treatment or torture but on abuse of official power.[611]

A better situation is seen in terms of investigation of ill-treatment allegedly committed in penitentiary establishments. According to the information submitted by the Prosecutor's Office, out of 11 cases of investigation, criminal prosecution was instituted in 5 cases on the account of ill treatment.

No. 8. Investigation Started in 2016 in the Incidents of Ill-Treatment Allegedly Committed by Police Officers; Source: the Office of the Chief Prosecutor of Georgia



EXAMPLES ILLUSTRATING INEFFECTIVE INVESTIGATION

Starting an investigation in a timely manner is one of the significant preconditions for effective investigation. E.g., investigation of the alleged ill-treatment of citizen T.Ts. started with the delay of 19 days. When police officers placed T.Ts. in a temporary detention isolator, the latter immediately notified the Prosecutor's Office. However, investigation started only after 19 days.

Serious breaches of the effective investigation standards were obvious in the investigations conducted in the cases of alleged ill-treatment of accused G.O. and accused M.P. Both these cases have been studied by the Office of the Public Defender of Georgia. Accused G.O. was allegedly ill treated by the personnel of a penitentiary establishment and accused M.P. was allegedly subjected to ill-treatment by law-enforcement officers. In neither of these cases, the Prosecutor's Office ensured conducting a comprehensive and timely investigation and reasonable involvement of victims of alleged ill-treatment in the process of investigation.

Prosecutor's Office, when investigating the case of G.O.:

610 Letter no.13/13873 of the Office of the Chief Prosecutor of Georgia of 1 March 2017.
611 See diagram no. 8.

– Failed to seize the full video recordings of the incident;

– Interrogated possible witnesses/eyewitnesses of the incident, as well as possible perpetrators, with the delay of 80 days; and

– Has not allowed the alleged victim of ill-treatment to be sufficiently involved in the investigation.[612]

Prosecutor's Office, when investigating the case of M.P.:

– Failed to conduct the examination of the alleged crime scene for collecting possible material evidence and samples that could be found there;

– Failed to conduct the requisite investigative actions for identifying those law-enforcement officers who could have been the perpetrators of the alleged crime;

– Failed to conduct an identification parade based on the information submitted by the victim about the possible perpetrator;

– Failed to conduct a forensic examination of alleged termination of pregnancy and did not ask concrete and specific questions to an expert for establishing sexual assault; and

– Has not allowed the alleged victim of ill-treatment to be sufficiently involved in the investigation.[613]

The representatives of the Public Defender of Georgia visited accused B.B. (who was arrested on 23 August) in a medical institution as the frontal bone of B.B. was shattered and his health condition was critical. His right palm was also fractured.

During the meeting with the representatives of the Public Defender of Georgia, B.B. alleged that about 30 members of the Special Forces participated in the arrest. One of them hit B.B. hard on the forehead with a truncheon and the blow caused the victim to faint. After that, he could not recall when and under what circumstances he injured his palm.

According to the accused, no medical assistance was provided for almost 12 hours from 20 August until late night. The open wound to his skull was so serious that a temporary detention isolator refused to admit B.B. It should be pointed out that according to a later forensic report, the wound was life threatening.

The document obtained by the Office of the Public Defender of Georgia revealed that medical assistance provided to B.B. was delayed. The Public Defender of Georgia, on 23 March 2016, publicly addressed the Office of the Chief Prosecutor to conduct an effective investigation of the alleged crime committed against B.B.[614] The investigation has been instituted, however, no perpetrators have been identified to date and B.B. has not even been given the status of a victim.[615]

It is also noteworthy that in the Parliamentary Report of 2015 by the Public Defender,[616] there was information about the incident of alleged ill-treatment of defence lawyer G.M. by police officers. Despite the facts that, in this case, criminal prosecution was instituted against one person only (the former chief of the police station) and the trial has been pending since 11 January 2016,[617] there has been no judgment adopted to this day.

612 The detailed analysis of this case is annexed to the Report, p. 821.
613 The detailed analysis of this case is annexed to the Report, p. 826.
614 The Public Defender called upon the Chief Prosecutor to institute investigation on the alleged ill-treatment of BB., the Office of the Chief Prosecutor of Georgia, 23.08.2016, at: http://www.interpressnews.ge/ge/samartali/393664-ombudsmenma-mthavar-prokurors-mimartha-beqa-beqauris-mimarth-shesadzlo-arasathanado-mopyrobis-faqtze-gamodzieba-daitsyos.html?ar=A.
615 Letter no. 13/8617 of the Office of the Chief Prosecutor of Georgia of 7 February 2017.
616 See the Parliamentary Report of 2015, pp. 388–389 http://www.ombudsman.ge/uploads/other/3/3891.pdf.
617 Letter no. 1/577–15 of Tbilisi City Court, dated 19 September 2016.

It is acknowledged by international human rights law that the obligation to investigate immediately arises whenever competent authorities receive a well-founded application or otherwise clear suggestion that ill-treatment could have taken place. When there are such circumstances, investigation shall start even if a victim does not file an express complaint.[618] Under Article 100 of the Criminal Procedure Code, 'an investigator/a prosecutor shall be obliged to start investigation upon reception of information about the commission of a crime'.

The Public Defender of Georgia took interest as to how this obligation is fulfilled and requested information about the number of investigations the Office of the Chief Prosecutor instituted on notifications about alleged ill-treatment in 2016.

It has turned out that, both in Tbilisi and in the regions, investigations are not started on most of the notifications.[619] According to the information requested and received in instalments from the Chief Prosecutor's Office, the following data has been identified:

In 2016, the Office of the Chief Prosecutor of Georgia received 240 notifications from temporary detention isolators of Tbilisi; criminal investigation started only in 60 cases; in other cases, prosecutors only interviewed the temporary detention facilities' inmates.[620]

According to the information from the regions, in 2016, the Office of the Chief Prosecutor did not start investigation on 146 notifications of alleged ill-treatment by police.[621]

It is noteworthy that the analysis of responses from the Office of the Chief Prosecutor of Georgia shows that there is an uneven practice in the offices of regional prosecutors when it comes to investigating alleged physical or psychological violence committed by law-enforcement officers. E.g., in 2016, Kvemo Kartli and Mtskheta-Mtianeti Regional Prosecutor's Office started investigation in 13 incidents out of 86 incidents that have been reported on alleged physical or psychological violence committed by law-enforcement officers. Samtskhe-Javakheti Regional Prosecutor's Office started investigation in all 20 incidents that have been reported.

It should be pointed out that the information submitted by the Office of the Chief Prosecutor of Georgia in a number of cases contradicts the analyses by the Office of the Public Defender of Georgia in the course of 2016. E.g., in the regional Prosecutor's Office of Kakheti, investigation started on all notifications of either physical or psychological violence on the part of law-enforcement officers. 19 notifications were received and investigation started in all 19 incidents. However, according to the information received from the Prosecutor's Office in reply to the notifications sent by the Office of the Public Defender requesting the Prosecutor's Office to respond to three incidents that had been studied by the Office,[622] investigation did not start as the existing evidence did not establish the fact that police officers had committed an alleged crime.

The above circumstance raises suspicions that the regional Prosecutor's Office does not register the alleged incidents of ill-treatment accurately, which is also a significant aspect in the fight against ill-treatment.

618 According to the well-established standards of the CPT, even in the case of absence of a formal complaint, the investigative bodies are under a legal obligation to start investigation upon the reception of credible information on alleged ill-treatment from any source.

619 The requested information contains separate data on Tbilisi and Regions. The Office of the Public Defender of Georgia did not merge these data in order to avert conflict with the total official statistics. The information submitted regarding Tbilisi and the regions already separately indicates that investigations are not instituted on a substantial number of notifications.

620 Letter no. 13/13869 of the Office of the Chief Prosecutor of Georgia of 1 March 2017.

621 Letters nos. 13/10333, 13/10376, 13/10342, 13/10326, and 13/10336 of the Office of the Chief Prosecutor of Georgia of 14 February 2017 and Letters nos. 13/10440, and 13/10425 of 15 February of 2017.

622 On 27 February 2016, the officers of Kakheti Major Regional Unit of the Ministry of Internal Affairs of Georgia used force during and after arrest of E.Gh., as the result of which the latter sustained multiple injuries. According to the response received from the prosecutor's office, investigation of the alleged ill-treatment did not start as the arrested persons' trial was pending in a court.

RECOMMENDATIONS

To the Office of the Chief Prosecutor of Georgia:

- To start investigation immediately upon the reception of information on ill-treatment;
- To ensure that all possible investigative actions are conducted diligently, without delay for years on; to interrogate and identify all possible witnesses/eye witnesses; to seize and examine all items, documents related to the possible crime; to appoint and ensure that a forensic examination is conducted for establishing the reasons of particular injuries and ask precise and relevant questions;
- To seize within shortest terms possible full video recording that could be depicting the facts related to an alleged crime, among them, the recordings of video cameras installed in penitentiary establishments;
- To give promptly the status of victim to respective persons in the course of investigation in accordance with the Code of Criminal Procedure Code of Georgia; and
- To ensure that a victim is involved to the maximum extent in the respective investigation, especially in the cases concerning the deprivation of life and ill-treatment. Their requests concerning conducting investigative actions should be taken reasonably into consideration.

To the Ministry of Internal Affairs and to the Office of the Chief Prosecutor of Georgia:

- To ensure that the officials in charge of enquiry/interrogation for conducting enquiry/interrogation are trained in a comprehensive manner.

To the Parliament of Georgia:

- To adopt a law on setting up an independent agency, entrusted with the functions of investigation and prosecution, to investigate crimes related to ill-treatment and torture, as well as deprivation of life.

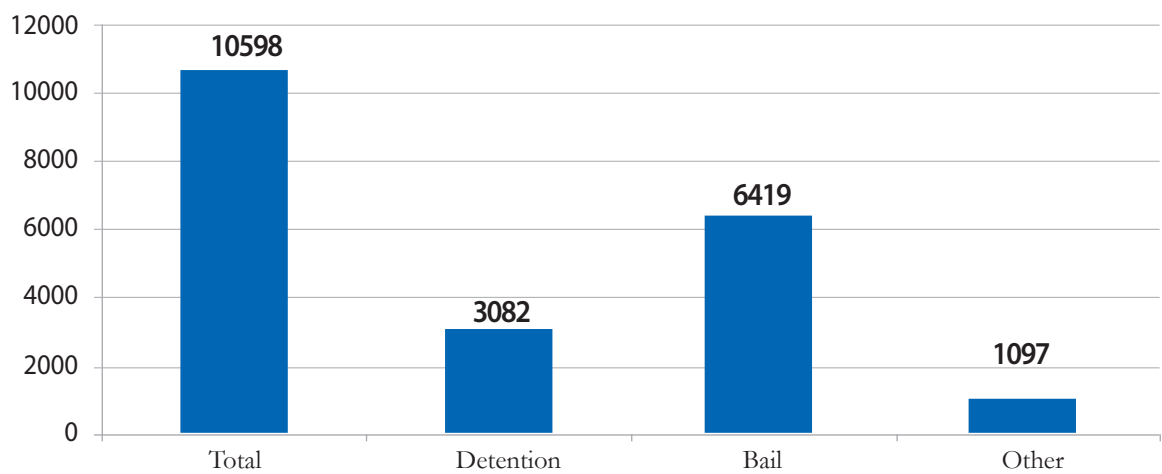
THE RIGHT TO LIBERTY AND SECURITY

The right to liberty and security is the fundamental right of a person that can be limited by a state only upon a legitimate and urgent necessity.[623] The circumstances, examined by the Public Defender during the reporting period, again revealed incidents of violations of the right to liberty and security both at legislative and administrative levels.

PREVENTIVE MEASURES

Compared to the previous years, the reporting period was marked with insignificant decrease (less than 1%) in the number of application of detention as a preventive measure[624] in criminal proceedings. In particular, in the previous year, detention constituted 29.6%[625] of the total number of the preventive measures applied, whereas, presently, it amounts to 29.1%.

No. 1. The Statistics of the Preventive Measures Applied



623 Article 18 of the Constitution; Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

624 See the statistics published on the official website of the Supreme Court of Georgiahttp://www.supremecourt.ge/files/upload-file/pdf/2016w-statistic-7arkv.pdf, http://www.supremecourt.ge/files/upload-file/pdf/2016w-statistic-7arkv.pdf.

625 According to the data published on the website of the Supreme Court, in 2015, there were 11,243 preventive measures; among them, detention was applied in 3,387 instances. This statistics is reproduced in the Parliamentary Report of Georgia of 2015, p. 426.

The Office of the Public Defender of Georgia examined the decisions on application of detention taken by Batumi, Poti and Kutaisi City Courts, as well as Gurjaani and Gori District Courts.[626]

The study of the above-mentioned decisions show that the courts apply detention mostly as a preventive measure against those accused persons who are charged with grievous and/or especially grievous violent crimes.[627] Besides, in number of cases, the courts fail to substantiate the risks posed by particular accused persons in terms of absconding, obstructing investigation, suborning witnesses, and/or destroying evidence. Accordingly, these decisions are indiscriminate and ill founded. In some cases, decisions are justified in terms of application of detention based on one or several grounds. However, even if one ground sufficiently justifies the application of detention, there are other grounds invoked as well in the decisions without any justification provided for these other grounds.

In the cases where bail has been applied, there is no information in court decisions about the property owned by either accused persons or those who could pledge to bail out accused persons with sums and/or immovable property.

There are examples of best practices: on 7 December 2016, Tbilisi Court of Appeals decided against the application of detention due to the inability of an accused person to pay bail. Tbilisi Court of Appeals opined that in those cases, where an accused person is unable to pay bail, 'the application of bail may become the ground for aggravating a preventive measure against the accused due to the inability to pay, which is referred to as "ulterior detention" in international practice and is impermissible.' There are cases where the courts decided against the use of any preventive measure, which is positively assessed.

In the context of proportionality of preventive measures, unjustifiably narrow statutory grounds allowing the application of an undertaking not to leave and duly behave should be pointed out.[628] This measure cannot be applied, *inter alia*, in those cases where, on the one hand, detention is completely unreasonable and, on the other hand, an accused person does not have sufficient means to pay bail. Such a regulation raises the risk of the application of a disproportionate preventive measure.[629] The Criminal Procedure Code[630] provides for the possibility of the parties to appeal a preventive measure with the Investigative Board of a Court of Appeals. However, according to the statistics submitted by Tbilisi Court of Appeals to the Office of the Public Defender of Georgia, the majority of appeals have not been admitted.[631]

626 Tbilisi City Court has not submitted materials to the Office of the Public Defender of Georgia.

627 There are isolated cases where detention has been applied against the accused persons, charged with non-violent crimes.

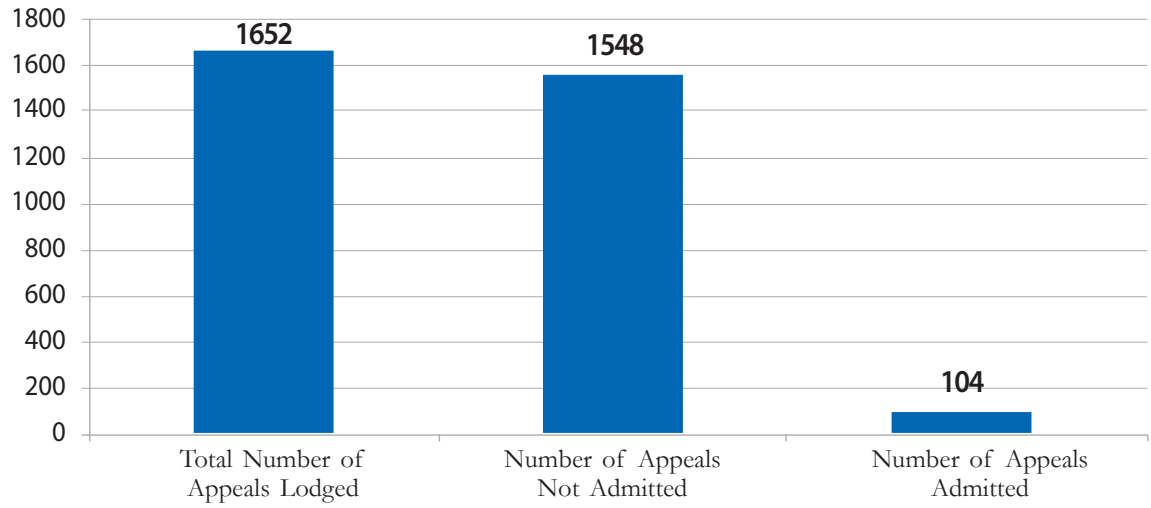
628 Under Article 202 of the Criminal Procedure Code of Georgia, the undertaking not to leave and duly behave can only be applied in those cases, where the penalty of deprivation of liberty does not exceed one year.

629 The risk for disproportionate preventive measure arises inasmuch a judge is authorised to apply either bail or detention. If a judge applies bail to an indigent accused person, it will be commuted with detention due to the failure to pay the bail: in accordance with the procedural legislation, the violation of the terms of a preventive measure causes the application of a stricter preventive measure. In the aforementioned case, the failure to pay the bail amounts to the violation of the terms of the bail and detention is the stricter preventive measure.

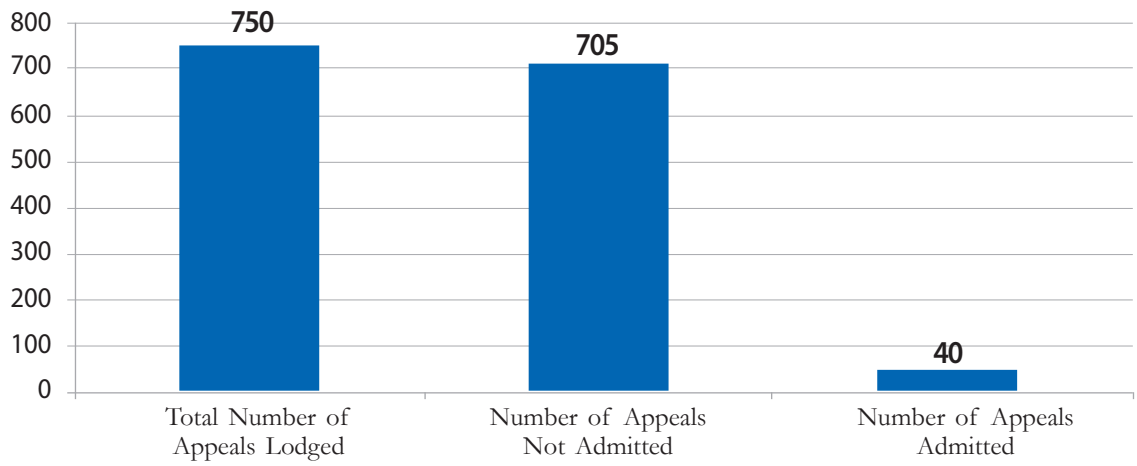
630 Article 207 of the Criminal Procedure Code of Georgia.

631 Letter no. 4/50 of Tbilisi Court of Appeals of 23 January 2017.

No. 2. The Statistics on Appealed Preventive Measures in Tbilisi



No. 3. The Statistics on Appealed Preventive Measures in Kutaisi



ARREST

The reports prepared in the previous years by the Public Defender of Georgia addressed the incidents of the violation of procedural safeguards during arrests. In 2016, there were mainly incidents of ill-treatment during arrests, which are discussed in the respective chapter of this report.[632] As regards procedural safeguards, arrests have been punctuated with several noteworthy incidents of violation of procedural safeguards, causing flagrant breach of an individual's right to liberty. The repetition of similar incidents will seriously damage the citizens' numerous fundamental rights. Therefore, from the very outset, such incidents should be particularly dealt with the competent state authorities.

Information posted on social media disseminated a photo and video material depicting E.D.'s arrest.[633] E.D. was handcuffed and made to get into a patrol police car. The arresting police officers explained to E.D. that his arrest was made based on Article 255 of the Criminal Code of Georgia.

632 See this Report's chapter on the prohibition of torture, inhuman and degrading treatment and punishment.

633 See https://www.youtube.com/watch?v=YGiQEz5gqYU , date of posting: 11 March 2016; [Last visited on 10 March 2017]. http://netgazeti.ge/news/100983/, date of posting 12 March 2016; Last visited on 10 March 2017

The fact of arresting E.D. was denied both by the Office of the Chief Prosecutor of Georgia[634] and the Ministry of Internal Affairs of Georgia.[635] According to their statements, E.D. was at the administrative building of the Ministry of Internal Affairs as a witness to be interviewed. The Georgian legislation does not allow handcuffing, transporting, or arresting a person for interviewing.

Another noteworthy incident in this context is identified: during the first appearance before a court, G.O. submitted that the arrest had been actually made on 5 September 2014 instead of 12 September 2014. G.O. maintained that he had not even tried to enter Tskhinvali region from the territory under effective control of the Georgian authorities and that the arrest report and video recording had been tampered with.

According to various information outlets, G.O. was arrested on 5 September 2015. G.O. motioned for an investigation to be instituted on his alleged illegal arrest, which was dismissed. The reason for dismissal was the fact that the arrest report had been acknowledged to be legal at a pre-trial hearing. However, according to G.O., the documentation at his disposal confirms the fact that he was illegally arrested, which had not been assessed at the pre-trial hearing (due to the fact that the information was obtained at a later stage). Therefore, it was imperative to start investigation on the alleged incident of illegal arrest.

The Constitution of Georgia,[636] the Criminal Procedure Code of Georgia,[637] and the International Covenant on Civil and Political Rights[638] stipulate that an arrestee or a detainee shall be informed of the reasons for their arrest in a language they understand and made aware of their right to have a lawyer; the arrest and whereabouts shall be notified to a family member and/or a third person of their choice.

In 2016, the Office of the Public Defender studied the case-files of 14 arrestees[639] and identified violations of the above rights. While a report on reading rights is drafted during arrest, the rights are not explained in a language arrestees understand. Similarly, rights are not explained during administrative arrests, despite the fact that the Code of Administrative Violations of Georgia provides in express terms for the obligation of law-enforcement officers to explain the rights in detail and in plain language understandable for an arrested person.[640]

The Office of the Public Defender studied two case-files of G.T. and M.O., where police officers had not informed their family members about arrests.

The right to access to a defence lawyer for a person arrested or detained in any procedure is safeguarded by the Constitution of Georgia and domestic legislation, as well as numerous international conventions and legal instruments.

In the reporting period of 2016, three defence counsels – D.J., G.T., and Z.P., applied to the Public Defender of Georgia.[641] According to their allegations, arrestees and detainees were restricted in their right to a legal counsel. Namely, one of the incidents reported concerned the refusal to allow a lawyer to the temporary detention isolator to meet the client; in another incident, a lawyer was admitted to a patrol police building with an hour and a half delay using the pretext of checking a warrant. There have been occasions where various investigative actions were carried out without a lawyer being present by the officers of Kutaisi Major Division, notwithstanding the multiple requests of an arrested person to ensure the presence of a defence lawyer.

634 Letter no. 13/32233 of the Office of the Chief Prosecutor of Georgia of 23 May 2016.
635 Letters nos. 992255 and 1523122 of the Ministry of Internal Affairs of 21 April 2016 and 21 June 2016.
636 The Constitution of Georgia, Article 18.5.
637 The Criminal Procedure Code of Georgia, Article 38.2.
638 ICCPR, Article 9.
639 Applications nos. 4138/16, 3253/16, 12055/16, 7575/16, 10903/16, 11863/16, 2507/16, 2509/16, 10911/16, 10240/16, 15004/16.
640 The Code of Administrative Violations, Article 245.
641 Applications nos. 11863/16, 4138/16, 3253/16.

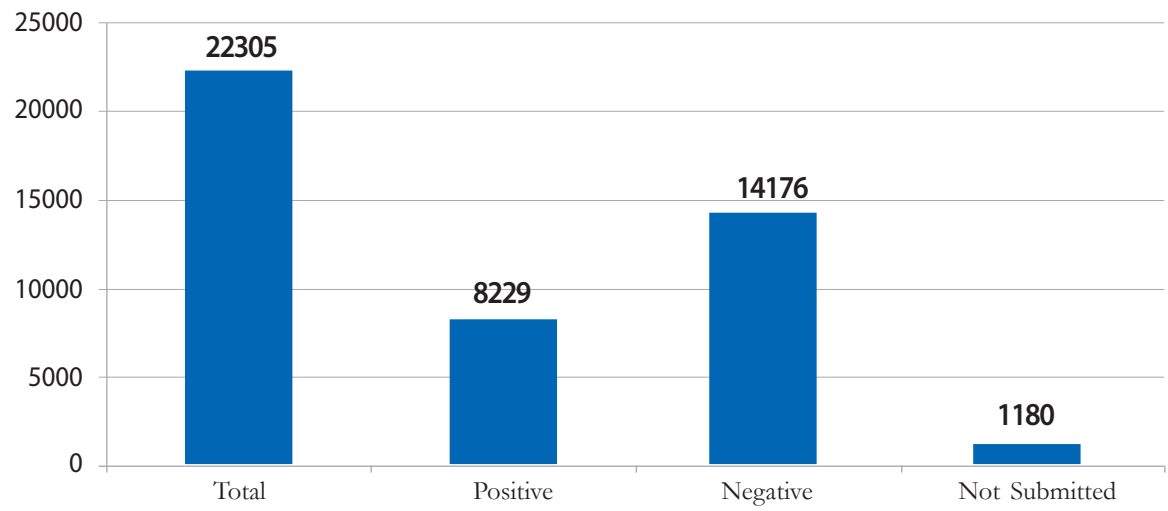
EXTRADITIONS

In 2016, the Office of the Public Defender of Georgia identified various incidents where wanted accused persons – G.D. and Z.K. – were not brought before a court within the statutory 48 hours after arrest.[642] Instead, they were brought before the court at the next hearing of the trial, 20 days after the arrest. Furthermore, the court opined in the case of C.D. that[643] 'the statutory terms set forth by the procedural legislation only apply to investigation but not to trial'. Such an interpretation essentially contradicts the rationale of bringing an arrestee before a court, the right is guaranteed by not only the criminal procedural legislation of Georgia but also by the international instruments as well.[644] The rationale of appearance of an arrestee in person before a judge aims at ensuring the court examines the absolute necessity and legality of an arrest, based on personal communication with the arrested person.[645]

TESTING FOR DRUGS

Various incidents of random stops on the streets for testing for drugs were identified during the reporting period. In particular, in several cases, police officers took particular persons against their will to a forensic building for administering drug tests. These acts were based on subjective suspicions that the person concerned could be under the influence of narcotics and/or other psychotropic drugs. Besides, the majority of these drug tests results are negative. According to the information submitted by the Ministry of Internal Affairs to the Office of the Public Defender of Georgia, the majority of the test results are negative:[646]

No. 4. Personal Data of the Persons Subjected to Testing for Drugs



In the reporting period, numerous incidents were identified[647] where persons arrested in administrative proceedings refused in writing to submit a biological sample for narcotics and/or other psychotropic drug tests. However, they were released after the lapse of the statutory term of twelve hours for administrative arrest.

642 The Criminal Procedure Code of Georgia, Article 206.10.
643 Minutes of the court hearing of 6 April 2016, audio recording no. 006, from 00:43:10 to 00:45:00.
644 Bergmann v. Estonia, Gutsanovi v. Bulgaria; Ipek and Others v. Turkey; Kandzhov v. Bulgaria; Guide on Article 5 of the Convention: Right to Liberty and Security, 2014, 2nd edition, paras. 132–133, p. 24.
645 *Idem.*
646 Letter no. 293477 of the Ministry of Internal Affairs of Georgia of 6 February 2017.
647 Eight incidents.

In another incident, an individual was arrested in administrative proceedings based on the suspicion of police officers that the individual was under the influence of narcotics. The individual refused to undergo voluntary drug test – to submit a biological sample. Despite this fact, according to the report of the criminal forensic department of the Ministry of Internal Affairs, the laboratory test was over in approximately four hours after the arrest. This case summons a question – how the lab test was conducted if the person concerned refused to hand in a biological sample. Obviously, if an arrested person did not submit the research material (biological sample), no laboratory test of any kind could have been conducted. Therefore, the laboratory forensic report raises doubts as to its authenticity.

It is noteworthy that the Law of Georgia on Police imposes an obligation on police officers to discontinue legal action in those cases where it is clear that an objective is unattainable.[648] Despite the express requirement of the law, police officers do not release arrested persons immediately, whenever they refuse to submit biological samples. Such practice amounts to flagrant breach of an individual's right to liberty and security and is in breach of both the Constitution of Georgia and international standards. The Public Defender of Georgia, with regard to this problem, lodged a constitutional complaint[649] with the Constitutional Court and requested a pronouncement on those legislative acts that expressly or tacitly allow law enforcement officers to transfer individuals to a forensic institution for the administration of drug tests without their will as unconstitutional.

Furthermore, the Public Defender of Georgia lodged a constitutional complaint[650] with the Constitutional Court of Georgia and requested a pronouncement on the restriction of liberty and the administrative detention for the use of narcotics and/or other psychotropic drugs as unconstitutional. On 22 December 2016, the Constitutional Court admitted the constitutional complaint for the consideration of the merits.

RECOMMENDATIONS

To the Parliament of Georgia:

- To make changes and amendments to the Code of Criminal Procedure of Georgia to the effect of extending the list of preventive measures to provide more alternatives to a judge for the proportionate application of preventive measures, e.g., extending the statutory grounds allowing the application of an undertaking not to leave and duly behave for a wider circle of crimes. The possibility of independent application of other measures that are already laid down by the Code of Criminal Procedure must be applied together with preventive measures that will make the legislation more flexible.

To the Courts of General Jurisdiction:

- To assess in detail those risks that leaving an accused person at liberty would involve; to invoke factual circumstances when assessing risks and not to limit the reasoning to citing the legislation only;
- To assess the financial situation of an accused and/or another person when applying bail to avert replacement of the bail with a stricter preventive measure - detention due to outstanding bail;
- When applying detention to a wanted accused that has been arrested and brought before a judge, the legality of arrest should be interpreted by a court in compliance with international standards to the effect of requiring an accused is brought to a court within 48 hours after his/her delivery to the place of investigation; and

648 The Law of Georgia on Police, Article 12.5.
649 Constitutional complaint no. 697 of 25 November 2015.
650 Constitutional complaint no. 770 of 17 June 2016.

- The high statistics of inadmissibility of appealed preventive measures gives rise to misgivings that the courts do not assess in depth the statutory criteria for admissibility of decisions. It is, therefore, imperative that the courts scrutinised each admissibility criterion separately and only then decided about the issue of admissibility.

To the Prosecutor's Office:

- Whenever a wanted accused is arrested and is brought before a court for the application of a preventive measure, extension of the applied detention in force or the application of another measure of prevention, to ensure that an accused, as per Article 206.10 of the Criminal Procedure Code of Georgia, appears before the respective court within 48 hours after he/she was brought to the place of investigation; and
- To start an investigation on the circumstances of G.O.'s arrest.

To the Ministry of Internal Affairs of Georgia:

- To take a person to another place for interview without the use of the means of restraint of any kind. The use of handcuffs and taking a person to another territory amounts to arrest and it is imperative to afford to arrestees all due procedural safeguards;
- Upon refusing to give a biological sample, to immediately release a person restricted in his/her liberty, unless there is another ground for arrest;
- To ensure that in each case of arrest, the rights are clearly explained to an arrested person in the language understandable for him/her;
- The use and voluntary waiver of the right to notify family and other relatives about arrest should be registered in a respective report, certified by the signature of the arrested person; and
- To ensure immediate meeting of a person restricted in his/her liberty in any form either by arrest or by detention with a defence lawyer and to safeguard the right to defence.

THE RIGHT TO A FAIR TRIAL

The right to a fair trial is a fundamental right of an individual, which is safeguarded by domestic and international instruments. The violation of this right defies the idea of rule of law. Breaches of various aspects of the right to a fair trial were identified in the reporting period, viz., a court of general jurisdiction failed to implement correctly particular judgments of the Constitutional Court; the consideration of cases was delayed in a court of appeals on a number of occasions; and the public statements made by the law-enforcement bodies were again in breach of presumption of innocence. Various other violations of the right to fair trial were identified in a number of individual cases and they are dealt with in this chapter.

THE APPLICATION OF THE CONSTITUTIONAL COURT'S JUDGMENTS BY THE COURTS OF GENERAL JURISDICTION

In the reporting period, the Office of the Public Defender looked into the implementation of two judgments of the Constitutional Court of Georgia adopted in 2015. It was revealed that the courts of general jurisdiction frequently disregard the reasoning of these judgments; they follow a formalistic approach and apply only the operative part of the judgments.

1. In 2015, the Constitutional Court of Georgia declared as unconstitutional those provisions of the criminal procedure legislation, which allowed conviction based on hearsay.[651] Due to the fact that the courts of general jurisdiction disregard the reasoning of the Constitutional Court's decision, numerous convictions that have been based on unconstitutional provision remain in force.[652]

2. In 2015, the Constitutional Court of Georgia declared as unconstitutional the normative contents of the law allowing the imposition of deprivation of liberty as a punishment for purchase and storage for personal use of dry cannabis – a narcotic substance amounting up to 70 gr.[653] Nevertheless, Batumi City Court and Kutaisi City Court[654] imposed suspended deprivation of liberty on individuals in several cases.[655]

651 Citizen Zurab Miqadze v. the Parliament of Georgia, judgment of the Constitutional Court of Georgia of 22 January 2015.

652 See annex – the Problem Related to the Implementation by the Supreme Court of Georgia of the Judgment of the Constitutional Court of Georgia, p. 851.

653 Citizen Beqa Tsiqarishvili v. the Parliament of Georgia, judgment of the Constitutional Court of Georgia of 24 October 2015. Letter no. 27G/K of Batumi City Court of 16 January 2017; Letter no. 499–1 of Kutaisi City Court of 16 January 2017, and Letter no. 20897 of Tbilisi City Court of 13 January 2017.

654 Letter no. 27G/K of Batumi City Court, dated 16 January 2017; Letter no. 499–1 of Kutaisi City Court, dated 16 January 2017; and Letter no. 20897 of Tbilisi City Court, dated 13 January 2017.

655 Suspended deprivation of liberty implies that if for a certain period, a convict does not commit a crime or does not violate certain conditions, the punishment of the deprivation of liberty will be deemed to have been served.

It is noteworthy that the Public Defender of Georgia, for a number of reasons, believes that imposition of deprivation of liberty for a drug related crime or an administrative violation amounts to inhuman and degrading punishment. For this reason, the Public Defender of Georgia filed a constitutional complaint with the Constitutional Court in 2016.[656]

REVISION OF SENTENCES

The Public Defender of Georgia drew attention to the necessity to improve the procedure for the revision of final sentences imposed by a court. The Public Defender highlighted this necessity in his reports[657] and recommended to the Parliament of Georgia and the Government of Georgia to introduce the appropriate procedure.[658] The draft law submitted by the Public Defender of Georgia in 2016 concerns the review of the constitutionality of the legally binding decisions of the courts of general jurisdiction adopted on the rights and freedoms safeguarded by the Constitution of Georgia.[659] The initiative is not followed-up.[660] It is noteworthy that the mechanism for the revision of legally binding court sentences does not allow full possibility for redeeming those incidents where justice was administered with substantial violations of the Constitution of Georgia, as the grounds for revision are unreasonably limited.[661]

The amendment made to the Georgian legislation in the reporting period[662] introduced a new ground for the revision of a sentence due to a newly revealed fact, viz., a prosecutorial resolution finding a major violation of a convict's right in criminal proceedings. According to the information from the Chief Prosecutor of Georgia,[663] after the enforcement of the said provision, the Prosecutors' Office received 434 letters requesting the revision of a sentence. The Prosecutor's Office upheld only 20 requests.[664] The large number of requests for revision is already a proof that numerous people wished the revision due to a reason that is not covered by the actual revision procedure on the one hand and was provided by the draft law submitted by the Public Defender of Georgia on the other hand.

656 See, http://www.ombudsman.ge/ge/recommendations-Proposal/sakonstitucio-sarchelebi/saxalxo-damcveli-narkomomxmarebl bisatvis-patimrobis-shefardebas-arakonstituciurad-miichnevs.page

657 See, the 2013 Report by the Public Defender of Georgia, pp. 235–237 at: http://www.ombudsman.ge/uploads/other/1/1563.pdf; the 2014 Report by the Public Defender of Georgia, p. 283 at: http://www.ombudsman.ge/uploads/other/3/3509.pdf.

658 To introduce a procedure that will enable, in case of a legislative gap, the revision of sentence, full rehabilitation of a victim of miscarriage of justice, including restoring the damage caused by illegal acts of the state. See: the 2013 Report by the Public Defender of Georgia, p. 280, the 2014 Report by the Public Defender of Georgia, p. 307.

659 See at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-iniciativa-saqartvelos-sakonstitucio-sasamartlos-uflebamo silebis-gafartoebastan-dakavshirebit.page.
The initiative provides for the possibility of challenging before the Constitutional Court of Georgia, within a year after enforcement of the law, as a measure of exception, of the legally binding decisions of the courts of general jurisdiction that have been adopted since 24 August 1995 and became final.

660 On 29 February 2016, the Committee of Human Rights and Civic Integration of the Parliament of Georgia examined the draft law based on the submission of the Public defender. See at: http://www.ombudsman.ge/ge/news/saqartvelos-parlamentma-saqartvelos-sakonstitucio-sasamartlos-uflebamosilebis-gafartoebastan-dakavshirebit-saxalxo-damcvelis-iniciativa-ganixila.page; The Public Defender presently submitted the initiative to the Constitutional Commission, set up under Resolution no. 65 of the Parliament of Georgia of 15 December 2016, and it is under consideration within the human rights working group.

661 The Criminal Procedure Code, Article 310.g)[1].

662 The Criminal Procedure Code of Georgia, Article 310.g[1] (as of 24 June 2016, in force since 12 July 2016).

663 Letter no. 13/12178 of 22 February 2017.

664 The Prosecutor's Office adopted 20 resolutions with regard to the major violation of the rights of 27 convicts in the criminal proceedings against them in 16 criminal cases. A court did not uphold prosecutorial motion in one case and admitted 19 other motions for the consideration of the merits.

THE PRINCIPLE OF LEGAL CERTAINTY

The principle of legal certainty is an aspect of due process and implies the application of a foreseeable provision, especially in those cases that involve the deprivation of liberty as a legal outcome based on this provision.[665] In the reporting period, the Public Defender studied the case-file from a first instance court's jurisprudence, where the Public Defender believes the principle of legal certainty - as an aspect of the right to a fair trial - was substantially infringed.

Tbilisi City Court, in its judgment of 16 May 2016,[666] in the criminal case of N.K., G.Gh., A.A., G.L., and D.Ts. (the so-called the *Cables Case*), did not construe two components of embezzlement in the manner that would ensure foreseeability of the provision of substantive criminal law, viz., 1. motive – whether the desire to profit is a *conditio sine qua non* for the commission of embezzlement; and 2. legal possession of sum – whether it is considered that a person manages the sum that he/she cannot independently dispose of.

The Public Defender submitted an *amicus curiae* brief[667] with regard to this case to the Constitutional Court of Georgia. In the *amicus curiae brief*, the Public Defender argued the ambiguity of embezzlement as a *corpus delicti*, citing numerous and non-uniform legal practice and observed that the impugned provision was not foreseeable; it allowed a wide interpretation and was, therefore, in breach of the Constitution of Georgia.

THE PRINCIPLE OF EQUALITY OF ARMS

One of the most important aspects of the right to a fair trial is the equality of arms during investigation. The Public Defender studied the criminal case against a clergyman G.M. on whom prosecutors imposed the obligation not to divulge the information related to the case, whereas the prosecution itself publicised the case details according to their discretion. Imposition of such a measure complies with law, when it is necessary for the interest of investigation. Since the substantive details related to the charges brought against G.M. were imparted by the Prosecutor's Office itself, imposition of the obligation on the defence not to divulge the information related to the case clearly shows that the defence is put in an unequal situation. The Public Defender called upon the Office of the Chief Prosecutor of Georgia to inform the public about the purpose of imposing such an obligation on the defence and to discontinue the restriction when it is no more necessary, in order not to violate the principle of equality of arms.[668]

WITNESS INTERVIEWS

In the reporting period, the Public Defender took interest in the practice of voluntary interviewing witnesses since there were several incidents where witnesses reported that they were coerced into interviews conducted by police.[669]

665 Guide on Article 5 of the Convention: Right to Liberty and Security, 2014, para. 26.8.

666 It should be pointed out that by the judgment of Tbilisi Court of Appeals of 26 January 2016 the charges were re-qualified to Article 333 of the Criminal Code of Georgia.

667 See an *amicus curiae* brief of the Public Defender of Georgia in the so-called *Cables Case*; the Public Defender of Georgia, 31.08.2016 at: http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-curiae2/saqartvelos-saxalxo-damcvelis-sasamartlos-megobris-mosazreba-ew-kabelebis-saqmeze.page.

668 See the statement of the Public Defender of Georgia in the case of archpriest Giorgi Mamaladze; the Public Defender of Georgia, 16.02.2017 at: http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-dekanoz-giorgi-mamaladzis-saqmestan-dakavshirebit.page.

669 Under the changes made to the Criminal Procedure Code on 20 February 2016, an investigator can interview a witness regarding a range of crimes only with his/her consent.

In particular, the obtained information showed that 1,750 witnesses were interviewed in criminal cases only in Police Station no. 5 of Tbilisi Vake-Saburtalo Division, in 2016.[670] On the other hand, according to the report of the Office of the Chief Prosecutor of Georgia,[671] covering the period from 20 February 2016 to 28 November 2016, out of the motions to a court on questioning witnesses, only 27 were based on the refusal to interview.[672]

The big contrast between these numbers, without going into much argument, still gives rise to misgivings about just how voluntary these interviews are that the investigative authorities conduct without a court's involvement in so many cases.

The Public Defender also identified those cases where witness interviews were automatically followed by arrests. In such circumstances, there are increased risks for the violation of the right to liberty and security of a person, as well as the ill-treatment and torture, which is discussed in detail in the preceding chapter of this report[673].

DELAY IN CONSIDERATION OF CASES BY THE COURTS OF APPEALS

A Court of Appeals, within ten days from receiving an appeal and the case-files, without an oral hearing, adjudicates upon the admissibility of the appeal.[674] The Court of Appeals adopts a judgment within two months from the admission of the appeal for the consideration of the merits.[675]

Out of 825 appeals that reached and admitted by the Chamber of Criminal Cases of Tbilisi Court of Appeals[676] in 2016, the consideration of the merits of 92 cases was delayed from four to nine months. It should be pointed out that out of the case-files studied by the Office of the Public Defender, in two occasions, Tbilisi Court of Appeals delayed the consideration of the merits for a considerable time. The case of convicts M.I. and L.A. has been pending since 24 September 2015 (from the admission of the appeal for the consideration of the merits) and a judgment has not been adopted even after the lapse of more than 1 year and 6 months.[677] The case of convicts S.V. and H.H. reached the Court of Appeals on 11 June 2015. As of 31 January 2017, the case was at the stage of examination and a judgment was not adopted.[678]

According to the information submitted to the Public Defender,[679] in 2016, the consideration of the merits was delayed in 47 occasions (from four months to a year and one month) out of 716 cases at the Chamber of Criminal Cases of Kutaisi Court of Appeals.[680]

670 Letter no. 293477 of the Ministry of Internal Affairs of Georgia of 6 February 2017.
671 See: http://pog.gov.ge/res/docs/angarishi-2016.pdf p. 38.
672 According to the report of the Chief Prosecutor's Office, 71 motions on witness interrogation have been submitted to a court.
673 See this report, p. 258.
674 The Criminal Procedure Code of Georgia, Article 295.2.
675 The Criminal Procedure Code of Georgia, Article 295.6.
676 Letter no. 33 of Tbilisi Court of Appeals of 15 March 2017 contained information indicating the dates of filing appeals and completion of proceedings.
677 Letter no. 1/B-887-15 of Tbilisi Court of Appeals of 26 July 2016.
678 Letter no. 1/1B–537–15 of Tbilisi Court of Appeals of 31 January.
679 Letter no. 26–2/10 of 13 January 2017 and Letter no. 72–2/10 of 8 February 2017. The letters contained the details of appeals: case numbers, date of filing, date of adoption of judgments.
680 717 appeals have been filed, 716 appeals have been considered.

PRESUMPTION OF INNOCENCE

Presumption of innocence is a central element of the right to a fair trial and guaranteed by the Constitution of Georgia[681] and international instruments.[682] In the reporting period, the Public Defender identified numerous incidents of violation of presumption of innocence by law enforcement authorities when making public statements.

It should be positively mentioned that, in the reporting period, the Ministry of Internal Affairs of Georgia made public statements without identifying accused persons. However, there were still several occasions,[683] where the news posted on the official website of the Ministry of Internal Affairs contained a statement about an accused being guilty and referred to the full name. The public statements made by the State Security Service of Georgia,[684] as well as the Office of the Chief Prosecutor of Georgia,[685] contain affirmative findings of accused persons being guilty. Besides, identification of the persons is possible as their names are mentioned in full. One of the statements on the State Security Service also contains information that an arrestee confessed to the commission of a crime.[686] The statements made by the Office of the Chief Prosecutor of Georgia concerning the criminal case against the clergyman[687] are in violation of presumption of innocence.

681 The Constitution of Georgia, Article 40.1: 'An individual shall be presumed innocent until found guilty as provided for by law and by a final court judgment of conviction.'

682 The Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6.2: 'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.'

683 See, the Ministry of Internal Affairs and the State Security Service arrested two persons for grievous extortion; the Ministry of Internal Affairs, 14.09.2016, at: http://police.ge/ge/shss-m-didi-odenobit-qrtamis-gamodzalvis-faqtze-ori-piri-daakava/10003; the statement of the Ministry of Internal Affairs, 19.08.20016, at: http://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/9945.

684 See, e.g. Anti-Corruption Agency of the State Security Service arrested one person for bribery, the State Security Service, 29.02.2016, at: http://ssg.gov.ge/news/135/sus-is-antikorufciulma-saagentom-qrtamis-aghebis-faqtze-erti-piri-daakava; Anti-Corruption Agency of the State Security Service and the Ministry of Internal Affairs arrested one person for bribery, the State Security Service, 02.03.2016, at: http://ssg.gov.ge/news/74/sus-is-antikorufciulma-saagentom-da-shss-m-qrtamis-aghebis-faqtze-erti-piri-daakaves; The Statement by the State Security Service, the State Security Service, 12.04.2016, at: http://ssg.gov.ge/news/97/saxelmtsifo-usafrtxoebis-samsaxuris-gancxadeba; Anti-Corruption Agency of the State Security Service arrested the Head of the District Service of Nadzaladevi District Gamgeoba for bribery, the State Security Service, 13.05.2016, at: http://ssg.gov.ge/news/105/sus-is-antikorufciulma-saagentom-qrtamis-aghebis-faqtze-nadzaladevis-raionis-gamgeobis-saubno-samsaxuris-ufrosi-daakava; Anti-Corruption Agency of the State Security Service arrested one person for bribery, the State Security Service, 13.06.2016, at: http://ssg.gov.ge/news/61/sus-is-antikorufciulma-saagentom-qrtamis-aghebis-faqtze-erti-piri-daakava-; The Ministry of Internal Affairs and the State Security Service arrested two persons for extorting a bribe, the State Security Service, 14.09.2016, at: http://ssg.gov.ge/news/173/shss-m-da-sus-ma-didi-odenobit-qrtamis-gamodzalvis-faqtze-ori-piri-daakaves ; Anti-Corruption Agency of the State Security Service arrested one person for bribery, the State Security Service, 16.11.2016, at: http://ssg.gov.ge/news/192/sus-is-antikorufciulma-saagentom-qrtamis-aghebis-faqtze-erti-piri-daakava; Anti-Corruption Agency of the State Security Service arrested one person for attempted fraud, the State Security Service, 10.11.2016, at: http://ssg.gov.ge/news/188/sus-is-antikorufciulma-saagentom-taghlitobis-mcdelobis-faqtze-erti-piri-daakava; Anti-Corruption Agency of the State Security Service arrested one person for bribery, the State Security Service, 29.0.2016, at: http://ssg.gov.ge/news/180/sus-is-antikorufciulma-saagentom-qrtamis-aghebis-faqtze-erti-piri-daakava-.

685 See, e.g. the Chief Prosecutor's Office closed the case of Besarion Khardziani murder, the Office of the Chief Prosecutor's Office of Georgia, 21.01.2016, at: http://pog.gov.ge/geo/news?info_id=857; the Chief Prosecutor's Office closed the case of shutting down TV company Iberia and forced discontinuation of broadcasting licence, the Office of the Chief Prosecutor of Georgia, 16.02.2016, at: http://pog.gov.ge/geo/news?info_id=869; the Chief Prosecutor's Office closed the case of Davit Otkhmezuri murder committed in 2004, the Office of the Chief Prosecutor's Office of Georgia, 29.03.2016, at: http://pog.gov.ge/geo/news?info_id=895; the Chief Prosecutor's Office closed the case of murder committed 11 years ago, the Office of the Chief Prosecutor's Office of Georgia, 04.04.2016, at: http://pog.gov.ge/geo/news?info_id=902; the Chief Prosecutor's Office arrested 5 persons for illegally obtaining the tapes on private life , the Office of the Chief Prosecutor's Office of Georgia, 08.04.2016 at: http://pog.gov.ge/geo/news?info_id=904; the Chief Prosecutor's Office instituted criminal prosecution against Giorgi Udesiani and Alexander Mukhadze, the Office of the Chief Prosecutor's Office of Georgia, 05.05.2016, at: http://pog.gov.ge/geo/news?info_id=917; the Chief Prosecutor's Office arrested citizens of Latvia and Georgia for fraud, the Office of the Chief Prosecutor's Office of Georgia, 26.04.2016, at: http://pog.gov.ge/geo/news?info_id=914; the Chief Prosecutor's Office charged former patrol police officers, the Office of the Chief Prosecutor's Office of Georgia, 21.04.2016, at: http://pog.gov.ge/geo/news?info_id=913; the statement of the Chief Prosecutor's Office on the case against Centre Point Group, the Office of the Chief Prosecutor's Office of Georgia, 11.07.2016, at: http://pog.gov.ge/geo/news?info_id=963; the Chief Prosecutor's Office committed to trial the former high-ranking officials for battery and deprivation of liberty of Koba Davitashvili, the Office of the Chief Prosecutor's Office of Georgia, 14.07.2016, at: http://pog.gov.ge/geo/news?info_id=966; the Chief Prosecutor's Office arrested the president of Tabukashvili-88 – Z. Tabukashvili, the Office of the Chief Prosecutor's Office of Georgia, 10.08.2016, at: http://pog.gov.ge/geo/news?info_id=987; the Chief Prosecutor's Office charged the former high-ranking officials in the so-called 26 May case, the Office of the Chief Prosecutor's Office of Georgia, 20.09.2016, at: http://pog.gov.ge/geo/news?info_id=1012; the Chief Prosecutor's Office arrested one person for illegally obtaining credit, fraud and legalisation of illegal proceeds, 06.10.2016, at: http://pog.gov.ge/geo/news?info_id=1028; the Chief Prosecutor's Office committed for trial four persons for inhuman and degrading treatment, the Office of the Chief Prosecutor's Office of Georgia, 13.12.2016, at: http://pog.gov.ge/geo/news?info_id=1080.

686 See, Counter Terrorism Centre of the State Security Service arrested one person, the State Security Service, 30.07.2016, at: http://ssg.gov.ge/news/156/sus-is-kontrteroristulma-centrma-erti-piri-daakava.

687 See, the Chief Prosecutor's Office arrested archpriest Giorgi Mamaladze as an accused for the preparation of murder, the Office of the

THE SHORTCOMINGS RELATED TO THE JURY TRIAL AND OTHER SHORTCOMINGS REVEALED DURING THE STUDY OF HIGH-PROFILE CASES

The study of the high-profile cases in the reporting period revealed shortcomings related to jury trials and other breaches. In particular, the Office of the Public Defender observed the consideration of two cases by juries. Shortcomings were identified in one set of proceedings that compromise various aspects of the principle of a fair trial; whereas, the shortcomings identified in another proceedings are specifically linked to a jury trial.

In the case of M.P.,[688] the court failed to take appropriate measures to ensure order during proceedings, which resulted in the violation of the reputation of the accused through multiple offensive remarks addressed to her. The proceedings were conducted so that both the Prosecutor's Office and the court failed to ensure the confidentiality of the information containing personal data and the details of private life of the accused, despite the fact that part of the proceedings were held *in camera*. Furthermore, during the proceedings, the prosecution focused on the matters that reinforce the social stereotypes about women, in breach of the obligation to fight for elimination of discrimination against women.

The case against G.O. showed that there is no effective mechanism in place that would allow the verification of the eligibility of candidate jurors. [689]

The above-mentioned case made it clear that there is no statutory mechanism in place that would protect jurors from the pressure of the public and the media and this way would ensure that a verdict is only based on the body of evidence. For instance, in the countries with a traditional jury system, the independence of jurors is ensured through media regulations. In Scotland, until a verdict is reached, media outlets are prohibited from publishing any information related to proceedings that have not been examined before the court considering the case.[690] In England and Wales, the parties themselves may prohibit media from making statements in relation to proceedings.[691] The violation of these regulations results in criminal responsibility in both systems.

This case also showed that the legislation does not provide for sufficient guarantees for the legality of a jury verdict. A verdict cannot be clear when questions cannot be put to jurors and at the same time the Court of Cassation is deprived of the possibility to examine whether an indictment is exhaustive, or just how individually relevant the evidence in the case file is for an accused.

The fact that the Court of Cassation completely distances itself from reconsideration of the body of evidence likewise violates the right to effective appeal. The actual legislation does not enable a convict to argue before an upper court that the verdict against him/her is clearly contradicting the body of evidence in the case-file. Therefore, the risk on the part of jurors is not sufficiently limited, which is in express violation of the *Taxquet* standards.

The lack of regulation of the use of hearsay by a jury is another problem. Giving general instructions concerning the probative value of hearsay (and that happens when there is a party's request) does not sufficiently avert basing a verdict on that evidence.

Finally, even in those cases where a case heard by a jury, a presiding judge must provide reasons for the determined category and measure of the punishment so that a sentence is not ill-founded.

Chief Prosecutor of Georgia, 13.02.2017, at: http://pog.gov.ge/geo/news?info_id=1137; the Chief Prosecutor publicises the of the intermediate findings of investigation into the case of Giorgi Mamaladze, the Office of the Chief Prosecutor of Georgia, 08.03.2017, at: http://pog.gov.ge/geo/news?info_id=1154.

688 The detailed analysis of this case is annexed to this report, p. 847.

689 The detailed analysis of this case is annexed to this report, p. 835.

690 "Reporting Court Cases in England and Wales: Rory Maclean", BBC Academy, http://www.bbc.co.uk/academy/journalism/law/courts/article/art20130702112133645, [Last visited on 23.03. 2017].

691 The Contempt of Court Act of 1981, section 4.

JUSTICE REFORM

In the reporting period, on 29 December 2016, the Parliament of Georgia adopted, after the third hearing, the draft law elaborated within the third wave of justice reforms.[692] The Public Defender of Georgia commends the positive aspects of the reform that the changes incorporate.[693] Among others, one of the major recommendations made by the Public defender concerning the introduction of electronic case management in the court system has been taken into account. However, the delay of the date of enforcement by one year, until 31 December 2017, should be negatively assessed.[694]

The Public Defender of Georgia welcomes the amendment, according to which the information given in a report by and/or a suggestion of the Public Defender of Georgia concerning a judge's act that could be considered a disciplinary violation, can serve as a ground for initiating disciplinary proceedings against that judge.[695]

Despite certain positive aspects of the third wave of justice reforms, the draft law adopted through the third hearing contains problematic provisions that fail to secure independence of the judiciary and to ensure that the reforms move in the right direction. The majority of negative changes appeared in the package of the third wave reform at the various phases of the parliamentary deliberations, which is particularly unfortunate.

In this regard, appointment of a president of a court/chamber/section by the High Council of Justice is noteworthy.[696] The initial legislative package elaborated within the framework of the third wave of justice provided for the election of court presidents (presidents of district (city) courts, appeal courts, as well as presidents of sections and chambers) by the judges of the same court by secret ballot. The opinion of the Venice Commission adopted in 2014 welcomed this system of election of court presidents and pointed out that this procedure was 'in line with the requirements of the principle of internal independence of the judiciary'.[697] Despite the foregoing, according to the amendments elaborated within the third wave of justice reform, the power to appoint court presidents remained with the High Council of Justice.

Besides, as the result of the third wave of justice reforms, out of nine judges of the courts of general jurisdiction that are members of the High Council of Justice, five judges can be, at the same time, a president of a court/chamber/section, the first deputy president of a court/chamber/section, or the deputy president of a court/chamber/section. Such representation of presidents in the High Council of Justice gives rise to a real risk for concentration of power in their hands. Holding several positions at the same time will increase already existing hierarchy among judges. For averting such risks, the Venice Commission observed in its opinion in 2013 that the law could provide that should a president of a court be elected to the Council, he or she would have to resign from his or her administrative position as a president.[698]

692 See the so-called draft law on the third wave of justice reform prepared by the Ministry of Justice of Georgia, 2 July 2015, III hearing, the Parliament of Georgia, available at: http://info.parliament.ge/#law-drafting/9716 [Last visited on 8 February 2017].

693 The President of Georgia signed the legislative package of the third wave of justice on 13 February 2017, after the reasoned comments of the president were not upheld by members of Parliament. Available at: http://www.parliament.ge/ge/saparlamento-saqmianoba/plenaruli-sxdomebi/plenaruli-sxdomebi_news/saqartvelos-me-9-mowvevis-parlamentis-sagazafxulo-sesiis-plenaruli-sxdoma.page [Last visited on 16.02.2017].

694 See Article 1.32 and Article 2 of the Organic Law of Georgia on Amendment of the Organic Law of Georgia on the Courts of General Jurisdiction, Law (21), Author: the Ministry of Justice of Georgia, the Parliament of Georgia, available at : < http://info.parliament.ge/file/1/BillReviewContent/142443?> [Last visited on 14.02.2017].

695 See Article 1.2 of the Draft Law of Georgia on the Amendment of the Law of Georgia on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings. Author: the Ministry of Justice of Georgia, the Parliament of Georgia, available at: <http://info.parliament.ge/file/1/BillReviewContent/142445?> [Last visited on 14.02.2017].

696 See Article 1.10.b) and Article 1.14 of the Organic Law of Georgia on Amendment of the Organic Law of Georgia on the Courts of General Jurisdiction, law (21), author: the Ministry of Justice of Georgia, the Parliament of Georgia, available at: < http://info.parliament.ge/file/1/BillReviewContent/142443?> [Last visited on 14.02.2017].

697 See joint opinion of the Venice Commission (European Commission for Democracy through Law) and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on Amendments to the Organic Law of Georgia on General Courts of Georgia, adopted by the Venice Commission at its plenary session (Rome, 10-11 October 2014), para. 75, available at: :< http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-geo> [Last visited on 08.02.2017].

698 See the opinion of the Venice Commission of 2013, para. 78, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e [Last visited on 13.02.2017].

The Legislation still does not provide for the rules and procedures for the promotion of judges. This was criticised by the Public Defender also in his Parliamentary Report of 2015. Under the changes, the authority to elaborate criteria for promotion of judges remains with the High Council of Judges of Georgia.[699] It is necessary to provide for statutory, objective, fair and transparent criteria for promotion of judges. The shortcomings of the legislation in force became evident during the competition for the promotion of judges conducted in 2015. Namely, the formalistic and opaque procedure of promotion and appointment of judges in the High Council of Justice, which was not based on a fair and objective assessment of candidates' professional activity, was particularly alarming.[700]

Despite the changes carried out within the third wave of justice reforms, the statutory regulation and practice of disciplinary responsibility of judges remains problematic. Similar to the Parliamentary Reports of the previous years, the Public Defender reiterates that the provisions regulating disciplinary responsibility of judges, as well as the relevant practice of the High Council of Justice, need serious revision.[701]

Despite the institutional reforms aimed at increasing the independence of the judiciary, there are still a number of challenges to be overcome in order to increase public trust in the courts. The Public Defender expresses his hope that active work will be conducted around reforming the court system further and crucially important issues for the justice system will be considered in this process.

THE DISMISSAL OF THE PRESIDENT OF A COURT AND A SECTION

It is important for the effective functioning of justice system that each decision concerning judges is taken by rigorously following the law.

In 2016, the Public Defender of Georgia, on his own motion, studied the legality of dismissal of the President of Tbilisi City Court and the Section of Criminal Cases, Mamuka Akhvlediani. The Public Defender submitted his finding to the High Council of Justice.

At the stage of the study of the case-files, the Office of the Public Defender scrutinised the relevant materials. The study of the case revealed that the High Council of Justice of Georgia took the aforementioned decision about the dismissal by circumventing the Law of Georgia on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings; the disciplinary procedure established by the aforementioned law was not used; the disciplinary case was not examined and the judgment was not adopted by the competent authorities established specifically for this purpose; the principles of adversarial proceedings and equality of arms were not safeguarded; the right to recusal was not exercised, etc. It should be pointed out that no such decision has been adopted before by the High Council of Justice, having circumvented of the Law of Georgia on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings. It should also be pointed out that the High Council of Justice has not at all discussed what breaches Mamuka Akhvlediani committed as the President of the Section of Criminal Cases of Tbilisi City Court.

According to the finding of the Public Defender of Georgia, due to the reasons mentioned above and other circumstances as well, the decision of the High Council of Justice is in violation of law and bound to have expressly negative ramifications for the interests of justice. The Public Defender expresses his hope that the

699 See Article 1.22.a) of the Organic Law of Georgia on Amendment of the Organic Law of Georgia on the Courts of General Jurisdiction.

700 See the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, 2015, the Public Defender of Georgia, pp. 443-444, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on: 13 February 2017]. See, also the statement of the Public Defender of Georgia: The Public Defender of Georgia on the Ongoing Promotion of Judges at the High Council of Justice, 30 October 2015, available at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-iusticiis-umagles-sabchoshi-mimdinare-mosamartleta-dawinaurebis-process-exmaureba.page [Last visited on: 13 February 2017].

701 *Ibid.,* p. 444.

High Council of Justice discontinues such practices and in the future, the alleged incidents of failure to perform administrative functions or undue performance of such functions on the part of a president of a court, a first vice president of a court, or a vice president of a court, a president of a section or a chamber will be considered by a disciplinary section within the procedure established by the Law of Georgia on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings and with due respect for the principles of the equality of arms and adversarial proceedings.

RECOMMENDATIONS

To the Parliament of Georgia:

- To provide for the relevant legislative amendments in line with the Constitutional Court's judgment related to drugs;
- To elaborate the procedure which will enable verification of the eligibility of candidate jurors in their selection process;
- To define the scopes for divulging the information about investigation with maintaining balance between public interest and an individual's right to a fair trial; to regulate media law based on this principle and determine the rules and scopes for imparting information/statement about investigation by the authorities in charge of proceedings; and
- To elaborate the effective procedure of appealing sentence adopted on the basis of a jury verdict and vest the Court of Cassation with the power to examine the body of evidence.

To the Courts of General Jurisdiction:

- To take into consideration the interpretations given in the Constitutional Court's judgments with regard to those legislative provisions which are relevant to the cases before them;
- To ensure consideration of cases within reasonable terms;
- When assessing the legality of a sentence adopted with the participation of a jury, to assess in each particular case the clarity of a verdict, the comprehensive and individual nature of the resolution of indictment;
- To give reasons for the category and measure of an imposed punishment;
- To use the statutory measures for maintaining order in their courtroom when a participant of proceedings is assaulted;
- To take decisions on their own initiative on holding proceedings *in camera* for protecting the private life/personal data;
- To warn participants of proceedings not to divulge information revealed at the hearings held *in camera*; and
- To secure the right of an accused person not to have the information given during the investigation stage revealed in any form if the accused person wishes so.

To the Prosecutor's Office of Georgia

- To be guided by the principle of the equality of arms so that the legitimate interests of the defence are not unreasonably restricted;
- When upholding public prosecution, to ensure respect for the confidentiality of the information related to private life, if this information was examined *in camera;*
- To elaborate guidelines for prosecutors for taking into consideration when upholding public prosecution before a court for contributing to the elimination of stereotypes established in the society concerning discrimination against women; and
- To conduct effective investigation concerning a specific incident of the breach of confidentiality of jury deliberations.

To the State Security Service of Georgia/the Prosecutor's Office of Georgia

- To ensure that the presumption of innocence is secured when making public statements;
- To respect the voluntariness of witnesses during interviews in accordance with the rules established by procedural legislation; and
- Within official inspections, permanently supervise the observance of the regulations established by criminal procedural legislation in witness interviews and identify illegal incidents of coerced interviews for responding effectively to such incidents.

RIGHT TO RESPECT FOR PRIVATE LIFE

The right to respect for private life[702] is the right of an individual to have a possibility to establish relations and communication with other people without illegitimate control.[703] Moreover, the respect for private life not merely compels the state to abstain from arbitrary interference in private space, but also obligates it to ensure effective exercise of this right.[704]

Compared to 2015,[705] the right to privacy became an object of fiercer attacks in 2016. Although crimes in this area increased, the state did not undertake adequate measures to investigate them and bring culprits to justice. Inadequate response, for its part, further bolstered impunity.

The period between 11 March and 13 June 2016 saw an intensive release of video recordings featuring private lives of various people via social networks and webpages, causing a public uproar.[706] In a call for fast and effective investigation into these facts, the Public Defender launched the campaign "Timer is turned on." A number of statements made within the scope of this campaign were aimed at urging the Chief Prosecutor's Office of Georgia towards adequate response to these facts.[707]

According to information obtained by the Office of Public Defender, the Chief Prosecutor's Office carried out a number of actions within the scope of investigation[708] and charged several persons with illegal acquisition and storage of recordings of private lives.[709] However, a person who released these videos has not been identified yet.

The period before the 2016 parliamentary election also saw the increase in the release of secretly recorded phone conversation between various persons, including:

- On 24 September 2016, a phone conversation between the General Director of Rustavi 2 TV company and the leader of political movement State for People;
- On 27 September 2016, a phone conversation between United National Movement members and the former President of Georgia;

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702 Article 8 of the European Convention on Human Rights, Article 12 of the Universal Declaration of Human Rights, Article 11 of International Covenant on Economic, Social and Cultural Rights, et cetera.

703 The case of *Costello-Roberts v. the United Kingdom*, 13134/87, 1993.

704 The case of *X and Y v. the Netherlands*, 8978/80, 1985; also the judgment N1/3/407 of the Constitutional Court of Georgia of 26 December 2007 on the case of *Georgian Young Lawyers Association and Citizen of Georgia Ekaterine Lomtatidze v Parliament of Georgia.*

705 The 2015 parliamentary report of the Public Defender of Georgia. http://www.ombudsman.ge/uploads/other/3/3891.pdf

706 http://rustavi2.com/ka/news/42305 [07.03.2017] – "Video material featuring private life, protest of nongovernmental organizations and strict warning of the President."

707 http://www.interpressnews.ge/ge/samartali/370245-sakhalkho-damcveli-piradi-ckhovrebis-amsakhveli-kadrebis-gavrcelebis-faqts-gmobs.html?ar=A [07.03.2017].

708 Inter alia, applied for consultative assistance to the US Federal Bureau of Investigation.

709 Letter N13/28247 of the Chief Prosecutor's Office of Georgia, 4 May 2016.

- On 3 October 2016, a phone conversation between the General Director of Rustavi 2 TV company and the former Chairman of Tbilisi City Court.

According to the information available to the Office of Public Defender of Georgia,[710] the investigation, on one of these cases, was launched into alleged plotting alone, not into the interference in private life, while investigations into other incidents have not arrived at any concrete result yet.[711]

Inadequate response of the state to violations of private life looks even more alarming bearing in mind that the investigation did not show interest towards finding out who obtained and released audio recordings in similar crimes that were committed in October-November 2015.[712] Identification of culprits is of great importance to dispel doubts about the involvement of state authorities in the above mentioned facts.

One should note the attempt undertaken by the Parliament of Georgia in response to the situation in the country to protect private lives of individuals on the legislative level. Although the legislature should be commended for taking steps towards the improvement of the situation, one cannot help but note that these steps proved to be with flaws.

According to the legislative amendments regarding covert investigative actions, which were adopted on 1 March 2017, a legal entity of public law, Operative-Technical Agency of Georgia, was established under the administration and control of the State Security Service to carry out covert investigative actions. It should be noted that the Agency will have certain elements of independence, but it will remain under the effective control of the State Security Service; this is inconsistent with the decision of the Constitutional Court of Georgia of 14 April 2016.

Doubts about actual independence of the Agency arise from a procedure of electing the head of the Agency. According to the law, a special commission selects a candidate for the head of the Agency out of those three nominees that are selected by the head of State Security Service and submitted to the Commission for consideration. The law, however, does not define the selection criteria to be applied by the head of State Security Service in selecting three nominees. Consequently, the commission is, from the very start, limited in its choice, which makes deliberation of the commission senseless.

Yet another manifestation of insufficient independence of the Agency is the power of the head of State Security Service to submit a motion to the Prime Minister about the dismissal of the head of the Agency.

The power of a mechanism of parliamentary control, the Group of Trust, is also ineffective. It should be noted that this Group can control the performance of the Agency only twice a year. The control is carried out by only one member selected by the Group of Trust, thus actually excluding the participation of parliamentary opposition in the mechanism of control.

Technical means of eavesdropping and surveillance, accumulated in the hands of the agency subordinated to the State Security Service, are subject to only partial and incomplete control.

Although the powers of Personal Data Inspector were significantly enhanced as a result of the amendments, they do not extend to controlling the lawfulness of covert investigative actions carried out for the aims stipulated in the Law of Georgia on Counterintelligence Activity and to auditing corresponding technical equipment.

Consequently, the mentioned amendments are inconsistent with the decision of the Constitutional Court and therefore, they cannot be seen as a guarantee for the protection against a serious threat of unjustified interference into private lives of people.

710 Letter N13/69049 of the Chief Prosecutor's Office of Georgia, 31 October 2016.

711 Besides, within the scope of one of investigations, the General Director of Rustavi 2 was interrogated only in regard to the content of the conversation.

712 On 24 and 29 October and 2 November 2015, secret recordings were released, which contained private telephone conversations of the former President of Georgia with various public figures. For additional information, see 2015 parliamentary report of the Public Defender of Georgia.

To contain the "epidemics" of the release of private life recordings, the Parliament of Georgia toughened the liability for the disclosure of private life information or personal data. It amended the Criminal Code by adding Article 157[1] which prohibits the infringement on the secret of private life. Four years in prison is set as a minimal punishment for this offence.[713]

The explanatory note to the abovementioned law does not outline criteria for separating information featuring the private life[714] from the secret of private life.[715] At first glance, these two definitions may be distinguished from each other by specifying whether secret contains the information featuring private life. However, since the disposition of Article 157[1] does not contain the definition of secret, the provision is dubious and provides an ample room for interpretation and arbitrariness as to what may or may not be considered a secret. The sizes of sanction, provided in this provision, significantly differ from each other and therefore, it is very important to clearly separate these two offences.

One concrete fact clearly demonstrated a socially dangerous nature of illegal release of video featuring private life and its irreparably damaging consequences. This fact is provided here for the only aim to have the state apparatus clearly realize the danger of failure to investigate the crimes that may potentially affect any person.

On 15 August 2016, a video material of torture and degrading treatment was released through several webpages, allowing to identify concrete persons filmed in it. Some time later, a citizen applied to the Office of Public Defender of Georgia, saying that the release of this material left him with no other choice but to leave his job and restrict communication with people he knew while the disclosure of torture and degrading treatment he had suffered, inflicted moral pain on him.

This fact also revealed a legislative vacuum in regulating the relationship of law enforcement entities with Internet service providers. In particular, there is no regulation that would enable an investigative body to request an Internet provider to block a concrete link for the purposes of investigation.

The right for respect of private life also includes inviolability of personal correspondence and a possibility to interfere in it only in cases stipulated in the law.[716] The violation of personal correspondence is a problem in penitentiary facilities. In the reporting period, the Office of Public Defender repeatedly applied to the Minister of Corrections of Georgia and the General Inspection of the Ministry, urging to adequate respond to alleged violations.[717]

Additionally, to assess the efficiency of court control, the Office of Public Defender of Georgia undertook efforts to obtain information about motions of prosecution about covert investigative actions, but, according to information from the Chief Prosecutor's Office of Georgia, statistics on this matter is not recorded.[718]

THE INSTITUTION OF OFFICERS OF ACTIVE RESERVE, THE SO-CALLED ODR

In his 2015 parliamentary report, the Public Defender of Georgia reviewed new regulations adopted in regard to the institution of so-called ODR (officers of active reserve) and discussed the need to examine the implementation of these regulations in order to ensure a strict enforcement of the legislative change and eradication of vice practice of illegal collection of information from various public or private entities which

713 Law 5152-RS of 3 June 2016 of the Parliament of Georgia.
714 A subject of Article 157 of the Criminal Code of Georgia.
715 A subject of Article 157[1] of the Criminal Code of Georgia.
716 Paragraph 1 of Article 20 of the Constitution of Georgia.
717 For example, proposal N15–11/9641 of the Public Defender of Georgia, 22 August 2016.
718 Letter N13/9344 of the Chief Prosecutor's Office of Georgia, 9 February 2017.

are not subject to these regulations.[719] In the Public Defender's view, to avoid these risks, it was necessary to pay attention to every bit of information that would indicate about the operation of so-called ODRs in organizations other than those listed in the normative act. Moreover, the Public Defender called on relevant entities, including, the Group of Trust set up in the Parliament of Georgia, to periodically inquire into the lawfulness of the activity of the State Security Service and to promptly react to information about cases of abuse of official duties by this service. The Public Defender also called on the Parliament of Georgia to set up a temporary commission to investigate the use of ODRs after the amendments to the law, including in those entities where their activity was excluded by the law. The Public Defender also applied to the Chief Prosecutor's Office of Georgia with a recommendation to initiate investigation into allegations about illegal activity of ODRs in various entities and to carry out it in a timely, effective, objective and impartial manner. It should be said, however, that public is not aware of any steps taken in this direction. These recommendations were disregarded. To study the mentioned issue, the Public Defender requested information from the Interior Ministry (which forwarded the received letter to the State Security Service) and the State Security Service twice,[720] but in breach of legal requirements, the State Security Service has not provided the requested information, thus preventing a comprehensive study into this issue by the Public Defender of Georgia within his mandate.

INFORMATION ABOUT SO-CALLED ODRS AT THE TBILISI STATE UNIVERSITY

The review of the issue of ODRs (officers of active reserve) was put on the agenda as a result of protest staged in March 2016 by students of the Ivane Javakhishvili Tbilisi State University (TSU) to voice their protest against the operation of ODRs in the university.

In regard to this matter, the Public Defender sent a letter to the rector of university,[721] asking for important information to study the issue of I.K. and I.Kh. (persons labelled as the ODRs by TSU students[722]).

The provided information[723] made it clear that I.Kh. was not a TSU student at all though he took part in the activity of TSU student self-government and held important positions there; he also participated in the election processes at various universities. In particular, in 2004-2009, I.Kh. studied at the law faculty of Pilipe Gogichaishvili Institute. In parallel to this, however, at various times, he was the deputy chairman of TSU student club, head of sports and tourism department of the student self-governance and during those years, was engaged in various elections held in the university.

Similarly interesting is the circumstances in which I.Kh. became an employee of the TSU administration. In 2010, I.Kh. submitted an application to the head of TSU administration, asking to consider his candidacy for the position of head of culture and sports center of the university. On the basis of this personal application he was awarded a nine-day-long employment contract and I.Kh. was appointed as the chief specialist of TSU's culture and sports center, After nine days he was appointed the acting chief specialist of the same center and later as the head of the center. He continued to hold the position as on the date of the information was provided.[724]

719 The 2015 parliamentary report of the Public Defender of Georgia.
720 Letters of the Public Defender of Georgia of 8 April 2016 and 26 October 2016.
721 Letter N04-5/3420 of 13 April 2016.
722 It should be noted that according to media reports, the mentioned circumstance was confirmed by the then rector of Tbilisi State University Lado Papava: http://liberali.ge/news/view/21358/papava-odeerze-is-aris-kantsleris-tanashemtse> (last accessed on 30.03.2017)
723 Including, CV of I.Kh.
724 13.05.2016.

As regards I.K., the provided information[725] showed that in April 2014, he applied to the head of TSU administration, asking to consider his candidacy for the position of an adviser to the head of TSU administration in security issues. On the very day of application, an employment contract was executed between him and the TSU[726] on the appointment of I.K. for the requested position for an indefinite time, tasking him to coordinate and control works necessary for ensuring security. After the protest rallies in TSU, on 21 April 2016, I.K. tendered his resignation effective on 1 May 2016. The resignation was accepted.

The above described circumstances raise serious questions about the lawfulness of the activity of TSU self-governance (in 2005-2009), the participation of I.Kh. in elections held in various universities and the employment of above persons in the university administration without any competition. Serious doubts arise also about the activity of I.K. on the position of adviser to the head of TSU administration in security issues over the period from 2014 April to May 2016. The Public Defender of Georgia believes that these issues must be immediately studied, including by investigative bodies and mentioned circumstances must be given a corresponding legal assessment.

Apart from TSU students, according to media reports, students and professors of Batumi and Telavi universities also spoke about the operation of ODRs in their respective organizations. Consequently, a recommendation of Public Defender to relevant entities to inquire into this issue and implement measures remains in force.

INQUIRY OF DISTRICT INSPECTORS ABOUT INFORMATION ON PERSONS PARTICIPATING IN ASSEMBLIES

The Public Defender of Georgia would like to emphasize a trend that outlined in 2016. In particular, on a number of occasions, district inspectors inquired about personal data of those persons/family members thereof, who voiced their protest against this or that issue and got media attention.

I.K. who voiced his protests against various issues, including the operation of so-called ODRs in the TSU, noted that exactly in those days, when he got coverage in media, representatives of police arrived at his apartment to inquire about him. This visit was perceived by him and his family members as pressure exerted on them to force I.K. to refrain from public statements concerning events unfolding in the TSU. The same was claimed by N.Ch. who voiced his protest against his dismissal from job outside the parliament building. According to N.Ch., at the very time when he was voicing protest, his family was visited by police officers to get information about him and his family members, including the phone number of his six year old child. The Interior Ministry confirmed both facts saying that district inspector-investigators visited families of I.K. and N.Ch.[727][728] to update passport data.

The Public Defender of Georgia believes that visits of Interior Ministry representatives to families of those citizens who voice protest and enquiries about them raise doubts that such actions pursue the aim of exerting pressure on these citizens or their family members towards refraining from expressing critical opinions in public rather than of fulfilling the main duties of district inspector-investigators; these doubts accelerate especially, when the timing of such police visits precisely coincide with the timing when persons voice their protests.

725 Including, CV of I.K.
726 The agreement is dated 21 May 2014, though according to its paragraph 1.5., the agreement is in force since 28 April 2014.
727 Letter #976009, dated 19 April 2016, of the Interior Ministry received in response to the letter #04-5/2010, dated 14 March 2016, of the Office of Public Defender of Georgia.
728 Letter #45298, dated 6 January 2017, of the Interior Ministry received in response to the letter #04-4/15110, dated 20 December 2016, of the Office of Public Defender of Georgia.

RECOMMENDATIONS

To the Chief Prosecutor's Office of Georgia:

- Considering the heightened public interest, inform public of circumstances that impede the identification of accused persons in such crimes and delivery of summary decision on them;
- Maintain statistics on the acceptance of motions for the conduct of covert investigative actions and lawfulness of performed actions;
- Initiate investigation into unlawful operation of so-called ODRs in various organizations and conduct it in a timely, effective and impartial manner.

To the Parliament of Georgia

- Introduce adequate amendments to the law for the prevention of the threat of illegal covert investigative actions, in particular, remove Operative-Technical Agency from under the control of the State Security Service or restrict the power of the head of State Security Service, concerning the dismissal of the head of the Agency;
- Restrict the power of the head of State Security Service to select candidates for the head of the Agency only according to his/her own judgment and enhance the power of the relevant commission in this regard;
- Extend the audit capacity of the Personal Data Inspector to technical equipment used for electronic surveillance carried out for the aims stipulated in the Law of Georgia on Counterintelligence Activity; set up a special unit in the Supreme Court of Georgia, which will conduct such audit and assist a supervisor judge;
- Further enhance the parliamentary control which will be expressed in providing a possibility to a member of parliamentary minority to conduct an effective monitoring. Moreover, staff the Group of Trust with the personnel who have a special knowledge of examining technical infrastructure of electronic surveillance and will assist members of the Group of Trust;
- Amend the criminal procedures legislation so that it regulates, within the scope of investigation, the relationship between an investigative body and an Internet provider to ensure the blocking of private life videos, by observing balance between public and personal interests, which adversely affect dignity and honor of a person and thus harm lawful interests of the individual;
- Inquire about and study the use of the institution of ODRs after the amendments to the law, including in those entities where their activity was excluded by the law.

To the Ministry of Internal Affairs of Georgia

- Prevent the use of activity of district inspector-investigators as a means of direct or indirect pressure on publicly active persons (or family members thereof).

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Georgia still faces a series of problems in terms of ensuring the protection of the right to religion, an environment that promotes tolerance and equality. Therefore, parliamentary reports of the Public Defender keep on highlighting the same problems from year to year. Failure of the state to adequately and effectively respond to cases of religious intolerance has been seen as the greatest challenge which, in turn, nurtures and further reinforces such crimes.

Jehovah's Witnesses tend to fall victims of majority of violent acts and other offences. The year of 2016 saw a slight improvement with respect to investigating and adequately qualifying such crimes. At the same time, there have been no legal outcomes to alleged crimes committed against the country's Muslim communities in the past few years.

In the reporting period religious unions and associations continued to encounter problems with respect to obtaining construction permits from respective local authorities for the construction of cult or religious buildings.

Failure to secure religious neutrality and compliance to the requirements of the Law of Georgia on General Education in public schools continues to pose a challenge. In order to resolve the problem, it is important that the Ministry of Education and Science of Georgia effectively monitor the situation in public schools and promptly respond to any violations of the requirements enshrined in the Law on General Education with respect to religious intolerance.

The content of the public education curriculum is also seen as problematic as textbooks designed and licenced for different grades contain texts with messages and information promoting religious and other intolerance, xenophobia, or biased editorial comments.

The reporting period did not see any effective steps undertaken by the State to ensure the restitution of property that the religious associations had to forcefully give up in the Soviet times.[729] Issues related to unfair state funding practice for religious unions remain unresolved. Currently the state funding is extended to just four religious associations with the purpose to reimburse damage incurred to these unions during the Soviet rule while authorities are reluctant to apply the same practice to other religious unions.[730] Nor are these religious unions recognised as victims of the Soviet totalitarian regime.

The reporting period did not see any changes to a flawed taxation policy which puts the Georgian Patriarchy at an advantage with other religious associations. The Georgian Patriarchy is eligible to tax benefits and exempt from property, VAT and profit taxes.[731]

729 Please refer to parliamentary reports of the Public Defender of previous years

730 Resolution N117 of the Government of Georgia of 27 January 2014 on the Rule for the Implementation of Certain Measures for the Partial Reimbursement of Damage Incurred by Religious Unions in Georgia by the Soviet Totalitarian Regime.

731 See the Public Defender's parliamentary report of 2010, p. 311.

In the reporting period the Public Defender came to know about several cases which involved creating various barriers to representatives of the Muslim community. In some of these incidents Muslim followers had been held and searched at Sarpi border checkpoint and Muslim pupils of Mokhe public school were told to not wear headscarves. Also, representatives of the Muslim community of the village of Adigeni were abused verbally and physically following the latter's claim to allocate a separate spot of land for a Muslim cemetery. The Public Defender's Office has been looking at possible signs of human rights violations, including discrimination, in the above mentioned cases.

In the reporting period penitentiary institutions demonstrated differenciated treatment towards prisoners with diverse religious background while allowinng additional parcels on religious holidays. The Public Defender received several notifications suggesting that Orthodox prisoners were put at an advantage with other prisoners when it came to receiving parcels on religious holidays.

OFFENCES COMMITTED ON THE GROUNDS OF RELIGIOUS INTOLERANCE TOWARDS JEHOVAH'S WITNESSES

Like in previous years a pattern of persecuting, abusing and preventing Jehovah's Witnesses from performing their religious rites was observed in 2016.

During the reporting period the Public Defender was notified on a number of violent acts against Jehovah's Witnesses. These incidents involve 13 cases of physical abuse against this particular religious group which were accompanied by verbal abuse and threats. Two representatives of Jehovah's Witnesses were involved in a hit and run accident as a result of which both of them sustained physical injuries. The applicants claimed that they were targeted because of their faith. The Public Defender is also aware of four episodes of assault against the royal hall of the Jehovah's Witnesses during which the hall had been damaged. In nine instances the Jehovah's Witnesses who were handing out religious literature by means of portable stands, were prevented from fulfilling their religious rites. Books and other materials of religious content were either damaged or destroyed in five out of nine cases.

The Public Defender's Office came to know about one case involving discriminatory treatment against Jehovah's Witness by public servants, in particular staff at conscription service, and also, one case of conversations between Jehovah's Witnesses being recorded and released In the Internet illegally, which, as representatives of Jehovah's Witnesses claim, aimed at discrediting them on religious grounds.

In spite of the fact that the number of incidents involving violence against Jehovah's Witnesses remains high, there has been some progress observed with respect to launching investigation and adequately qualifying offences. In many instances, investigations were launched under those articles of the Criminal Code which make concern religious bias of criminal actions.[732] However, the application of Article 187 (danage or destruction incurred to an item) of the Criminal Code of Georgia was still a widespread practice when it came to crimies on rligious ground. According to the above article, any act of damaging or destructing an item which causes serious damage, shall be sanctionable under the criminal law. For the purpose of this very article, serious damage is determined by a price of the item which exceeds 150 GEL. In the course of the reporting period, the Public Defender came to know about two cases involving an attack at the royal hall of Jehovah's Witnesses

732 During 2016 investigations into actions committed against the Jehovah's Witnesses were launched under the following articles: Article 156 of the Criminal Code persecution of persons because of their speech, opinion, thoughts, conscience, confession, faith or creed) - nine cases; Article 155 of the Criminal Code (unlawful intereference with the performance of religious services) – three cases; Article 125 of the Criminal Code (battering) – three cases; Article 142(1) of the Criminal Code (violation of human equality); Article 187 of the Criminal Code (damage or destruction of property); Article 158 of the Criminal Code (1. Unauthorised recording or eavesdropping on private conversation; 2. Unlawful use, dissemination of or otherwise making available of recordings of private communication); Article 276 of the Criminal Code (violation of traffic safety rules or rules for operating transport) – one case.

as a result of which an investigation had been launched for damaging an item. However, it was soon terminated as the damage did not exceed the amount of 150 GEL. The Public Defender believes that while there is Article 156 which stipulates the commencement of criminal procecution for crimies with religious bias, application of only Article 187 in similar cases (damaging an item) encourages a malpractice.

ISSUES RELATED TO THE CONSTRUCTION AND OWNERSHIP OF CULT BUILDINGS BY RELIGIOUS UNIONS

Impedments associated with the construction of cult buldings and their operation continued to pose numorous challenges durig the reporting period. Local authorities responsible for issuing permits for construction tended to impede the process often amidst protests of local Orthodox parishioners and clergy.

CONSTRUCTION OF A CATHOLIC CHURCH IN RUSTAVI

'Apostolic Administration of Latin Catholics of the Caucasus' had been trying to obtain a permit for construction works on a plot of land registered as their property, since 2013. On 13 November 2015 'Apostolic Administration of Latin Catholics of the Caucasus' reappealed to the Rustavi City Court against Rustavi city hall and challenged unjustified refusal to the issuance of the construction permit.[733]

On 6 June 2016 Rustavi City Court upheld the appeal of the Catholic Church. However, Rustavi city hall took the case to the court of appeal. Meanwhile, using the argument that the Orthodox Church and local community were against the construction of a cult building on the land which belonged to the Catholic Church, the state offered 'Apostolic Administration of Latin Catholics of the Caucasus' to exchange their land for another land parcel. Fearing that they would not be able to overcome three-year resistance from the State and that the process would be further prolonged, the Catholic Church had accept the offer.

MOKHE'S CONTESTED CONSTRUCTION AND THE COMMISSION'S CONCLUSION

The Public Defender continued to scrutinise circumstances around so called contested building in the village of Mokhe, Adigeni municipality and manifestation of intolerance related to the process of construction.[734]

The Commission for the Study of Circumstances Related to the Building Registered as a Club in the Village of Mokhe, Adigeni Municipality (hereinafter 'the Commission', which was set up by the State Commission for Religious Issues in 2014 and tasked to look at historical-religious background of the building[735], has done little within two years of its existence. As a sign of protest, the local Muslim community has been praying on Fridays in the open air near the contested building since October 2016.

733 The Public Defender issued an opinion of the friend of court (Amicus Curiae) on this particular case to Rustavi City Court, while issued a recommendation N04-9/5195 to Rustavi Mayor on the violation of construction legislation On this particular case .

734 See the Public Defender's parliamentary report for 2014, p. 270. Available at: http://ombudsman.ge/uploads/other/3/3510.pdf

735 See the Public Defender's parliamentary report for 2015, p. 393. Available at: http://ombudsman.ge/uploads/other/3/3892.pdf

On 3 November and 1 December 2016 at the sessions held in Akhatsikhe a decision was made to grant the building a status of a cultural heritage with a tentative title 'contested cult building', move it from the ownership of Adigeni municipality to the National Agency for Cultural Heritage and Monuments Protection. This move, the Commission believed, would ensure future maintenance of the monument. The Commission also decided to offer the local Muslim community several alternative locations for the construction of a new mosque in the village centre, instead of the contested building. The new mosque would then be handed over to the Muslim Department of Georgia.

The decision of the Commission triggered discontent among the local Muslims as they believed that the State failed to adequately respond to their demand of many years as a result of which the local Muslims had no trust in the Commission's members.

When it comes to developments around Mokhe's contested building, it should be noted that discussions of the ownership issues in the course of two years did not yield any results while an excuse for refraining from establishing the origin of the building (inability to mobalise huge financial resources), should not have taken that long to agree upon.

THE MOSQUE IN BATUMI

The greatest challenge, concerning the construction of a new mosque, that has been facing Batumi's Muslim communities over the course of many years has remained unresolved. In 2014 a decision making process led by the State Agency for Religious Affairs resulted in a decision according to which no plot of land would be allocated to the Muslim community build a mosque, but instead the State would donate the Muslim Department of Georgia two buildings – a mufti residence and a madrassa. It was also decided to enlarge and rehabilitated the existing mosque. However, measures undertaken by the state authorities failed to resolve of the problem of overcrowding of the mosque and praying in the open air.

In June 2016 the local Muslim community in Batumi set up a new fund for the 'construction of a new mosque in Batumi' and started fundraising to purchase land for the new mosque. On 7 September 2016 the fund managed to purchase land in Batumi with contributions from the local Muslims. According to the information provided by the fund, currently they are working to finalise and agree upon the draft of the mosque.

THE ISSUE OF THE BOADING SCHOOL IN KOBULETI

In 2014 the Public Defender reviewed case involving the tampering with the opening of a boarding school for Muslim students in Kobuleti from the angle of freedom of religion and property rights. While examining the case the Public Defender also looked at those aspects which concerned the fulfillment of positive obligations of the law enforcement to ensure the protection of these rights.[736]

While making a decision on the case above on 19 September 2016, Batumi city court relied heavily on materials provided by the Public Defender's Office to establish factual circumstances.[737]

The court partially upheld the claim of R.K., a chairperson of the Musilm Department of Georgia and a director of M&B Ltd and tasked the defendant to eliminate and prevent discriminatory actions, such as

736 See the Public Defender's parliamentary report for 2014. p. 269. http://ombudsman.ge/uploads/other/3/3510.pdf

737 See a chapter on 'the right to equality' which deals with the Public Defender's recommendation regarding the boarding school

tampering with the rights of the claimants to exercise their property right, access the bording school and move on the promises of the school, to ensure the free access to property located in Kobuleti and the construction and operation of the boarding school in the building for Muslim students. The defendants also had to pay a compensation for moral damage in the amoung of one GEL, a symbolic request by the claimant.

In spite of the fact that on 10 September 2014 the police mobiised at the boarding school failed to prevent tampering with the rights of the claimant and did little, if anything, to protect their rights, Batumi City Court did not uphold the claimant's demand to regard the police's action as disriminatory. The claimant challenged the above decision in Kutaisi's court of appeals.

CASE OF THE FORMER SHEIKH OF THE MUSLIM DEPARTMENT

The Public Defender of Georgia took the initiative to review the case involving the dismissal the former Sheikh of the Muslim Department of Georgia Vagif Akperov from a clerical position the latter had held at the Department.

The former Sheikh of all Georgia argues that he was forced to resign from the position of sheikh. More specifically, in December 2013, he was summoned in so called Module building and pressed for resigning from his position. Akperov was warned that the information pertaining to his private life would be released to public and his reputation smeared unless he submitted to the demand. In addition, his children had already been mentioned on several occasions which Akperov perceived as a threat. Akperov was warned against disclosing information on his visit to the Module to the media. Instead, a letter of resignation which Akperov wrote under duress and which was kept at the Module, later on appeared at a gathering of the Muslim Department of Georgia. The letter of resignation was accepted by the Religious Council selected by this organisation. The former Sheikh notes that together with the dismissal he was deprived of the right to perform religious rites in the mosque.

With a letter dated 27 April 2016 the Georgian Chief Prosecutor's Office notified the Public Defender[738] that on 27 April 2016 a criminal investigation was launched into an alleged misuse of authority under Para C, Part III, Aricle 333 of the Criminal Code of Georgia. In spite of the fact that Vagif Akperov had made a televised statement concerning alleged crime committed against him on several occasion,[739] the Chief Prosecutor's Office did not launch any investigation into the case. The investigation was launched only after the Public Defender referred the case to the Chief Prosecutor's Office. As of 25 March 2017, the investigation is still under the way.[740]

ADIGENI

Islam forbids its followers to be buried next to those who follow religions other than Islam. Therefore, the Muslim community of the Adigeni village, who has never had a separate cemetery, appealed to the Adigeni municipality Gamgeoba to allocate a plot of land for the cemetery. The State Agency for Religious Issues also submitted their recommendation to the municipality on the matter above.

738 Letter N13/27f194 of the Chief Prosecutor's Office

739 TV company 'Tabula', 'Conversations about Religion'. 25 February 2014. Available at: https://www.youtube.com/watch?v=uD65KaTCQ7M {Last accessed 27.03.2017}, TV company 'Rustavi 2', 'P. S.', 4 October 2015. Available at: http://rustavi2.com/ka/video/9452?v=2 {Last accessed 27.03.2017}.

740 Letter N13/19751 of the Georgian Chief Prosecutor's Office

On 29 February 2016 Zakaria Endeladze, Gamgebeli of Adigeni municipality, together with staff members was having a meeting with the local Muslim community in order to get to know the situation first hand. During the meeting, some members of the local community verbally and physically assaulted the Muslims three out of whom, A.I., R.I., and D.Sh. sustained physical injuries. Based on the information available to the Public Defender, Adigeni district department launched an investigation under Part I, Article 156 of the Criminal Code of Georgia which concerns persecution (based on expression, thought, conscience, faith, confession or belief or involvement of the individual in political, public, professional, religious or scientific activities). However, the investigation was soon terminated after six residents of the Adigeni village were charged with petty crimes stipulated by Article 166 of the Administrative Offences Code and fined with 100 GEL each. At the same time, the parties have been reported to agree on the allocation of a separate spot of land for the cemetery for the Muslim community.

INVESTIGATION INTO CASES INVOLVING VIOLATIONS OF THE RIGHTS OF THE MUSLIMS IN 2012-2014

While investigation has not yet been finalised, no individual has been charged for actions against the Muslims with alleged religious motive. The Public Defender of Georgia believes that the failure to launch or terminated investigations because of alleged absence of signs of the crime, points out to adequate response the State has been demonstrating towards such cases.

According to a letter of 8 November 2016 of the Georgian Ministry of Internal Affairs, an investigation looking into the case involving illegal tampering with the right of the Muslim community in the Nigvziani village to perform their religious rights, has not finished yet. However, the latter also indicates that the investigation found no evidence to prove that the Orthodox community members illegally tampered with the right of performing religious rites, violence or abuse.

Likewise, based on the information provided by the Georgian Ministry of Internal Affairs, an investigation launched in May 2013 into illegal tampering with the right of the Muslim community of the village of Samtatskaro, Dedoplistskaro municipality, and intimidation of a local resident's K.Kh.'s family has not been finished yet. Nor has an investigation (taking off on 10 September 2014) of a case involving threats against M&B Ltd been finalised.

With regards to those cases which involved the violation of rights of the Muslim community by the staff of the Ministry of Internal Affairs, the Public Defender's Office requested the Chief Prosecutor's Office to grant the access to respective case materials. With a letter of 25 March 2017 the Chief Prosecutor's Office notified the Public Defender's Office that an investigation of alleged misuse of power by the police in the village of Mokhe in 2014, is still ongoing.

As for an alleged case of misuse of authority and power against the Muslim community in the village of Chela, Adigeni municipality, any outcomes of the investigation remains unknown to the public even though this case was a subject matter of one of the Public Defender's recommendation.[741]

741 The Public Defender's parliamentary report for 2014, p. 279.

PARTIAL/SYMBOLIC COMPENSATION AGAINST THE DAMAGE SUSTAINED BY RELIGIOUS ORGANISATIONS DURING THE SOVIET PERIOD

As of today, several religious organisations receive state funding with the Georgian Patriarchy being the recipient of the largest share of funding. It has been many years since the Georgian state starting allocating several million Georgian Lari to the Georgian Orthodox Church.[742] This relationship stems from a constitutional agreement between the Georgian state and Georgian Apostolic Autocephalic Orthodox Church (hereinafter referred as the Constitutional Agreement). By signing the Agreement, the State admitted that the Church indeed sustained material and moral damage in 1921-1990 and took the responsibility to partially compensate the Church against incurred material damage.[743] However, as of today, the exact amount of damage sustained by the Church is yet to be estimated. Therefore, nor has it been calculated whether or not the State, by paying considerable amount of money, has fully compensated against the damage, or what portion of the compensation is yet to be paid.

Since 2014 the State has been funding several other religious organisations. More specifically, on 27 January 2014 the Georgian Government endorsed a resolution,[744] according to which the State shall symbolically reimburse four religious unions[745] against the material and moral damage sustained these religious associations during the Soviet rule. The act does not define the amount of damage sustained by these religious unions. Nor is it clear what selection criteria the State applied to while determining potential recipients of the compensation. At the same time, requirements established by the resolution, appeared to be difficult to meet by one of the Muslim unions,[746] as a result of which this particular union failed to become the recipient of funding.

In spite of the fact that both Constitutional Agreement as well as the Resolution of the Government of Georgia of 27 January 2014[747] make a reference to the partial/symbolic reimbursement of damage sustained during the Soviet Union, the current model does not have a form of reimbursement as eligible organisations receive annual funding from the State. The above statement is based on the fact that the damage sustained by concrete religious associations has never been estimated, while, on the other hand, it is unclear what the scope of the partial/symbolic compensation should be. The Public Defender believes that the existing pattern is a mismatch to above mentioned normative acts and thereby it needs to be made consistent and coherent.

RECOMMENDATIONS

To the Chief Prosecutor's Office of Georgia

- Investigate cases of the violation of rights of the local Muslim communitis of villages Chela and Mokhe, Adigeni municipality, as well as in Kobultei municipality, which, in some instances involved misuse of authority and/or inadequate response by the law enforcemet staff, in a timely manner.

To the Minitry of Internal Affairs of Georgia and Chief Prosecutor's Office of Georgia

- Launch effective investigation into actions targeting the Muslim communities of villages Nigvziani, Tsintskaro, Samtatskaro and Kobuleti between 2012 and 2014 and bearing signs of

742 For example, please compare lines of the state budget for the past several years: 2009– 25 659 000 GEL, 2010– 25 355 000 GEL, 2011– 24 391 700 GEL, 2012– 22 800 000 GEL, 2013– 25 000 000 GEL, 2014– 25 000 000 GEL, 2015– 25 000 000 GEL, 2016– 25 000 000 GEL, and 2017– 25 000 000 GEL.

743 Resolution of the Government of Georgia on Approving the Constitutional Agreement between the Georgian State and the Georgian Apostolic Autocephalous Orthodox Church, Article 11.

744 Resolution N117 of the Government of Georgia of 27 January 2014 on the Rule for the Implementation of Certain Measures for the Partial Reimbursement of Damage Incurred by Religious Unions in Georgia by the Soviet Totalitarian Regime

745 Muslim, Jewish, Roman Catholic and Armenian Apostolic unions registered as legal bodies of public law .

746 Case of M.S.

747 Resolution N117 of the Government of Georgia of 27 January 2014 on the Rule for the Implementation of Certain Measures for the Partial Reimbursement of Damage Incurred by Religious Unions in Georgia by the Soviet Totalitarian Regime

crimes stipulated by the Criminal Code, and make sure that the final decision is made in a timely manner.

To the Parliament and the Government of Georgia

- Resolve the issues related to the compensation of the damage sustained during the Soviet Union for other religious associations as well in a fair and non-discriminatory manner
- Eliminate unequal tax regime which puts Georgian Orthodox Church at an advantage with other religious associations
- Eliminate a discrepancy in the Law of Georgia on the State Property so that religious unions other than Georgian Apostolic Autocephalous Church, having a status of legal body of public law, are also allowed to directly purchase or be donated the State owned property.

To the Parliament and the Chief Prosecutor's Office of Georgia

- Analysis of the practice of applying Article 187 (loss or destruction of the item) to crimes based on religious hatred suggest that there is the apparent need for cahnging the way law enforcement bodies work or respectively amending the Criminal Code. More specifically, it is advised that the amount of damage should not be the major determining factor to render certain behaviours as crimes sanctionable under the criminal law.

To Local Municipalities

- Strictly follow respective legislation, religious neutrality and eliminate all discriminatory practice while working on the process of issuance of permits for cult constructions.

To the Ministry of Education and Science of Georgia

- Set up a special monitoring and response group to monitor the implementation of the requirements stipulated by the Law of Georgia on General Education, and respond to identified violations
- Together with the Public Defender, The Council of Religions under the Public Defender's Office develop a special work plan for the protection of religious neutrality and establishment of culture of tolerance in schools

Most of problems concerning the protection of national minorities and civic integrity remained unresolved in the reporting year. Even though state authorities implemented a number of problems aiming at teaching the state language, supporting integration and helping national minorities to preserve self-identification, they did not manage to address all of the problems. In his reports of previous years the Public Defender of Georgia has repeatedly underlined that these problems have accumulated over the course of decades and require extensive efforts and more resources for the to be resolved.

EDUCATION AND THE STATE LANGUAGE

TEACHING OF THE STATE LANGUAGE

The Ministry of Education and Science, President's Administration and other agencies have long been implementing various programmes for teaching the state language in regions heavily populated by national minorities.

A Georgian language learning programme is available to public servants and other interested individuals in Akhalkalaki, Ninotsminda, Bonisi, Dmanisi, Marneuli, Tsalka, Gardabani and village of Lambalo, Sagarejo municipality as well as in regional centres of Zurab Zhvania Public Administration School. Mobile groups established under the Zurabn Zhvania Public Administratio School following the recommendation issued by the Public Defender and the National Minority Council under the Public Defender, continue to offer interested persons (mostly teachers) Georgian language courses not only in municipal centres and cities, but also villages and settlements remote from municipal centres.

In spite of measures taken for the purpose of promoting the learning of the state language, the Public Defender believes that stronger efforts must be made in order to overcome persisting challenges. More specifically, it requires more educational activities and information campaigns to raise awareness of ethnic minority

communities on benefits of learning the state language. In addition, existing programmes must be monitored and analysed in order to make these programmes more effective and tailored to the needs of the target groups.

During the reporting period national minority communities residing in some of villages in Kvemo Kartli, Samtskhe-Javakheti and Kakheti had a chance to get enrolled in various Georgian learning programmes provided in local schools. Importantly, a significant part of the population of the above mentioned regions appreciate these programmes and their participation in them. Continuity and further development of Georgian language learning programmes is critical for sustainable support to the state language within school education system.

The issues related to the learning of Georgian by national minorities is touched upon by the UN Committee on the Elimination of Racial Discrimination in a report on Georgia. More specifically, the Committee recommends the Georgian state authorities to adopt a comprehensive approach to eliminate language barriers faced by national or ethnic minorities, including by ensuring that there is a sufficient number of qualified teachers at all levels of education.[748]

TEXTBOOKS

School education plays a pivotal role in promoting civic integration. Sadly, texts containing stereotypical content in textbooks regarding national minorities continue to pose challenges. In order to promote and support civic integration, it is important that textbooks reflect on issues related to tolerance and diversity and provide full information about various ethnic groups residing in Georgia.

Schools with minority languages as the language of instruction, still use bilingual textbooks the effectiveness of which has been repeatedly questioned by representatives of minority communities. In bilingual textbooks 30% of materials is in Georgian while remaining 70 is in the language of minorities. However, a low level of competence in Georgian of teachers and students alike, often makes it impossible to lead educational processes by means of the above mentioned textbooks. In most cases, both teachers and students do not trust those texts which are provided in Georgian in the textbooks. Based on the information provided by the representatives of the Ministry of Education and Science,[749] the Ministry plans to introduce a new bilingual teaching model, textbook and innovative teaching method to minority language public schools. However, no such model was introduced in the reporting period. Importantly, the delay is believed to negatively affect the quality of learning and accessibility to education in minority language schools.

The incompatibility of textbooks for Armenian and Azerbaijani languages and literature with requirements laid down by the Georgian education system, continued to remain a problem during the reporting period. These textbooks have been imported from Armenia and Azerbaijan respectively for the past decades. The Public Defender believes that in order to effectively promote the process of civic integration, it is important that language and literature textbooks be fully compatible and in line with the Georgian education system, as well as with the national curriculum approved by the Ministry of Education and Science of Georgia. Respective authorities should also promote the idea for these textbooks to be printed in Georgia.

748 Concluding observations on the sixth to eight periodic reports of Georgia. Article 13 (b), Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGEO%2fCO%2f6-8&Lang=en

749 Meeting of the Council for National Minorities with the Ministry of Educaiton and Science of Georgia. Available in Georgian at: http://www.ombudsman.ge/ge/news/erovnul-umciresobata-sabchos-shexvedra-ganatlebisa-da-mecnierebis-ministris-moadgilestan.page

HIGHER EDUCATION

The process of enrolment of minority students in the country's higher education institutions under so called 1+4 system continued successfully. Under this system young people from ethnic minority communities have to take only one subject in their native language to get enrolled in Georgia's higher education institutions.[750] Thanks to the programme several thousand young students master their professions in Georgia's higher education system, a tendency that is very much welcomed by the Public Defender. However, the Public Defender believes that the system requires further improvement. More specifically, most of ethnic minority students who have benefited from this programme come from places which are densely populated by ethnic minorities and therefore, their low level of the knowledge of Georgian creates barriers in relations with peers. In order to address the problem and contribute to the greater integration, it is important that are sufficient number of special programmes. In addition, it shared widely that the Ministry of Education and Science examine and analyse the reasons behind the number of dropouts or poor performance within students benefiting from 1+4 programme. Similar monitoring measures will greatly contribute to the process of improving the 1+4 programme.

Amendments to the Law of Georgia on Higher Education, which formed a basis for the so called 1+4 system, took effect on 17 November 2009. The extension the scope to cover Ossetian language speakers had been a subject matter of recommendations issued by the Public Defender in the past years. However, these recommendations were only upheld during this very reporting period. The Public Defender of Georgia welcomes the decision to make benefits available to prospective students speaking Ossetian as a native language and believes that the above mentioned system will provide ever greater opportunities for Ossetian language students to pursue education in Georgia's higher education system.

It should be noted that no information or awareness raising campaigns have been conducted to allow Ossetian language speakers to get to know the nature of amendments and new opportunities for pursuing higher education in Georgia's respective educational institutions. This may account for a low number of those students who wish to get enrolled in the programme.

EDUCATION IN NATIVE LANGUAGE FOR SMALL NATIONAL MINORITY GROUPS

the Public Defender of Georgia has raised concerns regarding the education of small ethnic minority groups residing in the country, and highlighted the importance of giving the latter the opportunity to study in their native languages in many of his previous parliamentary reports. Importantly, in 2015 the Ministry of Education decided to uphold the above recommendation and as soon as in 2016 launched a process to facilitate school education for students from small minority groups in their native languages. As a result of these efforts Kist, Assyrian, Udi and Avar languages have been introduced as languages of instruction. Notably, the Avar live in three villages of Georgia with each speaking their unique dialect. In the frame of the above mentioned programme students have the opportunity to master not only the Avar language but also their native dialects. Introducing severely endangered languages (including the Udi language) in the education system is pivotal for preserving and protecting these languages and therefore, the effort of the Georgian authorities is very much welcomed and appreciated.

750 General skills test

TEACHING IN ABKHAZIAN IN SCHOOLS OF ADJARA AUTONOMOUS REPUBLIC

In 2016 the Public Defender of Georgia issued a proposal to the Ministry of Education and Science of Georgia, the Office of the State Minister for Reconciliation and Civic Integration on the expediency to open Abkhaz language groups (classes) in several schools of Adjara.

The Georgian Ministry of Education and Science and the State Minister for Reconciliation and Civic Integration upheld the proposal by the Public Defender leading to the introduction of Abkhaz language classes to Adjara's two schools in January 2017, which is undoubtedly a positive step forward for the protection of languages spoken by small groups.

PRESERVATION AND DEVELOPMENT OF THE CULTURAL HERITAGE OF NATIONAL MINORITIES

In spite of a series of achievements in the protection of cultural heritage of national minorities, there still are numerous challenges to be addressed.

The Public Defender of Georgia welcomes the restoration of a so called Ossetian House placed in Giorgi Chitaia Tbilisi Ethnographic Museum. Importantly, the Public Defender had addressed the Ministry of Culture and Monuments Protection on several occasions. As per a decision made in 2015, the Ossetian House was undergoing the reconstruction works.

In 2016 the Ministry of Culture and Monuments Protection together with local authorities of regions with compact settlements of national minorities undertook a series of specific measures aiming at protecting cultural heritage of national minorities and their integration. It should also be noted that several troupes of singers and dancers in the regions are supported by state agencies.

The Public Defender of Georgia had been raising issues related to the rehabilitation of Tbilisi Petro Adamian Armenian Dramatic Theatre and Heydar Aliev Zarbaijani Dramatic Theatre to the Ministry of Culture and Monuments Protection in the course of many years. In a letter dated 1 February 2017 (N04/13–457) the Ministry informed the Public Defender's Office that '[on 6 February 2015] LEPL Heydar Aliev Tbilisi Azerbaijani Professional Dramatic Theatre and LEPL Tbilisi Petro Adamian Armenian Professional State Dramatic Theatre have been enlisted on a priority list of buildings for the rehabilitation.' According to the above mentioned letter of the Ministry of Culture and Monuments Protection, a bidding was opened on 25 November 2016 for rehabilitation work of Tbilisi Armenian theatre. On 16 December 2016 a winner was identified and currently necessary procedures are being undertaken to prepare an agreement.'

As for the Azerbaijani theatre, its rehabilitation needs to be addressed as soon as possible.

CHRISTIAN CULTURE HERITAGE MONUMENTS IN TBILISI

Georgia enjoys the wealth of material and non-material culture heritage monuments including those which are tightly linked with culture of Georgia's national and religious minorities. Hundreds of cultural heritage monument require urgent rehabilitation and other types of repair throughout the country, which in turn, require massive amount of financial resources. With respect to the condition of cultural heritage monuments, the situation in the protection of Christian cultural heritage monuments located in the capital Tbilisi is satisfactory: most of the churches have roof and they have been restored and now home routine services. However, some

of cultural monuments belonging to ethnic minorities (the Armenian community) are in dire condition. In particular:

1. Mughni 'Sub Gevorg' (Akhospireli street N6)
2. Shamkhoretsots 'Karmir Avetaran', Peristsvaleba street N6 (Avlabari)
3. Erevantsots 'Surb Minas' (basilica), Gelati street N13 (Avlabari)
4. 'Surb Nshani' ('Surb NIkoghaios') Vertskhli street N6
5. Tandoian 'Surb Astvatsatsini' (Basilica), David Aghmashenebli avenue N40 (N38)

It is true that the above mentioned monuments are enlisted as Georgian cultural heritage monuments, but there have been no measures to rehabilitate, preserve or otherwise protect these monuments. The only exception is the church at Vertskhlis street N6, where the rehabilitation works were launched few years ago. However, the process has not yet been completed.

In addition to scarcity of material resources, the maintenance and rehabilitation efforts are further hampered by controversies among representatives of various religious unions over confessional ownership and history of the monuments. Nevertheless, the Public Defender believes that these controversies should not be an excuse for the state to refrain from maintaining the cultural heritage monuments. Therefore, the commencement of rehabilitation of the above mentioned monuments should not wait for the resolution of issues around ownership and instead, effective measures should be taken to ensure that these monuments are saved and rehabilitated.

INVOLVEMENT OF ETHNIC MINORITIES IN DECISION-MAKING

The involvement of national minorities in decision-making continues to remain a problem. Aftermath the parliamentary elections of 2016 the number of representatives of ethnic minority groups has increased, however, challenges in this field still persist. As indicated in the parliamentary reports of the Public Defender of previous years, ethnic minorities are extremely underrepresented in the country's central authorities.

Issues related to the low level of participation of ethnic minorities in the decision-making and underrepresentation in state structures are highlighted in a report on Georgia by the UN Commission for the Elimination of Racial Discrimination. More specifically, the Committee recommends the Georgian authorities to take effective measures to increase the representation of national or ethnic minorities in public and political life and in decision-making positions.[751]

ACCESS TO MEDIA AND INFORMATION

Poor access to information on ongoing processes in the country for national minorities remained a challenge in the reporting period. The country has no media outlet which would provide accurate information to Georgia's Armenian and Azerbaijani communities on the processes and developments taking place in the country.

Even though the National Broadcaster routinely prepares information programmes in the languages of ethnic minorities and provides simultaneous translations of 'Moambe' at 18:00 and 20:00 in Armenian and Azerbaijani for the population of ethnic minority regions, this effort is believed to be insufficient partially because not many residents of these regions have access to so called set-top boxes which are necessary to receive digital broadcasting.

In addition, there are such newspapers as Gurjistan and Vrastan in Azerbaijani and Armenian languages respectively. However, the number of copies and material resources are not enough to fill out the informational gap.

751 Concluding observations on the sixth to eight periodic reports of Georgia. Article 13 (c)

In general, it should be noted that scope of activities designed for providing information to national minorities, is quite scope and therefore cannot massively improve the access to information for ethnic minority regions.

Major sources of information on Georgian and international affairs for Armenian and Azerbaijani communities are Armenian, Russian, Turkish, Iranian and Azerbaijani TV and other media sources.

For civic integration process to be successful, it is important to not only improve access to information for the ethnic minority communities, but also to provide accurate and stereotype-free information on minorities to the mainstream. The Public Defender believes that national minority representatives should be represented in media space not only during discussions of issues which directly concern them but also in conversations regarding all those issues which are important for the country as a whole.

There is scarcity of information in Georgian media not only for minorities to follow up with the processes taking place in the country but also, the lack of impartial information on minorities affects the understanding of the country's mainstream population. The Georgian law obliges the Public Broadcaster to allocate time for the discussion of these issues in its information space. Pursuant to the Law of Georgia on Public Broadcaster[752] the Public Broadcaster is obliged to dedicate its programmes to ethnic, cultural and linguistic diversities of the country's population, provide information in the languages of ethic minorities (with due proportion) and prepare programmes on the minorities. .

Issues related to the access to information for national and ethnic minorities on ongoing processes in the country are highlighted in the report of the UN Committee for the Elimination of Racial Discrimination for 2016. The Committee recommends the Georgian authorities to take measures to improve the quality and topicality of information available in the national minority languages.[753]

752 Law of Georgia on the Public Broadcaster, Article 16
753 Concluding observations on the sixth to eight periodic reports of Georgia. Article 13 (e)

GEORGIA'S INTERNATIONAL OBLIGATIONS
BEFORE THE NATIONAL MINORITIES

In 1999, in the process of accessing to the Council of Europe, Georgia took the responsibility to ratify the European Charter on Regional or Minority Languages. The Charter has been ratified by more than 30 member states of the Council of Europe. The document provides greater opportunities for linguistic and national minorities residing in the member states to better protect languages that these minorities speak.

The aim of the Charter is to protect regional and minority languages in Europe. According to the preamble of the Charter protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions'. Also, pursuant to Article 5 of the Charter, nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of states. Therefore, on the one hand, the Charter establishes higher standards for the protection and use of minority languages, while excludes any possibility to use the protection against the state's sovereignty and territorial integrity. The Charter allows the members states to define those languages and territories which will be under the scope of certain provisions of the Charter. The Charter does not imply the protection of dialects of languages and languages spoken by migrants.

It should be noted that discussions around the Charter are highly politicised, while content of provisions stipulated by the Charter is often overlooked. There are often over-expectations in both majority and minority groups concerning those risks and outcomes that are associated with the political context of the adoption of the Charter or absence of it. In order to help them to objectively ascertain the Charter and form opinions, it is important that the public have good understanding of the content of the Charter and experience of other countries which have already implemented it.

RECOMMENDATIONS

To the Government of Georgia

- Provide information to national minorities (including the Council for National Minorities at the Public Defender) on issues related to national minorities, including state programmes to be implemented in regions with compact minority settlements, prior to the commencement of such programmes.

- Develop an effective action plan under instructions of respective agencies in charge in order to ensure greater participation of communities residing in the regions with compact minority population in processes ongoing in the country, and improved access to information on developments in Georgia.
- Continue support to Gurjistan and Vrastan newspapers as well as other media outlets operating in minority languages.

To the Ministry of Education and Science of Georgia:

- Continue to provide Georgian language programmes for various age groups (students and adults) in regions with large population with national minority background
- Carry out information and awareness raising activities in order to disseminate information on positive outcomes of state language teaching initiatives in national minority regions
- Monitor these programme to ensure evaluation and further improvement
- Drawing on existing gaps within the current model of bilingual education, develop a new and more effective model
- Drawing on existing gaps within the current model of bilingual education, develop and introduce new textbooks for bilingual education
- Introduce and implement relevant educational programmes for training and retraining of bilingual teachers
- Develop an additional integration and educational programme for students participating in 1+4 system
- Conduct an active awareness raising campaign to promote a new programme (1+4) for the enrolment in Georgian higher education institutes among Ossetian speaking communities
- Articulate strict requirements for providing information promoting the idea of ethnic diversity and tolerance in rules applicable to licencing school textbooks, and set up control over the implementation of this requirement
- Bring language and literature textbooks for minority language schools in compliance with the Georgian National Curriculum and promote the idea for these textbooks to be printed in Georgia
- Continue to support programmes for teaching endangered languages in those schools where such demand exists

To the Ministry of Culture and Monuments Protection:

- Continue and finalise the rehabilitation of Tbilisi's Armenian and Azerbaijani theatres so that they are fully operational
- Effectively utilise opportunities existing in the sphere of culture in support to civic integration, inter-ethnic relations and the protection of national minority rights
- In order to ensure the protection and maintenance, as well as prevent further damage, conduct restoration, rehabilitation and other works as required to the following religious-cult buildings

associated with national minorities in Tbilisi: Mughni 'Sub Gevorg' (Akhospireli street N6), Shamkhoretsots 'Karmir Avetaran', Peristsvaleba street N6 (Avlabari), Erevantsots 'Surb Minas' (basilica), Gelati street N13 (Avlabari), 'Surb Nshani' ('Surb NIkoghaios') Vertskhli street N6, Tandoian 'Surb Astvatsatsini' (Basilica), David Aghmashenebli avenue N40 (N38)

To the State Minister for Reconciliation and Civic Integration:

- Take measures to promote full and impartial information on the European Charter for Regional or Minority Languages as well as potential outcomes of the ratification of the Charter
- Support the timely implementation of procedures required for Georgia to fulfil its obligations concerning the ratification of the European Charter for Regional or Minority Languages before the Council of Europe.

To the Public Broadcaster of Georgia

- Develop an action plan and specific programmes in order to raise awareness of population on ongoing processes in the country in the regions which have large minority communities.
- Improve the system of the provision of information on national minorities to Georgian language TV audience so that Georgian speaking communities have regular access to routinely updated information on national minorities residing in the country.

Considering its significance in a democratic society, realization of freedom of expression constitutes one of the priority areas of the work of the Public Defender of Georgia.

Public Defender of Georgia still considers it necessary to fully reflect his observations in Article 239[1] of the Criminal Code of Georgia on Incitement to Act of Violence.[754] As to launching investigation on the offence envisaged by this Article, such fact has not been recorded yet.[755]

The Recommendation of the Ombudsman of 2014 and 2015 to reflect in special statistics offences on interference into the journalist's professional activity as well as all those criminal acts against journalists that relate to their professional activities, has not been fulfilled yet.[756] Such practice prevents gaining full information about all the crimes committed due to the professional activities of media representatives; therefore fulfillment of this recommendation still remains acute.

During the reporting period, Public Defender of Georgia continued active monitoring of events surrounding TV Company "Rustavi 2", follow-up measures of the law-enforcement bodies on obtaining and disseminating secret recordings between the company's director and different individuals.[757] Impediment of journalistic activities during events at the Tbilisi State University, physical abuse of the "Tabula" journalists, administrative detention of May 17 activists were also noteworthy. Criminal persecution against one of the internet users attracted public and Ombudsman's attention.

MEDIA ENVIRONMENT

Similarly to 2015, 2016 was not marked with high number of alleged crimes against representatives of media outlets, however several instances still took place. It shall be mentioned, that in certain occasions, law-enforcement bodies took effective measures to remedy violations, however, ineffective responses were also detected.

754 This issue is discussed in details in the Report of the Public Defender of Georgia on Situation in Human Rights and Freedoms in Georgia, p.508, accessible on the following link < http://www.ombudsman.ge/uploads/other/3/3891.pdf >.
755 №234311 letter of the Ministry of Internal Affairs of Georgia of January 30, 2017.
756 №188108 letter of the Ministry of Internal Affairs of Georgia of January 24, 2017.
757 See chapter of this report "Right to Privacy".

FACTS OF INTERFERENCE INTO JOURNALISTIC ACTIVITIES

Events taking place at Ivane Javakhishvili Tbilisi State University, one of the acute issues in the reporting period, was addressed by the Public Defender of Georgia in his public statements for several times.[758] Office of the Public Defender of Georgia investigates five alleged facts of interference into the professional activities of journalists during these processes. [759]

Pursuant to the information provided by the Ministry of Internal Affairs of Georgia,[760] investigation was launched on the fact of damaging camera of the journalist Mamuka Mgaloblishvili under Article 187 (1) of the Criminal Code of Georgia. The amount of material damage (50 GEL) inflicted upon could not serve as basis for imposing criminal responsibility and for that reason he was not recognized as a victim; Besides, investigation was unable to deter anyone's guilt or unlawful action. Public Defender of Georgia considers that the actions against journalists, which are related to their professional activities, shall be adequately qualified. To this end, legislation of Georgia sets high standards under Article 154[761] of the Criminal Code. Appropriate qualifications of the facts of interference into the journalistic activities can also play effective preventive role.

As to the other facts,[762] refusal of journalists to cooperate with investigative bodies and/or having no claim while sings of criminal act are in place, shall not have a decisive role in terms of launching investigation.[763]

Public Defender of Georgia deems that, during the events that took place at Ivane Javakhishvili Tbilisi State University, police and TSU Security Service on the one hand failed to prevent such instances and on the other hand, to respond to them effectively. Therefore, it is important to study the issue of carrying out official duties of relevant personnel in due diligence, which has not been carried out yet.

PHYSICAL ABUSE OF JOURNALISTS

On January 12 of the reporting year, verbal and physical abuse was inflicted upon "Tabula" journalists and former staff members at one of the restaurants. According to the information provided by the Ministry of Internal Affairs of Georgia,[764] investigation was ongoing under Articles 27 and 156 (2, "a") of the Criminal Code of Georgia; three individuals were charged for committing a criminal act, as to the journalists participating in the incident, they were recognized as victims. Currently, case is pending before the Tbilisi City Court. Public Defender of Georgia welcomes effective investigation of the fact by the law-enforcement bodies.

Production and dissemination of secret recordings

Public Defender of Georgia considers prompt and effective investigation of the facts of illicit production and dissemination of secret recordings, as well as informing public thereto, of crucial importance.

758 Statement of the Public Defender of Georgia of March 15 and 16 are available on the following links: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-tbilisis-saxelmwifo-universitetshi-gushin-ganvitarebul-movlenebtan-dakavshirebit.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-15-marts-tsushi-ganvitarebul-procesebze-dakvirvebis-shedegebs-adjamebs.page> [visited on 6.01.2017].

759 These individuals include Liberali journalists Mamuka Mgaloblishvili and Sopo Gogishvili, journalist of Netgazeti Giorgi Diasamidze, journalist of 17 May issue Vakhtang Kvaratskhelia, journalist of PALITRATV.GE Mariam Lortkipanidze.

760 №984839 and №3157732 Letters of the Ministry of Internal Affairs of Georgia of April 20, 2016 and December 30, 2016 respectively.

761 Illegal interference into professional activities of a journalist.

762 According to the entity, Sopo Gogishvili and Giorgi Diasamidze refused to cooperate and to show up at the General Inspectorate. Mariam Lortkipandze stated that she had no complaints toward representatives of the Ministry of Internal Affaris, but toward the security service of the State University. With this letter we were also informed that Vakhtang Kvaratskhelia could not be identified.

763 Pursuant to Article 101 (1) of the Criminal Code of Georgia information on a crime constitutes basis for launching investigation.

764 №3006430 letter of the Ministry of Internal Affairs of Georgia of December 2, 2016.

During the reporting period several secret recordings were disseminated, featuring Nika Gvaramia, General Director of TV company "Rustavi 2" together with the politician Paata Burtchuladze in one case, and with Mamuka Akhvlediani, former Chairman of Tbilisi City Court in another.[765] Based on the information gained in the framework of examination of the case on Ombudsman's own motion,[766] investigation is ongoing on both of the above facts at the Ministry of Internal Affairs of Georgia under Articles 259 (1) [767] (2) and 284 (1)[768] of the Criminal Code of Georgia. Different investigative activities have been carried out on both cases, but no particular person is charged yet.[769]

In his public statement[770] Public Defender of Georgia addressed one of these facts underlying that such instances, especially during pre-election period, threaten healthy media environment and once again stressed the importance of rapid investigation.

Currently, according to the statement of Nika Gvaramia, General Director of TV company "Rustavi 2" of October 21, 2015, investigation is still ongoing on the alleged fact of threatening him.[771]

JUDICIAL DISPUTE RELATED TO TV COMPANY "RUSTAVI 2"

Considering high public interest of the case, similarly to 2015, Office of the Public Defender of Georgia carried out regular monitoring of the hearing of the "Rustavi 2" case at the Court of Appeal, and studied different documentation during the reporting period.

On June 24, 2016 Public Defender of Georgia addressed[772] the fact of serving decision on TV company "Rustavi 2" to the parties to the case by Tbilisi Court of Appeal on June 22 and underlined that this act did not comply with the law. In particular, save in exceptional circumstances envisaged by the legislation, Court does not send the decision to the party, who is given the possibility to determine the date of service of the court decision in between not earlier than 20 and not later than 30 days after announcement of the resolution part of the decision. This is particularly important, since the fact of serving the decision is related to the timeframe for submitting the cassation claim and, therefore, to the party's strategy for legal proceedings. In current case, in accordance with the representatives of TV Company "Rustavi 2", submission of the Appellate Court decision at an early stage was harming their interests.[773]

Public Defender of Georgia also addressed[774] the decision of March 2, 2017 taken by unanimity by the Grand Chamber of the Supreme Court of Georgia, according to which company's 60% of shares were transferred to Kibar Khalvashi, 40% - to LTD "Panorama" being under Khalvashi's ownership. Public Defender deems, that consideration of the case without oral hearing at the court of cassation adversely affected the public trust toward the court proceedings.

The fact of Kibar Kalvashi becoming an owner of "Rustavi 2" in 2004 has not been dealt by the Court. This issue was left without legal analysis, including from criminal law perspective, in spite of the fact that David

765 These recordings were disseminated on September 14 and October 3, 2016.
766 №13/69049 Letter of the Prosecutor's Office of Georgia of October 31, 2016.
767 Violation of secrecy of personal correspondence, phone conversations or other kinds of communication.
768 Unauthorized access to computer system.
769 For investigation shortcomings please refer to the Chapter of this Report – "Right to Privacy".
770 Statement of the Public Defender of Georgia of September 15, 2016 available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-farul-chanawerebtan-dakavshirebit.page> [visited on 6.01.2017].
771 №13/19298 Letter of the Prosecutor's Office of Georgia of March 23, 2017.
772 Statement of the Public Defender of Georgia of June 24, 2016 available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-exmaureba-rustavi-2tan-dakavshirebul-saqmes.page> [visited on 6.01.2017].
773 This passage refers to the strategic importance of making a decision on the constitutional claim by the Constitutional Court of Georgia before the final decision on the civil dispute.
774 Statement of March 3, 2017 available at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-rustavi-2is-saqmestan-dakavshirebit.page

Dvali and Jarji Akimidze, founders of "Rustavi 2" stated that they addressed Prosecutor's Office in 2012. The annual report of the Public Defender of Georgia for the first half of 2008[775] provides statement of Kibar Khalvashi, according to which "he purchased this TV Company [TV Company "Rustavi 2"], as well as fixed capital shares of TV company "Mze" and "Pirveli Stereo" upon President's request…" According to the same report: "scheme, according to which Kibar Khalvashi became the owner of "Rustavi 2" is also interesting. […] former owners' statements depict same scheme of state rackets in terms of TV Companies' shares, as the one resorted to in other cases of intervention with property rights, when it was handed over to the state. The difference between these cases constituted only in the fact that, the company or its shares were handed over to the individuals rather than the state (which in itself could not happen, because Law of Georgia on Broadcasters forbids administrative bodies or officials to own broadcasting license). By these individuals, representatives of the state authorities were controlling frequencies granted to broadcasters before 2004".

According to the Prosecutor's Office of Georgia, on December 8, 2012 investigation was launched on the fact of forceful transfer of property rights of the founder of broadcasting company "Rustavi 2" under Article 333 of the Criminal Code of Georgia. Yet, final decision has not been adopted.[776] Public Defender deems, that investigation of the fact for more than 4 years without any tangible results puts effective investigation under question.

Considering these factors, had the decision taken by the Court been enforced, plurality of media environment in Georgia, especially the operation of critical media outlets would have been endangered. Furthermore, media pluralism and establishment of high standards of freedom of expression and freedom of speech in the country could be threatened in view of the fact that the process of ownership related to "Rustavi 2" has not been legally examined in full, questions still existed, on the possibility to preserve TV channel critical toward the authorities, together with the lack of trust of restoration of justice. As to the legal analysis of the justified decision of the Supreme Court of Georgia, it will be possible only after studying the decision.

As it is well known, on the basis of the application of "Rustavi 2", European Court of Human Rights suspended enforcement of the Supreme Court's decision of March 2, 2017 until March 8, 2017 and afterwards until further notice.

Another important issue linked to the examination of this case at the Supreme Court of Georgia, is information on investigation launched on the alleged fact of interference into the activities of the judge of the Supreme Court of Georgia to influence legal proceedings,[777] which was launched on January 14, 2017 under Article 364 (2) of the Criminal Code of Georgia. According to the Prosecutor's Office of Georgia, different investigative activities have been carried out, criminal persecution has not been instigated against any particular individual and investigation is still ongoing.[778]

As mentioned above, representatives of the Public Defender of Georgia attended all court hearings at the Tbilisi Court of Appeal and requested different documentation from relevant authorities.[779] Currently, Office of the Public Defender of Georgia continues to examine the case.

775 Information is accessible on the following web-page: <http://www.ombudsman.ge/uploads/other/0/79.pdf> pp.85–86.
776 №13/19020 letter of the Prosecutor's Office of Georgia of March 22, 2017.
777 See the link: <http://pog.gov.ge/geo/news?info_id=1130> [visited on: 22.03.2017].
778 №13/13512 letter of the Prosecutor's Office of Georgia of February 28, 2017.
779 Letters of the Public Defender of Georgia addressed to the Tbilisi Court of Appeal: №04-11/5266, №04-11/6008, №04-11/6007, №04-11/7035; №04-11/5265 letter of Tbilisi City Court; №04-11/6301 letter of the High Council of Justice and etc.

EXCESSIVE USE OF FORCE AND USE OF HOMOPHOBIC LANGUAGE BY THE LAW-ENFORCEMENT BODIES DURING DETENTION OF 17 MAY ACTIVISTS

In light of freedom of expression, events of May 17, 2016 shall be mentioned, when law-enforcement officials detained LGBT activists for drawing stencils near the Patriarchate building.[780]

According to the information provided to the representatives of the Public Defender of Georgia by the detainees, they were detained in a rude manner and by using homophobic language. In addition, activists stated that they were detained by individuals in civil clothes and were not transported by police cars.

It shall be mentioned that whereabouts of detained individuals was unknown for several hours. Getting this information became difficult for the representatives of the Public Defender of Georgia too. Pursuant to the detainees, at the moment of their detention they were not explained about their rights and were deprived of the possibility to contact their relatives. Public Defender of Georgia publicly[781] addressed relevant bodies to study the issue of excessive use of force and usage of homophobic language, violation of the obligation to explain rights to detainees immediately by the law-enforcers and called for adequate response. According to our information,[782] General Inspectorate of the Ministry of Internal Affairs of Georgia carries out official inspection of these facts, nevertheless outcome of the inspection is still unknown. In spite of the repeated request,[783] Office of the Public Defender of Georgia was unable to gain full information/documentation about the measures carried out by the Inspectorate.[784]

In spite of the fact that arbitrary paintings on the facades and fences of the buildings constitute administrative infringement and therefore, an example of justified limitation of freedom of expression,[785] legislation does not foresee administrative detention for this offence.[786] Therefore, police lacked procedural authority to detain individuals only on the basis of mentioned infringement.[787]

As to the infringement envisaged by Article 173 of the Administrative Infringements Code of Georgia (hereinafter AIC), pursuant to the disposition of the said provision, existence of the lawful order or demand of the law-enforcement representative during execution of his/her official duties is a necessary constituent of the offence. In the present case, due to the problem related to the identification of detaining individuals as police officers, existence of the composition of the disposition envisaged by the mentioned Article and therefore, legal grounds of detention are under question. It shall be mentioned that the Court discontinued administrative proceedings in the framework of Article 173 AIC against all individuals and imposed administrative liability on several of them only on the basis of Article 150 AIC.

The use of homophobic and hate speech by state representatives shall be condemned and above mentioned facts adequately responded by relevant authorities. Public Defender of Georgia calls law-enforcement bodies to act only within the authority provided to them by law, and in case of carrying out any act described above, to take all necessary measures envisaged by law.

780 Due to drawing of stencils and disobeying with the lawful order of the police, 3 of them were detained at metro station "Freedom Square", 7 of them at the building of Patriarchate.

781 Statement of the Public Defender of Georgia of May 17, 2016, available at the following link: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-lgbt-aqtivistebis-dakavebis-shesaxeb.page> [visited on 10.01.2017].

782 №3072955 letter of the Ministry of Internal Affairs of Georgia of December 9, 2016.

783 №04-11/4039 letter of the Public Defender of Georgia of November 24, 2016.

784 By the letter №3072955 of the Ministry of Internal Affairs of Georgia of December 9, 2016 we were informed that official inspection of the matter was ongoing.

785 Article 150 of Administrative Infringements Code.

786 Articles 246 (a) and 244 (1) of the Administrative Infringements Code of Georgia. Public Defender has presented his position on this matter in relation to one of the cases in his public statement, available on the following link: <http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcveli-plakatebis-gakvris-gamo-sami-piris-dakavebas-exmianeba.page> [visited on 9.12.2017].

787 Pursuant to protocols on detention, committing the offence envisaged by Article 150 of the Administrative Infringements Code of Georgia constitutes factual and legal grounds for arrest.

Case of S.Ts.

During the reporting period, public attention was payed to the topic posted by the citizen S.Ts. on Tbilisi Forum, according to which he/she was preparing an attack on US ambassador to Georgia. On this ground, Prosecutor's Office of Georgia charged him/her,[788] and Tbilisi City Court sent him/her to two-month pre-trial detention.

Freedom of expression protects the right of internet users to create, use and disseminate content through internet.[789] State's obligation to ensure freedom of expression also extends to internet users[790] since the obligation to protect human rights and fundamental freedoms stands both online and offline.[791] On the other hand, even if the restriction of freedom of expression is based on a legitimate ground such as prevention of crime and ensuring public safety, the state is under an obligation to prove the necessity of the measure, its proportionality and direct and immediate link between the expression and the threat.[792] Constitutional Court of Georgia also underlines the necessity of existence of real threat of violence and/or criminal offence.[793]

According to the explanation provided by S.Ts. to the representatives of the Public Defender of Georgia, his/her aim was to caricature people with anti-western sentiments, which he/she used to do in different forms for several times. While examining existence of real threat by relevant body on S.Ts.'s case, if all circumstances and context were well analyzed, existence of no real threat of concrete outcome was clear-cut, which in itself excluded any of the above mentioned legitimate aims.

High interest expressed on topics posted by S.Ts gave the possibility to perceive the picture in full. S.Ts. is known in internet as a disseminator of shocking messages, aimed only at provoking other users (so called trolling). The so-called trolling implies publication of some inadequate, provocative information for discussing one or another topic, for discrediting an individual or a group, for laughing at them or for any other reason. It aims to create an illusion that information spread is real. For Tbilisi Forum users, S.Ts. is famous for being experienced in disseminating such content.

On May 8, 2016 S.Ts. was released on bail; he/she was detained during April 15 - May 8, 2016; It shall be mentioned, that according to S.Ts. investigation against him/her is still ongoing.

FREEDOM OF INFORMATION

Article 41 of the Constitution of Georgia grants every citizen right to become acquainted in accordance with the procedure prescribed by law, with the information about him/her stored in state institutions, as well as official documents existing there, unless they contain state, professional or commercial secrets. Constitutional Court of Georgia by its Decision №2/3/364 of July 14, 2006 interpreted that every individual and legal person are subjects of this right in spite of their place of residence and citizenship.

Supreme legal act of the country imposes a positive obligation on the state to issue information. Chapter 3 of the General Administrative Code of Georgia determines rules for issuing or refusing to provide public information. Pursuant to the national legislation, when requested public information is not stored at the public entity, it is under an obligation to search for such information in another authority.[794] Issuing public

788 Article 326 (2) of the Criminal Code of Georgia, envisaging threat of attack on a person enjoying international protection.
789 Council of Europe, Guide to Human Rights for Internet Users, 2014, 28.
790 Council of Europe, Recommendation of the Committee of Ministers CM/Rec(2014)6 to member states on Guide to Human Rights for Internet Users, 2014.
791 Council of Europe, Guide to Human Rights for Internet Users, 2014, 6.
792 UN Human Rights Committee, General Comment N34, September 12, 2011, Para. 35.
793 Decision N2/482,483,487,502 of the Constitutional Court of Georgia of April 18, 2011, Para. 104-105.
794 General Administrative Code of Georgia, Article 40 (1, "a").

information does not only imply making copies of such information, but also taking certain measures for creating information with a new content.

Significance of freedom of information is always emphasized in Annual Parliamentary Reports of the Public Defender of Georgia. In his Annual Report on the Situation in Human Rights and Freedoms in Georgia for 2015 Public Defender underlined the need of improving current legislation and harmonizing it with international standards in order to provide further guarantees for freedom of information. Parliament of Georgia, Government of Georgia and the Ministry of Foreign Affairs of Georgia were addressed with concrete recommendations to initiate new draft Freedom of Information Act in a timely manner, to introduce amendments into the Law of Georgia on Personal Data Protection to strike fair balance between freedom of information and right to personal data protection, to carry out relevant measures for ratification procedures of the Council of Europe Convention of June 18, 2009 on Access to Official Documents.[795] Unfortunately, recommendations of the Public Defender of Georgia reflected in the Ombudsman's Report on the Situation in Human Rights and Freedoms in Georgia for 2015 have not been fulfilled by relevant authorities yet.

Current regulations under the Law of Georgia on Personal Data Protection fail to strike right balance between freedom of information and personal data protection; until today special categories of data (sensitive data) of acting state officials or candidates that are related to execution of their official duties and are stored in public entities are not accessible even in cases of high public interest. Practice showed that due to these reasons, criminal court decisions related to the official activities of high ranking officials are not issued. The Parliament of Georgia has not yet fulfilled the recommendation issued on this matter last year.

By the Decision №1/250 of September 12, 2016 High Council of Justice adopted Rules on Issuing and Publishing Common Court Decisions. According to these rules, together with personal data (which relates to the identification of an individual) as foreseen by the Law of Georgia on Personal Data Protection, title of the legal person, its identification code and legal address shall not be published in common register of court decisions. Such regulation puts more limits on access to public information and fails to serve to the interests of a democratic society.

In comparison with last year, number of applications on unlawful restriction of right to access to information has increased in 2016. In certain cases incomplete information was issued, public entities made incorrect interpretation of existing legislation and limited access to public information for personal data protection purposes without any grounds.

Existing legal environment, where only the institute of Personal Data Protection Inspector exists and the mechanism for monitoring access to information and freedom of information has not been established yet, plus no sanctions are in place for unlawful refusal on access to public information, encourages public bodies to establish incorrect practice or to refuse access to public information unjustifiably.

CASE OF NON-ENTREPRENEURIAL ENTITY OF PUBLIC LAW INSTITUTE FOR DEVELOPMENT OF PUBLIC INFORMATION

On October 6, 2016 Institute for Development of Public Information addressed the Public Defender of Georgia on the failure of state authorities to issue public information. In particular, in March 2016 the non-governmental organization requested information on salaries and bonuses of officials of relevant bodies, their permanent and contracted staff, as well as information on staff rosters and number of employees, expenditures

795 Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, p. 519 <http://www.ombudsman.ge/uploads/other/3/3891.pdf>.

related to business trips, purchased property and services and other public information from the Ministry of Justice of Georgia and its Legal Entities of Public Law.

Examination of the case revealed that 12 public entities have not provided the applicant with any public information whatsoever. Therefore Public Defender of Georgia found a violation of the right of access to public information of the Institute for Development of Public Information and addressed relevant bodies with a recommendation[796] to issue public information requested by the non-governmental organization in March 2016. The recommendation of the Public Defender of Georgia underlined the importance of freedom of information and state's positive obligation to issue information. Furthermore, administrative bodies were informed that proactive publication of information does not release them from the obligation to issue information in accordance with established rules. Public Defender of Georgia requested the public bodies to pay particular attention to the fact that Institute for Development of Public Information constituted a non-governmental organization, which carries out monitoring of access to public information in state bodies. Its activities promote informed public debates on certain issues. Based on the European Convention on Human Rights and Fundamental Freedoms, European Court of Human Rights affords same standard of protection to non-governmental organizations acting in human rights field as to the press and equates creation of any barriers to such organizations during access to public information to indirect censorship.[797] Therefore, European Court of Human Rights considers the restriction of the right of non-governmental organization working in human rights field to access public information as an interference into their function of a social watchdog.

Public Defender of Georgia addressed 12 public bodies with this recommendation, however only one entity informed the Ombudsman about outcomes of considering his recommendation. In particular, National Agency of Public Registry issued information to the Institute for Development of Public Information in February 2017. Other 11 bodies have violated the law again, by failing to provide information on outcomes of discussing Ombudsman's recommendation, notwithstanding their legal obligation thereto.[798]

RECOMMENDATIONS

To the Parliament of Georgia

- To introduce amendments into Article 239[1] of the Criminal Code of Georgia (incitement to violence) in order to fully reflect observations of the Public Defender of Georgia
- Considering preceding importance of freedom of expression, to formulate a limited disposition of Article 150 of the Code of Georgia on Administrative Infringements, in order to avoid its wide and harmful application in practice
- To develop Ethical Standards of Members of the Parliament and officials of local municipalities and relevant mechanism for their enforcement
- To introduce amendments into the Law of Georgia on Personal Data Protection, which will serve to striking fair balance between freedom of information and personal data protection, in particular to ensure access to special categories of data of acting officials and candidates related to their official duties, that are stored in public bodies and have high public interest

To the Government of Georgia

- To initiate new draft Freedom of Information Act in a timely manner, which will establish a monitoring mechanism of free access to information and freedom of information, establish

796 Recommendation №04–5/1325 of the Public Defender of Georgia of January 31, 2017.
797 CASE OF TÁRSASÁG A SZABADSÁGJOGOKÉRT v. HUNGARY, 2009, §38.
798 Article 24 of the Organic Law on Public Defender of Georgia.

sanctions in cases of unlawful refusal to issuing public information, determine follow-up mechanisms of the President of Georgia, Parliament of Georgia and Prime Minister of Georgia on the report of December 10 on issuing public information or failure to comply with this obligation

To the Prosecutor's Office of Georgia

- To carry out prompt and effective investigation of alleged fact of threatening Nika Gvaramia in 2015 and alleged fact of production and dissemination of secret recordings in 2016 and inform public about investigation outcomes
- To carry out prompt and effective investigation of circumstances addressed in the application of David Dvali and Jarji Akimidze, founders of Broadcasting Company "Rustavi 2" on compulsory transfer of their right to property
- To carry out prompt and effective investigation of alleged fact of interference into the activities of the judge of the Supreme Court of Georgia to influence legal proceedings, and impose adequate responsibility on the offender
- To adequately qualify acts against journalists during the events at Tbilisi State University, to carry out all necessary measures to identify individuals interfering into their professional activities and for taking relevant legal measures against them
- To produce statistics by the investigative bodies on crimes against journalists due to their professional activities
- To train representatives of law-enforcement bodies on freedom of expression and authority to carry out detention of offenders in accordance with national and international standards

To the Ministry of Internal Affairs of Georgia

- To promptly and effectively study alleged illegal acts of law-enforcers during detention of May 17 activists, in order to take legal measures against them
- To produce statistics by the investigative bodies on criminal acts against journalists due to their professional activities
- To train law-enforcers on freedom of expression and right to detention in accordance with national and international standards

To High Council of Justice

- To introduce amendment into Article 6 of the Rules on Issuing and Publishing Common Court Decisions adopted by the decision №1/250 of the High Council of Justice of September 12, 2016 so that title of a legal person, its identification code and legal address are not encrypted while publishing court decision in common register of court decisions

To the Ministry of Foreign Affairs of Georgia

- To carry out necessary measures to launch ratification procedures of the Council of Europe Convention of June 18, 2009 on Access to Official Documents.

FREEDOM OF ASSEMBLY AND MANIFESTATION

Annually, Public Defender of Georgia carefully observes realization of freedom of assembly and manifestation in the country. Although assemblies were not dispersed with the use of force in the reporting period, compliance by the police with its positive obligation to ensure right to peaceful assembly and to charge offenders still remained a challenge.

Legislative amendments emphasized on several times by the Public Defender of Georgia have not been introduced yet.[799] In his report of June 8, 2012 as well as on public debates organized by the Public Defender of Georgia in 2016, Maina Kiai, UN special Rapporteur stressed the need of harmonization of legislation on Freedom of Assembly and Manifestation with international standards.[800]

Results of the monitoring carried out by the representatives of the Office of Public Defender of Georgia showed that quite large rallies organized by the political party United National Movement on March 6 and October 5 were held without excesses.

The Public Defender of Georgia also conducted permanent monitoring of student rallies at Tbilisi State University, where instances of ineffective activity of the university's security service and the police were observed.[801] Office of the Public Defender was informed that official inspection is ongoing at the General Inspectorate of the Ministry of Internal Affairs of Georgia on events taken place at the territory of the University on 14-15 March, 2016. Alike the comprehensive and rapid investigation of such violent facts, examination of performing official duties by law enforcers in due diligence is equally important.

Examination of the events occurred during the celebration of the International Day against Transphobia and Homophobia is also necessary. Due to threats to violence and absence of guarantees for a safe conduct of an event, LGBT activists refrained from marking International Day against Transphobia and Homophobia.[802] Unfortunately, homophobic attitudes of the society still pose a threat to the exercise of Constitutional rights. Lack of rapid and effective investigation of hate crimes hamper any changes into existing situation, particularly taken into account impunity of persons responsible for violence occurred on May 17, 2013.

799 Activity Reports of the Public Defender of Georgia for 2013 and 2014 outline the importance of complying with the observations of the Public Defender of Georgia reflected in Parliamentary Reports for 2011-2012.

800 Public debates of April 15, 2016, see the following link: <http://www.ombudsman.ge/ge/sadjaro-debatebi/sadjaro-debatebi-shekrebisa-da-gaertianebis-tavisufleba-migwevebi-da-gamowvevebi.page >.

801 Links are available at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-15-marts-tsushi-ganvitarebul-procesebze-dakvirvebis-shedegebs-adjamebs.page
http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-tbilisis-saxelmwifo-universitetshi-gushin-ganvitarebul-movlenebtan-dakavshirebit.page

802 Available on the following link: http://liberali.ge/news/view/22568/lgbt-aqtivistta-jgufi-khelisuflebam-ar-mogvtsa-ghonisdziebis-usafrtkhod-chatarebis-garantia [visited on: 7.02.2017].

FAILURE TO COMPLY WITH STATE'S OBLIGATION TO REALIZE FREEDOM OF ASSEMBLY

Public Defender of Georgia discussed in details violation of right to assembly of G.G. who was on a hunger strike in front of the Parliament building on December 26, 2016 in Tbilisi.[803] Police did not give him the right to use a staged umbrella and to open up a tent. It shall be mentioned that N.Ch., who was on a hunger strike several days before, also stated that he was deprived of the right to put a stool in from of Government's Administration during the rally.

In this regard, particular attention shall be paid to the decision of the Tbilisi City Court of August 31, 2016 according to which refusal of the Tbilisi City Hall to put up a tent by "Partizani Mebageebi" in the yard in front of the City Hall was considered illegal. In addition, according to the OSCE guiding principles on freedom of peaceful assembly, temporal character of rallies does not exclude putting up protesting tents or other non-permanent constructions.[804] Public Defender of Georgia has already outlined that this issue shall be examined individually in each particular case and that state has a positive obligation to facilitate realization of constitutional rights. In cases where putting up the tent is necessary for realization of right to assembly and no illegal preconditions are at stake, state shall give to individuals possibility to enjoy their constitutional right.[805] Public Defender of Georgia had similar position with regard to dispersion of veteran's rally on the basis of putting up the tent.[806]

With regard to the above mentioned cases Public Defender of Georgia is of the view that due to the fact that using a tent/stool/umbrella did not block carriageway or entrance of the buildings or hampered functioning of relevant entities, hindering by the state of freedom of assembly shall be considered as unjustified interference into the right.

On June 22, 2016 local population of Gonio carried out peaceful assembly on the territory of Administrative building of the Government of the Autonomous Republic of Adjara. Police officers took mattresses from the participants of the assembly with force and detained several individuals participating in the assembly. Due to the fact that assembly was not carried out on carriageway, it did not block traffic movement, was peaceful and did not take illegal character, citizens should have been given possibility to enjoy their constitution right. State has an obligation not only to refrain from interference into realization of freedom of assembly and association, but also to facilitate its full enjoyment.[807]

A regrettable incident in terms of exercise of the freedom of assembly was the fact occurred in the village Kortskheli, Zugdidi Municipality. On May 22, 2016 individuals gathered on the territory of #53 district election commission in the village Kortskheli, Zugdidi Municipality were physically assaulted. Individuals participating in the violence were acting in groups. According to the Prosecutor's Office of Georgia, 6 individuals were charged under Article 239 of the Criminal Code of Georgia on June 1, 2016; Court imposed bail on these individuals. 10 citizens, including members of the United National Movement are recognized as victims in the criminal case.[808]

In spite of the fact that law-enforcement bodies are obliged not only to investigate crimes, but also to prevent violent acts from occurring, police failed to ensure safety of participants of the assembly in the village Kortskheli. Sufficient number of law-enforcers were not at place, violence and offences were not eradicated instantly,

803 Link available on: < http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-shekrebis-tavisuflebis-shezgudvas-exmianeba.page> [visited on: 6.02.2017].

804 OSCE Guidelines on Freedom of Peaceful Assembly, para.18. Link available on: http://www.osce.org/odihr/73405?download=true.

805 Report of the Public Defender of Georgia for 2015, available on the following link: <http://www.ombudsman.ge/uploads/other/3/3891.pdf > pp. 527-528.

806 Report of the Public Defender of Georgia for 2010, available on the following link: http://www.ombudsman.ge/uploads/other/0/84.pdf, p. 281.

807 Article 25 (2,3) of the Constitution of Georgia, Article 2 (3) of the Law of Georgia on Assemblies and Manifestations, Article 17 (2) of the Law of Georgia on Police.

808 Response of the Prosecutor's Office of Georgia of August 24, 2016 to the Public Defender of Georgia.

individuals involved in violence were not detained immediately in order to protect life and health of other citizens. Public Defender negatively assesses the fact that, in spite of identification of charged individuals, no final decision is made on the case to submit it to the court for further consideration. Loyalty of law-enforcers on this and similar cases strengthens syndrome of impunity and encourages violence.

It shall be noted that on the fact of unjustified interference into S.Sh.'s freedom of assembly by the law enforcers,[809] General Inspectorate of the Ministry of Internal Affairs of Georgia[810] has found a disciplinary offense committed by the staff members of the Ministry of Internal Affairs of Georgia,[811] due to making a decision without examining the case in its entirety. Recommendatory notes have been issued against these individuals[812].

These facts are clear indications to the need of planning regular and systematic capacity building programs for law-enforcers on standards related to freedom of assembly.

THE CASE OF R.SH.

On August 4, 2016 the citizen R.Sh. hold rally in front of the central office of "Georgian Dream" Political Party.[813] The security officer of the political party informed the police, that the behavior of the participant of a rally periodically was inadequate, aggressive and threatening to surrounding people. Representatives of the law-enforcement bodies called the emergency only based on the information provided by the security officer of the "Georgian Dream". It shall be noted, that representatives of police and emergency service clearly confirmed[814] adequacy of an individual during an interview. Based on the case file, the fact of past treatment of R.Sh. at the psychiatric facility was the only suspicious circumstance provided by R.Sh. to the doctor, which taken separately does not constitute a reasonable ground for determining a mental health problem of an individual, but only serves to his stigmatization. Nevertheless, emergency doctor preliminary diagnosed the citizen with acute and transient psychotic disorder, as a result of which R.Sh. was transferred to specialized medical institution involuntarily.[815] As a result of examining health conditions of the patient at the said institution, no need for stationary psychiatric treatment was revealed, therefore the patient was released.

In the present case, law-enforcers or emergency doctor failed to verify information provided to them by the security officer of the political party "Georgian Dream" based on the objective source (interviewing surrounding individuals, checking records of video surveillance cameras set on the building of the organization or nearby territory and etc.) and were only bound by interviewing the participant of a demonstration, where fact of his inadequate behavior has not been revealed and existence of the need to avoid threat to health and/or life of other individuals considered. When examining mentioned legal ground, representatives of the state authority enjoy certain discretion, however, any intervention into the realization of a right shall be free from

809 Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms. pp: 526-527, available on the following link: < http://www.ombudsman.ge/uploads/other/3/3891.pdf >.

810 №91602703212 letter of the Ministry of Internal Affairs of Georgia of October 28, 2016.

811 Disciplinary Statute of Employees of the Ministry of Internal Affairs of Georgia (Article 2 (2,b)) – Negligent attitude toward official duties.

812 Pursuant to Article 5 of the Order №989 of the Minister of Internal Affairs of Georgia on Approving Disciplinary Statute of the Staff of the Ministry of Internal Affairs of Georgia, in case of minor disciplinary misconduct or other basis and considering prior performance of the employee, recommendatory note might be applied instead of disciplinary measure, which will provide guidance to the employee to eradicate and solve problems with relevant means in the future to prevent similar violations. Recommendatory note is stored in the personal case file of an employee.

813 Address: Erekle the Second Square.

814 Explanatory reports provided by Patrol Inspectors of Tbilisi Patrol Police Main Unit of September 9, 2016 and Chief Doctor of Emergency Medical Brigade of September 14, 2016

815 Based on Article 18 (a) of the Law of Georgia on Psychiatric Assistance.

arbitrariness. This implies that any restriction shall have legal grounds and state authorities shall protect both procedural and material part of the provision during its implementation.[816]

In the present case, state authorities failed to present reasonable arguments that would confirm doubts relating to the psychiatric conditions of the organization of the rally and/or need to avoid threat to life and/or health of the patient or others.[817] Therefore, Public Defender considered, that citizen R.Sh. was arbitrarily restricted of his right to freedom of assembly.

THE CASE OF Z.Ts.

Public Defender of Georgia closely monitored developments related to the construction of electricity transmission line in the village Tsdo. Local population hold several demonstrations for halting construction of the electricity transmission line. On April 16, at one of the demonstrations, participant of the rally Z.Ts. was arrested under Article 173 of the Administrative Infringements Code of Georgia. Disposition of this provision states: "disobeying with the lawful order of the police during his/her official duties, verbal assault of such person, and/or insulting him/her will result in imposition of a fine".

Therefore, 4 conditions shall be present to carry our detention measures: individual, who makes an order shall represent law-enforcement bodies, he/she shall be on an official duty, his/her order shall be lawful and an individual shall refuse to comply with it.

Identification of these conditions is impossible based only on the protocol of administrative detention.[818] Demonstration of local population on April 16 was held several meters away from the construction area; video records show that Z.Ts. was excited and expressed his/her protest emotionally, however no fact of hindering the construction work, or any attempt of this kind was proved. The type of order of law-enforcers toward Z.Ts., as well as fact of warning by law-enforcers on outcomes of failure to comply with their order could not be proved.

During the court hearing, only representatives of the law-enforcement bodies referred to the failure of an individual to obey their lawful order. While it is true that materials reflecting arrest do not exist, no other evidence exists that would prove that Z.Ts. did not comply with any order of the police. Public Defender of Georgia considers that content wise implementation of the constitutional principle – no one shall prove his innocence - shall be reflected in judgements on administrative infringement cases.[819]

Nevertheless, Mtskheta District Court recognized Z.Ts. as an offender.[820] Tbilisi Court of Appeal upheld the decision of the District Court. [821] According to the District Court:

„Z.Ts's **protest did not fall into** the requirements set by the Law of Georgia on Assemblies and Manifestations, Law-enforcement officers were under an obligation to **eradicate any illegal act**, which would be directed against the construction. **Based on the lawful order, law-enforcers repeatedly called** Z.Ts. to refrain from illegal action and comply with their lawful request, which was not complied with by Z.Ts".[822]

816 See Article 3 (b) of the Law of Georgia on Assemblies and Manifestations.
817 №6 16 02301675 letter of the Ministry of Internal Affairs of Georgia of 13.09.2016 and №0801/1385 letter of LEPL Medical Emergency under Tbilisi Municipality of 16.09.2016.
818 Basis of arrest is indicated as follows: *did not comply with the repeated lawful orders of the police.*
819 Report of the Public Defender of Georgia for 2015, < http://www.ombudsman.ge/uploads/other/3/3891.pdf > p: 465.
820 Decision of the Mtskheta District Court on Case №4 /202-16 of April 22, 2016.
821 Decision of Tbilisi Court of Appeal on case №4 /-380-16 of January 2, 2016.
822 Other justifications or subsumption of facts toward legal provisions are not provided in the Decision.

Public Defender of Georgia discussed the problems related to Orders on Administrative Infringement Cases in details in the Parliamentary report for 2015.[823] Public Defender stated that lack of justification of judicial decisions was the main shortcoming in relation to administrative offences. Decisions mainly reflect information provided by the individual completing protocol, however, analysis of the court on existence of alleged fact of infringement is lacking. Reliance of Judges' decisions on protocols compiled by police goes to the point that judge's preliminary attitude toward a citizen is revealed from a number of decisions.[824]

Another important issue relates to the failure to explain rights of the arrested individual. As stated by Z.Ts. at the court hearing (this is also indicated in the decision of the Mtskheta District Court), he/she was not acquainted with rights and grounds for the arrest at the moment of his/her arrest or afterwards. Besides, based on the information provided to the representatives of the Public Defender of Georgia,[825] document of his/her arrest was only completed at the Mtskheta police unit and possibility to contact his/her relatives was only given based on his/her request later on. Z.Ts. was arrested at about 13:00, but was transferred to the Mtskehta Police Unit at 21:00. Therefore, he could not contact his relatives for approximately 8 hours. Pursuant to Article 240 (4) of the Administrative Infringements Code of Georgia, offender is acquainted with his/her rights and duties enshrined in Article 252 of this Code during completion of the protocol (this fact being stated in the protocol as well). In the present case, protocol on administrative detention has no indication on informing Z.Ts. about his/her rights and duties.[826]

EVENTS OF 11-12 MARCH, 2017 IN BATUMI

On March 11, 2017 police officers issued administrative fine for wrongful parking to an individual, who later disagreed with the fact of infringement. Verbal assault between the police officers and citizens was followed by a protest. Police has arrested six persons for resisting the police, which further escalated the situation. The demonstration was organized in a very short period of time. The protesters accused the Head of Adjara Main Division of the Patrol Police Department of the Ministry of Internal Affairs in using discriminatory terms against them and requested his/her resignation, alleviation of fines and release of 6 arrested individuals. Protesters blocked Chavchavadze Str.

In parallel, protest rally was held at the Adjara Police Department, participants moved from Chavchavadze Street to the police department and joined participants of the demonstration there.

Rally soon turned into aggression, protesters started to throw stones in police's direction, broke and damaged local infrastructure, set fire to cars and broke traffic lights. Offensive spinning also took place.

Periodically police used tear gas and rubber bullets against protesters in an inhabited area. During the night tear gas was employed approximately for seven times, without any effective outcomes.

At approximately 5 a.m. Special Police Unit arrived at the police building. Number of protesters at this time was already decreased and police was able to disperse the rally. 74 individuals were arrested after the protest. Criminal charges were brought against 20 individuals, on the majority of court imposed an arrest warrant.

Unfortunately, protest soon went beyond the framework of freedom of assembly and freedom of expression and turned into a controversy, which was led by violence, health injuries and damages to property.

823 Report of the Public Defender of Georgia for 2015, accessible on the following link: <http://www.ombudsman.ge/uploads/other/3/3891.pdf >, pp: 462-469.
824 In the present case different assertions expressed by the judge during hearing indicated to preliminary attitude.
825 Explanatory report of Z.Ts. provided to the representative of the Public Defender of Georgia on April 17, 2016.
826 This type of a box does not appear in the protocol, nor does any indiciation exist in any box either in the form of a note or any other form.

Response of the law-enforcers was not satisfactory during the process. Participants of the rally almost all night long were destroying property, damaging city's infrastructure, but police failed to take any action. Lack of effective and rapid response of law-enforcers presupposes that state is not ready to manage similar crisis. Therefore, there is a need to analyze these gaps as well as the capacities of state's security services and law-enforcement bodies to timely and effectively overcome such crisis and whether there is an effective response plan to prevent such developments and defuse extremely tense situation.

RECOMMENDATIONS

To the Parliament of Georgia and Government of Georgia

- Introduce legislative amendments into the national legislation on freedom of assembly and asocial to harmonize it with international standards, in accordance with the recommendations of the Public Defender of Georgia and Venice Commission; guarantees shall be in place for providing the possibility to carry out spontaneous assemblies and for making decisions on individual bases rather than blanket restrictions of carrying out assemblies and manifestations

To the Government of Georgia

- Analyze effectiveness of work of law-enforcement systems and security services, in order to prevent crisis similar to events taking place in Batumi on March 11-12, 2017 and to manage processes
- To study properly real reasons behind negative expressions of the population and carry out systemic response to them

To the Ministry of Internal Affairs of Georgia

- To involve all relevant employees in continuing education on national and international standards regarding freedom of assembly and association in order to prevent arbitrary interference into this right, to prevent facts of violence and provide effective response
- Take all necessary measures for ensure security of the protesters as soon as information on assemblies and associations is received
- Facilitate realization of freedom of assembly guaranteed by the Constitution to the LGBT community
- Duly explain rights and obligations to the arrested individuals and reflect this information into protocol on administrative detention. To impose responsibility measures to the representatives of the Ministry of Internal Affairs in case of failure to comply with this obligation (including on case of Z.Ts.)
- Finalize in a timely manner inspection regarding the developments on Mach 14-15, 2016 on the territory of the Tbilisi State University in order to impose responsibility measures on the representatives of the Ministry of Internal Affairs
- Impose responsibility on the representatives of the Ministry of Internal Affairs every time when they make illegal interference into freedom of assembly (including on the cases of G.G., N.Ch, R.S., Gonio's population)

- Make a final decision on the incident t in the village Kortskheli as soon as possible and transfer the case to the court
- Considering existing technical and human resources, develop concrete plan of action on managing crisis similar to the events of March 11-12, 2017 in Batumi
- Carry out strict control of employing tear-gas. Ensure that this measure is only used in cases of extreme necessity, when it is necessary to attain effective outcome and only if local population will not be affected by such measure

To Common Courts

- To ensure full examination of evidence presented by parties during hearing administrative case and improve quality of justification of adopted orders.

On 2 May, 2014 the Parliament of Georgia endorsed the Law on the Elimination of All Forms of Discrimination (hereinafter referred as 'the Law') which defines the Public Defender of Georgia as a legal mechanism for ensuring equality in the country. The Law prohibits discrimination in any field and applies to public agencies as well as natural and legal persons of private law. Article 1 of the Law provides an incomplete list of grounds protected from discrimination. The Law provides protection against direct and indirect discrimination, as well as encouragement and support to discriminatory acts,[827] multiple discrimination,[828] discrimination by association and perception,[829] and victimisation.[830]

Even though almost three years have passed since the adoption of the Law, problems hampering the effective implementation of the Law still persist. A need to embark upon the so called first wave of changes in the Law remains one of the challenges. Importantly, Human Rights and Civil Integration Committee of the Parliament of Georgia has already initiated a legal proposal submitted by the Public Defender of Georgia.

An important aspect of the package of proposed changes is the obligation of private bodies to submit information requested by the Public Defender who has cancelled proceedings on numerous occasions for the failure to obtain requested information from private bodies who were defendants in these proceedings under circumstances whereby facts and evidence submitted by applicants turned out to be insufficient for establishing a fact of discrimination. At the same time

A proposed additional article to the Law is of great importance for ensuring its effectiveness. The article adds a requirement to the burden of proof division standard according to which if a public or private body fails to provide the Public Defender with materials pertaining to a case in question and provided that available body of evidence provides grounds for reasonable assumption that discrimination has occurred and that the application meets the legal requirements, such application shall be upheld. Otherwise, the party shall be denied his/her claim.

The proposed package also suggests that a three-month limitation for the referral to general courts be increased up to one year. In addition, according to the proposed amendments administrative proceedings should no longer serve as the grounds for the Public Defender to cease scrutinising the case.

At the same time, issues related to raising public awareness on the importance of equality and creating an enabling environment for non-discrimination have been recognised as one of the greatest challenges. Experience of the

827 Law of Georgia on the Elimination of All Foms of Discrimination, Article 2(5)
828 Law of Georgia on the Elimination of All Foms of Discrimination, Article 2(4)
829 Law of Georgia on the Elimination of All Foms of Discrimination, Article 2(6).
830 Law of Georgia on the Elimination of All Foms of Discrimination, Article 12(1)

Public Defender's Office suggests that in many instances widely shared prejudices towards various groups lead to discrimination. Considering the above said, it is pivotal that formal education programmes address issues around equality so that schools contribute to instilling values respecting and promoting equality.

Sadly, none of recommendations highlighted in the 2015 parliamentary report of the Public Defender of Georgia has been upheld so far.

EQUALITY IN GEORGIA AND STATISTICAL DATA

The Department of Equality at the Public Defender's Office has been functioning since November 2014. The Department serves as a legal mechanism for protecting the right to equal treatment as defined by respective legislation. In the period between November 2014 and the end of 2016 the Public Defender reviewed 333 applications concerning the right of equality. Notably, reviewed cases have diverse nature and involve alleged discrimination on various grounds as well as violation/restriction of rights in many spheres of public life.

Throughout 2016 the Public Defender processed 175 applications including seven initiated by the Public Defender himself.

Most processed applications concerned alleged discrimination based on political or other views (18%), religion (17%) and national/ethnic background (14%). A considerable amount of applications also involves alleged discriminatory treatment on the ground of sex (10%), sexual orientation/gender identity (8%) and disability (7%) while 8% of applicants believe that they were subject to discrimination based on other grounds. Importantly, there is a difference between the above mentioned data and those from the previous reporting period. More specifically, the current reporting period saw the increase in alleged discrimination based on political, religious and national/ethnic grounds (3%, 6% and 4% respectively). On the other hand number of applicants complaining about discriminatory treatment on the basis of sexual orientation/gender identity and disability has decreased by 3%.

In 2016 the Public Defender issued 15 decisions on issues related to equality, including nine recommendations and six general proposals. At the same time, a decision was made to cease proceedings on 65 cases while seven applications were deemed inadmissible.

Nine recommendations have been issued on the establishment of the presence of direct discrimination based on disability (1), citizenship (1), sexual orientation (1), sex (1), pregnancy (2), religion (1), property status (1) and membership of an association (1). Six out of these nine recommendations address administrative establishments while three have been submitted to private bodies.

In addition, six general proposals have been issued on the prevention of discrimination based on health condition (1), sex (3), gender identity, property status (1) and disability. Equal numbers of the proposals (3) were issued to public agencies and private bodies.

Four decisions issues by the Public Defender in 2016 were upheld by the defendant while in five cases defendants said they share the Public Defender's appeal and would take respective measures. As for the remaining six cases, the Public Defender was either notified that defendant did not agree to the recommendation or has not yet received any feedback.

Also, the Public Defender appealed to general courts with five opinions in the capacity of the friend of the court concerning cases of alleged discrimination based on membership of the trade union (1), religion (2), age (1) and sex (1). In addition the Public Defender released seven public statements [831] on issues related to equality.

831 Refer to http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-telekompania-maestros-mier-saias-socialuri-reklamis-etershi-gantavsebaze-uaris-shesaxeb.page

DISABILITY

As a rule, when it comes to the violation of the right to equal treatment against persons with disabilities, discriminatory treatment or encouragement of such takes place in environments that tend to be drastically different, which in turn, indicates that persons with disabilities may be exposed to unjustified and disrespectful treatment like any other vulnerable groups, in many sphere of public life.

The study has revealed that inappropriate treatment of persons with disabilities is often determined by lack of awareness on the subject matter and insensitivity towards disability. For instance, persons possibly with disabilities participating in sports event organised by Rustavi Sport Schools Development Centre and supported by Rustavi city hall, wore t-shirts with a writing 'PwDs' on them. The Public Defender of Georgia responded to this fact by releasing a public statement to highlight that such actions contributed to strengthening discriminatory stereotypes and prejudices towards with persons with disabilities as the writing on T-shirts underline the difference between persons with disabilities and other members of society and fosters greater marginalisation of the former.[832]

Children with Autism Spectrum Disorder and their parents are particularly affected by inappropriate treatment and prejudices that public often demonstrates towards persons with disabilities. Since behaviour of children suffering from Autism Spectrum Disorder is difficult to manage, they and their parents often fall victims of hostile attitudes in public transport and schools.

At the same time, low level of awareness on special needs of persons with disabilities among law enforcement agencies is widely believed to be a challenge. On the other hand, policy failure has led to the situation whereby special needs of persons with disabilities are overlooked. There are reasons why law enforcement agencies find it difficult to handle the situation in a way to protect rights and freedoms of persons with disabilities.

Yet another challenge is underdeveloped legislation regulating the field of inclusive education. More specifically, there is little clarity in roles assigned to the multi-disciplinary team, specialised teacher and parents. Nor is it clear who has the responsibility to address problems encountered by children involved in inclusive education process.

The Public Defender has established several cases involving discrimination on the grounds of disability or those facilitating disriminatory treatment. A recommendation was issued to the Ministry of Internal Affairs concerning a case whereby a person in a wheelchair under the police custody had to rely on a good will of the law enforcement staff to help him/her use a bathroom. Road police officers involved in the case above, did not allow the applicant to take a wheelchair out of the bagage compartment and use a bathroom as a result of which the applicant had to urinate in the vehicle.[833] In september 2016 the Ministry of Internal Affairs of Georgia notified the Public Defender that the Georgian MIA Academy had developed a syllabus 'communication standards for treatment of persons with disabilities'. In 2016 the programme was attended by 31 individuals and at the moment the syllabus is being incorporated in a specialised professional curriculum designed for road police and neighbourhood police officers.

<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-transgenderi-qalis-mimart-dzaladobis-faqttan-dakavshirebit.page>
<http://www.ombudsman.ge/ge/news/saxalxo-damcveli-qedis-sakrebulos-wevrebis-seqsistur-gamonatqvamebs-exmianeba.page>
Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-girchis-winasaarchevno-reklamastan-dakavshirebit.page
Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-zestafonis-municipalitetis-motxovnas-sqesis-nishnit-diskriminaciad-miichnevs.page
Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-shshm-adamianebis-mimart-diskriminaciuli-stereotipebis-xelshewyobis-faqttan-dakavshirebit.page
Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-miichnevs-rom-gadacema-kacebis-dros-promo-genderuli-stereotipebis-gamyarebas-uwyobs-xels.page;

832 Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-shshm-adamianebis-mimart-diskriminaciuli-stereotipebis-xelshewyobis-faqttan-dakavshirebit.page

833 The complete version is provided in Georgian at: http://www.ombudsman.ge/uploads/other/3/3868.pdf

In 2016 the Public Defender issued a general proposal addressing the Georgian Ministry of Education and Science on the possibility for preventing discriminatory treatment against children with disabilities in the system of inclusive education. According to the general proposal, the absence of an adequate legislative framework for inclusive education, may result in the of rights of children with disabilities. In his general proposal the Public Defender made a reference to an instruction of a director of school N41 prohibiting a child with Autism Spectrum Disorder to attend classes when late. The case suggests that similar situations are often dealt with solely by directors using their personal judgement while parents of children and specialised teacher are excluded from a decision making process. The Public Defender calls on the Ministry to closely scrutinise a unilateral instruction made by the director of school N41 and take measures to raise awareness among teachers of the school on principles of inclusive education. The Ministry should also accelerate the process to finalise the legislative base to specify functions of the multi-disciplinary team of education, a role of the specialised teacher and identify measure to make the latter's performance more effective. The Public Defender believes that the law should also provide detailed description of rights and responsibilities of all parties engaged in inclusive education and pay close attention to the role of parents of children with special learning needs in the process of education.

SEX AND PREGNANCY

Cases of alleged discrimination based on sex which are generally committed against women constitute an important aspect of the routine practice of the Public Defender's Office.

Contractual and labour relations is the sphere where women tend to be subject to discriminatory treatment on a regular basis. The analysis of cases by the Public Defender reveals that employers tend to look for men for managerial positions involving higher responsibility while as a rule '20-25 year-old pleasant looking men' are sought after to perform tasks which do not require particular qualifications'. The problem is complex: on the one hand there are employers setting discriminatory requirements for the employment, and on the other hand advertising webpages where such announcements are placed, also contribute to the spread of discriminatory statements. The Public Defender, either based on applications or personal initiative, has been examining advertisements which contain discriminatory criteria. In spite of the fact that there are hundreds of such announcement, no defendant has been able so far to provide justification for such a decision.

In 2015 in order to eliminate such a discriminatory practice, the Public Defender issued a general proposal to the management of the employment website www.jobs.ge.[834] A year later the Public Defender issued a recommendation to Elit Service LTD further to the establishment of direct discrimination on the ground of sex,[835] and arising from unjustified and selective treatment in pre-contractual relations However, there has not been any response from either recipient. The Public Defender also submitted an onion of the friend of the court on alleged cases of discrimination based on sex. [836] Materials of the case suggest that Zestaponi municipality Gamgeboa did not offer a contract to a female candidate because one of the members of the competition commission believed that a man would be better capable of performing duties pertaining to the position in question.

Such advertisements are not a one-off case and in addition to making focus on sex, such announcements often highlight requirements of age and marital status. Such announcements put women at a disadvantage while this attitude further reinforces deeply rooted stereotypes and prejudices promoting the idea that women have less capacity to hand high responsibility assignment. Particularly alarming is the tendency of such practice

834 The complete version of the general proposal in Georgian is available at: http://www.ombudsman.ge/uploads/other/2/2501.pdf
835 The complete version of the recommendation in Georgian is available at: http://www.ombudsman.ge/uploads/other/3/3433.pdf
836 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3595.pdf

being pursued by those companies which are widely expected to demonstrate social responsibility and play an important role in ensuring quality in the country.

Examination of vacancy announcements clearly indicate to an apparent gap in the legislation which allows bodies of private law to elude the Public Defender's request for the provision of information. Nor do private bodies have an obligation to uphold or respond to recommendations issued by the Public Defender or justify which legitimate grounds they based their decision to apply restrictive criteria for employment.

During the reporting period the Public Defender paid close attention to sexist advertisements and commercials which became a subject matter of numerous general proposals and public statements. Considering the fact that gender stereotypes towards appearance of the woman as well as her role in public life have long penetrated into public perception, release of sexist quotes and video commercials further reinforce prejudices and ultimately undermines the principles of equality.

A general proposal was issued to Tabula TV channel,[837] advising its staff to remove a video commercial which shows food placed on a woman's naked body. The promo objectifies a woman's body and depicts it as an item devoid of any value. The Public Defender also issued a general proposal to 'Vakis Auzi' (Vake swimming pool) calling on the latter to remove a notice notifying women clients that they 'are not allowed to use the swimming pool during periods'. The Public Defender believes that such notices are not gender neutral and contributes to reinforcing stereotypes about women's biological characteristics.[838]

At the same time, the Public Defender issued a public statement referring to sexist attitudes demonstrated by members of the Keda municipal council who demanded that women leave the meeting room as they were going to discuss personal issues.[839] The Public Defender also criticised a promo of a show 'Men's Time' aired on the Public Broadcaster the content of which diminishes functions of women and highlights dominant role of men: according to promo as women work at sewing machines, men are thinking of exploring space where they plan to take women so that 'they are not bored there'.[840] The Public Defender initiated the examination of a regulation adopted by JSC Metro Georgia which encourages segregation based on sex. According to the regulation in question passenger can purchase a ticket only next to the person of the same sex. Importantly, JSC Meto Georgia accepted the recommendation and made a decision to add a new parameter to the company's webpage and give a passenger to tick an option if s/he does not mind having a seat next to a person of opposing sex. In their response to the recommendation the company's management advised the Public Defender that full implementation of the new feature may take a few more months.[841]

Observations have also revealed that non-governmental organisations and independent researchers are often subject to certain restrictions while looking into cases involving harassment and other forms of sexual discrimination as the way court decisions are warded does not allow the identification of parties, witnesses and third persons involved in the case.

Considering the above said the Public Defender issued a general proposal to the civil court and the High Council of Justice,[842] advising that decisions on cases involving sexual and other forms of discriminations should be written in such a manner to allow, after licensing, for the identification of protected grounds (for instance, sex, religion, ethnic background, sexual orientation etc) with regards to individuals involved in the case, which are important for determining the motive of discrimination.

837 The complete verion is provided in Georgian at: http://www.ombudsman.ge/uploads/other/4/4008.pdf
838 The complete verion is provided in Georgian at: http://www.ombudsman.ge/uploads/other/4/4051.pdf>
839 Available in Georgian at: http://www.ombudsman.ge/ge/news/saxalxo-damcveli-qedis-sakrebulos-wevrebis-seqsistur-gamonatqvamebs-exmianeba.page
840 Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-miichnevs-rom-gadacema-kacebis-dros-promo-genderuli-stereotipebis-gamyarebas-uwyobs-xels.page
841 Available in Georgian at: http://www.ombudsman.ge/ge/news/metro-djordjiam-diskriminaciuli-praqtikis-agmofxvris-miznit-saxalxo-damcvelis-rekomendacia-gaitvaliswina.page
842 Available in Georgian at: <http://www.ombudsman.ge/uploads/other/4/4092.pdf>

In his general proposal the Public Defender stated that lack of access to diversified information based on sex or other protected grounds of discrimination prevents researchers from examining the court practice regarding discrimination while independent researchers and non-governmental organisations can play an important role in combating violence against women and various forms of discrimination. It has been three years since discrimination was banned in all areas and therefore analysing court practice by researchers and human rights advocates is of utmost importance in order to accurately assess the situation in equality and prevention of discrimination.

In his general proposal the Public Defender called on defendants to process statistical data on discrimination cases in a manner which specifies grounds for discrimination and an outcome of court hearing. The Public Defender also believes that claims and decisions concerning discrimination should also be registered. The High Council of Justice has been advised to extend the coverage of this standard to courts of all three instances. The defendant expressed their readiness to cooperate with the Public Defender with respect to issues raised in the latter's general proposal.

The practice of the Department of Equality suggests that pregnant women form a group which often falls a victim of discrimination. Different treatment of pregnant women represents a spesific form of discrimination as women have limited capacity to exercise their rights while fulfilling their biological functions. The Public Defender has regarded pregnancy as an independent and protected grounds and issued two recommendations on established cases of direct discrimination on the above mentioned grounds. The recommendations have been issued to a microfinance organisation KREDO[843] and Akhali Mzera (new vision) Ltd.[844] In the recommendations the Public Defender called on the receipients to restore former staff members dismissed on the grounds of discrimination and lead all activities with respect to the principles of equality. Notably, discriminatory treatment of pregnant employees was undertaken by employers who, after the expiration of respective contracts, refused to renew contracts for various formal reasons.

Importantly, the microfinance organisation CREDO fully upheld the recommendation and restored the applicant to her position, concluded permanent employment contract with letter to be resumed after the end of maternity leave. In addition, the applicant was fully reimbursed expenses incurred due to medical treatment and compensated salary for the requested period. Also, further to a directive issed by a director of CREDO, a written warning to the applicant was revoked.[845] The response represents an example of respect to the right to equality and social responsibility demonstrated by the private sector. Importantly, the applicant had indicated that she was encouraged to appeal to the Public Defender by a recommendation issued by the latter to CREDO Ltd. As for Akhali Mzera Ltd, its management notified the Public Defender that the recommendation was not upheld as the administration had not been informed on the pregnacny of the applicant and therefore, the request was regarded as groundless.

SEXUAL ORIENTATION AND GENDER IDENTITY

Like other vulnerable groups, individuals are often denied their right to equality on the ground of their sexual orientation. Discriminatory treatment towards this group is often caused by deeply rooted stereotypes. Cases involving the violations of rights of LGBT community clearly demonstrate that perceived membership to a certain group may trigger isolation of its members regardless of whether or not the individual perceives himself or herself a member of such a group. During the reporting period the Public Defender of Georgia

843 The complete version is available in Georgian at: http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-kerdzo-kompanias-orsulobis-nishnit-shromit-urtiertobebshi-diskriminaciis-agmofxvris-shesaxeb-mimarta.page

844 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3877.pdf

845 Available at: http://www.ombudsman.ge/ge/news/shps-kredom-orsulobis-nishnit-diskriminaciis-agmofxvris-shesaxeb-saxalxo-damcvelis-rekomendacia-sheasrula.page

became aware of the situation whereby an NGO working on rights of LGBT persons which had a term 'LGBT' in its title, had to change the name after numerous failed attempts to hire an office as landlords would refuse to rent them their property after finding out the name of the organisation.

In the 2015 parliamentary report the Public Defender advised the Ministry of Labour, Health and Social Affairs on the need for amending Annex 1 of the Order N241/□ of the Ministry dated 5 December 2000 in such a way to allow individuals falling under MSM (man having sex with man) group to donate blood beyond the window period. In his recommendation the Public Defender noted that while modern technologies have become widely accessible, a total ban on the donation of blood by MSM group without individual assessment represents a discrimination based on sex and sexual orientation. As far as the Public Defender is concerned the Ministry has not yet started working on this issue.[846]

It should be noted that the Ministry of Corrections of Georgia complied to the recommendation of the Public Defender,[847] which concerned, presumably, the placement of LGBT prisoners in inappropriate conditions. In the recommendation the Public Defender indicated that prisoners perceived to be members of LGBT community by the administration live in a maintenance part of N19 penitentiary facility designated for prisoners with TB[848]. Unlike other parts of the facility, there are no appropriate living conditions in this part which may, in turn, further deteriorate health conditions of prisoners living there.

In this case the Public Defender did not take measures to establish whether or not the prisoners in question, in fact, belonged to LGBT community as perceived membership of prisoners to LBGT community by the administration which has been used as grounds for degrading conditions, constitutes direct discrimination based on alleged sexual orientation.

In regards with the recommendation above, the Ministry of Corrections notified the Public Defender that the maintenance wing of N19 penitentiary facility has been rehabilitated. A presentative of the Public Defender visited the facility to inspect the situation. In their letter the Ministry also noted that health status of prisoners paled in the maintenance wing has considerably improved and one of them has successfully finished a treatment-rehabilitation course.

During the reporting period the Public Defender responded on several occasions to commercials which encouraged discrimination including on the grounds of gender identity. For instance, a video commercial released by CC Loan Ltd mocks a transgender person, who, in order to get his/her hands on money, chooses to engage in prostitution.[849]

RELIGION

Most of cases of alleged discrimination based on religion processed by the Public Defender throughout 2016 involved tampering with the right of religious organisations to religious premises. With regard to the above said, the Public Defender issued opinions of the friend of court in 2015 and 2016 concerning a permit to

846 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/4/4015.pdf
847 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/4/4013.pdf
848 There has been a practice in penitentiary institutions which suggests that some prisoners are placed in a part of the premises were prisoners responsible for maintenance and cleaning serve. If there is even a slightest doubt that te prisoner may have been engaged in sexual intercourse with an individual of the same sex, the prisoner is placed in the maintenance wing of the premises in isolation from other prisoners. Otherwise, he may be exposed to serious danger from fellow inmates. The maintenance wing may also home those individuals who have committed violent sexual crimes or those who have been assaulted by other inmates. Unwritten prison rules offer a number of derogatory nicknames for prisoners who live in the remote wing of the premises and are responsible for maintenance and cleaning. The communication of such prisoners with their fellow inmates is restricted. The maintenance part of the prison is often referred to by prison administration and prisoners as a 'residence for sexual minority'.
849 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/4/4000.pdf

construct religious building to Jehovah's Witnesses [850] and the Catholic Church[851] as well as an incident during which local community pinned a pig's head at the door of boarding school owned by the Muslim community.[852]

In September 2016 the Public Defender issued his first recommendation addressing the issues of equality and discrimination on religious ground.[853] The recommendation was submitted to Tbilisi city Gamgeobaand 'Kobuletis Tskali' (Kobuleti water company) Ltd. According to materials of the cases, premises that the local Muslim community has been holding on lease with the purpose of opening a boarding school for Muslim children, has not been yet attached to a plumbing system as the local community who perceives themselves as Orthodox parish has opposed to the construction of the boarding school and hampered plumbing activities. The examination of the case revealed that the defendants agreed to resume works provided that confrontation had been mitigated. However, the Public Defender believes that remedies that the local authorities have chosen to de-escalate conflict and maintain peace among the communities, are not appropriate as these remedies put the Muslim community at disadvantage as they are denied their rights to exercise the freedom of religion by being restricted the right to property, based on the will of the dominant religious group. The Public Defender also appealed to the Ministry of Internal Affairs on the case above, to address the resistance demonstrated by the local community. In their communication Kobuleti Gamgeoba notified the Public Defender that 'Kobuleti Tskhali' Ltd was tasked to resume the work on the plumbing system. However, no respective measures have been taken at this stage.

CITIZENSHIP

Analysis of cases currently under proceedings of the Public Defender's Office, differential treatment mostly on the basis of citizenship, exists between citizens of Georgia and those of other states/stateless persons. There have been cases when private banks refused to provide service to citizens of specific countries.

The Public Defender issued a recommendation[854] to the Ministry of Corrections raising a concern with regards to inaccessibility of Hepatitis C state programme for inmates who fail to produce a 11-digit Georgian identity card. In a response to the recommendation, the Ministry of Corrections indicated that limitations for non-Georgian citizens to benefit from the programme served the security of the medication so that they would not be taken outside the Georgian borders.

While processing the case, the Public Defender made an emphasis on the fact that inmates are subject to the State's control and therefore the latter bears full responsibility for the protection of their health and lives. When inaccessibility to treatment threatens inmates' health and life, the security of medicaments, technical gaps or other reasons cannot be regarded a valid excuse for differential treatment. It should be noted that the recommendation has been upheld and as of today the hepatitis C programme is open to all prisoners regardless of their nationality status.

In his parliamentary report for 2015 the Public Defender indicated that Batumi city hall and the Council had upheld the recommendation concerning different entrance fee to the botanical garden in Batumi for Georgian and non-Georgian citizens, which constituted discrimination on the grounds of citizenship.[855] In the reporting period the Public Defender reviewed a similar application which highlighted a discriminatory nature

850 The complete version is available in Georgian at: https://drive.google.com/file/d/0B9BM3M8hbgAUaFRva1h3bFVWa28/view
851 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/4/4016.pdf
852 The complete version is available in Georgian at: https://drive.google.com/file/d/0B9BM3M8hbgAUWVVXZHhFSWkxRjQ/view
853 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3908.pdf
854 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3381.pdf >
855 The complete version is available in Georgian at: <https://drive.google.com/file/d/0B9BM3M8hbgAUN2dnU3RJeDdwMTQ/view>

of pricing policy of the 'Akhaltsikis Tsike' (Akhaltsikhe castle). It should be noted that the administration of the Akhaltsikhe castle has already notified the Public Defender that the entrance fee will be soon equalised.

PROPERTY STATUS

In his general proposal issued to CC Loan Ltd the Public Defender highlighted a property status as one of the grounds protected from discrimination[856] and noted that the company's commercial about quick loans people experiencing financial hardship are depicted as those who have no moral values.

In a recommendation [857] issued to LEPL Khulo Municipality Union of Kindergarts the Public Defender touched upon the issue of differential treatment in pre-contractual employment. It has been already mentioned that employers often set discriminatory criteria for sex, age or marital status in vacancy openings. However, it was the first case in the Public Defender's practice that a property status was indicated as one of the criteria that applicants had to meet. More specifically, according to the vacancy opening candidates with the worst economic standing would be put at an advantage.

Importantly, it was also the first time that the Public Defender elaborated on the importance of positive discrimination which may represent the most effective means for combating inequality. However, it is important that such measures be taken with specific factual circumstances in mind in order to protect others' right to euqality.

In regards with this case, the Public Defender believes that the affirmative action cannot be regarded as a proportionate means as there was not a unified set of criteria for the assessment of candidates property status and information conveyed verbally by a village community was the only source of verificaiton, which in turn, led to the inclusion of one group of individuals. Notably, the defendant regarded cadidtaes as parts of their families and carried out the financial assessment of family mebers thus neglecting the right to employment as an individual choice. It should be noted that LEPL Khulo Municipality Union of Kindergarts notified the Public Defender that they had accepted the recommendation and were offering a position of a teacher in the kindergarten as a compensation for discriminatory treatment.

FELLOWSHIP

Cases of alleged discrimination based on the membership to a group or union have been primarily observed in relation with individuals who are members of the trade union or other unions or associations. The Public Defender of Georgia has issued two opinions of the friend of court with respect to two cases of alleged discrimination on the grounds of membership of the trade union.[858]

In addition, with the purpose of looking into the violation of the right to eqality in the legal framework for high educaiton, the Public Defender, amidst protest rallies orgnised by students, issued a recommendation to the administration of Ivane Javakhishvili Tbilisi State University and the Government of Georgia calling on amending the Law of Georgia on Higher Education to ensure that the right to participate in the management of educational institution is not limited only to members of self-government body of the institution but can be exercised by all students.[859]

856 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/4/4000.pdf
857 The complete version is available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3672.pdf
858 The complete version is avvailable in Georgian at: http://www.ombudsman.ge/uploads/other/4/4014.pdf> http://www.ombudsman.ge/uploads/other/4/4012.pdf
859 The complete version is avvailable in Georgian at: http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/rekomendacia-gaertianebis-wevrobis-nishnit-diskriminaciis-faqtis-dadgenis-shesaxeb.page

The Public Defender also stressed that a respective entry in the law contradicts a negative aspect of the right to association as for the student to participate in the management of his/her school or university, s/he has to be a member of the self-government budy of the higher education institution, a precodition which represents a indirect mechanism of duress and restricts the negative aspect of the right to association. Due to the violation of the negative aspect of the right to association, students who are not members of the self-government body are at a disadvantage in comparison with their fellow studnets who are members of the self-government body. The purpose of the legal norm is ambiguous and does not provide much clarity as to why a student, against his or her free will, has to become a member of a unioin or associaiton in order to exercise some rights.

In June 2016 the Administration of the Government of Georgia notified the Public Defender of Georgia that the Government had accepted the recommendaiton above and works were planned to start shortly.[860] In November 2016, the Public Defender of Georgia reappealed to the Government of Georgia regarding the recommendation. The latter referred the letter to the Ministry of Education and Science. The Ministry, in its turn, notified the Public Defender's Office that respective amendments had already been developed with due consideration of issues related to the reform of the self-government body of the higher educaiton institution. The communicaiton also stated that negotiations and reviews would be held with respective committees of the 9th Parliament.

HEALTH CONDITION

In 2016 the Public Defender of Georgia reviewed one case concerning the encouragement of discrimination based on health condition. A general proposal of the Public Defender on the prevention of discirmination on health grounds is a response to false information on AIDS/HIV and drug-dependant individuals provided in a biology textbook for eith graders. The information provided in the above mentioned textbook is not properly researched and reflects commonly upheld wrong perceptions. More specifically, the textbook labels a drug-dependant individual as a 'drug addict' and depicts him or her as dangerous for public. In addition, the texbook does not differenciate between HIV and AIDS and provides incorrect information on the contagiosity of diseases as well as means for combating.

In addition to numerous problems caused by the spread of stereotypical information on the above mentioned diseases in public, it is of great improtance that such information not be provided in school textooks. This practice may encourage children to develop percetions that can lead to marginalisaiton of certain groups and promote stereotypical thinkin from early years. However, the Ministry of Education and Science notified the Public Defender that recommendations would be considered at the next stage of textbook licencing.

INVESTIGATION OF ALLEGED HATE CRIMES

The practice of the Public Defender suggests that investigations of alleged hate crimes by law enforcement bodies have posed serious challenge to the protection of the right to equality. The Public Defender have reviewed numerous cases in which applicants have claimed that they have been subject to discriminatory treatment based on their religion, ethnic background or sexual orientation. The Public Defender notes that due to the neglect of a motive of discrimination demonstrated by investigation bodies, the importance of such crimes remains largely overlooked. Even when perpetrators are found guilty, the latter have no comprehension as to why they are punished and therefore, the punishment is devoid of preventative effect.

860 Available in Georgian at: http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-rekomendacia-gaitvaliswines.page

The Public Defender believes that ignoring a motive of hate crimes or failure to pay due attention may serve as grounds to believe that responsible agencies demonstrate discriminatory treatment. In addition, the situation is further exacerbated by the fact that there is poor public awareness of those regulations that guide the work of the Prosecutor's Office while investigating hate crimes.

In October 2016 the Public Defender released a public statement with respect to a murder of a transgender woman and called on investigation bodies to conduct comprehensive, full and impartial investigation of the murder and take measure to identify a motive qualifying the murder as a hate crime.[861] The main challenge associated with the investigation of similar cases is the proper qualification and lack of investigation proceedings to identify alleged hate motive.

On the one hand there are cases when crimes are not qualified in accordance with those articles of the Criminal Code of Georgia[862] which concern the violation of the right to equality and therefore, the presence of hate as a motive of the crime. In many instances, the above mentioned circumstance leads to the termination of an investigation due to the absence of signs of a crime, while in some instances the investigation is undertaken under the Code of Administrative Offences of Georgia. Importantly, the Administrative Offences Code does not regard hate as a qualifying sign or aggravating circumstance of an offense.

Several cases reviewed by the Public Defender were closed because of the fact that alleged crimes were not qualified as violating the principles of equality, nor were signs of crimes identified. For instance, according to factual circumstances of one of these cases, an applicant and his/her family members have regularly suffer insult and intimidation from their neighbours. An investigation was launched on alleged battering, however, as neither battering or other forms of violence could not be established, the investigation was eventually terminated. Yet in another case involving verbal assault to Jehovah's Witnesses and the breakage of a stand of religious purposes, the investigation was launched into damage incurred to an item. However, as signs of the crime were not identified, an individual indicated by the applicant was found guilty just in administrative offence. An investigation into smashing windows of Jehovah's Witnesses royal hall qualified as a damage incurred to an item was also terminated as the amount of damage incurred in each of the cases did not exceed 150 GEL. Due to the absence of signs of a crime the investigation was not launched into an incident involving an individual who had been secretly recording and uploading conversations among Jehovah's Witnesses to www.youtube.com. The same individual would regularly visit a yard of the Jehovah's Witnesses congress hall holding up placards in his/her hand with derogatory and insulting content. The Public Prosecutor's Office notified the Public Defender that during interviews both the applicant and suspected felon confirmed that recordings had been uploaded to the YouTube. The Public Defender believes that had the fact been reviewed in the context of equality, it would have been possible to establish the truth including the identification of hate motive.

On the other hand, the nature of investigative actions to ascertain whether or not the crime has a hate bias, remains ambiguous. The Public Defender has reviewed numerous cases concerning this issue. For instance, investigative bodies failed to identify the presence of elements of hate in those cases whereby transgender individuals claimed that had fallen victims of physical abuse in the streets. Nor was the presence of discrimination established with respect to a case involving threats against an individual who had been protected the interests of LGBT community.

Importantly, in many instances discriminatory treatment is based on not as much by an intential or motivated act, but rather is encouraged by those negative sterotypes and powerful stigma that are deeply rooted in public. In most cases such an attitude steps from the lack of information on certain groups and misperceptions that such groups may pose some kind of danger. A single fact of encouraging or promoting discrimination may

861 Available in Georgian at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-transgenderi-qalis-mimart-dzaladobis-faqttan-dakavshirebit.page

862 The Criminal Code of Georgia Art. 142 (violation of equal rights), Art. 142[1] (racial discrimination), Art. 142[2] (restriction of rights of persons with disabilities, Art. 156 (persecution).

lead to a numerous cases involving discriminatory treatment. Therefore, it is pivotal that wider public has access to accurate information on rights of vulnerable groups so that its members are not subject to prejudices. Raising public's awareness on the improtance of the elimination of discrimination in the country is very likely to be an isntrument as powerful as legal protection mechanisms. Importantly, public awarenes raising is a time-consuming process and requires consistent actions and intense work with verious societal groups.

RECOMMENDATIONS

To the Parliament of Georgia

- Amend respective legal acts in a manner which contributes to the implementation of the right to equality and the elimination of discrimination

High Council of Justice of Georgia and Tbilisi City Court

- Decisions on cases invoving discrimination based on sex should be written in such a manner to allow the identification of sex of parties, witnesses and third pirsons after barcoding of such cases is finalised. It is important that such cases are registered and respective entries made to the registry.
- Files of cases involving discrimination should be compiled in such a way to allow identification of sex, religiou, race, ethnic or national background, language, age and other individual characterstics of parties, witnesses and third persons.
- Information on cases involving discrimination shoud be prossessed in a manner which indicates grounds protected from disrimination and an outcome.

To the Government of Georgia

- Elaborate draft changes to the Law of Georgia on Higher Education in order to comply to the principle of euqality and and ensure the participation in the management of the higher education institution for all students regardless of their membership to an association or union.

To the Ministry Internal Affairs of Georgia

- Provide trainings and other relevant activities for the Ministry's staff on theoretical and practical aspects of the rights and needs of persons with disabilities.
- Develop a guiding document for the effective investigation of hate crimes

To the Ministry of Education and Science of Georgia

- Accelerate the process of improving legal and normative famework regulating the sphere of inclusive educaiton including. More specifically, the Ministry is advised to devlop detailed job descriptions for an inclusive education multidisciplinary group, specialised teachers, as well roles and responsbilities of other parties including parents.

- Replace incorrect information provided in a biology textbook for the eith grade[863] with accurate and verified information on persons with drug dependency, AIDS and HIV.

To the Ministry of Labour, Health and Social Affairs of Georgia:

- Develop a textbook work on equal treatment during recruitment
- Amend Annex 1 of the Order N241/□ of 5 December 2000 of the Minister of Labour, Health and Social Protection to ensure that individuals falling under MSM category are able to donate blood beyond a window period.

To the Prosecutor's Office

- Take respective investigation measures to identify a hate motive while investigating cases involving allged hate crime
- Revise and further improve a guiding document (with an input from specialists of the field) used by the Public Prosecutor of Georgia during the investigation of alleged hate crimes.

To Kobuleti Municpality Gamgeoba

- Support 'Kobuleti Tskali' Ltd in proceeding with blumbing work at 13, Lermontovi street, Kobuleti.
- Take measures to ensure awareness raising among local commutiies and the protection of rights to equality for religious groups residing in the municipality.

863 Malkhaz Makashvili, Rusudan Akhvlediani. Klio Publishing, Meridiani Publishing, 2012, barcoded in 2012 by the National Center of Educational Quality Enhancement at the Ministry of Education and Science

RIGHT TO VOTE

The exercise of the right to vote is directly linked to the existence of democratic order. Election issues are regulated by the Constitution of Georgia and the Election Code of Georgia.

On 22 June 2016, an interim local election was held in Zugdidi municipality while on 8 October 2016, the parliamentary election was held in Georgia.

Representatives of the Public Defender monitored more than 1 300 polling stations in the parliamentary election on 8 October 2016. The monitoring revealed procedural violations which had no significant effect on the voting results. The bulk of violations resulted from the lack of qualification of members of precinct electoral commissions.

PRE-ELECTION PERIOD

The analysis of cases[864] studied by the Public Defender of Georgia makes it clear that the majority of violations or criminal actions that occurred in the pre-election period were a result of lack of sensitivity among activists and a segment of society towards democratic values and healthy election process. Such actions included the damage and destruction of banners, placards and billboards of electoral subjects, incidents and facts of violence in election headquarters of various candidates. The Public Defender of Georgia believes that alongside the state and civil society, political associations must also play an active role in the improvement of existing reality. With a corresponding will and efforts they can contribute to the formation of healthy pre-election environment. The information provided to voters about the changes in boundaries of electoral districts was not sufficient and caused problems in the regions populated with ethnic minorities.

In several cases, the Office of Public Defender was not able to carry out a legal response due to failure of applicants to provide comprehensive information/documentation necessary for the study of cases. In the pre-election period, the Office of Public Defender received information from political parties and electoral subjects about instances of pressurizing voters. A large amount of information provided by applicants was not supported with corresponding evidence while some pieces of information were denied by those persons who were named as victims in the applications. In written applications submitted to the Office of Public Defender as well as in oral statements to representatives of Public Defender, applicants complained about violations such as physical attacks when disseminating promotional materials, threats to be fired from jobs because of political affiliations, and demands that they attend meetings.

864 The political party, United National Movement, repeatedly applied to the Public Defender of Georgia concerning various election-related issues.

The Public Defender also received a number of reports about alleged use of administrative resources during election campaigns; however, the examination of these allegations showed that representatives of administrative bodies, local or central government, participating in the campaign, were on paid leaves.

Damaging and tearing away promotional materials and election placards, spreading placards over existing ones, damaging billboards, et cetera, were carried out on a massive scale across Georgia. There were instances of placing promotional materials on facades of administrative buildings, which represents a violation of requirements of Election Code of Georgia.

Although local self-governments set a maximum amount of promotional materials and allocated special places for placement thereof, the promotional materials of the election subject, the Georgian Dream, prevailed across Georgia in most cases. Moreover, during a visit of Justice Minister Tea Tsulukiani, promotional materials of candidates from the United National Movement, placed along the central road, were torn away.

Instances of damaging and destroying banners of United National Movement were observed in various regions across Georgia; the Interior Ministry conducted a relevant expertise on these incidents and initiated investigation into them.

EXPLOSION OF GIVI TARGAMADZE'S CAR

Three days ahead of the election, on 4 October, an unfortunate incident happened; particularly, the car of Givi Targamadze from the United National Movement, with Givi Targamadze and a driver sitting in, was blown up. They as well as passersby got injuries. With regard to this case, a letter #13/69045 of 31 October 2016 from the Chief Prosecutor's Office of Georgia informed the Public Defender that the investigation had been launched into premeditated murder attempt under aggravating circumstances. On 14 October 2016, a D.Kh. was charged with the crimes envisaged in the following article of the Criminal Code: Article 19; Subparagraph C of Paragraph 1, Subparagraph E of Paragraph 2 and Subparagraph A of Paragraph 3 of Article 109; subparagraphs 2 and 3 of Article 236. A criminal proceeding was also instituted against B.Ch. under Subparagraph 2 of Article 236 of Criminal Code. According to available information, B.Ch. was found guilty on 9 February and was sentenced to imprisonment for four years which was replaced by six years of conditional sentence. According to official statement, the prosecution disagrees with the conditional sentence and is going to appeal this decision.[865]

In the Public Defender's view, it is alarming when such a fact happens three days before the election. It is important to undertake adequate legal measures against offenders.

DAMAGE AND DESTRUCTION OF BANNERS/PLACARDS/BILLBOARDS

According to information provided by the political party, United National Movement, to the Office of Public Defender, 17 incidents of damage and destruction of banners/placards/billboards of various single-seat candidates took place in Tbilisi and Mtskheta. As we were informed,[866] criminal proceedings were instituted under Paragraph 1 of Article 187 of the Criminal Code (Damage or destruction of property) in regard to five of these incidents. As for other incidents, as the final report of the activity of Interagency Commission

865 Available at: http://pog.gov.ge/geo/news?info_id=1136 [accessed on 28.03.2017]
866 Letter #2921064 of the Interior Ministry, 22 November 2016.

for Free and Fair Elections[867] said in regard to seven incidents, the Municipal Department for Supervision of Tbilisi City Hall[868] "was unable to identify the location indicated in the letter because the addresses of objects were not indicated;" in regard to four incident, it was impossible to identify offenders; while in regard to one incident, undertaken measures resulted in a court imposing a relevant administrative sanction (fine) on an offender.

The Public Defender of Georgia condemns obstructions to the spread of promotional materials in pre-election period by activists of various political associations or private persons and hopes that with the democratic values strengthening in society, such incidents will reduce in future.

FACTS OF STORMING AND DAMAGING OFFICES OF CANDIDATES

On 2 September 2016, the election headquarter office of Elene Khoshtaria, a single-seat candidate for Vake constituency from the United National Movement, was damaged. In regard to this fact, a criminal proceeding was instituted under Paragraph 1 of Article 187 of the Criminal Code of Georgia (Damage or destruction of property) and various investigative actions were carried out.[869]

The Public Defender called on law enforcement agencies to investigate this fact in a timely manner and undertake adequate legal measures against a culprit(s).

According to reports, on 19 September 2016, an offence was allegedly committed in the office of single-seat candidate from Georgian Dream-Democratic Georgia Levan Gogichaishvili.[870] The investigation did not establish signs of offence[871] and the investigation launched under paragraphs 2 and 3 of Article 236, was terminated.[872]

The Public Defender of Georgia deems it important that activists refrain from action that trigger conflicts and harm a peaceful pre-election environment.

ALLEGED VIOLATIONS OF CAMPAIGN RULES, VOTER BRIBERY AND USE OF ADMINISTRATIVE RESOURCES

Applications submitted to the Office of Public Defender contained allegations about the use of administrative resources in the pre-election period. The applications indicated about the use by members of polling station commission[873] of a vehicle that was on the balance sheet of a self-government unit.

Based on the materials of the case it was established that a member of polling station commission, who simultaneously was an employee of self-government unit[874], was on the paid leave in the pre-election period

867 The final report of Interagency Commission for Free and Fair Elections is available at http://justice.gov.ge/Ministry/Index/489 [last accessed on 13.12.2017].

868 According to Paragraph 4 of Article 93 of the Election Code of Georgia, the relevant local self-government bodies shall draw up protocols of administrative offences concerning illegal removal, tearing off, covering, or damaging of election posters, in terms of the administrative offences referred to in Article 80 of this Law.

869 Letter #2322668 of the Interior Ministry, 15 September 2016.

870 In particular, activists of the political party United National Movement entered this office; according to reports, they were armed and made an attempt to stage a provocation.

871 Letter #2857899 of the Interior Ministry, 15 November 2016.

872 Letter #2857899 of the Interior Ministry, dated 15 November 2016, explained that there was no physical confrontation; persons having arrived at the office were inebriated, they did not arrive there with any concrete intention, when leaving, a registered air pistol accidentally fell out of one's pocket, there was no gun toting.

873 №12 polling station of Krtsanisi election precinct in Tbilisi.

874 Tbilisi municipality, Krtsanisi self-government executive body.

and during this period traveled to the polling station in a car being on the balance sheet of self-government unit. According to provided explanation, the commission member use the car on a non-working day. Although the use by the commission member of the car in favor of a political party was not established, the use of office cars in non-working days is one of the problems observed in state bodies.

According to the United National Movement, on 29 June 2016, teachers of public schools in Chughureti district, undertook free medical tests at the Saint Michael Clinic; this event was organized by single seat deputy from Chugureti district and chairperson of Georgian Dream-Democratic Georgia faction of Tbilisi city council, Rima Beradze, and the head of non-profit (non-commercial) legal person Georgian Dream – Healthy Future, Ketevan Barateli. The applicant believed that this event represented voter bribery. Based on evidence obtained by the Office of Public Defender it was established that on 28 June 2016, the announcement was made on Kavkasia TV (the program Tkveni Dro) that the medical institution provides free medical tests on each Monday.[875] Within the scope of this action, alongside teachers, free medical service was rendered to other patients too. One should also note the results of the survey of teachers who said that they learned about free medical tests from TV and arrived at the clinic on their own and at their expenses.[876] It should also be noted that the clinic permanently organizes open door days and the event on 29 June 2016 was carried out within the framework of humanitarian medical event.[877] A report of administrative offence was drawn up on this case by the State Audit Service,[878] however, the court did not establish the offence.[879] This decision entered into force. The Public Defender of Georgia noted that Rima Beridze was a representative of Georgian Dream political party and an elected official and her activity was associated with the political party. Moreover, reports proved that she participated in the event as a representative of the political party.[880] In the Public Defender's view, participation of representatives of political parties in social, cultural or educational events and spread of information about such events via social networks or media may mislead voters as there is a real threat of such activities to be perceived as events conducted by a political party. As noted in the introduction, alongside state institutions and civil society, political parties also have an important role in ensuring democratic pre-election environment and therefore, representatives of political parties must refrain from actions of above discussed type as they impede the conduct of election campaign in a healthy environment.

ADVERTISING INFRASTRUCTURAL AND ECONOMIC PROGRAMS

The Office of Public Defender learned from information supplied by the United National Movement that in the pre-election period, various TV channels aired advertisements about infrastructural and economic programs implemented by the government, allegedly to favor Georgian Dream political party.[881] The Georgian National Communications Commission concluded that "a video clip does not bear signs of election/political advertisement; in particular, it does not feature any electoral subject or a number assigned to an electoral subject standing in the election. The video clip neither identified any electoral subject nor featured symbols of any political party. Bearing these in mind, the video clip does not bear signs of election campaign (agitation) either, including calls on voters in favor of, or against, an electoral subject/candidate.[882]

The study of the issue by the Georgian National Communications Commission[883] established that in above mentioned cases, advertisements were placed with broadcasters in accordance with Paragraph 2 of Article 66[1]

875 Letter #7849/09 of State Audit Service of Georgia, 20 September 2016.
876 Ibid.
877 Letter #445, dated 12 July 2016, from Saint Michael Multi-profile Hospital.
878 Report N000376 on administrative offence, 06.09.2016.
879 Decision of Tbilisi City Court on Case N4/7202-16, 12.09.2016.
880 Available at http://www.tbsakrebulo.gov.ge/index.php?m=255&news_id=2198 (last accessed on 01.02.2016).
881 Applications N12561/16, N10541/16, N11011/16 and N12976/16 of the United National Movement.
882 Decision N636/22 of the Georgian National Communications Commission.
883 Letters N03/3797-16 and N03/4097-16 of the Georgian National Communications Commission, dated 26 October and 29 November 2016.

of the Law of Georgia on Broadcasting, which allows administrative bodies to procure a broadcaster's service for disseminating important information to the public. Moreover, as explained by the Georgian National Communications Commission, taking into account the existing practice, the placement of video clip in the pre-election period for the aim of disseminating important information to the public does not rule out a possibility of perceiving the video clip as indirectly bearing certain signs of campaign/political advertisement and the Commission deems it necessary to set legislative restrictions on the effect of this article in pre-election periods.

The Public Defender of Georgia believes that the aim of pre-election advertisement and the aim of advertisement procured from the state budget in accordance with the above cited article of the Law on Advertising in the pre-election period may coincide and thus, indirectly serve pre-election interests of the ruling team, in particular, promoting implemented projects for campaigning. This runs counter to the principle of the law prohibiting the use of administrative resources.[884] One should also take into consideration that the law does not specify concrete criteria that would define the aim of disseminating important information to public, as stated in the Law on Broadcasting. Therefore, given the public interest, the responsible entities must conduct transparent and public discussions on this issue and take a decision that would be oriented on the solution of the problem.

THE ELECTION DAY (FIRST ROUND)

Incidents of violence took place on the election day as well as thereafter. Investigation into the physical abuse of the United National Movement on the election day[885] is in progress under Article 125 (Battery) of the Criminal Code of Georgia.[886] Also, investigation into physical confrontation between the supporters of United National Movement and the Georgian Dream after the elections[887] is in progress under Article 125 (Battery) of the Criminal Code of Georgia. According to an investigative body, the participation of representatives of the Georgian Dream-Democratic Georgia election headquarters has not been established.[888] The Office of Public Defender continues the study of these cases.

The Public Defender of Georgia condemns physical abuse of representatives of political associations and hopes that investigative bodies will undertake all possible measures to identify culprits and punish them accordingly.

On 8 October 2016, mobile teams of the Office of Public Defender monitored the voting process on more than 900 polling stations, including polling stations in the penitentiary facility N2[889] and Naneishvili National Center of Mental Health.[890] Employees of the Prevention and Monitoring Department of the Office of Public Defender monitored the vote counting in the penitentiary facilities N8 (in Tbilisi), N15 (in Ksani) and N 17 (in Rustavi).

On the basis of information about election violations, repeated visits were paid to several polling stations.

The monitoring of voting process revealed mobilization of police officers at polling stations. Delays in opening polling stations were observed in Kutaisi, Borjomi, Akhaltsikhe, Aspindza, Bolnisi, Tetritskaro and Zugdidi. There were instances of incorrect filling out of control sheets. Problems were observed in lists of portable ballot boxes and voting procedures. Instances of campaigning at polling stations and interfering in the activity of commissions by representatives of various political parties were detected.

884 Paragraph 1 of Article 48 of the Election Code of Georgia: "Any person having the right to participate in canvassing shall be prohibited from using administrative resources in the course of the election campaign in support of or against any political party, candidate for electoral subject, or electoral subject."
885 8 October 2016.
886 Letter N11602890136 of the Vake-Saburtalo Division of Tbilisi Police Department of Interior Ministry of Georgia.
887 11 October 2016.
888 Letter N2906863 of the Interior Ministry of Georgia
889 The mentioned organization houses №127 polling station of №49 election precinct of Kutaisi.
890 The Naneishvili National Center for Mental Health houses №30 polling station of №54 election precinct.

FACTS OF PHYSICAL CONFRONTATION

While the voting process was largely conducted in a peaceful atmosphere and the procedural violations discussed above had no significant effect on the voting results, the vote counting involved violence in several polling stations. Although large numbers of police officers were mobilized near polling stations,[891] their efforts to diffuse physical confrontation were largely assessed as ineffective by representatives of the Public Defender. Especially violent were the incidents in the villages of Jikhashkari and Kizilajlo.

In particular, during the vote counting, the polling stations N108 and N79 in the village of Jikhashkari, Zugdidi municipality, were raided, resulting in the damage to election inventory and the destruction of ballot papers. Members authorized to be in the polling stations spoke about deliberate inactivity of police officers. According to them, telephones of international observers were seized and damaged. As international observers said, although members of electoral commission directly pointed out participants in the raids who were still there, the police did not undertake corresponding measures. A criminal proceeding was instituted under Article 163 of the Criminal Code against three persons in this criminal case.

A physical confrontation took place at Kutaisi voting station №90between activists of the Georgian Dream and journalists, at around midnight; then, the same activists verbally abused a single-seat candidate from the United National Movement Gigi Tsereteli. Investigation was initiated under Article 187 of the Criminal Code of Georgia.

Both abovementioned violent incidents took place within approximately 30 minutes. More than 10 police officers were at the scene, who diffused the situation. However, actions of police officers were not consistent and effective. A representative of the Public Defender repeatedly called on law enforcement officers to use their official powers, but police officers, citing non-interference into election processes as a premise, virtually limited themselves to the role of observers of offences and only got involved in the physical confrontation at the last minutes.

An incident took place near the polling station. It did not affect the vote counting process.

Especially violent was the incident in the polling station N48 in Kizilajlo of Marneuli precinct N36, where tensions rose because of commission members' campaigning for the Georgian Dream, instances of voters who cast ballots without being marked and the refusal to register complaints.

Police officers who were mobilized outside the polling station did not take any effort to diffuse the tensions despite calls of representatives of the Public Defender. The verbal altercation at the front and rear entrances of the polling station then degraded into physical confrontation; a group of activists tried to storm the building. By that time police officers were already defending the building. Having met resistance from police officers, activists, several minutes later, tried to storm the building again with shouts and stone pelting, inflicting injuries on several police officers.

A special force regiment, ambulance and additional police teams were called in to the scene.

The arrival of a special force regiment further raised tensions but the incident was not repeated.

Persons suspected of participating in the incident at the polling station N48 in Kizilajlo were detained in a special operation on 13 October.

The investigation into the interference with the work of electoral commission and resistance to police was launched under articles 163 and 353 of the Criminal Code of Georgia.

Representatives of Public Defender met detainees at the №1 temporary isolator of Tbilisi and №8 establishment of the penitentiary department.

891 Often without necessity.

Out of six detainees four had physical injuries which, as they claim, they sustained as a result of physical and verbal abuse applied by law enforcement officers during the detention. The Public Defender continues to monitor this criminal case.

MONITORING THE ELECTION DAY IN PENITENTIARY FACILITIES AND THE NATIONAL CENTER OF MENTAL HEALTH

Representatives of the Public Defender monitored the voting process in the penitentiary facilities and the National Center of Mental Health.

The polling station N30 of Khoni precinct N30 at the Naneishvili National Center of Mental Health was opened at 8 a.m. with the first voter casting the ballot at 10 a.m. There were 206 voters on the list but only 139 patients cast their ballots.

The voting process at the penitentiary facilities N8, N17, N15 and N19 went on in a peaceful atmosphere; violations were detected in relation to submission of proper documentation and voters' lists.

THE ELECTION DAY (RUN-OFF)

During the run-off election on 30 October 2016, representatives of the Office of Public Defender monitored the voting process in up to 400 polling stations, including the polling station N127 of Kutaisi precinct N49 in the penitentiary facility N2 where only four out of 12 inmates cast their votes because the identity documents of the latter were not in proper condition. Observers from the International Society for Fair Elections and Democracy NGO and the United National Movement faced problems in entering the mentioned polling station; they were only allowed to enter half an hour later and this delay was explained by the fact that the security officers of the outer perimeter were not warned about their attendance.

The bulk of violations during the 2016 parliamentary elections could be attributed to the lack of training and poor qualification of members of precinct electoral commissions. These shortcomings can be totally eradicated through retraining of electoral administration.

Electoral legislation requires improvement as it often allows for dual interpretation. To avoid problems in realizing the right to vote, it is necessary to replace existing voting method with the modern electronic method; this will significantly improve the election process. The state must allocate financial resources for the introduction of biometric voting method.

RECOMMENDATIONS

To the Parliament of Georgia:

- Review the regulations allowing administrative bodies to procure a broadcaster's service for disseminating important information to the public in pre-election periods in order to avoid the perception of videos placed by the ruling team as political campaign advertising;
- For the avoidance of confusion, properly regulate the issue of withdrawal of candidates from standing in run-off election.

To the Central Electoral Commission:

- Review training standards for members of precinct electoral commission in order to eliminate procedural violations resulting from lack of qualification of commission members;
- For the introduction of biometric voting method, develop the methodology and recommendations, retrain employees of electoral administration.

To the Ministry of Internal Affairs of Georgia:

- Undertake immediate response to statements about physical or psychological pressure on the part of voters, political movements or election subjects and carry out a detailed study into each such alleged offence;
- Improve the control on facts of damaging campaign materials; apply measures envisaged by the law to each such fact in order to discourage such offence;
- Undertake response to each fact of violence in a timely and effective manner and in accordance with the requirements of the law;
- Ensure the enforcement of provisions of the Election Code of Georgia which allow the presence of police officers near polling stations during the ballot only when their presence is necessary to maintain public order or prevent violation thereof; police officers should leave the territory adjacent to the building of polling station once such necessity is eliminated.

To the Prosecutor's Office of Georgia:

- Investigate the case of explosion of car of MP Givi Targamadze in a timely, comprehensive and effective manner in order to bring all accused persons to justice and punish them accordingly;
- Timely investigate the case of damaging election headquarter office of deputy Elene Khoshtaria and other cases of battering and physical confrontation on the day of election and thereafter in order to undertake adequate legal measures against culprit(s).

To executive municipal bodies:

- Respond adequately to each fact of damaging campaign materials in order to prevent encouragement of such practice.

To the Ministry of Corrections:

- Establish an effective system in the penitentiary facilities, which will ensure the supply of comprehensive list of inmates participating in the voting process to precinct electoral commissions.

RIGHT TO PROTECT CULTURAL HERITAGE

The Public Defender of Georgia once again emphasizes[892] an irreplaceable role of cultural heritage, as a cultural value of the state, in social and economic life of the country and a crucial importance of national mechanisms, principles and quality of protection in the realization of the right to protect cultural heritage.

Similarly to previous years, the reporting period was not distinguished for applications from citizens regarding issues of protection of cultural heritage; this once again proves the need of strengthening the culture of protecting this right among public. One of solutions to this problem may be an active involvement by the state of citizens in the process of preservation and development of cultural heritage. The state has a special responsibility in creating favorable conditions, including adequate legislative guarantees, for the development of cultural heritage in the country.

The Office of Public Defender studied several important issues and found out that, on the one hand, legislative regulations require improvement and adjustment to public interests of the protection of cultural heritage, while on the other hand, administrative bodies continue a lawless practice. Besides, there is an acute problem of timely and effective investigation of violations of cultural heritage.

LEGISLATIVE SHORTCOMING REGARDING THE RULES FOR THE CONDUCT OF WORKS ON AND MAINTENANCE OF MONUMENTS

A recommendation[893] of the Public Defender of Georgia was not fulfilled in the reporting period and therefore, the provision of Paragraph 8 of Article 30 of the Law of Georgia on Cultural Heritage is still in effect without alteration. This provision sets an unjustified exception for the Apostolic Autocephalous Orthodox Church of Georgia and other religious confessions, releasing them from the responsibility imposed on the owner/legal user of cultural properties for the maintenance thereof.

According to the information provided by the National Agency for Cultural Heritage Preservation of Georgia, over the period between 23 October 2015 and 29 December 2016, the rules for conducting works on and maintaining cultural monuments were violated in relation of 13 cult buildings.[894]

892 The Public defender extensively discussed the value of cultural heritage and the role of the state in his report The Situation of Human Rights and Freedoms in Georgia, 2015. Available at http://www.ombudsman.ge/uploads/other/3/3891.pdf

893 The Public Defender applied to the Parliament of Georgia with a recommendation and requested legislative amendments to ensure equal treatment of all owners for the violations of the rules for conducting works on and maintenance of monuments of cultural heritage and to apply the responsibility of owners of monuments, stipulated in Article 30 of the Law of Georgia on Cultural Heritage, to every object, including objects in ownership of all religious confessions.

894 These monuments are: Gelati Monastery, Abisi Castle, church in the vicinity of village Baraleti, Dzama Fortress, church of Christ the Savior in the village of Dzabe, church of Christ the Savior in the village of Matskhvarishi in Latali community, church of Archangel

Despite a request from the Office of Public Defender, the Agency did not provide the information about the steps taken towards the fulfillment of the abovementioned recommendation and the position of the Agency concerning the provision of Paragraph 8 of Article 30 of the Law of Georgia on Cultural Heritage.

In the absence of legitimate aim for such exception, it is unjustified for the state to release any religious confession of the responsibility for the maintenance of monuments in their ownership. Consequently, the Law of Georgia on Cultural Heritage needs to be amended so that the provision applies to everyone.

UNFULFILLED OBLIGATION – THE OBLIGATION OF THE MINISTRY OF CULTURE AND MONUMENT PROTECTION TO PARTICIPATE IN A DECISION MAKING PROCESS

In 2016, the legal entity of public law National Environmental Agency carried on its practice[895] of taking decisions on the implementation of large-scale earthworks without applying to the Ministry of Culture and Monument Protection for a relevant opinion. The Public Defender of Georgia has repeatedly explained that this runs counter to the provision of Paragraph 1 of Article 14 of the Law on Cultural Heritage, which makes the implementation of large scale earthworks conditional on a relevant opinion of the Ministry.[896]

The LEPL National Environmental Agency explained[897] that it agrees with the reasoning of the Public Defender of Georgia that "large-scale earthworks" mentioned in Paragraph 1 of Article 14 of the Law on Cultural Heritage implies opencast mining and the mining of minerals. However, the administrative entity also added that the implementation of mentioned regulations stipulated in the law requires certain legislative changes.[898]

The existing practice totally ignored the legislative obligation to protect cultural heritage for many years; the responsibility for such practice must be placed on administrative bodies that take decisions on large-scale earthworks as well as on the primary guarantor of the protection of cultural heritage in the country – the Ministry of Culture and Monument Protection which must perform an active role in the implementation of all necessary measures that serve the interests of the protection of cultural heritage.

INVESTIGATION INTO THE DESTRUCTION OF ARCHEOLOGICAL SITES

In 2015, the Public Defender provided a detailed account[899] of the destruction of archeological sites during the construction of Ruisi-Rikoti road and the responsibility of relevant state entities in relation to that fact. The Public Defender applied to the prosecution of Georgia with a recommendation and demanded a fast and effective investigation of the destruction of archeological sites during the construction of Ruisi-Rikoti road, identification of responsible persons and application of legal measures against them. The Office of Public

in the village of Matskhvarishi in Latali community, church of prophet Jonah in the village of Ienashi in Latali community, church of St. George south to the village of Lahili in Latali community, church of Christ the Savior in the territory of cemetery of the village of Lakhushdi in Latali community, Pkhutreri church of Archangel in Etseri community, monastery of Virgin Mary in the village of Tsilkani, church of Virgin Mary in the village of Akaurta.

895 Letter N12/12907 of LEPL National Environmental Agency, dated 16 December 2016; as of December 2016, LEPL National Environmental Agency issued 274 licenses on the extraction of mineral resources.

896 See details in the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2015; available at http://www.ombudsman.ge/uploads/other/3/3891.pdf

897 One must note as a positive development that in contrast to the written explanation provided in 2015, this time the Agency no longer refers to different regulations of the normative acts and non-specific law.

898 In particular, amendments to the Law of Georgia on Cultural Heritage, Law of Georgia on Entrails of the Earth, Resolution N136 of the Government of Georgia, dated 11 August 2005, On Approval of the Regulation on the Procedure and Terms and Conditions for Issuance of License for Mineral Resources Extraction.

899 See the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2015; available at http://www.ombudsman.ge/uploads/other/3/3891.pdf

Defender inquired about the fulfillment of the recommendation and applied to the Chief Prosecutor's Office of Georgia for a corresponding information.[900]

According to the information provided by the Chief Prosecutor's Office,[901] the investigation into the damage of archeological sites by the China Nuclear Industry 23 Construction Co. LLC, which was launched in 2014 under Paragraph 1 of Article 259[1] of the Criminal Code of Georgia, continues to date. Moreover, according to the prosecution, the investigation has not yet conducted archeological and art expertise.

The Public Defender deems a rapid investigation of this case extremely important and calls on the Georgian prosecution to carry out effective actions and conduct investigative actions.

INVESTIGATION INTO THE DAMAGE AND DESTRUCTION OF ANCIENT SAKDRISI-KACHAGIANI GOLD MINE

Events that unfolded around the ancient Sakdrisi-Kachagiani gold mine were one of acute issues in the past few years. A detailed recount of results of the study into the issue by the Office of Public Defender of Georgia was provided in the report.[902] The Public Defender keeps tabs on the progress of the criminal investigation into the damage and destruction of the gold mine.[903] Unfortunately, the public is still unaware of measures undertaken by investigative bodies and the results of investigation. Nor did a letter sent by the Chief Prosecutor's Office of Georgia to the Office of Public Defender describe carried out investigative actions. No one has been yet identified as an accused and/or a victim in the case.[904] It is worth to note that despite a repeated attempt of the Office of Public Defender, the Chief Prosecutor's Office did not provide it with the information about undertaken investigative actions.[905] Moreover, the entity referred to Paragraph E of Article 18 of Organic Law of Georgia on the Public Defender of Georgia which allows the Public Defender of Georgia to obtain information about those criminal cases the decisions on which have entered into force, although the Public Defender requested information about investigative actions alone, not the materials of the criminal case. The requested information is a necessary precondition for the Public Defender to implement his constitutional power of monitoring the progress of investigation and hence, protecting human rights and freedoms. It is also worth noting that when it comes to other criminal cases, the prosecution, normally, issues requested information and does not cite an irrelevant provision of the Organic Law of Georgia on the Public Defender of Georgia as a ground for the refusal to provide information.

Bearing in mind legitimate questions raised by society and a heightened public interest towards the investigation into the damage and destruction of the ancient Sakdrisi-Kachagiani gold mine and the application of measures against responsible persons, it is necessary, without reservation, to inform public about ongoing investigation into this criminal case.

900 Letter N04-11/14331 of the Public Defender of Georgia, 1 December 2016.
901 Letter N13/78626 of the Chief Prosecutor's Office of Georgia, 15 December 2016.
902 The report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2014; available at http://www.ombudsman.ge/uploads/other/3/3509.pdf
903 The investigation was launched into the criminal case N074140214801 on the abuse of official powers by public political officials, under Paragraph 2 of Article 332 of the Criminal Code of Georgia.
904 Letter N13/1274 of the Chief Prosecutor's Office of Georgia, 6 January 2017.
905 Letter N13/14316 of the Chief Prosecutor's Office of Georgia, 2 March 2017. With its letter N04-11/2068, the Office of Public Defender requested the information about those concrete investigative actions which were carried out in regard to the abovementioned criminal case (by indicating corresponding dates).

RECOMMENDATIONS

To the Parliament of Georgia:

- For the aim of improving, make an amendment to the Law of Georgia on Entrails of the Earth so that it reflects the regulation stipulated in Article 14 of the Law of Georgia on Cultural Heritage;
- Introduce legislative amendments to ensure an equal treatment of all owners for the violations of the rules of the conduct of works on and maintenance of monuments of cultural heritage and the application of responsibility of owners of monuments, stipulated in Article 30 of the Law of Georgia on Cultural Heritage, to every object, including the objects under the ownership of all religious confessions.

To the government of Georgia:

- For the aim of improving, amend Ordinance №136 of 11 August 2005 of the government of Georgia so that it reflects the regulation stipulated in Article 14 of the Law of Georgia on Cultural Heritage.

To the LEPL National Environmental Agency, the LEPL Technical and Construction Supervision Agency, the LEPL Roads Department:

- When making decision on the conduct of large-scale earthworks, follow the regulation stipulated in Article 14 of the Law of Georgia on Cultural Heritage.

To the Chief Prosecutor's Office of Georgia, the Ministry of Internal Affairs of Georgia:

- Timely undertake all effective investigative actions to investigate the destruction of archeological sites during the construction of Ruisi-Rikoti road, identify responsible persons and apply legal measures against them;
- Timely undertake all effective investigative actions to investigate the damage and destruction of ancient Sakdrisi-Kachagiani gold mine, identify responsible persons and apply legal measures against them;
- Timely communicate information to public about investigative actions undertaken in regard to the damage and destruction of ancient Sakdrisi-Kachagiani gold mine, also, provide requested information to the Office of Public Defender of Georgia without impediment.

RIGHT TO WORK

The absence of effective mechanism to monitor labor conditions and safe working environment remained a pressing issue in the reporting period. The only entity that monitors labor conditions on the place of employment is the Department of Inspection of the Ministry of Labor, Health and Social Affairs, which carried out its activity in the reporting period based on the Ordinance №19 of the government of Georgia, "On the Approval of 2016 State Program of Inspection of Labor Conditions." Like in 2015, the problem in 2016 was the lack of such mechanism that, in the absence of employer's will, allows to detect and respond to violations; the only exception is the inspection carried out to reveal forced labor and labor exploitation. The Inspection Department also lacks a power to issue binding recommendations and if they are not fulfilled, to apply relevant sanctions.

The 2015 report highlighted a number of shortcomings of the labor law; in particular, the Labor Code of Georgia does not define maximum numbers of daily working hours and weekly working hours, does not determine the maximum acceptable limit of overtime, and does not provide an exhaustive list of grounds for terminating labor contract. The effective Code envisages a possibility of concluding a contract for a specified period if labor relations last for one year or more, when there is no objective need for that. There is no rule for compensating damage caused to the health of employee or as a result of death while performing his/her duties. To eliminate above-mentioned shortcomings, a recommendation was issued to amend the Labor Code accordingly; however, the recommendation was not fulfilled and hence, it remains in force.

Nor was another recommendation of the Public Defender fulfilled to amend the new law on civil service so that it ensured the employment in non-profit (non-commercial) legal entities established by local self-government bodies through a competition. Since these legal entities are funded from local budgets, we believe that the process of recruitment must be competitive, fair and transparent; consequently, to minimize the risk of nepotism, employees must be selected in accordance with the rule specified in the Law on Civil Service.

The problem of parental leave remains a problem for employed males. Although the existing legislation[906] provides a possibility to take pregnancy, childbirth and parental leaves, fathers actually do not use this right. The Office of Public Defender requested information from all ministries, the office of parliament, the presidential administration and the government administration about the number of men having asked for and taken parental leaves. Received information shows that only one man used this right in the Ministry of Internal Affairs; none of male employees of the remaining entities asked for it. One should also note that the Decree of the Health Minister on the "Approval of the Rule of Compensation of Pregnancy, Childbirth and Parental Leave as well as the Adoption Leave" envisaging the compensation of parental leave of fathers only in case of death of mother[907] conflicts with the law. The state must take effective measures to encourage fathers to take parental leaves.

906 Article 27 of Labor Code of Georgia; Article 41[1] of the Law on Civil Service.
907 Paragraph 6 of Article 10 of the Decree N 231/n of the Minister of Labor, Health and Social Affairs of Georgia.

In this chapter we will additionally discuss the issue of a minimum wage, the need of safe labor standards and effective inspection mechanism, the operation of existing inspection program, also, the appointment of heads of structural units of self-governments, and the problems concerning dismissal from jobs.

MINIMUM WAGE

The size of minimum wage in the country, which was also discussed in the 2015 parliamentary report of the Public Defender, remained topical in the reporting period. According to Paragraph 4 of Article 30 of the Constitution of Georgia, a fair remuneration of labor is determined by an organic law. Nevertheless, the labor legislation does not determine the size of minimum wage. The minimum wage is specified in the Presidential Decree №351 of 4 June 1999 and it comprises 20 GEL per month that is eight times lower than the official minimum subsistence level for a capable male[908] and hence, inadequate.

According to information provided by the Revenue Service,[909] as of March 2016, more than 62 681 persons had the income lower than the minimum subsistence level of an adult man, 130 282 persons had the income lower than minimum subsistence level of a family, and 25 001 persons had the income less than 100 GEL. Considering social and economic conditions of the country, this very grave reality is yet another proof that an adequate minimum wage needs to be determined.

At a conference in 1970, the International Labor Organization (ILO) adopted Minimum Wage Fixing Convention №131 and Recommendation №135, which aim to ensure the determination of such level of minimum wages which will enable workers and their families to meet their basic needs. The cited documents do not specify either the size of minimum wage or the needs that must be met by a minimum wage. By leaving this issue open, the Convention gives discretionary power to countries to set minimum wage in view of existing circumstances, by taking into account needs of workers and their families and the level of economic development.

In 2016, with the support of Friedrich Ebert Stiftung, the Office of Public Defender of Georgia, together with the Georgian Trade Union Confederation, conducted a study on the issues of minimum wage; drawing on experience of other countries and international standards, concrete recommendations were drawn up for various state entities within the scope of this study.

DEVELOPMENT OF LABOR STANDARDS AND THE NEED OF LABOR INSPECTION

Paragraph 4 of Article 30 of the Constitution of Georgia guarantees the rights and freedoms related to labor and employment of persons resulting from labor relations. One of the labor-related rights is the right of an employee to safe and healthy working conditions.[910] The achievement of labor safety and fulfillment of labor-related obligations must not hinge upon good will of individual employers. Breach of labor rights must be prevented to the maximum extent; a corresponding normative base must be developed and an independent state body must exist to monitor the compliance of employers with labor safety regulations, which will be vested with the power to issue binding instruction in case of violations and apply relevant sanctions. Without undertaking the above mentioned measures, a mere acknowledgment in the legislation by the state that

908 As of December 2016, it comprised GEL 161,6. http://geostat.ge/?action=page&p_id=178&lang=geo
909 Letter N21-11/47923 of the Service Department of the Revenue Service, 02.06.2016.
910 Article 35 of the Labor Code of Georgia.

employers must ensure labor safety is declarative and does not create real guarantees for the protection of labor safety.

Article 35 of the Labor Code determines a standard of labor conditions and sets an obligation to an employer to ensure maximally safe working conditions for the life and health of employees, to introduce a preventive system ensuring labor safety and timely provide employees with relevant information about labor safety-related risks and measures for preventing the risks.

The will of the state, expressed in the above mentioned legal act, about safe and healthy working environment must be enforceable. This, however, requires a mechanism that will inspect the compliance of labor conditions and safety of working environment with the legislation/standards and will undertake measures to ensure effective implementation of provisions. Moreover, it is important to have adequate, relevant standards and technical regulations of labor safety that will meet modern forms and approaches of production process.

The urgency of the problem is underscored by alarming statistics in the country. According to information provided by the Interior Ministry,[911] 58 persons were killed and 85 injured as a result of incidents in industry in 2016. Criminal investigation was launched into 121 accidents (under the following articles of the Criminal Code: paragraphs 1 and 2 of Article 240,[912] paragraphs 1 and 2 of Article 240[1],[913] paragraphs 1, 2 and 3 of Article 170,[914] Paragraph 1 of Article 275,[915] Article 124,[916] Paragraph 1 of Article 116,[917] and Article 118[918]). Out of these, the investigations into 21 criminal cases were terminated.

In 2016, at the meeting with a representative of Public Defender, employees of Chiatura ore mining operation and Zestafoni Ferroalloy Plant of Georgian Manganese LLC placed emphasis on grave and hard labor conditions. According to employees, the working conditions are dangerous for life and health as they have to perform their work with outdated and malfunctioning machinery. This machinery often breaks down and they have to perform the work, to be done by the machinery, manually which requires additional efforts.

Safe and healthy working environment was a demand, alongside other social demands, of hundreds of miners of Saknakhshiri GIG Group in Tkibuli[919] and workers of China Railway 23rd Bureau Group LLC, constructing Zvare-Moliti section of new Khashuri-Moliti railway, who went on strike in the reporting period. Unfortunately, at present, the only response from the state to fatal accidents at workplace is the initiation of criminal proceeding and corresponding investigation; however, the launch of investigation alone does not force an employer to strictly adhere to safety rules since employers are not held responsible for the violation of safety rules unless it has dire consequences. To put this problem to rights, it is necessary to determine sanctions for the violation of labor safety rules.

One should also note that there is no legal act regulating labor safety. The Action Plan of the Government of Georgia on the Protection of Human Rights for 2014-2015 envisaged the obligation to initiate the draft law on Labor Safety and Hygiene, but it was not fulfilled. The Action Plan of the Government of Georgia on the Protection of Human Rights for 2016-2017 envisages the obligation to develop a legislative framework for the protection of labor safety and health; the indicator of fulfillment of this obligation is the initiation of the draft law on the protection of labor safety and health.

The Public Defender expresses hope that in the foreseeable future, significant steps will be taken both on legislative and institutional levels in the area of labor safety to deal with the above mentioned problems.

911 Letter NMIA 017 00352728of the Interior Ministry, 13 February 2017.
912 Breach of safety regulations during mining, construction or other works.
913 Breach of safety regulations at electric or thermal energy facilities, or at gas, oil or oil products facilities.
914 Breach of workplace safety rules.
915 Violation of safety regulations or procedures for operating railway, water, air or cable way transport traffic.
916 Grave or less grave bodily injury through negligence.
917 Negligent manslaughter.
918 Intentional less grave bodily injury.
919 The 2015 parliamentary report of the Public Defender of Georgia.

PERFORMANCE OF THE STATE PROGRAM OF INSPECTION OF LABOR CONDITIONS

With its ordinance №19 of 18 January 2016, the government of Georgia approved "The State Program of Inspection of Labor Conditions." The aims and objectives of the document is to help employers create safe and healthy labor environment, to develop/revise relevant standards of labor safety and health protection and determine the need of institutional reform in the area of labor safety. The central office of the Ministry was tasked to implement the program.

A shortcoming of this program, alike the program which was effective in 2015, is that the Department of Inspection lacks power to enter, at its own initiative, an entity for the inspection of labor conditions there (unless there is a doubt about trafficking and forced labor in an entity); also, in case of detecting a violation, the Department can only issue a recommendation which is not binding on an employer; yet another significant shortcoming is the lack of access to inspection results. The access is only provided to an employer. The information about labor safety is not open either for society or for employees.

The regulation of the Department of Inspection, which was approved under the Decree №01-10/n of the Ministry of Labor, Health and Social Affairs on 21 April 2015, does not specify sanctions for violating labor safety rules. Consequently, the powers stipulated in the effective regulation do not make the Inspection Department a body equipped with effective and enforceable mechanisms. The Department can limit itself to issuance of recommendations alone, which, for their part, are not binding. Hence, the Inspection Department cannot be considered an effective body of supervision of labor conditions, including, protection of labor safety. According to the Ministry of Labor, Health and Social Affairs,[920] in 2016, as many as 96 employers expressed their consent to get engaged in the state program of monitoring labor conditions; 98 employers were inspected during the year. The Ministry also sent the information on a possible labor exploitation to the Ministry of Internal Affairs of Georgia. According to the Ministry, the inspection revealed the following shortcomings:

- Absence of fire-fighting system – 155
- Problems in electrical safety – 80
- Absence of personal protective equipment – 63
- Problems in collective security system – 14
- Lack of a person responsible for safety – 17
- Inobservance of microclimate – 70
- Excessive industrial noise – 18
- Excessive dust – 11
- Ergonomic problems, et cetera – 173

Much like the previous year, the Office of Public Defender asked the Ministry for a detailed information about the fulfillment by employers of recommendations issued by the monitoring group, which would indicate a concrete recommendation and an implementer thereof. The provided information contain the data on a repeat monitoring on the fulfillment of recommendations issued in 2015 and in July 2016. According to the information, the repeat monitoring was conducted on only 42 enterprises in 2016. Also, the provided information showed a very low indicator of fulfillment of recommendations.

920 Letter N01/7356 of the Ministry of Labor, Health and Social Affairs of Georgia, 7 February 2017.

- Out of 101 recommendations issued regarding fire safety only 42 were fulfilled;
- Out of 86 recommendations issued regarding electrical safety only 18 were fulfilled;
- Out of 63 recommendations issued regarding personal protective equipment only 24 were fulfilled;
- Out of 53 recommendations issued regarding the absence of collective security system only five were fulfilled;
- Out of eight recommendations issued regarding the increased risk of occupational diseases only two were fulfilled;
- Out of 48 recommendations issued regarding the inobservance of microclimate only 12 were fulfilled;
- Out of 57 recommendations issued regarding the absence of person responsible for safety only 17 were fulfilled;
- None of 15 recommendations issued regarding the waste disposal was fulfilled;
- None of 11 recommendations regarding the lack of disinfection means was fulfilled;
- Out of 27 recommendations issued regarding the excessive industrial noise only five were fulfilled;
- Out of 20 recommendations issued regarding excessive dust only two were fulfilled;
- Out of 30 recommendations issued regarding poor lighting only 11 were fulfilled;
- Out of 41 recommendations issued regarding ergonomic and other problems only 14 were fulfilled.

We requested the information about recommendations regarding the prevention of forced labor and labor exploitation as well as copies of such recommendation. However, we were not provided with the information about the amount of recommendations and were also informed that only verbal recommendations were issued in regard to this issue.

Proceeding from the above said, it is important to grant the Inspection Department a power to issue binding recommendations in order to ensure the elimination of shortcomings revealed as a result of inspection. Moreover, sanctions need to be determined, which will be imposed for violating labor safety rules and labor rights of employees.

LEGISLATIVE REGULATIONS FOR THE APPOINTMENT AND DISMISSAL OF HEADS OF STRUCTURAL UNITS OF SELF-GOVERNMENTS

The rule of appointment and dismissal of heads of structural units in bodies of local self-governments remained a problem in the reporting period. In particular, heads of structural units in bodies of local self-governments are appointed by a governor/mayor without a competition[921] whereas decisions taken on their dismissals are not substantiated and reference is made to the powers of governor/mayor. A position of the head of structural unit is not equally available to everyone; a decision on this issue is taken solely by a governor/mayor without conducting a competition. Employees who had legitimate expectations for being employed on this position for an indefinite term are dismissed from the job without substantiation, thereby infringing on their constitutionally guaranteed right. In particular, Article 29 of the Constitution of Georgia grants a citizen of Georgia the right to hold any position in the public service if he/she meets the requirements established by

921 Paragraph 1 of Article 60 of Local Self-Government Code.

legislation. The practice of the Constitutional Law broadened the content of Article 29 of the Constitution of Georgia to imply not only the obligation of the state to determine reasonable, nondiscriminatory regulations for the appointment of a person to a public service position, but also the right of a civil servant to be protected from unsubstantiated dismissal from the job. One should commend amendments made to the Organic Law of Georgia Local Self-Government Code in late October 2015, which stipulate that heads of structural units of self-government bodies are appointed and dismissed by governors/mayors in accordance with the rule specified in the Law of Georgia on Civil Service; however, since the mentioned amendments enter into force on 1 July 2017, the issue remained problematic in 2016.

SHORTCOMINGS IDENTIFIED IN APPOINTING THE RECTOR OF TECHNICAL UNIVERSITY OF GEORGIA

The Office of Public Defender of Georgia studied the application of a candidate for the position of rector of the Technical University of Georgia regarding the lawfulness of the election conducted in the University for the vacancy of the rector of Technical University of Georgia and concluded that on 18 January 2016, the election in the University was conducted in breach of requirements of the law. Consequently, the Public Defender issued a recommendation to the Ministry of Education and Science of Georgia to cancel the results of the election conducted in breach of law and to ensure a lawful conduct of a new election. Also, the Public Defender issued a recommendation to the election commission of the Technical University of Georgia to declare the registration of Archil Prangishvili as a candidate for the position of rector and results of his election nil and void.

According to the factual circumstances of the case, through the election conducted at the Technical University of Georgia, Archil Prangishvili was elected as the rector for the third consecutive time. Before that he was elected in 2009 and 2012 while in 2008-2009 he was an acting rector. The election of Archil Prangishvili for the third term violated those provisions of the Law of Georgia on Higher Education which prohibit the election of the rector for more than two terms in a higher educational institution established by the state.

The Internal Audit Department of the Ministry of Education and Science studied the lawfulness of the election conducted in the Technical University of Georgia but did not establish the violation. The Department did not take into consideration the fact that the regulation of University postponed the enactment of the restrictions established by the law and the rector's tenure was counted from the election in 2012. Thus, the facts of appointing Archil Prangishvili as the acting rector in 2008 and his election as the rector in 2009 were ignored.

According to the Ministry's Audit Department, Archil Prangishvili met the requirement of the law established for a candidate of rector because the University changed its legal form. The Audit Department referred to the changes in legal form of the Technical University of Georgia in 2011 and 2013. However, at the times of those changes in legal form, the restriction of the law prohibiting the election of a rector for more than two terms was in force. Consequently, the position of the Audit Department cannot be approved. Moreover, one should note the aim pursued by the law in restricting the tenure of rector, which is prompted by the autonomy of the University and serves the aim of avoiding the management of a university by one and the same person for an indefinite time.

Unfortunately, the addressed entities did not agree with the recommendations of the Public Defender of Georgia.

RECOMMENDATIONS

To the Parliament of Georgia:

- Amend the Labor Code to provide for the establishment of labor inspection to monitor labor conditions, which will be vested with relevant powers of conducting an effective monitoring and taking binding decisions;
- Specify a procedure in the Law on Civil Service for filling a vacancy for a position in non-profit (non-commercial) legal entities established by local self-governments through a competition;
- Define adequate sanctions to be imposed on employers for violating labor safety rules;
- Define in the Labor Code of Georgia:
  - Maximum amount of daily working hours and minimal amount of time for uninterrupted rest for employees per week;
  - Maximum acceptable limit of overtime;
  - Concrete and predictable grounds of terminating labor relations with an employee without leaving an ample room for subjective interpretation;
  - Possibility to conclude a contract for any specified term only in case of predetermined, objective circumstances;
  - Minimum wage and a mechanism of annual revision of minimum wage.

To the government of Georgia:

- Timely initiate the Draft Law on Labor Safety and Health Protection;
- Draw up regulations for compensating damage to employee's health sustained in the workplace or compensating the damage resulting from the death of employee;
- Determine fair minimum wage on the basis of relevant study, also, a mechanism of its annual revision;
- Determine minimum wage in hourly as well as monthly terms to avoid cuts in part-time jobs.

To the Ministry of Foreign Affairs of Georgia:

- Speed up the process of ratification of Article 3 of the European Social Charter, Conventions of the International Labour Organization: №81 concerning Labour Inspection in Industry and Commerce, №129 concerning Labour Inspection in Agriculture, №155 concerning Occupational Safety and Health;
- Ratify the Convention of the International Labour Organization №131 adopted in 1970.

RIGHT TO LIVE IN HEALTHY ENVIRONMENT[922]

The right to live in a healthy environment is a value targeting the rights of broader society and the issue of its realization has been one of priorities of the Public Defender over the last few[923] years.

Along with the development of the mankind, the attitude of European society towards environmental issues has been changing and the implementation of environment-oriented policy has been increasingly becoming a pressing issue and a priority.

A new agenda adopted by the United Nations on 25 September 2015 - Transforming our World: The 2030 Agenda for Sustainable Development - entered into force on 1 January 2016. After the completion of 15-year cycle of Millennium Development Goals and the agreement reached at the conference held in Rio de Janeiro in 2012, the new UN agenda is the most universal and global document for both developing and developed nations. The 2030 Agenda integrates the three dimensions of sustainable development - economic, social and environmental, in a balanced manner. Alongside 192 countries, Georgia assumed the obligation to fulfill the goals and objectives of the new agenda.[924] Consequently, the country must prioritize sustainable use and production of its natural resources, create sustainable infrastructure, take urgent action on climate change and undertake other environmental measures.

With new global goals set, Georgia must establish international standards in economic, social and environmental areas and public entities must also lead their activities in accordance with the mentioned principles. Today, Georgia faces really difficult challenges in terms of imperfect legislation and practice. It is necessary to maintain a reasonable balance between the economic development and the right to live in healthy environment. Creating a liberal investment environment by ignoring the right to live in healthy environment is unacceptable.

Although much like the previous year the reporting period did not see a large amount of applications from citizens concerning the exercise of the environmental right, the Office of Public Defender, at its own initiative, took efforts to study individual cases as well as identify systemic shortcomings of legislation and problems in its practical application. The results of the study are detailed below.

922 First principle of the 1972 Stockholm declaration; first principle of Rio de Janeiro declaration. Moreover, the environment as a human right was discussed in a number of European conferences and seminars in the second half of the twentieth century. Article 37 of the Constitution of Georgia also represents a legal guarantees to live in healthy environment.

923 The Public Defender of Georgia discussed international environmental guarantees and attitudes in the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2015; available at http://www.ombudsman.ge/uploads/other/3/3891.pdf

924 The document includes 17 goals and 169 targets for sustainable development of social, economic and environmental dimensions.

FUNDAMENTAL SHORTCOMINGS OF ENVIRONMENTAL LEGISLATION

The Ministry of Environmental Protection and Natural Resources had been drafting the Environmental Assessment Code since 2013. The Public Defender believes that the process of initiating/adopting the legislative changes was not conducted within the reasonable period of time. It is noteworthy that on 13 February 2017, the government of Georgia submitted the Draft Environmental Assessment Code and an enclosed legislative package to the Parliament of Georgia. The Public Defender of Georgia deems it important that this process is completed in 2017 and within this process, relevant legislative acts up to international standards are adopted.

As in 2015, the Public Defender deems it necessary again to amend the effective legislative regulations. In particular, to approximate the activities that are subject to environmental impact assessment to international standards, including to introduce a mechanism for decision making on the need of environmental impact assessment on case by case basis; to ensure legal guarantees of public involvement at the onset of the process of decision making on environmental issues, including the replacement of a simple administrative procedure with a public administrative procedure.[925] Moreover, the Public Defender believes that the obligations related to environmental impact assessment must not be integrated into the procedures of issuance of construction permit. Environmental impact assessment must precede the planning of any works and the procedure of obtaining legal documents of these works. Also, a combined procedure of environmental impact assessment and construction permit cannot ensure the involvement of public at the early stage of decision making; this, for its part, indicates about the absence of mechanisms of taking legitimate interests of population into account.

The regulations[926] that require from an investor to submit an environmental impact assessment report after signing a memorandum between the investor and the state remain unchanged and thus run counter to the law because no activity that requires environmental impact permit shall be launched without environmental impact assessment.

Yet another serious issue is related to legislative regulations of issuance of construction permit. In the Public Defender's opinion, effective provisions fail to ensure proper realization of the right to live in healthy environment. In particular, according to the ordinance[927] of the government of Georgia, a legal ground for construction is an engineering-geological survey, a construction drawing of a building, an assessment of impact on adjacent buildings,[928] et cetera. However, the ordinance allows the issuance of construction permit without submitting the documents specified in the mentioned normative act. There are no legal regulations that would obligate a construction permit seeker to submit the documentation, regarded as the legal grounds of construction, to an administrative body at any of the stages of issuance of construction permit. The Public Defender deems such an approach unjustified and believes that the obligation to submit the documentation must be an integral part of the procedure of issuance of construction permit. All this is directly linked to the exercise of the right to live in healthy environment as the construction launched without the study into important circumstances gives rise to numerous legitimate questions and runs counter to the principles of sustainable development and spatial arrangement.

DAMAGING ENVIRONMENT IN THE COURSE OF INDUSTRIAL ACTIVITY – NEGLECT OF LEGISLATION BY GEORGIAN MANGANESE LLC.

The Public Defender has been studying responses of state entities to grave ecological problems caused as a result of works carried out by Georgian Manganese LLC in Chiatura.

925 Mentioned legislative shortcoming and amendments to be introduced are discussed in detail in the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2015; available at http://www.ombudsman.ge/uploads/other/3/3891.pdf

926 The Ordinance №214 of the government of Georgia, dated 21 August 2013, on the Approval of Rule of Expressing Interest about Technical-Economic Study, Construction, Possession and Operation of Hydro Power Plants in Georgia.

927 Subparagraph A of Paragraph 4 of Article 33 of government of Georgia Ordinance #57 of 24 March 2009 on Construction Permit Issuance Procedure and Permit Terms.

928 Ibid., Article 35.

It has been established that the company conducts ore mining works in breach of environmental standards and license terms. The environmental damage caused by the Georgian Manganese LLC in 2013-2015 exceeds 357 million[929] GEL.[930] The damage caused by illegal digging up of 220,6 cubic meters of timber for the aim of extracting ore exceeds GEL 158 thousand; the damage caused as a result of deterioration/contamination reaches GEL 325 million; the damage resulting from polluting earth with waste exceeds GEL 53 thousand and the damage caused by the pollution of surface water bodies with wastewaters exceeds GEL 30 million.

According to the Chief Prosecutor's Office of Georgia,[931] the investigation into the above mentioned fact is underway and a criminal proceeding has been instituted against Georgian Manganese LLC under Subparagraph A of Paragraph 2 of Article 192 of the Criminal Code of Georgia (for illegal entrepreneurial activity committed jointly). A criminal proceeding was separated from the mentioned case against the accused legal entity Georgian Manganese LLC and it was sent to court for the hearing on the merits. The information from the prosecution does not make it clear whether the investigation into the crime under the above cited article is still in progress or whether anyone has been accused or how is the case qualified which was handed over to the court.

In addition, the investigation is underway into a crime envisaged under Article 298 of the Criminal Code of Georgia (violation of the procedure for use or protection of mineral resources). However, according to the prosecution, it is technically impossible to identify a concrete person who violated common rules of use of mineral resources during works conducted by Georgian Manganese LLC in 2007-2013; the documentation is requested from the company and the investigation is in progress. To study the above mentioned issues and the lawfulness of the response of state entities in this case, the Office of Public Defender continues the study and the results of it will be made public.

In the Public Defender's view, the above described situation is alarming. The irreparable environmental damage of a scale the company caused by gross and continuous violation of the law requires immediate, adequate and effective response from the state entities.

Moreover, according to Paragraph 4 of Article 34 of the Law of Georgia on Licenses and Permits, despite imposing the liability on a permit holder, the failure of the permit holder to fulfill the permit terms and conditions is a ground of repealing the permit. With this very request the Department of Environmental Supervision, on 4 July 2016, applied to the issuer of permit – the Ministry of Environmental Protection and Natural Resources of Georgia. However, with the Minister's decree #i-334 of 5 July 2016, the Georgian Manganese LLC was granted the right to conduct the licensed activity till 31 December 2017. This decree refers to Paragraph 12 of Article 34 of the Law of Georgia on Licenses and Permits, according to which if repealing the permit may cause more damage than an extension of its validity or if a suspension of its validity is virtually impossible, the permit issuer shall make a substantiated decision on granting the right to carry out the activity under the permit provided that the terms and conditions of the permit set by the permit issuer are met. According to the decree, the Ministry believes that the circumstance specified in the above cited provision is present in this particular case since the named enterprise is the key source of employment in Chiatura and adjacent villages and repealing its environmental impact permit would lead to a serious social crisis in the region. Moreover, repealing the permit and stripping the owner of the right to carry on its activity would not ensure the improvement of existing grave environmental condition whereas the imposition of additional environmental measures on the owner and the monitoring of their implementation give more opportunities to improve the existing situation. According to the decree, Georgian Manganese LLC assumed the obligation to build and commission a new enrichment factory of European standards, which will fully meet environmental standards and serve as a basis for modernizing the production process, therewith reducing negative impact on

929 GEL 357 279 777.
930 Letter #5 16 00090612 of the Department for Environmental Supervision of the Ministry of Environmental Protection and Natural Resources.
931 Letter N13/1995 of the Chief Prosecutor's Office of Georgia, 10 January 2017.

the environment. The company was imposed various obligations which must be fulfilled until 31 December 2017.[932]

Although the grounds referred to in the Decree #i-334 of 5 July 2016 of the Minister of Environmental Protection and Natural Resources of Georgia, which spare the company from repealing a permit, should not be disregarded, the Public Defender of Georgia believes that even under such circumstances everyone shall respect the rule of law, especially bearing in mind that the company has not fulfilled relevant obligations for years.[933] Considering all this, the Public Defender believes that it is important to effectively monitor the fulfillment of obligations stipulated in the decree and in the event of breach thereof, to apply against the company those measures that are stipulated in the law.

The above discussed case clearly reveals the inefficiency of legislative regulations concerning the damage to environment. Sanctions envisaged in the law for administrative offences are not commensurate with the gravity of committed actions. Moreover, bearing in mind a small size of penalties, the sanctions cannot be viewed as an effective mechanism to prevent offenders from repeating offences in future.[934]

PRACTICE RELATED TO THE ISSUANCE OF SPECIAL ZONAL AGREEMENTS

Decisions on special (zonal) agreement within the administrative borders of Tbilisi were taken[935] and are taken[936] by the Tbilisi City Hall on the basis of conclusions of the council for regulating the use and development of settled areas. When studying one of the cases,[937] the Office of Public Defender identified important systemic problems. The obligation to substantiate a conclusion of the mentioned council (which is drawn up in the form of a protocol of meeting) is specified in the legislation.[938] In particular, a protocol of the meeting must indicate a decision taken by each member of the council on the issue in question and a relevant substantiation of the decision. As the study conducted by the Office of Public Defender reveals,[939] decisions of council members, whether positive or negative, on the increase of parameters of urban development were general in nature and lacked proper reasoning, thus been incompliant with the requirements of the law. Moreover, such approach casts doubt on the lawfulness of a further decision of the Mayor of Tbilisi municipality because a decision on awarding special (zonal) contracts, which is based on an unsubstantiated conclusion of the council, must be regarded as a decision taken without investigating important circumstances of the case.[940]

According to data covering the period between 1 January 2014 and 1 September 2016, the total of 3 187 applications were submitted for the increase of parameters of urban development with positive conclusions

932 Including, to arrange treatment facility collector of wastewater discharged from enrichment plant; finish works on arranging laboratory of the enterprise; build and commission a new enrichment plant, et cetera.

933 One should note that the company's term for the fulfillment of obligations was first extended to 31 December 2015 and then to 1 July 2016. On 17 May and 30 June 2016, the company was refused for a further extension of the term. The company had not fulfilled any of the obligations by 1 July 2016.

934 For example, according to Article 57^3 of Administrative Offences Code of Georgia, the failure of holder of license for extraction of mineral resources or use of mineral resources to submit a plan for use of mineral resources within a specified term shall carry a fine of GEL 500; Violation of the conditions of a mining license or of a license for exploitation of mineral resources shall carry a fine of GEL 2 000; according to Article 57^2, violation of standards for exploiting mineral resources as well as violation of safety rules and standards for using mineral resources shall carry a fine from GEL 400 to GEL 700.

935 Paragraph 3 of Article 25 of the Decision N4-13 of 27 March 2009 of the Tbilisi City Council on Approval of Rules of Regulating the Use and Development of Tbilisi Territory.

936 Paragraph 7 of Article 22 of the resolution N14-39 of 24 May 2016 of the Tbilisi City Council on Approval of Rules of Regulating the Use and Development of Territory of Tbilisi Municipality.

937 Application N3219/16 of the citizen M.T.; 11 March 2016.

938 Article 53 of the General Administrative Code of Georgia; Subparagraphs E and F of Paragraph 4 of Article 8 of the council regulation approved under the ordinance №16-32 of Tbilisi City Council of 5 December 2014.

939 On 2 September 2016, with the letter N04-11/10192, the Office of Public Defender applied for the information and documentation to the Tbilisi Mayor and the chairman of the council for regulating the use and development of Tbilisi territories.

940 This runs counter to the regulations stipulated in the General Administrative Code of Georgia.

issued on 1 608 applications.[941] During a meeting with representatives of the Office of Public Defender on 2 February 2017, members of the council admitted that the problem of substantiation of conclusions is of systemic nature.

In essence, a special (zonal) agreement is a legislative exception when a lawmaker allows the increase in standardized urban development parameters and this decision must be taken after a comprehensive study of the issue. An administrative body must investigate, case by case, whether the increase in the development intensity coefficient is compatible with the peculiarities of a concrete land plot and urban development principles, in general; what are those special social, economic or other grounds that make it necessary to change the development intensity coefficient; what are those alternative measures that will compensate the negative impact on healthy living conditions and environment; whether this endangers other public interests or infringes on the rights of others.

Considering the abovementioned circumstances and the fact that neither the protocol of council's meeting nor the decree of the Mayor provided factual and legal grounds justifying the increase in the development intensity coefficient, also, given that the decision was taken without the participation of interested parties, the Public Defender of Georgia, in regard to the case of citizen M.T., issued a recommendation[942] to the Mayor of Tbilisi municipality and the council for regulating the use and development of settled areas, demanding that the protocol of council's meeting and the decree of the Mayor be declared nil and void and a new decision be taken after a comprehensive investigation and evaluation of circumstances of the case. According to oral explanations, the council intends to change the existing practice and to fulfill the requirement for substantiation of council decisions.[943] The Public Defender will continue the monitoring of this process. In response to the Public Defender's recommendation of 19 August 2016, the Tbilisi Architectural Service, with its letter of 20 February 2017,[944] informed us that the Public Defender's recommendation was not fulfilled. It should be noted that the Tbilisi Mayor did not provide the information about the fulfillment of the recommendation.

In the Public Defender's view, when taking decisions, administrative bodies must observe principles established in the Law of Georgia on Basics of Spatial Planning and Urban Development.[945]

CONSTRUCTION OF NENSKRA HPP[946]

A permit for the construction of headworks on the Nakra river and 280 MWT hydro power plant (HPP) on the Nenskra river in the village of Nakra and the village of Chuberi, was issued on the basis of a decree of LEPL Technical and Construction Supervisory Agency, dated 5 October 2015, while the environmental expertise was approved under the decree #i-768, dated 2 October 2015, of the Minister of Environmental Protection and Natural Resources. However, according to media reports[947] on 16 September 2015, the Italian company had started the preparation works for the construction of the HPP before the construction permit was obtained and the ecological expertise approved.[948] The launching ceremony of the construction were attended by the

941 Letter N07/9147-13, dated 13 October 2016, from the Architectural Service of Tbilisi.
942 Recommendation N04-11/9611 of Public Defender of Georgia, dated 19 August 2016.
943 On 2 February 2017, representatives of the Public Defender attended a meeting of the council, at which the chairman of the council and deputy Mayor of Tbilisi, the practice of the council will change while in regard to the case of M.T., a decision will be taken about a possibility to consider the case anew as a result of study into factual circumstances.
944 Letter N07/9172-13, dated 20 February 2017, from the Architectural Service of Tbilisi.
945 Which include issues of creating healthy and safe living and working environment for population, minimizing negative impact on the development of settlements, positive effect of infrastructure for spatial territories.
946 On this issue, the Office of Public Defender is conducting a study on the bases of a collective application N4883/16 and explanatory note N14682/15 from the population of 18 April 2018..
947 Available athttp://liberali.ge/news/view/18329/nenskra-hesis-msheneblobis-mosamzadebeli-samushaoebi-daitsyo [last accessed on 4.02.2017].
948 Rehabilitation/construction of access roads to the construction site and mobilization of construction equipment.

Prime Minister of Georgia, the Energy Minister, the Ambassadors of Korea and Italy to Georgia and the managers of the companies. Alike the case with Khudoni HPP, this must be assessed as a pressure on a decision making body. This also gave rise to a reasonable doubt among the public that the administrative procedure was a mere formality.

Local population and interested society raise questions about the reliability of environmental impact assessment report prepared by the JSC Nenskra. In particular, questions are raised about whether the scale of environmental impact of the implementation of Nenskra HPP project and the reality are described in the impact assessment report in a comprehensive and professional manner; whether risks of the development of dangerous geodynamic processes are evaluated in a comprehensive manner (local population speaks about different reality); the study of biological environment; the analysis of costs of project and long-term benefit for the country, which, in turn, is linked to the reasonability of its implementation. Moreover, according to specialists, a substantial part of the report is identical to environmental impact assessment reports of other hydro power plants.[949] This, naturally, casts doubt on the reliability of assessment.

In this particular case a matter of interest is that part of environmental impact assessment which concerns the evaluation of availability of resources for the local population. According to the document, the population will lose the access to lands within the project territory, which though owned by the state are in public use, for good. The population uses these lands (around 3,7-3,8 km^2 of state owned land will be lost) as pastures, for collecting firewood, et cetera. The impact on the availability of resources for population is evaluated as small but negative in the environmental impact assessment report. The document, however, does not specify the objective criteria which led the author of the report to make such a conclusion. A concern of and one of main reasons of dissatisfaction among the local population is the loss of availability of lands of common use. This, for its part, may be viewed as a factor which will encourage internal migration.

Yet another cause of dissatisfaction among population is that the construction of a power transmission line, within the framework of the project, may entail the resettlement of local population from the village of Lakhami. According to the information available to us, in the summer of 2016, the construction of power transmission line was still on the planning stage and its route was not determined.[950] The Public Defender believes that before starting the construction of power transmission line, it is necessary to thoroughly consider all possible alternative routes and through the involvement of local population, to take into account their interests to the maximum possible extent.

CONSTRUCTION OF TSDO POWER TRANSMISSION LINE

The Office of the Public Defender studies the lawfulness of reconstruction of the Dariali 110, a power transmission line of the JSC Georgian State Electrosystem. Under the decree of the Minister of Environmental Protection and Natural Resources of Georgia,[951] the project of reconstruction of the power transmission line Dariali 110 of the JSC Georgian State Electrosystem was exempted from the obligation to conduct environmental impact assessment. The basis of this decision was a recommendation of the Special Environmental Impact Council.[952]

According to Paragraph 1 of Article 11 of the Law of Georgia on Environmental Impact Permit, an activity may be exempted from an environmental impact assessment if the *overall national interests* require that the activity be started and that an appropriate decision be timely made.

949 Joint comments of Central and Eastern Europe Bankwatch Network and association Green Alternative on the environmental impact assessment report of Nenskra HPP construction and operation project. See at http://greenalt.org/wp-content/uploads/2015/09/GA_shenishvnebi_Nenskra1.pdf [last accessed on 23.03.2017].
950 Letter N3316/1 of 5 July 2016 of JSC Georgian State Electrosystem.
951 Decree #i-11 of 5 January 2016 of the Minister of Environmental Protection and Natural Resources.
952 Protocol #64 of 28 December 2015 of the special council of impact assessment.

According to the letter from JSC Georgian State Electrosystem,[953] the commissioning of Dariali HPP was planned in February 2016 and the construction of the power transmission line was needed to hook it up to the grid and transmit the power generated by the HPP to the energy system of Georgia. As the author of the letter explained, a public hearing of environmental impact assessment report would take much time.

It should be noted that for the purposes of the law it is important to substantiate not only the significance of a project for the state (which may be the case for any infrastructure project) but also the circumstances allowing the exemption from an environmental impact assessment for the state interests. According to the mentioned letter, the only argument is the date of commissioning of Dariali HPP, although it does not explain why it was not possible to predict this and start relevant works in due time. The Ministry of Energy of Georgia did not provide any different or additional reasoning either.[954]

According to the protocol of the meeting of Special Environmental Impact Council, the chairman of the council explains:

"It would be desirable for this project to fully undertake the procedures prescribed by the law as the issue of communicating information to population remains a problem. Since the project is connected to the Dariali HPP it is viewed as a complex topic, but given that the HPP has already been built, the construction of power transmission line is the inevitability."

No other argument about national interests, save the above cited opinion, is provided in the protocol; this makes us conclude that the council linked the exemption of the power transmission line from environmental impact assessment to the inevitability of its construction alone. The lack of substantiation of the above mentioned decree of the Environmental Ministry of the exemption from environmental impact assessment indicates that the decree was issued without the study into important circumstances of the case.[955]

The circumstance as to why was the conduct of environmental impact assessment of special significance in this particular case is directly linked to the essence and the aims of environmental impact assessment.[956] Besides, the procedure of consideration of environmental impact assessment represents the only decision making stage during which public may engage in the process to receive comprehensive information and express their opinions. In this particular case, public interest towards the construction of the power transmission line was high because four transmission line pylons would cross the village Tsdo. The local population, for their part, suggested a reasonable alternative route (away from the village, the left or the right bank of Tergi river) where the project could be implemented without interfering in the development of mountainous village and the community.[957] The Public Defender disapproves of the continuing practice of decision making on large projects without the involvement of interested society and calls on the state entities to stick to the principles enshrined in the Aarhus Convention in all such cases.

CUTTING OF PLANTS

Cutting of 45 trees in a privately owned land plot in Kazbegi Street, on 17 August 2016, attracted a great deal of public attention. To study the issue, the Head of Municipal Department of Environment and Landscaping of Tbilisi arrived at the scene. In his comments to media he said that one should study the lawfulness of

953 Letter N5384/07 of 4 December 2015 of JSC Georgian State Electrosystem.
954 Letter N04/4533 of 4 December 2015 of Ministry of Energy of Georgia.
955 Paragraph 1 and 5 of Article 53, Paragraph 1 of Article 96 of the General Administrative Code.
956 Environmental impact assessment is the identification of nature and degree of any expected impact on the environment as well as the assessment of environmental, social and economic consequences, in the process of creating documentation substantiating a planned activity and taking a decision on this activity.
957 Population voiced protest against the construction of HPP in the village of Tsdo, see at http://netgazeti.ge/news/108753/.

issuance of permit for cutting the trees and also, the compliance of cutting with the issued permit. The Office of Public Defender decided to study the issue at its own initiative and to this end, requested the information from relevant entities.[958]

According to materials available to the Office of Public Defender, the permit for cutting 44 diseased and depreciated trees was issued by Municipal Department of Environment and Landscaping of Tbilisi [959] on the basis of Subparagraph A of Paragraph 6 of Article 6 of the Law of Georgia on Special Protection of Greenery and the State Forest Fund within the Borders of Tbilisi and its Adjacent Territories. This provision allows for cutting plants when plants are diseased and relevant authorized persons certify that they cannot be cured.

In this particular case, there is a conclusion of a company expert about the condition of the structure of trees.[960] According to this conclusion, 17 poplars had reached the depreciation age,[961] the wood of the trees started declining and they could be cut down. One cedar was dried, one cypress was diseased, 13 fir trees were diseased and declining, three fir trees were dried, one fir tree was fallen as a result of wind, four cedars were diseased and incurable, seven ashes were also diseased. It should be noted that the conclusion said nothing about incurability or curability of tress save in case of cedars. The environmental city service issued permit for cutting 44 out of 47 trees. As for the compliance of cutting with the permit, according to a relevant entity, one tree was cut/damaged arbitrarily on the mentioned land plot and the value of recovery of this tree comprised GEL 3 700. According to the Municipal Department of Environment and Landscaping of Tbilisi, the issue was sent to the Interior Ministry for the response.[962]

According to information available to the Public Defender, the issue of lawfulness of the permit for cutting the trees is being studied within the scope of criminal investigation launched by the Chief Prosecutor's Office under Paragraph 1 of Article 303 of the Criminal Code (Illegal felling of trees and bushes that results in substantial damage). Various investigative actions were carried out, including the appointment of relevant expertise.[963] The Public Defender urges law enforcement authorities to take all effective investigative actions within the scope of this criminal case in a timely manner.

According to information provided by the Municipal Department for Supervision of Tbilisi,[964] 76 reports on an offence envisaged in Article 151^1 of the Administrative Offences Code of Georgia (Damage or unauthorized cutting and/or transfer of green plantings, or violation of the rules for maintaining and restoring green plantings in the territory of the city of Tbilisi) were drawn up in 2011, 52 reports in 2012, 76 reports in 2013, 88 reports in 2014, 35 reports in 2015 and 49 reports from 1 January to 15 September 2016.

According to information provided by the Chief Prosecutor's Office,[965] for the offence envisaged in Article 303 of the Criminal Code of Georgia (Illegal felling of trees and bushes) criminal proceedings were instituted against 71 persons in 2011, 25 persons in 2012, 84 persons in 2013, 69 persons in 2014, 98 persons in 2015 and 30 persons in 2016 (eight months). For the offence envisaged in Article 304 of the Criminal Code of Georgia (Damage or destruction of forest or plantation), criminal proceedings were instituted against one person in 2011, two persons in 2015 and one person in 2016 (eight months). In 2012, 2013 and 2014, none of the persons were charged with the offence under the mentioned article.

One should also note legislative initiatives concerning the felling of trees, which became a subject of public discussions and are topical due to above mentioned case. In the reporting period, several legislative initiatives

958 Letters of the Public Defender: N04-11/10811 to Municipal Department for Supervision of Tbilisi, N04-11/9755 to Municipal Department of Environment and Landscaping of Tbilisi, N04-11/10895 to Chief Prosecutor's Office.
959 Letter N25/201354, dated 2 August 2016, of Municipal Department of Environment and Landscaping of Tbilisi.
960 Letter N1/356 of 14 March 2016 of Forest Company LLC.
961 According to the expert, a maximum lifetime of poplar ranges between 60 and 80 years, depreciation age is 40-50 years; the age of mentioned 17 poplars did not exceed 50-70 years.
962 Letter N16/257214 of 30 September 2016 of the Municipal Department for Supervision of Tbilisi.
963 Letter N13/62556 of the Chief Prosecutor's Office of Georgia, 29 September 2016.
964 Letter N16/242236 of 15 September 2016 of the Municipal Department for Supervision of Tbilisi.
965 Letter N13/58156 of the Chief Prosecutor's Office of Georgia, 7 September 2016.

concerning the felling of trees were submitted to the Parliament of Georgia.[966] The effective legislation requires a private owner to seek permit for cutting diseased trees from the Tbilisi municipality and moreover, to undertake **compensation measures that are commensurate with the impact. A legislative initiative of the MP Davit Songhulashvili** allowed for the felling of diseased trees under private ownership without undertaking compensation measures that are commensurate with the impact on biodiversity. In a public statement,[967] the Public Defender expressed his disapproval of the legislative initiative. At present, the Parliament of Georgia considers a modified draft law.[968] The Public Defender believes that when the situation with greenery and in general, ecology is grave in the capital, the Parliament of Georgia should adopt regulations that are oriented on the environmental interests and the protection of the right to live in a healthy environment.

RECOMMENDATIONS

To the Parliament of Georgia:

- Implement the environmental legislative reform within the shortest possible time and in a manner that brings the existing environmental impact assessment system, including the provisions concerning the activities subject to environmental impact assessment and the involvement of public in decision making process (especially in regard to HPP, power transmission line and other large scale infrastructure projects), in line with international standards; also, de-integrate the obligation of submitting environmental impact assessment report from the procedure on the issuance of construction permit;
- Amend the Administrative Offences Code of Georgia to toughen sanctions stipulated in the law for the violation of safety rule/standards of the use of mineral resources, terms of license for the extraction/use of mineral resources;
- Amend the Law of Georgia on Special Protection of Greenery and the State Forest Fund within the Borders of Tbilisi and its Adjacent Territories to preserve and increase greenery. The legislative changes must ensure the existence of relevant complex guarantees and the improvement of the mechanism of measures for compensating impact on biodiversity;
- With the involvement of field specialists, set effective guarantees for ensuring the quality of environmental impact assessment.

To the government of Georgia:

- In order to bring in line with the legislation, amend the Ordinance №214 of the government of Georgia, dated 21 August 2013, to allow the signing of memorandum on hydro power plants between the state and potential investors only after the completion of environmental impact assessment;
- Introduce legislative amendments to the Ordinance N57 of the government of Georgia, dated

966 With a proposal N2180 of 15 December 2016, the company "m2 real estate" requested a legislative amendment which would allow a private owner to cut diseased plants within his/her own territory without paying money. See at http://info.parliament.ge/#law-drafting/13134; the organization Green Alternative, with its proposal of 19 December 2016, requested the toughening of regulations on tree felling, including through introduction of administrative procedure for the issuance of public permit and additional obligation to substantiate immediate necessity. See at http://info.parliament.ge/#law-drafting/13272. Moreover, a legislative initiative of 22 December 2016 of the member of parliamentary committee on sectoral economy and economic policy, Davit Songhulashvili, also concerns changes in legislative regulations concerning the cutting of plants. See at http://info.parliament.ge/#law-drafting/13240.

967 Statement of Public Defender of Georgia on 7 March 2017. See at http://www.ombudsman.ge/ge/news/saxalxo-damcveli-exmaureba-davit-songulashvilis-iniciativas-xeebis-chrastan-dakavshirebit.page

968 See at http://info.parliament.ge/#law-drafting/13240 [last accessed on 23.03.207].

24 March 2009, on Construction Permit Issuance Procedure and Permit Terms to specify the obligation to submit documents listed in Subparagraph A of Paragraph 4 of Article 33 of the same Ordinance to a decision making body in the process of issuance of construction permit.

To the Chief Prosecutor's Office of Georgia:

- Immediately undertake all effective investigative actions to identify all persons having committed crimes, envisaged in Subparagraph A of Paragraph 2 of Article 192 and Article 298 of the Criminal Code of Georgia, in the process of conducting by the Georgian Manganese LLC of industrial activity and to apply legal measures against them;
- Investigate the cutting of trees in Kazbegi Street in Tbilisi in a timely and effective manner.

To the Ministry of Environmental Protection and Natural Resources:

- In case of failure to fulfill the Minister's Decree #i-334 of 5 July 2016, ensure the application of measures specified in Paragraph 4 of Article 34 of the Law of Georgia on Licenses and Permits against Georgian Manganese LLC.

To the Special Environmental Impact Council of Ministry of Environmental Protection and Natural Resources:

- In case of exemption from environmental impact assessment, substantiate relevant decisions of the Council and the Minister of Environmental Protection and Natural Resources in full compliance with the requirements of the law.

To Tbilisi City Hall, the council for regulating the use and development of settled areas:

- Take decisions on special (zonal) agreements in accordance with the obligation imposed by the law to substantiate the decision and in each case, observe the principles enshrined in the Law of Georgia on Basics of Spatial Planning and Urban Development.

The right to health care is a fundamental right.[969] This chapter overviews the programs of universal health care, referral service and tuberculosis management, the patient rights and the situation in the area of tobacco control.

THE UNIVERSAL HEALTH CARE PROGRAM

In view of actual expenditure of the previous year, the 2016 state budget allocated GEL 570 million for the universal health care program,[970] but towards the end of the year this expenditure significantly increased and reached GEL 494 937 000, i.e. 97,2 percent of the total planned allocation, only in nine months of 2016.[971]

In the 2015 parliamentary report, the Public Defender highlighted the fact that persons engaged in private insurance schemes as of 1 July 2013 were not able to fully enjoy a universal health care program as a problem. The number of such persons comprised 496 765[972] and they could enjoy only so-called "minimal insurance package."[973] The Public Defender deemed this indicator alarming. In 2016, the government took a decision[974] to amend the Ordinance №36 of the government of Georgia of 21 February 2013, on the Measures for the Transition to Universal Health Care; according to this amendment, persons who were engaged in private insurance schemes as of 1 January 2017 (instead of 1 July 2013) cannot benefit from the universal health care program. By merely changing restriction dates the government was not able to ensure a complex resolution of this problem since persons who will be withdrawn from private insurance schemes after 1 January 2017, will receive different treatment in the provision of health services and will again have to use the so-called minimum insurance package. Conversely, those persons who will engage in private insurance schemes after 1 January 2017, will not be deregistered from the state program and will enjoy the so-called dual insurance. The dual insurance means that a beneficiary will simultaneously use the universal health care program and the service of private insurance companies when private insurers cover only those services which are not envisaged under the universal health program. This significantly increases the number of program beneficiaries and the amount of its expenditures.

969 Article 37 of the Constitution of Georgia; Article 1 of the 1978 WHO Declaration.
970 Budgetary system of Georgia, the 2016 state budget. See information at http://www.mof.ge/images/File/gzamkvlevi/Citizens_Guide-2016_MOF_GEO.pdf
971 Available at http://mof.gov.ge/images/File/biuj2016_9tv/TAVI%20VI.pdf
972 Letter №01/88602 of Ministry of Labor, Health and Social Affairs of Georgia, dated 5 December 2016.
973 Paragraph C of Article 2 of Annex №1 to the Ordinance №36 of the government of Georgia of 21 February 2013, On Several Measures to Be Undertaken to Transfer to Universal Health Care.
974 The Ordinance №73 of the government of Georgia of 9 February 2017.

In the Public Defender's view, the program must consider the interests and needs of vulnerable groups of population to the maximum extent.

A prerequisite for a successful implementation of health care program is the provision of geographic access. A state program of village doctor, which is being implemented, aims to increase geographic and financial availability of primary health care services for rural population. The budget of the program is GEL 26 million.[975] It is necessary to enhance geographic coverage of the program as well as increase the amount of medical services rendered under it.

THE STATE PROGRAM OF REFERRAL SERVICE

Within the framework of Referral Service, the government of Georgia established a commission to take decisions on providing relevant medical assistance.[976] The commission is set to facilitate a relevant decision making on rendering medical assistance to population "within the scope of medical assistance component, in the form of referral service, at times of natural disasters, calamities, emergency situations, to conflict-affected people and in other cases as defined by the government of Georgia." The 2016 budget of the program was set at GEL 26 034 000.

In 2016, the Office of the Public Defender studied the application of citizen G.N..[977] The citizen suffered from chronic lymphocytic leukemia (C91.1) and required urgent chemotherapy. According to the applicant, due to grave social and economic condition the family could not afford the treatment. The applicant applied for assistance to the commission established under the referral service. With the decision №21 taken on 3 May 2016, the commission refused to finance the treatment because in 2015 and 2016, the commission considered the applications of G.N. and on both occasions took decisions to finance the medical assistance. The commission explained that at a meeting on 27 November 2012, the commission members agreed that: "… in regard to financing expensive oncological medications… such medications for a patient will be financed only once during a calendar year." This was the ground of the refusal to finance medical service for the second time during the year, according to the information provided by the Ministry.[978] The Office of Public Defender requested the information on the number of cases when the commission took decisions on satisfying (fully or partially) applications for financing medical service of same citizen twice or more in 2015 and 2016 (break-down by years). The response of the Ministry of Labor, Health and Social Affairs[979] does not contain statistical data, but it notes that "…financing by the commission of the same citizens twice (or more) is allowed when it concerns the beneficiaries defined in the Ordinance №660 of the government of Georgia, dated 30 December 2015, On the Approval of State Health Care Programs and within the scope of services defined therein.

The Public Defender believes that the criteria defining beneficiaries of the Referral Service state program must be more clear-cut, must cover various social groups of population and enable a seeker of assistance to receive effective medical service as soon as possible.

PATIENT RIGHTS

The Georgian legislation containing provisions on patients' rights draws on international legal acts, European Charter of Patient Rights as well as recommendations adopted by the World Health Organization. It includes fundamental rights such as: right to preventive measure, right of access, right to information, right to consent,

975 The Ordinance №660 of the government of Georgia of 30 December 2015, On the Approval of State Health Care Programs for 2016.
976 The Ordinance №331 of the government of Georgia of 3 November 2010.
977 Statement №6014/16 of the Office of Public Defender.
978 Letter №01/48353 of Ministry of Labor, Health and Social Affairs of Georgia, dated 23 June 2016.
979 Letter №01/488209 of Ministry of Labor, Health and Social Affairs of Georgia, dated 2 December 2016.

right to free choice, right to privacy and confidentiality, right to respect of patient's time, right to safety, right to complain, right to compensation.[980] The majority of above listed rights are incorporated in Georgian laws.[981]

The Constitution of Georgia gives everyone the right "to apply to a court for the protection of his/her rights and freedoms."[982] Clearly, this right can be exercised in the context of health care too. According to Article 63 of the Law of Georgia on Health Care, the quality of medical activities in all medical institutions is controlled by the Ministry of Labor, Health and Social Affairs of Georgia in accordance with the legislation. The Council of Professional Development,[983] established under the Ministry, considers applications and complaints about the activity of medical personnel and after scrutinizing relevant materials, takes decisions on professional liability. Organizational and technical support to the activity of the Council is provided by the State Regulation Agency for Medical Activities, a sub-entity under the Ministry of Labor, Health and Social Affairs of Georgia. It also performs the function of secretariat of the Council.

In 2016, the Office of Public Defender studied the applications of N.T.[984] concerning the quality of provided service and alleged restriction of the right to health care. The applicant demanded that the professional activity of the doctors be studied and evaluated. The issue was considered several times by the Council of Professional Development at the Ministry of Labor, Health and Social Affairs, but the applicant was not given an opportunity to attend the meeting. It must be noted that the parties are allowed to attend a decision making of the Council.[985] Based on a written application of the Office of Public Defender and revealed new circumstances, the Council considered the complaint of N.T. anew in the presence of the complainant. It showed that irrespective of the obligation provided in the law, there were problems in inviting complainants to meetings.

The Public Defender also studied the lawfulness of the decision on denying public information to N.T.. It was established that the entity violated requirements of General Administrative Code of Georgia and the Law of Georgia on Protection of Personal Data. In this regard, a recommendation was drawn up[986] by the Public defender and fulfilled by the entity.

The Office of Public Defender also studied the application of citizen G.K.[987] who demanded that the State Regulation Agency for Medical Activities study the quality of service rendered to the applicant. G.K. also noted that the medical institution did not provide medical information in full. The State Regulation Agency for Medical Activities did not study the facts described in the application.

It should be noted that the competence and scope of activity of the Agency includes the control of quality of medical service rendered to patients by legal and physical persons (including, under state health care programs); the study of compliance of legal and physical persons with the terms and conditions of license/permit, technical regulation; the implementation of measures envisaged in the law and the study of citizen applications (complaints) within the scope of effective legislation.[988] The Agency started the study into the facts described in the application only after it was addressed by the Office of Public Defender.[989]

The State Regulation Agency for Medical Activities must draw up common legal regulations for the implementation of legislation in the area of patient rights and to ensure a uniform standard of communication with applicants.

980 EUROPEAN CHARTER OF PATIENTS' RIGHTS BASIS DOCUMENT; Rome, November 2002; http://ec.europa.eu/health/ph_overview/co_operation/mobility/docs/health_services_co108_en.pdf
981 The Law of Georgia on Patient Rights.
982 Article 42 of the Constitution of Georgia.
983 Decree № 122/n of Minister of Labor, Health and Social Affairs of Georgia, dated 16 May 2008.
984 Statement 9048/15, 11617/16 of the Office of Public Defender.
985 Article 87 of Law of Georgia on Medical Practice.
986 Recommendation №04-5/14464 of the Public Defender of 5 December 2016.
987 Statement №60009/16 of the Office of Public Defender.
988 Subparagraphs B, C and E of Paragraph 3 of Article 2 of the regulation of State Regulation Agency for Medical Activities approved under the Decree № 01-64/n of Minister of Labor, Health and Social Affairs of Georgia, dated 28 December 2011.
989 Letter №04-5/13337 of the Office of Public Defender of 11 November 2016.

STATE PROGRAM OF TB MANAGEMENT AND ITS LEGAL REGULATIONS

In 2015, the Parliament of Georgia adopted the Law on Tuberculosis Control. Main articles of the Law entered into force on 1 January 2017 while in 2016, normative acts necessary for its enactment were being drafted and published.[990]

The toughening of control on infectious diseases, including tuberculosis, and the enhancement of epidemiological surveillance as well as the prevention of antimicrobial resistance representing a global threat have become increasingly urgent in the process of association with the European Union. The country must introduce latest recommendations of the World Health Organization, which will enable the country to meet TB control-related obligations in accordance with the EU directives.

SITUATION IN THE SPHERE OF TOBACCO CONTROL

Every person has the freedom of choice. One can choose either to consume tobacco or to refrain from its consumption. The freedom of choice, however, does not mean the right to harm others. The smoking harms not only smokers but also those who do not consume tobacco but find themselves in the environment where others smoke.

Tobacco consumption is a leading cause of death in the world. According to data of World Health Organization (WHO), six million people die from tobacco consumption worldwide annually. Of them, 600 000 are victims of second-hand smoke (exposure to second-hand smoke that come from burning tobacco). In other words, one person dies per six seconds, on average, because of tobacco.[991]

A survey conducted by the Institute of Social Studies and Analysis[992] in 2016 shows that 30.6% of adult population of Georgia consumes tobacco.

Under the Ordinance №58 of the Government of Georgia, dated 15 March 2013, a state commission was set up to strengthen tobacco control measures. The commission developed a national strategy on tobacco control[993] and a multi-year action plan.[994]

On 27 June 2014, the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part was signed. Under the EU-Georgia Association Agreement[995] the parties agreed to develop cooperation in the field of public health. This cooperation includes effective implementation of international health agreements recognized by the Parties, in particular the International Health Regulations and the Framework Convention on Tobacco Control.

990 A form of the report on administrative offence for the failure of a health care provider to inform a relevant local public health unit about a refusal of a person to undertake mandatory TB investigation was approved (the Decree № 01-42/n of Minister of Labor, Health and Social Affairs of Georgia, dated 31 October 2016); the government of Georgia drew up the rule of determining, and issuing, the monetary incentive for a patient, who is a Georgian citizen, for observing the TB treatment regime (the Ordinance №162 od the government of Georgia of 1 April 2016); as of November 2016, finalizing consideration of special written form of offer to undertake mandatory TB investigation or/and the approval of the rule of implementation of this offer were underway. The information is provided in the letter №01/86969 of Ministry of Labor, Health and Social Affairs of Georgia, dated 28 November 2016.

991 See details at http://www.who.int/mediacentre/factsheets/fs339/en/

992 Study into attitudes of society towards tobacco-free environment (2016). Available at http://www.issa-georgia.com/ka / პროექთები/472.

993 Ordinance №196 of the government of Georgia on the approval of state strategy for tobacco control, 30 July 2013.

994 Ordinance №304 of the government of Georgia on the approval of the action plan for tobacco control for 2013-2018, 29 November 2013.

995 The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part was signed. Under the EU-Georgia Association Agreement. Available at http://www.parliament.ge/ge/ajax/downloadFile/34753/AA

In 2016, the government of Georgia drew up the 2016 National Action Plan[996] which envisages the promotion of cessation of regular tobacco consumption; prevention of tobacco uptake; reduction of secondhand smoke exposure; raising of public awareness; strengthening of international cooperation, et cetera.

In June 2016, the Parliament of Georgia was presented, in accordance with the rule of legislative initiative, with a package of legislative changes to the following Georgian laws: Law on Tobacco Control, Code of Administrative Offences, Law on Organizing Lotteries, Games of Chance and other Prize Games, and Law on Broadcasting. The package of amendments seeks to introduce ban on smoking in all public buildings and transport (except for residential houses, penitentiary facilities and hotels) from 2018, to prohibit all forms of advertising, sponsorship and promotion of tobacco products (prohibition on the display of packets is requested from 2019), to make the printing of pictograms on packets of tobacco products mandatory and enlarge the size of health warnings up to 65%, to set regulations on electronic cigarettes, raise fines on breach of tobacco control legislation and allow an authorized representative of executive authority to apply fines to violators without a court judgment, to grant a government entity the powers to monitor tobacco control legislation, et cetera.

According to the draft amendments to the Law on Tobacco Control, which were prepared in 2016, subparagraph "M" was added to Article 2; according to this subparagraph, the criteria, requirements, conditions and rules in the tobacco control field of Georgia shall be defined following such principles that imply that the participation of tobacco industry must be excluded from and its interests not accepted in the process of drafting, approving and implementing health care decisions and the relationships of public institutions/officials with the tobacco industry must be transparent and responsible.

Unfortunately, the government administration disagreed with the amendments to the tobacco control legislation, which were submitted as a legislative initiative to the Parliament of Georgia. In its opinion, submitted to the Parliament of Georgia on 4 July 2016, the government administration noted:

"…we deem it appropriate to compare and agree positions in the process of drafting the legislative package concerning the tobacco control sphere and to finalize the wording with the involvement of all interested entities, including the involvement of private entrepreneurs engaged in this sphere."

The above opinion of the government of Georgia runs counter to Paragraph 3 of Article 5 of the WHO Framework Convention on Tobacco Control, which requires that in setting and implementing their public health policies with respect to tobacco control, the parties shall ensure the protection of these policies from commercial and other vested interests of the tobacco industry.

Georgia lacks appropriate counselling or assistance services for those who want to quit smoking. According to Article 14 of Framework Convention on Tobacco Control, the parties have an obligation to take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

According to Paragraph 4 of Article 5 of the Law of Georgia on Tobacco Control, points of tobacco sale shall display a health warning, approved by the Minister, and a quitline number for counselling those who are willing to quit smoking.

With its letter N01/45267 of 13 June 2016, the Ministry of Labor, Health and Social Affairs provided the Office of Public Defender with the data on quitline beneficiaries: 233 beneficiaries in 2013, 839 beneficiaries in 2014, 440 beneficiaries in 2015, and 29 beneficiaries in January-March 2016. Bearing in mind that according to latest surveys around 31% of population consumes tobacco and 39.1% of them tries to quit smoking, the helpline service for cessation of smoking, in the form it operates today, cannot be regarded as effective.

996 Ordinance №382 of the government of Georgia, 7 March 2016.

In the absence of referral clinics and/or services for the treatment of tobacco dependence, the conduct of trainings by the Ministry of Labor, Health and Social Affairs targeting doctors of primary health care center cannot be considered an effective measure for promoting the cessation of tobacco use.

The Public Defender of Georgia inquired about enforced court decisions on violations of requirements for the use of tobacco, sale of tobacco products, advertisement of tobacco products, and design of tobacco products. The study of court decisions showed that over the period from 1 January to April 2016, the majority of court decisions – 70% (569 decisions) concerns a misdemeanor specified in Paragraph 2 of Article 155^3 of Administrative Offences Code. During the indicated period, 17% of court decisions (137 decisions) concerned the complaints against a misdemeanor envisaged under Paragraph 4 of Article 155^3 of Administrative Offences Code, that is the sale of tobacco products to persons under 18, while 5% (43 decisions) concerned a misdemeanor specified in Paragraph 1 of Article 155^3 of Administrative Offences Code, that is the sale of tobacco products at trade outlets that sell children's clothes and toys.

Results of a sociological survey clearly show that **tobacco products are readily available to minors**; this may turn them into tobacco consumers and cause serious harm to their health in future.

Something that captures one's attention when studying court decisions enforced in 2013-2016 is the following: the majority of reports on violations (57%) was drawn up by representatives of the executive branch in 2013; the reports on violation of requirements established for the consumption, sale, advertisement and design of tobacco products, drawn up in the jurisdictions of eight out of 14 district courts over the period between 1 January 2013 and April 2016, were dated May-June 2013; as regards remaining district courts, the reports on administrative offence were submitted to them by entities responsible for tobacco control mainly in May-June 2013 and the first quarter of 2014.

The documentation provided by the Interior Ministry proves that the majority of violations of the rules of tobacco consumption and sale was detected in May-June 2013 and the first quarter of 2014; representatives of the Ministry detected only two violations of tobacco consumption and sale rules in 2015, with one of them concerning the sale of tobacco to a minor and another concerning the smoking in the hall of metro station.

The provided statistical data makes it clear that the Interior Ministry fulfills obligations under international and national legislation in a sporadic, not regular, manner. The inactivity of the Georgian Interior Ministry in performing the powers granted to it in the field of tobacco control was apparent in 2015.

The legislation on tobacco control needs to be improved and approximated with the WHO Framework Convention on Tobacco Control and directives of the European Parliament and of Council; regulations concerning the availability of tobacco products for youth need to be especially toughened. Moreover, the executive authority must fulfill restrictive provisions in the field of tobacco control in a regular, not sporadic manner. The above issues are discussed in detail in a special report of the Public Defender on Situation in the Field of Tobacco Control.[997]

RECOMMENDATIONS

To the Parliament of Georgia:

- Approximate the legislation in the field of tobacco control with the Framework Convention on Tobacco Control and recommendations of World Health Organization within the shortest possible time, in particular:
  - Impose a total ban on smoking in buildings of all public and private institutions and public transport;

997 Special Report of the Public Defender of Georgia on Situation in the Field of Tobacco Control, 2017.

- Impose a ban on all forms of direct and indirect advertising, promotion and sponsorship of tobacco products;
- Enlarge the size of health warnings on tobacco packaging so that it covers 65% of packaging surface and make the printing of pictograms on packaging mandatory;
- Subject electronic cigarettes and charging containers to adequate legislative regulation, as it is in the case of tobacco products;
- Deliberate on easing the administering of violations of tobacco control law on the legislative level, in particular, grant the power to authorized executive bodies (the Ministry of Internal Affairs and the LEPL Revenue Service) to impose small size fines for violations;
- Impose liability on public and private entities/organizations for breaching requirements of total smoking ban.

To the government of Georgia:

- In accordance with the obligations assumed under the EU-Georgia Association Agreement and the WHO Framework Convention on Tobacco Control, develop and approve a plan on the increase of taxes on tobacco products and raise taxes according to this plan;
- Clarify the criteria defining beneficiaries of the Referral Service state program and make it cover various social groups of population and enable a seeker of assistance to receive effective medical service as soon as possible.

To the Ministry of Labor, Health and Social Affairs:

- Do not link the restriction on the availability of universal health care program to the engagement of citizens in private insurance schemes as of a concrete date;
- Enhance geographic coverage as well as amount of provided medical services under the state program of village doctor;
- Cause the State Regulation Agency for Medical Activities to develop common legal regulations for the implementation of legislation in the area of patient rights and to ensure a uniform standard of communication with applicants;
- Introduce most recent recommendation of the World Health Organization, thereby enabling the country to meet TB control-related obligations in accordance with the EU directives;
- Direct greater amount of resources towards raising awareness of population about harmful effects of tobacco products and implementing other tobacco control measures, in order to allocate adequate finances;
- Ensure the development and accessibility of counselling for cessation of smoking and services of treatment for tobacco dependent persons in the country.

To the Ministry of Internal Affairs of Georgia and the LEPL Revenue Service:

- Ensure effective enforcement of tobacco control legislation; perform this activity in a regular, not sporadic manner.

SITUATION OF THE RIGHTS OF THE CHILD

INTRODUCTION

Despite positive changes implemented by the state in 2016, the rights of the child remain a problem in terms of their consideration, protection and promotion. Measures undertaken to eliminate violence against children, extreme poverty and other violations of children's rights are well below sufficient. No notable change has been seen in the situation with the rights of children placed in alternative care, let alone unseen children left beyond the state care. Child remains the most vulnerable member of a family and society, whose voice is often unheard.

One should commend measures undertaken by the state to improve legislation, which positively affect the situation of children's rights. In this regard, one should note the Law on Early and Preschool Education adopted by the Parliament in June 2016.Yet another important step is a new regulation on child protection referral procedures. This government ordinance[998]extended the circle of state entities responsible for identifying violence against children and neglected children, and protecting and assisting them. With this legislative amendment adopted, it is now important to ensure that it is effectively enforced – something which, unfortunately, remains problematic.

Moreover, in June 2016, the Parliament of Georgia ratified the Third Optional Protocol to the UN Convention on the Rights of the Children a Communications Procedure. According to this document, the Committee on the Rights of the Child can be communicated about individual violations of child's rights. It is worth noting that the Public Defender of Georgia repeatedly recommended the ratification of the optional protocol.

The year 2016 was remarkable in regard to submission of the fourth periodic report of Georgia to the UN Committee on the Rights of the Child. Alongside the state report, shadow reports were submitted by the Public Defender and nongovernmental organizations. After the consideration of the Report on its 74th session, the Committee published concluding observations on 3 February 2017.[999]

The Public Defender of Georgia conducts an intensive monitoring of children's rights across the country. The number of applications to the Public Defender's Office, concerning individual violations of children's rights remained high in 2016. The analysis of 311 cases proves that violence against children remains a serious problem (78 cases) as well as child poverty and inadequate living conditions (57 cases).

A high indicator of violence against children in families and at care and educational institutions is a challenge faced by the state. Identification of offenders, on the one hand, and implementation of effective measures for rehabilitation and protection of victims of violence remain problematic. Corporal punishment of children as well as bulling is a problem in general educational institutions.

998 Ordinance #437 of the government of Georgia "On the Approval of Child Protection Referral Procedures." 12 September 2016.
999 UN Committee on the Rights of the Child. Concluding observations on the fourth periodic report of Georgia. 16 January – 3 February, 2017.

Child poverty and inadequate standard of living, which implies malnutrition and grave living conditions of children, remain among unresolved issues. The process of placemen of such children in state programs and provision of corresponding service is often procrastinated, thereby undermining the efficiency of these programs.

Education and health care of minors remained a problem in the reporting period. The situation of the right of children living and working in street requires special attention since the response undertaken by responsible entities is often ineffective and belated.

The Public Defender fully supports the call of the UN Committee on the Rights of the Child on the government of Georgia to adopt a law on the rights of the child,[1000]which will incorporate all provisions of the Convention on the Rights of the Child and its optional protocols. The adoption of the law will facilitate systematization of rights, further approximation of national legislation to international standards and will ensure successful implementation of the rights guaranteed by the Convention. The Public Defender of Georgia calls on relevant state entities to undertake effective measures in this direction.

THE RIGHT OF THE CHILD TO LIFE AND HEALTH

Under-five child mortality

According to the UN Convention on the Rights of the Child, "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services." Moreover, the Convention obligates the states to diminish infant and child mortality and to ensure appropriate pre-natal and post-natal health care for mothers.

According to the UN General Assembly resolution, "Technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age," to diminish child mortality it is necessary to take into account relevant risk factors and undertake a multi-faceted response while giving special consideration to most vulnerable groups.[1001] To reduce under-5 mortality, the states must ensure the highest attainable standard of health.[1002] Special attention should be paid to factors such as poverty, access to education and various social services.

Although according to 2015 official statistics and results of wide-scale surveys, the child mortality rate slightly decreased in Georgia, the 2015-2016 indicator of under-5 mortality still significantly exceeds a corresponding indicator of developed countries.[1003] While the mortality indicator in these countries stands at 6 per 1,000 live births, a corresponding indicator in Georgia stood at 12 per live births in 2015[1004]and slightly increased according to 2016 preliminary data (see Table №1).

According to 2016 data, the situation is grave and problematic in the prevention of mortality among infants and children aged between 1 and 5 years. The preliminary data provided by the Ministry of Labor, Health and

1000 UN Committee on the Rights of the Child. Concluding observations on the fourth periodic report of Georgia; General measures of implementation. (Articles 4, 42, 44(6)). A. legislation (6).

1001 Report of the United Nations High Commissioner for Human Rights. "Technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age." 2014; Par. 17.

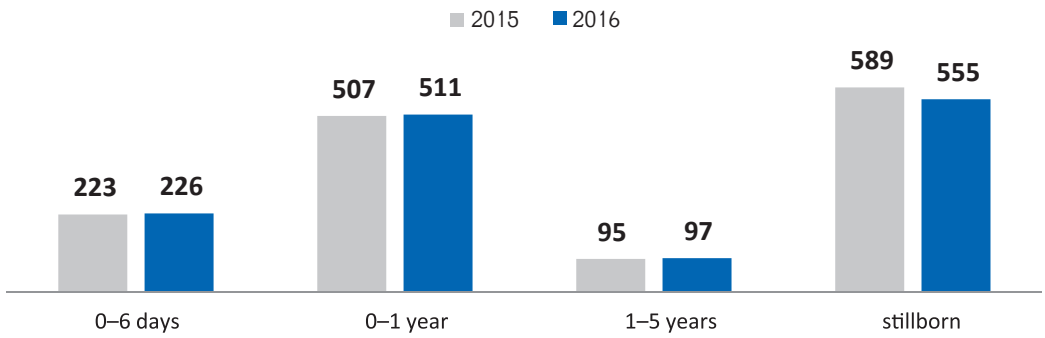
1002 Ibid., Par. 20.

1003 Data of Inter-agency Group for Child Mortality Estimation (IGME). See http://www.childmortality.org/files_v20/download/IGME%20Report%202015_9_3%20LR%20Web.pdf.

1004 Ibid.

Social Affairs of Georgia[1005] was compared to the 2015 data of the National Statistics Office of Georgia.[1006] The table below (see Table №1) shows a slight increase in mortality of infants and the children aged 1-5 among age groups of 0-6 days, 0-1 year and 1-5 years. As regards a stillbirth rate, it has decreased as compared to the previous year.[1007]The child mortality rate is shown below.

Table №1. Child mortality rate.



Results of the examination carried out by the Office of Public Defender of Georgia show risk-factors causing infant mortality; they include problems in providing affordable, quality and timely health care service, the need of relevant equipment and infrastructure for health institutions, especially antenatal hospitals and maternity homes, et cetera. Moreover, availability of funds and geographic access remain serious challenges in the field of protection of children's rights to life and health care.

Implementation of measures designed to improve quality of perinatal services in Georgia began in 2015, but they have not been completed yet and the geographic area covered by these measures is small. This process, along with other competences, involves the regionalization of services (classification by levels). One should note that the perinatal care system consists of three levels: basic care (level I), specialized care (level II) and subspecialized care (level III). Of 84 hospitals assessed in 2015-2016 countrywide, levels were determined for 34 hospitals. Repeat assessment was conducted in 23 hospitals. Moreover, additional 17 hospitals[1008] were assessedin early 2017. Nevertheless, the process of assessment of hospitals should be conducted in a more intensive and timely manner.

As regards the issue of disciplinary proceedings against doctors on cases of under-5 child mortality, in 2016, the LEPL Regulation Agency for Medical Activities launched inquiry into 21 cases of child mortality (0-1 and 1-5 age groups). The inquiry into 10 cases was completed and the issue of liability of 12 doctors was raised at the council for professional development. The council for professional development considered one issue and found one doctor liable suspending that doctor's license for one month.[1009] One should note that during the reporting period, the council for professional development took a decision only on one child mortalitycase. The council should consider the issue of professional liability of doctors on child mortality cases within a reasonable timeframe.

In 2016, the Public Defender of Georgia submitted a proposal[1010] to the government of Georgia, regarding the measures necessary for the prevention and reduction of under-5 child mortality.

1005 Letter N01/3869 of the Ministry of Labor, Health and Social Affairs of Georgia.
1006 National Statistics Office of Georgia, population, available at: http://www.geostat.ge/?action=page&p_id=151&lang=geo
1007 Ibid.
1008 Correspondence N01/9217, 15/02/2017.
1009 Ibid.
1010 See http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saxalxo-damcvelis-winadadeba-5-wlamde-bavshvta-sikvdilianobis-prevenciisa-da-shemcirebisatvis-sachiro-gonisdziebebis-shesaxeb.page

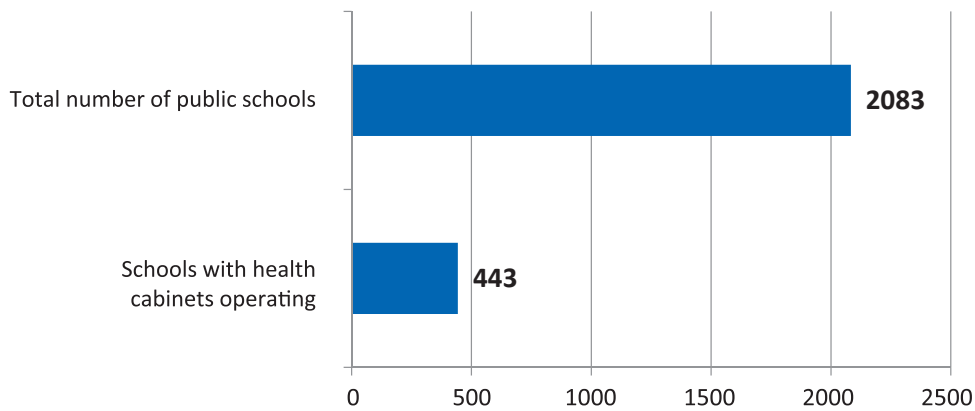
On the positive side, it should be noted that to improve health of mothers and newborns, the government of Georgia developed a long-term strategy (2017-2030) and a three-year action plan (2017-2019). These documents cover issues such as strategic interventions, reduction of mother and child mortality rates, family planning, priority directions of sexual and reproductive health development of youth. A matter of utmost importance is the effective implementation of the strategy and action plan.

EXERCISE OF THE RIGHT TO HEALTH AT EDUCATIONAL INSTITUTIONS

General educational institutions have a crucial role in the protection of children's health. Although the Ministry of Education and Science of Georgia undertakes particular measures in regard to the protection of health and sanitary-hygienic standards at schools, serious problems are observed in the areas of water supply, rules of organizing catering and observing hygiene and sanitation.

The Ministry of Education and Science of Georgia implements a "Subprogram on the operation of health cabinets in the territories of general educational institutions (public schools) and the activity of school doctors" which defines the functions and obligations of school doctors, including: monitoring health condition of schoolchildren and communicating information/recommendations to parents, planning and implementing preventive measures of infectious diseases, planning sanitary-hygienic and prophylactic measures at school and supervising sanitary-hygienic conditions, monitoring the compliance with the recommendations concerning school catering standards, et cetera. However, the number of schools in which health cabinets operate is quite low.

Table №2. Health cabinets operating in public schools[1011]



In 2016, the Office of Public Defender of Georgia studied the efficiency of state mechanism of monitoring water and sanitary-hygienic standards at general educational institutions. During the process a great deal of attention was paid to the safety of drinking water, the proper fulfillment of obligations by state entities and the effectiveness of monitoring mechanism.

The study revealed that the existing situation in general educational institutions regardingdrinking water supply and sanitary-hygienic conditions falls short of national and international standards and runs counter to basic principles of the UN Convention on the Rights of the Child. This tendency is especially apparent in public school located in mountainous and rural areas.

1011 Correspondence MES 9 17 00014962.

The study of a number of schools showed that there is a problem of water supply system at schools. The situation is aggravated by the fact that a monitoring body is not defined on a normative level, which would regularly inspect the safety of water and the sanitary-hygienic conditions in general educational institutions. It is worth to note that according to standards of the World Health Organization, potential risks to health caused by the consumption of drinking water must be assessed by a relevant supervisory body; this means the establishment of a systemic program of inspection which may involve audit, analysis, sanitary inspection and other aspects.[1012]

According to the information received from the LEPL Educational and Scientific Infrastructure Development Agency of the Ministry of Education and Science of Georgia,[1013] the entity has no obligation to control the quality of water and sanitation at schools.[1014] At the same time, according to the information received from LEPL Food Safety Agency of the Ministry of Agriculture of Georgia,[1015] lab tests performed in 2015-2016 showed the incompliance of 45 drinking water samples taken from public schools with technical regulation of the government of Georgia;[1016] this speaks about epidemiologically unsafe drinking water which results from ineffective water disinfection.

One should also mention results of the study conducted with the assistance of UNICEF by LEPL Educational and Scientific Infrastructure Development Agency in 2013, which showed that since 2010, only in 10% of all public schools was the quality of water inspected. Moreover, as many as 70% of schools had never carried out water disinfection measures. Some 70% of schools use pipeline water supply system; 4% of urban and 12% of rural schools use unimproved water sources as the main source; in 70% of schools water supply pipeline system is not installed in the school buildings.[1017] The reporting year has not seen any notable improvement of the above described situation.

THE RIGHT OF CHILD TO BE PROTECTED FROM POVERTY AND INADEQUATE STANDARD OF LIVING

Child poverty remains a problem in the country.[1018] In its concluding observation,[1019] the UN Committee on the Rights of the Child emphasizes this issue and reiterates its recommendation issued to the state in 2008, concerning the actions to be implemented for the alleviation of child poverty.

As the results of the monitoring carried out by the Public Defender's Office revealed, grave social and economic condition is one of main causes of removing minors from their biological families to place them under the state care. This raises questions about the efficiency of social programs. It is worth noting that 30% of beneficiaries of alternative care, studied by the Public Defender's Office within the framework of monitoring of foster care subprogram, were placed there because of poverty and inadequate living conditions.[1020]

According to information from the LEPL Social Service Agency of the Ministry of Labor, Health and Social Affairs of Georgia,[1021]as of December 2016, 169,503 children (under 18 years of age) were registered as beneficiaries of social assistance (social allowance) while 62,522 families with a member under 16 years of

1012 WHO. Guidelines for Drinking Water Quality. 2011,9.
1013 Correspondence N MES 6 17 00040438, 18/01/2017.
1014 Ibid.
1015 Correspondence N09/9552, 06/12/2016
1016 Ordinance N58 of the Government of Georgia On the Approval of Technical regulation of Drinking Water, dated 15 January 2014.
1017 http://unicef.ge/uploads/Standards_Water_Sanitation_and_Hygiene_in_School.GEO_1.pdf
1018 The Well-being of Children and Their Families in Georgia - Georgian Welfare Monitoring Survey, Fourth Stage 2015. See http://unicef.ge/uploads/WMS-2015-GEO.pdf
1019 Concluding observations on the fourth periodic report of Georgia, CRC/C/GEO/CO/4. 2017.
1020 Special Report on the Monitoring of State Subprogramof Foster Care. Pg. 24. http://www.ombudsman.ge/uploads/other/3/3823.pdf
1021 Correspondence 01.02.2017 – N04/5904.

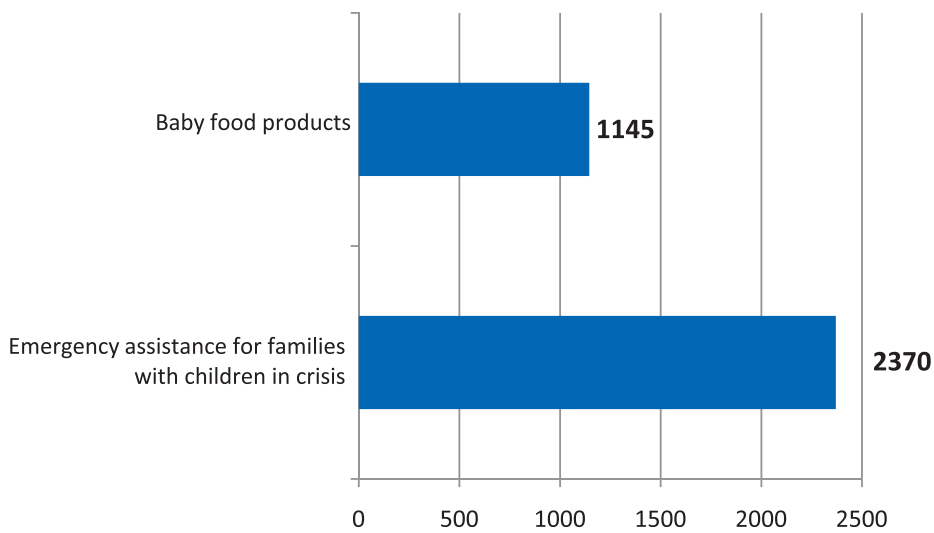
age were registered as receivers of a 10-lari-worth addition in the common database of socially disadvantaged families. These figures indicate about social and economic hardships of families. They often find it difficult to meet needs of children and ensure adequate standard of living. Problems are seen in the provision of food and daily items. In certain cases, poverty restricts the access of minors to education.

It should also be said that the above described situation largely determine the number of children working and living in street. Nevertheless, the state has not taken effective steps towards a thorough study of the situation, which is proved by results of individual cases studied by the Public Defender too.

Strength and effectiveness of targeted social assistance system area matter of great importance for the empowerment of families and reduction of risks of poverty. The state program of social rehabilitation and child care, implemented in the country, includes a subprogram - emergency assistance for families with children in crisis; the objective of the program is to meet primary needs of poor families with children and to reduce risk of child abandonment.

According to the information from the LEPL Social Service Agency of the Ministry of Labor, Health and Social Affairs of Georgia,[1022] the data on the beneficiary families and the children provided with baby food products under the emergency assistance for families with children in crisis subprogram during 2016 looks as follows:

Table №3. Indicators of children/families engaged in program.



Results of the study by the Public Defender of Georgia revealed shortcomings regardingthe engagement in and the use of the subprogram. Firstly, it must be noted that the number of subprogram beneficiary families is far below the number of the children receiving allowance and the families receiving a 10-lari-worth addition. The schedule of meetings of a decision-making commission is not drawn up, which results in procrastination of decisions. In certain cases, families have to wait for years to receive service of the subprogram.

This impedes the achievement of the objective of subprogram as well as the goal of state program. On certain occasions, the needs of families change in the process of decision making by the commission and they come to face risks and needs of a different degree. During the reporting period, the Public Defender studied several such cases in which families applied for the subprogram in 2014-2015, but the commission,as of 2016, had yet to take decisions.

1022 Correspondence 01.02.2017 – N04/5904.

It should be noted that the state program for social rehabilitation and child care envisages the provision of mother and child shelters; theaim of the program is to preventchild abandonment and empowerbiological families. After leaving the service mothers are still unprepared for an independent life and face problems before getting into the shelter. The study of cases by the Public Defender's Office revealed that, in most cases, they do not have dwelling and find it difficult to meet children's needs and provide them with adequate living conditions.

CHILD LABOR AND WORST FORMS OF LABOR

Serious challenges existing in the sphere of child labor in Georgia require effective response from the state. The effective legislation needs to be significantly improved and developed in order to come in line with international standards. Effective enforcement of the conventions concerning Minimum Age for Admission to Employment and the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labourof the International Labor Organization (ILO) is especially problematic on the national level.

According to the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, a program of priority actions shall be designed and an effective implementation mechanism shall be developed on the national levelto eliminate worst forms of child labor.[1023] However, such a mechanism is still missing in the national legislation, which significantly impedes the preventionof child labor exploitation and the protection of labor rights.

The national legislation sets minimum standards in the area of child labor rights. The legislation regulates aspects of child labor rightssuch as the labor capability of minors, minimum age, requirements forlabor conditions, et cetera. Irrespective of mentioned legislative regulations, the situation in practice is quite grave in regard to the protection of child labor rights and prevention of labor exploitation. There is no system of effective monitoring and identification of cases. One should also note that alike in previous years, issues concerning the rights of children living and working in street and the efficiency of the system of protecting and assisting them remain a serious challenge in the country.

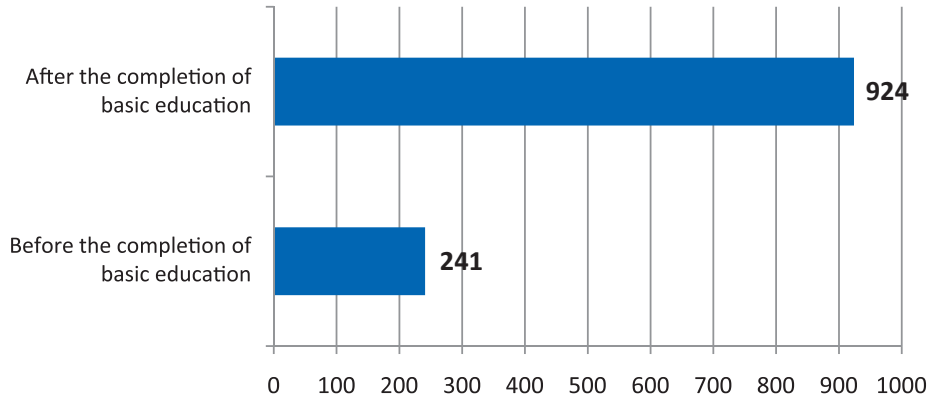
In 2015-2016, the Public Defender's Office identified cases of alleged labor exploitation of children who were reintegrated from the alternative care into their biological families. In particular, children[1024] had to perform worksunsuitable for their age at various private workplaces; that endangered effective enforcement of children's rights to education and health.

The main factors, pushing children towards performing works unsuitable for their age and the level of their mental and physical development are poverty and inadequate living standard. Along with these factors, one should also mention ineffectiveimplementation of positive obligations by the state entities. In particular, instances of child laboror labor exploitation are not identified in a timely manner. Also, the issue of child labor in coastline resorts is especially urgent. To improve social conditions, minors seasonally perform quite a hard work. One should also mention frequent cases of dropping school because of child labor as well asabsenteeism from school because of seasonal works in households.

1023 The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour №182. Articles 5, 6, 7(2).

1024 Beneficiaries of the subprogram approved under the Decree #01-20/n of the Minister of Labor, Health and Social Affairs of Georgia, dated 20 March 2014, "On Determining the Rule and Conditions of Appointment, Suspension, Renewal and Termination of Reintegration Allowance, also, Other Relations Connected to the Issuance Thereof."

Table №4. Indicator of dropping school because of work[1025]

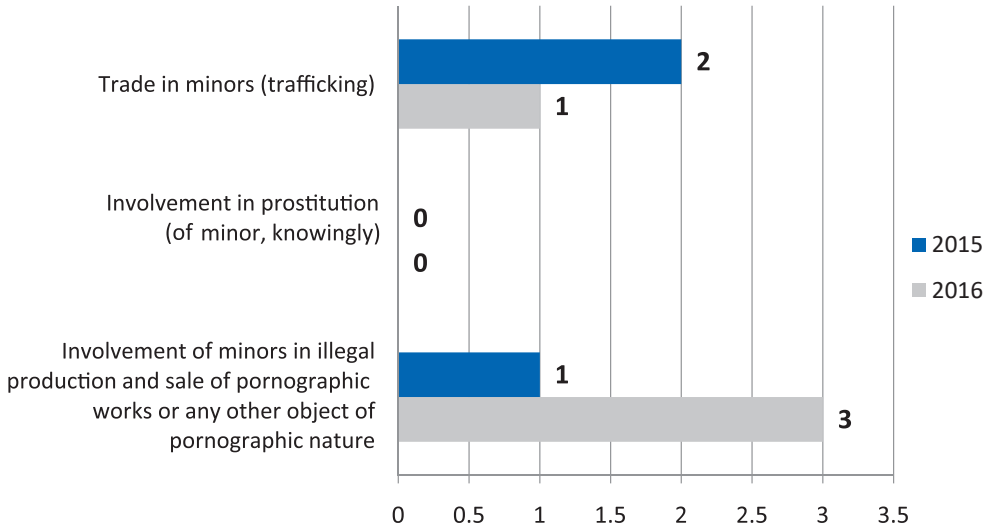


Yet another problem is the child labor migration. According to the results of a survey conducted by the NPLE Young Pedagogues' Union,[1026] minors have to perform various seasonal works, even more so, overtime, without fixed working hours, outside the country too. In particular, minors from Adjara and Guria regions seasonally perform hard and labor-intensive work for nine hours per day, on average, in Turkey.[1027] According to this survey, incidents of sexual violence in labor migrationare few, though five respondents indicated about such incidents.[1028]

The analysis of information received from LEPL Social Service Agency and the Ministry of Internal Affairs of Georgia reveals problems in elimination of worst forms of child laborand timely referral, especially in terms of investigation into cases of child trafficking, involvement in prostitution, illegal production and sale of pornographic materials, and measures undertaken by law enforcement authorities[1029] (see Table №5). Moreover, according to information of the Interior Ministry,[1030] patrol police inspectors of the Tbilisi Main Division of Interior Ministry's Patrol Police Department were called in by citizens concerning only two facts of alleged labor exploitation of minors; however, according to the information received from the Interior Ministry, the Ministry did not receive from its territorial bodies any report aboutfacts of alleged labor exploitation of minors and the Ministry of Internal Affairs **did not carry out a procedure of referral to the LEPL Social Service Agency**.[1031]

1025 Correspondence N MES 3 17 00214261, 06/03/2017.
1026 Young Pedagogues' Union. "Surveying the practice of child labor migration from Adjara and Guria to Turkey," 2015-2016.
1027 Ibid.
1028 Ibid.
1029 Correspondence N2426105, 27.09.2016.
1030 Correspondence N MIA 6 17 00518054, 02/03/2017.
1031 Ibid.

Table №5. Indicator of investigations into alleged child labor exploitation, 2015-2016.[1032]



According to information received from the LEPL Social Service Agency, the total of 150 minors were placed under the alternative care because of labor exploitation.[1033] Moreover, according to the Agency,[1034] victims of child labor exploitation are registered in the subprogram of foster care, small family-type children's homes, day care centers and round-the-clock shelters, where registered beneficiaries receive the service of the center and psychologist. It should also be mentioned that "12 beneficiaries, who suffered from labor exploitation, were placed under the state subprogram of emergency assistance for families with children in crisis."[1035]

According to the Agency, main forms of labor exploitation in 2016 were: trade in small objects, collection of scrap metal, begging. Moreover, in 2016, the Agency received seven notifications about the cases of child labor, which were referred to the Ministry of Internal Affairs.[1036]

Although a state program on the monitoring of labor conditions is approved under the government of Georgia ordinance, the state lacks effective mechanism for the monitoring of children's labor rights. As for the shortcomings of the program implementation, one should mention the need to obtain consent from an employer and the lack of effective mechanism of sanctioning. Moreover, the program does not define specific regulations for the monitoring of child labor conditions.

The above said is proved by the information received from the Labor and Employment Inspection Department, according to which inspections conducted in 2016 resulted in the identification of cases of child employment in six organizations.[1037] The majority of detected violations basically relate to failure to observe micro-climate and sanitary-hygienic norms, absence of individual and collective protection, et cetera.

JUVENILE JUSTICE

In the reporting period, to study criminal proceedings against minors, the Office of Public Defender of Georgia[1038]scrutinized eights criminal casesrequested from the Supreme Court of Georgia. Shortcomings

1032 The table reflects preliminary data provided by the Ministry of Internal Affairs.
1033 Correspondence N04/71204, 21/09/2016.
1034 Correspondence N04/71204, 21/09/2016.
1035 Ibid.
1036 Ibid.
1037 Correspondence N04/71204, 21/09/2016
1038 Within the framework of the project "The rights of accused minors in the process of criminal justice" implemented by non-governmental organization Rehabilitation Initiative for Vulnerable Groups.

identified as a result of the study and corresponding recommendations were included in a special report "Rights of Accused Minors in the Process of Criminal Justice."[1039]

The abovementioned study concerns the rights of accused minors in the process of criminal justice. The document discusses the procedures to be used, and the practice, during the process of criminal justice against children in conflict with the law, starting from the first contact of a child with law enforcement bodies to the court trial and enforcement of imposed sentence.

It should be noted that when studying the cases requested by the Public Defender's Office, the attention was focused only on the degree of enforcement of procedural guarantees.[1040] The study identified several shortcomings, in particular, problems in detention procedures, proper drawing up of reports on investigative actions, timely drawing up of individual assessment reports, et cetera.[1041]

VIOLENCE AGAINST CHILDREN

Georgia continues to face problemsin the prevention of violence against children, identification of such cases in a timely manner and effective implementation of protection and assistance measures. In addition to negative stereotypes deep-rooted in the society, shortcomings in the delivery of service negativelyaffect the protection of children from any form of violence.

One should note a legislative change adopted in 2016 to improve the legislation regulating the prevention of violence against children, which envisages the enhancement of the role of social workers; also, amendments to the Law of Georgia on the Elimination of Domestic Violence, Protection of and Support to Its Victims, aimed at enhancing the role of social workers and intensifying their involvement when minors are isolated from offenders in case of any form of violence against children. However, along with the improvement of legislative regulation, it is important to effectively implement these regulations in practice – something which remained a challenge in the reporting period.

Domestic violence against children is an especially acute problem. The results of study conducted by the Public Defender's Office show that the identification of neglect and other forms of violence against children and timely response to these offences to prevent repeat violence remain problematic. A low indicator of identification of such cases can be attributed to lack of awareness among society of the impact of violence on the child and lawless nature of such action as well as, in often cases, indifference towards such violence. Moreover, the failure to effectively deliver child-friendly services and a poor coordination between responsible entities further aggravate the problem.

In regard to above problems, it is worth to mention a case from the practice of Public Defender of Georgia, inwhich the Social Service Agency as well as the Ministry of Internal Affairs reacted to a fact of domestic violence against a minor only after the Public Defender hadapproached them, although the minor, as he claimed, spoke to a social worker on this issue before applying to the Public Defender's Office.

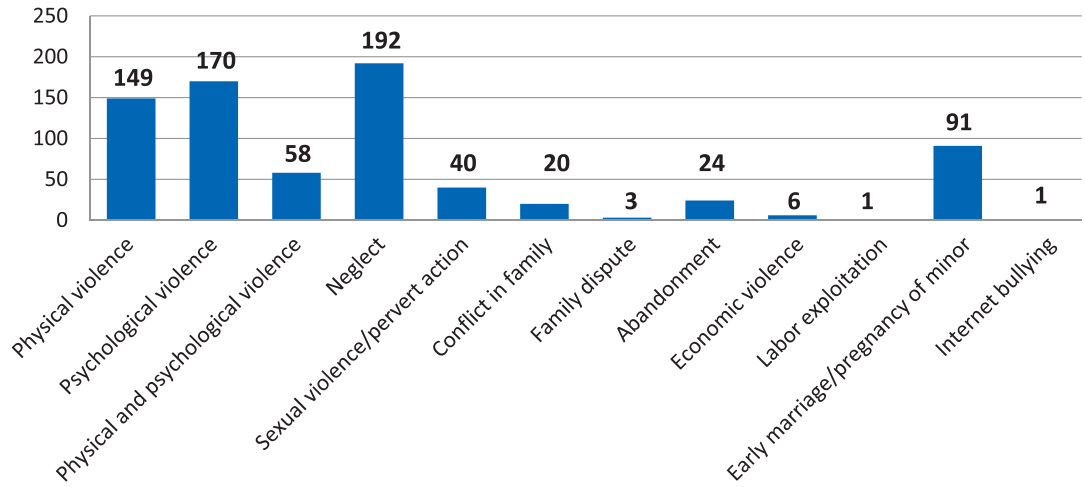
According to the information provided by the LEPL Social Service Agency to the Public Defender's Office, as many as 755 facts of violence against children were identified in 2016. Of these cases, 426 were referred to the Ministry of Internal Affairs.

1039 See http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/arasrulwlovani-braldebulis-uflebebi-sisxlis-samartlis-processhi.page.

1040 It should be noted that the study into eight criminal cases, naturally, cannot fully depict the problems existing in juvenile justice, but there is a high likelihood that similar practice is commonplace.

1041 NGO Rehabilitation Initiative for Vulnerable Groups also identified serious legislative and practical shortcomings in the process of juvenile justice and issued concrete recommendations about steps to be taken for the protection of best interests of the child; see http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/arasrulwlovani-braldebulis-uflebebi-sisxlis-samartlis-processhi.page

Table №6. Data on violence against children in 2016.[1042]



In 2016, psychologists of the LEPL Social Service Agency provided service to 378 children country-wide. This makes it clear that the process of rehabilitation of child victims of violence – timely involvement of psychologists and access to psychological service - remains a problem. The cause of it is the shortage of psychologists at the LEPL Social Service Agency. According to provided information[1043], the Agency employs 11 psychologists in the country.

As for the measures undertaken by the Interior Ministry regarding the facts of violence against children, in 2016, the investigation was launched into 67 facts of beating of minors, according to provided information.[1044] In terms of geography, the highest number of such incidents occur in Tbilisi (26 cases) and in Kvemo Kartli (13 cases). In 2016, the investigation was launched into 95 cases of domestic violence and 110 minors were given the status of victims. The highest indicator of such cases is in Tbilisi (36 cases), followed by Imereti, Racha-Lechkhumi and Kvemo Svaneti (23 cases) and Kvemo Kartli (12 cases).

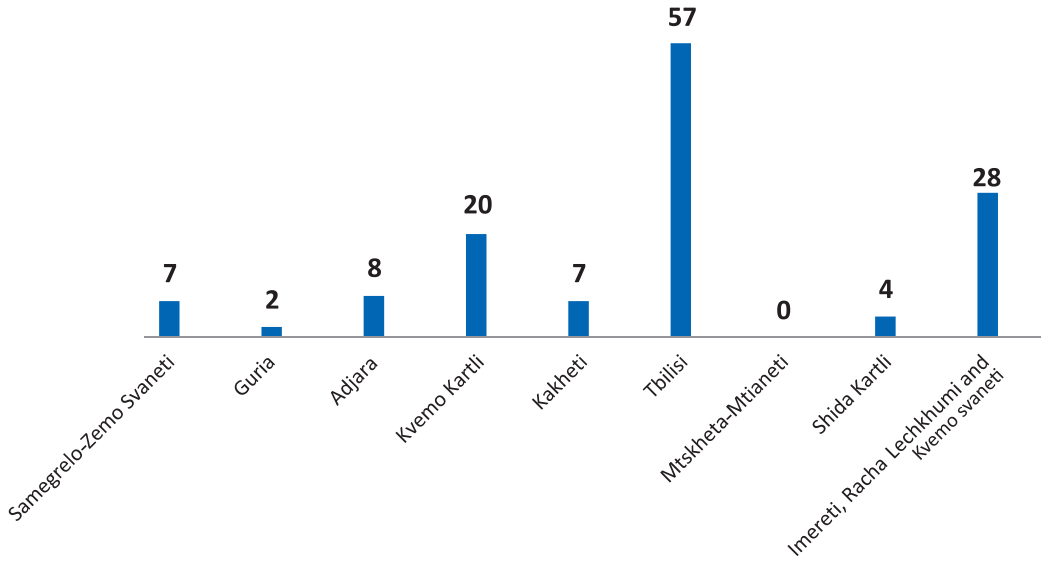
Received statistics shows high indicator of crimes envisaged by Article 140 of the Criminal Code of Georgia (Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years). In 2016, the investigation under this article was launched into 250 alleged crimes and 189 minors were given the status of victim. By regions, the highest indicator is in Kakheti (55 cases), Kvemo Kartli (50 cases), Imereti, Racha-Lechkhumi and Kvemo Svaneti (46 cases), Samegrelo-Zemo Svaneti (31 cases).

The investigation into a crime specified in Paragraph 2 of Article 150[1] of the Criminal Code - forced marriage committed against a minor – was launched into two cases and according to the information provided by the Prosecutor's Office, one person was qualified asa victim. Investigation into a crime specified in Article 171 of the Criminal Code ("Engagement of minors into anti-social activities") was launched into one case and two minors were qualified as victims. Given the scale and urgency of the problem, these statistical data indicate about the difficulty of identifying such cases and the lack of coordination among state entities.

One should note a low indicator of the application of measures to protect children from violence. The number of restraining orders issued in 2016 to protect children (133) comprises a mere 4.6 percent of total orders (2877) issued in the same year. Unfortunately, the Chief Prosecutor's Office of Georgia did not provide us with the information about criminal proceedings instituted in accordance with those articles under which minors are qualified as victims, because, as we were informed, the Chief Prosecutor's Office does not maintain such statistics.

1042 Correspondence N 04/1731; 12/01/2017 of the LEPL Social Service Agency.
1043 Ibid.
1044 Letter N153909, 20.01.2017.

Table №7. Data on restraining orders issued against facts of violence in 2016.



A matter of importance is to ensure adequate response from law enforcement entities to each and every instance of domestic violence against children, launch of investigation in a timely manner and implementation of all necessary investigative actions. Moreover, LEPL Social Service Agency must promptly interfere in cases of domestic violence against children while coordination among responsible entities must be of permanent nature.

Violence in educational institutions

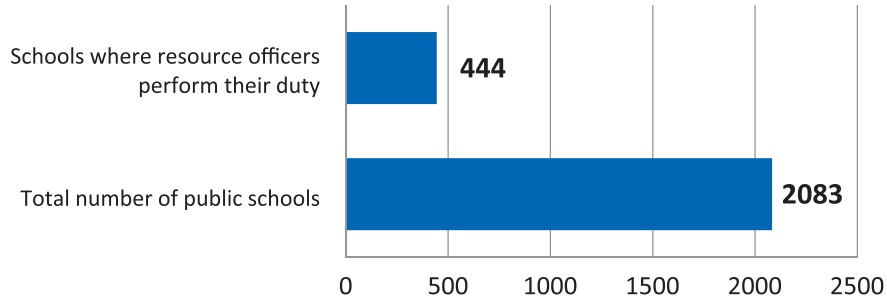
Since 2016, with the support from UNICEF, the Office of the Public Defender of Georgia conducts the monitoring of public schools and boarding schools on issues of violence.[1045] In the reporting period, a monitoring visit was carried out to 30 public schools and four boarding schools in Samegrelo-Zemo Svaneti, mountainous Adjara, Mtskheta-Mtianeti, Imereti, Samtskhe-Javakheti and Kakheti regions.

Preliminary results of the monitoring show that violent and humiliating attitude of teachers towards pupils is commonplace in general educational institutions. Moreover, bullying among pupils is apparent on a large scale.

Resource officers in educational institutions identify facts of violence against pupils and refer them to the center of psychological service.[1046]The responsible for the referral procedure lies with a resource officer whereas in schools where the resource officer service does not operate – a director or deputy director. It should be noted that the number of those schools where resource officers perform this function is small compared to the total number of public schools (see Table №8). According to the results of monitoring, this service does not currently operate in public schools which, according to the number of pupils and the space of school territory, require a resource officer.

1045 Results of the monitoring of public schools and boarding schools will be fully provided in a special report of the Public Defender.
1046 The Psychological Service Center of the LEPL Office of Resource Officers of Educational Institutions operates in seven cities: Tbilisi, Rustavi, Telavi, Kutaisi, Batumi, Gori and Poti.

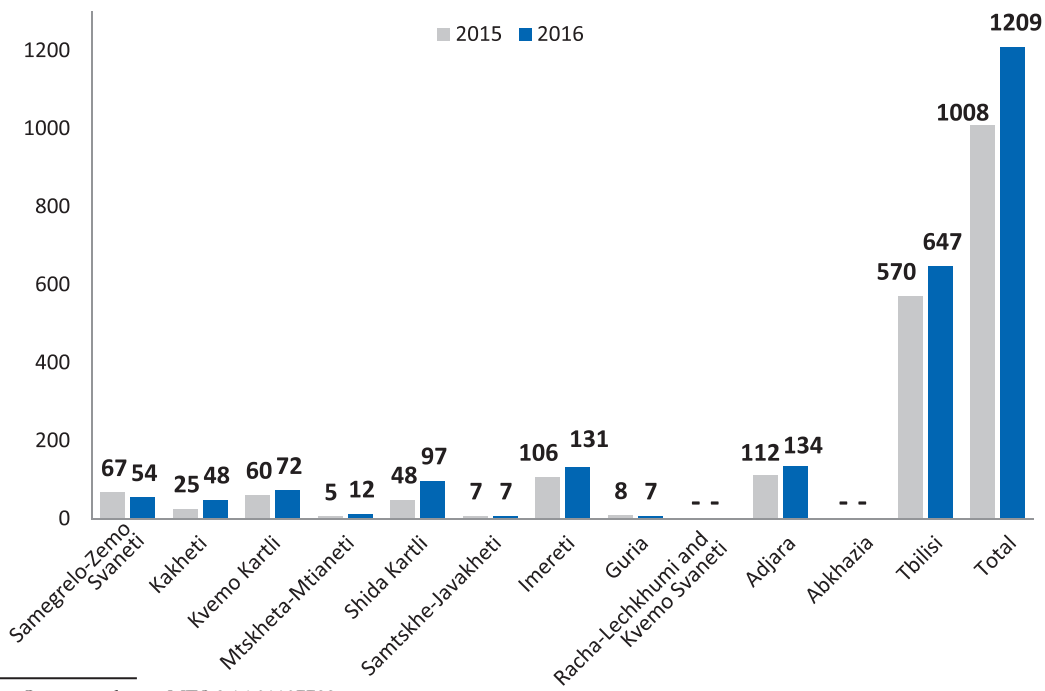
Table №8. Schools where resource officers of educational institutions carry out their duty.[1047]



The monitoring detected bullying among pupils, which is a widely-spread form of relationship among minors. Conducted focus-groups and filled in questionnaires revealed that humiliating pupils, giving derogatory nicknames, ridiculing, spreading rumors, marginalizing, physically abusing, hiding or damaging personal items, cyber bullying are all common practice. As the results of monitoring show, identification of facts of alleged bullying and violence remains a challenge for school directors as well as teachers and sometimes, for resource officers. They perceive instances of bullying as a childish joking and an isolated incident of squabble. This can be explained by the lack of awareness of regulations concerning violence, which were developed and adopted by public schools on the basis of the ordinance of the government of Georgia of 12 September 2016 "On the Approval of Child Protection Referral Procedures,"and the poor realization of relevant responsibility.

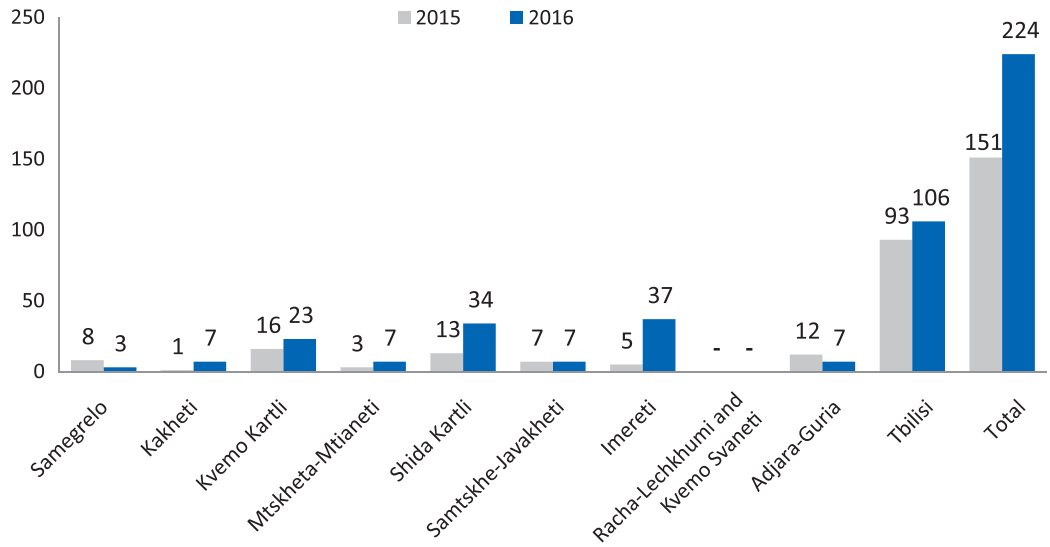
It is noteworthy that compared to the previous year, 2016 saw the increase in the number of beneficiaries referred to the Psychological Service Center of the LEPL Office of Resource Officers of Educational Institutions from the majority of regions (see Table №9). A similar trend is observed in terms of referral of pupils to the Social Service Agency in case of doubt about domestic violence (see Table №10). Considering the above mentioned shortcomings in identifying, the data provided in Table №9 and Table №10[1048] fails to depict the real scale of spread of violence.

Table №9. Data on beneficiaries referred to the Psychological Service Center of the LEPL Office of Resource Officers of Educational Institutions, by regions.



1047 Correspondance MES 2 16 01107728.
1048 Correspondance MES 9 17 00014962.

Table №10. Data on beneficiaries referred to the Social Service Agency by the LEPL Office of Resource Officers of Educational Institutions, by regions.



Through focus groups and questionnaires conducted at public schools, interviewed pupils spoke about violent and humiliating attitudes from teachers towards them. As it transpired, instances are frequent of shouting at pupils, manhandling, pulling their hair, making pupils to stand in a corner and to stand throughoutthe lesson, naming and shaming them in front of a class, classmates or schoolmates, humiliating because of dressing style, accessories and look, making pupils to clean school territory as a form of punishment (according to internal regulation, a school administration applies it on certain occasions as a disciplinary sanction), sending them out of classroom (according to internal regulation, may be applied as a disciplinary sanction).

To a question whether they apply to school for assistance in case of violation of their rights, pupils often respond: "it makes no sense," "nothing will change," "I trust no one," "I'd better settle problem myself." Monitoring results suggest that pupils' response to alleged violations against them from school administrations and teachers, as against the violations of their rights, aggravates the situation of minors at school.

To a question as to what measures school administration and teachers undertake when theyidentifycases of neglect of children by parents or legal guardians, physical and sexual violence, the most frequent answer is "contact a parent." Only few say that they contact a relevant service.

Table №11. "Contact a parent."

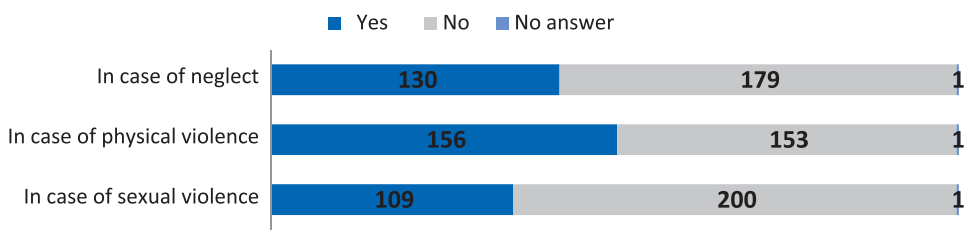
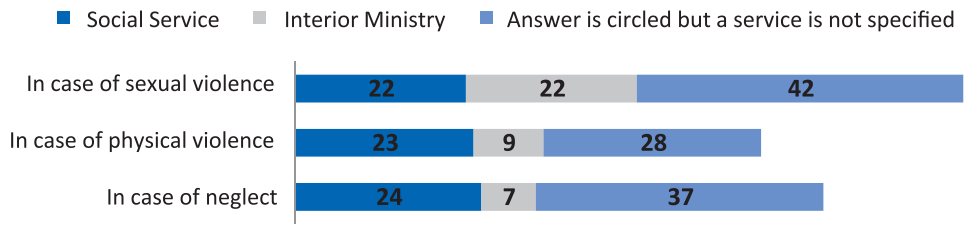


Table №12. "Contact a relevant service."



Results are of this type irrespective of the fact that the LEPL Office of Resource Officers of Educational Institutions and the LEPL National Center for Teacher Professional Development conducted trainings for directors, teachers and resource officers on the issues of prevention and identification of and response to alleged violence against minors in general educational institutions; this makes it obvious that this measure is not sufficient.

The right of the child to have relation with both parents

According to Paragraph 3 of Article 9 the UN Convention on the Rights of the Child, "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." The Civil Code of Georgia establishes the principle of equality of parents to children and stipulates that parents have equal rights and responsibilities to their children.

According to the information received from the LEPL Social Service Agency of the Ministry of Labor, Health and Social Affairs,[1049] 737 court disputes concerning the relationship with children were registered in 2016, in which Agency representatives participated. Some 140 applications for the enforcement of decisions were submitted to territorial units of LEPL Social Service Agency.Of these applications 89 cases were enforced or completed for other reason. At this stage, 44 cases have not been enforced for various reasons, including because of psychological influence on a child by a liable person, refusal of the child, failure of a party interested in enforcement to appear, termination of the process by an authorized person.

The enforcement of cases concerning the transfer of child or/and the right of another parent or other family member to have relation with a child remains a problem. The Public Defender highlighted this issue in his 2012-2015 parliamentary reports too, emphasizing the role of social workers in this process. Yet another problem is the identification of physical/psychological violence against a child from family members in the process of enforcement of court decisionsand a legal response to such cases.

Consideration of cases by the Center of Child's Rightsof the Office of Public Defender made it clear that when there is a disagreement between the parents about the place of residence of the child, until they apply to court, a parent, whom the child lives with, denies another parent the contact with the child. This process procrastinates and until a court delivers its decision, frequently causes a substantial harm to a child. Often parents claim that children refuse themselves to have contact with another parent and/or such a contact poses threat to safety and interests of the minors. In disagreements or disputes between parents about the issues of living place of and relationship with children, a threat of a child becoming victim of psychological pressure is real.

The Civil Code of Georgia provides for the protection of a minor from the abuse by parents/other legal representatives of their rights. The consideration of cases revealed disregard of the opinion of a child in determining his/her place of residence. A timely and effective response of the LEPL Social Service Agency to such cases remains a problem too. In particular, the LEPL Social Service Agency does not often consider the

1049 Correspondance 13.01.2017 – N10-4/4606.

issue in its entirety, by studying and comparing positions of both parents and givingconsideration to the best interests of the child. The involvement of psychologist is often a problem too.

The above described problems indicate that professionals working with children fail to properly ensurea child's contact with both parentsbased on the principle of parents' equal rights, while taking into account the safety of minor, not only before a court's decision but during the enforcement of the decision too.

THE RIGHT TO EDUCATION

Early and preschool education

The adoption by the Parliament of Georgia of the Law on Early and Preschool Education must be recognized as an important development. One should note that before the adoption of this law, the country lacked a common normative act regulating the rights of beneficiaries of preschool educational institutions and specifying the legal basis of universal availability and development of preschool education.

Nevertheless, there are important issues which, despite recommendations of the Public Defender, are still missing from the law. In particular, the Law does not specify an entity responsible for training and professional retraining of teachers; also, an obligation for relevant entities to monitor standards of their fields, which is a necessary mechanism for the maintenance of proper educational conditions in institutions. Moreover, Article 22 of the Law needs to be revised towards the reduction of the quantitative indicator of preschool student-teacher ratio.

Besides, the reporting period saw the protraction of the procedure of drafting and approving the following documentswithin a reasonable time: State Standards for Early and Preschool Education,[1050]Professional Standards for Caregiver-Pedagogues,[1051] technical regulations of catering, sanitary and hygienic standards at and infrastructure of institutions.[1052]

The reporting period saw problems in terms of protection of children safety in preschool educational institutions and efficiency of monitoring system; according to one of the cases studied by the Public Defender, a preschool institution neglected the safety of children resulting in a child sustaining an injury. It should be noted that local self-government bodies also fail to effectively control the conditions of children in preschool educational institutions, thereby impeding the identification of instances of neglect of and violence against beneficiaries.

Several cases of neglect of, and alleged physical and psychological violence against, beneficiaries of preschool educational institutions became known in the reporting period. A fact of breach of safety norms was also identified in one of the institutions when due to carelessness of caretakers and teachers,a child left the institution; this is something that constitutes the neglect of child and raises the issue of liability of caretakers and teachers.[1053]In additionto above mentioned problems, kindergartens do not conduct systemic retraining of caretakers and teachers in the areas of managing beneficiaries' difficult behavior, preventing violence and ill-treatment.

Adequate infrastructure and the educational inventory necessary for the development of children remain problems in the field of early and preschool education. Therefore, responsible bodies of municipalities should allocate proper fundsto meetthe mentioned needs of kindergartens.

1050 Subparagraph B of Paragraph 1 of Article 28 of the Law of Georgia on Early and Preschool Education.
1051 Ibid., Subparagraph C of Paragraph 1 of Article 28.
1052 Ibid., Subparagraphs D, E, F of Paragraph 1 of Article 28.
1053 The child disappeared from the territory of the institution for a certain period of time.

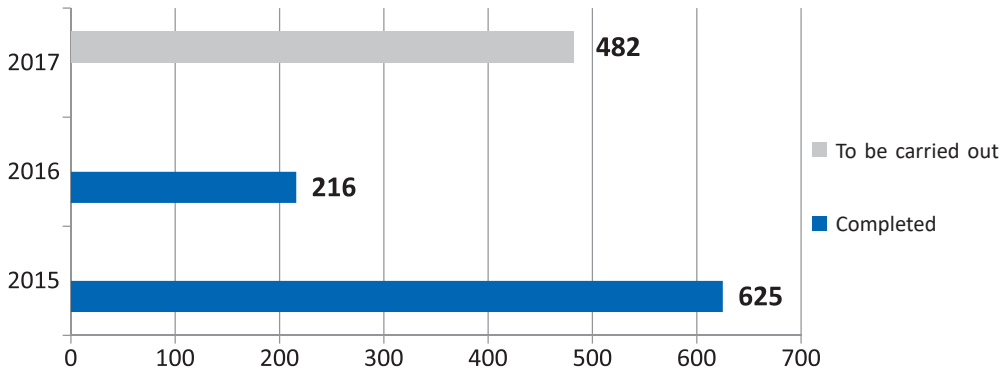
The right to general education

According to the UN Convention on the Rights of the Child (CRC),[1054]States Parties shall ensure the access to secondary education on the basis of equal opportunity. The Law of Georgia on General Education envisaged this principle and specifies the openness and availability of general education to everyone as a state obligation.

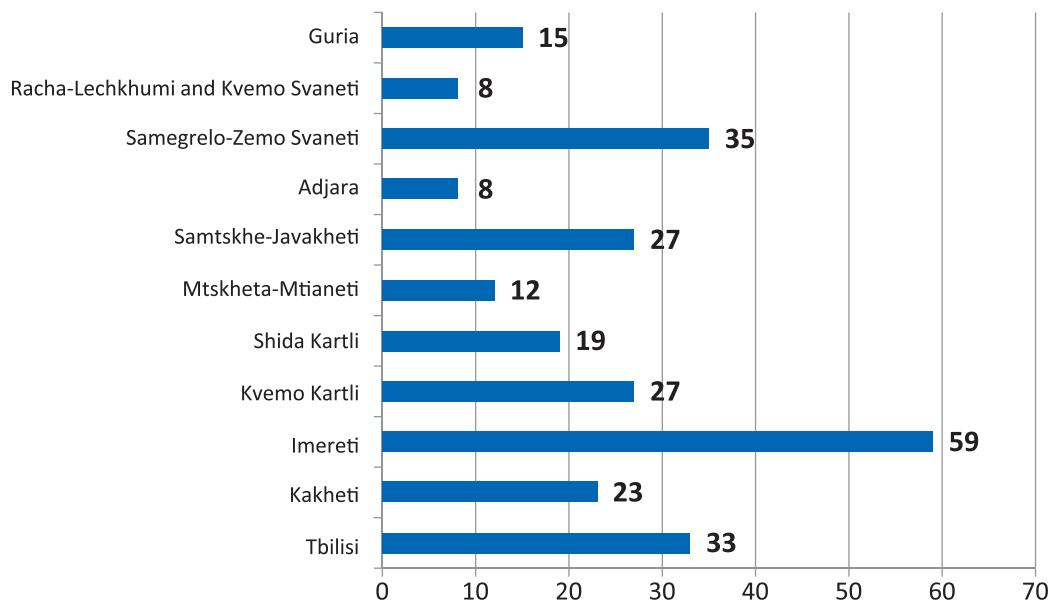
Although the guiding principles of CRC requires availability of the right to educationon the basis of equal opportunity regardless of whether a child attends a private school or a public school, the practice showed a number of alleged violations of the rights of private school students. The Ministry of Education and Science, however, did not respond to these violations adequately because the minors in question studied in a private school.

Among the problems identified in the reporting period in the area of effective enforcement of the right to general education, one should mention the need to improve public school infrastructure (see Tables №13 and №14), to effectively enforce the right to general education,to ensure equal access to education in rural and mountainous areas.

Tables №13. Indicators of rehabilitation works carried out in public schools.



Tables №14. Repair and rehabilitation works carried out in public schools in 2016, by regions.



1054 Article 28 of UN CRC.

The presented information makes it clear that the number of schools which were repaired and rehabilitated in 2016 is small. As for the geography, the lowest indicator is seen in Adjara, Racha-Lechkhumi and Kvemo Svaneti, Guria and Mtskheta-Mtianeti regions. Several cases studied by the Public Defender also showed instances when general educational institutions badly needed repair and rehabilitation but such works were not carried out in the reporting period.

In parallel to above described problems, one should note that the situation with catering facilities, lavatories, classes and cabinets, sports halls and educational inventory need to be put to right too. Moreover, a number of cases studied by the Public Defender showed the problem of heating system in general educational institutions in rural and mountainous areas (especially in schools with low enrollment).

The Public Defender learned as a result of the monitoring that the public school №3 of Gorelovka village in Ninotsminda municipality has not had a separate school building for years. The school operates in the building of public school №1 of Gorelovka village. This creates significant problems to both pupils and teachers. In particular, pupils of school №1 have classes in the first half of the day while those of school №3 have classes in the second half of the day. The classes are over at around 20:00. The school lacks enough space toaccommodate classes; for example, a computer room, the office of director, a library and a grade 2 class were accommodated in one room; schoolchildren do not have a canteen, sports hall, cabinets, et cetera. To tackle the problems in the school, the Office of the Public Defender applied to the Ministry of Education and Science of Georgia.[1055] In response to our application the Ministry informed us[1056] that they selected an alternative space for the school but it requires substantial rehabilitation.

Considering all the above said, it is of utmost importance for the Ministry of Education and Science of Georgia to pay adequate attention to the protection of pupils' rights in schools and the development of infrastructure.

Children dropping education

The number of children dropping education is alarming; along with other types of violations they are deprived of a possibility to exercise their right to education. Early marriage, social and economic hardships of families, neglect of the best interests of children and other factors are among reasons pushing children to drop schools.

The situation is further aggravated by the fact that persons working in general educational institutions lack information about violence against children, referral procedures in case of violation of their rights. This adversely affects the indicator of timely and effective interference of responsible entities. Moreover, they fail to prevent children from dropping schools.

According to the information of the Ministry of Education and Science of Georgia, in 2016, as many as 3,556 minors, for various reasons, dropped school before the completion of basic education stage (nine grades) while 6,449 dropped it after the completion of the basic stage.

Undertaking job and early marriage prevail among the reasons of dropping education; they require individual scrutiny and response from relevant entities. The issue of protection of the right to education of children living and working in street remain a problem too.

1055 Correspondance N10–2/15481.
1056 Correspondance N MES 2 17 00023631.

Table №15. Number of pupils having dropped school before and after the completion of basic education stage (nine grades).

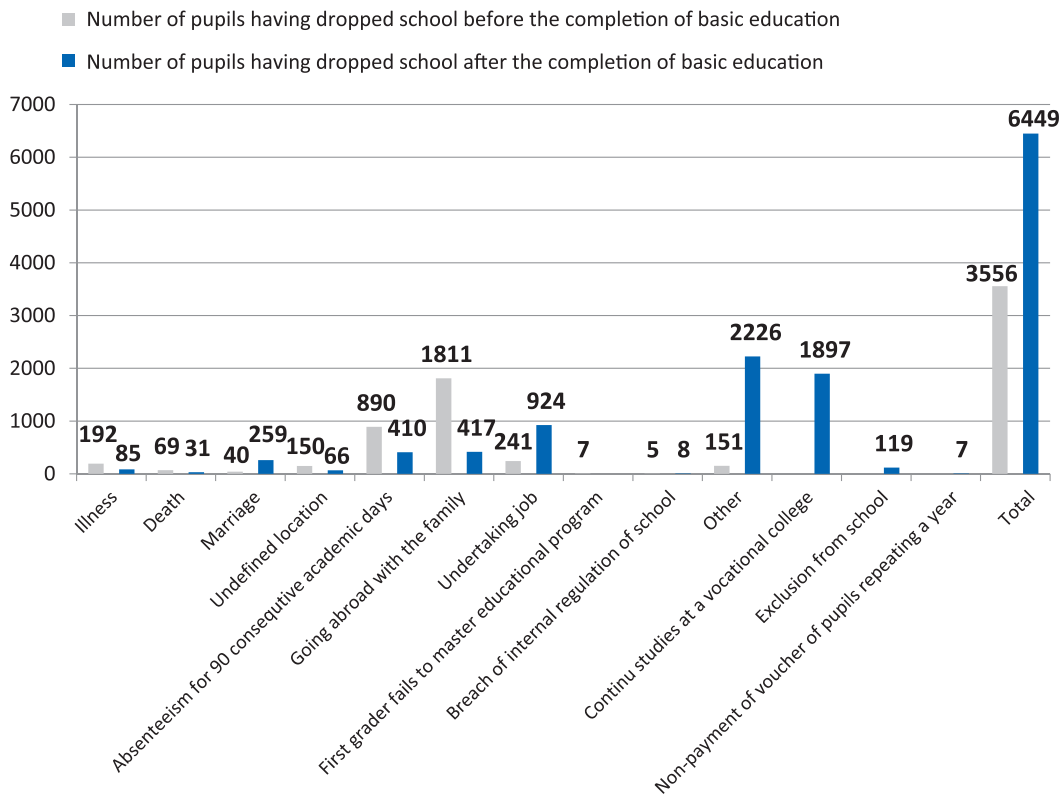
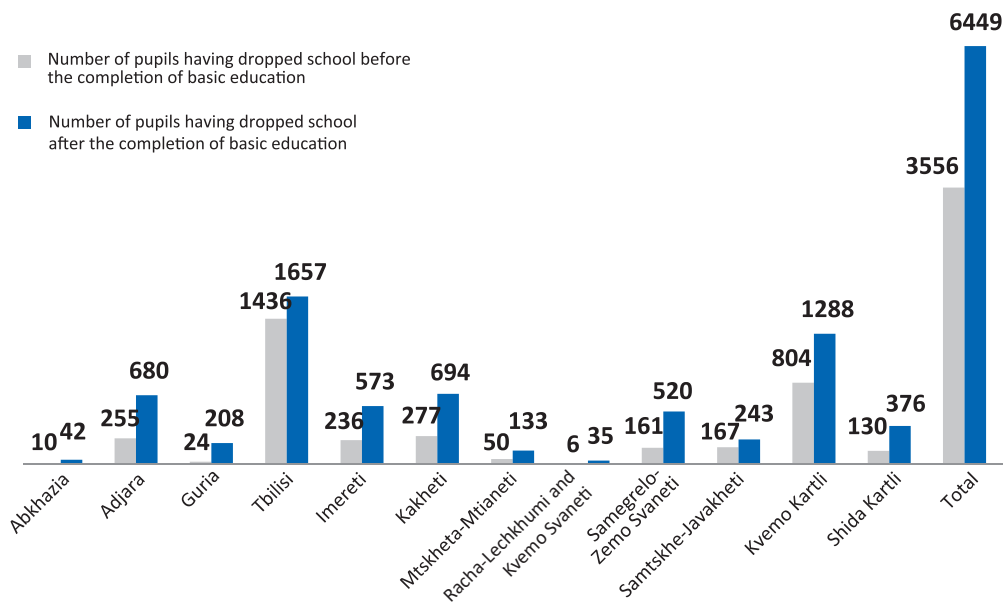


Table №16. Number of pupils having dropped school before and after the completion of basic education stage, by regions.



Informal education (school Olympiads, camps)

According to the UN CRC, in implementing any action toward a child, the best interests of the child shall be taken as a primary consideration. According to Comment №14 of the Committee on the Rights of the Child, the best interest of the child is to have the right of free access to education, formal and informal education and similar activities.

Consideration of cases by the Center of Child's Rights of the Public Defender's Office in 2015 and 2016, showed a number of shortcomings in the protection of child's rights in the implementation of school Olympiads and camps organized by private entities. In particular, there is no control over the conduct of Olympiads and camps. Also, the law does not require from organizers, before planning the activities, to undertake procedures of accreditation or agreement.

Case №1

The Public Defender became aware that in 2015, an educational summer camp for minors operated in the Khoni municipality, where sanitary norms were not observed and conditions were unsuitable for the needs of minors.

During the study of this case, the Social Service Agency informed[1057]the Public Defender that the issue of compliance of conditions in camps with the requirements did not fall within their competence. They respond only when they receive information about incidents of alleged violence in such camps. The Ministry of Education and Science[1058] monitor only camps that are organized by it. The National Food Agency[1059] inspected the territory adjacent to the camp and informed us that the sampling of water showed incompliance of the water with established requirements.

Case №2

The Public Defender became aware of the shortcomings in the progress of school Olympiads organized by private entities. We were notified about a case in which an under-age winner in the Olympiad did not receive an agreed valuable gift because of financial problems of the entity.

During the study of this case,the Ministry of Education and Science informed us that they lack any legal possibility to interfere in a dispute of private nature between a parent and organizer of Olympiad.

The study of above described cases showed that when camps and Olympiads are organized by legal entities of private law and natural persons, the state does not monitor such activities. Moreover, to conduct such activities, organizers do not have to undertake mandatory procedures of any kind and inform any entity. The state does not control the topics of materials used during school Olympiads or the results thereofeither. All this raises questions about taking the best interest of minors as a primary consideration and protecting their rights in the process.

Therefore, in accordance with the best interests of the child, this issue must be regulated by the law and entities responsible for the progress of each and every Olympiad and camp must be identified; besides, social workers must get involved in case of violating rights in this process and a controlling mechanism and corresponding standards must be developed.

1057 Correspondance 06.10.2015 – N04/75594; 12.11.2015 – N04/87244.
1058 Correspondance 11.12.2015 – N MES 31501295461.
1059 Correspondance 01.04.2016 – N09-6/1928.

CHILDREN UNDER STATE CARE

Situation of the rights of beneficiaries involved in state reintegration service

The UN General Assembly Resolution #64/142 (2010) sets an obligation for the states to ensure the development and implementation of coordinated policies in the sphere of alternative care.[1060] To this end, the states should develop and strengthen child welfare and protection system on the national level. According to the resolution, the states should develop and strengthen educational skills of biological familiesand the social services for parents and children with disabilities.

According to Paragraph 7 of Article 4 of the Decree #01-20/n of the Minister of Labor, Health and Social Affairs of Georgia, dated 2014, "On Determining the Rule and Conditions of Appointment, Suspension, Renewal and Termination of Reintegration Allowance, also, Other Relations Connected to the Issuance Thereof," a social worker works with a child placed in a specialized institution and with his/her biological family or guardian/custodian to strengthen the family and improve skills of parent for the aim of reintegrating the child into the biological family or with the guardian/custodian. This work may involve measures facilitating an independent functioning of parent/parents or custodian/guardian and when need be, referral to corresponding services.

According to statistical data of the LEPL Social Service Agency, 449 beneficiaries were engaged in reintegration service in 2016 (as of October); 40 of them were minors with disabilities.[1061] Moreover, 98 minors were reintegrated from the alternative care into their biological families.[1062]

According to the results of the monitoring conducted by the Center of Child's Rights of the Public Defender's Office,[1063] the process of reintegration of beneficiaries from the alternative care into their biological families does not meet the criteria of the best interests of the child. A greater attention should be paid to the protection of safety of reintegrated children, prevention and elimination of violence against them.

An especially problematic issue is the improvement of social function of families and their timely involvement in relevant supporting subprograms. According to the government ordinance on Social Assistance,[1064] the amount of reintegration allowance is set at 90 GEL per beneficiary and 130 GEL per minor with disabilities. According to the majority of families examined during the monitoring, this allowance is not sufficient to ensure proper social and economic conditions and educational environment for children. A segment of respondents, however, say that the reintegration allowance along with social assistance only partially allows to create a proper social and educational environment for children.

A small amount of reintegration allowance is especially problematic for families living in villages and mountainous regions where children live in extremely poor households. Moreover, the involvement of beneficiaries in non-monetary social programs is not properly implemented. In this regard, central and local government bodies do not conduct a coordinated state policy in order to ensuresocial empowerment of children living in comparative poverty in a timely and efficient manner.

A number of subprograms are envisaged within the framework of the government of Georgia ordinance #102 of 2016 On the State Program of Social Rehabilitation and Child Care to improve the situation of children facing the risk of abandonment. Among them especially topical is the issue of involvement of reintegrated families in the Emergency Assistance for Families with Children in Crisis Subprogram.[1065] As it transpired, the involvement in this subprogram of reintegrated families in crisis is, on certain occasions, procrastinated.

1060 UN General Assembly Resolution, Guidelines for the Alternative Care of Children. 24 February 2010.
1061 The data is as of October 2016. http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=1199
1062 Correspondence N04/2998.
1063 See http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/specialuri-angarishi-mindobit-agzrdis-saxelmwifo-qveprogramis-monitoringis-shesaxeb.page
1064 Article 10^3 of the Ordinance №145 of the government of Georgia on Social Assistance, 28 July 2006.
1065 According to Subparagraphs A and B of Paragraph 1 of Article 3 of the subprogram, among target groups are families subject to reintegration/involved into reintegration service.

As regards the improvement of social function of reintegrated families, the statistical information about reintegrated children involved in the State Program of Social Rehabilitation and Child Care in 2016 is worth to note:[1066]

Table №17:

1	Early Child Development Program	**5**
2	Day Care Centers Subprogram	23
3	Home Care for Children with Severe Mental Retardation Subprogram	2
4	Children Rehabilitation/Habilitation Subprogram	3
5	Emergency Assistance for Families with Children in Crisis Subprogram	120

As the above table shows, the number of beneficiaries engaged in the State Program of Social Rehabilitation and Child Care is small; one should also note problems in the involvement in the Emergency Assistance for Families with Children in Crisis Subprogram; in particular, as seen from citizens' applications and monitoring results, this process is quite protracted and often, reintegrated families cannot receive needed assistance.

The monitoring of reintegration service also revealed that stereotypical attitude of parents towards physical and psychological violence against children is still observed in the reintegrated families. In this regard, responsible state entities have a positive obligation to raise the level of awareness of parents and improve the system of child protection and assistance.

Situation of rights of the children involved in the state subprogram of foster care

The UN General Assembly Resolution №64/142 (2010)sets an obligation of the states to develop and implement coordinate policy in the field of alternative care.[1067] To this end, the services tailored to individual needs of the child and the procedural mechanisms are to be developed on the national level.[1068] Moreover, within the scope of positive and negative obligations, the states must establish an effective system of child alternative care in order to promote the effective enforcement of fundamental rights of children in foster care.[1069]

It is worth noting that in the reporting period, a draft law on Adoption and Foster Care was drawn up and submitted to the Parliament of Georgia. To improve the effectiveness of regulation in this sphere, the draft law envisages significant changes. At the same time, the Public Defender of Georgia expresses hope that the Parliament of Georgia will support his opinions submitted concerning this draft law.[1070]

Measures of the subprogram on foster care include the support in upbringing neglected children in the environment approximated to family environment and facilitating and strengthening child's contact with the biological family if it is not contrary to the best interests of the child.[1071] Despite this regulation, on certain occasions, there are problems in supporting active and regular relations of children with their biological families for their further reintegration and protection from being neglected.

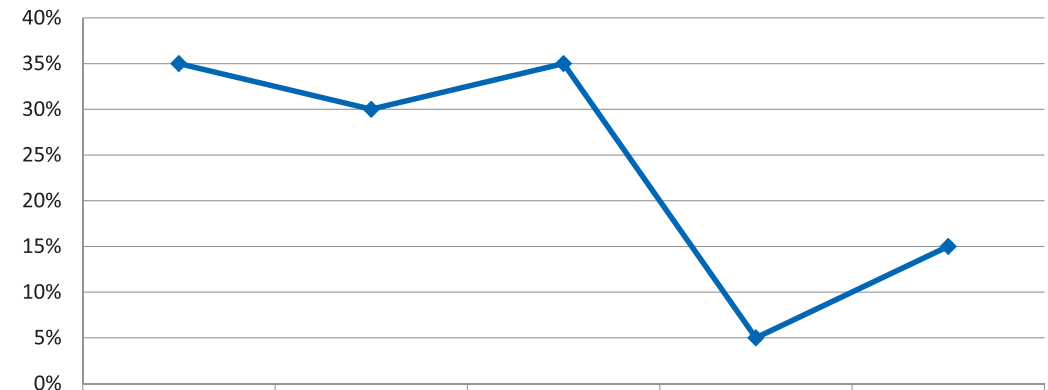
1066 Information received from the LEPL Social Service Agency, correspondence N04/2998, 18/01/2017.
1067 UN General Assembly resolution. General Assembly Resolution, Guidelines for the Alternative Care of Children, 24 February 2010, Doc. A/RES/64/142.
1068 Ibid.
1069 Ibid.
1070 See http://ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-winadadeba-shvilad-ayvanisa-da-mindobit-agzrdis-shesaxeb-saqartvelos-kanonis-proeqtshi-cvlilebebis-shetanis-shesaxeb.page
1071 Subparagraphs A and C of Article 2 of Annex 1.9 of the government ordinance №102.

The reporting period saw a number of steps taken by responsible entities to improve the situation of rights of beneficiaries of foster care subprogram; however, problems still remain in terms of neglect of children, rehabilitation of minor victims of domestic violence and reintegration.

The subprogram on foster care counts 1,390 beneficiaries with 204 amongst having disabilities.[1072] Moreover, in 2016, some 376 beneficiaries were placed in foster care of which 17 were placed in foster care of relatives.[1073]

In the reporting period, the Public Defender of Georgia, with the support of UNICEF, issued a special report[1074] on the situation of the rights of children involved in the subprogram on foster care. The monitoring examined the situation of the rights of 110 beneficiaries. According to the results, the reason of placement of beneficiaries in the subprogram of foster care is of mixed nature. The leading factors, conditioning the removal of a child from the biological family, are violence and other forms of ill-treatment, poverty, inadequate living standard and neglect (see Table №18).

Table №18. Reasons of removal of beneficiaries from their biological families, by results.[1075]



	Violence and other forms of illtreatment	Poverty and inadequate living standard	Neglect	Death of biological parents	Change in alternative care
%	35%	30%	35%	5%	15%

Results of monitoring show that the identification and rehabilitation of child victims of violence, protection of their rights to health care and education represent a challenge. Sometimes, social workers do not maintain stable and regular relations with beneficiaries; foster families do not receive comprehensive information about state services.

The monitoring revealed the need for the upgrade of qualification and retraining of social workers in the area of identification of ill-treatment of children, and the shortage of psychologists in local guardianship/ custodianship centers.

Along with the abovementioned monitoring results, the consideration of cases by the Public Defender's Office shows that effective double-checking of the conditions of children placed in foster care service remains a problem. This implies both planned and unplanned visits to foster families, referral of children to supporting services, psychological rehabilitation of child victims of violence and support of relations with biological families. The monitoring also revealed the absence on the normative level, of effective mechanism of preparing beneficiaries for an independent life.

1072 LEPL Social Service Agency, correspondence N04/17494.
1073 Correspondence N04/2998.
1074 http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/specialuri-angarishi-mindobit-agzrdis-saxelmwifo-qveprogramis-monitoringis-shesaxeb.page
1075 Ibid.

Situation of the rights of children in small family-type homes

The issue of protection of children's rights in small family-type homes remains a problem. Although in his reports, the Public Defender repeatedly recommends the LEPL Social Service Agency to ensure regular retraining of social workers, inter alia, on the issues of devising proper individual development plans, this is still not ensured. The problem is the retraining of caregivers in the management of child behavior and protection of child from violence; this impedes the timely identification of child victims of violence and provision of corresponding assistance to them.

According to the information provided by the Social Service Agency,[1076] there are 46 small family-type homes with 322 beneficiaries placed there, including 25 children with disabilities.

In 2016, the reintegration of 99 children took place, with 93 amongst because of reaching full legal age. A serious problem is the preparation of minors for an independent life, especially after they reach full legal age and leave the alternative care. The fact that the State Program of Social Rehabilitation and Child Care does not envisage service to minors who have left alternative care, represents a huge problem.

A number of reports of the Public Defender of Georgia highlighted the problem of frequent changes in the forms of alternative care, which often adversely affects minors. In 2016, eight children were placed in foster care from small family-type homes, eight children were transferred to another type of family home, one child was transferred to a refugee shelter. Nine children were transferred from foster care into a small family-type home, 198 children were placed from emergency foster care into regular foster care while 142 beneficiaries were placed in other foster families.

A matter of great importance is the identification of facts of violence against children in alternative care and the rehabilitation of child victims of violence. In the reporting period, the Social Service Agency identified the total of 10 facts of violence against children in alternative care. One of them was the case of bullying while seven involved violence of caregivers against children.

Yet another matter of special importance is the protection of child's rights in religious boarding schools. Although the process of licensing has begun in part of boarding schools subordinated to the Orthodox Church, this still opposes the process of deinstitutionalization and the principle of upbringing a child in family-type environment is not observed.

Since 2015 to date, the license for educational activity was obtained by three shelters of the Patriarchate, which shelters 241 children. Although, over this period, the Social Service Agency assessed beneficiaries of the shelters, only three minors were reintegrated since 2015.

On 30 November 2016, the Center of Child's Rights and Special Prevention Group of the Public Defender's Office conducted an unplanned monitoring of the small family-type home of the Social Partnership charity fund. The monitoring aimed at examining the situation with the rights of beneficiaries of the small family-type home.

Although the monitoring showed that the environment in the small family-type home is satisfactory, problems were observed there too. Among them one should note the problem of giving consideration to children's opinions and children's participation in decision-making process. It transpired that even the engagement in off-school activities is decided by the head of the home and the choice of individual beneficiaries, their individual interests and capabilities are disregarded.

Although the emotional and social environment created in the small family-type home of the Social Partnership charity fund is basically oriented on the development of children, a strict schedule of the day, also a strict internal regulation of the home and a strict monitoring on the children restrict children from making a free

1076 LEPL Social Service Agency, correspondence N04/17494, 23.03.2017

choice, do not accommodate individual interests and capabilities of beneficiaries. At the same time, the home lacks children with disabilities, which does not ensure equal access to the service.

It should be emphasized that there is round-the-clock audio and video surveillance in the home, which adversely affects emotional state of children and caregivers. This does not contribute to forming relations on the basis ofgood will, trust and respect and triggers negative emotions among children and caregivers, thereby violating the principle of upbringing children in the environment approximated to family. One should also note that "anonymous box" is fixed in a visible place in the home, but because of constant audio-video surveillance of this area, anonymity of children cannot be protected.

The Public Defender of Georgia issued recommendations to the LEPL Social Service Agency in regard to violations identified as a result of monitoring of the small family-type home of the Social Partnership charity fund.

CHILDREN LIVING AND WORKING IN STREET

The situation of the rights of children living and working in street is especially grave. Despite some steps taken by the state, their rights to education and health services and their integration into society remain a serious challenge.

The UN Committee on the Rights of the Child called on Georgia to conduct a comprehensive survey to evaluate the scale and reasons of children living in street, in order to develop a prevention strategy. However, steps have not been taken in this direction so far. There is no accurate data about children living and working in street, thereby complicating the implementation of measures tailored to their needs.

The objective of subprogram on the Provision of Shelters to Neglected Children of the state program of social rehabilitation and child care is the psycho-social rehabilitation and integration of neglected children. One of areas of the subprogram is to find biological families and make an initial assessment of social environment. However, challenges existing in this regard, such as, for example, the shortage of social workers, impedes the effective implementation of the program.

It must be noted that shelter for neglected children is not available countrywide. A problem of overcoming stigma towards street children remains a problem as well as communication of proper information on this issue to society.

According to statistical data from the Social Service Agency of the Ministry of Labor, Health and Social Affairs,[1077] within the framework of the subprogram of the provision of shelter to neglected children, as of 2016, there were 26 beneficiaries in Kutaisi day care center; 58 beneficiaries in Tbilisi day center, and 11 in Rustavi day center. These indicators are very low, given the scale of the problem.

The results of consideration of cases by the Center of Child's Rights of the Public Defender's Office showed that due to social and economic hardships adults beg along with their children. According to them, they do not have any other source of income and are unable to meet needs of their families otherwise. In parallel to living in shelters, the majority of children continue begging. In the 2008 concluding observations, the UN Committee on the Rights of the Child urged the state to develop a strategy towards the unification of family in the light of street children, in accordance with their best interests. One should note that no effective steps were taken in this regard. A comprehensive study into the role of social and economic hardships of family in view of children living and working in streetis yet to be conducted.

1077 Correspondence - 01.02.2017 – N04/5904.

According to statistical data received from the Interior Ministry,[1078]in 2016 investigation was launched into a criminal case under Article 171 ("Engagement of minors into anti-social activities") of the Criminal Code of Georgia. This figure is clearly inadequately low given the existing reality and speaks about ineffective response of law enforcement bodies to violations of rights. Children living and working in street are especially exposed to trafficking and other forms of exploitation. Initiation of investigation into alleged cases of child trafficking is a problem. It is of utmost importance to step up activity in this direction and carry out an adequate response by relevant entities to signs of this crime.

According to the information of guardianship/custodianship and social programs department[1079] of the Social Service Agency, as of 2016, six day care centers, four round-the-clock shelters and four mobile teams operate under the subprogram on the provision of shelters to neglected children. In particular, three mobile teams, four day centers and three round-the-clock shelters operate in Tbilisi; one day center and one round-the-clock shelter operate in Rustavi and one mobile team and one day center operate in Kutaisi. In 2016, some 162 children used the service of day center and 77 children used round-the-clock shelters.

The subprogram on the provision of shelters to neglected children still fails to cover all those regions of the country, where such problem exists; this is also recommended to the state by the UN Committee on the Rights of the Child.[1080] At present, within the framework of subprogram on the provision of shelters to neglected children, shelters operate in Batumi where the problem of children living and working in street is especially apparent in summer, while Kutaisi, as mentioned above, has only a day center and does not have a round-the-clock shelter.

In 2016, the hotline (15-05) received 106 reports; of them, 88 cases were responded while 18 cases were readdressed to the emergency service center 112. It is important to note that the state has not yet established an effective mechanism of response to reports about children living and working in street, which are received at the Ministry's hotline (15-05) after the end of working hours. This is apparent from the consideration of cases by the Center of the Rights of the Child of the Public Defender's Office as well as efforts of representatives of the Public Defender to reach the hotline after the working hours. The operator of the Health Ministry's hotline does not often ensure the readdressing of reports to the emergency service center. Moreover, mobile teams work at night once a week, which is not sufficient and cannot ensure their response at night on a daily basis.

The attitude of patrol police and level of awareness of issues concerning street children is a problem. They often lack information whom to address in case of identifying street children. They lack adequate information about the service under the subprogram on the provision of shelters to neglected children. According to information provided by the Interior Ministry,[1081] in 2016, patrol police officers did not attend courses of training on issues of street children at the Academy of Ministry of Internal Affairs.

As the information provided by the Social Service Agency shows, in 2016, there were three incidents of domestic violence, two incidents of sexual violence and 1 physical violence against children living and working in street and all the six incidents, through the referral mechanism,were referred to the Interior Ministry.

Children living and working in street must be ensured with a possibility to be brought up in their families or the environment approximated with family. In 2016, two beneficiaries were placed in foster care and six beneficiaries were placed in a small family-type home. In this regard, it is necessary to intensify work with biological families of street children, if it is not contrary to the best interests of children. If this is the case, then it is important, for the aim of upbringing street children in family environment, to prioritize the transfer of such children from round-the-clock shelter into alternative case within the shortest possible time.

It is necessary to conduct an awareness raising campaign about children living and working in street to defend them from stereotyped attitudes and ensure their integration into society.

1078 Correspondence 02.03.2017 – MIA 6 17 00518054
1079 LEPL Social Service Agency of the Ministry of Labor, Health and Social Affairs of Georgia, correspondence N04/2999.
1080 Committee on the Rights of the Child; CRC/C/GEO/CO/3. Par. 16; 65(c), 23 June 2008.
1081 Correspondence N435869; 22.02.2017 received form the Patrol Police Department of Interior Ministry.

RECOMMENDATIONS

To the Government of Georgia:

- Start work on drafting a general law on the rights of the child, which will reflect provisions of the UN Convention on the Rights of the Child and its optional protocols.
- Determine a mechanism of supervision of availability and quality of drinking water in public schools.
- Support prevention of violence against children through implementing awareness raising events.
- Support strict enforcement by responsible entities of the ordinance of the government of Georgia on the referral procedure and undertake effective steps to improve coordination and monitoring.
- Develop a procedure for the conduct of school Olympiads and camps by private entities, inter alia, determine measures of state monitoring and a state entity responsible for it.
- Carry out relevant measures for the effective implementation of the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor №182 on the national level.

To the Ministry of Labor, Health and Social Affairs of Georgia:

- Support effective implementation of the state strategy and action plan for the improvement of mother and newborn health.
- Carry out measures designed to improve qualification of health care personnel. Pay special attention to medical personnel in regions, including in the area of practical training in high-tech medical institutions.
- Facilitate elimination of geographic barriers to the access to health care services and the improvement of infrastructure and material-technical basis of medical institutions.
- Ensure the monitoring of implementation of health care services and state programs, including, for the improvement of perinatal services; the assessment of hospitals and determination of their levels.
- Council of professional development should consider cases of child mortality within a reasonable time.
- A decision making commission on emergency service to families with children in crisis should develop the procedure and terms of decision making; decisions regarding the involvement in the subprogram should be taken within a reasonable time.
- Conduct a thorough study on the needs of children living and working in street and based on it, implement measures for the empowerment of families, with a special focus on the needs of rural children.
- Minimize the indicator of removal of children from biological families on the ground of poverty through improving social and economic functions of families.
- Ensure empowerment of mothers in mother and child shelters, their professional development and support in finding jobs, in accordance with the best interests of the child.

- Facilitate timely and effective identification of cases of child labor exploitation, enhance the rehabilitation of child victims.
- Undertake adequate and timely measures to study reasons of child labor migration, to reduce and prevent migration, also to identify and rehabilitate children having suffered from migration.
- Enhance territorial centers of LEPL Social Service Agency in terms of human and technical resources, inter alia, increase the number of social workers and psychologists.
- Ensure systematic training of social workers on the issues of violence against children; pay a greater deal of attention to the development of skills of effective identification of incidents of violence.
- When responding to facts of domestic, always consider and evaluate risks of neglect and violence against children.
- Ensure timely and adequate psychological support to direct and indirect child victims of violence. Moreover, provide children placed together with their parents in shelters for victims of domestic violence with psychological assistance tailored to their needs.
- In the process of determining a living place of a child, thoroughly study the situation of the right of the child in relation to both parents and provide corresponding information to a court.
- Considering the best interests of the child, support the relation of a minor with both parents on the stage of enforcement of court decisions as well as before the court decision.
- In close cooperation with the Ministry of Education and Science of Georgia, study cases of school dropping and implement relevant measures to eliminate possible neglect and other forms of violation of the right.
- Improve supervision mechanism in the area of inspection of situation of the right of children involved in the state foster care and reintegration services and the identification of needs.
- Actively implement measures for the support of regular relations of foster care subprogram beneficiaries with their biological parents and for their further reintegration.
- Conduct intensive training of foster care families on the issues of child's rights and needs as well as management and prevention of difficult behavior.
- Cancel audio-video control in the small family-type home of Social Partnership charity fund.
- Raise qualification of persons employed in small family-type homes on the issues of violence against children and management of difficult behavior.
- Take effective steps for the launch of deinstitutionalization process in children's boarding houses subordinated to the Georgian Orthodox Church and Muslim confession.
- Undertake relevant measures for preparing children under alternative care for an independent life.
- Enhance the geography of the subprogram for providing shelter to neglected children, increase the number of mobile teams working under the subprogram and the frequency of their night shifts.
- Timely involve children living and working in street into general educational process to ensure their right to education.

- Carry out immediate referral of alleged crimes against children living and working in street to the Ministry of Internal Affairs.
- Conduct work with families of children living and working in street or children at risk and carry out their strengthening to prevent or reduce begging because of social problems.

To the Ministry of Education and Science of Georgia:

- Implement active measures to ensure protection of the right to health, safe and harmless drinking water and sanitary-hygienic conditions for pupils at schools.
- Actively coordinate with the Ministry of Labor, Health and Social Affairs of Georgia on issues of ensuring water and sanitary-hygienic conditions at public schools as well as prevention of diseases.
- Conduct regular retraining of teachers and resource officers on the issues of prevention of violence against children, identification of such incidents and measures to be implemented for adequate response, including by changing deep-rooted stereotypes.
- Increase the number of psychological service centers of the LEPL Office of Resource Officers of Educational Institutions and enhance existing capabilities.
- Resource officer service should start operating in those school where, considering the number of pupils, such service is needed.
- Regularly raise awareness of pupils about their rights and responsibilities, mechanisms of protection from violence and negative impact of bullying.
- To prevent dropping of school, carry out a timely response to and referral of every identified case to a relevant state entity.
- Actively implement measures oriented on the improvement of the situation of rights of pupils at public and private schools, with a special emphasis on the improvement of availability and quality of education.
- Improve infrastructure of general educational institutions and refresh school inventory with a special focus on general educational institutions in rural and mountainous areas.
- Develop early and preschool education standards and implement necessary measures to timely introduce them in kindergartens.

To the Ministry of Internal Affairs of Georgia:

- Strengthen the area of timely identification and investigation within a reasonable time, of alleged cases of child labor exploitation, trafficking, involvement in prostitution, in production and sale of pornographic materials and anti-social activity.
- Support the provision of services oriented on child's interests in the process of identifying and responding to violence against child.
- Regularly retrain employees of Interior Ministry on issues of violence against children, including techniques of identifying and investigating such instances, and on the importance of the use of protection measures.

- Conduct awareness raising of patrol police employees and their retraining on issues of children living and working in street; facilitate change in stereotypical attitude.
- When responding to a case of domestic violence, consider risk of neglect or other forms of violence against a child and evaluate the situation; promote the use of protection measures, including restraining order.
- Pay special attention to proactive exposure, identification of children living and working in street and their referral to the Social Service Agency.

To the Chief Prosecutor's Office of Georgia, the Ministry of Internal Affairs of Georgia:

- Record results of investigative actions in relevant reports.
- When conducting investigative action at night in emergency, specify concrete factual and legal grounds of such action in a corresponding report.
- Include in each criminal case a document certifying the specialization in juvenile justice of persons conducting the process.

To the Chief Prosecutor's Office of Georgia:

- Apply detention without a court order towards a minor only as a last resort.
- During a criminal proceeding against a minor, a prosecutor should timely apply to a relevant agency with the request to draw up an individual evaluation report.
- Draw up an individual evaluation report in a timely manner, before taking all those decision when a person conducting the process uses discretion.

To local self-government bodies:

- Intensively carry out measures oriented on the improvement of situation with the rights of children in kindergartens, with a special emphasis on the improvement of infrastructure and sanitary-hygienic conditions of institutions.
- Raise qualification of teachers and caregivers of kindergartens on the issues of the child's rights, prevention of violence against children, protection from ill-treatment and management of difficult behavior.
- Develop corresponding programs for the elimination of poverty and inadequate living standard on the level of local self-governments.

GENDER EQUALITY

WOMEN'S RIGHTS

Introduction

The grave situation surrounding the legal status of women, and of gender equality more generally, in Georgia remained essentially unchanged during the reporting year. Despite steps taken by the State, challenges remain. Addressing these challenges requires special attention and effort.

One notable problem is the lack of an intersectional perspective in measures taken by the State. This impedes reflection of problems faced by women with different backgrounds and subsequently increases their vulnerability.

In 2016, no effectives steps were taken to improve the legal scope of gender equality and protection of women's rights. Moreover, the Parliament did not support legislative initiatives on the topics of gender-based quotas and definitions of sexual harassment and femicide. As assessed by the Public Defender, support for the above initiates would have been clear steps forward in the process of harmonizing Georgian legislation with international standards and addressing existing challenges in the country.

It is notable that, at the beginning of 2017, the ratification package of the Council of Europe's Convention on "Preventing and Combating Violence Against Women and Domestic Violence" was submitted to the Parliament of Georgia. The Convention includes a number of important guarantees for prevention of violence as well protection and assistance for victims. Unfortunately, the draft law does not contain a definition of sexual harassment, which is an obligation of the Convention and would address important challenges faced by Georgia.

We welcome the fact that new measures have been implemented for preventing domestic violence and violence against women, which had positive impacts on incident reporting rates. However, the increased number of applications has exposed systemic deficiencies which are serious impediments to effectively responding to and eliminating domestic violence and violence against women.

Despite the fact that the number of shelters for victims of domestic violence has increased and a new crisis center has opened, services for victims of violence clearly need improvement, especially in terms of supporting the social and economic empowerment of victims (i.e., supporting victims' independence and employment). Those objectives cannot be achieved only through the functioning of shelters.

The lack of public awareness and indifferent attitudes about early marriage and child marriage remain problems often resulting in neglect of the best interests of children and violations of equality. Particularly disturbing were revelations about the practice of female genital mutilation, a problem that has existed in the shadows for many years. The above issues require a coordinated, coherent, and needs-based response from the State.

The existing situation in terms of women's reproductive and sexual health has not substantively improved. Still problematic are gender-based sex selection, the lack of the family planning services, and low levels of public awareness about the issues.

Through observing the process and results of the 2016 parliamentary elections, it can be concluded that women's representation in political decision-making processes remains critically low. It should be emphasized that an increase of women's representation in the 9th Parliament by 4% is incidental and not the result of gender-sensitive political processes.

WOMEN'S PARTICIPATION IN DECISION-MAKING PROCESSES

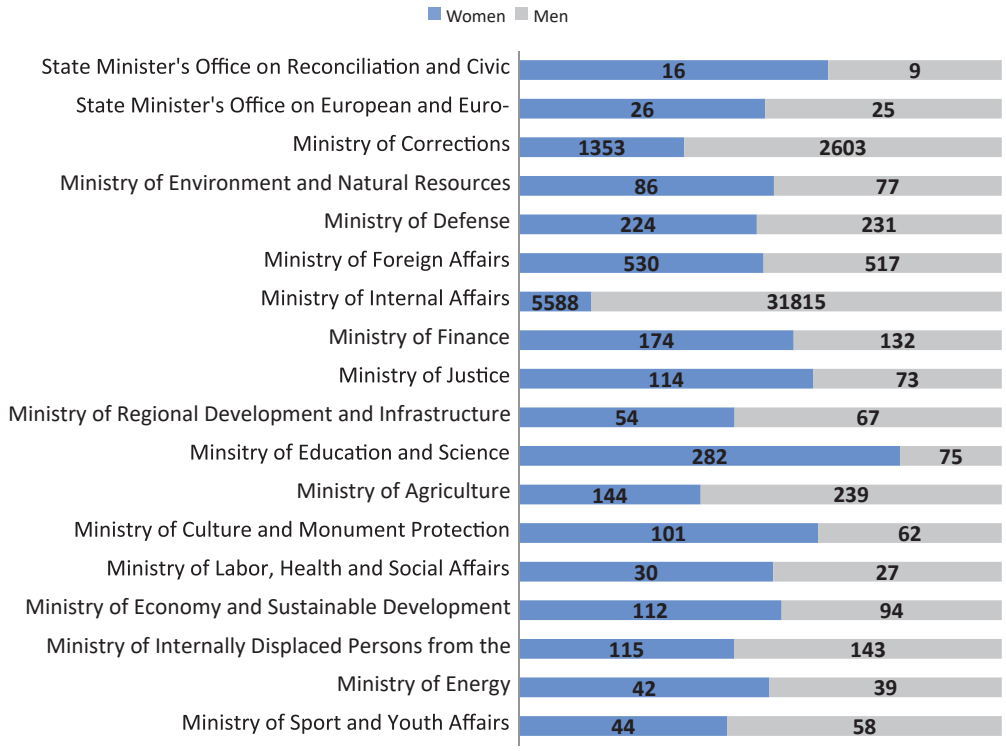
Women's participation in political life is a necessary precondition for building a democratic system and a pluralistic, representative legislative body. However, it remains one of the main challenges in the field of protection of women's rights and gender equality.

According to the Global Gender Gap Index 2016,[1082] Georgia was ranked 114th among 144 countries in terms of women's political participation and representation in the Parliament. According to the data of the Inter-Parliamentary Union[1083], Georgia, as of March 1, 2017, was ranked 124th among 193 countries with 24 women in the Parliament. According to the Global Gender Gap Index 2016[1084], Georgia was ranked 51st among 144 countries with its female legislators and their representation on managerial positions, while in terms of women's representation on the ministerial positions, Georgia was ranked 80th among 139 countries.[1085] It should also be noted that after the parliamentary elections, there are only two women among 18 ministers in the executive government, meaning that the situation has worsened in this direction.

During the reporting period, the Office of the Public Defender of Georgia[1086] assessed the number of employees on the executive government level and conducted a gender analysis of the available data.

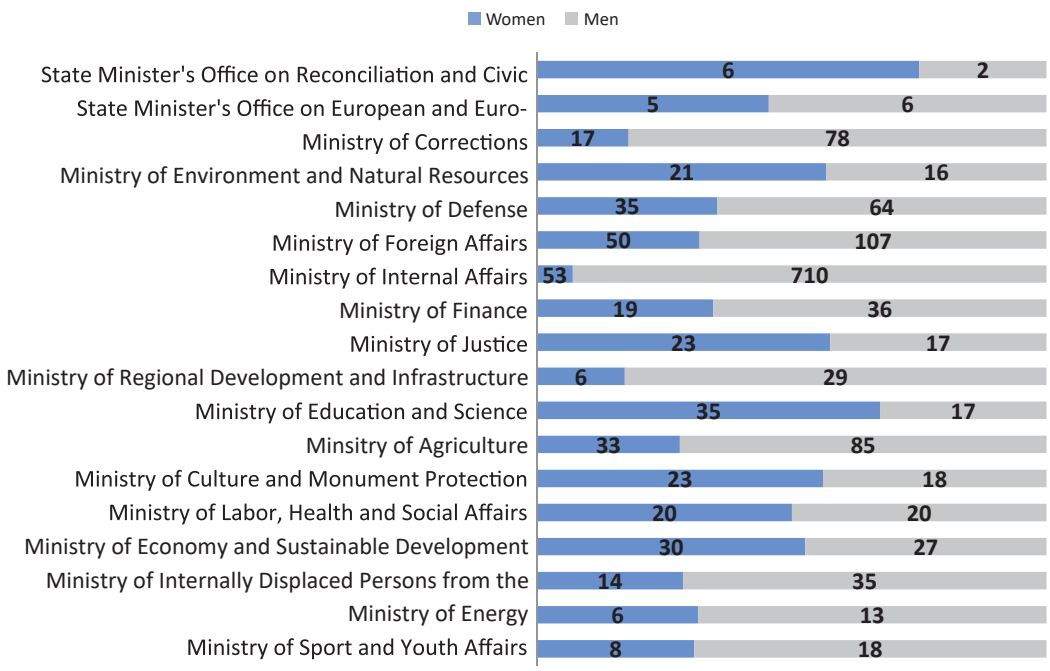
1082 Information is available at http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=GEO [last seen on March 15, 2017].
1083 Information is available athttp://www.ipu.org/wmn-e/classif.htm [last seen on March 15, 2017].
1084 Information is available at http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf.
1085 Ibid.
1086 The reporting period covers data from 1 January 2016 to 31 December 2016.

Table N1: The Number of Employees in the Executive Government by Gender Composition, 2016



The data reveals that except for in the Ministry of Internal Affairs, where the majority of employees are men, women are (or are close to being) equally represented in executive government ministries. However, data on the number of women in managerial and decision-making positions is alarming.

Table N2: Number of Employees in Managerial Positions in the Executive Government, 2016



It is noteworthy that offices responsible for gender equality issues have still not been created in the ministries. Based on analysis of the requested information, in 44% of the ministries, that work is carried out by individuals holding other positions as an additional duty, and in 50% of the ministries no such staff exists. Only one ministry has a specific office responsible for gender equality issues.[1087]

Georgia's political culture is closely connected to traditional attitutes, which, in the majority of cases, exclude women from participation in political processes. Additionally, a primary reason for the low rate of women's participation in politics is the lack of effective legislative mechanisms for promoting such participation.

Increasing women's political participation is not a priority issue for political parties. Gender balance, for which legislation has established a financial incentives procedure, was satisfied only by four out of the 25 political parties and blocs who participated in the 2016 parliamentary elections.[1088] This was relevantly reflected in the results of the elections.

Studies have shown that references to issues related to women's rights and gender equality in political parties' election programs tended to have a declamatory nature, and stated economic, agricultural, educational, social, and cultural policies were completely void of consideration for the specific problems women face.[1089] For a number of political parties, the respective election programs did not demonstrate support for attaining gender equality.

It should be noted that according to the results of a study conducted by the National Democratic Institute,[1090] 74% of respondents believe that in elected positions, either women and men perform equally well or women perform better than men; and 70% of respondents believe that a minimum of 30% of MPs should be women. Nevertheless, reality is dramatically different from study results, and women still face numerous obstacles while engaging in political processes.

Given all the above, it is unfortunate that members of the Georgian Parliament have not adopted the recommendation of the Committee on Elimination of all Forms of Discrimination adopted after reviewing the 4th and 5th periodic reports of Georgia. The Committee, for the purpose of ensuring increased women's political participation, has called for the adoption of temporary special measures.

The Public Defender still considers that adoption of a quota system—especially in advance of the 2017 local self-government elections—is an effective solution to existing unequal conditions.

WOMEN'S PARTICIPATION IN AGRICULTURE DEVELOPMENT PROGRAMS AND IN THE WORK OF CITY ASSEMBLIES (SAKREBULOS)

According to the 2015-2020 Strategy for the Agriculture Development of Georgia,[1091] empowerment of women participating in agriculture should be a major component of each direction of the strategy. In this regard, based on information received from the Ministry of Regional Development and Infrastructure, the number of municipalities where the women's empowerment programs have been implemented has increased. However, it is unfortunate that some municipalities do not consider it necessary to implement projects specifically aimed at the empowerment of women.[1092]

1087 Letter # 04/07/893, 18/01/2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

1088 Information is available at: <https://www.ndi.org/sites/default/files/NDI_Statement_WomensParticipation_Georgia2016_Final_GE.pdf > [last visited on 15 March 2017].

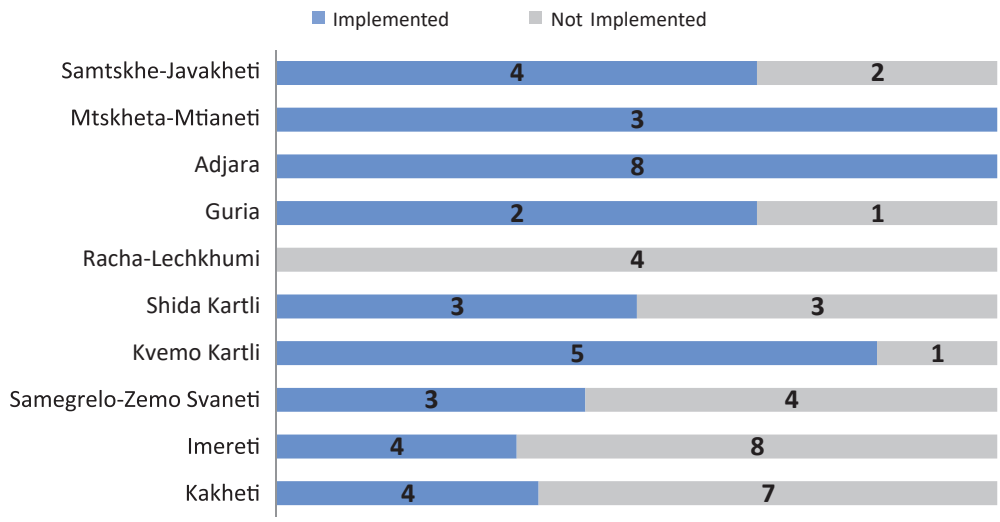
1089 Information is available at: <http://www.feminism-boell.org/ka/proekti-ikitxe-politika> [last visited on 15 March 2017].

1090 Ibid.

1091 Information is available at: <https://matsne.gov.ge/ka/document/view/2733545> [last visited on 15 March 2017].

1092 Letter #08/20 of the Kareli Municipality City Assembly dated 02/02/2017; Letter #19 of the Ambrolauri Municipal Government (Gamgeoba) dated 24/01/2017; Letter #02/639 of the Borjomi Municipal Government (Gamgeoba) dated 26/01/2017; Letter #37/473 of the Samtredia Municipal Government (Gamgeoba) dated 27/01/2017.

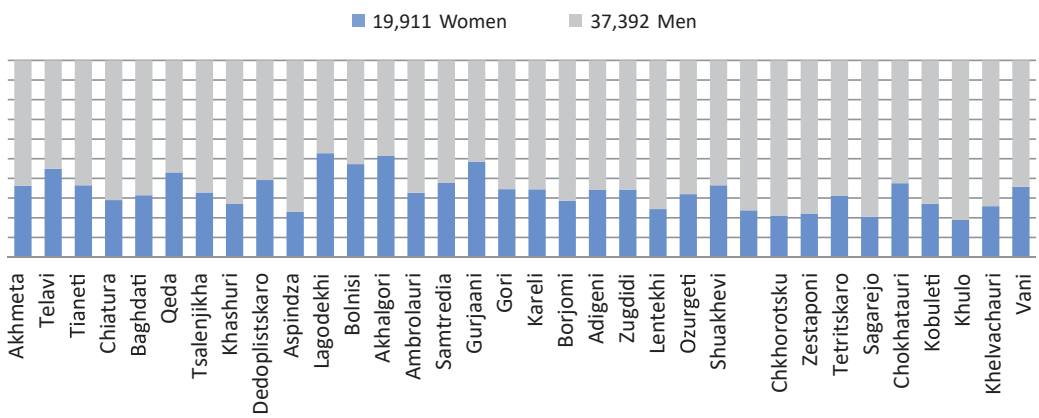
Table N3: Projects on the Empowerment of Women, Implemented in 2016



It is worth noting that the majority of projects on the empowerment of women at the municipal level include the creation of "Women's Rooms" and the provision of services for women's reproductive health. Taking into consideration the problems faced by women living in rural areas, it is important to promote the implementation of projects bettering the economic and political rights of women.

Women's participation in the decision-making process at the local self-government level is still low. In 2016, the number of men participating in the village meetings and various gatherings almost twice exceeded the number of women.

Table N4: Quantitative Indicators by Gender of Attendance at Village Meetings and Public Meetings, 2016

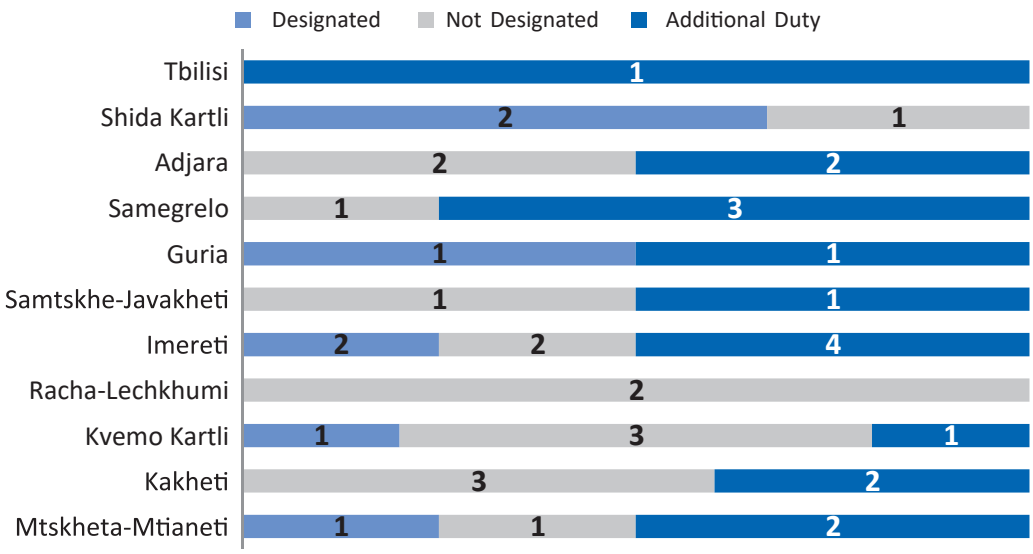


The lack of women's participation in public spaces and meetings is due to a number of factors. However, the research and experience of the Public Defender's Office reveals that in many cases men resist their female family members' involvement in such activities. Additionally, the individuals responsible for organizing meetings often do not inform women about upcoming meetings.

Analysis of the obtained information demonstrates that in the majority of governing institutions, work related to issues of gender equality and women's rights is carried out by individuals as an additional duty. Moreover, in a number of municipalities no person is designated responsible for these tasks. The Public Defender's Office welcomes that, in comparison to previous years, the number of municipal governments (Gamgeoba) that have a gender advisor has increased. In particular: 20 municipal governments have a person specifically responsible

for gender issues; in 11 municipal governments it is an additional duty; and in 25 municipal governments persons responsible for gender issues have not been designated. Data at the city assembly (Sakrebulo) level is as follows:

Table N5: Persons Responsible for Gender Issues at the City Assembly (Sakrebulo) Level, 2016



The information provided by local self-governing authorities clearly demonstrates that women's participation in decision-making processes is minimal. It is also notable that not a single woman serves as mayor of a self-governing city and only one women is a Gamgebeli.[1093]

Stereotypical attitudes about the gender roles of women were clearly revealed during a session of the Qedi Municipality City Assembly (Sakrebulo): female members of the Sakrebulo were asked to leave the meeting by the male members, who stated that it was a personal matter.[1094] Alarming is that the above incident took place in a local self-governing body, the work of which should serve the purpose of improving living standards and protecting human rights on the municipal level. It is unacceptable that male MP's perceive the political forum to be a personal space where they can request women to leave the room during political debate.

WOMEN'S ECONOMIC ACTIVITY AND LABOR RIGHTS

The UN 2015 Agenda on further development[1095] clearly sets out that sustainable economic development and gender equality are two challenges that should be addressed by states with transitional economies, as the full and effective implementation of the rights of women and girls is a pre-condition for successful economic development.[1096] Both factors also intersect in the Georgian reality, where women's engagement in economic activities on an equal basis remains a challenge.

1093 Information is available at: <http://tianeti.org.ge/?m=3&sm=1> [Last visited on 24 March 2017].
1094 Statement of the Public Defender dated 31 August 2016 regarding the sexist statements of members of the Qedi Municipality Sakrebulo, available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-qedis-sakrebulos-wevrebis-seqsistur-gamonatqvamebs-exmianeba.page >[last visited on 15 March 2017].
1095 Information is available at: <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2014/unwomen_surveyreport_advance_16oct.pdf?vs=2710> [last visited on 15 March 2017].
1096 Information is available at: <http://www.oecd.org/dac/gender-development/Addis%20flyer%20-%20Gender%20Equality_FINAL.pdf> [last visited on 15 March 2017].

When discussing Georgia's economic condition it is important to take gender aspects into consideration, as traditional economic instruments are unable to fully reflect women's economic conditions.[1097] Considering the fact that women in Georgia lack the unrestricted ability to participate in economic activities, it is important that the State put more effort into supporting women's equal participation—both through legislative guarantees and raising awareness about the role of women in the economy.

According to the Global Gender Gap Report, women's participation in the labor market lags behind that of men.[1098] Taking into account the above data, Georgia's position on the index worsened from 2015 to 2016 and it now stands in 90th place out of 144 countries. According to the same report, Georgia is 34th on the index for equal pay for equal work. The respective average incomes of the two sexes do not correspond: the average annual income of a man (12,551 USD) is twice that of a woman (6,072 USD). The index takes into consideration a number of social and cultural factors. However, the main reason for the disparity is the lack of legislative guarantees specifically directed at combatting gender-based mistreatment of employed women; for instance, prohibition of sexual harassment and regulation of the equal pay for equal work principle.

Still problematic is existence of the so called "glass ceiling" which refers to both visible and invisible barriers to women's career growth. Gender-based segregation of professions belongs to the same category of problems. According to the Global Gender Gap Report, in 2016, 66% of legislators, high-ranking officials, and managers were male. According to the same data, the majority of women (62%) performed technical work.

Unequal economic participation is also a result of the unequal distribution of care. In a number of cases, in addition to paid work, women perform unpaid work such as housekeeping and childcare. The Organization for Economic Cooperation and Development (OSCE) calls on states to measure and assign monetary value to women's unpaid work. Such measurement is an important instrument for women's empowerment by quantifying and recognizing their contribution to economic output.[1099] According to the data of the Global Gender Gap Report, the vast majority of individuals employed in the household sector are women (a ratio of 2.48:1). Based on the results of a 2014 study on agriculture and food safety, 93.8% of women living in rural areas are busy primarily with housekeeping and childcare.[1100]

The Public Defender welcomes the provision of free nursery services by the State. However, the lack of infrastructure supporting mothers of infants is still problematic and to a large extent limits women's participation in the public sphere.

The achieve equality in women's economic participation it is necessary to regulate leave for pregnancy, childbirth, and childcare. Despite numerous promises to the contrary, the regulation established by the Order of the Minister of Labor, Health and Social Affairs of Georgia which allows the State only to compensate women for family leave due to pregnancy, childbirth, and childcare, still has not been changed.

SINGLE MOTHERS AND MOTHERS WITH MULTIPLE CHILDREN

Still problematic is the legal status of single parents and families with multiple children. When combined with social and economic disadvantages, mainstream public opinion about single mothers increases their vulnerability. Moreover, effective steps have not been taken to support families with multiple children.

1097 Information is available at: <https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-the-world-2016.pdf > [last visited on 15 March 2017].

1098 Information is available at: <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=GEO> [last visited on 15 March 2017].

1099 Information is available at: <https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf> [last visited on 15 March 2017].

1100 Information is available at: <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=GEO> [last visited on 15 March 2017].

Despite almost two years having passed since the legal status of single parents was defined, no results have been achieved in terms of social support. The Public Defender has on numerous occasions responded to the need to grant status and change the cancellation rule, as the current wording (despite its name) excludes the possibility of legal existence of a single father. In addition, single parent status is only granted when there is no record of a mother/father in the child's birth certificate. Therefore, in all other cases the parent is excluded from eligibility to receive single parent status while caring for the child alone.[1101]

Also problematic is that entering into a registered marriage is grounds for cancelling single parent status, because the law does not regulate how such status can be regained or how responsibility for childcare (for instance, alimony) is distributed following the divorce of the parents. In addition, a single parent, even when married, is required to handle alone all legal relations that stem directly from the obligation to care. The Public Defender's Office welcomes that in regard to this issue, the Legal Committee of Parliament supports the solution suggested by the Public Defender. Accordingly, the Committee resolved to establish a working group to discuss legal problems stemming from the issue.[1102]

According to information provided by the LEPL Public Service Development Agency, from 2015 to 14 March 2017, 1,417 applications on granting single parent status were fully satisfied and 24 were partially satisfied.[1103] Fourteen individuals lost single parent status due to the marriage. Additionally, it is noteworthy that, according to the provided information, all single parents are women. No father has not yet been granted single parent status.

According to information received from the Ministry of Justice, in 2016, 11,955 women became mothers of three or more children.[1104] Nevertheless, the issue of mothers with multiple children is not addressed by legislation, as provisions for granting such status do not exist. Consequently, the State is prevented from keeping statistics on mothers with multiple children and from supporting such mothers by providing relevant social and economic services.

Based on the provided information, 4,379 single mothers were identified during the assessment of the social and economic conditions of socially-vulnderable families.[1105] The decrease in the number of single mothers and socially-vulnerable families (households)[1106] with legal status clearly demonstrates that preconditions for granting single parent status do not reflect the actual number of single parents. The Public Defender finds it necessary to improve rules for granting single parent and multi-children parent statuses and for keeping relevant statistics, the analysis of which would give the State the possibility to prepare a gender-sensitive program for supporting children and parents.

RIGHTS OF FEMALE HUMAN RIGHTS DEFENDERS

The Declaration on Human Rights Defenders recognizes the special role of human rights defenders.[1107] Female human rights defenders are designatedas a special group,[1108] and the UN Special Rapporteur welcomes in her

1101 Informationis available at: <https://www.matsne.gov.ge/ka/document/view/2875417> [last visited on 15 March 2017].
1102 Letter of the Bureau of the Parliament of Georgia #2031/4-10, 17/02/2017.
1103 According to the letter of the Public Service Development Agency of the Ministry of Justice (#01/69380, 15/03/2017), partial satisfaction of the application for single parent status comprises cases when an individual requests determination of the status toward several children, while the authorized unit determines this status toward some but not all requested children.
1104 Letter of the Ministry of Justice of Georgia #08-3/1782, 07/02/2017.
1105 Letter of the Ministry of Labor, Health and Social Affairs of Georgia #01/4055, 24/01/2017.
1106 The number of single fathers in socially-vulnerable families is unknown, since the rule for determining single parent status and keeping records of relevant individuals does not contain a similar statement. Information is available at: <https://matsne.gov.ge/ka/document/view/2667586 >[last visited on 26 March 2017].
1107 Information is available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> [last visited on 15 March 2017].
1108 Information is available at: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/16/44> [last visited on 15 March 2017].

report the activeness of women human rights defenders and the empowerment of civil society. At the same time, however, she expresses concern about the fact that human rights defenders often become victims of physical, psychological, economic, and social violence.[1109]

Instances of harassment and threats against female human rights defenders are not unknown in Georgian. The Gender Equality Department of the Public Defender's Office of Georgia reviewed several cases last year in which women human rights defenders were threatened because of their work. Study of these incidents demonstrated that the representatives of law enforcement bodies face difficulties properly evaluating threats and risks faced by female human rights defenders.

Although the Public Defender of Georgia in his 2015 Parliamentary Report called for policy documents to reflect the issues identified by the Resolution on Women Human Rights Defenders[1110] and the need to instill proper attitudes in law enforcement representatives, implementation of the above issues remains imperative.

THE ROLE OF THE MEDIA IN ACHIEVING GENDER EQUALITY

The media can play a significant role in eliminating gender inequality and discrimination. Therefore it is necessary to provide members of the media with comprehensive information about gender equality and women's rights to enable them to report on these issues to the public.

The Public Defender's Office of Georgia pays great attention to the training of journalists and recognizes their role and importance in forming public opinion. To this end, in 2016, in the framework of the Human Rights Academy of the Public Defender, three training sessions were held on gender equality and women's issues with the participation of 50 journalists from the national and regional media.

It is noteworthy that the Law of Georgia on Broadcasting obliges the Public Broadcaster to relflect in its programs the ethnic, cultural, linguistic, religious, age, and gender diversity that exists in society.[1111] In addition, regarding the reflection of diversity, paragraph 7 of Chapter 15 of the Code of Conduct of the Public Broadcaster[1112] clearly states that when discussing women, sexist expressions, assessments, and comparisons should not be made.

Nevertheless, the Public Defender of Georgia has issued a number of statements on sexist programs and commercials[1113] including a commercial for the Public Broadcaster's program "Katsebis Dro" ("Men's Time"), which expressed sexist and discriminatory messages. The Public Defender deemed that the commercial promoted gender-oppressive practices and the reinforcement of gender stereotypes on the professional capabilities and development of women.

The role and importance of media is also reflected in the report of the Special Rapporteur on Violence against Women, its Causes and Consequences. In particular, the Special Rapporteur found that sexist statements and stereotypes regarding gender roles spread in the media can harm women's career opportunities, professional development, and participation in political and public life with equal rights.[1114]

1109 Information is available at: <https://phrgeorgia.wordpress.com/2017/03/06/phr-32/> [last visited on 15 March 2017].
1110 Information is available at: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181> [last visited on 25 March 2017].
1111 Information is available at: <https://matsne.gov.ge/ka/document/view/32866> [last visited on 15 March 2017].
1112 Information is available at: <http://gpb.ge/files/documents/2006/04/b80766114bede8515fda6dab805e19e5.pdf > [last visited on 15 March 2017].
1113 General Proposal of the Public Defender of Georgia dated 14 November 2016 on the sexist video of the TV station "Tabula."
1114 Information is available at: <http://www.ombudsman.ge/uploads/other/3/3867.pdf> [last visited on 15 March 2017].

According to the recommendation of the Committee of Ministers of the Council of Europe member states,[1115] media sources should promote the development of internal codes of conduct and ethics and procedures for internal monitoring as well as standards to support gender equality in media coverage. These measures would create consistent media policies and working conditions to ensure equal access to, and representation in, media on the part of women and men, including in fields where women are currently not represented.[1116]

WOMEN, PEACE AND SECURITY

Implementation of the Agenda put forth by UN Security Council Resolutions on Women, Peace and Security has major significance for Georgia. The legal status of women victims of conflict and women living on the occupied territories[1117] remains a major challenge. In addition, women's participation in decision-making processes is lacking and rights violations such as domestic violence and lack of access to services are frequent.

In 2016, the Government of Georgia approved the National Action Plan (NAP) for the implementation of the UN Security Council Resolutions on Women, Peace and Security. The main directions of the above NAP were based on existing experience and identified problems. The NAP covered five main directions: participation, prevention, protection, implementation, and monitoring.

Participation includes promotion of women's participation in security and peacebuilding. Noteworthy is the practice of the Ministry of Defense of Georgia to give special attention to the implementation of gender mainstreaming in employment, training, and peacebuilding processes. Progress in terms of women's participation is evident. However, more effort is needed for proper raising of awareness and elimination of existing stereotypes.

The Public Defender's Office requested from the Ministry of Defense of Georgia statistical data on women's representation. In response, we were informed[1118] that the number of employees in the armed forces and participants in the peacebuilding missions has a secrecy label "for restricted use." Consequently, the Public Defender's Office lacks the possibility to analyze indicators of women's involvement in peacebuilding processes, including the number of women in managerial positions. Besides the armed forces and peacebuilding missions, statistics for women's participation in other structural units of the Ministry of Defense are as follows:[1119]

- The Ministry of Defense of Georgia has 455 employees, out of which 224 (94.2%) are women;
- Ninety-nine employees are serving in managerial positions, out of which 35 (35.3%) are women;
- 46% of the employees at the National Defense Academy are women;
- 35% of employees in managerial positions at the National Defense Academy are women; and
- 4% of the Cadets Battalion are women.

Prevention includes the reduction of sexual- and gender-based violence and other risks to human security in addition to raising public awareness about issues related to security and civil defense. A study conducted

1115 Recommendation adopted by the Committee of Ministers on 10 July 2013 at the 1,176th meeting of the Deputy Ministers; (CM/Reco, 2013).
1116 Information is available at: <http://www.mdfgeorgia.ge/uploads/library/9/file/GENDERMEDIATORI.pdf > [last visited on 15 March 2017].
1117 Information is available at: <http://ombudsman.ge/ge/reports/specialuri-angarishebi/qalta-da-bavshvta-uflebebi-konfliqtebit-dazaralebul-regionebshi-2014-2016-wlebis-mimoxilva.page> [last visited on 15 March 2017].
1118 Letter of the Ministry of Defense #MOD 5 17 00082922, 27/01/2017.
1119 Letters of the Ministry of Defense #08-3/1491, 02/02/2017 and #08-3/587, 12/01/2017.

by the Public Defender's Office revealed that the responsible institutions have carried out informational-educational meetings[1120] with members of the conflict-affected population regarding domestic violence and gender equality topics. However, considering the scale of the problem, these efforts must be strengthened. Moreover, the integration of civil defense issues into formal educational curricula remains a problem. As we were informed by the Ministry of Education and Science,[1121] revision of the basic-level national curriculum is currently being conducted, and integration of the main principles of civil defense into the curriculum is still under development.

The protection direction includes access to justice for conflict-affected women and girls and ensuring they have access to psychosocial support services. In addition, it covers support for the socio-economic empowerment and employment opportunities of conflict-affected women and girls. To this end, in 2016, the Legal Aid Service[1122] consulted 1,049 IDPs, including 579 women. At the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, 3,549 individuals were provided with legal consultations, out of which 2,246 (63%) were women. The Office of the Public Defender was informed by a letter of the Ministry of Education and Science of Georgia[1123] that in 2016, 11,374 students started educational programs, of which 849 students have IDP status, including 383 women and 466 men.

The institution responsible for providing psychosocial rehabilitation services is the Ministry of Labor, Health and Social Affairs of Georgia. The above issue has special importance for women and girls affected by conflict. According to the information provided by the Ministry, [1124] it plans to conduct a needs assessment related to the development of psychosocial services. Based on the results, a concept for psychosocial rehabilitation services will be developed for internally displaced and conflict-affected women. It is noteworthy that the above obligation remained unfulfilled in the framework of the previous action plan.

The State Fund for the Protection and Assistance of Statutory Victims of Human trade (Trafficking) is responsible for providing effective rehabilitation and assistance to victims of sexual violence, as well as for the development of the State services concept in compliance with international standards and best practices.[1125] The State Fund has prepared guidelines that discuss in detail issues of sexual violence including the scale, aftermath, and services necessary for assisting victims and addressing current challenges for the protection of victims of sexual violence.

The NAP imposes certain obligations on the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. It is noteworthy that in 2016, the Ministry approved the gender equality strategy and the NAP[1126] aiming at supporting the implementation of the state policy on gender equality and integration.

1120 In 2016, eight meetings were held by the Ministry of Reconciliation and Civic Equality (two in Batumi, two in Niqozi, one in Zugdidi, one in Ganmukhuri, one in Khurcha, one in Imereti); The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees has held meetings with the internally-displaced population in Gori, Zugdidi, and Kutaisi.
1121 Letter of the Ministry of Education and Science of Georgia #MES 417 00165867, 22/02/2017.
1122 Letter of the Legal Aid Service #LA 017 00003369, 22/02/2017.
1123 Letter of the Ministry of Education and Science #MES 4 17 00165267, 22/02/2017.
1124 Letter of the Ministry of Labor, Health and Social Affairs #01/11677; 27/02/2017.
1125 Letter of the Government Administration #5860, 23/02/2017.
1126 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees #04/07/3588; 13/02/2017.

Table N6: Projects Implemented by the Ministry of IDPs to Address Gender Issues, 2016

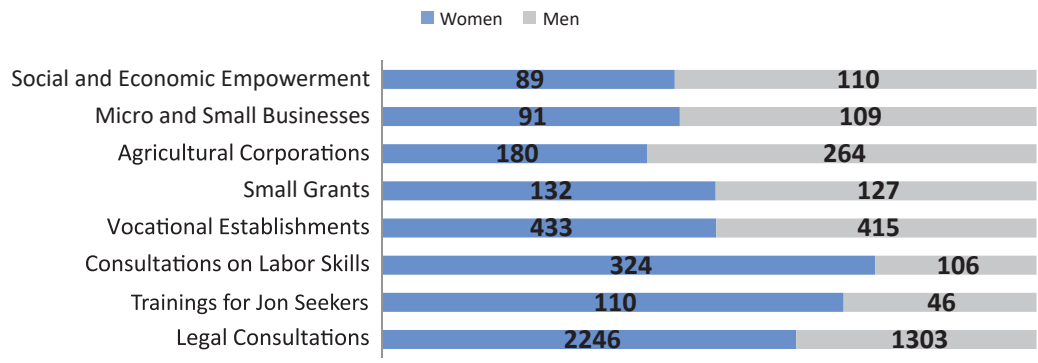


Table N6 clearly demonstrates that women's participation in educational activities is significant. As for the number of individuals enrolled in vocational establishments and complicit grants, women's and men's involvement is almost equal. Relatively few women participate in agricultural corporations and social-economic empowerment programs. The same trend was observed in 2016 in the projects financed by the State Minister's Office for Reconciliation and Civic Equality. There, out of 57 projects, only nine covered issues related to women's needs.[1127]

Taking into consideration the above-mentioned facts, the Public Defender of Georgia deems it important to take necessary steps for effective implementation of the NAP as well as amend internal institutional documents to reflect the obligations set out by the NAP. In addition, it is necessary to plan and implement specific measures as, in past experience, implementation of the NAP tended to be expressed in non-specific, day-to-day activities.

REPRODUCTIVE AND SEXUAL HEALTH AND RIGHTS

Problems surrounding reproductive and sexual health and rights remain pressing in Georgia. Limited access to information and education as well as financial, geographic, and cultural barriers create obstacles for the effective realization of rights, especially for women living in rural areas.

In 2016, the Government of Georgia presented its report in the framework of the 31th session of the Universal Periodic Review. The report noted that caring for the health of mothers and children constitutes a priority issue for the Government.[1128] A report was also submitted by a coalition of NGOs[1129] which paid great attention to issues of protection of sexual and reproductive health and rights. At this stage, significant attention should be devoted to implementing the recommendations adopted in the framework of the Universal Periodic Review in the NAPs and other policy documents.

First and foremost, it is important to raise youth awareness about reproductive health, so that youth have sufficient information about family planning, modern methods of contraception, and the risks associated with early marriage. Unfortunately, education about the above issues is not part of the formal education curricula and informational activities tend not to be implemented on the general educational level.

Integration of reproductive health education into formal education curricula is also mentioned by Dubravka Šimonović, the UN Special Rapporteur on Violence against Women, its Causes and Consequences. She notes

1127 Letter of the Government Administration #5860; 23/02/2017.
1128 Information is available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/169/51/PDF/G1516951.pdf?OpenElement> [last visited on 15 March 2017].
1129 The following NGOs are in the coalition: Tandgoma, Hera XXI, Identoba, and the Human Rights Education and Monitoring Center (EMC).

in her report on Georgia that the Government should ensure the inclusion of education on violence against women and age-relevant sexual and reproductive health and rights issues in education curricula on every level.[1130]

MATERNAL AND CHILD MORTALITY

Based on the Declaration on Human Rights, the primary right of mothers and children is to universal access to high-standard medical services regardless of race, socio-economic status, and cultural and religious identity.[1131] Decreasing the mortality rates of mothers and children, along with controlling infectious diseases, constitutes one of the key priorities of the UN sustainable development program.

Based on UNDP data, worldwide, six million children under the age of five die annually. Hundreds of women die daily due to complications from pregnancy or childbirth. In the cases of women living in rural areas, only 56% of births are handled by professional doctors.[1132]

Each year, approximately 16 million girls give birth between the ages of 15 and 19, and one million – before the age of 15.[1133] According to the data of the Institute for Health Metrics and Evaluation, the majority of maternal mortality cases are occur during or after childbirth.[1134] In the current situation, it is important to prioritize access to high-standard medical services.

As noted in the National Center for Disease Control and Public Health document Mother Mortality Trends in Georgia, the country has taken important steps toward protecting the health of mothers. However, the maternal mortality rate remains unacceptably high.[1135]

CHALLENGES RELATED TO FAMILY PLANNING AND ABORTION

According to World Health Organization data, the worldwide use of modern contraceptive methods has increased slightly, from 54% in 1990 to 57.4% in 2015.[1136]

Obviously, in countries where awareness about reproductive health and rights is lacking, rates of unplanned pregnancy tend to be higher. Currently, women in Georgia lack access to modern methods of family planning and contraception as well as various other services. Additionally, public awareness about reproductive health issues is limited.

The State Policy, implemented by Georgia's Health Care System[1137] includes an information campaign about modern methods of family planning and available contraception in 2010. However, due to the fact that the data has not been updated and a modern study has not been conducted, the current situation cannot be accurately assessed. According to available research, up to 53% of the Georgian population uses modern contraception

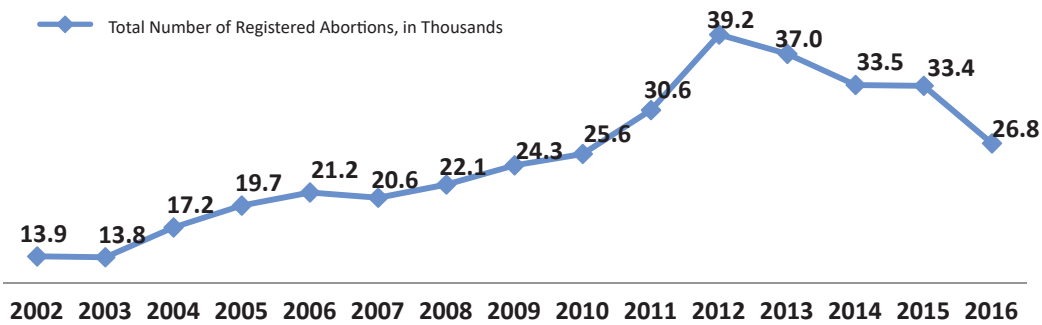
1130 Information is available at: <http://www.ombudsman.ge/uploads/other/3/3867.pdf> [last visited on 15 March 2017].
1131 Information is available at: <http://www.euro.who.int/__data/assets/pdf_file/0012/98796/E90771.pdf> [last visited on 15 March 2017].
1132 Information is available at: <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-3-good-health-and-well-being.html> [last visited on 15 March 2017].
1133 Information is available at: < http://www.who.int/mediacentre/factsheets/fs364/en/> [last visited on 15 March 2017].
1134 Information is available at: < http://www.healthdata.org/maternal-health > [last visited on 15 March 2017].
1135 National Center for Disease Control and Public Health, Mother Mortality Trends in Georgia.
1136 Information is available at: <http://www.who.int/mediacentre/factsheets/fs351/en/ > [last visited on 15 March 2017].
1137 National Center for Disease Control and Public Health, Mother Mortality Trends in Georgia. Information is available at: <https://matsne.gov.ge/ka/document/view/2657250> [last visited on 15 March 2017].

methods, and roughly 33% use traditional methods which tend to be ineffective and often end in abortion. Information about modern contraception methods is incomplete and often misleading, especially about how should each method be used.[1138]

According to the World Health Organization data, around the world, roughly 22 million abortions are recorded annually. The majority of those take place in low-income and developing countries.[1139]

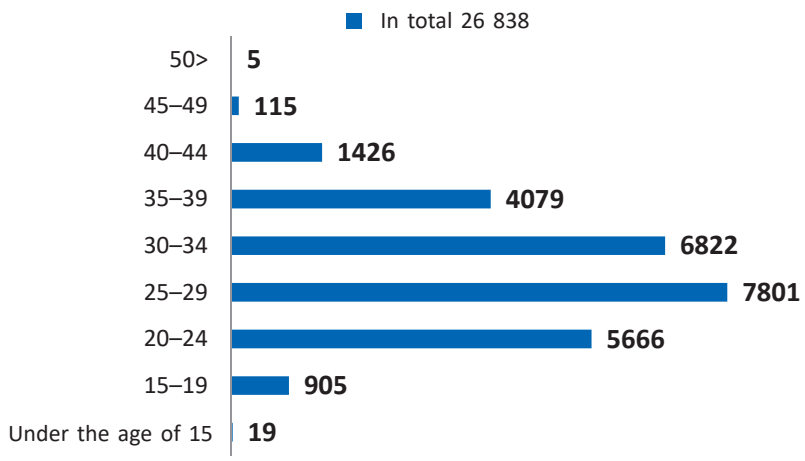
According to the information provided by the Ministry of Labor, Health and Social Affairs of Georgia, in 2016, 26,838 abortions were conducted in Georgia.[1140] That number decreased in comparison to previous years, a fact which supposedly indicates increased use of modern methods of contraception.

Table N7: Number of Registered Abortions



Also worth noting are abortion statistics broken down by age. As in 2015, most registered abortions were performed on women ages 25 to 29 (7,801). The number of abortions performed on girls under the age of 15 increased compared to the previous year.

Table N8: Number of Abortions by Age of Mother, 2016



Sex-selective abortion remains a significant issue in Georgia. It is a factor that drives gender inequality and results in a reduced number of girls born annually. According to the Global Gender Gap Report from 2016, Georgia, by sex correlation rate at the time of birth, ranks 137th out of 144 countries and the situation remains essentially unchanged since 2015.[1141] The UN Special Rapporteur on Violence Against Women, its Causes

1138 Women's Reproductive Health Study in Georgia, 2010.
1139 Information is available at: < http://www.who.int/mediacentre/factsheets/fs388/en/ > [last visited on 15 March 2017].
1140 Letter of the Ministry of Labor, Health and Social Affairs of Georgia #01/3869; 24/01/2017.
1141 Information is available at: < http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=GEO > [last visited on 15 March 2017].

and Consequences calls on the Government to take measures for the prevention of sex-selective abortions and to ensure the regular publishing of birth registration data by sex and by region in order to raise the public awareness about the possible negative long-term effects of the practice.[1142]

HUMAN TRAFFICKING

Human trafficking is a modern form of slavery and a gross violation of human rights. Women and children often become victims of human trafficking for both labor and sexual exploitation. According to a joint 2016 by the European Parliament and Council of Europe, 95% of victims of sexual exploitation worldwide are women.[1143] Trafficking offenders mainly take advantage of the vulnerability of victims. In the majority of cases, vulnerability stems from factors such as: poverty, discrimination, gender inequality, violence against women, and lack of access to education.

The Public Defender's Office welcomes that, in the Central Criminal Police Department of the Ministry of Internal Affairs of Georgia, a unit has been created to fight trafficking and illegal migration by directly investigating trafficking cases. However, initial identification of possible trafficking cases by the regional bodies of the Ministry of Internal Affairs of Georgia remains a problem.

In 2016, investigations were carried out into 20 alleged cases of trafficking—15 cases of sexual exploitation, four cases of forced labor, and one case involving both labor and sexual exploitation. In 2016, two women were granted the status of victim and another was granted victim status based on the fact that sexual exploitation was committed against her. In 2016, indicators of individuals using related services are as follow:

Table N1: Data on Services for the Victims of Human Trafficking	Individuals
Using a shelter based on the status of a standing group	1
Using a shelter based on victim status	3
Number of individuals using hotline consultations	123
Number of individuals who received compensation	2

The case of M.P.

The Gender Equality Department of the Public Defender's Office of Georgia was informed that an alleged victim of trafficking, M.P., was living with a family with which she had no family ties. According to the information provided, the family allegedly was exploiting her grave socio-economic condition. Allegedly, M.P. had sexual intercourse with men living in the household.

Unfortunately, the regional bodies of the Ministry of Internal Affairs and the LEPL Social Service Agency studied the situation incompletely and have not taken measures to identify the alleged offender. Information indicating the alleged acts of violence and exploitation were left to the attention of central governmental institutions. An investigation into the above case was launched only on the recommendation of the Public Defender of Georgia. It is still ongoing.

1142 Information is available at: < http://www.ombudsman.ge/uploads/other/3/3867.pdf > [last visited on 15 March 2017].
1143 European Parliament of Council of Europe Report on the Progress of Fight Against Human Trade (Trafficking), 2016.

RESULTS OF MONITORING OF SHELTERS

In 2016, the Gender Equality Department of the Public Defender's Office conducted monitoring of the shelters for victims of human trade (trafficking). No trafficking victim were present at the shelters during the monitoring, therefore, the results were based on information provided by shelter administration and on visual examination of the shelter's physical environment.

The monitoring results demonstrated that the existing situation in the shelters is favorable. However, a number of problematic issues were revealed, the resolution of which will significantly improve the quality of services. It should be noted that the issue of receiving beneficiaries with contagious infectious diseases has been resolved at the shelter in Tbilisi. However, no such possibility exists at the Batumi shelter.

The monitoring also uncovered problems in monitoring the health conditions of beneficiaries. Based on the information obtained, medical examination of each beneficiary is conducted when they are accepted to the shelter. This examination is based on an interview with the beneficiary. Given the fact that a person may not be aware they have a contagious disease, it is important for protection of the interests of other beneficiaries to conduct necessary medical examinations while accepting beneficiaries to the shelters. The Tbilisi shelter faced problems when it was revealed, seven months after placement in the shelter, that one of the beneficiaries had tuberculosis in an open, contagious form.

The monitoring revealed that persons with disabilities still face problems accessing the shelters. The shelter yards are ill-equipped for accommodating persons with disabilities. Additionally, the Batumi shelter cannot satisfy safety standards due to its location. Rehabilitation and educational services for beneficiaries also needs improvement in order to give victims the possibility of better re-integration into society.

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN GEORGIA

Violence against women and domestic violence remain grave problems. Given the increased rate of case identification, more importance should be given to state efforts to ensure victims have access to effective services and are protected from repeat acts of violence. In addition, it is important that state measures are planned, coordinated, and consistent in order to achieve tangible results.[1144]

Unfortunately, Georgia remains a society where gender stereotypes are deeply rooted. That fact heightens the risk and scale of violence against women and domestic violence.

The cases studied and analyzed by the Public Defender's Office reveal that domestic violence has a particularly grave impact on women with little or no income, juveniles, ethnically non-Georgian women, and women with disabilities. One reason for their increased vulnerability is that it is particularly difficult for law enforcement authorities and the Social Service Agency to detect violence in such cases and respond accordingly.

It should also be noted that problems with involving social workers in the process of studying domestic violence cases is still acute. Given the lack of social workers and their overloaded working conditions, proper responses to cases of domestic violence as well as provision of effective social services is difficult to fathom.

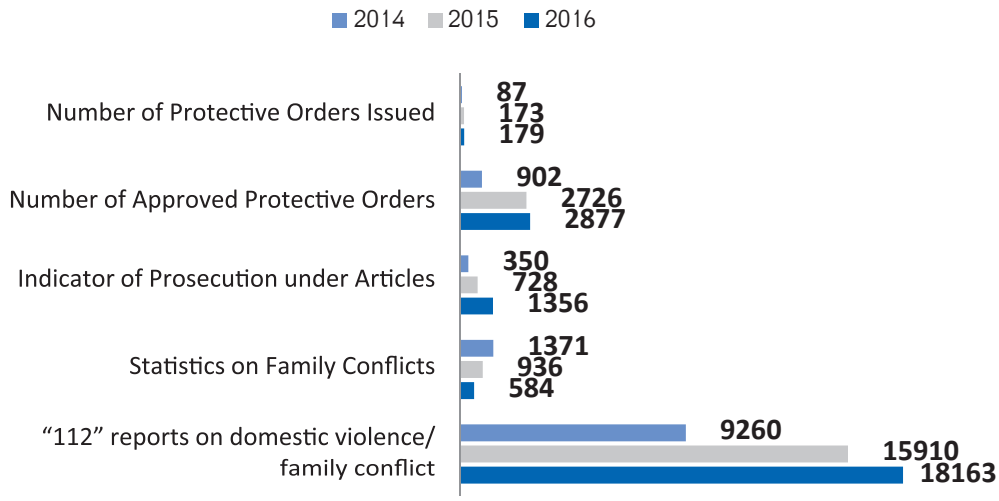
Despite numerous recommendations by the Public Defender of Georgia, the State still does not keep joint statistics and analysis on violence against women and domestic violence. Such statistics would give the State the possibility of provide needs-based responses. Additionally, it would significantly support the work of organizations devoted to the above issues and the service provider organizations to take evidence-based measures.

1144 Information is available at: <https://www.un.org/ruleoflaw/blog/document/not-a-minute-more-ending-violence-against-women/ > [last visited on 15 March 2017].

It is noteworthy that, unlike in 2015, during preparation of the report the Public Defender's Office was not immediately provided with the requested information. It was noted in correspondence with the Ministry of Internal Affairs of Georgia that the relevant authorities were tasked with processing and analyzing the requested statistical data, which was time-consuming. The related delay underlines the fact that the keeping of statistics does not constitute part of the working process and attention is not paid to statistical trends during day-to-day activities.

Statistical data on the issues of domestic violence is as follows:

Table N9: Cases of Domestic Violence



A noted trend is the refusal of victims to continue legal proceedings after reporting incidents of violence perpetrated by their intimate partners. According to the applications submitted to the Public Defender's Office, the reasons for that are numerous: lack of trust in law enforcement authorities; fear of intensified violence; uncertainty in the effectiveness of existing mechanisms; lack of economic independence and future perspectives; and problems related to the housing, among others. As a result, the above trend reinforces the prevalence of unidentified and unrecorded cases of violence which are thus left outside the State's capacity to respond.

Different countries rely on different measures to overcome the problem. For instance, in Germany,[1145] a special group was established under the main law enforcement body to record and document all details of cases of violence. The victim, after being properly empowered, submits the evidence to the relevant body. As a result of that and similar practices, it is possible to prevent incidents of violence from escaping the State's attention.

While applying to the Public Defender of Georgia, victims of domestic violence often reference stereotypical attitudes on the part of law enforcement. According to the same information, law enforcement officials often express solidarity with offenders and make victims feel uncomfortable for having filed a complaint against a family member. Some victims lose the desire to submit complaints to the police unit and instead seek alternative ways to protect themselves. The above facts indicate the need for greater awareness raising among law enforcement personnel and for the use of gender sensitive measures when responding to domestic violence cases.

It should be noted that detecting violence against people with disabilities poses a challenge for law enforcement authorities, especially in cases concerning mental health. The problem was revealed in a case studied by the Public Defender. In that case, the police interviewed the abuser, who indicated the victim's mental health

1145 Information is available at: <https://www.bmfsfj.de/blob/93938/7da570051cb2af391592774ca0dedcbe/gemeinsam-gegen-haeusliche-gewalt-englisch-wibig-data.pdf > [last visited on 15 March 2017].

problem and denied having committed acts of violence. The question of the abuser's responsibility was raised only after the Public Defender issued a proposal requesting the Chief Prosecutor's Office to launch an investigation.

It is noteworthy that the output of the working group devoted to the legal status for domestic violence victims has been positively reflected in the increased identification of domestic violence cases and in victims having greater access to available services. In a number of cases, victims of domestic violence are reluctant to contact law enforcement authorities for a number of reasons, while having a legal status increases their access to shelter, legal aid, and medical services.

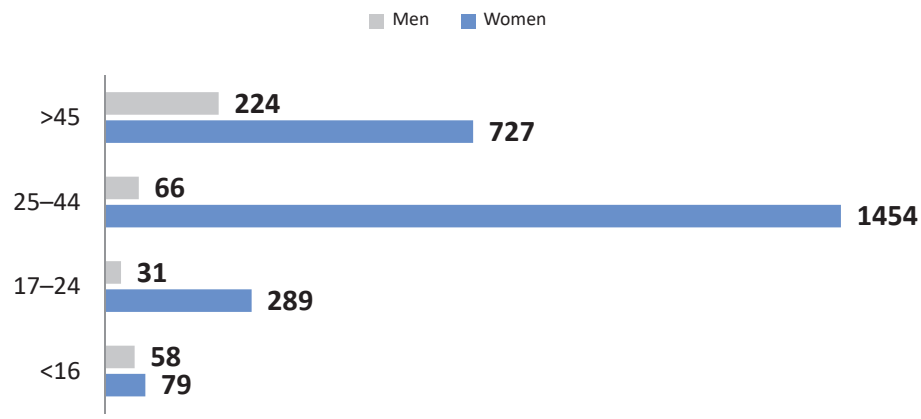
In 2016, the working group devoted to domestic violence victim status studied 38 cases, and victim status was granted to 32 individuals. Five applicants were refused and one case was not considered because it did not satisfy the basic criteria for consideration.

ASSESSMENT OF MECHANISMS FOR THE PREVENTION OF DOMESTIC VIOLENCE

According to Ministry of Internal Affairs data on restraining orders issued in 2016, cases of violence affected 3,012 families and 5,667 people in total. Of those cases, 2,877 restraining orders were approved. According to data on abusers and victims, 92% of the abusers were men and 87% of the victims were women.

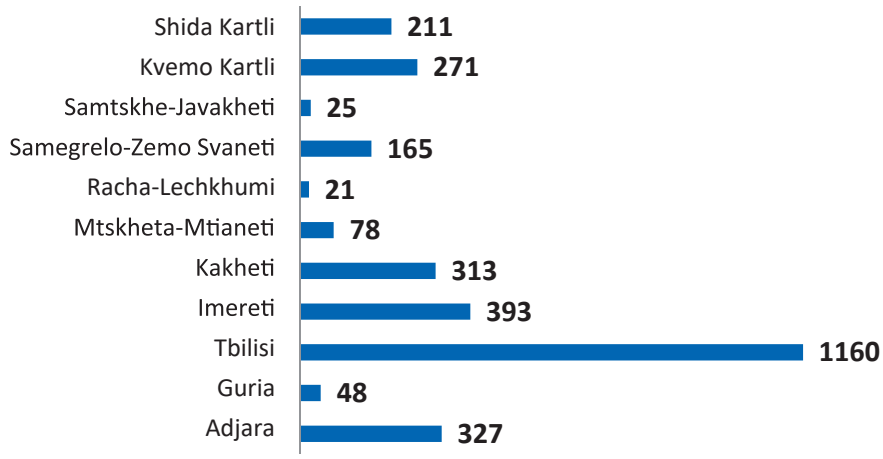
By age group, the most at-risk group is women between the ages of 25 and 44 (57% of cases with female victims) and men over the age of 45 (59% of cases with male victims). According to the number of issued restraining orders, the number of victims under the age of 24 remains low.

Table N10: Age Distribution of Victims (Based on Restraining Orders)



Another problem is the low rate of referral of domestic violence cases in Georgia's regions. The indicator is especially low in the Racha-Lechkhumi, Samtskhe-Javakheti, Guria, and Mtskheta-Mtianeti regions. Due to chronically-low referral rates in the above regions over several years, it is necessary to study the reasons behind the data and to develop special measures for raising awareness.

Table N11: Issued Restraining Orders by Region



As for responding to cases of domestic violence similarly to criminal offenses, according to the Prosecutor's Office, in 2016, criminal proceedings were launched against 1,356 individuals under Articles 11^1 - 126^1 of the Criminal Code of Georgia. The Public Defender's Office welcomes that, in comparison to past years, the rate of response to instances of domestic violence nearly doubled,[1146] indicating that discussions about domestic violence are gradually shifting from the private to the public sphere.

The Ministry of Internal Affairs and the Analytical Department of the Supreme Court do not classify restraining and protective orders stemming from domestic violence and violence against women by different forms of violence.[1147] Therefore, the Public Defender deems that law enforcement authorities lack the ability to analyze prevalent forms of violence and to plan and implement relevant protective measures. Moreover, the Public Defender's Office is deprived of the opportunity to assess the effectiveness of measures taken in response to incidents of violence against women.

It is noteworthy that a court decision to reject a restraining order request does not indicate whether the court, when considering the domestic violence incident, discussed the fact of abusing the interests of a juvenile, despite the fact that the risk is high in all similar cases. In addition, it is not indicated whether a social worker was brought in to study the conditions facing the juvenile.

POSSIBLE IMPACT OF WOMEN'S ECONOMIC INDEPENDENCE ON DOMESTIC VIOLENCE

In 2016, the Public Defender considered roughly 20 cases of domestic violence in which the applicants directly referred to the lack of economic independence as a main factor forcing to endure and repeated acts of violence.

The problem was also emphasized by data published in the Global Gender Gap Report, which covered women's access to property in Georgia. According to the study, women are two times less likely than men to inherit property. Additionally, women are two times less likely than men to use, own, or dispose of movable property or real estate.

1146 In 2015, criminal prosecution proceedings were initiated against 728 individuals under Articles 11^1 and 126^1 of the Criminal Code of Georgia; Information is available at: < http://www.ombudsman.ge/uploads/other/3/3891.pdf > [last visited on 15 March 2017].

1147 Letter of the Supreme Court of Georgia #□ -46-17; 08/02/2017 and letter of the Ministry of Internal Affairs of Georgia # MIA 7 1700314132; 08/02/2017.

According to analysis of the State Policy on Homelesness,[1148] gender inequality in famial relations is mostly reflected in women's housing conditions. This is related to unequal access to familial property, domestic violence against women, and unequal distribution of domestic labor between men and women.

The cases studied by the Gender Equality Department of the Public Defender's Office confirm that, in a number of cases, women endure violence from their spouses because of a lack of financial resources or a lack of support from immediate family members. In this regard, temporary shelters do not provide a long-term solution to victims of violence. However, access to housing and independent financial resources remain permanent problems. Analysis of the cases revealed that, in many instances, women are forced to sell or relinquish ownership of property in favor of male family members due to violence or threats of violence.

In such cases, law enforcement authorities face difficulties identifying cases of economic violence and considering the importance of gender in such cases. The identification of victims and abusers becomes immensely complicated in cases involving economic violence against women with disabilities. In such cases, social workers face difficulty providing adequate services and assistance to women with disabilities.

Case of T.K.

The Public Defender's Office was made aware of a case of domestic violence against T.K. According to the information provided, T.K. was systematically subjected to physical and psychological abuse by her spouse. Due to the abuse, T.K., together with her four children, left her husband's house and moved in with her parents. Unfortunately, instead of supporting her, her parents sheltered her abusive husband when he came to reconcile with T.K. Due to that, T.K. and her children were forced to leave her parents' house and seek shelter in a dormitory which did not have adequate living conditions.

Case of N.I.

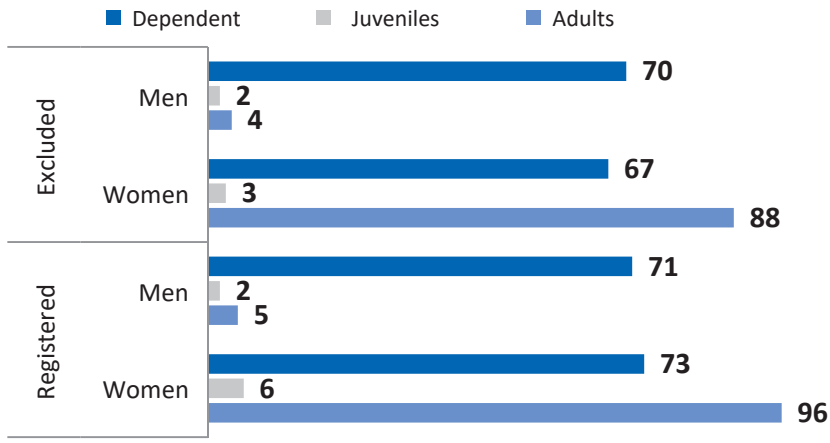
According to information provided to the Public Defender's Office, N.I. was the victim of systematic domestic violence. In particular, her brother subjected her and other family members to psychological abuse. Her brother requested that property be transferred to him, and that family members take out a loan and transfer him the money. Both the LEPL Social Service Agency and the Ministry of Internal Affairs of Georgia were informed about the abuse occurring in N.I.'s household. The Ministry of Internal Affairs of Georgia has issued several retraining orders; however, that failed to prevent further abuse.

ASSESSMENT OF SERVICES PROVIDED TO VICTIMS OF DOMESTIC VIOLENCE

In 2016, five state shelters were functioning in Georgia to serve victims of violence. Ninety-one women and five men benefited from their services.

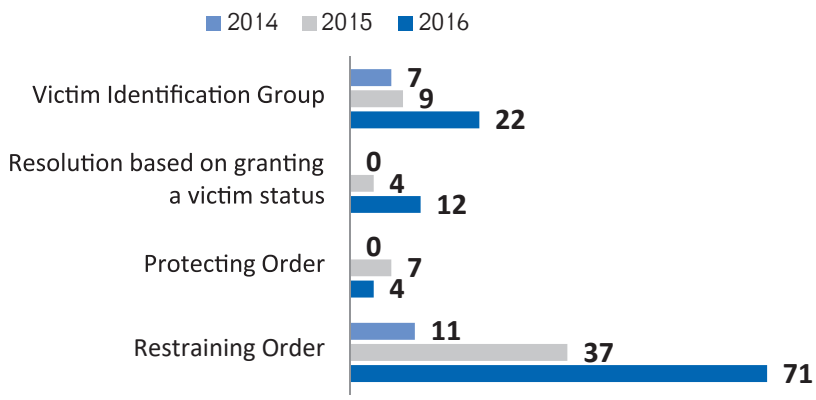
1148 Information is available at: <https://www.scribd.com/document/329069739/>კვლევა-უსახლკარობა [Last visited on 15 March 2017].

Table N12: Issued Restraining Orders by Region



The most common legal grounds for admission to a shelter is placement based on a restraining order or domestic violence victim status. The utilization rate of restraining orders remains low.

Table N13: Legal Basis for Admittance to Shelters



In 2016, the Gender Equality Department of the Public Defender's Office of Georgia, with support from UN Women, conducted monitoring of the shelters for victims of domestic violence and trafficking. The monitoring aimed to assess existing conditions in the shelters.

The monitoring results demonstrated that beneficiaries tend to feel safe and to positively assess the performance of personnel working at the shelter. However, it was revealed that proper realization of the beneficiaries' capacities, empowerment, and psychosocial rehabilitation were not taking place in the shelters. Due to that, after leaving the shelters, beneficiaries face difficulties establishing independence and, accordingly, are often force to return to abusive environments.

The existing infrastructure and diversity of services offered are still lacking. It is important that the shelters pay more attention to beneficiaries' health. Moreover, it is necessary to conduct regular scheduled medical examinations of the beneficiaries and to subject them to tests upon admission to the shelter in order to reduce the spread of infectious diseases. In addition, it is necessary to improve procurement practices. Accordingly, internal regulations and supervision practices must be improved.

It should also be noted that nearly all shelters currently operating in Georgia are located in cities, which limits accessibility to women living in rural areas. That problem is underlined by Dubravka Šimonović, Special

Rapporteur on Violence Against Women, its Causes and Consequences, in her 2016 report,[1149] Violence against Women, its Causes and Consequences.

FEMICIDE AND SUICIDE

Despite numerous recommendations by the Public Defender of Georgia, analysis of cases of gender-motivated killings of women and incitement to suicide—including the collection and maintenance of accurate statistics—has still not been carried out.

The respective datasets provided to the Public Defender of Georgia by the Ministry of Internal Affairs and the Chief Prosecutor's Office are incomplete and in a number of cases contradictory.[1150] According to the Ministry of Internal Affairs data,[1151] in 2016, 21 murders were committed as a result of domestic violence. However, the total number of women killed is not clear from the data. The Chief Prosecutor's Office also provided incomplete information[1152] due to the fact that the Analytical Department of the Chief Prosecutor's Office was unable to process and analyze the data during the requested time period. It is noteworthy that the Public Defender's Office requested statistical data from 2016 during the period of February-March 2017.

Due to the above, the Public Defender lacks the ability to provide detailed analysis and assessment. It is noteworthy that the Public Defender's call to record cases of femicide and the request of the Special Rapporteur on Violence Against Women, its Causes and Consequences to create an effective system of analysis have not been satisfied.

The cases of murder and attempted murder of women reviewed by the Public Defender demonstrate that violence between partners or former partners constitutes the bulk of cases. In addition, significant attention should be paid to cases of suicide when systematic domestic violence is involved. It is necessary that law enforcement authorities investigate all cases of incitement to suicide and uncover the motive of violence in each case.

From 2014 to the present, the Public Defender has been reviewing the cases of alleged incitement to suicide of Kh.J. and M.D. The investigation into the alleged incitement to suicide of Kh.J. has been ongoing for roughly three years. However, no criminal prosecution has been lauched against any individual connected to the case. A similar situation exists with regard to the case of alleged incitement to suicide of M.D. No concrete results have been achieved during three years of investigation. Unfortunately, the protracted nature of the investigations clearly indicates the ineffectiveness of law enforcement authorities in investigating cases of alleged incitement of women to suicide.

The Public Defender blames the high number of femicides on the lack of monitoring and risk assessment systems for cases of violence against women and domestic violence. In 2016, the Gender Equality Department of the Public Defender's Office reviewed cases of murder, attempted murder, and damage to women's health resulting from domestic violence in which the Ministry of Internal Affairs was informed of ongoing domestic violence prior to the crimes being committed.

The reviewed cases demonstrate the difficulty of law enforcement authorities to identify gender-based violence and, in particular, to detect instances of psychological abuse and threat. The authorities tend to focus only on visible signs of physical damage and to respond only after the abuser has already killed or physically abused the

1149 Information is available at: < http://www.ombudsman.ge/uploads/other/3/3867.pdf > [last visited on 15 March 2017].
1150 According to the information of the Ministry of Internal Affairs of Georgia, criminal proceedings were launched in 18 cases. Criminal proceedings were launched in 16 cases further to data provided by the Chief Prosecutor's Office of Georgia.
1151 Information is available at: <http://police.ge> [last visited on 15 March 2017].
1152 Letter of the Chief Prosecutor's Office of Georgia #13/16346, 13/03/2017.

victim. One particularly disturbing finding was an incident in which a woman was murdered just hours after police were informed about her being subjected to ongoing domestic violence. Despite that, the crime could not be prevented.

According to the information requested from the Ministry of Internal Affairs, in a number of cases, the failure to respond stemmed from the fact that victims retracted their criminal reports. In these cases, law enforcement was not interested in why victims retracted their reports; for example, if they did it upon threat from the abuser. Special attention should be paid to cases in which victims report to law enforcement agencies several times and in which responses have been made. In situations when a victim informs the authorities about abuse and later cancels the report, the law enforcement agency does not study the case further. The above factor underlines that each abuse report is treated as a separate case by law enforcement. Accordingly, the systematic and chronic nature of domestic violence is not taken into consideration.

It is important to note the role of district inspectors in domestic violence prevention, as inspectors are responsible for periodically monitoring affected families. The Public Defender's review revealed that, in many cases, district inspectors fail to observe that duty.

The above-mentioned problems were revealed in several cases reviewed by the Public Defender on his own initiative based on Article 12 of the Organic Law of Georgia on the Public Defender of Georgia.

Case of K.I.

On 13 July 2016, an investigation into K.I.'s murder was launched by the first department of detectives division of the Tbilisi Police Department of the Ministry of Internal Affairs of Georgia. The investigation was launched under Articles 11[1]-108 of the Criminal Code of Georgia. K.I.'s spouse was detained as a suspect.[1153]

Shortly before the murder (at 18:59), a notice was received at the LEPL 112 of the Ministry of Internal Affairs: the caller (the grandmother of the deceased) reported physical abuse against her grandchild and asked for help. Later that day (at 23:33) the authorities received a call from K.I.'s spouse, who admitting to murdering K.I. and expressed desire to surrender to the police.

Case of M.Ph.

On 31 March 2016, an investigation was launched into the case of M.Ph.'s murder in the Urekhi Police Department of Khelvachauri Regional Division of the Ajara Autonomous Republic of Georgia's Ministry of Internal Affairs. The victim's ex-spouse was charged under Articles 11[1], 19-108 of the Criminal Code of Georgia.[1154]

Seven notifications were recorded by the law enforcement agency prior to the crime. According to the information provided, because none of the notifications included references to criminal offenses, no response was made by the law enforcement authorities.[1155]

The Public Defender's review also revealed shortcomings in coordination between the LEPL Social Service Agency and the Ministry of Internal Affairs of Georgia. In a number of cases, both institutions considered cases of abuse; however, the responses and results differed. Despite the fact that the Social Service Agency managed to identify cases of abuse, the police chose not to share the information they had obtained.

1153 Letter of the Administration of the Ministry of Internal Affairs of Georgia #2072147; 18/08/2016.
1154 Letter of the Khelvachauri Regional Division of the Ajara Autonomous Republic of Georgia's Ministry of Internal Affairs #MIA 5 16 00959424; 18/04/2016.
1155 Letter of the Administration of the Ministry of Internal Affairs of Georgia #1859144; 26/07/2016.

It is important to note that diversion mechanisms often fail to protect victims. In many cases, victims of violence have to leave their homes and move into a shelter. Generally, abusers are diverted by employees of the relevant unit of the Ministry of Internal Affairs, in order to immediately defuse the threat of further abuse. However, such mechanisms fail to prevent repeated violence in the long-term.

Currently, the Ministry of Internal Affairs does not keeping statistics on the number of diversions conducted in cases involving domestic violence. While obtaining data on domestic violence, it is important that the Ministry of Internal Affairs obtains and records information on whether a given victim and abuser lived together when the incidents of violence occurred and whether diversion of the abuser took place. That would enable the institution to properly plan monitoring measures.

FEMALE GENITAL MUTILATION

Female genital mutilation constitutes an extreme human rights violation that violates women's health, safety, physical integrity, prohibition of torture, and implementation of other rights.

In 2016, incidents of female genital mutilation were revealed in one region of Georgia. There, the practice of female genital mutilation was established as a part of a "baptism" ritual involving cutting off a small part of the clitoris. The ritual is performed in home conditions.

The information obtained by the Public Defender of Georgia reveals that the local population is not aware of the complexity, risks, and complications inherent to female genital mutilation. In addition, the purpose of the practice is not uniformly understood. Many members of the population relate it to tradition and/or religious custom.

The Public Defender of Georgia requested information from the relevant institutions on work conducted regarding female genital mutilation in order to analyze the significance and scale of the problem. According to the responses received from the Ministry of Internal Affairs and the Chief Prosecutor's Office,[1156] steps taken to prevent female genital mutilation mainly include studying the facts and conducting public meetings aimed at raising the population's awareness of the practice's illegality.

According to the information provided by the Ministry of Labor, Health and Social Affairs of Georgia,[1157] the Ministry organized two inter-agency meetings, after which it printed an informational leaflet on "Dangerous and Hazardous to Health Procedures." In addition, based on the information provided by the Ministry, it took into consideration the resistance of a specific community to discussion of the above topic and, therefore, abstained from meetings with that community. However, as of Spring 2017 the Ministry is planning to continue work on the above issue. The development of an inter-agency action plan is also planned.

The Public Defender welcomes the fact that after approval of the package of amendments prescribed by the Istanbul Convention, Georgia's legislation will be amended to include a definition of female genital mutilation. Additionally, it is necessary to strengthen efforts to raise awareness in the public. Particularly important is the timely development of an inter-agency action plan for implementation of the measures. The action plan should be based on best practices and be prepared with the coordinated involvement of various institutions. The work should be based on an in-depth study of the practice that takes into account the intersection of various important factors such as gender, the ethnic identity of the victims, social stigma, and risks of repeated trauma.

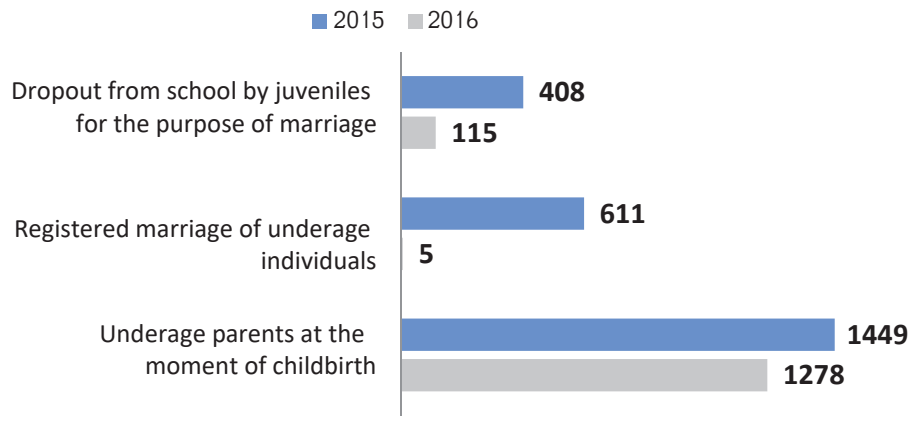
1156 Letter of the Ministry of Internal Affairs of Georgia #MIA 2 17 00353071; 13/02/2017 and letter of the Chief Prosecutor's Office of Georgia #13/4355; 23/01/2017.

1157 Letter of the Ministry of Labor, Health and Social Affairs of Georgia #01/4252; 25/01/2017.

EARLY MARRIAGE AND CHILD MARRIAGE

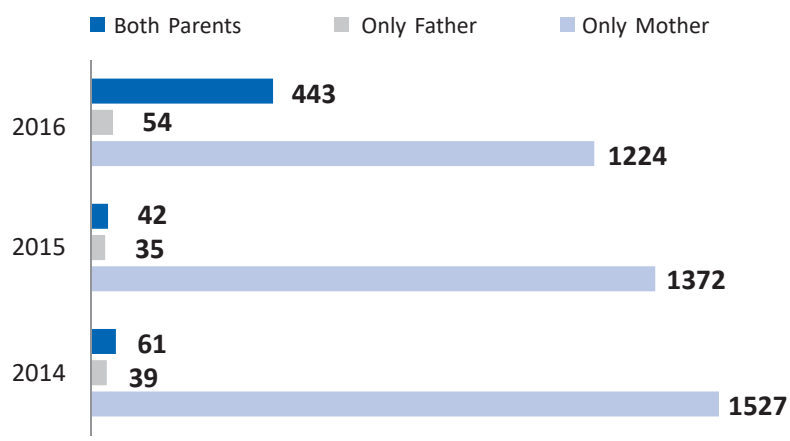
Early marriage and child marriage still constitute some of the most disturbing manifestations of gender inequality in Georgia. Analysis of the cases reviewed by the Public Defender in 2016 revealed that instances of actual cohabitation have decreased. However, the rate of engagement has increased, something which is no less harmful to the rights of the juveniles and has a negative impact on their personal development, opportunity to receive education, and freedom of choice.

Table N14: Data on Early Marriages



According to the information provided by the Ministry of Justice of Georgia, in 2015, 611 juvenile marriages were registered. In 2016, there were only five. The decrease is a result of amendments to th Civil Code of Georgia initiated by the Public Defender and is direct evidence of the fact that the state can play an important role in regulating gender-related issues. The number of parents who were still juveniles when registering the birth of a child also declined from 1,449 in 2015 to 1,278 in 2016.[1158] Unfortunately, figures for the number of juvenile parents having children considerably exceeds the figures on early marriage.[1159]

Table N15: Parents who are Underage at time of Childbirth

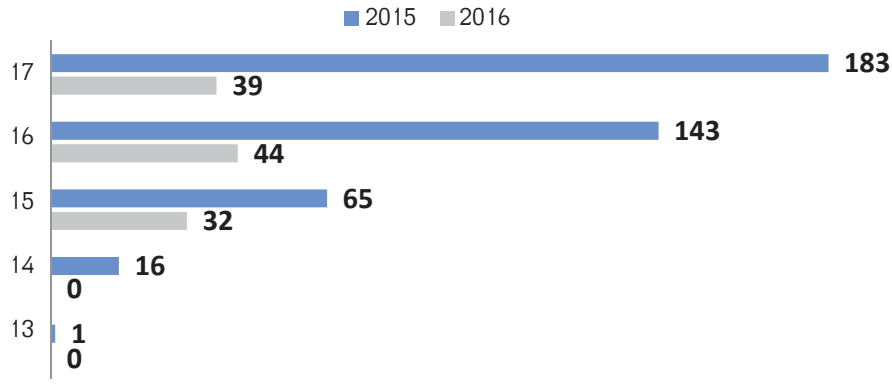


Juvenile marriage is closely connected to access to education. Unfortunately, juveniles often abandon their studies. Such practice affects women's economic independence and increases their susceptibility to domestic violence. According to the information provided by the Ministry of Education and Science of Georgia,[1160] in

1158 Letter of the Ministry of Justice of Georgia #01/19266; 23/01/2017.
1159 While assessing this trend, it should be taken into consideration that a short period of time has passed for assessing the legislative amendments. The amendments covered the second half of 2016.
1160 Letter of the Ministry of Education and Science of Georgia #MES 3 17 00047276; 20/01/2017.

2016, 115 schoolchildren between the ages of 13 and 17 left school. In 2015, 408 schoolchildren terminated their studies.

Table N16: Number of Students Leaving School due to Early Marriage



Despite the sharply-reduced number of registered marriages, implementation of a response to actual cohabitation remains a problem to be addressed. The case study conducted by the Public Defender revealed shortcomings in the measures taken by law enforcement authorities, the Social Service Agency, and educational institutions. According to the information provided by the Social Service Agency,[1161] it reviewed 79 cases of early marriage in 2016.

Still problematic is the lack of inter-institutional coordination on cases of early marriages. Despite the fact that in a number of cases early marriage is followed by sexual assault, abandonment of studies, and parental neglect, the above circumstances are not perceived as rights violations by state agencies and law enforcement authorities. The authorities often point to the voluntary nature of marriage or traditional attitudes, declining to take effective measures for ensuring the best interests of children.

In cases of early marriage, even when they involve abuse of an underage individual, the Social Service Agency usually chooses not to separate a child from their family. In such cases, the Social Service Agency covers up problems in the family. Unfortunately, alarming cases of early marriage have been revealed when the Social Service Agency, in order to create formal justification for leaving the juvenile in the family, appointed the mother of the alleged abuser as legal guardian. In addition, a case was revealed when the Social Service Agency assessed the existing family environment as favorable and non-violent for the underage individual in question. In reality, the victim's spouse was found guilty of sexual offenses, about which the Social Service Agency had been informed.

Article 140 of the Criminal Code mandates punishment by imprisonment for a term of seven to nine years for sexual intercourse with a person under the age of 16 year. There are no exceptions to the above. According to the information provided by the Chief Prosecutor's Office of Georgia,[1162] criminal proceedings have been launched against 183 individuals under Article 140, the majority of which (161) were involved in family-related crimes (88%).

Unfortunately, the case study revealed that in cases of marriage between adult males and girls under the age of 16, law enforcement authorities tend not to interested in investigating alleged sexual offenses. In such cases, it is enough for the couple to declare that they do not have or will not have sexual intercourse until the girl turns 16. An investigation into sexual offense is launched only if the girl is found to be pregnant.

Awareness about the details of early marriage, including issues of crime and punishment, is low in Georgia. In cases when the couple starts a family, the sentencing prescribed by Article 140 of the Criminal Code of

1161 Letters of the Ministry of Labor, Health and Social Affairs of Georgia #01/4054, 24/01/2017 and #01/62049, 12/08/2016.
1162 Letter of the Chief Prosecutor's Office of Georgia #13/16346, 13/03/2017.

Georgia is not handed down and the offender is offered a plea bargain. Unfortunately, the plea bargain often results in a mere fine for marrying an underage girl and in some cases, despite awareness of criminality, it is acceptable for financially well-off men to pay the fine in exchange for marrying a young girl.[1163]

As for actions punishable under Article 143 of the Criminal Code of Georgia, unlawful imprisonment (including abduction with the purpose of marriage), 27 investigations were launched in 2016 according to the information provided by the Ministry of Internal Affairs.[1164] According to the data provided by the Chief Prosecutor's Office,[1165] criminal proceedings under the same article were launched in 20 cases.

Based on the above-mentioned facts, steps taken by the State to combat the practice of early marriage are effective but insufficient. Effective steps have not been taken for raising awareness on the above offense, something important both for crime prevention and for reducing instances of early marriage.

In 2016, several cases were revealed in which educational institutions violated the requirements stipulated by referral documents by failing to inform the relevant authorities about cases of early marriage. Cases of violation of the requirements of the referral documents by the Ministry of Internal Affairs were also revealed. The above cases underline the need to raise awareness among educational professional and representatives of the Ministry of Internal Affairs about issues related to early marriage.

Case of M.J.

The Public Defender of Georgia was addressed by M.J., who reported violence committed against her child. According to the information provided, M.J., at 15 years old, married a 27-year-old man. Throughout the marriage the girl was the victim of physical and psychological abuse by her spouse. During the Public Defender's review of the case it was revealed that the Ministry of Internal Affairs as well as the relevant educational institution were aware of the early marriage. The Ministry of Internal Affairs did not respond, as the couple's declaration, that they would not have sexual intercourse until M.J. turned 16, was deemed sufficient. The police only reacted when a few months after the marriage it received notification about domestic violence perpetrated by the husband. Not a single institution informed the Social Service Agency about the domestic violence.

In addition to early marriage, engagement involving underage girls is a problem. Unfortunately, less attention is paid to such cases by childcare institutions and representatives of law enforcement agencies. In such cases, the authorities prefer that the engaged girl remains with her biological family. That was confirmed by information received from the Chief Prosecutor's Office regarding investigations launched under Article 150[1].[1166] In 2016, investigations under this Article were launched in only three cases.

LEGAL STATUS OF LGBTI PERSONS

Specifically grave is the legal status of LGBTI persons. In response to the existing homophobic and transphobic attitudes, steps taken by the State for improving the legal status of LGBTI persons are still minimal and have a formal character.

LGBTI persons feel unsafe due to the high amount of hate public expressed against them. Additionally, there are still gaps in legislation which deprive LGBTI persons of equal rights and protections guaranteed by Georgia's constitution.

1163 Information meetings held by the Public Defender on issues of early marriage in 2015-2016.
1164 Letters of the Ministry of Internal Affairs of Georgia # 201943,26/01/2017 and # 2050756, 16/08/2016.
1165 Letters of the Chief Prosecutor's Office of Georgia # 08-3/506, 11/01/2017 and # 13/53405, 15/082016.
1166 Letters of the Chief Prosecutor's Office of Georgia # 1353405, 15/08/2016 and # 13/6254, 30/01/2017.

Despite the fact that during the last decade a number of legal amendments have been adopted in the country, the practical implementation of the relevant laws is insufficient and ineffective. Homophobic attitudes remain prevalent and so-called "political homophobia", the use of homophobic hate speech by politicians, remains problematic. The above factors are reflected in the diminished legal status of the LGBTI community.

LGBTI persons in Georgia are victims of systemic abuse, harassment, persecution, intolerance, and discrimination in all aspects of life. Violence and discrimination against them often occurs within the family, in public spaces, and in various institutions and is manifested in physical and psychological abuse, marginalization, bullying, and social exclusion.[1167] Unfortunately, LGBTI persons are preventing from developing an agenda for promoting their rights and legal status.

The State remains unable to ensure creation of an education system that is free from homophobic and transphobic perspectives and that will promote the inculcation of tolerant values in schoolchildren from an early age. Homophobic attitudes in teachers are also frequently evident, a fact which encourages indifference toward acts of violence. In terms of exercising the right to education, homophobic and transphobic attitudes remain pervasive in Georgia's public schools and universities. This limits the extent to which members of the LGBTI community can exercise their rights, creates a hostile environment, and leads to exclusion from educational spaces.[1168]

The grave legal status existent in the country is most starkly reflected on the status of the most vulnerable sub-groups within the LGBTI community, such as lesbian, transsexual, and transgender women. Homophobic attitudes expressed toward them generally follows from the grave situation in terms of the legal status of women. As a result, the number of lesbian, transsexual, and transgender women who have been victims of violence in three or more instances exceeds the number of gay, bisexual, and transgender men suffering the same experience.[1169] Nevertheless, not a single case concerning physical abuse of lesbian or bisexual women was submitted to the Public Defender's Office during the reporting period, which in itself indicates the low visibility of the problem within the community. In such cases, we can assume that lesbian and bisexual women are left beyond the space regulated by the State and are thus more vulnerable in comparison to other social groups.

As for transgender women, the scale of violence committed against them is so large that law enforcement authorities are often forced to intervene. However, considering the increased number of incidents that occurred in 2016, it is clear that the police do not have a strategy for prevent this king of violence and is limited to responding to certain incidents. In short, the authorities are unable to address the systemic nature of the problem.

Case of 17 May 2016

According to the statement of an independent group of LGBTI activists, they refused to hold a public event in 2016 due to possible threats and the State's inability to guarantee their safety. That should be deemed a step backward in terms of protecting freedom of expression.

In the early morning of 17 May 2016, 10 LGBTI activists were detained. Three of them were detained at the Freedom Square metro station and seven near a building owned by the Orthodox Church of Georgia. They were detained for painting stencils and failing to comply with the lawful requests of the police. The detainees notified the trustees of the Public Defender of Georgia that their detention was carried out aggressively, without any explanation, and with the use of homophobic language. LGBTI activists indicated that they were

1167 Declaration on Elimination of Discrimination based on Sexual Orientation and Gender Identity (SOGI) and Achievment of Equal Legal Status for the LGBTI Persons, 2016.
1168 Legal Status of LGBTI persons in Georgia, Human Rights Education and Monitoring Center (EMC), 2016.
1169 Information is available at: < https://ge.boell.org/ka/2016/06/17/cinascargancqobidan-tanascorobamde > [last visited on 15 March 2017].

arrested by persons wearing plain clothes. Additionally, they were not transported in police cars. The location of the detainees was unknown for several hours. The detainees noted that they were not informed of their rights during detention and were not given the possibility to contact their families. The trustees of the Public Defender had difficulty even obtaining the above information.

It is alarming that the situation has deteriorated since 2015. That year, after certain security measures were taken by the State, LGBTI activists had the possibility to celebrate the International Day Against Homophobia and Transphobia, despite the fact that demonstrations were limited in time and space.

The Public Defender deems that governmental bodies should support to the maximum extent possible the prevention of hate-based violence as well as the elimination of homophobic acts. Additionally, the State should ensure unconditional observance of the rights and freedoms of LGBTI persons guaranteed by the Georgia's constitution.

The Transgender Community's Access to State Services

The lack of legal recognition still constitutes a major challenge for transgender individuals.[1170] Due to the fact that transgender people lack the possibility to change their legal gender recognition in civil records based on their own gender identity, risks of discrimination, ill-treatment, and abuse increase when suing the above documents.

Although procedures for changing one's legal gender recognition is not regulated at the legislative level, the established practice of the Ministry of Justice of Georgia is to treat an anatomical sex change surgery certificate as grounds for changing legal gender recognition. That contradicts international standards, according to which the State should give transgender persons the possibility to change their name and legal gender recognition in official documents in a fast and easily-accessible way. In addition, great importance should be given to the elimination of unjustified restrictions and invisible visible barriers surrounding the procedures for changing one's legal gender recognition.

In 2015, the Public Defender of Georgia addressed the Ministry of Justice with a proposal to develop and approve procedural rules in civil acts for changing legal gender recognition. Despite the proposal, existing practices have not changed and the legal status of transgender persons has not improved in this regard. In addition to the proposal, an *amicus curiae* was prepared during the reporting period which also referred to legal gender recognition.

The *amicus curiae* emphasizes that the legislation and legal practice of different countries is directed at ensuring that states offer transgender persons the possibility to change their name and legal gender recognition in official documents in a fast and easily-accessible way. In addition, great significance is given to the eradication of unjustified restrictions accompanying procedures for amending legal gender recognition. For instance, a poll conducted by the European Agency for Fundamental Rights demonstrated that transgender persons are subject to more discriminatory treatment, especially when seeking employment, than lesbian, gay, and bisexual persons. Almost one-third of the interviewed transgender respondents (30%) experienced discrimination at the workplace, twice the rate of discriminatory experiences in the lesbian, gay, and bisexual communities.[1171]

As for the utilization of health care services, the 2015 study of the experiences of transgender persons found that the majority of respondents consider doctors in Georgia to have negative attitudes towards transgender persons. That constitutes one of the barriers for transgender persons to receive high-quality health care services.[1172]

1170 Information is available at: < http://www.ombudsman.ge/uploads/other/3/3720.pdf > [last visited on 15 March 2017].
1171 Study of LGBT Persons in Europe, 2014, Key Findings, p. 29.
1172 Information is available at: <http://women.ge/data/docs/publications/WISG_Transgender_survey_2015.pdf > [last visited on 15 March 2017].

The Public Defender deems it important to reach a timely and effective solution to the problem, one which includes separation of medical procedures from legal gender recognition. Changing legal gender recognition should be independent from sex change surgery and hormonal and drug therapy.

Gender-Based Violence against the LGBTI Community

Applications studied by the Office of the Public Defender of Georgia clearly demonstrate the grave reality facing the group. This confirms that attitudes towards LGBTI persons are not merely worsening, but are being reflected in mass violence against the members of the group.[1173]

It is widely recognized that an abusive, homophobic, and transphobic environment marginalizes the LGBTI community and directly harms not only the well-being and health of individuals, but also prevents self-realization on individual, inter-personal, and political levels.[1174]

Research on instances of domestic violence was a key component of the 2014 survey conducted by the European Agency for Fundamental Rights (FRA).[1175] Seven percent of respondents noted that serious incidents of violence were being perpetrated by family members. Additionally, female respondents indicated more incidents of domestic violence than did male respondents. Only 5% of the respondents identified as gay or bisexual men. The monitoring of shelters for victims of domestic violence conducted by the Public Defender's Office in 2016 revealed that personnel do not possess the relevant knowledge and experience of communicating with LGBTI victims and what awareness-raising training activities that are held for them mainly focus on issues of domestic violence and trafficking.

Of the applications submitted to the Public Defender's Office in 2016, only one case related to domestic violence, according to which an underage individual was subjected to violence from their parents due to their sexual orientation. The Social Service Agency took the underage person out of the family and placed them in foster care.

In a number of cases studied by the Office of the Public Defender, representatives of the LGBTI community referenced acts of alleged misconduct by police officers. In many cases that included humiliating treatment, homophobic attitudes, verbal and physical abuse, and indifference. In the applications indicating abuse of power by representatives of the police, the Public Defender's Office has appealed to the Prosecutor's Office to respond appropriately. Currently, investigations are ongoing into the alleged criminal actions.

In some applications, representatives of the LBGTI community referenced alleged violations committed during administrative detention. In particular, the applicants noted that in a number of cases they were not informed of their rights during detention nor were they given the possibility to contact lawyers or family members. Cases should also be mentioned in which representatives of the LGBTI community were administratively detained, only to have legal proceedings against them terminated after the court decided no administrative offense had occurred.

The termination of administrative proceedings by courts on a number of cases indicates the necessity of training police officers to identify and confirm the existence of administrative offenses while obtaining evidence. Additionally, police should be made to understand that the power to effect administrative detention should not be exercised in an arbitrary manner.

Prevailing public attitudes encourage violence against members of the LGBTI community. Given the above, taking steps in this regard is of utmost importancy. In addition, timely and accountable investigation into

1173 Information is available at: <https://ge.boell.org/ka/2016/06/17/cinascargancqobidan-tanascorobamde >[last visited on 15 March 2017].

1174 Declaration on Elimination of Discrimination based on Sexual Orientation and Gender Identity (SOGI) and Achievment of Equal Legal Status for LGBTI Persons, 2016.

1175 Study of LGBT Persons in Europe, 2014, Key Findings, p. 64.

crimes motivated by hate and discrimination and committed against members of the LGBTI community should be conducted, and the punishments prescribed by legislation should be imposed on offenders. Such measures could, to certain extent, prevent further crimes. The lack of response on the part of law enforcement authorities encourages discriminatory treatment and, resultantly, members of the LGBTI community lose trust in law enforcement agencies.

Case of G.T., J.TS., G.U., and T.M.

The applicant, G.T., noted that a citizen verbally abused transgender persons, after which they called the patrol police. The patrol police detained persons from both parties and accused them of minor hooliganism. The applicant noted that they were not informed of their rights during detention and they were subjected to verbal and physical abuse by the police.

G.T. was released by the police based on a receipt, and administrative court proceedings against the transgender persons J.TS., G.U., and T.M. were terminated (their having committed offenses was not confirmed). An investigation is still ongoing into the alleged abuse of power by the police officers.

Case of Detention of Transgender Women

According to the application, in the late hours of 25 June 2016 in the vicinity of Hero Square in Tbilisi, a transgender woman was attacked and resultantly sustained injuries. The attacker has wounded her in her right arm with a nail-studded stick.

According to the reports, the victim called the police. However, the law enforcement authorities neither tried to detain the offender nor made any other response. To protest the above fact, other transgender women who were at the crime scene called another patrol police crew and requested them to respond to the crime. The second police crew actually considered the transgender women's protest to be an offense, detaining four of them and transferring them to the relevant police department. The police accused them of offenses under Article 166 (disorderly conduct) and 173 (non-compliance with a lawful order or demand of a law-enforcement officer). Court proceedings were terminated against two of the individuals (their having committed the offense was not confirmed). The court decision regarding the other two persons is unknown (presumably, proceedings were terminated against them as well; the police did not possess this information when the request was sent to them by the Public Defender's Office).

Investigation into the case is ongoing regarding the beating of the transgender woman and into alleged abuse of power by the police officers.

Case of Z.Sh.

According to the application, on 14 October 2016, a transgender individual was attacked and suffered multiple injuries in an incident motivated by homophobia. According to the provided information, the injuries were received by side-arms and blunt objects. Z.Sh. died as a result of the injuries. Based on the information provided by the Prosecutor's Office, investigative measures were actively taken to detect a hate motive. However, the above has not yet been revealed and the investigation is ongoing.

RECOMMENDATIONS

To the Government of Georgia:

- Ministries should support the implementation of gender mainstreaming through establishment of a special institutional unit or by designating persons responsible for gender equality issues;
- The Government should support the development and implementation of internal institutional policy documents (strategy, action plan, concept) on gender equality issues;
- Gender statistics related to employment should be maintained and analyzed for identifying and eliminating barriers to the career advancement of women;
- In action plans and strategies regarding gender equality issues, measures should be determined for protecting the legal status of women human rights defenders as well as for addressing issues related to the implementation of the UN General Assembly Resolution A/RES/53/144 ;
- Work directed toward legislation strengthening women's labor rights should be renewed and legislative guarantees specifically directed against the gender discrimination of women employees should be developed;
- Relevant procedures should commence aiming at signing and ratifying the International Labor Organization's Convention N183 on Maternity Protection;
- The legal status of multi-child parents should be defined and the relevant legislative amendments should be initiated;
- The responsible state institutions should keep comprehensive and detailed statistics and conduct related analysis. Statistical data on the murder and incitement to suicide of women should be kept and the data should be analyzed;
- Regarding the practice of female genital mutilation, the inter-agency action plan should be developed in a timely manner; and
- Governmental strategies and actions plans should comprehensively reflect measures taken by the relevant institutions to eliminate violence based on sexual orientation and gender identity, and the implementation of strategies and action plans should be supported.

To the Parliament of Georgia:

- The recommendations of the Committee on Elimination of All Forms of Discrimination against Women and of the Special Rapporteur on Violence against Women, its Causes and Consequences on introducing an obligatory binding mechanism for gender quotas should be considered;
- A definition of sexual harassment should be determined and a system of adequate sanctions should be developed; and
- The work of the Parliamentary Council on Gender Equality should be strengthened in terms of reflecting gender equality issues in Georgian legislation and promoting effective implementation of international standards and recommendations.

To Local Self-Government Bodies:

- The powers, scope of work, and resources of persons responsible for gender equality issues at the level of local executive bodies should be strengthened;
- The establishment and sustainability of an institutional unit devoted to gender equality issues should be supported at the level of City Assemblies (Sakrebulos);
- Statistics on gender and employment should be maintained and analyzed for identifying and eliminating barriers to the career advancement of women;
- While drafting local budgets, particular attention should be paid to integrating women's issues into budgets and implementing targeted programs aiming at improving the legal status of women, including programs for single parents, parents of multiple children, and victims of domestic violence; and
- Women's engagement and participation should be ensured at every stage of the planning, implementation, and assessment stages of rural development programs and community priority projects.

To the Ministry of Regional Development and Infrastructure of Georgia:

- The integration of initiatives aimed at improving the legal status of women should be strengthened in projects targeted at local municipal development; and
- The sharing of best practices and establishment of common approaches among local self-government bodies on issues related to gender equality should be supported.

To the Ministry of Internal Affairs of Georgia:

- A more sensitive attitude toward possible violation of the rights of women human rights defenders should be developed, and increased risks due to the nature of their activities should be given special consideration;
- The training of the employees of the regional bodies of the Ministry of Internal Affairs of Georgia should be ensured. In particular, the following issues should be included in the police officers' training curriculum: trafficking, domestic violence, early marriage, female genital mutilation, sexual orientation, gender identity, and gender characteristics;
- A specialized structural unit should be created with direct responsibility for issues related to gender-motivated crimes and cases of domestic violence;
- In cases of domestic violence, sustained performance of duties assigned by legislation to employees of the Ministry of Internal Affairs should be monitored;
- Standards filling in information in the restraining order protocol should be improved;
- Effective use of protective measures, including diversion, should be supported. In addition, further monitoring of responses should be carried out;

- Standards of analysis of statistical data on violence against women and domestic violence should be improved. In particular, that refers to: notifications of cases of alleged domestic violence and family violence received by the LEPL 112, protective measures, and other incidents of violence;
- Coordination should be strengthened with the LEPL Social Service Agency while reviewing cases of domestic violence and early marriage;
- Guidelines for responding to cases of early marriage should be developed and the role of the district inspector in addressing cases of early marriage and early engagement should be strengthened;
- Cases related to alleged domestic violence by parents or of parental neglect should be studied; and
- The Ministry should cooperate with LGBTI organizations and other NGOs and initiative groups working on gender issues in order to support prevention and to strengthen trust in the law enforcement system.

To the Ministry of Justice of Georgia

- A rapid, transparent, and accessible procedure should be established for reflecting gender identity and transgender issues in documents issued by public and non-public institutions. It is important that the procedure be clearly separated from the medical transition process.

To the Ministry of Labor, Health and Social Affairs of Georgia:

- Regulations governing maternity, childbirth, and childcare leave and associated compensation should be approved in the nearest future in order to prevent cases of discrimination on gender grounds;
- Measures directed toward assisting single parents and parents of multiple children should be introduced, including incorporating such persons into the existing system of social allowances. Complete statistical information on single and multiple-children mothers should be kept and analyzed;
- Conflict-affected women and girls should be provided with psychosocial services in a timely manner;
- Measures for raising public awareness about reproductive and sex health and rights should be planned and implemented, including raising public awareness about the use of contraceptives and family planning services. This should be done with the active involvement of rural clinics;
- Measures to prevent sex-selective abortion such as holding informational and educational meetings in Georgia's regions should be planned and implemented;
- Statistics on early marriage should be comprehensively studied and responses prescribed by legislation should be implemented. When analyzing instances of early marriage and engagement, discussions should be held on the responsibilities of the parents and the best interests of the child;
- In cases of early engagement, families should consulted on the negative aspects of early marriage and psychologists should be involved in order to avoid forced marriage;

- The Ministry should regulate the medical transition process in such a way that transgender and intersex individuals have effective access to medical services at internationally-acceptable standards. The related costs accrued should be paid in the framework of the public health insurance system;
- The Ministry should adopt and implement international clinical guideline principles focusing on the needs of transgender, transsexual, intersex, and gender uncomfortable individuals to ensure their access to quality health care;
- It should be ensured, in accordance with the number of cases, that social workers have increased resources, additional training on issues of gender and sexual violence, and improved working conditions.

To the Ministry of Education and Science of Georgia:

- Civil defense studies at general educational institutions should be timely implemented;
- Coursework on basic issues of reproductive and sexual health and rights should be introduced for schoolchildren, and in cooperation with local medical institutions, seminars on issues of reproductive and sexual health should be organized for schoolchildren;
- Awareness-raising of teachers about existing obligations and obligatory procedures for responding to cases of early marriage and engagement should be ensured;
- Systems for keeping records of why children leave school should be monitored, especially in regions populated by ethnic minorities and where shortcomings in recording similar cases have previously been revealed; and
- In cooperation with the Social Service Agency, projects should be initiated to re-engage young people in educational processes who have abandoned studies because of early marriage or engagement.

To the Prosecutor's Office of Georgia:

- Preventive measures should be undertaken to avoid and reduce cases of femicide, forced marriage, and sexual intercourse with underage individuals. Moreover, effective responses should be ensured in every instance;
- Regular working formats should be created jointly with LGBTI organizations and other groups and organizations working on gender issues, aiming at effective prevention of crimes and strengthening trust in law enforcement authorities; and
- The keeping of statistics as well as analysis and implementation of studies related to cases of violence against women should be supported.

To the State Fund for the Protection and Assistance of Victims of Human Trafficking:

- The health of beneficiaries and their dependents should be comprehensively assessed during placement in the shelters in order to avoid the spread of disease and to ensure timely treatment;

- Conditions in the shelters should be upgraded for serving persons with disabilities and buildings should be adapted to meet mandatory standards to the maximum extent possible;
- The location of shelters should be chosen in such a way to ensure the protection of confidentiality, private space, and safety of the beneficiaries;
- Psychosocial rehabilitation and educational programs offered in the shelters should be revised. In particular, more time and resources should be spent on planning and implementing rehabilitation programs and activities and the above programs should become more inclusive; and
- The Fund should ensure that the personnel of state shelters are trained on issues of assistance and empowerment of victims of gender-based and sexual violence as well as on issues of gender identity and characteristics.

To the Public Broadcaster:

- The importance of women's rights and gender equality should be recognized. When creating programming, sexist and discriminatory content should be avoided.

RIGHTS OF PERSONS WITH DISABILITIES

INTRODUCTION

In 2016 already two years passed after the ratification of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the Convention) . Nevertheless, major challenges in the process of effective implementation of the convention are still in the agenda. Despite the specific recommendations from the Public Defender, the Optional Protocol to the Convention has not been yet ratified.

There were no substantial changes in terms of harmonization of the national legislation with the requirements of the Convention. In addition to the fact, that certain number of National Legal Acts are not in compliance with the approach of the convention, some of them even contradicts it. The terms like: handicapped,[1176] or invalided [1177] are still included. Georgian legislation does not recognize the notion of "reasonable accommodation" and "universal design".

.Creation of efficient and effective enforcement mechanism of the convention, final formation of which is important for ensuring coordination between responsible state agencies, still remains a challenge.

Implementation of social model has to be noted among other challenges in the process of implementation of the Convention in practice. Unfortunately, the status of a disabled person is still based on an individual medical diagnosis.

Main state challenges also include providence access to social protection, realization of the right to adequate housing and employment of persons with disabilities. In addition to this, issues of accessibility to the physical environment, infrastructure, transport and information remain a problem. Public institutions, including majority of the ministries, do not use adequate supply methods to ensure information / services accessibility for the persons with disabilities. Web-pages are not being modernized or adapted.

The "State Program on Social Rehabilitation and Child Care ", which is annually approved and is aiming to ensure social integration of persons with disabilities, including children with disabilities and their engagement in the social life, does not fully meet the target groups' needs and is not geographically available.

Inclusive educational process is progressing with shortcomings. The large part of children with disabilities is not involved in the process, especially in the regions. In addition, teaching quality and continuity is a challenge.

The number of state programs promoting employment is insufficient. Effective implementation of the few

1176 Ethics Code of Georgian Police, annex N2.

1177 The Law of Georgia on Health Care, Article 3„S1" < https://matsne.gov.ge/en/document/view/29980 >; The law of Georgia on General Education, Article 485 and The law of Georgia on Patient's Rights , article 12, article 25.

existing programs remains a challenge. Low number of employment of persons with disabilities undermines effectiveness of the various activities implemented by the state in order to promote employment. By2016, 52 persons with disabilities were employed in the public sector, [1178] and the number of persons employed in the private sector reached only 32.

The statistics about the persons with disabilities, necessary to ensure formulation and implementation of relevant policies, as well as planning and enforcement of subsequent programs and establishment of need-based approach giving effect to the Convention, are not collected and analyzed in the state[1179].

During the reporting period, acts of discrimination against persons with disabilities have also occurred. The Public Defender addressed relevant state agencies with recommendations in certain cases [1180] Including: to the Ministry of Internal Affairs concerning discrimination of persons with disabilities [1181] and to the Ministry of Education and Science, regarding the prevention of discrimination on the ground of disability in the process of inclusive education.[1182]

MONITORING OF THE PROMOTION, PROTECTION AND IMPLEMENTATION OF THE CONVENTION

The monitoring mechanism of the UN Convention on the Rights of Persons with disabilities includes, along with the Department of the Rights of Persons with Disabilities, the Consultative Council for Monitoring of Promotion, Protection and Implementation of the Convention and the Monitoring Group.

The Consultative Council is a consultative body tasked with determining a strategy and priorities for the monitoring of implementation of the CRPD. The Council consists of representatives of the Office of the Public Defender, persons with disabilities, their representative organizations and international and local organizations working on disability issues. [1183] During the reporting period, the Consultative Council renewed its composition of representative members and by 2016, it council consists of 15 members.[1184]

During 2016, in compliance with the Consultative Council statute, the advisory body has held five sessions. Among them, one was an extended workshop session for broader target audience, attended by persons with disabilities and civil society activists. [1185]

Activities aiming at the popularization of the Convention for the year 2016 included: publication of the Public Defender's Parliamentary Report of 2015 in accessible formats; [1186] preparation and distribution of Information booklet on rights of persons with disabilities; Organizing public debates and trainings. The training for the persons with disabilities and the representatives of the organizations working in the field of disability on the

1178 Letter of the Civil Service Bureau N 215–18.01.2017.

1179 Proposal to Government concerning Collection and Maintenance of Statistical Data on Persons with Disabilities, December 13, 2016. <http://www.ombudsman.ge/en/recommendations-Proposal/winadadebebi/proposal-to-government-concerning-collection-and-maintenance-of-statistical-data-on-persons-with-disabilities.page >.

1180 See the detailed information in the chapter about Equality Rights.

1181 Recommendation to Ministry of Internal Affairs concerning Discrimination of Person with Disabilities, August 26, 2016 <http://www.ombudsman.ge/en/recommendations-Proposal/rekomendaciebi/recommendation-to-ministry-of-internal-affairs-concerning-discrimination-of-person-with-disabilities.page >.

1182 General Proposal on Prevention of Discrimination on Grounds of Disability in Inclusive Education, December 28, 2016 <http://www.ombudsman.ge/en/recommendations-Proposal/zogadi-winadadeba2/general-proposal-on-prevention-of-discrimination-on-grounds-of-disability-in-inclusive-education.page>.

1183 http://www.ombudsman.ge/en/specializirebuli-centrebi/shshm-pirebis-uflebata-dacvis-departamenti/shshm-pirta-uflebebis-konvenciis-monitoringis-meqanizmi/sakonsultacio-sabcho

1184 http://www.ombudsman.ge/uploads/other/4/4006.pdf

1185 http://www.ombudsman.ge/en/news/expanded-meeting-of-consultative-council-for-monitoring-the-promotion-protection-and-implementation-of-the-un-convention-on-the-rights-of-persons-with-disabilities.page

1186 Short version of the report is published in the audio form; the information on the conditions of persons with disabilitieswas printed in Braille script.

topic of the monitoring and implementation of the Convention on the Rights of Persons with Disabilities was the most notable one. [1187] Another important training was conducted for the public servants of self-governing City Halls and City Councils working on financial-budgetary and social issues on the topic of "involvement of people with disabilities and their requirements in the budgeting process." [1188]

In 2016, within the framework of the promotion, protection and implementation of the mechanism of UN Convention on the Rights of Persons with Disabilities were planned and implemented actions to monitor the governmental action plan, analyzed the legal reform on capabilities, along with national prevention program for disabled person's boarding houses were monitored as well, prepared special reports. In 2016, Monitoring of the Governmental Action Plans concerning Persons with Disabilities were planned and conducted, Legal Capacity Reform was analyzed, Boarding Houses for Persons with Disabilities were monitored together with the National Preventive Mechanism and Special Reports were Prepared within the frameworks of the Monitoring Mechanism of the popularization, protection and implementation of the Convention.

MONITORING OF LEGAL CAPACITY REFORM

In 2016 the research – "Legal Capacity – Reform without Implementation" was developed within the framework of the activities of the monitoring mechanism of the implementation of UN Convention on the Rights of Persons with Disabilities. The purpose of the study was to appraise the part of the reform implemented after the decision of October 8, 2014 of the Constitutional Court, concerning the recognition of the persons as a support recipient and the scope of such support. Common court decisions related to the subject was studied and analyzed in the process of working on the report.

The study has revealed that the legislative reality after the reform mostly takes into account the individual needs of persons with psycho-social needs and except for few exceptions, is in line with the Constitutional Court and UN CRPD requirements.

The legislation provides for a possibility of Common Courts to appoint support in the part of petty deals in contrast to the Constitutional Court judgment. The legislation envisages supporter's obligation to constantly supervise medical service of the support recipient even if no medical support is appointed for the person. The legislation provides for blanket deprivation of some of the rights of support recipients without individual and judicial evaluations. These rights are: the parental and some of the related rights, the right to hold position in public service, the right not to become an object of medical research without informed and clear consent. In relation of the Common Courts, it was revealed, that some courts did not observe procedural terms., the vast majority of the judgments on recognition of individuals as support recipients include only the resolution part in accordance with the procedural legislation, which makes it impossible to find out the content of the decision and relevance of the support to the individual needs of support recipient. Common Court judgments, which contain motivations, are template and unsubstantiated. In addition, there is no unified form of the resolution part of the judgments.

There are still systemic problems of blanket appointment of support, full deprivation of legal capacity and plenary guardianship in the process of reform implementation.

The recommendations related to the current challenges are included in the report. [1189] In this regard, the

1187 http://www.ombudsman.ge/en/news/training-for-representatives-of-organizations-working-on-issues-on-the-rights-of-persons-with-disabilities.page

1188 http://www.ombudsman.ge/en/news/training-held-by-human-rights-academy-of-public-defender-for-representatives-of-city-halls-and-city-assemblies.page

1189 Legal Capacity – Reform without Implementation, October 21, 2016. <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/legal-capacity-reform-without-implementation.page http://www.ombudsman.ge/uploads/other/3/3949.pdf >.

Supreme Court considered it relevant to hold a joint meeting with an engagement of the representatives of Ombudsman Office, judicial and executive branches of the government. [1190]

MONITORING OF THE STATE CARE INSTITUTIONS FOR PERSONS WITH DISABILITIES

In 2016, Human Rights situation of persons with disabilities in state care institutions were monitored within the frameworks of the activities of the National Preventive Mechanism and the mechanism for the monitoring of popularization, protection and implementation of UN Convention on the Rights of Persons with Disabilities – the two significant mandates granted to the Public Defender's Office under internationally recognized obligations. .

The representatives of the public defender's office inspected the level of protection of human rights of PWD beneficiaries placed in five state residential institutions: Tbilisi Infants' House, Kojori Boarding House for Children with Disabilities, Dzevri Boarding House for Persons with Disabilities, Dusheti Boarding House for Persons with Disabilities, Martkopi Boarding House for Persons with Disabilities and their compliance with the standards established by the UN Convention on the Rights of Persons with Disabilities, other international documents and national legislation.

The monitoring revealed that institutional arrangement of the daily specialized institutions for persons with disabilities, non-adapted infrastructure, lack of professional and support staff, lack of psycho-social services and relevant professional personnel and their low qualification creates significant challenges in terms of offering services relevant to the individual needs of people with disabilities.

Non-adapted infrastructure, lack of communication with the outside world and their families (including children), social inactivity and isolation from the society, as well as deficiencies related to administration and medical care are also among main challenges in the process of implementation of the convention.

The monitoring showed that care for beneficiaries' safety and security, their emotional, physiological well being and mental health, also the level of the service providers' awareness on the violence-related legal regulations and standards is extremely low. The beneficiaries are not aware of their rights. The administrations of the institutions do not consider the issues as an important care standard.

It is worrisome that all existing situation in the state care institutions leads to the blatant violation of the beneficiaries' rights, including discriminatory treatment, and sometimes violation of the persons with disabilities right to life. Based on identified problems the Ombudsman has developed recommendations for relevant state agencies, administration of specialized daily institutions for people and children with disabilities.[1191]

Despite the recommendations reflected in the Special report, the situation has not changed in most of the boarding houses during the reporting period. After the monitoring, the Public Defender's Office has received information about increased dynamics of transferring Martkopi boarding house beneficiaries to the Mental Health Institutions,[1192] as well as about the increased numbers of conflicts between the beneficiaries of the same boarding house. [1193]

1190 The Letter of the Supreme Court of Georgia N01/82–30.11.2016. In January 26, 2017 a discussion dedicated to resenting recommendations reflected in Public Defenders Special Report was held.

1191 Legal Situation of Persons with Disabilities in the State Care Institutions, October 21, 2016 <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/legal-situation-of-persons-with-disabilities-in-the-state-care-institutions.page>

1192 Public Defender's Office Case N11746/16–12.09.2016; N12558/16–28.09.2016; N14619/16–14.11.2016.

1193 Public Defender's Office Case N14098/16–02.11.2016.

The study of the cases revealed that the facility is overcrowded, administration doesn't have management mechanism of persons with severe disability, mental health and behavioral problems, and as a result, transferring beneficiaries in mental health institutions or threat of such transfer is a commonly established mechanism for conflict management.

The recommendation addressing Martkhopi boarding House problems was drafted and represented to the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking by the Public Defender of Georgia. [1194]

PERSONS WITH DISABILITIES' PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Participation in political and public life for persons with disabilities includes enjoying the right to active and passive voting hold public positions at any level of state governance, to perform public functions, if necessary, through using new supporting technologies.

Participation of persons with disabilities and their representative organizations in the decision-making process on the different levels of governance is crucial for their engagement in political and public life on an equal basis. The measures, necessary to achieve this goal had been determined by various state policy documents and action plans since 2010, however no tangible results have been achieved so far.

One of the main tasks of the Action Plan on Social integration of persons with disabilities of 2010-2011, [1195] was to deal with the problems of increasing the participation in the local self-government decision-making process. The main goal of the „ Government Action Plan 2014-2016 on Providing Equal Opportunities for the Persons with Disabilities, " was to involve these individuals in the regional and local level councils' creation/ activation process. The same goal is included in 2016-2017 Action Plan on the protection of human rights as well. [1196]

CREATION/ ACTIVATION OF REGIONAL AND LOCAL COUNCILS WORKING ON DISABILITY ISSUES

As it has already been mentioned above, one of the forms of participation in political and social life for persons with disabilities is creation/activation of the regional and local Councils working on disability issues with an engagement of persons with disabilities in this process. .

As a result of the analysis of the issue by the Public Defender, it was revealed that in 2016 only34 local government units have created advisory boards (local councils working on disability issues), which is not even the half of the total number of municipalities (75). Thereby, it can be concluded that number of local self-governing units has not implemented obligation determined by the Government Action Plan, thereby preventing engagement of persons with disabilities in the process of development of important activities, major plans, and programs concerning them.

1194 Recommendation concerning Problems in Martkopi Boarding House for Persons with Disabilities http://www.ombudsman.ge/en/recommendations-Proposal/rekomendaciebi/recommendation-concerning-problems-in-martkopi-boarding-house-for-persons-with-disabilities.page

1195 Order of the Government of Georgia issued on December 15, 2009 N978 on confirming the 2010-2012 action plan on social integration of persons with disabilities .

1196 2017-2017 State Action Plan for the Protection of Human Rights

Public Defender's Office has also examined level of engagement of persons with disabilities and organizations working on their rights in the advisory boards' composition and work in the municipalities, where such boards were created. Study results suggest that, apart from few exceptions, persons with disabilities and their representative organizations' involvement in the local councils' is extremely low, which may be caused by lack of information with respect of the rights of persons with disabilities and importance of their participation, as well as absence of local civic organizations and /or their inactivity.

One of the important issues is the proper functioning of the existing councils, in particular, timeframe of the boards' meetings and consideration of their initiatives by the local self-government bodies. It should be noted that in some municipal units several meetings of local Council has been held during the reporting period, held (Gurjaani -8 meeting; Zugdidi, Bagdadi 6 meeting, Tskhaltubo, Lanchkhuti 5 meetings; Ozurgeti Chkhoroktsu -4; Chokhatauri -3; tsageri Board - 2; Adigeni -1). However, no relevant requested information was provided for the Public Defender's Office by number of other municipal units , which causes reasonable doubt that the sessions have not been held in those municipal units at all.

Tbilisi City Hall has informed the Public Defender's Office, that reorganization of the Council working on disability issues had started in January 2016. In order to prevent Council working delay caused by the reorganization process, the work has continued in thematic groups. During 2016, the thematic groups had held 15 meetings. [1197]

As for the issues initiated and discussed by the Council boars, identified obstacles and consideration of these issues by the local governments, the correspondences received from the majority of the municipalities reveals, that topics related to the creation of the environment adapted to the needs of persons with disabilities were mainly discussed during the sessions. According to their information, there were no obstacles in the implementation of the issues presented before local government units by the Councils.

It should be noted that, the needs of persons with disabilities are not sufficiently reflected in the self-government budgets for the year of 2017. For years, the social programs include same one time activities supporting persons with disabilities, such as: financial support, allocation of funds to purchase medicines, sports and cultural activities dedicated to International Day of persons with disabilities or other holidays.

Planning and implementation of abovementioned events are not enough to respond to different needs of persons with disabilities. It is important to ensure their full and effective engagement in the process of implementation of the rights of persons with disabilities and the proper implementation process of the UN Convention.

RIGHT TO VOTE FOR PERSONS WITH DISABILITIES

Equal access to right to vote for persons with disabilities is important for their full and effective participation in political and public life.

Despite the fact that active and passive voting rights are guaranteed by national legislation for all Georgian citizens, persons with disabilities meet certain barriers in the practical realization of these rights, which in turn are linked with the accessible environment, public transport, access to information and communication problems.

Mentioned challenges create barriers for persons with disabilities in terms of participation in election commissions' work, as well as performing functions of an observer during the electoral process. It is important

1197 Correspondence N10/267700–11.10.2016 Public Defender's Office registration N13283/16–12.10.2016.

for persons with disabilities to enjoy the right to passive voting; however, certain preconditions are necessary to be met for its implementation, including political parties and unions' willingness to widely engage persons with disabilities in their activities, to recognize their role. It is equally important to change public attitudes towards persons with disabilities.

During the 2016 parliamentary elections, election programs of only three political parties[1198] were accessible for persons with disabilities.

The Central Election Commission's website, which according to the current information submitted to the Public Defender's Office by the Agency, is fully adapted for persons with disabilities including blind persons' needs is not accessible without special software. [1199]

According to the "2014-2016 Government Action Plan on Providing Equal Opportunities for Persons with Disabilities ", the Central Election Commission, along with local self-government bodies, was obliged: to adapt the polling stations for voters with movement disabilities, construct permanent / temporary ramps; construct and arrange special voting booths for voters with mobility problems; create the video for deaf voters explaining election procedures in sign language and broadcast it through public broadcaster; display video clip in certain polling stations using portable computer software providing access to election for blind voters.

According to Information provided by Central Election Commission, regarding the above-mentioned measures, during parliamentary elections of October 8, 2016, out of 3 634 polling stations included in 73 electoral districts, only 1115 polling stations were adapted,[1200] which is only one third of the existing stations. Consequently, 70% of the polling stations are not accessible for persons with disabilities. It should also be noted that the quality of adaptation is not fully consistent with the standards established by the convention. In general, during the electoral process universal design principles of accessibility established by the Convention are not applied. [1201]

As it was reported by the Central Election Commission, for the local elections of June 15, 2014 local elections, as well as for other elections held afterwards, the special voting booths were placed in more than 800 polling stations. As for the dissemination of the video via portable computers in certain identified electoral areas, 400 polling stations were provided with such computer for deaf voters.

Public Defender welcomes the fact that during June 15, 2014 Local Government elections, October 31,2015, and May 22 , 2016 by-election, the Information prepared by Central Election Commission for deaf voters were disseminated with sign language interpretation. During May 22, 2016 by-election day, for the first, the Central Election Commission briefing was broadcasted live with sign language translation.

STATISTICS AND DATA COLLECTION

States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention (Article 31).

"2014-2016 Government Action Plan on Providing Equal Opportunities for Persons with Disabilities" envisaged creation, development and improvement of the individual database of persons with disabilities. In particular, improvement of statistical methodology, including information gathering and research taking

1198 Political parties: Georgian Dream, United National Party, Georgian Republican Party.
1199 Policy Document on " Right to Vote for Persons with Disabilities " , Giorgi Noniashvili, 2016. International Society for Fair Elections And Democracy .
1200 Central Election Commission's response, correspondence N01–07/2394 (21.09.2016).
1201 Policy Document on " Right to Vote for Persons with Disabilities " , Giorgi Noniashvili, 2016. International Society for Fair Elections And Democracy.

into consideration the international practices; consideration certain information concerning persons with disabilities in the population census questionnaires and creation of a database of the persons with disabilities.

With regard to this issue, the Public Defender's Office requested relevant information from the National Statistics Office of Georgia, the Social Service Agency and from relevant Ministries. [1202]Information requested from the named state agencies was regarding the statistics produced, processed and distributed within their competences. [1203]

Based on the analysis of received information, data collection about persons with disabilities in Georgia is only limited to the statistics gathered during census through counting the total number of persons with disabilities, on the ground of information provided by persons with disabilities themselves, based on self-identification, which cannot give complete and precise information about persons with disabilities and their needs. Similarly, the Social Service Agency's statistics are limited only by the number of persons with disabilities receiving social package and other allowances and the number of job seekers, which obviously doesn't provide relevant information on the number of individuals with specific functional disabilities. It also doesn't make it possible to completely identify job seekers' individual needs.

Taking into consideration the complex nature of disability, existing statistics and data cannot guarantee collection of information necessary for the monitoring of the protection of rights of persons with disabilities.

The statistics and data produced by state on persons with disabilities do not reflect fair and accurate picture of the protection of the rights of persons with disabilities. Accordingly, it is difficult to make a proper analysis about the quality of protection of their rights by the state.

Therefore, the Public Defender addressed the Government of Georgia with General Proposal[1204] on the statistics and data collection about Persons with disabilities. The General proposal reflects recommendations about the measures to be taken by the State Government.

CHILDREN WITH DISABILITIES

Article 7 of the UN Convention on the "Rights of Persons with Disabilities" of 2006 , [1205] refers to children with disabilities and establish state obligation to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. According to the Convention approaches, in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. .

1202 Overall from sixteen Ministries.

1203 The Ministry of Economy and Sustainable Development (letter N09-1 / 7967), the Ministry of Energy (letter N09-1 / 7962), Ministry of Foreign Affairs (letter N09-1 / 7962), the Ministry of Labor, Health and Social Affairs (letter N09-1 / 7481), Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation And Refugees Of Georgia (letter I N09-1 / 7968), the Ministry of Education and Science (letter N09-1 / 7484), Ministry of Agriculture (letter N09-1 / 7965), the Ministry of Regional Development and Infrastructure (letter N09-1 / 7924), the Ministry of Finance (letter N09-1 / 7961), the Ministry of Culture and Monument Protection of Georgia (letter N09-1 / 7923), the Ministry of Sport and Youth Affairs (N09-1 / 7920), the Ministry of Defense (letter N09-1 / 7963), Ministry of Justice (letter N09-1 / 7966), the Ministry of Internal Affairs (letter N09-1 / 7552), the Ministry of Corrections Georgia (letter N09-1 / 7555), the Ministry of Environment and Natural Resources (letter N09-1 / 7960), National Statistics Office of Georgia (letter N09-1 / 7478) and the National Social Service Agency (letter N09-1 / 7483).

1204 Proposal to Government concerning Collection and Maintenance of Statistical Data on Persons with Disabilities, December 13, 2016. <http://www.ombudsman.ge/en/recommendations-Proposal/winadadebebi/proposal-to-government-concerning-collection-and-maintenance-of-statistical-data-on-persons-with-disabilities.page>

1205 The United Nations Convention on the Rights of Persons with Disabilities http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf

CHILDREN UNDER THE STATE CARE

By 2016, two state care institutions were functioning for children with disabilities – branches of State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking: Tbilisi Infants' House and Kodjori boarding house for children with disabilities. By 2016, the number of beneficiaries living in the mentioned institutions reached 86.

Public Defender welcomes the fact of signing Memorandum of Understanding between the Social Service Agency and the United Nations Children's Fund on January 18, 2016. The memorandum includes creation of an alternative small set of services for the infants' house beneficiaries – namely for children with severe disabilities in need of care.

Based on the observation of the current processes, it becomes clear that there is an urgent need for more active work to be performed in a timely manner, so that the state provides high-quality alternative services close to family environment for the children beneficiaries as soon as possible, (such as: foster care, small family type home services).

The number of alternative care services is very low, which increases the risk of abandonment of children with disabilities and hinders process of deinstitutionalization. According to the data of September 2016, the number of children involved in the state sub-program of the small family type homes consisted with 10 beneficiaries. At the same time, there are long waiting lines of beneficiaries willing to benefit from the service offered by the sub program. . It should be noted that a number of flaws were recorded in the foster care[1206] and reintegration sub-programs' monitoring process.[1207] The Public Defender's Office emphasized the need of constant monitoring of the situation of children placed under the services mentioned above to be conducted by the state.

L.B. Case - Minor's Health and Social Rights Violations in Foster Care

In 2016, the Public Defender's Office studied the case, [1208] about 5 years old child with disabilities (Down syndrome), L.B's needs. In particular, the condition of the child was extremely deteriorated while being under foster care, so that there was an urgent need to place the child in intensive care unit. According to the case files, from 2009 until 2016 L.B's foster family hosted 16 children, including six children with disabilities and others with different kinds of health-related problems. Currently, a family hosts five minors, including three children with disabilities. L.B. was placed in foster care since October 27, 2011.

According to the information received from the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking and the Social Service Agency's department of care and social programs[1209] due to the child's health condition, the case of foster care in terms of this particular child was closed and after getting relevant treatment, child was placed in Tbilisi infants' house, where the beneficiary was provided with subsequent service from the specialists. Currently the child is involved in the early development state sub-program.

Taking into Consideration extremely heavy health condition of L.B, Social Service Agency City Center's argument claiming, that the Child was getting foster care service from 2011 to 2016 under proper monitoring on behalf of the state in compliance of existing legislation, given that the child was not even engaged in any other programs or services except from the foster care and early childhood development programs, must be

1206 Special Reports on Monitoring of State Subprogram of Foster Care, July 20, 2016 <http://www.ombudsman.ge/uploads/other/3/3825.pdf>.
1207 special report on the Monitoring of State reintegration service http://www.ombudsman.ge/uploads/other/3/3824.pdf>
1208 Case N15539/16.
1209 №07/1654–28.12.2017; №04/2041–13.01.2017.

considered unjustified and unreasonable. In addition, after December 2013, the child was no longer receiving service within early childhood development sub program any more.

This case study clearly indicates that children are not placed in foster families based on reasonable research of situation (including quantitative terms) and the sub-program is not sufficiently monitored by the State, , which in turn threatens lives, health, development and security of children.

RIGHTS TO SOCIAL PROTECTION

During 2016, cases analysis of the Public Defender's Office shows that children with disabilities are living in poverty and cannot effectively enjoy the right to a proper and adequate life. Issue of receiving Social allowances for the families with children with disabilities is one of the most important problems. . After the approval of„ vulnerable families (households) socio-economic status assessment methodology "[1210] for many of them it became more difficult to obtain the right to allowance.[1211]

From July 1, 2016 the social package for persons with severe disabilities and children with disabilities was increased and amounted 180 GEL. It should also be noted that the increased amount of social package still is not enough to cover the needs of children with disabilities.

Effective social protection of children with disabilities in the country is hindered by the fact, that disability status is not based on social model, and accordingly does not highlight the functional needs of children with disabilities. As it is known, the disability status is being determined based on requirements of the Law of Georgia on „medical-social examination".[1212] The law introduces some progressive regulations; however determination of disability status is still regulated based on the list of anatomical and mental diseases, determined by the order of the Ministry of Labor, Health and Social Affairs which is direct medical approach and clearly needs to be changed.

Determination of the disability status o at early age (0-3) still remains a problem. The current regulations do not allow the possibility for the early identification of problems, timely intervention and effective management ability. [1213]

RIGHT TO HEALTH, CHILD CARE AND SOCIAL REHABILITATION

Right to health is not sufficiently guaranteed for all children with disabilities. Due to the lack of financial resources of the families and insufficient involvement on behalf of the state / local government agencies, certain number of children do not receive the necessary medical consultations, examinations and drug assistance.

State Program on „Social Rehabilitation and Child Care ", [1214] to some extent is oriented to the interests of children with disabilities however it does not fully cover all their requirements. This is partly due to the reason that over the years, activities are planned without the statistics and data collection and thereby in absence of

1210 Decree of the Government of Georgia on the Approval of the Methodology for evaluation of Socio-economic situations of the Households.

1211 „Right of the Persons with Disabilities". Special Report , 2015, pp 44. <http://www.ombudsman.ge/uploads/other/3/3728.pdf>.

1212 The Law of Georgia on Medical and Social Exemination https://matsne.gov.ge/en/document/view/15772

1213 „Human Rights and Freedoms in Georgia" Public Defender's Report, 2013. <http://www.ombudsman.ge/uploads/other/1/1934.pdf>.

1214 The Decree of the Government of Georgia on the Approval of Social rehabilitation and Child Care State Program for the year 2016.

needs based analyses on the target group. The analysis of the information obtained from the Ministry of Labor, Health and Social Affairs[1215] reveals that the sub-programs can not cover existing needs (see. Table 1).

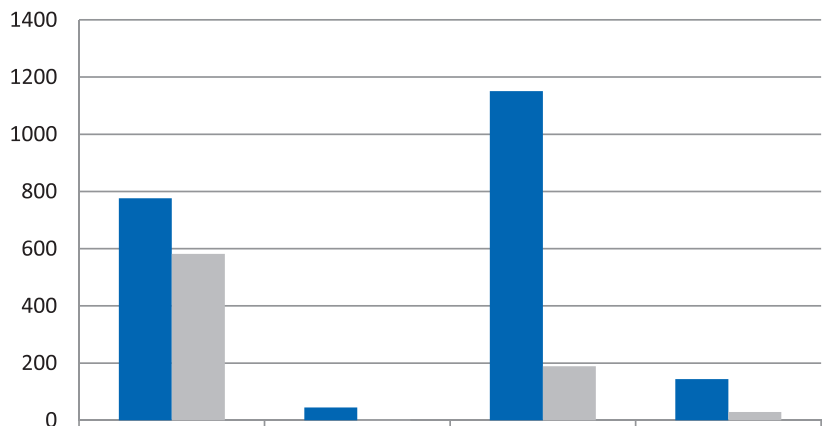
The mentioned state program includes "early childhood development" component, which covers the target group of up to 3 years or from 3 to 7-year old children with disabilities or at risk of disability, however service delivery is problematic in terms of geographical areas of the country. In particular, the service is provided only in the following cities: Tbilisi, Kutaisi, Batumi, Kobuleti, Zugdidi, Chkhorodsku, Lagodekhi and Telavi. In addition, the limited budget of the sub-program cannot provide adequate services to the needs of all children. The situation is similar in terms of "home care sub-program for children with severe and profound mental retardation", due to the fact that the service delivery is available only in Tbilisi.

"Children Rehabilitation and Habilitation" sub program is also implemented within the frameworks of the State Program on "Social Rehabilitation and Child Care". Subprogram service is available for children with disabilities up to 3 years and from 3 to 18 years. Sub program's limited budget is not enough for the needs of its beneficiaries in this case as well.

"Day Care Center" subprogram is aiming at supporting families and prevention of the abandonment of persons with disabilities. Program target groups include children from 6 to 18 and persons with disabilities from 18and above. Geographical coverage of the day care centers includes both - the cities and regions, although the number of centers is not enough to fully supply existing demand. In 2016, 718 children with disabilities benefited from the day care sub-program, including 63 children with severe and profound mental retardation.. According to the information submitted to the Public Defender's Office,[1216] waiting list of people in need of the service offered by the sub-program exists, t, however the numbers are not specified.

The sub program on the "Rehabilitation of Children with Autistic Spectrum" aims to promote early development of children with disabilities. Mentioned sub-program is funded by Tbilisi City Hall from the resources of municipal budget. In addition to few numbers of children with disabilities engaged in sub-program, the challenge is that the service was delivered only to the children with disabilities registered in Tbilisi until July 2015, creating unequal conditions for the children living in regions, who are also in need of such services.

Table 1



	Early Development	Home Care of the Children with Severe and Profound Mental Retardation	Reabilitation / Habilitation	Rehabilitation of the Children with Autism Spectrum
Number of service receiver children in 2016	**776**	**45**	**1151**	**144**
Waiting List	**582**	**2**	**189**	**29**

1215 Correspondence: №04/78048, №01/72262, №04/6624.
1216 Correspondence:№04/6624–03.02.2017.

In 2016, the Public Defender's Office was studying the case, concerning medical needs of a child with autism spectrum;[1217] in particular, the child needed psycho-social rehabilitation course. The child's parents were unable to cover service value and asked for help in funding. According the information received from the Ministry of Labor, Health and Social Affairs[1218] within the framework of the "referral services" the patient's request was rejected. Therefore, child could not receive the necessary service. It is obvious that such cases highlight the need to expand the capacity of existing services.

Individual case study reveals that children with disabilities have limited possibility to benefit from different target social programs. Among them should be noted the "urgent state assistance sub-program for families with children in crisis". Parents of children with disabilities are not properly informed about the program even during its implementation. Similar to last year, [1219] the population still does not have adequate information about existing state and local government programs and social assistance.

In conclusion, the sub-programs of the state program on "social rehabilitation and child care" are insufficiently accessible due to the lack of funding, limited geographical coverage and other factors. Majority of the sub-programs focusing on Children with disabilities have the waiting lists.

In addition, it is noteworthy that due to the absence of the quality services for persons with disabilities after 18, they remain without service they need. Therefore, the continuity of service delivery is violated. The inefficiency of subprograms is also causes by insufficient equipment of social services with human and technical resources.

RIGHT TO EDUCATION

Inclusive Early and Pre-school Education

We can say that the dynamics of the implementation of inclusive education, in terms of access to education, on the vocational and general education level (especially in the capital) is increasing, while there are significant barriers in terms of access to inclusive education on the pre-school stage. [1220]

In order to effectively implement pre-school education, the Ministry of Education and Science has developed "pre-school education program", which is based on, in "early childhood learning and development standards ",[1221] however due to its recommendatory nature it does not allow modification of learning and development plans for children with disabilities, according to individual approach to a child.

The adoption of law of Georgia on "Early and pre-school education"[1222] is a step forward, however, Public Defender's Office case study in 2016 confirms, that[1223] that there are still number of problems in pre-school institutions and pre-school education is not fully accessible for children with disabilities.

In order to ensure quality implementation of pre-school education, it is important to establish uniform approaches on the municipal level within the frameworks of obligations determined by law.[1224] Practical and timely implementation of pre-school education by the municipalities, including providence of school readiness program, is also very important. The mentioned municipality Councils in turn should issue a regulatory act on the monitoring, evaluation and reporting system of the program. In addition, in order to ensure equal access

1217 N14530/16 – 10.11.2016.
1218 №01/90040–12.12.2016.
1219 „Situation on Children's Rights" Special Report of the Public Defender, 2015, p. 53 <http://www.ombudsman.ge/uploads/other/3/3704.pdf>
1220 Civil Development Institute, Inclusive Education Practice in Georgia ", Alternative report of 2016.
1221 Early Age Education and Development Standards, National Curriculum and Assessment Center, UNICEF, 2013.
1222 The Law of Georgia on Early and Preschool Education. Adopted by the Parliament of Georgia on June 8, 2016.
1223 Case N10401/16.
1224 The Law of Georgia on Early and Preschool Education, article 7, 8, 10, 14.

to inclusive education, in the process of authorization and supervision, the needs of children with disabilities and identification of qualified service should be taken into account.

It is problematic that there is no official database on children registered in the kindergarten; also there is no differentiated data on types and character of disabilities and about the children's needs.

One of the main problems is that the teachers do not have sufficient support in the process of working with children with disabilities. They do not possess relevant skills and specific knowledge for effective communication with them. Kindergarten associations still autonomously decide what kind of training to organize and the training themes are not prioritized as well. [1225]

E.M's case – Violation of the Right to Preschool Inclusive Education

In 2016, the Public Defender was addressed[1226] by the citizen E.M living in Marneuli municipality village of Shulaveri. The notification was about his/her 4-year-old child with disabilities, the alleged violation of the right to pre-school inclusive education of E.M. As reported, in June 2015 the child was enrolled in Kindergarten in Shulaveri for the probation period. Five days later the kindergarten administration refused to register child due his health condition, and recommended to the parent, to transfer the child to the kindergarten in Kizil-ajlo, a village in Marneuli Municipal territorial unit. Where there is a special class for children with special needs.. Kindergarten staff due to the lack of qualified personnel could not manage child's behavior, which is why the child was aggressive, refusing to take any food or drink. As a result, the kindergarten administration called the parent to take the baby out of the garden. The head of the kindergarten demanded from the parent to make his/her child go through special medical treatment and represent relevant health certificate in order to be registered in the kindergarten.

In the official correspondence received from the Kindergartens' union[1227],[1228] the representative of the pre-school education institution was appealing to the child's difficult and aggressive behavior, which, according to them, negatively reflected on other children and threatened the staff. From the case analysis it becomes clear, that, to the contrary of the Convention approaches, the administration had chosen easy way out and refused appropriate service delivery. The fact of probation period enrollment of the child must be negatively assessed as well as the fact that the village Shulaveri kindergarten stuff does not possess specific skills for adequate communication with children with disabilities and for the management of their behavior. Such practices should be regarded as unjustified and appropriate. Relevant measures must be taken for integration of children with disabilities in the community and residential care / education system.

General Education

It should be noted that inclusive education funding on the level of general education is fragmented, and there is no special uniform mechanism in financing students with special educational needs. Existing model does not meet requirements of all children with such needs.

After the ratification of the UN Convention on the rights of Persons with Disabilities, integration of the rights of persons with disabilities to inclusive education, and its implementation in the law of Georgia on "General Education "[1229] should be considered as positive step. However, despite the changes, the statutory regulation of

1225 Goal-oriented Research in Georgia, implemented by the company "Geo-Well" World Vision, within the Project "Social Inclusion of Children with Disabilities in Caucasus Region", Tbilisi, 2014.
1226 Case N12467/16.
1227 To study the case, the public defender's office officially address to the kindergarten union on the Marneuli Municipality territory (pre-schooling center).
1228 N13430/16-18.10.2016.
1229 The Law of Georgia on "General Education".

Inclusive education in general education institutions still is meant as a matter of authority not the obligation. [1230] In addition, the law on general education in relation with the accessibility of inclusive education focuses on geographical and linguistic barriers and does not consider disabilities in the similar context. [1231] The status of Special teachers' and issues related to integrated classes still are not regulated on the legislative level. There is no concept of integrated classes and legal act, which regulates it.

Approval of "Inclusive Education Monitoring Program" should be assessed as a positive step. [1232] However, it is important to enforce mentioned monitoring instrument on the general level of education as soon as possible.

The Ministry of Education and Science does not have statistics of children with disabilities enrolled in general education institutions. By the time of submission information to the Public Defender's Office, the ministry was generating common data only about the student with special educational needs.[1233]

Specialized education system is still functioning in Georgia. Despite the current inclusive education model, existing legislation and practice allows the possibility of specialized schools. Such institutions are incompatible with the objectives of the Convention, which, in turn, is focused on transforming the education system in an integrated and inclusive manner. Herewith, in contrast to the capital, only a few specialized schools operate in regions, which are not accessible for the population due to the physical environment and transportation accessibility issues. In 2015, three blind students were given the opportunity to continue their studies in a public school instead of in special boarding school. [1234] However, this is a single case and such an approach does not have a systematic character.

Teaching quality and continuity of inclusive education remains a challenge. Important number of the children with disabilities, especially in the regions, is not involved in the educational process. Number of teachers and the specially qualified personnel, not adapted physical environment, transportation, not accessible educational institutions, classroom equipment and teaching materials still represents a problem. [1235]

Situation in terms of realization of right to inclusive education is especially difficult in regions. Only 171, out of 505 mountainous village schools, have implemented inclusive education. [1236] However, even in these cases, inclusive education does not have a complex, comprehensive character. The main problem is that, as a rule, funds allocated for inclusive education are usually spent on the salaries of special teachers and/or psychologists. At the same time funds are not directed on students themselves, in accordance with the individual assessment of students with special educational needs - depending on what the needs of a particular student has e.g. adapted technologies and educational resources, the school's physical adaptation, other support specialists of the school – nurse, a speech therapist, sign language teacher, assistant, transportation, etc.).

The process of Inclusive education is hindered by not adapted public transportation and road infrastructure, as well as not adapted physical environment of educational institutions. According to information of the Ministry of Education and Science, [1237] 777 public schools have a ramp or simple adaptation facilities. Named number is less than one-third of the total number of schools in Georgia. The mentioned adaptation level is extremely low, as just only ramps cannot provide a comprehensive and complete access. It should be noted that there is only a pilot version of alternative educational plan for students with hearing and visual impairments and it is not fully implemented. In terms of adapted educational resources and technologies, progress is less visible at the level of General Education System, compared with specialized schools and professional institutions. [1238] By

1230 Article 33, (2)„c" of the Law of Georgian on „General Education"
1231 *Ibid*, Article 7.
1232 Order N31 of January 20, 2016 of the Minister of Education and Science of Georgia January 20, 2016.
1233 Correspondence MES 4 16 0050628; 27.05.2016.
1234 Correspondence MES 4 16 0050628; 27.05.2016.
1235 „The Situation of Human Rights and Freedoms in Georgia" Annual Report of the Public Defender, 2015. <http://www.ombudsman.ge/uploads/other/3/3892.pdf>.
1236 Civil Development Institute„ Inclusive Education Practice in Georgia ", Alternative report of 2016.
1237 Correspondence of May 27, 2016 MES 4 16 00570628.
1238 Civil Development Institute„ Inclusive Education Practice in Georgia ", Alternative report of 2016.

March 2016, 1372 special teachers are employed in the public schools, which do not meet all existing needs in practice. In 2016, the Ombudsman's Office studied the case concerning insufficient number of special teachers and psychologists at public schools, [1239] the case concerns situation in N21, N24, N166, N175 and N181 public schools in Tbilisi. The case materials[1240] revealed that number of staff in some schools has not been reasonably chosen and were not in line with actual needs of students. In particular, at N21 public school there was a need to increase the number of special teacher. At N 166 secondary school appropriateness of adding new special Teacher or psychologist resource has been revealed, while in contrast to the above-mentioned schools, at N175 public school there were 3 special teachers assigned for 20 students with special educational needs.

It should be noted that special teachers do not have necessary skills to create individual learning plans this can be caused due to the fact that their training quality is not being monitored. In addition, other teachers' engagement in the process of creation of individual educational plan is extremely low. Situation is the same in specialized schools.

In addition, insufficiently low salaries paid to special teachers in most cases attracts non-professional or low quality professional staff, resulting in frequent termination of employment, which adversely affects motivation and education process quality. Unlike other academic discipline teachers, there are no mechanisms to encourage motivation of special teachers which would make it possible to improve their financial situation along with professional development.

Several other problems revealed with regard to the multidisciplinary team should also be noted. [1241] The quantity and systematic involvement of the team members in the educational process is an issue - the team members have obligation to provide student's assessment, re-evaluation, consult special teachers and monitor. Practice analysis shows that due to insufficient number of the team members, they are mostly limited to the initial appraisal of the student. Consultation is provided only when the school asks for immediate intervention, to solve specific problem related to the student with special educational needs.

At the same time, assessment / re-evaluation of the students with special educational needs, as well as case management, inclusive education progress measurement, monitoring of the learning process and supervision of the teaching process are not / cannot properly be implemented. One of the challenges is the lack of narrow profile specialists in the multidisciplinary team. Properly trained human resources and a shortage of specialists such as occupational therapist, psychologist, and child psychiatrist are also in the agenda.

Inconsistent approach to the different needs of children with disabilities, also insufficient legislative basis of inclusive education, to some extent, promotes discrimination against children with disabilities. Functions of a multidisciplinary team members of inclusive education should be defined by legislation in detail, which will increase its effectiveness at schools in terms of the monitoring and supervision of the implementation of inclusive education and . The positive cooperation between school and the parents of students with special education needs is also very important.

Implementation of the Convention based approaches in practice is prevented with other impediments as well. Parents of children with disabilities do not have enough support, in most cases they are not informed about their children's needs. In addition, influence of the stereotyped attitudes is still very strong. [1242] All these factors, in the circumstances, when children's involvement in educational process takes place based on the will of their legitimate representatives, increases risks to leave more children beyond education system. Full and effective evolvement of children with disabilities in general education system is prevented by the failure of the society

1239 Case N12707/16.
1240 Official Response of the department of inclusive education of the Ministry of Education and Science of Georgia N13457/16-18.10.2016.
1241 Civil Development Institute,, Inclusive Education Practice in Georgia ", Alternative report of 2016.
1242 See relevant chapter in the parliamentary report (2016) elaborated by the Equality Department of the Office of Public Defender of Georgia.

to perceive that children with disabilities are fully fledged members of the society. Alienation from the public society, in turn causes stigmatized attitude toward them.

In 2015 the program on the "Educational Opportunities for children left out learning process" started a pilot service, offering education to the adults in crisis and transit centers. However, there are some children beyond state services; their numbers are unknown since they are invisible to the system. It should be noted that the current state policy with respect to children who stays out of education system is counterproductive and does not ensure their integration into the system. At the same time, there are no statistical data regarding how many children are left (including children with disabilities) beyond the formal education.

It is necessary to establish an effective referral mechanism, which allows children's proactive involvement in the education system by the state and provides accessible services, as well as efficient transition process.

Vocational Education

The law of Georgia on "Vocational Education"[1243] in contrast with the Law of Georgia on "General Education",[1244] is not focused on introduction of the individual approach in terms of persons with disabilities. The law does not recognize such a target group and does not provide specific approach methods in relation with them. Article 31 of the law, which refers to the equal treatment to the students, is not characterized by a complex approach, and distinguishes only one factor of "physical ability". [1245]

Since 2013 vocational inclusive education system began collecting statistical data. However, at this stage the ministry does not own any differentiated data and only references is made, on the general number of persons with special educational needs. [1246]

On vocational education level, space adaptation is a challenge as well. Out of 21 state vocational training schools, in 2015, only five state vocational training centers' physical environment adaptation process has started according to the "universal design" principle. [1247] Despite the fact that at this point, all authorized vocational college has ramps (which are included in the requirements of authorization), the environment still should be adapted for various needs in different ways (training rooms, bathrooms, workshops, etc.), movement in the building and access to teaching materials is still problematic. [1248]

Functioning of the Advisory group on inclusive education, ensuring monitoring, evaluation and assurance of relevant recommendation on inclusive vocational education initiatives, should be assessed positively. The group meets once per 6 months.

VIOLENCE AGAINST CHILDREN WITH DISABILITIES

During the reporting period, case analysis[1249] shows that the main challenge in terms of the protection of children with disabilities from violence is problem of identification of violence committed against them. Herewith, following issues are problematic with this regard: protection of minors from violence, the implementation

1243 The Law of Georgia on Vocational Education and Training.
1244 The Law of Georgia on General Education
1245 Article 31 (1),"B " of the Law of Georgia on Vocational Education and Training.
1246 Correspondence MES 4 16 00570628.
1247 Tbilisi: Societal College " Merani" „Spektr." Kutaisi: Societal College „Iberia". Akhaltsikhe: Vocational College „Opizari". Gurjaani: Vocational College „Aisi".
1248 „Accessibility of Vocational Education and Training for Vulnerable Groups in Georgia" 2015. Research implemented within the frameworks of the Initiative of the Ministry of Education and Science of Georgia Concerning "Introduction of Inclusive Education in the Conational Educational and Training Process".
1249 N9597/16; N8817/16; N13888/16.

of rehabilitation program in practice, lack of social service professionals, psychologists, as well as insufficient cooperation between the relevant agencies.

Georgian legislation still does not separately regulate the notion of domestic violence of persons with disabilities (including children) and it is integrated in the regulations on domestic violence general policy, regulated by the law of Georgia on the "Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence ".[1250] The interests of particularly vulnerable group and specific approach to them are not taken into consideration even within the framework of the public bodies' internal guidelines and methodologies.

Recording the number of domestic violence cases and data collection concerning the issue is still a challenge.[1251] There are no differentiated statistics on domestic violence against children with disabilities with regards the physical, psychological, economic, sexual and other forms of domestic violence. It should be noted, that only data about domestic violence is based on the available recorded number of issued restraining orders, which do not reflect the real extent of the problem. Mentioned problem, along with number of other factors, is caused by the lack awareness, fear of retaliation and stigmatization, lack of the trust in law enforcement bodies and shortcomings revealed in the process of providing protection and assistance services. The main threat is that violence against children with disabilities are often "invisible" and is not responded adequately, which, to some extent, is due to both - the public and the law enforcement agencies' low awareness, and stereotypical attitude towards the issue.

Effective supervision of the enforcement of protective measures remains as a challenge. It is necessary to introduce a monitoring mechanism, which would enable the relevant bodies to observe families where children with disabilities abuse cases have been identified and at the same time, set up the database that allows better planning of preventive measures.

Coordination and information exchange between the institutions responsible for the elimination of domestic violence is still a problem. Case-studies often reveal flaws, in the evaluations carried out by both the law enforcement agency, and the Social Service Agency. In some cases, information provided to the Ombudsman's Office by the mentioned agencies contradicts each other. In some cases, despite the confirmation of violent incidents by a social worker, it is difficult for law enforcement bodies to identify abuse and they fail to adequately react on it. The issue is particularly acute in cases of psychological violence. The situation is aggravated by the fact that the policemen do not have specific communication skills while working with persons / children with disabilities.

In practice, the aspects of appropriate qualification of the personnel working in residential institutions for children with disabilities is problematic, in terms of beneficiaries' difficult behavior management and conflict resolution.

M.M. Case- Alleged Abuse of Child with Disabilities

In 2016, the Public Defender's Office studied the case, [1252] concerning the beneficiary of Kodjori boarding house for children with disabilities, the case was about alleged human rights violations against M.M. In particular, on July 26, 2016, the M.M. -broke a glass, which is why the tutor verbally and physically abused (raised his ear) the child. Due to the incident, the head of the institution verbally assaulted the beneficiary and as a punishment measure refused to take the child for a walk with other beneficiaries.

Based on the official letter of the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking [1253] facts of physical or psychological abuse of the child are absolutely denied. The law enforcement

1250 The Law of Georgia on "Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence".
1251 Condition of Human Rights and Freedoms in Georgia,op.cit.p.412.
1252 N9597/16.
1253 №07/1018–11.08.2016.

officers have not been informed about the incident. The case file shows that the punishment of the beneficiary was carried out based on the assessment of the psychosomatic condition of the child, however there is no argumentation about what kind of educational impact this punishment can have. In addition, there is no information assessing the beneficiary's general situation. Clearly, the incident escalation was caused by the conflict between M.M. and other beneficiaries, M.K. The staff failed to manage the conflict situations neutralize the difficult behavior of the beneficiaries and de-escalate the situation. Such practice cannot obviously ensure the safety of the beneficiaries and their protection from violence or abuse.

According to the National standards,[1254] all beneficiaries of persons / children with disabilities daily-specialized institutions should be protected from any kind of violence or abuse. The service provider should be familiar with and guided by the current legislation.[1255] According to the regulations of Kodjori boarding house for children with disabilities, the branch should provide adequate facilities for the beneficiaries, a safe and secure environment and should promote the quality of service, and most importantly, the beneficiary has right to be protected from all forms of violence. The administration of the institution should provide adequate measures for psychosocial assistance of the beneficiaries.

WOMEN WITH DISABILITIES

State policy in the field of health and social protection is not sensitive towards the needs and interests of women and girls with disabilities. Despite the fact that mentioned groups based on the Convention approach are with different needs, state policy documents in the area of human rights, as well as state programs, do not imply them as an independent target groups. Their needs are not considered during creation of state program development and budgeting. This applies to health care, social rehabilitation, education, employment and other programs.

It is known that in the current state medical insurance system has recently included persons with disabilities; however, women with disabilities are still not able to use health services based on their specific needs. Explicitly should be noted, the issue of access to reproductive and sexual health services. The necessary medicines are not provided properly. Most beneficiaries are financially dependent only on the state social package, which does not allow purchasing sufficient medicines.

Services to women with disabilities in the state care institutions are being delivered with flaws.. The order of the Ministry of Labor, Health and Social Affairs on the "Approval of Minimal Standards of Specialized Daily Care Institutions for Persons with Disabilities and Elderly People",[1256] issued on July 23, 214 2014, does not reflect needs of the mentioned target group.

One of the main challenges, of law enforcement agencies is to reveal violence against women with disabilities. Especially, in case if an alleged abuse victim has a mental health problem.

As a result of the research conducted by non-governmental organization "Partnership for Human Rights" on "Violence Against Women with Psycho-Social Needs in Georgia - The Main Trends"[1257] it was concluded, that general regulations in legislation, which do not consider individual needs of the women with mental health

1254 The Order N01–54/N of the Ministry of Labour, Health and Social Affairs on the " Approval of Minimum Standards of the Service Delivery in Specialized Daily Care Institutions for Persons with Disabilities and Older Persons", dated back July 23, 2014. Annex, Article 10.

1255 Among them Law of Georgia on the Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence".

1256 The Order N01–54/N of the Ministry of Labour, Health and Social Affairs on the " Approval of Minimum Standards of the Service Delivery in Specialized Daily Care Institutions for Persons with Disabilities and Older Persons", dated back July 23, 2014. Annex, Article 10.

1257 „Violence Against Women with Psycho-Social Needs in Georgia - The Main Trends ", Nana Gochiashvili, Tbilisi, 2015, NGO "Partnershio for Human Rights".

problems, often result in violence against women with psycho-social needs. Existing legislation is General, and is absolutely not sensitive to gender or disability issues.[1258]

Vulnerability of women with psycho-social needs is confirmed by the applications submit to the Ombudsman's Office, which are mainly related to women's mental health rights violations.

Majority of applicants claimed that they were taken and placed in mental health Institutions either by force and / or threat and intimidation on behalf of the police.[1259]

E. A. Case

Woman with disabilities E.A (Case N11467) addressed the Public Defender with application claiming, that she was tricked to sign consent form for voluntarily psychiatric care and hospital administration refused to allow her leave the facility. Case study by the Public Defender revealed[1260] that E.A. was placed in the mental health hospital accompanied by emergency service and the police. However, according to the information submitted by mental health establishment, the patient was voluntary placed to psychiatric assistance facility.

The similar situation is in other cases. [1261] The patient was forced to sign some unidentified for them documentations when placed in the facility. In this case again, the institution confirms, that the person was taken to the medical center by disaster brigade and police accompaniment. [1262]

Special Report of the Public Defender's Office on the Monitoring of Mental Health Institutions in the report refers to the issue of informed consent during hospitalization, according to which in the person's dignity and personal integrity based mental health system, the patient's informed consent should be a prerequisite for the providence of the psychiatric aid. The consent to the treatment can be called free and informed only if it is based on the patient's acknowledgment of condition and offered treatment through accurate and detailed information delivered to them.

On the basis of appeals to the Public Defender's Office, it can be concluded, that the level of awareness of persons receiving psychiatric care – both voluntary and involuntary - about the nature and duration of treatment, as well as about their rights and medicines to be taken, is extremely low. [1263] In some cases, [1264] the patients get information about the nature of psychiatric treatment (voluntary / involuntary) only afterwards, when the treatment is over and the patient has left the hospital via the Public Defender's Office.

Alleged acts of violence against persons with psycho social needs in Mental Health stationary and ineffective investigation of such acts should be discussed separately.

Case of M.Sh.

Public Defender's Office case (N2296 / 16) is related to the alleged physical abuse of the woman patient by the hospital's staff, which occurred in February 2016. According to the case materials, M.Sh appealed to the prosecutor's office on March 15, 2016. According to the Chief Prosecutor's Office, citizen's application was sent to Tbilisi Police Department's district inspector division (3rd department).

1258 „Violence Against Women with Psycho-Social Needs in Georgia - The Main Trends ", Nana Gochiashvili, Tbilisi, 2015, NGO "Partnershio for Human Rights". Page.12 (Georgian Version).
1259 Case N8977of Public Defender of Georgia ; Case N11746/16; Case N12771/16; Case N11467/16; N6827/16.
1260 Correspondence N2552/3 of September 14, 2016 of the LTD O. Gudushauri National Medical Center.
1261 The case of the Public Defender's office of Georgia N6827/16; N8977/16.
1262 Correspondence N154 of the LTD Tbilisi Mental Health Center.
1263 The case of the Public Defender's office of Georgia N12771/16; N9373/16; N11567/16; N6827/16.
1264 The case of the Public Defender's office of Georgia N9373; N6827/16.

It should be noted that in this case the investigation process was delayed. At last, the fact of physical abuse, namely beating of M.Sh. was not confirmed and on December 23, 2016, according to the criminal code of Georgia, the investigation was terminated due to the absence of a criminal actions. [1265]

VIOLENCE AGAINST WOMEN WITH DISABILITIES IN INSTITUTIONS

In terms of protection of women's rights under institutional care their placement in the Mental Health Institutions is one of the main challenges.

During 2016, Case study by the Public Defender's Office had confirmed that during the conflict situation between the beneficiaries at the representatives of boarding house beneficiaries' transfer to the Mental Health hospitals is a common practice. [1266]

M.Kh's Case[1267]

Public Defender's Office got information that on September 25, 2016, the beneficiary of Dusheti boarding house for persons with disabilities, M.KH, was taken to the mental health institution in Tbilisi by the police, against beneficiary's will.

According to the information submitted to the Public Defender's Office, M.KH was placed into the Mental Hospital based on boarding house psychiatrist's recommendation and the beneficiary was receiving psychiatric treatment voluntarily. The medical facility noted that the patient would be returned back to Dusheti boarding house for persons with disabilities as soon as the other beneficiary, person in wheelchair, who was the main reason to cause aggressive behavior of M.Kh would be taken to another facility.[1268]

After the additional appeal from the Public Defender's Office, the institution denied the fact that the patient's stay in the mental health institution was artificially prolonged and claimed, that M.Kh had stayed there only for the period necessary for examination and treatment of the patient.[1269]

This fact was also denied by the State Fund for Protection and Assistance of (Statutory) Victims Of Human Trafficking. According to their information, [1270] administration of boarding houses for persons with disabilities manages the conflict situation according to the order N07-201 / O on "the Internal Regulations of the territorial units (branches) of the State Fund for Protection and Assistance of (Statutory) Victims Of Human Trafficking" of the Director of the Fund issued on December 3, 2014. At the same time, the Fund urges, that use of the practice of placement beneficiaries in Mental Health Institutions in order to solve conflict situations between the beneficiaries by the head of the branches of the Fund, has not been confirmed.

1265 The Ministry of Internal Affairs' Police Department district inspectors' letter MIA 8 17 00325203 (09.02.2017).
1266 See. The Public Defender's special report on the Legal Situation of Persons with Disabilities in the State Care Institutions, October 21, 2016. <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/legal-situation-of-persons-with-disabilities-in-the-state-care-institutions.page>.
1267 Case N12771/16 of the Public Defender of Georgia.
1268 Correspondence N281 of the LTD Tbilisi Mental Health Center.
1269 Correspondence N290 of the LTD Tbilisi Mental Health Center.
1270 Correspondence of the State Fund for Protection and Assistance Of (Statutory) Victims Of Human Trafficking N07/1378 (10.11.2016).

RIGHT TO HEALTH OF PERSONS WITH DISABILITIES

During the reporting period, there had been no proper tangible changes implemented in order to guarantee the right to health of persons with disabilities. Existing state health care programs do not meet specific and different needs of these individuals. Their involvement in screening programs, as well as to sexual and reproductive health services remains a challenge.

Health Care Infrastructure accessibility problems significantly hinders persons with disabilities opportunity to have access to the full scope of the health care system. Communication with Medical staff and gain of necessary information remains a problem for persons with hearing and talking problems, as well as persons with visual impairments and blind persons.

Training and awareness rising of Doctors and other specialist on the right of the persons with disabilities doesn't have systemic character. The latter is crucial for the proper and effective communication with persons with disabilities and for the improvement of the service delivery process.

MENTAL HEALTH AND EXISTING PROBLEMS

Mental health Care is one of the most significant challenges before the state in the process of realization right to Health by Persons with Disabilities.

In 2017, changes in mental health funding methodology made through the approval of the state health care programs by the Government of Georgia, [1271] was followed by the sharp criticism on behalf of the persons working in the field and from the civil sector. According to the information spread, within the current funding model part of the service providers, in particular, multi profile clinics, refused to participate in the state program and provide psychiatric services, which, in turn, worsens the conditions of persons with mental health problems.

The above-mentioned changes may significantly slow down the process of deinstitutionalization, which according to the State concept on mental health is one of the most important obligations of the state.

During the reporting period, the Public Defender's Office carried out the monitoring of the implementation of the mental health development State Action Plan for2015-2020 Monitoring of the document revealed that the actions to be fulfilled by current period, is not completed yet and some part of the strategy implementation work has only just begun. [1272]

For 2016, hospital sector funding of the mental health (72%) is still considerably higher than outpatient services (23%) funding. Funding of Community based mental health services remains disturbingly low (1.5%).

During 2015-2016 years, the number of beneficiaries who received community-based mobile team services reached 40 persons per year on average. [1273] Mentioned indicator, taking into account its geographical coverage and the lack of the budget cannot be considered sufficient for the elimination of the deficit of community service. [1274] It should be noted that the above mentioned service is provided only in Tbilisi.

According to existing information, rate of re-hospitalization in the mental health care system is still high, as well as the number of patients hospitalized for more than 6 months. [1275] Providence of further outpatient

1271 Ordinance of the Government of Georgia №638 of December 30, 2016 on the approval of 2017 state healthcare programs.
1272 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), letter from the Ministry of Education and Science MES 9 17 00033835 (17.01.2017), the letter of the Ministry of Corrections MOC 3 17 00060376.
1273 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), p.9 (Georgian version).
1274 Annex 12, article 8 of the Ordinance of the Government of Georgia №638 (of December 30, 2016) on the approval of 2017 state healthcare programs.
1275 The letter of the Ministry of Labour, Health and Social Affairs N01/5664 (31.01.2017).

services after hospitalization for the purposes of insurance of continuity of service is an issue. [1276]

In 2016, the number of psycho-social rehabilitation centers was not increased. Mental health deinstitutionalization strategy document has not been developed so far. According to the information from the Ministry of Labor, Health and Social Affairs, its development is planned in 2017. [1277]

Georgian mental health field is experiencing a severe shortage of human resources, which is expressed in at least 250 psychiatric specialist deficiencies in the country. In 2016, the growth rate of medical personnel in the specific field is not registered.

Raising the qualification of people working in mental health care field remains a challenge. 120 primary health care doctors were trained in 2016 on the issue of managing the mental health patients at the outpatient level. Among the activities planned for the future are the Council of Europe funded, six cycle of nationwide training program for mental health institutions, physicians, nurses and social workers, on the topic of human rights, ethics and patient care.

The Ombudsman believes that planned measures and measures taken in 2016 cannot be deemed as effective for advancing qualification of personnel working in mental health care field.

Changing community attitude to mental health problems and reducing stigma about persons with mental health problems, strengthening their families and organizations remains as a problem, as well as the mass media representatives awareness raising on key issues of state mental health policy.

Infrastructure of psychiatric institutions is an important challenge as well. The measure taken in this regard are: selling of the state-owned company "Acad. B. Naneishvili National Mental Health Center "95% of shares in the form of direct purchase items to " B & N ". As well as the signed minute of the meeting with the trade and economic advisor in the office of the Republic of China Embassy to Georgia for the study of construction of the technical and economic base of Georgian psychiatric hospitals. The latter includes equipment and construction of mental health hospitals in the cities, Telavi and Senaki.[1278]

It should be noted that besides the fact that the state does not take enough measures for the rehabilitation of mental health institutions, the above-mentioned cases are related to the strengthening of the large residential institutions, which is not in line with the strategy defined by the state on deinstitutionalization process.

Suicide prevention program of the persons with psycho-social needs has not been developed during 2016. According to the current information, working on the strategy is planned in 2017. By the technical support of the Council of Europe the project of internal inspection and monitoring mechanism of the psychiatric institutions was created, however the process is not yet completed. The Ombudsman considers that timely implementation of this mechanism is crucial for the proper protection of the right to mental health.

One of the main challenges for the state is to development mental health services in the penitentiary system. According to the information provided by the Ministry of Corrections' , [1279] the management of emergency / crisis intervention, suicide risk management, mild mental disorders and behavioral treatment, stationary treatment, management of side effects of the psychotropic medication are evaluable in system. In 2016, the Ministry approved suicide prevention program for the accused /prisoners. [1280]

For the success of the mental health action plan, it is important to continuously implement set of measures that will make it possible for people with disabilities to effectively realize their rights.

1276 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), p. 10.
1277 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), p. 13.
1278 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), p. 2.
1279 The letter of the Ministry of Corrections of Georgia MOC 3 17 00060376 (25.01.2017).
1280 More detailed information regarding the topic is available in the annual parliamentary report prepared by the national prevention mechanism of the Office of Public Defender of Georgia.

RECOMMENDATIONS

To the Parliament of Georgia:

- To ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities as soon as possible
- To fully harmonize national legislation with the UN Convention on the Rights of Persons with Disabilities principles

To the local self-governance bodies:

- To ensure that the persons with disabilities and/or representative organizations take part in the process of creation and work of regional and local councils on disability issues
- To take needs of children with disabilities into account while accumulating municipal budgets; strengthen existing services and their coverage

To the Government of Georgia:

- To ensure creation of effective implementation and coordination mechanism of the United Nations Convention on "the Rights of Persons with Disabilities "
- To set obligation for to the collection of appropriate statistical information about persons with disabilities
- To accumulate sufficient funds for the social security budget to fully satisfy the needs of children with disabilities and make effective implementation of existing programs possible
- To make national policy, strategy and action plans focus on the needs and requirements of women and girls with disabilities
- To ensure timely and effective implementation of activities determined by 2015-2020 National Action Plan on the Development of Mental Health Care by responsible State Agencies

To the Ministry of Labor, Health and Social Affairs of Georgia:

- To develop and implement social model based on which disability status will be granted to the person
- To ensure re-assessment of the methodology for evaluation of socio-economic conditions of the vulnerable families (households) and its formation in a way that makes it possible to provide families with children with disabilities with relevant state allowance To strengthen identification of the problems in early age for children with disabilities, timely intervention and involvement in relevant services / programs
- To increase number, coverage and geographical availability of the services for each and every child with relevant need, provided by the State program on Social Rehabilitation and Child Care.
- To promote the process of deinstitutionalization, and considering the best interest of a child, their reintegration in the biological families, through strengthening their families and supporting service implementation
- To ensure reasonable placement of children with disabilities in foster care, considering the best interests of a child, as well as to conduct systematic and regular trainings for foster families in order to raise their awareness on children's rights and requirements

- To inform parents of children with disabilities about the programs and services in the accessible form
- To ensure the continuity of services, , by offering relevant supportive services oriented on the needs of persons reaching 18 and leaving the state care
- To ensure effective identification of children with disabilities who are the victims of violence and their psycho-social rehabilitation
- To ensure Improvement of the health insurance system in such a way that women and girls with disabilities have possibility to benefit from health care services based on their needs, including reproductive health services
- To provide and strengthen community-based rehabilitation service, including increasing number of the community-based mobile teams and expand their coverage areas
- To implement a mental health service provider institutions' monitoring and control system mechanism
- To provide timely implementation of activities developed regarding mental health within the framework of national action plan of2015-2020 on the Development of mental Health Care

To the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking:

- To prohibit the transfer and / or threat to transfer of beneficiaries of the state care institutions to the Mental Health Institutions as a method of punishment
- To ensure the establishment of a mediation and take measures for conflict de-escalation, including the using the services of other organizations' psychological intervention
- For the prevention of violence on beneficiaries , ensure a timely identification / registration of acts of violence and provide victims with legal, social, medical and psycho-social rehabilitation
- To ensure elaboration of complex behavior management guidelines and protocols at children's daily specialized institutions, where non-verbal and verbal aggression management procedures will be envisaged in detail, in accordance with the law of Georgia and international standards. These issues should be reflected in the internal regulations
- To implement professional and support staff training in institutions for children with disabilities for specific needs of the psychiatric / behavioral problems / violence management related issues

To the Central Election Commission:

- To implement full adaptation of polling stations and ensure promotion of participation and involvement of persons with disabilities in election administration activities

To the ministry of Education and Science of Georgia:

- To conduct needs based study for children with disabilities enrolled in preschool, secondary, vocational institutions and to develop differentiated database concerning students with disabilities
- To ensure awareness raising about the needs of children with disabilities for the educational staff, including organizing trainings for the spec. Teachers on preparation of individual learning plans

- To ensure adaptation of the physical environment, infrastructure, training and teaching materials of the educational institutions in a very limited period, adoption of appropriate communication mechanisms, as well as transportation matters for educational needs
- To replace recommendation character of defining the number of special teachers and psychologists with the normative mandatory one and revise required numbers of spec. Teachers and psychologists in educational institutions
- To implement specific needs-based funding model for students with special educational needs
- To support parents of children with disabilities to have access to the appropriate level of information, for purposes of their children integration in the education process
- To implement effective referral mechanism, in close cooperation with the social service agency, that provides finding the children with disabilities outside education system and involving them in the educational process, herewith, the effective implementation of transition process
- To promote the involvement of persons with disabilities in vocational education and training growth of thematic programs, at the same time to review the professional education legislation gaps for further improvement
- The specialized school education should be discussed as the last resort and a temporary opportunity for persons with disabilities to ensure the right to education, developed and introduce plan students' inclusion in the mainstream education

To the Ministry of Internal Affairs:

- To implement effective measures for identification and insurance of adequate response to address acts of violence against children with disabilities, including the development and implementation of the guidelines
- To ensure effective coordination with the social services in order to respond adequately to the alleged acts of violence against children with disabilities
- To conduct differentiated statistics of children with disabilities as victims of domestic violence
- To take the appropriate preventive measures and conduct monitoring of children with disabilities to eliminate violence against them, including measures to raise awareness
- To ensure training of the law enforcement agency representatives about the rights and specific needs of the persons with disabilities, especially when it comes to domestic violence and the follow up response

To the Ministry of Corrections and Legal Assistance of Georgia

- To take all necessary measures for the development of mental health within the framework of 2015-2020 National Action Plan, in the competences of the Ministry, for their timely and effective implementation.

PROPERTY RIGHTS OF THE ELDERLY PERSONS

INTRODUCTION

Existing mechanisms for the protection of rights of the elderly fails to respond to modern day challenges and international requirements. The year of 2016 did not see any substantial changes and the elderly continue to represent one of the most vulnerable groups in the country.

In his parliamentary report for 2015 the Public Defender of Georgia stressed that[1281] most of the elderly have no access to adequate housing, social services and protection mechanisms which exposes them to risks associated with poverty, homelessness and isolation. The elderly often fall victims to violence while existing state programmes do not provide alternative care services for this category. Nor are there targeted programmes or local interventions which would provide social welfare for senior citizens. Services offering home care are and provided by public organisations under projects funded by donors.[1282]

The amount of the old age pension was increased on 1 July 2016 and now totals 180 GEL. Pensionaries residing in high mountainous zones have their pensions increased by 20% (216 GEL). However, in light of the country's current economic standing, this measure is far from being sufficient to meet the needs of the elderly.

The reporting period saw the endorsement of the 'Georgia's policy for responding to aging' by the Parliament of Georgia.[1283] The policy document highlights main directions of the state policy towards issues associated with the aging population and is based on Madrid International Plan of Action on Aging of 2002 and requirements of implementation stipulated by the regional strategy.

The concept obliges the executive authorities to develop and endorse an action plan for 2016-2018 before 1 August 2016 to ensure the consideration of issues related to population aging in various sectoral policies and programmes.

According to the available information[1284] the action plan for 2016-2018 has not been yet endorsed. The document has been developed by the Georgian Ministry of Labour, Health and Social Affairs which submitted a draft action plan to the Government of Georgia on 8 December 2016. The document has been through an agreement procedure as per existing legislation and will be approved upon the successful completion of the above mentioned procedure.

The Public Defender believes that the process of the implementation of requirements stipulated by the state policy documents has been hampered which, in turn, negatively affects the rights of the elderly.

1281 Annual report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2015. Available at: http://ombudsman.ge/uploads/other/3/3892.pdf
1282 Case N6608/16 of the Public Defender of Georgia
1283 Available in Georgian at: https://matsne.gov.ge/ka/document/view/3297267
1284 Letter N44855–19.12.2016 of the Human Rights Secretariat

The situation prevailing in residence facility for the elderly remains of the greatest challenges the state has to deal with. In most instances the administration and staff of these facilities have not been taken any specific trainings on matters related to care for the elderly and their rights. Nor are there minimum nutrition standards developed and approved by a respective normative act.

There is no regulation for service providers that would set standards as to the number of medical staff as well as their rights and responsibilities. The absence of such a regulation affects the quality of assessment concerning health condition of the elderly and need for medical assistance.

The presence of psychologists and social workers in facilities providing services to the elderly remains a problem since there are no criteria which would be used while recruiting individuals as psychologists and social workers in these facilities. Currently, there has been no practice of identifying risk factors triggering violence and inappropriate treatment, as well as inhuman or disrespectful treatment of beneficiaries. Nor are there any mechanisms for responding and overseeing such incidents.

Local self-governments have not yet taken tangible measures to ensure that the rights of senior citizens are protected. Needs of the elderly are not properly assessed at the municipal level, nor have been there targeted programmes that would reflect interests of the elderly and be funded from local budgets.

Assistance offered to senior citizens by respective municipal authorities are mostly one-off support and limited to co-funding/funding of healthcare and community services and medicaments, soup kitchens, one-off assistance to veterans and funding of utility costs.

SOCIO-ECONOMIC CONDITIONS OF THE ELDERLY

The state authorities have not taken any effective measures to improve the protection of socio-economic rights of the country's senior citizens. Lack of adequate housing and support in the realisation of socio-economic rights remain a problem for most of Georgia's elderly population.

Services available under state funded programmes are not accessible to all individuals with respective needs. There is a scarcity of places at elderly boarding facilities. At the same time, terms and conditions applicable to funding (co-funding) of the placement at boarding facilities create barriers for some of senior citizens. Services are fully covered only to those individuals who are registered in the unified database of vulnerable households. Therefore, some of applicants are left without adequate housing and shelter.

Allowance for socially unprotected households is one of the benefits available to the elderly. However, as a result of amendments to the Resolution of the Government of Georgia of 2014 on *Approving the Methodology for the Assessment of Socio-economic Standing for Socially Unprotected Families (households)'* families of the elderly, who used to receive state allowance prior to above mentioned amendments, are no longer eligible to this benefit.

28 applications out of total 38 on the rights of the elderly received by the Public Defender [1285] concerns the revocation of allowance for socially unprotected families. The applicants indicate that monetary allowance they had been receiving was cancelled as a result of re-assessment of their social and economic standing based on new methodology. The applicants claim that their socio-economic situation remained unchanged and that they could not understand reasons why they were deemed ineligible to the state allowance.

1285 Cases N14230/16, N14023/16, N3307/16 , N3847/16, N4013/16, N5460/16, N5233/16, N5615/16, N6289/16, N6994/16, N7734/16, N7728/16, N7736/16, N7711/16, N7718/16, N7727/16, N7735/16, N7713/16, N7726/16, N7714/16, N7719/16, N7709/16, N7717/16, N7716/16, N7720/16, N12520/16, N16355/16, N8105/16.

VIOLENCE AGAINST ELDERLY WOMEN

When issues related to rights of elderly women are closely looked at, it is evident that there is no effective state mechanism for the protection of elderly women. The situation is further exacerbated for those women who also live with disabilities.

In 2014, the UN Committee for the Elimination of all Forms of Discrimination against Women, published a summary of the two reports on Georgia at the 58th session of the Committee which highlights, among other issues, dire situation with respect to women with disabilities. According to the report women with disabilities, along with women of ethnic minority background and the elderly, are subject to various forms of discrimination.[1286]

A report containing findings of a visit to Georgia by a UN special rapporteur on violence against women, causes and consequences in February 2016 suggests that specific groups of women including, women belonging to ethnic minorities, women living in rural areas, internally displaced women, refugees, LGTB or older women tend to suffer multiple forms of discrimination, which render them more vulnerable to specific forms of violence.[1287]

The difficulties of identifying violent incidents, the perception of violence by victims, ineffective investigation of incidents, and low rate of referral to respective bodies by victims have hampered efforts to eliminate violence against women including the elderly.

The situation has been further exacerbated by the impunity syndrome which allows many perpetrators to walk away with rimes they have committed.[1288]

Empirical observations suggest that victims of violence often refrain from referring to law enforcement agencies while in many instances all they ask for is shelter so that they have no longer have to live in a family of abuser, rather than punishment of perpetrators.[1289]

In the reporting period the Public Defender's Office reviewed several cases involving alleged domestic violence,[1290] against elderly women with disabilities.

Case of R.Sh.

The Public Defender has been reviewing a case (N9441/16), which involves alleged verbal and physical abuse against an elderly woman R. Sh. from her family members.

The Public Defender's Office responded to the case by further examining the case as a result of which it was established that the violence did, in fact, take place.[1291] [1292] Respective bodies have taken relevant measures including the registration of the applicant in an outpatient facility for mental health, prescription of medication, issuance of identification document. In addition, authorities have started working to appoint a support provider for the applicant.

1286 'Implementation of Article 6 of the UN Convention on the Rights of Persons with Disabilities: Existing Challeges and Prospects'. A report of the findings of a small-scale project, UN joint program for supporting gender equality in Georgia. A component for strengthening of the Public Defender of Georgia. Tbilisi, 2014. P. 23

1287 Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia (15-19 February, 2016), A/HRC/32/42/Add.3. The full text is available here. pp.8-9

1288 Implementation of Article 6 of the UN Convention on the Rights of Persons with Disabilities: Existing Challeges and Prospects'. A report of the findings of a small-scale project, UN joint program for supporting gender equality in Georgia. A component for strengthening of the Public Defender of Georgia. Tbilisi, 2014. p. 19

1289 Case N2762/16 of the Public Defender's Office

1290 Case N13982/1; N9441/16; N14066/16 of the Public Defender's Office

1291 Letters N09–1/8120; N09–1/8138; N09–1/10982; N09–1/10983; N09–4/15225 and N09–4/15224 of the Public Defender's Office

1292 Letters N04–11/1731 (29.07.2016); N04–11/2215 (30.09.2016); N04–11/2874 (29.12.2016) of the Social Service Agency and letters MIA 2 16 01875639 (27.07.2016); MIA 7 16 02368420 (21.09.2016); MIA 6 16 03242878 (29.12.2016) of Akaltsikhe district devision of Samtskhe-Javakheti Police Department at the Ministry of Internal Affairs

However, in spite of efforts undertaken by the LEPL Social Service Agency the applicant still remains in her family without access to alternative care services.[1293] According to the information that the Public Defender received, respective agencies have been working to decide on a type of care for the applicant as her family members continue to ignore her. The social service believes that the placement of the applicant under state care is the best option. However, as the family's social assessment score is higher than required in such case, the senior citizen's placement in a specialised care institution is not eligible to full funding.

With respect to the above described case, the Police district department has notified the Public Defender that criminal proceedings against the individuals involved in the abuse has not yet been launched.[1294]

Case of L.T.

The Public Defender has reviewed a case[1295] of possible domestic abuse against an elderly woman L.T.

Based on the information available to the Public Defender, respective police department launched an investigation, however, the proceedings were terminated on the grounds of the absence of actions stipulated by the criminal law.[1296] The police informed the Public Defender that L.T. was not subject to any kind of physical or verbal abuse.

The above case has also been reviewed by a district office of the LEPL Social Service Agency. The Agency's representative paid a visit to home of the senior citizen and interviewed the latter as well as her family members.[1297]

The analysis of the above cases reveals that the State is yet to establish effective mechanisms to ensure the protection of the rights of the elderly. Law enforcement agencies often tend to prolong their investigations while identification of facts of violence against the elderly is also a challenge. These failures allow many perpetrators to walk away without being punished by the law.

In addition, there are no targeted state funded programmes/services available to those senior citizens who are neglected by their own family members.

While the world fights against ageism, challenges Georgia further reinforces stigma and segregation towards one of the most vulnerable groups – the elderly. Therefore, it is pivotal that the State plan and implement necessary measures to protect the rights of its senior citizens in a timely manner.

RECOMMENDATIONS

To the Government of Georgia

- Accelerate the process of the elaboration of aging action plan
- Endorse a document to make sure that issues related to aging are reflected in various sectoral policies and programmes for greater protection of the rights of the elderly.
- Identify tangible and clear indicators for the implementation of the plan of action on aging.

1293 Letter N04–11/2215–30.09.2016.
1294 MIA 6 16 03242878 (29.12.2016).
1295 Letter N13982/16.
1296 Letter MIA 0 17 00296929 (06.02.2017) of the Tskaltubo district division of Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department at the Ministry of Internal Affairs of Georgia.
1297 Letter N2696/17–23.02.2017.

- Revise the methodology of assessment of socio-economic standing of socially vulnerable families (households) and amend the mentioned methodology in such a way to ensure that the senior individuals with needs are eligible to state allowance.

LEPL Social Service Agency

- Take measures to scrutinise facts concerning alleged violence against the elderly and respond adequately to protection needs of alleged victims regardless of outcomes of investigation.
- Take measures to effectively identify and respond to cases of violence in boarding houses for the elderly, also, set up an effective oversight mechanism.

To Local Self-government Bodies

- Develop targeted programmes tailored to interests of the elderly and consolidate such programmes in local budgets based on needs assessment of local senior citizens.

To the Ministry of Internal Affairs

- Ensure timely and effective investigation of domestic violence against senior citizens including elderly women, identify perpetrators and charge them duly with crimes they have committed. .

RIGHT TO ADEQUATE HOUSING

INTRODUCTION

For years, many citizens applied to the Office of Public Defender in regard to lack of shelter or adequate living conditions. This tendency has not changed in 2016 either. The study of applications shows that the problems in this area remain the same as well as the circumstances that impede the realization of this right. In his parliamentary reports of the past two years the Public Defender focused on the National Strategy for the Protection of Human Rights (for 2014-2020) in which the fulfillment of obligation related to adequate housing and the elimination of the problem of homelessness are defined as a strategic priority.[1298] Nevertheless, the Action Plan of the Government of Georgia on the Protection of Human Rights (2014-2015)[1299] did not envisage even a single concrete measure and a responsible entity which would ensure the implementation of objectives set in the strategy.[1300] To resolve the mentioned problem, a recommendation was issued to the government of Georgia.[1301]

In February 2016, the Office of the Public Defender was involved in the discussion of the draft Action Plan of the Government of Georgia on the Protection of Human Rights (2016-2017), when the government was once again reminded of the need to reflect in the document concrete actions concerning the right to adequate housing. Unfortunately, the approved Action Plan of the Government of Georgia on the Protection of Human Rights (2016-2017)[1302] still misses the above discussed issue and therefore, the recommendation on this issue remains unaltered.[1303]

On 22 March 2016, the Tbilisi City Council held the discussion of the Public Defender's special report, Right to Adequate Housing.[1304] As a result of the meeting, central government bodies and Tbilisi City Hall were asked to undertake concrete measures for the realization of the right to adequate housing in order to eliminate systemic problems.[1305] According to information obtained by the Office of Public Defender, the central government

1298 Ordinance №2315 of the government of Georgia, dated 30 April 2014, On the Approval of National Strategy for the Protection of Human Rights in Georgia 2014-2020, Paragraph 21.

1299 Ordinance №445 of the government of Georgia, dated 9 July 2014, On the Approval of Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015) and the Establishment of Coordination Council of Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015) and the Approval of Regulation of the Council.

1300 See, the Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2014, Chapter: Right to Adequate Housing; also the corresponding chapter in the 2015 report.

1301 Ibid.

1302 Ordinance №338 of the government of Georgia, dated 21 July 2016, On the Approval of Action Plan of the Government of Georgia on the Protection of Human Rights (2016-2017).

1303 See, the Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2014, Chapter: Right to Adequate Housing; also the corresponding chapter in the 2015 report.

1304 Available at http://www.tbsakrebulo.gov.ge/index.php?m=255&news_id=1694 (last accessed on 22.03.2017).

1305 Protocol №5 of the meeting of the commission on human rights and civil integration and the commission on healthcare and social services of Tbilisi City Council, 22.03.2016.

did not undertake any measures.[1306] As regards the Tbilisi City Hall, the Public Defender, in his previous parliamentary report, overviewed those positive steps which were taken on the self-government level to create legislation or provide housing.[1307] Given the urgency of the issue, the Tbilisi City Council, on 27 April 2016 and 13 February 2017, applied to the Prime Minister of Georgia with a request to set up an interagency commission on the right to adequate housing, but the decision on this issue has not been taken.[1308]

The results of the study conducted by the Office of Public Defender show that the measures undertaken to protect the right to adequate living deal with the problem on the local level alone, they are not consistent and do not correspond to the scale of the problem. The fulfillment of obligations regarding the right to adequate living depends on self-government bodies alone and neither central nor legislative powers are involved in systematic resolution of the problem. It must be emphasized that it is impossible to ensure comprehensive realization of the right to adequate living and gradual but irreversible eradication of homelessness in the country by relying on local self-government bodies alone.

Considering the urgency of the issue, the Public Defender of Georgia invited the UN Special Rapporteur on the Right to Adequate Housing to study individual and systemic violations, to make legal evaluation of these violations and to identify effective mechanisms of response.[1309]

THE RULE OF REGISTRATION AS HOMELESS AND PROVIDING SHELTER TO HOMELESS IN TBILISI

The regulation of the commission for ensuring the registration as homeless and provision of shelter in Tbilisi was approved in December 2015. The commission consists of representatives of both central and local executive governments.[1310] According to information provided by the Tbilisi City Hall, the commission first assembled on 20 January 2016 and held 10 sittings during the year.[1311] As of 8 February 2017, up to 6 100 applications were received by the administrative body; of this total number, 335 persons got registered as homeless, 360 persons were denied the registration while in relation to 37 persons additional information is being sought.[1312] The Office of Public Defender learned that the Tbilisi municipal government took decisions on providing housing to 47 persons (17 families).[1313]\

The Office of the Public Defender was engaged in the activity of the commission in the capacity of observer. This chapter will overview those shortcomings identified during this monitoring. The statistical data proves that the demand for shelter is high in the capital city with more than 5 000 applicants waiting for the consideration of their issues. A number of instances were observed during the monitoring when sittings of the commission were not held due to the absence of quorum. The legislation requires the commission to meet as need be, but no less than once in three months.[1314] In the Public Defender's view, an increasing demand shows the need that was implied by lawmakers and hence, the commission should hold meetings more frequently. It is very important that the intensity of the commission's activity keeps up with the dynamics of the demand for the exercise of this right.

1306 Letter №06/1396 of 12.02.2017 of the commission on human rights and civil integration of Tbilisi City Council.
1307 See, the Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2015, Chapter: Right to Adequate Housing.
1308 Letter №06/1396 of 12.02.2017 of the commission on human rights and civil integration of Tbilisi City Council.
1309 Available at http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelma-satanado-sacxovreblis-uflebis-shesaxeb-gaeros-specialuri-momxsenebeli-moiwvia.page (last accessed on 18.01.2017).
1310 Ordinance №49.03.1384 of 9 December 2015 of Tbilisi City Hall on the Creation of Commission for Ensuring Registration as Homeless and Provision of Shelter and Approval of Regulation.
1311 Letter №15-0117039118 of 08.02.2017 of Municipal Department of Healthcare and Social Service of Tbilisi.
1312 Ibid.
1313 Letter №06/1396 of 12.02.2017 of the commission on human rights and civil integration of Tbilisi City Council.
1314 Paragraph 1 of Article 5 of Ordinance №49.03.1384 of 9 December 2015 of Tbilisi City Hall on the Creation of Commission for Ensuring Registration as Homeless and Provision of Shelter and Approval of Regulation.

Yet another problem is related to prioritization of applications of persons specified in the ordinance of Tbilisi government (residents of former military hospital in Isani district and of the buildings №225, №226, №204 and №205 in the sea district of Nadzaladevi).[1315] When assessing the rule of registration as homeless and provision of shelter in the 2015 parliamentary report,[1316] the Public Defender highlighted a shortcoming detected by his office in regard to the mentioned provision of the ordinance, which allows for prioritizing specific persons in providing shelter. The Public Defender noted that it was a discriminatory provision and that it would be better to apply general criteria to persons specified in the ordinance.[1317] However, the local self-government did not take steps towards the improvement of the provision in 2016; therefore, the consideration of applications for registration as homeless was carried out in unequal conditions and the Public Defender, having studied circumstances of the case, identified a fact of discrimination. Consequently, the Public Defender issued an individual recommendation to the legislative and executive authorities of Tbilisi and once again demanded that the process of providing shelter be compliant with the right to equality.[1318] The administrative body informed that it planned to rectify the shortcoming through amending the normative act.[1319] On 7 March 2017, the normative act was amended through deleting the above mentioned discriminatory provision; thus, the Public Defender's recommendation was fulfilled.[1320]

The next problematic issue concerns the explanation by the Municipal Department of Healthcare and Social Services of Tbilisi to persons that the registration of a person as homeless does not obligate the local self-government to provide that person with a shelter within a specific period of time.[1321] This is also specified in the ordinance of Tbilisi City Council.[1322] In the Public Defender's view, a person whose need for shelter has been established must have a real and predictable expectation that at a certain stage, his/her request will be met. Consequently, the above mentioned provision must be abolished and a person registered as homeless be informed about possibilities, resources or/and planned measures of the local municipality concerning the provision of shelter. However, the existing legal provision and practice hold a person in uncertainty as it is unknown when the government will create the infrastructural resource to provide a shelter; this undermines the person's expectation for the exercise of the right and makes him/her feel vulnerable. Moreover, the reference to the mentioned provision is not properly substantiated by the Tbilisi municipality, which may be perceived as an attempt to avoid responsibility.[1323] Consequently, the abovementioned provision must be abolished and a person registered as homeless be informed about possibilities, resources or/and planned measures of the local municipality regarding the provision of shelter.

Yet another problem which was discussed in the 2015 parliamentary report and remained topical in 2016 is related to the rule of compensating rent to homeless persons, which grants broad discretion to local self-government bodies in deciding on the issuance of assistance.[1324] It is worth to note that the new rule of compensating the rent was approved at the end of 2015, but alike the previous one, the document has flaws. In particular, the criteria for the selection of beneficiaries of assistance issued under the exceptional/special rule (for socially vulnerable persons or persons in grave social and economic or living conditions, also persons affected by natural disaster) are not clear. The process of decision making on the compensation of rent must be transparent and given limited financial resources, beneficiaries must be selected in accordance with the

1315 Article 4 of Resolution№28-116 of 27 November 2015 of Tbilisi City Council on the Approval of Rule for Ensuring Registration as Homeless and Provision of Shelter in Territory of Tbilisi Municipality.
1316 See, the Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2015, Chapter: Right to Adequate Housing.
1317 Ibid.
1318 Recommendation N13–1/809 of the Public Defender of Georgia, 18 January 2017.
1319 Letter N06/979 of the Tbilisi City Council, 1 February 2017.
1320 Letter N4/18 of the Tbilisi City Council, 7 March 2017.
1321 Letter №10/317366 of 6 December 2016 of Municipal Department of Healthcare and Social Service of Tbilisi.
1322 Paragraph 4 of Article 2 of Resolution№28-116 of 27 November 2015 of Tbilisi City Council on the Approval of Rule for Ensuring Registration as Homeless and Provision of Shelter in Territory of Tbilisi Municipality.
1323 See, the Public Defender's report, The Situation of Human Rights and Freedoms in Georgia, 2015, Chapter: Right to Adequate Housing.
1324 Ibid.

objective criteria. Since the situation did not change in 2016, the recommendations provided in the 2015 report remain in force.[1325]

And last but not least, decisions of the Municipal Department of Healthcare and Social Services of Tbilisi on the denial to register persons as homeless lack reasoning. In particular, there were instances when decrees of the administrative body on the refusal to register persons as homeless did not specify factual and legal data that served as a ground for the refusal of application.[1326] The decrees contained general explanation that persons were denied registration due to incompliance with the criteria defined in the normative act. This is an unjustified approach because the General Administrative Code obligates an administrative body to substantiate administrative legal acts issued by it in writing.[1327] Hence, each person must get clear and reasonable explanation of reasons that served as a ground for the refusal to meet the request. The substantiation is also important because it enables a person to present new evidence to the administrative body, ask for re-consideration of the case and avoid court proceedings.

SITUATION IN REGIONS

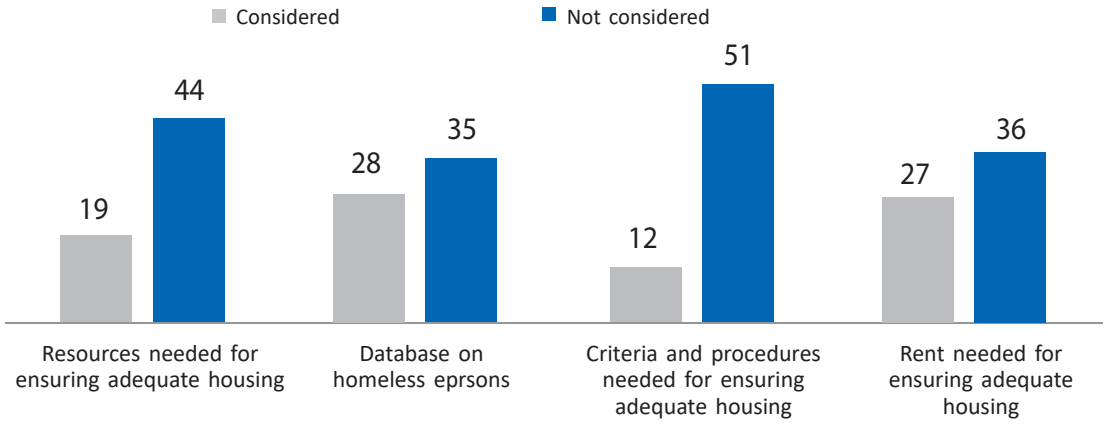
Alike the previous years, the problem in the reporting period was the maintenance of municipal and centralized databases of homeless persons and the methodology needed for its smooth functioning. The shortage of funds intended for homeless persons and the absence of infrastructural resource necessary in this area remained a problem too. The practice of self-governments in this regard is not uniform. Some municipal budgets allocate compensation for rent, viewing it as a means of tackling the problem of homelessness, while others issue one-off monetary assistance and purchase accommodation. Moreover, several municipalities do not allocate any budgetary resource due to shortage of funding or absence of such need.

A serious shortcoming in municipalities of regions is the absence of legislation regulating the issue of adequate housing as well as the absence of normative instruction concerning the provision of shelter or rent. Safe living conditions of persons squatting in various buildings and the availability of state programs for socially vulnerable families remain a serious challenge. The details of above mentioned issues are discussed in a special report of the Public Defender and the recommendations issued in this regard remain unchanged.[1328]

The Autonomous Republic of Ajara has not so far identified the list of those facilities that were arbitrarily occupied by persons and live there. Consequently, the government of Autonomous Republic of Ajara has not fully recorded the population squatting in such facilities, has not created a comprehensive database on such families and has not categorized the families by causes of their resettlement. Nor did the government of Autonomous Republic of Ajara carry out a single effective measures which would resolve any of such problems.

The statistical data on the above issues, obtained by the Office of Public Defender, which is based on information provided by 63 local self-government bodies is provided below.

1325 Ibid.
1326 Decree №569/9 of 25 November 2016 of Municipal Department of Healthcare and Social Service of Tbilisi.
1327 Paragraph 1 of Article 53 of the General Administrative Code of Georgia.
1328 Ibid.



RIGHTS OF PERSONS LIVING IN TERRITORIES OF FORMER 25TH AND 53RD BATTALIONS IN BATUMI

It has been five years now that the issues of studying social and economic conditions of persons squatting in the territories of former 25th and 53rd battalions in the Autonomous Republic of Ajara, namely, in Batumi, and of providing assistance tailored to their needs remain a serious challenge.

To study the problem and find solutions, the local self-government set up a commission,[1329] but the commission has not developed a strategy and recommendations which would improve the conditions of these homeless persons. Yet another shortcoming of the activity of this commission is that it did not undertake a study of the families squatting in the facilities by applying door-to-door method; instead, the commission tasked heads of local executive bodies to collect data on those families within their territories who moved there and live in arbitrarily occupied facilities.

RECOMMENDATIONS

To the Parliament of Georgia:

- Correct and improve the definition of homeless persons in the Law of Georgia on Social Assistance so that to cover various forms of homelessness that, by international standards, are subjects of the right to adequate housing;
- In order to implement obligations under the right to adequate living, adopt legislation conforming to international standards.

To the government of Georgia:

- Cancel the provision envisaging a blanket ban on the registration of persons squatting in state owned facilities in the common database of socially vulnerable persons;[1330]

1329 Decree N407 of 5 December 2014 of the head of government of Autonomous Republic of Ajara on the establishment of joint government commission for studying facts of arbitrary occupation by citizens of immovable property in the ownership of state, Autonomous Republic of Ajara and municipality.

1330 Paragraph 5 of Article 5 of Ordinance N126 of 24 April 2014 of the government of Georgia on the Improvement of Measures for the Reduction of Poverty in the Country and Social Protection of Population.

- For the implementation of the objectives related to the right of adequate housing, specified in the National Strategy for the Protection of Human Rights (for 2014-2020), write down concrete measures in the Action Plan of the Government of Georgia on the Protection of Human Rights (2016-2017).

To the Tbilisi City Hall and the Ministry of Economy and Sustainable Development, also, the government of Autonomous Republic of Ajara and the local self-government bodies

- Draft a strategy and action plan for the resolution of problems identified as a result of the study of individual socially vulnerable, homeless families squatting in state and municipal facilities and the identification of the scale of the problem.

To the Tbilisi City Hall and the Ministry of Economy and Sustainable Development

- Improve within the shortest possible time the situation in those state or municipal facilities in which homeless/socially vulnerable people live in extremely grave conditions, in particular, lack basic infrastructure, including electricity supply, drinking water, sewerage system, and do not impede this process in order to improve these conditions up to minimal/basic standards of the right to adequate housing.

To the Ministry of Labor, Health and Social Affairs:

- Conduct a relevant survey to identify a scale, reasons and forms of homelessness in the country;
- Create and regularly operate common database on homeless persons;
- Create a strategy and action plan for eradication of homelessness.

To the local self-government bodies:

- Define a procedure for the registration of homeless persons in the database and the provision of shelter to them in those municipalities that face the need to provide homeless persons with shelter, like it was done by the government of the capital city;
- For the aim of monitoring homelessness, regularly enter data into databases and provide this information to the LEPL Social Service Agency;
- For the aim of fulfillment of obligation stipulated in Article 18 of the Law of Georgia on Social Assistance, in those regions which face a problem of provision of shelters to homeless persons, channel efforts towards the creation of financial and infrastructural resources to enable the protection of persons from homelessness;
- Start the introduction of social and economic rehabilitation programs for beneficiaries placed in shelters, thereby facilitating the integration of homeless persons into society;
- Conduct information campaigns in those district executive bodies, where social programs are implemented for homeless persons, to raise awareness of target group about the right to adequate living and existing means of protecting from homelessness;

- The commission for ensuring registration as homeless and provision of shelter of the Tbilisi municipality should conduct sessions as frequently as appropriate to timely and effectively consider received applications.

To the Tbilisi City Council:

- Amend the rule of registration as homeless and provision of shelter in Tbilisi, for the aim of improvement of the rule.

To the government of Autonomous Republic of Ajara and local self-government bodies:

- Conduct a coordinated and comprehensive study of social and economic conditions of persons squatting in the territories of former 25th and 53rd battalions in Batumi and within a reasonable time, undertake adequate measures to provide them with a corresponding assistance.

RIGHT TO SOCIAL SECURITY

INTRODUCTION

During the reporting period, Office of the Public Defender was working on different directions of the right to social security. In the present chapter, right to adequate food is discussed within the scope of the national and international standards. The amendments to the by-laws regulating assessment of socio-economic conditions of families and gaps revealed by the Office of Public Defender of Georgia in this area will be also overviewed. In the present chapter issues related of the high mountainous regions in light of the Georgian Law on the Development of High Mountainous Regions is also considered.

In the parliamentary report for 2015 Public Defender of Georgia considered problems revealed during implementation of new methodology of assessing socio-economic conditions of socially vulnerable families in practice.[1331] Because of the fact that issues outlined in the report on the inconsistencies of the so called "new methodology" are still acute, recommendations of Public Defender of Georgia remain unchanged in the present chapter.

THE RIGHT TO ADEQUATE FOOD

The right to adequate food is envisaged by the International Covenant on Economic, Social and Cultural Rights. According to the Article 11 (1) of the Covenant, parties recognize 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". According to Article 11 (2) in order to implement fundamental right of an individual to be free from hunger, taking more concrete and immediate measures might be necessary. According to the General Comment of the Committee of Economic, Social and Cultural rights,[1332] it is essential to implement the right to adequate food for realization of all other human rights. The right to adequate food is closely linked to other rights. For instance, it is closely linked with the honor of individual and has essential importance for implementation of other rights recognized by international human rights law. It is inalienable from social fairness, for the realization of which adoption of economic, ecological and social policy aiming at elimination of poverty and protection of all human rights on the national as well as on international level is necessary.

The state is obliged to ensure accessibility to the minimal package of nutrition products, which shall be appropriate, secure and in conformity to calorie requirements in order to release individuals from hunger. The

1331 See Report of the Public Defender of Georgia for 2015 on the Situation of Human Rights and Freedoms in Georgia, p.786 <http://www.ombudsman.ge/uploads/other/3/3891.pdf >.

1332 General Comment #12 (session 20, 1999) UN Doc. E/2000/22, p.102-110.

right to adequate food imposes three types of obligations on the state: the obligation to respect, obligation to protect and obligation to fulfil. The latter in itself implies both facilitation of realization, as well as ensuring this right.

Constitution of Georgia does not include any direct provision on social security and the right to adequate food. Nevertheless, this right is recognized within the scope of Article 39 of the Constitution. Namely, "Constitution of Georgia shall not deny any other universally recognized rights, freedoms, and guarantees of an individual and a citizen that are not expressly referred to herein but stem inherently from the principles of the Constitution". At the same time, Article 16 of the Self-Governance Code of Georgia defines rights and obligations of the municipality. In the framework of this Article different municipalities elaborate programs of "free dining service".

Order #1879, of November 26, 2014 of the Mayor of Tbilisi defines an instruction on the case management of beneficiary registration.[1333] The aim of the document[1334] is to establish common practice of management of free dining service program at Tbilisi Municipality district boards and to rise efficiency of the program, its cost effectiveness and to improve and simplify its process of administration. According to the instruction, service of free dining might be received by the beneficiaries who are in the list approved by the order of the Governor, are socially vulnerable and their rating score is less than 200 000. Hence, list of the beneficiaries is formed on the basis of the database of socially vulnerable families of LEPL Social Service Agency. According to the Instruction there are two lists of beneficiaries – main and additional. The beneficiaries from the main list are receiving unlimited amount of food on a daily basis. When the beneficiary from the main list does not arrive for any reason the food might be obtained by the beneficiaries from additional list. The number of beneficiaries from additional list shall not be more than 10% of those in the main list.[1335] According the instruction, sequence of inserting applicants to the list is solved according to the date of registration of their application. Due to the rule, preference is given to the beneficiary whose application was registered in the Board earlier than others. The instruction also includes the exceptional rule of inserting beneficiary in a dining list. The Governor has the right to make motivated decision on the insertion of an individual into the list in special circumstances.[1336] In such cases Governor has the discretion to consider whether special circumstances are at stake on case by case basis.

Budget allocated by the Tbilisi City Hall for the implementation of the program of "free dining service" is also worth mentioning. According to the resolution of Tbilisi City Assembly #30-87 on the approving of budget of Tbilisi for 2017, 16,203,000 GEL is allocated for free dining service. It shall be noted, that compared to the previous years the funds allocated to the free dining service are increased, the fact is likely caused due to high demand in the service.

Office of the Public Defender of Georgia requested information from each district of Tbilisi on the register of the beneficiaries, case management rules and instruction. After analyzing received documentation, it was revealed that in each district additional lists of beneficiaries waiting for free dining service are established, their number is equal to 10% of number of beneficiaries from the main list. It is notable, that the lists are not revised and in fact, continue to operate for unlimited period of time. For this reason, citizens are permanently in the waiting list. All free dining halls located in Tbilisi are serving up to 38,500 citizens daily and additional 10% of this number is in permanent waiting list. As it was already mentioned, sequence of inserting citizens in the main list is defined on the basis of the registration of their application. Thus, there is a risk that families have more needs, but remain to be in the waiting lists due to the fact that somebody applied earlier. For instance, family, whose rating score is 1000, might be in the waiting list, and conditionally family with the rating score 190000

1333 On the approval of the instruction of proclaiming state tender procurement conditions within the scope of "free dining service" program of Tbilisi Municipality mayor territorial bodies (Municipalities of Tbilisi Districts) and case management instruction of register of beneficiaries.
1334 Ibid, Annex 2.
1335 Annex 2, Instruction on case management of register of beneficiaries, Article 2.
1336 Ibid, Article 14 (14).

receives free dining service. Therefore, during planning of the program it is important to distribute funds in a way that can meet high demands in the area. In case of keeping the status quo, it will be better to give priority not to the date of registration in the list, but to the needs of the family on accessibility to adequate food.

Besides Tbilisi, Office of Public Defender of Georgia, requested information related to the operation of the free dining program and accessibility to adequate food by beneficiaries from six different municipalities (Telavi, Rustavi, Gori, Zugdidi, Kutaisi, Batumi). Part of municipalities, from which Office of the Public Defender of Georgia requested information, have rules on register of beneficiaries and case management. Main criteria include registration in the territory of the municipality and unified database of socially vulnerable families. Though regions define the highest score individually. Namely, program beneficiaries in Rustavi municipality are citizens registered in municipality's administrative borders, who at the same time are registered in the unified database of socially vulnerable families and their rating score is not more than 100 000.[1337] However, on the basis of information received from Kutaisi City Hall, registration in the unified database of socially vulnerable families and rating score not more than 65000 is a necessary criteria for the selection of beneficiaries.[1338] According to the information received from Batumi self-governance, the rating score shall not be more than 57000.[1339]

Analysis of received information shows, that free dining service program is only accessible in self-governing cities, while program of free dining service does not exist on the territory of the self-governing communities. This does not mean that people living in the communities have no need to accessibility to adequate food, but only shows that relevant self-governances did not properly study the needs of population living in their municipalities.

ANALYSIS OF LEGISLATION REGULATING EVALUATION OF SOCIO-ECONOMIC CONDITIONS OF FAMILIES

During the reporting period, by-laws regulating evaluation of socio-economic conditions of families were amended several times. Amendments to the Order #141/n of May 20, 2010 of the Minister of Labor, Health and Social Affairs, related to the drafting of the protocol on the termination of evaluation of socio-economic conditions of families by the authorized person of the Agency is worth noting. According to the former version of the document, grounds for drafting the protocol, such as - family is not living on the provided address, or there is no possibility to meet authorized representative - were provided in one and the same paragraph. Besides, termination protocol was drafted in cases when authorized person of the Agency was unable to meet family or its legal representative during three visits to the address. In this case Agency was taking into account period between first and third visits and was putting date of the third visit as the date of the protocol.[1340] By the new version[1341] obligation of the authorized person of the Agency to fill in the protocol in cases of "inability to meet family members or its legal representatives" is provided in a separate article.[1342] While completing the protocol only on this ground, authorized representative of the Agency is obliged to make three visits to the family and to have certain period of time between the first and third visits. Thus, while drafting the protocol on termination of evaluation of socio-economic conditions of the family by the authorized representative of the Agency on the ground that "the family is not living at the address provided in the application", authorized

1337 Letter of Rustavi City hall #02/2741, 13/02/2017.
1338 Letter of the Administration of Kutaisi City Hall #01/3767, 17/02/2017.
1339 Letter of the Batumi City Hall #25/1892, 10/02/2017.
1340 Order of the Minister of Labor, Health and Social Protection of Georgia #141/n, May 20, 2010 on "The Approving of regulation of evaluation of socio-economic conditions of socially vulnerable persons", version of May 22, 2015 Article 14 (1, "g") and (4).
1341 Amendments to the Order of the Minister of Labor, Health and Social Protection of Georgia #141/n, May 20, 2010 of 09.08.2016 #01-36/n.
1342 Order of the Minister of Labor, Health and Social Protection of Georgia #141/n, May 20, 2010, Article 14 (1, "f") and (7) .

representative shall determine that the family does not really live on the address indicated in the application. In such cases, paying three visits to the family is not necessary. However, without the visits it is unclear on which factual and legal grounds authorized representative of the Agency will identify that the family does not live at the provided address. In this case legislation might be interpreted in a way that if during the first visit of the authorized individuals, family members are not at the address, registration of the family in database might be terminated for one year. Thus, there is a risk, that these amendments might incur damage on some families unjustifiably. It is important to elaborate other balancing mechanisms, such as receiving information from other sources in addition to the visit.

According to the information provided by the LEPL Social Service Agency,[1343] amendments aimed to improve administration process of social support on the basis of analysis of existing practice. Explanatory report of the amendments states that the protocol of termination of evaluation of socio-economic conditions of the family (form #3) is amended; it provides precise definition on drafting of the protocol by the authorized representative of the Agency and termination of the registration of the family. Though, explanatory report fails to address grounds for identification that the family does not live at the provided address permanently and aim of such an amendment.

GAPS REVEALED WHILE EVALUATION OF SOCIO-ECONOMIC CONDITIONS OF THE FAMILIES

Issue related to legitimacy of decision on the termination of registration in the unified database of socially vulnerable families and prohibition of registration arose in one of the cases dealt by the Office of the Public Defender of Georgia. While dealing with complaints and documentation, Office of Public Defender of Georgia revealed the fact of unlawful restriction of right to social security of R.G.'s family on the basis of the illegal decision of an administrative body. Namely, according to the factual circumstances of the case, counting of the rating score did not take place at the R.G.'s family, because the new member of the family A.Kh. (spouse of the R.G.) was restricted to register in the in unified database of socially vulnerable families for 3 years, while living in a different family before the marriage with R.G., as she/he provided false information to the Agency.[1344] After the marriage with R.G., administrative body was entitled to extend restriction to the A.Kh. and not to other members of the family.[1345]

According to the information received from the LEPL Social Service Agency, recommendation of the Public Defender of Georgia might become the bases for amendments into the legislation. In this case, however, it shall be considered, that before termination of registration the R.G. family had very low rating score – 22620. Accordingly, LEPL Social Service Agency, within the scope of existing legislation could consider interests of the family, act within its discretionary powers[1346] and terminate restriction of registration of R.G.'s family in the unified database.

While discussing identified gaps as a result of evaluation of socio-economic conditions of the families, procedural shortcomings by separate authorized representatives (agents) of the Agency shall also be addressed; this particularly relates to filling incorrect information in the declarations while evaluating socio-economic conditions of families, as well as to providing incomplete information to the citizens on legal grounds for terminating their allowance.

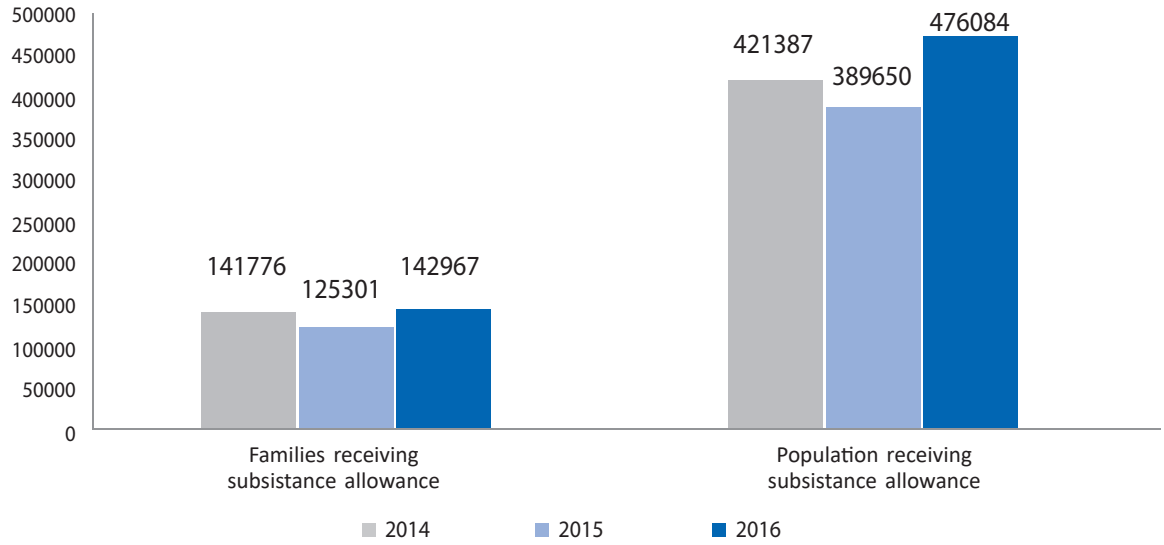
1343 Letter of the LEPL Social Service Agency #01/69343 of September 12, 2016.

1344 Paragraph 10 (2) of Article 10 of the Government Regulation #126 of 2010: "In case of providing false information by family member of respective representative while evaluating socio-economic conditions of the family, the Agency is entitled to terminate registration of the family in the database. In such cases, the application of the family to be registered in database is annulled automatically. In case provided in the present paragraph the family losses the right to be registered in the database for three years".

1345 Amendments made to the regulation of the Government #126, of April 24, 2010 in May, 2015.

1346 According to Article 10 (5) of the Regulation of the Government #126, of April 24, 2010 "Agency is entitled to reevaluate socio-economic conditions of the registered family on its own initiative".

Statistics:



Present chart reflects statistical information taken from the web page of LEPL Social Service Agency on quantity of families (population) receiving allowance in 2014, 2015 and 2016.[1347] Namely, in accordance to the data for December, 2014 141,776 families and 421,387 individuals were receiving allowance. According to the data for 2015, amount of families and population in general significantly decreased to 125,301 families and 389,650 individuals respectively. In 2016, number of population receiving allowance significantly increased and exceeded the number of beneficiaries in 2014. It is difficult to analyze impoverishment of families or improvement of their living conditions on the basis of the above-mentioned statistics. The chart mainly reflects number of population to which subsistence allowance can be granted within existing state resources.

PROBLEM RELATED TO GRANTING THE STATUS OF HIGH MOUNTAINOUS REGION

The law of Georgia on "the Development of High Mountainous Regions" entered into force on January 1, 2016. Criteria for granting appropriate status to the inhabited area are defined under Article 2 of the mentioned law.

Office of the Public Defender was dealing with the application of population of the village Shakhvetila, Ilto valley. According to the application, migration level is very high in the Ilto valley, 70% of the population remaining in the villages are elderlies and retirees. Villages are located at the borderline, carry strategic importance to the country; therefore, it is essential to reduce level of migration.

According to the criteria defined by the Georgian Law on "the Development of High Mountainous Regions", considering aggravated migration processes, Georgian Government is entitled to grant status of high mountainous region to the residential area which is located lower than 800 meters from the sea level in order to improve demographic situation. The purpose of the same law is to suspend process of emptying of mountainous area from population, it aims to identify high mountainous residential areas with critical demographic situation and where targeted involvement of the state is necessary.

Average age of population is one of the criteria to assess whether the situation is critical in one or another area. For instance, if the average age of population is more than 40 years, population is getting older, birth rate and natural increase of population is reduced, which at the end causes depopulation.

1347 Information is available on the web-page: http://ssa.gov.ge/index.php?lang_id=&sec_id=769 (visited on: June 23, 2017)

The demographical situation of residential area will be assessed as critical if the average age of population is more than 40 years. Demographical situation in villages of Ilto valley shall be assessed according to these criteria.

Village	High from the sea level	household	living	More than 40 years	Left houses
Shakhvetila	700 Meter	33	69	50	22
Chartala	720 Meter	11	15	14	10
Naduknari	680 Meter	6	13	11	6
Sabue	560 Meter	6	12	12	9

Issue of adding 99 residential areas (with the population 38000) to the list of high mountainous regions on the basis of exceptional criteria was discussed at the meeting of the National Council of Mountainous Development held on May 24, 2016. Government of Georgia was addressed with the petition to include following residential areas to the list of high mountainous areas:

- 90 residential areas from 99 is in compliance with the requirements defined by the council;
- 6 residential areas are located in the territory of historic-geographical regions defined by law;
- In one area[1348] hypsometric height was defined more precisely;
- In one residential area[1349] National Agency of Public Registry checked existence of the village;
- One residential area[1350] is in compliance with agricultural criteria.[1351]

Despite the fact that board of Akhmeta municipality addressed all authorized governmental agencies, the villages of Ilto valley still were not falling among 99 villages added to the high mountainous regions through the exceptional rule.

RECOMMENDATIONS

To the Government of Georgia

- Revise new methodology of evaluation of socio-economic conditions of socially vulnerable families (households) approved by the regulation #758 of Georgian Government, taking into account gaps reflected in the annual report of the Public Defender of Georgia

To Ministry of Labor, Health and Social Affairs of Georgia

- To take appropriate measures to improve qualification and performance of the representatives of the Agency

1348 Cheremi
1349 Gorga
1350 Kotoraantkari
1351 Information is available on the web-page: http://www.newposts.ge/?l=G&id=112007-%E1%83%A1%E1%83%9D%E1%83%A4%E1%83% 94%E1%83%9A%E1%83%98,%20%E1%83%9B%E1%83%97%E1%83%90 (visited on: March 23, 2017)

To National Council of Mountain Development

- To grant status of high mountainous regions to the villages of Ilto valley – Shakhvetila, Chartala, Nabuqari and Sabue – through the exceptional rules

To Local Self-Governing Bodies

- To provide social programs to the socially vulnerable families in a way which considers interests of families with high rating score and which are not mainly adapted to families with low rating score
- Study needs of population in municipalities where free dining service programs are not implemented and take appropriate measures to provide free dining program
- Increase budget and find additional resources in municipalities with high demand for free dining service and where population lacks access to adequate food, or take into account priority needs of the families while forming the lists instead of giving priority to the date of registration of applications.

According to data from 2016, 273 765 IDPs are registered in Georgia. 144 014 out of the total number reside in so called "private sector" while remaining 129 751 live in former compact settlements.[1352]

During the reporting period representatives of the Public Defender travelled throughout the country to monitor the situation with respect to internally displaced persons. More than 700 internally displaced persons were counselled as a result of more than 250 visits in former IDP compact settlements. The present paper has been developed based on factual circumstances and results of case analysis.

In 2016 the Public Defender's Office continued to actively participate in the work of the Commission on IDP Issues at the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodations and Refugee of Georgia. In addition, the Public Defender is also a member of the supervisory board overseeing the implementation of the action plan of the State IDP Strategy.

The year of 2016 was marked by the most extensive and long-term accommodation process for IDPs. While 179 IDP households with living conditions containing life hazards or health risks were provided with accommodation in the reporting period, the issue of accommodating IDPs living in deplorable buildings continue to remain a pressing problem.

Analysis of the situation in the property rights of IDPs reveals that this particular group has been suffering from the same persisting problems over the course of many years. These problems include low level of awareness of IDPs on developments in the field of IDP's rights. It is critical to ensure that IDPs are involved in decision-making which will considerably improve their awareness of these processes. Bad living conditions of many internally displaced persons residing in certain housing as well as rehabilitation projects of former collective centres and a poor quality of rehabilitation are also among burning issues affecting IDPs.

Importantly, since 2016 the Ministry alongside a long-term accommodation project has been moving towards a needs based approach which is of critical importance for effectively responding to the needs of internally displaced persons. This process must be based on an in-depth analysis of IDPs' socio-economic conditions and a vision for tailored assistance.

PROCCESS Of DURABLE ACCOMMODATION OF IDPS

Specific needs and human rights issues affecting internally displaced persons tend to persist even after conflicts and natural disasters have ended. Nor do they disappear after victims of conflict or disasters find shelters in

1352 Letter N01-01/07/6 dated 3 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

places not threatened by the conflict. They require support as long as a long-term solution their problems are to be found.[1353]

Long-term solution is considered to be found when internally displaced persons are no longer in need of any specific support or protection related to their displacement, and when they can exercise human rights without any discrimination based on their displacement status. Problems can be resolved by ensuring their integration in places of permanent residence (the right to return), through the integration in host communities (local integration) or through providing housing in other parts of the country.[1354]

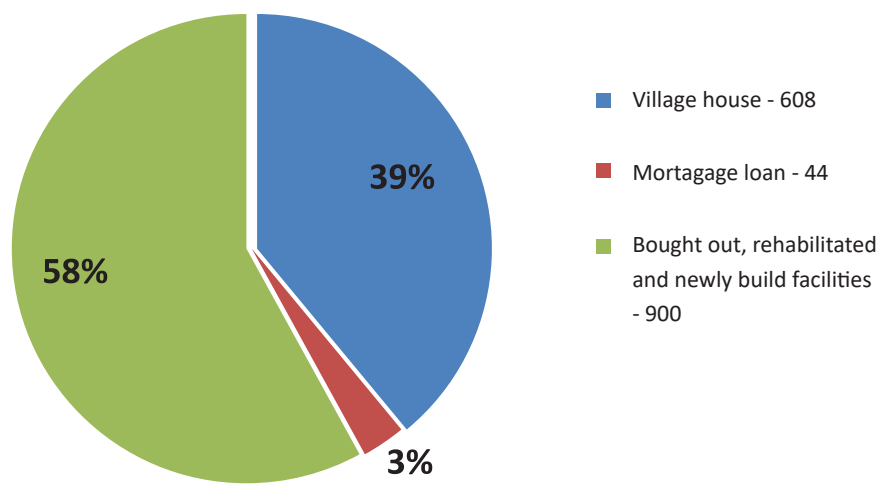
The long-term resolution of problems pertaining to internally displaced persons is outlined in UN's guiding principles of internal displacement which represents an important framework for defining the rights of IDPs.[1355] Internationally recognised principles are also enshrined in the Georgian legislation. Until they return to places of permanent residence, IDPs' accommodation with long-term housing and support their socio-economic integration remains the State's priorities.

The existing legislation[1356] provides four core programmes for long-term accommodation of IDPs:

- Accommodating IDPs in rehabilitated and newly constructed buildings
- Purchasing individual houses and apartments for IDP households (under the *House in the Village* project)
- Granting property right to IDPs over privately owned settlements (through privatization)
- Mortgage program

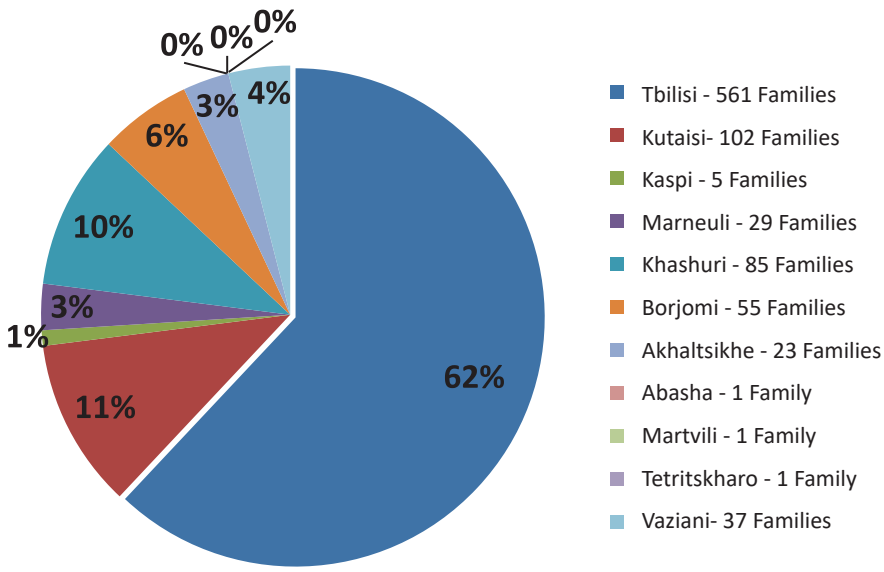
Representatives of the Public Defender closely observed not only the process of distribution of flats by the Commission on IDP issues, but also voting. In 2016 1 552 households were provided with long-term accommodation,[1357] including 608 families benefiting from the *House in the Village* program and 44 who were included in the mortgage program. 900 households moved to rehabilitated and newly constructed buildings. However, 52 886 IDP families are still in need of shelter.[1358]

1552 IDP Families received Durable Accomodation in 2016



1353 A scheme of long-term solution of IDPs' problems developed by the Interagency Permanent Committee
1354 Ibid
1355 28 and 30 Principles
1356 Order N320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia on the Rule and Criteria for Provoding Long-term Accommdation for IDPs and the Statute of the Commission for IDP Issues
1357 Letter N01-02/08/32576 dated 28 December 2016 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
1358 Letter N01-01/07/6 dated 3 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

900 IDP Families were provided with Durable Accomodation in rehabilitated and newly-constructed buildings in Tbilisi an regions in 2016



Importantly and for the credit of the Ministry, priority was given to those families who had been exposed to life threats and health hazards while living in dilapidating and rundown buildings under lawful possession. A condition of the building should be assessed by the Levan Samkharauli National Forensics Bureau and a respective report issued. It is important that the Ministry, at certain intervals and when required, take measures to assess the sustainability of IDP compact housing and/or upgrade existing reports.

Like the previous year, in 2016 accommodation process of IDPs was the most extensive in Tbilisi.

In 2016 the Ministry moved 400 households in a newly constructed block of apartments including 200 apartments in the Olympic Village at the Tbilisi Sea while remaining 400 households were handed in the modern apartments bought out from developers.[1359]

14 IDP households moved their long-term accommodation located in a newly constructed housing block at Gakhokidze Street N62. These families had been living in devastating conditions at Kazbegi Ave 34 over the course of many years. Their situation had been numerously highlighted by the Public Defender in his annual reports.

Importantly, the Commission continued a follow a positive pattern and chose three key directions while deciding on the distribution of housing.[1360] Priorities were given to those families who had been living in particularly dire conditions. The Commission members went through data and monitoring results of individual households. Number of rooms in an apartment was proportional to number of members in a single household.[1361]

Voting was conducted in a calm and transparent manner. It should also be noted that special needs of persons with disabilities were given special consideration and they were allocated apartments on the first floor without voting.

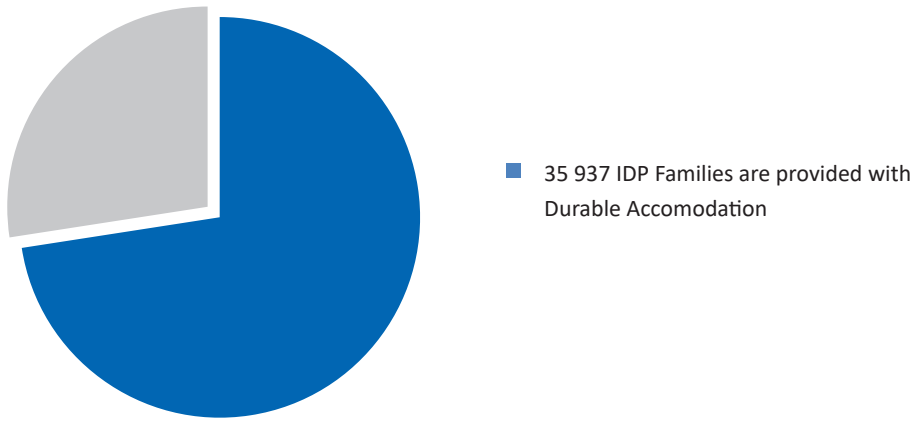
As of today 52 886 IDP households await accommodation.

1359 A statememt of the Ministry of Internally Displaced Persons, Accommodation and Refugees on the distribution of housing in Tbilisi. Available in Georgian at: http://mra.gov.ge/geo/news/show/189/10390;

1360 1. Removal of IDP households from hazardous and life threatening living conditions in dilapidating buildings and constructions; 2. Provision of IDP families with living space based on a decision of the court or a higher administrative body or an administrative commitment pledged by the Ministry; 3. Long-term accommodation of IDPs pursuant to the criteria

1361 Overall 248 single-room, 79 double-room and 73 triple-room apartments were distributed among the IDP households.

52 886 IDP Families are still in need of Housing



PRIVATIZATION OF LIVING SPACES FOR IDPS

According to the Action Plan for the implementation of the State IDP strategy, one of the critical stages of long-term accommodation efforts stipulates the transfer of residences in compact settlements into IDPs' private ownership. The process started as early as in 2009 (further to Resolution N62 of the President of Georgia) and it aims at transferring state-owned collective centres into the ownership of IDP households.

129 751 individuals are reported to be registered in former compact settlements all over the country. As of 2016, 125 of these settlements had already been transferred into IDPs' private ownership.[1362]

Findings of the monitoring reveals that like previous years, problems faced by IDPs living in compact settlements have remained the same. Rehabilitation work and a poor quality of construction/reconstruction is among the deepest concerns of IDP communities. Lack of information on landlords' condominium represents yet another challenge. With the Law of Georgia on Condominiums taking effect, condominiums are now able to seek financial support from municipalities to address issues related to maintenance of buildings.

IDPs who are going to become legal owners of their residences, will automatically considered members of condominiums. Therefore, if before it was up to the Ministry's will to help out IDPs, now they are be able to see to their problems by referring to local municipalities.

IDPs do not have sufficient information about the condominium system. Even in places where they managed to set up condominiums they have only basic idea of how the system operates or what are benefits that they may expect from the system. There have been cases when IDPs in collective settlements do not consider themselves as participants of decision making within condominiums which are often established by the most active leaders in communities. These leaders tend to become chairs of condominiums almost automatically. It is important that municipality representatives provide relevant information to IDPs to prevent situations whereby decision-making is hijacked by a handful of individuals without consent of landlords.

The Public Defender of Georgia has numerously called for relevant actions to address the issue of inadequate housing observed in a number of places.[1363] These buildings fail to meet even the basic housing requirements with broken sewage and plumbing systems and barely holding roofs and principal walls which constitute the

1362 Letter N01-01/07/6 dated 3 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

1363 Pursuant to the Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories, Article 4, para m, adequate housing means accommodation transferred to IDPs into ownership or lawful possession where essential conditions for dignified life are ensured including access to safety, sanitary conditions and infrastructure.

minimum living conditions which should have been provided by the Ministry before the legalisation. The findings of the monitoring suggest that a degree of responsiveness to issues related privatised housing and daily challenges of IDPs varies across municipalities throughout the country. In spite of legalisation municipalities do not often have sufficient resources to resolve problems. Therefore, it is pivotal that the MRA and local municipalities work together closely to eliminate such problems.

So called half-legalised buildings which have been surveyed and drafted on numerous occasions, have not yet fully privatised. Because of this problem IDPs cannot set up condominiums, manage their properties as they wish and exercise other civil rights. These issues were highlighted in 2016 report as well.

Yet another pivotal issue is to determine red lines of lands attached to premises which, together with other shared property (basement, attic, flight of stairs, corridor etc) remains the State's property. Because of this restriction IDPs are not allowed to benefit from such municipal services as landscaping of yards and adjacent territories. The problem may be resolved by transferring shared space to the condominiums' shared ownership.

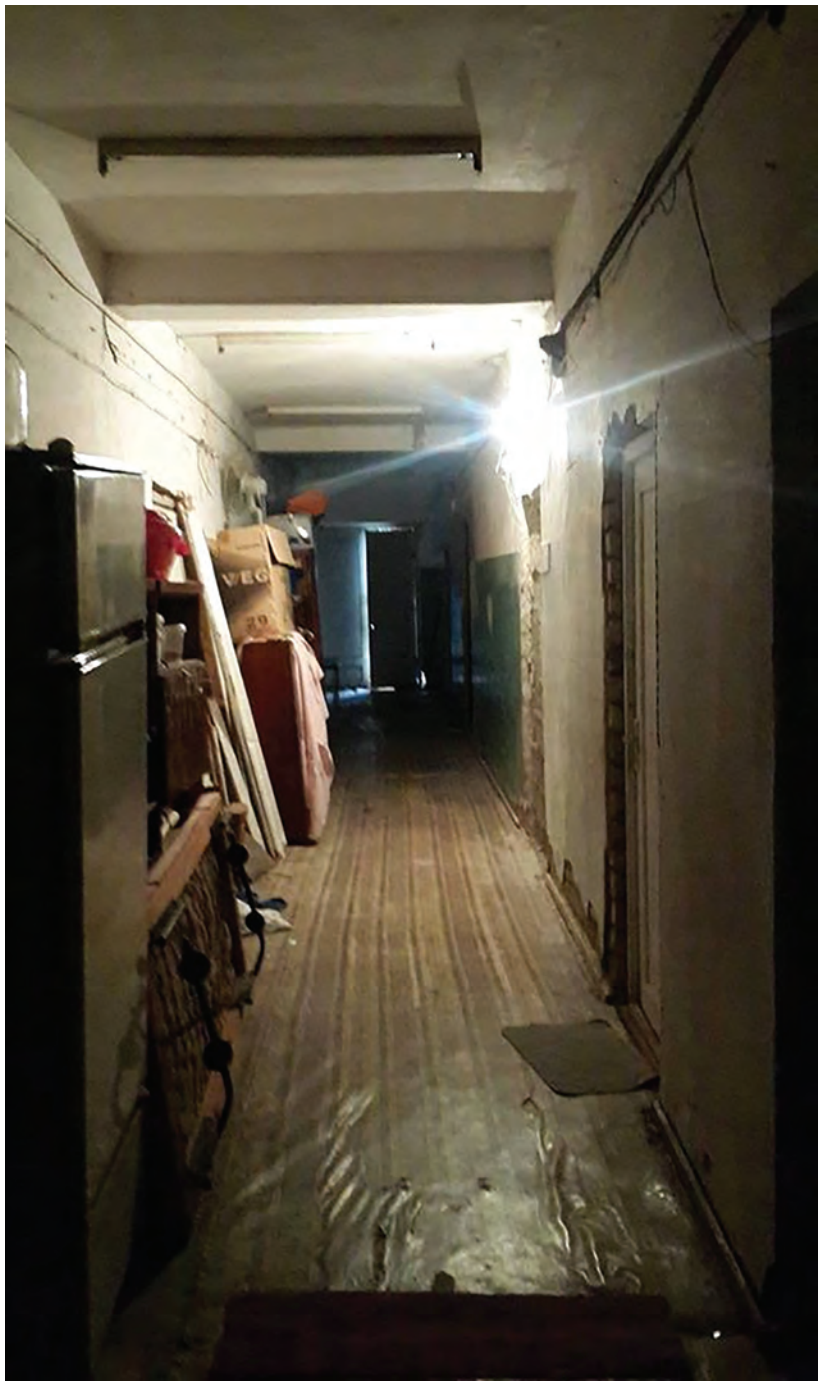
"COLLAPSING" COLLECTIVE CENTERS

Provision of 1 552 IDP families with long-term accommodation in 2016 is undoubtedly a great progress. 179 of these households had previously lived in extremely dangerous conditions exposed to life threats on a daily basis. However, dilapidating buildings that may IDPs still call a home remain of burning problems authorities have to address.

The findings of the monitoring suggest that in some residences living conditions are extremely poor. Among them is Hotel *Ushba, Hydrogeological Bureau* in village Dighomi, former pre-school facility N73 in Navtlukhi district, *Saktsigni* building at Kiziki Street 26, *Kikicha Enterprise* at Mevele street 5 and *Duzan* building at Iumashev street 21.

IDP communities residing in these buildings suffer from damaged roofs and broken sewage systems. Reports prepared by the staff at Levan Samkharauli National Forensics Bureau states that current condition of these buildings put their residents under risks.

The monitoring found that IDPs staying in cottages in Okrokana settlements live hard lives. Most of buildings are rundown with cracked walls and leaking roofs and without basic sanitary and hygienic conditions.



Village Digomi, 'Hydrogelogical Bureau'. 2016

Photo credit: Office of the Public Defender of Georgia

Village Digomi, 'Hydrological Bureau'. 2016

Photo credit: Office of the Public Defender of Georgia

Tbiisi, Hotel Ushba. 2016

Photo credit: Office of the Public Defender of Georgia

Tbilisi, Iumashev Street, JSC Duzani, 2016

Photo credit: Office of the Public Defender of Georgia

Okrokana, 'Okrokana Cottage'. 2016

Photo credit: Office of the Public Defender of Georgia

The following buildings are in an appalling situation: In Kutaisi: Base Mukhnari at Youth Avenue, 5th Lane, Sulkhan-Saba settlement, Kutaisi 99 Ltd at Mshenebeli Street, a former dispensary, the Learning Centre of Persons with Disabilities, culinary school, Hotel Tbilisi. In Bagdati: a former vocational-technical college. In Chiatura municipality: buildings of Jarbeli and spa Chiatura.

Bagdati, a former vocational-technical college, 2016

Photo credit: Office of the Public Defender of Georgia

The monitoring revealed that moving IDPs out of these building or completely rehabilitating these premises must be the Ministry's top priority for 2017. Postponement of these measures is very likely to lead to devastating results. People living in these pleases are exposed to life threatening danger on a daily basis.

As of today the MRA administratively 'closes' compact settlements when all IDPs are provided with a long-term accommodation. This process may take three forms:[1364]

1. Privatisation: a fully privatised compact settlement the maintenance of which is the responsibility of owners and condominiums

2. Vacation: IDPs are accommodated or temporarily moved to other places because of imminent threat as a result of potential or factual destruction of the building. The building is under the responsibility of either the Ministry of Economy and Sustainable Development or the municipality.[1365]

3. Vacation: IDPs, either at their own will or as a part of the MRA programme have been moved to other locations. However, the compact settlement is not demolished. The premises are under the responsibility of either the Ministry of Economy and Sustainable Development or a municipality.

After the compact settlement is administratively closed, the building is removed from the MRA's database while the Ministry of Economy and Sustainable Development of Georgia resumes responsibility.

It often happens that, even after the MRA administratively closes settlements in either of three manners, IDPs or other homeless/socially vulnerable people occupy buildings or continue living there even though they (IDPs) have been offered/accepted a temporary or long-term accommodation. In order to make a reference to such situation the MRA has coined a term 'partial closure'. As of today IDPs live in 23 of such buildings which they have occupied without permission.[1366] Therefore, it is recommended that the term 'closure' mean both – administratively and physically closed premises. An agency which is responsible for the building should ensure that it is protected from trespassing as they still pose considerable life and health danger.

CONCLUSION

The year of 2016 was not much different from that of 2015 with respect to the rights of IDPs. Even though the reporting period was marked with a long-term IDP accommodation projects, there are still 52 886 households who are in need of shelter. Issues related to the accommodation of IDPs living in dilapidated buildings remains a challenge. Moving IDPs out of these building or rehabilitating premises must be the Ministry's top priority for 2017. Postponement of these measures is very likely to lead to devastating results.

In addition to embarking on long-term accommodation projects the Ministry should continue to make serious effort to introduce needs based assistance following thorough and in-analysis of IDP's socio-economic conditions. Tackling actual needs of IDP communities through livelihood programmes requires a series of research and needs assessment as well as more effective management of the sector ensuring greater access of IDPs to basic services.

1364 Socio-economic profiling of compact settlements, accommodation of families and closure of prioirity building under a risk of demolition.

1365 Compact settlements are not the Ministry's property and it is responsible for them as long as IDPs live in these settlements. After IDPs are provided with a long-term accommodation compact settlements, in most cases settlements go back to either the Ministry of Economy and Sustainable Development or a municipality.

1366 Letter N01-02/08/32583 dated 29 December 2016 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

RECCOMENDATIONS

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia:

- Priorities the provision of housing for IDPs residing in "collapsing" and hazardous compact settlements within the frame of the long-term accommodation process for 2017.
- Ensure sustainability assessment of compact settlements by Levan Samkharauli National Forensics Bureau or upgrade existing reports.
- Provide both factual as well as legal grounds for rejection of a request for accommodation in a note of the session of the Commission for IDP Issues
- Provide information to municipalities on rehabilitation needs with regards to collective centres on their territories so that respective financial means are reflected in municipal budgets.
- Together with local municipalities and the Georgian Ministry of Economy and Sustainable Development develop a unified approach to a status of partially privatised collective centres and power of condominiums in these buildings
- Develop a comprehensive programme facilitating a transition to a needs based approach in partnership with civil society including IDP organisations, international organisations and other stakeholders.
- Take measures to raise awareness of IDPs on all issues concerning their rights.

RIGHTS OF CONFLICT-AFFECTED POPULATION

INTRODUCTION

2016 was consistently difficult for the conflict-affected communities residing both on Georgian-controlled and Russian-occupied territories. However, unlike the previous year, 2016 was marked by a series of murders, detentions and disappearances. Meanwhile, the futility of negotiations on these issues is a clear indication of the absence of effective cooperation between the interested parties. This, in turn, hinders investigation and the collection of facts about the situation on the ground.

Unresolved conflicts and the routine politicization of humanitarian issues severely affect children and youth. Detentions of children, including infants, and their parents on the Administrative Boundary Line (ABL) with Abkhazia have raised serious concerns. In 2016, the Public Defender of Georgia was informed about numerous cases involving inappropriate and degrading treatment—including verbal abuse and restriction of access to food and water—of detainees at Russian military bases.

Difficulties associated with access to the occupied territories by human rights watchdog organizations, coupled with a scarcity of international donors and non-governmental organizations able to contribute to capacity building in Abkhazian and Ossetian civil societies, further complicate the situation. This, in turn, negatively affects the rights of communities residing in the conflict-affected regions.

In spite of the fact that the Georgian authorities have no effective control over Abkhazia or South Ossetia, the Government still has responsibilities to use political, legal, and diplomatic instruments to improve the situation regarding the rights of conflict-affected communities. Therefore, the Public Defender of Georgia believes that state policy must maximize efforts to protect the rights and freedoms of communities living on the occupied territories and along the ABL, improve their social and economic standing, provide access to quality health and education services, and facilitate their inclusion in economic activities in Georgia. To achieve this goal, the Government should develop coordinated and flexible mechanisms at the legislative and administrative levels tailored to the needs of conflict-affected communities. The following chapters highlight important recommendations developed by the Public Defender in 2016.

RIGHTS OF THE COMMUNITIES RESIDING ALONG THE ABL

Socio-economic issues

The Office of the Public Defender regularly observes the situation regarding the rights of communities residing along the ABLs in Shida Kartli and Samegrelo, respectively. General observations suggest the situation remains

consistently difficult. In spite of a series of government-supported social and infrastructure projects, the local communities still suffer from the consequences of war. This goes especially for villages in Shida Kartli near the ABL which had been directly targeted by military actions in 2008. These communities have been further affected by the installation of barbed wire fencing since the war, restricting access to agricultural land and irrigation water which are critical for the livelihoods of local subsistence farmers. For example, according to information provided by the Kareli municipality Gamgeoba, all except for one out of 15 municipality villages along the ABL suffer from lack of access to irrigation water. Importantly, between 2014 and 2016 the problem was partially addressed in four villages.[1367]

In March 2016, Russian soldiers allegedly started implementing road works in the vicinity of the village of Jariasheni, Gori municipality. Local residents argued that the road cuts off 30-40 hectares of farmland, leaving 32 households with little or no access to their land. They also reported that the ABL has been moved forward 70 meters into Georgian-controlled territory. Although these lands can no longer be accessed by locals because of the occupation, local residents had continued to pasture cattle. Even that opportunity has been lost, however, due to road construction.[1368] Since the war, 60 families out of 138 residing in the village have lost access to their farmland.

In places where access to farmland and irrigation water are not problems, local communities complain about high costs of farming and of difficulties related to selling their products. A conversation with residents of Jariasheni revealed that fruit production is the major source of income for the villagers. However, they find it difficult to sell their harvest. They are also concerned with the poor quality of fertilizers, because of which they have to spray their orchards several times per year. That incurs additional costs and lowers the quality of the harvest. Moreover, although the gasification process had been completed, local residents still use firewood for heating; for which, they have to occasionally cut down their orchards.[1369]

The above suggests that income generation is the most pressing problem for the local population. In his parliamentary report from 2015, the Public Defender stated that the Interim Governmental Commission for Responding to the Needs of the Population Residing alongside the Diving Line (hereafter referred to as the "Governmental Commission") should consider implementing agriculture and entrepreneurship projects adjusted to local needs and capacities.[1370] However, as of today, the Governmental Commission has not held discussions about any such programs.[1371] It should be noted that in 2016 the LEPL Entrepreneurship Development Agency at the Georgian Ministry of Economy and Sustainable Development funded 147 beneficiaries from villages along the ABL as part of micro and small business programs, at a total sum of 655,649 GEL. However, in addition to being insufficient for effectively spurring entrepreneurship (an average of 4,460 GEL per beneficiary), the program is not designed to target conflict-affected communities.

The Public Defender welcomes the fact that 23 out of 57 villages along the ABL received the status of High Mountainous Settlement, a program expected to the improve social and economic standing of the respective communities.[1372] From 2014 to 2016, an additional 200 GEL to cover heating costs was allocated to registered customers in the villages where gasification had been completed, while in those places where the process is still ongoing, the same sum was allocated to households.[1373]

1367 Letter # 2646/17 dated 22 February 2017 of the Kareli municipality Gamgebeli.

1368 Visits of the Office of the Public Defender to Jariasheni in March 2016 and February 2017. Armed people shown up alongside the village of Jariasheni. InterpressNews. Available at: http://www.interpressnews.ge/en/archive/2016/3.html?day=12&enddate=2016-3-12 [Last accessed 15.02.2017].

1369 A visit of the Office of the Public Defender to Jariasheni on 16 February 2017.

1370 The situation of the Rights of the Conflict-affected Population in Georgia, Public Defender of Georgia, 2015. p. 6

1371 A draft progress report for 2016 of the Interim Governmental Commission for Responding to the Needs of Population Residing alongside the Division Line.

1372 The villages include: Ergneti, Ditsi, Kordi, Arbo, Mereti, Zardiaantkari, Gugutiantkari, Kirbali and Zemo Nikozi in Gori municipality; Satskhuri, Koda, Atotsi and Abano in Kareli municipality; Vake, Sakorintlo, Pantiani, Goraka, Bozhami, Tvaurebi and Kodistskaro in Kaspi municipality; Chorchana, Tsakhvli and Kobi in Khashuri municipality. Source: letter #515 dated 8 March 2017 of the Office of the State Minister for Reconciliation and Civic Equality.

1373 The number of beneficiaries of the gasification program residing along the ABL in Gori, Khashuri, Kaspi, Kareli, Sachkhere and Oni

Importantly, a series of activities were undertaken to improve access to higher education for communities living along the ABL. In 2016, high school students from areas of Samegrelo and Shida Kartli near the ABL participated in a vocational training program, while inclusive education was introduced to 25 schools in villages in the proximity of the ABL. For the 2016-2017 academic year, 166 students from such communities were awarded social grants to pursue higher education. In total, 846 students received funding by the first semester of the 2016-2017 academic year further to a decision made by the Governmental Commission.[1374]

The construction and rehabilitation of drinking water wells, irrigation systems, schools and public centers have also contributed to improved infrastructure, which, in turn, is vital for protecting the rights of local communities. The construction of an emergency medical center in the village of Tkviavi, Gori municipality, and a multi-profile university hospital in the village Rukhi in Zugdidi municipality are currently underway.

As for villages in the vicinity of the ABL in Samegrelo-Zemo Svaneti,[1375] residents of the village of Khurcha in Zugdidi municipality have reported improved access to certain services over the past three years. That includes gasification (completed in 2015), rehabilitation of a four-kilometer section of road leading to the village and construction of a kindergarten in 2015 with the joint support of the Japanese Embassy and Zugdidi municipality. Notably, children with disabilities are included among 29 students attending the kindergarten. As of today, the villagers also have access to emergency medical services, something which was not the case in the aftermath the 2008 war when ambulances would not enter the village due to security considerations. However, the local community still complains about delays in the provision of emergency services. Although there are two general medical practitioners serving the local population, the absence of an adequately-equipped primary healthcare center hampers the delivery of primary medical assistance.

The absence of a primary healthcare center is a problem for the community living in the village of Pakhulani, Tsalenjikha municipality, where the socio-economic situation is further aggravated by the absence of a bridge over the Olori River—which, if constructed, would connect several sections of the village (Lekuke and Kagaldi districts). As of today, dozens of households are cut off from the surrounding areas during flood conditions. The riverbanks also need to be reinforced to prevent the erosion of arable land. Construction of the bridge and reinforcement of the riverbanks are projected to foster economic development by ensuring access to heretofore uncultivated lands. As communicated by the local municipality to the Public Defender, because of insufficient public funds, the works are yet to be undertaken. [1376]

In 2015, the Office of the Public Defender examined the issue of a broken water system, which, according to local residents, denied half the population of the village access to clean, potable water. The Public Defender welcomes the initiative launched in 2016 by Tsalenjika municipality to rehabilitate watermains and pipes.[1377] In addition, the Municipal Development Fund supported by The World Bank completed a full rehabilitation, including street lighting, of a four-kilometer section of road leading from the village center to the ABL. The rehabilitated road will considerably improve the daily lives of local community members.

Poor electricity infrastructure and provision is an acute problem for residents of village Khurcha, which was underlined in the special report of the Public Defender.[1378] Further to a query from the Public Defender, the Ministry of Energy communicated that, as a result of rehabilitation work undertaken by Energo-pro Georgia, those customers who have agreed to move to the company's distribution network now enjoy unrestricted electricity provision.[1379]

municipalities totaled 11,891. Source: A draft progress report for 2016 of the Interim Governmental Commission for Responding to the Needs of the Population Residing alongside the Division Line.

1374 Letter 3614/17 dated 14 March 2017 of the Ministry of Education and Science.

1375 Detailed information pertaining to these villages is provided in the Public Defender's special report for 2016 on the rights of residents in the villages along the dividing line in Samegrelo-Zemo Svaneti. Available at: http://www.ombudsman.ge/uploads/other/3/3898.pdf.

1376 Letter #43 dated 12 January 2017 of the Tsalnejikha municipality Gamgebeli.

1377 Letter #43 dated 12 January 2017 of the Tsalnejikha municipality Gamgebeli.

1378 Special report of the Public Defender of Georgia for 2016 on the Human Rights Situation of Residents of Villages along the Dividing Line in Samegrelo-Zemo Svaneti. p.8.

1379 Letter #03/95 dated 9 January 2017 of the Ministry of Energy of Georgia.

The village of Ganmukhuri in Zugdidi municipality suffers from a lack of access to natural gas. The villagers reported that the construction of gas infrastructure in the village was suspended four years ago.[1380] According to information provided by the Zugdidi municipality Gamgebeli, gasification work will be resumed in the village in 2017.[1381] Zugdidi municipality allocated to socially vulnerable families three cubic meters of firewood or a sum in the amount of 100 GEL to cover heating costs, based on each family's vulnerability score.[1382]

Yet another problem highlighted by the Public Defender is the lack of responsiveness of the Governmental Commission to problems faced by communities living along the ABL in Samegrelo. These communities have been affected by the installation of barbed wire fencing. More specifically, the gasification process has not yet been completed in Ganmukhuri or Pakhulani, nor have local communities received winter assistance to cover heating costs. Municipal Gamgebelis have also been absent from discussions held by the Governmental Commission. In response to the Public Defender's recommendation that the ministries participating in the Governmental Commission provide 200-GEL vouchers for winter to the communities in Samegrelo along the ABL, in particular the villages of Khurcha, Ganmukhuri and Pakhulani, the Governmental Commission notified the Office of the Public Defender that the matter would be discussed at the Commission's upcoming session.[1383]

Property rights of conflict affected persons

Nine years after the war, the Public Defender is still regularly approached by citizens who have appealed to the authorities, to no avail, for compensation or for help rehabilitating residential buildings damaged by military actions. In addition, individuals still residing in damaged houses face risks of becoming homeless. This risk particularly affects individuals residing in the village Zardiaantkari, Gori municipality and village of Khurcha in Zugdidi municipality. The issue has been highlighted by the Public Defender in numerous reports (e.g. the reports for 2014 and 2015).[1384]

On 11 February 2016, the Public Defender received a letter (registered #1837/16) from G. Kh., a resident of the village of Chvrinisi, Kareli municipality. The house of G. Kh. was damaged as a result of military actions in 2008. In spite of the fact that since 2009 the claimant has repeatedly requested assistance from the local municipal Gamgeoba, there have not been sufficient funds available in the local budget for rehabilitation of the damaged property. On 7 July 2016, the Public Defender re-issued a recommendation (#01-7/7424) to the co-chairs of the Governmental Commission to review the case and allocate funds for the rehabilitation of G.Kh.'s house under an accelerated procedure.

However, the problem extends further than compensation for damage sustained as a result of the armed conflict in 2008. It also includes those affected by military conflicts in Abkhazia during the 1990s, who have long awaited due reimbursement. The Public Defender of Georgia closely studied the situation in the village of Khurcha, Zugdidi municipality, where the local community affected by three different instances of conflict (in 1992-1993, 1998 and 2008) have requested compensation to no avail. Local residents reported that in 2007 some households were reimbursed for damage sustained during the conflicts, while others did not receive any assistance at all.[1385]

1380 A statement of citizen T.Sh. #12459/16 of 26 September 2016.
1381 Letter #02/743 dated 14 February 2017 of the Zugdidi municipality Gamgebeli.
1382 Letter #02/743 dated 14 February 2017 of the Zugdidi municipality Gamgebeli.
1383 Letter #515 dated 6 March 2017 of the Office of the State Minister for Reconciliation and Civic Equality.
1384 For more information please refer to the special report of the Public Defender: Zardiaantkari: Consequences of War and Burden of Existence (2014). Available at: http://www.ombudsman.ge/uploads/other/2/2244.pdf ; the special report of the Public Defender for 2016 on the Human Rights Situation of Residents of Villages along the Dividing Line in Samegrelo-Zemo Svaneti. Available at: http://www.ombudsman.ge/uploads/other/3/3898.pdf
1385 See the special report of the Public Defender for 2016 on the Human Rights Situation of Residents of Villages along the Dividing Line in Samegrelo-Zemo Svaneti. Available at: http://www.ombudsman.ge/uploads/other/3/3898.pdf.

The Public Defender's Office is aware that local municipalities have already assessed the condition of houses damaged by war. Although cost estimates have been prepared, the requested sum is too large to be covered by local municipal budgets. As a response to respective recommendations, the Ministry of Infrastructure and Regional Development and the State Ministry of Reconciliation and State Equality notified the Office of the Public Defender that they have already started seeking financial assistance from potential donors. [1386]

As the condition of houses damaged during the war in 2008 worsen from year to year, the costs of rehabilitation increase. Moreover, because individuals and families living in such houses face the risk of being left homeless, the Public Defender recommends the Governmental Commission to allocate compensation money from the state budget.

The right to property is enshrined in Article 21 of the Constitution of Georgia and guaranteed by Article 1 of the first optional protocol to the European Convention on Human Rights. In addition, the right to adequate housing is recognized by a number of international conventions including the International Covenant on Economic, Social and Cultural Rights (Article 11). Importantly, the lack of available resources does not exempt the state from its obligation to protect the rights of its citizens to adequate housing guaranteed by the International Covenant on Economic, Social and Cultural Rights.

Land registration

Issues related to land registration, especially in the villages along the ABL, were highlighted in the Public Defender's parliamentary reports for 2014 and 2015. As early as 2014 the Public Defender's parliamentary report included a recommendation to the Ministry of Justice to accelerate the land registration process in villages along the ABL.[1387] Results of a pilot land registration process run by the National Agency of Public Registry in the village of Ditsi were highlighted in the Public Defender's report for 2015. The pilot research included recommendations on the need to legalize documents issued in violation of legal requirements, and *inter alia*, exempting the population residing near the ABL from land registration fees. Information about a draft law developed by the Ministry of Justice was released in the beginning of 2016, which envisaged simplification of the land registration process.[1388]

According to information provided by the National Agency of Public Registry,[1389] on 31 July 2016 the Law of Georgia on Improvement of Cadastral Data and the Procedure for Systemic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project took effect. The law simplified the process of registering property rights over land and made the process free of charge. Pursuant to the law, the National Agency of Public Registry can search for and obtain entitlement documents from various bodies using its own resources. In addition, it allows for the recognition by a relevant commission of property rights over a plot of land occupied illegally. Local municipalities have also been granted certain authorities. The law permits the use of a mediation mechanism to resolve disputes, as well as establishes a legal framework for the legalization of registration documents for agricultural land.

According to information provided by the National Agency of Public Registry, 287 applications from areas along the ABL (a 500-meter section) have been filed since the opening of registration on 1 August 2016. Of those applications, 204 have already been successfully approved and finalized, while proceedings are still ongoing with respect to the remaining 83 applications. However, existing legislation does not establish a special legal framework for applicants residing along the ABL, meaning that the established registration rule covers the whole territory of Georgia in a uniform manner.

1386 Letter #01/3895 dated 20 December 2016 of the Ministry of Regional Development and Infrastructure.
1387 The Human Rights Situation of the Conflict-affected Population in Georgia, Public Defender of Georgia, 2014, p. 61. Available at: http://www.ombudsman.ge/uploads/other/3/3387.pdf.
1388 The Situation of the Rights of Conflict-affected Population in Georgia, Public Defender of Georgia, 2015. p. 61. Available at: http://www.ombudsman.ge/uploads/other/3/3768.pdf.
1389 Letter #58143 dated 20 February 2017 of the National Agency of the Public Registry at the Ministry of Justice of Georgia.

The Public Defender welcomes initiatives of the Ministry of Justice to thoroughly analyze the problem and further improve relevant legislation. However, he believes that pressing problems resulting from the occupation require close attention and the local communities affected by the installation of barbed wire fencing should be able to register their lands as soon as possible under accelerated procedures. Therefore, the Public Defender considers the recommendation to be partially implemented.

Security problems

The rights of conflict-affected communities to private and family life, health, education, housing and property are violated on a regular basis, due mostly to restrictions imposed on local residents' ability to move freely across the ABL. Since 2009, border guards serving under the Russian Security Forces (FSB) have been in total control of the ABL demarcating Abkhazia and South Ossetia. Therefore, the Russian Federation must be held responsible for the above-mentioned violations.

Illegal detentions remain a key security challenge facing local communities. However, unlike in 2015, in 2016 cases of disappearance and killings further aggravated security issues along the ABL.

The murder of citizen G.O. at the Khurcha checkpoint in Zugdidi municipality on 19 May 2016 was a clear indication of the vulnerability of communities near the ABL. According to the information available to the Public Defender, G.O. was attempting to bring food through the Khurcha-Nabakevi checkpoint when he became engaged in an altercation with an Abkhazian border guard. The armed border guard followed G.O., who had already returned to Georgian-controlled territory, and fired at him several times, killing him. Soon after the incident, a video recorded by a CCTV camera was released to the public.

On 26 May 2016, N.S. disappeared from the village of Kordi, Gori municipality. His family reported that he had gone up to lock an irrigation water collector located near the ABL. Since then, N.S. has been missing without a trace.[1390]

These issues have been repeatedly raised at meetings of the Incident Prevention and Response Mechanism. However, lack of cooperation has hampered effective action and the apprehension of perpetrators.

The table below lists official statistics on detentions:

	2011	2012	2013	2014	2015	2016
Total number of detainees	224	300	532	517	504	327
Involving minors	7	8	16	14	22	21
Involving women	15	62	111	98	57	32

Source: State Security Agency of Georgia

Considering the inability of the Georgian central authorities to document each and every case of detention on the occupied territories, the statistics are therefore incomplete. When it comes to detentions at the ABL with Abkhazia, the official statistics available to the State Security Agency reportedly constitute only 5-10% of the total number of detentions.

Since 2014, the Public Defender of Georgia has regularly raised questions related to Georgian, Abkhazian and Ossetian prisoners, with a special report dedicated to this issue.[1391] The report included the Public Defender's

1390 Information provided to the Public Defender's Office on 16 February 2017. 'State Security Agency reports that Nika Saghirashvili is not kept in Tskhinvali detention facility', Trialeti. Available at: https://www.youtube.com/watch?v=NwFSKT0sTQo [Last accessed 15.02.2017].

1391 A special bulletin of the Public Defender on Detentions across the Dividing Line and Situation of Prisoners, 2014. Available in Georgian at: http://www.ombudsman.ge/uploads/other/1/1771.pdf [Last accessed 24.02.17].

recommendation that all parties to the negotiations "find ways to release detainees and prisoners possibly release 'all for all', amnesty or pardon."

On 10 March 2016, information about an agreement between the Georgian Government and de-facto Abkhazian and Ossetian authorities for an all-for-all release of prisoners was released to the public. Overall, 18 prisoners had been released, including four by the Georgian side, 10 by the *de facto* government in Sukhumi, and four by the *de facto* government in Tskhinvali. The Public Defender released a special statement and welcomed a dialogue launched by Georgia and the *de facto* authorities about prisoners' issues. He also called on the parties to reach consensus on a mechanism to prevent detentions along the ABL and to effectively protect the rights and security of local communities.[1392]

However, it should be noted that a prisoner, G.L., serving a 20-year sentence in Abkhazia, was not included in the prisoner exchange. Another citizen of Georgia, G.G., was detained near the ABL in Shida Kartli in June 2016 and sentenced to 20 years' imprisonment by a *de facto* court in Tskhinvali.[1393] The Georgian authorities have repeatedly raised the issue of their release for more than six months, but to no avail. Keeping both prisoners in illegal detention threatens the success of the prisoner release agreement reached by the parties. Protection of freedom of movement on both sides of the ABL is of crucial importance and requires an end to the practice of illegal detention.

Although anyone, regardless of sex or age, can be detained, the practice more severely affects the rights of women and children. This is particularly true in Gali district, where detainees are often released in the late hours without any public transport to take them to their places of their residence, thus exposing them to danger.

UN Security Council Resolution 1325 (2000) on Women, Peace and Security highlights the importance of considering the special needs of women in negotiations between conflicting parties. However, the equal participation of women in conflict resolution mechanisms and the full consideration of their needs in negotiations remains a problem on the entirety of Georgia's territory.

Women are underrepresented in two official dialogue formats – the Geneva International Discussions (GID) and the Incident Prevention and Response Mechanism (IPRM). The number of women included in the ten-member Georgian delegation to the Geneva International Discussions has ranged from three to four, while from the five members of the Abkhazian and Ossetian delegation, only one woman is included. One or two women participate in the IPRM meetings on behalf of Georgia (the delegation usually consists of six members) while there are usually no women among the Abkhazian and Ossetian participants. Media reports and images show that even when there are female participants at the IPRM, they are seated at the back of the room rather than at the negotiating table. Furthermore, meeting agendas do not include discussion items on the special needs of women.

RIGHTS OF INDIVIDUALS RESIDING ON THE OCCUPIED TERRITORIES

The right to the healthcare on the occupied territories

Poor health services and underdeveloped infrastructure, low level of qualification of medical staff, high medical costs and restrictions on movement across the ABL are all factors that negatively affect the health status of local communities and their access to healthcare at an acceptable standard.

1392 'Public Defender welcomes the release of prisoners in the conflict zone'. 10 March 2016. Available at: http://www.ombudsman.ge/en/news/public-defender-welcomes-release-of-prisoners-in-conflict-zone.page [Last accessed 24.02.17]

1393 The Public Defender also released a statement calling on the Georgian authorities as well as South Ossetian *de facto* bodies to take effective measures for G.G.'s release. 'A statement of the Public Defender on Detainees on the Dividing Line', 7 February 2017. Available in Georgian at: http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-gamyof-xazze-dakavebulebtan-dakavshirebit.page [Last accessed 15.02.2017].

Abkhazia's medical facilities suffer from a lack of qualified specialists, damaged infrastructure and inadequate equipment. For instance, in 2016, Abkhazian media reported on disorder in maternity hospitals and the deaths of infants and newborns.[1394] When tested for bacteria and infection, some of the samples taken from Abkhazian hospitals turned up positive.[1395]

Conditions in healthcare facilities in Gali District are particularly severe. The district has no neonatal care service, and the absence of obstetricians and gynecologists exposes newborns to life-threatening conditions. The situation is further complicated by the absence of a children's emergency unit in Zugdidi, which means that children in need of intensive care need to be transported to Kutaisi. Considering the fact that there is no children's emergency transportation available in Kutaisi, the delivery of medical services may be considerably delayed while one waits for transport to arrive from Kutaisi or Tbilisi.

According to the information released by the Ministry of Health of Abkhazia in exile, the lack of sanitary and anti-epidemic control procedures exposes residents of Gali district to infectious diseases. Tuberculosis and cancer are prevalent in the district, while the lack of specialized treatment facilities hampers timely and effective treatment. Drug addiction and suicide are also prevalent among youth.[1396]

In addition, the Public Defender believes that the lack of training and retraining programs for medical professionals is also a problem. According to the information provided by the Georgian Ministry of Labor, Health and Social Affairs, medical staff in the village of Saberio in Gali district have not participated in any retraining programs since 2014.[1397] More specifically, medical practitioners working for Gali's emergency medical service are yet to participate in a retraining program launched in 2016 for all emergency medical workers throughout the country.[1398]

The Public Defender is deeply concerned with the fact that around 10,000 residents of the so-called Upper Gali zone had no access to emergency medical service for a span of three months, from December 2016 to 10 March 2017. A UAZ ambulance vehicle which was donated to the local service in 2002 broke down in December 2016 without any possibility of repair.[1399] According to a letter from the Georgian Ministry of Labor, Health and Social Affairs, the Ministry plans to include a relevant line in the state budget for 2017 that would remedy the problem.[1400]

The Public Defender has raised the issue of including residents of the occupied territories in the State Referral Program numerous times over many years. In his parliamentary reports for 2014 and 2015, the Public Defender called on the Prime Minister of Georgia to develop a relevant mechanism to ensure the inclusion of residents of the occupied territories in the State Referral Program. Sadly, the recommendation remains unfulfilled and the unresolved problem continues to severely affect conflict-affected communities.

International organizations such as World Vision and the UN Children's Fund have contributed greatly to improving healthcare provision for children, particularly in Abkhazia. These organizations have donated medical equipment and materials to medical facilities, supported children's vaccinations and provided training for doctors, nurses and psychologists.[1401]

1394 'What is going on in Sukhumi maternity hospital?' Vitali Sharia, 26 October, 2016, Radio 'Ekho Kavkaza'. Available in Russian at: http://www.ekhokavkaza.com/a/28076804.html [Last accessed 16.11.2016]; 'Sukhumi maternity hospital in pictures', 15.11.2016, 'Nuzhnaya Gazeta'. Available in Russian at: https://abh-n.ru/suxumskij-roddom-v-kartinkax-slabonervnym-ne-smotret/ [Last accessed 24.02.2017].

1395 For more information, see the Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions for 2016. p.14. Available at: http://www.ombudsman.ge/uploads/other/4/4319.pdf.

1396 A speech delivered by the Minister of Health and Social Affairs of the Abkhazian Autonomous Republic to the Parliamentary Committee for Health and Social Affairs on 6 February 2017.

1397 Letter 1955/17 dated 9 February 2017 of the Ministry of Labor, Health and Social Affairs.

1398 Information provided to the Public Defender's Office by a source in January 2017.

1399 Information provided to the Public Defender's Office by a source in January 2017.

1400 Letter 1955/17 dated 9 February 2017 of the Ministry of Labor, Health and Social Affairs.

1401 Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions, 2016, p.14.

Conditions of persons with disabilities residing in the occupied territories beg close attention. Although the Georgian authorities offer certain social and healthcare programs to persons with disabilities, often the latter are not able to cross the ABL in order to access these services. International NGOs and organizations (including World Vision and UNICEF) have been supporting three rehabilitation centers for children in Abkhazia—at Ochamchire, Tkvarcheli and Gali, respectively. The centers provide beneficiaries with physiotherapy, psychological support, speech therapy and other services. There is also a rehabilitation center in Sukhumi that was built in 2015 and supported by the Russian Federation.[1402] However, the lack of medical-hygienic means and adequate equipment as well as the general scarcity and poor quality of rehabilitation services remain challenges in the region.[1403]

Restrictions on the movement of patients across the ABL was particularly challenging in 2016. Since the movement of ambulances across the Enguri bridge was banned by the Abkhazian *de facto* administration in 2011, patients are often forced to take bypass routes in order to cross the ABL. From 8 PM to 7 AM each day the checkpoint is closed and, therefore, patients must use the EUMM-operated hotline or get consent from the Gali security service in order to cross the ABL. If the relevant persons cannot be contacted, taking a bypass route or paying a bribe remain the only means of crossing the ABL.[1404]

Gali residents who have no proper documents as well as those from elsewhere in Abkhazia who don't hold a special permit also have to take a bypass, meaning in some cases they have to stay in a nearby village for several days waiting for suitable time to cross over to the Georgian-controlled side. Therefore, because of restrictions on movement, patients, including minors, suffer the consequences of delayed treatment.

As for South Ossetia, recent years have seen several hospitals rehabilitated and refurbished. However, these hospitals tend to be used only for primary medical purposes by local residents because of a lack of qualified medical personnel. For instance, unofficial data suggest that 99% of women in South Ossetia prefer to travel to Vladikavkaz to deliver babies.[1405] In addition to offering better conditions and medical equipment, the Russian Federation provides financial aid for every newborn.

Because the ABL with South Ossetia is completely closed (except for at Akhalgori district[1406]), patients requiring emergency medical attention are transferred to medical facilities on the Georgian-controlled territory with the support of the International Committee of the Red Cross. However, the Public Defender is aware of several cases of death of patients because of delayed consent by the Tskhinvali hospital management and the *de facto* authorities.[1407] For pre-planned examinations and treatment, South Ossetians often enter Georgia through the Upper Larsi checkpoint (Georgia-Russia border), taking a route which is 8-10 hours longer.

The prevalence of incidents involving domestic violence in Abkhazia and South Ossetia remain high. Although there are no accurate statistics on incidents of domestic violence, a Gali based non-governmental organization reported that there were 107 cases of domestic violence in Ochamchire, Tkvarcheli and Gali districts in 2016.[1408] In addition to the failure of law enforcement agencies to effectively respond to such incidents, the situation is further aggravated by the absence of shelters and crisis centers to provide temporary safe shelter to victims of domestic violence. Nor is there a shelter for domestic violence victims in Zugdidi, which would be the nearest location to seek shelter for those who cross the ABL from Abkhazia. Domestic violence also represents an acute problem in South Ossetia, where local police have been ineffective in dealing with domestic violence cases. This problem was also highlighted in the Public Defender's parliamentary report for 2015.[1409]

1402 Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions, p.21.
1403 A speech delivered by the Minister of Health and Social Affairs of the Abkhazian Autonomous Republic to the Parliamentary Committee for Health and Social Affairs on 6 February 2017.
1404 Information provided to the Public Defender's Office by a source in November-December 2016.
1405 Information provided to the Public Defender's Office by a source in November 2016.
1406 A checkpoint at Akhmaji-Mosabruni in Akhalgori district is used by only residents of Akhalgori while the local population of Znauri, Java and Tskhinvali cannot access it.
1407 2016 Information provided to the Public Defender's Office by patients' family members, 2016.
1408 Information provided to the Public Defender's Office in March 2017.
1409 The Human Rights Situation of the Conflict-affected Population in Georgia, 2015, p.72. For more information on domestic violence on

In addition, in the beginning of 2016, the Public Defender proposed the Prime Minister to amend Article 2 of Resolution #169 of the Government of Georgia issued on 20 April 2015 on the *State Program for Provision of Measures under the First Stage of Hepatitis C Management*, which identifies individuals with Georgian ID documents as beneficiaries of the program. The Public Defender recommended that persons holding neutral ID documents also be able to benefit from the program.

An initial letter from the Ministry of Labor, Health and Social Affairs suggested that such an amendment could not be made, because of the program's security requirements. Medicaments are donated free of charge to the Georgian authorities from a pharmaceutical company.[1410] However, the Public Defender's Office received a letter from the Prime Minister's Office informing him that an agreement had been reached between the Ministry Labor, Health and Social Affairs and the pharmaceutical company Gilead to include holders of neutral document in the program. At the time of receipt of the letter, the relevant bodies were elaborating relevant legal documents.[1411]

Early in 2017 the Public Defender requested a progress report from the Ministry of Labor, Health and Social Affairs and was subsequently notified that negotiations were ongoing with the Ministry of Justice to ensure the inclusion of neutral document holders in the State Program for the Elimination of Hepatitis C.[1412] The Public Defender of Georgia welcomes implementation of the recommendation by the Government.

Documentation and freedom of movement

Issues related to the documentation of Gali residents have remained unsettled for many years. This causes serious problems with respect to freedom of movement and property and social rights. In spite of a decision made by the Abkhazian *de facto* authorities to issue resident permits to Gali residents who hold Georgian citizenship,[1413] as of 1 March 2017 the process of issuing resident permits had not yet been launched. In his parliamentary reports for 2014 and 2015, the Public Defender highlighted a series of problems related to the ambiguity of criteria for issuing resident permits. That ambiguity creates a sizeable space for interpretation which, in the Public Defender's view, can create barriers for Gali communities.[1414]

Since June 2016, the authorities have issued Form N9 to Gali residents for the purpose of crossing the ABL. Issuance of the document has benefited those who have to regularly commute across the ABL. International organizations believe that the number of such documents issued in Sukhumi may amount to 12,000.[1415] Information available to the Public Defender suggests that Gali residents need to first obtain five or six other documents in order to obtain Form N9,[1416] in addition to, in many cases, making an additional payment or bribe. The Office of the Public Defender learned that one Gali resident had to pay 8,000 Russian rubles (approximately 300 GEL) to acquire a Form N9.[1417] For these reasons, most local residents cannot afford to obtain a Form N9 and instead have to take a bypass route to cross the ABL.

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the occupied territories, see the Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions, 2017. p.5-7.

1410 Letter #01/13196 dated 18 February 2016 of the Ministry of Labor, Health and Social Affairs of Georgia.

1411 Letter #01/38169 dated 17 May 2016 of the Ministry of Labor, Health and Social Affairs of Georgia.

1412 Letter #01/8698 dated 14 February 2017 of the Ministry of Labor, Health and Social Affairs of Georgia.

1413 'Legal status of the Eastern Abkhazia residents is going to be regulated', 29.12.2006, 'Nuzhnaya Gazeta'. Available in Russian at: https://abh-n.ru/pravovoe-polozhenie-zhitelej-vostochnyx-rajonov-abxazii-budet-uregulirovano/ [Last accessed 26.02.2017]. See The Human Rights Situation of the Conflict-affected Population in Georgia, 2015. Public Defender of Georgia. 2015, p.17.

1414 Ibid.

1415 Information provided to the Public Defender's Office by the UNHCR Regional Representative in the South Caucasus, 28 February 2017.

1416 The following documents are required for the issuance of Form N9: 1) a certificate from the place of residence, names and surnames of family members, extract from a Residents Book; 2) Form A issued by a village administration to indicate the period of time the applicant has lived on the indicated territory; 3) a certificate from a place of work or education institution; 4) a birth certificate (if the certificate is Georgian, a notary certified translation as well as copies of the parents' passports must be enclosed. If the parents are deceased, death certificates are also required); 5) certificate of marriage (if the certificate is Georgian, a notary certified translation and a copy of the spouse's passport must also be enclosed; 6) permission from the Security Service; 7) a certificate from a conscription service (required only for men); and 8) a receipt of payment.

1417 Information provided to the Public Defender of Georgia by a Gali resident, 10 February 2017.

This factor contributes to the high number of detentions, which has remained a problem for many years. According to data released by the Border Protection Service of the Russian Federation, the number of detentions on the Abkhazian ABL totaled 14,000 between 2009 and 2016.[1418]

The situation is likely to be further complicated as checkpoints opened in 2013 will reportedly be closed. The Abkhazian *de facto* authorities have on numerous occasions pledged to shut down all checkpoints on the ABL except for the checkpoint on the Enguri river. One checkpoint (Shamgona-Tagiloni) was shut down in April 2016, followed by closure of the Khurcha-Nabakevi and Orsantia-Otobaia checkpoints on 4 March 2017. In lieu of that, the *de facto* authorities provide a special bus service to the Enguri checkpoint to Gali residents.[1419] In an act of protest, residents of the village of Nabakevi in Gali district organized a rally on 25 January 2017. That was soon followed by a meeting of local residents with the representatives of local authorities and the security services. The protests ended. However, the decision to close the checkpoints went forward.[1420]

In addition to the fact that villages in so-called Upper and Lower Gali are located far from the Enguri River crossing, poor infrastructure creates additional problems for local residents to get to the crossing. Maintaining only one functioning checkpoint at the Enguri River crossing is likely to add to the financial burdens of local communities, increase commute times and contribute to the further isolation of communities in Gali. It is assumed that closure of the checkpoints will result in an increased number of detentions, as the local residents will be forced to use bypass routes.[1421]

It should be underlined that until recently those detained and charged for "illegal crossing of the border" were released after paying 1,200 Russian rubles (approximately 60 GEL). However, as a result of a legislative amendment enacted by the *de facto* Parliament of Abkhazia of 18 January 2017, the fine payable for "violation of the border" will further increase to 4,800-6,000 rubles (approximately 215-270 GEL), while repeated violations during a single year will entail 15 days' administrative imprisonment.[1422] Undoubtedly, this regulation will negatively affect the rights of those who routinely cross the ABL.

The problems related to movement across the ABL are coupled with the difficulties of internal movement. Russian Federation guards serving at checkpoints opened in December 2016 in Gali thoroughly check the documents (Form N9 or an Abkhazian passport) of residents commuting between villages. For instance, a resident of a village in Upper Gali cannot commute to a village in the Lower Zone without a permit, and vice versa. As for residents of other regions of Abkhazia, they too must produce a special permit upon entering a so-called "border zone" (Gali). Such severe restrictions will create additional problems for those residents who lack some or all of the necessary documents.

As for detentions on the ABL with South Ossetia, there were no major changes to established procedures in 2016. The ABL remains closed for local communities except for one checkpoint in Akhalgori district. According to information provided by the Georgian State Security Agency, 134 individuals were detained on the ABL in 2016, including 14 women and eight minors (in 2015, the number of detentions amounted to 163,

1418 'Border Protection section of Russia's Federal Security Service celebrates the 7th anniversary in Abkhazia'. 29 April 2016. Apsnypress. Available in Russian at: http://www.apsnypress.info/news/pogranupravlenie-fsb-rossii-v-abkhazii-prazdnuet-sedmuyu-godovshchinu-so-dnya-obrazovaniya/ [Last accessed 24.02.2017].

1419 'Two more checkpoints to shut down at the Enguri border', 28 December 2016, Apsnypress. Available in Russian at: http://apsnypress.info/news/zakryvayutsya-eshche-dva-punkta-propuska-na-granitse-po-reke-ingur [24.02.2017]; 'Abkhazian cabinet of ministers releases its resolution', 24 January 2017. Apsnypress. Available in Russian at: http://www.apsnypress.info/documents/vneseny-izmeneniya-v-postanovlenie-kabmina-abkhazii-ob-ustanovlenii-punktov-propuska-cherez-gosudars/ [Last accessed 24.02.2017].

1420 'Gali residents protest crossing point closure', 17 January 2017, 'Civil Georgia'. Available at: http://www.civil.ge/eng/article.php?id=29810&search= [Last accessed 24.02.2017].

1421 The Public Defender of Georgia responded to the initiative of the *de facto* authorities by stating that 'this is yet another step backward from respecting and protecting the rights of the local population. The closure of a crossing point restricts the freedom of movement of Gali residents and exposes them to problems in healthcare, education, trade, family unification and other directions'. *The Public Defender comments on announced closure of the crossing point on the Dividing Line of Abkhazia.* 6 January 2017, Available in Georgian at: http://www.ombudsman.ge/ge/news/saxalxo-damcveli-afxazetis-gamyof-xazze-gamshvebi-punqtebis-shesadzlo-gauqmebas-exmaureba.page.

1422 'Fine for illegal crossing of the Abkhazian border has increased'. 19 January 2017, 'Kavkazski Uzel'. Available in Russian at: http://www.kavkaz-uzel.eu/articles/296198/ [Last accessed 24.02.2017].

including 18 women and seven minors).[1423] Most detainees were residents of villages in the vicinity of the ABL on the Georgian-controlled sign.

Data released by the *de facto* South Ossetian authorities suggests that in 2016, 549 individuals were detained for "violation of border regime."[1424] The difference in the respective numbers of detainees is accounted for by residents of South Ossetia who were detained while trying to cross into Georgian-controlled territory.

As for the case of Akhalgori, members of the local population still need a permit in order to cross over to Akhalgori and back. However, the issuance of such permits is often problematic. Limited working hours at the checkpoint (7 AM to 9 PM) create an additional barrier for the local communities. In addition, the checkpoint is completely closed on holidays and during political events (e.g. elections). The Public Defender learned that on 30 December 2016—while the checkpoint was closed for the New Year—a fatal case occurred: a 73-year old man diagnosed with a stroke had to wait in an ambulance while a permit could be issued. The patient, who was unconscious, was transferred to a hospital in Tbilisi where he died shortly thereafter.[1425]

The local communities have been long concerned about the fact that they are unable to invite friends and family members living on Georgian-controlled territory to Akhalgori. At the end of 2015, 10 individuals were on a special list granting permission to commute from Georgian-controlled territory to attend weddings or funerals in Akhalgori. However, that is no longer the case: a total ban took effect in January 2016.[1426]

Rights of Children

In Georgian, Abkhazian and South Ossetian societies, children are traditionally perceived as inferior. These societies often ignore children and justify abusive treatment of them. Tradition restricts children from publicly expressing opinions, whether within the family, school or wider public. Consequently, violation of the rights of children are rarely identified or even recognized. Abuse of children and violation of their rights fails to receive public attention, even though there have been some grave cases.

Protection of children's rights in conflict-affected regions is carried out by local and international organizations. However, these efforts are limited to small initiatives. Interventions undertaken by international organizations such as UN's Children Fund (UNICEF) and World Vision are mostly devoted to projects built on issues related to access to healthcare, awareness raising and capacity building. By contrast, local civil society organizations focus mostly on charity, cultural and sports events.

General assessments by local and international actors suggest that the situation regarding the rights of children is broadly similar in Abkhazia and South Ossetia as it is in the rest of Georgia. Common problems include child poverty, violence against children, an insufficient number of pre-school education facilities and care institutions for children with disabilities and a lack of financial resources. Moreover, inconsistent or non-existent public policies for the protection and support of children remains one of the most serious challenges facing the conflict-affected regions.

The Public Defender's special report on the rights of children and women living on the occupied territories deals with how the pernicious legacy of armed confrontation, unresolved conflict and politicized humanitarian issues affects children, including teens.[1427] Children's health is systematically exposed to threats because of restrictions on movement across the ABL. Children seeking medical treatment often have to be transported

1423 Letter #1494/17 dated 2 February 2017 of the Georgian State Security Agency.
1424 'South Ossetian Authorities have evicted a border violator from Georgia', 28 December 2016. 'Sputnik Osetia'. Available in Russian at: http://sputnik-ossetia.ru/South_Ossetia/20161228/3522804.html [Last accessed 24.02.2017].
1425 Information provided by a source, 20 January 2016.
1426 'Neither death, nor marriage', Murat Gukemukhov, Radio 'Ekho Kavkaza'. 05.02.2016. Available in Russian at: http://www.ekhokavkaza.com/content/article/27534878.html [Last accessed 02.03.2016].
1427 Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions, 2016.

via bypass routes which require spending two to three days in a village near the ABL waiting for an appropriate moment to cross (when Russian border guards are not in the vicinity). Gali residents in particular claim there have been hundreds of such cases.[1428]

Document-related issues severely affect children because, if neither parent holds an Abkhazian passport, the child is not eligible to receive a birth certificate and, therefore, identification documents. The problem is further exacerbated by the fact that, without identification documents, local community members cannot cross to the Georgian-controlled side to obtain documents confirming their Georgian citizenship. For these reasons, there are many children in Gali, Ochamchire and Tkvarcheli districts holding neither Abkhazian nor Georgian documents. As a result of this situation, in many instances children cannot register at pre-school and general education institutions. This is a breach of one's right to education. Moreover, these individuals are unable to benefit from small allowances and healthcare services provided by the Government of Georgia to Georgian citizens and internally-displaced persons.

Persons with disabilities are particularly affected by these limitations as they have limited capacity to cross the ABL to the Georgian-controlled side to obtain proper documents.

The Public Defender is deeply concerned with the detention of children, including infants, and their parents. In addition, children detained by Russian border guards are subject to inappropriate and degrading treatment at Russian military bases. Such treatment involves verbal abuse, limited access to food and drinking water and other abuses.[1429]

Eye-witness accounts provided by detained citizens to the Public Defender's Office describe poor conditions in the holding cells of Russian military bases in Gali. Detainees are not provided with water or food, and dozens are placed in the same room regardless of sex and age.

Restriction of the right of children to free movement across the ABL also violates their right to health and education, as attending school is one of main reasons for which children have to cross the ABL. In addition, according to Article 37 of the UN Convention on the Rights of the Child, no child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment. Pursuant to the same article, the arrest, detention or imprisonment of a child should be used only as a measure of last resort. With respect to children in Gali, detentions are mostly used to secure the payment of fines by family members.

The right to education in one's native language as well as access to quality education remain grave problems facing communities in Gali district. The issue was highlighted in the Public Defender's parliamentary reports for 2014 and 2015.[1430] In his parliamentary report for 2015, the Public Defender appealed to members of delegations representing the parties to the Geneva International Discussions to use all legal, political and diplomatic mechanisms to protect the rights of Gali communities and to raise awareness in the international community.

Based on information provided by the Georgian Ministry of Foreign Affairs,[1431] issues related to the right to receive education in one's native language—as such issues affect Gali communities—are routinely raised by the second working group under the Geneva International Discussions, which is devoted to humanitarian affairs. These issues are also highlighted in reports on human rights on the occupied territories which are released by the Ministry of Foreign Affairs on a quarterly basis. Regrettably, despite consistent efforts by the Ministry of Foreign Affairs, the situation is unchanged. Moreover, no agreement been achieved on a program or mechanism which would be acceptable to Gali residents.

1428 Interviews conducted by representatives of the Public Defender's Office in November 2016.

1429 For more information on specific cases see the Special Report of the Public Defender of Georgia on the Rights of Women and Children in Conflict-affected Regions for 2016. p.14. Available at: http://www.ombudsman.ge/uploads/other/4/4319.pdf

1430 For more information see the special report of the Public Defender of Georgia on The Right to Education in the Gali District: New Developments and Challenges in the Academic year of 2015-2016. Available at: http://www.ombudsman.ge/uploads/other/3/3363.pdf.

1431 Letter #01/2223 dated 23 January 2017 of the Ministry of Foreign Affairs of Georgia.

The Georgian Ministry of Education and Science has also supported educational processes on the occupied territories. However, in order to effectively address gaps in the sphere of education, it is important that the number of informal education programs for school students residing on the occupied territories be increased. In addition, measures must be taken to strengthen material support for teachers.

Early marriage is a problem for young girls residing on the occupied territories. As law enforcement agencies often choose to not respond to early marriage cases, justice rests within families. In many instances, family members themselves agree to early marriage. Even when it comes to domestic violence, in most cases families refuse to accept their daughters back into the home, believing it to be a smear to their honor. The Public Defender is aware of 11 cases of early marriage among girls occurring over the past three years in Gali (by 2016, the total number of school children in Gali totaled 4,363), including one case in which both spouses were minors.[1432] An Abkhazian NGO reported 23 cases of early marriage among communities in Ochamchire, Tkvarcheli and Gali in 2016.[1433] It can be assumed that the practice of early marriage is equally common throughout Abkhazia, South Ossetia and the rest of Georgia.[1434] However, the Public Defender's Office has no access to accurate information which would allow it to produce a comprehensive picture.

REVIEW OF THE LAW ON OCCUPIED TERRITORIES AND RELEVANT RECOMMENDATIONS

In the fall of 2016, the 9th Parliament of Georgia resumed review of a draft law on "Amending the Law of Georgia on the Occupied Territories." The law was passed in its first reading by the 8th Parliament in May 2013. The Public Defender of Georgia dedicated a special report to the parliamentary discussions and submitted his opinions with respect to restrictions stipulated by the law which hamper the realization of human rights.[1435]

Illegal Entry to the Occupied Territories

In May 2013, the Georgian Parliament passed on the first reading the bill, "On Amendments to the Law on Occupied Territories" (hereinafter referred to as the "Amendments"). Submitted by the Government, the Amendments altered Article 4 of the Law on Occupied Territories regulating entry into the occupied territories. Further to the Amendments, first-time violation of the rule against entering the occupied territories from outside the territory of Georgia is no longer treated as a criminal offense; rather, it is now treated as an administrative offense. The same action committed on a repeat basis is deemed a criminal offense; however, rather than subject to confinement, the guilty party is punishable by a fine of 400 GEL. Parliament resumed consideration of the Amendments in late 2016.

The Public Defender believes that illegal entry to the occupied territories should be subject to administrative sanctions only. Therefore, he approves of the Government's draft law envisaging the issuance of special permits after entering the occupied territories and calls for simplified procedures for international organizations and their representatives.

1432 Information provided by the Gali Resource Center. 13.12.2016.
1433 Information provided to the Public Defender's Office. 2016.
1434 See a special report of the Public Defender of Georgia, On Early Marriage: Challenges and Solutions, 2016. Available at: https://www.ombudsman.ge/uploads/other/3/3488.pdf.
1435 For more information see the special report of the Public Defender Analysis and Recommendations regarding the Law on Occupied Territories, 2017. Available at: http://www.ombudsman.ge/uploads/other/4/4316.pdf [24.02.17].

Economic Activities on the Occupied Territories

Through the Law on Occupied Territories, Georgia limits nearly all economic activities on the occupied territories that bypass the regulations of the Government of Georgia, and considers any such activity to be a criminal offense. This applies not only to foreign citizens and foreign investments, but also to economic activities carried out by Georgian companies and citizens. Although the Law on Occupied Territories allows for the possibility of issuing a special permit, the number of activities to which the Government has given consent is relatively small.

In order to ensure greater engagement of the communities on the occupied territories in the economic activities of the rest of Georgia—as well as to create an environment enabling these communities to benefit from Georgia's political and economic integration with the EU—the Public Defender believes the Government should develop flexible legal and logistical mechanisms, including a revised tax regime, and allocate financial resources to allow local entrepreneurs and micro and small businesses operating on the occupied territories to develop economic and trade relations with businesses and entrepreneurs operating on the other side of the administrative boundary line, with the purpose of carrying out joint economic activities. In addition, procedures regarding responsibility and permission should be revised for local healthcare and educational organizations and institutions delivering medical services and educational programs to persons living on the occupied territories.

Documents Issued on the Occupied Territories

The Public Defender believes that residents of the occupied territories should be made able to obtain Georgian citizenship documents and other legally-valid documents in a simplified manner. Therefore, the Government of Georgia should discuss the possibility of accepting documents issued by the *de facto* authorities to ensure that residents of the occupied territories have access to state services.

Responsibility for the Protection of Human Rights

The Law on Occupied Territories makes no mention of the obligation of the Government of Georgia to protect, to the extent possible, the rights of the population living on the occupied territories. The Public Defender believes that a relevant entry to the Law on Occupied Territories stipulating the State's obligation to protect the rights of communities residing on the occupied territories would contribute to improving the human rights situation of conflict-affected communities.

RECOMMENDATIONS

To the Government of Georgia:

- Task relevant structures (Ministry of Labor, Health and Social Affairs, Office of the State Minister for Reconciliation and Civic Equality, State Security Agency) to develop a mechanism to ensure the population residing on the occupied territories is able to benefit from the referral program; draft amendments to the Resolution on *Establishing a Commission and a Rule of its Operation for the Purpose of Making Decisions on the Provision of Relevant Medical Assistance under the Referral Service* so that a unified practice is established with respect to every individual residing on the occupied territories regardless of citizenship status.

To the Parliament and Government of Georgia:

- Develop amendments to the Law of Georgia on Occupied Territories to reflect the recommendations of the Public Defender of Georgia regarding entry to the occupied territories and implementation of economic activities on such territories, as well as recommendations with respect to legally-valid documents issued by *de facto* authorities and the obligation to protect human rights on the occupied territories (these recommendations are included in the Public Defender's special report, *Analysis and Recommendations regarding the Law of Georgia on Occupied Territories*).

To the members of delegations participating in the Geneva International Discussions and the Incident Prevention and Response Mechanism (Office of the State Minister for Reconciliation and Civic Equality, Ministry of Foreign Affairs of Georgia, Ministry of Justice of Georgia, State Security Agency of Georgia):

- Ensure greater participation of women in the Geneva International Discussions and the Incident Prevention and Response Mechanism so that the specific needs of women and children, including issues related to domestic violence, are included on the agendas of these mechanisms.

To the Interim Governmental Commission for Responding to the Needs of Population Residing alongside the Dividing Line:

- Make a conclusive decision to provide funds for rehabilitating houses damaged as a result of the military conflicts in the 1990s and 2008, or compensate against damage from the state budget.
- Deliberate and task relevant member structures (Ministry of Agriculture, Ministry of Economy and Sustainable Development) to assess specific features of the villages located in the vicinity of the ABL and develop entrepreneurial and agricultural programs tailored to the specific needs and capacities of these communities.
- Allocate means to rehabilitate the bridge on the river Olori in the village of Pakhulani, Tsalenjikha municipality, and to reinforce the riverbanks.

To the Ministry of Labor, Health and Social Affairs of Georgia:

- Refurbish and equip an intensive care unit for children in the hospital currently under construction in the village of Rukhi, Zugdidi municipality and donate an ambulance to the region to serve children crossing from Abkhazia, among others.
- Rehabilitate, refurbish and equip primary healthcare centers in the villages of Khurcha (Zugdidi municipality) and Pakhulani (Tsalenjikha municipality).
- Allocate additional resources to providing financial and material support to medical personnel working on the occupied territories and ensure their professional retraining; equip medical facilities operating on the occupied territories.
- Hand over an ambulance to Saberio Emergency Medical Centre as soon as possible.
- Take all available measures to support non-governmental organizations that offer services to women, children, persons with disabilities, victims of violence and abuse and other vulnerable people living on the occupied territories.

- Open a shelter for victims of domestic violence in Zugdidi to serve individuals living in Abkhazia, among others.

To the Ministry of Education and Science:

- Strengthen support for Gali schools and its personnel, including material assistance—which may include better insurance coverage for academic personnel, donation of personal computers and other assistance programs.
- Increase the number of educational and informal educational programs targeting the needs of children and teachers on the occupied territories.

RIGHTS OF ECO-MIGRANTS

Since 2010, a separate chapter in the Public Defender's Annual Parliamentary Report is dedicated to the situation of the rights of people affected by and displaced as a result of natural disasters, the so called eco-migrants. In spite of slight improvements in their human rights situation, main problems still remain unresolved.

As in previous years, in 2016 lack of uniform legal framework in the field of victims of natural disasters was still the main challenge. It is unfortunate, that the draft law on eco-migrants prepared by the Commission established under the Order of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia (hereinafter - the Minister) [1436] was disapproved by the Government of Georgia. Consequently, it was not initiated in the Parliament.[1437]

Provision of durable accommodation is one of the important issues in the field of eco-migrants. 93 houses were purchased for victims of natural disasters during the reporting period, 90 more will be purchased in 2017.[1438] As to the previous years, Ministry purchased 69 living spaces for eco-migrants in 2013-2014, and 91 in 2015 respectively.[1439] Unfortunately, rising tendency of families provided with durable accommodation in the reporting or current year has not been maintained.

Establishment of a database is also very important in the field of eco-migrants rights;[1440] certain measures have already been carried out since 2015 to develop such a database.[1441] In accordance with the 2016 data, 3 909 eco-migrant families are registered in Georgia.[1442] During the reporting period process of privatization of property to eco-migrants of 2004-2012 has continued. Living space was transferred into the private ownership to 311 eco-migrant families in 2016.[1443]

Along with eco-migrants living in different regions of Georgia, present chapter will also address legal regulations, state measures and gaps revealed in relation to the natural disaster of June 13-14, 2015 in Tbilisi, Vere river valley.

1436 N123 Order of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of June 6, 2013.
1437 According to the letter N5273 of the Chancellery of the Government of Georgia, Government considered it appropriate to regulate issues envisaged by the draft law on eco-migrants by sub-legislative act.
1438 N03-01/03/3044 Letter of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.
1439 Parliamentary Report of the Public Defender of Georgia for 2015, p. 848.
1440 N03-01/03/3044 Letter of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.
1441 Parli23amentary Report of the Public Defender of Georgia for 2015 p 848.
1442 N03-01/03/3044 Letter of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.
1443 N03-01/03/3044 Letter of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.

LEGISLATION IN THE FIELD OF ECO-MIGRANTS, ITS SHORTCOMINGS AND LACK OF SOCIAL GUARANTEES

Public Defender of Georgia has addressed legislative shortcomings in the area of eco-migrants for several years already.[1444] In spite of the fact that international standards[1445] provide solid basis to consider eco-migrants as internally displaced persons, Georgian legislation does not recognize persons displaced due to natural disasters as IDPs.[1446]

Consequently, social guarantees enjoyed by IDPs are not applied to eco-migrants.[1447] Besides being unable to receive status-based assistance, they do not enjoy right to compensation for rent[1448] and one time monetary assistance,[1449] allowances that are frequently used by IDP families.[1450]

State still has no unified position with regard to eco-migrants, which is reflected in the lack of relevant legislation, as well as Special Strategy and Plan of Action. In spite of the fact that Human Rights Action Plan for 2016-2017[1451] in one of its chapters[1452] addresses families affected by natural disasters, current action plan does not foresee adoption of special legislative act as its predecessor in 2014-2015. This shall be assessed negatively, since state authorities do not plan to improve legislation in the coming future. The importance of this issue was further outlined by the natural disaster of 13-14 June, 2015 in Tbilisi. Public Defender emphasized,[1453] that lack of uniform legislation resulted in adoption of *ad hoc* regulations in relation to affected families in Vere river valley.[1454]

Currently, definition of an "eco-migrant family" is only used for settlement purposes. In particular, a normative act (hereinafter – N779 Order of the Minister) deals with the settlement of families affected by natural disasters.[1455] The act establishes special Commission[1456] that reviews issues of settlement and privatization of accommodation of families affected by natural disasters and those subject to displacement.

Regulations set by N779 Order are discussed in the Public Defender's Parliamentary Reports for 2014-2015.[1457] Hence, only amendments introduced in the reporting period will be discussed.

By the amendments,[1458] settlement issues of eco-migrants registered on the territory of Autonomous Republic of Adjara are dealt by the commission established on the basis of the Governmental Decree of the Autonomous Republic of Adjara within its budgetary resources. Management rules of unified electronic database of eco-migrant families was adopted in the reporting period.[1459] We consider, that mentioned amendment will increase

1444 Parliamentary Report of the Public Defender of Georgia for 2010, pp 450-451, Parliamentary Report for 2011 p. 215, Parliamentary Report for 2012 pp 660-661, Parliamnteary Report for 2013 pp 613-614, Parliamentary Report for 2014 pp 661-662 and Parliamentary Report for 2015 pp 849-850.

1445 UN Guiding Principles on Internal Displacement, Preambul, Para 2, World Migration Report 2010, International Organization of Migration, pp 73-74.

1446 Pursuant to Article 6 (1) of the Law of Georgia on Internal Displaced Persons from Occupied Territories of Georgia, IDPs are individuals who left place of their permanent residence due to foreign country's occupation, agression, armed conflict, violence and/or massive human rights violations.

1447 Law of Georgia on Internal Displaced Persons from Occupied Territories of Georgia provides exhaustive list of social guarantees of IDPs in Article 16.

1448 Article 6 (6) of the Order N320 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of August 9, 2013.

1449 Article 2.2.4 of the Decree N127 of the Government of Georgia of February 4, 2015.

1450 Parliamentary Report of the Public Defender of Georgia for 2015, p. 813.

1451 Decree N338 of the Government of Georgia of July 21, 2016 on Approval of Human Rights Action Plan of Georgia (2016-2017).

1452 Chapter 16.

1453 Parliamentary Report of the Public Defender of Georgia for 2015 p. 850.

1454 Decree №17-66 of the Tbilisi Citi Council of July 5, 2015 on approving rules on provision of housing, transfer of real estate and issuance of other types of assistance to victims of natural disaster of June 13-14, 2015 in Tbilisi Municipality.

1455 Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013.

1456 Commission on Regulating Resettlement of families (eco-migrants) affected by natural disasters and subject to resettlement.

1457 Parliamentary Report of the Public Defender of Georgia for 2014, pp. 660-661, Parliamentary Report for 2015 p. 850.

1458 Article 1 (5) of the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.

1459 Annex 6 of the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013.

number of eco-migrants provided with durable housing; as to the database, it will facilitate policy planning toward eco-migrants in the future.

Another important amendment was introduced into the definition of an "eco-migrant family". In particular, pursuant to the current regulation, eco-migrant is a family which lives or lived in a life-threatening building/house or in an area of natural or anthropogenic disasters or a zone under such risks.[1460] Before the amendment, eco-migrant was a family living in above-mentioned conditions. As a result of the amendment, definition of eco-migrant family[1461] became more exhaustive and extended to those individuals, who are displaced as a result of the disaster.

Pursuant to the amendments in the reporting period, Department of Eco-migrants was granted with the right to cancel registration of the victim in the database, if during the review of the application on durable housing, eco-migrant submits false information.[1462] Since with this amendment the Department was vested with broad authority, we deem it appropriate to grant the authority on nullifying registration in the database to the Commission.

Finally, in terms of legislation it shall be outlined that eco-migrants and IDPs belong to vulnerable categories. Therefore, it is important that both categories enjoy equal social guarantees and approaches.

PRACTICE AND SHORTCOMINGS IN THE FIELD OF ECO-MIGRANTS

As mentioned for several times, eco-migrants only have the right to resettlement. Therefore, Office of the Public Defender of Georgia has monitored privatization process of property to eco-migrants displaced during 2004-2012, which was launched in 2016, for several years already. According to the information from the Ministry,[1463] during the reporting period living space was transferred to the private ownership to 311 families. As it is well known, 1062 individuals were resettled throughout the regions of Georgia in the mentioned period.[1464] Certainly, the process has not been finalized yet; Public Defender of Georgia expresses his hope that privatization process will continue further.

According to the information from the Ministry,[1465] no special procedures/criteria have been adopted for transferring living space into the private ownership of eco-migrants resettled during 2004-2012 and therefore, they are addressed by the N779 Order of the Minister.

State financial assistance plays important role in ensuring rights of eco-migrants. Pursuant to the information from the Ministry,[1466] 2 230 465,6 GEL was spent on the resettlement of eco-migrants in 2016. In particular, 648 applications on provision of durable accommodation was submitted, out of which 93 eco-migrant families were resettled. As to the budget for 2017, 2 250 000 GEL is allocated for the resettlement of eco-migrants.

Pursuant to the N779 Order of the Minister, there are several possibilities of resettlement. These include privatization of a living space, resettlement in an accommodation purchased by the Ministry and purchase

1460 Annex 1, Article 1 (3) of the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013.
1461 Only resettlement purposes.
1462 Annex 1, Article 2 (12) of the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013.
1463 Letter N03-01/03/3044 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.
1464 Parliamentary Report of the Public Defender of Georgia for 2013 p. 620.
1465 Letter N03-01/03/3044 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.
1466 Letter N03-01/03/3044 of the Ministry of Internally Displaced Persons from Occupied Territories, Accomodation and Refugees of Georgia.

of a residential space found by an eco-migrant. Satisfaction of the request for durable housing is based on the number of scores. Priority is given to applicants with higher scores; however, in exceptional cases scores are disregarded and the resettlement is carried out without any criteria. The ground for such an exception may be a decision of the higher administrative body or the court, a conclusion of the relevant authority that the eco-migrant family lives in a living space with increased threat to life and health and a targeted grant of a donor organization.[1467] According to the information of the Ministry,[1468] 27 families were granted with durable housing on the ground of heightened risk. However, the Ministry does not have information on how many eco-migrant families were issued such conclusions in total, which shows lack of coordination in the activities of state entities in the area of eco-migrants. Considering that the Ministry does not have information on the number of eco-migrants who are in immediate need of resettlement, we can conclude that proper attention is not paid to such families. In order to protect them, no rent program exists, that would give the possibility to families living in extremely bad conditions to temporary resettlement.

NATURAL DISASTER OF JUNE 13-14

In his Parliamentary Report for 2015, Public Defender of Georgia addressed the natural disaster of June 13-14.[1469] The Report deals with legislation on compensation for the damage caused by the disaster and gaps therein.

Public Defender emphasized that the absence of common legislative framework conditioned the introduction of special regulations to compensate for the damage caused by the natural disaster. Unfortunately, state authorities still have not expressed their willingness to improve legislation. Existence of common rules would ensure equal treatment toward families affected my natural disaster and living in different regions of Georgia.

Legislation on compensation for the damage caused and its shortcomings

For the purposes of compensation for the damage caused to the population, Tbilisi City Council adopted Rules on Provision of Housing and Other Types of Financial Assistance.[1470] Document addresses housing solutions for families affected by the natural disaster, transfer of real estate and provision of other types of financial assistance.

Unfortunately, problematic issues outlined in the Parliamentary Report of the Public Defender of Georgia for 2015 still remain unresolved. In particular, normative act on compensation of damage caused by natural disaster of 13-14 June does not foresee compensation of those individuals, whose land or garage was damaged. The Office revealed cases when Organic Law of Georgia on Rules for Expropriation of Property in the Public Interest was applied, which raises certain questions from legal perspective. In particular, an owner was deprived of his/her land, falling in the disaster zone, in exchange of compensation. Public Defender of Georgia launched investigation of the case on his own motion. Currently, certain information is already received from relevant authorities. Outcomes of examination will be published later on.

Pursuant to the amendments introduced during the reporting period, city government may provide one time monetary assistance to tenants living in the disaster area for purchasing family/household items.[1471]

1467 Annex 1, Article 3 (3) of the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013.
1468 Letter N03-01/03/3044 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.
1469 Parliamentary Report of the Public Defender of Georgia for 2015, p. 853.
1470 Decree №17-66 of Tbilisi City Council of July 5, 2015.
1471 Annex 1, Article 5 (4) of the Decree №17-66 of Tbilisi City Council of July 5, 2015.

During the reporting period, Office of the Public Defender of Georgia continued to review applications which addressed failure of compensation for damage caused by the disaster. Applicants were not given compensation for different reasons. However, in most cases[1472] refusal for compensation was based on living outside the territory determined by the Commission. This issue was addressed in the previous Parliamentary Report of the Public Defender. Definition of the "victim family"[1473] is linked to the fact of ownership and destruction of immovable property located on the territory determined by the authorized body.[1474] Individuals living on this territory, whose accommodation was damaged are considered as victims; those individuals, whose immovable property was affected outside such territory, were assisted by the local government.[1475] To this end, relevant funds are allocated in the budget of Tbilisi Municipality.[1476] Furthermore, practice shows, that funds for assisting this category of individuals will be allotted from the reserve funds of Tbilisi City Council.

Office of the Public Defender of Georgia requested information from Saburtalo and Vake municipalities on assistance provided to the families living outside the designated territory.[1477] Vake municipality has not provided requested information to the Office.[1478] As to the information provided by the Saburtalo Municipality,[1479] 172 families living outside the designated territory applied to the Municipality, out of which only 61 families were satisfied.[1480] Part of these families, in particular 16 of them, received assistance from reserve funds of Tbilisi City Hall.[1481] Unfortunately, Municipality has not developed concrete criteria, according to which such families are provided with relevant assistance. Lack of criteria and relevant regulations increases risk of making unjustified decisions. Saburtalo Municipality has not provided information on the criteria according to which 61 families receiving assistance were selected, or reasons for refusing such financial aid to other families.

In certain cases LEPL Property Management Agency refused families on their requests for compensation due to their inability to prove property right on land plots (through legalization). Office of the Public Defender of Georgia continues to study this case.

Analysis of the cases dealt by the Office show that eradication of effects of natural disaster by a Decree adopted in force majore is not effective, because it is impossible to comprehensively respond to existing challenges. To this end state willingness to develop and enforce legislation related to eco-migrants plays crucial importance.

RECOMMENDATIONS

To the Parliament of Georgia and Government of Georgia

- Prepare and adopt law on eco-migrants in compliance with international standards
- Determine obligation of local municipalities on the legislative level to provide Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia information on those natural disasters that might cause migration of population

1472 Applicants M.M. and T.M.
1473 Annex 1, Article 2 (a) of the Decree №17-66 of Tbilisi City Council of July 5, 2015.
1474 Decree N274 of the Government of Georgia of June 18, 2015 on „Approval of the statute for the establishment of the interagency commission for the liquidation of the natural disaster of June 13-14, 2015 and organization of reconstruction process as a result of studying situation in the river Vere Valley and the surrounding area.
1475 Vake and Saburtalo Municipalities.
1476 Programatic Code 02 11.
1477 Letters N04-9/1193 and N04-9/1191 of the Office of the Public Defender of Georgia.
1478 Letter N30-0117041421 of Vake Municipality.
1479 Letter N31-011703854 of Saburtalo Municipality.
1480 To this end, 570 147,9 GEL was spent from the budget.
1481 245 000 GEL was spent from the reserve funds of Tbilisi Mayor, 16 families in total.

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Develop Strategy and detailed Action Plan determining concrete activities for resettlement of eco-migrants and providing them with other social guarantees

To the Government of Tbilisi

- Develop Rules of assistance and concrete criteria for those victims, whose houses do not fall in the designated territory, but were affected by the natural disaster of June 13-14
- Develop rules for compensation of the damage caused to the victims and/or transfer of real estate, who had land plots or non-residential buildings (such as garage) on the designated territory.

ON REPATRIATION OF PERSONS FORCEFULLY SENT INTO EXILE **FROM THE SOVIET SOCIALIST REPUBLIC OF GEORGIA BY** FORMER USSR IN THE 40S OF THE XX CENTURY

Upon joining the Council of Europe in 1999, Georgia undertook an obligation[1482] to repatriate persons forcibly removed from the Soviet Socialist Republic of Georgia by former USSR in the 40s of the XX century. The document obliged Georgia and its government to develop legislative framework on repatriation and integration within two years after its adoption, and completion of repatriation process within 12 years. In spite of the fact that fulfilling obligations and relevant procedures have been delayed, today Law of Georgia on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 40s of the XX Century by the Former USSR (hereinafter Law on Repatriation) is adopted, which regulates process of dignified return and repatriation of exiled individuals. Moreover, Georgia took further step by developing and approving State Strategy; the action plan has also been drafted and now awaits approval.

Pursuant to the Law on Repatriation, in order to grant Georgian citizenship to repatriate status holders under the simplified procedure, Decree N87 of the Government of Georgia on Simplified Procedure for Granting Citizenship to the Repatriate was adopted in 2010. Currently, this issue is regulated by Organic Law of Georgia on Citizenship of Georgia and the Order N237 of the President of Georgia of June 10, 2014 on Approval of the Decree on Examining and Deciding upon Issues of Georgian Citizenship.

In spite of the fact that legislative framework is in place and state expresses its readiness to carry out the repatriation process, challenges exist which need to be tackled in a complex manner.

According to the data of December 2016[1483], as many as 5841 individuals were registered as the repatriate status seekers within the scope of the Law of Repatriation at the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. Only 1533 out of them were granted repatriate status. These data have not changed over the past two years since none of the status seekers has been awarded the status of repatriate in 2014-2016.

As to the granting of Georgian citizenship to the repatriate status holders, per the information on the website of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia 494 individuals were awarded Georgian citizenship. According to the information provided by the LEPL Public Service Development Agency under the Ministry of Justice of Georgia[1484], only 15 repatriate status holders were granted Georgian citizenship in 2016. According to the data of February 1, 2017 of the Public Service Development Agency, none of these individuals have presented a document confirming renunciation of previous citizenship, which is obligatory, since the Order on Granting Georgian Citizenship

1482 PACE Opinion, January 27, 1999 - http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16669&lang=en

1483 Information of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia: Letter N02–02/03/505 (11.01.2017).

1484 Information of the LEPL Public Service Development Agency under the Ministry of Justice of Georgia – Letter N 01/31755, 03.02.2017.

will only enter into force if the repatriate will present such document to the competent authorities. This issue is discussed in details in the Parliamentary Report of the Public Defender of Georgia for 2015 on the Situation in Human Rights and Freedoms.[1485]

INTEGRATION

The repatriation strategy and action plan have a decisive role in the effective management of the process of dignified return and integration of persons deported from Meskhetia. To facilitate the repatriation process, we deem that the approval of action plan must be accelerated.

Furthermore, to facilitate repatriation and integration process, complex approach is necessary, which is one of the important challenges Government of Georgia is facing nowadays. Existing legislative framework in a certain way ensures return of deported individuals, however, implementation of concrete activities, such as those envisaged by the Action Plan of the Repatriation Strategy and tailored to changing controversial public attitudes, is necessary to ensure real return.

For a successful integration of deported persons, there is a need to eliminate those problems which may emerge in case of repatriation, such as those related to education, employment or access to healthcare.

Law on Repatriation or other normative acts fail to foresee any type of social assistance to repatriates, which has adverse affects on their return and dignified life in Georgia.

State Strategy on Repatriation of persons forcefully exiled from the Soviet Socialist Republic of Georgia by former USSR in the 40s of the XX century is an important element which is designed to facilitate the dignified and voluntary return of repatriates and the civil integration of repatriated population. However, document only contains general information. Therefore, to support post-repatriation integration measures it is important to speed up the approval of the Action Plan to Strategy.

SO-CALLED SELF REPATRIATED MESKHETIANS

Analysis of the applications submitted to the Office of the Public Defender of Georgia in past years shows that there is a group of persons, who were unable to collect and submit necessary documents within the legal timeframes and subsequently, to obtain repatriate status; therefore they do not fall within the requirements of the simplified procedure of naturalization and their legal status in Georgia is still under question.

Public Defender of Georgia discusses in details the situation of so-called self-repatriated Meskhetians in its report on the Situation in Human Right and Freedoms.[1486] During the reporting period State failed to provide such individuals with relevant information and to regulate their legal stay in Georgia; therefore their human rights situation is still in need for further improvement.

In order to prevent violations of immigration rules, it is necessary that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with the assistance of international and non-governmental organizations, identifies these individuals and gives them the possibility to bring their stay in Georgia in line with the law.

1485 Report of the Public Defender of Georgia for 2015 on the Situation in Human Rights and Freedoms, pp 859–859 http://www.ombudsman.ge/uploads/other/3/3891.pdf

1486 Report of the Public Defender of Goergia on the Situation in Human Rights and Freedoms, p. 870 http://www.ombudsman.ge/uploads/other/2/2439.pdf.

Providing relevant information to repatriate status seekers on Georgia and repatriation process is equally important. Raising awareness is also important in terms of educational and socio-economic development. The majority of these individuals do not speak Georgian, which is an impediment to their full integration. Although, the Government has carried out positive and important measures, both in terms of legislation and practice, to comply with its commitments undertaken at the Council of Europe level, more effort is needed to ensure effective integration of repatriates.

RECOMMENDATIONS

To the Government of Georgia, Parliament of Georgia, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Accelerate adoption of the Action Plan of the State Strategy on Repatriation of persons forcefully exiled from the Soviet Socialist Republic of Georgia by former USSR in the 40s of the XX century, as an important instrument to facilitate repatriation process and integration of repatriated Meskhetians
- Gather information on the so-called self-repatriated individuals, to determine their legal status

To Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Take all possible measures to facilitate naturalization process of repatriate status holders and the so-called self-repatriated individuals.

RIGHTS OF MIGRANTS

INTRODUCTION

Justification of decisions related to the refusal to grant residence permit and citizenship on the basis of national and/or public security by Public Service Development Agency still remained a problem in 2016. Namely, administrative acts fail to indicate concrete circumstances which became basis for refusal of the application on the grounds of national and/or public security, but are exhaustively envisaged by law.[1487] Public Defender of Georgia addressed this problem in details in his parliamentary report for 2015; issued recommendation still remain acute.[1488]

In his parliamentary report for the previous year, Public Defender also addressed strategic importance of effective management of migration policy and steps taken by the government in this direction.[1489]

REINTEGRATION OF MIGRANTS RETURNED TO GEORGIA

Public Defender of Georgia welcomes implementation of the state reintegration program of migrants returned in Georgia by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, launched on May 31, 2016. This specific program is approved for one year. According to the letter of the Ministry, by December 31, 2016 within the scope of this program 303 returned migrants were registered as beneficiaries; out of this number 77 received funds for social projects, 24 beneficiaries were assisted with medical service and medicines, including psycho-social rehabilitation, legal service was provided to 14 individuals, 15 returned migrants were registered in the program of training/retraining and raising qualification of job seekers.[1490]

According to the letter of the Ministry, budget of the program, consisting of 600 000 GEL is not exhausted and funds are available for providing additional services to the beneficiaries. Besides, 590 000 GEL is foreseen in the state budget for 2017 for facilitating reintegration process of migrants. Public Defender considers it important to tailor programs planned and implemented by Ministry to the needs of migrants. Monitoring by the representatives of the Office of the Public Defender of Georgia of the united operation of migrants' return showed, that needs of migrants are not fully foreseen in proposed programs.

1487 1) Article 16 (2) of Organic Law on Citizenship of Georgia; 2) Law of Georgia on Legal Status of Foreigners and Individuals Without Citizenship", Article 18 (2).

1488 Report of the Public Defender of Georgia for 2015 on the State of Human Rights and Freedoms in Georgia, chapter: Legal Status of Aliens, p. 862-865.

1489 Ibid.

1490 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia #02-02/03/1263, of 24.01.2017.

Namely, the opportunity to move on the territory of Georgia in accordance with the needs of migrants is not ensured. Despite the fact that a number of sending states provide financial support (50-100 EUR) to the part of the deported migrants in order to reimburse costs of transportation to the final destination and catering after their return to the home country, there are some returned migrants who have no financial resources at all. Lack of finances is especially acute for the migrants living in rural areas, who need transportation to the final point of destination. The fact that most of the migrants lack the opportunity to contact family members during the deportation and to inform them on their return to the county shall also be taken into account. Therefore, appropriate state bodies shall consider the possibility of ensuring one-time transportation of persons with such needs, to the final destination on the territory of Georgia.

Monitoring of united operation of migrants' return also raised the issue of transportation of returned individuals to temporary housing, catering in temporary housing and in case of need, provision of 24 hour shelters for certain period of time. Along with financial resources, returned migrants might also lack housing. Despite the fact that such persons, in case of special need, are provided with housing within the state reintegration assistance program, beneficiary is able to use this service only for 4 nights. It is not clear what happens after the expiration of the 4-day term of temporary housing – in particular, whether these persons are provided with durable housing in case of need or relevant measures are undertaken to ensure that the person without housing is able to find shelter on his/her own resources. Coordinated work with the local self-government bodies on this matter is important.

Within the scope of the state program of "Reintegration Assistance to Returned Migrants in Georgia", representative of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia meets persons deported to Georgia at the airport, interviews them and offers different social programs implemented by the Ministry. Since deported persons have no information on these programs before their arrival to Georgia, and are under stress and probably in a difficult psychological condition at the time of their arrival, understanding importance and efficiency of proposed programs becomes difficult. To this end, deported persons should be distributed booklets about state programs on board the plane, thus giving them more time to familiarize themselves with offered programs and realize their importance.

Office of the Public Defender of Georgia continues monitoring of the reintegration programs of returned migrants to Georgia and expresses his hope that steps taken by the Ministry in this direction will effectively ensure achievement of the program objectives.

RECOMMENDATIONS

To the National Security Service and LEPL Public Service Development Agency

- Meet requirements of the law during refusal to grant residence permit and citizenship on the basis of national or/and public security, in particular, indicate specific ground (paragraph)[1491] and provide individuals whose request was denied with appropriate information

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Discuss the issue of one-time transportation of returned migrants with relevant needs to their housing on the territory of Georgia and catering at the temporary housing.

1491 Sub-paragraphs listed in Article 18 (2) of the Law of Georgia on the Legal Status of Foreigners and Persons Without Citizenship and sub-paragraphs listed in Article 16 (2) of law of Georgia on the Citizenship of Georgia.

RIGHTS OF ASYLUM SEEKERS, REFUGEES AND HUMANITARIAN STATUS HOLDERS

INTRODUCTION

This chapter deals with the human rights situation of asylum seekers, refugees and humanitarian status holders – main trends, legislative framework and access to asylum procedures. Positive and negative tendencies revealed as a result of monitoring during the reporting period are also discussed.

Against the backdrop of population moving on an unprecedented scale worldwide, the number of asylum seekers has grown in Georgia over the past few years. Nevertheless, compared to the previous year, 2016 saw a decrease in asylum seekers. Conflicts and human rights violations have resulted in the increase of asylum seekers from such regions as Africa, Western and Eastern Asia (see data below) in the reporting period.

In 2016, on the initiative of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (hereinafter Ministry of Refugees), Georgia adopted the Law on International Protection and drafted a package of normative acts. Representatives of the Public Defender were actively involved in discussion of normative acts, along with state entities, international and non-governmental organizations.

OVERVIEW OF THE LAW OF GEORGIA ON INTERNATIONAL PROTECTION AND OTHER NORMATIVE ACTS

On December 1, 2016, the Parliament of Georgia adopted the Law on International Protection. The Law envisages provisions of qualification directives adopted by the European Union in relation to international protection standards in 2011 (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011) and 2013 (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013). In contrast with the current law, the new law is approximated to the 1951 Convention relating to the Status of Refugees and alike the Convention, regulates grounds for granting, excluding, and denying international protection. It also deals with the basis for termination, cancellation or revocation of refugee, humanitarian and temporary protection statuses.[1492]

Along with the refugee and humanitarian status, new form of protection - „temporary protection" - has been introduced in the law, which implies registration of individuals entering the country in large groups and granting them the temporary protection status. Definitions of the "country of origin" and "alternative to

1492 Explanatory report of the draft law on International Protection.

internal displacement" have been introduced. New term "sur place refugee" and etc. have also been adopted. Considering family unity principle, definitions in the draft law on "family members" and „produced status" are particularly important for the family members of the person with international protection status. Bearing in mind the objectives of the UN Convention on Rights of the Child of 1989, law payed particular attention to the best interest of a juvenile. Introduction of the notion "person with special needs" and relevant procedures, which imply prioritized examination of such cases, shall also be outlined. Asylum standards and procedural guarantees were also improved and shall be assessed positively.

Although the Law complies in general with the directives on standards of international protection and provisions of the UN Convention Relating to the Status of Refugees, it still has shortcomings which need to be discussed and eliminated. In particular, Public Defender deems, that the term for the review of application for international protection (Article 29), set to six months and if extended to nine months, plus the term for consideration of complaints by a court, is quite a long period and adversely affects especially those asylum seekers who lack a source of income (except for those who live in reception centers for asylum seekers and along with a monthly allowance receive other benefits) to live in a foreign country. The provision in the law, saying that the term of review may be extended to nine months when "complex factual or legal issues are revealed" is too general in its nature and requires clarification. Consequently, the provision of the law stating that in exceptional cases, the consideration of an application shall not exceed 21 months is, in the Public Defender's view, unreasonable and may have a negative impact on an asylum seeker, who will have to stay in uncertainty for a long period of time.

Pursuant to the Charter of the Fundamental Rights of the EU[1493] (Article 41) every person has the right to have his or her affairs handled within a reasonable time. Decision taken in such term is favorable for both, the state that will avoid unnecessary administrative expenditures, and an asylum seeker, who will not stay in uncertainty for 21 months.

Document of the United Nations High Commissioner for Refugees, prepared for the EU common procedures on granting and withdrawing international protection (recast),[1494] also outlines duration of the term. Quality decisions made within shorter period of time is in the interest of State parties to the Convention, since it decreases costs of procedures and reception conditions. This is one of the arguments behind this founding principle. Decision made within reasonable timeframes is also favorable for the applicant who will not be in uncertainty for a long period of time.[1495]

The Law requires the conduct of first interview with an asylum-seeker within four months from the date of registration of application, which also seems an unreasonably long period of time.

Pursant to the Convention on the Rights of the Child, before any activity is carried out by the state or private social service agency, court, administrative or legislative bodies, primary attention shall be payed to the best interest of the child.

The Public Defender also believes that the law as well as procedure for granting asylum must include a phrase "to determine best interests of a minor"; although Georgian legislation lacks the procedure to determine such interest, the Public Defender thinks that it must be drawn up. Moreover, considering the best interest of the juvenile, it is necessary that the Ministry of Refugees undertakes all necessary measures to find family members of a minor, left without a legal representative, within the shortest possible time.

1493 European Union, Charter of the Fundamental Rights of the EU, 26 October 2012, 2012/C 326/02, accessible on: http://www.refworld.org/docid/3ae6b3b70.html [visited on: 30 January 2017].

1494 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June, 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, accessible on: http://www.refworld.org/docid/51d29b224.html [visited on: 30 January 2017].

1495 UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final, January 2012, accessible on: http://www.refworld.org/docid/4f3281762.html [visited on: 9 February 2017].

The criteria for granting humanitarian status, listed in Article 19, must also include an additional criterion - "who requires other reliable humanitarian aid". Without this criterion, the definition of "humanitarian status" in the Law is narrowed down and excludes instances of humanitarian aid such as medical aid, natural disasters, etc. It is worth noting that such criteria were provided in the Law of Georgia on Refugees and Humanitarian Status and thus constituted a relevant protection mechanism for persons seeking such statuses.

In regard to Article 43 (3) of the Law which concerns inability to serve the decision by reason of an asylum-seeker, it is necessary to consider additional means for the service of a decision such as phone call and SMS with corresponding recording; this is necessary, since asylum seekers often change their addresses and establishing those to be blamed for the failure to serve the decision is difficult.

Attention shall be paid to Article 7 (4) of the Law, which was added to the draft law after it passed its second reading. According to Paragraph 1 of this provision, a foreigner or stateless person is released from criminal responsibility for illegal crossing of the state border of Georgia, or preparation, use, purchase of forged identity card or other official documents or for keeping such documents for later use if he/she asks Georgian authorities for international protection. However, according to Paragraph 4 of the same Article, if the final decision of the relevant authority determines that a foreigner or stateless person does not require international protection, he/she will not be released from criminal responsibility.

This provision runs counter to the 1951 Geneva Convention Relating to the Status of Refugees. Given that by signing the Convention Georgia committed itself to enforce it, the above-mentioned provision must be deleted.

The above cited Article also conflicts with the note to Article 344 of the Criminal Code of Georgia, which states that the criminal liability envisaged by this Article does not apply to foreign citizens or stateless persons, having entered Georgia, who seek asylum from Georgian authorities in accordance with the Constitution of Georgia.

Problems of interpretation is also important in addition to the issues related to Asylum Procedure, drafted in the reporting period, which we already mentioned in the comments on the Law. There must be an authorized person who will check the knowledge and skills of an interpreter. Save in exceptional circumstances, review procedures of asylum application shall not be attended by an interpreter who was presented by an asylum seeker. Moreover, an interpreter must be among signatories of a protocol on the withdrawal of application for international protection and the repeated application.

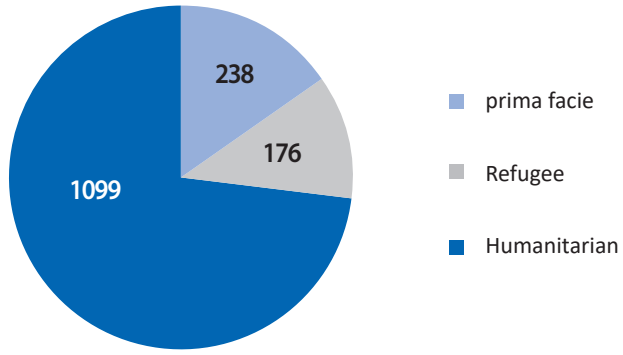
STATISTICAL DATA ON ASYLUM SEEKERS, REFUGEES AND PERSONS WITH HUMANITARIAN STATUS

As of December 31, 2016[1496] there were 1 513 refugees and persons with humanitarian status living in Georgia (out of this number, 238 persons were granted the status of a refugee based on the *prima facie* principle,[1497] 176 persons were granted the refugee status on individual basis and 1 099 were granted a humanitarian status).

1496 Information from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia: Letter N02-01/05/862, 18.01.2017.

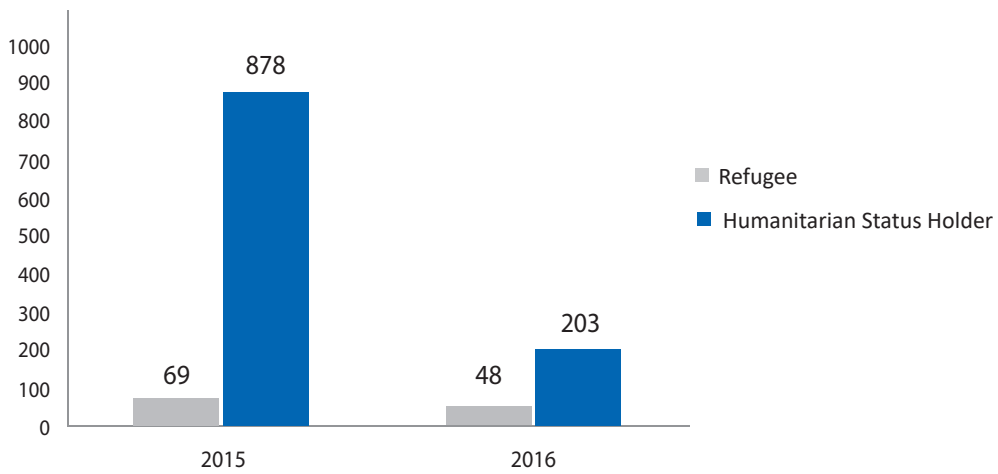
1497 Latin at first sight.

Statistics of Refugees and Humanitarian Status Holders (December 31, 2016)

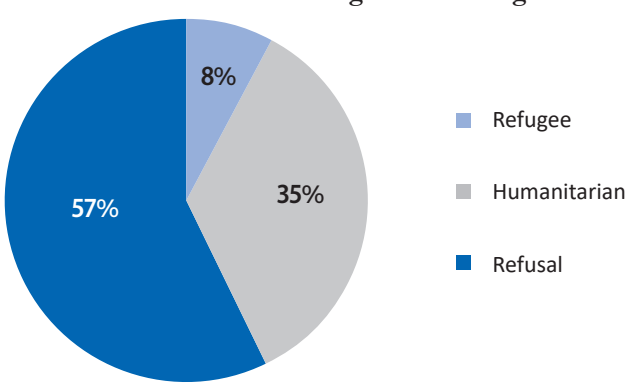


Compared to the previous year[1498], the amount of granted refugee and humanitarian statuses has decreased. While in 2015, a positive indicator of considered applications stood at 75 percent (69 persons were granted the status of refugee and 878 persons were granted the humanitarian status), a corresponding indicator in 2016 was 43 percent - 48 persons were granted the status of refugee and 203 persons were granted the humanitarian status whereas 332 asylum seekers were denied the statuses. It shall be noted, that consideration of quite a large amount of applications was terminated due to the fact that asylum seekers left the country before the completion of the case. According to the information provided by the Ministry of Refugees, 256 cases of asylum seekers were closed down in 2016 because applicants did not turn up while 403 cases were terminated based on personal applications before final decisions on these cases were taken.

Granting Refugee and Humanitarian Status in 2015 and 2016



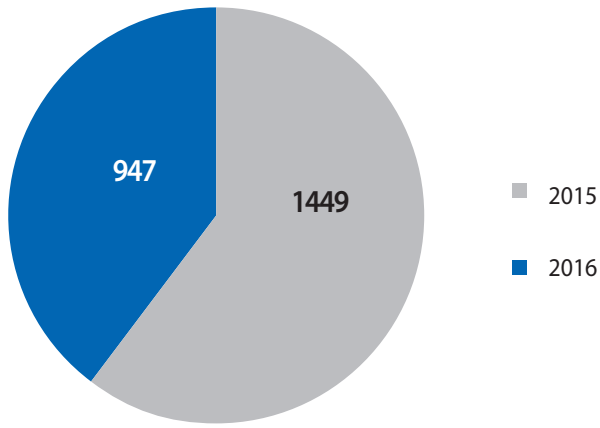
Percentage on Granting Status 2016



1498 The Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms for 2015, p. 867, http://www.ombudsman.ge/uploads/other/3/3891.pdf.

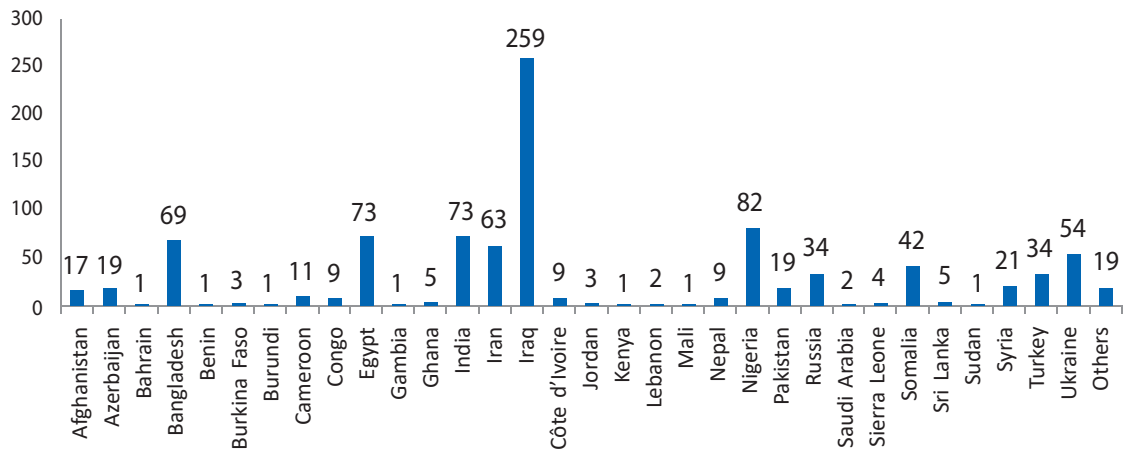
As to the entry of asylum seekers in the country, a downward trend has been observed since 2014. Compared to 2015, the number of asylum seekers has notably decreased. In 2016, 947 individuals were registered in total, compared to 1 449 persons in 2015.

Number of Asylum Seekers in 2015-2016



As noted above, a significant rise was seen in asylum seekers from African countries in 2016, though the highest number of asylum seekers were from Iraq – 259.

Statistics of Asylum Seekers According to their Countries of Origin



ASYLUM PROCEDURE IN GEORGIA – POSITIVE AND NEGATIVE TRENDS

According to the amendment to the regulation of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the units for determining the status, and the quality control and trainings have started to operate within the Department for Migration, Repatriation and Refugee Issues since 2016, which shall be assessed positively. According to the information from the Ministry of Refugees, the unit for determining the status has five while the unit for quality control and trainings has three permanent positions. However, the monitoring revealed that mainly three persons work on status determination. We consider that existing human resources are not sufficient to study the amount of applications of asylum seekers submitted to the Ministry on a daily basis. The lack of human resources will become a serious impediment as soon as the new law and procedures enter into force, since new asylum procedures are detailed and require additional time and properly trained human resources.

Procedures for determining refugee and humanitarian statuses, which are applied by the Ministry of Refugees, have notably improved over the past years. However, the number of denials to citizens of the Republic of Iraq became a matter of great interest in the data for 2016. According to information provided, there are 103 persons who were denied the status, including 61 persons who were denied for the lack of reasons, 15 persons were denied for state security purposes, 27 persons were denied because they had an internal flights alternative; these numbers raise questions. Iraq is a country where majority of its regions are in conflict. According to the position of United Nations High Commissioner for Refugees on the situation in Iraq, ten thousand civilians were killed and wounded as a result of renewed conflict and violence in the country, 3,18 million persons were internally displaced and 10 million are in need of humanitarian assistance. Where decision makers consider the availability of an internal flight or relocation alternative, the burden is on them. Internal flight or relocation alternative would only be available in the exceptional circumstances where an individual can legally access and remain in the proposed area of relocation, would not be exposed to a new risk of serious harm there and has close family links in the proposed area, with the family willing and able to support the individual.[1499] ISIS's 2014/2015 advances and subsequent military operations against ISIS have caused large-scale displacement, with many more Iraqis at risk of displacement as a result of the ongoing Mosul offensive.[1500] Due to military attacks and counter attacks, the security situation is unstable in central and northern part if Iraq.[1501] Therefore, cases of individuals whose state of origin or permanent residence are countries with massive human rights violations, shall be carefully examined.

International law stipulates that persons under threat are not obliged to exhaust all legal remedies in their country before requesting asylum. Therefore, internal flight or relocation alternative shall be utilized only in so far as it does not hamper main aspects of human rights that are the basis of international protection, in particular, individuals right to flee from his/her country, right to asylum and right to protect himself/herself from forceful relocation. Besides, as this concept might only arise in the context of asylum, it shall not become the grounds for denial to the procedure on determining refugee status while examining relevant application. When discussing internal flight alternative, individual circumstances of the applicant and conditions of the country toward which internal flight alternative is considered, shall be examined.[1502]

As regards the asylum procedure, the monitoring showed certain shortcomings in relation to consideration of an application of a minor. The process of consideration disregarded the peculiarity of the case; the length of interview exceeded its standards; questions were not meticulously selected and processed, which negatively affected psychological and emotional state of the minor, especially in the case of child victim of domestic violence. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his/her mental development and maturity.[1503] Therefore, to fully protect interests of a minor applicant, a decision maker, during the interview, must pay particular attention to questions and the behavior of a minor.

When considering a case of an unaccompanied minor, their vulnerability and specific needs shall be taken into account. It is especially important to give priority to the application of the minor on refugee status and to make every effort to make a decision promptly and fairly.[1504] In the reporting period, along with the monitoring of procedures for determining the refugee status, we also studied randomly selected cases; in examining them our attention was mainly paid on the information reflected in the conclusion prepared by the Department

1499 UNHCR Position on Returns to Iraq; Par.48, p.23 http://www.refworld.org/docid/58299e694.html [visited on 25 January 2017)].
1500 Ibid, Par. 4, p.2 [visited on 25 January 2017].
1501 UN Security Council, Report of the Secretary-General pursuant to resolution 2299 (2016), 25 October 2016, p.4, Para 15 http://www.refworld.org/docid/5821ca0f4.html [visited on 25 January 2017].
1502 UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees), accessible on http://www.refworld.org/docid/4f33c8d92.html (visited on: 25 January 2017).
1503 Guidelines on Procedures and Criteria for Determining Refugee Status (Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees), p 52.
1504 UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seaking Asylum, accessible on http://www.refworld.org/docid/3ae6b3360.html [visited on: 1 March 2017].

for Migration, Repatriation and Refugee Issues. When monitoring court hearings, special interest of judges towards countries of origin in several cases was also revealed.

The case studies identified several types of shortcomings, such as common inaccuracies, use of outdated materials, omission of details containing essential information on asylum case, lack of analysis, inappropriate use of sources, etc.

County of Origin Information (COI), containing detailed information on country's social, political, legal and human rights situation is inalienable and one of the important issues in refugee status determination procedure. COI in asylum procedure is used to examine reliance of individual application and risks, in case of the return to the country of origin. COI enables the decision maker to examine whether subjective fear of the asylum seeker is based on objectively negative circumstances and whether asylum application is well justified.[1505]

MONITORING OUTCOMES – ACCESS TO ASYLUM AT THE STATE BORDER

During the reporting period, monitoring was conducted at the following border-immigration control departments of the Patrol Police of the Ministry of Internal Affairs of Georgia: Sarpi, Batumi Airport, Kutaisi Airport, Tsodna (Lagodekhi), Dariali (Kazbegi), Poti Port, Vale, Sameba (Ninotsminda), Tsiteli Khidi, Geguti, Sadakhlo, as well as border-immigration control unit, Tbilisi Airport. Visits were paid to structural units, including sectors, of Georgia's Border Police – a state entity subordinated to the Ministry of Internal Affairs.

The monitoring revealed that border police officers lack proper information about measures to be undertaken in case of asylum request at the border and cooperation with the Ministry of Refugees.

The monitoring at the state border and at penitentiary institutions identified concrete cases, when foreign citizens requested asylum at the border but representatives of relevant services have failed to carry out procedures envisaged by law. In particular, in one case, there was a direct and clear request for asylum at the state border, which was verbally confirmed both by the asylum seeker and a representative of the border police. The foreign citizen named his/her ethnic origin, expressed his/her political opinions and explained that he/she was persecuted in the country of his/her citizenship. He/she made the similar statement before the court, nevertheless, a criminal proceeding was instituted against the foreign citizen under Article 344 (1) of the Criminal Code which envisages punishment for illegal crossing of the state border.

In spite of the impediments, this person was registered as an asylum seeker but was not released from criminal responsibility as stated in the note to Article 344.

As to the two similar cases, two persons were also crossing the state border illegally when the border police detained them. In both cases, they made indirect applications stating that they were persecuted in their own country since they were perceived as being linked to a terrorist organization due to living in Turkey for a while. The border police neglected this statement and transferred applicants to a penitentiary facility.

The above-mentioned cases confirm the likelihood of detention of more asylum seekers at the border. Therefore, there is a need to conduct intensive trainings for both patrol police and border police officers on issues of refugee law, including, the grounds for the release of asylum seekers from criminal liability.

1505 Immigration Advisory Service (IAS), the Refugee Roulette: The Role of Country Information in Refugee Status Determination, January 2010, accessible on: http://www.refworld.org/docid/4b62a6182.html [visited on 17 January 2017].

RECOMMENDATIONS

To Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Amend new law of Georgia on International Protection: In particular, decrease tenure for examination of the asylum application and decision making terms enshrined in Article 29 of the Law. Amend Article 3 (sub-paragraph "L") of Second Chapter of the Law and insert the phrase "to determine best interests of a juvenile". Determine corresponding procedure in relevant legislative acts; add the following legal base for granting humanitarian status envisaged by Article 19 – "who needs other reliable humanitarian assistance". Remove Paragraph 4 of Article 7, which is in contradiction with the 1951 Refugee Convention and Criminal Code of Georgia
- Increase human resources at the Unit of Asylum issues of the Ministry of Refugees to work on the status determination procedures
- To improve quality of collecting information on countries of origin by relevant structural units of the Ministry of Refugees, in order to ensure that presented information meets relevant standards, which in itself will assist decision maker in justification of the final decision

To the Patrol and Border Police of the Ministry of Internal Affairs

- Train staff of patrol police, border police and other units of the Ministry of Internal Affairs (Operative-Investigative Unit) on asylum related issues.

RIGHT TO PROPERTY

Article 21 of the Constitution of Georgia guarantees the property and the right to inherit.[1506] According to universally recognized principles and norms of constitutional and international law, this right is an eternal and supreme human value and the cornerstone of welfare state.[1507]

The Office of Public Defender of Georgia constantly monitors the situation with the property right in the country and the process of creating legislative guarantees related to property right and instantly reacts to instances of unjustified interference of the state in the right to property. Last year saw the enactment of a number of regulations related to the exercise of the right to property; in particular, the Law of Georgia on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project was adopted and the so-called eviction by police was abolished. This chapter discusses, inter alia, legislative changes and the process of their implementation.

Unfortunately, the issue of so-called traditional ownership of land plots remains unregulated thus creating a threat of losing the main source of living to persons who have owned and cultivated agricultural land for decades.

Moreover, the problem related to the registration of ownership right on agricultural land plots distributed among residents of the town of Bakuriani and the village of Didi Mitarbi during the implementation of land reform remains topical. As noted in the 2015 report,[1508]a comprehensive consideration of applications from residents of Bakuriani and Didi Mitarbi is impeded by the following: the lists of land distribution, compiled by the Land Reform Commission, as well as effective taxation lists for the use of agricultural lands and administrative legal acts approving these lists, are seized by the investigative unit of the Samtskhe-Javakheti Regional Prosecutor's Office on 19 October 2006 and 13 August 2007, while the investigation is launched in regard to the criminal case N01606907, into the alleged fact of abuse of official powers by the employees of Borjomi executive office which is the crime envisaged in Paragraph 1 of Article 332 of the Criminal Code of Georgia. According to explanation provided in relation to this issue by the Chief Prosecutor's Office of Georgia, in 2016, within the scope of investigation, criminal proceedings were instituted against seven persons who were then found guilty and imposed, along with the main punishment, an additional punishment in the form of expropriation of illegally obtained land plots. Investigation in relation to other land plots is in progress.[1509] The Public Defender deems it important for the prosecution to complete the investigation into this criminal case in a timely manner.

1506 According to Article 21 of the Constitution of Georgia the property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible.

1507 Constitutional Court of Georgia, Judgment №1/2384 of 2 July 2007; The Georgian Citizens – Davit Jimsheleishvili, Tariel Gvetadze and Neli Dalalishvili v The Parliament of Georgia. II. Par. 5,6.

1508 The report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2015.

1509 Letter N13/6997 of the Chief Prosecutor's Office of Georgia, 1 February 2017.

REGISTRATION OF LAND OWNERSHIP RIGHTS WITHIN THE FRAMEWORK OF THE STATE PROJECT

To form interagency, multisector, common and consistent policy in the field of human rights, to implement good governance and strengthen the protection of human rights, the Parliament of Georgia, on 30 April 2014, approved the National Strategy for the Protection of Human Rights (for 2014-2020). One of strategic objectives of the document is the introduction of higher standards of protection for the right to property. Tasks that must be implemented to achieve this objective are: enhancing existing legislative and institutional mechanisms for the protection of the right to property; ensuring strict adherence to constitutional and international norms in cases of expropriation of land by public authorities for reasons of public necessity; taking decisions on recognition or refusal to recognize ownership rights on privately owned/held land plots on the basis of thorough investigation of every case and in accordance with the law.

On 1 August 2016, the Law on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project was fully enacted. The term of validity of this law is 1 August 2018 and it aims at ensuring the creation of comprehensive cadastral and land ownership data.

Based on this law, in accordance with the government ordinance, a systematic registration of land ownership rights must be carried out in 12 settlements selected on the ground of geographic diversity; this implies a proactive registration of land ownership rights and changes in the registered data in accordance with the rule specified in this Law. In other words, within the framework of pilot project, the Agency of Public Registry must carry out systematic registration of land ownership rights on the basis of obtained documentation and the cadastral drawings of land plots proactively and systematically drawn up by the Agency; must clarify, on its own initiative, cadastral data of registered land plots and in case of need, ensure the involvement of all interested parties in the administrative proceedings.

According to information provided by the LEPL Agency of Public Registry,[1510] as of 13 February 2017, a systematic registration of land ownership rights under the pilot project had not started yet.

As regards sporadic registration, the Law of Georgia on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project defines a sporadic registration as the registration of ownership rights to land plots and of changes to registered data on the basis of applications and documentation submitted by interested persons within the framework of state project,[1511] in accordance with a special procedure specified in the Law. When conducting registration procedure on the basis of applications of interested persons, the Public Registry Agency, as need be and within the registration procedure term, requests, on its own initiative, documentation/ information important for a case from other administrative bodies: LEPL National Archive of Georgia, LEPL Revenue Service, municipalities, et cetera. If it transpires that, within the framework of state project, an interested person seeks the registration of title to arbitrarily occupied land plots along with legally owned land, the Public Registry Agency, in case of consent of the interested person, applies to the commission on the recognition of ownership of a relevant municipal executive body for the consideration of the issue within the scope of its competence. On such occasions, the commission takes decisions within 10 days of receiving applications and documentation.

In contrast to a general procedure of ownership registration, the existence of transaction, concluded between the person with the right to seek ownership registration and the user without observing the form (oral or written), is established by a written agreement between the parties, the authenticity of signatures to which

1510 Letter N4948/1 of the National Agency of Public Registry, 13 February 2017.

1511 According to Subparagraph A of Paragraph 1 of Article 2 of the Law of Georgia on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project, the state project means a set of special public administration measures to be implemented with regard to the systematic and sporadic registration provided for by this Law and which are implemented under the preferential terms established by this Law to encourage the registration of plots of land as private property.

is certified by a notary; this action is regarded as the execution of new transaction in accordance with Civil Code of Georgia. The mentioned written agreement and the availability of cadastral drawing represent the ground for the registration of ownership right of a land user in the public register. The Law of Georgia on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project grants the power to representative of municipality, within the framework of pilot project, to establish, if need be and on the basis of evaluation and comparison of all circumstances important for the case, with an individual administrative legal act the factual location of a land plot or identity of land plot which has been registered in the National Agency of Public Registry with unverified data and a land plot drawn on the cadastral drawing. Also, the Agency is authorized, within the framework of state project, to change, at its own initiative, unverified cadastral data of land plot with the verified cadastral data if registration documentation or/and as a cadastral drawing show the discrepancy with the actual location of the land plot, and to ensure the involvement of all interested persons in the administrative procedure launched towards this aim.

To facilitate the achievement of aims set in the above mentioned law, the Decree #1-1/410 of the Minister of Economy and Sustainable Development, dated 3 August 2016, specified the rule of compensating the price of cadastral drawing works performed within the state project; according to this rule a physical person or a private entity who has the right to seek primary registration of land ownership or/and who has obtained the ownership right on an object but in an unverified form, and asks for the measurement drawing of the land plot to verify the cadastral data, is eligible for the compensation of measurement costs of land that is specified in the agreement between a surveyor and the mentioned person and registered in accordance with specified rule, but within the limits of five hectares per owner. This rule can be used by interested persons if they submit relevant applications to the Public Registry till 30 June 2017.

On this stage, one should commend the legislative changes that were introduced to sort out systemic problem of ownership registration. The Public Defender of Georgia will keep a close watch on the implementation of special procedure for systematic and sporadic registration of land ownership rights and the norms for the improvement of cadastral data.

MEDIATION AS AN ALTERNATIVE MEANS OF DISPUTE RESOLUTION WITHIN THE FRAMEWORK OF STATE PROJECT

The Law of Georgia on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project provides for mediation - an alternative means of dispute resolution between parties in the process of implementation of state projects. Basic principles of mediation are: free will, integrity, equality, cooperation, impartiality and independence of mediator, confidentiality. Mediation process is conducted by a mediator (mediators) - a person(s) with special knowledge.

In the case of a dispute between the parties during the implementation of the State Project, the National Agency of Public Registry, in order to resolve the dispute, resorts to notarial mediation or involves a mediator (mediators) in the matter, who notifies the parties about the conditions of mediation and, with their consent, sets a date and place of meeting. The mediation is confidential. For the purpose of facilitating negotiations between the parties and identifying common interests, the mediator holds both individual and joint meetings with the parties. If an agreement is achieved, a mediation contract is concluded between the parties, which serves as the basis for registering the right to a plot of land. A resolution agreement signed as a result of a notarial mediation is the basis for the registration of the right to a plot of land.

The analysis of applications/complaints submitted to the Public Defender's Office in the past few years proves that the main problem related to the land ownership registration is a so-called issue of interference/duplicate

registration, which has been repeatedly highlighted in the Public Defender's parliamentary reports of previous years.[1512]

The Office of Public Defender inquired about the role performed by, and efficiency of, mediation in the elimination of the most serious problem related to land registration. To this end, LEPL National Agency of Public Registry was asked for the information about instances of so-called interference identified in the process of systematic and sporadic registration in 2016, and successful outcomes of disputes through notarial mediation.

According to received information, over the period between the enforcement of the Law of Georgia on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project (31 July 2016) and 31 December 2016, the National Agency of Public Registry registered the total of 133 026 applications within the framework of sporadic registration; of this total number, the registration was successfully completed on 57 662 applications, the registration proceedings were terminated on 16 092 applications on the basis of interference. Notarial mediation was applied to 348 applications due to property dispute having arisen during the registration procedure and 80 cases ended in settlement between the parties.[1513]

The information provided by the Public Registry indicates that the problem of so-called interference is still pressing; it shows such violations that cannot be eradicated through notarial mediation alone.

RESULTS OF ABOLITION OF EVICTIONS FROM IMMOVABLE PROPERTY BY POLICE

At the end of 2015, the Civil Code of Georgia was amended to abolish the rule defined in Paragraph 3 of Article 172 providing a possibility, in case of encroachment on or otherwise disturbing the right of ownership to an immovable thing and upon the demand of lawful owner, to have the law-enforcement body put an end to such action without a court decision. Beginning on 1 March 2016, such disputes were to be resolved by court. Consequently, the Civil Procedures Code was amended to set a limited period of time for the consideration of such disputes; in particular, the term of considering a case on the recovery of an object from illegal ownership by a court was set at one month of receiving an application/complaint,[1514] while the term for the receipt and decision-making on cassation appeal was set at two months.[1515] According to amendments to the Civil Procedures Code, a court decision on the recovery of an immovable object from unlawful ownership was instantly enforceable.[1516] The failure to pay court costs both for plaintiff and defendant (in case of counter-claim) no longer represented an impeding factor.[1517]

With the Decree #75 of the Minister of Internal Affairs on 1 March 2016, the procedure of eviction/removal of unlawful possessor of residential house/apartment or/and other property was approved; it defined the rule and procedures of evicting/removing unlawful possessor of residential house/apartment or/and other property and persons being with him/her, upon the demand of lawful owner, in case of reasonable doubt that a crime envisaged in Article 160 of the Criminal Procedure Code of Georgia was committed.[1518]

1512 See the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia (2015) at http://www.ombudsman.ge/uploads/other/3/3891.pdf; the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia (2014) at http://www.ombudsman.ge/uploads/other/3/3509.pdf; the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia (2013) at http://www.ombudsman.ge/uploads/other/1/1563.pdf; the report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia (2015) at http://www.ombudsman.ge/uploads/other/0/86.pdf.

1513 Letter N4948/1 of the National Agency of Public Registry, 13 February 2017.

1514 Paragraph 3 of Article 59 of the Civil Procedure Code of Georgia.

1515 Paragraph 6 of Article 391 of the Civil Procedure Code of Georgia.

1516 Subparagraph E^1 of Article 268 of the Civil Procedure Code of Georgia.

1517 Paragraph 2 of Article 48 of the Civil Procedure Code of Georgia.

1518 Paragraph 11 of Article 3 of the Criminal Procedure Code of Georgia.

In his 2015 parliamentary report, the Public Defender noted that he would keep a close watch on the implementation of amendments concerning the abolition of eviction by police. Considering the past experience, the Public Defender reckoned that such disputes in courts would procrastinate and even bring no result in terms of change of unlawful occupant. These circumstances would create preconditions of violation of the property right.

Consequently, the Office of Public Defender of Georgia requested from all courts in Georgia the following information:

How many complaints were registered on the recovery of immovable property from illegal ownership in each court during the period from 1 March 2016 to 31 December 2016 and how many of them were not admitted on the basis of Article 186 of the Criminal Code of Georgia;

How many proceedings were terminated, how many complaints were left without consideration and how many were underway of the total number of complaints on the recovery of immovable property from illegal ownership during the same period;

In addition to above listed, information was requested about the dates of filing complaints on the recovery of immovable property from illegal ownership from 1 March 2016 to 31 December 2016 and final decisions delivered on them, as well as the dates of decisions on terminating the proceedings and leaving complaints without consideration.

Unfortunately, the Tbilisi city court reckoned that the provision of above information to the Public Defender's Office required time and human resources disproportionate with the aims of administering justice and hence, did not provide the requested information; this may be considered as a violation of law.[1519] As regards information from other courts, it shows that in the majority of cases complaints on the recovery of immovable property from illegal ownership are not considered within the timeframe set in the Civil Procedures Code. For example, as of 2 February 2017, Batumi city court and Gori district court were still considering complaints on the recovery of immovable property from illegal ownership, which were filed in March 2016; as of 6 February 2017, Tbilisi appeals court and Mtskheta district court had not completed the consideration of appeals filed in April 2016; as of 1 February 2017, Telavi and Gurjaani district courts had not completed the consideration of complaints filed in June 2016, et cetera. The existing situation is yet another proof of the Public Defender's position that the consideration of such complaints requires much more time than set in the procedural legislation and creates a precondition for the prolongation of the violation of the right to property.

In 2015, the Public Defender of Georgia gave a negative assessment to a above mentioned draft legislative amendments submitted to the Parliament of Georgia, reckoning that the abolition of the mechanism of eviction by police might encourage the regulation and criminal prosecution of such legal relationship under Article 160 of Criminal Procedure Code of Georgia (Violation of inviolability of domicile or of any other property) and this would significantly worsen the situation of rights of those people (refugees, socially vulnerable, other persons) who, because of homelessness and extremely hard social and economic conditions, arbitrarily occupied private facilities and continued to live there without any ground.[1520] To find out how were this legislative changes translated into practice, the Office of Public Defender requested the information that was important to study the issues from the Interior Ministry; however the Ministry explained[1521] that they did not have the data that would enable to identify the number of applications submitted to the Ministry over

1519 It was important for the Office of Public Defender to process this information because over the period between 1 March 2016 and 31 December 2016, the Tbilisi City Court registered 835 complaints on the recovery of property from the illegal possession (it is not identified how many of them concern immovable property), which comprise 46% of all complaints on the same matter, registered in all operational district (city) courts in Georgia in the same period.

1520 Proposal of the Public Defender of Georgia, 22 July 2015. Available at http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saxalxo-damcveli-sapolicio-gamosaxlebis-meqanizmis-gauqmebis-iniciativas-uaryofitad-afasebs.page > [last accessed on 18.01.2016].

1521 Letter #MIA 21700376166 of the Interior Ministry, 15 February 2017.

the period between 1 March 2016 and 31 December 2016, in accordance with the Rule and Procedures of Eviction/Removal of Unlawful Possessor of Residential House/Apartment or/and Her Property and Persons Being with Him/Her approved under the Decree #75 of the Minister of Internal Affairs on 1 March 2016, in which lawful owners demanded the eviction/removal of unlawful possessor of residential house/apartment or/and other property and persons being with him/her; the number of applications that met the requirements provided in this rule; the number of applications enclosed with documents supporting a reasonable doubt; the number of carried out evictions/removals of unlawful possessor of residential house/apartment or/and other property and persons being with him/her; and the number of residential houses/apartments or other property recovered by their lawful owners.

The information provided to the Office of Public Defender by the Interior Ministry with the letter N MIA 21700376166 of 15 February 2017 enabled us to identify that the number of cases into which investigations were launched by Interior Ministry's divisions under Article 160 of the Criminal Code (Violation of inviolability of domicile or of any other property) in the period between 1 March 2016 and 31 December 2016 increased by 40% as compared to the period between 1 March 2015 and 31 December 2015.

The above said reveals that the violation of terms set by the law for the recovery of immovable property from illegal possession is a frequent occasion; as a result the protection of the right to property by court is a procrastinated process.

RIGHT TO PROPERTY OF POPULATION AFFECTED BY UNCOMPLETED HOUSING DEVELOPMENT COOPERATIVES

According to the Law of Georgia on Public Debt, an obligation assumed by the state in regard to housing development cooperatives is recognized as a domestic public debt since 1998. This problem, discussed in the 2015 parliamentary report,[1522] remained pressing in 2016 too.

On 15 November 2004, a state commission for studying the issues of state domestic debt was set up to consider, resolve and draw up recommendations on issues of domestic debt recognized under the Law of Georgia on Public Debt. The term of the activity of commission expires on 1 January 2018. During years the commission has not drawn up any recommendation for the resolution of the abovementioned problem. At a sitting of the commission on 28 April 2015, the commission took a decision to ask Tbilisi City Hall and the Finance Ministry to draw up, until 1 February 2016, a rule for the transfer of municipal immovable property into private ownership of members of housing development cooperatives in exchange for the state debt towards them and to submit it to the government of Georgia for approval. Also, the Finance Ministry was tasked to discuss, while preparing the 2016 budget, the issue of allocating sums needed for the continuation of construction of those uncompleted buildings on the territory of Tbilisi municipality, which were intended for members of former housing development cooperatives.

On 9 March 2016, the government of Georgia issued an ordinance N419 based on which Tbilisi municipality was asked to ensure the transfer of specified immovable property to members of housing development cooperatives at a symbolic price and the execution of relevant agreements with them.

According to information requested by the Public Defender of Georgia from LEPL Agency of Property Management of Tbilisi municipality,[1523] representatives of Tbilisi municipality and an initiative group which comprises members of former housing development cooperatives as well as members of association defending

1522 The report of the Public Defender, The Situation of Human Rights and Freedoms in Georgia, 2015; available at http://www.ombudsman.ge/uploads/other/3/3891.pdf.

1523 Letter N01-8/7834 of 17 November 2016 from the Agency of Property Management.

the rights of housing development cooperatives of Georgia continue to work on the implementation of measures envisaged in the above mentioned governmental ordinance. According to the same entity, under the ordinances of Tbilisi municipal government of 21 September 2016 and October of the same year, a decision was taken to submit an issue of transfer of immovable property in the form of direct use, at a symbolic price, to separate persons affected by housing development cooperatives to the Tbilisi City Council for agreeing. By the time the Office of Public Defender received the information, the transfer of property into ownership of mentioned persons had not been carried out. Also, under the absence of uniform rule, the principle of selecting persons to be satisfied on the first stage is ambiguous.

We also requested information from the Finance Ministry to find out whether, in preparing 2016 budget, it discussed the issue of allocating sums needed for the continuation of construction of uncompleted buildings on the territory of Tbilisi municipality for members of former housing development cooperatives and how it was decided. However, the response from the Finance Ministry[1524] did not contain this information.

We believe that the steps taken by the state in this direction cannot be considered effective. It is necessary to draw up a common rule for the fulfillment of obligation to citizens having suffered from unconstructed residential buildings under housing development cooperatives, which will detail the forms and terms of fulfillment of obligation to these persons. Given the number of affected people, it is clear that the transfer of lands into ownership in Tbilisi municipality alone will not be a sufficient measure to fulfill the obligation to all such persons. To reinstate the rights of these persons, it is necessary to undertake, within the shortest possible time, the measures for the transfer of immovable property, intended for members of housing development cooperatives, at a symbolic price and execute relevant agreements with them, also, to timely undertake measures for the completion of residential buildings.

RECOMMENDATIONS:

To the Parliament of Georgia

- Ensure that the legislation regulates a possibility of recognition of ownership right of traditional holders to agricultural lands and draw up a rule and procedure of recognition.

To the government of Georgia, the Ministry of Economy and Sustainable Development and the Borjomi municipality

- Do not dispose of agricultural land plots in the town of Bakuriani and the village of Didi Mitarbi until the ongoing criminal investigation has not been completed.

To the government of Georgia:

- Timely develop a common rue of compensating the domestic debt to members of housing development cooperatives and establish an effective mechanism for the fulfillment of obligation to the affected population.

1524 Letter N08-01/14190 of 2 February 2017 from the Finance Ministry.

To the Chief Prosecutor's Office of Georgia

- Timely complete the ongoing criminal investigation into the distribution of agricultural land plots in the town of Bakuriani and the village of Didi Mitarbi.

To the Tbilisi municipality:

- Timely transfer immovable property intended for members of housing development cooperative into the ownership at a symbolic price and consider and take relevant decision on the issue of executing relevant agreements with them.

ANNEX:
ANALYSIS OF INDIVIDUAL CASES

THE CASE OF G.O.

(Ineffective Investigation of Alleged Ill-Treatment)

Investigation of the alleged inhuman treatment of the accused, G.O., placed in penitentiary establishment no. 6 started on 8 June 2015 under Article 144[3].1 of the Criminal Code of Georgia.[1525] On 13 August 2016, investigation was discontinued by the resolution of a prosecutor due to the nonexistence of the elements of the crime.

Both during the investigation and after its discontinuation, the Office of the Public Defender of Georgia maintained communication with various competent state authorities; studied the files of the completed case and met representatives[1526] of the Office of the Chief Prosecutor of Georgia, concerning the identified shortcomings. The analysis of the case-files showed that the investigation was not effective.

The Facts

According to accused G.O., placed in cell no. 63 of penitentiary establishment no. 6, on 7 June 2015, the Head of the Security Division of penitentiary establishment no. 6, S.M., when in G.O.'s cell, torn his official uniform and inflicted self-harm. According to G.O., staging the attack on the establishment's staff member was aimed at bringing new charges against him.

According to G.O., his nine-month detention term was to expire on 12 June 2015 and bringing new charges against him would make it possible to keep him in detention. It should be noted that, on 8 June 2015, new charges were brought against G.O. under Article 373 of the Criminal Code of Georgia.[1527] The new charges are related to another incident and G.O. was kept in detention, based on a court decision.

It should be noted particularly that this analysis only concerns the effectiveness of investigation and does not include the analysis and credibility of G.O.'s statements mentioned above.

1525 The Criminal Code of Georgia, Article 144[3] – degrading or inhuman treatment.

1526 The meeting was attended, among other representatives, by the First Deputy Public Defender and Deputy Chief Prosecutor. During the meeting, since the prosecutor's office failed to adduce arguments against shortcomings of the investigations, the questions about shortcomings in the investigation remained unanswered.

1527 The Criminal Code of Georgia, Article 373 – false denunciation.

Compatibility of the Investigation with International Standards

Under the Constitution of Georgia, investigation falls within the exclusive competence of the state authorities.[1528] The state has the obligation to investigate allegations about violations promptly, comprehensively and effectively, through independent and impartial bodies. Failure by the state to investigate allegations of violations could in itself give rise to a separate breach of the violation.[1529]

It is noteworthy that in this case, G.O. did not claim of torture or inhuman treatment against him. However, the investigation progressed under Article 144^3 of the Criminal Code of Georgia. Accordingly, the investigation should have been conducted in accordance with the standards emanating from the contents of the positive obligation incorporated in Article 3 of the European Convention on Human Rights.

According to the well-established case-law of the European Court of Human Rights, 'in order for an investigation to be effective, its conclusions must be based on a thorough, objective and impartial analysis of all relevant elements.'[1530] The investigation must be comprehensive, prompt and allow a victim's participation proportionally to the interests of investigation.[1531]

a) Investigation was not Thorough

The Code of Criminal Procedure of Georgia sets forth the obligation of an investigator to conduct thorough, full and objective investigation.[1532] The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible.[1533]

According to the jurisprudence of the European Court of Human Rights, any deficiency in the investigation, which undermines its ability to establish the cause of injury or the person responsible, will risk falling short of this standard.[1534] The investigation's conclusions must be based on thorough, objective and impartial analysis of all the relevant elements.[1535] It is impermissible to conduct investigations that are perfunctory and superficial and do not reflect any serious effort to discover the truth.[1536]

Despite the fact that the Office of the Chief Prosecutor of Georgia conducted a number of investigative actions, it is obvious that the criterion of thoroughness has not been met.

Despite the numerous requests from both G.O. and the Office of the Public Defender of Georgia, as well as actual necessity, the Prosecutor's Office has not obtained and studied the video recordings of the external premises of cell no. 63. The evidence existing in the case-files clearly show that it would be impossible to establish the elements of the crime based on the video recordings obtained from the cell only.

It should be pointed out that the Office of the Chief Prosecutor of Georgia, similar to G.O. and the Office of the Public Defender of Georgia, not only could request the video recordings from cell no. 63 but also request from the very outset to have the recordings depicting the external premises and G.O.'s movements fully archived.

1528 The Constitution of Georgia, Article 3.1.q).
1529 The United Nations Human Rights Committee, General Comment no. 31 [80].
1530 Tsintsabadze v. Georgia, application no. 35403/06, judgment of the European Court of Human Rights of 15 November 2011, para. 85.
1531 Cf. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989 1, etc.
1532 The Criminal Procedure Code of Georgia, Article 37.2.
1533 Enukidze and Girgvliani v. Georgia, application no. 25091/07, judgment of the European Court of Human Rights of para. 242.
1534 *Bati and Others v. Turkey*, applications nos. 33097/96 and 57834/00, judgment of the European Court of Human Rights of 3 June 2004, para. 134.
1535 *Enukidze and Girgvliani v. Georgia*, application no. 25091/07, judgment of the European Court of Human Rights of para 242.
1536 *Poltoratskiy v. Ukraine*, application no. 38812/97, judgment of the European Court of Human Rights of 29 April 2003.

Even assuming that the Prosecutor's Office was initially interested only in the video recording from cell no. 63, the office was already aware as early as on 8th June about the request from both G.O. and the Office of the Public Defender. The Prosecutor's Office was also aware of the fact that the video recordings were archived following the request from the Office of the Public Defender of Georgia, since there are letters in the case-file both from the Office of the Public Defender and the response from the Penitentiary Department of the Ministry of Corrections.

Despite the above-mentioned, due to unknown reasons, the Prosecutor's Office has not requested the video recordings. In the course of the investigation, the Prosecutor's Office has not even enquired whether the Penitentiary Department of the Ministry of Corrections fulfilled its statutory obligations.[1537] The Prosecutor's Office neither obtained the recordings nor adduced any good reason for this failure. Such negligence towards securing the major piece of evidence of the case despite numerous requests submitted by G.O. for obtaining the video recordings is astonishing.

Accordingly, the failure to obtain and examine the video recordings of the external premises of cell no. 63 is a violation of particular implications, since only this way it would have been possible to recreate the chain of events.

In this regard, it is important to clear up the discrepancy in the letters of the Penitentiary Department of the Ministry of Corrections;[1538] whether the video recordings were actually archived and what happened to them. Furthermore, if the requests of the prisoner and of the Office of the Public Defender of Georgia were not followed, whether there was a credible reason for this inaction needs to be established.

Another particularly noteworthy fact is that the principal witnesses were interviewed only once and only after 80 days from the incident. The statements by the personnel of penitentiary establishment no. 6 are different with regard to several significant details, which had to be cleared up through additional interviews. However, these witnesses were not interviewed further. It should be pointed out that G.O. requested multiple times in his applications and complaints to have the said witnesses interviewed further.

b) Investigation was not Prompt

Under the Criminal Procedure Code of Georgia, an investigation shall be conducted within reasonable terms.[1539] The requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law.[1540]

For the assessment of the promptness of investigation, the relevant factors are the time taken for starting the investigation and collection of evidence. The duration of the investigation in itself is not an unconditional ground for finding a violation. In this regard, it is important that prosecution does not delay obtaining evidence and statements.[1541]

1537 Order no. 35 of the Minister of Corrections of Georgia, dated 16 May 2015.
1538 The letters of the Penitentiary Department of the Ministry of Corrections of Georgia, dated 8 June 2015 and 22 November 2016.
1539 The Criminal Procedure Code of Georgia, Article 103.
1540 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia, application no. 71156/01, judgment of the European Court of Human Rights of 3 May 2007, para. 96.
1541 *Aydın v. Turkey*, applications nos. 28293/95, 29494/95 and 30219/96, judgment of the Grand Chamber of the European Court of Human Rights of 25 September 1997, para. 106; *Aksoy v. Turkey*, application no. 21987/93, judgment of the European Court of Human Rights of 18 December 1996, para. 189; Çakıcı v. Turkey, application no. 23657/94, judgment of the Grand Chamber of the European Court of Human Rights of 8 July 1999, para. 284.

In the given case, the personnel of penitentiary establishment no. 6 and accused person– D.S. – placed there were interviewed after 80 days from the incident. The delay in interviewing the witnesses made it impossible for them to remember a number of factual circumstances. It should also be pointed out that there seems to be no explanation in the case-files why the interviewing witnesses was delayed until 26-27 August.

It is unclear why the witnesses were interviewed with such an obvious delay. Due to the delay, not only the important information and data perceived by them was distorted and lost, it gave rise to the significant risk of witnesses being subjected to pressure of some sort.

It is likewise impossible to justify the three-month delay due to the complexity of the investigation. Interview is one of the simplest investigative actions that allow establishing various circumstances significant for the case within the shortest time possible. The same is true with regard to other investigative actions that were also conducted with astonishing delay.[1542]

c) The victim was Unable to Participate in Investigation

The European Court of Human Rights imposes an obligation on the states to take positive actions for securing the rights of victims.[1543] The states must ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.[1544]

In this case, the Office of the Chief Prosecutor of Georgia, except for one occasion,[1545] has not responded to the requests of the victim to look into the circumstances indicated by him. G.O. pointed to the contradictions among the witness statements numerous times; requested to be shown the seized video recording; and re-interviewing witnesses. However, there was no adequate follow-up to these requests. Therefore, G.O. could not fully participate in the investigation.

Conclusion

In the course of the investigation conducted on criminal case no. 074080615802, the Office of the Chief Prosecutor of Georgia obtained a number of evidences, interviewed numerous witnesses and conducted various investigative actions. However, despite these investigative actions, the investigation cannot be considered as effective in accordance with international standards, especially, in terms of thoroughness, promptness and participation of the victim.

The Office of the Chief Prosecutor of Georgia has not obtained the major evidence, which would enable establishing the truth. The failure to obtain the video recordings from the external premises of cell no. 63 is unjustifiable. This was requested both by G.O. and by the Office of the Public Defender of Georgia. The Prosecutor's Office was aware of the letter of the Penitentiary Department of 8 June 2015, according to which the video recording of the external premises had been archived. The Prosecutor's Office had to take steps to obtain this recording. However, in the course of 14 months, the Prosecutor's Office did nothing to obtain the major piece of evidence.

The Office of the Chief Prosecutor of Georgia failed to act promptly regarding the fact indicated by G.O. It is not clear why witnesses were questioned only after 80 days from the incident. This is an unjustifiably long period. The three-month delay in questioning witnesses caused distorting/forgetting the perceived information. In this connection, it is also noteworthy that such delay may result in pressure being exerted on penitentiary staff.

1542 E.g., the video recording from cell no. 63 was examined on 24 September 2015, after 4 months from the incident.
1543 *Ireland v. the United Kingdom,* application no. 5310/78, para. 239.
1544 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.
1545 To order composite drawing forensic examination.

The actions of the Office of the Chief Prosecutor of Georgia additionally show that G.O. was not afforded sufficient possibility to participate in the investigation. He could not have any influence on the direction of the investigation in any way. Despite numerous applications and complaints, all his requests (apart from ordering forensic examination) remained unanswered.

THE CASE OF M.P.

(Ineffective Investigation of Alleged Ill-Treatment)

The Public Defender of Georgia studied on his own initiative the criminal case of the alleged treatment of M.P.[1546] The investigation started on 22 December under abuse of official power[1547] and discontinued on 2 June 2016. Despite the fact that investigative/procedural acts have been conducted, the study of the case showed that the investigation was not effective.

I. Thoroughness

The failure to conduct investigative actions for obtaining evidence was found to be in violation of the standard of thoroughness of effective investigation by the European Court of Human Rights, *inter alia,* in the judgments delivered against Georgia.

a) No Investigative Actions taken to Identify Persons of Interest

When questioned as a witness, M.P. referred to a specific room, where police officers committed criminal acts against her; she also described in detail four persons (their approximate age, height, body structure, and facial features, colour of eyes and hair, and clothes). However, no investigative actions have been taken to identify those persons.

The Court considered that the applicant's allegations made before the domestic authorities contained enough specific information – the date, place and nature of the ill-treatment, the identity of the alleged perpetrators, the causality between the alleged beatings and the asserted health problems, etc., to constitute an arguable claim in respect of which those authorities were under an obligation to conduct an effective investigation.[1548]

b) The Crime Scene has not been Examined and no Samples Collected

M.P. was questioned in relation to the above incident on 23 December of the same year. Accordingly, not much time passed from the alleged incident to make it meaningless to examine the scene. To the contrary, this was

1546 According to the statement given by M.P., on 20 December 2015, at approximately 03:00–04:00 a.m., she was taken from her house to one of the rooms of a police station. A few minutes later, 4-5 police officers requested her to confess to the crime and subjected her to physical violence after she refused. She later was stripped and thrown on a sofa and threatened with rape in case she did not confess to the crime. One of the police officers indeed attempted to rape her but 'N.' who entered the room ordered the police officers to stop, which they did. The accused remain in the police station and the said four persons were hitting her with their hands on the various areas of the head and the body in order to get the confession from her.

1547 On 21 December 2015, a letter from Tbilisi temporary detention isolator no. 1 was sent to the Office of the Chief Prosecutor of Georgia. The letter contained a copy of the external examination report describing the injuries found on M.P.'s body: 'there are small cyanotic areas and the right shoulder and the left thigh; excoriation covered with scabs on both palms; bruises on the right side and near navel; hyperaemic areas of various sides on both wrists and left knee. According to the accused, the police officers assaulted her physically and verbally during the arrest.'

1548 Gharibashvili v. Georgia, application no. 11830/03, judgment of the European Court of Human Rights of 29 July 2008, para. 64.

both necessary and possible to examine the room in the police station, as well as getting sample(s) (if there were any) from the items in the room) and/or seizing items relevant to the case for obtaining fingerprints on them and or obtaining samples for examining/establishing the circumstances indicated by the accused in her statements. Furthermore, M.P.'s clothes have not been seized;[1549] neither the sample(s) (if there were any) on the clothes have been obtained. Moreover, M.P. alleged that the police officers forcefully undressed her and the clothes could bear such traces.

When assessing the effectiveness of investigation, the European Court of Human Rights takes into consideration the failure to examine a crime scene[1550]; investigator's failure to take fingerprints;[1551] Istanbul Protocol also indicates the need for examining the alleged crime scene and clothes thoroughly for obtaining physical evidence, finding/seizing fingerprints, biological trace and other evidence.[1552]

c) Not all Possible Documents/Information have been Obtained

There was no information obtained as to who was present in the police station, where she claimed she had been subjected to physical violence, in the time-frame indicated by the accused on 20 December 2015 (police officers, their work places and positions[1553]). No information was obtained from either electronic or hardcopy of the log entries (if there was any) registering entry and departure of personnel/individuals to and from the police station.

Under the Istanbul Protocol, it is necessary to draw up the list of all the persons present at the alleged crime scene (full names, addresses, telephone numbers other contact details).[1554]

d) Not every Person Present in the Police Station and Involved in Investigation Actions have been Questioned

In the course of investigation, the head of police station no. 4 and its two staff members as well as the deputy head of the detectives' unit and its two staff members were questioned/interviewed. For the purposes of effective investigation, it was necessary to obtain information from the Ministry of Internal Affairs of Georgia about all the persons involved in the investigative actions carried out in the criminal case against M.P. as well as the police officers present at the police station; it was necessary to question/interview all those above-mentioned persons through posing detailed and exhaustive questions to them.

According to the interpretation given by the European Court of Human Rights, the thoroughness and impartiality of an investigation is preconditioned by identifying all the persons related to the act at stake.[1555] The European Court considers an investigation to be ineffective when the persons having information about alleged incidents are not identified and questioned.[1556] For identifying the possible witnesses to alleged torture,

1549 On 21 December 2015, in the period of 16:20–16:50, in Tbilisi temporary detention isolator no. 1 investigative action was carried out in criminal case no. 010201215001 against M.P. –the clothes and shoes (worn by her on 19-20 December 2015) were seized.

1550 Dvalishvili v. Georgia, application no. 19634/07, judgment of the European Court of Human Rights of 18 December 2012, para. 49.

1551 Tsintsabadze v. Georgia, application no. 35403/06, judgment of the European Court of Human Rights of 15 November 2011, para 80. 'The Court has no doubt that such a simple but, in the circumstances, indispensable investigative measure could have significantly elucidated the facts'.

1552 Istanbul Protocol, para. 101.

1553 It should be taken into consideration that according to the statements given by police officers, the case against M.P. was investigated by the Detectives' Unit of Tbilisi Police Department. The staff members of Police Station no. 4 of Vake-Saburtalo Division were also involved in the investigation.

1554 Istanbul Protocol, para. 102.

1555 Enukidze and Girgvliani v. Georgia, application no. 25091/07, judgment of the European Court of Human Rights of para. 255.

1556 Danelia v. Georgia, application no. 68622/01, judgment of the European Court of Human Rights of 17 October 2006, para. 64. Tsintsabadze v. Georgia, application no. 35403/06, judgment of the European Court of Human Rights of 15 November 2011, para. 80.

it is necessary under the Istanbul Protocol to question all the persons that were in the facilities or the premises concerned,[1557] as well as all persons of interest.[1558]

e) No Identification Parade has been Held

Despite the fact that M.P. described in detail the police officers who subjected her to violence, no investigative/procedural act was conducted to identify those persons and no identification parade was held. It is noteworthy that M.P. was requested to give the names and surnames of specific persons for conducting investigative actions.[1559] The legislation does not stipulate the obligation to provide names and surnames of those persons to be identified. Before identification, the person identifying should be questioned/interviewed regarding individual and generic features of those to be identified.[1560]

f) Forensic Examination was not Conducted for Establishing a Specific Incident of Violence

Despite the fact that M.P. underwent forensic examination[1561], the problem is that no examination was conducted for establishing the reason for the termination of her pregnancy. On 12 January 2016, the O. Ghudushauri Medical Centre sent to the investigative authorities M.P.'s medical files, which confirmed the termination of pregnancy within a few days after the accused was arrested.[1562] The investigative authorities have not sent the relevant medical documents of the case-file to the forensics bureau and have not requested forensics examination for identifying the reasons for the termination of her pregnancy (could the pregnancy be terminated due to the physical violence indicated by the accused). Furthermore, no forensic examination has been appointed/conducted to check that allegation in M.P.'s statement according to which she was the victim of an attempted sexual assault. The investigative authorities relied on the statement given by M.P. during the additional questioning on 25 December 2015 where she said no injury has been caused by this act and needed no forensic examination.

The significance of medical examination/documentation of injures and conducting forensic examination is pointed out by the European Court of Human Rights. The Court finds the violation of the obligation to conduct an effective investigation when an adequate medical forensic examination is not carried out.[1563] The importance of medical forensic examination is also highlighted by Istanbul Protocol.[1564]

g) The Witness has not been Fully Questioned

Apart from the above-mentioned, there was the problem related to the failure to ask one of the witnesses the questions necessary for obtaining comprehensive information. According to the statements given by M.P.,

1557 Istanbul Protocol, para. 102.
1558 Ibid., para. 100.
1559 On 20 May 2016, letter no. 13/01–31863 of Tbilisi Prosecutor's Office notified M.P.: 'as regards identification, please, indicate the names and surnames of the persons who committed any illegal acts against you (and who you request to be identified).
1560 The Criminal Procedure Code of Georgia, Article 131.2.
1561 According to conclusion no. 000071416 of LEPL Levan Samkharauli National Forensics Bureau, dated 13 January 2016, on 24 December 2015, the personal examination of M.P. showed injuries in the form of bruises and synulosis that are inflicted by a solid, blunt object. The injuries both taken together and individually fall under mild injuries without damage to health. The possible time of inflicting the injuries corresponds the date indicated in the preliminary information.
1562 According to the medical notice (form no. 100), the patient was in the clinic from 21:30 23, 23 December 2015 until 22:30, 26 December 2015. On 23 December 2015, at 23:30, an examination was conducted and consultation provided concerning possible pregnancy (ultrasound examination showed amniotic sac). On 26 December 2015, at 17:00, an examination conducted concerning the 'possible' termination of pregnancy showed that there was no amniotic sac.
1563 *Dvalishvili v. Georgia*, application no. 19634/07, judgment of the European Court of Human Rights of 18 December 2012, paras. 42, 46; *Enukidze and Girgvliani v. Georgia*, application no. 25091/07, judgment of the European Court of Human Rights of para. 256.
1564 Istanbul Protocol, para. 103.

during the violence inflicted on her, the person named 'N' (possibly a superior officer) who entered the room, ordered the police officers to stop the illegal act. It is noteworthy that when questioning N.O. - Deputy Head of the firs police station of the Detectives' Unit - he was not asked about the situation in which he saw the accused, the room, and the police officers who were present in the room with her and if he witnessed the fact alleged by M.P. in her statement.

The European Court of Human Rights in the context of ineffective investigation also refers to superficial nature of questioning the failure to attempt specific questions to police officers.[1565]

h) The Involvement of a Person of Opposite Gender in an Act Involving Undressing has not been Examined

When M.P. was placed in Tbilisi no. 1 temporary detention isolator, the external examination report was drawn up by Chief Inspector G.A. with the participation of doctor M.M. Apart from the doctor of the same sex as the accused, there was another person of the opposite sex that took part in the external examination – the isolator's inspector. The investigation that was conducted did not examine whether the external examination of the accused was conducted by the male inspector or the doctor of the same sex, while the inspector only wrote the report; whether the examination by the inspector would subject the accused to degrading treatment was not established. In case there were no elements of the crime, the Inspectorate General of the Ministry of Internal Affairs was not notified to address the issue.

The examination of the person by a person of the same sex serves the purpose of respecting the dignity of the former, a domestic and international standard. Therefore, the contradiction in the existing documents should have been studied by the competent authorities.[1566]

II. Promptness

Despite the fact that investigative actions were carried out soon after the investigation commenced, the activity to obtain the video recordings should be assessed as a violation of the criterion of promptness of investigation. On 18 January 2016, the investigative body applied to the State Security Service of Georgia with the request for providing the video recording from the internal and external premises of the police station (from 02:00-22:00 on 20 December 2015). The video recordings are the importance evidence for establishing the circumstances of the incident. However, the request was sent by the investigative authorities to the Service of the State Security of Georgia only on the 27th day after the investigation was started.[1567]

It is noteworthy that when assessing the promptness of investigation and the diligence of instigative authorities, the European Court takes into account the time that was needed for the collection of preliminary evidence and the investigation in its entirety.[1568]

III. The Involvement of the Victim in the Investigation

M.P. did not have any information about the progress of the investigation or its discontinuation, apart from the investigative acts that were carried out with her participation (she was questioned twice as a witness and

1565 Dvalishvili v. Georgia, application no. 19634/07, judgment of the European Court of Human Rights of 18 December 2012, para. 49.
1566 Istanbul Protocol, para. 173; the Criminal Procedure Code of Georgia, Article 111, Article 121.
1567 According to the letter received from the State Protection Service of Georgia, dated 21 January 2016, the recording could not be found. The letter does not contain the reasons as to why the recording could not be found (*inter alia*, the letter did not specify if recordings are not kept or are erased after certain period).
1568 Eric Svanidze, Effective Investigation of Ill-Treatment: the manual of the guiding European standards, p. 66.

a forensic expert examined her). Following M.P.'s two requests filed with the Prosecutor's Office,[1569] she was notified that she was not a party to the proceedings and she would not be able to study the case-files.[1570] M.P. only had the status of a witness and has not been recognised as a victim due to which she was not given any possibility to exercise the rights afforded by the criminal procedural legislation for victims.[1571] It is important to recognise a person as a victim[1572] from the very beginning of investigation so that he/she is involved in the investigation and not prevented from the exercise of his/her rights. For recognising a person as a victim, it is not necessary to have a crime established beyond a reasonable doubt at the moment of adopting a respective resolution.

The European Court of Human Rights pointed out in numerous cases the necessity to have victims involved in the progress of investigation. The following was held in violation of the obligation to conduct an effective investigation: the refusal to grant leave to the applicants to take part in important investigative measures and the failure to inform the applicants of the findings made in the course of the investigation measures conducted in their absence;[1573] denial of access to the case-files,[1574] the failure to recognise the status of a victim;[1575] the failure to notify the termination of proceedings[1576] and the inability to safeguard statutory procedural rights after the termination of investigation.[1577]

IV. The Resolution on Discontinuation of Investigation

According to the investigation discontinuation resolution, the injuries are established to have been found M.P.'s body. However, it was not established that the police officers inflicted the injuries on M.P. or committed any illegal act; M.P. did not allege any breach of her rights during the investigative and procedural actions carried out in the police station. Furthermore, the resolution on discontinuation of investigation relies on the police officers' statements, according to which there has been no illegal act committed against M.P.

According to the police officers' statements, on 20 December 2015, at around 2-3 a.m., they brought M.P. from her house to the police station. According to the case-files, M.P. was questioned as a witness[1578] on 20 December 2015, from 11:01–15:00 and on the same day at 15:37 was arrested. During the arrest, the following injuries were identified: excoriations on a palm, bruises; she complained about shoulder pain and stated that she got the injuries during stress.[1579] M.P. was practically arrested from the moment she was taken from her house. Furthermore, she was kept until the start of questioning for more than 8 hours so that no investigative action was carried out with her participation. By the time the arrest report was drawn up, she was under police supervision and surveillance for more than 12 hours and she claimed to have been subjected to ill-treatment during this very period. It is noteworthy that in this period, M.P. did not have a lawyer.[1580] This could explain the absence of the respective comments/statements in the reports of investigative actions. Later, when being

1569 On 1 March 2016, the application of M.P. was sent from the Office of the Chief Prosecutor of Georgia to Tbilisi Prosecutor's Office. On 3 May 2016, she lodged a complaint.

1570 Letter no. 13/01–31863 of Tbilisi Prosecutor's Office, dated 20 May 20016.

1571 The Criminal Procedure Code of Georgia, Article 57.1.d): 'a victim shall have the right to obtain a copy of the resolution on discontinuation of investigation;' Article 57.1.h): 'a victim shall have the right to receive information about the progress of investigation and study case-files, unless this contradicts the interests of investigation.' The Criminal Procedure Code of Georgia, Article 106.1[1]: 'a victim shall have the right to one time appeal of a resolution on discontinuation of investigation/criminal prosecution before a superior prosecutor'.

1572 The Criminal Procedure Code of Georgia, Article 3.22: 'a victim shall imply a public, physical or a legal person sustaining moral, physical or property damage as the immediate result of a crime.'

1573 Enukidze and Girgvliani v. Georgia, application no. 25091/07, judgment of the European Court of Human Rights of para 250.

1574 Enukidze and Girgvliani v. Georgia, application no. 25091/07, judgment of the European Court of Human Rights of para 250.

1575 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia, application no. 71156/01, judgment of the European Court of Human Rights of 3 May 2007, para. 113.

1576 Mikiashvili v. Georgia, para. 91. 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia, application no. 71156/01, judgment of the European Court of Human Rights of 3 May 2007, paras. 122–123.

1577 Enukidze and Girgvliani v. Georgia, application no. 25091/07, judgment of the European Court of Human Rights of para 251.

1578 Criminal Case no. 010201215001 against M.P., the report on interrogation.

1579 Reports on arrest and search of an accused.

1580 A lawyer attended the interrogation of M.P. as an accused person conducted on 20 December 2015, from 16:05–16:15.

admitted to a temporary detention isolator, placed in a penitentiary establishment and meeting an investigator of the Prosecutor's Office, M.P. explained that the injuries were sustained as the result of police brutality. However, there is no evidence in the case-file confirming that the injuries concerned were sustained before the arrest.[1581]

The European Court of Human Rights noted the inconsistent approach to the assessment of evidence by the domestic authorities in the following cases: when the prosecution and judicial authorities accepted the credibility of the police officers' testimonies without giving any convincing reasons for doing so, despite the fact that those officers' statements might have been subjective and aimed at evading criminal liability for the purported ill-treatment of the applicant[1582] when a judgement was based on the testimonies of the police officers involved in the incident;[1583] and the officer in charge of the investigation was satisfied with the testimonies given by the police officers who denied the fact of ill-treatment, and explanations given by persons involved in the alleged ill-treatment.[1584] In this respect, the credibility of the police officers' statements should have been questioned, as the investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal charges.[1585] The investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded findings or conclusions to close their investigation.[1586]

V. Conclusion

Thus, in the course of the investigation, there has been no examination of the crime scene, no sample(s) (if there were any) obtained and no items seized; no investigative actions have been conducted for identifying alleged perpetrators; every police officer present during the incident has not been questioned; no identification parade has been held; M.P.'s clothes have not been seized; no fingerprints from the clothes have been obtained; and no forensic medical examination has been conducted for establishing the reason for termination of her pregnancy or the fact of alleged attempted sexual violence. The steps for obtaining video recordings from the police station were made only after 27 days from the start of the investigation. From the start to the end of investigation, M.P. was not recognised as a witness, due to which she was not allowed to be involved in the investigation and obtain information about its progress. In the light of the forgoing, the investigation conducted on the incident of alleged ill-treatment of M.P. cannot be considered to be thorough and effective.

THE CASE OF G.O.

(The Legality of the Verdict in the Jury Trial and other Points of Law)

The Public Defender of Georgia studied the criminal case against G.O. in which a jury adopted a partially guilty verdict.

The shortcomings of legislative or practical nature that have been identified by the Public Defender of Georgia when examining the above criminal case concerns the standard of legality of the verdict in the jury trial and other particularities of the proceedings with the participation of jurors.

1581 According to the resolution, the evidence did not show the injuries caused to M.P. by police officers, which certified the fact that the injuries had been sustained before M.P.'s transportation to the police station. It is noteworthy that according to the statement given by M.P., only one injury (in the form of a scab) had been sustained before the arrest.
1582 Dvalishvili v. Georgia, application no. 19634/07, judgment of the European Court of Human Rights of 18 December 2012, para. 50.
1583 Mikiashvili v. Georgia, application no. 18996/06, judgment of the European Court of Human Rights of 9 October 2012, para. 82.
1584 Davtian v. Georgia, application no. 73241/01, judgment of the European Court of Human Rights of 27 July 2006, para. 46.
1585 Mikiashvili v. Georgia, application no. 18996/06, judgment of the European Court of Human Rights of 9 October 2012, para. 82.
1586 Gharibashvili v. Georgia, application no. 11830/03, judgment of the European Court of Human Rights of 29 July 2008, para. 62.

The Criminal Proceedings

On 12 September 2014, citizen G.O. was charged under Article 109.3.e) of the Criminal Code of Georgia (intentional murder committed more than once) and Article 236.1, Article 236.2 of the Criminal Code of Georgia (illegal purchase, storing and carrying of a firearm). On 5 June 2015, jurors could not adopt a verdict and the case was referred to a new composition of a jury.

On 25 December 2015, the second composition of a jury acquitted G.O. from the charges of illegal purchase, storing and carrying a firearm and found him guilty in the intentional commission of a murder. He was sentenced to 20 years of deprivation of liberty.

This sentence was appealed in cassation proceedings by both the prosecution and the defence, and remained in force after oral hearings. In the cassation proceedings, the defence invoked five different legal grounds for repealing the judgment.[1587] In the process of examination of the case by the Office of the Public Defender of Georgia,[1588] the convict notified the office about other possible violations. The present chapters discuss the shortcomings found in the court trial and cassation proceedings.

The Selection of Jurors

The legal composition of jurors is the starting safeguard for the legality of a verdict. Even the participation of one illegal juror in a trial will result in a mistrial.[1589] The Office of the Public Defender examined the application of G.O. according to which, one of the jurors worked in the Ministry of Internal Affairs of Georgia, which is a circumstance making a candidate juror incompatible to serve as a juror.[1590]

The Office of the Public Defender of Georgia revealed that the workplace of the candidate jurors is only verified based on the special questionnaire filled out by candidates.[1591]

It is obvious that the legislature 'overlooked' to regulate one of the main aspects of the legality of a jury trial. The legislation does not set up a mechanism for preventing an incompatible juror from participating in the trial. It should also be taken into consideration that no normative act provides for those issues that have to be answered in the questionnaire. This may cause that relevant questions that would be aimed at revealing the incompatibility to act as a juror are not posed to candidate jurors.

While the legislation provides responsibility for inaccurate filling of the questionnaire,[1592] it is impermissible that the state should completely trust the good faith of the candidate jurors. The state should elaborate a procedure for verifying the eligibility of candidate jurors to ensure the legal composition of a jury and the legality of the verdict to be adopted by this jury. Otherwise, the administrative recourses and the time spent by the state and the participants of the process may turn out to be futile.

1587 Namely, Article 226.2 paras. a), b), c), e). f) of the Criminal Procedure Code of Georgia, which reads as follows:
a) a presiding judge adopted an illegal decision on admissibility of evidence:
b) a presiding judge adopted an illegal decision when considering a motion filed by a party to the proceedings, violating the principle of adversarial proceedings;
c) a presiding judge made an essential mistake when giving instruction to jurors before their departure to a deliberation room;
e) a presiding judge, when adopting a sentence, relied on a verdict passed in breach of the requirements of the Criminal Procedure Code of Georgia;
f) sentence is illegal and/or manifestly ill-founded.

1588 It is noteworthy that the Office of the Public Defender of Georgia observed the proceedings at all times. Ample correspondence was maintained with various agencies. The representatives of the Public Defender studied the case-files. The office examined about 530 applications filed by G.O and his representatives. The visits were regularly made to the penitentiary establishment to monitor the condition of the convict.

1589 The Code of Criminal Procedure of Georgia, Article 310.b).

1590 The Code of Criminal Procedure of Georgia, Article 30.d) as of 24 June 2016.

1591 Letter no. 15–1/13195 of the Office of the Public Defender of Georgia, dated 7 November 2016, and Letter no. 20456, dated 9 November 2016, sent in response by Tbilisi City Court concerning the mechanism of checking the grounds of incompatibility of candidates for jury.

1592 The Code of Criminal Procedure of Georgia, Article 367^2.

The Office of the Public Defender of Georgia continues to obtain information in this regard; particularly in the criminal case against G.O.

The Protection of Jurors from Outside Influence and their Independence

Both before the start of the proceedings and during its progress, the potential and incumbent jurors were not protected from outside influence, namely, due to the existing media coverage and the statements of representatives of the state authorities shaped up the public opinion about his guilt, violating G.O.'s presumption of innocence[1593].

The right to a jury trial cannot be exercised effectively unless jurors are protected from outside pressure. Conversely, the legislation in force does not provide sufficient guarantees for jurors' independence. Unlike other states with the classical jury system,[1594] a procedure regulating the activities of TV media or press that would secure effective protection of presumption of innocence is not present in Georgia. Under those circumstances, where these media outlets cover the entire territory of the country, the protection of jurors from outside pressure can be managed by moving the court to another territory.[1595] In order to secure the independence of jurors, it is necessary to limit making the case public before the examination of the case by a jury through some kind of a mechanism.[1596]

Problems related to the independence of jurors were also identified in terms of violation of confidentiality of jury deliberations. In order to enable jurors to participate in deliberations, they should know that their positions made known within the jury shall remain confidential.[1597]

In the given case, a relative of the victim made a public statement on the television, which made it obvious that two jurors of the first composition let the relative know the details of jury deliberations. The investigation started on this incident has had no outcome to this day.[1598] It is imperative to investigate each case of breach of confidentiality of jury deliberations effectively so that it has a preventive effect for future proceedings.

The Use of Hearsay

In the opinion of the defence, the court failed to take into consideration a judgment of the Constitutional Court of Georgia about admitting indirect testimonies of witnesses for prosecution.[1599] The Court of Cassation observed that the judgment of the Constitutional Court did not mean the inadmissibility of hearsay and it will be impossible to assess the indirect nature of a statement unless a witness is given the possibility to participate in the proceedings.

It should be pointed out that the judgment of the Constitutional Court of Georgia does not exclude the possibility for hearsay to be admitted. It not only is possible to admit hearsay but also to rely on it in for the purposes of conviction, provided it is not the decisive evidence. When a case is examined by a professional judge, this can be verified through the reasoning part of the judgment. However, when a case is tried by a jury, the fact that a verdict is not reasoned, it excludes any possibility to verify which piece of evidence was relied upon by a jury.

1593 The representatives of state authorities made affirmative statements concerning the guilt of the accused. See the 2015 Parliamentary Report by the Public Defender of Georgia, pp. 458–459.
1594 For instance, by the Law of England and Wales on Contempt of Court, media is prohibited from publishing materials that are likely to influence court proceedings. A similar regulation exists in Scotland too.
1595 "Guarantees of impartiality for Georgian Juries", Eka Khutsishvili, 21.11. 2011, http://dfwatch.net/guarantees-of-impartiality-for-georgian-juries-40627-1588
1596 Winter, Examination of Cases by Lay Judges in the Council of Europe Member States, 2013, p. 32.
1597 Idem.
1598 Letter no. 13/65683 of the Office of the Chief Prosecutor of Georgia, dated 13 October 2016.
1599 Judgment no.1/1/548 of the Constitutional Court of 22 January 2015.

The said judgment of the Constitutional Court concerns both regular and jury trials. Therefore, the legislation in force should limit relying only on hearsay by a jury when adopting a guilty verdict. While the European Court of Human Rights does not exclude the possibility of the use of hearsay by a jury and basing a guilty verdict on it,[1600] the domestic legislation provides for the higher standards of legality in this regard.

One of the safeguards in this regard laid down by the legislation in force is giving instructions to jurors. In this case, pursuant to the request of the defence, the jurors were also instructed additionally about the judgment of the Constitutional Court of Georgia. The defence had also the possibility to address the issue of inadmissibility of hearsay in their concluding remarks.

It is, however, should be borne in mind that jurors have no legal education. Despite being given general instructions, they may find it difficult to identify hearsay or part hearsay. Giving jurors a general instruction does not avert the possibility they rely on hearsay when reaching a guilty verdict. It is, therefore, imperative that the legislation provides for some additional mechanism that will enable the implementation of the judgment of the Constitutional Court of Georgia.[1601]

The Grounds for the Legality of a Verdict

G.O. maintained in his cassation appeal that the sentence was based on the verdict adopted in breach of law. To substantiate his claim about the illegality of the verdict, the convict invoked the landmark judgment of the European Court of Human Rights adopted in the *Taxquet v. Belgium* case and pointed out that both the verdict and the sentence based on it failed to comply with the criteria established in the judgment of the Grand Chamber.

The convict observed in his cassation appeal that the jury acquitted him in the charges of illegal storage and carrying of firearms and this circumstance excluded commission of an intentional crime by him. In the opinion of the convict, the verdict was unsubstantiated and obscure, and violated his right to know why he was found guilty.[1602] The convict maintained that he had not been provided with sufficient safeguards to know the basis for his conviction. Therefore, the Court of Cassation was under an obligation to examine whether the guarantees for the legality of the verdict had been upheld in this case.

The Safeguards of the Legality of a Verdict According to the Taxquet Case

It is not the task of the European Court of Human Rights to harmonise the legal systems existing in Europe, or to review the relevant legislation in the abstract or standardise it.[1603] The Court noted that jury system exists in a variety of forms in different States, reflecting each State's history, tradition and legal culture; variations may concern the number of jurors, the qualifications they require, the way in which they are appointed and whether or not any forms of appeal lie against their decisions. However, the *Taxquet* judgment sets forth the guiding principle, neglecting which may cause the violation of the right to a fair trial.

The Convention does not require jurors to give reasons for their decision and Article 6 does not preclude a defendant from being tried by a lay jury even where reasons are not given for the verdict.[1604] A State's choice

1600 Al-Khawaja and Tahery v. the United Kingdom, applications nos. 26766/05; 22228/06, judgment of the Grand Chamber of the European Court of Human Rights of 15 December 2011.

1601 For instance, the mechanism to compensate the restriction of the right of the defence through the use of hearsay is giving instructions by a presiding judge to jurors pointing out hearsay and explaining the less probative value of this piece of evidence. See Al-Khawaja and Tahery v. the United Kingdom, applications nos. 26766/05; 22228/06, judgment of the Grand Chamber of the European Court of Human Rights of 15 December 2011.

1602 *Taxquet v. Belgium,* application no. 926/05, judgment of the Grand Chamber of the European Court of Human Rights of 16 November 2010.

1603 *Taxquet v. Belgium*, para. 83.

1604 *Taxquet v. Belgium*, para. 90.

of a particular criminal-justice system is in principle outside the scope of the supervision carried out by the Court at European level, provided that the system chosen does not contravene the principles set forth in the Convention. The general rule appears to be that reasons are not given for verdicts reached by a traditional jury[1605] and it is, in principle, acceptable.[1606]

Nevertheless, for the requirements of a fair trial to be satisfied, the accused, and indeed the public, must be able to understand the verdict that has been given. When it comes to the assessment of the legality of a verdict, the European Court takes into account not the quality of reasoning of a judgment but the clarity of a verdict.[1607] The European Court has developed a number of safeguards that the proceedings in question should comply with:

- Individual nature of the bill of indictment by the prosecution and the comprehensiveness of information it imparts;
- The number of questions put by a presiding judge to jurors and how specific, informative and particular these questions are;
- The instructions given by a presiding judge to jurors; and
- The effective possibility of appealing a sentence.[1608]

The first two criteria are considered together and aim at ensuring that an accused understands the sentence against him/her, whereas the following two criteria limit the possibility of arbitrariness on the part of the jury. The right to a fair trial was found to be in breach in the Taxquet case due to the fact that, even in conjunction with the indictment, the questions put in the present case did not enable the applicant to ascertain which of the items of evidence and factual circumstances discussed at the trial had ultimately caused the jury to answer the questions concerning him in the affirmative. Furthermore, an appeal to the Court of Cassation concerned points of law alone and accordingly did not provide the accused with adequate clarification of the reasons for his conviction.[1609]

Examination of the Legality of the Verdict by the Court of Cassation

Based on the above criteria, the Court of Cassation had to examine whether arbitrariness was averted and whether the verdict was sufficiently clear in this case. Upon finding a breach, the Court of Cassation had to repeal the verdict reached by the jury as the standards of the European Court of Human Rights have a direct effect. Following the *Taxquet* judgment, a number of countries with a jury system examined, on their own initiative, the compatibility of their domestic legislation with the European standards.[1610]

In the present case, the Court of Cassation formally examined only the compatibility in terms of the points of law.[1611] The judgment of the Court of Cassation only assessed one safeguard referred to in the *Taxquet* judgment. Namely, the Court was satisfied that the instructions given to the jurors were in line with the legislation in force.

The Court of Cassation observed in general that because the accused opted for the consideration of the criminal case against him by a jury, he was aware of the lack of reasons in a jury verdict. The Court of

1605 See, *R. v. Belgium*, application no. 15957/90; *Papon v. France*, application no. 54210/00; *Bellerín Lagares v. Spain*, application no. 31548/02 etc.
1606 *Taxquet v. Belgium,* paras. 43–60.
1607 *Taxquet v. Belgium,* paras. 91–92.
1608 *Taxquet v. Belgium*, paras. 92, 94; 95, 96.
1609 *Taxquet v. Belgium*, paras. 97–99.
1610 For instance changes were made to the Belgian and French legislations, whereas in Scotland (Beggs v. HM Advocate [2010] HCJAC 27, 2010 SCCR 681) and in Norway (judgment of the Supreme Court of Norway in the case of A. v. The Public Prosecution), domestic courts examined the compatibility of the national legislation with the Convention.
1611 Review of Articles 261–263 of the Criminal Procedure Code and other general provisions.

Cassation held that the lack of reasoning in a verdict does not amount to the breach of the right to a fair trial. The Court took into consideration the information about the verdicts reached by Georgian jurors that were devoid of any legal logic[1612] and stated that the convict had to have factored these risks from the outset.

Therefore, the Court of Cassation has not addressed altogether whether the guilty verdict was in compatibility with the standards established in the *Taxquet* judgment in the given case and the scope of an accused person's right to know the ground for his/her conviction for a particular crime.

The Reflection of the Taxquet Standards in the Georgian Legislation

a) Clarity of a Verdict

As already mentioned, the clarity of a verdict can be ensured by the answers to the questions put to a jury and in a traditional jury system – through the exhaustive nature of the information given in indictment.

The Court of Cassation of Georgia does not consider the fact that the Georgian legislation does not provide for the possibility of putting questions to the jury. According to the Taxquet judgment, this is compensated if the indictment is sufficiently exhaustive, specific and individual.[1613] However, the Court of Cassation did not discuss the comprehensive and specific nature of the resolution about bringing charges against G.O.

In this case, the clarity of the verdict is questioned by the fact that G.O. was acquitted under the head of the charges concerning the indispensible part of the main charge (intentional murder).

Partial acquittal by a jury does not in itself certainly imply that an accused is supposed to be cleared of other charges as well.[1614] The liberty of jurors results in the nullification.[1615] Jurors, for a number of reasons,[1616] can reach a verdict of partially guilty or partially non-guilty and contradict the body of the evidence existing in the case-file.

Since jurors' deliberations and voting is confidential and the Georgian legislation does not provide for putting questions to them, a convict will never know as to why and based on which particular arguments he/she was found guilty. In such cases, the additional guarantor to provide clarity of the verdict should be the Court of Cassation.[1617] The Court of Cassation should examine the clarity of indictment and refer to particular evidence that is relevant for the convict in unequivocal, exhaustive and individual manner.

In the given case, the Court of Cassation did not examine the clarity of the indictment, which is the only statutory means to ensure the clarity of a verdict. This approach should be changed so that a guilty verdict is clear and understandable for a convict.

b) Limiting the Arbitrariness of Jurors

As already mentioned, a presiding judge indicates to jurors the law within which they should act; the appeal mechanism on the other hand, if needs be, will rectify the manifestly illegal decision adopted by them.

In the present case, the instructions given by a presiding judge complied with law and the defence also took part in drawing up the instructions. The problem was the insufficiency of the clarifications given with regard to hearsay. This issue has been discussed above.

1612 For instance, a person was found guilty of the charges of purchase and storage of a firearm but was acquitted in charges of carrying the same weapon, and vice versa.
1613 *Taxquet v. Belgium*, paras. 94–97.
1614 *Saric v. Denmark*, application no. 31913/96.
1615 http://www.library.court.ge/upload/nafic_msajulTa_sasamarTlo.pdf
1616 Either social or political connotation of the issue, choice between the morality and law, etc.
1617 Taxquet v. Belgium, para. 99.

As regards the effective mechanism of appeal of a judgment, the Court of Cassation did not consider whether the Georgian legislation provides for sufficient possibility for appealing a jury verdict. The Court of Cassation observed 'it was not competent to review whether there was a sufficient body of evidence for a guilty verdict.'[1618]

It is indeed not within the power of the Court of Cassation to review a factual circumstance,[1619] especially, where the sentence has been adopted based on a verdict.[1620] If professional judges have a possibility to reconsider the factual circumstances already examined by a jury, this will undermine the entire institution of jury trial. Jurors are 'the masters of facts'[1621] and their verdicts are not subject to appeal.

Nevertheless, the risk for arbitrariness on the part of a jury needs to be neutralised. A court should be able to examine if there is a body of evidence that excludes a guilty verdict.[1622] The Georgian legislation limits the appeal to the points of law,[1623] which according to the *Taxquet* judgment is one of the violations.[1624]

In the present case, the Court of Cassation did not review the body of evidence existing in the case-file since the Georgian legislation does not provide such a procedure. Therefore, the legislation is in breach of the standards of the *Taxquet* judgment, which requires the possibility of appeal concerning factual circumstances.

The revision of the evidence assessed by jurors is the prerogative of a presiding judge only. He/she can repeal the verdict reached by the jury if it clearly contradicts the body of the evidence, is groundless or its repeal is the only means for administration of due justice.[1625]

This right given by law to a presiding judge cannot be considered sufficient. It is not an appeal mechanism at all. Even in those cases where the defence motions for such an action, a presiding judge may reject the invoked circumstances without providing any substantiation for his/her reasoning. In this case, in particular, after the verdict was reached, G.O. motioned to the judge to exercise the statutory right concerned; however, his appeal remained unanswered.

Furthermore, the legislation vests a presiding judge with virtually absolute discretion in this regard. Accordingly, similar to the present situation, the Court of Cassation does not consider that by virtue of the refusal to exercise this right, a presiding judge violates law and does not assesses factual circumstances invoking another ground of Article 266.

Thus, the assessment of the evidence by a jury is not subject to further revision, which gives rise to arbitrariness on part of the jurors. Presently, only a presiding judge can verify the compatibility of a verdict with the body of evidence existing in the case-file. The Court of Cassation should also be able to examine the evidence. The right to appeal cannot be effective if the court limits its examination to the formalistic review of the points of law.[1626] At the same time, the Court of Cassation should not be proving the case beyond a reasonable doubt but should verify that there is no evidence in the case-file that clearly contradicts a guilty verdict.

Reasoning of Sentence

In the opinion of G.O., there were a number of mitigating circumstances in his favour,[1627] which the presiding judge failed to take into consideration. It remained unclear for him by what criteria the court was guided when

1618 See the judgment of the Court of Cassation, p. 16.
1619 Group of Authors, Commentaries to the Criminal Procedure Code of Georgia, 2015, p. 783–785.
1620 Georgian Network for Human Rights, Jurors in Criminal Proceedings, 2016, p. 21.
1621 'Masters of facts' - Simpson v. HM Advocate (1952) SLT 85.
1622 Judge v. the United Kingdom, para. 36.
1623 The Criminal Procedure Code, Article 266.
1624 The right to appeal will not be effective unless it is limited to the points of law and does not provide the accused with adequate clarification of the reasons for his conviction, *Taxquet v. Belgium*, para. 99.
1625 The Criminal Procedure Code, Article 261.7.
1626 E.g., filling verdict forms, conducting jury deliberations, proper voting, announcing the results of voting, etc.
1627 E.g., see his positive characteristics, sporting and educational activity, participation in the war of August 2008, the state of health, etc.

assessing his personality. The prosecution, in its turn, considered that the court failed to take into consideration the fact that the convict again committed a grievous violent crime.

The sentence passed by the presiding judge of a jury trial fails to provide reasoning concerning the amount of punishment. The judge did not consider the ground for a particular measure of the punishment. To justify this failure with the fact that a presiding judge does not have to substantiate a verdict is impermissible. A verdict is related to the evidence existing in the case-file and not to individual features of a convict. When determining a punishment, a judge is independent, which imposes on him/her an obligation to provide reasoning for the determined category and measure of the punishment. Accordingly, in the given case, the sentence under the head of the determining punishment is stereotypical and devoid of substantiation, which is a familiar problem related to court judgments.

Conclusion

The study of the judgment adopted in the case against G.O. revealed that the legislation governing jury trial suffers from multiple shortcomings. The problems related to the selection of jurors and the appeal procedure for a jury verdict should be mentioned in particular.

The legislation neglects the primary precondition for the legality of a jury verdict – the legal composition of a jury. There is no effective mechanism in place that would allow the verification of the eligibility of candidate jurors. Independence of jurors is under threat, as there is no mechanism provided that would avert the pressure from the public and the media, and investigation of the breach of confidentiality of jury deliberations are infective.

The legislation does not provide for sufficient guarantees for the legality of a jury verdict. A verdict cannot be clear when questions cannot be put to jurors and at the same time the Court of Cassation is deprived of the possibility to examine whether an indictment is exhaustive, or just how individually relevant the evidence in the case file is for an accused.

The fact that the Court of Cassation completely distances itself from reconsideration of the body of evidence likewise violates the right to effective appeal. The actual legislation does not enable a convict to argue before an upper court that the verdict against him/her is clearly contradicting the body of evidence in the case-file. Therefore, the risk on the part of jurors is not sufficiently limited, which is in express violation of the *Taxquet* standards.

The lack of regulation of the use of hearsay by a jury is another problem. Giving general instructions concerning the probative value of hearsay (and that happens when there is a party's request) does not sufficiently avert basing a verdict on that evidence.

Finally, even in those cases where a case heard by a jury, a presiding judge must provide reasons for the determined category and measure of the punishment so that a sentence is not stereotypical.

THE CASE OF M.P.

(The Right to a Fair Trial)

The detailed study by the Office of the Public Defender of Georgia of the minutes (audio recording) of the trial of M.P. revealed several important points in terms of human rights protection. The court failed to ensure order during proceedings, which resulted in the violation of the reputation of the accused through

multiple offensive remarks addressed to her. Both the Prosecutor's Office and the court failed to ensure the confidentiality of the information containing personal data and the details of private life of the accused. During the proceedings, the prosecution focused on the matters that consolidate the social stereotypes about women, in breach of the obligation to fight for elimination of discrimination against women.

Breach of the Order During Court Hearings

An indirect victim and other persons attending court proceedings, at a number of hearings, verbally assaulted the accused. However, the presiding judge did not take any adequate legal measure to prevent such actions. Accordingly, the passivity of the judge contributed to periodic repetition of similar actions at other hearings as well.

The accused was not only verbally assaulted but sometimes aggression towards her was manifested by shouting. The presiding judge only called upon those attending a hearing to calm down.

Under the Georgian legislation, if those present at a court hearing and other persons present in the court commit an act expressing disrespect towards the court, they shall bear statutory responsibility. A judge presiding over a hearing must request the persons present at the hearing to respect each other.

There are specific statutory measures in place to ensure the maintenance of order in a courtroom, such as verbal reprimand calling upon to discontinue disorderly actions, imposition of a fine and/or expelling from the courtroom or even detention. A judge not only has a right to use an appropriate measure and hold a culprit responsible whenever order is breached in his/her courtroom, he/she is also obliged to maintain order during court proceedings and respond adequately to breaches with appropriate legal measures.

There were several occasions, where an indirect victim put a question to the accused when she was questioned as a witness. The presiding judge stopped the indirect victim only once and explained that an indirect victim could not pose questions to the accused. However, further attempts of the indirect victim were not stopped and consequently M.P. answered some of the questions asked by the witness.

Under Article 115 of the Criminal Procedure Code of Georgia, only a party and, in exceptional cases, a judge can ask questions to a person giving a testimony before the court. A witness does not have the right to ask questions. Therefore, the presiding judge had the obligation to explain the statutory provision in each case the witness posed questions to the accused and stop any attempts at posing questions. The presiding judge failed to maintain order in this regard too.

The Right to Silence

One of the most important procedural guarantees was breached during the court proceedings. The right of the accused not to have read out the testimony she did not wish to be read out was violated. In the initial speech for the jury, a prosecutor made public the part of the statement that was given by the accused at the investigation stage, which she did not want to be read out. It should be noted that the presiding judge did not uphold the objection made by the defence. The presiding judge only explained to the jury that they were not supposed to treat this statement as a piece of evidence. However, the judge did not stop the prosecution.

Under Article 247.1 of the Criminal Procedure Code of Georgia, if an accused objects to the information submitted to the investigative authorities during interview before the beginning of a trial being read out before a court, as well as objects to an audio or video recording (demonstration) of this information being heard, this information shall not be used as evidence.

Therefore, in any event, whenever an accused does not agree, it is impermissible to make the contents of his/her statement public. This concerns making the statement made during the investigation stage public during the prosecutor's initial speech, which.

The Right to Respect for Private Life

The accused person's right to respect for her private life was not ensured during the court proceedings. Her request to have the information related to her private life examined *in camera* was practically not upheld. The problem was that despite closing down several hearings, during the later open hearings, a prosecutor touched upon the details of the accused person's private life on multiple occasions and even commented on these details during the statements made to media outlets.

Under Article 182 of the Criminal Procedure Code of Georgia, when there are respective grounds, court proceedings can be held fully or partially *in camera* both under the motion of either party or at the court's own initiative. It should be pointed out that a court can use a suspension order on those persons present at a court hearing thus prohibiting them from making public the information they learned during the court proceedings.

Thus, the information in the criminal case against M.P. falling under the category of personal information had to be heard *in camera*. It was not necessary to have a motion filed by a party in this case; the presiding judge was *ex officio* entitled to hold the hearing in camera. The court could use suspension order against the persons attending the trial as well as the prosecutor not to divulge personal information. The right to respect for the private life of the accused person implied the obligation of the court to carry out such measures.

The Discriminatory Statements Against Women

During court hearings, on multiple occasions, the prosecution made comments containing discriminatory statements against women. Namely, a prosecutor made emphasis on those circumstances that reinforce stereotypical attitudes towards wearing certain clothes, posting own photos by an adult on social media, working despite her husband's objection, etc., acts that are not punishable by the Georgian legislation. It was impermissible to point them out, on the one hand, as evidence corroborating the crime at stake and, on the other hand, the low morals of a person, more specifically of a woman.

The consideration of the merits of a criminal case should be directed towards one aim only, viz., to establish whether an accused committed the incriminated crime; whether the accused acted unlawfully; whether the impugned act be imputed to the accused; whether the accused should be punished for the committed crime; and to establish the category and measure of punishment to be imposed on the accused.

It was not the task of either the prosecution or the court to assess/decide about the morals of the accused person. The prosecutor emphasised those circumstances that fall within the sphere protected by the constitution and it is impermissible to point them out as the evidence corroborating a crime. It should be borne in mind that these issues have been discussed before a jury, which can be perceived as furthering or reinforcing established social stereotypes about women.

Under the UN Convention on the Elimination of All Forms of Discrimination against Women, the states parties are obliged to work towards the modification of social and cultural patterns of individual conduct to eliminate prejudices, customs and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

As regards the prosecutorial activities, international instruments require that prosecutors should carry out their duties impartially without any kind of discrimination based on political, social, religious, cultural, gender or any other ground.

Therefore, the emphasis of the prosecution, made in the initial speech, on the accused person's job that she did despite her husband's objections, provocative clothes and posting personal photos on social media, is in breach of Article 14 of the Constitution guaranteeing equality and the obligations taken by the state under the UN Convention on the Elimination of All Forms of Discrimination against Women.

The Problem Related to the Implementation of the Judgment of the Constitutional Court of Georgia by the Supreme Court of Georgia

The formalistic approach of the courts of general jurisdiction to the judgments and decisions adopted by the Constitutional Court of Georgia is not new. The Public Defender of Georgia discussed several cases in the Parliamentary Report of the previous year, where the rights of numerous persons were violated due to the inconsistent interpretation and ignoring the reasoning part of the Constitutional Court's judgments.[1628]

It should be noted that the wrong practice discussed in the report of the last year persisted in 2016 as well. The analysis of the present case highlights the inconsistency between the jurisprudence of the Constitutional Court of Georgia and the Supreme Court of Georgia.

Procedural Background

The judgment of the Constitutional Court on Georgia of 22 January 2015[1629] declared the normative contents of the provisions of the Criminal Procedure Code, which allowed conviction based on hearsay and adoption of a guilty judgment, as unconstitutional.[1630]

Based on the above judgments, numerous persons requested before the Court of Appeals for the revision of convictions based on hearsay.[1631] The Court of Appeals did not admit those applications for the consideration of merits that concerned convictions under the Criminal Procedure Code of 1998. These inadmissibility decisions were appealed before the Supreme Court of Georgia.[1632]

The Supreme Court of Georgia considered the arguments in the cassation appeals as noteworthy,[1633] stayed the proceedings in all appealed cases and lodged a constitutional referral with the Constitutional Court.[1634]

Legal Assessment

In the opinion of the Supreme Court of Georgia, the basis for the constitutional referral was the fact that the convicts concerned were tried under the Criminal Procedure Codes of 1960 and 1998 respectively. This approach of the Supreme Court was based on the formalistic interpretation of Article 19.2 of the Organic Law of Georgia under which, 'if during the hearing of a specific case in a common court, the court finds that there is a sufficient ground to consider a law or other normative act, which the court must apply when resolving the case, to be fully or partially non-compliant with the constitution, it shall suspend hearing of the case and refer the issue to the Constitutional Court.'

1628 See the 2015 Parliamentary Report by the Public Defender of Georgia, pp. 432–433; also *ibid.,* pp. 456–458.
1629 Judgment no. 1/1/548 of the Constitutional Court of 22 January 2015.
1630 The Criminal Procedure Code of 2009, Article 13.2 and Article 169.1.
1631 From 22 January 2015 until 29 September 2016, the persons convicted in 11 various cases applied to Tbilisi Court of Appeals and Kutaisi Court of Appeals. In their appeals, the convicts argued that their sentences have been based on contradictory and indirect testimonies and requested the revision of their convictions.
1632 See, decision of the Supreme Court of 28 October 2016 in criminal case no. 53AG–16, decision of 27 October 2016 in criminal case no. 14AG–16, etc.
1633 The applications argued that the Constitutional Court found the use of indirect evidence as unconstitutional in all judgments where convictions were based on this type of evidence. The applicants also argued that it did not matter which code established the rule of the use of evidence, as the Constitutional Court would be unable to declare as unconstitutional the provisions that were already invalidated.
1634 See constitutional referrals nos. 3/3/685, 686, 687, 688, 689, 736, 737, 758, 793, 794 and 820.

Stemming from the above-mentioned, the Supreme Court filed the constitutional referral with the Constitutional Court requesting it to declare the relevant provisions of the Criminal Procedure Codes of 1960 and 1998 that had been applied in the original convictions in the given category of cases as unconstitutional.

In the given case, the Plenum of the Constitutional Court of Georgia faced the need to interpret the competence of the courts of general jurisdiction stipulated in Article 19.2 of the Organic Law of Georgia. The Constitutional Court observed that 'stemming from the regulation at stake, a court of general jurisdiction is entitled to request the declaration of the provision the application of which it needs for the decision about the matter before it as unconstitutional'.[1635]

In the opinion of the Plenum of the Constitutional Court, 'Chapter XXVII of the Criminal Procedure Code of Georgia of 9 November 2009 governs the procedure for the revision of convictions. Under Article 2.1 of the Criminal Procedure Code of Georgia of 9 November 2009, "the procedural provision that is in force during investigation and court trial shall be applied in criminal proceedings." Accordingly, after the enforcement of this code, its very provisions are applied for procedural acts, including, serve as the basis for the revision of convictions due to newly revealed circumstances. There is an exception established by Article 329.3 of the Criminal Procedure Code of Georgia, under which "the criminal prosecution that was instituted before the enforcement of this provision should be governed by the rules established by the Criminal Procedure Code of Georgia of 20 February 1998." However, in this case, in the opinion of the Constitutional Court, the matter before the court concerns not the continuation of criminal proceedings instituted before the enforcement of 9 November 2009, but revision of a legal sentence which is regulated by the new Criminal Procedure Code.'[1636]

Moreover, the Constitutional Court observed that '…in constitutional referrals nos. 685, 686, 687, 688, 689, 736, 737, 758, 793, and 794 the Supreme Court of Georgia considers the appeals on the decisions adopted by the Court of Appeal. This fact itself confirms that the matter is regulated based on the Criminal Procedure Code of 2009, since under Article 594.2.a) and Article 597.a) of the Criminal Procedure Code of 20 February 1998, a complaint would be lodged with the Chamber of the Criminal Cases of the Supreme Court of Georgia with the request to have the final convictions and other judgments adopted by a court of general jurisdiction revised due to newly established and newly revealed circumstances; whereas the procedure of applying to a court of appeal has been established by the Criminal Procedure Code of 2009.'[1637]

Consequently, on 29 September 2016, the Plenum of the Constitutional Court did not admit the constitutional referrals of the Supreme Court for the consideration of their merits and by invoking the very jurisprudence of the Supreme Court of Georgia[1638] held that the law to be used was the Criminal Procedure Code of 2009.[1639]

Furthermore, under the interpretation given by the Constitutional Court,'...in accordance with the rule established by the Criminal Procedure Code of 2009, a Court of Appeals carries out examination*, inter alia*, in the context of newly revealed circumstances, assesses new evidence and consequently, assesses the effect of the newly revealed facts on the adopted sentence; whether with the consideration of the newly established fact (in this case exclusion of hearsay from the case-file), the same judgment would be adopted and the conviction upheld. Therefore, within the framework of revision of convictions due to newly revealed circumstances, a court of general jurisdiction does not apply the provisions of the Criminal Procedure Code of 1998 at all. It is obvious that in terms of the stayed proceedings, the Supreme Court of Georgia does not face the need to decide about the admissibility of evidence or uphold conviction or carry out any other procedural act based on Article 10.3 of the Criminal Procedure Code of 1998.[1640]

1635 Inadmissibility Decision of 29 September 2016 on the referrals nos. 3/3/685, 686, 687, 688, 689, 736, 737, 758, 793, 794,820 II. para. 1.
1636 *Ibid.,* II. para. 4.
1637 *Ibid.,* II. para. 5.
1638 Judgment of the Supreme Court of Georgia of 13 March 2015 in case no. 83AG–14.
1639 Inadmissibility Decision of the Constitutional Court of Georgia of 29 September 2016 on constitutional referrals nos. 3/3/685, 686, 687, 688, 689, 736, 737, 758, 793, 794 and 820, II-9.
1640 *Ibid.,* II. para. 8.

Thus, the Constitutional Court considered that the impugned provision was '... not the law to be applied; instead, the declaration of the impugned provisions as unconstitutional is considered to be a fact, which, due to a newly revealed circumstance, will warrant the initiation of the conviction revision procedure. The set of rules to be applied to these proceedings is fully provided by the Criminal Procedure Code of 2009.'[1641]

In the light of the foregoing, it is clear that the Constitutional Court of Georgia, in its inadmissibility decision of 29 September 2016, indicated to the Supreme Court of Georgia the legal procedure that had to be taken for bringing the respective sentences in compliance with the Constitution of Georgia within the framework of the new Criminal Procedure Code.

Furthermore, the Constitutional Court pointed out that 'in case the Supreme Court considered that the sentence, the revision of which due to newly revealed circumstances was requested, could have been adopted in violation of the Constitution of Georgia and the law does not allow its revision, then the Supreme Court had to question the constitutionality of those provisions limiting the said possibility, which ensure the *res judicata* nature of the sentences adopted in breach of the Constitution without establishing the sufficient mechanisms for their revision.'[1642]

The constitutionality of a procedural provision is preconditioned by its contents and not by the fact of which normative act contains this provision.[1643] Therefore the wording of Article 310.d) of the Criminal Procedure Code in force should not prevail over the need to revise the convictions based on an unconstitutional provision.

Accordingly, the Supreme Court of Georgia should itself have interpreted Article 310.d) of the Criminal Procedure Code in force to the effect of extending the application of the Constitutional Court judgment adopted with regard to the constitutionality of the use of hearsay to the sentences adopted on the basis of the unconstitutional provisions contained in the Criminal Procedure Code of 1998. Alternatively, if the Supreme Court deemed that the scope of Article 310.d) of the Criminal Procedure Code in force was so narrow that it excluded the revision of the sentences adopted on the basis of the unconstitutional provisions contained in the Criminal Procedure Code of 1998,[1644] then the Supreme Court could refer this provision to the Constitutional Court, requesting the declaration of the said normative contents as unconstitutional.

However, the Supreme Court of Georgia disregarded and did not discuss the circumstances mentioned in the reasoning part of the Constitutional Court's decision on inadmissibility and dismissed the application of the convicts to have their convictions, adopted in violation of the Constitution, revised.

Conclusion

The following should be pointed out as concluding remarks:

- The Supreme Court of Georgia based on the inadmissibility decision (its reasoning part) of the Constitutional Court of 29 September 2016, due to the newly revealed fact (the procedural reality introduced by judgment no. 1/1/548 of the Constitutional Court of 22 January 2015) had to revise the respective sentences and examine whether under the exclusion of hearsay would still warrant adoption of the same decision and if there was still a ground for conviction; and

1641 *Ibid.,* II. para. 9.
1642 *Ibid.,* II. para. 11.
1643 The Constitutional Court in its judgments declares as unconstitutional not only specific words, phrases and sentences but also the principles contained in the impugned provision and it does not matter which normative act contains the regulation implied in the principle. See, inadmissibility decision of the Constitutional Court of Georgia of 26 February 2016 on constitutional referrals nos. 3/1/708,709,710, II-5.
1644 Based on this provision, only the law that has been used for the impugned conviction should be declared as unconstitutional. The applicants have been tried under other legislation – by the Code of Criminal Procedure of 1998.

- As the result of the Constitutional Court's decision, the Supreme Court of Georgia could either interpret the contents of Article 310.d) of the Criminal Procedure Code or submit a fresh constitutional referral to the Constitutional Court and request declaration of those provisions as unconstitutional, which in its opinion prevented it from establishing the practice compatible with the judgment of the Constitutional Court of Georgia.

As the result of the approach taken by the Supreme Court of Georgia, the persons tried under the Criminal Procedure Code of 1998 were deprived of their right to have revised their convictions that had been adopted based on unconstitutional provisions. They were treated differently from those persons tried under the Criminal Procedure Code that is in force.

Thus, numerous sentences that have been adopted based on unconstitutional provisions remain in force. It is imperative that the Supreme Court changes its practice that is incompatible with the inadmissibility decision of the Constitutional Court of Georgia.

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