PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

THE REPORT OF THE PUBLIC DEFENDER OF GEORGIA

ON THE SITUATION OF PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

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INTRODUCTION

This document is a report of the Public Defender about the situation of human rights and freedoms in the country in 2015 and highlights civil, political, economic, social and cultural rights. It also draws attention to the upsides and downsides in the human rights area during the reporting period and brings together the Public Defender's important recommendations provided for the branches of the Government. The document was designed on the basis of paragraph 1 of article 22 of the Organic Law on the Public Defender and shall be submitted to the Parliament.

In 2015, Georgia was elected as a member of the UN Human Rights Council at the UN General Assembly plenary session. It is important Georgia not only to effectively perform its obligations under the United Nations, but also to get closer to international standards and to use the UN system for improving response to human rights violations and the human rights situation in general. The Council membership is a new challenge for the country and means that Georgia should give advantage to the human rights issues both in its home and foreign policies.

In 2015, the Parliament of Georgia shared significant part of the Public Defender's recommendations and adopted a resolution by which it commissioned relevant agencies to take certain measures. The Parliament's Committee of Human Rights and Civil Integration carries out monitoring of the implementation of the Public Defender's recommendations. Unfortunately, some very important recommendations were not implemented, which creates serious risks in terms of protection of human rights in the country.

The number of applications submitted to the Public Defender's Office was still high. In 2015, about 7 thousand applications were considered as eligible, which is a significantly high figure and refers to the increased expectations towards the Office, as well as to the raised public awareness on the violation of rights and existence of free environment in the country.

During the year, the Government of Georgia, within its obligations under international and national levels, continued to carry out reforms in the justice system and law enforcement agencies.

We welcome the reforms carried out in the prosecution system, which improves the independence of the Prosecutor's Office. However, there are still a number of challenges, which, unfortunately, were not taken into account during implementation of the reform, including the rules of staffing of the Prosecutorial Council and maximum de-politicization of the Prosecutor's Office.

The changes carried out in the field of state security, namely, separation of the State Security Service from the Ministry of Internal Affairs, was a positive step. However, it should be noted that in this regard a number of challenges still remain, including absence of a mechanism for civic monitoring of the safety system. It was a step forward that the essence of the so-called "ODR" institution (ODR is a Russian abbreviation that

stands for 'Acting Reserve Officer', a person inculcated into an institution and acting on behalf of the secret police) was changed as a result of the amendments made in the field of state security. There is no more an indefinite circle of institutions, which can provide the State Security Service with information of unspecified type and volume. The law established the list of high-risk agencies and specifically defined categories of information which can be exchanged. However, despite this change, in March 2016, information about existence of the "ODR" institution was one again voiced at Ivane Javakhishvili Tbilisi State University. Therefore, it is necessary to thoroughly implement the legislative regulations in practice and to eradicate ugly practice of illegal collection of information from various public and private institutions beyond the statutory regulations. The Public Defender calls on the Parliament to create a temporary fact-finding commission to check the use of the "ODR" institution after the amendments took effect, including in the agencies where their function is prohibited by law.

In recent years one of the major achievements has been liberalization of criminal policy in the area of human rights, consistent implementation of which has already been reflected in reasonable and proportional punishments, as well as in reduction of percentage of the use of pre-trial detention. Other positive developments were the adoption of the Juvenile Justice Code and the amendments made to the Criminal Code regarding the rules of questioning of witnesses, which took effect in February 2016. However, in order witnesses to be questioned according to high standards of human rights, it will be necessary to improve the law in the future too.

In the reporting period, an important legislative package was developed within the third wave of the justice reform. The legislative package took into view one of the main recommendations of the Public Defender with regard to electronic distribution of cases in the court. It should be noted that despite the institutional reform carried out for the judiciary independence, a lot of challenges still remain to be overcome for increasing trust towards the court.

Particularly alarming was the non-transparent and formal process of appointment and promotion of judges ongoing in the High Council of Justice, which was not based on a fair and objective assessment of the candidates' professional activities. Like in previous years, the Public Defender repeatedly appealed to the High Council of Justice to initiate disciplinary proceedings against the judges, who had allegedly violated procedural norms during consideration of cases, but the appeals remained without an adequate response.

Although cases of torture and ill-treatment is no longer the major challenge, investigation of thousands of prisoners' complaints on torture, inhuman and degrading treatment are still pending and except for single cases, no results have been achieved with regard to these systemic violations of human rights.

During the reporting period, effective investigation of alleged ill-treatment committed in police stations and penitentiary facilities remained a problem. The Public Defender welcomes the amendment made to the Imprisonment Code of Georgia in 2015, according to which, from September 1, 2016, the Public Defender/Special Preventive Group will be

allowed to take photos in penitentiary institutions. The changes aimed at improving the internal inspection system and centralized management of the penitentiary system are also welcome. The Public Defender also hails the introduction of a system of convicts' risk assessment and stresses that it is important to properly assess the existing risks and then periodically review them. In this process prisoners should be able to enjoy legal safeguards without any hindrance.

There are substantial gaps in appropriate documentation of prisoners' injuries, their nature and origin, as well as in responding to such cases. The investigative body, in many cases, is unable to get recordings of the surveillance cameras, as they are not kept in a reasonable period of time. Despite the Public Defender's recommendation, under which such recordings must be retained for a reasonable period, as per the order №35 of the Minister of Corrections and Legal Assistance of 19 May 2015, the recordings are kept for at least 24 hours. Therefore, it remains unclear how long the recordings are kept. Herein, it should be noted that, unfortunately, the Public Defender or the Special Preventive Group members are not given the opportunity to watch the recordings, which is extremely important for the implementation of the mandate of the National Preventive Mechanism. Given all this, the Public Defender thinks that there still exists high risk of ill-treatment in penitentiary facilities.

Despite the Public Defender's recommendation, as per the 6th part of article 54 of the Imprisonment Code, the prison administration still has the right to visually observe (though not listen to) the meetings between prisoners and the Public Defender/Special Preventive Group member by using technical means of remote monitoring and recording, which, according to the Public Defender, is contrary to the principle of confidentiality. In addition, the growing trend of using placement of prisoners in a solitary confinement cells as a disciplinary punishment and in general, varied use of disciplinary penalties, which puts into question the proportionality of the use of disciplinary penalties, remain problematic.

Prevention of violence among prisoners, implementation of effective measures against the impact of prison's criminal subculture and observance of order remain significant challenges, which along with other factors, are conditioned by the lack of rehabilitation and re-socialization activities of prisoners. Infrastructure of closed institutions does not enable prisoners to be engaged in sports or other interesting activities that negatively affect their health and well-being. In such conditions, dissatisfaction of prisoners is growing, which in the end results in infliction of self-damages or use of other extreme forms of protest by prisoners due to lack of effective requests/complaints mechanism.

The Public Defender is concerned about the fact that convicts' contact with the outside world is extremely limited, which is contrary to the principle of the presumption of innocence. It is important to implement appropriate legislative changes in order to better protect the rights of convicts.

During the reporting period, monitoring showed that prisoners are frequently transferred from penitentiary institutions located in eastern Georgia to the facilities in western Georgia and vice versa. In addition, it should be noted that in most cases, decisions

on the transfer are based on a confidential letter of the prison director, which is not available for the Public Defender/Special Preventive Group member. As a result of such long-distance transportation, prisoners have problems in communication with their families and lawyers.

It should be noted that physical environment and sanitary condition in the facility N7 are still important problems. The Public Defender has issued a number of recommendations on closure of the establishment given the difficult situation there. The Public Defender's recommendation remains the same in connection with the closure of the institution, though he considers that before the closure it is necessary to immediately take temporary measures to somehow alleviate prisoners' condition.

Compared to the previous year, prisoners' death rate, including suicide cases, was decreased. This refers to the progress achieved in the prison health care; however, it is important to continue efforts to improve the health care system in the penitentiary system.

In 2015, compared to 2014, the number of Public Defender's proposals sent to the Prosecutor's Office of Georgia about investigation of cases of ill-treatment committed by police officers was increased. The high risk of torture and other ill-treatment was also confirmed by the examination conducted by the Special Preventive Group at the Ministry of Internal Affairs.

The Public Defender considers that ill-treatment of detainees by police officers was critical in 2015. He is concerned about the fact that in most cases, the applicants' explanatory notes make it clear that police officers had been trained in advance to exert physical and psychological violence on prisoners in order to make them plead guilty, which is a sign of torture crime.

The nature and localization of injuries on some of the applicants' bodies, as well as the fact that some of them were transferred to civil hospitals due to the received injuries, is especially worrying. It is especially noteworthy that, in some cases, detainees had to spend a night in a police department before being put in a temporary detention center. In the studied cases, the duration of presence of the detainees under the control of police officers, ranges from 5 to 23 hours. In addition, in some cases, the factual time indicated in the detention documents do not match the time named by the applicants in conversations with the Public Defender's representatives.

The Public Defender is concerned about the fact that investigations were launched under article 333 of the Criminal Code of Georgia on the basis of his 11 proposals submitted to the Chief Prosecutor, whereas the circumstances indicated in the proposals contained signs of torture and inhuman or degrading treatment.

However, it should be noted that the situation somewhat improved in terms of categorization of crimes committed in the prison system during the reporting period. Following the Public Defender's appeals, a number of crimes committed in the penitentiary facilities were categorized under special article 144^3 of the Criminal Code of Georgia (inhuman or degrading treatment).

Particular concern was caused by the beating of lawyer G.M. by police officers in the 5th division of Vake-Saburtalo police department of Tbilisi on November 8, 2015. Despite the fact that charges were filed against the chief of the division, the Public Defender considers that other involved police officers should also have been identified and punished, which can be assesses as a drawback of the investigation.

One of the most alarming cases of 2015 was the prominent case against G.O. who was charged with false reporting. The law enforcement officers allege that the prisoner provided false information to the Public Defender, on the basis of which an investigation was launched into alleged ill-treatment of the inmate in the penitentiary facility. Later, the investigation was terminated and charges were filed against the prisoner himself with regard to false reporting for personal interests.

Information provided to the Public Defender on torture or ill-treatment cannot be used against a person/prisoner or serve as grounds for launching criminal proceedings against him. This is conditioned by international conventional commitments and obligations on absolute prohibition of torture, as well as by foundations of the implementation of the mandate of the National Preventive Mechanism. In addition, the given case, due to the real risk of criminal liability, creates the likelihood that all inmates will refrain from submitting complaints, which can become an unconditional impeding factor in the fight against ill-treatment.

Unfortunately, performance of the Prosecutor's Office of Georgia remains ineffective in terms of the investigation of crimes of torture, inhuman and degrading treatment, and punishment of perpetrators. Institutional independence of the investigation of similar crimes remained a problem in 2015, which once again, strongly emphasizes the need for creation of an independent investigative mechanism in the shortest possible time for investigation of cases of torture, inhuman and degrading treatment in penitentiary institutions.

The Public Defender describes the steps taken after the large-scale amnesty by the Government in connection with "political prisoners and politically persecuted persons" as unsatisfactory. The process of restoration of justice cannot be limited to a single act of amnesty, since for full legal rehabilitation of this category of persons it is important not only to restore the dignity and reputation, but also to compensate for the loss inflicted by the state.

It should also be noted that on 13 February, 2015, an investigative department was set up in the Prosecutor's Office which will investigate crimes committed during legal proceedings, including forced concession of property and other facts of coercion.

Despite the legitimate expectations of the society, the state has not created any legal mechanism that would enable all the stakeholders to revise the enacted decisions, including restitution of property and moral compensation for unlawful convictions.

Despite the repeated appeals, results of the criminal investigation of the high-profile cases indicated in the Public Defender's 2013-2014 parliamentary reports are still unknown. Unfortunately, information about the process and progress of the investigation

is not available to the victims' families, the stakeholders or the public. We believe that the actions of the law enforcement agencies should be transparent and effective in this regard.

Results of the official investigation into the events developed near the village of Lapankuri, Lopota Gorge, are still unknown. The investigation is pending regarding the events of August 28, 2012, in the Lopota Gorge. Information about the process and progress of the investigation is not available to the victims' families, the stakeholders or the public. Accordingly, the investigation must be regarded as ineffective. Three years have passed since those developments and the Public Defender once again calls on the Parliament to set up a temporary investigative commission to examine the mentioned events.

An important event of 2015 was the decision of the International Criminal Court Prosecutor which addressed the Court's Judges and requested authorization to initiate an investigation into the alleged war crimes and crimes against humanity in relation to the August 2008 armed conflict in Georgia. The International Criminal Court satisfied the appeal in 2015.

Many former high officials were arrested on various charges. Misuse of pre-trial detention measure against them created signs of selective justice. In this context the progressive and important decision of the Constitutional Court in the case of "Georgian Citizen Giorgi Ugulava v. Parliament of Georgia" deserves attention.

Pre-trial detention was ordered for three persons, participating in a rally in front of the Parliament building in the city of Kutaisi, for abusing Georgian Dream MP Davit Lordkipanidze, whereas the measure of detention was not used in several other cases when members of the United National Movement party were oppressed. The court used only administrative fines against the offenders in the mentioned cases. The abovementioned raises signs of selective justice. It is welcome that the decision on pre-trial detention was later changed.

Demonstrations held in 2015 passed without any complications, but there were a few exceptions, where the state failed to ensure the constitutionally guaranteed right to peaceful demonstration, and/or the freedom of assembly was unduly restricted.

Diverse media environment was ensured during the year. However, at the end of the year, problems arose with regard to maintenance of healthy media environment and unjustified interference with the freedom of expression by court during the judicial dispute over Rustavi 2 TV. In addition, during the reporting period a number of issues related to access to public information remained a challenge.

Violation of the right to privacy was of large-scale problem in 2015. There were cases of the release and public display of videos showing torture, inhuman and degrading treatment, as well as the release of audio recordings of personal telephone conversations. The syndrome of impunity and ineffective investigation of similar crimes stimulated new crimes, culminating in the release of secret recording of private life in March 2016. The Public Defender calls on the Prosecutor's Office to promptly and effectively investigate the crimes and to bring to justice all the persons who created, obtained and released the

recordings. The Public Defender hopes that the Parliament will make relevant amendments to the Criminal Code in a reasonably short period of time, which will significantly tighten sanctions for the violation of privacy.

Although the Parliament approved a legislative package on covert investigative actions, as per which new regulations were introduced for covert listening and personal data protection, which is a step forward, there remains a norm in the law on "Electronic Communications" that gives the state agencies the right to copy identifiable data and to continuously get the contents of the communications in a real time.

Absence of minimum standards of labour safety and an alarming number of casualties in the workplace are other issues of concern. Unfortunately, no effective steps were taken at the state level to create a labor inspection mechanism that would be responsible for monitoring the protection of labour rights, something demanded by the Public Defender in his several recommendations in recent years. The program developed by the Ministry of Labour, Health and Social Affairs cannot respond to the existing challenges.

Achieving gender equality remains a problem in the country. In particular, women's political and economic activities are low. Scales of violence against women and domestic violence are alarming. Femicide represents a particular problem. In addition, high rate of early marriage deserves special attention. Unfortunately, despite the repeated promises made by high-ranking officials, the Council of Europe Convention of 2011 "on preventing and combating *violence against women and domestic violence"* (Istanbul Convention) was not ratified by the Government.

Homophobic attitudes towards LGBT persons, as well as timely and effective investigation of hate crimes, remain a challenge. The Public Defender of Georgia welcomes celebration of the International Day Against Homophobia and Transphobia on May 17, 2015, in peaceful environment. However, it should be noted that none of the persons involved in the violent crimes committed on 17 May 2013 has been held responsible.

Fight against discrimination is one of the most significant challenges in Georgia. Adoption of the Law on Elimination of all Forms of Discrimination was a step forward. However, it should be noted that the gaps of the law poses a real obstacle for the Public Defender to effectively carry out his function of eliminating discrimination and ensuring equality, while it prevents victims of discrimination to effectively restore their violated rights. The Public Defender addressed the Parliament with a legislative proposal to eradicate gaps in this area. Despite the fact that the proposal was initiated by the Parliament, unfortunately, the process is delayed and no amendments have been made to the law so far.

During the reporting period, one of the most important events was the satisfaction of the constitutional claim of the citizens of Georgia, Ucha Nanuashvili and Mikheil Sharashidze, by the Constitutional Court, as a result of which the Court declared the norms of the Election Code on the definition of 73 single-mandate electoral districts as unconstitutional.

Parliamentary by-elections were held in Martvili and Sagarejo majoritarian districts. Public discussion was caused by the opening of a polling station in the military part as

an exception in Sagarejo. By the Public Defender's assessment, the existing legislative regulations should be changed in this direction.

The situation is still alarming and worrying in terms of protection of children's rights. During the reporting period, high rates of child mortality and poverty, inadequate life of juveniles, unavailability of public health services, tolerance of the society towards violence against children, are still problematic. The state should care about particularly difficult situation of children in the mountainous regions. In addition, acute problems are observed in children's group homes and boarding schools under religious organizations. Separate placement of juvenile prisoners from adult prisoners is still urgent.

The full enjoyment of freedom of religion is a problem. In particular, getting a permit for building religious buildings, ownership of disputed religious buildings, observance of religious neutrality at public schools and implementation of the requirements of the law on general education, as well as effective investigation of the alleged religious crimes, were still problematic. Serious question marks remained with regard to effective implementation of the principle of secularism.

The level of participation and involvement of national minorities in the decision-making process was low. Teaching of mother and state languages at schools, as well as low awareness of population of minority-populated regions about ongoing events, were also problematic.

Another problem was the absence of database of homeless persons, which is why the number of people in need of shelter is still unknown. One of the major problems still is the lack of financial resources allocated from local and central budgets for assisting homeless persons. Situation in terms of realization of the right to adequate housing is still alarming in Khelvachauri's so-called cardboard settlement near the city of Batumi, Adjara region. Socio-economic conditions of the residents of mountainous regions, including access to health care and living environment/conditions, are alarming. Adoption of the law on mountainous regions should be regarded as a positive development. However, the Government should work out a unified national strategy and an action plan to improve the human rights situation in the mountainous areas as soon as possible.

Employment, access to health care, agricultural activities and migration of conflict-affected population, as well as issues related to the safety and movement of the population living alongside the dividing line of Abkhazia and South Ossetia are still problematic. Particularly alarming was the restrictions imposed on the right to get education in a native language in Gali district, which continues to this day, and the Government should take all possible measures to change this situation.

Despite the positive steps taken for solving the problem of accommodation of IDPs, there is still a serious challenge in terms of resettlement of IDPs and provision of safe environment for them.

In the reporting period, one of the most pressing issues was realization of the right to live in a healthy environment. Provision of timely information to population and engagement of stakeholders in the important projects and decision-making that might have

significant impact on the right to live in a healthy environment were low. Among such decisions were the construction of "Acharisktskali", "Khudoni" and other hydro power plants, as well as the impact of the extraction of fossil in the vicinity of the Sakdrisi-Kachagiani site on natural environment and human health. Examination of the legality of the abolition of the cultural heritage status of the Sakdrisi-Kachagiani site showed that the Minister of Culture and Monument Protection of Georgia and the Director of the National Agency for Cultural Heritage of Georgia violated the legislation during making a decision on the issue, which opened the way for the activities of the private companies and today this monument of cultural heritage is destroyed due to private business interests.

Construction permit for the "Panorama Tbilisi" project, regardless of its size and influence on the capital's environment, was issued as per simplified administrative rules and no report was prepared on environmental impact assessment either. Accordingly, there was actually no public involvement in the decision-making related to that issue, which was described by the Public Defender as unjustified and represented violation of international requirements.

Despite some progress, reflected in providing houses for a few dozen migrant families, the situation of tens of thousands of families affected by natural disasters is critical, like in previous years. The Government suspended the process of adoption of the law on eco-migrants. The state does not carry out programs on adaption of eco-migrants for their new accommodations and regions. Nothing is done for the prevention of human rights violations during natural disasters. All these problems emerged during the June 13-14 disaster, 2015, which left 21 people killed and many more homeless. However, the public support in the relief efforts was exemplary.

The issue of return of Meskhetians, which had been expelled from South Georgia, is still widely discussed. Granting Georgian citizenship to the expelled persons and promotion of their social integration are especially important.

Implementation of the United Nations Convention on the Rights of Persons with Disabilities of December 13, 2006, as well as of the Optional Protocol to the Convention, remains a challenge. Some of the most important challenges faced by the state are social protection of persons with disabilities, realization of the right to adequate housing, employment, availability of physical environment, infrastructure, transport and information.

In the reporting period, a number of problems were revealed with regard to the realization of the rights of older persons. Most of the elderly people do not have access to adequate housing, social services and protection mechanisms, because of which they are under the risk of poverty, isolation and homelessness. In addition, mechanisms for identification, protection and prevention of older persons that became victims of violence do not exist. The state still does not have an effective policy and strategy for ensuring protection of the rights and social welfare of older persons.

A number of problems were reported in terms of rights situation of recruits and military personnel, as well of as military and war veterans. Significant deficiencies were observed

in the examination of recruits by doctors, which in some cases resulted in staining the honor and dignity of the recruits. Faulty examination of mental health of recruits deserves special attention. Herein, it should be noted that mandatory military servants are mainly used for security services and in fact no military or physical trainings are held for them. Accordingly, it is necessary to improve the system of compulsory military service.

6 soldiers died in the reporting period. 2 of them were said to have committed suicide due to social conditions.

There were several cases when the citizens of Georgia had problems in crossing the Georgian state border and when their freedom of movement, guaranteed by the Constitution, was violated. Naturally, such a practice is unacceptable and should be ruled out in all cases.

The main challenge in terms of the rights situation of asylum seekers, refugees and persons with humanitarian status, is still justification of the refusal to grant a refugee or humanitarian status to an asylum seeker on grounds of the state security, which violates the principle of efficient proceedings. It is important the administrative body's response to explain justification of the refusal by indicating factual circumstances in a way that it does not cause damage to the state security.

1. SITUATION OF HUMAN RIGHTS IN CLOSED FACILITIES

(REPORT OF THE NATIONAL PREVENTIVE MECHANISM)

The present report contains the findings of the monitoring conducted by the National Preventive Mechanism during the reporting period in the penitentiary facilities, detention establishments, police departments, temporary detention isolators, mental hospitals, military detention cells and military units, small family-type children's homes, orphanages under the religious confessions, seniors' centres and the temporary detention centre of the migration department of the Ministry of Internal Affairs. Monitoring results of the joint operation of the return of the migrants is also covered by the report.

During the reporting period, with the aim of checking the situation on the protection of human rights, the Special Preventive Group of the Public Defender of Georgia carried out 54 visits throughout the country in 15 penitentiary establishments and visited 3 300 prisoners; 7 visits were carried out in orphanages under the religious confessions and 200 children were visited. 10 visits were paid to the small family-type children's homes and 69 children were visited. In addition, 7 visits were conducted in the nursing homes meeting 150 beneficiaries. 1 visit was paid to the temporary detention centre of the Ministry of Internal Affairs and 18 persons were visited. 2 visits were carried out in order to observe the process of return of 79 migrants deported from the European countries to Georgia. Monitoring was carried out in 31 temporary detention isolators and 59 police departments and 54 detainees were visited. 1 visit was paid to the detention facility and 25 inmates were visited. 1 visit was carried out in the military unit, where 35 soldiers were met. 2 visits were paid to the detention facilities for military servicemen (hauptwachts) and 1 military serviceman were met. During 18 visits paid to 12 mental hospitals 661 patients were visited.

In the framework of the monitoring the trustees of the Public Defender examined the physical environment and situation of the rights of prisoners in the closed facilities. Particular attention was given to the treatment of prisoners.

1.1. SITUATION IN THE PENITENTIARY INSTITUTIONS

OVERVIEW

Despite initiating and conducting investigation on the alleged facts of ill-treatment of the prisoners in the penitentiary establishments, not a single employee of the penitentiary facilities was found guilty on the ground of ill-treatment in 2015. Therefore, the position of the Public Defender of Georgia is unchanged – in order to ensure effective investigation of the facts of torture, inhumane and degrading treatment, it is necessary to set up an independent investigation mechanism.

Timely and methodological documentation of ill-treatment facts and the non-existence of the doctor's legislative obligation to directly inform the revelant investigative bodies is problematic. During the meeting of the prisoner and the doctor the practice of the employee of administration attending the meeting violates medical confidentiality.

The practice of implementing the security measures and supervision of the prisoners by the administration poses a problem. There is a trend that the administration, without any reasonable ground, uses the isolation of the prisoners for a long term, including in the de-escalation rooms and the safe cells. In addition, in a number of establishments, the practice of using the handcuffs is rather frequent that can also indicate that it has become a routine.

Another challenge is the practice of visual and/or electronic surveillance and control in the penitentiary facilities.

Despite the authority granted by the organic law on Public Defender of Georgia, the representatives of Public Defender are not given the possibility to get acquainted with the visual and/or electronic surveillance videos.

The Public Defender of Georgia welcomes the adoption of the risk assessment system of the convicts.

Physical environment and sanitary conditions of the establishments are still in need of significant improvement in order to be in conformity with international standards.

In the majority of the establishments not all prisoners are provided with the 4 sq.m. as foreseen by the Imprisonment Code of Georgia.

The Public Defender notes positively the increased rate of the prisoners' incentives compared to the previous year. Nevertheless, noteworthy is the fact that compared to the previous year, the practice of applying disciplinary sanctions has increased.

Despite the fact that the number of doctors and nurses increased in 2015, the quantity is still not sufficient in some of the establishments.

The conditions in the penitentiary facilities cannot ensure the adequate resocialization and reintegration in the society of the persons subjected to life imprisonment.

Language barrier constitutes a particular problem for the foreigners and representatives of other ethnic or religious minorities. Based on the above, most of the prisoners are not aware of their rights.

The enjoyment of the prisoner's right to have an appointment with the family member is hindered by the fact that the residence of the family is not taken into consideration. In addition, due to the glass barrier in the short-term visit room the prisoner is deprived of the possibility of any kind of physical contact with family members.

Providing the applicants with safe, accessible, confidential and impartial appeal procedure is a problematic issue in the penitentiary facilities.

ILL-TREATMENT IN THE PENITENTIARY ESTABLISHMENTS

Not a single state program is implemented in Georgia that will ensure the rehabilitation of the victims of torture in the penitentiary facilities.

The monitoring results demonstrated that the threat of ill-treatment of the prisoners is created by the criminal subculture of the establishments and it often becomes the reason of violence and abuse among the prisoners.

DOCUMENTATION OF FACTS OF ILL-TREATMENT AND THEIR COMMUNICATION TO THE COMPETENT AUTHORITIES

The doctor who examines a detainee should be able to to determine the likelihood of inflicting damage through violence even if the patient does not indicate. The doctor should also be able to document mental and phsycological evidences of ill-treatment and to establish the level of conformity between the claims of ill-treatment and the results of examination.

The Public Defender welcomes the position of the Ministry of Corrections of Georgia regarding the development of the new forms of studying the injuries of the prisoners. Nevertheless, it should be noted that the above procedure has not yet started in the penitentiary facilities.

In terms of the prevention of torture, immediately informing the relevant authorities about the alleged facts of ill-treatment is more important than documenting the injuries.

The Public Defender considers it appropriate to increase the role of the doctors in notifying the investigation bodies about the alleged facts of ill-treatment. To this end, the legislation should determine the doctor's obligation to personally inform the Chief Prosecutor's Office regarding the injuries found on the bodies of the prisoners in the penitentiary establishments.

ORDER AND SECURITY IN PRISONS AND DETENTION FACILITIES

Positive relations among the personnel of the penitentiary facilities and prisoners is a necessary condition for ensuring security and order in the penitentiary establishments.

ACCOUNTABILITY

It should be positively noted that the Ministry of Corrections of Georgia is preparing the plans of the job descriptions for the staff of the penitentiary facilities which will describe in detail the rights and responsibilities for each and every position.

Nevertheless, creation of the proper working conditions of the personnel of the penitentiary establishments remains to be problematic. Sufficient amount of staff should

exist in the above facilities and they should be provided with the efficient legal and social protection guarantees, so that their conditions won't have a negative impact on the treatment of the prisoners and on the maintenance of the security and order in the establishment.

TRAINING OF PERSONNEL OF THE PENITENTIARY FACILITIES

Sufficient qualification and experience of the personnel of the penitentiary facilities still constitute one of the most important challenges. The Public Defender considers that the number of the participants of the trainings thoughout 2015 and the training modules cannot sufficiently reflect the needs for raising the knowledge and skills of the personnel for the protection of human rights, order and security in the penitentiary establishments. Special attention should be drawn to the following topics: security, including the concept of the dynamic security, also, managing the violent offenders through the preventive and techniques, such as negotiation and mediation.

CLASSIFICATION OF THE CONVICTS

The Public Defender of Georgia welcomes the adoption of the system of the prisoners' risk assessments and its periodic reassessment. Nevertheless, the Public Defeder believes that certain amendments should be made in the above rule in order to ensure the legal guarantees of the convicts during the risk assessment.

The head doctor should be added to the initial group of data processing and the head of the medical department or the other authorized person – to the multidisciplinary team. As an alternative, the obligation to request the information on the conditions of health of the convict can also be defined in the risk assessment process.

SECURITY MEASURES, MANAGEMENT OF INCIDENTS AND EMERGENCY SITUATIONS

THE ROOMS OF DE-ESCALATION AND SAFE ROOMS

De-escalation rooms function in the penitentiary establishments N2[1], N5, N8 and N18, and the safe rooms function in the facilities N3, N6 and N7.

The issue of placing the prisoners in the de-escalation and safe rooms is not regulated by the legislation and the by-laws issued by the Minister do not enshrine sufficient guarantees of legal protection. The above creates the threat of putting the prisoners in the de-escalation/safe rooms for the disproportionate and unreasonable period of time that is already proved by the practice. The provisions do not specify for exactly how long it is allowed to place the prisoners in the above-mentioned rooms.

1 Due to the non-existence of the relevan infrastructure, Establishment N2 has no de-escalation rooms.

The Public Defender considers that it is unaaceptable to put the prisoners in the conditions existing in the de-escalation/safe rooms for a long period of time. If the criteria of placing the prisoners in the de-escalation/safe rooms are not expired in 24 hours, the administration of the establishment should resort to the other means, including providing the prisoners with the adequate psychiatric assistance.

In addition, particularly important is to keep the video tapes of the surveillance cameras in the de-escalation/safe rooms for a reasonable time and it should not been less than 1 month.

The Public Defender considers that the placement of the prisoners in the de-escalation/safe rooms should take place only under a clear legal framework and in case of sufficient legal guarantees.

VISUAL AND/OR ELECTRONIC SURVEILLANCE

The monitoring results demonstrated that according to the established practice, the order on the electronic surveillance contains little information and is like a template.

Article 8 of the rule on the visual and/or electronic surveillance, storage, deletion and destruction of the records enshrines that the administration is entitled to visually observe the meeting, in the conditions of remote monitoring and recording through technical means but without listening of the persons foreseen by Article 54 (6) of the Code. The Public Defender requests to change the application of the above provision to the respresentatives of the Public Defender/Special Preventive Group as far as it contradicts the organic law on the Public Defender of Georgia.

ACOMMODATING THE PRISONERS SEPARATELY DUE TO THE SECURITY REASONS

The examination revealed that the prisoners are often placed in the solitary confinement cells of the penitentiary establishments without any legal basis and it has a systemic character.

The Public Defender of Georgia considers that it is important to create legal guarantees on the legislative level so that the separately placed prisoners do not have additional detention conditions that will strengthen the suffering caused by both imprisonment and isolation. In addition, the legislation should determine the maximum limit of isolating the prisoners.

USE OF SPECIAL MEASURES

The Public Defender deems it important to prohibit attaching a person to a solid surface by using the handcuffs. The frequent use of the handcuffs in the Establishment N3 is noteworthy (123 cases).

CONDITIONS OF DETENTION

PHYSICAL ENVIRONMENT, SANITARY AND HYGIENIC CONDITIONS

The conditions of the penitentiary establishments are still in need of improvement and harmonization with international standards.

PENITENTIARY FACILITY N2

The ventilation system does not work in the living cells of the penitentiary facility N2. It should be noted that in the cells per 6, 8 and 10 prisoners the space for one prisoner is less than 4 square meters. There is one window in every cell (1.35X0.96 cm). Natural and artificial lightning is satisfactory in the cells foreseen for 2, 3, 4 and 6 prisoners. One window in the cells for 8 and 10 persons cannot ensure the natural lightning and ventilation in the cells. There are two-tier beds, individual wardrobes, a table and chairs in the cells. The prisoners have a TV in a cell. The cells have separate sanitary-hygienic knot.

The facility has a problem of accessibility to the means of personal hygien of women prisoners. Natural and artificial lighting in the cells is satisfactory. The ventilation system cannot ensure the adequate ventilation of the cells.

PENITENTIARY FACILITY N3

During the visit[2] most of the cells for 6 persons (11 cells) were fully loaded. The above is not in conformity with Article 15 paras 2 and 3 of the Imprisonment Code. The facility has problems with the water supply. Sanitary and hygienic conditions in the main livig cells are satisfactory.

In the investigation rooms of the facilities, besides the investigative authorities the prisoners meet the lawyers, religious leaders, representatives of the international organizations and of the Public Defender. The confidentiality of the above meetings is guaranteed by the law. All rooms are equipped with a surveillance camera. Majority of the prisoners consider that they are subjected to the video and audio recordings through the surveillance cameras of the investigation rooms. The above has a negative impact on their openness and restricts them during conversations.

PENITENTIARY FACILITY N5

Living blocks of the establishments have common shower rooms. The water used in the bathrooms of the A, B, C blocks does not run through the sewer system and dams in the bathrooms. The ventilation is poorly functioning. The floor and the walls are outdated and in need or renovation.

2 7-9 May, 2015.

PENITENTIARY FACILITY N6

In the facility, the toilets of the newly renovated cells have partially isolated doors due which it is difficult to be in solitude while using the toilet in the cells for 2 or more persons. It should also be noted that the surveillance cameras are installed right in front of the toilets of the above cells that directly watch the process of the prisoners meeting their natural needs. Artificial ventilation is not installed in the toilets of the living cells and the ventilation is not sufficient in the cells. Common shower of the second living block is ventilated only naturally. Water is dammed in bathroom sinks of some of the cells.

PENITENTIARY FACILITY N7

In 2014 Parliamentary report the Public Defender addressed the Minister of Corrections with the recommendation to close the penitentiary facility N7 due to the particularly grave living conditions in the establishment. According the response from the Ministry of Corrections[3] the decision of liquidation cannot be taken at this point, however, in the nearest future, it is planned to significantly reduce the contingent of the facility and transfer the convicts to the establishment of relevant risks.

It is also planned to completely rehabilitate the Facility N7, to close the first floor of the establishment entirely and to reduce significantly the limit of placing the accused persons/convicts. It should be noted that in February 2016 19 convicts were transferred from the Facilty N7 to the Facilty N6. As for the position of the Ministry, it is worthwhile mentioning that taking into consideration the infrastructure and the initial purpose of the Facility (it was built as an investigation isolator), it is hard to imagine for the Public Defender how the establishment can be renovated so that its infrastructure can be in conformity with the standards of the detention facilities. Therefore, the Public Defender's recommendation on the closure of the Facility N7 remains unchanged.

PENITENTIARY FACILITY N8

The space of the living cells does not comply with the requirements of Article 15 paras 2 and 3 of the Imprisonment Code of Georgia. Artificial ventilation system is poorly functioning in the living cells of the establishment. There is humidity in some of the cells. The facility has no facility for the long-term visits.

The waiting cells are partially underground, leaving the cells without the sufficient lighting and ventilation. Sanitary and hygienic conditions in the cells are unsatisfactory. Specific smell and a large number of cockroaches were noticed in the waiting rooms during the visit. The prisoners had no linen and as they noted, they were not given the possibility take a shower.

3 Letter N186/16 received in the Public Defender's Office, 11 February, 2016.

During the visit of the Special Preventive Group to the establishment[4] the sanitary and hygienic conditions of de-escalation rooms were not satisfactory.

In the Facility N8 the walking yards are located on the last floor of the living blocks. They look like the cells covered by the metal grid. There is no relavant inventory, no chairs and the atmosphere is generally depressing. The prisoners do not have the opportunity to exercise.

PENITENTIARY FACILITY N9

The space of the living cells does not comply with the requirements of Article 15 paras 2 and 3 of the Imprisonment Code of Georgia.

The living cells are provided with both the natural and artificial lightning. The cells are ventilated though the windows, however, it is necessary to install the artificial ventilation system. The laundry facility is not operating in the establishment. The walking yards should be equipped with the exercise equipment in order to ensure the physical activity of the convicts.

Quarantine and solitary cells of the establishment were not functioning throughout the year. The facility does not have the infrastructure for the long-term visits.

PENITENTIARY FACILITY N11

Short-term visit room of the establishment is at the same time used as an investigation room. There are several tables in the room and a couple of prisoners might be meeting the visitors at the same time. The above violates the confidentiality of the conversation. It should be positively noted that the juveniles have the opportunity of directly meeting the family members without any barriers.

PENITENTIARY FACILITY N12

Penitentiary Facility N12 had insfrastructural problems for years.

The space in some of the facilty cells do not comply with the requirements of paras 2 and 3 of Article 15 of the Imprisonment Code of Georgia.

The main living block of the prisoners[5] is outdated and needs major renovation. The residential block of the prisoners responsible for prison maintenance service. The problems are both infrastructural and sanitary and hygienic. The administration should take care of the electrical network in every cell of the facility, since the safety standards are not met.

4 24-26 November, 2015.

5 Where there are also the working cabinets of the facility's administration personnel.

PENITENTIARY FACILITY N14

4 residential blocks are functioning in the establishment. The natural and artificial lightning in the cells is not sufficient. Central heating system is operating. Cells are ventilated only naturally. However, it should be noted that in 2015 the airboxes were installed in the cells.

Sanitary conditions in the operating room of the medical part of the establishment is unsatisfactory. In addition, the room is isolated from the reception room only by the curtain.

PENITENTIARY FACILITY N15

Space of the cells in the penitentiary facility N15 is not in conformity with the requirements of Article 15 paras 2-3 of the Imprisonment Code of Georgia.

Artificial ventilation system is not functioning in the cells. There is no central heating. The floor is made of the stone mosaic. The walls are rough. The sanitary and hygienic conditions in the corridors and stairs of the living blocks are not satisfactory.

Quarantine cells and cells of solitary confinement are located in the closed-type living block. In total, 16 solitary confinement cells are functioning and they do not have the isolated sanitary spots. The prisoners are forced to use the sanitary knot of the cell as a toilet, without any cover. The above spot does not give any possibility of solitude and it is located in the area of the surveillance cameras. The sanitary knot does not wash off.

PENITENTIARY FACILITY N16

During the visit to the facilty, all convicts were ensured with the 4 square meters living space. Natural, as well as artificial ventilation system is available in the living cells that ensures sufficient ventilation. There is central heating in the cells.

Complaints boxes are placed at the entrances of the first and second floors of the establishment's block "A". On the first floor the complaints box is in front of the personnels' duty room and in the area of the surveillance cameras installed nearby. The camera is installed right above the box on the second floor and it violates the confidentiality.

PENITENTIARY FACILITY N17

The space of the cells is not in conformity with the requirements of Article 15 paras 2-3 of the Imprisonment Code of Georgia.

The living blocks of the prisoners are outdated and in need of a major renovation. Sanitary and hygienic conditions of the cells are not satisfactory. The ventilation system could not ensure the adequate ventilation of the cells during the visit.

Humidity was observed in the cells.

Noteworthy is the sanitary-hygienic conditions in the kitchen of the facility. It was revealed during the monitoring that there was no dishwashing sink in the Facilty N17. The dishes were washed in the metal box of the kitchen floor.

THE AGENDA AND REHABILITATION ACTIVITIES

The Public Defender has noted in his previous reports that the conditions of the penitentiary establishments should ensure the prisoner's resocialization and reintegration into the society. The Public Defender welcomes the measures taken in the penitentiary facilities throughout 2015 for the resocialization of the prisoners. Nevertheless, the problem of implementing rehabilitation activities in the high risk establishments and in medical institutions with the long-term care units still is acute.

EMPLOYMENT OF PRISONERS

One of the positive events of 2015 is the preparation of the draft amendments to the Imprisonment Code according to which the convict having a job with the permission and control of the penitentiary establishment's director is allowed to sell the handmade items with the support of the penitentiary facility.

PENITENTIARY HEALTH-CARE

FUNDING OF THE GEORGIAN PENITENTIARY HEALTH-CARE, ORGANIZATIONAL ASPECTS AND IMPLEMENTED REFORMS

The statute of the Medical Department was approved by the Decree N53 of the Minister of Corrections dated 25 June, 2015. The work of the medical units of the detention facilities, first-aid medical units of the facilities of deprivation of liberty, Tuberculosis Treatment and Rehabilitation Centre and the medical units for the treatment of the accused persons and convicts was defined and put in a legal regulatory framework with the new statute.

On 22 April, 2015 the Minister of Corrections, by the decree N31 approved the penitentiary health-care standard "On Approving the Medical Service Standards in the Facilities for Denetion and Deprivation of Liberty, the Additional Medical Service Standards for the Persons with Special Needs, on Approving the List of Basic Medicines and Receiving Preventive Service Package of Penitentiary System Health-Care." The above decree defines the type of service the Government will provide the prisoners/persons in detention.

According to the information received from the Ministry of Corrections, complete reorganization of the medical unit took place in the framework of the reforms. In addition, the health-care budget was increased, which constitutes a positive trend.

REGIME, DISCIPLINARY LIABILITY, INCENTIVES

The Public Defender welcomes the increase of the prisoners' incentives compared to the previous year. Nevertheless, it should be noted that in comparison to the previous year, the practice of using disciplinary sanctions has considerably increased. The Georgian legislation does not define which disciplinary sanction should be imposed on the violator in concrete situations. Therefore, the officials have a fairly wide discretion in the process of selecting disciplinary sanctions. This increases the risk of disproportionate penalties. Several facts of placing the prisoners with mental problems in the solitary confinement cells during 2015 are alarming. In addition, disturbing is the practice in the Penitentiary Facilty N7 of imposing complete ban to meet the family members as a sanction.

The prisoner who is under the disciplinary sanction should have the opportunity to appeal to a competent and independent higher authority.

MEDICAL INFRASTRUCTURE

MEDICAL INFRASTRUCTURE OF THE PENITENTIARY FACILITIES

Medical services in the medical units of the penitentiary establishments are provided in former cells that somewhat limits the quality of the service provided. There are problems regarding the surface of the walls and floors in the doctors' cabinets. It is necessary to cover the floor with antistatic linoleum in every cabinet for diagnostic examinations or small interventions. Velntilation problems also exist. All the above-mentioned increase the risk of nosocomial infection. The quality of the medical equipment and their technical storage is also problematic in the penitentiary system.

Drug storage facility/warehouse located in 2 small rooms was monitored in the Facility N12. The facin of the ceiling and walls of the drugstore did not give the possibility of regular wet cleaning and disinfection.

ACCESS TO MEDICATION

The issue of replacing the prescribed drugs still remained a problem in 2015. The visits carried out in the penitentiary establishments during the reporting period revealed that the prisoners often protest the replacement of the medication prescribed by the doctor. The prisoners also complain about the lack of medication in the facility. In addition, during the conversation with the members of the Special Preventive Group, the accused/convicts note that the anti-cold medicines are not accessible to them.

ACCESSIBILITY AND QUALITY OF THE MEDICAL SERVICE

ACCESS TO THE DOCTOR

In the penitentiary establishments medical service is provided by 37 primary health-care teams and 2 medical facilities. Despite the fact that in 2015 the number of doctors and nurses increased, the quantity is still insufficient in some of the facilities.

In 2015, the established practice of the Penitentiary Facilities N2 and N3 according to which the prisoners have to write an application on the needs of medical service and pass it to the controller on duty in order to receive the necessary medical assistance still remains problematic.

The visits conducted in the penitentiary establishments during 2015 in order to study the question of the consultation of prisoners provided by the invited consultant doctors revealed that the regularity and frequency of the doctors' visits in not sufficient in a number of facilities.

Properly processing medical documentation still is a problem in the penitentiary facilities.

MEDICAL REFFERAL

While studying the medical referral in the penitentiary facilities, the Special Preventive Group has found that the timely approval of the case by the medical department during the registration in the unified electronic database constitutes a problem. It should be noted that in most cases the head doctor of the facility sends the request of registering the medical referral in the unified electronic database in a timely manner. Nevertheless, the approval from the medical department takes from 1 to 6 months in a number of cases.

THE DOCTOR'S INDEPENDENCE AND COMPETENCE, CONFIDENTIALITY AND INFORMING THE PRISONER

Professional independence of the medical personnel is necessary to raise the quality of independence and competence of the medical personnel employeed in the penitentiary system.

According to the monitoring results conducted by the Special Preventive Group there is a certain dependency of the medical personnel on the facility's administration. The above violates the principle of confidentiality and impedes the process of medical service.

The monitorings carried out by the Special Preventive Group revealed that in most of the cases the infrastructure of the medical units violates confidentiality.

MENTAL HEALTH, PROBLEM OF DRUG DEPENDENCE AND SUICIDE PREVENTION IN THE PENITENTIARY SYSTEM

MENTAL HEALTH

Identification of the prisoners with personal disorder constitutes a problem. Therefore, it is important to improve access to a psychiatrist and to deepen the cooperation of a psychologist and a social worker with a psychiatrist.

All necessary measures should be taken in order to avoid placing the convict with mental problems in the solitary confinemet cells. This kind of convicts should be provided with timely and adequate mental assistance.

SPECIAL CATEGORIES

JUVENILE PRISONERS

Entry into force of the Juvenile Justice Code in 2015 should be assessed positively.

The increased practice of transferring juvenile prisoners to the temporary facilities N2 and N8 due to the security reasons was noted during the reporting period. The above facilities do not have the environment suitable for the rehabilitation of the juvenile prisoners. Despite the fact that in the establishments N2 and N8 the juveline prisoners are placed in the isolated living block, they still have the possibility to communicate with the adult prisoners. Hence, the Public Defender considers that all juvenile prisoners should be placed in the rehabilitation facility for the juveniles.

Although the juveline prisoners in the Facilities N2 and N8 are located in an isolated living block, they still have the possibility to communicate with the adult inmates.

It is important to inform the juveline prisoners about their rights and responsibilities in the language they understand.

Juveline accused/convicts of the penitentiary system encounter the problems while registering on the national exams.

RIGHTS OF THE FEMALE PRISONERS

The procedure of full examination at the admission of prisoners in Facility N5 remains to be a problem, as all the clothes of the prisoners are removed. In addition, the prisoners are requested to squat, which is causing moral damage. It is noteworthy that the above procedure is taking place whenever the prisoner is leaving and returning.

Reducing the practice of placing women under solitary confinement as a disciplinary sanction calls for a positive evaluation. Nevertheless, the cases of transfering the prisoners in the cell-type rooms have increased.

Timely receiving the planned medical care still constitutes a problems in the healthcare system.

Hygienic procedures of the female prisoners still remains to be problematic. Living cells of the establishment are not properly heated. In addition, there is no hot water in the cells, although the convicts have to wash dishes and clothes, and in the evening, they have to perform prcedures for personal hygiene. Constant contact with the cold water has a negative effect on a woman's health.

Providing childrens' clothing is still problematic.

In the establishment, it is necessary to develop such programs and services that fit their needs. Female prisoners and other stakeholders should be involved in the drafting process.

GBT prisoners are placed separately and the other prisoners are restricted from communication with them. However, in the female prisons LBT prisoners are not separated since they are not in need of this kind of involvement to ensure the safety.

As the monitoring results revealed, there is a high risk of self-harm among the LBT female prisoners, nevertheless, they are not ensured with the specilized work with the phsychologist.

INDIVIDUALS WHO HAVE BEEN SENTENCED TO LIFE IMPRISONMENT

The Public Defender has repeatedly noted in the reports that the conditions of the penitentiary establishments cannot ensure re-socialization and reintegration into the society of persons sentenced to life imprisonment.

It is noteworthy that no diverse and systematic rehabilitation activities are carried out in the penitentiary facilities where life imprisonment is served.

Georgian legislation does not provide for special treatment that is necessary for re-socialization and reintegration into the society of persons sentenced to life imprisonment.

It is important to give the prisoners serving life sentence the possibility of having regular communication with the family members and friends, through correspondence as well as the visits. The above should take place under the relevant supervision.

It should be noted that in some of the penitentiary facilities there is no infrastructure for the long-term visits and due to that, the prisoners are transported to another facility.

THE ACCUSED INDIVIDUALS IN DETENTION

It should be noted that placing the convicts and the accused together constitutes a problem in the penitentiary facilities N2, N3 and N8.

The Public Defender considers that each convict should be ensured with not less than 4 square metres of living space. Rehabilitaion activities are not foreseen for the accused individuals placed in the penitentiary establishment. The accused persons in detention have the right to take a walk for not less than 1 hour per day.[6] Other activities are not foreseen for the above category.

In order to maintain close ties with the family it is important for the accused the increase the number of short-term visits. Besides this, it is significant to make changes to the Georgian legislation and give the accused persons in detention the right to use the long-term visits.

VULNERABLE GROUPS

During the visits carried out in 2015 the conditions of GBT[7] and particularly vulnderable groups[8] of the penitentiary establishments was studied and the existing risks and possible facts of harassment were revealed. The criminal sub-culture and informal rules have been applied in the penitentiary establishment for decades.

The prison maintenance service parts of the facilities[9] are divided into two. One part is responsible for distributing food and providing the prisoners with the products from the facility's shop. The other part is responsible for cleaning. They are placed separately. Placment of prisoners in the maintenance service is in some way an isolation by which the prison administration is trying to avoid the tensions among the prisoners. This is exactly why the prisoners responsible for cleaning constitute a vulnerable group. Persons involved in the prison maintenance work, responsible for cleaning do not constitute self-identified GBT persons in a number of facilities. However, due to various reasons they are identified with GBT persons by the other prisoners. Therefore, the risk of discrimination, the threat of violence and stigmatization against them is high in the penitentiary facilities. The attitude of the facility's personnel towards these prisoners constitutes an important challenge.

ETHNIC AND RELIGIOUS MINORITIES, FOREIGN NATIONALS AND STATELESS PERSONS

Foreign nationals and representatives of ethnic and religious minorities placed in the penitentiary facilities constitute one of the most vulnerable category. The language barrier is specifically problematic with the above persons due to which the majority of the prisoners are unaware of their legal rights.

Wothwhile is mentioning that majority of the foreign-language speaking prisoners do not possess information regarding their rights. In most cases, the prisoners are not in-

6 The Code of Imprisonment, Article 14, part I, para g.
7 Gay, Bisexual and Transgender Individuals.
8 Prisoners from the Agricultural unit, responsible for cleaning.
9 Except the facilities N5, N11, N16 and N18.

formed of their rights since the facility's social service personnel do not speak the foreign language. In addition, communication is complicated with the other staff of the establishment.

The prisoners speaking foreign language are not provided with the news programmes, newspapers and other media sources in the language they understand.

Foreign nationals and stateless persons encounter problems regarding their involvement in treatment of Hepatitis C through Sofosbuvir.

CONTACT WITH THE OUTSIDE WORLD

The monitoring conducted by the Special Preventive Group during the reporting period revealed that excersising the right to the visit with the family member is hampered by several factors. In particular, the existence of the glass barrier in the short-term visit room, also, ensurance of the confidentiality during the family visit. In addition, the problem of taking into account the residence of the family while placing the prisoners in the penitentiary establishments should be underlined.

SHORT-TERM VISIT

In the majority of the penitentiary establishments the short-term visits are usually administered in a room with a glass partition. Hence, the prisoners are deprived of the possibility to have any kind of physical contact with the family members.

Visits of the family members are hampered by not taking into consideration the residence of the family while placing the prisoners in the penitentiary facilities. Mainly the prisoners transferred from the eastern Georgia to the western part of the country encounter the problems related to the family visits and meetings with the lawyers.

In total 40 897 shot-term visits were carried out in the penitentiary establishments during 2015. It should be noted that the use of the short-term visits has decreased in 2015 compared to 2014.

LONG-TERM VISITS

There is no necessary infrastructure for the long-term visits in the Facility N8. Only the prisoners sentenced to life imprisonment are excercising their right to the long-term visits.

Similar to the Penitentiary Facility N8, there is no necessary infrastructure for the long-term visits in the Facility N7. It should be noted that the prisoners serving the life sentence cannot exercise their right to the long-term visit in the Facility N7.

Despite the fact that the socially vulnerable families enjoy some benefits, families of some prisoners are hampered by the heavy economic conditions to use their right to long-term visits, and the above is specifically important to maintain close links with the family.

Amendment should be made to the Imprisonment Code that will determine the procedure for using the right to long-term visits by the defendants in pre-trial detention in view of investigation interests.

VIDEO MEETING

Video meetings have an important role in the relationships between the convicts and family members and friends. At the same time, it has a positive impact on the re-socialization of the prisoners. Video meetings have a special importance.

It is noteworthy that there are only five penitentiary facilities (N5, N11, N15, N16 and N17), where the infrastructure for the necessary video meetings is available.

The Public Defender of Georgia issued recommendations to the Minister of Corrections to provide every penitentiary facility with the infrastructure necessary for video meetings in Parliamentary Reports of 2013 and 2014. Nevertheless, this recommendation has not been fulfilled.

TELEPHONE CONVERSATIONS

The right to telephone conversations is one of the most crucial rights of defendants/convicts that helps foster close contacts with family members and friends.

Prisoners encounter problems related to the conversation limit during the phone calls. In particular, if a prisoner does not exhaust the conversation time on one card, the remaining time is blocked and he/she can no longer make a call to use the minutes remaining on the card. The only way is to buy a new calling card, which is an additional cost for the prisoners. Calling card is also blocked when a prisoner is unable to have conversation due to unrelated reasons such as network overloading, call interruption, incorrect number dialing, etc.

The lack of the telephones is a specific problem for making the phone calls by the prisoners placed in the semi-open penitentiary facilities.

There are many cases when the prisoners placed in the solitary confinement cells are not allowed to call the Public Defender's Office.

In the closed detention facilities the telephones are placed in the duty rooms of the personnel where the controller on duty is present. The above violates the confidentiality of the phone conversation.

1.2. THE MECHANISMS FOR REVIEWING REQUESTS/APPEALS IN THE PENITENTIARY SYSTEM OF GEORGIA

The absolute prohibition of torture constitutes the peremptory norm of customary international law (*jus cogens)* from which no derogation is permitted. The guaranteed right of every individual to the prompt and impartial review of the appeals against the representatives of the government bodies, as well as the functioning of the effective internal monitoring system is the most important component of fighting against torture.

Application of these principles in practice is not possible without ensuring the prisoners with the procedures of filing and reviewing the appeals. The states have the obligation to create an effective system in which the prisoners will have the possibility to file an appeal on any matter related to their treatment and detention conditions.

The effective mechanism for reviewing and monitoring the appeals/requests in the penitentiary facilities ensures the respect of the prisoners' rights and constitutes a fundamental guarantee against the ill-treatment. The non-existence of this kind of mechanism has a negative impact on protecting security and order in the penitentiary establishments. Due to the improper response to the requests and appeals the prisoners often resort to the extreme measures of protest – the hunger-strike and self-injury.

The existing practice of informing the prisoners about their rights cannot ensure the prisoners with the sufficient knowledge regarding the general rights of the prisoners as well as about the concrete right to filing an appeal/request and its review procedures. According to the assessment of the Special Preventive Group, the information regarding the rights and procedures of appeal are not regularly accessible for the prisoners.

The Public Defender welcomes the fact that the Ministry of Corrections shares the position of the Public Defender regarding the measures to be taken for providing the prisoners with the sufficient information. It is noteworthy that the Ministry is ready to issue informational brochures on various topics in several languages, to prepare the banners and posters and to put them in the penitentiary establishments so that the accused persons/convicts can access the information on their rights and responsibilities.

Positively should be assessed the situation in the facilities regarding the availability of the material and technical means necessary for realization of the right to file a request/appeal. Nevertheless, there are still cases when the prisoners have not had material and technical means for the last two years. The Ministry of Corrections is taking into account the Public Defender's recommendation and is planning to take additional measures in order to fully ensure the prisoners in the penitentiary facilities with the relevant material and technical means.

In relation to registering and sending the request/appeal to the adressee noteworthy is the fact that the majority of the appealing prisoners are informed about the registration number of the appeal. However, it should be noted that every third prisoner filing the confidential appeal notes that they have not received the registration number. According to the majority of the prisoners, the registration number and the code of the relevant envelope haven't been put up. It should be underlined that the prisoners are

informed about the registration numbers directly in the cells and therefore, the author of the confidential appeal might be identified. The research has revealed the cases when the appeal was forwarded to the person whose conduct was referred to in the claim.

The Ministry of Corrections does not share the postion of the Public Defender regarding the problems related to the registration number of the confidential appeals and putting a relevant code near the appeal box. Nevertheless, the Ministry expresses its readiness to take part in the discussion of the above recommendation. The results of the conducted social research demonstrated that the information on the registration number is provided to the absolute majority of the prisoners without protecting confidentiality.

The impossibility to use the appeal box by the prisoner of the closed facility without the accompanying person constitutes a problem. In addition, in a number of establishments the appeal box is placed in the area of the surveillance cameras. Confidentiality is violated while drafting an appeal with the help of the social worker and the security staff is also present in the room.

In the closed facilities the envelope necessary for writing a confidential appeal is not received without identification. Noting the envelope number and the name and surname of the prisoner by the social worker constitutes a clear violation of confidentiality. Distribution of the correspondence from the Public Defender's Office to the prisoners in an open form, also, opening the closed envelopes by the facility's personnel in front of the prisoners is alarming.

Due to the different timelines for reviewing the appeals, requests and applications, differentiation and timely response from the various units of penitentiary system established by Imprisonment Code is problematic. The practice of response to the prisoners' requests is timely but template. In particular, units of the penitentiary system as addresses of the requests/appeals/applications are sending the responses to the prisoners in a timely manner, however, these responses in the majority of cases do not constitute the decision after the careful consideration of the appeals/request/applications. As a rule, it is an intermediate response confirming that the addressee has received the appeal/request/application. Noteworhty is the fact that in case of prolonging the deadline for reviewing the appeal, sufficient information in a written form is not provided to the appellant/application regarding the necessity of extending the term. It should be negatively assessed that the deadlines for reviewing the appeals by the medical department and the general inspection of the Ministry of Corrections are not defined by the Code.

The methodology of studying the issue by the general inspection is problematic. Namely, they are mostly limited only to question the prisoner and the personnel of the administration. Representatives of the general inspection do not always check documental and other evidences and do not question other prisoners and witnesses. In addition, they are asking the administration staff the leading questions and are not checking the answers with the other sources. The cases are solved on the ground that the fact of violation was not confirmed, while the argumentation in the written notices mainly includes only the description of explanations and the final report - that the violation was not confirmed.

In the closed facilities there are problems regarding the issue of transferring the responses to the prisoners. In particular, the prisoners are informed of the answers to their appeals, however, the documents are not left with them in the cells. There are cases when the prisoner does not have the possibility to get acquainted with the received response and react subsequently.

In the reporting period, the analyses of reacting to the compaints of the prisoners by the general inspection of the Minsitry of Corrections demonstrated that the official check-up conducted by the general inspection has a formal character and cannot be considered as an effective work. The reason for closing the monitoring unit was the intersection of the responsibilities of general inspection and the monitoring unit and the ineffective work of the latter. This is undoubtedly a positive step forward.

Positively should be assessed the practice of critically evaluating the conditions and revealing the violations by the regulation division of the medical activities. It is important to further strengthen the above division and to ensure it with the relevan human resources. According t the Special Preventive Group the further improvement of working methodology of the regulation division of the medical acitivies is very important. As well as the training of its staff, providing the prisoners with the sufficient information regarding the rights and responsibilities of the division and ensuring the transparentcy of its work.

1.3. FACILTY FOR THE RESTRICTION OF LIBERTY

GENERAL OVERVIEW

On 3 June, 2014 the first establishment for the restriction of liberty was opened in Tbilisi which became functional from January 2015. The convicts, whose sentence was substituted with the restriction of liberty by the decision of the Local Parole Council are allocated in the above establishment. Detention was substituted by the restriction of liberty for the above persons. In the facility for the restriction of liberty are also placed those persons who are sentenced to the restriction of liberty by the court. The above facilty is oriented on the full integration of the convicts in the society. They are guaranteed with possibility to leave the establishment during the holidays in order to maintain the contact with the outside world.

TORTURE AND INHUMANE OR DEGRADING TREATMENT

It should be noted that during the visit, the members of the Special Preventive Group have not received any information regarding the physical violence or verbal abuse of the convicts from the personnel of the facility.

SECURITY

In the facility for the restriction of libery not a single living cell was equipped with the electronic surveillance system. They are installed only in the solitary confinement cells.

According to the received information, the personnel of the establishment did not use special measures during the year.

Based on the information received during the visit to the facilty, the staff of the facility is trying to eliminate the conflict among the prisoners with the conversations. Nevertheless, in 2015 19 cases of verbal dispute and physical assault took place between the prisoners. According to the assessment of the Special Preventive Group, there are problems in the facility in terms of physical security. In particular, there is a high risk of violence and disorder among the inmates. Therefore, it is necessary to take appropriate measures. Among others, for the proper supervision of prisoners and prevention of conflicts, there should be a sufficient number of personnel in the facilty and they should be trained in the practical implementation of dynamic security.

AGENDA AND REHABILITATION ACTIVITIES

According to the law of Georgia on Procedure of Execution of Non-custodial Penalties and Probation, the work of a person restricted of liberty shall be remunerated.[10] It should also be noted that according to the information received from the facilty,[11] during 2015, only 11 convicts were employed in the pasta factory on the territory of the establishment.

It should be welcomed that thoughout the year, various rehabilitation programs were carried out in the facility. However, it is important to give the convicts the possibility of paid employment in the factories and enterprises of the facility.

MEDICAL SERVICE

During the reporting year, 15 convicts were transferred to the civil hospitals, among them 1 was planned, at the expense of the state, 3 – as a matter of urgency, also at the expense of the state and 11 – also planned, but at their own expense. It should also be noted that based on the records in the medical files of the convcits, in a number of cases, the convicts are in need of the consultations with the concrete specialist doctors. However, the treatment is prescribed by the facilty doctor without the above consultation.

Consultations with the specialized doctors are not ensured in the facilty. The head doctor is in charge of all consultations and prescription of treatments.

10 Article 44[1] para 3.

11 Letter N1557/16 of the Head of the Establishment received at the Public Defender's Office, dated 5 Fenruary, 2016.

REGIME, DISCIPLINARY LIABILITY, INCENTIVES

In 2015, out of 48 disciplinary sanctions, in only 24 cases were the convicts prohibited from leaving the territory of the facilty. The main reasons of discriplinary sanctions were the physical/verbal abuse of the other prisoners, arriving at the facilty drunk or late, and abuse of the facility's staff.

CONTACT WITH THE OUTSIDE WORLD

According to the statute of the establishment the convict has the right to a short-term visit with parents, foster parents, child, adopted child, wife, sister and brother, in accordance with the Georgian legislation. According to the information received from the facilty, in 2015 19 prisoners benefited from the family visits and 7 convicts met their lawyer.

The monitoring results revealed that the convicts are ensured with the written and telephone communication means, short-term visits with the family members and the right to temporarily leave the facilty, as foreseen by the law. Nevertheless, it should be noted that there are problems in terms of transportation due to which the convicts have to walk to the nearest mini bus stop. The above is especially difficult in winter, in a cold and rainy weather.

1.4. SITUATION IN THE AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

In 2015, the monitoring was carried out in 59 police departments and 31 temporary detention isolators where 54 detainees were interviewed.

In the process of monitoring, members of the National Preventive Mechanism of the Public Defender had unimpeded access to – and freely moved – in the regional departments and temporary detention isolators. During the visit, employees of all the departments and isolators fully cooperated with all the representatives of the Public Defender in line with the law and assisted them to thoroughly conduct the monitoring.

GENERAL OVERVIEW

In comparison to 2014, the number of persons in the temporary detention isolators is significantly decreased. In addition, in 2015 compared to 2014, 916 less cases of bodily injury were reported. The number of claims against the police has also decreased (30 less cases). Nevertheless, taking into account the cases of torture and other ill-treatment, the Public Defender and the Special Preventive Group considers that the situation in terms of protection of human rights in the system of the Ministry of Internal Affairs of Georgia has worsened.

Compared to 2014, in 2015 the number of Public Defender's recommendations submitted to the Chief Prosecutor's Office of Georgian regarding the investitation of the facts of ill-treatment from the police officers has increased. The research carried out by the Special Preventive Group also confirms the high risk of torture and ill-treatment.

The Public Defender considers that in 2015, the ill-treatment of detained persons by the police is an acute issue. The Public Defender is alarmed with the fact that in most of the cases, the explanations of the applicants reveal that for the physical and mental violence the police is planning in advance and implementing it, in order to get a confession. The above constitutes qualification sign of the crime – torture.

In some cases, disregarding the guarantees of legal protection, such as the information on the rights, contacting the family and a lawyer, of the detainees from the police was problematic.

There are high risks of torture and ill-treatment in the so called "conversation" practice carried out in the police cars or the isolators/divisions without the express and free consent from the person. The above in fact constitutes arbitrary detention without the explanation of procedural rights. The Public Defender negatively assesses the fact that there is no registry in either the police department or in the temporary detention isolator. It would give the possibility to find out how many persons requested to inform the family or to use the right to a lawyer and how many excercised the above rights.

The Public Defender positively assesses the existing situation in terms of accessibility to a lawyer and the possibility to have a confidential conversation with a lawyer. However, a number of cases revealed during the monitoring that the detained persons were allegedely physically or verbally abused by the police while requesting the access to a lawyer or other procedural rights, constitutes a serious problem. In terms of access to a lawyer problematic is the fact that the persons in administrative custody never use the assistance of a lawyer due to the lack of financial resources or other reasons. At the same time, the existing legal basis cannot ensure the detained persons enjoying free legal aid with the lawyer's service from the first stage of legal proceedings. This issue is particularly acute in the regions where there is a problem of free legal aid and free legal aids from the non-governmental organizations is less accessible.

Important legal guarantee for the persons placed in the temporary detention isolators against ill-treatment is the procedure of notifying the investigation authority about the bodily injuries of the detainees. It is noteworthy that the notice to the prosecutor regarding the injuries on the body of the detained person is sent at the discretion of the head of the detention isolator. There is no concrete rule regulating the above procedure and it is not defined exactly when is the prosecutor notified. Problematic is the fact that the Prosecutor's Office does not study and investigate the claims of the persons detained in the temporary detention facilities properly and in a timely manner.

The Public Defender of Georgia considers that the check-up practice of the monitoring service of the Department of Human Rights Protection and Monitoring cannot ensure the sufficient examination of the human rights protection in the temporary detention

isolators. During the check-up, attention is drawn to the administrational and technical work carried out by the isolators and not to the quality of documenting the possible facts of ill-treatment of detainees by the police and in this regard, to the condition of protecting their rights.

The Public Defender's position is unchanged regarding the establishment of the independent investigation mechanism and considers that it is of utmost importance to create the mechanism with the mandate of effectively investigating the alleged facts of torture and inhumane treatment of the detained persons by the law enforcement officials.

TORTURE AND ILL-TREATMENT

In 2014, the Public Defender of Georgia submitted 7 proposals to the Chief Prosecutor of Georgia and in 2015 – 11 proposals to start investigation on the alleged facts of ill-treatment by the police. It should be noted that in 2014 there was a tendency of excessive use of force by the police during the detention. The above is mentioned in the Public Defender's Parliamentary Report of 2014. In 2015, the tendency of the detainees' ill-treatment by the police is revealed. Compared to 2014 in 2015 the number of the Public Defender's recommendations sent to the Chief Prosecutor's Office of Georgia regarding the investigation of the facts of ill-treatment by the police officers has increased.

Also alarming is the fact that as a result of 11 recommendations of the Public Defender of Georgia sent to the Chief Prosecutor of Georgia during 201,5 the investigation has started under Article 333 of the Criminal Code while the circumstances noted in the Public Defender's recommendations include the signs of torture and inhumane and degrading treatment. The Public Defender calls on the Prosecutor's Office of Georgia to launch an investigation of the similar cases under Articles 144^1 and 144^3 of the Criminal Code.

Disregarding the legal protection guarantees (such as defining the rights and connecting with the family and a lawyer) of the detained persons by the police constitutes an acute problem. As specified in the protocol of detention attention should be drawn to the tendency of the police's aggression towards the citizens. In cases when the police officers lacks qualification, there is a high risk of using force and therefore, the likelihood of the excessive use of force from them.

BASIC GUARANTEES FOR THE PROTECTION FROM ILL-TREATMENT

INFORMING THE DETAINED PERSONS OF THEIR RIGHTS

The Public Defender considers that the practice of transferring the person to the police vehicle or the police department for the "conversation" creates a high risk of arbitrary detention and ill-treatment. In any case of restriction of liberty the person should be notified of his rights immediately and on the language he/she understands.

The inspection of the Special Preventive Group revealed that in some of the police departments the time of the persons' arrival to the department is ahead of the actual time of detention. Therefore, they have not been officially detained during the delivery to the police department and they have not been informed of their rights.

The Public Defender considers that all persons transferred to the temporary detention isolator should be informed clearly and on the language they understand not only about their procedural rights, but all the rights and responsibilities they have while in custody in the isolator.

INFORMING THE FAMILY ABOUT THE DETENTION, ACCESS TO THE LAWYER AND THE DOCTOR

INFORMING THE FAMILY

According to para 1 of Article 177 of the Criminal Procedure Code of Georgia, the prosecutor, or upon his/her instructions, the investigator, shall, not later than 3 hours after the arrest, remand detention or placement in a medical facility for expert examination, notify any of the person's family members, or in the case of their absence, any of his/her relatives or close persons. It is foreseen in Article 245 part I para (c) of the Administrative Offences Code of Georgia the arrested person has the right if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her

The practice of providing information about the arrest to the family members or the lawyer by the Police is different. In some cases, the police officer allows the accused person to communicate with the family member from his/her own phone (only after it is checked that the person the accused is calling is really his/her family member) or the police officer calls the number indicated by the accused and informs the family.

In addition, there is no registry either in the police department or in the temporary detention isolators to note how many persons requested to inform their families, how many persons excercised the above right, who communicated with the relatives of the arrestee, what was the information provided and etc… It gives the impression that even when the detained person requests to inform the family members about the arrest, it depends on the good will of the police since the enjoyment of this right is not documented in a unified, systematized registry. Therefore, in cases when the detainee cannot exercise the above right due to the fact that his/her family members were not available on the phone, it is hard to determine whether the police officers actually called and could not reach the family of the detainee or they arbitrarily deprived the person of this right.

The 2015-2016 Action Plan on fighting against torture and inhumane and degrading treatment and punishment provides the development of the relevant recording system in the temporary detention isolators and facilities for detention and restriction of liberty through the improvement of the registries. Therefore, the Public Defender considers

that the improvement of the registries should also include the proper documentation of the detainee's requests to inform the family or a lawyer.

ACCESS TO A LAWYER

The UN Special Rapporteur on Torture, in the report regarding the visit to Georgia in March 2015 notes that the general situation regarding the accessibility of a lawyer is satisfactory and the persons in the detention facilities are given the possibility of a confidential conversation with a lawyer. However, the Special Rapporteur indicates that in some cases the physical and verbal abuse from the police took place as a result of the detainee's request to access a lawyer or exercise other procedural rights.

The Public Defender has already indicated that the accsess to a lawyer should be ensured as soon as possible from the moment of detention since the risk of threat, pressure, abuse and other forms of ill-treatment is the highest exactly in the first stage of the restriction of liberty when the person is the most vulnerable.

Despite the fact that the right to a lawyer is guaranteed by the administrative as well as the criminal procedure code, the monitoring of the national prevention mechanism revealed the tendency that persons in administrative detention almost never use the assistance of a lawyer.

The Public Defender considers that according to the regulations of the Law of Georgia on Legal Aid the detained person cannot in fact exercise the right to a lawyer as soon as possible from the moment of detention if the persons cannot hire a lawyer at their own expense.

In addition, documenting the fact of requesting the lawyer by the detainee is problematic. The Public Defender finds it important to document each and every request to excersie the right to a lawyer. The registry should be conducted in which every such request and its response will be noted.

ACCESS TO A DOCTOR

During the reporting period 241 persons were transferred to the medical establishment after the arrest due the health conditions.

According to the established practice, when a person is placed in the temporary detention isolator the ambulance is called in order to provide a medical examination of the detainee. The Public Defender welcomes this practice since the emergency doctor is not working under the Minsitry of Internal Affairs and is independent.

The Public Defender considers that all medical examinations should be carried out without the law enforcement personnel and other non-medical personnel listening to or visually observing the process except for the particular cases when it is necessary to ensure the security of the medical personnel.

Out of 740 studied cases regarding the documentation of injuries by the emergency doctors, 264 cases were revealed when the injury was noted in the visual examination report but the emergency doctor did not indicate it.

The Public Defender considers that the placement of the medical personnel of the Ministry of Internal Affairs in the isolators on the one hand ensures quick and timely medial treatment, but on the other hand, the degree of impartiality and independence of the above personnel is questionable. This can prevent the further identification of ill-treatment facts of the detained persons. Taking the above-mentioned into consideration the National Prevention Mechanism will study the activity of the medical personnel of the Ministry of Internal Affairs in order to determine the level of their independence.

PROCEDURAL GUARANTEES

AUDIO-VIDEO RECORDINGS

The European Committee for the Prevention of Torture considers that the fundamental guarantees for the protection of the detained persons in the police departments will be reinforced if, for each detainee separately, there is produced a unified and thorough video tape reflecting all aspects of detention and activities related to them.

In 2015, the lack of video surveillance in the inner perimeter of the majority of police departments remained to be a problem. It is necessary to equip the police department buildings with the surveillance cameras and to keep the video tapes for a reasonable time. The above constitutes an additional guarantee for the protection of the detained person from ill-treatment. It is noteworthy that in 2015, out of 11 recommendations of the Public Defender regarding the alleged facts of ill-treatment of detainees by the police officers, 10 cases were about the facts of physical violence against the detained persons conducted in the police departments.

It is important to equip with the video cameras and car video registries not only the personeel of the police department but also the detective-investigators and inspector-investigators of the districts. Video tapes might be an effective guarantee for the protection of rights of the detainees as well as the police.

The Public Defender of Georgia considers that it is necessary, from the moment of detention of a person until he/she is under the control of the police, to carry out a video recording of the complete process. In order to ensure the protection of the detainee from ill-treatment it is important to record a video surveillance in the temporary detention isolators and keep the records for a reasonable time. In case of need, the records should be accessible to the members of the Special Preventive Group.

THOROUGH DOCUMENTATION

During the visits carried out in 2015, the members of the Special Preventive Group of the Public Defender of Georgia have examined the cases of persons detained in the

temporary detention isolators and journals of the police departments and divisions. The above documentation revealed various violations and gaps that should be imporved for the thorough documentation process.

In a number of cases it cannot be established when the person was detained by the police officer. The date/time of the detainee's arrival in the police department as well as his fate is also unclear. The numbering in the journal is tangled and it is not indicated when and in what circumstances occurred the offense. In some cases, columns in the journals are not filled at all.

The results of the monitoring revealed that it is necessary to improve the form of the administrative arrest report. Thorough information should be added to the above report. In addition, the personnel of the temporary detention isolators of the Minsitry of Internal Affairs, Police Units and Departments should be trained.

COMPLAINTS

The most important component of fighting against torture is the right guaranteed to any person to the prompt and impartial hearing of the complaint against the representatives of the Governmental bodies. The states have the obligation to create an effective system where the detained persons will have the possibility to file a complaint against ill-treatment by the police. An effective mechanism for the revision of the complaints will ensure respect for the rights of the detainees and constitutes a fundamental guarantee against ill-treatment.

Accessibility to the procedures for reviewing a complaint is related to existence of simple and clear procedures for filing and reviewing a complaint. It is important that the procedures should be understandable and accessible both for the detained persons and the law enforcement bodies. The above procedure combines several important components. Firstly, the detainees should be informed of the existence of the review mechanism of the complaints. The administration of the detention facilities should ensure them with material and technical resources necessary for the complaints. The complaints should be registered and a timely and adequate response should be provided.

The monitoring of the temporary detention facilities during the reporting period revealed that the administration of the isolator informs the detainees of their rights, including the information on the right to complaint. However, certain deficiencies regarding this matter were noted.

If not provided with the material and technical means, the detained person will not be able to exercise the right to filing a complaint. The above includes the means necessary for writing a letter. It is noteworthy that the procedure of filing a confidential complaint by the persons placed in the temporary detention facilities is not defined on a normative level. Therefore, the possibility to provide the general inspection with the information confidentially and safely (in terms of protection from reprisals) is not ensured.

The monitoring results revealed that the Prosecutor's Office does not properly study and investigate the issues related to the complaints of persons allocated in the temporary detention facilities. The Public Defender considers that investigation should start regarding independet criminal cases even if there is no formail complaint of the detained persons.

In addition, the Public Defender's position in relation to the creation of the independent investigation mechanism is unchainged. The Public Defender considers that it is of utmost importance to establish a mechanism with the mandate to effectively investigate the alleged facts of torture and ill-treatment of detainees by the law enforcers.

INSPECTION AND MONITORING

Conducting various internal and external inspection is one of the effective means for the protection of the rights of the persons restricted of liberty. General Inspection of the Ministry of Internal Affairs of Georgia is carrying out the internal inspection of the Ministry of Internal Affairs of Georgia. Besides this body, the monitoring unit of the Human Rights Protection and Monitoring Department carries out periodic checks on the territory of the temporary detention facilities.

The Public Defender of Georgia considers that the examination practice of the Monitoring Unit of the Human Rights Protection and Monitoring Department of the Ministry of Internal Affairs of Georgia cannot ensure the proper consideration of the human rights protection conditions in the temporary detention facilities. During the examination, it is necessary to study the quality of documenting the facts of alleged ill-treatment of detainees by the police, as well as the situation in terms of protecting the rights.

As for the external monitoring, during the reporting period, the members of the National Prevention Group of the Public Defender had unimpeded access to – and freely moved – in the regional departments and temporary detention isolators of the Ministry of Internal Affairs. In the framework of the monitoring, employees of all the departments and isolators fully cooperated with the representatives of the Public Defender in line with the law and assisted them in conducting a thorough monitoring

The Public Defender highlights the fact that it is necessary to give the National Prevention Mechanism unhindered access to the video surveillance systems in the isolators and police departments.

CONDITIONS IN THE TEMPORARY DETENTION ISOLATORS

During 2015, the members of the Special Preventive Group carried out the monitoring in 31 temporary detention isolators of the Ministry of Internal Affairs.

As the results of the monitoring conducted in 2015 revealed, in the temporary detention isolators of the Ministry of Internal Affairs the central heating in the cells, natural

lighting and ventilation, complete isolation of the sanitary spot, wash-stands and a toilet flushes still remain to be problematic.

The existence of plank-beds instead of the individual beds in the cells is still a problem in the temporary detention isolators of Rustavi, Tsalka, Gardabani and Akhaltsikhe. The Public Defender of Georgia has addressed the Minister of Internal Affairs regarding the above problem in his Parliamentary Report of 2014. However, the monitoring carried out in 2015 revealed that infrastructural deficiencies are not completely eliminated in the isolators.

NUTRITION OF THE DETAINEES

The detainees in the temporary detention isolators should be provided with the standard food ration such as bread, tea, pate, canned beef and a dry package of the chicken soup. In addition, in the majority of the existing isolators the detainees are not provided with bread, since no relevan contracts are signed regarding supplying the facilities with bread. In a number of cases, the personnel of the isolator are forced to buy bread for the detainees at their own expense. The detained persons are mainly eating the food received through the parcels. Persons sentenced to administrative detention can be placed in a temporary detention isolator for up to 15 days and for the person who is detained long-term the proper nutrition and living conditions are important.

The monitoring results revealed that the number of temporary detention isolators did not have a single-use plates for feeding the detainees and hence, they were provided with the food on papers. This is exactly why the detainees refused to take meals in this form.

The canned beef foreseen by the standard nutrition ration is heating in the can in a number of cases since no special dishes are provided in the isolators. The visit to the Chkhorotsku temporary detention isolator revealed that the detainees are served with the cold canned beef without heating, which is also inadmissible.

1.5. PROTECTION OF MIGRANTS FROM ILL-TREATMENT

Monitoring of the Temporary Accommodation Centre of the Ministry fo Internal Affairs

On 17 December, 2015, the members of the Public Defender's Special Preventive Group monitored the temporary accommodation centre of the Migration Department of the Ministry of Internal Affairs of Georgia. During the visit, members of the monitoring group could freely move on the territory of the center and there was not any obstruction from the administration. The staff of the centre presented all necessary documentation available to them and requested by the group.

During the visit, the members of the Special Preventive Group did not receive informa-

tion about the physical violence or verbal abuse of the persons placed in the centre by the employees of the establishment. The temporary accommodation centre is envisaged for 92 persons. During the visit, 18 persons were allocated in the facility. Among them 16 men and 2 women, out which one was placed in the women's division and another – in the family division.

RECEPTION AND PLACEMENT AT THE TEMPORARY ACCOMMODATION CENTRE

In Public Defender's Parliamentary Report of 2014 the recommendation was issued requesting the amendments to the decree N631 of the Miniter of Internal Affairs of Georgia on "Approval of the procedure for the detention and placement of foreigners at the temporary accommodation centre" in order to specify that the surficial examination means touching only the surface of the clothes with a hand, special devise or special means. Till now, no amendment has been made to the above rule and hence, the recommendation has not been fulfilled.

The detained migrants should be informed about their rights and procedures utilized against them promptly and in a language they understand. It is important to provide the detained migrans with the document explaining the procedures carried out against them and the information on their rights. The above document should be available in the languages the above individuals usually speak. In case of need, additional service of an interpreter should be used.

During the monitoring, majority of the individuals placed in the centre noted that they were informed of there rights verbally while placed in the centre. Nevertheless, they are not provided with the special document containing the information about their rights in a relevant language.

LEGAL GUARANTEES FOR THE DETAINEES

In the monitoring process the foreigners have not complained of the legal consultations available to them. However, some of thems wanted to receive a complete legal aid in relation to the process of their removal.

The possibility to receive legal consultation prescribed by law cannot be deemed as a full-fledged legal aid. During the decision making process on the removal of a person it is important to provide him/her with a complete legal assistance which includes drafting of the legal documents and representation in the court and administrative body. It is noteworthy that the Law of Georgia on Legal Aid defines the persons benefiting from legal aid, however, we do not find the foreigners to be removed in the above list. Therefore, the relevant legislative amdendments should be implemented. It should be taken into consideration that the Public Defender has issued a recommendation in this regard in his Parliamentary report of 2014. This recommendation is still not fulfilled.

CONDITIONS IN THE TEMPORARY ACCOMMODATION CENTRE

The European Committee for the Prevention of Torture holds that the detention centre should not resemble a prison in any way. International guidelines stipulate that the detained migrants should be placed in the centres specifically designed for them and the detention conditions should be conformity with the nature of their deprivation of liberty.

The Public Defender welcomes the effort of the Ministry of Internal Affairs of Georgia in creating the infrastructure and sanitary and hygienic conditions in the temporary accommodation centre. At the same time, it can be noted after the external and internal visual inspection of the facilty building that the whole infrastructure is designed by the enhanced security components, which creates the sense of the prison regime.

It should be welcomed that the centre has a separate room for the disabled persons which is ensured with the relevant lighting and ventilation. The inventory of the room (special moving wheeled table) gives the possibility to consider the needs of the disabled individuals.

The facility has a yard with a basketball/football field. The yard also has a covered space where the persons placed in the centre can take a walk in a bad weather.

NUTRITION

Foreign citizens placed in the centre are complaining about the food. Some of them cited the food ration as a problem, which, as they note, does not change. Some of them complained about using bread in large amounts as a meal and requested to substitute bread with rice. The monitoring results revealed that during the preparation of meals the nutritional characteristics of different religions and vegetarians is not taken into consideration.

CONTACT WITH THE OUTSIDE WORLD

THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE NOTES THAT

Notifying a relative or third party of one's choice about the detention measure is greatly facilitated if irregular migrants are allowed to keep their mobile phones during deprivation of liberty or at least to have access to them.

One of the important aspects for contacting a family in the accommodation centre for migrants is the right to use a phone or a computer. According to the timetable of the centre, the foreigners are allowed to use the phone only on certain days (Monday, Wednesday, and Thursday). The length of each phone call is four minutes. In some cases, the phone conversation constitutes the only mean for the detained foreigner to have contact with the family. During the monitoring, the individuals placed in the centre not-

ed that despite the time allocated for the phone calls, the administration did not allow them to use the phone.

Important aspect for keeping contact with the outside world is the unlimited right to use the computer during the free time. As explained by the staff of the centre, it was allowed to use internet, however, the majority of the interviewed foreigners were not informed about the possibility to use one computer of the centre and the internet.

SCHEDULE AND ACTIVITIES

The agenda for the individuals placed in the centre is regulated by the agenda of the foreigners allocated in the temporary accommodation centre. According to the above timetable, the individuals of the centre are ensured with the free time from 10:00 to 13:00 o'clock and from 14:00 to 17:00 o'clock. The free time encompasses a walk on the fresh air and the using the library and a computer.

It is important to let the individuals placed in the centre have less restrictions during the free time and the possibility to move freely on the territory of the centre. In addition, they should be allowed to freely choose the activities and not be limited in time while using the activities established by the timetable. Noteworthy is complaint from the male unit that they can use the football field only for an hour per day.

MONITORING OF THE JOINT OPERATION TO RETURN THE MIGRANTS

On 20 October 2015, the employees of the Department of Prevention and Monitoring of the Public Defender's Office of Georgia carried out for the second time the monitoring of the joint operation to return the migrants.

The above monitoring was conducted in the framework of implementation of the Readmission Agreement concluded between Georgia and the European Union. The employees of the Department of Prevention and Monitoring of the Public Defender's Office of Georgia conducted the monitoring of the deportation of 35 citizens of Georgia from the EU member states. The above individuals were deported from Germany (21 citizens), Switzerland (8 citizens) and Bulgaria (6 citizens). There were 25 men, 9 women (1 pregnant woman) and 1 minor among the deportees.

1.6. MONITORING REPORT OF THE MENTAL HEALTH INSTITUTIONS

INTRODUCTION

The Special Preventive Group has conducted the monitoring together with the Department for the Protection of the Rights of Persons with Disabilities on the Public Defender's Office.

The monitoring group was composed based on the multidisciplinary principle and consisted of the members of the Special Preventive Group and the employees of the Department for the Protection of the Rights of Persons with Disabilities of the Public Defender's Office. During the monitoring, the members of the group inspected the infrastructure of the Mental Health Institutions and had a confidential conversation with the patients of the establishment. The members of the group also talked to the representatives of the administration, medical personnel, pshycologists of the facilty and social workers. The documentation and journals were also checked during the monitoring.

During the visit, members of the monitoring group could freely move on the territory the Mental health Institutions and there was not any obstruction from the administration. The staff of the Mental Health Institutions presented all necessary documentation available to them and requested by the group.

MENTAL HEALTH IN GEORGIA – REFORMS AND CHALLENGES

THE MEANING OF MENTAL HEALTH

Mental health is an integral part of individual and public health. There is not health without mental health. Therefore, the public mental health care is crucial for improving the mental health of the society.

During the recent years, the issue of mental health has significantly intensified in the global and European policy agenda of mental health. This increased attention and consciousness is truly justified by the World Health Organization, international research institutes, governments and professional societies.

MENTAL HEALTHCARE IN GEORGIA: A BRIEF OVERVIEW

In the years following the independence, the number of psychiatric beds has significantly decreased. This was a general trend in the post soviet states. Since 1995 the number of psychiatric beds has decreased by alsmot 5 times. It was caused by the lack financing of the healthcare services. Unfortunately, like the other states, the decrease of hospital services in Georgia was not compensated by the development of outpatient and community-based services.

The mental healthcare system of Georgia is severely lacking human resources. The deficit of phsychiatrists is expressed in Georgia twice as much as the average European index, which, in absolute numbers equals to the lack of minimum 250 phsychiatrists.

Georgia still has to finalize the fundamental transformation from the old post soviet mental healthcare structure towards the humane system that will comply with the basic standards of human rights.

THE CAPACITY SYTEM REFORM IN GEORGIA

Important step forward is the incapacity system reform in Georgia which foresees the capacity institute change for the induals with mental illnesses in the Georgian legislation. With the adoption of this amendment, the mechanisms for support and in extreme cases - substitution were established instead of the complete disregard. This kind of large-scale legislative change was made due to the decision of the Constiutional Court of Georgia dated 8 October 2014, which found the existing legal regulations limiting the capacities of persons with disabilities because of the mental disorders unconstitutional.

2015 MONITORING RESULTS

For the systemic responses to the problems and challenges, in December 2013 the Parliament of Georgia has adopted the "State Concept on Mental Health Care." This is the mainc document of mental health in the country. The document states that "Georgia recognizes the importance of mental health." Moreover, "Georgia undertakes the responsibility to organize the provision of mental health care services within the country so that the individuals suffering from mental disorders can undergo a treatment in a less restrictive environment, at home or as close as possible to home, according to the basic needs. Also, the responsibility to ensure the maximum protection of their rights and dignity and their full and effective involvement in the society on an equal basis with the others." In order to achieve the objectives identified in the state concept, the Ministry of Labor, Health and Soccial Affaris of Georgia started development of the national strategy and action plan for 2015-2020, which was approved in December 2014. The above is definitely a step forward. Despite the state policy, the situation in the mental health care sphere is heavy. The monitoring has revealed a number of systemic problems.

First and foremost, we should mention the lack of funding of the mental health care. The amount of funding is directly related to the quality of the mental health care. Since 2006, the expenditures on mental health care in Georgia are increasing. Nevertheless, the percentage of mental health care costs have not significantly changed compared to the common expenditures on public health care. Big amount of funds is spent on inpatient mental services and this figure remains high throughout the years. The Government is prioritizing the funding of the inpatient services. The funding of the phsycho-social rehabilitation is in the condition of complete stagnation and only a small part of the finances is spent on the outpatient treatment. Besides the lack of funding, the methodology of the acute and long-term cases is also problematic. According to the above methodology the monthly amount for the acute cases is 840 GEL and for the long-term cases – 450 GEL. In the end, the lack of funding is leading to the problems related to the non-existence of the sufficient number of the qualified personnel in the mental facilities and to absence of the proper therapeutic environment, to the quality of treatment, care, phycho-social rehabilitation, to the length of delaying the patients in the mental hospitals and the lack of community-based services.

The mental health care system of Georgia is severely lacking the human resources. The deficit of the phsychiatrists exceeds the European index twice. The study conducted in

2015 on the mental health experts revealed that according to the total data of the state financed facilities, the mental health care personnel is 40% less than the total number of the organization's staff. Also problematic is the training and professional development of the personnel of the mental facilities. The lack of qualified staff has a negative impact on the quality of the phsychiatric aid, supervision of the patients and the safe environment in the establishments. This condition increases the unjustified physical limitation of the patients as well as the risk of excessive use of force. In addition, due to the extremely grave working conditions, the negative emotions of the personnel under in the heavy mental conditions can lead to the ill-treatment of the patients.

During the visits in the mental facilities the monitoring group has received a number of notificiations regarding the physical violence and verbal abuse against the patients. In addition, according to the assessment of the monitoring group, placement of the petients in extremely grave conditions in some of the mental facilities, and in a number of cases, the facts of phycial and chemical restraints, the use of physical tying and injections in the presence of the other patients, the lack of access to the prompt and adequate treatment of the somatic diseases, long-term hospitalization in with negligence and involuntary medical intervention, can be considered as ill-treatment. As a result of the monitoring, it was also found out that there is a problem of due protection of patients of the mental facilities from violence among the patiens and the problem of safety.

The monitoring has revealed that the violation of the requirements of law regarding the physical restrictions has a systemic nature. According to the surveys of the patients, they are often "tied" for a long period of time, during which they are not adequately supervised. It became obvious that in the majority of the facilities there is no clear system of registering the cases of restriction – mostly, the record of the physical restraint is made in the journal for the physical restraint and cannot be found in the patient's medical card or vice-versa. Generally, nowhere can be found the record on the condition of the patient's dynamics in the 15 minutes interval and sometimes, the time of starting and ending the physical restraints is not indicated. The decision on using the physical restraint is less informative and in a number of cases it cannot be determined why it was necessary and whether there was the possibility to use the alternative means. It should be noted that neither the Law of Georgia on Phsychiatric Care nor the abovementioned instruction contain the maximum period for using the physical restraints. Formally, it can last for 4 hours several times. The above legal acts do not enshrine the obligation to record the physical restraint cases in the patient's medical documentation or a specific registry (specific journal). Therefore, in order to improve these normative acts, it is important to make the relevant changes and regulate the above-metioned two issues.

It is noteworthy that neither the law nor the instruction mention the chemical restraint as a measure of restriction. According to the assessment of the Public Defender, the cases of chemical restraints are often in the facilities and they are not properly documented. The establishmens have a routine practice that when the chemical restraint is utilized together with the physical one while there is no regulatory framework for the chemical restraint and its use is not being justified. This contradicts the international

human rights law standards. In cases of using the measures of chemical restraints, the same guarantees should be ensured as during the utilization of mechanic means for tying.

As a result of interviewing the patients and checking the documentation, it was revealed that the patients are placed in the isolation rooms for days. Taking into account the conditions in the above rooms, this fact causes the Public Defender's concern. According to the assessment of the Public Defender, isolation rooms are not specifically, properly equipped neither in the Clinical Republican Phsyco-Neurological Hospital and the National Centre for Mental Health nor in the other mental hospitals. Therefore, there is a high risk of self-harm of the patients. In addition, the Public Defender considers that the bars on the doors and windows are unacceptable, both in terms of safety and the fact that it violates the therapeutic environment and is associated with prison, with the punishment cell. According to the all above-mentioned, placing a person in this kind of siolation room may amount to the degrading treatment.

The Public Defender is alarmed by the fact that despite the equal requirements of Article 16 of the Law of Georgia on Phsyciatric Care and the above-mentioned instruction in terms of length, surveillance and docummenation of the physical restraints and placement in the isolation room, the patient's isolation is not substantiated, not properly documented and is carried out in violation of law for a long period of time.

The Public Defender is disturbed by the fact that the physical restraint is equally used against the patients under the formally voluntary treatment and the ones under the involuntary treatment. This also contradicts the position of the European Committee for the Prevention of Torture according to which the means for physical restraint cannot be used against the patients undergoing the formally coluntary treatment. If the need for the physical restraint exists, the legal procedure for reviewing the patient's status (voluntary or involuntary) should be initiated immediately.

It is important to provide the patients with the material means that will ensure their recovery and well-being. It should be noted that the physical environment and sanitary-hygienic conditions in some of the facilities do not contribute to the creation of the favorable therapeutic conditions. On the contrary, it it creates the situation, which, in most of the cases, may amount to inhumane and degrading treatment. Namely, in some of the establishments, among the important problems, was revealed old and defective infrastructure, extremely grave situation in terms of sanitary and hygienic conditions, the lack of the living space established by the standards, poor sanitation and the non-existence of privacy. In addition, there are problems related to the central heating and ventilation.

The monitoring group has found that receipt of an informed consent has a formal nature. It is carried out without the relevant explanation and without the provision of complete, objective, timely and understandable infromation. Receiving the informed consent takes place in order to avoid the involuntary hospitalization of the patients and this whole procedure is directed towards the formal placement of the patient's consent signature in his/her medical card. In practically all facilities, the members of the moni-

toring group have interviewed a number of patients subjected to the formally voluntary treatment who did not wish to stay in the hospital and were requesting to be discharged.

Taking into consideration the spirit of the UN Convention on the Rights of Persons with Disabilities, the Public Defender considers that all measures should be taken in order to base the phsyciatric assistance predominantly on the informed, reasonable consent of the patient. The practice of placing individuals in the hospitals for an inpatient treatment with the aim of mental care should be gradually eliminated. At the same time, the Public Defender is alarmed by the vulnerable legal conditions of the formally voluntary, but in fact involuntary inpatient individuals. They are outside the judicial control, unable to protect their rights and are subjected to the medical interventions and physical restraints against their will. Therefore, the right to personal libery and security of the above patients is violated and in the conditions of arbitrary detentions, in the majority of cases, they constitute the victims of inhume and degrading treatment.

The Public Defender believs that in the short-term perspective, in order to avoid the above-mentioned vulnerable legal situation, it is necessary for the mental institutions to promptly address the court in cases when the patient under the voluntary treatment is requesting to be discharged from the hospital but there are the criteria of the involuntary inpatient treatment at hand. The Public Defender also underlines the circumstance that due to the risk of unsubstantiated and/or a long-term hospitalization even in the condition of judicial control, also in a short-term perspective, before the complete elimination of the involuntary mental care, it is important to establish solid security guarantees in this direction.

The monitoring results revealed the problems related to the practice of involuntary inpatient phsychiatric care. In several cases the motions submitted to the court contained a reference only to one criterion while there should be at least two at hand. In addition, the reasoning of the motion is of a template nature as well as the order of a judge. Also, in most of the cases the fact of the past inpatient treatment has a negative impact on the decision-making process of an individual regarding the involuntary inpatient treatment. In particular, operates a certain "presumption of illness." The monitoring has demonstrated that in most of the cases the judges satisfy the motions of the mental facilities. As a rule, they agree with the position of a doctor and are less interested to listening to the patient. Doctor Phsychiatrists consider that they know better, what patients need and a judge, due to the absence of medical education should not make deicions against the doctor's position. In these circumstances, in the process of the court hearing, especially when the feasibility of extending the involuntary mental care for 6 months is assessed, it is important to listen to the opinion of independent phsychiatrist doctors, which is not envisaged in the Georgian legislation and constitutes an essential gap in terms of complete protection of the patients' rights.

The Public Defender considers that the information on the treatment should be provided to the patients regularly, in the language they understand and it should constitute a part of the therapeutic process. The medical personnel of the mental facilities should respect the patient's refusal on treatment and should try to persuade the patients to agree to the treatment through the provision of a detailed information on the possible

outcome. This will ensure respect to the patient's personal autonomy.

According to the Public Defender's assessment, the patients we can conditionally call "life-time" patients are placed in the mental facilities. "Life-time patients" in this case signifies the category of patients who are placed in the facility for months and years without leaving it, they are not in need of active treatment, however, cannot leave the hospital since they have "nowhere to go" or because the families avoid taking them home. It is noteworthy that the management of all the facilities having the unit for a long-term treatment states that the "life-time patients" constitute 30-40% of their long-term delay contingent. The reason of this kind of delay is the absence of the patient's support system, material insecurity, the lack of modern housing/facility for the long-term care, geographic unavailability of the existing outpatient mental services and the deficit of community based mental services. In addition, the shortage of the patients' skills necessary for independent life. Long-term hospitalization (in an impoverishing environment) deprives the patients of the vital skills and causes such deep disabilities that their reintegration into the society is related to the serious barriers and constitutes a long-term process.

The Public Defender shares the accepted norm that the patient whose mental condition is no longer in need of an inpatient treatment and forcible delay in the mental facility, due to the life outside the hospital and lack of sufficient living conditions shold be properly assessed and deinstitutionalized. The Public Defender calls on the Government to take all necessary measures in order to gradually substitute large mental facilities with modern establishments. This requires the development of the community-based care and secured services.

During the inspection of the treatment standards of persons with mental disorders the Special Preventive Group found that in the majority of the facilities the treatment is identified with the pharmacological therapy both by the managers and the medical personnel. This is not in conformity with the modern biopsychosocial model and the healthcare principles based on evidences. Intensive method of pharmacotherapy is probably related to the practice established in the acute units – to discharge the patients as soon as possible. As noted by several doctors of the above unit, the quick discharge of the patients from the acute unit of the mental facilty, unfortunately, is less based on the corresponding medical condition and is mainly related to the fund allocated to the severe accident management, also to the timeline that is optimal the withdrawal of the above amount. The Special Preventie Group also had an impression that the tendency of the so called "pharmacotherapeutic" is mostly the only measure to control the patients. Management of the mental cases is typically carried out without any complex therapeutic structure and the possibility of involving the patients in the essence changing activities is less ensured.

According to the Public Defender's assessment, the short period when the management of the patient's acute condition is carried out (10-14 days on average), is in most of the cases not enough for achieving a solid improvement. Presumably, the condition improved by the intensive treatment is quickly deteriorating since the phase of solid remission is not achieved and after discharging from the hospital the patient is not outpa-

tiently observed or due to the insufficiency of funding, the treatment is considerably less intensive. Outside the hospital services are fragmented and underdeveloped, therefore, neither the involvement of these services are not enough for maintaining the achieved improvement. Hence, there is a high risk of re-aggravation of the condition and the repeated hospitalization.

The monitoring results revealed that the purchase of the high quality medications is prevented by the insufficient funding of the phsychiatric care and the legal framework for state procurement. Namely, mental facilities buy medicines through a simplified electronic tender. The winner of the tender will be the bidder offering the lowest price. Purchasing the medicines like this has a negative impact on the quality of medication since on the market there are medicines from various producers and of various qualities, containing the same active substances and the market price is directly related to the quality of medicines.

The monitoring has revealed a number of shortcomings of medical documentation. In some of the facilities the pshychiatrists are visiting the patients occasionally and the results of their observations are also occasionally reflected in the medical cards. The medical cards did not contain the data on individual treatment schemes. It is practically impossible to read a number of records due to the handwriting of the doctor. In the majority of the establishments, the records describing the patient's conditions (the so called cursuses) are producted irregularly and as a rule, are templates.

Based on the monitoring results, the Public Defender came to the conclusion that there are serious problems in terms of treating the somatic diseases in the mental facilities. The situation is slightly better in those mental departments/units that are in the general profile hospitals (for example the phsychiatric unit of the O. Ghudushauri National Medical Centre). This kind of phsychiatric departments/units have access to the services of various units of the general profile hospitals. The problem of diagnoses and treatment of the somatic diseases is particularly acute in the L.T.D-s established by the State, such as the L.T.D. "Alexander Kajaia Surami Mental Clinic," L.T.D. "Senaki Inter-district Psycho Neurological dispensary," L.T.D. "Republican Clinical Psychoneurological Hospital," L.T.D. "Bediani Psychiatric Hospital," L.T.D."B. Naneishvili National Center of Mental Health." The representatives of administration of the above institutions state that they have no financial or infrastructural means for the proper examination and treatment of the patients's somatic diseases.

The Public Defender is particularly alarmed by the frequent deaths of the patients. As the evaluation of the dead patients' medical documentation reveals, the need for the proper examination and treatment of somatic diseases existed in a number of cases, however the medical documentation does not confirm the fact of examination and treatment.

Despite the efforts of the personnel of mental facilities to assist the beneficiaries in solving the social problems, the service of phsycho-social aid, rehabilitation and reintegration in the stationaries are barely develeoped. In a number of cases, their existence only has a formal nature and can be considered as a daily activity.

The monitoring results revealed the cases of long-term delays of children in the hospitals. According to the Public Defender's assessment, it is related to the improper performance of their duties by the social worker. In the Clinical Hospital N5 no multidisciplinary work is carried out. In the framework of an individual developmet plan with children, the work on the phsychological and behaviorial problems is not provided except for the pharmacological treatment of mental disorders. In addition, there is no individual service plan for each beneficiary, the person responsible for which will monitor in dynamics that the patient receives the whole package of the service. The Public Defender considers that the therapeutic processes in the children's unit do not meet the modern standards and international guidelines for intervention, the strategies need to be developed, the relevant competencies of the personnel should be improved and etc. The Public Defender is alarmed by the fact of placing the juvenile patients in the stationaries for adults and urges the facility's personnel to prevent such practice in future.

The patients forcibly transferred from the penitentiary facilities and undergoing an involuntary treatment are subjected to the treatment in the conditions of similar strict regime with undifferentiated approach. The patients are restricted from communicating with each other. In cases of patients undergoing a forcible, as well as involuntary treatment, the phsychiatric aid includes only pharmacotherapy. The patients are not involved in the programs for rehabilitation and resocialization or in the sports and other events. The monitoring group had an impression that phsycho-social rehabilitation work is practically not carried out, the work of the phsychologist is very little. The days are not structured with the meaningful activities and are passing monotonously.

The Forensic Psychiatric departments of the National Centre for Mental Health do not have an individual approach to the treatment of the patients. Their individual needs are not identified and no multidisciplinary team work is conducted to satisfy these needs. The patients are not involved in the treatment process. Managing the aggression among the patients is taking place though the threats and injections. The risk assessment procedure is not in conformity with international standards. It is unclear what is the evidence of credibility provided by the acting instrument or how does the risk level integrate in the treatment plan when the treatment is conducted according to the similar, conventional scheme.

Finally, it should be particularly noted that there is a problem of state supervision of proper phsychiatric assistance and of monitoring the protection of the patients' rights in the mental facilities. In this regard, the work of the National Prevention Mechanism has a crucial importance. However, according to the Public Defender's assessment, taking into account the specific nature of the National Prevention Mechanism's mandate, it is also important to ensure the effective operation of the other mechanisms of state control.

Mental institutions formally have the procedure of complaints and feedback, the complaint boxes are installed, however, the patients are practically not using this procedure and complaint boxes. Interviewed patients are not aware of their rights and also have no information on whom should they apply with the complaint. According to the assessment of the Public Defender, it is important to take measures in order to solve the

following three problems: a) informing the patients on their rights in the language they understand; b) creating simple and effective procedure of reviewing the claims while taking into consideration the patients' special needs; c) ensuring the proactive monitoring inside and outside the hospital (in the framework of the sectoral state control). National Prevention Mechanism also considers that while determining the timelines and other procedures in the framework of the procedure for reviewing the claims, it is important to take into consideration the needs of the patients of mental hospitals and the practical difficulties they might come across while excercising the right to appeal.

2. LEGAL STATUS OF THE RECRUITS, MILITARY SERVICEMEN, THE VETERANS OF WAR AND MILITARY FORCES

COMPULSORY MILITARY SERVICE

The Law of Georgia on Military Duty and Military Service does not regulate how early should the recruits receive the letter on recruitment in the compulsory military service and on appearing on the military distribution point. Therefore, it is possible to call up the recruits any time from submitting the letter on recruitment. In the majority of cases, it happens on the second or the third day, which is an unreasonable term. Often, the objective reason can become the violation of appearing on the military distribution point by the recruit.

As a result of the monitoring carried out in the Department for Coordinating Mobilization and Recruitment it was revealed that during the medical examination the confidentiality of the recruits is not protected. Outsiders and recruits can hear each others diagnoses and health problems.

Recruits go to the doctors together. Dressing room is located in the room opposite the doctor's cabinet and the recruits have to walk to the cabinet on the floor with the tiles barefoot and in the underwear. In this condition, the recruits will be under risk of transmitting infectous diseases from the surface (e.g. a fungal disease), they might also encounter other health related problems, especially in winter. Moving around in such condition is inhuame and degrading.

Special attention should be drawn to the examination carried out by the phsychiatrist. He/she interviews the recruits for about 10 minutes. General examinations are conducted quicklu, in a couple of minutes. As a result of the monitoring conducted in the military base, it was revealed that the military servicemen of the military unit are often excluded due to being useless for the military service since the recruited military reveal the diseases that the Conscription Commission missed.

As for the military records and conscription services in the regions, the majority of recruites note[12] that neither the representatives of the military records and conscription services of Tbilisi or regions have informed them of the rights regarding the delay of the military service or alternative military service. In most of the cases, they are trying to find information on the rights and responsibilities on their own.

The military servicemen serving the compulsory military service in the Ministry of Defence, the Ministry of Internal Affairs, penitentiary facilities and special state security services are guarding in every three days – as guards on the checkpoints, and internally – as servicemen on duty of the military company and as the patrol.

As studied by the Public Defender's Office, in the Strategic Objects Protection Depart-

12 During the monitoring carried out by the respresentatives of the Public Defender, both recruits and military servicemen of compulsory military service were interviewed.

ment of the Special and Emergency Operations Center of the Ministry of Internal Affairs the cases of military servicemen leaving for the extraordinary guarding duty are quite frequent. Namely, about 36 individuals are in the extraordinaly schedule twice or three times every other day.

Servicemen of the compulsory military service are used in the security services, their function is guarding and serving as the guardsmen and patrol. In addition, they are performing various physical and agricultural work. They are not prepared for the combat and not pass the physical standards.

PROFESSIONAL ARMY

Based on the decree N583 of the Minister of Defence of Georgia dated 21 July 2011 on the Rule of Military Service of the Employees/Servicemen of the General Staff and the Land Forces of the Ministry of Defense of Georgia, in most of the cases, the military servicemen are transferred at the disposal of the HR department and are discharge without offering the relevant position. In the order on transfer Article 13 of the Decree N583 is indicated as a ground, however, there is no justification as to why was the military serviceman transferred under the disposal of the HR. The above practice is not acceptable and violates the labour rights of the military servicemen.

The issues of determining disciplinary offenses and decent behaviours of the professional military servicemen are regulated by the resolution N615 of the Government of Georgia dated 3 November 2014 on Approving the Military Disciplinary Statute. In case of committing a disciplinary offense the military serviceman may serve a disciplinary sanction based on the decision of the commander or the mandate commission.

Attention should be paid to the decisions of the mandate commissions on discharging the military servicemen from the military service due to the unworthy behavior. According to the law, [13] a military serviceman can be discharged for actions discrediting the dignity of military servicemen. However, it is not specifically indicated what can be regarded as an action discrediting the dignity.

The issue of ensuring the professional military servicemen with the housing is not practically regulated. Since 2006, in Mtskheta, certain part of the acting militaries have been living with their families on the territory of the former command post "Zevda." There is a risk of eviction from the above territory while these people were not offered the alternative housing. However, according to the information requested from the Minsitry of Defence of Georgia, based on the recommendation of the General Staff of the Georgian Military Forces, the commission is considering the issue of transferring the living appartments on the balance of the Ministry of Defence to the above-mentioned militaries with the right to utilize the housing.

In 2015, 6 military servicemen died, out of which one was enrolled in the compulsory military service, one was serving on the civil position of the military unit and the other 4

13 The Law of Georgia on Military Servicemen, Article 21, para 2.

represented the professional army. 3 deaths were qualified as suicides and the investigation terminated. Criminal legal proceedings are instituted on 2 cases under Article 115 of the Criminal Code of Georgia (bringing to the point of suicide), one case was qualified as part II of Article 117 of the Georgian Criminal Code (intentional damage to health that caused death).

Deceased military serviceman R.SH. was diagnosed with mental disorder during the military service. He inflicted self-harm while in service. Afterwards, his reports demonstrate that he had mental problems before the conscription. After he was found invalid for military service, he committed suicide.

Besides, it should be noted that as a result of investigation, social problems were revealed as the main reason of the suicide. In particular, financial responsibilities with the banks and micro-finance organizations.

It is noteworthy that there are no pshychologists in the military units in order to provide phsychological assistance to the stressed recruits and other militaries.

LEGAL STATUS OF VETERANS

The former military base inhabited by the veterans is located in Tbilisi, Isani-Samgori district. The buildings were the veterals are living are wrecked in unfit for living. However, due to the lack of alternative housing they are forced to take shelter with their families in the above buildings. The above buildings and the territory is in the ownership of J.S.C. "Real Invest" since 2008.

Despite the fact that the gas pipeline is running on the territory, the representatives of the J.S.C. "Real Invest"are not allowing the residents gasification even at their own expenses. The residents are also not provided with the electricity and water. As noted by the residents, they are prohibited to repair the building on their initiative. There is the sewage system on the whole territory of the former military base, however, the residents are not allowed to utilize this system.

It is prohibited by the law to evict the veterans of war and military forces from the occupied houses without providing them with the alternative space.[14] However, since the above property is in the private ownership, the veterans living on the territory fall within the category of homeless persons, without any special status.

According to Article 13 of the Law of Georgia on the Veterans of War and Military Forces, the social protection veterans foresees provision of the pensions based on the Law of Georgia on State Compensation and other social protection guarantees in accordance with the Georgian legislation. Social protection of veterans also includes the unacceptability of their eviction without the alternative housing, aslo, it enshrines the free public transportation in the city (except the taxes) and rural and long-distance areas in accordance with the Georgian legislation.[15]

14 The Law of Georgia on Veterans of War and Military Forces, Articles 13, 14, 15.

15 The Law of Georgia on Veterans of War and Military Forces, Articles 14 and 15.

As for the social rights of the veterans, for the certain category, the right to enjoy the living subsidies is not accessible. We were informed from the Social Service Agency of the Ministry of Labour, Health and Social Affairs that "if the person holding the status of a war veteran is not registered in a competent body as an individual receiving the state pension, there is no legal basis for providing him/her with the living subsidy from 1 September 2012, despite the fact the person addresses the competent authority with the request of registration and submits the documentation provided by law."[16]

We consider it unacceptable for the persons having an equal status provided by the Georgian legislation to enjoy unequal rights only because they received the status of a veteran after 2012, or had a relevant status before 2012 and decided to register after 2012.

16 Letter N04/51315 of the Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia, dated 13/07/2015.

3. ENFORCEMENT OF THE LAW ON AMNESTY

On 28 December 2012 the Parliament of Georgia adopted the Law of Georgia on Amnesty providing for the obligation to terminate criminal prosecution against persons and/or convicts who were charged with the commission of less serious crimes. An addition, according the law of Georgia on Amnesty dated 28 December 2012 the enforcement of the above law should be carried out in two months from its entry into force.[17]

The citizen S.M. was not allowed to enjoy the rights and privileges prescribed by the Law of Georgia on Amnesty of 28 December 2012 due to the fact that the criminal case was lost after it was transferred to the court for the consideration on the merits (pages 280-282). In addition, the Public Defender of Georgia, taking into consideration the authority of the Prosecutor's Office entitled by the Criminal Procedure Code of Georgia, was addressing the Prosecutor's Office with the recommendation to terminate the criminal prosecution of the citizen S.M. based on Article 105 of the Criminal Procedure Code of Georgia. The Prosecutor's Office still has not fulfilled the above recommendation.

With the letter N13/12255 of the Chief Prosecutor's Office of the Ministry of Justice of Georgia, dated 27 February 2012, the Office of the Public Defender of Georgia was informed that as of today, the final decision is not made regarding the use of the Law of Georgia on Amnesty (dated 28 December 2012) and the termination of criminal prosecution against the citizen S.M. The reason of the above is the fact that based on the information requested from the archives of the department of common courts, the criminal case against S.M. is registered in the Didube-Chughureti District Court from 2001 to 2005 after which the movement of the case does not appear and it is not kept in the archive.

According to the above-mentioned, the citizen S.M. still cannot enjoy the benefit prescribed by the Law of Georgia on Amnesty dated 28 December 2012, to terminate the criminal prosecution against him.

17 According to para 4 of Article 23 of the Law of Georgia on Amnesty, dated 28 December 2012 "the amnesty enshrined in the first 21 articles of the present law should be enforced in 2 months from the entry into force of the law. The amnesty prescribed in Article 11 of the present law should be enforced in 4 months from the entry into force of the law."

4. THE FAILURE TO FULFILL THE LAWFUL REQUEST OF THE PUBLIC DEFENDER OF GEORGIA

Within the reporting period, like in the previous year, the Public Defender of Georgia actively enforced the the legal remedies provided by law in the case of failure to fulfill the lawful requests.

According to the Organic Law of Georgia on the Public Defender, all state and local self-government authorities, officials or legal persons shall be obligated to assist the Public Defender of Georgia in every way, immediately submit materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers.[18]

Failure to fulfil the obligations defined by this 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.[19] In addition, the failure to fulfill the Public Defender's lawful request is an administrative offence under Article 173[4] of the Code of Administrative Offences.

During the reporting period, the Public Defender of Georgia launched administrative proceedings on administrative offenses in 11 cases of failure to fulfill the lawful request based on the above-mentioned legal norms.[20] The Public Defender sent protocols to the common courts of Georgia on 2 cases: against the Mayor of the Poti Municipality[21] and against the Head of the convoy division of the main unit of external security and escort of the Ministry of Corrections of Georgia.

18 The Organic Law of Georgia on the Public Defender of Georgia, Article 23, para 1.

19 The Organic Law of Georgia on the Public Defender of Georgia, Article 25, para 1.

20 Among them: 1 case – on violating the deadline established by Article 24 of the Organic law of Georgia on the Public Defender of Georgia for providing the information on the results of examination of the Public Defender's recommendations; 1 case – on the unfulfillment of the Public Defender's legal representative's request (violation of the right to confidential interview tiht the convict, Article 19 of the Organic Law of Georgia on the Public Defender of Georgia); 9 cases – on the violation of the deadline established by Article 23 of the Organic Law of Georgia on the Public Defender of Georgia for providing the necessary information to study a case.

21 Providing the information in the deadline provided by law after the examination of the Public Defender's recommendation.

5. PROHIBITION OF TORTURE, INHUMANE AND DEGRADING TREAMENT AND PUNISHMENT

Unlike the data of 2014, in 2015 there were more cases of alleged ill-treament by the police[22] than by the employees of the penitentiary system. The Public Defender of Georgia has address the Chief Prosecutor of Georgia with 15 proposals, namely, 11 proposals addressed the alleged ill-treatment committed by the police officers and 4 proposals were about the possible ill-treatment committed by the employees of the penitentiary system.[23] Out of 11 alleged facts of ill-treatment committed by the police officers, 7 cases took place in the regional law enforcement bodies. Despite the numerous proposals sent from the Public Defender's Office, until now, the alleged perpetrators have not been identified and held responsible.

According to the studied facts the ill-treatment by the police was mainly expressed in the physical abuse of the detained citizens. The detainees has bodily injuries that was also noted in various official documents. The majority of the alleged ill-treatment fact took place in the Imereti region.

Not a single investigation fo the alleged facts of ill-treatment committed by the law enforcers in 2015 was qualified as criminal offences of torture and ill-treatment under Articles 144^{1}-144^{3} of Georgian Criminal Code, since the investigation was launched under the Article 333 (exceeding official power). Unlike the possible ill-treatment committed in the penitentiary system that was on a number of occasions qualified under Articles 144^{1}–144^{3} of the Criminal Code of Georgia rather than under Article 333, the above tendency should be positively assessed. However, the Public Defender's Office is unaware if the practice on the facts of ill-treatment is simila in the cases the source of which is not the Public Defender's Office of Georgia.

The cases of the Public Defender's Office demonstrate that on a signle official (of law-enforcement or penitentiary system) has been charged. The criminal prosecution was initiated only in one case against the head of the Police Department N5 of the Vake-Saburtalo District Division of the Ministry of Internal Affairs under Article 333 of the Criminal Code of Georgia.[24]

Over the years, like in the reporting period, one of the major obstaces of investigation for the investigation bodies is named the mulfunctioning of the video cameras and the accidental destruction of records. Therefore, it is impossible to obtain the video tape reflecting the fact which will be the unconditional basis for increasing the effectiveness

22 See also the Chapter on "Situation in the Agencies under the Ministry of Internal Affairs of Georgia" of the present report.

23 One proposal was about the alleged ill-treatment of the detainee by the employees of both – the law-enforcement bodies and the penitentiary system; therefore, out of 15 proposals 11 are about the possible crimes commited by the law enforcers and 4 proposals relate to the alleged facts of violence against the prisoners in the penitentiary facilities.

24 See the case of the lawyer G.M. discussed in the first sub-chapter of the present chapter.

of the criminal investigation. The investigation bodies use the above argument not only regarding the functioning of the video cameras installed in the police buildings, but in cases related to the facts taking place in the penitentiary facilities.

The investigation on the facts of torture and ill-treatment is delayed in absolutely every case on which the Public Defender's Office has submitted a proposal. The state should express interest in the smooth and efficient operation of the cameras. As for keeping and using the video tapes both the practice and legislation should be changed.

In addition, according to the established practice, the investigation is not effective, independent, prompt and impartial. This conclusion follows from examining each fact and analyzing the tradition of responces from the investigation authorities.

Ensuring the individuals placed in the penitentiary system with the adequate medical services still remaints to be a problem. Noteworhty is the circumstance that for the prevention or detection of ill-treatment special importance is given to the proper functioning of the National Prevention Mechanism of the Public Defender of Georgia. Therefore, information provided to the Public Defender of Georgia regarding the fact of torture or ill-treatment cannot be directed or used against the person/prisoner or become the basis for initiating criminal procedure against him/her.

6. INDEPENDENT, EFFECTIVE AND IMPARTIAL INVESTIGATION

Based on the case study conducted in the Public Defender's Office during the reporting period, the effective investigation of the alleged facts of ill-treatment committed by the law-enforcers against the citizens or alleged facts of ill-treatment against the accused persons/convicts placed in the penitentiary facilities remains to be a major problem. In particular, providing the victims of ill-treatment with the victim status, conducting investigation in a reasonable time, the qualification of the action and most importantly, the lack of institutional independence of investigation, constitute a problem.

In 2013, 2014 and 2015 the Public Defender has issued 58 proposals[25] to the Chief Prosecutor of Georgia and requested the effective investigation of the alleged facts of ill-treatment. According to the response letters received at the Public Defender's Office of Georgia from the Chief Prosecutor's Office of Georgia the investigation has started on a number of facts. Therefore, the Public Defender of Georgia has addressed[26] the Chief Prosecutor's Office and requested the detailed information on the progress of investigation of 21 (twenty one) cases. Based on the response letters from the Chief Prosecutor's Office[27] the Public Defender of Georgia received information only about 18 criminal cases. According to the above information, certain individuals have not been granted the status of victims or accused in any of the cases and the investigation was terminated in 5 cases.

It is noteworthy that the Chief Prosecutor of Georgia did not provide the Public Defender of Georgia with the information regarding the concrete investigative actions and their dates, or whether the expertise was carried out in the framework of any case and what were the conclusions. Also, there was no information on whether the video tape was withdrawn in any of the cases. Therefore, it is absolutely impossible to discuss the effectiveness of investigation.

Despite the legal changes of 18 September 2015, the guarantees of systemic independence of the Prosecutor's Office are not perfect and there are neither the sufficient guarantees for freedom from the political influence. Although the Prosecutorial Council was created, the involvement of the Ministry of Justice of Georgia in the process of appointing the Chief Prosecutor of Georgia, also taking into consideration the power of the Government to submit the candidate to the Parliament of Georgia, also, the approval of Special Prosecutor's report by the Prosecutorial Council cannot be regarded as a comprehensive guarantee of independence from the executive power. Hence, in order to ensure the independence and political neutrality of the Prosecutor's Office, the in-

25 From the above-mentioned in 30 cases the alleged fact of ill-treatment was commited by the law enforcers and in 28 cases – by the employees of the penitentiary system.

26 The letters of the Public Defender's Office of Georgia, dated 21 December 2015, 4 February 2016 and 15 January 2016.

27 The letters of the Chief Prosecutor's Office of Georgia, date 30 December 2015, 9 January 2016 and 4 February 2016.

volvement of the executive government in the process of the Prosecutor's appointment should be excluded.

According to the Georgian legislation, the Ministry of Internal Affairs of Georgia, as well as the Ministry of Corrections of Georgia and State Security Service still retain the authority to investigate the crimes committed in their systems. It cannot ensure independence investigation and constites a direct violation of institutional independence. Accordingly, the Public Defender's recommendation issued in the previous reports on creating the independent investigation body for ensuring the institutional independence while investigating the crimes committed by the law-enforcers against the prisoners of penitentiary facilities, remains to be in force.

The cases studied by the Public Defender's Office of Georgia confirm that the investigation authorities do not comply with their responsibilities established by law or are disregarding the requests to start an investigation.

7. RIGHT TO LIBERTY AND SECURITY

After underlining the facts of violating the right to liberty and security in the reports of the Public Defender of Georgia, several positive trends are observed, among them the decrease of application of pre-trial detention as a prevention measure by the common courts and increase of the quality of substantiating the ruling on applying detention as a measure of restraint.

During the reporting period, the Public Defender's Office of Georgia has studied the rulings on application of pre-trial detention towards defendants adopted by Tbilisi, Kutaisi, Rustavi, and Poti City Courts, Bolnisi, Gori, Akhaltsikhe, Gurjaani and Zugdidi District Courts and magistrate judges within their jurisdictions. Compared to the previous years, the quality of reasoning is increased in almost every city and district court studied by the Public Defender of Gerogia. Specifically should be noted the quality of proof provided by the Poti City Court which was separately addressed in the Public Defender's reports of 2013 and 2014 due the application of unsubstantiated detention and the frequency of abstract reasoning of the judges. Overall, the rulings of the Poti City Court of 2015 are in line with the general standards of substantiation as established by the procedural legislation.

During the hearing of the juvenile's case, the Rustavi City Court has rules based on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing rules), which should be welcomed.

The trend to increase the standard of proof was not observed in the Gurjaani District Court. The rulings studied by the Public Defender's Office during the reporting period contain no substantiation on the use of a certain custodial sentence or on determining its duration or amount.

Despite the general positive trend, there are certain rulings in practice of every studied court, which do not use the norms of international agreements. Moreover, only the template grounds enshrined in Article 198 of the Criminal Procedure Code of Georgia are used for the application of the custodial measures. There are cases where the court explicitly cites the law without subsumption of the factual circumstances of the case or without evaluation of the defendant's personal characteristics. The level of substantiation of the judgements are often different even in several judgements issued by the same judge. As for the risk of absconding of the accused person the judge should discuss the circumstances strengthening the presumption that the accused might abscond and the judgement won't be enforced. With respect to the above criterion, the studied courts (except the Gurjaani District Court) rightly use the practice of the European Court of Human Rights[28] and do not consider the length of the sentence a sufficient criterion to confirm the risk of absconding. In order to assess the risk of absconding the courts use the contacts of the accused person in other states, the border crossings and the past life. Akhaltsikhe and Zugdidi District Courts use the detention almost always,

28 E.g. Mansul Ialchin and others vs. Turkey, 2014.

if the accused lives near the so called "administrative border." As a rule, the Courts use detention against the persons with the high rate of border crossing and do not discuss the possibility of using the additional obligation for neutralizing the risk of absconding, foreseen by Article 199 part 2 – seasuring the passport and an ID.

In order to strengthen the assumption of destroying important information for the case by the accused person the judges utilize information about the investigative actions to be carried out, whether the accused individual has contacts with the persons who might have important information for the case and in what relations are they. Also, in case of a group crime, whether the other persons involved in the crime are identified.

Prolonging the detention term on the ground that investigative actions still need to be carried out, remains to be problematic. The actual need for taking investigative actions is not checked. For example, the City Courts of Rustavi, Gurjaani and Zugdidi, in a number of cases satisfied the requests to postpone pre-trial hearings and prolong the detention. In the above decisions we can only find the description of the factual circumstances of the case. The reasons preventing the timely investigation are not noted. It is noteworthy that when the Zugdidi District Court did not satisfy the petition for prolonging the detention term, the judge did not substantiate the decision and blankly pointed to the unreasonability of prolonging the detention term.

Positively should be assessed the tendency according to which, while discussing the motion to apply detention as a custodial measure, the common courts consider structurally separately the substantiation of applying the measure of restraint on the one hand and the use of detention on the other hand.

In the most part of the reporting period there was a problem of the uniform approach to the drug related crimes. It is impossible to determine why the courts used detention in a number of cases and bail in the other cases while all cases were essentially identical.

Problematic is the issue of application of bail while not taking into consideration the material conditions of the accused individual. The courts do not study even the personality of the individual who has to pay the bail applied by the court. In the court rulings we almost cannot find the argumentation as to why the court considers that the specific amount will ensure the realization of the preventive measure by the individual. Positively should be assessed the tendency according to which the courts almost always take into consideration the application of the minimum amount of bail or prolonging the term of payment for socially vulnerable individuals.

Negatively should be assessed the fact that the courts are neglecting the additional measures foreseen by the Article 199 part 2 of the Criminal Procedure Code of Georgia. The district courts of Akhaltsikhe and Zugdidi have not applied an obligation of the accused person to appear in a certain body at the specified time. Not a signle above-mentioned court has applied the electronic monitoring or the obligation of the accused individual to be at a certain place during certain hours. Also, the rate of applying personal guarantees is low. The latter is used in cases of crimes related to the use of drugs or family violence.

The report of 2015 of the Public Defender of Georgia has reflected a number of facts when the law-enfrocement authorities have started counting the detention terms incorrectly and neglected the requirements of the Georgian legislation.[29] There were still found cases of violation of the requirements of Georgian legislation by the police officers during the arrests and the cases of unlawful deprivation of liberty.

In addition, the cases studied during the reporting period reveal that the common courts failed to establish a uniform approach towards the individual cases based on the decision of the Constitutional Court of Georgia in the case of "The Citizen of Georgia Giorgi Ugulava Vs. The Parliament of Georgia."

29 Report of the Public Defender of Georgia of 2014, p. 362.

8. RIGHT TO A FAIR TRIAL

The facts of violating various components of the right to a fair trial were revealed during the reporting period. In particular, unlawful restriction of the public hearing, neglection of transferring the reasoned decision to the party and reviewing the case within a reasonable time, facts of violating the presumption of innocence, infingment of the right to legal assistance, also, the fact of violating the right to the interrogation of witnesses on equal terms; problematic issues of the court decisions related to the reviewing of the judgements due to the revealed circumstances and the analysis of the practice developed by the common courts on the drug related crimes after the decision of the Constitutional Court of Georgia, problematic issues existent during the hearings on the administrative offences.

In terms of utilizing the right to defence the case was revealed when the inactivity of the state appointed lawyer had an irreparable impact on the procedural interests of the accused individual.

The Public Defender of Georgia considers that the independence and impartiality of the judiciary is hindered by the vagueness of the criteria and procedures of appointing and promoting the judges. In 2015, during the process of appointment and promotion of judges, the Public Defender of Georgia addressed the High Council of Justice with recommendations issued throughout the years regarding starting the discriplinary proceedings against the concrete judges or the facts of human rights violations revealed during the court proceedings. In the majority of cases the Council did not take into consideration the information submitted by the Public Defender. In addition, legislative regulations and practice of applying disciplinary sanctions against the judges remains to be a problem. During the reporting period, like in 2013 and 2014, the Disciplinary Board of Judges has not reviewed a single case of disciplinary responsibily of the judges.

In the reporting period, there were facts of violating the principles of public hearing and equality when the judge closed the hearing partially and banned the attendance of the certain part of the public based on the place of residence.

The statemets of the convicts studied by the Public Defender's Office of Georgia revealed that after issuing the verdict by the Gori District Court the convict was not provided with the copy of the judgement in a reasonable time. In addition, there is a systemic problem of delaying the transferring of the appeals and criminal cases filed in the Gori District Court. Also, there were cases of delays in hearings of the non-custodial cases. Due to the changes in the Criminal Procedure Code of Georgia made in 2015, the term for issuing the judgement by the first instance court is 24 months. It is important to develop the practice of the common courts so that they define these 24 months as the maximum amount of time and the trial of the non-custodial cases do not take place at the end of expiration of the 2 years term.

The case was revealed when the person was sentenced to life imprisonment in violation of prohibition of the principle of retroactivity of law. When the act was committed, the Georgian legislation did not foresee the above punishment.

The Public Defender of Georgia negatively assesses the partial enforcement of the witness interrogation rule. The enforcement of the above norms that were foreseen by the Criminal Procedure Code of 2009 was postponed several times, while the state had a reasonable time to implement the rules in practice. At the same time, even the acting rule cannot fully ensure the adversariality. In particular, in case of absence of consent on interrogation the prosecution is allowed to request the person's interrogation in the court. The defense party cannot use the above possibility. The principle of equality of parties and the oral examination of evidences is violated by norm according to which the defense party does not have the possibility to attend the witness interrogation at the court. Despite the voluntary nature of the examination, in fact, the rule according to which there is a criminal responsibility for providing false information in the investigation stage, is still maintained.

In the reporting period, the Public Defender's Office has studied the practice of the common courts on the cases of drug related crimes. The study of the presented judgments revealed that during the examination by the common courts and prosecution bodies of the criminal cases foreseen by Articles 260, 262, 265 and/or 273 of the Criminal Code of Georgia, the decision of the Constitutional Court of Georgia dated 24 October 2015 is not reflected. Namely, the Constitutional Court of Georgia has found unconstitutional the normative content of Article 260 part 2 of the Criminal Code of Georgia which foresees detention as a criminal sentence for purchase and consumption for the private use of the narcotic drug – dried marijuana of the amount questioned by the plaintiff (up to 70 gr). However, the practice of the common courts reveals that in most of the cases, the Constitutional Court's decision is interpreted narrowly and not uniformly. In order to ensure the effective implementation of the above decision and establish a high standard of the human rights protection, it is necessary to make changes to the Georgian criminal legislation in a reasonable time.

Ensuring the presumption of innocence in the process of spreading public statements by the Procesutor's Office of Georgia, the Ministry of Internal Affairs of Georgia and the State Security Service of Georgia remains to be problematic.

CASES OF ADMINISTRATIVE OFFENCES

Like in the reporting period of 2013-2014, it is still a problem that the Code of Administrative Offenses is outdated and ineffective. The new Code of Administrative Offenses has not been finalized and it is unknown when will it be submitted to the Parliament of Georgia as a draft law.

The analysis of the administrative offence cases reveal that the main shortcoming of the court judgments is the lack of substantiated reasoning. The majority of the rulings replicate the content of the legal norms and do not discuss whether and why the con-

duct committed by the specific individual matches the conduct described in the cited provision. In addition, the major gap of the current code is the rule on distribution of the burden of proof and the lack of standards of proof. Therefore, the employees of the law-enforcement bodies do not provide substantial evidences. Examination of the case files by the court is reset to the examination of formal legality of correctness of the protocol composed by the police officer. The due examination of evidences by the court is not conducted even in the cases when the person does not agree with the protocol of offence drawn up by law enforcement officers.

9. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

During the reporting period of 2015, the alarming trends of violating the right to private life were revealed. Namely, there were a number of cases when the audo and video recordings of personal nature, including the materials that constitue a part of criminal investigation, were spread.

On 24 and 29 October and 2 November 2015, the Ukrainian media disseminated the secret audio recordings of privte phone conversations of the Ex-president of Georgia with different persons. On 3 November 2015 the Public Defender of Georgia has called on the Chief Prosecutor's Office of Georgia to study the legality of collecting and disseminating the above audo-recordings, in the framework of independent investigation. Despite this fact, the Prosecutor's Office of Georgia has not initiated the investigation.

On 17 October 2015, the Ukrainian video portal tube.ua has published the video tape of sexual violence carried out by the representatives of the law-enforcement bodies in Samegrelo, Georiga (the so called "barrels" case). Different individuals and organizations carried out the public screened of the above tapes in Zugdidi and Tbilisi. Still no one has been charged for the above actions.

On 11 March 2016, unknown individuals have disseminated through the social network the video tapes reflecting the private life of the member of one of the opposition parties. On 14 March 2016, unknown individuals, also through the social network, have distributed another video which allegedly contains recording depicting the private life of a famous political figure and the threats on spreading the similar material in future. Despite the fact that the criminal proceedings are initiated against 5 individuals, these persons are not charged for the facts of collecting/creatins and/or spreading the video tapes of personal nature on 11 and 14 March, 2016.

In order to restore the sence of protection of private life in the society and to eliminate the syndrome of impunity in the perpetrators of crimes, it is necessary not only to take formal steps, but each crime should be effectively investigated and the public should be properly informed about the actions taken.

In 2015, the Office of the Public Defender of Georgia has revealed the violation of proportionality principle of data processing by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. The Ministry is publishing the scores allocated by the Commission for ensuring the IDPs with the housing like the list on its official web-site. In the published lists, in absolutely every case there is the indication of the internaly displace person's name and surname, allocated score, the number of family members, the score given due to having a person with disability in the family, the score allocated according to the poverty rate, the score given due to the mental disorder of the family member and etc… If every internally displaced family is given a unique code and the information interesting to them will be posted on

the official web-page of the Ministry with this code, the legitimate interests of the public as well as the personal data of the members of the internally displaced families.

Positively should be assessed the fact that the norms of the Law of Georgia on the State Security Service and the bylaws according to which the indefinite circle of bodies, from which the State Security Service might receive all kinds of information, no longer exist. The current legislation foresees the list of agencies containing high risk of state security, also, the categories of certain information that can be shared are specifically defined. Nevertheless, in March 2016 the students of the Iv. Javakhishvili Tbilisi State University noted that in the higher education institutions there still exists the institute of the so called "leader/odeer." It was followed by a massive protest of the students. Hence, it is necessary to enforce the legislative regulations thoroughly. The ugly practice of illegal collection of information from vaiours public or private institutes should not exist.

10. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Based on the analysis of religious intolerance in the country, it cannot be said that in 2015, during the reporting period, in terms of protection of freedom of religion, the situation has improved compared to the previous years. The Government has not taken effective steps to solve the problems of tolerance, equal rights and excercising the freedom of religion.

During the reporting period, not a single recommendation related to the freedom of religion and improving the tolerant environment, noted in the Public Defender's Parliamentary report of 2014 was fulfilled.

In 2015 as well, the Public Defender of Georgia was aware of about 40 facts of alleged violation of freedom of religion and equality.

Prompt, adequate and effective responses to the incidents based on religious intolerance and hate, can be named as one of the major problems. According to the numerous reports from the Jehova's witnesses, sometimes, the law-enfrocement officials demonstrate bias or indifference, they resort to discriminatory treatment and use hate speech. The problem is also aggravated by the fact that the General Inspection of the Ministry of Internal Affairs in fact does not provide proper response and as a rule, names the lack of evidences as the reason. The Prosecutor's Office largely reveals a loyal attitude towards the individuals prosecuted for the hate crimes.

The relevant qualification of the religiously motivated hate crimes still remains to be a serious problem.

There are cases when the investigation on the facts of damaging the property of religious minorities is initiated not under Article 156 of the Criminal Code (Persecution for speech, opinion, conscience, religious denomination, faith or creed or political, public, professional, religious or scientific pursuits), but under Article 187 (damaging or destruction of object). The above is ineffective since the Article deems the damage or destruction punishable if it is substantial (above 150 GEL). In a number of cases, damaging the Royal Hall of the Jehova witnesses or their literature and stands, despite the religiously motivated hate, is always left without the response from the state, since the caused damage does not reach the threshold.

The unresolved problem of the public schools is still the implementation of the requirements set forth by the law on General Education which prohibits religious indoctrination and proselytism at schools. During the conversations with the representatives of Public Defender, the religious minorities note that the pupils sometimes become the victims of intolerance and discrimination at the public schools. Pupils belonging to religious minorities, who cannot take part in the other religious rituals since it is essentially contrary to their belief, are often forced not to disclose their religion and participate in the above events against their will, with the aim to avoid exclusion from the majority and discrimination.

The resistances related to the construction and functioning of the cult and other type of buildings of the religious minorities remains to be a problematic issue. As a rule, they encounter this problem with the local minicipality bodies that are responsible for issuing construction permits. The municipalities, in some cases, do not issue the permits without substantiation or the process is prolonged otherwise. This kind of practice, most likely, has a religious motive which is, in most of the cases, preceeded by the protest of the orthodox clergymen and the parish that actively oppose the construction of buildings of the religious minorities.

The unfair rule of funding the religious entities is preserved. Also, despite the Government's promise, the religious entities active in the Soviet Georgia (except 4 entities) have not been recognized as the victims of commonust totalitarism. The process directed towards returning the property confiscated by the Soviet forces has not started. Also, the discriminatory tax regime, which puts other religious entities in an unequal situation with the Georgian Orthodox Church, has not changed.

11. PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES AND CIVIL INTEGRATION

Effectiveness of programs in the sphere of civil integration and proper protection of the rights of national minorities still remain to be an important challenge. On 17 August 2015, the Government of Georgia has adopted the state strategy of civil equality and integration and the action plan for 2015-2020.

Throughout 2015, for the promotion of civil integration, various programs were carried out in the direction of education, culture, media and informing of the population, supporting the learning of the state language, protection of identification of the small minorities and etc. However, challenges still remain in terms of involvement of national minorities in the above directions and in the decision-making process and in terms of other issues, which requires more attention in-depth approach.

CULTURAL HERITAGE

In terms of protection of the national minorities and supporting civil integration, the proper protection and realization of cultural rights has an utmost importance.

Many activities are carried out for the protection of cultural heritage and integration of the national minorities in Georgia. Nevertheless, challenges are still remaining. Among them we should underline the rehabilitation and full functioning of the Armenian and Azerbaijanian theatres, in the regions – in villages and municipalities – functioning and development of the cultural houses, issues related to the protection of tangible and intangible cultural heritage of the representatives of national minorities. Overall, in the civil integration sphere, effective enjoyment of cultural field as one of the most important directions, still remains to be a challenge

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EDUCATION AND STATE LANGUAGE

Part of the national minorities living in Georgia in small numbers have the problem of preservation of the native language. This issue was raised a number of times in the previos reports of the Public Defender and in 2015, the Ministry of Education and Science took into consideration the Public Defender's recommendation and approved the standard of teaching of the languages of small national minorities. As a result, since 2015-2015 it is possible to teach at schools these languages (Kurdish (Kurmanji), Assyrian, Udi, avaruli (Avar), Kist (Chechen) and Ossetian languages).

The Public Defender, the Public Defender's Council of National Minorities and the representatives of the Ossetian Forum has repeatedly raised the question of extending the 1+4 system of the Law of Georgia on Higher Education to the Ossetian entrants. According to the decision of the Ministry of Education and Science and National Examination

Centre of Georgia, from 2016, the Ossetian entrants will have the opportunity to enter the higher education institutions with the preferential system. Unfortunately, no relevant informational campaign has been carried out in the Ossetian population, which is why, at this stage.

MEDIA AND ACCESS TO INFORMATION

According to the law of Georgia on Broadcasting the Public Broadcaster is responsible for reflecting enthnic, cultural and language diversity of the society in its programs and should prepare the programs about the minorities.

The TV Show "Our Yard" ("Chveni Ezo") had been serving and to certain extent contributed to the aim of full and proper awareness of the minorities and the majority. From the second part of 2015 the above TV Show is no longer on air. In 2015, the radio capacity of the Public Broadcaster was completely unused.

The Armenian and Azerbaijanian newspapers "Gurjistan" and "Vrastan" contributes to the awareness of the minorities. However, the circulation and material resources of the newspapers are not enough. As a temporary measure, it is important to continue supporting "Gurjistan," "Vrastan" and the other newspapers.

12. FREEDOM OF EXPRESSION

Events regarding the freedom of expression were particularly active and eventful in 2015. Mentioned activeness was about the legislative changes related to the introduction the digital broadcasting, as well as the important events occurred in the media and alleged rights abuses of individual journalists, neglecting public and political responsibility by public officials.

In 2015, the current topics were: ongoing court discussion on "Rustavi-2" case, director of "Rustavi 2" Nika Gvaramia's statement on the alleged threatening against him, closing down several political talk-show programs and so on.

CASE OF THE BROADCASTING COMPANY "RUSTAVI 2"

The Public Defender studied[30] court's verdict of August 5, 2015 on interim measure that was issued based on the lawsuit against the broadcasting company "Rustavi 2" and its partners. Ombudsman considered that usage of several types of ancillary attachment was not adequately justified in the lawsuit. In addition, according to the Public Defender, the Court has limited the right of ownership. The court did not explained if the level of limitation of the right was serving the protection of the applicants' legitimate interests.

In addition, , the Public Defender responded [31] to the court's verdict of November 5, 2015 of "Rustavi 2" on the appointment of temporary management, with the aim of ensuring the enforcement of the court's decision made on November 3 by the same judge.

According to the Public Defender's assessment, this decision violates freedom of speech and expression of "Rustavi 2", as it is unjustified and is in contrary to the principle of foreseeability of the law. At the same time, to rate the broadcaster's editorial policy by the court is an infringement of the rights of freedom of speech and expression.

FREEDOM OF INFORMATION

Improvement and harmonization with international standards of the current legislation is necessary for more guarantees for the freedom of information in the country. Timely adoption of the new act on freedom of information will eliminated all of the major issues, such as guaranteeing access to the freedom of information and absence of a mechanism for monitoring freedom of information, absence of sanctions for the illegally refusing the public information and etc.

30 The information is available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-telekompania-rustavi-2-is-qonebis-dayadagebastan-dakavshirebit.page> {Last visited 28.03.2016.].

31 The information is available at web page : <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-sagangebo-gancxadeba-telekompania-rustavi-2shi-droebiti-mmartvelebis-danishvnastan-dakavshirebit.page> [Last visited 28.03.2016.].

During the reporting period, studied complaints' analysis showed that the public authorities are not taking balance between the freedom of information and protection of personal information into consideration. The attitude of the public authorities to this crucial subject is caused by the fact that despite the several repeated recommendation attempts by the Public Defender , Georgian legislation still does not provide sanctions for illegally refusing of the public information, the law on ,, Personal Data Protection" defines sanctioning [32] for the violation of the provisions of this legal act. Accordingly, there is a tendency among public servants, who are responsible to make a decision and issue an information in particular cases are obliged to balance right to privacy and the right of freedom of information. The principle of proportionality is not guidance for public servants, but they are trying to avoid the sanctions stated in the law on "Personal Data Protection".

The cases studied during the reporting period revealed, that the law on "Personal Data Protection" is defective, accordingly adoption of new changes is needed that will serve balancing the right of information and protection of personal data. In particular, the data protected in the public institution and is target of public interest should become transparent, it concerns the data of special category on the former and active public authorities that are connected with their professional duties.

32 The law on "Personal Data Protection", chapter VII.

13. FREEDOM OF ASSEMBLY AND MANIFESTATIONS

The full realization of freedom of assembly is the functional element in a democratic state. Although during the reporting period, this right has not been infringed massively, however, during below stated several high-profile cases unjustified interference in the freedom of assembly occurred. It should be noted that unlike 2014, in the reporting period of 2015 the number of such incidents is more intense.

Despite the Public Defender's repeated demand for legislative changes, it still has not been implemented.[33] It should be noted that the freedom of assembly related legislation harmonization with international standards was one of the objectives of the Human Rights Action Plan of the government in 2014-2015, which has not been completed.

UNJUSTIFIED INTERFERENCE OF THE RIGHT TO FREEDOM OF ASSEMBLY

Right to freedom of assembly was violated on June 12, 2015, when the police did not allow peaceful manifestation in the Heydar Aliyev square. The Public Defender spread public statement about the case after the fact. [34] The law enforcement officials directed the actions to obstruct the process of the planned rally, not to hold the demonstration on the territory of Heydar Aliyev Park. Demonstrators were forced to hold a rally in a remote location.

On July 19, 2015, the police arrested 10 people during the protest action against the project "Panorama Tbilisi" for using the transparencies where the project was compared with the man's genitals. According to the police, mentioned content of the protest signs is an administrative offense. In particular, there was a minor offense.

It is unfortunate that the court made decision by neglecting the national and international standards of freedom of expression and assessed the protest sign used during the action as a minor offense.

The law of Georgia on "Freedom of expression" [35] regulates sanctioning only in the cases of the direct insult or obscenity. The phraseology used by the protesters was not insulting someone directly, the protest was directed to one of the projects, and not to any specific person. As for obscenity, the disputed part of the phrase may be unacceptable for part of the public, however, as noted above, freedom of expression is protecting the "unacceptable" opinions as well and choosing to the form of expression is person's constitutional right.

33 Annual report of 2013-2014 of the Public Defender underlines the implementation process of the recommendation covered in 2012-2013 parliamentary reports.

34 Available at web-page: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-shekrebis-tavisuflebis-dargvevastan-dakavshirebit.page> {Last visited 28.03.2016.].

35 The law of Georgia on "Freedom of expression" ,Article 9.1.b.

The PDO of Georgia has monitored the demonstrations of "Patriotic Alliance" members in every Georgian city where it was held, and concluded that in some cases the police was telling the protesters to remove their tents from the parks as they were distorting the visual of the area.

In this case, the action was not held on the carriageway and was a peaceful gathering. At the same time, we should consider the fact that the rally was held in a quite difficult weather conditions. The state has positive obligation to promote citizens' realization of their constitutional rights. In this case, setting up the tent was the indispensable prerequisite for action members to realize their right to the freedom of assembly and there is no prerequisite sigh of illegality, the state is obligate to allow use of citizens' constitutional rights.

Herewith, during the reporting period, other facts of infringement of freedom of assembly were recorded.

FREEDOM OF ASSOCIATION

Article 26 of the Constitution of Georgia protects person's right to freedom of association. Freedom of association is crucial not only for guaranteeing basic human rights, but in a formation of democratic and free state as well. [36] Freedom of association is one of the most important pillars for self-determination of the society as it is in case of freedom of assembly and manifestations.

In late **April 2015,** in Gurjaani the violence occurred toward some members of Parliament and other supporters of the "United National Movement". **In particular, according to the spread reports,** [37] **In Gurjaani district and municipal officials,** with the activists of the coalition "Georgian Dream", invaded into the working room of the majoritarian parliament member of Giorgi Gviniashvili and made him leave the building with other supporters of the "United National Movement". According to the disseminated materials, [38] the supporters of the "Georgian Dream" gathered in the local government building, including employees of local self-government established (non-commercial) legal entity and threw eggs to the majoritarian parliament member of Gurjaani Giorgi Gviniashvili, MP Irma Nadirashvili and other persons being with them in the moment.

This was not a first occasion, [39] when the employees of the local self-government or other (non-commercial) legal entities based by them, were actively involved in the confrontation with the opposition party. The Ombudsman has repeatedly referred to the negative aspects of participation in these incidents by the local government employees,

36 Decision of Georgian Constitutional Court 2009, September 15, #2/2/439. Citizen of Georgia Omar Alapishvili against Georgian Parliament.

37 The information is available at web-page: <https://www.youtube.com/watch?v=-rd92FZ2ADU> [Last visited 28.03.2016.].

38 The information is available at web-page: <https://www.youtube.com/watch?v=b5n0IhWSdEM> {Last visited 28.03.2016.].

39 The similar case happened in March 15, 2015 in Zugdidi. The report of the Public Defender on the Situation of Protection of Human Right and Freedoms in Georgia, 2014, pp 490–491.

including the danger of raising doubts about self-government' politically neutrality and impartiality. The issue needs to be addressed immediately.

In October 2015, number of illegal actions occurred against the head office of "United National Movement" party and its regional organizations all over the country: hammering the doors of the party office, throwing objects, splashing the paint and etc. The most serious incident occurred during last December, when citizens' political union "United National Movement's" office was damaged by firearm in Dedoplistskaro.

The facts / actions named by the political party "United National Movement" In 2015, could be serving intimidation and / or pressure to the party members and / or those who want to cooperate with political party. It is important to investigate each of these incidents in a timely manner by the law enforcement agencies. Some cases are still in the process of investigation. In some cases where the facts of administrative offences were distinguished, the period of perishability has already been exhausted , accordingly the work of the Ministry of Internal Affairs of Georgia in this extent can be appraised as ineffective.

During the reporting period, also has been studied legitimacy of the video surveillance equipment installation near the central office of the "United National Movement ". Party representatives believed that the mentioned camera was illegally collecting their personal data. The study revealed that the above-mentioned video camera can move in different directions. Public Defender believes that the Ministry of Internal Affairs can achieve the legitimate goal, if installs fixed CCTV camera on the territory of Tbilisi, Kakheti Highway 45-A instead of the presented rotating video camera, whose coverage (vision) area only fall under to the highway and to the motor vehicles moving around. The mentioned action will be proportional for to achieve legitimate aim, in addition it better guarantees party's occupation in free environment.

14. PROHIBITION OF DISCRIMINATION

By adopted the Law on the "Elimination of all Forms of Discrimination" (Hereinafter referred to as "anti-discrimination law") in May 2014 Parliament of Georgia recognized the elimination of discrimination as one of the most important priorities of the country. One of the main achievements of the anti-discrimination law is that its scope covers administrative bodies as well as private individuals and legal entities.

Matter of the necessity of the agency that monitors the discrimination, the law assigns the function of supervision on the elimination of discrimination and guaranteeing equality to the Public Defender.

Sending application to the Public Defender or to the court is the main mechanism of the state to implement the policy effectively that means to eliminate discrimination. The grid of the legislation has to be organized that the functions of the Ombudsman and the court does not coincides each other.

According the Law of Georgia on the Elimination of all Forms of Discrimination, Article 9 paragraph 1 item "b", the Public Defender of Georgian shall suspend proceedings if due to the same alleged discrimination "the administrative proceedings are under way". If inferior administrative body already conducted discrimination, the superior administrative body is not eligible to react on the cases and effectively restore the violated rights (determine the fact of discrimination, compensation for damages), accordingly it cannot be considered as an alternative dispute resolution mechanism along with the Public Defender's office. Particularly, administrative bodies often delay the proceedings, accordingly, waiting for the finalization of administrative proceeding will hinder the effective reaction to the violated rights. Due to the mentioned facts, it would be expedient to delete the Article 9, paragraph 1 item "b" provision.

According to the Public Defender, the main issue of the Law of Georgia on the Elimination of All Forms of Discrimination is that it does not provide the same leverage for the acquisition of materials, documents, explanations, and other information from private legal or physical persons that is available in the case of public agencies, and the process is fully dependent on the good will of the parties. Mentioned fact creates important issued in practice, as far as it makes difficult and sometime makes it even impossible the examination all the circumstances and proper solution of the case.

According to the mentioned, it would be expedient to amend the Law of Georgia on the Elimination of all Forms of Discrimination with the provision that obligates the private persons and public bodies to provide the requested information, and the cases involving circumstances that justify the reasonable doubt of alleged discrimination, the application/complaint of the citizen should be satisfied.

Article 363^2 of the Civil Procedural Code of Georgia allows the victims of discrimination to apply to the court based on the facts he/she considers discriminatory. A claim may be filed with a court within three months after a person becomes aware or ought to have

become aware of the circumstance that he/she assumes to be discriminating. It should be noted that the prescribed period of three months is too short and the Ombudsman considers it appropriate that the period be increased to one year.

DISCRIMINATION ON GROUNDS OF CITIZENSHIP

By the decree of the City Council of Batumi entrance fee in the Botanical Garden for Georgian nationals was determined as 3 (three) GEL and for foreign nationals – 8 (eight) GEL.

The public defender also noted that in the present case, the difference in treatment should be based on the idea that the citizens of the other countries are in a better financial conditions, accordingly are able to pay more money. This is a pre-formed, stereotypical opinion that is devoid of any objective justification. Financially strong and poor person might be Georgian citizens as well as citizens of other countries or stateless person. Stereotypical attitude cannot be regarded as a legitimate aim and cannot possibly be an objective and reasonable justification.

After receiving the recommendation, Batumi City Hall and the City Council acted appropriately in order to eliminate the discriminatory practices.

DISCRIMINATION ON THE GROUND OF SEX

Public Defender studied the online job announcements posted on www.jobs.ge. 10.01% of the announcement used terms related to the female gender and 24.02% referred to male candidates. Ombudsman considered that since the web page www.jobs.ge was not filtering the job announcements based on discriminatory wordings. This was considered as a promotion of the discrimination practices.

On April 8, 2015, the Public Defender addressed with the general proposal to the "www.Jobs.ge" to draw up the regulations that eliminates publishing the job announcement containing discriminatory wordings. It should be noted that the same issue exists in the companies that publish job announcements with discriminatory terminology.

Tbilisi Children's Infectious Clinical Hospital refused the applicant to stay with his child as a caregiver, on the grounds that the right could be given only to the patient's mother or grandmother, while men were not allowed to do it, since he might be inebriated.

The Public Defender considers that similar stereotypes restrict men to play an important role in their children's life and to share parental burden with their partners. Accordingly, the Public Defender stated that the Children's Infectious Clinical Hospital of Tbilisi committed direct discrimination on grounds of gender identity.

Discrimination Based on Sexual Orientation and Gender Identity

Provisions of the order of Minister of Labour, Health and Social Affairs of Georgia #241/n No1, 05.12.2000 and #282/n , 27.09.2007 considers "homosexuality" as the indicator against donation of blood and its component.

The public defender noted that the above-mentioned order of the MSM group is placed in a disadvantaged situation comparing to heterosexual men and women, bisexual women. Ministry considers the absolute restriction for MSM, when in cases heterosexuality more attention is paid to the character of the relation.

Discrimination on the Grounds of Religion or Belief

The Public Defender did not determine discrimination on the grounds of religion or belief among the ongoing issues, however the Ombudsman submitted two amicus curiae opinions to the Batumi and Zestaponi courts that concerned the subjects of the alleged discriminatory treatment during teaching religion and religious building constructions.

Discrimination on the Ground of Disability

On February 12, 2015, the anniversary event of Paata Burchuladze was held at the Sport's Palace. Among other attendants, the persons with disabilities purchased the tickets; however, due to the inadequate adaptation of the facilities, they were not able to attend the above-mentioned event.

As a result of the examination of the case, the Public Defender determined that the building was not fully in compliance with the standards, however reaching the territory of the stage was possible for disabled persons. The Sports Palace became unaccesable for disabled persons only after the intalation of constructions by the organazers, accordingly the LTD "Artpalace" was held in charge of a direct discrimination on the grounds of disability.

[In one of the case] the Public Defender pointed out that the abolishing the rental contract by the reason of that the person renting the apartment has a child with autist syndrome and renter does not want such kind of child to live in his property is false and stereotypical attitude toward the children with autistic syndrome. Herewith, assuming that such kind of child will damage something or/and cause harm cannot be considered a legitimate reasoning. Without the legitimate reasoning, such kind of treatment cannot be justified.

The Public Defender of Georgia addressed to the "Tbilisi Transport Company" with the general proposal to conduct the training for their employees on the topic of special needs of the persons with disabilities and formulate flexible schedules of passenger transporting, that includes different times and schedules for the persons with special needs.

15. FREEDOM OF MOVEMENT

During the reporting period the among the cases discussed in the Public Defender's Office of Georgian limitation of the freedom of movement was pointed out, particularly, limitation of freedom of movement to the citizen of Georgian while entering his/her citizenship country. In addition, the fact of the use of preventive measures with collateral duties was recorded - an investigative body did not return the passport of Georgian citizen despite the fact of the withdrawal of the period specified by the court, as a result freedom of moving out from Georgian was restricted.

16. RIGHTS TO PROPERTY

Within the reporting period in 2015, as well as during the previous years, it is still problematic to register ownership on real estate matter of legislative and practical shortcomings. As to the issues of registration of real estate and the remedies for violations of rights of citizens in this regard still remains as a problem in Georgia. This is mainly due to the faults of finding documents (land area and indicate their exact location, etc.), as well as a severe lack of necessary funds matter of the social background for the registration (cadastral drawing-costs and so on). It should be noted that the legislation does not provide aid/ support even for this kind of vulnerable persons, which should be appraised negatively. At the same time, the law does not provide possibility of registering the land that was in the traditional ownership.

Strategy N106 on Land Registration and Refinement of Cadastral Data in the Pilot Areas approved by the Minister of Justice on October 29, 2015, Should be assessed positively, there are mandatory free registration and measurement works for all types of land in the pilot areas (11 selected area).

During the reporting period, new draft law amendments of Georgian law on "Public Registry" was proposed. According to the Public Defender's opinion, the draft law will negatively affect the realization of the right to property in Georgia. The country has not yet completed the process of initial registration of the land/real estate. This is mainly due to the faults of finding documents (land area and indicate their exact location, etc.), as well as a severe lack of necessary funds matter of the social background for the registration (cadastral drawing-costs and more.) The state's every action and effort should be driven for to solve this ongoing issue. In addition, request from the interested persons to the National Agency of Public Registry for to cancel the full or partial registration of state ownership is not a solid guarantee, as its realization depends on the discretion of the National Agency of Public Registry.

The so-called Interference / duplicate registrations remain a significant problem. Since on the bases of the real estate measuring drawings registered in the National Agency of Public Registry and its transfer of information into electronic cadastral database on the basis of relevant assessment still has not completed, the exact scale of the problem is unknown for the National Agency of Public Registry. The timely and fast implementation of the process is crucial, and the overlap detection in all cases should be considered as an illegal or, in the presence of a bona fide purchaser, the reparation of damages to the owner of the property by the state.

During reporting period of 2015, the Public Defender identified the wrongful practices of the National Agency of Public Registry in the process of considering the case of the applicant for registration of the issue of the property rights. In particular, after studding the case revealed that the person who had the ownership certificate issued by the Standing Committee for Recognition the Ownership, instead of demanding the registration certificated of property rights, the National Agency of Public Registry registration department of Tbilisi division requested the state's consent of the recognized right for registration. Actions alike this contradicts the laws of Georgia, as in the case of the National Agency of Public Registry register infringes in the competencies of the Standing Committee for Recognition the Ownership and the person who willfully occupied the land and was recognizes as an lawful owner of the property is taken in the position of the possessor of the land - not the owner, in the cases like this if the state will not recognize already recognized right to property - the persons cannot realize rights already lawfully assigned to them.

The Public Defender's Office concluded after the cases examination that there are important issues related to the registration of ownership, land reform, and legalization of land plots under lawful possession in the settlement Bakuriani and large village Didi Mitarbi. The issue is that during the land reform in the years of 1992-1999, the free privatization in Bakuriani was held not according the families, but the numbers of the family members. According the circumstance that the confirming a document of lawfully possessed (used) property is the "tax list approved by local self-government (government) bodies on the agricultural land use for the time of registration " is problematic, the registrations were made by the Bakuriani City Council only after the land reform. The majority of the population of the town of Bakuriani and the large village Mitarbi is facing the real threat, that land can be confiscated by the state without compensation.

The Public Defender monitors condcucted research of the identification and compensation of the trespassed persons who abandoned the land/ real estate property matter of the duress / pressure, donate and transfer the property to the state free of charge during the 2004-2012 years. In early 2015, the department investigating the crimes committed in the course of theproffeisonal proceedings was created in the State Prosecutor's Office. The Public Defender of Georgia considers that the department investigating the crimes committed in the course of the proceedings under the State Prosecutor's Office can not be effective, taken the number of the application / complaints addressed to the department in 2015, presently the investigation was completed only in rare cases.

During the reporting period, one of the main events was adoption of legislative package that abolished the police eviction institute on 11 December 2015. The Ombudsman will closely monitor the implementation practices of the mentioned changes, including monitoring of the court cases in terms of eviction from the property in the tight time frames provided by the law.

During the current year the issue of fulfilling the obligations and paying the promised debt toward the population affected by the cooperative housing is still relevant. There is no formulated mechanism of reparation of mentioned debt therefore, trespassed populations by the unfinished constructions cannot get reparation and their property rights are infringed. It is necessary to develop an effective and the timely mannered compensation mechanism of the recognized domestic debt for reparation of population affected by the cooperative housing.

17. RIGHT TO VOTE

On October 31, 2015 the parliamentary by-elections were held, herewith, the Constitutional Court made an important decision on the right to vote that resulted the inevitable necessity to put the improvement of the election system on the agenda.

According to the norms appealed in the Constitutional Court each municipality has the single-mandate districts, except Tbilisi, which was presented as a 10-seat electoral district. As a result, during the majoritarian parliamentary elections, the votes were not equally binding. The Constitutional Court explained that the universal suffrage is a free and equitable reflection of the people's will in the process of forming the government, while mechanically connection of the municipalities and electoral districts can cause ignoring the equality of votes. Accordingly, the Constitutional Court considered the appealed norm of the "Election Code of Georgia" as unconstitutional, as it was violating Article 14 (equality before the law) and the first paragraph of Article 28 (right to vote) of the Constitution of Georgia.

in 2016 As a result of the amending the Organic Law on Election of Georgia the mixed system for parliamentary elections maintained. However, the necessary votes for the elections of mayors and governors amounted to 50%+1, herewith new majority districts distribution rules was introduces. Article 110^1 of the Election Code of Georgia lists majoritarian electoral districts for parliamentary elections of Georgia including the villages, and indicates numbers of majoritarian electoral districts for each of them. The Public Defender considers the existing rule of formation the majoritarian election districts artificial, as it does not considers the interests of the local population and geographic areas created naturally and it somewhat loses the main sense of the majoritarian system.

On August 31, 2015 was appointed the parliamentary majoritarian system by-elections of October 1, 2012 in the majoritarian constituencies of Martvili and Sagarejo. The society acquired a legitimate question, whether the elections of August 31 was in accordance with the decision announced by the Constitutional Court. The Ombudsman stated that for the best interests of the protection of constitutional rights of voters, almost 80 thousand voters of Martvili and Sagarejo would have possibility to participate in majoritatarian system elections.

The subject special polling stations become one more burning issue during the by-elections. Article 23, paragraph 4 of the Election Code of Georgia states list of the exceptional cases of creation of the polling stations. The provision does not provide an exhaustive list of exceptions, which are in the so-called special electoral precinct. Meanwhile, at the well-founded written request of the commander of a respective military unit and by DEC decree, an electoral precinct may be set up within the military unit, in which the number of voters does not exceed 50 military servicemen. The mentioned provision makes obscure grounds of creation rules of the special polling station set up and provides a wide range of interpretation and discretion. The Public Defender believes that military personnel should vote according to their place of registration or only according the proportional electoral system, in the nearest dislocated polling station in the parliamentary elections.

Public Defender studied complaints of the political party "Patriotic Alliance of Georgia", regarding the alleged violations during the polling day of by-elections in Sagarejo, incorrectly filling precinct election commission summary protocols, miss leading numbers of votes and the total number of the voters, as well as the existence of invalid ballots. Despite the fact that the case study revealed a variety of uncertainties, the violations were not the kind of that could have affected the final election results.

18. THE RIGHT TO THE PROTECTION OF CULTURAL HERITAGE

Ministry of Culture and Monument Protection of Georgia is the first guarantor of the safety of the cultural heritage. Realization of the mentioned function is guaranteed by the Law of Georgia on the Protection of Cultural Heritage, Article 14 paragraph first, according to it the decision of **open case mining and mining operations, as well as construction of objects of special importance can be implemented only after the fulfilling the precondition of positive appraisal from the Ministry of Culture and Monument Protection of Georgia** . In order to monitor the implementation of this legal provision the Public Defender's Office requested the information from the relevant authorities. The information study obtained revealed that the mineral extraction licenses were issued by the National Environmental Agency without the positive appraisal of the Ministry of Culture and Monument Protection of Georgia. The mentioned practices have continuous nature of the violation of the legislation.

The Public Defender's Office studies the cases of the destruction of archaeological objects during construction of Ruisi-Rikoti road. As a result of the observation the issue, important systemic irregularities were distinguished. In particular, the materials revealed that the National Environmental Agency issued mining licenses without the conclusions of the ministry with a flagrant violation of the law. However, technical and construction inspection made decision on the construction and evaded involvement of the Ministry of Culture in the decision making process.

The ground of the report of the Ministry of Culture is archaeological examination that has to be facilitated by the *person interested* who had interest on the land. In this case, the person interested is the Agency of the Roads Department of Georgia, the command on Ruisi-Agara constructions was issued according the order of the Technical and Construction Inspection.[40] In this case, Agency of the Roads Department of Georgia despite the fulfillment of the order, rather than was requesting archaeological examination from the private company. The following request did not comply with the definition of an interested person provided by article 14 paragraph 2 of the Law of Georgia on the Pro-

40 Statement of the Agency of the Roads Department of Georgia 2012, August 6, №03–04/3052.

tection of Cultural Heritage. The role of the National Agency for Cultural Heritage Preservation should be noted, it should react on the violation of the law within its authority in a timely and efficient manner, including to the violations from the state agencies. In the present case, the actions of the agency have not been consistent. The archaeological excavation was held based on the permit issued by the National Agency for Cultural Heritage Preservation that caused destruction of the Settlement of the Kalkolit era, Bronze Age tombs.

One of the case study held by the Public Defender's own initiative,[41] revealed **legislative loophole of article 30 paragraph 8 of the law on the Protection of Cultural Heritage**. Article 30 sets the general responsibility of the listed property owner (legal user) of the cultural heritage. However, paragraph 8 of the same Article includes the exception to the rule and clarifies that the responsibility for the maintenance monument does not apply to the Autocephalous Orthodox Church and ownership of other religious denominations' (legal user) objects. The Public Defender considers the above mentioned provision unreasonable as there should not be any exemptions when it comes to the maintenance of the cultural heritage.

This year, the target of the public attention was directed to the **"Panorma Tbilisi" project** planned by ""Investment Fund".

In terms of the project "Panorama Tbilisi" on the level of local authorities as well as the central government level, public awareness and their active inclusion in the process of decision-making was limping for the interested parties. Since the legislation does not provide provisions on obligation of the project's environmental impact assessment, the public participation was not guaranteed with this form either. Considering the facts listed above, legitimate questions raised by the public still remain unanswered.

According to the resolution of the Government of Georgia of March 24, 2009 №57 on "The Procedure of Issuing a Construction Permit and Defining the Conditions," approval decisions of use of the land for construction, as well as building permits, can be issued by the provisions of simple administrative proceeding established according the Chapter VI of General Administrative Code. This type of proceeding does not obligate involvement of the interested parties. According to the Administrative Code of Georgia, the individual administrative act of an administrative authority may be issued through public administrative proceeding in the cases, if it refers to the broad interests of the general public. In this case, despite the civil society's requests to the authorities and the public's interest, the administrative body, the Technical and Construction Supervision Agency, did not use above mentioned authority granted according the legislation.

The resolution of the Government of Georgia of March 24, 2009 №57 on "The Procedure of Issuing a Construction Permit and Defining the Conditions," building permits should consider be exceptions from the general rule of simple administrative proceeding. Law should define the criteria of appraising the circumstances of the cases, if they should be issued according the provisions on the public administrative proceeding.

41 №7092/15 case on heritage building, result of illegal occupation to the Ananuri church.

19. RIGHT TO WORK

THE NEW LAW ON "PUBLIC SERVICE"

This year, a new law on "Public Service" was adopted, that will come into force from January 1, 2017. Ombudsman submitted a number of comments to the Parliament some of them was taken into consideration. However, the other part was neglected. In particular, in the new law on "Public Service" no longer indicates that the labour legislation, taking into account peculiarities of this law, no longer applies to the public officials and members of a support staff. The relations that are not regulated by this law, shall be covered by the other relevant legislation. We consider the mentioned loophole as a very important issue, since the new law on Public Service does not cover all spheres of Labour Relations, the absence of a special indication on the regulation of relations by the Labour Code of Georgia hinders the determination of the law. Accordingly, a risk of not regulated some issues remain as a shortcoming. In addition, the official maximum probation period of 6 months prolonged to 12 months that aggravates the situation of employees and raises the threat of some risks.

EXISTING SHORTCOMING OF THE LABOUR CODE OF GEORGIA

Despite the adopted significant changes in the Labour Code of Georgia in 2013 challenging series of questions still remain that are not covered by the law. In particular, the Labour Code does not determine the maximum number of daily working hours and the number of working days per week. Herewith, the legislation does not define the maximum allowable limit of the overtime working hours. Herewith, labour legislation does not define the amount of the minimum wage.

The Labour Code of Georgia does not provide exhaustive list of grounds of dismissal, in particular, according to the Article 37 of the Labour Code paragraph "O": An employee may constitute grounds for dismissal of any "other objective circumstances which justify the termination of the employment contract." The existence of such general provision leaves a large room of maneuvering and assessment to the employer, and for the employee it is not predictable and reasonable the reason that might be the basis for the termination of labour relations.

According to the current provisions of the Labour Code, the employer has the obligation to substantiate the need to enter into a fixed term contract for is only 1 year or more by the time of signing. The employer is not limited for signing the agreement up to 1 year period. [42] According to the provision on a fixed term contracts the employer can dismiss the employee from his position only for the expiration grounds without any explanation.

In addition, it is noteworthy that there are no regulations for reimbursement in the cases of employee's health damage or death in employment.

42 Labour Code of Georgia, Article 6 , section 1^2

SAFETY IN EMPLOYMENT

The Public Defender's annual reports have repeatedly noted that only recognition by the legislative level that the employer must provide the employee's safety at workplace is a norm of declarative nature and does not create real guarantees of protection of safety at workplace. The reason is following, there is no specific legal sections for the violation of the provisions on the protection of the health and safety at workplaces, and there is no state institutions that is obligation in the supervise these matters.

According the information of Ministry Internal Affairs during 2015 there were 82 work injuries at workplace, the number of deaths in 42 cases. [43] Unfortunately, currently, the only way of investigation cases like mentioned is proceeding according the criminal law. It is obvious that only the initiation of the investigation is not the strict enough warning for the employer and it does not prevents future violations of the safety rules. In this regard, there is an urgent need to elabourate the safety rules' supervising state body - the labour inspection and determine the appropriate sanctions for the violation of rules.

In addition, it should be noted that the project law on "Labour Health, Safety and Hygiene" Still is not initiated.

TKIBULI MINERS' LABOUR RIGHTS VIOLATIONS

February 15, 2016 miners working on the stations named after Mindeli and Dzidziguri went on strike. The employees were demanding the decent pay, along with demanding adequate labour conditions, because their work environment included increased threat for life and health. Their labour rights are completely ignored by the employer, which is expressed in the forms of: in the meager compensation work overtime and shift; inadequate work uniforms; Faulty and outdated equipment, or in some cases, did not existence of the equipment at all, and therefore the employees have to work by bear hand instead of the special machines; the rule of using paid vacations' and violation of the rules of the workplace accidents compensation, etc.

Despite the demands the administration of the enterprise was not meeting with their employees in order to discuss their demands, which transformed the miners' protest into crisis. The state was not effectively responding to the ongoing processes. As well as the enterprise, the state has neglected the social importance of the process. The ongoing dispute between the employer and the employee cannot be considered only as local issue. The case of the miners protest demands revision of the social policy the state obligations on making specific steps on labour safety improvement require.

THE WORK OF THE STATE'S LABOUR CONDITIONS MONITORING PROGRAM

February 5, 2015 the Government approved N38 decrees on working conditions' monitoring program, the aims of the program are: to help the employers to create a safe and

43 Letter N255708 of the Ministry of Internal Affair of Georgia, issued in February 2, 2016

healthy environment and to determine the safety need for institutional reform. It should be noted that state working condition monitoring program requires the employer's written consent to join the program, which is ineffective, since, if the employer does not express the will of the voluntarily participation in working monitoring of the program the monitoring body has no legal leverage to conduct monitoring and examine the enterprise / workplace conditions – for the sake of employee's working conditions, labour safety and the prevention of forced labour.

Also, it should be noted that the current capacity of the labour conditions is not an effective and enforceable mechanism of monitoring body, because it only have function of issuing the recommendations, which are not binding.

Based on the foregoing, it is important to create a labour inspection based on the law, that supervises and controls workers' occupational safety and health in the enterprises / institutions, as well as labour rights and eliminate faults revealed and issues binding decisions. Furthermore, appropriate sanctions should be determined for the violation of labour safety rules and employees' rights.

PROTECTION OF LABOUR RIGHTS IN THE PUBLIC SERVICE

After the studding the application received in the PDO during the 2015 the issue of former public servants dismissal, as well as the legality of the recruitment and certification process in the public service and civil servants' rights violations are still a vivid issue. In some cases, the competitions and certification is just a formality, illegal and unjustified dismissals of the officials still remain the problem.

It should be noted that the current legislation, according the Code of Local Self-Government, local government units are appointment and recruitment is carried out by the governor / mayor, as well as dismissal decisions can be made without justification, law is only referencing to the governor's / mayor's competence in this matter. Thus, the position of head of the local government unit is not available to everyone equally, because this issue is becoming governor / mayor's sole competence, without requirement of announcing public competition on the position. Also workers, who had a legitimate expectation of employment in this position, for certain period, can unreasonably be dismissed from their positions, which violate their constitutionally guaranteed right.

DISMISSALS OF THE OFFICIALS AND FORMAL CHARACTER OF THE RECRUITMENT

Studding the received statements on termination of employment of the official from the public service revealed that public servants dismissal decisions are often unreasonable, made without examining the circumstances of the case and undermining the rights of employees. Some cases distinguished issue of obscure certification and recruitment competition results that are held bypassing the provisions of the law. Specifically, in

some cases it is impossible to find out the reasoning of the decision of the competition commission.

COMPENSATION FOR OVERTIME WORK

The Law on Public Service no longer applies to the public officials and members of a support staff. [44] Overtime pay issue is regulated by the Labour Code: "Prolonged working hours should be reimbursed by raising the remuneration", the parties may agree for additional time off for an employee. [45] After the reviewing the application received by PDO it revealed problems in the public sector's compensation practice for overtime work. In this regard, the Ministry of Corrections and Legal Assistance of have the systemic problem, namely, according to the information provided by the Ministry, staff's overtime, including hours worked during the public holidays and weekends are not recorded, therefore, the law that imperatively established overtime compensation obligation is not implemented in practice, thus ministry is severely and systematically violating the provisions of law and human rights of the employees of the ministry.

APPOINTMENT OF THE AUTHORITIES WITHOUT THE COMPETITION

Article 30 of the Georgian Law on "Public Service"[46] defines the list of authorities that could be appointed at the position without the recruitment process that includes appointed and elected officials by the President, the Speaker of Parliament, the Prime Minister. The list of the officials to be appointed by listed authorities is prescribed in the various regulations. According to the mentioned facts, it can be concluded that the President, the administrations of the Georgian government and administration of the parliament staff is appointed by bypassing the transparent procedures and publicity according to the provision of the Georgian Law on "Public Service".

ABSENCE AND OPAQUE NATURE OF RECRUITMENT REGULATIONS IN STATE NON-PROFIT ENTITIES

Recruitment of the staff of the Non-profit legal entities established by the local self-government bodies is not regulated by the Law on "public Service". Due to the fact that the local self-governing bodies established the (non-commercial) legal entities under the local self-government budget, and they are receiving the funding from the budget, they are the budgetary organizations. Therefore, it is important to the process of the recruitment to be transparent and regulated by the provisions of the law on "Public Service" and prevent the risk of cronyism as much as possible in the similar entities mentioned above.

44 Georgian Law on "Public Service" , Article 14, paragraph 1.

45 Labour Code of Georgia, Article 17 paragraph 4 and 5.

46 Law of October 31, 1997 was stating the similar provision on appointing or electing part of the public servants by the President and Parliament of Georgia, the list has been enlarged according 14.04.2006. N2884 amendments.

THE EXISTING GAPS OF GENERAL INSPECTION

In 2014, the Public Defender's Office of Georgia studied the issues of dismissal of employees from the municipal bodies that revealed there still is an issue of termination of the employment based on the personal statement which was forced by the municipal body. It is especially worrisome when these harassment cases fail to achieve the goal, the public servants are threatened by the authorities that their disciplinary behavior will be investigated by the general inspection and they will be dismissed anyways. There is a tendency that the inspection organs are used as an instrument of harassment / pressure to the civil servants.

As a result of studding the complaints by submitted the former public officials, also revealed that in some cases, inspection units during working in public institutions on disciplinary proceedings are violating the rule of law and fail to properly fulfill its obligations.

20. RIGHT TO THE HEALTHY ENVIRONMENT

According to the information of The Public Defender's Office, the Ministry of the Environment and Natural Resources is working on the draft law of **the Code of Environmental Assessment**. The Public Defender considers improvement of environmental legislative principally important for the government's systematic development and involvement of specialists of the field is carried out processes.

During the reporting period, the Public Defender was paying the special attention to implementation of the law on "Environmental Impact Assessment". The Public Defender's Office has distinguished particularly important issue within the framework of the proceedings held by its office. The Public Defender considers that the list of subject activities of the law on the environmental impact assessment is not exhaustive and does not coincides with the international standards. In addition, it should be noted that the Georgian legislation does not provide any mechanism of individual case review and environmental assessment on the need for individual decision-making capability.

Important issue is how the existing regulations are ensuring the **full involvement of the public in decision-making process**. According the Article 9 paragraph first of the law on "Environmental Impact Assessment" the environmental permit issued under the General Administrative Code, Chapter VI of the simple administrative procedure. The only possibility to get involved in the process by the public, is the environmental impact assessment (hereinafter - EIA) procedure of public discussion hearing. Of course the EIA public participation review cannot be regarded as a counter-argument of the neglecting the public involvement by the administrative procedural rule and the fulfillment of the standards the Aarhus Convention. [47] It should be noted that a number of obligations, concerning the public discussion and community involvement in the decision making process is fully transferred to the state. According the states position the public participation in EIA discussions is low. [48]

The Public Defender's Office is studding the legality of the construction of several hydropower plants. At this point we can say that is it problematic issue is the Government's decree№214 issued in August 21, 2013 on "On Approval of the Rule of Expression of Interest for Construction Technical and Economic Feasibility Study, Construction, Ownership and Operation of Power Plants in Georgia" of. The resolution set out the procedure that the investor is required to prepare an environmental impact report after signing the memorandum between the state and their representatives. The Public Defender considers that the memorandum of cooperation signed only after the construction with the investor's and fulfilling the legal requirements afterwards, is in contrary to the law on "Environmental Impact Assessment".

47 The convention on "Public Participation in Decision Making and Access to Justice in Environmental Matters" adopted by the he Fourth Ministerial Conference in the "Environment for Europe", June 23-25, Aarhus , Denmark ,1998, Active after October 30, 2001.

48 The national report on implementation of Aarhus Convention, 2013, page 30.

The mentioned gaps in the law is severely affecting in the practice. The example of the mentioned is the cases under the consideration of Public Defender's office, the cases of Vake-Saburtalo districts' connecting so-called a new road and the construction of the project "Panorama Tbilisi".

In particular, June 13-14, 2015, as a result of a natural disaster **Vake-Saburtalo districts' connecting so-called a new road** was damaged severely. There is no environmental impact assessment carried out after neither the first [49] nor the followed works. The road connecting Vake-Saburtalo os not an international importance construction and according the law on "Environmental Impact Assessment" [50], is not obligated to conduct environmental expertise, including environmental impact assessment of the object. Events reaffirmed the troublesome severity of the list on environmental impact assessment.

As for the "investment fund" planned "**Panorama Tbilisi" project**, is covering the constructions of multi-hotel complexes and the construction of a cableway. In this case, Current legislation also is not obligating for the implementation of the Environmental Impact Assessment.

The Public Defender studied the collective statement of Agladze Street residents about **the noise from industrial and other facilities** that was resulting the difficult situation for the population. The regulations on the noise level regulation in the legislative are still being delayed. The absence of norms regulating causes the neglecting of the needs of society and creation of the healthy environmental. The state does not fulfill its obligations by regulating the noise on the state level. The mentioned situation needs an urgent regulation.

January 15, 2016, the Public Defender of Georgia addressed with the legislative sentence to the Parliament of Georgia, [51] to apply to all existing measures noise regulation at the legislative level, according to international standards and the appropriate sanctioning measures in the Administrative Procedural Code. Ombudsman monitors the process and hopes that the issue will be resolved in a timely manner.

49 Mentioned road construction has finished in 2010, in the framework of the project several tunnels in the Vere river valley and three overpasses on the Heroes' Square were built.

50 The Georgian law on "Environmental Impact Assessment" Article 4, paragraph 1, section "j".

51 Proposal of the Public Defender of Georgia №04-14/527 15.01.2016.

21. RIGHT TO HEALTH

In the Constitution of the World Health Organization the health is defined as a state of complete physical, mental and social well-being and not merely the absence of disease.

2015 was the year of the people actively applying to the Public Defender,[52] complaining about the situation in "National Center for Tuberculosis and Lung Diseases". Based on the appeal of the Public Defender's Office, the State Regulation Agency conducted a study that revealed the violations and the administrative violations protocol of submitted.[53] Afterward the "National Center for Tuberculosis and Lung Diseases" eliminated some of the violations found. In particular, patients' stationary treatment and nutrition conditions have been improved.[54] In 2015, the Parliament adopted a law on "Tuberculosis Control". The legal act is directed towards the maximum prevention of the spread of TB in the public.[55]

2015 was announces as a year of fighting against Hepatitis C in our country - C hepatitis elimination is defined as one of the target strategy. Hepatitis C elimination program was launched in May 2015. Ensuring universal accessibility to medicines is a key for the further development of the Hepatitis C state program. Attention should be paid to the reduction of the share of co-financing by the patient.

State program of universal health care has significantly improved financial access to health services. Despite the providing with minimal package, the program is no financing a number of types of medical care, and in many cases the financial limit set by the program is not enough. All the listed above has a negative impact on the availability of financial health. Public Defender believes that health care program needs urgent expansion of the list of diseases nosology, as well as providing financial limit increase.

According the conditions of the current regulations of the universal healthcare program is not fully accessible to persons who were involved in private insurance schemes by the July 1, 2013. Their involvement in the program is provided only with a minimal package, which contains a list of limited services and is not a financial support for the mentioned individuals. The regulations mentioned are rather problematic and needs to be modified in such a way that those private insured individuals have to have a complete access to the universal healthcare program.

Using tobacco is one of the most problematic societal health issues in the world. Tobacco usage is one of the causes of death. In Georgia, in 2010, any tobacco product (smoking and smokeless) consumed 30.3% of the respondents (55.5% of men and 4.8% of women).

52 Applications №19058/1, №591/15, №2407/1.5

53 The letter №02/31942 of the State Regulation Agency, 06.05.2015.

54 The letter №3287/01-17 of the director of "National Center for Tuberculosis and Lung Diseases", issued in 26.11.2015.

55 Georgian law on "Tuberculosis Control" , Article 5 paragraph 1.

By ratifying The World Health Organization Framework Convention on Tobacco Control Georgia has committed to implement comprehensive tobacco control measures in the country. The government approved the progress rules for the establishment of specific obligation and in compliance with Framework Convention on Tobacco Control. [56]

It should be noted that only a very small part of these commitments have been fulfilled till today. It is important to improve the current legislation and modify tobacco advertising, sponsorship and promotion of the commitments taken in the direction of elimination of tobacco usage. All the closed public areas and in public transport smoking should be completely banned, in order to ensure maximal smoke-free environment.

56 Decree №196 (30.07.2013) of Government of Georgia on " Tobacco Control Strategy Approval" and decree №304 (29.11.2013) on „Approval of Action Plan on Tobacco Control for 2013 – 2018" .

22. RIGHTS OF CHILDREN

In 2015 the Ombudsman examined the merits of the state's steps with respect to the improvement of the child's rights, and positively praised number of them, including the Parliament's approval of the Juvenile Justice Code, preparation of the draft law on,, The Early, Pre-school and Education Upbringing,, , amendments to the law on "Adoption and Foster Care ''and preparation the standards for the adopter, submission of the 4th periodic report on the implementation of the rights of the children defined by the United Nations Committee on the rights of the child Convention . It should also be noted that on December 16,2015, the Parliament unanimously passed the third reading of the legislative sentence, which was prepared th on the basis of the legislative proposal submitted by the Public Defender. According to the amendment, the marriage of the 17 to 18 years person's registration rules was changed, only the court can permit the marriage. Also clarified the circumstances of the marriage registration and validation of the provision shall define as for one year. It is positive fact that once again was determined the promotion of the prevention of early marriage.

Herewith, along with the listed matters regarding the child's rights in Georgia, there are a number of challenges. Signing and ratification of the third Additional Protocol of the United Nations Convention on the Rights of the Child still is on the agenda; the adoption of the government's human rights strategy and action plan on children's right ought to be followed by the more consistent implementation of commitments of state agencies; Although the country is still high rate of violence against children, the legislation has not yet been reflected the changes of which the state will take responsibility on protection over all forms of violence of the child. In this regard, effective measures of the public's awareness are not taken by the state. In many cases, professionals working with children do not have special knowledge of identification of the minor victims of violence and prevention skills of the child abuse. Poor coordination of child protection from the violence referral procedures is still an issue between the state agencies; It should be noted that the Public Defender's Children's Rights Centre, case management process, revealed high rate of sexual violence committed against the children . The Ombudsman suggested and demanded setting up the action plan on the field of the eradication and prevention of sexual abuse against children the field to the government; the active implementation of the Council of Europe Convention in practice together with the sub-programs. However, during the reporting period, the Public Defender's Office has not received a reply regarding these recommendations from the government. The Juvenile violence living and working on the streets is also problematic issue. In many cases, adequate actions and preventive measures are not implemented by the authorities. The Public Defender addressed the Ministry of Internal Affairs with the proposed activities for the implementation on the protection of children living and working in the street.

In 2015, the Public Defender's Office support of the UN Children's Fund (UNICEF) implemented the monitoring of the state's the sub-programs on foster care and reintegration. This type of monitoring implementation was the first time under the Ombudsman's

mandate. The monitoring revealed problems in the following areas: foster /reintegrated child's abuse, exploitation and other forms of ill-treatment, protection from the poverty and inadequate living conditions, confidentiality and individual approach to the principles of access to the quality and timely health rights, equal access to the right to education and unequal treatment issues.

During the reporting period, the Public Defender's Center of Children's Rights, in the framework of the National Preventive Mechanism along with the Special Preventive Group will monitor the implementation of the 10 small family-type children's homes in eastern Georgia. Alike with the monitoring results in 2014 in the small family-type children's homes, the problem on the capacity building of caregivers still remains, the training of the beneficiaries for independent living, child abuse and rehabilitation of child victims of violence, as well as their psychological / psychiatric services. There were cases of bullying among children, which requires a systematic approach.

Enforcement of court decisions regarding the determination of the child's place of residence in cases of their parents divorce still remains the problem in the country; the sub-programs of the State Child Care Programs cannot fully cover the needs of the child. Social services still are not equipped with sufficient human and technical resources, including the means of transportation; the improvement of the labour environment of the social workers, prevention of the brain drain of the qualified personnel and capacity building of the new staff - is an incomplete list of the issues, that is the solution of which contributes to improving the quality of child care and for which the government should make every effort.

The problem of child poverty and mortality is urgent. Despite the decrease in statistics, further reduce of the mortality rate among children fewer than 5 is still an urgent task. The Public Defender addressed the Government in order to implement preventive measures to the mortality among children under 5, indicating the necessity of working out the strategy and action plan on reduction of infant mortality; the Public Defender studied the issue of the infrastructure of public schools of the mountainous regions; The main challenge is qualification of the teachers and their need for systematic training, the introduction of a fully inclusive education program, continuity of education and quality assurance for the prison inmates and juvenile criminals; Urgent measures have to be taken to protect juvenile inmates / detainees from any kind of violence. Notably, the task of rehabilitation and re-socialization of the former juvenile delinquents has to be taken into consideration.

During the reporting period, the Public Defender's Office carried out monitoring of the juvenile boarding houses under the supervision of the Georgian Orthodox Church and Georgian Muslim confessions. Monitoring shows that current service of the boarding houses under religious denominations needs to be harmonized with the state standards of the child care services and the conditions of the boarding houses should be brought up to the close version to the family environment. It is necessary that religious boarding houses beneficiaries legal case rights and responsibilities to be given to the representative care agency.

During the reporting period, the Children's Rights Center has studied ethical and legal standards of the media coverage related to the issues of juvenile. The examination revealed the the major problems associated with the implementation of standards of following main factors 1) production and distribution of the children's direct and / or indirect identification in broadcasting programs and printed media ; 2) the cases of of unethical coverage of suicide, suicidal tendencies, or a case of sexual acts against the alleged child victims; 3) broadcasting the content of programs containing negative effects on the psycho-emotional health of the juveniles; 4) inadequate coverage of the conditions of children's rights living in state care facilities, in poverty or in inadequate living conditions; 5) a limited implementation of coverage of juvenile participation and their the right of expression in the Media.

During the reporting period, the proceedings revealed that child poverty, improper living conditions, various forms of violence against children remains a challenge. The research based on the Public Defender's representatives' visits to the regions shows that child poverty and difficult social and economic conditions should the priority of the state. According to statistics from case management of the center, children's right to education is a notable issue, as well as a variety of disorders of the existing gaps on legal status of the children under the state care. Inspection results of the Children's Rights Centre pointed out that a significant numbers of reintegrated children are living in relative poverty conditions. Poor socio-economic environment is observed in these families. Children do not have adequate housing and educational conditions, educational and home appliances, adequate food products; problem of housing is also important, accessibility to the social services and the sub-programs. In the framework of mentioned sub-programs also identified poor parenting skills reintegrated child's parents.

There is also the issue of protection the accused / convicted juveniles' rights in the juvenile penal institutions. A number of cases of violation of the rights of the child in the pre-school education are recorded that is studies by the center. The challenges of the sub-program on "Mother and Child shelter " is also recorded.

23. GENDER EQUALITY AND WOMEN'S RIGHTS

Protection of the women's rights and gender equality is still a challenge in Georgia. Despite the positive steps taken by the state, the current situation in a number of areas needs special attention.

It is particularly important that on December 16, 2015, the Parliament unanimously passed the third reading of the legislative sentence, which was prepared the on the basis of the legislative proposal submitted by the Public Defender. According to the amendment, the marriage of the 17 to 18 years person's registration rules was changed, so that only the court can permit the marriage.

Gender mainstreaming practice and challenges' study results indicated that in the executive branch of the government, the employees of the ministries as well as the State ministries the majority of workers are women, but they are rarely represented on the leadership positions. It is important to carry out and analyze gender-segregated statistics on the promotion of women for to identify and eliminate barriers. Herewith, the Ministries do not have any structural units on gender equality issues. Only three ministries have already approved person in charge, while in the rest it is compatible task for certain civil servants or the person responsible is determined if necessary.

During the reporting period, special attention was drawn to the rural development programs, if the matter of the gender equality and in generally the issue of women's participation is taken into account. According to local residents, women do not participate in the planning and implementation in any stage of the rural development program.

One of the greatest challenges of women's rights and gender equality field remains an issue of the equal participation of women in politics in Georgia. The Ombudsman supported the initiative of the women's movement 50/50, which demands different gender of the every other candidate in the election lists. Unfortunately, the parliamentary committee for legal issues did not support the initiative during the committee hearings.

It is important to note that state took improvement steps in terms of **women, peace and security.** However, monitoring results of the National Action Plan indicated that the action plan has not been reflected in the populations who have special needs in this regard. Women living near the occupied villages and IDP settlements have too many barriers to overcome, however there is an obvious lack of protecting or rehabilitation measures implemented for improvement their rights.

The challenges in health care should also be noted. Particularly the need of psychological support programs for acute displaced and conflict-affected population. Herewith, the main challenge is to access to justice, especially for the refugees and conflict-affected women. Despite the work of Legal Aid Service Agency low level of awareness in the country on services and rights for the population displaced and conflict-affected still remains.

The lack of specific activities also was a significant challenge. According the National Action Plan number of agencies reflected the activities as part of their daily work and the principle of the "Women, Peace and Security" has been lost.

The issue of the improvement of **women's labour rights** has been the subject of the recommendation of the Public Defender several times. However, the 2nd wave of legislative reform for women's labour rights improvement still has not been implemented. Effective steps have not been taken to prevent sexual harassment at work and for the creation of the legal prevention mechanism of the issue. The process of ratification of the ILO Convention N183 on Maternity Protection has not started. The issue of compensation assigned for pregnancy, childbirth and child care leave only to the woman according to the Ministry of Labour, Health and Social Affairs order still remains. [57]

It is particularly important to define the notion of sexual harassment in the law, accordingly to impose sanctioning with the relevant system. In addition, internal institutional mechanisms of the sexual harassment prevention and internal complaining rules should be defined by public and private institutions.

Among challenges faced in the process of achieving gender equality, social and economic situation of **single and multi-children parents** is especially grave. Despite defining the status of the single parent, special measures of protection and assistance still are not implemented, and status of multi-children parents still is undefined. In addition, the problems of the parent of the larger families are not in any better conditions. According to the Ministry of Justice data, statistical information about the number of multi-children parents in Georgia has not been produced, because the legislation still has not determined their status.

Media outlets have particular role in the process of eradication of discrimination and gender inequality. The Public Defender considers the integration of the gender equality issues in the public broadcaster's editorial policy as a very important step forward. In 2015, the Public Defender addressed to the Parliament with the legislative proposal that demands amendments to the Law on Advertising with the definition of sexist ad and determination system of the sanctions in the Broadcasting Law.

Despite the fact that defending **the right of the women human rights defenders** is not characterized as an actual issue, the Public Defender's Office has learned a number of cases. The cases revealed that law enforcement bodies have trouble of proper assessment of the oppression and threats of violations against the women human rights defenders. Especially important problem is to prevent the concealment of facts or mixation of it in any other type of cases. That is why it is particularly important to implement the UN General Assembly's resolution on women human rights defenders issued in 2013, making effective steps for its implementation into the national legislation as well as the revision and improvement of response practices by the relevant authorities.

The level of awareness of Georgian population with regard to **reproductive and sexual health and rights,** as well as on existing programs and services is quite low. Information-

57 According the current information working on the amendment and changes to the decree has started base on the request of the Public Defender; however the issue is still unsolved.

al vacuum is mostly encountered in the regions with settlements of ethnic minorities, which is caused by the additional language barrier. In addition, availability of the information on reproductive health in formal education programs is very meager. Accessibility to services is especially low in rural areas, among the groups that lack education and information. The spread of the information on contraceptive related use has to be done by the competent and professional staff, and the provider of the services for the population should not only be international or local non-governmental organizations.

According the UN Maternal Mortality Estimation Inter-Agency Group, Georgia is considered a so-called Group B country; Represents a country which does not have a system of registration of cases of maternal mortality. [58] Accordingly, the current challenges require much effort.

In 2015, 29 551 abortions were made in Georgia, [59] compared to previous years the dynamic is decreasing. Gender selective abortion is still an issue.

The issue of prevention and management of the cases of early marriages still exist in Georgia. Monitoring of the Measures taken by the state authorities shows that effective reaction and fulfillment of the legal regulations regarding early marriage cases remains a challenge. Herewith, the public attitude on perception of the fact of early marriage as a common practice is problematic. In 2015, 611 marriages of the minor were registered. [60] The data of the Ministry of Justice is almost three times larger, [61] regarding the registration of the child who has minor parents.

As a result of The Public Defender's Office research that order on "the approval of the child protection (referral) procedures" issued on May 31, 2010 are not being fulfilled. The referral mechanism is neglected and teachers refuse to fulfill legal duties.

Dropping out from the school on the basic level is especially alarming. According to Ministry of Education and Science in 2015, [62] 408 pupils aged between 13 and 17 were cut off the school due to the getting married reason, and the 168 case studies at the age of 18 has dropped out.

It is important to promote the protection of children coordinated along with the Social Services Agency and the Ministry of Education and Science of Georgia based on the referral document, including the fulfillment of the notification obligation. As well as raising awareness of teachers and involvement of law enforcement persons in the preventive and information spreading activities.

The reality of **violence against women and domestic violence** is very grave, femicide cases are especially alarming. Involvement of the social workers in the preventions and protection mechanism of violence against women and domestic violence is crucial, which still is not implemented in practice. The Public Defender's recommendation indi-

58 The information is available at: < http://ncdc.ge/Category/Article/2804 > Last seen 01.03.2016].
59 Letter #06/382,26/01/2016 of the Ministry Labour, Health and Social Affairs of Georgia.
60 The Ministry of Justice of Georgia letters: #7264; 23/09/2015; #01/14677; 25/01/2016.
61 The Ministry of Justice of Georgia letters: #7264; 23/09/2015; #01/14677; 25/01/2016.
62 The Ministry of Education and Science of Georgia letters: # MES 7 15 00971410; 25/09/2015. MES 8 16 00046633; 21/01/2016.

cates the importance of the strengthening and support of the social workers, because of their limited number and resources efficiency in execution of new functions is hard to imagine.

The numbers of identification of cases of domestic violence increased in comparison with the last year. According to the data Ministry of Internal Affairs of Georgia, based on the numbers of the restraining order issued in 2015 was identified 2726 acts of domestic violence, in which the persons participated are 5106. It is a positive trend, but there is raising the need of monitoring of the numbers of recurrence cases and restrictive orders. It should be noted that despite the repeating recommendation of the Public Defender on received messages of possible domestic violence or conflict in the Emergency Response Center "112" still is not analyzed.

The effective monitoring of protective enforcement measures still remains a challenge. It is important to introduce a monitoring mechanism, which would enable the relevant bodies to observe the families, where violence fact was revealed and at the same time, the creation of an information basis, which will provide with a very important information for planning preventive measures. In addition, coordination and information exchange between the competent authorities in charge of domestic violence problem is an issue. While evaluating the measures carried out by the law enforcement agencies and the Social Service Agency shortcomings were revealed.

According to the Chief Prosecutor's Office 28 cases were detected of murder or attempted murder of women in 2015. 16 cases were committed as a result of domestic violence and in 12 cases another motives were revealed. In most cases, perpetrator was a partner, former partner or a person who has been denied in partner relations. [63] The Public Defender joins the call of violence against women, violence causes and consequences of the UN Special Rapporteur on violence against women, its causes and consequences according to which all the states should work deliberately to prevent with gender-motivated women's murders, establish gender-based women's murders surveillance system, and the present of detailed analysis of the cases each year on November 25.

Along with women's murders, special attention has to be paid to the cases of the women's suicide which's alleged cause was the systematic nature of domestic violence.

It should be noted that **women drug users** have to overcome double barrier to access treatment or harm reduction programs. In addition, a number of systemic, social, cultural or other barriers are existing. The problem is no existence of the female drug users' accurate statistics that is linked witht the social stigma. In addition, the problem is the allocation of the drug user women in the victims of domestic violence shelter because it cannot provide them with needed services. It should be stressed out that the challenges of the national anti-drug strategy do not cover a gender aspect and the programs do not respond to the needs of women.

Trafficking of human being victims institutions (shelter) monitoring has revealed that shelters provide favorable situation. However, there were a number of problematic is-

63 The Chief Prosecutor of Georgia letter: #13/11306, 24/02/2016.

sues which's improvement would significantly improve the quality of service. In particular, the institution does not have standards on the arrangement of the housing and the provisions on service rules. In addition, the problem of interrupted services for individuals with infectious transmitted diseases remained unresolved.

On May 17 of 2012 and 2013, hate violence occurred to the people gathered for an **International Day against Homophobia and Transphobia** to realization their constitutional rights. May 17, 2014, LGBT community and human rights activist representatives have not gather for solidarity, because the experience of the past years and that created expectation that the state could not ensure their safety. We welcome designation of the International Day against Homophobia and Transphobia in a peaceful environment on May 17, 2015.

Changing the sex record in the civil acts for transgender people still is the problem. That is hindering barrier in education, employment or other processes.

24. RIGHTS OF DISABLED PERSONS

Persons with disabilities are continuously facing obstacles in the current reality to enjoy right to participation as a full member of social life, as a result of an unhealthy attitude toward them their rights are still being violated and due to the lack of public awareness about people with disabilities.

During the reporting period, the major challenge still remained the implementation of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) of 2006, December 13. The harmonization of the convenient with Georgian legislation is hindered, as well as its implementation in practice. Parliament has not yet ratified the Optional Protocol of the Convention that entitles the people with disabilities with the right of to addressing to the United Nations' particular Committee violations regarding the violation cases.

Despite the fact that the responsible body on implementation of the convention was identified as the Coordinating Council of the Prime Minister on the Issues of Persons with Disabilities, the government has failed to create an effective and efficient mechanism to ensure its realization in practice in accordance with Article 33 of the Convention.

Since January 2015, the Public Defender's Office, as the Convention's promoter, protector, monitor and implementation body, formed the mechanism, that included creation of the Department, the advisory board and monitoring group that will implement the protection of the the rights of persons with disabilities. For ensuring the involvement of the persons with disability in occupation of implementation mechanism, the Advisory Council shall be composed of persons with disabilities and the representatives of their organizations working on the topic. The council has already held several meetings and drafted an action plan for 2016-2017.

Legislative changes have to be praised as a step forward that aims to reform the institute of legal capabilities of the persons with disabilities. However, it should be noted that during the legislative drafting of the amendments, foresee of certain circumstances and proper consideration did not happen. This is mainly attributed to deteriorating during certain decisions of the person's mental health condition worsens (ex: hospitalization, treatment, financial transactions) the issue of the decision making opportunities and threats coming from it. The fact has to be praise negatively, without exceptional cases (ex. The City Hall of Kutaisi) of municipalities have not yet implemented the special training of the public transport drivers.

Responsible agencies did not adequately fulfilled the obligations defined by the Government' Action Plan on "Equalization of Opportunities for Persons with Disabilities for 2014-2016"[64] and the "Government Human Rights Action Plan (for 2014-2015 years)" [65] commitments.

64 Available at: http://government.ge/files/381_40157_501181_76200114.pdf
65 Available at: http://government.ge/files/382_43290_797918_4452c92c072c14.pdf

The lack of adjusted infrastructure is a problem throughout the country (transport, educational and medical institutions, banks, etc.) and means of transportation that significantly limits the possibility of independent living for disabled persons. Public Defender studied the case and issued the numbers of recommendations to the relevant responsible state agencies.

In 2015, there were several cases of unfortunate neglecting of the rights of the persons with disabilities or special needs while attending sports, cultural and recreational activities. For the people in wheel chair, among that kind of cases were the Sports Palace case of Paata Burchuladze's jubilee celebration and the opening ceremony of the European Olympic Youth Festival "Tbilisi 2015".

It is noteworthy that in terms of the realization of the right to access information equally people with disabilities still have barriers from the broadcasters, on accessibility of the news, entertainment and other types of TV programs, not providing movies in the adapted way for them as well.

The social protection, the realization of right to adequate housing and employment of disabled persons still remains as one of the most important challenges for the state. The problem is particularly acute in term of the persons who were under state care from childhood, after attained the legal age the majority of them are not ready to leave the state institutions and start an independent living, the most part even remains without accommodation.

The realization of the employment rights of disabled persons is one of the most important current challenges. The State has not developed a policy to foster employment of these persons and has not adopted a respective legislative framework that hinders their inclusion. The above-mentioned is confirmed by the fact that in the public sector out of 53 109 employed people, only 112 is a disabled person. [66]

Inclusive educational process is carried out with shortcomings. The Important part of the Children with disabilities, especially in the regions, is not involved in the process. The challenge of teaching quality and continuity still remains. The problematic issues are the number and qualification of teachers, available of the educational institutions and training materials.

As to the full realization of the right to health care of disabled persons, despite some positive trends related to introduction of the Universal Health Care Program, there still remain problems of taking into consideration well as their provision with medicines.

The part of the citizens is experiencing the barriers while determining their status of disability. The issue often is controversial procedure of the financial compensation. Although there are no reservations about the people with disabilities in social expertise, despite the high-tech research, in the national healthcare program, in particular, required examinations for to determine the status of disabled person is funded by the state, however, the topic of the examination fees at medical facility is a disputed subject.

66 The report of Civil Service Bureau in 2015, page 22; Available at : http://csb.gov.ge/uploads/2015_GEO_web.pdf

During the reporting period, there had been repeated stigmatizing and abusive cases of the disabled people, statements containing hate speech. Ombudsman issue a public statement after the fast-food establishment "KFC" published the promotional photos, which contained the stigma and abusive attitude towards mentally disabled persons. A disturbing trend of hate speech from the public figures, including politicians was noted. Public Defender called on all parties, especially the high public officials to refrain from stigmatizing and discriminatory announcements against people with disabilities. Moreover, they should ensure equal protection of their rights in every way and promote the awareness raising activities for the public on the issue.

Ensuring the necessary services for the children with disabilities remained a problem. We should consider neglecting the needs assessment of the problem as one of the reasons of causing the issue. As a result services provided by the state program on "Social Rehabilitation and Child Care" within its sub-programs is not available for certain groups of people. It is necessary to change this practice, and every child that needs to be involved in the program and the demand should be fully covered.

Besides the above, the lack of information about existing programs and services is a serious problem, especially for the people living in the regions. Many of them are not aware about the provided services (including supplementary materials) and demanded submission of the documentation and other procedures by the state program. [67]

67 Case N2993/15.

25. RIGHTS OF THE OLDER PERSONS IN GEORGIA

The older population belongs to especially vulnerable group in Georgia. Therefore, one of the important directions of the Public Defender's Office occupation is to monitor the legal status of the older people.

The Most of the older people do not have access to adequate housing, social services and protection mechanisms, and therefore is under threat of poverty, lack of shelter and isolation. The violation cases against them are quite often. In addition, there is no violence identification, prevention and victim protection mechanism.

The state still does not have an effective policy strategy for to protect the older people, their rights and social welfare. Existing programs and services are not focused on the specific needs of these individuals. A large part of older persons live below the poverty line, the state provide only minimum subsistence allowance or boarding house service. The actual demand contradicts to the offered specialized daily compliance service. Persons seeking and waiting in queues for admission proofs it right. State programs do not provide alternative care services for older people, such as home care.

Public Defender introduced the monitoring results of daily specialized institutions for the older persons. The report covers Tbilisi and Kutaisi boarding houses for the older persons, as well as 5 specialized daily services provider for the older persons, the monitoring revealed significant irregularities, which gives assume that current situation in boarding houses is human degrading. The public defender addressed to the responsible agencies with recommendation to properly realization the rights implement for older persons under state care, ensure elimination of the existing gaps in the institutions and guarantee constant supervision of the mentioned institutions.

The Public Defender of Georgia believes this is a commendable fact that the Healthcare and Social Issues Parliamentary Committee formed and coordinated an interdisciplinary working group on the topic of aging. The Ombudsman considers that working on the policy documents and developing an action plans needs to be accelerated, and it's too early to talk about the effectiveness of the group's activities.

The monitoring results of daily specialized institutions for the older persons revealed a number of institutional violations, as well as defects in the existed regulations and harmful practices. The Ombudsman considers that the rights of the older persons' under state care are not properly realized, their living standards are not adequate, and in some cases they are the victims of ill-treatment. The state is not fulfilling the provisions stated in international documents, including "the Madrid International Plan of Action on Ageing (MIPAA) and the Political Declaration ". Internal regulations need to be improved. Meanwhile, the problem of enforcement of existing regulations and shortcoming of current supervision mechanism should be eliminated.

The monitoring results of daily specialized institutions for the older persons revealed that international and national regulations requirements, including the Order N01-54

approved by the Ministry of Labour, Health and Social Affairs, July 23, 2014, defining minimum standards, are fulfilled partially or not at all.

Among the seven inspected specialized institutions the current situation of the boarding house "Young Teachers' Union" deserves positive evaluation, where despite the lack of information from the regional social services, low involvement of the care agency in the process for the older persons services with low-quality and deficit the supervision, the care services are provided with fulfilling of the international and national standards, along with the protection and realization of the rights of older persons .

To all the other older persons' daily organizations the security of the beneficiaries, their emotional and psychological well-being and mental health care, as well as the level of knowledge of the service providers, legal regulations of the violence and its standards, is extremely low.

In addition, the monitoring revealed the following main problems: ill-treatment of the beneficiaries, non-existence of the standards of supervision mechanism, deficiencies related to the record-keeping, lack staff capacity and the low professional qualifications, malfunctions of the feedback mechanism and low level of beneficiaries' awareness, not adapted physical environment and infrastructure, social passivity of the beneficiaries and threat of the isolation from the society, timely and adequate medical care related problems and medication access problems.

Care for the older in most cases on the municipal level is limited to one-time financial assistance and does not have a systematic character. In addition, there are approaches focused on accessibility of services. In most cases, the beneficiaries of some programs of the budget in terms of the medical and social welfare are other registered persons on the territory of self-government; the older are target of these programs only in some cases.

26. RIGHT TO ADEQUATE HOUSING

High numbers of the applications on the right to adequate housing of the citizens was maintained during 2015. Although one of the objectives right of National strategy for the protection of human rights in Georgia (2014-2020 years) is providing the adequate housing according the state liabilities and solving the homelessness-related issues. [68] There is no indication of the mentioned strategy and plan of solving the issues in the Action Plan of the Government of Georgia on the Protection of Human Rights for 2014-2016. [69] Also it is noteworthy that the Human Rights Action Plan's (for 2016-2017 years) project does not include the realization of the right to adequate housing-related activities.

As rule Local authorities do not have the document, which would be serves registration rules of the homeless persons. The exception is the municipality of Tbilisi. There still remains a problem of the lack of centralized, as well as regional, databases of homeless people. The safety of the persons occupying the various facilities, their living conditions and use of the state program by the vulnerable households remains the problem. In addition, the problem of lack of finances allocated to state and local budgets targeting assistance for the homeless persons.

The state delegated the obligation to local authorities to provide housing to the homeless. Requested information from 44 municipalities across the country shows that last year, some developments had taken place. 50 family-oriented social housing were built in Khelvachauri, 2016 budget of Tskaltubo has allocated money (250, 000) for rehabilitation of and old state-owned building and facilitation of shelter. The arrangement of financial resources (1 million) for shelter (for 50 families) is mobilized in Kutaisi budget, which should be considered as a positive development.

In municipalities where the sheltering service is not functioning, the accommodation is satisfied by paying fee for the flat in the framework of the program, but there were occasions when some municipalities had no homeless people helping policies. It is noteworthy fact that in 2015 the police eviction mechanism was canceled [70] that worsened these persons' human rights in the arbitrarily occupied various facilities.

In 2015, the City Council of Tbilisi approved a draft resolution proposed by the Tbilisi City Hall, as a result the registration procedure and the homeless person's asylum pro-

68 Decree #2315 of GoG on approving "the National Strategy for the Protection of Human Rights in Georgia (2014-2020 years) In April 30, 2014.

69 Approving act of the Action Plan of the Government of Georgia on the Protection of Human Rights for 2014-2015 and Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015) on creation and approval of coordination council's statute by the GoG decree #445, issued on July 9, 2014.

70 Article 172 paragraph 3 has been deleted from the Civil Code of Georgia. Accordingly the order #747 (24.05.2007) of the Ministry of Internal Affairs of Georgia on „Approval of the Rule of Eradication of the Infringement in to the Right Ownership of Real Estate" .

cedures determined.[71] The Public Defender's Office was involved in the proposed version of the resolution committee review process. The local government was informed of the remarks proposed by the Public Defender during initial discussions that would have significantly improved the draft legislation. As a result of the accelerated pace of discussion the document was approved, however some parts of it is in contrary with the human rights.

The Ombudsman, presented friend of the court's opinion (Amicus Curiae) to the Constitutional Court on the persons living in the state ownership facilities, database registration of the persons living in vulnerable families and providing them with the subsidies.

In the territory of the Autonomous Republic of Adjara, the assessment socio-economically the persons living illegally in the territory of the former 25th and 53th battalions and suggestion the subsidies suitable for them remains the key issue.

Building the Lilo shelter is a step forward from the government in terms of the implementation of the right to adequate housing, however, needs of proper attention and efforts towards integration arraignments for the beneficiaries in the society.

71 Order of Tbilisi City Council #28-116 (27.11.2015) on "Approval of the Rules on Homeless Registration and Shelter aAccommodation in the Territory of Tbilisi Municipality ".

27. RIGHT TO SOCIAL SECURITY

As in previous years in 2015 high demand of inclusion in the social security program from the families below the poverty line remained high. From May 1, 2015, the new methodology of the assessment is carried for the socio-economic conditions of vulnerable families (households). Within the new methodology, gradations of the rating points and determination appropriate the amount of the allowance was defined. In addition, any vulnerable family with no more than 100 thousand ranking points is getting additional 10 GEL for each child. However, it must be noted that assigning of additional 10 GEL allowance for each child cannot be considered as a sufficient measure to fight against the child poverty.

The new methodology of evaluating social and economic conditions of the socially vulnerable families does not require indication into family declaration of the results of the visual inspection of the family by the competent official of the agency. This is a commendable fact as of evaluation of financial conditions of beneficiaries based on the subjective evaluation of social agents does not reflect the reality. However, according the new methodology the visual inspection declaration part of the living floor material designation of the family house has a great importance (only the capital of the households). This particular record in the methodology and the fact that references to the parquet flooring materials are directly and substantially related to the changes of rating points can be considered as a shortcoming of the new methodology, as it does not allow the proper identification of vulnerable groups and unreasonably increases the number of points granted.

Speaking of methodology gaps the attention should be paid to the identification value of the minimum consumer basket in the formula and the subject of its inflexibility. In the moment of defining the price of the consumer basket formula was 149.6 GEL. Accordingly, the mentioned record is problematic since the minimum wage will vary with changes in the minimum consumer basket, respectively, in the case of calculating the minimum wage increase the methodology of the formula given in the form of a fixed value of the minimum consumer basket will remain unchanged.

According the statistical data of the Social Service Agency in 2014 and 2015, the households and generally the population of allowance recipients decreased and therefore, the part of the families, who previously was the recipient of the allowance, currently cannot receive the aid. Number of applications received by Public Defender's Office was referring to the fact that despite the unchanged socio-economic status applicants were reevaluated and determined with more scores, accordingly they do not receive the allowance any more. The above statistics could be related to the changes in the methodology and not with the reduction of poverty in the country. Accordingly, the need to improvement of the methodology is in the agenda.

The Ombudsman's 2013-2014 Parliamentary reports underlines the fact of difficult socio-economic living conditions health care access, and living surroundings of the people

in remote mountainous areas. The law, which should establish benefits for people living in the mountainous regions, came into force from 1st of January, 2016. The new law on "Mountainous Regions Development" is directed towards the welfare, raising the standard of living, employment, economic and social conditions improvement of the population in the mountainous regions. In particular, tax and social benefits, creation of the mountain national council and the high mountainous region development fund.

Public Defender welcomes privileges for residents the mountainous regions and considers that the adoption of this law is a progressive step forward, however underlines the possibility of the law not working as effectively as it was its initial main purpose. According to the legislation, the mountainous region person's status is granted if the person actually living in the mountainous village in a total of 9 months or more for a period of the calendar year. These provisions create problems for the seasonally migrated population. For example, In Tusheti snow cover duration is 5-6 months and during this time the access road is closed and communication is terminated with administrative center. Consequently, due to objective circumstances the majority of the population cannot stay more than 6-7 months to the main place of residence in a year. Accordingly, it is necessary to amend the legislation and instead of 9 month, indicate 6 months in an exceptional ground of granting the status of residence in the mountainous region, and / or Article 3 of the paragraph seven the exceptional reasons on the keeping status should be added with the temporary migration and natural condition.

Druing the meeting in the reporting period the population of Imereti, Racha-Lechkhumi, Svaneti, Guria and Pshavi population notified the office of ombudsman about the problem of timber usage in several areas. According to them, obtaining a permit for the fuel and timber resources is complicated and protracted, which is another burden for the rural population that already live in difficult socio-economic conditions. The Law on "the Forest Code" is outdated and does not meet the requirements of the population and sustainable forest development.

28. RIGHTS OF IDPs

During 2015, the Public Defender's Office and the project[72] working along with it were actively monitoring the situation of internally displaced persons across the country. More than 700 visits were carried out in the compact settlements of IDPs and more than 900 IDPs were provided with legal consultations.

Process of Durable Accommodation of IDPs in 2015 1 855 families were provided with withdurable housing[73] house was purchased ("rural house") for 479 families, under the program a mortgage loan was covered for 49 families, 1327 families were given rehabilitated and resettled new buildings . 55 450 families are still in need of accommodation. [74] 660 families were provided with temporary accommodation within the program for rental housing allowance.

On March 6, 2015, the order N320 was amended with the provision on durable accommodation for the purposes of the alternative solution[75] - for one-time financial assistance of up to 20 000 GEL for to cover IDPs mortgage loan. Deadline of the application for to use alternative solution possibility was defined as one month, [76] the public defender considers it as unreasonably low. [77] However, the IDPs Issues Commission does not considered the need of extending the term for mortgage loan applications. [78]

The fact that according to the №320 decree IDP families that were leaving in the collapsing facilities and in the building that was threat for their life or health were prioritized and therefore their issues would be discussed at first is by all means positively assessed decision, herewith, transferring ownership of buildings that were occupied legally was one of the recommendations of the Ombudsman.

In 2015 resettlement processes were the most active in Tbilisi. In December, The ministry transferred the living facilities to the 561 families on the Tbilisi sea area, the so-called "Olympic Village" redeemed from developers and new buildings constructed with modern standards. 10 010 IDPs applied with the demand of living space to the ministry. [79]

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72 Project "Enhance the Capacity of the Public Defender of Georgia to Address the Issues of IDPs" funded by The United Nations High Commissioner for Refugees, the British Embassy to Georgia.

73 Letter N01-02/08/31048 (Issued in 10.12.2015) by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

74 Letter N01-02/08/31549 (Issued in 15.12.2015) by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

75 Decree N309 (06.03.2015) of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

76 The information is available at: < http://mra.gov.ge/geo/news/show/189/8032 > [Last visited 26.04. 2015]; the information is available at: <http://mra.gov.ge/geo/news/show/189/7523 > [Last visited 26.04. 2015].

77 The recommendation N04-9/3200 (28.04.2015) of the Public Defender of Georgia.

78 Letter N01-02/08/12942 (Issued in 18.05.2015) by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

79 Statement of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia on division of living space in Tbilisi: <http://mra.gov.ge/geo/news/show/189/10096>.

PROCESS OF PRIVATIZATION OF THE LIVING ACCOMODATION

One of the forms of the durable accommodation is transferring the ownership to the IDPs living in compact collective housing centers (state-owned collective centers).

125 375 IDPs were registered in the former compact accommodation facilities. [80] In 2015 the process of handing over the private ownership living spaces for the IDPs started all over the country, this process has started on 210 units and is still in process, that fact deserved the positive evaluation. In 2016, 75 units will be privatized. [81]

In 2015 by the monitoring process of the privatization certain shortcomings were found. There are many units that do not meet the minimum standards of adequate housing, however the private ownership has been transferred to the IDPs.

Rehabilitation process of collective centers remains a problem. Most of them are not rehabilitated. While at the places in which the repair work was carried out, the IDPs complained about the quality of the repair work. We positively assess fact that the IDP's awareness of the voluntary nature of privatization process and about getting the alternative accommodation in cases of renunciation the possibility of privatization. [82]

INTEGRATION OF RESETTLED IDPs

2015 monitoring[83] showed that the IDPs' situation has not improved in terms of livelihoods and access to employment. The state still has not implemented the employment promotion programs. Local infrastructure does not allow fulfillment of the basic socio-economic needs of IDPs. The main source of income still is a social allowance for the vast majority of the refugees settled in the regions.

DISPOSABLE MATERIAL AID

According the 2015-2016 state action plan [84]on issues of the Internally Displaced Persons – IDPs, the state will provide one-time cash assistance for IDPs in cases of emergency, in accordance with the established criteria**.**

Statistics show that the displaced families are actively applying for the disposable material aid. It should be noted that there is no specific criteria that should assess an urgent necessity of the displaced families. In addition, there is no certain maximum amount assigned to be paid the IDPs, that give large discretion for every appraising each application to the commission studding IDP issues.

80 Letter N01-02/08/31549 (Issued in 15.12.2015) by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

81 Letter N01-02/08/32332 (Issued in 28.12.2015) by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

82 The result of the survey, comparing to 2014 IDPs answer the question regarding the being informed responses positively.

83 The monitoring was conducted in the following objects: Municipality of Marneuli Settlement Shaumiani. Municipality of Gurjaani Village Bakurtsikhe, Municipality of Tetritskharo village Tsintskharo, Municipality of Chkhirotsku village Potskho-Esteri.

84 Order N127 article 2.2.4of GoG issued in 04.02.2015.

29. RIGHT OF CONFLICT-AFFECTED POPULATION

During the reporting period in 2015, the Ombudsman and representatives of the ombudsman's office were actively monitoring the rights of conflict-affected communities living near the line of occupation, as well as living in the occupied territories; series of meetings were held with local communities, civil society, local and central government officials.

RIGHT OF THE POPULATION LIVING NEAR THE BORDERLINE

Important projects were implemented during the reporting period for the implementation of the socio-economic rights of the population living near demarcation line: the gasification infrastructure works in 50 villages was finalized; irrigation water wells and drinking water reservoirs was facilitated; 29 schools were rehabilitated and one new school was built; Graduate studies of more than 700 students were funded in 2015-2016 academic year; Net-Books and notebooks were given to the first-graders and tutors of first-graders. [85]

Despite these important social projects implemented in 2015, socio-economic status of conflict-affected villages in Shida Kartli and Samegrelo living near the demarcation line remains vulnerable. The main problem for the local population still remains a source of income, because the wire fences and cut off irrigation water the locals can no longer follow the traditional agricultural activities. It is necessary to developed agricultural projects that will be adjusted particular to the specific needs and opportunities of the conflict-affected communities.

The population that has not received any assistance for damaged homes and lost property from the states still remained in Shida Kartli region during 2015. The village Zardiaantkari has to be specially noted as was occupied until 2012.

In this regard, on 17 July 2015, the Ombudsman address with a proposal to the Temporary State Commission on responding the special need of conflict-affected population (hereinafter referred to as State Commission) co-chairs. The Public Defender is still not received the comprehensive response on the issued proposal from the co-chairs of the State Commission.

The military exercises in the occupied territories and illegal detentions on the borderline still remains as a serious threat for the residents of the villages living near the demarcation line. According to official statistics, in 2015, on the demarcation line of the so-called South Ossetian was detained 163 people (in 2014 - 142). In cases of Abkhazia 341 detainee cases were recorded (in 2014 - 380).[86] However, the number of detention

85 The letter N198of The State Minister for Reconciliation and Civic Equality to the chairperson of the Human Right Parliamentary Committee (01.02.2016) .

86 The letter N383603of the State Security Service to the PDO of Georgia.

is higher on demarcation line as Georgian state security cannot record the detention cases of Gali population (According to the Abkhazian and Russian sources the number is 2400 people). [87]

It is still impossible to register land ownership or legalize the property in the rural villages near the dividing line. Even those who have some documentation cannot pay the fee of legalization, due to severe financial problems, that at least costs 150 GEL. The houses and other buildings are not registered along with the land ownership.

The Public Defender addressed with the recommendation to the Ministry of Justice, that the population affected by the wire fences use all legal mechanisms to protect their rights. In 2016, the government approved the draft law, which aims to simplify the registration process of the land ownership and make it more accessible for citizens. [88]

RIGHT OF THE POPULATION LIVING IN THE OCCUPIED TERRITORIES

In Abkhazia and in so-called South Ossetia the fact of violation of right of health care, education and transportation still continues. Ethnic discrimination, illegal detention and so on, have regulate character. During the reporting period, the situation in terms of the civil and social rights was grave.

The problem of access and education in mother tongue is acute in Gali. According the decision of the de facto administration, in 2015-2016 academic year, 1- 4 grades started learning classes in Russian language, while hours assigned for Georgian language studding were reduced in the remained Georgian schools. Herewith, each following first grader also will study in Russian language.[89] Accordingly, in the nearest future studding in Georgian in the Gali district schools will stop. [90]

Switching to the teaching in Russian language seriously deteriorated the quality of education. According to the information of the Public Defender, some families had to leave their place of residence and had to move children in the area controlled by Georgia to continue their studies in their native language.[91]

87 Crossing intensively og the borderline of the Abkhazian- Georgia should decrease. Information agency "Sputnik Abkhazia" (17.03.2016). The information is available in Russian language: <http://sputnik-abkhazia.ru/Abkhazia/20160317/1017555465.html#ixzz439N4TnYk> [Last visited 18.03.2016].

88 Information about the initiative of the Ministry of Justice is available at: <https://www.youtube.com/watch?v=nqkrgCLkMVw>; the barriers for land registration is abolished, The ministry of Justice 15.03.2016. Information I available at : <http://justice.gov.ge/News/Detail?newsId=5133 > [Last visited 26.02.2016].

89 The education process in Gali municipality will be conducted under the provisions of Ministry of Education and Culture of Abkhazia. The information is available in Russian language: <http://www.apsnypress.info/news/vo-vsekh-shkolakh-galskogo-rayona-obuchenie-budetvestis-po-standartam-minobrazovaniya-abkhazii/> [Last visited 15.01.2016]; Interviews with contact persons, September- October (2015).

90 "Living in Limbo", "Human Rights Watch", 2011, page 48.

91 Abkhazian A / R Ministry of Culture and Education , Gali Resource Center.

According to international law, education must be physically and economically accessible, without discrimination and affordable for everyone. The form and substance of education, including curriculum and teaching methods should be appropriate, culturally relevant and qualitative for students and parents. [92]

From the first April of 2016, the new regulations for non-citizens of Abkhazia will come into force, which, among other things, regulate the prerequisites for getting a residence permit. [93] These regulations will directly reflect with the population in the Gali who does not have the so-called Abkhazian passports. It is likely that many of them will also fail meet requirement for so-called Abkhazian citizenship, even the criteria of getting the residence permit and may be forced to leave their place of permanent residence. For example, a residence permit may be refused or be annulled, if the person was not in the Abkhazia during 6 months. [94] This is problematic for the Gali district resident students who are studying abroad or on the territory controlled by Georgia.

In 2015, application to the Public Defender's Office gender-based violence from the Occupied Territories was increased. Case study and additional research results revealed that one of the difficult grave and, at the same time, tabooed problem in society is domestic violence.

In December 2015, the de facto parliament adopted the Law on Health Care, which completely prohibits abortion in the territory Abkhazia, even if the fetus threatens the mother's health. [95] According to international law, the banning of abortion in all cases is infringement of the woman's health and the right to privacy, in some cases is it considered as violation like a cruel, inhuman and degrading treatment. [96]

Like in previous years, freedom of movement was limited near the occupation line in 2015 as well. The inhabitants of Abkhazia are allowed to come to the territory controlled by Georgia by Abkhazian passports and through check points only. However, some segments of the population do not have Abkhazian passports; accordingly they have to come around the dividing line by bypassing the checkpoints. This increases their risk of their arrest.

As for the so-called South Ossetia's inhabitants, the dividing line is completely closed, beside the three exceptions: the population of Akhalgori is moving by the passes issued by de-facto administration through Akhmaji-Mosabruni crossing point (not all the inhabitants); the residents of district Java, village Kardzmani are moving through the cross point of the village of Perevi, Sachkhere District; And in 2015, conditions of the move-

92 UN Economic, Social and Cultural Rights Committee General Comment N13, paragraph 6.

93 „The Law on Foreigners Legal Status in Abkhazia has been Signed The information is available in Russian language : <http://presidentofabkhazia.org/about/info/news/?ELEMENT_ID=3531> [Last visited 05.02.2016].

94 Article 11 (10).

95 "Abolition of Abortion" Elena Zavodskaia, Radio "Ekho Kavkaza" 18.12.2015, The information is available in Russian language: <http://www.ekhokavkaza.com/content/article/27436256.html> [last visited 11.01.2016].

96 UN High Commissioner for Human Rights Information Series on sexual and reproductive health and rights, abortion , The information is available in English: <http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf> [Last visited 08.02.2016].

ment of the Gori municipality near the village of Zardiaantkari point become easier, for only the population of Zardiaantkari who holds the so-called South Ossetian passport (only 17 persons). [97]

On occupational line, on both Abkhazian and South Ossetian sides, still continues faulty practices of the arrests of the population living on the Georgia's controlled territory and the inhabitants of occupied territories. Public Defender revealed the facts of detaining the babies and parents, school children, patients or elderly persons.

On 10 March of 2016 the government of Georgia and de facto authorities of the Abkhazia and South Ossetia reached an agreement to release prisoners on the principle - "all for all". This move made possible the release of persons who have been unlawfully deprived in the prisons of Tskhinvali and Sokhumi. Overall 18 prisoners were released, including 4 by the Georgian side, 10 from Sokhumi side and 4 from the de facto authorities in Tskhinvali.

It is a significant achievement to decide to reopen the Incident Prevention and Response Mechanism meetings in the Gali district, the decision were made in the framework of the 35th round the international discussions in Geneva on March 22-23, 2016. The Public Defender continuously has addressed to the Georgian delegation to the Geneva talks with the recommendation and to be flexible and take effective steps to restore this mechanism in the Gali district.

97 „Only 17 Inhabitants of the Zardiankhari Can Cross the bBorderline, Infomration Agency "Sputnik Iujnaia Osetia" 15.10.2015, The information is available in Russian language : <http://sputnik-ossetia.ru/South_Ossetia/20151015/723311.html> [Last visited 02.02.16]

30. SITUATION OF RIGHT OF THE ENVIRONMENTAL MIGRANT PERSONS

According to the Georgian legislation eco-migrants are not considered as internally displaced persons and their right are not covered by the this field of legislation, there is no legal status of migrants on the level of legislation and the term Eco migrant families is used only as a concept of settlement only. [98]

According to the ministry, [99] 1 777 000 GEL has been spent on the resettlement of migrants during the year 2015. In particular, 1 010 applications have applied for the living space, while 91 of environmental migrant families actually got it. Mentioned figures reveals lack of states the efforts in for this matter and the its extremely small scale.

Matter of the fact that the eco-migrants still are living in state-owned houses, they do not have a feeling of private ownership of their own living space and do not have discretion on real estate they currently possess. Also in some cases the legal owner of the property has to allow the carrying out the rehabilitation works that is additional impediments to the family. According to the Ministry, [100] the real estate purchased during 2004-2012 for the eco-migrant families will legally be transferred to them during 2016.

23 people are dead / missing during the June 13-14, 2015 Vere disaster in Tbilisi, [101] many families were left without the house. The ownership / use of the land, garages and vehicles owned by the part of the inhabitants were destroyed. According the provided information[102] the houses were damaged / destroyed for 150 families, and the car - 157 cases. The city's infrastructure was damaged largely. The tragedy has united the entire society; a significant financial contribution has been mobilized. According to information provided [103] 20 733 029.60 GEL was collected by the private sector. the Tbilisi City Council has developed the rules for providing the housing and other form of financial aid for the for damage reparation. [104]

The Public Defender's Office in the proceedings several statements made by the applicants indicating that their houses are no in certain area of disaster, but were damaged by the natural disaster, and the damage still is not reimbursed. In the resolution the city council indicates that in such cases[105] the district administrations of Tbilisi are imple-

98 "Affected by natural disasters and displacement of families subject to the approval criteria of the resettlement and resettlement issues Regulatory Commission " order N779 (13.11.2013) of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

99 The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia letter N03-01/03/2017 (21.01.2016)

100 The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia Letter N03-01/03/2017 (21.01.2016).

101 The letter N08/10537-8 (17.009.2015) annex four of the National Property Management Agency of Tbilisi municipality.

102 The letter N08/10537-8 of National Property Management Agency.

103 The letter N06/15212284-1 of Tbilisi City Hall.

104 Decree №17-66 of the City Council of Tbilisi (05.07.2015).

105 Ibid Article 1.4

menting appropriate measures.

Resolution recognizes individuals as recipients of other types of financial aid who for the purposes of the resolution is not considered to be the disaster affected family, but they were living in a particular territory before the natural disaster and their unlawful possession residential area was destroyed during the flood. According the information of National Agency for State Property, [106] in case mentioned above families already get assistance by the local district governments. The process is still underway and data on the final amount of the assigned funds does not exist at this time.

In addition, it is noteworthy that the persons whose land or garages were damaged during the flood are not a target area of this resolution. According to the agency, the families who owned land or garages that was damaged as a result of the flood were not reimbursed in practice. [107] These circumstances are still problematic.

106 Interview report with the head of Privatization Department of the Tbilisi City Hall Property Management Agency N.Esitashvili (11.03.2016).

107 Interview report with the head of Privatization Department of the Tbilisi City Hall Property Management Agency N.Esitashvili (11.03.2016).

31. ON REPATRIATION OF PERSON'S FORCIBLY DEPORTED FROM THE SSR OF GEORGIA BY THE FORMER USSR IN THE 1940s

According to the data of December 2015, [108] in the framework of the Georgian law on "Repatriation of Person s Forcibly Deported from the SSR of Georgia by the Former USSR in the 1940s" in the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is registered 5 841 persons. Only 1 533 of them were granted the status. The data was the same during the last year as well.

As for the granting the citizenship to the person' with status of repatriate, according to the information [109] provided by the State Services Development Agency of the Ministry of Justice, presently only 472 persons with repatriate status have been granted the citizenship of Georgia.

In 2014 repatriation strategy for Meskhetians was approved that should be considered as a step forward. However, an action still is not confirmed. According the information of the Ministry Internally Displaced Persons from the Occupied Territories [110] the working process on the action plan project is completed and will soon be adopted after the review and remarking by the appropriate agencies.

In 2015, only one meeting was held by the inter-governmental council working on Repatriation of Person's Forcibly Deported from the SSR of Georgia by the Former USSR in the 1940s, project action plan presented during the meeting. We believe that inter-governmental council working on repatriation should make more intense steps and find effective measures to solve the problems of the repatriated population.

Despite the existence of the legal framework and state's readiness to implement the repatriation process, a number of challenges still remain that needs comprehensive approach to overcome.

108 The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia letter N02–01/05/1884 (21.01.2016).

109 The Public Service Development Agency of the Ministry of Justice information- letter N01/17344 (27.01.2016).

110 Session of the inter-governmental council working on Repatriation of Person's Forcibly Deported from the SSR of Georgia by the Former USSR in the 1940s (30.12.2015).

32. RIGHT OF FOREIGNERS IN GEORGIA

In order to effectively management the migration, in 2015 migration strategy for 2016-2020[111] and implementation action plan[112] for its execution came into force. Unified migration analytical system has been created. [113]

The Public Defender in 2014 Annual Report was identifying the legislative issue of the visa issuance procedures. [114] In Georgia the Electronic Visa Portal activated from 2015, [115] based on which foreigners are entitled with the rights to receive e-visa in consulates of Georgia in abroad.

During the previous reporting year, compared to 2014, appealing to the PDO office decreased, as less foreigners or stateless persons were declined for the residence permit and citizenship based on national and / or public safety concerns.

The legislative acts approved in 2014 defined cases exhaustively, when a certain person's request can be declined based on national and / or public interest protection according the law. [116] Based on the statements studied revealed that the State Agency was not pointing to the certain refusal provision while declining residence permit and citizenship request, regarding the conditions causing the existence of national and / or the need to protect public safety. In such cases, the interested parties are evicted from the right to appeal the in the court or to submit evidence to that proved it wrong, because these persons do not know the real legal reasoning of the refusal.

111 Decree #622 (14.12.2015) of the GoG on "Approval of the Action Plan on Migration Strategy for 2016-2020"

112 Action plan of 2016-2017 of Migration Strategy for 2016-2020.

113 Decree #352 (17.07.2015) of GoG on " Creation and Approval of the Administrative Rulings on Developing of a Unified Migration Analytical System " .

114 „Annual Report of 2014 of the Public Defender of Georgia on the Situation of Protection of Human Righs and Freedom" Pages: 877-890.

115 Law of Georgia on "the Legal Status of Aliens and Stateless Persons" Article 6 paragraph 1^2 .

116 1) Organic law of Georgia on „Georgian Citizenship" Article 16, paragraph 2; 2) Law of Georgia on "the Legal Status of Aliens and Stateless Persons" Article 18, paragraph 2 .

33. SITUATION OF RIGHT OF ASYLUM-SEEKERS, REFUGEES, AND PERSONS WITH HUMANITARIAN STATUS IN GEORGIA

Numbers of the asylum-seekers, refugees, and persons with humanitarian status applying to the Ombudsman's Office increased comparing to the previous years.

It is important to note that the asylum legislative has been improved during this reporting period, the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia initiated the formulation of the draft law on "International Protection"

By the data of 2015 December 31, [117] 1273 refugees and persons with humanitarian status are living in Georgia. Out of the number mentioned 232 persons have been granted refugee status based on prima facie principle, [118] 139 persons are refugees, while 902 – have humanitarian status. As for the asylum seekers, in the reporting period 1449 persons applied for it to the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. Out of this number the majority was Iraqi (650 persons), Ukrainian (404 persons) and Bangladeshi (80 persons) citizens.

During the reporting period, the rate of granting refugee and humanitarian status has increased significantly compared to previous years. According the existing data for December 31, 2015, positive decisions were made in 75% of the reviewed cases (in 2014 - 37%). As for the numbers, 69 persons were granted refugee status in 2015, and the humanitarian - 878 persons (in 2014, respectively, 29 and 105 persons).

In 2014-2015 asylum seekers' identification, receiving on the boarder, transferring and cooperation rules were implemented on the state border. [119]

During the reporting period, was implemented the monitoring of the decisions of Georgian state border, the asylum seeker and humanitarian status holder prisoners of Ministry of Corrections and Legal Assistance of Georgia, asylum seekers reception center, temporary placement center of the the Migration Department of the Georgian Ministry of Internal Affairs, processed asylum seekers cases in the common courts.

In the framework of the monitoring the identification of asylum seekers on the border, including researching the information about them and after the supervision of the fulfillment the criteria of the order issued by the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia along with the Ministry of Internal Affairs of Georgia several issues during the visits were identified:

117 The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia letter N1282/16, 27.01.2016.

118 Latin: At first view.

119 The order N1033–N2975 (23.12.2014) issued by the Ministry Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia along with the Ministry of Internal Affairs of Georgia .

police officers' lack of information about the measures have to be implemented while the asylum seeker is passing through on the border.

Amenities of the border police and border checkpoints buildings are not in order with the standards. In most cases, the interview is not conducted in a confidential environment.

Based on the information collected during the monitoring revealed that frequently the foreign nationals are refused for to enter the country due to not having the visa or lack of other relevant documents according the law.

In cases of monitoring the common court system technical aspects of the trial was in focus. Lack of information about the meetings and the hearing procedures of the parties were revealed. The hearing where the side did not have any representative / lawyer is especially noteworthy. In this regard, an important legislative change have been implemented in terms of to free legal aid for the asylum seekers, refugees and persons with humanitarian status, which came into force in 2016.

During 2015 monitoring of foreign citizens residing in the Department of Corrections N8[120] and N5[121] establishments was implemented. It should be noted that the data and personal information provided by the ministry on asylum seekers was not complete and did not coincide with each other.

120 N8 penitentiary facility of the Ministry of Corrections and Legal Assistance of Georgia locate in Tbilisi, Gldani District VII, 2nd km.

121 N5 (women's) penitentiary facility of the Ministry of Corrections and Legal Assistance of Georgia located in the Gardabani municipality, village Mtisdziri.