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ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

2014

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Introduction

This document is the report of the Public Defender of Georgia on the situation ofhuman rights andfreedoms in Georgia in 2014 and covers a wide spectrum of civic, political, economic, social and cultural rights. It also highlights positive and negative trends in the area of human rights for the reporting period and brings together key recommendationsdeveloped by the Public Defender to various branches of government.

This document has been developed in accordance with Article22 of the Organic Law of Georgia on PublicDefender and submitted to the Parliament of Georgia.

2014 was marked with a number of significant events that may contribute to a notable improvement of human rights standards. On 27 June 2014, the Association Agreement was signed between Georgia and the European Union (EU) and ratified. The enhancement of political and economic cooperation with the EU implies, among others, the approximation of the Georgian legislative base with the EU legislation, including in the sphere of human rightsprotection.

On 30 April 2014, the Parliament of Georgia approved the National Human Rights Strategy of Georgia (2014-2020), the development of which was proposed by the Public Defender as early as in2012.

The government of Georgia also approved a corresponding action plan. It should be noted that the establishment of high standards of human rights protection in Georgia will largely depend on the effective implementation of the abovementioned strategy and its action plan.

On 2 May 2014, the Law on the Elimination of All Forms of Discrimination was adopted, specifying the Public Defender of Georgia as the authority responsible for supervising the elimination of discrimination and ensuring equality. The adoption of this law is indeed a step forward towards eliminating intolerance for various minorities, promoting the culture of tolerance and establishing equality in the country.

On 27 October 2014, the government of Georgia named the Office of Public Defender (PDO) as the authority to promote andto monitor the observance and implementation of the UN Convention on the Rights of Persons with Disabilities. The 2014-2016 government action plan to ensure equal opportunities for persons with disabilities was also adopted.

A welcome move on the part of the Georgian government was the signing of the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

Yet another welcome move was the accession of Georgia to the 2014 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

A positive step towards the protection of children's rights was the draft juvenile justice code prepared by the Ministry of Justice of Georgia with the involvement of interested parties, set to be adopted in 2015.

One of significant achievements of the last year in the area of human rights is the liberalization of criminal law, a gradual implementation of which has already translated into proportional and reasonable punishments and a decreased indicator of the use of pretrial detention.

In 2014, the local self-government election was held in a free and competitive environment with runoff elections for mayors and heads of municipal districts taking place in Tbilisi and a number of Georgia's regions for the first time ever in the recent history of Georgia.

Much like in 2013, in 2014, the Parliament of Georgia took into account a substantial part of Public Defender's recommendations and to this end, tasked government entities, bya corresponding decree, to implement concrete measures. The monitoring on the fulfillment of Public Defender's recommendations is carried out by the Human Rights and Civil Integration Committee of the Parliament of Georgia.A report on the implementation of recommendations set out in the decree was submitted to the Committee by relevant entities before 1 March 2015.

The number of persons appealing to the PDO remained high. In 2014, the PDO admitted up to 7,000 applications, a notably increased indicator which reflects increased expectations towards the PDO, greater awareness among population on the infringed rights and free environment in the country.

Even though after the dissemination of video footage in September 2012, which featured torture and inhumane treatment in penitentiary facilities, cases of torture and inhumane treatment of inmates are no longer among the list ofmain challenges owing to the politicalwill and reformsimplemented to eliminate the problem, investigations ofthousands of inmate complaints on torture, inhumane and degrading treatment arestill in progress and save single cases, no decisions have been made on these systemic violations.

In spite of the institutional reform implemented last year to improve the independence of judiciary, numerous challenges need to be tackled to boost trust towards courts. During the year, the Public Defender repeatedly appealed to the High Council of Justice to initiate disciplinary proceedings against those judges suspected in gross violations of procedural norms. Unfortunately, in each of those cases, the High Council of Justice limited itself to a standard response that no violations on the part of judges were established.

Media environment improved and became more diverse. There were no instances observed of government interference in editorial policy of media outlets and the freedom of expression of journalists. The majority of protest actions in 2014 were held without incidents though there were a number of cases of the government failing to ensure a constitutionalright to freedom of assembly to participants in peaceful actions or/and of unjustified restriction of the freedom of assembly.

The Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia entered into force, which better conforms with international standards in these spheres.

Activities for social and economic rehabilitationcarried out in conflict-affected regions by the Temporary State Commission on Response to the Needs of the Affected Population of the villages along the dividing line must be viewed as the achievement.

In spite of abovementioned positive steps, the Parliament of Georgia did not abolish the temporary rule of interrogating witnesses although the witness interrogation at courtsalone was regarded as one of main advantagesof the new Criminal Procedure Code.

The Public Defender of Georgia considers steps taken by the government concerning "persons detained on political groundsand prosecuted for political reasonsunder the criminal law" after the wide-scale amnesty

unsatisfactory. The restoration of justice cannot be limited to a single act of amnesty because full legal rehabilitation of persons of this category is important not only in terms of restoring their dignity and reputation, but also in terms of ensuring fair compensation of unlawfullysustained damage. It should be noted here that on 13 February 2013, the Department to Investigate Offenses Committed in the Course of Legal Proceedings was set up in the Prosecutor's Office of Georgia, responsible for investigating alleged offenses committed during legal proceedings, including coercion of private owners into giving uptheir properties and other facts of coercion. Public Defender expresses the hope that the activity of this department will be effective.

Despite a legitimate expectation of society, a legal mechanism has not yet been established, which would enable interested persons to review enforced decisions, including to get property restitution and compensation of moral damages for illegal convictions. As in previous year, in 2014, a number of convicts/former convicts, considering themselves illegal prisoners, appealed to the Public Defender. Apart from single cases, investigative bodies have not yet made decisions or/and court trials onpasthuman rights violations are still underway. The protracted investigation into the so called "tennis court special operation" was further aggravated by the killing of Yuri Vazagashvili. Investigative bodies must conduct effective and timely investigation into the killings of ErosiKitsmarishvili and BesoKhardziani. The investigation must provide convincing and reasonable answers to any question arising in connection with these cases.

A number of former officials were arrested on various charges. Political opposition, several organizations and experts raised questions about the selective use of justice and the reasons as to why the investigation showed interest only towards former officials. A special trial monitoring mission of the OSCEOffice for Democratic Institutions and Human Rightshas completed the monitoring of trials of former public officials. Apart from procedural violations the presented OSCE/ODHIR report highlights a number of facts of disregarding the presumption of innocence. The Public Defender discussed the procedural violations observed by OSCE/ODHIR trial monitoring mission, in its 2012 and 2013 reports to the Parliament of Georgia.

The issue of institutional independence of investigations into alleged human rights violations committed by employees of law enforcement bodies remained a problem in 2014. Cases studied by the Public Defender during the year provide the ground to say that there are legislative shortcomings in this regard as well as problems in practical implementation of the law. Consequently, the existing legislation needs revision and an independent investigative mechanism needs to be installed to ensure impartial investigation of such cases. It is worth noting in this regard that the government action plan on human rights protection envisages the launch of discussions on the establishment of independent investigative mechanism.

In 2014, the POD was approached by a number of persons complaining about alleged maltreatments by representatives of law enforcement bodies. The monitoring revealed the tendency of using disproportionate force by police officers when detaining persons. Instances of such behavior on the part of police officers are more frequent in western Georgia. Unfortunately, the Georgian prosecution is ineffective in investigating such cases and imposing liability on culprits.

2014 saw the renovation and opening of the central prisonhospital leading to significant improvement of medical service. The penitentiary institution #16 was also renovated. Viral C hepatitis treatment and suicide prevention programs are being implemented. Despite positive changes in the penitentiary system, the Public Defender of Georgia found the circumstances of the death ofseveral inmatesalarming, when the state failed to ensure the effective protection of life and personal safety of personsunder its custody. Circumstances of the death of Pertenadze and several other inmates as well as the results of investigation into them are still unknown to the public. The number of inmates who died in penitentiary institutions comprised 28 of which seven are thought to have killed themselves.

Applications concerning maltreatment increased in 2014. Some 28 requests to launch investigation were sent to the Prosecutor's Office. Qualifying alleged offences committed by law enforcement officers remains a problem. A pressing issue is the protection of victims of maltreatment. It is important to properly document the nature and origin of injuries observed on bodies of inmates and to ensure adequate response. Yet another problem is conducting forensic expertise, obtaining CCTV footage and other evidence in a timely manner. It is therefore necessary for the National Preventive Mechanism to have the right to make photo and video shooting in penitentiary institutions and the access to CCTV recordings. The independent and impartial investigation into ill-treatment of inmates by prison employees is something which needs to be emphasized. Inadequate conditions in a number of such institutions remain a problem. The conditions are especially grave in the penitentiary facility #7 which must be closed down.

Results of investigations into high profile cases of 2013-2014 are still unknown, including the alleged illegal detention of Tbilisi Town Hall and Town Council employees, alleged illegal withdrawal of IvaneMerabishvili from prison and the beating of MP NugzarTsiklauri. Legitimatequestions remained regarding alleged violations of requirements of Law in the so called "tractors' case", which requirescomprehensive investigation; however, no progress was observed in the investigation of these cases. Legitimate questions remained about the impartiality of Prosecutor's Office as the body implementing the criminal prosecution. In Public Defender's opinion, there was no necessity to fully classify the so-called "cable case," thereby preventing the defense from having free access to case materials. The prosecutor's office took heed of Public Defender's recommendation and later de-classified a substantial part of case materials.

Results of ongoing official investigation into the events that unfolded near the village of Lapankuriin Lopota Gorge are still unknown. The investigation into the eventsin Lopota Gorge on 28 August 2012is still in progress. The information on the progress in investigation is not available to the families of victims, interestedparties or wider public.

It remains a problem to achieve gender equality in the country. The scale of violence against women and the domestic violence is alarming. Especially grave is the problem of femicide which is further aggravated by the fact that in several cases, victims had turned asked law enforcements bodies for assistance before the incidents took place. The degree of political and economic activity of women is low. The availability of health care for women and high indicators of early marriage are worrying.

Homophobic attitudes towards LGBT community and timely and efficient investigation of hate crimes remain a challenge.

The situation remains alarming in terms of children's rights. The conducted monitoring revealed extreme poverty of children, inadequate living conditions of adolescents and unavailability of state health service. High morbidity and poverty indicatorsamong children, society's tolerance of violence against children, extremely grave conditions of children in mountainous regions must become a matter of special care on the part of the government. Poor quality of education, lack of qualified teachers, improper implementation of inclusive education and poor adaptation of the environment to the needs of schoolchildren with disabilities representacuteissues. Other problems include maltreatment of children by teachers in small family-type children's homes, proper implementation of the right to education and protection of children from violence. The issue of separation of juvenile delinquents from adult inmates is topical too.

Problems remain in the access to mental aid shelters and institutions issuing documentation for medication; in the development of community-based services according to biological, mental and social needs and inclusive education system; in identifying facts of violence against persons with disabilities as well as in their employment and access to physical environment.

Full exercise of religious freedom, acquisition of permits for the construction of religious buildings, the ownership of disputed religious structures, the religious discrimination at schools and the implementation

of requirements of the law on general education are all a matter of concern as well as the effective investigation into alleged crimes committed on religious grounds.

The level of involvement of national minorities in a decision making process is low. The quality of teaching native language within the school curricula and information about the developments in the country to the regions densely populated by ethnic minorities is very poor.

Although the Parliament of Georgia adopted the legislative package related to secret investigative activities, establishing new regulations concerning surreptitious recordings and personal data protection, which must be assessed as a positive step forward, there is still a provision in the Law of Georgia on Electronic Communications that allows state entities to make copies of identifying data and obtain content of communication in real time, thereby infringing on the right to privacy guaranteed by the constitution. Legislative changes are also problematic in that they allow personal data protection inspector, despite a high degree of trust in this institution, to be both a party to eavesdropping and an entity implementing the monitoring of this process.

A mass dismissal of employees in several self-government bodies took place after the 2014 local self-government elections.

The absence of minimal labor safety standards and the number of people who got injured and killed when performing their jobs are still alarming. Unfortunately, the state has not taken active steps to create an entity responsible for the protection of labor rights, the Labor Inspection. A program of monitoringlabor conditions, set upin the Ministry of Labor, Health and Social Affairs, cannot be considered as a mechanism capable to improve labor safety and inspecting labor conditions.

There is no common database of homeless persons, preventing to identify the number of people requiring shelter countrywide. One of main problems continues to be the shortage of allocations from local as well as central budgets for targeted assistance of homeless persons. The situation in terms of exercising the right to adequate housing is alarming in the so-called "cardboard settlement" in Khelvachauri, near Batumi.

Personal visits of Public Defender to mountainous regions of Georgia better outlined those problems that concern local population. The social and economic conditions of these people are especially grave, including in terms of access to health care and living environment/conditions. The government of Georgiashould, in the shortest possible timeframe, develop a common state strategy and action plan for the improvement of human rights in mountainous regions. It is necessary to speed up the drafting and adoption of the mountain law.

The situation concerning the rights of conflict-affected population, employment, access to health care, conduct of agricultural activities and migration remain grave. Security of people living along the dividing lines with Abkhazia and South Ossetia and the freedom of their movement remainproblematic. Unfortunately, the situation has not changed in regards with the release of prisoners either.

The resettlement of refugees and people living in dangerous environment is still a serious challenge.

As regards the exercise of title to property, the problem of so-called merging of land plots still remains pressing.

The right to safe and healthy environment is problematic to exercise. The level of providing adequate, timely and efficient information to population as well as the level of involvement of interested persons at the initial stage of decision making on environmental issues is low. The impact of the construction of Khudoni Hydro Power Plant as well as the mining works on the territory near Sakdrisi on the environment and human health is a serious problem too.

Last year saw a number of cases of restricting the freedom of movement to foreigners entering Georgia as well as Georgian citizens crossing the state border. Despite repeated requests to provide explanations, the Public Defender did not receive any information from a relevant entity about factual and legal grounds for denying the entry and the exit to these people.

As in previous years, conditions of tens of thousands of families affected by natural disasters are alarming. The state does not implementprograms toensure the adaptation of eco-migrants to the places of re-settlement.

The report also reviews human rights of refugees and asylum seekers, legal status of foreigners in Georgia, andthe situation of rights of repatriates who suffered from the 1944 repressions.

A separate chapter is dedicated to human rights of the elderly in Georgia. Serious challenges were identified during past year in this regard.

SITUATION OF HUMAN RIGHTS IN CLOSED FACILITIES (REPORT OF THE NATIONAL PREVENTIVE MECHANISM)

INTRODUCTION

The report contains the findings of the monitoring conducted by the National Preventive Mechanism in 2014 in penitentiary facilities, police departments, temporary detention isolators, mental hospitals, and small family-type children's homes. Monitoring of the joint operation to return migrants in 2014, which was implemented by the National Preventive Mechanism of Georgia for the first time, is also briefly covered here. The monitoring will also continue in the future in order to evaluate the situation of the protection of migrants from ill-treatment.

The monitoring of penitentiary institutions and agencies under the Ministry of Internal Affairs of Georgia were carried out with the financial support of the European Union. The monitoring of the small family-type children's homes was supported by "Open Society Foundation Georgia Foundation".

Within the reporting period, employees of the Department of Prevention and Monitoring of the Public Defender's Office carried out 24 planned and 364 unplanned visits to the penitentiary facilities of Georgia, and visited 3,040 prisoners. 28 planned visits were carried out in the temporary detention isolators and police departments of the Ministry of Internal Affairs. Three planned visits were carried out in mental hospitals. 44 visits were carried out in the small family-type children's homes. Monitoring of the joint operation to return migrants (Tbilisi – Paris – Warsaw – Tbilisi) was also carried out. Transportation vehicles for the transfer of prisoners were also examined.

During the monitoring, the proxies of the Public Defender examined the physical environment and situation of rights of prisoners in the facility. Particular attention was given to the treatment of prisoners.

SITUATION IN PENITENTIARY INSTITUTIONS

GENERAL OVERVIEW

The year of 2014 saw several positive changes in the penitentiary system. Among the changes was the amendment of the Imprisonment Code to determine four types of institutions according to security risk level which differentiated prisoner rights according to the risk levels. It is safe to say that, in spite of several arguable clauses, the amendments generally improved the rights of prisoners at the legislative level.

We would like to mention draft amendments to the Imprisonment Code authored by the Ministry of Corrections,[1] which has been submitted to the Parliament of Georgia. On 28 January 2015, the Public Defender sent its proposal about the draft law to the Georgian Parliament.

In its proposal, the Public Defender welcomes the planned reform of the penitentiary system but emphasizes some of the key issues related to the draft law such as the need for improving the early release mechanism and the procedures for prisoner allocation/ transfer, the need for reducing a term of administrative detention of prisoners in high risk institutions, etc.

A major component of the Public Defender's proposal is the Public Defender's request to allow the Public Defender and its Special Preventive Group members to take photographs inside the penitentiary institutions. On the initiative of the Georgian Parliament, a working group of representatives from the Ministry of Corrections and the Public Defender's Office was set up to discuss this request.

It is certainly worth noting that the Ministry of Corrections took the Public Defender's initiative into consideration adding a relevant clause to the draft law under review, which entitles the Public Defender and its Special Preventive Group members to take photos inside penitentiary institutions pursuant to a procedure established by the Minister of Corrections. According to the draft clause, the Minister of Corrections will elaborate such a procedure in cooperation with the Public Defender and publish it no later than 1 August 2016. The clause entitling the Public Defender and its Special Preventive Group members to take photos inside the penitentiary institutions will take effect on 1 September 2016.

During the reporting period, the Central Penitentiary Hospital was refurbished and opened thus improving access to healthcare services to some extent. Penitentiary Institution No. 16 was refurbished as well.

The Public Defender welcomes the introduction of a six-month training program for the regime officers of the

1 A full text of the draft law together with an explanatory note accompanying the draft law can be accessed at http://www.parliament.ge/ge/law/7805 [last viewed 11.02.2015]

Penitentiary Department. We believe a long-term professional education for the Penitentiary Department employees has a crucial role in ensuring proper management of penitentiary institutions on the basis of the principles of human rights and rule of law. Also, we positively assess the proposed reform initiative, which goes in line with the concept of dynamic security and places an emphasis on strengthening rehabilitation programs.

Despite the above-described positive changes, a number of concerns related to the penitentiary system were identified during the reporting period. Draft amendments to the Imprisonment Code concerning the right of the penitentiary personnel to use special equipment generated a lot of controversy but the disputed draft was eventually adopted with certain changes.

Number of reports concerning alleged ill-treatment of prisoners increased in the reporting period; accordingly, the Public Defender's recommendations about the need for carrying out effective investigations increased compared to the year of 2013. In 2014, the Public Defender sent out 21 recommendations to commence investigation (compared to 9 recommendations in 2013). Unfortunately, in none of these cases was criminal prosecution commenced against those responsible and the Public Defender has not been informed in detail about the progress of investigations. Substantive shortcomings were observed in the way the investigative authorities obtain evidence. Protection of possible victims of ill-treatment also constitutes a ground for concern because often times they continue to remain in the same institutions where they had allegedly been ill-treated. In the Public Defender's view, there is a clear systemic problem in terms of investigation of allegations of ill-treatment – a situation that calls for creation of an independent investigation mechanism to ensure independent, impartial and effective investigation.

Also, for the prevention of ill-treatment, it is important to have tools in place for adequate assessment of real and inevitable risks for prisoners' physical integrity and to take measures accordingly. The environment in the prison should such where torture and ill-treatment are less likely to happen. This requires elimination of the root causes of torture and ill-treatment. It is necessary, in this regard, to bring the current practice of documenting ill-treatment in line with the international standards, ensure such detention conditions as are compatible with human dignity and to apply security measures in a proportional way.

We would like to point out, further, that prevention of ill-treatment also requires implementation of measures such as support to the National Preventive Mechanism's operations, strengthening its functions, allowing the National Preventive Mechanism representatives to make photographs in prisons and access secret information about the treatment of prisoners (including criminal intelligence information), changing laws allowing the National Preventive Mechanism representatives to view the records of surveillance cameras and enhancing current cooperation and ways of reacting to recommendations.

Prevention will be ineffective unless good order and security is ensured in places of deprivation of liberty. The monitoring results raise security concerns such as conflicts between the prison administration and the prisoners, which is exacerbated by inadequate reaction or lack of reaction of penitentiary officials in specific situations, improper follow-up on complaints and lack of awareness by prisoners of the services available to them. The level of knowledge and qualifications of the prison staff are insufficient. Against this background, the prisoners are often resorting to hunger strikes and injuring themselves. A high risk of violence among prisoners and the impact of criminal mentality in penitentiary institutions are a serious problem. This is what makes it necessary to introduce a system that would ensure maintaining good order and security in prisons according to international standards; in particular, it is necessary to actually implement the concept of dynamic security and develop a well-thought-through plan for management of incidents and emergencies.

Unfortunately the moving of prisoners from one institution to another remained a frequent practice in 2014. The Public Defender's Office is unable to evaluate whether or not the individual decisions to transfer

prisoners between different prisons were reasonable because, according to an official explanation by the Penitentiary Department, the decisions are based on secret letters authored by prison directors; since these letters contain criminal intelligence information, the Public Defender's representatives have no right to access them. Our observation is that prisoners are often moved from the penitentiary institutions located in the eastern Georgia to those located in the eastern Georgia and vice versa. It is for that reason that the prisoners have difficulty to maintain contact with their families and lawyers and are experiencing additional stress related to adaptation to the changed environment.

In regard to movement of prisoners, the Special Preventive Group also inspected the vehicles designated for moving prisoners and concluded that the conditions of transportation are unsatisfactory and represent a serious nuisance for prisoners. Furthermore, we found out that inside a Mercedes vehicle designed for moving the prisoners there is a small-size metal booth (with an area of about 0.3 square meters), which is narrow, is not aerated and it is completely dark inside. The booth is usually used to transport women prisoners and prisoners who belong to sexual minorities. The Special Preventive Group believes that placing an individual in such booths is a degrading treatment and the booths must be removed.

Ensuring proper conditions to prisoners requires a great deal of attention. Compared to previous years, the physical environment and hygiene have improved in a number of penitentiary institutions. However, the existing conditions in the Georgian penitentiary institutions are still leaving a lot of room for improvement. Some of the common problems are: insufficient artificial ventilation in residential cells, quarantine cells and solitary confinement cells; insufficient natural light and ventilation; short time for outdoor exercising and lack of exercising opportunities in closed institutions; lack of required equipment and conditions in the yards of penitentiary institutions designed for outdoor exercising; and lack of infrastructure to support long-term visits.

In the reporting period, disciplinary punishment was used twice as many times as in the year of 2013. The Public Defender's recommendation to develop guidelines on the use of disciplinary punishment was not fulfilled. Prisoners often get locked up in solitary confinement cells as a measure of disciplinary punishment and the disciplinary sanctions are not used proportionally in practice.

The penitentiary healthcare reform deserves positive assessment. We appreciate the fact that the prison healthcare system has been better funded, which really meant increased salaries for the medical staff and accessible primary healthcare services in all of the penitentiary institutions. We also welcome the opening of the Central Penitentiary Hospital and the refurbishment of the Center for the Treatment of Tuberculosis and Rehabilitation. Despite these positive changes, a series of problems remain in the penitentiary system. One of the issues is the timeliness and adequacy of medical services and insufficient periodicity of visits paid by physicians to penitentiary institutions. Measures must be taken to ensure that prisoners have unhindered access to the prescribed medications. It is unfortunate that no breakthrough steps have been made in the reporting period to fully integrate the penitentiary healthcare into the civilian healthcare system; hence, the principle of equivalent services is not fully respected. The penitentiary healthcare system is still facing the challenges related to suicide prevention, excessive reliance on medications and psychotropic drugs, and lack of timely and adequate psychotropic assistance for prisoners with mental disorders. Unfortunately, the number of deaths was higher in the reporting period than in 2013. Twenty-seven (27) prisoners died in 2014. The number of suicides increased as well. Seven (7) facts of suicide were registered. Analysis of prisoner deaths reasonably leads to doubting whether the medical services provided in penitentiary institutions are adequate. The Public Defender deems it is necessary to control the quality of medical services and to strengthen efforts towards prevention of suicides.

The Public Defender's view is that prisoners should have stronger contact with the outside world. Despite the Public Defender's recommendation to allow short-term visits without the separating glass bar, such visits continue to be administered with the glass bars separating the sides. It is important to

equip all of the penitentiary institutions with infrastructure for long-term visits. A particular problem in this regard exists in women's institutions and closed institutions for deprivation of liberty.

Special attention is to be paid to the special needs of women and juvenile prisoners. The situation existing in the Georgian penitentiary system is discussed in detail in the relevant chapters below.

PREVENTING TORTURE AND INHUMAN OR DEGRADING TREATMENT AND PUNISHMENT IN PENITENTIARY INSTITUTIONS

Pursuant to Article 7 of the International Covenant on Civil and Political Rights, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[2]

Article 10 of the International Covenant on Civil and Political Rights stipulates that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The United Nations Human Rights Committee explains that [respect for human dignity] is "a norm of general international law not subject to derogation."[3]

The international human rights law places a special emphasis on the protection of the rights of individuals deprived of their liberty at detention facilities. The Government must take all appropriate measures not to inflict more suffering upon a human being than it is inevitable element of legitimate punishment. Incompliance with this requirement would amount to intrusion in the area protected by Article 3 of the European Convention on Human Rights.[4]

The European Court has been consistently stressing in regard to Article 3 of the Convention that the value protected under Article 3 is one of the fundamental values in a democratic society. Hence, the Government must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well- being are adequately secured.[5]

It should be noted that the human rights law protects the rights of detained individuals at a higher standard than the rights of those in community. According to a standard established by the European Court, although ill-treatment must attain a "minimum level of severity" to fall within the scope of Article 3, in respect of a person deprived of his liberty recourse to physical force which has not been strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right under Article 3.[6]

According to standards established by the European Convention on Human Rights and the case-law of the European Court of Human Rights, the State has not only a negative obligation (not to violate a person's right) but a positive obligation (to protect a person's right) in order to secure the implementation of the prohibition of torture

and inhuman treatment and the of the right to life. It is of special importance to protect individuals in closed-type institutions from torture and inhuman or degrading treatment or punishment, and to protect their right to life. Since prisoners are under an exclusive control of the State, the State authorities then have an obligation to take all steps that are reasonably expected of them to prevent real and immediate risks to the prisoner's physical integrity, of which the authorities had or ought to have had knowledge.[7]

2 Art. 7, International Covenant on Civil and Political Rights
3 General Comment No 29, States of emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para.13a.
4 *Kudla v. Poland*, no. 30210/96; also *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII.
5 *Case of Davtyan v. Georgia*, no. 73241/01.
6 *Case of Tekin v. Turkey,* no. 22035/10.
7 See the following judgments of the European Court of Human Rights: *Pantea v. Romania*, no. 33343/96,§190, ECHR 2003-VI and *Premininy v. Russia*, no. 44973/04, §84, 10 February 2011.

A positive obligation of the State to protect individuals from being subjected to torture and other ill-treatment by definition implies the taking of measures by the State that would help protect individuals against ill-treatment. As an international standard, the requirement of implementing such preventive measures can be found in international human rights treaties as well as in the judgements of the European Court of Human Rights and reports of the European Committee for the Prevention of Torture and the United Nations Committee against Torture. Torture prevention is a global strategy that aims at reducing risks and establishing an environment where torture and inhuman treatment are not likely to happen.

A general obligation envisaged by Article 1 of the European Convention on Human Rights requires the States to launch effective investigation even if the alleged ill-treatment has been administered by private persons.[8] According to the European Court, the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals.10[9]

In this respect, we would like to mention the case of loss of his life by prisoner G.F. in the penitentiary institution no. 14 – a fact that has gained an extensive publicity.

G.F. died on 4 March 2014 as a result of argument among the prisoners in the penitentiary institution no. 14.

As the Chief Prosecution Office informed us,[10] on 4 March 2014, at about 2:20 am, in the penitentiary institution no. 14, prisoners Sh.Sh., L.M. and G.S. from the cell no. 322 of the sixth regime building had an argument with their fellow inmate G.F. The argument grew into a physical fight. Acting together, Sh.Sh., L.M. and G.S. managed to knock G.F. down on the floor who lost his consciousness and could no longer fight off the attackers. Instead of stopping the violence, Sh.Sh., G.S. and L.M. continued to beat G.F. who lied unconscious with their legs and hands in the chest, neck and face. They were bumping unconscious G.F. with his head against the concrete floor. As the prison staff heard swearing and noise, they rushed to enter the cell where Sh.Sh., L.M.

and G.S. were physically abusing G.F. and stop the violence. G.F. was transferred to the medical unit of the institution but, despite the assistance provided by the prison healthcare staff and an ambulance team that arrived on call, prisoner G.F. died.

According to a forensic medial report, the reason of G.F.'s death is a sharp swelling of the brain with the brain string dislocated and stuck, which was caused by a blunt trauma of the skull and brain.

Pursuant to information received from the Penitentiary Department of the Ministry of Corrections,12 [11]on 30 May 2013, prisoner G.F. was moved from the penitentiary institution no. 2 to the penitentiary institution no. 14. The same day, he was accommodated in cell no. 221 of the sixth regime building. On 28 June 2013, he was moved into cell no. 334. The prisoner asked the prison administration to move him into cell no. 322 because one of the inmates in that cell was he childhood friend. The prison administration granted this request and on 20 January 2014 prisoner G.F. was moved to cell no. 322. The reason of moving the prisoner to the institution no. 14 was that he had been sentenced to imprisonment for 8 years, 7 months and 15 days by the Kutaisi Court of Appeal.

Prisoner Sh.Sh. was transferred from Institution no. 6 to Institution no. 14 on 12 February 2014, on the basis of an order issued by the Chairman of the Penitentiary Department, and was placed in the cell no. 338 the same day. He was moved to the cell no. 322 on 14 February 2014.

8 *M. and Others v. Italy and Bulgaria*, Judgment of 31 July 2012, par. 99.
9 *Denis Vasilyev v. Russia*, Judgment of 17 December 2009, par. 98
10 Letter no. 13/23626 dated 12 April 2014
11 Letter no. MCLA 1 14 00207345 dated 7 May 2014

Prisoner L.M was transferred from the Institution no. 6 to the Institution no. 14 on 12 February 2014, on the basis of an order issued by the Chairman of the Penitentiary Department. The same day, he was placed in the cell no. 429. He was moved to the cell no. 322 on 14 February 2014.

Prisoner G.S. was transferred from the Institution no. 6 to the Institution no. 14 on 27 February 2014, based on an order of the Chairman of the Penitentiary Department. The same day he was placed in the cell no. 322 of the sixth building.

We would like to stress that it were the secret reports of the director of the Institution no. 6 on which basis the orders to move prisoners Sh.Sh., L.M. and G.S. to the Institution no. 14 were issued. The Penitentiary Department refused to furnish copies of these reports to us under the pretext that they are classified as "secret" documents and the Public Defender is not entitled to access such documents under the Law on Criminal Intelligence Activities. We therefore remain unaware of the reasons of moving prisoners Sh.Sh., L.M. and G.S. to the Institution no. 14.

In respect of this case, the Office of the Public Defender addressed the following additional questions to the Chief Prosecution Office:

1. What investigative measures were conducted; how many officials of the Penitentiary Department were interrogated;
2. Which of these investigative measures were conducted by the Investigation Department of the Ministry of Corrections;
3. Is it known, according to facts established by the investigation, whether prisoner G.F. had a conflict with his fellow inmates before the incident and, if yes, whether the administration of the Institution no. 14 was aware of it;
4. What triggered the argument between G.F. and his fellow inmates on 4 March 2014;
5. How much time after G.F. was injured was he taken to the prison medical unit and what was the medical assistance provided (please describe the medical manipulations carried out and the time they were carried out);
6. How much time after the Institution learned about the incident did the Institution's administration call the ambulance and when did the ambulance team arrive (please indicate the exact time of calling the ambulance and the exact time the ambulance arrived);
7. Whether the investigation revealed failure by the staff of the Institution no. 14 or the healthcare personnel to perform or duly perform their duties and whether the investigation considered such a theory of case.

In response to our enquiry, the Chief Prosecution Office wrote us[12] that the following investigative measures had been conducted: inspection of the place of incident, sample taking, corpse inspection and witness interrogation. 12 staff members of the Institution no. 14 were interrogated. Of these measures, inspection of the place of incident, sample taking and interrogation of 3 witnesses were performed by the Investigative Department of the Ministry of Corrections. According to the case file, G.F. had no conflict with his fellow inmates before the incident, and the investigation could not ascertain an exact reason why the argument took place on 4 March 2014. G.F. was provided with medical assistance on the spot; in particular, the doctor gave an injection of a painkiller and cleaned the respiratory tract as much as it was possible. After that, the prisoner was transferred to the prison medical unit in the shortest time possible. At the medical unit, they measured his blood pressure and injected another painkiller, a medication to stop bleeding and cardiac drugs.

12 Letter No. 13/39576 dated 23 June 2014

As the blood pressure was dropping, the he was given adrenalin and dexamethasone. After the pulse sensation on the wrist disappeared, he was being given heart massage and artificial respiration for an extensive period of time. According to the case file, the ambulance was called at 02:38; it arrived in the Institution no. 14 at 02:59.

It should be mentioned that the initial investigative measures have been conducted by the Penitentiary Department of the Ministry of Corrections, which cannot be considered an independent and impartial investigation authority. Also, a series of the Public Defender's important questions remained unanswered; for example, the Public Defender is unaware of the reasons of moving the prisoner from the Institution no. 6 to the Institution no. 14 and whether all the reasonable security measures were taken to prevent the loss of his life by the prisoner; nor has the Public Defender been informed about any possible involvement and hence potential criminal liability of the prison staff. Furthermore, according to the Letter no. 12/23626 dated 12 April 2014, the Chief Prosecution Office informed the Public Defender's Office that criminal prosecution started only against three prisoners under paragraphs 5 to 8 of Article 117 of the Criminal Code. Against such background, it is necessary to conduct an independent and impartial investigation into the death of prisoner G.F. and to properly punish all those responsible.

As a result of its visits to the penitentiary institutions, the National Preventive Mechanism came up with a list of issues affecting the effective prevention of ill- treatment. In particular, the following risk factors should be considered for the purposes of prevention of torture and inhuman treatment in the penitentiary system:

- Documenting facts of ill-treatment and reporting them to the relevant authorities;
- Provision of victims with legal aid (access to a lawyer);
- Protecting victims for recurring ill-treatment;
- Training;
- Surveillance cameras.

DOCUMENTING FACTS OF ILL-TREATMENT AND REPORTING THEM TO THE RELEVANT AUTHORITIES

One of the important standards for the prevention of torture is to document possible evidence of ill-treatment and report it to the relevant authorities. Timely and methodically documenting and reporting injuries found on the body of a possible victim of ill-treatment will greatly facilitate to the investigation of cases of possible ill-treatment and the holding of perpetrators to account, which in turn will act as a strong deterrent against the commission of ill-treatment in the future. A crucial role in documenting possible facts of ill-treatment is played by the prison healthcare staff. For the purposes of prevention of ill-treatment, no less important is that a prisoner is timely examined by a medical specialist on admission to prison to verify whether the prisoner has been subjected to torture or other ill-treatment from the moment of his/her detention until he/she has been brought to the penitentiary institution.[13]

According to the CPT (the European Committee for the Prevention of Torture) recommendations, documents produced on admission of a person to a closed institution should contain:

- an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),
- a full account of objective medical findings based on medical examination, and

13 23rd General Report of the European Committee for the Prevention of Torture, 2013, paras. 71 – 73

- the doctor's observations in the light of the previous paragraphs, indicating the consistency between any allegations made and the objective medical findings.

The record should also contain a description of the results of additional examinations, findings made and treatment given. For the purposes of documenting bodily injuries, there should be a special form with *body charts* for marking traumatic injuries. Further, it would be desirable for photographs to be taken of the injuries.[14]

The need for documenting bodily injuries by way of photographing them is stressed in the "Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment" – "the Istanbul Protocol".[15]

Physicians examining a detainee must be able to ascertain the probability of violent origin of injuries even in the absence of specific allegations by the patient. They should also be able to document mental and psychological evidence of abuse and ascertain a degree of consistency between the patient's account of ill-treatment and the results of the medical examination.[16] To that effect, physicians may use terms such as "not consistent", "consistent", "highly consistent" and "typical appearance".[17] Physicians should use a standardized medical report form for documenting purposes.[18]

Descriptions of prisoner injuries used at Georgian penitentiary institutions do not comply with the standards established by the Istanbul Protocol. Each prison keeps "a journal for registration of traumas of accused/convicted persons", in which the healthcare personnel register injuries found on the body of a prisoner. The journal requires the healthcare personnel to enter the following information: first name and last name of the prisoner, time of discovering the injury, location and description of the injury, origin of the injury, a physician's signature and the prisoner's signature. However, the healthcare personnel will normally provide only a short description of the injury and enter a note in the relevant section of the journal: "self-injury", "everyday life injury", "injured by other person". Physicians do not evaluate consistency of the nature of the injury with the prisoner's account of origin of the injury.

After injuries are found, standard documents about the healthcare services provided are filled out and kept in the prisoners' medical files. Currently, photographing as a method of documenting injuries is not practiced in the Georgian penitentiary institutions.

According to information we received from the Penitentiary Department of the Ministry of Corrections, in 2014, 1,040 untried prisoners were admitted with injuries to the detention facilities of the Penitentiary Department. Of this figure, 136 prisoners received their injuries during detention, 853 prisoners before detention, 48 prisoners after detention and 3 prisoners did not disclose the origin of their injuries. According to the same information, in 2014, 3,169 prisoners received their injuries inside the penitentiary institutions. Of this figure, 2,261 cases were self-injuries, 755 cases were everyday life injuries, 53 prisoners did not specify how they got injured and in 100 cases prisoners were injured by other persons.

According to the results of the National Preventive Mechanism's inspection visits paid to the penitentiary institutions in 2014, the healthcare personnel are not properly documenting prisoner injuries. Often times the time of discovering the injuries and their origin are not indicated. Signatures of the physician and the prisoner are also absent in many cases.

During the reporting period, the National Preventing Mechanism encountered many cases of the healthcare personnel not documenting prisoner injuries at all – a practice that clearly contradicts the standards on the prevention of ill-treatment. The Public Defender conducted an inquiry in the following specific case.

14 *Ibid.*, par. 74
15 The Istanbul Protocol, par. 105.
16 *Ibid.*, par. 122
17 *Ibid.*, par. 187.
18 *Ibid.*, par. 125

According to a letter lodged by S.Q. with the Public Defender's Office, on 14 January 2014, he was verbally and physically abused by the employees of the Penitentiary Department at the Institution no. 15. While meeting with the prisoner, the Public Defender's trustees observed a clear injury on his body (a ruptured skin in the area of the left eyebrow). On this ground, the Public Defender addressed the Chief Prosecutor with a recommendation to launch investigation. The Chief Prosecution Office informed the Public Defender that prisoner S.Q. was interrogated but he did not confirm he was injured by the Penitentiary Department employees; however, he did mention he injured his face in the Institution no. 15 when he fell down in his cell. The Public Defender's trustees, within the framework an inquiry into this case, did not find any document in the Institution no. 15 providing any information about Prisoner S.Q.'s injury. According to the information received from the Chief Prosecution Office, neither did the investigation find such a document. Hence, it follows that S.Q.'s injury remained undocumented in the Institution no. 15.

Prisoner O.G. reported that, on 3 September 2014, he was at the Institution's medical unit where he had an argument with the prison doctor who verbally insulted him several times. According to the prisoner, when the prison staff heard the noise, they rushed into the room and started beating him (the prisoner). When the Public Defender's trustees met with O.G., they observed different injuries on O.G.'s body: a swelling and a bruise in the area of the left eye, a swelling on the forehead and some scratches. Although the incident occurred on 3 September, the prisoner injuries were not documented in the relevant document – a journal for injury registration. It was only on 4 September – when a Public Defender's trustee discovered the injuries – that the prison staff entered the information about the injuries into the journal. Further, on 6 September 2014, when the Public Defender's trustees were visiting the Institution no. 17, they learned that Prisoner O.G. attempted to commit a suicide. As a result, the prisoner had a purple injury at the whole length on his neck. Our representatives checked the injuries journal but this latter injury was not documented either.

On 12 November 2014, the Public Defender's trustees were visiting the Institution no. 8 of the Penitentiary Department. During the visit, they heard sounds of quarreling and yelling as they were on the staircase that goes down to the Smart Reception Unit. Our representatives tried to find the room where these sounds were coming from. In the corridor, near the shower room, they observed a trace of newly wiped off blood and a stain. The prison staff looked troubled, talking to each other with abrupt phrases and showing anger towards the Public Defender's trustees.

A Public Defender's trustee inquired into how the blood traces occurred and what the noise was coming from. A deputy director of the Institution no. 8 replied that they were keeping (drunk) prisoners at the Smart Reception Unit and the prisoners were verbally abusing him and his employees. The Public Defender's trustees announced they wanted to see the prisoners immediately. This request was met with manifest and unhidden discontent on the part of the prison staff who were present there. However, the Public Defender's trustees insisted; they entered the shower room where they saw the prison staff were keeping detained prisoners M.U. and M.F.

As the Public Defender's trustees entered the shower room, they saw both prisoners, in wet clothes, lying on the floor. M.U.'s hands and legs were fastened to each other with a special chain (the shackles had a single structure). Both prisoners had traces of violence on their bodies, including their faces. M.U. had a cut in his forehead that was bleeding; he had other multiple injuries too. Prisoner M.F. had a bruise in his right eye.

The Public Defender's trustees demanded that the deputy directors of the Institution no. 8 of the Penitentiary Department provide explanations about the prisoners' condition and the origin of the injuries. The deputy directors stated the injuries came from falling.

The Public Defender's trustees enquired about the reason for keeping the prisoners in the shower room, in wet clothes and with their hands and legs fastened. One of the deputy directors replied that at that point it would

be unreasonable to place these prisoners with other inmates in solitary confinement cells; and them lying on the floor in wet clothes was caused by their own negligence. As the deputy director and the chief of the security unit stated, the prisoners were not placed in the de-escalation zone since this would require drawing up relevant documents; moreover, they were wet and soiled with blood. For these reasons, they decided to keep the prisoners in the shower room.

The Public Defender's trustee demanded that the prisoner injuries be entered and described in the relevant journal. The trustees noticed the prison doctor was under pressure from the prison administration, which was the reason of why the prisoners'

external injuries did not get documented and described in the journal in detail. In particular, when the doctor was examining the prisoners to look for any injuries, there was a deputy director of the Institution in the doctor's room directly instructing the doctor not to indicate the injuries that were expressly present on the prisoner's body in the relevant documents.

On admission to a closed institution, a medical screening of the person must be confidential. It is crucial that the person is questioned about ill-treatment only by a doctor, without the prison staff attending.[19]

In the reporting period, the National Preventive Mechanism paid its inspection visit to the Institution no. 3 of the Penitentiary Department. During the inspection, the Special Preventive Group members observed a prisoner admission process. It turned out that the way prisoner admission is administered at the Institution no. 3 is completely inconsistent with the principle of confidentiality of medical screening. Women prisoners were being visually inspected by a prison staff instead of a doctor. One and the same staff member was searching the person of the prisoner and telling a doctor on duty about injuries found on prisoner's body. Men prisoners, on the other hand, were being searched by the doctor, in the presence of the prison staff. They were also searching the person of prisoners at the same time; the process was attended by even the escort officers who brought the person to the institution. It should be noted that after the visual observation was over, the doctor filled out the medical papers and talked to the prisoners but this process was also attended by the prison staff.

As already mentioned above, a special role in preventing ill-treatment is played by the healthcare personnel responsible for documenting prisoner injuries. In this respect, it is crucial that a relationship of trust is established between the prisoner and the doctor to ensure that possible facts of ill-treatment are fully documented. Such an environment of trust is unimaginable without the doctor and the prisoner being able to communicate in privacy.

Members of the National Preventive Mechanism believe that the above-described practices of prisoner admission to penitentiary institutions do not ensure detection of ill-treatment for prevention purposes. Our belief is supported also by the information furnished to us by the Ministry of Corrections that, of the accused persons accommodated in the Institution no. 3 in 2014, 43 persons had injuries on their bodies and only 4 of them indicated the origin of their injuries. Other persons abstained from providing the doctor with any information about their injuries.

We note that in its 2013 Annual Report to the Georgian Parliament, the Public Defender recommended to the Minister of Corrections that the Minister elaborate and implement a new form of injury registration in conformity with the Istanbul Protocol to enable taking down of more detailed information about prisoner injuries. Unfortunately, the recommendation of the Public Defender remains unfulfilled to-date; we do welcome the fact though that, as the Ministry of Corrections informed us, Minister agrees with the recommendation and has started elaboration of new forms for registration of prisoner injuries.

19 23rd General Report of the European Committee for the Prevention of Torture, 2013, par. 75

Along with documenting injuries, it is equally important, in the interests of torture prevention, to immediately report possible cases of ill-treatment to the relevant authorities,. Reporting to the relevant authorities of and subsequently launching an investigation into what might constitute ill-treatment is mandatory under both the national legislation and the international standards.

Prison doctors must bear in mind the best interests of the patient and their duty of confidentiality to that person, but the moral arguments for the doctor to denounce evident maltreatment are strong. Where prisoners agree to disclosure, no conflict arises and the doctor's moral obligation is clear. If a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in preventing the perpetuation of abuse.[20]

The inspection visits paid by the National Preventive Mechanism during the reporting period have shown that prisoner injuries discovered on admission get reported by prison authorities to the Prosecution Office, while injuries occurred while in prison are reported to the Investigation Department of the Ministry of Corrections.

During its inspection of the Institution no. 3 of the Penitentiary Department, the Special Preventing Group discovered that two cases of injured prisoners were not reported to the Investigation Department of the Ministry of Corrections and that happened against the background that all other cases of injuries were reported.

PROVISION OF LEGAL AID TO POSSIBLE VICTIMS OF ILL-TREATMENT

Article 14(1) of the United Nations Convention against Torture stipulates that "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible."

The United Nations Committee against torture highlights the importance of affirmatively ensuring by the States Parties that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. The States Parties should moreover provide assistance and support to minimise the hardship to complainants and their representatives. Such proceedings should not impose a financial burden upon victims that would prevent or discourage them from seeking redress. The Committee recommends implementing mechanisms that are readily accessible. Judicial remedies must always be available to victims, irrespective of what other remedies may be available. States Parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress.[21]

The possibility for persons taken into custody to have access to a lawyer is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons. Further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.[22]

In Georgia, State-funded legal assistance is governed by the Law on Legal Aid, which provides that such legal assistance shall be administered by the Public Law Entity "Legal Aid Service". Normally, only insolvent individuals are eligible for free of charge legal aid, with a number of exceptions in certain circumstances. The mandate of the PLE "Legal Aid Service" does not envisage provision of free-of-charge legal representation to victims of torture at remand facilities and places of deprivation of liberty. This means eventually that persons who may become subjected to ill-treatment during their detention are not always eligible for a fundamental legal guarantee such as access to a lawyer.

20 The Istanbul Protocol, par. 72.
21 3rd General Report of the European Committee for the Prevention of Torture, 2012, paras. 29 and 30
22 23rd General Report of the European Committee for the Prevention of Torture, 2013, par.18

In order for torture victims to be involved in redress procedures for the restoration of their rights, they must be provided with qualified legal assistance, which includes drafting legal documents and representation before judicial and law enforcement authorities. It is important that legal aid be ensured to these individuals from the moment they wish to complain about any ill-treatment administered against them.

Under the Government Action Plan for 2014 – 2015 approved by the Georgian Government Resolution No. 445 dated 9 July 2014, one of the projected activities is improvement of effective legal aid for torture victims through financial and technical support of the Free Legal Aid Service (including by funding the necessary expenses required for effective defense). Unfortunately, this activity has not been implemented this far.

PROTECTION OF VICTIMS AGAINST REPEATED ILL-TREATMENT

Pursuant to Article 13 of the United Nations Convention against Torture, each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

One of the fundamental criteria for effective investigation of allegations of ill- treatment, according to the Committee for the Prevention of Torture, is that for so long as a preliminary inquiry or criminal investigation into possible ill-treatment is underway, the possible victims of ill-treatment should under no circumstances be returned to the custody of the law enforcement agency where it is alleged the ill-treatment was inflicted.[23]

In *Popov v. Russia,* the European Court of Human Rights mentioned that it is of the utmost importance for the effective investigation of ill-treatment allegations that applicants be able to freely participate in the investigation process without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy.[24]

One of the aims of Georgia as a democratic State is to prevent, suppress and effectively investigate all facts of ill-treatment. At the same time, this is an international obligation assumed by Georgia under its international treaties. Fulfillment of this obligation requires Georgia to have an effective mechanism in place for the protection of victims of ill-treatment. Victims of ill-treatment as well as their family members must be provided with additional guarantees and protection against any violence, threat of violence or any other forms of intimidation that might occur between the commencement of investigation and completion of judicial process.

As a result of its activities implemented during 2014, the National Preventive Mechanism concluded that protection of possible victims of ill-treatment from repeated pressure and intimidation is a matter for concern. In many cases we dealt with during the reporting period, prisoners were reporting ill-treatment administered against them to the Public Defender's trustees first but were rejecting their statements afterwards in the presence of representatives of investigative authorities. Then, at follow-up meetings with the Public Defender's trustees, they were stating that they had been intimidated by persons who administered ill-treatment against them, which was the reason for them not to pursue their complaints.

23 Report of the European Committee for the Prevention of Torture (CPT) on its visit to Albania from 23 May to 3 June 2005, CPT/Inf(2006) 24, par. 52. See also CPT's Public Statement Concerning the Chechen Republic of the Russian Federation, Appendix I, CPT/Inf (2007) 17, par. 53.

24 *Popov v. Russia*, Judgment of 13 July, 2006, application no. 26853/04 §246.

The prisoners were mentioning, in particular, that they did not feel safe and protected from repeated pressure because they remained in the same penitentiary institutions and under the supervision of the same staff that have ill-treated them.

The National Preventive Mechanism believes that the Georgian law does not envisage guarantees and mechanisms of protection against repeated victimization of victims of ill-treatment at places of deprivation of liberty. According to Article 91 of the Law on Civil Service, if on the basis of a prisoner's complaint an in-house inquiry is commenced against a civil servant on account of his/her possible perpetration of ill-treatment, such civil servant may be suspended from office. However, if a criminal investigation is commenced under Articles 159-162 of the Criminal Procedure Code, a civil servant can be suspended from office only if he/she is formally found accused. Further, the law does not contain any mandatory provision obligating the relevant authorities to move a possible victim of ill-treatment to another institution.

We welcome the fact that the Interagency Coordination Council for the implementation of measures against Torture, Inhuman, Cruel or Degrading Treatment, which has been established by a Government Resolution no. 341 dated 7 May 2014, drafted a set of amendments to the effect of increasing the role of judges in combating torture. The amendments propose the following new regulations:

- If, at any stage of hearing/proceedings, a judge doubts that the accused/convicted person has been subjected to torture, degrading or inhuman treatment, he/she will be authorized to request that the relevant investigative body commence investigation;
- A judge may issue a judicial order obliging the Penitentiary Department to report to the court about the prisoner's health status. The judicial order may specify periodicity of such reporting;
- If there is a likelihood that a prisoner's life or health will be at risk if the prisoner remains in the same remand facility / place of deprivation of liberty or there is a supposition, including information received under paragraph 2 of this Article, that the prisoner has been or may be subjected to torture, degrading or inhuman treatment, a judge may issue a judicial order obliging the Penitentiary Department to move the prisoner to other remand facility / place of deprivation of liberty.

INCOMPLIANT DETENTION CONDITIONS

According to the case-law developed by the European Court of Human Rights, Article 3 of the Convention may be violated not only by action but by the conditions in which a person is kept detained. In *Dougoz v. Greece*, the Court elaborated detention conditions/criteria, which, among others, include the standard that there should be a normal temperature in the cell so that it is neither too hot nor too cold; bedding isappropriate; and sanitation complies with the standards.

In *Ramishvili and Kokhreidze v. Georgia*, the European Court of Human Rights stated that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

In its judgment in *Modârcă v. Moldova*, the European Court of Human Rights explained that a combination of different expressions of inappropriate living conditions may have a cumulative effect to amount to violation of the right under Article 3 of the European Convention on Human Rights (inhuman and degrading treatment).

In *X v. Turkey,* the European Court of Human Rights stated that the Government was unable to explain why the applicant was not given the opportunity to take regular open-air exercise. After having examined

the case circumstances, the Court concluded that the applicant had been subjected to inhuman and degrading treatment.[25]

Problems related to physical environment at penitentiary institutions are discussed in the relevant chapter of this Report. It is worth noting that during the reporting period the Public Defender's Office encountered cases where prisoners had been unduly placed separately from other prisoners for different reasons and the conditions they were kept in were incompatible with the established standards as humiliating and degrading the dignity of their persons. For example:

On 22 January 2014, the Public Defender's trustees met and spoke with defendants detained separately from other inmates at the Institution no. 6. They inspected the detainees' living and other conditions as well.

Having spoken with the accused persons and inspected their residential cells, we found out that they were allocated in the cells on the first floor but the cells were under the ground by half of their size. The walls in the cells were newly painted that made the cells humid. The stone tiles on the floor were soiled with construction mud. Each cell had one window sized 70x70 cm with three-rowed built-in iron bars. Also, in front of the windows, there was a wall construction in the yard that made penetration of sufficient daylight into the cells impossible. The detained defendants were saying they were keeping the windows open all the time because, firstly, had they closed the windows, they would not open again because the windows had no handles and, secondly, the cells were not being ventilated enough. These factors altogether had the effect that the temperature in the cells was low, despite the fact that the heating system was on. The doors of toilets inside the cells were barely covering the toilets and the toilets were not therefore fully isolated. There was no water tank to flush the toilet. There were ventilation pipes in the cell but the ventilation system was off; in fact, the detained defendants stated, the ventilation system was never on.

In conversation with us, the accused detainees stated that, due to the above-described conditions, they were suffering from lack of air, they had not been allowed to do an outdoor exercise since the day they were admitted to Institution no. 6 (28 November 2013), and they were alone in the cells, isolated from others. All these factors were negatively affecting their mental health with the effect that they had sleep disorders, were feeling anxiety and could easily get irritated. Some of the detainees had inflicted self-injuries stating they did so out of protest against the conditions they were kept in.

The administration of the penitentiary institution referred to security reasons as a justification for keeping the accused detainees isolated. Because the detention conditions of these prisoners were not complying with the established standards, on 28 January 2014, the Public Defender addressed the Minister of Corrections with its Recommendation no. 03-2/3953 to provide the prisoners with adequate living conditions.

The Special Preventive Group considered the conditions of prisoners in solitary confinement cells at the Institution no. 3 also ill-treatment. The Group was visiting the Institution no. 3 through 23-24 October 2014. Our monitoring revealed that it was impossible to keep sanitation and hygiene in the cells, there was an unbearable smell all around, the prisoners did not have matrasses and linen[26] and they had to sleep on iron beds.[27] One of the prisoners had toilet paper rolled around his body underneath his clothes to protect himself from cold. The prisoners allocated in solitary confinement cells were not allowed to exercise outside.[28]

25 *X. v. Turkey*, Judgment of 9 October, 2012, application no. 24626/09, §§ 42-45.

26 On the issue of providing prisoners in solitary confinement cells with mattrasses and linen, the monitoring team spoke with the Institution's lawyer who explained that the law does not envisage that such prisoners be provided with matrasses and linen.

27 It should be noted that, during our visit to the Institution no. 3, the Penitentiary Department's Monitoring Division was conducting its scheduled monitoring to the same institution. The National Preventive Mechanism team provided the Penitentiary Department's monitoring group with information about detention conditions in solitary confinement cells that are incompatible with human dignity demanding that the Penitentiary Department's monitoring group take appropriate measures immediately. Our team informed the group also about other problems we revealed at the Institution no. 3.

28 Detention conditions must be compatible with respect for human dignity, prisoners' health and well-being should be adequately secured (*Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII).

The living conditions are particularly grave at the Institution no. 7. The Public Defender has been repeatedly addressing the Minister of Corrections with its recommendations on this issue. The matter is discussed in detail in the Public Defender's 2013 Report to the Georgian Parliament but major problems at the Institution have not been dealt with to this date.[29]

PENITENTIARY STAFF TRAINING

Development of professional teaching programs and trainings for public officials is a key element of a strategy of prevention of torture and inhuman treatment.[30]

Consequently, it is necessary to organize trainings and courses for them periodically. Especially needed are trainings in effective prevention of prison incidents and human rights-based approaches.

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

Equally important is the subsequent use of the knowledge received at trainings. As the international experience shows, prison training programs are often times incompatible with the human rights-based approach and procedures and lack practical application. Prison staff prefers to do things the way they have always done.[31] In order to maintain sustainability and practicability of trainings, mechanisms for training assessment should be developed. Training effectiveness should be evaluated differently to show whether the actual performance has improved.

Training evaluation may be done on the basis of the following criteria: participant satisfaction and inclusion, willingness to use the learned knowledge in practice, and knowledge testing including by simulations and operational scenarios.[32]

Qualifications and experience of the penitentiary system employees remains one of the major challenges of the penitentiary system in Georgia. The following activities have been implemented in the Georgian penitentiary institutions in this regard:

A UNDP program has been approved for the Public Law Entity "Penitentiary and Probation Training Center" envisaging a number of new opportunities for the Training Center.

With the help from the Council of Europe, the Penitentiary and Probation Center developed a 6-month training program for new staff. Based on the positive results achieved, it was decided to continue with the program in 2015. On the basis of the mentioned teaching module, a uniform training program for current employees was elaborated which will start to be implemented in 2015. Trainings for the management level of the penitentiary institutions are continuing and are primarily aimed at human rights protection and prevention of torture and ill-treatment.

29 For more detail, please see in this Report a chapter entitled "Physical environment and sanitation and hygienic conditions at penitentiary institutions"

30 Human Rights Committee general comment No. 20: "Enforcement personnel, medical personnel, police officers and any person involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States Parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons" (par. 10).

31 United Nations Prison Incident Management Handbook, 2013, p. 23.

32 Andrew Coyle, A human Rights Approach to prison management, International Centre for Prison Studies, (2009).

It is important for prison staff trainings to be designed in a way to uphold protection of human rights and prevent torture and ill-treatment in penitentiary institutions. In drafting training programs, consideration should be given to sufficient frequency of trainings and relevance of training topics. Also, special attention should be paid to enhancing the penitentiary personnel's ability to work as a team, based on a multidisciplinary approach.

IMPORTANCE OF SURVEILLANCE CAMERAS

A penitentiary institution should be based on several components of security. One of such components is physical security that implies a physical sustainability of the premises and additional security systems such as video surveillance.[33] Video surveillance of prisoners should be implemented in way that their rights are protected and risks and threats related to their privacy are paid due consideration. This means that such video control should only be exercised in places of shared use as determined by law.

Video observation at places of shared use implies electronic surveillance only in non-private areas such as the prison reception unit, corridors, exercising yards, etc. Electronic surveillance and control of remand and convicted prisoners may not be administered in shared shower rooms, toilets and rooms designed for long-term visits except in accordance with a procedure and in circumstances envisaged by the Georgian legislation. The European Committee for the Prevention of Torture (CPT) has been emphasizing in its reports to individual countries that it is essential that the privacy of detained persons be preserved when they are using a toilet and washing themselves.[34]

Video surveillance is one of the most important components of prison security. It also enhances public control over and monitoring of places of shared used. The Georgina legislation regulates how video surveillance should be exercised in such places. Pursuant to the Imprisonment Code of Georgia, the administration has the right to use audio, visual and other technical means of electronic control.[35] The aim of this power is to prevent escaping from the prison and prevention of commission of crime or other wrongdoing as well as to collect information.

As a result of the monitoring visits paid to various penitentiary institutions, the National Preventive Mechanism was able to reveal problems that lack of proper video control of places of shared use may entail. In particular, we witnessed once again the need for electronic surveillance in such places as we were on our visit to the Institution no. 8 on 12 November 2014 when the Public Defender's trustees found shackled prisoners with traces of violence on their bodies in the shower room of the Smart Reception Unit. It is without doubt that had the Smart Reception Unit been equipped with surveillance cameras, it would have been possible to obtain evidence having crucial importance to the investigation – a video recording – that would help find out at least who took the prisoners to the Smart Reception Unit and how.[36] In one of its reports to the Turkish Government, the CPT mentioned that lack of video control rendered fixation of various facts of collective beatings and violence impossible thereby hindering prevention of ill-treatment.[37]

Further, it should be noted that the Smart Reception Unit is used to accommodate newly admitted prisoners, while the law does not envisage moving prisoners already allocated to their residential cells back

33 Andrew Coyle, A human Rights Approach to prison management, International Centre for Prison Studies (2009).

34 Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, available at: http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf [last viewed 23.03.2015].

35 Under Article 54(1) of the Imprisonment Code of Georgia, "the administration is entitled to use, in accordance with the legally established procedure, audio-visual, electronic or other technical means of control".

36 The Public Defender's 2014 Report on its Visit to the Penitentiary Institution No. 8, p. 8, accessible at http://www.ombudsman.ge/uploads/other/2/2196.pdf [last viewed 23.03.2015].

37 Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 28 June 2012 available at: http://www.cpt.coe.int/documents/tur/2013-27-inf-eng.htm [last viewed 23.03.2015].

to the Smart Reception Unit. Because it happened once, there is a risk that the practice of moving prisoners from their cells to the Smart Reception Unit will become recurrent. It is necessary to mention that this Unit is located in a part of the building where the so-called "greeting by beating" of the inmates was happening before they would be sent to their cells and hence it is necessary, for the prevention of these criminal practices, to establish a constant and full-fledged video surveillance over this area and to store the recordings for a reasonable time. Although there is no uniform rule about retention period of such recordings, our practice analysis shows that video recordings should be kept for a reasonable time (at least 10 years).

No surveillance cameras are installed on the territory of the Institution no. 14, as we learnt during our visit to that institution.[38] We would like to note once again that lack of video control hinders fixation, investigation and timely prevention of various incidents at places of shared use.

RECOMMENDATIONS

To the Minister of Corrections:

- Develop and implement a new injury registration form that would be compatible with the requirements prescribed by the Istanbul Protocol, in particular a form that will allow entering more detailed information about prisoner injuries;
- Conduct intensive training for the penitentiary healthcare staff in documenting ill-treatment;
- Take all reasonable measures, including by providing relevant training and instruction, to ensure that conversation between the healthcare staff and prisoners takes place with full respect for the confidentiality principle;
- Ensure that each time doctors discover signs of ill-treatment the case gets reported to the investigative authorities;
- Enact an new normative act or amend the existing one introducing an obligation of moving a possible victim of ill-treatment immediately from the institution where he/she was possibly subjected to ill-treatment;
- Take all reasonable measures, including by providing relevant training and instruction, to ensure to all prisoners in the penitentiary institutions imprisonment conditions that are compatible with the established standards;
- Equip penitentiary institutions with video surveillance systems in accordance with the requirements under Article 54 of the Imprisonment Code;
- Enact an order determining a reasonable term for storing video surveillance recordings and ensure that members of the National Preventive Mechanism have unhindered access to such recordings.

38 The Public Defender's 2014 Report on its Visit to the Penitentiary Institution No. 14, p. 3, accessible at http://www.ombudsman.ge/uploads/other/2/2196.pdf [last viewed 23.03.2015].

To the Parliament:

- Amend the Law on Legal Aid so that possible victims of ill-treatment are provided, in every case, with appropriate legal aid funded by the State;
- Amend the Georgian legislation with a view of making it possible to suspend public officials who have been reported to have committed ill-treatment from their office regardless of they have formally been charged;
- Amend the Georgian legislation making it mandatory to move victims of ill-treatment from the institutions they have allegedly been subjected to ill-treatment and to take all necessary measures to ensure their security.

ORDER AND SECURITY AT REMAND FACILITIES AND PLACES OF DEPRIVATION OF LIBERTY

GENERAL OVERVIEW

Pursuant to the European Prison Rules, "Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities".[39] This stipulation requires setting up a system of order and security that maintains balance between security and programs for prisoner reintegration into the society. This means, on its turn, that consideration should be paid to various components to effectively manage prisons.

Security includes prevention of violence among prisoners, firefighting and preclusion of other emergency situations, ensuring safe work environment to the prison personnel, and prevention of suicides and self-injuries. In view of these objectives, security components can be categorized as follows. Physical security implies physical security of buildings, including walls, windows, doors, etc. Procedural security is about having methods and procedures in place to ensure prison security and this has to dowith rules on the prevention of escapes and establishing order.[40] One of the best tools of ensuring good security is the so-called dynamic security concept.

The concept of dynamic security envisages establishing positive relations between the prison staff and the inmates by way of maintaining fair treatment practices and making available activities helping the inmates resocialization and reintegrate into the society. According to the UN Prison Incident Management Handbook, prison staff should realize that humane and fair treatment of prisoners helps maintain a good order and safety in prison.[41]

An indispensable condition for maintaining order and security in prisons is positive relationship between the staff of the penitentiary institution and the prisoners. For such relationship to arise, it is important that prisoners realize that the institution rules and procedures are there because they are important for keeping the prison environment safe and humane. Prisoners should believe that they will be treated humanely and their rights will be protected.

39 Council of Europe Committee of Ministers, The European Prison Rules, Rule 49, Recommendation Rec(2006)2, adopted by the Committee of Minister on 11 January 2006

40 Andrew Coyle, A human Rights Approach to prison management, International Centre for Prison Studies, (2009), accessible at http://www.prisonstudies.org/ [last viewed 15.02.2015].

41 United Nations Prison Incident Management Handbook, 2013, p. 21-22, accessible in English at http://www.un.org/en/peacekeeping/publications/cljas/handbook_pim.pdf [last viewed 22.03.2015].

Although ensuring a good order and safety in prison through positive relationship between the staff and the prisoners is a starting point, in some cases it becomes necessary to use force and other measures of coercion. Prisoner control involves static security elements too such as proper security infrastructure and equipment as well as incident management and use of force where appropriate.[42]

We should mention here that the United Nations Code of Conduct for Law Enforcement Officials allows the law enforcement officials to use force only when strictly necessary and to the extent required for the performance of their duty.[43] This means additional security measures should be resorted to only in extreme cases. Force and other measures of coercion should be used only according to a due procedure and following the best examples existing in practice.

During its visits to the penitentiary institutions, the National Preventive Mechanism learned about conflicting, tense and unfriendly relations between the inmates and the prison staff. Several reasons contribute to such environment: the prisoners' feeling that they are treated unfairly; improper follow-up to requests and complaints; unsatisfactory detention conditions at penitentiary institutions; in some cases, a physical environment that is inconsistent with the standards; often times, lack of re-socialization and rehabilitation activities; low level of staff knowledge and qualifications; improper management of mental health, drug addiction and redundant use of psychotropic substances; problems in provision of healthcare services; lack of prisoners' awareness of services available in the penitentiary system and procedures to receive those services; etc.

It is quite common in penitentiary institutions for prisoners to go on hunger strike. Analysis of such occurrences has showed that prisoner hunger strike as an extreme form of protest is sometimes related to actions or inactions of the prison personnel. Another extreme form of protest is inflicting injuries to self, which sometimes also has to do with the prison personnel's actions or inactions

Multiple factors contributing to the risk of recurrent violence among prisoners are a serious problem in penitentiary institutions. These risks are exacerbated by the long-embedded prevailing criminal mentality in prisons that has been in place for decades. Gradual elimination of that practice requires a manifold approach, including the measures listed below.

The reasons described above bring us to a conclusion that protection of human rights and maintenance of order and safety in penitentiary institutions require a manifold and systemic approach. The following organizational aspects[44] need to be considered in this process:

- Appropriate legal framework (regulations);
- Accountability (reporting mechanism);
- Operational abilities and competence of the prison staff (ratio of staff to prisoners, organizational structure, staff skills and experience, prison staff ethics code, prison internal regulations and disciplinary process);
- Elements of dynamic security (staff interaction with prisoners, observation, information gathering, knowledge of each prisoner, conflict management, mediation, etc.)
- A pre-made plan for incident and emergency management.

These organizational aspects are discussed in more detail in the relevant chapters below.

42 *Ibid.* p. 13.

43 UN General Assembly, Code of conduct for law enforcement officials, 5 February 1980, A/RES/34/169, accessible in English at http://www.refworld.org/docid/48abd572e.html [last viewed 09.03.2015].

44 *Ibid.* p. 15.

ACCOUNTABILITY

Protection of human rights and maintenance of good order and security in penitentiary institutions are closely related to accountability of the institution personnel. International standards and norms refer to the need for a reporting mechanism as a general rule.[45] But it is then for the governments to elaborate their own accountability standards. These standards should serve to managing prisons effectively and should be in line with the UN Standard Minimum Rules for the Treatment of Prisoners.

This can be made possible by putting in place a legal framework that allows for internal and external assessment of performance of both the prison administration and each staff member based on pre-determined indicators and evaluation of maintaining order in prisons. The development of such framework will increase transparency, accountability and credibility of the penitentiary institutions.[46]

Although penitentiary institutions are periodically sending their reports on issues of concern to the Penitentiary Department and the Ministry of Corrections, there is no system in place to assess performance of prison administrations based on pre-determined indicators.

As for the individual accountability of prison staff, they are reporting to their direct supervisor; in addition, possible misconduct committed by the penitentiary personnel is investigated by the Inspectorate-General of the Ministry of Corrections.

To ensure proper performance of their functions by and accountability of the penitentiary system employees, it is necessary to develop clear job descriptions, standard operation procedures, ethics codes and incident management guidelines.

Unfortunately, because of the lack of a set of such guiding documents and low qualification of employees of the penitentiary system, the prison staff find it difficult to make right decisions in a timely manner, which on its turn is associated with an increased risk of power abuse and ill-treatment.

Extremely important is to develop a clear-worded ethics code that, among other profession-related issues, would cover: staff behavior rules that would positively affect the environment inside the penitentiary institutions; competent and diligent performance of their duties by the staff in accordance with the legislation and other normative acts, relevant handbooks and lawful orders of superiors; collegial attitude to fellow staff members; respect for the human dignity of prisoners; protection of confidentiality; and maintenance of high professional standards in public relations.

STAFF TRAINING

As the UN Standard Minimum Rules for the Treatment of Prisoners provide, the prison personnel shall possess an adequate standard of education and intelligence.[47] Another requirement is that personnel shall have opportunities to further deepen their knowledge. This implies, on its turn, that relevant trainings and courses be offered at various intervals. Especially important is to train the staff in human rights approaches and human rights-based prison management methods.

Qualifications and level of experience of the penitentiary system peronnel remain one of the major challenges faced by the Georgian penitentiary system. Prison staff were provided with various training opportunities in 2014. Information about trainings[48] more or less related to human rights, order and security is provided in the below table:

45 Handbook for prison leaders: a basic training tool and curriculum for prison managers based on international standards and norms, the United Nations Office on Drugs and Crime, New York, 2010, accessible in English at http://www.unodc.org/ [last viewed 22.03.2015].

46 United Nations Prison Incident Management Handbook, 2013, p. 17.

47 The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 47-1, accessible in English at http://www.ohchr.org/EN/ [last viewed 02.03.2015].

48 The data have been taken from the official webpage of the Penitentiary and Probation Training Center at http://pptc.ge/cms/site_images/pdf/angarisi/PPTC%20Report%202014%20GEO.pdf [last viewed 21.03.2015].

N	Training pics	Ministry employees	Penitentiary Department employees	Prison employees
1.	Use of firearms	10	67	0
2.	Training for the escort service members; use of firearms	1	38	0
3.	A beginning basic training for employees of remand facilities and places of deprivation of liberty (regime)	0	0	120
4.	Team working methods (phase I)	0	0	16
5.	Bullying; prevention of bulling (phase II)	0	0	19
6.	Art therapy (phase III)	0	0	18
7.	Improving survival skills; carrier planning and getting ready for employement (phase IV)	0	0	17
8.	Projective and diagnostic techniques in individual work (phase V)	0	0	0
9.	Practical application of risks and needs assessment and individual sentence planning methods and relevant instruments in the penitentiary system	0	4	20
10.	Changes in the law	0	126	319
11.	Tactical training ToT	0	0	12
12.	Long-term course for training the staff of prison legal units	0	0	25
13.	Training seminar in "Reasonable admission and allocation"	1	0	23
14.	Mental disorders in prisoners: early discovery and prevention; methods of intervention, care and treatment	0	0	21
15.	The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures Women Offenders (the Bangkok Rules)	0	0	40

16.	Special training program for security service employees	0	0	16
17.	Altering violent behavior and addictions	0	0	10

The data presented in the above table shows that neither the number of training participants nor the topics covered at the trainings sufficiently meet the needs of penitentiary employees in terms of knowledge and skills required for both protecting human rights and maintaining good order and safety in the penitentiary institutions. However, we do welcome the introduction of a long-term (6 months) training course for the staff of prison legal units; the course consists of 5 phases and includes theory and practice.[49] Equally important is to further reinforce the basic training program and to keep the teaching results sustainable. The Penitentiary and Probation Training Center offers training for new staff based the basic training program. The basic training course includes theory, practice, tactics and physical training.[50]

When drafting training curricula, it is important to consider sufficient frequency of trainings and relevance of training topics. Special attention should be paid to the ability of penitentiary system employees to work as a multidisciplinary team.

Knowledge received at trainings should then be actually applied in practice. As the international experience shows, translation of the knowledge gained at training courses in practice is not easy because the prison staff prefer to do things the way they have always done.[51] In order to maintain sustainability and practicability of training, an effective mechanism for assessing training results and supervising their implementation in practice should be developed. Training effectiveness may be evaluated by different means such as measuring participant satisfaction and their willingness/readiness to use the received knowledge in practice, testing their skills of making situational analysis and finding solutions, observation by supervisors to see whether the training participant has improved his/her skills, and providing feedback about the use of the knowledge in practice by the training participants.

PRISONER CLASSIFICATION

Prisoner classification should be performed in a way that a precise analysis of each prisoner's risks and needs is produced. This is important to ease management and control of prisoner behavior. An effective prisoner classification system should also meet requirements such as reliability, accuracy and equality of rights.

The changes effected to the Imprisonment Code on 16 April 2014 determined the following types of places of deprivation of liberty: a low-risk place of deprivation of liberty, a half-open place of deprivation of liberty, a closed place of deprivation of liberty and a special-risk place of deprivation of liberty. The penitentiary system also includes a Juvenile Rehabilitation Institution and a Women's Special Institution.[52]

Pursuant to Article 46(2) of the Imprisonment Code, the Chairperson of the Penitentiary Department determines the type of deprivation of liberty in accordance with the relevant provisions of this Code.

49 Information about the long-term training course is accessible at http://pptc.ge/?action=page&p_id=127&lang=geo [last viewed 14.02.2015].
50 Information about the basic training course is accessible at http://pptc.ge/?action=page&p_id=130&lang=geo last viewed 14.02.2015].
51 The United Nations Prison Incident Management Handbook, 2013, p. 23.
52 Imprisonment Code, Art. 10

Under paragraph 4 of the same Article, based on a decision of the Chairperson of the Penitentiary Department, a convicted person may be moved, in order to serve the remaining sentence, to a place of deprivation of liberty of the same or other type, due to systematic violation of the institution's regulations, illness and/or risk level for security purposes, on account of the institution's reorganization, liquidation or overcrowding, or where there is a circumstance described in Article 58(1) of this Code or there are other important, justified circumstances and/or based on the convicted person's consent. Risk assessment and periodic review is performed by the Multidisciplinary Group. A ministerial order determines the types of risks, risk assessment criteria, rules of assessing and reviewing risks, procedures and conditions of moving convicted persons to a place of deprivation of liberty of the same or other type, and the composition and rights of the Multidisciplinary Group.

The Ministry of Corrections produced a draft version of the above-mentioned ministerial order. The draft order envisages creation of initial data processing groups[53] and the Multidisciplinary Group. As it is projected in the draft order, the Multidisciplinary Group and the initial data processing groups as well as the Chairperson of the Penitentiary Department should complete the process of prisoner allocation to appropriate places of deprivation of liberty according to the risk assessment results not later than by 1 January 2017.

The draft ministerial order offers the following definition of a danger risk. A danger risk is a danger possibly posed by a convicted prisoner to the security of the institution, the people around, the public, the State and/or law enforcement bodies, in view of the person's personal traits, motive of commission of crime, the actual illegal outcome, behavior in the institution and relations with the criminal world. A danger risk may be low, medium, standard or high. Low risk convicted persons will be allocated to low risk places of deprivation of liberty. High risk convicted persons will be allocated to closed places of deprivation of liberty. Standard risk convicted persons will be allocated to half-open institutions. And high risk convicted persons will be allocated to special risk institutions.

According to the draft ministerial order, each data processing group will be composed of 1 representative from the institution's security unit, 1 representative from the institution's legal regime unit, 1 representative from the institution's special registration unit, 1 representative from the institution's social unit and an institution's psychologist. Information processed by the groups (completed questionnaires) will be forwarded to the institution director who will then refer to the Multidisciplinary Group in 5 days.

The Multidisciplinary Group is a consultative body to the Chairperson of the Penitentiary Department that helps the Chairperson determine categories of prisoners by their danger risks. The Multidisciplinary Group consists of leading officials (chiefs or deputy chiefs) of the Department's relevant units who have appropriate education and professional experience as well as moral values and are able to function as members of the Multidisciplinary Group. The Multidisciplinary Group consists of 5 members: 1 representative from the Department's social services unit, 2 representatives from the main security unit (a legal regime unit and an operative unit), 1 representative from the special registration unit and 1 Department's psychologist. The multidisciplinary group sends it final decision on prisoner danger risk to the Department's Chairperson recommending allocation of the prisoner to the relevant institution.

It should be noted that a prison administration is obliged to inform the convicted person that the Multidisciplinary Group has started evaluation of his/her danger risk.

The convicted person has the right to view documents about himself/herself forwarded to the Multidisciplinary Group, if he/she so requests in writing. The convicted person may not view information indicated in Article 8(2) of this order. The person has the right to submit any additional documents, at any stage of proceedings, which he/she thinks will facilitate to making a decision he/she considers favorable to him/her.

The Public Defender welcomes this initiative and considers the introduction of a prisoner risk evaluation and periodic review system a clearly positive step. We also welcome the fact that the ministerial

53 Each group to cover not more than 700 convicted persons.

order formally establishes the right of convicted prisoners to appeal the decisions of the Multidisciplinary Group on determining the prisoner risk and/or decisions of the Penitentiary Department Chairperson on prisoner transfer. It has been for years that the Public Defender has been recommending in many of its recommendations to allow the prisoners to appeal against their transfer decisions.[54]

Despite the progress, the Public Defender believes a number of provisions of the draft ministerial order are vague and legally deficient. Annex 2 of the draft order, which lists prisoner danger risk assessment criteria, raises concern in this respect. The Public Defender deems these criteria are vague and insufficient leaving plenty of room for their versatile interpretation and incorrect application in practice. The criteria listed in Annex 2 make the impression that, in evaluating the prisoner danger risks, consideration will only be given to the severity of the punishment.

In addition, the proposed draft order contains provisions allowing for unjustified procrastination of the danger risk assessment exercise.

The Public Defender believes that convicted prisoners must be explained in advance their rights in the process of their danger risk determination. Convicted prisoners should also be informed, in advance, about the danger assessment criteria. It is then necessary to document the assessment procedure by drawing up relevant minutes, which should be signed by the prisoner. This would raise the protection of prisoner right to a whole new level establishing a higher protection standard.

In its proposal, the Public Defender also paid attention to issues such as the need for including physicians in the primary data processing groups and the Multidisciplinary Group. The Public Defender recommended introducing the possibility of moving prisoners from one penitentiary institution to another at their own request.

In its proposal, the Public Defender identified also some other issues concerning the draft ministerial order, which he thought were problematic. The proposal has been submitted on 20 March this year and it is therefore unknown at this stage whether the Public Defender's propositions have been taken into account.

PRISONER ALLOCATION

According to the European Prison Rules, prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.[55] Prisoners should be consulted when moving them from one institution to another. The European Committee for the Prevention of Torture has recommended that prisoners should be able to maintain good contact with the outside world and any limitation thereof should

be based only on substantial and manifest security risks.[56] According to the case-law of the European Court of Human Rights, although the European Convention does not grant prisoners the right to choose their place of detention, detaining an individual in a prison which is so far away from his/her family that visits are made very difficult or impossible may in some circumstances amount to interference with family life.[57] This covers situations where remoteness is coupled with badly functioning transportation system, health status of family members and exhausting travel for children. For these reasons, prisoners should be consulted with before they are moved to another institution.

Our monitoring showed that moving prisoners between institutions was quite a frequent practice during the reporting period. Often times prisoners are moved from the institutions located in the eastern

54 Public Defender's 2013 Report to the Parliament, p. 63
55 The European Prison Rules, Rule 17.1
56 Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf/E (2002) 1 - Rev. 2013).
57 See judgments of the European Court of Human Rights in *Ospina Vargas v. Italy*, *Vintman v. Ukraine*, *Messina v. Italy*).

Georgia to those located in the western Georgia or vice versa. As a result, the prisoners experience difficulties in maintaining contact with their families and lawyers and are suffering from the stress related to changed environment. For example, remand prisoners brought from the eastern Georgia to the penitentiary institution no. 3 in Batumi were refusing to attend court hearings due to a long distance to the court.

Often times reasons the prisoner are unaware of the reasons of moving them from one institution to another. Moreover, the Penitentiary Department refuses to inform the Public Defender's Office about the reasons of transfer. Normally, a template letter from the Penitentiary Department will say that a prisoner has been transferred from one institution to another on the basis of a confidential letter of the institution's director. The European Court of Human Rights has explained that a decision to transfer

a prisoner from one establishment to another must be reasoned and must serve a legitimate goal. The frequent moving of a prisoner from one institution to another, depending on the specific circumstances of the case, may result in violation of Article 3 of the European Convention on Human Rights.[58]

In its 2013 Report to the Parliament, the Public Defender recommended to the Minister of Corrections that prisoners be made aware of the grounds and reasons for moving them from one institution to another and the relevant minutes be drawn up; also, according to the Public Defender's recommendation, prisoners should be explained that they have the right to appeal their movement order. The Parliament approved these recommendations in its "Resolution on the Report of the Public Defender on the Protection of Human Rights and Freedoms in Georgia in 2013". However, the Ministry of Corrections has not fulfilled the recommendations and the practice concerned has not changed yet.

It has been emphasized in the Public Defender's 2013 Report that remand prisoners and convicted prisoners are not fully isolated from each other in the penitentiary institutions.[59] Neither are juvenile prisoners and adult prisoners.[60] These two issues are still a matter of concern at the penitentiary institution no. 8. Accordingly, the Public Defender's recommendation has not been fulfilled.

Monitoring carried out at the Institution no. 6 showed that all convicted prisoners, with no distinction by their imprisonment regime, were allowed to exercise outdoors under the same rule – one hour a day. In other words, prisoners who are serving their sentence under a half-open regime cannot move freely inside the institution on a territory designated for that purpose despite the fact that they are entitled to a leisure time for 6 hours and 30 minutes every day under the prison regulations. It follows that, in the Institution no. 6, such prisoners are not able to exercise their freedom to the extent guaranteed to them by the Georgian legislation.

The Public Defender believes this problem has to do with the lack of appropriate infrastructure at the Institution no. 6. This Institution is unfit for housing both closed regime and half-open regime prisoners at the same time.

SECURITY MEASURES; MANAGEMENT OF INCIDENTS AND EMERGENCIES

SMART RECEPTION UNITS

On 2 December 2014, the Order of the Minister of Corrections, Probation and Legal Assistance no. 97 dated 30 May 2011 was amended determining legal grounds for placing prisoners in the Smart Reception Unit. There is a separate de-escalation room in the Smart Reception Unit. According to the amended ministerial

58 *Khider v. France*, Judgment of 9 July 2009

59 Institution no. 7 is referred to as an example, p. 62. The report is accessible at http://www.ombudsman.ge/uploads/other/1/1563.pdf [last viewed 15.02.2015].

60 A recommendation about isolating juvenile priosoners from adult prisoenrs has also became part of the Parliament's Resolution on the Report of the Public Defender on the Protection of Human Rights and Freedoms in Georgia in 2013

order, if a remand or sentenced prisoner in the waiting room is a threat to his/her own or others' lives, the penitentiary institution's administration may allocate such a prisoner in a properly-equipped de-escalation room within the institution under a 24-hour visual supervision and with an uninterrupted access to the healthcare personnel. A de-escalation room must be equipped with a safe matrass, a surveillance camera (the lavatory pan must be excluded from the camera visibility area), an open-type damage-proof remotely- controlled toilet, a water tap, lighting and proper ventilation. Where necessary, measures of physical restraint and special means prescribed by the Georgian legislation may be used in relation to individuals placed in a de-escalation room. Physical restraints may be applied for a reasonable period until the criteria indicated in paragraph 1 of this Article are eliminated. Immediately after an individual is placed in a de-escalation room, a relevant document should be drawn up and entries about the condition of the individual must be registered at reasonable intervals. Remand and convicted prisoners will be placed in a de-escalation room until the allocation criteria are eliminated.

The statute of remand facilities and places of deprivation of liberty does not determine who exactly decides on placing an individual in a de-escalation room and what the level of proof is. The statute says a relevant document should be drawn up immediately after an individual is placed in a de-escalation room but it is unclear whether the document to be drawn up should be minutes or decision (order). A maximum term of holding a person in a de-escalation room is not indicated too. Pursuant to the statute, remand prisoners and sentenced prisoners may be placed in the Smart Reception Unit for no more than 15 days. But the statute does not expressly provide that remand/sentenced prisoners will be placed in a de-escalation room until the allocation criteria are accomplished but for no more than 15 days. It follows that it is unclear what happens if the 15 day-term of placing a person in a de-escalation room expires but the criteria for allocation a person in de-escalation room are not eliminated.

Having said that, we believe prisoners should be placed in de-escalation rooms inside the Smart Reception Units only on the basis of clear legal regulations providing proper guarantees against unlawful, arbitrary and disproportionate use of the measure.

ELECTRONIC SURVEILLANCE

On 19 December 2014, the Public Defender addressed the Minister of Corrections and Probation with its proposal concerning the draft Order of the Minister of Corrections and Probation "on determining rules and procedures for visual and/or electronic surveillance and control and for retention, deletion and destruction of the recordings". The Public Defender welcomed the Minister's initiative to legally regulate visual and/ or electronic surveillance in remand facilities and places for deprivation of liberty. Despite the positive assessment, the Public Defender requested betterment of some of the provisions of the draft ministerial order and the bringing of the order into consistency with the European standards.

Pursuant to Article 3(5) of the draft ministerial order, electronic surveillance and control of remand prisoners and sentenced prisoners may not be carried out in the areas of shared use such as shower rooms and rooms designed for long-term (conjugal) visits, except in accordance with the procedure and in cases determined by the Georgian legislation. We believe toilets located in the cells as well as toilets of shared use should be added to this list. In its reports on visits to various countries the European Committee for the Prevention of Torture (CPT) has been emphasizing that the privacy of detained persons should be preserved when they are using a toilet and washing themselves.[61]

The European Committee for the Prevention of Torture (CPT) has been emphasizing that the decision to establish a visual and/or electronic surveillance and control must be reasoned failing which such decision may

61 http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf see p. 19, par. 31; see also http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf p. 30, par. 60 [last viewed 22.03.2015]

be considered to be in violation of the prisoner's right to privacy. According to Article 4 of the draft ministerial order, a director of the institution decides to apply the measure by issuing a relevant order. Although Article 3 of the draft order says the director's decision must be reasoned and proportional to the purpose, we believe it is necessary to expand the content of Article 4 to specify that, in each case a visual and/or electronic surveillance and control is authorized, the director's decision must refer to the facts and circumstances that warranted application of the measure. The director's decision should also provide arguments as to why other means would not be effective in the given case. In each individual case, risks should be evaluated in detail and the director's decision (order) must clearly prove that visual and/or electronic surveillance and control are the only means with no alternative. This is important against the background that current decisions authorizing electronic surveillance contain scarce information and rather stencil phrases.

According to the draft ministerial order, after a decision to establish visual and/or electronic control is made, the administration must warn the remand/sentenced prisoner about it, except in the events prescribed by law. This will be documented in the relevant minutes to be signed by the prisoner. We think it would be more appropriate if the prisoner not only signs the minutes but also receives a copy thereof. This formulation could be inserted as an additional paragraph in Article 5 of the ministerial order.

Article 8 of the draft order basically repeats the relevant provision from the Imprisonment Code stating that the institution's administration may visually observe a meeting of individuals referred to in Article 54(6) of the Code using remote surveillance and make a recording by technical means, but without hearing the conversation. We believe the above-mentioned provisions of both the Imprisonment Code and the draft ministerial order must prescribe an exception to this rule whenever prisoners are meeting with the Public Defender/Special Preventive Group because these provisions expressly contradict Article 19(3) of the Organic Law on Public Defender, which provides: "Meetings of the Public Defender/Special Preventive Group members with persons who are detained, remanded or whose liberty is otherwise restricted and with convicted prisoners as well as with persons in psychiatric institutions, shelters for senior citizens and children's homes shall be confidential. No eavesdropping or observation shall be permissible."

Another issue which the European Committee for the Prevention of Torture (CPT) pays attention to in its reports is the need for periodic review of decisions on establishing visual and/or electronic control. The above proposed ministerial order does not envisage such obligation. Hence, the Public Defender deems it necessary to expressly articulate in the ministerial order the obligation of such periodic reviews, persons responsible for review and the reasonable intervals at which the review should happen.

Only two of the Public Defender's six substantive comments were taken into consideration. Two of the comments that were agreed with have to do with the possibility of periodic review of decisions on establishing visual and/or electronic surveillance and control and the exclusion of shared toilets and other places from the coverage area of electronic surveillance. The Ministry of Corrections also took into account a technical comment adding a paragraph to Article 5 of the ministerial order, which envisages the obligation of furnishing remand prisoners and convicted prisoners with a copy of the minutes documenting that a prisoner has been warned about the decision to put him/her under visual and/or electronic surveillance.

During its visit to the Institution no. 3 on 23 October 2014, the monitoring group went round to inspect the so-called "anti-vandal cell"[62] (Cell no. 229). There were no items in the cell but a matrass on the floor where prisoners sleep on. There was one prisoner in cell who was spilling water from a plastic bottle onto the matrass and the floor and was then lying on the wet matrass. This was a form of protest the prisoner was resorting to in order to object to the ill-treatment against him. According to the prisoner, he had been placed in the cell for one month and eighteen days by then. The representatives of the Institution's administration

62 This is how the staff of the Institution no. 3 call the cell no. 229

failed to inform the monitoring group about how they were going to deal with this prisoner's problem. They simply stated the prisoner was one of the "problematic prisoners" and this was the reason of his placement in the so-called "anti-vandal cell". Formally, the prisoner was under electronic surveillance according to the prison director's decision but in reality he was being subjected to an additional security measure – isolation from other prisoners ("moved to a safe place" [63]) but without a formal basis (decision). Whenever a prisoner is placed in a solitary confinement cell as a security measure, the term of keeping the prisoner there should not exceed 24 hours, while if a prisoner is moved to a solitary confinement cell on the ground of moving to a safe place, then it should not exceed 60 days. Because the prisoner was not formally ordered to a security measure, it was unclear how long he could be kept in the so-called "anti-vandal cell".

In respect of use of solitary confinement and extended electronic surveillance during the reporting period, the National Preventive Mechanism inquired into the case of K.G. Convicted prisoner K.G. has been kept isolated from other convicts since 17 November 2013. The director of the Institution no. 7 explained that the security measure has been applied in the interests of keeping the prisoner safe. However, the measure has not been ordered in compliance with Article 69 of the institution's statute approved by the Order of the Minister of Corrections and Legal Assistance no. 97 dated 30 May 2011. This means the prisoner cannot enjoy the legal guarantees protecting him from violation of his rights by extended isolation.

Here we would like to stress the approach developed by the European Court that States are obliged to periodically review the necessity and proportionality of a measure applied to a prisoner for security reasons. According to Rule 51.5 of the European Prison Rules, the level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

In *Ramirez Sanchez v. France,* the European Court of Human Rights explained that solitary confinement cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement. The Court found violation of Article 13 because the prisoners in solitary confinement did not have any remedy available to challenge the original measure or any renewal of it.[64]

In *Piechowicz v. Poland*, the Court found a violation of Articles 3 and 8 of the Convention because the prisoner was held in isolation for a long time without having the chance to participate in any social activities with other prisoners. The Court also noted that all forms of solitary confinement without appropriate mental and physical stimulation deteriorates a person's mental faculties and social abilities.[65]

The Court has been consistently stressing in many of its judgments that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.[66] The Court has also mentioned that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.[67]

In the Institution no. 7, sentenced prisoner K.G. lacks the possibility of socializing. He has been repeatedly indicating that he does not feel safe. He does not have a TV set in his cell. During his time in isolation, he has been imposed disciplinary measures several times, which restricted his ability to communicate with the outside world. It should be mentioned that a major reason why he has been disciplined is that he has been trying to communicate with other prisoners shouting from his cell – something that is a natural behavior for a

63 Statute of the remand facility, Article 59 transfer of an accused person to a safe place
64 *Ramirez Sanchez v. France*, no. 59450/00, § 145, 152.
65 *Piechowicz v. Poland*, no. 20071/07, § 173.
66 *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; see also *Kudla v. Poland* [GC], no.30210/96, § 94, ECHR 2000-XI.
67 *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II.

human being as a social individual. The negative effects resulting from K.G.'s long-term isolation were clearly visible during the meeting of the Public Defender's trustee with him.

Prisoner K.G. has been disciplined and ordered to isolation in avoidance of the rules and procedures prescribed by the Georgian legislation – a fact that itself amounts to unlawful limitation of his rights. Also, it is unclear how long the disciplinary measure should last or what exactly should happen (what criteria should be fulfilled) for the measure to become unnecessary and to be lifted. Likewise, it is unclear what makes the objective referred to by the director of the Institution no. 7 – the need to ensure security – impossible to achieve by moving K.G. to another cell where there are other inmates or to some other institution where his life and health would not be endangered. Having reviewed K.G.'s case, the Public Defender addressed the Minister of Corrections with its recommendation but, nevertheless, the prisoner remains alone in the cell, subjected to electronic surveillance.

USE OF SPECIAL MEANS

The European Court of Human Rights as well as the European Committee for the Prevention of Torture have developed a specific approach and standards concerning special means that can be used by law enforcement agents in maintaining public order. While draft amendments to the legislation on the use of special means were under consideration, the Public Defender produced its recommendations about the draft amendments. A majority of the Public Defender's recommendations have been taken into account and have been reflected in the Imprisonment Code. Below we give an account of recommendations that have not been agreed with but that the Public Defender believes must become part of the Imprisonment Code and of the relevant bylaws.

TEAR GAS AND PEPPER SPRAY

The Code of Imprisonment has been amended by adding paragraphs "d" and "e" to Article 57[1], which allow for using tear gas and pepper spray against remand prisoners and sentenced prisoners.

The European Court of Human Rights has a clear approach toward use of such gases by the law enforcement agents. According to the standard established by the European Court, these substances should not be used in confined spaces. Even when used in open spaces, the European Court concurs with the European Committee for the Prevention of Torture in that there should be clearly defined safeguards in place.

In *Ali Güneş v. Turkey*,[68] in regard to use of pepper spray and tear gas, the Court has stated that the use of these substances being potentially dangerous for health can produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it may cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging. Although according to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction[69] tear gas is not considered a chemical weapon and its use is authorized for the purpose of law enforcement, the Court concurred with European Committee for the Prevention of Torture stating that there can be no justification for the use of such gases against an individual who has already been taken under the control of the law enforcement authorities.

In the above-cited case, the Court discussed whether the use of gas was compatible with Article 3 of the

68 *Ali Güneş v. Turkey*, no. 9829/07.

69 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, adopted 13 January 1993

Convention and concluded that spraying the gas into the applicant's face while the applicant was under the control of law enforcement agents amounted to inhuman and degrading treatment.[70] It should well be noted that even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct.[71] The Convention makes no provision for exceptions and no derogation from Article 3 is permissible even in the event of a public emergency threatening the life of the nation.[72]

The approach of the European Committee for the Prevention of Torture towards use of pepper spray is also important. In particular, in its report to the Czech Government, CPT stated that there can be no justification for the use of pepper spray in confined spaces. Even if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered measures of relief. Further, CPT believes that such gases should not form part of the standard equipment of prison staff.[73]

In the same report, the CPT recommended the Government to elaborate a clear directive on the use of pepper spray. The Committee also stressed the importance of availability of information about the qualifications, training and skills of staff members authorized to use pepper spray.[74]

In this regard, we welcome the prohibition by the legislation of the use of pepper spray in confined areas but the law still does not prohibit the use of tear gas under the same conditions.

HANDCUFFS

In its report to the Russian authorities, the European Committee for the Prevention of Torture recommended the Government to discontinue the routine handcuffing practice and to use this measure only in exceptional cases, on the basis of an individual and comprehensive risk and needs assessment carried out by appropriately trained staff.[75]

The Committee recommends the Member States that, when resort to instruments of physical restraint is required, the prisoner concerned be kept under constant and adequate supervision.[76]

In its report to the Russian authorities, CPT additionally explained that if a person in custody is acting in a highly agitated or violent manner, the use of handcuffs may be justified. However, the person concerned should not be shackled to a wall or fixed objects but rather be kept under close supervision in an appropriate setting. In case of agitation brought about by the state of health of a person being held in custody, law enforcement officials should request medical assistance and follow the instructions of the doctor.[77]

It should be noted that according to Article 6, *"Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014, fastening remand prisoners and convicted prisoners to a fixed surface is prohibited except in extreme cases where legitimate objectives prescribed by law cannot be achieved by other means. As we see, the text of the article does not completely prohibit fastening prisoners to a fixed surface, which is a substantial defect that must be corrected.

70 *ALİ GÜNEŞ v. TURKEY* , paras. 37-43.
71 *Labita v. Italy*, no. 26772/95, par. 119.
72 *Ibid.* par. 119.
73 Report of the European Committee for the Prevention of Torture to the Czech Government, CPT/Inf (2009) 8, par. 46.
74 *Ibid.*
75 CPT Report to the Russian Government, CPT/Inf(2013)41, §111, p. 52.
76 CPT Report to the Government of Bosnia and Herzegovina, CPT/Inf(2009)25, §77, p. 36.
77 CPT Report to the Russian Government, CPT/Inf(2013)41, §52, p. 29.

Also the regulations should say that using handcuffs for fastening a prisoner to a strong surface is prohibited and appropriate supervision shall be ensured when handcuffs are used.

NON-LETHAL WEAPONS

The law does not provide a definition of or determine the types of non-lethal weapons, which certainly makes the law unclear and difficult to foresee. However, for the sake of fairness, we should mention that, according to Article 6, *"Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014, non-lethal weapons are rubber bullets, paintball guns, shooting nets and anti-riot smoke.

Nevertheless, the Public Defender believes the law must contain a clear definition of non-lethal weapons. Also, considering the threats associated with the use of such weapons, the law should expressly say that "special means" should only be applied when – and to the extent – strictly necessary to maintain security and order.[78]

STRAITJACKETS, RESTRAINT CHAIRS, RESTRAINT BEDS

Pursuant to Rule 33 of the United Nations Standard Minimum Rules, straitjackets as instruments of restraint shall never be used. Article 571(2)(b) of the Imprisonment Code allows for the use of straitjackets, restraint chairs and restraint beds. These instruments should be used under a doctor's supervision.

It should be noted that the National Preventive Mechanism has become aware of the fact that on 20 September 2014, the staff of the penitentiary institution no. 3 used a restraint bed in relation to convicted prisoner L.Q. Having inquired into the report, we found out that the restraint bed was used in violation of the provisions of the *"Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014. In particular, the prison director did not draw up a report on the use of special means and did not send it to the Minister of Corrections and the Chairman of the Penitentiary Department, as required by Article 18 of the abovementioned Rules.

The use of restraint bed was documented in the minutes which say in their reasoning section: "L.Q. was attempting to injure himself and those around him. His conduct was manifestly aggressive and, due to the extreme security condition, a restraint bed was used because other means were ineffective." This explanation does not contain a reasoning of why other means were considered ineffective. Also, it is unclear who made the decision to use a restraint bed. According to Article 13(2 *Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014, a director of a penitentiary institution or an authorized person in the director's absence have the right to make such decisions.

It should also be mentioned that a letter from the penitentiary institution no. 3 came with a certificate on health status issued by the institution's chief doctor, which reads: "Prisoner L.Q. who is put under electronic observation is agitated, anxious and inclined to injuring himself. He needed to be monitored strictly. For this reason, between 20:15 and 22:10 on 20 September 2015, a restraint bed was used in relation to the prisoner for security reasons. The patient then calmed down, as the doctor on duty reported, and no injuries were found

78 *Ibid.* par. 72, p. 38.

on his body as a result of his examination." As we can see, the chief doctor relies on a hearsay account of the doctor on duty and it is unclear whether the chief doctor medically examined the patient or whether prisoner L.Q. was under a doctor's constant supervision while he was subjected to the security measure. The medical certificate dates 20 September 2014 but it does not specify the exact time it was drawn up at. In addition, no medical examination report on the use of special means was produced, in contravention of the Order of the Minister of Corrections no. 145 dated 12 September 2014.

On these grounds, we conclude the use of a restraint bed in relation to accused L.Q. materially violated the *"Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014. Nevertheless, the Inspectorate General of the Ministry of Corrections commenced in-house inquiry into the issue only after the Public Defender's Office got interested in it.[79]

Recommendations to the Minister of Corrections

- Put in place a legal framework for internal and external assessment of performance of both the prison administration and each staff member based on pre-determined indicators and for evaluation of the ability to maintain good order in prisons.
- Develop clear job descriptions, standard operation procedures, an ethics code and incident management guidelines with a view of ensuring proper performance of their functions by and accountability of the penitentiary system employees.
- For the purpose of protection of human rights and maintaining good order and safety in penitentiary institutions, develop training programs based on an assessment of the staff knowledge and skills and ensure proper attendance of the staff.
- Ensure that more staff take the long-term (6-month) training course for legal regime unit staff of remand facilities and places of deprivation of liberty.
- Also, special attention should be paid to enhancing the penitentiary personnel's ability to work as a multidisciplinary team.
- Develop an effective mechanism for assessing training results and supervising their use in practice in order to maintain sustainability and practicability and conditions of moving convicted persons to a place of deprivation of liberty of the same or other type, and the composition and rights of a multidis-ciplinary group".
- In relation to convicted prisoners who have been allocated to half-open institutions, move such prisoners, in shortest time possible, respectively to half-open institutions where they can enjoy their freedom to the full extent guaranteed by the Georgian legislation.
- Since the penitentiary institution no. 6 does not have appropriate infrastructure for the prisoners to enjoy the aforementioned right, do not send prisoners who have to serve their sentence in half-open type places of deprivation of liberty to Institution no. 6.

79 According to the Letter from the Inspectorate-General of the Minister of Corrections dated 12 March 2015, the Inspectorate-General received a letter from the Chairman of the Penitentiary Department as of 5 March 2015 with an accompanying request of the Chief of the Public Defender's Prevention and Monitoring Department to the Penitentiary Department to inquire into the use of special means against Accused L.Q. in the penitentiary institution no. 3 on 20 September 2014. According to these letters, the Inspectorate-General commenced in-house inquiry into alleged failure by the director of the penitentiary institution no. 3 to draw up a report on the use of special means and to send it to the Minister of Corrections and the Chairman of the Penitentiary Department.

- Amend the draft Order of the Minister of Corrections "on determining rules and procedures for visual and/or electronic surveillance and control and for retention, deletion and destruction of recordings" in a way to provide that a decision to put a person under visual and/or electronic surveillance and control is well-reasoned and explains why this measure is necessary and cannot be replaced by other measures.

- Amend the draft Order of the Minister of Corrections "on determining rules and procedure for visual and/or electronic surveillance and control and for retention, deletion and destruction of recordings" in a way to provide that meetings of the Public Defender/Special Preventive Group members with accused and convicted persons are confidential and no eavesdropping or observation is permissible.

- Amend *"Types of specials means possessed by bodies responsible for enforcement of pretrial detention and imprisonment as well as rules and conditions of storing, carrying and using such means; rules of determining persons authorized to use the special means"* approved by the Order of the Minister of Corrections no. 145 dated 12 September 2014 prohibiting the fastening of prisoners to a fixed surface using handcuffs and establishing that, whenever handcuffs are used, the prisoner concerned is kept under adequate supervision.

- Comprehensively inquire into the legality of use of a straitjacket in relation to accused L.Q. and take appropriate measures against those responsible.

- Ensure that the relevant laws and bylaws are strictly adhered to in each special means are used by, *inter alia,* organizing intensive training for the staff and increasing staff accountability.

Proposal To The Parliament:

- Amend the Code of Imprisonment to provide that meetings of the Public Defender/Special Preventive Group members with accused and convicted persons are confidential and no eavesdropping or observation is permissible.

- Amend Article 571 of the Code of Imprisonment to expressly prohibit use of tear gas in confined areas.

- Amend Article 571 of the Code of Imprisonment to provide a clear definition of what non-lethal weapons mean and stipulate that they should only be used when and to the extent strictly necessary to maintain security and order.

DETENTION CONDITIONS

PHYSICAL ENVIRONMENT; SANITATION AND HYGIENE

According to the European Prison Rules, the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor

space, cubic content of air, lighting, heating and ventilation.[80] In all buildings where prisoners are required to live, work or congregate: *a.* the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system; *b.* artificial light shall satisfy recognised technical standards; and *c.* there shall be an alarm system that enables prisoners to contact the staff without delay.[81] According to the case-law of the European Court of Human Rights, Article 3 of the European Convention can be violated by not only undue or inhuman treatment but the environment in which a person is kept. Also, one of the principles of the European Prison Rules is that "prison conditions that infringe prisoners' human rights are not justified by lack of resources".[82]

The European Court has been consistently stressing in its judgments that Article 3 of the Convention requires of the States to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.[83] The Court has also mentioned that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.[84]

Compared to previous years, the physical environment and sanitation/hygiene have improved in a number of penitentiary institutions. However, the conditions existing in the penitentiary institutions still need to be improved and be brought in line with the international standards. The State must, despite the existing difficulties, timely eradicate the shortcomings and create proper conditions for prisoners.

PENITENTIARY INSTITUTION NO. 7

The living conditions at the Institution no. 7 are unfavorable. The Public Defender has been addressing the Minister of Corrections with a number of recommendations on this matter.[85] The problems in the Institution No. 7 are described in detail in the Public Defender's 2013 Report to the Parliament of Georgia. A majority of these substantive problems remain unresolved.

There are 25 cells in the Institution No. 7. Twelve of these cells are designed for two prisoners, five for four prisoners and the remaining eight cells are meant for eight prisoners each. In total, the institution has places for 108 prisoners.

Cells for two are about 7 square meters each, cells for four are nine square meters and cells for eight are 14.5 square meters. Each prisoner is allocated 3.5 square meters in a cell for two, 2.25 square meters in a cell for four and 1.8 square meters in a cell for eight.

By 25 March 2015, in cells for eight people, there were seven prisoners in cells no. 9 and no. 25, six prisoners in cell no. 7, five prisoners in cell no. 2 and four prisoners in cell no. 16. As regards cells for four people, there were four prisoners in cells no. 10 and no. 17 and three prisoners in cell no. 24. As for the cells for two people, there were two prisoners in cells no. 12 and no. 19. Fifteen prisoners were accommodated in single cells each.

According to our monitoring results, it follows that, in cells no. 9 and no. 25 with 7 prisoners, each person gets a space of about 2 square meters, which is a violation of a standard under the Imprisonment Code.[86] In

80 Rule 18.1
81 Rule 18.2
82 Rule 4
83 *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; *Kudla v. Poland* [GC], no. 30210/96, §94, ECHR 2000-XI;
84 See *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II.
85 30/07/2013 N03-3/513; 16/12/2013 N894/03-5; 19/02/2014 N03/458.
86 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters. Under paragraph 3 of the same Article 15, a residential area per prisoner in a remand facility should not be less than 3 square meters.

regard to cells no. 7, no. 2 and no. 16 housing six, five and four prisoners respectively, each prisoner gets an area between 2,4 square meters and 3,6 square meters. In cells no. 10 and no. 17 where four prisoners are accommodated as well as in the cell no. 25 with 3 prisoners inside, the area allocated to each prisoner is between 2,25 square meters and 3 square meters.

It should be noted that, in doing the above calculation, we did not subtract the toilet space and the area occupied by beds and chairs. Toilet areas vary from 0.4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. Each bed occupies 1.3 square meters. It follows that we should subtract 5,2 (1,3X4) square meters as well as roughly 1 square meter occupied by toilettes and tables amounting to a total of 8.3 square meters from the total area of each cell for eight people. It follows that even if only 4 prisoners are accommodated in a cell for eight people, the actual area usable by prisoners is narrow enough. The same is true for cells designed for four people.

In assessing living conditions in the light of Article 3 of the European Convention on Human Rights, the European Court takes into consideration, in addition to personal space allocated to a prisoner, other aspects of physical conditions of detention, such as the possibility of outdoor exercise, access to natural light, availability of natural and artificial ventilation, adequacy of heating arrangements, the possibility of using the toilet with respect for privacy, and compliance with basic sanitation requirements.[87]

In *Peers v. Greece,* the Court deemed that the fact that two prisoners shared 7 square meters coupled with the lack of ventilation and daylight amounted to violation of Article 3 of the European Convention on Human Rights.[88]

The cells in the Institution have small-size windows (75x43 cm) covered with several layers of iron bars making the entry of air and sun beams into the cells virtually impossible. The institution's ventilation system does not allow for sufficient movement of fresh air. Damp cells are ill lit and insufficiently heated.

According to Article 15(4) of the Code of Imprisonment, the premises where remand prisoners and convicted prisoners are accommodated must have windows to ensure access to natural light and ventilation. Prisoners must be provided with heating as well.

Pursuant to Rules 10 and 11 of the Standard Minimum Rules for the Treatment of Prisoners adopted in Geneva in 1955, all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.

We would like to mention here that recently there has been a plan to install new windows in the penitentiary institution no. 7. These windows would not open and the cell would only be aired by artificial ventilation.

On 16 December 2013 the Public Defender addressed a recommendation to the Minister Corrections stressing that even if artificial ventilation system would be provided, such a system could not substitute the need for fresh air intake in the cells. Accordingly, the Public Defender's recommendation was to take account of domestic and international requirements by installing such windows as would ensure to prisoners in the cells access to daylight and natural ventilation.

As a result of the Public Defender's recommendation, the installation of the abovementioned artificial system and windows has been stopped but a handful of other problems yet persist.

87 *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007.
88 *Peers v. Greece*, judgment of 19 April, 2001, application no. 28524/95, § 70-72.

In its reports on visits to Georgia, the CPT has been paying special attention to windows in the cells of Georgian penitentiary institutions, which are covered with iron shutters and bars preventing the entry of daylight and fresh air into cells.[89] The Committee has been urging the Georgian Government to take measures, without delay, to provide the penitentiary institutions with natural lighting and adequate ventilation. CPT has been particularly keen on prisoners' ability to access daylight and fresh air considering that these two are basic elements of life which must never be denied to prisoners despite any security needs.[90]

In its judgments against Georgia, the European Court of Human Rights has been referring to the reports of the European Committee for the Prevention of Torture (CPT) stating that the iron shutters on windows in the cells of a penitentiary institution were blocking the entry of fresh and daylight into the cells, and there was no ventilation system to compensate for the absence of lack of air. The Court deemed that these conditions amounted to violation of Article 3 of the European Convention on Human Rights.[91] In particular, the European Court of Human Rights stated:

"The Court also notes that, in the prison concerned, windows had iron shutters preventing air and natural light from entering the cells. There was no ventilation system to compensate for this lack of air. […] In the view of the Court, the evidence at its hand allows it to consider it proven "beyond reasonable doubt" that the applicant was indeed kept in the conditions of detention he complained of in his application. In particular, he had no bed of his own and was suffering from constant lack of air and dirt... Therefore, there was a violation of Article 3 of the Convention.[92]

The Penitentiary Institution no. 7 does not have infrastructure for long-term visits for which reason prisoners are unable to enjoy their right to conjugal visits.

Prisoners in the Institution no. 7 complain of the location of the exercise yards and lack of the necessary equipment in the yards. The yards are small-size and are located in areas where there is almost no movement of air. As our monitoring shows, each exercise yard is as narrow as 13 square meters (4,2x3,1) and there are four such yards in the Institution. Each of the small yards is surrounded by walls of about three meters high and is covered with bars and an iron net. These conditions coupled with the fact that the yards are encompassed by buildings around them are responsible for the fact that sun beams and fresh air do not properly penetrate into the yards.

One should also take into account that the Penitentiary Institution No. 7 is a closed- type facility for both sentenced and remand prisoners and the prisoners are entitled to 1 hour of walk per day. Amongst the Institution's population are prisoners who are suffering or have previously suffered from lung tuberculosis multiple times. These conditions negatively affect their health and increase the risk of them contracting the same disease in the future again.

In its judgment in *Ananyev v. Russia*, the European Court of Human Rights has stated that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity.[93]

89 Report of the European Committee for the Prevention of Torture on its visit to Georgia from 6 to 18 May 2001, published on 25 July 2002, accessible at http://www.refworld.org/docid/415c2d784.html
Report of the European Committee for the Prevention of Torture on its visits to Georgia from 18 to 28 November 2003 and from 7 to 14 May 2004, accessible atb http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdfhttp://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdf

90 Extract from the 11th General Report [CPT/Inf (2001) 16], p. 25, par. 30, accessible at http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf.

91 *Aliev v. Georgia*, application #522/04, Judgment of 13 January 2009; *Ramishvili and Kokhreidze v.Georgia*, Application # 1704/6, 27 January 2009; *Ghavtadze v. Georgia*, application #23204/07, Judgment of 3 March 2009; *Gorgiladze v. Georgia*, application #4313/04, Judgment of 20 October 2009.

92 The European Court of Human Rights, *Aliev v. Georgia*, application #522/04, Judgment of 13 January 2009, paras. 82 to 84

93 *Ananyev and Others v. Russia*, judgment of 10 January 2012, application nos. 42525/07 and 60800/08, §156.

In *Kudla v. Poland,* the Court has stressed that Article 3 of the Convention imposes the obligation on the Government to protect the physical health of persons deprived of their liberty.[94]

According to Article 14(a.a.) of the Imprisonment Code, remand prisoners and sentenced prisoners have the right to be provided with personal hygiene. Under Article 21 of the Code, "remand prisoners and convicted prisoners must be able to satisfy their physiological needs and maintain their personal hygiene in a manner that their dignity and honor are not abased."

The toilets in the Institution No. 7 are small-size, there is no ventilation system and flush tanks are not installed. Although toilets are isolated from the rest of the cell space, the doors on the toilets are too short to cover the toilets in full and, due to lack of the ventilation system, the open space above the short doors lets the stench out of the toilettes.

According to prisoners' reports, the process of satisfying physiological needs is made difficult due to insufficient floor area of the toilettes. A toilet area varies from 0,4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. According to the prisoners, some inmates, due to their physical limitations, have to satisfy their physiological needs in a humiliating manner – with the toilet door open. It should also be noted that beds in the cells are located right in front of the toilets thus making it virtually impossible to maintain some privacy. The European Court of Human Rights has discussed this issue in the context of inhuman and degrading treatment in many of its judgments.[95]

PENITENTIARY INSTITUTION NO.8

The area of residential cells in the Institution no. 8 does not, in most cases, comply with the requirements under paragraphs 2 and 3 of Article 15 of the Imprisonment Code.[96] It should be noted that as a result of its visit to Georgia in 2012, the European Committee for the Prevention of Torture recommended the Georgian government to ensure that every prisoner in the Institution no. 8 has at least 4 square meters of living space in the multi-occupancy cells and excess beds are removed from the cells accordingly.[97] This recommendation has not been fully complied with by now. The juveniles detention facility is an exception since the cells there are designed for four people and are compatible with the above-described requirements.

The artificial ventilation system does not adequately function in the residential cells. The Institution does not have an infrastructure for long-term visits.

In November 2014, a Smart Reception Unit was opened in the Institution no. 8. New prisoners are initially allocated in the unit. Natural light is the cells of this unit is insufficient. The ventilation system also does not provide adequate ventilation. Despite the fact that the Smart Reception Unit has been recently renovated, there is moisture on the ceiling and walls in some cells.

Moisture is visible also on the ceiling of cell no. 105 in the 2nd regime building designed for prisoners on hunger strike. The walls are peeling. Natural light and ventilation are insufficient in this cell and the cell no. 223 of the 2nd regime building. According to prisoners on hunger strike, they usually do not use their right to outdoor exercise because they are offered to go out at 7 or 8 o'clock in the morning.

94 *Kudła v. Poland* [GC], no. 30210/96, §94, ECHR 2000 XI.

95 See, *inter alia*, *Ramishvili and Kokhreidze v. Georgia*, application no. 1704/06, Judgment of 27 January 2009, par. 86; *Aleksandr Makarov v. Russia*, application no. 15217/07, Judgment of 12 March 2009, par. 97

96 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters. Under paragraph 3 of the same Article 15, a residential area per prisoner in a remand facility should not be less than 3 square meters.

97 Report on CPT visit to Georgia on 19-23 November 2012, CPT/Inf (2013) 18, par. 33.

In the Institution no. 8, exercise yards are located on the last floors of the buildings. The exercise yards resemble cells that are covered with a metal net. There is no appropriate equipment in the yards, no chairs, and the general environment very depressing.[98] Prisoners do not have the possibility of doing physical exercises.

The shower rooms have cloakrooms. Six shower units are separated from each other with partitions. The floor tiles in the shower rooms are damaged. Taps and water sinks in cloakrooms are dysfunctional. Soap holders and shelves for other items of hygiene are not installed in the shower room. In a majority of cloakrooms, there are no chairs.

Investigation rooms are located on the two floors of the administrative building. These rooms are used for meeting with prisoners by not only representatives of investigative authorities but also by lawyers, priests and representatives of international organizations and the Public Defender's Office – persons whose conversation with the prisoners is confidential under law. There are 36 investigation rooms in total.

Surveillance cameras are installed in 35 of these 36 rooms. There is no surveillance camera in one room, which is normally used by representatives of international organizations to talk to prisoners.

The investigation rooms are not heated. The rooms have no windows and no central ventilation system. The rooms are lit by electricity. There is an air conditioner in each room but the air conditions either do not work properly or are inoperative. This problem has been persisting since the day the Institution no. 8 was opened.

Almost always when prisoners are having meetings in the investigation rooms in the Institution no. 8, the doors of the rooms are open. Visitors prefer to open the doors because of the cold inside and the lack of air in wintertime (only the corridor is heated) and the heat in summertime. In summertime, it is even more unbearable to stay in the investigation rooms.

It should be noted that open doors during the visits in the investigation rooms raise a concern about confidentiality of the conversation. In particular, with open doors, the conversation can be overheard by those in the next room and by the prison staff who are on duty and are constantly moving around in the corridor. It is for this reason that some prisoners refuse to discuss confidential issues, especially if there are surveillance cameras installed in the room. Hence, the prisoners feel pressured and are unwilling to speak up.

WOMEN'S INSTITUTION NO. 5

The penitentiary institution no. 5 is designed for female prisoners. The windows in the cells would not open to the full and the artificial ventilation system operates defectively. For this reason, it is hot in the cells in summertime and the prison administration deals with the problem by temporarily removing the windows in the residential cells. When winter sets in, the windows get re-installed.

The Imprisonment Code allows every prisoner to maintain systematic contact with their families and close relatives by means of visits. Visits are helpful for the prisoners to resocialize and reintegrate into the society.

Presently, the institution has 16 half-isolated areas for visits. Each area is separated with a partition. For years, prisoners had to meet with their visitors over the glass partition, which was a bad practice. Against this background, it is certainly a positive step that the glass partition has been removed. But a problem now is the small area in the visit rooms, which also raises the issue of confidentiality of conversations. In particular, the reality is that visitors have to see the inmates in the corridor alongside the booths because the area of a partitioned booth on this side of the glass is only 1 meter.

98 Problems related to exercise yards are mentioned in the CPT's report on its visit to Georgia in 2010, ar 81, accessible in English at http://ww.cpt.coe.int/documents/geo/2010-27-infeng.htm [last viewed 28.12.2014].

There are four investigation rooms in the women's institution with surveillance cameras installed in all of them. In two investigation rooms there is no artificial light at all. One of these two rooms is sometimes used for short-term visits. In summertime, because of heat, visitors have to open the door of the investigation room – a practice that may violate the confidentiality of the conversation.

The residential buildings in the institution have shower rooms for shared use. In the shower rooms in buildings A, B and C, the consumed water gets stuck in the sewerage system and the shower rooms get flooded. The ventilation system does not function properly. The walls and floors are outdated and need repair.

In the division for mothers and children, the equipment is outdated and the artificial ventilation is not operational at all.

INSTITUTION NO. 11 FOR JUVENILES

In the Institution no. 11 for juveniles, residential cells are lit by both natural and artificial light. The cells are aerated by natural means but it would be better if the ventilation system were functional. The Institution has a centralized heating system. Every cell has its own toilet and shower. In some cells, water is leaking from the toilet walls making the cells humid.

There is also a shared shower room in the juveniles' residential building. There are 8 showers in the shower room. Both natural and artificial lights are sufficient in the room. However, the artificial ventilation system is dysfunctional. There is a central heating. The plaster has fallen in the corner of the shower room and repair is needed.

A single room in the Institution designed for short-term visits plays the role of an investigation room too. There are several tables in the room and several prisoners may be meeting with their visitors at a time, which violates the confidentiality of the conversation. Juveniles have the possibility of meeting their family members directly, without barriers – a fact that we would certainly like to welcome. The room is heated through the central heating system. The artificial ventilation system is dysfunctional. Repair is needed in the other room.

The institution also has a room for video visits, which has been repaired and has all the relevant equipment.

PENITENTIARY INSTITUTION NO. 12

The Institution no. 12 was having infrastructure issues for years, which the Public Defender has been reporting in its 2013 Report to the Parliament. We welcome the fact that a central heating system is already operational in the Institution, including in the investigation rooms and auxiliary areas. There is an infrastructure for long-term visits. A new residential building was build. However, a central ventilation system still does not exist in the Institution.

PENITENTIARY INSTITUTION NO. 9

The Institution no. 9 accommodates both remand prisoners and convicted prisoners. The cells have natural and artificial lighting. The residential cells are aerated through windows but an artificial ventilation system needs to be installed. The Institution has a functional central heating system. There is no infrastructure for long-term visits.

PENITENTIARY INSTITUTION NO. 3

In the Institution no. 3, the cells are designed for 2, 4 and 6 prisoners and have the area of 10 m2, 15 m2 and 19.5 m2 respectively. At the time of monitoring, the cells for four and six were not operating at their full capacity and hence each prisoner had a floor space of 4 square meters.

Natural light and ventilation are insufficient in the cells. The artificial light is satisfactory. The artificial ventilation system does not function properly. The cells are heated by means of a central heating system. The cells have bunk beds, individual cabinets, tables and chairs. In most cells the prisoners have TV sets. Inside the cells there are isolated sanitation and hygiene compartments and the prisoners can take a shower there too. The institution is having a water supply problem. Sanitation and hygiene in the residential cells are satisfactory. Conditions for sports activities are not adequate in the Institution.

PENITENTIARY INSTITUTION NO. 6

Last year, an artificial ventilation system was dysfunctional at the Institution no. 6. The windows in the cells were not providing sufficient natural ventilation. The Public Defender addressed the Head of the Prison Department with its recommendation in the 2013 Report to the Parliament. Repair works are currently being carried out at the Institution no. 6.

PENITENTIARY INSTITUTION NO. 14

At the Institution no. 14, building 6, a majority of prisoners in the cells do not enjoy the legally established minimum floor space of 4 square meters. There is insufficient natural and artificial lighting in the cells. A central heating system is operational. The cells have bunk beds, individual cabinets, tables and chairs. There are TV sets in a majority of cells. The cells are not adequately ventilated.

The prisoners use a shared shower room. Partitions are not installed in the shower room and distance between the taps is just one meter. The shower room has a capacity of 6 people. The sewerage system operates with defects which results in the shower room getting flooded and humid. The ventilation system is not operational in the shower room.

Natural and artificial lighting is adequate in the medical unit. The cells are heated through a central heating system. In the medical unit, there is no ventilation system; also there are no taps or a toilette. This is why the prisoners have to use the toilette and the washstand in the corridor. The walls are in a satisfactory condition. At the medical unit, the shower room and the laundry room are located in the same area. Two showers are located next to each other, with no partition in between.

Sanitation in the manipulation room of the medical unit is unsatisfactory. The manipulation room is separated from a reception room merely with a curtain.

The quarantine unit consists of 2 cells having the capacities of 28 prisoners and 38 prisoners respectively. The floor in the cells is made of concrete. There are bunk beds and individual cabinets in the cells. Each cell has 3 windows with iron nets installed on the inner side and iron bars on the outer side, which makes penetration of daylight and movement of air in the cells difficult. The artificial lights in the cells are unsatisfactory. There is no artificial ventilation. There is no heating system in the cells. There are isolated sanitation and hygiene compartments in the cells. Solitary confinement cells and the quarantine unit have their own exercise yard, which is half-roofed and fenced with an iron net fastened to iron poles. According to the prisoners, they are able to spend an hour outdoor every day after the meal.

A residential building no. 5 designed for prisoners employed at the economic unit has two floors. There are residential cells on both floors. The prisoners are not evenly allocated to the residential cells and, as a result, the cells on the first floor are overcrowded. These cells need repair.

The Institution's kitchen is under repair. It should be noted that while on its visit to the Institution no. 14 in February 2014, the National Preventive Mechanism's monitoring group recommended repairing the kitchen because of the unsatisfactory conditions there. We welcome the fact that fulfillment of our recommendation has started and the National Preventive Mechanism hopes that the repair works will be carried out properly and completed in a reasonable time.

Prisoners can stay outdoors, on the fresh air, from the morning till the evening. However, in the view of the monitoring group, the yard of the Institution's building no. 6 is small for the prisoners' recreational purposes. There are not necessary conditions for exercising in the yard. The prisoners have no access to a sports ground.

PENITENTIARY INSTITUTION NO. 17

The Institution no. 17 has different types of cells. The cells are designed for 10, 12, 18 and 24 prisoners and have the area of 30.4m2, 32m2, 47m2 and 55m2 respectively. The floor area in the residential cells does not always comply with the requirement under Article 15(2) of the Code of Imprisonment.[99]

The cells in the residential buildings have two iron-bar windows. Repair is needed in the cells. Natural and artificial light in the cells is sufficient. The residential buildings have a central heating system. The toilets in the residential buildings are small-size and are isolated; the ceiling and walls are humid; no flush tanks are installed.

There are two quarantine rooms in the Institution. If these rooms were used to the full of their capacity, they would be extremely cramped, because of the small area and the beds inside. In particular, if all the 24 prisoners are accommodated in the first room and 32 prisoners in the second room, infection control would be very difficult and infectious diseases could easily spread amongst the prisoners.

Residents of half-open residential buildings can enjoy their right to outdoor exercise, use a telephone and engage in sports activities between 07:00 and 21:00 hrs. Residents of closed-type residential buildings are entitled to 1 hour of outdoor exercise per day.

The exercise yards of half-open residential buildings are equipped with tables, chairs, sports grounds and exercising equipment. There are shared toilets and washstands in the exercise yards. There is no sports and recreational equipment in the exercise yard of the closed-type regime building. At the time of the Special Preventive Group's visit, the sewerage system was damaged in the exercise yard of the 1st and 2nd regime buildings and there was a puddle of water in the yard.

The monitoring group inspected the shower rooms in the Institution's regime buildings. In the shower rooms, there is no heating, the central ventilation system is dysfunctional. The floor tiles are damaged. The sewerage system operates with defects which results in the shower room getting flooded and humid.

The shower rooms in the Institution's closed-type regime building are not isolated. There is no artificial or natural ventilation in the shower room.

On the first floor of the administrative building there are two investigation rooms. These rooms are used for meeting with prisoners not only by representatives of investigative authorities but also by lawyers, priests and representatives of international organizations and the Public Defender's Office – persons

99 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters.

whose conversation with the prisoners is confidential under law. There are a total of 4 investigation rooms. Surveillance cameras are installed in all of the investigation rooms. A majority of the prisoners believes their conversations are audio- and video-taped by the surveillance cameras. This makes the prisoners feel pressured and unwilling to speak up.

The investigation rooms are not artificially ventilated. Each room has one PVC window which provides adequate natural ventilation. The investigation rooms are equipped with a central heating system. Both natural and artificial lights are sufficient.

PENITENTIARY INSTITUTION NO. 15

The floor area of the cells in the Institution no. 15 are 12m2, 13m2, 17m2 and 18m2. Each cell is meant to accommodate 6 prisoners. The floor area in the residential cells does not always comply with the requirement under Article 15(2) of the Code of Imprisonment.[100]

The natural light in the cells is inadequate and an artificial light is always on. The central heating system in the residential buildings does not sufficiently heat the residential cells and the prisoners have to buy electric heaters – which means additional costs for them.

Quarantine cells and solitary confinement cells are located in the closed-type residential building. There are 14 solitary confinement cells in total in three of which surveillance cameras are installed. Each cell has an area of 10 square meters. Each cell has one window with iron bars, which is inadequate to properly provide natural light and ventilation.

There are 5 quarantine cells in the Institution. Each cell has an area of 22 square meters. There are 5 bunk beds in each cell. Sanitation and hygiene in the cells are inadequate. Each cell has one window, which is not enough to provide natural ventilation. It should be noted that if the cells are used to the full, they will become cramped. Placing several prisoners in one quarantine cells works against the objective of controlling infection in the prisons and may result in spreading infectious diseases amongst the prisoners.

There is a sports ground in the exercise yard of the main residential building. Part of the yard (200 square meters) is roofed to keep some sports equipment there. A closed-type building has 4 exercise yards each having an area of 10 square meters.

Surveillance cameras are installed in the exercise yards. The yards are not roofed. The sewerage system does not work properly.

On the first floor of the residential building there are 4 shower rooms one of which is dysfunctional. Another one was under repair at the time of monitoring. There are 80 showers separated from each other with partitions. The shower rooms are not ventilated either naturally or artificially. Sanitation and hygiene in the shower rooms are unsatisfactory. Repair is needed in the shower rooms. In the closed-type building there are 2 shower rooms, which are not isolated. Prisoners can take a shower twice a week.

On the first floor of the administrative building there are two investigation rooms. These rooms are used for meeting with prisoners not only by representatives of investigative authorities but also by lawyers, priests and representatives of international organizations and the Public Defender's Office – persons whose conversation with the prisoners is confidential under law. Surveillance cameras are installed in all of the investigation rooms. A majority of the prisoners believe their conversations are audio-and video-taped by the surveillance cameras. This makes the prisoners feel pressured and unwilling to speak up.

100 Under Article 15(2) of the Imprisonment Code, the floor area per each convicted prisoner in all types of places of deprivation of liberty should not be less than 4 square meters.

The investigation rooms are not artificially ventilated. Each room has one PVC window which provides adequate natural ventilation. The investigation rooms are equipped with a central heating system. Both natural and artificial lights are sufficient.

PENITENTIARY INSTITUTION NO.2

The floor area allocated to each prisoner in the residential cells is less than 4 square meters. The natural and artificial lighting in the cells is satisfactory. A central heating system is functional. The ventilation system operates with defects. An extractor fan in the toilet is operational. There are bunk beds in the cells. A sanitation and hygiene compartment is separated in the cells. Women prisoners are not provided with items of personal hygiene.

The quarantine division has 8 cells and a shower room. A central heating system is functional. Artificial ventilation is insufficient. Conditions in the cells are satisfactory, in general. However, each prisoner gets less than 4 square meters of personal space. The natural and artificial lighting in the cells is satisfactory. The cells have bunk beds, individual cabinets, tables and chairs. A sanitation and hygiene compartment is separated in the cells.

Living conditions in the solitary confinement cells, except those in Building D, are unsatisfactory. The solitary confinement cells located in Building D are used only for prisoners from the same building.

Recommendation to The Minister of Corrections:

- Shut down the Penitentiary Institution no. 7
- Take all necessary measures to ensure uninterrupted water supply at the Institution no. 3
- Equip institutions no. 5 and no. 9 with the infrastructure required for long-term visits
- Ensure that each prisoner in the institutions no. 2, no. 8,[101] no. 14, no. 15 and no. 17 is provided with 4 square meters of floor area
- Remove excessive beds from the residential cells in the institutions no. 3 and no. 8
- Provide proper ventilation at institutions no. 2, no. 3, no. 5 and no. 8
- Install a central ventilation system in the investigation rooms at the Institution no. 5
- Ensure proper natural and artificial ventilation in the residential cells, solitary confinement cells and quarantine cells at the institution no. 14, no. 15 an no. 17
- Ensure proper artificial ventilation in the residential cells, solitary confinement cells, quarantine cells, investigation rooms and shower rooms at the institutions no. 6, no. 9, no. 11 and no. 12
- Install a heating system and repair the existing air conditioners in the investigation rooms at the Institution no. 8; install a central ventilation system in the investigation rooms
- Repair the room for long-term visits at the Institution no. 11 as necessary

101 Multi-occupancy cells in the Institution no. 8 are meant

- Eliminate the causes of humidity in the residential cells and repair the cells in the Institution no. 11
- Repair the roofs of the regime buildings at the Institution no. 8 to prevent water leakage into the cells located on the last floor
- In the Institution no. 8, give the prisoners the possibility to exercise outside according to the existing schedule
- Arrange an exercise yard at the level of the land surface in the Institution no. 8; install chairs, exercising equipment and other required items in the exercise yard
- Allocate sufficient area to arrange exercise yards at the institutions no. 3 and no. 14; arrange the exercise yards in a way to allow for physical exercising; ensure access to a sports ground
- Replace the old equipment with a new one in the mothers' and children's division at the Institution no. 5
- Ensure an environment of confidentiality and a proper room area for visitors at the Institution no. 5
- Repair the sewerage system on the entire territory on the Institution no. 17
- Repair the sewerage and ventilation systems in the shower rooms at the institutions no. 5, no. 15 and no. 17
- Repair the shower rooms and equip them with the necessary equipment at the Institution no. 8
- Install a partition in the shower room at the Institution no. 14 and in the closed-type residential building at the Institution no. 17
- At the Institution no. 14, repair, as soon as possible, the building no. 5 designed for prisoners employed at the economic unit; ensure that these prisoners are provided with appropriate conditions
- At the Institution no. 14, duly separate the manipulation room in the medical unit from the reception room and maintain appropriate sanitation and hygiene
- Provide women prisoners with all the items of personal hygiene at the Institution no. 2
- In the Institutions nos. 2, 3, 5, 6, 9, 11, 12, 14, 15, 17, 18 and 19, allocate a room for the representatives of the Public Defender/Special Preventive Group to meet prisoners at any time, without any surveillance or eavesdropping.

DAILY SCHEDULE AND REHABILITATION ACTIVITIES

In many of its reports has the Public Defender been stating that the conditions at penitentiary institutions must be such as to facilitate to a prisoner's resocialization and reintegration into the society. While serving their sentence, prisoners should receive or deepen their education and skills in the fields they are interested in and should have the possibility to partake in sports, arts, intellectual and other activities. All of these are necessary for the prisoners to become able to go back to the society as full-fledged individuals after they complete their sentence.

The resocialization process requires a multi-faceted approach. This means that a well-thought-through action plan should be developed that will not only articulate general activities but take into consideration avenues for customized approach. Basic resocialization tools applied according to the sentence imposed, offense committed, offender personality, their psychology and behavior are the following: serving the sentence in compliance with the relevant rules; rehabilitation programs; prisoner employment; general and vocational education; and relations with the outside world.

Recreational and cultural activities shall be provided in all institutions for the benefit of mental and physical health of prisoners.[102] According to the European Prison Rules, every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.[103]

During 2014, a variety of vocational and handicraft courses have been offered and are currently being offered in the penitentiary institutions. Various activities aimed at prisoner resocialization were conducted such as presentations of poem collections, theatrical performances, movie showings, poetry evenings and other activities.

Rehabilitation programs were implemented in the institutions nos. 2, 5, 8, 11, 12, 14, 15 and 17. The prisoners were able to partake in cultural events, attend general and vocational education courses and learn various handicrafts. The best examples in the regard are the institutions no. 5 and no. 11.

Institution no. 5			Institution no. 11	
N	Course title	Number of participants	Course title	Number of participants
1	Guitar course	17	Office software	22
2	Hairdresser course	42	"Bibliotherapy"	9
3	Makeup artist course	13	Psychology awareness	3
4	Embroidery	38	Art therapy	12
5	Gardening skills	24	Effective communication	19
6	Plant nursery	12	Behavior and responsibility, social skills, culture of positive behavior	7
7	Doing small business	23	Survival skills	6
8	Leather accessories specialist	18	The EQUIP program: social skills, etc.	20
9	Tapestry	17	Wood carving	46
10	Hotel management	21	Wood carving, artistic wood engraving and design	19
11	Georgian language course for ethnic minorities	16	Healthy way of life	11
12	Beauty specialist	40	Drawing	14
13	Office software	30	Drafting your CV and motivation letter; preparing for a job interview	12

102 Standard Minimum Rules for the Treatment of Prisoners, Rule 78
103 European Prison Rules, Rule 28.1

14	Tailor	29	Guitar course	16
15	Massage	16	"Debategroup"	9
16	Thick felt and batik	19	Enamel work	20
17	Training in Bangkok Rules	41	Small business	18
18	Civics training	33	Life values course	24
19	Management of emotional aggression and stress	8	Football training	40
20	Child development and related issues	5	Rugby training	35
21	Healthy way of life	20	Hip-hop training circle	4

No rehabilitation programs were carried out in the penitentiary institutions nos. 3, 7, 9 and 18 during the reporting period. Although the institutions nos. 18 and 19[104] are medical facilities,[105] prisoners get placed in the divisions of medical units for long periods and it is therefore important to offer some activities in those institutions too.

As we found out during our monitoring visit at the Institution no. 3 in October 2014, almost no psycho-social activities are offered in the institution. The institution does not have resources to implement such activities. Despite the lack of resources, the Institution's psychologist is trying to engage the prisoners in some measures. Conversations between the psychologist and the prisoners usually take place in one of the investigation rooms that does not have an appropriate therapeutic environment. It is virtually impossible to conduct group therapy sessions in the Institution no. 3. In the monitoring group's opinion, the inmates at the Institution no. 3 do not have the possibility to engage in any valuable activity that would be interesting to them – a fact that badly affects their health and well-being. In addition, the existing situation creates an unhealthy and stressful environment negatively affecting both the relations between the prisoners and the prison staff and the maintenance of good order and security.[106]

Although the Institution no. 6 was undergoing through a major overhaul during the reporting period, a number of prisoners were serving their sentence there anyway. The Institution offered only one educational program "Christian Talks", which lasted 2 months and involved 10 prisoners. A table below shows the activities implemented at various penitentiary institutions and the number of prisoners who partook in the activities.

N	Rehabilitation/resocialization projects by institution	N2	N8	N12	N14	N15	N17
1.	Project "Read books at the Partriach's blessing"	10	0	0	0	0	0
2.	Intellectual game "What? Where? When"	34	14	12	0	0	0
3.	Etalon	0	11	14	0	0	0

104 During the year, at the medical facility no. 19 for TB-infected prisoners, a literature competition was held in which 3 prisoners participated. Further, a project entitled "A prisoner's letter to children" was carried out in which only 2 prisoners were involved.

105 Institution no. 18 is a Medical Facility for Remand and Sentenced Prisoners and Institution no. 19 is a Treatment and Rehabilitation Center for Remand and Sentenced Prisoners

106 The Public Defender's report on its visit to the penitentiary institution no. 3 http://www.ombudsman. ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n3-dawesebulebashi-vizitis- shesaxeb.page

4.	Project "Getting ready for liberty"	25	80	36	0	35	45
5.	Project "Managing emotional aggression and stress"	0	0	8	0	0	10
6.	Program "Psychology talk behind the bars"	7	0	0	0	0	0
7.	Computer course	10	0	60	0	0	0
8.	Competition "Please like my logo!"	6	0	0	0	0	0
9.	Program "Healthy way of life"	0	0	18	0	0	20
10.	"Art theraphy"	Juveniles	0	0	0	0	0
11.	An event dedicated to the Book Day	24	0	0	0	0	0
12.	Project "Civic Education"	0	0	11	0	58	0
13.	English course	30	0	0	0	0	0
14.	Business course	0	0	0	18	29	34
15.	Wood carving	12	0	0	0	0	30
16.	Icon painting	3	0	0	0	0	0
17.	Embroidery course	5	0	0	0	0	0
18.	Therapy	0	0	0	29	0	0
19.	Poetry evening	0	8	0	0	0	0
20.	Guesthouse management	0	0	12	0	0	0
21.	Computer course	0	21	60	60	0	0
22.	Electrician course	0	0	0	0	34	0
23.	Enamel work	0	0	0	0	0	26
24.	Plant nursery	0	0	0	0	0	23
25.	Hotel management	0	0	0	0	17	0
26.	Psycho-social programs	0	0	0	379	0	0

In addition to those listed in the table, some additional cultural and sports activities were held in the institutions nos. 2, 5, 8, 11, 12, 14, 15 and 17: an event dedicated to the Book Day; a meeting with writers and other celebrities; movie showing; tournaments in chess, soccer, checkers and table tennis. Certainly, availability of such programs and events in the penitentiary institutions are welcomed but they should become systematic and there should be a great variety of programs offered. This is particularly important in closed-type institutions.

In its 2013 Report to the Parliament, the Public Defender recommended that the Minister of Corrections introduce and implement different programs aimed at prisoner resocialization at the penitentiary institutions nos. 6, 7 and 8. The Public Defender's recommendation was fulfilled only in case of Institution no. 8 and only partially.

As it is clear from the above table, the level and extent of prisoner involvement in various activities at penitentiary institutions are unsatisfactory. Furthermore, lack of variety of the activities offered is a problem. We believe the prisoners should be surveyed to identify the activities they would be interested in participating in and the activities thus selected should be offered then. Also, incentives should be used more frequently to encourage better involvement in the activities.

REGIME; DISCIPLINARY LIABILITY; ENCOURAGEMENT

DISCIPLINARY LIABILITY

According to the European Prison Rules, disciplinary procedures shall be mechanisms of last resort.[107] Prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.[108] The severity of any punishment shall be proportionate to the offence.[109] Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.[110] Importantly, punishment shall not include a total prohibition of family contact.[111] Use of disciplinary punishment should be in compliance with the principles of rule of law and the UN Standard Minimum Rules for the Treatment of Prisoners. Conduct constituting a disciplinary offence should be determined by law or regulation.[112]

It should be noted that the Georgian legislation does not determine which disciplinary punishment should be imposed upon the perpetrator in which case. This vests prison leaders with too much discretion in choosing the type of punishment and the risk of disproportion application of disciplinary punishment increases. Our monitoring shows that prison administrations are most frequently choosing solitary confinement as a form of disciplinary punishment. This practice confirms once again that it is necessary to have a legal determination of which type of disciplinary sanction should be used in which cases to make sure the sanction selected is proportional to the conduct committed.

Compared to 2013, the use of disciplinary punishment doubled in 2014. In particular, disciplinary sanctions were used in 1,408 cases in 2013 and in 2,972 cases in 2014. In its 2013 Report to the Parliament, the Public Defender recommended the Minister of Corrections to develop guidelines on the use of disciplinary sanctions to help establish uniform practices of sanction application across all of the penitentiary institutions. Unfortunately, the Public Defender's recommendation remains unfulfilled. Presently, the most frequent grounds for imposing disciplinary punishment are the following violations: making noise, shouting, verbally abusing prison staff or other prisoners, disobedience to the prison staff, being late or failure to appear at roll-call and contaminating the prison territory. Analysis of the use of disciplinary sanctions in the Institution no. 8 shows that the prison director has been using the same sanction for different types of disciplinary misconduct. Thus, prisoners making noise were imposed any of the sanctions indicted in the table below, depending on the sole discretion of the Institution's director.

Months	Reprimand	Taking away a TV set	Restrictionon visits	Restrictionon shopping	Restrictionon parcels	Restrictionon telephone calls	Solitary confinement
January	14	0	0	15	0	8	25
February	11	0	0	8	0	12	32
March	10	0	3	20	1	14	44
April	6	0	8	5	0	16	22
May	14	0	0	11	1	9	40

107 The European Prison Rules, Rule 56.1.
108 *Ibid.* Rule 56.2.
109 *Ibid.* Rule 60.2.
110 *Ibid.* Rule 60.3.
111 *Ibid.* Rule 60.4.
112 Standard Minimum Rules for the Treatment of Prisoners, Rule 29.

June	17	0	13	25	19	10	42
July	7	0	5	12	2	30	51
August	10	0	5	18	36	52	62
September	12	0	4	26	24	58	70
October	10	43	4	17	37	99	71
November	9	8	6	28	25	80	49
December	8	26	1	3	32	51	57
Total	**128**	**77**	**49**	**188**	**177**	**439**	**565**

Taking away a TV set as a disciplinary sanction was used in the Institution no. 8 only in October and November, during the period between 1 January and 28 November 2014. Because there is only one TV set in a cell, we think taking away that only TV set may amount to a collective punishment if the other inmates from the same cell are deprived of the possibility of buying a TV set. However, if the inmates buy a TV set, the sanction then no longer makes sense. Use of this sanction[113] may have particularly adverse effects on the well-being of isolated prisoners (those who are alone in the cell). Against the background of scarce rehabilitation, sports and cultural activities in closed-type institutions, television is the only entertaining means and the only source of information for the inmates. Therefore, the recently-established practice of using this sanction needs to be reviewed. Furthermore, prison directors should try as much as possible to refrain from applying sanctions related to limitation of contact with family.

It is worth noting that the right to have a TV set is considered a measure of encouragement under the statute of the Institution.[114] As regards remand prisoners, they may enjoy watching the television upon the administration's permission.[115] We believe it should not depend on the administration's good will whether prisoners watch TV or not. All remand prisoners and sentenced prisoners should have the right to watch television without having to obtain permission from the administration in advance. Only in exceptional circumstances, where there are clear pre-determined grounds, should the prison director be authorized to restrict this right for a definite period and based on a reasoned decision.

According to the information received from the penitentiary institutions, solitary confinement is the most frequently used disciplinary sanction. According to statistical data from the Institution no. 14, out of 124 cases of use of disciplinary punishment, solitary confinement was imposed in 120 cases. This practice contradicts Article 88(1) of the Code of Imprisonment, which stipulates that solitary confinement as a measure of disciplinary punishment should be used only in special cases.

The trend of using solitary confinement by penitentiary institutions is shown in the below table:

Institution no.	Solitary confinement	Other punishments	Total
N2	127 (60,5 %)	83 (39,5%)	210
N3	55 (67,1 %)	27 (32,9 %)	82
N5	3 (5,4 %)	52 (94,6 %)	55
N6	37 (60,6 %)	24 (39,4 %)	61

113 Can be imposed for up to 6 months, according to Article 82(1)(d) of the Code of Imprisonment.
114 Article 74(f) of the Institution's statute.
115 Article 21(1)(d) of the Institution's statute.

N7	0	145 (100 %)	145
N8	565 (34,8 %)	1058 (65,2 %)	1623
N9	0	3 (100 %)	3
N11	0	5 (100 %)	5
N12	5 (41,6 %)	7 (58,4 %)	12
N14	120 (96,8 %)	4 (3,2 %)	124
N15	119 (47,6 %)	131 (52,4 %)	250
N17	74 (23,6 %)	239 (76,4 %)	313
N18	0	48 (100 %)	48
N19	27 (65,8)	14 (34,2 %)	41
Total	**1132 (38,1 %)**	**1840 (61,9 %)**	**2972**

Solitary confinement cells were dysfunctional during the year at institutions no. 7 and no. 9 and hence, none of the prisoners was imposed solitary confinement as a disciplinary sanction. There are no solitary confinement cells at the institutions no. 11 and no. 18, due to the profile of these institutions. The data shown in the table demonstrate that solitary confinement occupies the highest share in disciplinary sanctions imposed in the institutions nos. 14, 3, 19, 6 and 2. Further, the share of solitary confinement in sanctions imposed in these institutions exceeds 60%, while it equals 96.8% in case of the institution no. 14.

According to Article 88(2) of the Code of Imprisonment, persons subjected to solitary confinement are restricted from the enjoyment of certain rights such as short and long visits, telephone calls and shopping for food. These restrictions are actually applied in practice. The CPT has recommended the Georgian Government to "take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts."[116] On this matter, in 2012, the Public Defender addressed the Parliament with a proposal to amend the Imprisonment Code accordingly; in its 2013 Report to the Parliament, the Public Defender reiterated that the above provision needed to be amended. Despite these appeals, Article 88 of the Imprisonment Code remains unchanged.

During its visit to the penitentiary institution no. 14, the monitoring group was informed about lack of access to medical services for those placed in solitary confinement cells. Thus, a prisoner who was serving his 3-day disciplinary punishment in a solitary confinement cell in the institution no. 14 had health problems, including a mental health issue. Due his mental illness, he had been prescribed drugs such as diazepam and tizercin. As the prisoner told us, he had been waiting for the healthcare staff to provide him with his prescription drugs and was making noise by hitting his legs against the cell door as a sign of protest. As a result, he was imposed solitary confinement as a sanction for making the noise. According to the prisoner, the healthcare staff did not visit him in the solitary confinement cell.[117]

In *Kudla v. Poland,* the European Court of Human Rights has indicated that Article 3 of the Convention obliges the State to protect the physical health of a detained person. In many of its judgments has the Court stated that it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic and involved a comprehensive therapeutic strategy.[118]

116 CPT Report on its visit to Georgia during 5-15 February 2010, par. 115 at http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm [last viewed 12.03.2014].

117 See the Public Defender's report on its visit to the penitentiary institution no. 14 at http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n14-dawesebulebashi-vizitis-shesaxeb-2014-wlis-19-20-oqtomberi.page

118 See, *inter alia, Jashi v. Georgia*, Judgment of 8 January 2013, par. 61

According to the 2007 Istanbul Statement on the use and effects of solitary confinement,[119] use of solitary confinement in relation to mentally ill prisoners should be absolutely prohibited. Unfortunately, we revealed a number of occurrences of keeping mentally ill prisoners in solitary confinement cells in the penitentiary institutions nos. 3, 14 and 17. As a result of the monitoring, we found out that prison leaders are less willing to cooperate with and to take into consideration the recommendations of prison healthcare staff in making decision on placing individual prisoners in solitary confinement cells. Such practice seriously endangers the lives and health of prisoners who are mentally ill or have suicidal inclinations. According to the Georgian law, "the administration is obliged to inform the healthcare personnel about placing a person in a solitary cell. Persons detained in solitary cells must be kept under daily and special observation of the healthcare personnel. If necessary, the duration of a person's stay in the solitary confinement cell may be reduced on the basis of a doctor's conclusion."[120]

In the reporting period, a total of 2,972 disciplinary sanctions were used against the prisoners in the Georgian penitentiary institutions. Only three prisoners challenged the decisions on imposing disciplinary punishment.[121] It should be noted, as the monitoring of penitentiary institutions during the recent years has revealed, that prisoners refrain from challenging their disciplinary punishment because, as they say, it makes no sense.

During its visit to the penitentiary institution no. 8 in November 2014, the monitoring group inspected the solitary confinement cells and talked to the prisoners detained there. We should mentioned that the prisoners in the solitary confinement cells did not have items of personal hygiene; they were provided with such items only after the monitoring group members talked to the Institution's responsible officer. According to the prisoners, they were not enjoying their rights to take shower and to exercise outside. According to the relevant representative of the Institution, the prisoners in the solitary cells rarely make use of their right to take shower and to take a walk outside but the staff member was unable to show any document confirming either enjoyment or waiver of these rights by the prisoners.

Similar to that, during its visit to the penitentiary institution no. 3 in October 2014, the monitoring group found out that the prisoners did not have access to outdoor exercise and healthcare services, and the conditions in the solitary confinement cells were unsatisfactory. There are 4 solitary confinement cells having the area of $7m^2$, $6.3m^2$, $5.8m^2$ and $6m^2$ respectively. The cells have concrete floors. There are a small table and a chair in each cell. The beds are fastened to the walls. Toilets in the cells are not isolated. Each cell has one small casement window, which won't open. The cells are not ventilated either naturally or artificially. At the time of inspection, there was no water supply in the cell and the stench was unbearable. The prisoners would not be provided with mattresses and linens and they had to sleep on firm surface.[122] According to the Institution's lawyer, the law[123] is not clear about whether prisoners detained in solitary confinement cells are entitled to mattresses and linens. We believe both facts described above are a violation of the rights under Articles 21[124] and 22[125] of the Imprisonment Code of Georgia.[126]

According to information received from the penitentiary institutions of the Ministry of Corrections, in the period between 1 January and 31 December 2014, administrative detention was imposed on 4 sentenced

119 International Psychological Trauma Symposium (2007), The Istanbul Statement on the use and effects of solitary confinement.

120 Code of Imprisonment, Article 88(6)

121 Institutions nos. 6, 8 and 9

122 *Ibid.* Report on the Public Defender's visit to the institution no. 3, available at http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/angarishi-sasdjelagsrulebis-n3-dawesebulebashi-vizitis-shesaxeb.page.

123 The Imprisonment Code, Article 88(4): "A solitary confinement cell should be lit and should be ventilated. An accused/sentenced person shall have a chair and a bed. He/she has the right to have reading materials upon request."

124 The Imprisonment Code, Article 21: 1. An accused/sentenced person shall have the possibility to satisfy his/her physiological needs and maintain his/her personal hygiene in manner that does not affect his/her honor and dignity. 2. Normally accused/sentenced persons should be provided with the possibility to take shower twice a week and to visit a hairdresser at least once a month. It is prohibited for the administration to have an accused/sentenced person shave his/her head completely unless a doctor requests so or this is necessary for hygienic reasons.

125 The Imprisonment Code, Article 22(3): A prisoner must have a bed and linen in his/her personal possession, which he/she should receive in an clean and undamaged condition. The administration must ensure that the linen is clean.

126 Ibid.

prisoners: 3 prisoners in the institution no. 7 and 1 prisoner in the institution no. 15. The term of detention was 10 days in all the four cases. None of these prisoners challenged the detention before appellate courts. It should be mentioned that administrative detention was used only once in 2013.

According to draft amendments to the Code of Imprisonment authored by the Ministry of Corrections by the end of 2014, a list of grounds on which basis administrative detention may be ordered will expand. In particular, the changes will make it possible to impose administrative detention for up to 90 days upon prisoners in special- risk places of deprivation of liberty for the following violations: 1) disobedience or other resistance to an institution's servant or other authorized person while they are performing their official duties; commission of willful conduct, which endangers the life and/or health of other person or infringement upon the honor or dignity of other person; 3) transmission of any information in an unlawful form from one cell to another or outside the institution.

It should be noted that, for the same disciplinary misconduct described above, prisoners in other, lower risk institutions may be imposed solitary confinement[127] for no more than 14 days[128] and administrative detention for up to 60 days may be used only if the prisoner commits another disciplinary misconduct while he/she is still serving punishment for the previous misconduct. So it is clear that the only reason for punishing one and the same conduct with substantially different sanctions is the prisoner's risk status (special risk prisoners). Also, it is hard to understand why the objective of maintaining order and security in a penitentiary institution cannot be achieved in special-risk places of deprivation of liberty with sanctions under Article 80 of the Imprisonment Code. It is further surprising why administrative detention is considered more effective while its enforcement starts only after the sentence indicated in the convicting judgment has been served; why would it not be more effective to use disciplinary sanctions that are enforceable immediately. So, it is clear that the proposed draft amendments are trying to introduce manifestly disproportional sanctions for the same types of conduct. Furthermore, the Ministry of Corrections has not provided any reasoned and evidence-supported explanation of why administrative detention would be more effective in maintaining order in special-risk institutions than other disciplinary sanctions. Accordingly, we believe the aforementioned draft proposed by the Ministry of Corrections should not be adopted.

Pursuant to the jurisprudence of the European Court of Human Rights, proceedings for imposing administrative detention are considered criminal charges for the purposes of Article 6 of the European Court of Human Rights.[129] Accordingly, a person whose administrative detention is considered enjoys the minimum rights guaranteed in paragraph 3 of Article 6 of the European Convention.[130] Among other rights, he/ she should have adequate time and possibility to prepare his/her defense. The requirement that accused person must be allowed adequate time to prepare their case is a guarantee against hasty judicial decisions.[131] In determining the adequacy of time afforded, account should be given to the nature and complexity of the case.

If new circumstances arise during proceedings, the accused person should be given additional time to appropriately shape his/her position[132] for which reason he/ she should have the right to request adjournment of the hearing;[133] in some cases, where this is in the interests of justice, the court should adjourn

127 Under Article 88(1) of the Imprisonment Code, solitary confinement as a disciplinary sanction should be used only in special cases.
128 The draft changes propose reduction of the duration of solitary detention from 20 days to 14 days – a change we certainly welcome.
129 *Ezeh and Connors v. the United Kingdom*; *Campbell and Fell v. the United Kingdom.*
130 According to Article 6(3), every accused person has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.
131 *Krӧcher and Möller v. Switzerland* (dec), *Bonzi v. Switzerland* (dec), *OAO Neftyanaya Kompaniya Yukos v. Russia*, § 540.
132 *Miminoshvili v. Russia*, § 141, *Pélissier and Sassi v. France* [GC], § 62, G.B. v. France, §§ 60-62.
133 *Galstyan v. Armenia*, § 85, *Campbell and Fell v. the United Kingdom*, § 98.

a hearing on its own initiative.[134]

Pursuant to Article 90 of the Imprisonment Code, a decision imposing administrative detention should be submitted, within 24 hours after it is made, to the competent court according to the location of the institution. The court (a single) judge will examine the decision at an open hearing within 48 hours after the decision has been lodged with the court. A reasoned judgment of the court must be rendered immediately after judicial examination of the decision is completed. Therefore, it is clear from the procedure envisaged by the Imprisonment Code that a prisoner has 72 hours at most to contact a lawyer, develop a defense strategy, obtain evidence and lodge a complaint with the court. It should also be mentioned that there is no possibility of adjourning a hearing after 48 hours have passed following the lodging of the detention decision with a court because the court must make a judgment within 48 hours anyway. As it follows from the above discussion, the procedure envisaged by the Imprisonment Code is not consistent with the requirements of a fair trial and needs revision.

And finally, if administrative detention as a type of disciplinary sanction is to remain in the Imprisonment Code, the maximum term of detention will need to be reviewed. Also, there must be a uniform standard of applying administrative detention. As a result of changes made to the Administrative Offenses Code in 2014, the duration of administration detention reduced from 90 days to 15 days – something that we surely evaluate as a positive step. However, it is now needed to apply exactly the same standard to the duration of administrative detention envisaged by the Imprisonment Code so that a maximum term of such detention is set at 15 days in relation to prisoners.

PRISONER ENCOURAGEMENT

If a prisoner partakes in various rehabilitation activities, a social worker will then draw up a report about the prisoner's good behavior. The report will be sent to a prison director who makes decision on which measure of encouragement to use in relation to the prisoner. The director's decision is inserted into a prisoner's personal record.

The following measures of encouragement may be used: announcing a thank you, additional short or long visit, quashing of a reprimand or of other disciplinary sanction, etc. Statistics of incentives applied during the year are provided in the below table:

Institution no.	N2	N3	N5	N6	N7	N8	N9	N11	N12	N14	N15	N17	N19	Total
Number of incentives	209	127	129	85	5	351	16	60	15	90	267	383	41	**1778**

As we can see from the above table, measures of encouragement were not used in relation to any prisoner in the Institution no. 18 in 2014. In the Institution no. 7, incentives were used in only 5 cases in a period of 12 months.

We would like to point out that frequent use of incentives can shake the negative impact of the prison sub-culture upon prisoners and facilitate to the prisoners' resocialization. It is therefore necessary to apply measures of encouragement more intensively in the institutions nos. 6, 7, 9, 11, 12, 14 and 19.

134 *Sadak and Others v. Turkey* (no. 1), § 57, *Sakhnovskiy v. Russia* [GC], §§ 103 and 106.

PRISONER EMPLOYMENT

According to the European Prison Rules, prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.[135] Prison authorities shall strive to provide sufficient work of a useful nature.[136] As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.[137]

Prisoner employement data for 3 years		
2012	2013	2014
102 prisoners	506 prisoners	804 prisoners

As the above table shows, in 2013 and 2014, the number of employed prisoners has drastically increased compared to the year of 2012. We welcome this fact and believe this positive trend must continue.

Institutions no. 11 (juveniles' institution) and no. 18 (medical facility) were not employing prisoners during the year, due to the special profiles of these institutions. Statistical data of prisoner employment according to institutions in 2014 are shown in the below table:

Institution no.	N2	N3	N5	N6	N7	N8	N9	N12	N14	N15	N17	N19	Total
Number of employed prisoners	112	28	31	51	4	192	10	37	99	68	138	34	**804**

Prisoners employed at penitentiary institutions were cleaning, washing, doing laundry, distributing food and products and performing other tasks, for which they were receiving salaries.

Recommendation to the Minister of Corrections:

- Develop guidelines on the use of disciplinary punishment so that disciplinary sanctions are used uniformly at all penitentiary institutions
- Use disciplinary sanctions as a measure of last resort
- Develop and introduce in all the penitentiary institutions a logbook to register use of their rights by prisoners placed in solitary confinement cells (taking a shower, outdoor exercise, receipt of items of personal hygiene)
- Take all necessary measures to prevent placement of mentally ill prisoners insolitary confinement cells
- Take appropriate measures to ensure that prisoners in solitary confinement cells get visited by doctors in accordance with Article 88(6) of the Code of Imprisonment

135 The European Prison Rules, Rule 26.1.
136 *Ibid.* Rule 26.2
137 *Ibid.* Rule 26.3

- Take all necessary measures to implement a variety of rehabilitation activities in all penitentiary institutions and to offer help, as much as possible, to the social units of penitentiary institutions in planning and conducting various activities with participation by prisoners. In planning such activities, due consideration should be given to areas of interest to prisoners. Measures of encouragement should be used more often to facilitate to prisoner involvement in such activities.
- Offer job opportunities to more prisoners in penitentiary institutions

Proposal to the Parliament:

- Reduce the maximum term of administrative detention to 15 days
- Amend the Imprisonment Code so that prisoners have access to all the guarantees of fair trial in the proceedings related to imposition of administrative detention

PRISON HEALTHCARE SYSTEM

The right to health is an inclusive right[138] and involves access to safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information and gender equality.[139]

Exercise of the right to health is closely related to preventive healthcare, which implies: facilitation to health and improvement of general living conditions; food; sanitation; intellectual and physical activities; targeted preventive measures in prisons focused on specific problems such as infectious diseases, mental health, drug addiction and violence.

Within the framework of the monitoring conducted in 2014, an emphasis was made onthe effective functioning of the prison healthcare system and the existing challenges. In the course of monitoring, we interviewed the prisoners and the prison healthcare staff; we also inspected the conditions in medical units of the penitentiary institutions and the infrastructure at the penitentiary medical facilities.

Statistical reports and information provided by the Medical Department of the Ministry of Corrections and individual penitentiary institutions were used during the research.

The below analysis is based on the national legislation such as laws and bylaws as well as international standards found in hard law and soft law, in particular:

- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997);
- The Optional Protocol to the above-mentioned Convention (2006);
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987);
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") (United Nations; New York and Geneva, 2001 – 2004);

138 Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights and World Health Organization, available at http://www.ohchr.org/Documents/Publications/Factsheet31.pdf [last visit on 31.05.2014].

139 General comment no. 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.

- Principles and case-law of the European Court of Human Rights;
- 3rd General Report on the CPT's activities – healthcare services in prisons;
- The UN Minimum Standard Rules for the Treatment of Prisoners (1955);
- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1989);
- The European Prison Rules (2006);
- Recommendation No. R (87) 3 of the Council of Europe Committee of Ministers (1987);
- Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 20 April 1998);
- Consensus Statement on Mental Health Promotion in Prisons, WHO Regional Office for Europe Health in Prisons Project (The Hague, Netherlands, 18–21 November 1998)
- The UN international principles of medical ethics (1982)
- The World Medical Association: Declaration of Tokyo (1975), Declaration of Hamburg (1997), Geneva Declaration (1948), Declaration of Malta (1991, 2006), Helsinki Resolution (2003, 2007);
- A Guide to International Instruments and Mechanisms against Torture, International Rehabilitation Council for Torture Victims (IRCT) (as of 4 July 2007)
- Health in Prisons, A WHO guide to the essentials in prison health;
- The Madrid recommendation: health protection in prisons as an essential part of public health (WHO, 2010).

Reforms implemented in the penitentiary healthcare system and current challenges are discussed below in the relevant chapters.

FUNDING OF THE GEORGIAN PRISON HEALTHCARE; ORGANIZATIONAL ASPECTS; REFORMS CARRIED OUT

According to the information received from the Ministry of Corrections, the Ministry's Penitentiary Department has separate units for primary healthcare, specialized medical assistance, medical activity regulation, healthcare economy and medical logistics.

In 2014, the implementation of the 18-month Penitentiary Healthcare Action Plan was completed. The implementation was positively evaluated by representatives of the European Union and the Council of Europe. Experts from the Council of Europe helped elaborate a Penitentiary Healthcare Development Strategy for 2014-2017. According to the information we received from the Ministry of Corrections, the following activities were implemented within the Strategy:

- Salaries of the healthcare staff increased by 60% (for example, a doctor's salary increased from 750 Lari to 1,200 Lari and a nurse's salary increased from 350 Lari to 750 Lari).
- A primary healthcare model was introduced in one penitentiary institution and is now accessible in all the penitentiary institutions. 214,567 medical consultations were issued at the primary healthcare/outpatient level.

- An electronic medical history (P-HER) and an electronic queue for transferring patients to hospitals were introduced.
- New "*Rules of transferring sick prisoners from pretrial detention facilities and places of deprivation of liberty to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Institution for the Treatment of Remand and Sentenced Prisoners*" were drafted and approved in 2014.
- A new Central Penitentiary Hospital was opened. There were 1,122 referrals to the Central Penitentiary Hospital (Medical Institution for Accused and Convicted Persons) in 2014.
- When necessary, it is possible to provide medical services to convicted persons in civilian clinics and hospitals. 3,658 referrals were made to the civilian institutions in 2014.
- Standards for penitentiary healthcare medications were developed and approved. Between 2013 and 2014, the expenditure for medications increased thrice: from 64 Lari to 184 Lari.
- Drug-addicted prisoners have access to a methadone detoxication program, a narcologist's consultation and narcological treatment, detoxication and specialized assistance at the Central Penitentiary Hospital and civilian clinics, testing for infectious diseases and related consultation on a voluntary basis. A long-term methadone replacement therapy program is under development.
- The Center for the Treatment of Tuberculosis and Rehabilitation was refurbished and a special ward for accused persons was opened.
- A program for the preventing, diagnosing and treating hepatitis C started; within the program, 8,711 accused persons and convicted persons were screen in 2014. 180 patients completed a hepatitis C treatment course in 2014.
- In 2014, prisoners' nutrition standards were updated, which envisage 12 different rations for prisoners having different physical abilities, health condition and category.
- A suicide prevention program was launched. The program is being implemented in 6 penitentiary institutions.
- Dental infrastructure was renovated. A new dental room was opened in the Central Penitentiary Hospital. Monitoring was carried out in all the penitentiary institutions and needs were identified, on which basis it is planned to purchase sterilizers for all dental rooms.
- Screening for breast cancer, cervical cancer and rectum cancer was conducted in the Institution no. 5 in 2014 to identify risk groups.
- A long-term care division for 57 individuals was opened for disabled prisoners in the Central Penitentiary Hospital.

We would like to note the substantial increase in the funding of the penitentiary healthcare. In 2014, 15,466,000 Lari were allocated for the penitentiary healthcare and 13,300,800 Lari were actually spent. We welcome the sharp increase in the penitentiary budget but, for the sake of optimal use of resources, it is necessary to assess cost-effectiveness of the activities implemented and to take this information into account in planning the next year budget.

MEDICAL INFRASTRUCTURE

INFRASTRUCTURE AT MEDICAL FACILITIES

A number of activities were implemented to update the medical infrastructure in the penitentiary system in 2014. Of special importance is the refurbishment carried out at the Treatment Institution no. 18 for Accused and Convicted Persons. After the repair works, the Institution became operational on 1 July 2014. Patient capacity of the Institution is 158 patients (158 beds). Number of beds per Institution's divisions is shown in a table below:

N	Division capacity according to number of beds	
1.	Reception	9
2.	Therapeutic ward	9
3.	Long-term care ward	53
4.	Narcology ward	11
5.	Psychiatric ward	21
6.	Anti-infection ward	10
7.	TB ward	8
8.	Surgery ward	21
9.	Critical medicine ward	16

The diagnostic ward at the Treatment Institution for Accused and Convicted Persons offers X-ray, echoscopy, endoscopy (gastroscopy, colonoscopy, bronchoscopy), elastoscopy (fibroscan), shock room, laboratory (clinical, bacteriological, biochechemical). There are also a sterilization room, a dental room and an observation room in the Institution.

The Treatment Institution provides 24-hour services to patients in the areas of therapy, neurology, endocrinology, psychiatry, infections, tuberculosis, skin and venereology, surgery, cancer, traumatology, urology, ENT (ear, nose and throat), ophthalmology, resuscitation and other areas.

During the monitoring, the Special Preventive Group inspected the premises of the Institution. The ground floor has an area of 746 square meters housing a pharmacy, a room for storing human corpses, a conference hall, chemical and bacteriological labs, a sterilization room, a library and the archives. The area of the first floor is 672 square meters and houses the administration, the reception (5 rooms and 9 beds), a sanitation room, a cast room, a shock room and a diagnostic bloc (X-ray, echoscopy, endoscopy, spirometry). The second floor with an area of 699 square meters houses a TB ward and an infectious diseases ward (7 rooms and 18 beds), a psychiatry ward (8 rooms and 21 beds) and a dental room. The third floor has an area of 726 square meters and accommodates a therapeutic ward (3 rooms and 9 beds) and a long-term care ward (21 rooms and 53 beds). The same floor houses a rehabilitation room equipped with a variety of gym equipment. The rehabilitation room was dysfunctional during the monitoring visit. The area of the fourth floor is 738 square meters. There are a critical medicine ward (5 rooms and 16 beds), a surgery ward (7 rooms and 21 beds) and an operating bloc. The clinic has two operating rooms: one for scheduled and the other for urgent surgical operations. Sanitation conditions in the hospital rooms and wards are generally satisfactory. But no ventilation systems are installed in the operating rooms and the X-ray room.

At the time of monitoring, the Institution had the following medical equipment: one 3-channel ECG (electrocardiograph), one UHF device, one electric stimulator "myorhythm", five glucometers, 36 blood pressure measuring devices with stethoscopes, three 3-channel electrocardiographs, one echoscopy device, one colonoscopy device, one gastroscopy device, one bronchoscopy device, one cardiac monitor, five electric knives, three defibrillators, five artificial breathing machines, three electric saws, one compressor, two

surgery table, 2 surgery lights, two electric surgery machines, forty-five wheelchairs and forty-two adjustable crutches.

In the psychiatric ward, there is an isolation room with a special bed with fastening belts. There is a water closet inside the room. If a patient refuses to take medications and food and disobeys the clinic rules, the relevant minutes are drawn up. On the first day of our visit, only 5 cells could be monitored electronically but, based on the Penitentiary Department's decision, surveillance cameras were in the process of getting installed in all of the rooms of the psychiatric ward.

TB TREATMENT AND REHABILITATION CENTER

The Center's capacity is 698 prisoners. At the time of the Special Preventive Group's visit, there were 168 prisoners at the institution. According to the institution's director, one convicted prisoner had been transferred to "Academician B. Naneishvili National Center of Mental Health".

Prisoners accommodated in the institution for treatment purposes are placed mostly in the first and second buildings. The first building houses prisoners infected with multi-drug-resistant tuberculosis MGB(+). The building has 18 rooms where there were 8 prisoners by 11-12 December 2014. The other building is a four-story building. On the first floor, there are offices for a chief doctor and a statistician as well as a drug storage and a laboratory. On the third and fourth floors, prisoners infected with sensitive and resistant forms of tuberculosis are accommodated in various wings of the building. One part of the third floor has rooms for newly admitted prisoners who are undergoing initial tests.

TB Treatment and Rehabilitation Center offers X-ray, echoscopy and lab tests. They have a dentist's room, a small manipulations room and a sterilization room.

MEDICAL INFRASTRUCTURE AT PENITENTIARY INSTITUTIONS

Healthcare services in penitentiary institutions are provided by 37 primary healthcare teams. According to information received from the Medical Department of the Ministry of Corrections, each primary healthcare team is equipped with a defibrillator, a pair

of scales, a stadiometer, a cardiograph, a glucometer, a blood pressure measurement device and an X-ray viewer. Dental rooms and small manipulation rooms are operational in the institutions.

Healthcare services in the medical units of penitentiary institutions are provided in former cells affecting the quality of the services provided. The surface of the walls and the floor in the doctors' rooms are an issue. In all rooms where diagnostic tests or small surgical interventions are conducted, the floor must be covered with antistatic linoleum. Ventilation is also a matter of concern. The same is true about the quality and technical maintenance of the medical equipment at penitentiary institutions.

Recommendation to the Minister of Corrections:

- Install an appropriate ventilation system in the operating room and the X-ray room at the Treatment Institution for Accused and Convicted Persons and ensure good working of the Institution's ventilation system
- Review the decision of the Chairman of the Penitentiary Department on installing surveillance cameras in all the rooms at the psychiatry ward and protect privacy of patients

- Make the medical units of penitentiary institutions compatible with the standards applicable in the whole country, including by properly equipping these medical units and controlling the quality of their medical equipment, putting the ventilation systems in good order and laying antistatic linoleum on the floors

ACCESS TO MEDICATIONS

Timely access to appropriate medications is a key to achieving success in treatment. According to Article 24 of the Code of Imprisonment, accused and convicted persons have the right to be provided with the needed healthcare services. Where necessary, accused and convicted persons should have access to medications and items permitted in pretrial detention facilities/places of deprivation of liberty. Upon request, accused and convicted persons have the right to buy, on their own money, medications that are more expensive than the institution-procured drugs or have properties similar to institution-procured drugs.

Monitoring showed that the prisoners cannot enjoy this right because none of the penitentiary institutions except the Institution no. 15 has a pharmacy where prisoners can buy medicines at.[140] Pharmacies are not operational in other institutions. The relevant normative acts do not envisage the right of prisoners to receive medicines from their relatives.

Substitution of prescribed medications remains a problem. We understand that, by making a list of basic medications for the use in the penitentiary healthcare system, the Ministry of Corrections determined medications it undertakes to provide to the penitentiary institutions at its own expense. In addition, the Order of the Minister of Corrections dated 30 May 2011 now regulates an exceptional situation when a prisoner may, at the expense of the Ministry, be provided with a medication that is not on the list of basic medications. According to the mentioned ministerial order, where there is a medical necessity, based on a written recommendation of a penitentiary institution's chief doctor to be accompanied with the patient's Form no. IV-100/a and a prescription issued by an attending medical doctor, upon permission of the Chief of the Ministry's Medical Department, a prisoner may be provided with medications, which are not on the list of basic medications approved by the Ministry for the use in the penitentiary healthcare system but which are envisaged in the National Clinical Practice Recommendations (the Guidelines) and State Standard on Clinical Situation Management (the Protocol) approved or recognized by the Ministry of Labor, Health and Social Protection. Medications thus prescribed will be provided to the relevant penitentiary institution by the Ministry of Corrections.[141] Funds spent on medications for penitentiary institutions are shown in the below table:

Institution	Expenses
N2	214552,074
N3	47124
N5	84475,86
N6	112333,09
N7	19184,24
N8	267371,29
N9	17184,21
N11	7505,244

140 By December 2014, no pharmacies were functional in the following penitentiary institutions: 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 17, 18, 19

141 Article 28(8) of the statute of pre-trial detention facilities, Article 29(8) of the statute of places of deprivation of liberty

N12	50662,53
N14	473277,2
N15	265582,59
N17	307660,81
N18	182628,86
N19	201146,81
Total	2250688,808

According to our monitoring findings, the healthcare personnel of penitentiary institutions are normally prescribing only generic medications available at the relevant penitentiary institutions at the expense of the State for which reason prisoners are precluded from buying branded medications on their own money. It is important for the prisoners to be able, in agreement with the doctor and on the basis of a relevant prescription, to buy a branded medication corresponding to the generic one initially prescribed by the doctor in the penitentiary institution's pharmacy or, where there is no pharmacy, to receive such medications from their family members.

During our monitoring, having studied the documentation and conversed with the prisoners, we found out that patients sometimes do not get medications prescribed by the doctor as part of a complex course of treatment. Also, often times the prescribed medications are later substituted with other medications – something which is heavily frowned at by prisoners and which even becomes a ground for conflict between the doctor and the patient.

Recommendation to the Minister of Corrections:

- Take measures to ensure that prisoners have unimpeded access to basic prescribed medications; ensure that, in issuing prescriptions, doctors are not limited to issuing only those medications that are available in the penitentiary institution and that prisoners can access branded medications at their own expenses without barriers, upon their request and in agreement with their doctors; elaborate a clear procedure for delivering medications in parcels to prisoners in penitentiary institutions where there are no pharmacies.

ACCESSIBILITY AND QUALITY OF HEALTHCARE SERVICES

ACCESS TO A DOCTOR

The European Human Rights Court has stated in *Kudla v. Poland* that Article 3 of the European Convention imposes the obligation upon the State to secure physical health of detained persons. In many of its judgements has the Court stated that it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic and involved a comprehensive therapeutic strategy.[142]

According to information received from the Medical Department of the Ministry of Corrections, 37 primary healthcare teams are operational in penitentiary institutions. The teams are composed of family

142 See, *inter alia*, *Jashi v. Georgia*, Judgment of 8 January 2013, par. 61

doctors. During 2014, family doctors employed at the institutions issued medical advice to the prisoners 214,567 times (this figure was 224,363 in 2013). As for the invited doctors, they issued medical advice in 30,726 cases (33,929 cases in 2013). The statistics show that the number of consultations provided by family doctors and invited doctors has decreased in 2014 compared to 2013; the decrease is not significant though. It should be taken into account that, according to the statistical data provided by the Ministry of Correction, the sickness rate has increased compared to 2013. Information about the sickness rate is provided in the table below:

N	Diseases	2014	2013	Difference
1.	Cardiovascular diseases	1650	859	791
2.	Respiratory system diseases	5037	1536	3501
3.	Digestivesytemdiseases	2721	1708	1013
4.	Urogenital system diseases	6181	1180	5001
5.	Nervous system diseases	1726	958	768
6.	Mental illnesses	2023	1998	25
7.	Endocrinal system diseases	431	182	249
8.	Hematological diseases	53	19	34
9.	Diseases of sense organs	1316	1349	- 33
10.	Infectiousdiseases	442	168	274
11.	Tuberculosis	136	294	-158
12.	HIV/AIDS(newlydetected)	34	7	27
13.	Osteoarticulardiseasesanddiseasesofconnectingtissues	1121	416	705
14.	Skin and venereal diseases	525	285	240
15.	Self-injuriesandtraumas	3086	3051	35
16.	Dental diseases	15860	15857	3
17.	Accute surgical diseases	377	230	147
18.	Oncological diseases	37	40	- 3
		Total: 42756	Total: 30137	Total: 12619

As regards the number of doctors and nurses envisaged by the staffing tables of penitentiary institutions, according to the information received from the Medical Department of the Ministry of Corrections, the number of family doctors and nurses decreased in 2014 compared to 2013.[143] Against the background that the number of prisoners in penitentiary institutions was 9,093 in December 2013 and 10,372 in December

143 119 doctors were employed at penitentiary institutions in 2013 and only 103 in 2014. Also, the number of nurses was 169 in 2013 and 136 in 2014.

2014, the Special Preventive Group considers it unreasonable that the number of healthcare staff was reduced despite the increased prison population and the increased sickness rate. It should be mentioned also that, with the number of doctors reduced, the number of medical consultations issued by the doctors decreased by 4,4% compared to the previous year. The number of doctors and nurses according to penitentiary institutions is shown in the table below:

N	Institution no.	Doctor	Nurse	Other assisting personnel
1.	Institution N2	12	13	1
2.	Institution N3	6	5	1
3.	Institution N5	8	9	1
4.	Institution N6	8	12	1
5.	Institution N7	2	3	1
6.	Institution N8	24	37	2
7.	Institution N9	5	7	1
8.	Institution N11	4	4	1
9.	Institution N12	3	5	0
10.	Institution N14	10	11	1
11.	Institution N15	12	15	2
12.	Institution N16	8	7	1
13	Institution N17	9	15	2

Based on the information received from the Medical Department of the Ministry of Corrections, below we provide a ratio of doctors and nurses envisaged by the penitentiary institutions' staffing tables to the number of doctors according to institutions in 2014:

N	Penitentiary institution no.	Prisoner to doctor ratio	Nurse to prisoner ratio
1.	Institution N2	137	116
2.	Institution N3	47	47
3.	Institution N5	38	29
4.	Institution N6	16	10
5.	Institution N7	35	23
6.	Institution N8	120	74
7.	Institution N9	12	7
8.	Institution N11	15	11

9.	Institution N12	81	48
10.	Institution N14	112	67
11.	Institution N15	164	120
12.	Institution N17	224	119

The figures in the above table have been calculated by dividing the number of prisoners in each institution by the number of doctors and nurses according to the institution's staffing table. These data are valid for 2014. The table does not take into account the duty schedule of doctors and nurses but, nevertheless, it is clearly visible that the number of nurses is clearly insufficient in the institutions nos. 2, 8, 14, 15 and 17.

Our monitoring visits carried out in 2014 revealed that it is difficult for the inmates to access staff doctors both in the daytime and at night, in some of the institutions. Also, the penitentiary healthcare personnel have been mentioning problems related to overcrowding and hard working conditions. Thus, in the penitentiary institution no. 17, one family doctor in the day shift and one family doctor in the night shift have to serve more than 400 prisoners; likewise, one nurse serves more than 200 prisoners. In the Institution no. 8, there are up to 300 prisoners per each primary healthcare doctor. The number of nurses is clearly insufficient: one nurse per 430 prisoners. In the Institution no. 14, 3 primary healthcare doctors, 3 nurses and 1 doctor on duty work in the day shift. Accordingly, one doctor and one nurse have to serve more than 250 and 340 prisoners in the day shift, and one doctor and one nurse have to serve more than 1,000 prisoners in the night shift.

The doctors and especially nurses have hard working conditions at Institution no. 3. During a whole day, the institution is served by only one primary healthcare doctor and one nurse. In this situation, it is simply impossible for the doctor to provide full- fledged healthcare services to the patients in the medical unit and the residential cells while properly maintaining the required medical documentation at the same time.

Dental services in the penitentiary institutions are a matter of concern. Dentists do not have assistants and have to serve 25 to 30 patients each day. Orthopedic services are provided with some impediments.

During our visits to the institutions no. 2 and no. 3, the monitoring group revealed a somewhat new practice of provision of healthcare services to prisoners: in particular, for a prisoner to receive treatment, he/she writes up an application for medical services and hands the application in to the controlling officer on duty. The controlling officer collects such applications during the day and files them with institution's chancellery where the applications get registered and get sent to the institution's doctor later. Only in urgent cases will the controlling officer deliver an application for medical services to the chancellery immediately. It is unclear, however, how a prison controlling officer who does not have medical knowledge will evaluate whether or not an individual prisoner's medical condition is urgent. The above-described procedure constitutes an additional barrier in the process of provision of healthcare services in prison and a breach of the principle of confidentiality. We therefore believe that the above-described practice needs to stop immediately.

According to the information received from the Medical Department of the Ministry of Corrections, invited doctors issued 30,726 medical consultations during 2014. The number of medical consultations issued monthly is between 2,000 and 3,500. Below we describe some examples of common problems revealed by the Special Preventive Group during its monitoring at several penitentiary institutions in regard to timely availability of invited doctors.

The monitoring has shown that the invited doctors are not visiting the penitentiary institutions regularly and frequently. Thus, in the institution no. 3, an echoscopy specialist last paid his/her visit on 1 October; by 23-23 October, 12 prisoners were awaiting his/her next visit. A urologist visited the Institution on 14 august and 10 prisoners were waiting for him/her since then. An X-ray specialist was in the Institution

on 16 September and 34 prisoners were awaiting his/her next visit. A proctologist's last visit dates back to 8 September and 2 prisoners were in queue for his/her consultation.

In the Institution no. 2, a patient wore the Ilizarov frames on his left shank to keep his broken bone fixated for as long as 2 months. Despite the fact that, according to the medical record entered on 1 September 2014, it was necessary for the patient to see a traumatologist, no services were provided even after 2 months. The same patient had been X-rayed a week before but did not know the result of the X-ray.

As our monitoring at the Institution no. 14 showed, prisoners enlisted for an appointment with invited doctors have to wait for extended time periods to see the doctor. This contradicts the standard of timely provision of healthcare services. Some examples from the Institution no. 14 are described below:

- One patient complained to us that he had been waiting for an endocrinologist's consultation for 5 months already with no avail. Endocrinologists are not visiting the institution at all.
- A patient who was in the medical unit because his wound opened after the surgery was waiting for a surgeon's consultation for 2 weeks.
- A patient was put on the list awaiting an appointment with a specialist on 6 September but the relevant journal (log) does not contain any information about provision of consultation by the doctor.
- A patient suffering from a hemorrhoidal disease has been enlisted for an appointment with a doctor on 16 September 2014 but no records of consultation rendered by the doctor can be found in the documents.
- Two other patients were put on the list for an appointment with the relevant doctor on 17 September 2014 but no record of consultation provided could be found.
- One prisoner with mental health problems was saying he had been waiting for a psychiatrist's consultation several months. According to the prisoner's medical files, the last time he had an appointment with a psychiatrist was 27 March 2014. Since we did not find the prisoner's name on the appointment form, the monitoring group asked for an account from a primary healthcare doctor. The doctor explained he/she had forgotten to put the prisoner on the list for a psychiatrist's consultation and would make good the problem right the next day.

As the monitoring carried out at the institution no. 14 showed, 40 prisoners received a psychiatrist's consultation on 16 October 2014, 32 prisoners on 9 October and 38 prisoners on 2 October. Such a high number of prisoners taking a psychiatrist's consultation in just one day raises a reasonable doubt about the content and quality of such consultations.

During its monitoring visit to the Institution no. 8 in December 2014, the Special Preventive Group talked to the prisoners and the healthcare personnel. It turned out that timely access to a neurologist's services is an issue because only one neurologist is serving all the penitentiary institutions in the eastern Georgia. One of the most spread diseases in the Institution no. 8 is digestive system diseases but it is hard to timely get an appointment with a gastroenterologist. It is also difficult to timely get a consultation of an ENT (ear, nose and throat) doctor.

Mental health remains a serious matter of concern in the Institution no. 8. Many prisoners want an appointment with a psychiatrist. According to the reports provided by the healthcare staff, 140 to 185 prisoners get a psychiatrist's consultation each month. A psychiatrist's services were not normally available in September and only 68 prisoners were able to get an appointment. The healthcare personnel explained that a list of prisoners wishing to get an appointment with a psychiatrist will be handed over to a psychiatrist by primary healthcare doctors. The primary healthcare doctors, however, refuse to put some prisoners on the

list because they think the prisoners are malingerers. We believe, because of the general depressing and unhealthy environment in the Institution, a psychiatrist's services should readily be available in order to timely identify any psychic problems and timely provide adequate psychiatric assistance.

As a result of our inspection visit to the Institution no. 17 in December 2014, we found out that it takes too long for prisoners listed for an appointment with invited doctors specializing in narrow areas to actually obtain consultation of these doctors. The time the patients have to wait for the doctor is inconsistent with the standard of timely provision of medical services. Here are some examples:

- According to Form 200-5/a – a medical examination paper – of prisoner G.B., the prisoner needs an echoscopy of his abdominal cavity and a colonoscopy. By the date of our visit, none of the indicated medical measures were carried out.
- According to the results of a doctor's consultation on 29 October 2014, prisoner V.B. needs a visit to a neurologist. The prisoner did not have a chance to visit a neurologist by the time we monitored the institution.
- According to a doctor's consultation on 8 July 2014, prisoner D.T. needed to have his waist scanned with MRI (micro resonance imaging). The patient was registered in the appropriate database but the MRI was not performed.
- Prisoner T.G. was asking for a neuropathologist's consultation for 6 months in vain.

The prisoners we interviewed in the Institution no. 17 complained of rare visits by a gastroenterologist. According to their statements, they have to wait 3 to 4 months to see the gastroenterologist. Due to prevalence of gastrointestinal diseases in prisons, long intervals between the visits of gastroenterologists negatively impact the health of prisoners.

MEDICAL REFERRAL

Primary healthcare teams at penitentiary institutions are the ones who decide whether specialized medical services are needed. Accordingly, they are the ones to request patient referral. Patients are registered electronically. After a request for referral gets registered, it is then processed by the Medical Department of the Ministry of Corrections. If the request is well-founded and complies with the national guidelines (plus international guidelines where necessary), it will get approved and assigned a list number.

After a request is approved, depending on the number of the request in the list, a medical services provider is contacted and the patient is referred to the provider. If a request is rejected, the rejection is registered in the system and the relevant primary healthcare team is informed about the reasons of rejection.

Only those patients are put on an electronic queue whose medical services are pre- planned. Urgent cases are not subject to a queue. There are separate electronic queues for eastern and western parts of Georgia and they are regulated independently. Referrals to outpatient clinics and inpatients clinics are regulated separately as well.

According to explanations obtained from the representatives of the Medical Department of the Ministry of Corrections, scheduled referrals are impeded by barriers such as prisoners injuring themselves, going on hunger strike or arbitrarily stopping a treatment course. Another problem in regard to medical referrals is the capacity of civilian hospitals to deal with prisoners. According to the information received from the Ministry of Corrections, prisoners are contractually served by 51 civilian clinics. In addition, prisoners are served by the Center for the Treatment of Tuberculosis and Rehabilitation (the Institution no. 19) and the Treatment Institution for Accused and Convicted Persons (the Institution no. 18). It should be noted that the temporary closure of the Treatment Institution for Accused and Convicted

Persons due to a major overhaul created problems in terms of timely access to medical services. However, the re-opening of the Institution should strongly affect the capacity of the penitentiary healthcare system in a positive sense. The tables below show the number of healthcare personnel in the relevant units of the above-mentioned penitentiary medical facilities.

INSTITUTION NO.18

Division	Number of staff	Division	Number of staff
Chief doctor	1	Reception	
Deputy chief doctor	1	Chief doctor	1
Long-term care unit		Doctor (on duty)	4
Chief of unit	1	Nurse	7
General practitioner	1	Radiology division	
Doctor	3	X-ray specialist	1
Doctor (on duty)	1	Endoscopy specialist	1
Cardiologist	1	X-ray assistant	4
Neurologist	1	Nurse	1
Epidemiologist	1	Lab	
Endocrinologist	1	Chief of lab	1
Skin specialist	1	Lab doctor	6
Chief nurse	1	Lab assistant	4
Nurse	8	Thereapeutic division	
Assistant nurse	5	Chief doctor	1
Psychiatry division		Doctor (on duty)	4
Chief of division	1	General practitioner	1
Psychiatrist	4	Chief nurse	1
Psychologist	1	Nurse	5
Nurse	4	Critical medicine division	
Orderly	4	Chief doctor	1
TB and infectious diseases division		Doctor (on duty)	1
Chief of division	1	Nurse	3
TB specialist	1	Surgery division	
Infectious diseases doctr	3	Chief doctor	1
Nurse	4	General surgeon	4

Dentistry		Proctologist	1
Neurologist	1	Urology surgeon	1
Dentist	1	Traumatology surgeon	1
Nurse	1	Otorhinolaryngologist	
Aesthesiology unit		Nurse	14
Chief doctor	1	Assistant nurse	5
Aesthesiology nurse	3	Sterilization unit	
Nurse (on duty)	1	Nurse	4
Nurse	1		

INSTITUTION NO. 19

Division	Number of staff	Division	Number of staff
Chief doctor	1	Inpatientunit	
Chief nurse	1	Chief doctor	1
Nurse	3	Doctor	9
X-ray specialist	1	Nurse	9
X-ray assistant	1	Assistant nurse	2
Dentist	1	Intensive therapy unit	
Resistent TB unit		Chief doctor	1
Chief of unit	1	Doctor	4
Doctor	1	Nurse	8
Nurse	17	Lab	
Outpatient ward for sensitive tuberculosis		Chief of lab	1
Chief of ward	1	Lab doctor	3
Doctor	6	Lab assistant	3
Nurse	8		

According to the information we received from the Ministry of Corrections, in 2014, there were 1,122 referrals to the Treatment Institution for Accused and Convicted Persons and 3,658 referrals were made to the civilian hospitals and clinics.

The Public Defender's 2013 Report to the Parliament has described how the electronic database governing medical referrals functions. The Report has emphasized that the functioning of the database was not regulated by a normative act and the Order of the Minister of Corrections and Legal Assistance no.

38 dated 10 March 2011 was outdated. Accordingly, the Public Defender recommended the Minister of Corrections to cancel the abovementioned Order and to approve new regulations governing medical referrals.

We note with satisfaction that the Minister of Corrections cancelled its Order 38 with its newer Order no. 55 dated 10 April 2014 approving the "*Rules of transferring accused and convicted persons to general-profile hospitals, the Treatment Institution for Accused and Convicted Persons and the Center for the Treatment of Tuberculosis and Rehabilitation*". According to paragraphs 2 to 4 of Article 1 of the new Rules, a prison doctor drafts a reasoned request for transferring a patient to the Treatment Institution and Center and sends the request to the Medical Department of the Penitentiary Department. The prison doctor's reasoned request shall be registered in the Medical Services Electronic Software (hereinafter, "the Software"). The prison doctor must inform the prison director about the request in writing. The Medical Department will examine the request within a reasonable time on the basis of the National Clinical Practice Recommendations (the Guidelines) and State Standard on Clinical Situation Management (the Protocol) approved or recognized by the Ministry of Labor, Health and Social Protection; where necessary, the request will also be examined against international guiding documents. If the request is granted, a patient who requires a scheduled medical service will be assigned a list number in the Software and a recommendation on his/her transfer to the Treatment Institution or the Center will be sent to the prison director and the prison doctor at least a day before the actual transfer.

Paragraph 5 of Article 1 of the Rules determines how a waiting list is made. In particular, the Medical Department determines the list according to the location and the type of services requested (inpatient or outpatient). It is unfortunate that the Public Defender's recommendation on improving the medical referral system for avoiding delayed provision of medical services as much as possible was rejected. In particular, we offered to take into consideration when constructing a waiting list the different grounds such as acute and chronic diseases, progress of the disease, aggravation of a patient's health and other factors. We believe the electronic database of medical referrals needs to be improved because the current procedure of constructing the waiting list does not take into account patients' individual needs and the patient's number in the list depends not on clinical factors but on other criteria such as the number of waiting patients and the capacity of the relevant medical institution.

A medical referral procedure for planned treatment is defective: it does not take into consideration a situation where the health condition of a patient on a waiting list is deteriorating but the condition has not achieved the intensity level warranting the provision of urgent medical services under Article 3(s1) of the Law on Health Protection. It should be noted that some diseases develop very quickly and it may be too late to provide the urgent healthcare service when a person's life is in danger already. The medical referral procedure does not envisage the possibility of sorting patients with such diseases as a priority in determining their number on the list.

The Public Defender's 2013 Report to the Parliament also emphasized the circumstance that it depended on the will of a prison director and the Chairman of the Penitentiary Department – individuals who are not health professionals – whether a medical referral would take place or not. The Report viewed this as a shortcoming of the procedure of providing prisoners with medical services. The Public Defender therefore issued a recommendation to cancel this rule and vest the Chief of the Medical Department of the Ministry of Corrections with the right to decide on prisoners' medical referral, upon consultation with the Chairman of the Penitentiary Department. Unfortunately, the Rules approved by Order 55 of the Minister of Corrections grants the decision-making power to prison directors if a prisoner is to be transferred to penitentiary medical facilities, and to the Chairman of the Penitentiary Department if a prisoner is being transferred to a civilian hospital. Both prison directors and the Chairman of the Penitentiary Department may refuse to transfer prisoners to the aforementioned medical facilities. Further, the Rules do not specify, in case of refusal, what additional measures should be taken to provide the prisoner with timely and adequate

healthcare services. We believe these shortcomings must be made good, by inserting appropriate changes in the Rules governing medical referrals.

One of the recommendations indicated in the Public Defender's 2013 Report to the Parliament was not to make a prisoner wait for his/her turn on the list if he/she had been incompletely examined in an outpatient clinic or has been examined but requires additional tests or examination shortly after the visit to the outpatient clinic. We believe the Order of the Minister of Corrections no. 55 must regulate this issue so that there is a legal ground for transferring those in need to medical facilities without having to wait for their turn on the list.

EQUIVALENT AND QUALITY MEDICAL SERVICES

According to the European Prison Rules, medical services in prison shall be organised in close relation with the general health administration of the nation. Health policy in prisons shall be integrated into, and compatible with, the national health policy. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. Prisoners should have access to all necessary medical, surgical and psychiatric services including those available in the country.[144]

Unfortunately we did not see any steps towards substantial integration of the penitentiary healthcare with the national civilian healthcare system in 2014. These two healthcare sectors – penitentiary and civilian – are developing separately, each on its own. Standards applicable to the civilian healthcare system have not been fully implemented in the penitentiary healthcare system yet. Although in organizing the prison healthcare system consideration should be given to the differences and difficulties inherent in the penitentiary system, implementation of the basic civilian healthcare standards in the penitentiary as soon as possible is of crucial importance for raising the penitentiary health services to a level equivalent to civilian health services. Furthermore, an effective mechanism for controlling the quality of medical services should be introduced. Some of the essential problems discovered as a result of our monitoring are discussed below.

The Order of the Minister of Health no. 01-63/N dated 12 September 2012 "on improving the quality of medical services provided by inpatient clinics and the functioning of the internal system of patient safety evaluation" stipulates that inpatient clinics must set up their own internal structures to control quality and to ensure provision of patient- oriented, quality and effective services.

The Quality Department monitors high priority matters such as permissions; functioning of physical infrastructure and medical equipment; personnel qualifications; sanitation, hygiene and epidemiology watching regime; implementation of the National Recommendations (the Guidelines) and Standards (the Protocols); nosocomial (hospital-acquired) infection control; maintenance of medical documents including statistics and referrals. Unfortunately, the requirements envisaged by the said Order are not being fulfilled in the penitentiary system yet.

The Order of the Minister of Health no. 01-25/n dated 19 June 2013 "on determining classification of medical interventions and approving minimum requirements for primary healthcare institutions" establishes minimum requirements to be met by primary healthcare institutions. It should be noted that the requirements envisaged by Order no. 01-25/n apply to and are mandatory for only those primary healthcare institutions that are involved in the Insurance Program for All; however, it would certainly be a step forward if some of the standards established by the mentioned Order were implemented also in the penitentiary healthcare system with a view of meeting the principle of equivalency of penitentiary healthcare services. The scope of the Order may be extended to cover the penitentiary healthcare system except certain issues that are specific to the prison setting, which should be regulated separately such as special rules for sterilization, use of safe

144 The European Prison Rules, Rules 40.1 – 40.5.

boxes and appropriate containers to collect sharp objects and syringes, disinfection and sterilization of medical tools, items and materials for multiple usage. Requirements of maintaining medical and statistical information should also be articulated separately.

Government Resolution no. 359 dated 13 February 2014 "on approving Technical Regulations for High-Risk Medical Activities" regulates high-risk medical activities. Such activities that are also implemented in the penitentiary setting are related to infectious diseases such as tuberculosis, hepatitis and HIV/AIDS. The monitoring results have shown that the requirements established by the said Government Resolution are not fully observed in the penitentiary system. Problems remain in terms of proper management of medical waste, control of the disinfection and sterilization process and lack of ventilation equipment in manipulation rooms.

A key factor in assessing equivalency of healthcare services available to individuals in the penitentiary system is whether a prisoner has access to timely and adequate treatment, including medications.

According to Article 3(s^1) of the Law on Health Protection, medical assistance is urgent if without such assistance a patient's death, disability or serious aggravation of health is inevitable. According to the Order of the Minister of Health no. 01-25/n dated 19 June 2013 "on determining classification of medical interventions and approving minimum requirements for primary healthcare institutions", there are 4 classes of medical intervention: an urgent (critical) intervention is an intervention to save a life, an organ or an extremity involving resuscitation and the intervention usually starts several minutes after the decision has been made. An emergency (without delay) intervention means intervention when a life-threatening medical condition has already started and/or deteriorated acutely. Such medical conditions are those that may entail a loss of life, organ or extremity, while the actual intervention could be fixating a fracture, pain management and relieving other heavy symptoms. Normally a decision on intervention should be made within no later than 24 hours after the first-category preserving treatment is completed. Emergency (without delay) intervention is an early intervention while a patient's condition is stable and his/her life, organ or extremity is not under urgent threat but the intervention has to be carried out in several days (2-5 days). A scheduled intervention is the one scheduled for a date that is convenient for the patient, the doctor and the medical institution. In the relevant sub-chapter above we discussed a medical referral procedure and provision of healthcare services by invited doctors in the penitentiary institutions. Unfortunately, the standard established by the above-mentioned ministerial order (01-25/N) is often times unfulfilled and appropriate healthcare services are not accessible timely. Hence, we recommend that the penitentiary healthcare staff be guided with the aforementioned ministerial order in planning their medical interventions.

Although a substantial progress has been made in terms of organization of the penitentiary healthcare, the process of provision of medical services within the penitentiary system is still full of various defects. In many cases, the principle of continuity of required medical assistance is not observed. Thus, a paper confirming provision of medical consultation by a surgeon cannot be found in the deceased prisoner D.G.'s medical documentation; no records of medications requested for and issued to the deceased prisoner were found in the prison documents for registration of use of medications. Also, the healthcare personnel of the Institution no. 17 received the necessary medical documents of prisoner Ts.A. with delay.

No medical file was found in prisoner G.K.'s personal folder and the prison healthcare staff had to produce a new medical file for the entire period the prisoner had been admitted to the prison, for the purpose of control and evaluation of his health condition. Prisoner Kh.R.'s medical file does not include his backbone X-ray result.

As a result of an inspection visit paid to the penitentiary institution no. 12 by the representatives of the Medical Activity Regulation Agency of the Medical Department of the Ministry of Corrections, often times the patients' medical papers are illegible, the patients' general information sections are not completely

filled out, dates of medical consultations and the names of invited doctors are not indicated. The Special Preventive Group identified similar problems in other penitentiary institutions too. In the Institution no. 18, the numbering in the patient admission and discharge journals and in the inpatient files have been arbitrarily "corrected" by the healthcare staff.

The monitoring group revealed that patients are not given the prescribed treatment. Thus, in the Institution no. 17, a prisoner was prescribed treatment with electrophoresis but, because there is no such device in the Institution, no treatment was provided. Also, another prisoner who was diagnosed with occluded veins on the lower extremities at the "Aversi" Clinic back in 2012 while serving his sentence and was recommended to undergo a relevant angiological surgery, has not been operated on yet and experiences difficulty in movement.

Timely access to appropriate medications is a key to achieving success in treatment. Provision of generic medications to prisoners in penitentiary institutions is, in general, satisfactory but the prisoners are unable to buy the so-called branded medications because there are no pharmacies in the institutions. The only exception is the Institution no. 15 which has a pharmacy. We believe the principle of equivalency is therefore breached in the sense of accessibility of medications.

It should be stated that the Medical Activity Regulation Agency of the Ministry of Corrections conducted inspection visits to penitentiary institutions and revealed flaws in the provision of medications. Thus, it was with difficulties that prisoner E.M. managed to receive a branded medication prescribed by the doctor. Prisoner N.M. was not provided with a neuroleptic drug prescribed before his detention. Hence, a recommendation was issued urging the Medical Department to buy and provide this drug to the prisoner.

G.N. was receiving the following medications for post-surgery treatment: Nucleo-forte, Solkoseryl, Mildronate, Neuromidin and Omega. Drug named "Gangleronum" is not on the list of basic medications approved by the Ministry of Corrections; despite this, the Logistics Unit of the Medical Department tried to buy this drug for the prisoner in observance of the relevant procedure but none of the contracted pharmaceutical companies had the drug in stock at that moment. Gangleronum does not have a registration code at the pharmaceutical market presently. For this reason, the Medical Department could not provide the patient with Gangleronum. Prisoner G.N. was offered to buy the drug on his own money instead.

In case of prisoner Z.Kh., the existing documents did not contain a confirmation that the prisoner was provided with some of the medications.

Prisoner V.Ts.'s medical file does not contain a prescription paper to help find out whether the treatment prescribed after the surgery was complied with.

In the interests of fairness, we have to mention that the Medical Activity Regulation Agency of the Ministry of Corrections is itself making efforts to rectify the flaws in provision of healthcare services within the penitentiary system. This was one of the Public Defender's recommendations that went in the PD's 2013 Report to the Parliament. However, the quality control system, in a contemporary sense of this phrase, is not yet operational in the penitentiary healthcare system. We believe it is necessary to enhance the mechanism of controlling the implementation of civilian healthcare standards in the penitentiary system, to introduce an effective system for statistical data collection and analysis, to pay more attention to statistical analysis results in designing the penitentiary healthcare action plans, and to effectively manage the procurement process and evaluate its cost-effectiveness. The quality of penitentiary healthcare services should be assessed using pre-determined and relevant indicators.

Recommendation to the Minister of Corrections:

- Ensure that each penitentiary institution has adequate number of doctors and nurses so that healthcare services can be provided timely and adequately
- Ensure that invited doctors visit the penitentiary institutions at proper intervals to timely and adequately provide the required medical services; ensure timely provision of their consultations by neurologists, gastroenterologists and psychiatrists
- With a view of ensuring timely provision of healthcare services, in determining a patient's list number in the medical referrals electronic database, take into account the disease's nature and dynamic of its development; incorporate this new principle in the Order of the Minister of Corrections No. 55 dated 10 April 2014
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that only the Chief of the Medical Department of the Ministry of Corrections, after consulting with the Chairman of the Penitentiary Department on issues of security of patient transfer, is authorized to make decisions on transferring patients to both penitentiary medical facilities and civilian hospitals.
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that prisoners do not wait for their turn on the list if they had been incom- pletely examined in an outpatient clinic or had been examined but require additional examination shortly (a few days) after their visit to the clinic.
- Take all measures to enhance a mechanism for controlling the implementation of civilian healthcare standards in the penitentiary system; introduce an effective system for statistical data collection and analysis; pay more attention to statistical analysis results in designing the penitentiary healthcare action plan; effectively manage the procurement process and evaluate its cost-effectiveness. The quality of penitentiary healthcare services should be assessed using pre-determined and relevant indicators.

Recommendation to the Minister of Corrections and the Minister of Labor, Health and Social Protection:

- By mutual collaboration, develop a plan for full integration of penitentiary healthcare into the national healthcare system

INDEPENDENCE AND COMPETENCE OF PRISON DOCTORS; CONFIDENTIALITY; PATIENT AWARENESS

According to the Recommendation of the Committee of Ministers of the Council Europe, doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.[145] A doctor shall not

145 Recommendation no. R (98) 7 of the committee of ministers to member states concerning the ethical and organisational aspects of health care in prison (Strasbourg 1998, 20 April), paras. 19-20

be involved in an activity whose purpose is not protection of the priosner's health.[146] As we found out as a result of our monitoring in 2014, there are issues related to independence and competence of the penitentiary healthcare personnel. Thus, in the Institution no. 3, the monitoring group witnessed how a prisoner stated he had swallowed sharp-tinned metal screws sized 4-5 centimeters each but the doctor on duty could not independently decide to call an X-ray specialist or an echoscopist to locate the screws in the intestines and determine the actual or possible injury to the prisoner's health. The doctor on duty tried to contact the chief doctor who was not in the institution at that time. Because the prisoner was under an imminent threat, the monitoring group obtained the prisoner's consent to inform the deputy prison director about the incident. It was only then that the chief doctor was contacted and a permission to call an X-ray specialist was obtained. The monitoring group has gotten an impression that prison doctors are unable to independently make decision in specific cases – something that puts their independence and competence under a question mark.

In deciding whether to refer a prisoner to a medical facility, the penitentiary healthcare personnel depend on the will of the prison director and the Chairman of the Penitentiary Department because these two have the right to reject a prisoner's transfer to a hospital. It is necessary to eliminate the possibility of such undue interference by non-medical staff in the provision of medical services by amending the Order of the Minister of Corrections no. 55 dated 10 April 2014 accordingly.

As a result of our monitoring during 2014, we revealed that it is a routine practice to place prisoners in solitary confinement cells as a measure of discipline on the basis of a doctor's recommendation. Moreover, it is not always clear whether the doctor's recommendation is based on the doctor's examination of a prisoner's actual health condition. The Special Preventive Group's impression was that doctors are, in fact, partaking in the enforcement of disciplinary punishment and it is the doctor who determines for how long a prisoner can be held in a solitary confinement cell. It may seem at a glance that a prisoner feels relieved knowing that a doctor endorsed his confinement as safe for his health but, on the other hand, a routine application of such practice may cause resentment in other prisoners who did not receive a positive recommendation from the doctor. We believe such practice may cast doubt on the independence of prison doctors.

With a view of raising the independence and competence of the penitentiary healthcare personnel, it is necessary to ensure professional independence of the healthcare staff. The medical ethics principles must fully be incorporated in the legal framework regulating the penitentiary system. Further, the healthcare personnel should be provided with continuous professional training; existing training modules should be enhanced. Finally, an effective mechanism should be created to evaluate and supervise the sustainability of training results. Clear job descriptions should be elaborated for the healthcare personnel.

It is an established practice in remand facilities and places for deprivation of liberty that prisoners request an appointment with the doctor through the prison staff who are not healthcare personnel and often times doctors examine prisoners and provide their consultation in the cells. This procedure contravenes the principle of confidentiality of the patient/doctor relations because the patient's medical complaints become known to non-healthcare staff of the prison and to other inmates.[147] Save urgent cases, any medical examination and consultation should be performed in privacy, in observance of the confidentiality principle, in a doctor's office.[148]

The principle of confidentiality is breached also by Article 24(2)[149] of the Georgian Imprisonment Code, which states that a medical account of a prisoner's mandatory medical examination carried out on admission must be kept in the prisoner's personal (non-medical) file.

146 United Nations Principles of Medical Ethics (1982), Principle 3 is available only in English at http://www.un.org/documents/ga/res/37/a37r194.htm [last viewed 18.03.2015].

147 Par. 51, passage from the General Comment of the Committee for the Prevention of Torture (CPT/ Inf(93)12).

148 *Ibid.,* par. 35

149 *Ibid.* paras. 50-51

The confidentiality principle is not always respected when prisoners undergo their mandatory medical examination on admission to a penitentiary institution. Thus, the members of the Special Preventive Group who were inspecting a prisoner admission process at the Institution no. 3 witnessed that a woman prisoner's external inspection was not attended by a doctor-on-duty at all; instead, the doctor was getting the information about prisoner injuries from a controller who was searching the prisoner. Examination of male prisoners' injuries was limited to very shallow visual observation and asking some general questions of the prisoner; the process was attended by a controller (who does not belong to the healthcare personnel). The described procedure of prisoner medical examination contradicts the principle of confidentiality the doctor/patient relationship. In its 2013 Report to the Parliament, the Public Defender recommended the Minister of Corrections to cancel the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the "*Rules of transferring sick prisoners from pretrial detention facilities and places of deprivation of liberty to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Institution for the Treatment of Remand and Sentenced Prisoners*" and to reinforce the principle of confidentiality of medical information in a new normative act governing medical referrals.

Order 38 was cancelled and replaced by Order 55, pursuant to which prison doctors no longer have to obtain the consent of not only the Medical Department but the prison directors to a transfer of prisoners to medical facilities. Prison director will receive a mere notification that a prisoner's transfer to a medical facility has been requested. This new rule ensures protection of confidential information.

Sometimes prisoners are unaware of the medical services to be provided to them. In some cases we observed a clear lack of communication between the prisoners and the institution's healthcare staff. Thus, before his transfer to the Institution no. 14, a prisoner was informed by the healthcare staff that he might have been put on the electronic list but he did not know that the request for his surgery was approved. With the prisoner's consent, members of the monitoring group talked to the Institution's chief doctor on this matter who stated that the prisoner had been registered in the electronic database but the chief doctor did not inform him thereabout. It is important for prisoners to be involved in the provision of healthcare services to them as much as possible. Prisoners should also have access to information about health protection in general, including preventative health protection measures.

Recommendation to the Minister of Corrections:

- Ensure professional independence and competence of the penitentiary healthcare personnel by fully incorporating the medical personnel's professional independence principle and the medical ethics principles in the legal framework regulating the penitentiary system, providing the healthcare personnel with continuous professional training, enhancing various training modules for them, creating a mechanism for evaluating and supervising the sustainability of training results and elaborating clear job description
- Make sure that a prisoner can contact the healthcare staff directly, without having to involve non-medical staff, including by installing calling buttons and obliging the healthcare staff to go round and inspect the cells every day in closed-type institutions
- Take necessary measures to ensure that any medical examination and medical consultation takes place in privacy, respecting the principle of confidentiality, in a doctor's office, unless the situation is urgent and exceptional
- Take all necessary measures to involve patients in the provision of health-care services to them by properly informing them about the services to be rendered; ensure prisoner access to health protection information, including information related to preventative health care

Proposal to the Parliament:

- Amend Article 24(2) of the Code of Imprisonment cancelling a provision, which states that a medical account of a prisoner's mandatory medical examination carried out on admission must be kept in the prisoner's personal (non-medical) file.

MENTAL HEALTH, DRUG ADDICTION AND SUICIDE PREVENTION IN THE PENITENTIARY SYSTEM

MENTAL HEALTH

Care for mental well-being of prisoners is one of the serious challenges for the penitentiary healthcare system. According to the information received from the Ministry of Corrections, 2,020 prisoners have mental health problems, which figure makes 4.7% of all of the sickness cases revealed. Since prevalence of mental illnesses in penitentiary institutions equals roughly 70% according to the international statistical data, the low figure of 4.7% might be an indication of insufficient identification of cases of mental illness. In 2013, the prevalence rate of mental illnesses was 6.6%, which is by 1.9% higher than the analogous index for 2014. However, it is in the interests of fairness to say that there was a substantial improvement in revealing mental illnesses in October, November and December 2014.

As the prison healthcare personnel have explained, a psychiatrist gets a list of prisoners wishing to get an appointment with the psychiatrist from the primary healthcare doctors. The primary healthcare doctors, however, refuse to put some prisoners on the appointment list because they think the prisoners are malingerers. We believe, because of the general depressing and unhealthy environment in the prisons, a psychiatrist's services should readily be available in order to timely identify any psychic problems and timely provide adequate psychiatric assistance.

Identification of prisoners with personality disorders is a matter of concern. Hence, it is crucial to improve access to psychiatric services as well as to deepen collaboration among prison psychiatrists, psychologists and social workers. These efforts should help improve the mental illness identification rate and provide adequate psychiatric assistance to mentally ill prisoners taking into account their individual needs. Patients suffering from acute psychosis should be treated not in penitentiary institutions but in psychiatric facilities. At the same time, adequate outpatient services will have to be made available.

According to the information received from the Ministry of Corrections, 174 prisoners were placed in inpatient facilities for involuntary psychiatric assistance in 2014. It is worth noting that this figure was only 76 in 2013. We therefore welcome the increased number of patients transferred to inpatient facilities.

Special attention should be paid to evaluating each prisoner's mental health at the time of admission to a penitentiary institution, during his/her initial medical examination.

Prisoners inclined to commit self-aggression or suicide and drug-addicted prisoners should be target groups for mental health screening. In addition, prisoners who systematically demonstrate asocial behavior and there is a doubt that such behavior may be caused by their mental condition must also be subject to mental health assessment.

Because there is no effective mechanism for identifying mental health problems, prisoners who injure themselves, breach the prison regime or commit other disciplinary violations are punished with disciplinary sanctions instead of being provided with timely and adequate psychiatric assistance. A change in the

Imprisonment Code which obliges a prisoner to reimburse treatment expenses if he/she willfully or negligently injures himself/herself[150] extends also to prisoners with mental problems who injure themselves. We believe the right approach to prisoners with mental problems who injure themselves is treatment but not punishment.

Prevalence of mental illnesses among the prison population is mostly caused by drug addiction and overuse of psychoactive substances in penitentiary institutions. In its 2013 Report to the Parliament, the Public Defender emphasized the urgent nature of the issue and the need for taking measures to resolve the problem. As a solution, the Public Defender recommended to amend the *Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008 on "Rules of implementing replacement therapy programmes to deal with opioid addiction in penitentiary institutions"* with a view of introducing a preservation replacement treatment in the penitentiary system. According to the information we received from the Ministry of Corrections, efforts to introduce such replacement treatment in the penitentiary system have commenced. In addition, a psycho-rehabilitation program "Atlantis" has been developed to be launched in 2015.

According to the information received, 382 prisoners were involved in the methadone programme in 2014, while the same index in 2013 was 311. We welcome that more prisoners were involved in the methadone programme in the reporting year but, considering the scale of drug addiction in the penitentiary system, this number of prisoners covered is not really sufficient to meet the demand.

When it comes to psychic health, of paramout importance is the protection of an individual's interests, respect for his/her dignity and provision of care in as humane environment as possible. According to the General Comment of the UN Human Rights Committee,[151] prolonged solitary confinement of the detained or imprisoned person may amount to torture or other cruel, inhuman or degrading treatment. According to a report of the UN Subcommittee on Prevention of Torture, prolonged solitary confinement may amount to an act of torture and it should not be used in the case of minors or the mentally disabled.[152] According to the 2007 Istanbul Statement on the use and effects of solitary confinement,[153] use of solitary confinement in relation to mentally ill prisoners should be absolutely prohibited.

Contrary to this prohibition, the Special Preventive Group revealed instances of keeping mentally ill prisoners in solitary confinement cells. Thus, in the Institution no. 17, prisoner O.G. with mental problems who attempted to kill himself was held in a solitary confinement cell for 5 days. In the Institution no. 3, a prisoner who demonstrated clear signs of mental illness such as inclination to injure himself, unmotivated aggressive behavior and difficulty to make contact with other people was placed in a solitary confinement cell. According to his medical file, the last time he received a psychiatrist's consultation was June 2014. According to his documentation, he has not been consulted by a psychiatrist since his admission to the Institution no. 3 on 16 September 2014.

During our monitoring visit to the penitentiary institution no. 3 on 11 December 2014, our group got interested in the personal file of prisoner L.Q. According to the documents, the prisoner was admitted to the Institution no. 3 on 17 September. Since his admission, he spent time in a solitary confinement cell thrice (4 days on the first occasion, 15 days on the second occasion and 10 days on the third occasion). According to the prisoner's medical file, the prisoner has not received a psychiatrist's consultation since the day of his admission to the Institution regardless of the fact he clearly needed psychiatric assistance. The prisoner injured himself four times during his stay at the Institution no. 3. On 20 September 2014, the prisoner was

150 According to Article 29(2) of the Imprisonment Code, an accused or convicted persons shall reimburse the costs of treatment in case of self-injury or injuries inflicted upon other persons deliberately or with gross negligence. They shall also reimburse any damages inflicted upon the remand facility or the place of deprivation of liberty and any additional expenses related to suppression of his/her escape from the relevant institution.

151 CCPR, General Comment 20/44, April 3, 1992.

152 UN Subcommittee on Prevention of Torture (2010), report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the republic of Paraguay (par 184).

153 International Psychological Trauma Symposium (2007), The Istanbul Statement on the use and effects of solitary confinement.

subjected to a special means – a restraint bed. However, the prison director did not draw up a report on the use of special means and did not send it to the Minister of Corrections and the Chairman of the Penitentiary Department as required by Order of the Minister of Corrections no. 145 dated 12 September 2014. For this reason, the Inspectorate-General of the Ministry of Corrections started an internal inquiry.

Deriving from these reasons, we believe all measures should be taken to avoid placing mentally ill prisoners in solitary confinement cells and to ensure timely and adequate psychiatric assistance to such prisoners.

SUICIDE

The 2013 parliament report referred to increased cases of suicide. Sadly, 2014 saw even higher number of suicide. The dynamics clearly indicate that there have been problems related to the implementation of preventions measures. This part of the report provides brief information on each case of suicide.

N.S.

On September 17, 2014 at around 13:40 a body of a convict who had been on a hunger strike was found in cell 26 located in the special building of Penitentiary Institution N17. An injury incurred by a penetration wound was observed in a neck area of the body.

Based on documents submitted to a medical examination, it is evident that N.S. was placed in Penitentiary Institution 17 on October 10, 2014. During an examination upon the admission declining excoriations were identified in the area of the blade-bone of the convict. In addition, old penetration wounds were observed on the internal surface of both forearms and extravasations and excoriations on both eyelids. A declining blunt force trauma was identified on the edge of the forehead hairline.

According to the report 004024314 prepared by the National Forensics Bureau, N.S's death was caused by acute anemia induced by a straight-edge wound in the right half of the neck as a result of cut on the jugular and the carotid artery. In addition to the above described wounds, smooth-edge wound covered with crust was observed on both blade-bones, extravasations in the areas of right shoulder and near the right lower eyelid. The injuries were induced by a blunt force trauma 10-11 days prior to death. Psychotropic drug Diazepam and anti-epileptic substance Carbamazepine were found in the blood and intestines of the deceased.

According to the information provided by the Ministry of Corrections, in November 2012 the convict was placed in a psychiatric unit of Penitentiary Institution N18 where he was diagnosed with organic, emotionally labile (asthenic) disorder, epilepsy, degradation of intellectual functions. The patient was prescribed Koncurant, Diazepam, Optimal, Drimolin, Hepato Riz, Leron and sleeping pills.

The convict had suffered from self-inflicted injuries on several occasions. On February 4, 2014 the patient inflicted 5-6 superficial and one deep wounds in the neck area. It should be noted, that the convict had gone on a hunger strike before committing suicide and for this reason s/he was placed in a cell alone without electric surveillance. In spite of the fact that both medical and non-medical staff knew about the patient's inclination towards inflicting self-injuries, absence of appropriate observation led to a fatal outcome. Importantly, no psychiatric or psychological consultations had been rendered to the patient while s/he was on a hunger strike.

J.I.

A convict diagnosed with a depression and suicidal thoughts was transferred from Penitentiary Facility 8 to Healthcare Facility for Offenders 18 on December 1, 2014.

During the admission to the healthcare facility the patient was anxious, perplexed and stating that s/he was sick and reluctant to communicate. S/he complained about 'noise inside the head' and voices. 'Kill yourself, I want to have some rest, I see insects, fears are clinging on me'. According to the staff, the patient would often throb the head against a wall and express suicidal thoughts.

According to the patient, s/he used to abuse substances and take psychotropic drugs. S/he had swallowed a nail-clipper and a toothbrush before, which was confirmed by an X-ray. The convict would insist that s/he be transferred to the National Centre of Mental Health where s/he claimed s/he was feeling good.

In the Institution N18 the patient was diagnosed with emotionally instable personologial disorder – depression, mental and behavioral disorder caused by simultaneous use of various substances and psychotropic drugs. The patient was prescribed Neirolepsin, Diazepam, Truxal, Sophanax, Tizercin and Fevarin.

On December 2, 2014, at 14:35 the patient committed suicide by strangling. Based on the information outlined above, the patient had been asking for psychiatric help but to no avail. In order to prevent such grave incidences in the future, it is critical that adequate psychiatric assistance be rendered to patients in a timely manner, in particular in cases when patients themselves ask for and there is a medical record corroborating such need.

L.M.

According to information provided by the Ministry of Corrections the convict had repeatedly inflicted self-injuries including a period he spent in the Penitentiary Institution N17. On December 10, 2014 s/he amputated the nail phalange of the first finger on the right hand. S/he had confirmed a long time abuse of drugs (Heroin and Subotex since s/he was a child) and suffered from schizophrenia. S/he would insist on Diazepam and was reluctant to adhere to a doctor's recommendation.

A consultation note completed by a psychiatrist on March 29, 2014 says that '[the patient] is skeptical to treatment recommendations, asks for revision of his/her case, complains that s/he is constantly being cheated and s/he will go from one hell to another'. At the consultations held with the psychiatrists on October 20 and November 20, the patient did not express suicidal thoughts.

The convict went on a hunger strike on several occasions during 2014 to protest against his/her illegal imprisonment. On December 10, 2014 at 9:20 am the staff on a morning checkup discovered in a cell toilet hanging on a wall with a rope noose. He had already been dead.

It is worth noting that in spite of suicidal thoughts expressed by the offender in the past, the two last consultations by psychiatrists were rendered with a month's interval. During these consultations the patient did not voice any suicidal thoughts. Sadly, the information does not specify when the next consultation was scheduled and whether or not the convict had been put under a special observation.

Z.S.

According to the information from documentation submitted to a forensic investigation, on September 16, 2014 at approximately 8:15 AM a doctor on a day shift in Penitentiary Institution N6 discovered the body of Z.S. hanging on a bed with a sheet in Cell 31.

According to a forensic report 004991614 prepared by the National Forensic Bureau, the death was caused by manual asphyxiation induced by pressure of a noose. The body had a single, open diagonal strangulation fissure in an upper third of the neck inflicted by pressing of a noose. A bruised wound, a scar and

extravasation on the upper left limb inflicted by a blunt force trauma either very shortly before the death or at the moment of dying.

According to the information obtained from the Ministry of Corrections, while being placed in the penitentiary facility, the convict stated that he had been suffering from a high blood pressure since 1996 and internal bleeding in the stomach long ago. Because of high arterial pressure s/he was on Clofeline. S/he did not mention any other complains. A visual examination identified declining marks on both blade=bones. S/he did not have a previous record of applying to a psychiatrist. Nor did s/he abused alcohol or drugs.

During a consultation on August 25, 2014, the convict did not have any complaints. A mental status seemed normal. The convict could orientate well in time and the space. S/he talked in a calm manner.

Based on provided information, a consultation rendered to the convict few days prior to suicide did not reveal any problems related to mental health. It should also be kept in mind that, the corpse shows damages to the head and the upper limb. Therefore, an independent and impartial investigation must be carried out to ascertain any possibility of violence towards the convict and/or forced suicide.

A.M.

According to the case records, on March 23, 2014, at approximately 8:10 AM an offender named A.M. committed suicide by strangulation in a toilet of Cell 312 located in Regiment Building 6 of Penitentiary Institution N14.

According to a forensic report 001465314 submitted by the National Forensics Bureau, the death was caused by manual asphyxia induced by blocking upper respiratory tract by a noose. An examination of the body revealed the following marks and signs which were all in causal relation with the death of the convict: in injury in the upper third part of the neck above the thyroid cartilage diametrical on the front surface, diagonal on the side surfaces ascending from the front backwards and upwards, extravasations in a pattern of a double premortem strangulation fissure in soft tissues induced by pressing a noose in the above mentioned area.

In addition, the body had the following injuries incurred before her/his death: multiples scars on the left side surface of the nose (upper third) and on the internal and external surfaces of the right shin (in upper and lower thirds), multiple extravasations on the front surface of the right knee joint, on the front surface of the right foot in a projection area of the navicular bone and on the front surface of the nail phalange of the right foot's first finger; extravasations on the tip of the tongue and in the area of the lower lip on right and left mucosae incurred by an impact from an blunt item (items). Such injuries as extravasations had incurred immediately before the death while other injuries were inflicted long before the death. Such injuries on a live body are qualified as light and they not cause death.

Extravasations and defects of mucosae inflicted by a blunt object where also found inside the anus sphincter mucosae. Such in injuries on a live body are qualified as light and do not contradict the date indicated in the report.

According to information provided by the Ministry of Corrections a psychiatrist consulted the convicted on November 27, 2012 and the latter was diagnosed with personologial disorder and prescribed Tizercin and Zolomax. Repeated consultations were also rendered on March 6 and 20, 2014 and the patient was prescribed Diazepam, Fevarin and Atarax.

Based on the above said and considering a nature and the specifics of the bodily injuries as indicated in the forensic report, it is necessary that an independent and impartial investigation be carried out to look at potential acts of violence including sexual abuse against the convict.

A.C.

According to the medical note, the offender had been previously treated under the diagnosis of personological disorder with prescribed Diazepam and Fenazepam. In the past s/he used to consume Subotex and heroin and was a beneficiary of the methadone programme. A visual examination revealed scars on the forehead, both forearms and the front wall of the abdomen of the convict (no recent injuries were observed). According to the convict, the injuries were self-inflicted.

On June 27 and 30, 2014 the convict was rendered psychiatrist's consultations and diagnosed with psychotic depression with suicidal thoughts. S/he was advised to join a suicide prevention programme and recommended that psychiatric consultations be continued.

On July 28, 2014 the convict was rendered another consultation with a psychiatrist and diagnosed of unstable personological disorder without suicidal thoughts. S/he was prescribed Citomax (1/2 tablet once a day), Truxal (one tablet once a day for three weeks).

A doctor on a shift was called to Penitentiary Institution N14 on November 25, 2014 at approximately 20:10. The convict was unconscious with a strangulation mark in the area of the neck, in particular on the right side, no pulse was found on the carotid artery. In spite of attempts and rendered medical assistance, vital functions could not be regained. Biological death was confirmed at 20:40.

The examination of relevant materials and documents revealed that the convict A.C. was temporarily transferred from Penitentiary Institution N8 to the Quarantine Unit of Penitentiary Facility 15 on October 16, 2014. Further to the Order 14 issued by

Director of the facility, the convict was transferred to a safe place isolated from other inmates for 30 days. This period was further extended for 30 more days based on the order of the Director. It should be noted that no psychiatric consultation was provided to the patient even though s/he had a record of medical disorder and had repeatedly expressed suicidal thoughts. As established by representatives of the Public Defender of Georgia the last time the convict was provided with a medical consultation was July 28. As explained by a prison doctor, the convict had never referred to medical staff and therefore, no medical service had been provided. The above said raises questions regarding the responsibility of the medical staff working in Penitentiary Institution N15. Therefore, it is recommended that an impartial and independent investigation be carried out on the case.

J.F.

According to medical notes a doctor called in Cell 7 of the Penitentiary Institution N6, the first building at 00.15 found the inmate J.D. lying on the floor and covered in blood. The inmate was immediately transferred to a medical unit. A large cross-section cut was observed on the neck, there was no pulse, the arterial pressure equaled zero and pupils widened. An ambulance called at the place of the incident confirmed the death. The attempts of IV catheterization turned out to be unsuccessful.

The death was caused by severe anemia induced by damages to the right jugulars and the external carotid artery as a result of a cross-sectional in the neck area. The following injuries were identified on the body: diagonal cross-section wounds which damaged the right jugulars and the right external carotid artery caused as a result of an impact by a sharp object immediately before death; also, extravasations in the areas of the right lower limb, right upper limb and the right underarm caused by a blunt object(s) 1-2 days ago. The cross-section cut and the damage to the vascular are qualified as severe, life threatening injuries when performing an examination on a living body. Such injures could cause the death while other injuries were light. No injuries were identified in the area of the anus. The area of the neck were the wounds were sustained was accessible by the deceased.

Based on the medical records the convict was examined by a doctor on March 4, 2014. The patient did not have any complaints and had never seen a psychiatrist before. Nor did s/he take psychotropic medication. There was no known attempt by the deceased to inflict self-injuries. The patient did not consume much alcohol, never abused drugs and therefore he was diagnosed as *practically healthy*.

It should be noted that even though no health related problem which could trigger suicide was indicated in a medical record, a forensic report indicates that extravasations on the lower and upper limbs as well as in the area of the underarm were observed on the body which may have been sustained as a result of violence. Therefore, an independent and impartial investigation must be carried out to rule out violence against the deceased or any possibility of bringing him/her to the point of suicide.

The Ministry of Corrections provided information on inmates enrolled in suicide prevention programme. Based on the information 99 inmates participated in the programme throughout 2014. The table below shows the breakdown of the institutions and months.

თვეები	N8	N11	N2	N3	N18	N5
January	15	2	2	0	0	0
February	6	1	0	0	0	0
March	2	0	0	0	0	0
April	6	1	0	0	0	0
May	4	2	0	0	0	0
June	14	0	0	0	0	0
July	3	1	0	3	0	0
August	6	1	0	1	2	0
September	2	0	0	3	1	0
October	0	1	0	0	2	0
November	3	0	1	1	4	1
December	3	0	0	0	3	2
Total:	**64**	**9**	**3**	**8**	**12**	**3**

In light of widespread tendency of drug abuse, excessive usage of psychotropic medicaments and severe problems related to mental health, the number of inmates enrolled in the suicide prevention programme is strikingly low. For instance, the special prevention group members while monitoring Penitentiary Facility 2 in October 2014 established that only two inmates were enrolled in the suicide prevention programme since January 2014 while 50 cases of suicide were reported to have taken place in the facility.

Also, it should be noted that the programme does not function in every facility. Nor is there a legal framework to regulate the programme. It is evident that measures for preventing suicide are insufficient and further steps need to be taken to strengthen efforts in this direction.

Recommendations to the Minister of Corrections:

- To ensure screening of health conditions of inmates and provide those with mental health problems adequate and timely psychiatric support
- To ensure treatment of inmates diagnosed with severe psychosis in a mental health facility and develop adequate out-patient services
- To take all necessary measures to prevent isolation of inmates with mental health problems in a solitary confinement
- To implement opioid replacement therapy
- To implement suicide prevention programme in all penitentiary facilities
- To develop legal criteria for the participation in suicide prevention programme and set rules for a multidisciplinary team working on the programme

Proposal to the Prosecutor General:

- To ensure independent and impartial investigation of all cases of suicide

MANAGEMENT AND PREVENTION OF HIGH RISK INFECTIOUS DISEASES

According to the information provided by the Ministry of Corrections TB screening was carried out on 64 672 cases and 131 inmates are registered as TB patients (to compare with 293 inmates registered in 2013) with 63 new and 58 relapse cases.

36 inmates have been diagnosed with multi-drug resistant TB (57 inmates in 2013) while the number of default treatment amounted 18 (20 cases in 2013). In 2014 in order to carry out test on or treat co-infections 10 inmates were transferred to various medical facilities. Based on the data provided above, there has been significant progress towards controlling TB.

A visit to the TB Treatment and Rehabilitation Centre 19 on December 11-12, 2015 revealed that the centre faced certain problems related to infection control measures and treatment of co-infections. More specifically, the patients move around without a mask, there are no special containers for sputum and hands are not fully sanitized. As for the treatment of co-infections, it was ascertained that there is a long waiting period for patients scheduled for consultations. The referral procedures to civic health facilites were applied to only in 10 cases while the same figure totaled 202 in 2013. A report submitted to the Parliament in 2013 contained a recommendation on studying the cases of those patients who had refused to continue with anti-TB medication either because of side effects of the drug or because they had been asking for treatment of one of co-infections. The recommendation also called on relevant stakeholders to ensure the timely treatment of co-infections if such need would be established. Sadly, the recommendation has never been implemented and the number of referrals has decreased by 192 cases in 2014.

Side effects of the anti-TB drugs have negative effects on TB treatment and therefore, psychological support to patients during the treatment and control of their mental condition is of utmost importance. However, there is no psychiatrist or a psychologist working in the centre. Moreover, the examination of relevant documentation revealed that there has been no consultation provided by a psychiatrist in the cetnre from May to November 2014.

A recommendation of the Public Defender to refer every prisoner diagnosed with TB to the TB Treatment and Rehabilitation Centre for better management has never been considered.

In 2013 report the Public Defender issued a recommendation to amend the Decree 01-5/N of the Minister of Labour, Health and Social Affairs of January 31, 2014 on *Approving the Programme on Prevention, Detection and Treatment of Hepatitis C in Prisons and other Detention Institutions* so that anti-viral treatment be provided to every inmate/accused based on medical evidence. The Public Defender welcomes the implementation of the recommendation as a result of which the provision of the decree allowing anti-viral treatment to those inmates who were sentenced to more than 18 months had been abolished. Nowadays, there are no restrictions in terms of lengths and duration of a sentence.

Based on the information provided by the Ministry of Corrections 8711 inmates were tested for hepatitis in 2014 and 289 of them were treated against the disease. Importantly, a recommendation of the Public Defender to provide an anti-viral treatment to patients based on relevant medical evidence has not been implemented.

9081 inmates were tested for HIV/AIDS in 2014. 56 inmates were involved in anti-viral treatment of HIV/AIDS throughout 2014.

The monitoring revealed that the penitentiary system experiences problems related to full compliance to the infections control requirements, provision of a cold change as per the legislation, disinfection and sterilization of multi-use medical instruments, items and materials, allocation of safety boxes and containers to collect sharp objects and syringes. The problems related to lack of information on preventative healthcare among inmates are also striking.

Recommendations to the Minister of Corrections of Georgia:

- To fully comply with the infection control measures outlined in a TB Management Guideline in TB Treatment and Rehabilitation Centre
- To transfer all inmates diagnosed with TB to the TB Treatment and Rehabilitation Centre to ensure appropriate and adequate management of TB cases
- To review every case of default caused by side effects of anti-TB drugs and ensure timely treatment of co-infections of TB patients based on medical evidence and a request from a patient.
- Ensure full adherence to requirements for infection control
- Ensure that inmates have an access to information pertaining to preventative healthcare

Recommendations to the Minister of Labour, Health and Social Affairs of Georgia:

- Amend Resolution 01-5/N, 31 January 2014 by the Minister of Labour, Health and Social Affairs on *approving the rules for approval and Implementation of the programme on prevention, detection and treatment of viral Hepatitis C in penitentiary facilities* so that inmates have an access to an antiviral treatment based on medical evidence.

DECEASED INMATES

27 deaths of inmates were reported in 2014. In order to examine each of these cases, the National Prevention Mechanism requested information on medical services rendered to the deceased as well as forensic reports. 16 forensic reports were provided by the Levan Samkharauli National Forensics Bureau[154]. In addition, the National Prevention Mechanism also received information from the Ministry of Corrections. 11 cases of death are reviewed below[155].

D.G.

On January 2, 2014 at approximately 13:20 a convict D.G passed away in the TB Treatment and Rehabilitation Centre N19 of the Penitentiary Department. According to a medical record, the patient had been diagnosed with HIV and chronic Hepatitis C and later on, on December 19, 2013 with AFB(-) lung disseminated TB, a primary case in Penitentiary Facility 2 of the Penitentiary Department.

On December 27, 2013 the patient was transferred to the TB Treatment and Rehabilitation Centre N19 of the Penitentiary department for anti-TB treatment. On December 31, 2013 at 5.30 AM the patient reported an abdominal pain and asked for a painkiller. S/he did not complain about nausea. According to a medical record the abdomen was of medium rigidness; there was a pain in the right flank and in the area of the waist. The patient did not report a pain on the surface of the thigh. The patient vomited. By 2 pm the pain started to decline. The patient was administered an injection of Ketz, No Spa and Platilin. In about an hour the patient asked for a sleeping pill as he could not fall asleep because of dull pain. S/he was administered an injection. The stool was liquid.

According to the medical records, on January 2, 2014 at1:20 PM a call was registered from Cell B-406. A doctor responding to the call found the convict prone in bed in vomit (with a consistency of coffee-grounds) and pronounced biological death with preliminary diagnosis of aspiration with vomited substance, asphyxia.

According to a report N000006514 prepared by the National Forensics Bureau, the death was induced by purulent diffusive peritonitis resulted from the dissemination of miliary tuberculosis to the digestive tract and perforation of the inner wall of the small intestine. The following injures were found on the body of the deceased: an extravasation on the front surface of the right shoulder (the lower third) and a scar in the area of the same shoulder and the elbow (the back surface) inflicted by a blunt object in the interval of one to three days prior to death. These injuries, when observed on an alive individual, are qualified as light and are not related to the cause of death.

The forensic report states that the cause of death was the dissemination of lung miliary tuberculosis in the esophagus, stomach, intestines, lymph nodes, omentum, also, by disintegration of tubercular structures in the esophagus, stomach and small intestines, defects, gastric and esophageal varices, perforation of the inner wall of the small intestine and development of diffusive purulent peritonitis. A post mortem examination also revealed that the deceased suffered from the accumulation of greyish-yellowish-greenish liquid up to 2000 ml in the abdomen and a large quantity of fur of the same colour, brain and soft coat edema, focal arachnoiditis, lipomatosis of epi-myocardium, chronic cholangitis, chronic aggressive hepatitis, HIV/AIDS. The blood of the deceased contained Analgin and Diazepam.

Importantly, the information provided by the Medical Department of the Ministry of Corrections did not contain any note by a surgeon which would recommend an operation on the patient. Nor did the documents contain any records on drugs and medication requested by and allocated to the deceased.

154 Letter MCLA 2 15 00244911, dated March 11, 2015 signed by a head of Medical Department of the Ministry of Corrections

155 4 out of 16 forensic reports attached to a letter by a head of administration at Samkharauli National Forensics Bureau on January 23, 2015 concern cases of suicide while one report refers to violent death of an inmate and therefore are not covered in the present section

Therefore, there is evidence that medical service provided to D.G. was of poor quality and that the assistance was delayed and inadequate.

T.C.

A convict T.C. who had been transferred from the Institution N2 of the Penitentiary Department to the Tskhakaia National Medical Centre on January 26, 2014 at 10:20 died two days later on January 28, 2014 at 04:30. According the medical documentation the patient was transferred by an ambulance. According to the information provided by the medical staff of the ambulance the patient had been vomiting blood. The review of the medical records also reveals that the patient had been dismissed from the Hospital of Infectious Diseases on January 25, 2014. According to the medical documentation the patient was posthumously diagnosed with chronic Hepatitis C, liver cirrhosis, liver insufficiency, hepatic coma, gastroduodenal bleeding, acute respiratory insufficiency, hypovolemic shock, artificial lung ventilation, cardiac arrest.

According to the forensic report N000481714 by the Natinoal Forensics Bureau, the

death of T.C. was caused by anemia of the internal organs induced by esophageal varices resulted from liver cirrhosis. The examination of the body revealed the following injuries inflicted before death: a scar on the cheek to the right and in the area of the upper lip (central and to the left), extravasations in the area above the left eyebrow, on the outer surface of the left shoulder (mid third) and outer surface of the right shoulder (mid third) induced by a blunt object(s) long before the death. The injuries are qualified as light and could not have caused death.

T.C. also had scars on the outer surface of the left thigh in the upper, mid and lower thirds, on the front surface of the left thigh in the lower and mid thirds, on the front surface of the left thigh in the mid third and on the front surface of the left knee joint extending to the front surface of the left shin's upper third.

The following diagnosis is indicated in T.C's forensic report: chronic Hepatitis C with extensive inflammatory infiltrations and presence of necrotic strains, multiple rigid connective tissues with the formation of false lobes, liver cirrhosis and esophageal varices. The examination of the body revealed the presence of 0.4 cm fraction on the enlarged vein in the third part of the esophagus with dark reddish extravasations in the esophageal mucosae, internal bleeding with blackish blood congelation of up to 2500 ml in the stomach, masses of black in the lumens of the small and large intestines, anemia of internal organs, ascites (presence of peritoneal liquids), presence of pleural liquids in both cavities of up to 100 ml, post hemorrhage anemia, atherosclerotic coronary sclerosis, myophibriosis, aortal atherosclerosis. Psychotropic substance - Diazepam and painkiller Lidocaine, also Norketamine were found in the blood sample of the deceased.

R.C.

A convict R.C died in a cell of the Institution N2 of the Penitentiary Department at about 5:20 PM on March 8, 2014. A record made by a doctor on shift, reveals that R.C. had pulsation on the carotid arteries, the skin was pale and the body temperature low. The doctor performed an indirect cardiac massage but to no avail.

According to the report N001228614 by the National Forensics Bureau the death was caused by a brain swelling with brainstem dislocation and embedment inflicted by a non-traumatic extravasation in the brain as a result of acute disorder of blood circulation. The examination of the body did not reveal any external mechanical injuries.

The postmortem report indicates the following diagnosis: acute disorder of blood circulation in the brain as a result of brain vessels atherosclerosis: diffusive hemorrhage in the brain-tunic in a form of congelation, diffusive extravasation in the soft tunic of cerebellum, intracerebral extravasation in the right hemisphere extending to right side ventricle (presence of up to 100 ml blood congelation in the ventricle), swelling of brain-tunic and substances with brainstem dislocation and embedment, athero-arterial sclerosis of the brain-tunic, atherosclerotic coronary sclerosis, aortal atherosclerosis, swelling in the lungs, focal emphysema, bronchitis, pneumosclerosis, hepatitis, athero-arterial sclerosis of IV blood vessels.

Based on the information provided by the Medical Department of the Ministry of Corrections it is not clear whether or not R.C. had been provided with a consultation with a cardiologist or any tests on cardiovascular system or the brain in either 2013 or 2014 even though the patient had undergone hypertonic crisis in 2012 and was taking treatment in accordance to the diagnosis (hypertonic disease, second stage).

G.U.

On February 11, 2014 at approximately 13:30 a convict G.U. born in 1972 died in the Institution N8 of the Penitentiary Department. According to the medical records, G.U. had been placed in the facility on January 23, 2014. Upon admission the convict complained about a pain in the area of both shins and difficulties while walking. The convict was also diagnosed with chronic viral Hepatitis C and had an extensive record of drug abuse.

The convict was examined by a doctor in his/her cell on February 11, 2014 at 12:50 PM. The convict was complaining about fatigue, dizziness, shortness in breath. According to the fellow inmates the convict knocked out at the attempt to get up. Because of low arterial blood pressure, the patient was administered Cordiamin and caffeine. After the injections the convict started feeling better. However, after 10 minutes from the injection the symptoms reoccurred. The patient was given Validol but the situation got worse as the peripheral pulsation faded away and the patient lost consciousness. An intensive care therapist was called and both the doctor and the intensive care therapist tried to revive the patient. An ambulance was also called to the place but to no avail.

Biological death was pronounced at 13:50. Diagnosis: declining breakage of the upper third of the left shin and the distal fragment of the right shin, post-osteochondrosis period, chronic viral Hepatitis C (according to the medical record).

According to the report N000716414 of the National Forensics Bureau, the death was caused by acute myocardial infraction. The examination of the body revealed several small, oval shaped, dark maroon scars with 0.2, 0.1 and 0.3 cm in diameter covered with dry crust in the area of the upper lip, on the projection of the nose-lip wrinkle and next to the chin. The examination did not find any traces of external injuries. The injuries are inflicted by a blunt force trauma from three to four days before death. All the injuries are qualified as light traumas and could not have induced death.

The forensic report indicates the following medical diagnosis: chronic cardiac ischemic disease, acute myocardial infraction, atherosclerotic coronary sclerosis, myocardial fibrosis, post-infraction scars in the myocardium, hypertrophy of miocardiocitis, lipodystrophy, aortal atherosclerosis, chronic interstitial pneumonia, chronic bronchitis, and chronic pleuritis with pleural fibrosis, chronic hepatitis, kidney cyst, and kidney glomerular sclerosis.

It should be noted that a letter received from the Medical Department of the Ministry of Corrections does not provide any proof that tests and treatment regarding vascular and other diseases indicated in the postmortem report were provided to the convict. Importantly, an intensive care therapist arrived only after an hour to attend to the unconscious patient.

R.M.

A convict R.M. born in 1983 was transferred to *Rustavi Clinics* from the Institution N6 of the Penitentiary Department on June 22, 2014. However, R.M. died on the way to the hospital. The medical documentation shows that a medical report was filed on June 13, 2014 after a doctor and a nurse visited the convict in his/her cell. The convict had a cross-section cut on the right lower limb. According to a medical record the patient sustained the injury from hitting the limb against a sink. The convict refused to be examined by a surgeon.

According to the report N003186414 by the National Forensic Bureau, the death was called by acute vascular insufficiency inflicted from acute ischemic damage to cardiomyocitis. The body shows straight-edge wound on the internal surface in the mid third of the shin induced by a sharp blade object during lifetime eight to ten days prior to death. These injuries are qualified as light and could not have caused death.

The forensic reports indicates the following diagnosis: acute vascular insufficiency, cardiac ischemic disease, acute focal ischemic disease of cardiomyocitis, coronary atherosclerosis, cardioscrelosis, swelling of brain-tunic and the matter; lung TB with the hyperplasia of peribronchial lymph nodes and the mediastinum (A15;2). The blood sample examination confirmed the presence of Diazepam and Clozapine.

It is worth noting that a letter received from the Medical Department of the Ministry of Corrections does not indicated that the patient had been administered any tests related to cardiovascular diseases. Also, in spite of the two tests on TB (the last test was administered two days prior to death) the diagnosis of TB was not confirmed. However, the forensic repot points out that at the moment of death the deceased had lung TB with the hyperplasia of peribronchitis and mediastinum (A15.2).

P.R.

A convict P.R. died the night of August 18, 2014 of acute liver insufficiency in Imereti Regional Clinical Hospital. According to the medical documentation, P.R. was provided with medical assistance on April 4, 2014. S/he was diagnosed with viral Hepatitis C. On April 17, 2014 the convict was enrolled in the Hepatitis C Programme and prescribed Pegferon and Ribovirin. The first injection was administered on July 17, 2014 and by August 7 the condition of the patient was satisfactory. The patient complained about dizziness and fatigue. The complaints started after an injection of Pegferon. Vesicular breathing normal, cardiac sounds of low intensity, weak filling condition of the pulse, the stomach was soft, a pain was reported when palpated, the spleen and the liver could not be found, Pasternack syndrome negative. The patient did not report any complaints during an examination on August 8 and the overall condition was evaluated as satisfactory.

On August 14, 2014 the patient was administered a Pegferon injection. S/he complained about dizziness and fatigue, sweatiness. After an hour from the Pegferon injection the patient starting feeling sick with weak ventricular breathing in the lungs, weak filling condition of the pulse, cardiac sounds of low intensity, arterial blood pressure 90/70 mm, pulsation 70, the stomach soft and without pain. The patient was given an IV diffusion after which s/he felt better.

On August 15, 2014 P.R. was transferred to the Imereti Regional Clinical Hospital with a preliminary diagnosis of acute liver insufficiency, chronic Hepatitis C, hepatic encephalopathy. Upon the admission to hospital, the convict was inadequate, disoriented and struggled with answering questions. In spite of medical assistance rendered to the patient, s/he died on August 18, 2014.

According to the report N004432414 of the National Forensics Bureau, the death was caused by pneumo-cardiac insufficiency resulted from double purulent lobar pneumonia and chronic cardiac ischemic disease. The forensic report indicates the following diagnosis: chronic cardiac ischemic disease, atherosclerotic

coronary sclerosis, post-infraction scars in the myocardium, myofibrils, epicardial lipomatosis, aortal atherosclerosis, cardiac hypertrophy, the wall of the left ventricle 2.0 cm thick, double lobar pneumonia with purulent sections, bronchitis, focal emphysema, chronic hepatitis, hepatosis, atherosclerosis of IV vessels, tubulointerstitial nephritis, swelling of the brain-tunic and matters, full-bloodiness of internal parenchyma organs, swelling. The blood sample showed the presence of psychotropic substance Diazepam.

It is worth noting that the information provided by the Medical Department of the Ministry of Corrections does not contain any evidence that the patient was tested for cardiovascular (except for EKG) and pulmonary diseases.

M.M.

According to the medical documentation, on June 29, 2014 an ambulance was called to the Institution N6 of the Penitentiary Department. A doctor responding to the call found a convict M.M. unconscious, in a terminal condition. There was no pulse on carotid artery and the periphery, breath disorder, negative reflexes on the pupils. The patient was administered Adrenaline, Atropine and Naloxin. However, in spite of interventions and continuous resuscitation for 45 minutes, the patient was pronounced dead at 16:00.

According to the report N003326514 by the National Forensics Bureau, in order to establish the cause of M.M.s death a medical examination involving a commission must be arranged. The examination of the boy revealed the presence of reddish cuts without curst on both earlobes, greyish-brownish cuts on the back surface of the radiocarpal joint covered with crust and induced by a blunt object. These injuries are qualified as non-lethal and could not have caused death. The cuts on the earlobes had been inflicted immediately before death, while the cuts on the radiocarpal joint were sustained 8-10 days prior to death.

The forensics report contains the following medical diagnosis: acute swelling of internal organs, intensive swelling of brain and brain-tunic (G93.6), weak coronary atherosclerosis, epicardium lipomatosis, pulmonary TB (A15.2). The blood and internal organs contained psychotropic substance of Diazepam (100.3 ng/ml)

Z.S.

On October 19, 2014 at 19:30 a convict Z.S. died in an intensive care unit of Facility 18 of the Penitentiary Development. The medical documentation indicates to presence of a large size tumours in the area of the back, neck and infrascapular. The tumours were soft, of elastic consistency and mobile. The patient complained about the pain and discomfort in the above described area. The patient had been repeatedly seen by a surgeon who issued a recommendation on operational intervention. The preliminary diagnosis: tumour formations in the area of the neck and the back (lipomatosis). The patient underwent leg tests, echoscopy and X-ray of thoracic vertebra.

On October 19, 2014 at 16:50 the patient underwent an operation under a general anesthesia. The operation aimed to eliminate subcutaneous formations. The operation concluded without any complications. At 17:30 the patient opened the eyes, restored breathing and followed instructions. However, there was a wave of sudden convulsions followed by a cardiac arrest. The medical staff immediately began resuscitation and repeatedly administered defibrillation. A catastrophe medicine brigade was called to arrive at 19:00. Against all efforts to save the patient, Z.S. died at 19:30.

According to the report N005667314 of the National Forensics Bureau, the death was caused by the acute vascular insufficiency as a result of an acute ischemic damage to cardiomyocitis. The body showed the

following traces of a medical manipulations performed during the lifetime: marks of defibrillation as result of resuscitation measures and broken left third and fourth and right sixth, seventh and eighth ribs (inflicted during resuscitation)

The forensic report indicates the following diagnoses: coronary atherosclerosis, cardiosclerosis, myophibrosis, post-infraction scars on the myocardium, acute ischemic injury to cardiomyocitis, aortal atherosclerosis, focal extravasations in paraortal soft tissues, focal emphysema, focal pneumosclerosis, arterial nephrosclerosis, chronic interstitial nephritis, nephric cysts, extravasations in operated soft tissues, operational substance – lipoma, post-operational conditions after the removal of lipomas in the area of the back.

It is worth noting that according to the information provided by the Medical Department of the Ministry of Corrections, the convict underwent EKG and consulted with a cardiologist, as a result of which it was concluded that s/he did not suffer from any pathological changes. It should also be noted that an emergency arrived 90 minutes after convulsions and a heart arrest started.

D.A.

According to the documentation submitted for examination, on September 15, 2014 at about 18:05 in the Institution N17 of the Penitentiary Department a convict D.A. asked for a doctor. The convict was complaining about a pain in the muscles in the chest which started right after the patient had taken a cold shower. The patient was consulted by a GP: pulse 72, rhythmic, of normal filling and intensity, arterial blood pressure 140/100 mm, palpated pain in the chest area. A medical record of the patient did not indicate any cardiovascular pathology. After the consultation with the GP, the patient was transferred to a medical unit of the facility with a preliminary diagnosis of chest myositis. The patient was immediately administered Diclac and Nozit. Within the next minutes the patient reported an improvement. S/he went out to the yard of the medical unit but while talking to a guard the patient passed out. The doctor immediately resuscitation as no pulse was observed. The patient suffered from cyanosis around the lips. The doctor started indirect heart massage with a resuscitation device. Rustavi ambulance and a brigade from the Catastrophe Centre were both called. In spite of resuscitation measures, the patient died at 19:00. A preliminary cause of death was acute cardiovascular insufficiency, acute myocardial infraction.

According to the report N004973114 of the National Forensics Bureau, D.A's death was caused by the myocardial infraction as a result of chronic ischemic disease of the heart. The forensic report indicates the following diagnosis: acute vascular insufficiency, chronic ischemic disease of the heart, coronary atherosclerosis with thrombosis, myocardium infraction in the final phase of reparation, newly occurred infraction of myocardium, atheroarteriosclerosis of the brain-tunic, swelling of brain-tunic and lungs, acute bronchitis, pulmonary emphysema, hepatitis with inflated infiltrates and proliferation of the connective tissue, atheroarteriosclerosis of nephric blood vessels.

It is worth noting that according to the postmortem examination of the body, the deceased had undergone myocardium infraction, the information provided by the Medical Department of the Ministry of Corrections does not contain evidence that the convict was tested for cardiovascular diseases. Importantly, the doctor based in Facility 17 preliminarily diagnosed the deceased with cardiac myositis which proved to be inaccurate. It is not clear why the doctor ignored the possibility of cardiac pathology in light of the complaints by the convict.

V.N.

Based on the documentation submitted for an examination the convict at different times had been diagnosed with: hemorrhoid disease (IIIB stage), chronic Hepatitis B and C, lipotoma on the back surface

of the neck, recurrent bubonocele, simple bubonocele, arterial hypertension of I degree. The patient underwent an operation. On November 3, 2014 the patient went on a hunger strike. A doctor consulted him/her on November 4. The doctor indicated that the pulse was rhythmical, arterial blood pressure – 140/90. According to a medical record the patient did not have any complaints. On November 5 the doctor found the inmate deceased. The supposed cause of the death is thromboembolia.

According to the report N006037114 of the National Forensics Bureau, the death was caused by acute cardiovascular insufficiency as a result of the acute ischemic damage to cardiomyocitis.

The forensic report indicates to the following diagnosis: acute ischemic damage to myocardium, coronary atherosclerosis, cardiosclerosis, myocardiac fibrosis, aortal and central vascular atherosclerosis, pulmonary miliary tuberculosis, cicatrized sections of upper left and right pulmonary lobes, alveolar emphysema, pleural fibrosis, hepatomegaly, chronic persistent hepatitis, steatosis, adenoma of bile ducts, nephric

carcinoma, polycystocis of both kidneys, arterial and arteriosclerotic nephrosclerosis, focal chronic arachnoiditis with fibrosis of brain tunic, purulent sections on the rectal mucosae, a scar in the area of the anus, multiple scars on the body, a pergameneous section in the centre of the forehead inflicted after the death, a scar in the area of the right cheek, a dotted scar on the right side of the mouth, an extravasation in the area of the right cheek, at the lip-nose wrinkle.

It is worth noting that according to the findings of the examination, the deceased was additionally diagnosed with miliary pulmonary tuberculosis, adenoma of the bile ducts, nephric carcinoma and other diseases which provides a ground to conclude that the deceased suffered severe health conditions. However, the documentation provided by the Medical Department of the Ministry of Corrections does not corroborate that the convict ran through complex tests and was subject to the treatment appropriate for these diseases.

E.K.

On November 6, 2014 a convict E.K. died in the Institution N18 of the Penitentiary Department. According to the records submitted for an examination the convict was placed in a treatment facility 18 for the convict and accused on November 3, 2014. Upon the admission, the patient reported a pain in under the right side of the abdomen in the area of the bile. According to E.K he had suffered from pains for the past 10 years. S/he also stated that he suffered a myocardial infraction in 2011. The patient was tested with EKG, chest X-ray, abdominal echoscopy, EDG (esophagogastroduodenoscopy), biochemical blood test. A cardiologist paid a visit to the patient. The preliminary diagnosis was calculus cholecystitis, post-operational ventral hernia, post nephrectomy and gastrectomy period, post myocardial infraction, arterial hypertension of II degree.

The patient was transferred to a surgical unit for a scheduled operation. The patient underwent the operation under endotracheal anesthesia, upper-mid laparatomy, sinechiolisis, cholecystechtomy, sanitation of the abdominal cavity. After the operation the patient was transferred to an intensive care unit. In about half an hour after the completion of the operation, bleeding started through the drainage with nasogastric fluid. The doctors concluded that the patient was suffering from intra-abdominal bleeding and proceeded with an urgent intervention, relaparatomy. The medical staff operating on the patient observed that the bile duct and the artery were still attached and that there was bleeding in the area of bed. The patient was administered necessary manipulations and the wound was stitched. According to the medical record, the patient's condition gravely deteriorated in about an hour with cardiac arrest. Resuscitation did not yield desired outcomes and the patient died at 21:40.

According to the report N006078514 of the National Forensics Bureau, the death was causes by an acute cardiovascular insufficiency resulting from an acute ischemic damage to cardyomyocitis.

The forensic report indicates the following diagnosis: vascular atherosclerosis of the brain-tunic, swelling of the brain and brain-tunic, coronary atherosclerosis, post-infraction scars on the myocardium, an acute ischemic damage to cardiomyocitis, myofibrosis, aortal atherosclerosis, pulmonary emphysema, inflammation of the bile ducts, extra- and inter Glisson's capsule extravasations, nephric atheroarteriosclerosis, post cholecystectomy condition.

Even though a letter from the Medical Department of the Ministry of Corrections corroborate the record of myocardium infraction sustained by the patient in 2011, the same letter does not provide a proof that the deceased was tested for cardiovascular diseases (except for EKG before the operation).

Based on the above said, it is evident that there are problems related to timely and adequate medical services which require immediate resolution. We find it critical that particular attention be paid to screening of cardiovascular and respiratory diseases in order to ensure early detection and timely treatment. In addition, the health condition of inmates should be checked at least once a year. [156]

Recommendation to the Minister of Probation:

- Ensure complex examination of inmates at least once a year with a strong focus on screening of cardiovascular and respiratory diseases for early detection

HUMANITARIAN SUPPORT - SPECIAL CATEGORIES

JUVENILE PRISONERS

The special preventive group at the Public Defender's Office together with its Centre of the Child's Rights monitored penitentiary facilities to look into the status of the rights of juvenile inmates. The monitoring was carried out within the frames of the National Preventive Mechanisms. The section provides the findings of the monitoring mission.

A juvenile convict who has not reached the age of 18, must be placed in a rehabilitation institution for juveniles.[157] Under age convicts/accused are also placed in Facilities 2 and 8 of the Penitentiary Department. By the end of the reporting period 48 juvenile convicts were placed at Facility 11.

Article 21 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) sets the rules for placement of the juvenile offenders in a detention facility, while Recommendation (2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures[158] holds that the placement of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being. According to the United Nations Standard

156 According to Article 120, Paragraph 2 of the Imprisonment code of Georgia, the state of the health of an accused/convict shall be checked at least once a year. Ill accused/convict shall be provided with emergency treatment

157 The Imprisonment Code, Article 68, Part I

158 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [last accessed 24.03.2015].

Minimum Rules for the Treatment of Prisoners must be kept separately from adults[159]. The same refers to the separation of untried prisoners from the convicts.[160]

Unlike the Institutions N2 and N8, the Institution N11 homes only juvenile offenders. Separation of juvenile and adult inmates in the Institutions N2 and N8 still remains a problem. In spite of the fact that the juvenile convicts are placed in a separate building, they still have means of communication with adult inmates, for instance, when the former are taken to a lawyer or a legal representatives. In the Institutions N2 and N8 juvenile prisoners can meet with adults while being transferred. In addition, both juvenile and adult prisoners are taken to a court hearing in the same vehicle which enables them to communicate to each other.

According to Article 49, II Part of the Imprisonment Code, a convict must be immediately notified of his or her rights and rules for treatment, receiving information and filing a complaint, disciplinary and other requests in a language that is understandable by him or her.

Inmates in the Institution N11 are introduced to their rights mostly by a social work or a head of the department. However, children do not fully understand their rights which may indicate to the fact that the information is not provided in full or in a language that they can comprehend. For instance, a majority of the juvenile convicts do not know what the procedures for appealing are.

While examining directions on imposing disciplinary punishment, it was revealed that such form of punishment was imposed for five times in 2014 including four reprimands and a restriction of phone conversations for a month (two cases of assault, one case of trespassing the restricted territory and disobedience, one case of disturbing a teacher during classes, one case of throwing an apple by a juvenile towards a watchtower).

Juveniles are expected to keep their personal items, clothing and sleeping accommodation clean and tidy and the authorities shall provide them with the means for it.[161] The UN Rules for the protection of juveniles specify that authorities of an institution are responsible for providing juveniles with clothing suitable for weather and necessary for health[162] while the Committee of Ministers recommends that *juveniles who do not have sufficient clothing of their own be provided with such clothing by an institution.*

It is worth noting that the administration of the institution distributes hygienic items once a week which are not delivered personally but according to cells which makes it possible for juveniles to protect hygienic measures especially in those cases when a cell is shared by three, four or more juveniles. Importantly, juvenile inmates do not often have such a basic item as a toothbrush. In addition, provision inmates with clothing and linen is a serious challenge.

Provision of prisoners with basic hygienic and everyday items still remains a problem. For instance, one of the convicts was only provided with a pillow and a blanket upon placement while linens were given by other children. The convict does not have linens to change as his/her family lives in a devastating financial condition and cannot afford it.

During the reporting period 30 convicts were transferred from the Institution N11 to the treatment facility N6 out of which were further transferred to the treatment facility N18 for the untried and convicts. Treatment facility 11 is of out-patient type which contains an office of a chief doctor and a dentist's cabinet as well as a room for medical procedures, storage rooms for drugs and medicaments.

159 The UN Standard Minimum Rules for the Treatment of Prisoners, Article 8, Paragraph D

160 The UN Standard Minimum Rules for the Treatment of Prisoners, Article 8, Paragraph B

161 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: Article 65.4. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [last accessed 24.03.2015].

162 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: Article 66.2; Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [last accessed 24.03.2015].

None of the convicts were involved in the Anti TB Programme in 2014 while 9 inmates were enrolled in the Suicide Prevention Programme. However, it is worth noting that there has not been any attempts of suicide in Institution 11 during the reporting period.

Even though mental and behavioral disorders of various types are widely-spread among the youth and require continuous supervision of both a psychiatrists and a psychologist, there is one psychologist in the institution which is far from being sufficient considering the needs and the specifics of the institution.

It is worth noting that four psychologists and one social worker resigned from their positions throughout 2014. Therefore, effective functioning of a psychological service comes under a threat as only one psychologist will unlikely to handle the provision of juveniles with all rehabilitation programmes. If new staff are to be hired, there will be the need to build their capacity through providing necessary knowledge and skills for working in a penitentiary system which is time and resource consuming.

According to a recommendation of the Committee of Ministers of the European Council[163] a juvenile in an institution, shall enjoy various activities and events as per an individual plan which aims to prepare a juvenile for a release through less severe custody and his/her integration in a community. It is worth noting that rehabilitation programmes in the institution are implemented by the institution's social services and non-governmental organisations. At the time of the monitoring, most of the juveniles were engaged in wood-carving workshops and various arts and crafts activities and practiced football and rugby.[164]

A recommendation developed by the Committee of Ministers of the Council of Europe[165] specifies key directions of activities to be carried out by a regime: schooling, vocational training, work and occupational therapy, citizenship training, social skills and competence training, aggression-management, addiction therapy, individual and group therapy, physical education and sport.

Juvenile convicts participated in a series of recreational and educational activities in 2014. However, there are prisoners who do not participate in any of these activities. For instance, as one of the inmates stated s/he has never expressed willingness to engage in the activities, nor has the social service offered him/her any rehabilitation or other programme.

A standard minimum rule for the treatment of prisoners specifies that juvenile education should be obligatory and authorities of an institution must pay special attention to its administration. According to the rule *so far as practicable the education of prisoners shall be integrated with the education system of the country so that after their release they may continue their education without difficulty.*[166]

According to Article 35 of the Constitution of Georgia 'everyone shall have the right to education and the right to free choice of a form of education. Article 7, Paragraph 4 of the Law of Georgia on General Education obliges the state to 'provide general education in penitentiary institutions in compliance with the rules set out in the Imprisonment Code' while Article 14, I part, Paragraph B the Imprisonment Code states that 'an accused/convict shall have the right to receive general and vocational education'.

There is a school at the Institution N11 affiliated with one of Tbilisi's general schools. The school implements a sub-programme of general education for juveniles. The programme provides opportunities for juveniles to not only complete general education through equivalency examinations but also to obtain a certificate (attestat) after passing attestation examinations. The school premise, which is a separate building, also

163 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 79.1 and 79.2. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [last accessed 24.03.2015]

164 For detailed information please refer to the chapter on rehabilitation programmes

165 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 77. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last accessed 24.03.2015].

166 The Standard Minimum Rules for the Treatment of Prisoners, Rule 77

homes library and a social workers' office. The programme covers all 12 grades with maximum 5 thirty minute classes a day. There is a five minute break between the classes. The difference in the schedule is to prevent juveniles form overburdening with schooling. Considering the fact that attendance to classes are voluntary, the administration tries to develop certain incentives to encourage juveniles to undertake the programme. The teachers focus more on getting students do core tasks and do not oblige them to do homework. There were 27 registered students by the end of the reporting period. Unlike Institution 11, general education programmes running in Institutions 8 and 2 are not affiliated to any public schools and therefore, no document certifying the completion of the programme is issued. The main objective of the programmes offered by these institutions is to ensure continuity of the education process as long as a juvenile has a status of a convict. As a result, the offenders do not demonstrate strong interests towards the programme and often skip classes.

It is worth noting that juvenile prisoners often face problems when it comes to the enrollment in classes as it entails a series of procedures and requires parent's active participation. Often parents cannot afford commuting to Tbilisi to sign a document. Also, in some cases the schools where juvenile offenders had attended classes prior to entering the system, are reluctant to accelerate the process and refrain from partnering with a school affiliated to Institution 11.

The UN Standard Minimum Rules for the Administration of Juvenile Justice promulgate the importance of a contact with the outside world for juvenile offenders and specify that: 'all measures must be taken to ensure juveniles' contact with the outside world which is an integral part of fair and human treatment and of great importance for their reintegration into the society'.[167] In the Institution N11 juvenile offenders enjoy the legal right to short and long term visitations, video and phone visitation. There are two furnished rooms designated for long term visitations. However, a fee related to exercising the right to long term and video visitations represent a barrier in this regard.[168] 19 long term and 3 video visitations were registered in the institution during the reporting period.

One of the critical problems faced by the Institution N11 is a violence among the juveniles. There are leader who oversee the situation and often misuse their authority to intimidate others and use their cards. There have also been cases of insults and physical abuse. It has also been observed that there are individual leaders for school, canteen and the library who take the responsibility for punishing others for inappropriate behavior including being late in classes, leaving behind crumbs on a dining table etc. In light of insufficient linen and hygienic items for some inmates, there are also those who enjoy certain privileges. The cells of such privileged offenders are well furbished, they have several matrasses, linens, rugs and the basic items that are limited for other inmates in the same institution.

3 foreign citizens, 22 representatives of ethnic minorities including 8 Azeri, 7 Armenians, 4 Yeside, 1 Syrian Kurd, 1 Roma and 1 Ossetian were registered in Institution 11 by the end of the reporting period.

The right to communicate with the respective diplomatic and consular representatives and the freedom to exercise religious beliefs is of utmost importance for prisoners who are the nationals of foreign countries.[169]

There were 6 Muslim and 3 Gregorian juveniles placed at the institution during the reporting period. There is an orthodox church on the premises of the institutions while followers of other confessions can organize a corner for their respective rituals. During posts the menu of the institution contains appropriate meals. As for the representatives of other confessions, there is only one restriction, which is absence of pork, is effective.

167 The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Rule 59

168 Article 4, I Part of Order 132 of the Ministry of Corrections of Georgia adopted on July 22, 2014, on *Approving the Rules for a Long-Term Visitations for the Convicts'*

169 The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 38

Recommendation to the Minister of Corrections of Georgia:

- Ensure all juvenile prisoners with appropriate clothing
- Provide all juvenile prisoners with hygienic items
- Explain the rights and responsibilities to juveniles in a language which is understandable for them
- Take necessary measures to engage as many juvenile prisoners as possible in recreational and sports activities
- Ensure sufficient number of psychologists in the juvenile institutions

FEMALE OFFENDERS

The Special Preventive Group under the National Preventive Mechanism and the Department of Gender Equality of the Public Defender's Office carried out a monitoring in special institutions for females. The findings of the monitoring are dealt with in the sub-chapter below.

Female prisoners are placed in the Penitentiary Institution N5 which contained 270 inmates by the end of the reporting period. The Public Defender welcomes a promising tendency of paroling of female prisoners, which is in line with Rule 63 of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules). 43 women serving in the Institution N5 were paroled during 2014. It is also worth noting that female inmates largely benefited from various education programmes and cultural and recreational activities implemented in the institution.

Within the frames of the National Preventive Mechanism at the Public Defender's Office and with the support from UN Women the Institution N5 for female offenders have been monitored based on a specially developed methodology informed by local and international legal framework. In order to adequately reflect on specific needs of women prisoners the monitoring team looked at the compliance with the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders.

Overall situation in the Institution N5 is satisfactory. However, the monitoring team revealed few serious problems including personal searches upon admission during which women are to get completely naked. In addition, what is particularly traumatizing for them is that they are asked to do squats.[170] It is worth noting that such searches are conducted when prisoners leave the facility. Because of this practice which many prisoners find beyond their dignity, female inmates often refuse to receive medical care outside the facility or attend court hearings.[171]

A practice of placing prisoners in a solitary confinement in the Institution N5 as a form of disciplinary punishment has decreased, which is undoubtedly a positive development. Since January 2014 disciplinary punishment were imposed om 55 prisoners including 3 cases of the placement in solitary confinement, 8 cases of the placement in a closed confinement while 5 prisoners were restricted an access to the outside world (restriction on family visitation – 2, restriction of phone conversation – 3). Other cases entailed reprimands and warnings.

170 Decree 97 of the Minister of Corrections of May 30, 2011 on *Approving the Statute of* re-trial Detention, Semi-open and Closed-type Prisons, Medical Establishment and Tuberculosis Treatment and Rehabilitation Centre, Article 32, Part 9

171 According to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rules 19 and 20 effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

There were 75 cases of a hunger strike from January 1, 2014 to December 31, 2014. The grounds for these strikes were claims and complaints related to health services, revisions of criminal proceedings and fairness of pardoning procedures.

There were 3 attempts of suicide in the Institution N5 during 2014. None of them yielded fatal outcomes. It is worth noting that Institution 5 joined the Suicide Prevention Programme in the summer 2014. According to the latest data 7 female convicts have been enrolled in the Programme.

219 prisoners were transferred to various medical facilities during the reporting period; 37 of them were referred to the penitentiary medical facility while 182 were transferred to hospitals outside the system. The Institution N5 homes a doctors' office, also the cabinets of surgery, gynecology, a dentist's, a room for manipulations and intensive observation. Also, the medical staff are qualified to take samples for TB and HIV/AIDS tests.

Female prisoners are a special category with specific requirements and therefore it is critical that these needs be assessed regularly and special programs developed on a regular basis. Prisoners have an access to showers from 10 AM to 8 PM. Cells in the institution are not heated adequately and in spite of the fact that the convicts have to do dishes and wash clothes, also take care of their personal hygiene during late hours, they do not have hot running water in their cells. There are significant problems related to the lack of hygienic items. More specifically, the administration fails to provide female inmates with pads which are only allowed in small quantities as a part of a parcel. The ones available in a shop are reportedly of poor quality. Often prisoners use unhygienic items which may cause a serious threat to their health. There are restrictions on other hygienic items as well.

The monitoring team also looked at the conditions of mothers and children. There are 12 rooms and a playroom in the institution. There were 6 mothers and 6 children reach the age of 3 is a critical problem.[172] Existing procedures are particularly painful for both children and their mothers. In order to protect the best interest of the child, it is crucial to ensure that the system will ease the procedures for children leaving the institution at the age of three. Separation should be flexible and needs based rather than rigid as the child's best interest must be the first priority while making such decisions.[173]

Women prisoners must be able to undertake various measures to ensure guardianship of their children. The Bangkok Rules stipulate the possibility for a parole within reasonable timeframe. A balance between the child's best interests and public interests promulgated by a penitentiary system must be the priority while making any decision.[174]

It is worth noting that female convicts placed in a building designated for convicted mothers often complain about the lack of products to prepare adequate meal for themselves and their children. There are cases when they take food for other prisoners. According to the staff working in the canteen explained that mothers are due a prisoner's allowance, but they often turn it down. It is important that issues related to child nutrition are in line with the existing standards of the country as the State is responsible for taking care of children who are placed in a state institutions.

Authorities must ensure that women prisoners have maximum contact with the outside world. In this regard, it is important that female prisoners enjoy the right to long term visitations exercised by male inmate. These issues are dealt in detail in a sub-chapter dedicated to long term visitations.

According to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) prison administration must acknowledge that women prisoners

172 The Imprisonment Code of Georgia, Article 72
173 The UN Convention on the Rights of the Child, Article 3
174 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 52.2 and 3

representing various religions and cultures have specific needs.[175] Prison administration should ensure the availability of those programames and services which meet the special needs. A process of the development of such programmes must be designed in a participatory manner with an active participation of beneficiaries.

A prison environment should be comfortable rather than disturbing for such prisoners. Understandingly, a prison may cause discomfort in general but the environment should not violate religious or other beliefs or restrict beyond reasonable limits. It must be kept in mind that women prisoners do not have only gender-specific needs and therefore authorities must consider all the individual specifics which requires special treatment of female prisoners.

When it comes to women prisoners who are foreign citizens the right to communication with relevant consular representatives and exercise their religious beliefs are of particular importance. 68 female prisoners placed in the Institution N5 belong to religious minority group including 41 Muslims, 23 Gregorian, 1 Catholic and 3 Yesides.

Issues related to conditions of LBT prisoners deserves special attention. It is worth noting that the situation in regards to female LBT prisoners is strikingly different from that of male LBT prisoners. One of the key differences is related to practices of placement and acceptance by other inmates. LBT prisoners are placed separately and other inmates have restricted communications with them, while in the institution for female offenders there is no separation as there are no security and safety threats which would require such a type of intervention.

It should be noted that neither prison administration nor inmates speak of any conflicts occurring on the grounds of gender identity or sexual orientation, or of any cases involving discrimination or inappropriate treatment. In fact, the prison administration does not have sufficient information for assessing risks. A social worker do not work with LBT inmates to provide special assistance. The monitoring mission found that the risk of self-damage is higher among LBT prisoners, however, there are no specialized schemes developed by a psychologist in place.

Recommendation to the Minister of Corrections of Georgia:

- Take all necessary measures to implement personal searches without insulting dignity of inmates
- Provide inmates with hygienic items reflecting on their gender specifics
- Ensure that women inmates have an access to heating and hot running water in their cells
- Revise and improve separation procedures involving convicted mothers and their children so that the child's best interests are protected through adaptation with the outside world and minimizing trauma of separation for children
- Revise a nutrition standard for mothers and children so that there is a sufficient amount of food
- Improve an access to psychological and social services for inmates with foreign citizenship and seek the assistance from relevant language specialist so that such prisoners overcome language barriers
- Undertake measures to raise the awareness of prison staff on LBT rights, international standards and potential risks related to placement in closed institutions
- Ensure that the administration of the penitentiary institution pays attention tions and contribute to creating safe and violence free environment of LBT inmates

175 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 54

- Intensify the interaction between a psychologist and a social worker on the one hand and LBT and other prisoners on the other to foster acceptance among non LBT prisoners and prevent potential risk of self-isolation and damage.

LIFE SENTENCE PRISONERS

Life sentence prisoners belong to a particularly vulnerable group of prisoners and therefore, their treatment should promote their dignity and strengthen a sense of responsibility.[176] The Public Defender in his reports have repeatedly underlined that existing conditions within the penitentiary institutions do not accommodate to their adequate resocialisation and reintegration into the wider community.

According to the Rules 20-23 of the Committee of Ministers the prison administration should seek to ensure that prisoners are explained the prison rules and routine and their duties and rights, including the right to make personal choices in as many of the affairs of daily prison life as possible. In addition, life sentence prisoners should be offered adequate material conditions and opportunities for physical, intellectual and emotional stimulation and have a maximum contact with the outside world.[177]

The Institutions N6, N7 and N8 designated for life sentence prisoners stand out as the most problematic facilities which fail to implement diverse and regular rehabilitation activities. Moreover, there was no programme targeted on psychorehabilitation implemented in the Institution N7 during the reporting period while Institution 6 offered only one recreational programme *Talks about Christian Themes* involving just 10 inmates for two months. In general there is no service available to male prisoners in penitentiary institutions.[178] They only have an access to a DVD player.

It is worth noting that a long term imprisonment, and in particular life sentence, is unlikely to achieve its objectives unless adequate measures are undertaken to ensure the transition of convicts to major directions and steps of public life.[179] Importantly, Georgian legislation does not promulgate specific approaches required for resocialisation and reintegration of life sentence prisoners. Therefore, there are no practice of developing individual action plans and set of indicators for life sentence prisoners. According to a recommendation by the Committee of Ministers of the Council of Europe, member states must ensure that individual plans are developed for life sentence and long-term prisoners.[180]

It is important that life sentence prisoners, under relevant supervision, have communication with their families and friends with regular intervals both in writing and visitations.[181] The Georgian Imprisonment Code provides rules that life sentence prisoners have the right to 2 long-term visitation annually and the possibility for two more long-term visitations as an incentive. It is worth noting that in some of penitentiary institutions there is no adequate infrastructure for long-term visitations and prisoners are transported to other facilities. There were cases when requests for long-term visitations were turned down because of the absence of adequate infrastructure.[182]

176 Standard Minimum Rules for the Treatment of Prisoners, rules 65 and 66.

177 Management by Prison Administrations of Life-sentence and Other Long-term Prisoners, Recommendation REC (2003) 23 adopted by the Committee of Ministers of the Council of Europe on 9 October 2003, Para. 21-25

178 Referring to Institutions 6, 7 and 8

179 The Economic and Social Council, in its resolution 1992/1 of 6 February decided to dissolve the committee on crime prevention and control and to establish the Commission on Crime prevention and criminal justice as a functional commission of the Council, as requested by the General Assembly in its resolution 46/152 of 18th December 1991. The commission held its first session from 21 to 30 April 1992.

180 Recommendation (2006)2 of the Committee of Ministers to Member States on European Rules for Prison (adopted on January 11, 2006 by the Committee of Ministers). Available at: http://www.ombudsman.ge/uploads/other/1/1225.pdf [last accessed 27.03.2015].

181 The Imprisonment Code of Georgia, Article 65, Paragraph D

182 These issues are reviewed in detail in a sub-chapter dealing with contact with the outside world

As stated by the European Committee for the Prevention of Torture, member states should undertake all necessary measures to support family relations prohibition of which, in its turn, will negatively affect emotional and health conditions, as well as motivation of the prisoner and prevent him or her from positively use the time spent in an institution.[183]

Recommendation to the Minister of Corrections of Georgia:

- Develop action plans tailored on individual life sentence prisoners for their resocialisation and reintegration in the society
- Ensure that prisoners participate in diversified activities focused on rehabilitation
- Ensure full support to life sentence prisoners to maintain ties with their families

CONTACT WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture emphasizes the importance of maintaining regular contact with the outside world for every prisoner serving a life sentence: 'a guiding principle here is the support to maintaining contact with the outside world. Any decision to restrict such contact must be determined by gave security risks or issues related to material resources.[184]

Rule 61 of the UN Standard Minimum Rules for the Treatment of Prisoners emphasizes the importance of maintaining contact between prisoners and communities outside an institution. More specifically, the treatment of prisoners should emphasize their continuing part in it. Community agencies should assist the staff in the task of social rehabilitation of the prisoners and support them to maintain relations with their families. Steps should be taken to safeguard the rights relating to civil interests, social security rights and other interests of prisoners.

Rule 79 of the Standard Minimum Rules for the Treatment of Prisoners highlights the maintenance of relations between prisoners and their families. More specifically, special attention should be paid to improvement of such relations between a prisoner and his family as are desirable in the best interest of both.

According to Rule 24.4 of the European Prison Rules the arrangement of visit should be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

According to Article 46, Part III of the Imprisonment Code a convict shall serve a sentence in an institution closest to his/her place of residence or to that of a family member. Exceptions are made if the placement is impossible because of overloading of the institution, or when the placement in another institution is preconditioned by a health condition of a convict, for the protection of his or her safety or upon a consent of a convict.

Monitoring missions to penitentiary institutions in the west of Georgia by the special preventive group members have found that the right of prisoners to visitations cannot be fully exercised because of various reasons. More specifically, one of the most common barriers is the presence of glass partitions and absence of conditions for the protection of confidentiality during family visits in penitentiary institutions. Also, ignorance of a place of residence while placing convicts is yet another of crucial problems.

183 Recommendation (2006)2 of the Committee of Ministers to Member States on the European Prison Rules
184 Resolution parts of the general reports of the European Committee for the Prevention of Torture (CTP), Strasburg, August 18, 2000. P. 37

SHORT-TERM VISITS

Well-being of prisoners and their reintegration after having served their sentence are largely determined by an extent to which they maintain relations with their families and friends. Direct contact and communication with families greatly contributes to rehabilitation of ex-convicts.

Article 17, Part II of the Imprisonment Code determines a limited circle of those persons who are allowed to visit convicts upon a written request filed by the latter. Persons who are allowed to visit a convict for a short-time include: close relatives (child, spouse, a partner, a parent (adoptive parent), stepmother, stepfather, in-laws, stepchild, adopted children and their descendants, grandchildren, sister, brother, niece, nephew and their children, grandfather, grandmother, great grandparents (both paternal and maternal), uncles (maternal and paternal), aunts, cousins, also a person with who a convict lived with in a same household for a year before imprisonment).

It is worth noting that according to an amendment to the Imprisonment Code of April 16, 2014 (21 part was added to Article 17 of the Code), a convict has the right to meet with an individual who does not fall in the above mentioned circle upon a consent of a head of the penitentiary department. The amendment will contribute positively to a resocialization process of convicts.

The Imprisonment Code regulates matters related to the right of convicts to short- term visits. More specifically, according to Article 61, Paragraph B a convict serving in a semi-closed institution has the right to two short-term visits per month and to one more short-term visit as an incentive. Article 64, Clause 1, Article B grants the right to a convict serving in a closed institution to have one short-term visit per month, while additional visit may be allowed as a form of an incentive.

The Imprisonment Code also regulates the right of women and juvenile offenders to short-term visitations. According to Article 72, Part 3, female convicts have the right to 3 short-term visits per month and one additional short-term visit as an incentive. According to Article 70, Part 2, Paragraph A, a juvenile offender has the right to 4 short-term visits per months and two additional short-term visits per month as an incentive.

According to Article 17, Part VII of the Imprisonment Code of Georgia a long-term visit should be implemented under solely a visual control. Exceptions are allowed only under the terms stipulated by the Georgian legislation.

Article 50 of the Decree 97 of the Minister of Corrections of Georgia defines the terms for short term visits. More specifically, short term-visits are allowed in specially designated rooms. Based on the specifics of an institution, visits may take place as a face to face meetings through glass partitions.

It is worth noting that in most penitentiary institutions such visits are implemented in spaces with glass partitions. In such cases prisoners are deprived opportunities for physical contacts with their family members. Exceptions may be allowed upon a consent of a director of an institution when such circumstances as a convict's severe health condition, meeting with an underage child of a convict arise. Although physical partitions are necessary for specific cases, it is important to acknowledge physical contact a norm. In addition, any decision on restricting physical contacts must be reasonable, justified and proportionate to the reason behind such restrictions. Importantly, decisions to restrict physical contact must be subject to regular revisions. Otherwise such interference in prisoners' personal and family affairs shall not be justifiable.

The European Court of Human Rights deliberated on this issue while hearing a case *Mesina v Italy.*[185] The case originated in an application filed by a citizen of Italy Antonio Messina (the Applicant). The Applicant alleged

185 Messina v Italy, Judgement of September 28, 2000

in particular infringement of his right to respect for his family life on account of the restrictions on family visits while he was a prisoner, of his right to respect for his correspondence on account of the fact that it was intercepted by the prison authorities, and of his right to an effective remedy against the decisions to extend the period for which he was to be subject to the special prison regime (which stipulated the restriction on the number of visits by the Applicant's family members with maximum two visits for a month). The restrictions also implied supervision on visits (prisoners were separated from visitors by glass partitions). The Court holds that these restrictions represent interference in the Applicant's right to family life promulgated by Article 8 of the Convention. The Court notes that the regime laid down in section 41 *bis* is designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimize the risk that they will maintain contact with criminal organisations. In particular, it notes that as the Government point out, before the introduction of the special regime imprisoned Mafia members were able to maintain their positions within the criminal organisation, to exchange information with other prisoners and the outside world and to orgnise and procure the commission of serious crimes both inside and outside their prisons. In that context, the Court takes into account the specific nature of the phenomenon of organized crime, particularly of Mafia type, in which family relates often play a crucial role. Moreover, numerous Sates party to the Convention have high-security regimes for dangerous prisoners. These regimes are also based on separation from the prison community, accompanied by tighter supervision.

In its judgement the Court holds that the Italian legislature reasonably considered such measures to be necessary to achieve the goal. This refers to the critical circumstances of the investigations of the Mafia being conducted by the Italian authorities. However, the Court considered that the extension of the special regime may have violated the right of the Applicant guaranteed by Article 8 of the Convention.

European Court of Human Rights ruled that the right of the Applicant guaranteed by Article 8 of the Convention was not violated by imposing restrictions over visits of his family members. However, interception of the Applicant's correspondence did breach the above mentioned right.

According to Article 1211, Part III, Paragraph A of the close relatives of convicts/accused (child, spouse, a partner, a parent (adoptive parent), stepmother, stepfather, in-laws, stepchild, adopted children and their descendants, grandchildren, sister, brother, niece, nephew and their children, grandfather, grandmother, great grandparents (both paternal and maternal), uncles (maternal and paternal), aunts, cousins, also a person with who a convict lived with in a same household for a year before imprisonment) may be granted the right to visits upon recommendation of a physician in charge and a consent of a head of the department under the terms ruled by the Minister.

THE CASE OF T.P.

A counselor representing the interest of a convict T.P. filed an application to the Public Defender. According to the application and attached materials, the convict has been placed in the Centre of Cellular Technologies and Therapy (K. Mardaleishvili Medical Centre) since October 22, 2013. The convict suffers a serious and incurable illness. In spite of this circumstance, the convict is not allowed to be visited by the family. In the correspondence dated March 24, 2014 and July 29, 2014 (MCLA31400131729 and MCLA11400358221 respectively) the Unit of Legal Regime at the Lead Unite of Security at the Penitentiary Department justified such restrictions with security protection.

It is worth noting that on September 24, 2014 the Public Defender's Office addressed in writing (letter #03-2/12006) the Penitentiary Department of the Ministry of Corrections to follow up with the above described issue.

With the correspondence MCLA91400497739 dated September 27, 2014 the Penitentiary Department notified the Public Defender's Office that as the convict was still in the Centre of Cellular Technologies and Therapy, there was no relevant infrastructure for short-term visits, the Department could not provide security and therefore had to refuse the convict the possibility to meet with the family.

With regard to T.P's right to respected personal and family life, the Public Defender's Office appealed to the Ministry of Corrections (recommendation 048/14884). As a response to the recommendation the Ministry notified the Public Defender that granting the right to the convict to a short-term visit was found inexpedient on the security grounds.

A decision on the restriction of rights must be subject to accurate and in-depth revision. In addition, due attention must be paid to a prisoner's right to maintain a certain type of contact with his/her family members in light of protecting important and sensitive public interests. The state bears the responsibility to undertake relevant measures for the protection of security not infringing at the same time prisoners' rights to family life.

In addition, due attention must be paid to measures for the protection of privacy during visitations. More specifically, family members and friends of prisoners should be able to visit prisoners in adequate conditions considering prison conditions and maximum protection of confidentiality. Findings of the monitoring missions indicated to infringement of confidentiality because of inadequate infrastructure in short-term visitation rooms.

According to the Article 46, Part III of the Imprisonment Code of Georgia, a convict shall serve a sentence in an institution closest to his/her place of residence or that of his/her close relative except for the cases outlined in Clause 4 of Article 46.

One of the impediments to the realisatioin of the right to visits is the ignorance of places of residence while making decisions on placement of prisoners in penitentiary institutions. Prisoners from Eastern Georgia who serve their sentences in penitentiaries located in Western Georgia are the ones who most often experience problems related to the rights to visitations. This category of prisoners also have problems with meeting their lawyers. It is worth noting that the monitoring by the National Preventive Mechanisms found that a massive transfer of prisoners to west Georgia's penitentiaries took place during the reporting period. Normally, neither transferred prisoners nor Public Defender's representatives are notified on the grounds for the transfer from one institution to another. This issue has been repeatedly raised in many reports prepared by the Public Defender's Office.

According to Rule 24.1 of the European Prison Rules should be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons while Rule 24.5 states that prison authorities must assist prisoners in maintaining adequate contact with the outside world and provide them

with the appropriate welfare support to do so. Due to the fact that because of the absence of adequate infrastructure in most of closed institutions prisoners are not able to exercise their right to long-term visits. Nor is one short-term visit in a room divided with glass partitions sufficient to support prisoners to maintain full contact with their families. Therefore it is of utmost importance that the legislation be amended so that prisoners serving their sentences in closed institutions are allowed extra short-term visit.

Overall 44 631 short term visits were paid in penitentiary institutions during 2014. The table below shows the breakdon of this figure according to the institutions:

Institution	Number of Visits
Institution N2	6020
Institution N3	276
Institution N5	1374
Institution N6	2077
Institution N7	345
Institution N8	7950
Institution N9	552
Institution N11	909
Institution N12	1690
Institution N14	2940
Institution N15	7863
Institution N17	12067
Institution N18	35
Institution N19	533

LONG-TERM VISITS

According to Article 8, Part I of the European Convention on Human Rights everyone has the right to respect for his private and family life. Article 23 of the International Covenant on Civil and Political Rights states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. The right of prisoners to long-term visitations is a part to the right of protection of family. Importantly, maintaining close relations with their families helps prisoners in smoother reintegration with their families and society after the release.

According to Article 17[1], Part I of the Imprisonment Code, a long-term visit is a cohabitation of convicts with persons defined by Part II[186] of the same article in a room located on the premises of an institution. According to Article 62, Clause 2, Paragraph E a convict serving in a semi-closed institution has the right to three long-term visits per, while two more long-term visits may be granted as an incentive.

An amendment to Article 65 of the Imprisonment Code of Georgia enacted on April 16, 2014 is considered undoubtedly positive development. More specifically, according to newly added paragraph D a convict placed in a closed institution has the right to two long-term visits per year and to additional long-term visit per year as an incentive.

There is no adequate infrastructure for long-term visits in Institution 8 and only life sentence prisoners exercise their right to long term visits. As a rule, life sentence convicts are transported to Institution 6 once a month for long-term visits upon prior arrangements with family members.

Similar to Institution 8 there is no infrastructure in Institution 7 to accommodate to long-term visits. It is worth noting that, the life sentence prisoners serving in this institution are not able to exercise their right to long-term visitation.

186 'A convict may be granted the right to long-term visits by son/daughter, adopted son/daughter, grandchild, spouse, a partner with who s/he had a child, parents (adoptive parents), grandmother, grandfather, sister and brother'.

THE CASE OF V.A.

A.A mother of a convict V.A. serving a life sentence in the Institution N7 of the Penitentiary Department has repeatedly applied to the Public Defender's Office in regards to the infringement of her son's right to long-term visits.

The Public Defender's Office reviewed V.A's case and concluded that the convict has not exercised the right to visits granted by the law since 2012. To follow up with the case, the Public Defender applied to a director of the Institution N7 (letter 03-3/9073) on July 10, 2014 and to a deputy head of the Penitentiary Department of the Ministry of Corrections on August 4, 2014 (letter 03-3/9788). According to a feedback correspondence (a letter MCLA 41400370176) of August 4, 2014 from the director of the Institution N7 there is no adequate infrastructure in the institution to accommodate to long-term visits, while the Penitentiary Department (correspondence MCLA914003650569 dated July 30, 2014) informed the Public Defender's Office that a decision to grant a right to long-term visits is to be made by a director of a facility.

It is worth noting that V.A. has not exercised his right to long-term visits on August 1, 2012 when the convict was transferred to the Institution N6 to receive a long-term visit from his mother due to the absence of adequate infrastructure for long-term visits in the Facility N7.

With a recommendation 03-3/12102 of September 29, 2014 to allow V.A. to exercise his right to long-term visitation Public Defender applied to the Ministry of Corrections of Georgia but to no avail.

It is worth noting that a recommendation outlined the Public Defender's 2013 report the latter called on the Minister of Corrections to provide the Institutions N7, N8 and N12 with adequate infrastructure for long-term visitations. The Public Defender welcomes the construction of infrastructure in the Institution N12 to accommodate to long-term visitations. Prisoners in the Institutions N5, N18 and N19 are also affected by the absence of infrastructure for long-term visits. Importantly, the Institution N18 homes convicts who are placed under long-term care unit and unable to meet with their relatives because of absence of facility for long-term visitation.

It must be underlined that according to amendments of April 16, 2014[187], the Imprisonment Code of Georgia does not stipulate the right to long-term visits for prisoners placed in high-security institutions. For instance, Article 17^2, Part VI states that convicts placed in high-risk facilities shall not have the right to long-term visitations.

According to 24.2 of the European Prison Rules communication and visitations may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact. Prohibition of long-term visits for convicts serving in high-risk institutions is more of a punitive character rather than a security measure. Therefore, there is no justification for such a restriction.

Article 17^2, Part VI restricts the right to long-term visits for convicts under a quarantine regime, also those who are subject to disciplinary punishment or administrative detention.

During the reporting period the Special Preventive Group members were informed by the social service staff of the Institution N14 that a convict placed in a solitary confinement was not allowed to receive long-term visits as per Article 17^1, Part VI of the Imprisonment Code.

This case indicates that the legal norm has been misinterpreted as, in fact, it refers to such cases when a convict is subject to a disciplinary punishment (still into force) and the restriction must not be extended to those cases, when the term of disciplinary punishment is exhausted.

187 Law of Georgia on 'Amendments to the Imprisonment Code' April 16, 2014 N2241-IIს.

According to Clause 4 of Decree 132 of July 22, 2014 of the Minister of Corrections, costs of long-term visits are paid by a convict or his/her visitor via bank transfer. Fee of a long-term visit amounts 60 GEL for adult convicts and 30 GEL when juveniles are concerned.

It is worth noting that severe economic conditions of a convict and his/her family impede the right of prisoners to long-term visits and prevent the latter to maintain strong relations with their families. The Public Defender welcomes an amendment to Article 17[2] as a result of which 'long-term visits may be exempt from fees under the terms specified by the Minister. According to Article 4, Clause 4 of Decree 132 of July 22, 2014 of the Minister of Corrections visitors who are registered beneficiaries in the unified registry for socially unprotected households are exempt from paying fees for visits. The Table below provides the breakdown of long-term visits carried out in 2014.[188]

N	Penitentiary Institution	Number of Long-term Visits
1.	Institution N2	705
2.	Institution N3[189]	31
3.	Institution N6[190]	343
4.	Institution N11	19
5.	Institution N12[191]	73
6.	Institution N14	722
7.	Institution N15	1559
8.	Institution N17	1780

As for the accused, Article 17, Part X of the Imprisonment Code of Georgia grants them the right to only short-term visits. At the same time, according to Article 123 of the transitional provisions, the accused have the right to maximum four short-term visits a month up to January 1, 2016 upon a consent of a prosecutor or an investigator. This restriction limits contact of the accused with their family members and there is no justification for the prohibition of long-term visits for the accused during a pre- trial period as maintaining contacts and relations with families for this category of individuals is critically important.

The Public Defender's Office requested the information from Tbilisi City Court on the numbers of the accused who were granted the right under Articles 123 and 124 of the Imprisonment Code as well as the number of denials (Correspondence 04-8/1205 of February 17, 2005) for 2014. According to a response dated February 18, 2015 (correspondence 1-04373666) Tbilisi City Court does not run this statistics.

According to Rule 99 of the European Prison Rules, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, also they may have additional access to other forms of communication unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

Based on the above said, the Imprisonment Code should be amend in a way to define the rules for untried prisoners to be able to receive long-term visits paying due attention to the interests of investigation.

According to Article 72 of the Imprisonment Code of Georgia women convicts have the right to one family visit per month. Article 17[3], Part II of the Code women convicts have the right to receive visits from son/

188 Institutions 5, 7, 8, 18 and 19 have no adequate infrastructure for long-term visits
189 Long-term visits in Institution 3 started in May 2014
190 Including those prisoners who had been transferred to another institution for long-term visits
191 Long-term visits in Institution 12 started in October 2014

daughter, adopted son/daughter, parents (adoptive parents), sister and brother. Visits shall take place in a specially designated room on the premises of an institution for maximum 3 hours.

According to Rule 27 of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules), women prisoners must have the right to family visits the same way as male prisoners as the Imprisonment Code grants women convict the right to only 3 hour family visits while male prisoners enjoy 24 hour long long-term visits.

The terms and conditions defined by the Imprisonment Code of Imprisonment contradict the Bangkok rules and are against the inspiration conveyed by the UN Convention on the Elimination of All Forms of Discrimination against Women. According to Article 124[1] of the Imprisonment Code of Georgia, the Ministry of Corrections shall ensure there are adequate conditions in women's and closed institutions for long term

visits. Such must be in place before December 31, 2015 latest. It is important that authorities take all relevant measures for creating an environment whereby women prisoners will be able to exercise their right to long-term visits. With this regards the Georgian Public Defender in his 2013 report recommend the Minister of Corrections. However, the recommendation is yet to be implemented.

VIDEO VISITS

According to Article 17[1] of the Imprisonment Code a convict placed in a penitentiary institution has the right to video-visits (direct audio and visual telecommunication) visit with any individuals. Exceptions are convicts serving their sentences in high- security prisons and shoes defined by Article 50, Part I, Paragraph F.

Video-visits play an important role in maintaining relations between prisoners and their family members and positively contributes to the processes of recosialistion of the former. Video visits are of particular importance as both family members and friends and other persons closer to a convict may take part.

According to Clause 2 of Decree 55 of the Minister of Corrections dated April 5, 2011 convicts are eligible to one video visit per ten calendar days from 10:00 to 18:00 and with the maximum duration of 15 minutes.

According to Article 17[1] of the Code video-visits are subject to fees to be paid to a bank account of the National Bureau of Probation and accommodates to the goals and objectives of the Bureau. As per the Minister's decision video-visits may be exempt from a fee. However, Part IV1 of the same Article provides a condition under which persons defined by Article 17, Part II registered in a unified registry for socially unprotected households and having with the assessment score lower than an official marginal rating are exempt from a fee.

Fees for video-visits are paid by a convict, his/her legal representative or a person willing to participate in a video-visit. The Minister of Corrections makes a decision on selecting the institutions to provide video-visits to convicts, number of video-visits, duration, the amount to be paid for such visits and procedures for the implementation.

It is worth noting that adequate infrastructure for video-visitations is available in only four penitentiary institutions[192] (Institutions N5, N11, N15 and N17). The table below provides information on video-visits implemented in 2014.

192 Institution 16 underwent rehabilitation throughout 2014

N	Penitentiary Institution	Number of Video-Visits
1.	Institution N5	9
2.	Institution N11	3
3.	Institution N15	106
4.	Institution N17	136

In his 2013 report the Public Defender recommend the Minister of Corrections to provide necessary infrastructure video-visits in all penitentiary institutions. However, the recommendation has not been implemented.

TELEPHONE CONVERSATIONS

Right to telephone conversation is one of the fundamental rights for the convict/ untried prisoners which supports to maintaining strong relations with their families and friends. According to Article 14, Part I, Paragraphs A-D, convicted/untried prisoners have the right to telephone conversation and correspondence.

A convict serving a sentence in a semi-closed institution is eligible to four telephone conversations per month each with the duration of maximum 15 minutes at his/her own expense and may also have unlimited telephone conversations of maximum 15 minutes each as an incentive. According to Article 65, Clause 1, Paragraph C, a convict serving in a closed institution is eligible to three telephone conversations each of maximum 15 minutes per month at his/her own expense, while s/he may be granted to right to unlimited number of telephone conversations each of maximum 15 minutes at his/her own expense as an incentive.

It is worth noting that is a prisoner fails to spend a total credit on his/her card, s/he can no longer use the remaining credit for telephone conversations and therefore there is a need to purchase a new card, which incurs additional expenses.

A telephone card is blocked if a prisoner cannot manage to have a conversation within the telephone calls (because of termination of phone connection, dialing a wrong number etc). The monitoring mission found out that there is a constant deficit of telephone cards in a prison shop which restricts prisoners to exercise their rights.

As for untried prisoners, according to Article 124 of the Imprisonment Code they have the right to correspondence at their own expenses and under the administration's supervision and are allowed to have three telephone conversations three times a month upon a consent of a prosecutor or court.

CORRESPONDENCE

According to Article 16, Part I, convicted/untried prisoners have to the right to send and receive correspondence without any limit under the rules defined by the Code except for cases provided in the same Code. According to Part IV correspondences run by convicted/untried prisoners are subject to scrutiny implying visual examination without reading a content. However the administration has the right to read the content of correspondence and ban sending out provided that there is a reasonable doubt that the dissemination of information provided in the correspondence may threaten public order, security or undermine rights and freedoms of other individuals. Such a decision shall be immediately convey to a sender.

According to Article 16, Part VI of the Imprisonment Code, a representative of the administration has no right to suspend and/or check the correspondence of a prisoner if the addressee is the president of Georgia, the spokesperson of the parliament or the prime minister, member of the parliament, court of law, the European Court of Human Rights, an international organization created in accordance with an international agreement or covenant ratified by the government of Georgia, a Georgian ministry, department, the Public Defender of Georgia, advocate, prosecutor.

It is worth noting that according to Article 79, Part II the prisoner may be restricted in his/her rights stipulated by Subparagraph C[193] of the same article upon a justified decision of an investigator or a prosecutor.

Protection of confidentiality pertaining to correspondence by the Public Defender's Office of Georgia is of particular importance. However, the Special Preventive Group revealed cases involving the infringement of correspondence of the Public Defender's Office. For instance, during a visit to the Institution N17, the group members discovered that the correspondence received from the Public Defender's Office had been delivered in opened envelopes by one of the convicts working in the institution's library. In addition, during a visit to the Institution N2, a member of the Special Preventive Group discovered that a staff member of the chancellery had opened the correspondence from the Public Defender's Office and made a copy of the letter. According to the staff member, this was a normal routine in the institution. Therefore, all measures must be undertaken to eliminate this illegal practice.

Correspondences from penitentiary institutions are sent with help of social services. Data obtained from the Penitentiary Department suggest that[194] 3 135 letters of complaint was sent via a complaints box during the reporting period. It is worth noting that 50 per cent of letters were sent from the Institution N17 while Institution 15 accounted for 47 per cent of the correspondence. Prisoners in other institutions do not normally use this mechanism.

RECOMMENDATIONS:

To the Minister of Corrections:

- Ensure the access to short-term visitations without glass partitions
- Ensure the construction of adequate infrastructure for long-term visitations in all penitentiary institutions
- Ensure the construction of adequate infrastructure for video-visitations in all penitentiary institutions
- Ensure a full access to telephone conversations as per the right granted by the legislation
- Undertake all necessary measures to ensure the confidentiality of correspondence granted by the law

To the Head of the Penitentiary Department:

- Consider a place of residence of family members of a prisoner while making a decision on the placement in a penitentiary institution to ensure that prisoners are able to exercise their right to visitations

193 Accused during their stay in facility and under the administration's supervision have the right to correspondence at their own expenses and are allowed to have telephone conversation three times a month, each not exceeding 15 minutes.

194 Written response (128288) from the Ministry of Penitentiary on February 2, 2015

A proposal to the Parliament of Georgia:

- Amend the Imprisonment Code to reflect on the need of untried prisoners for long-term visits with due consideration of interests of an investigation
- Amend the Imprisonment Code so that prisoners serving in closed institutions are allowed to increased number of short-term visits

SITUATION IN THE AGENCIES UNDER THE CONTROL OF THE MINISTRY OF INTERIOR OF GEORGIA

INTRODUCTION

The present report provides a review of findings resulting from the monitoring missions by the National Preventive Mechanism at the Public Defender's Office to police departments and agencies under the control of the Ministry of Interior of Georgia.

It is worth mentioning that during the monitoring the members of the National Preventive Mechanism were not impeded by any means and obstruction and moved freely within the district departments and detention facilities under the control of the Ministry of Interior. During the visits all staff members of the departments and detention facilities fully complied with the law and cooperated with the representatives of the Public Defender thus enabling the latter to implement a full-scale monitoring.

According to the Minister of Interior's Decree 108 of February 1, 2010[195] 'the following registration-identification logs of various purposes, electronic systems and documentations will be used to facilitate smooth operation of detention facilities: a) unified electronic database for registering detainees in detention facilities b) detainees registration log c) registration log for detainees' medical assistance d) communications registry e) parcel registry f) protocols of detainees' external examination g) list of prisons subject to guarded transfer h) watches' paper i) protocol of personal examination j) archive card

The monitoring team examined the registry of detainees and the logs of those transferred to detention facilities. The monitoring revealed that often registry and log entries were incomplete and inaccurate. More specifically, it is always clear when a person was detained by the police, when s/he was brought in the police department. Nor was follow up information provided. In addition, numbering tends to be incorrect and no indication of details pertaining to the breach of law. There are many cases when sections are left blank in the logs.

Registries and logs run by the departments of Baghdati, Zestaponi, Tsageri, Sachkhere, Chiatura, Ambrolauri, Tkibuli, Samtredia and Terjola contained the most errors, while Vani, Khoni and Lentekhi district police departments turned out to be most consistent and accurate.

195 Decree 108 of February 1, 2010 of the Minister of Interior of Georgia on *Approving Additional Instructions for Standard By-laws, Statutes of Detention Facilities and Operations of Detention Facilities under the Ministry of Interior.* Annex 3, Article 5

PROTECTION FROM INAPPROPRIATE TREATMENT

The right to protection from torture, inhuman and degrading treatment is one of the fundaments of a democratic state, enshrined in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[196]

The 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of my kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[197]

The Ministry of Interior has a key role for protecting public security and order in a democratic society. The Georgian legislation defines forms, methods and means of the Police's operation. More specifically, the law states that 'a police officer shall protect the principles of the protection of and respect for fundamental human rights and freedoms, the right to non-discrimination, commensurability, exercise of discreet competences, political impartiality and transparency of its operations.[198] 'Forms and methods of the Police's operation shall not violate human respect and dignity, the right to life and physical inviolability and property ownership as well as other basic rights and freedoms. Nor shall he inflict unjustifiable damage to environment.[199]

N	Annual Data	2013	2014
1	Number of placed individuals	16553	17087
2	Placed individuals with injuries	7095	6908
3	Claims against the Police	111	198

There were more than 87 registered cases of filing claims by detainees against the Police in 2014. It is worth noting that during the monitoring visits no complaints or concerns were voiced by the detainees in regards with mistreatment by the staff of detention facilities.

The Special Preventive Group also examined the protocols of external observation of the detainees in detention facilities. In some cases individuals did not raise any claims against the Police noting at the same time that s/he received injuries while being detained. In few cases the degree of described injuries and their location raises doubt that an individual(s) may have been exposed to inappropriate treatment.

During the monitoring mission in October 2014, the members of the Special Preventive Group examined cases of 956 detainees 150 out of which was selected for closer scrutiny. The members found violations of various types in 41 cases. In 17 protocols there were no indications of injuries which were described in the protocols of external examinations upon admission. The table below provides information on these cases.

196 The Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950, Article 3: 'No one shall be subjected to torture, inhuman treatment and degrading treatment or punishment.'
197 UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984), Article 1
198 Police Law of Georgia, Article 8, Part I
199 Police Law of Georgia, Article 9, Part I

N	Detention Protocols	protocol of external examination in temporary detentioin facilities [200]
1.	No injuries found	Redness on the face
2.	No injuries found	Excoriation on the upper limb and the face
3.	No injuries found	Redness and excoriations on the face, back and upper limb
4.	No injuries found	Scratches on the neck, face and upper limb
5.	No injuries found	Hyperemia in the area of the face
6.	No injuries found	Wound in the area of the face and upper limb
7.	Blank	Excoriation and hyperemia in the areas of face and the back
8.	Blank	Hyperemia in the areas of the neck and the back
9.	Blank	Hyperemia in the areas of the neck and the back
10.	No injuries found	Excoriations in the upper and lower limbs
11.	No injuries found	Hyperemia in the areas of the neck, the back and upper limb
12.	No injuries found	Hyperemia in the areas of the neck, the back and upper limb
13.	No injuries found	Excoriations in the areas of the neck, the back, and lower and upper limb
14.	No injuries found	Excoriation on the lower limb
15.	No injuries found	Hyperemia in the area of the neck and on the lower limb
16.	No injuries found	Excoriations on the lower limb and the face
17.	No injuries found	Extravasation on the upper limb

It is worth noting that in seven cases the injuries in the area of the face indicated in the external examination protocols could not have gone unnoticed by the police officer. Therefore, there is strong presumption that in 17 cases indicated above detainees had sustained physical injuries before they were placed in a detention facility. In addition, in these 17 cases, unlike protocols filed in the detention facility, detention protocols do not provide full information about injuries found on the bodies of the detainees.

In regards to the above said, the European Court of Human Rights states that if a person sustained injuries in custody when entirely under the control of police officers, any such injury originates gives the ground to presume that this person has been subject to inhuman treatment.[201] In such a case it is for the Government to provide a plausible explanation as to the causes of injuries.[202] Therefore, special attention must be paid to providing full written record of bodily injuries during detention in order to present plausible explanation in case a detainee files a claim.

The examination also revealed that in many detention protocols miss a section for reporting on bodily injuries and therefore, there is no written description of injuries in these protocols. Therefore, it is important that every protocol include a section about injuries to be filled out thoroughly with detailed information.

The scrutiny of 150 cases revealed three cases of missing information on bodily injuries in the protocols filed in the detention facility, while such information is found in the detention protocols. Also, there is inconsistency while describing injuries in external examination protocol and in that of detention which points out to discrepancies in documentations which needs to be addressed immediately.

200 Information on injuries has been copied without any changes
201 Bursuc v. Romania, October 12, 2004
202 Selmouni v. France, Paragraph 87

Yet another problem related to the discrepancies found in documentations reporting bodily injures is the absence of CCTV in a great majority of the police buildings. As a rule, a CCTV is installed only at the entrance thus covering only an outside perimeter. After a detainee is taken inside the police building, it is impossible to establish what conditions the detainee is kept in or whether or not s/he has been subject to physical or psychological abuse.[203] Therefore, we find it critical that the police premises be equipped with CCTVs and video recording kept for a reasonable period of time.

When it comes to effective investigation European Committee for the Prevention of Torture states that even when there is no formal complaint filed it is for the prosecutorial authorities to open and proceed investigation upon the receipt of credible information from any sources on the ill-treatment towards a detainee. Therefore, it is critical that relevant state authorities be responsible to immediately provide information on the ill-treatment to prosecutorial authorities.[204]

It should also be mentioned that during a visit in a temporary detention facility of Khashuri the Group members found that the Prosecutor's Office had not been informed on bodily injuries identified on one of the detainees. It is important that the responsibility of staff at a temporary detention facility to inform a prosecutor's office in cased of injuries sustained by a detainee, be clearly defined.[205] At the same time, fulfilment of this responsibility must be strictly controlled and relevant measures taken against an individual who fails to comply.

During a visit to a temporary detention facility in Kutaisi, the group members learnt that A.D. and G.K. had injuries in the area of the face. More specifically, A.D. had an extravasation in the right eye, fractions on the right check, in the right corner of the lip and on the back of the head. G.K. had fractions on the right side of the nose and the right hand. According to the detainees police officers had beaten them up even though they never resisted the arrest. After that the detainees were transferred to Department 4 where they were coerced and threatened for about an hour to provide a written testimony declaring that they sustained injuries before the detention.

A series of conversations with the detainees in the temporary detention facilities revealed that in many cases detainees cannot manage to communicate their location to their families and therefore they have no opportunity to have a counselor of their choice or receive medical assistance which is a guarantee for the protection from inappropriate treatment of a detainee. The right must be exercised since the very moment of detention. It must be underlined that risks of intimidation, pressure, coercion, humiliation and other types of ill-treatment are particularly high on the first stage of the deprivation of liberty.

Police officers must use minimum force possible and take all measures to avoid physically injuring a detainee. According to the Police Law of Georgia the police must use proportionate coercive measures while performing their duties as the last resort and with the intensity that is necessary to achieve a legitimate goal.[206] The type and intensity of coercive measures are defined by a specific situation, a nature of the crime and individual characteristics of an offender in question. At the same time, while using coercive measures the police officer must try to make the damage minimum and commensurable.[207]

203 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) highlights the importance of CCTV recordings in the police premises. See *Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf/E (2002) 1 – Rev. 2015), Paragraph 36*. Available at: http://www.cpt.coe.int/en/docsstandards.htm [Last accessed 27.03.2015]

204 14th General Report on the CPT's Activities, 2004, Paragraph 27

205 It is worth noting that according to Article 32, Clause 2 of the Georgian Police Law a police officer is legally bound to report to his/her supervisor and a prosecutor on any injury sustained as a result of his/him using physical force. At the same time, the Imprisonment Code also obliges that information on bodily injuries sustained by the convict be immediately provided to the prosecutor. More specifically, Article 75, Part V states that the prison administration must immediately notify the prosecutor if there are signs of injuries on the convict's body.

206 The Police Law of Georgia, Article 31, Part I

207 Georgian Police Law, Article 31, Part IV

It is worth noting that during monitoring missions carried out by the Special Preventive Group members throughout 2014 it was revealed that detainees had sustained a series of injuries as they were being detained by the police. The injuries were mostly sustained in the areas of the chest as well as lower limbs and the face. As shown in the table provided below the police staff tend to often omit detailed information in detention protocols that would describe the nature of resistance and types of coercive measures to stop the resistance. In addition, there are inconsistencies between the descriptions of bodily injuries sustained by detainees in detention and external examination protocols. The above said raises reasonable doubt that the police may have abused their authorities in the indicated cases.

N	Detention Protocol	Detention Circumstances	External Examination Protocol
1	An injury on the right side above the forehead which, as the detainee claims, was sustained before the detention	S/he was detained at 21:15. During the detention s/he resisted a lawful demand from the police	The detainees has an injury on the head. However, s/he claims the injury had been sustained few days before the detention during work
2	Redness above the right forearm, on the left flank, above the right eyebrow and a scratch above the left knee.	S/he was detained at 17:35 while resisting the police who had to use coercive measures against him/her	Redness on the upper side of the right forearm, on the left flank, above the right eyebrow and a scratch above the left knee
3	A scratch would on the left eyebrow, bruise of red and blue in the area of the left eyehole, scratches on the left side of the neck, scratches and redness on the left blade-bone and in the area of the back, redness in the area of the abdomen.	S/he was detained at 17:35 while resisting the police who had to use coercive measures against him/her	Excoriations, extravasations, swellings and contusions in the areas of chest, abdomen, back, lower and upper limbs.
4	An injury at the left ear, scratches in the areas of the neck, face, chest and left hand, extravasation of bluish color on the right shin	S/he was detained at 03:50 while resisting the police who had to use coercive measures against him/her	Extravasation, hyperemia and swelling/contusion in the areas of the face, neck, chest also on the upper and lower limbs.
5	Injuries in a form of extravasations on the left hand and in the upper right part of the back	S/he was arrested at 23:10 while resisting the police officers who were trying to perform their duties	Extravasation and hyperemia in the areas of the back and lower and upper limb
6	The detainee explained that s/he has a scar on the head from a wound several years ago. There are also scratches in the area of abdomen, in the back near the right blade-bone and on the lip. S/he claimed the injuries were sustained while s/he was repairing a car	S/he was detained at 18:20 while resisting the police's legitimate demand	Excoriation, extravasation and hyperemia in the areas of the neck, chest and the back.
7	Scars in the front and back of the body which s/he explained as marks from previous illness, also, injuries on the elbows and a bruise on the right eye.	S/he was detained at 03:15 while resisting the police's legitimate demand	A scar in the area of the face, extravasation
8	A scar from a wound on the lower and upper limbs and in the area of the abdomen which, as the detainee explained were sustained several years ago.	S/he was detained at 21:50 while resisting a patrol inspector. The detainee hit the latter in the face.	Extravasation on the upper limb

The data provided by the Ministry of Interior suggest that[208] in 254 out of 6636 cases of detention, detainees sustained bodily injuries before they had been detained while 68 of them sustained injuries after the detention. In 28 cases the detainees inflicted self-injuries while the staff registered 9 cases of casual trauma.

CONDITIONS IN TEMPORARY DETENTION FACILITIES

The number of temporary detention facilities operating throughout Georgia in 2014 totaled 37[209] two of which are located in Tbilisi. The rest includes facilities in the following locations: Mtskheta-Mtianeti, Dusheti, Telavi, Sagarejo, Sighnaghi, Kvareli, Gori, Khashuri, Borjomi, Akhaltsikhe, Akhalkalaki, Rustavi, Tetritskaro, Tsalka, Gardabani, Marneuli, Kutaisi, Lentekhi, Zestaponi, Baghdati, Chiatura, Samtredia, Abmrolauri, Zugdidi (regional), Zugdidi, Senaki, Khobi, Poti, Chkhorotsku, Mestia, Batumi, Kobuleti, Ozurgeti, Lanchkhuti and Chokhatauri.

According to information provided by the Ministry 17087 individuals were placed in 37 facilities during the year. The table below shows the breakdown of the annual data per facilities.

N	Facility	Detainees	N	Facility	Detainees
1	Tbillisi 1 TDF	859	20	Lentekhi TDF	12
2	Tbilisi and Mtskheta TDF	5351	21	Zestaponi TDF	297
3	Mtskheta-Mtianeti TDF	390	22	BaghdatiTDF	83
4	DushetiTDF	45	23	Chiatura TDF	101
5	Telavi TDF	333	24	Samtredia TDF	302
6	SagarejoTDF	211	25	Ambrolauri TDF	54
7	Sighnaghi TDF	198	26	Zugdidi regional TDF	338
8	Kvareli TDF	431	27	Zugdidi TDF	518
9	Gori TDF	535	28	Senaki TDF	311
10	Khashuri TDF	428	29	Khobi TDF	233
11	BorjomiTDF	136	30	PotiTDF	166
12	Akhaltsikhe TDF	277	31	Chkhorotsku TDF	183
13	Akhalkalaki TDF	52	32	MestiaTDF	20
14	Rustavi TDF	477	33	Batumi TDF	2039
15	Tetritskaro TDF	27	34	KobuletiTDF	221
16	Tsalka TDF	46	35	OzurgetiTDF	171
17	Gardabani TDF	78	36	LanchkhutiTDF	65
18	Marneuli TDF	893	37	Chokhatauri TDF	28
19	Kutaisi TDF	1178	-	Total	17087

208 Correspondence 604485 of the Ministry of Interior of March 23, 2015 (registration N3290/15 by the Public Defender's Office)
209 Correspondence 604485 of the Ministry of Interior of March 23, 2015 (registration N3290/15 by the Public Defender's Office)

It should be noted that the number of detainees in 2013 totaled 16553 which indicates to an increase in the number as compared to the previous year.

Accommodation in temporary detention facilities must comply with relevant national and international standards. According to Rule 10 of the UN Standard Minimum Rules of the Treatment of Prisoners 'all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.'

The Georgian legislation[210] also regulates conditions of administrative custody. Sanitary and hygienic as well as general conditions should respect the right to respected existence, dignity and honour, inviolability and privacy. The administration is responsible to ensure the compliance of sleeping conditions of detainees in cells with health requirement, natural and artificial lighting, heating, ventilation, relevant sanitary conditions, protection of hygiene in cells. The administration shall also make sure that detainees, at their own expenses, are able to bring in food and clothes as well as receive parcels and that detainees have an access to medical service and are able to be alone in a cell as well as maintain contacts with the outside world and file complaints.

There are no functioning ventilation systems in most of temporary detention facilities in Georgia and small windows are far from being enough to provide natural ventilation and lighting. Nor are cells heated appropriately. To illustrate the findings of the monitoring the cases below delineates the situation in some of the temporary detention facilities.

Kutaisi Temporary Detention Facility has no space for out-walks. There are eight four-bed, one six-bed and one ten-bed cells in the facility. Three cells[211] are more or less in the need of rehabilitation (there is a moist because of leaking water from the floor above). Sanitary and hygienic conditions in other cells are satisfactory. The space of four-bed cells totals 9.48-9.78 m^2, ten-bed cells occupy 21.14 m^2 while six-bed cells are of 16.32 m^2.

The WCs in the cells are not isolated. Water pipe protruding from the wall at 60 cm height from the floor is used for washing face and hands as well as flushing toilets. Water is turned on from outside the cells. Artificial lighting is provided through a bulb installed in a small window above the cell door, which is always on.[212]

Lentekhi Temporary Detention Facility is located on the premises of the police department and separated from the rest of the building by metal bars and a wooden door. There are just two two-person cells with the space 4.3 and 4.4 m^2 respectively. The height to the ceiling is 2.9 metres. There are no windows, ventilation, heating systems, water, tables and chairs in the cells. Detainees use WCs for the police staff. There is no out-walk space in the facility.

There is insufficient artificial lighting in all five cells of **Gori Temporary Detention Facility**. Nor is there any furniture in the cells. There is no closed WC and flushing tap is located in the corridor to be opened by an officer on duty.

There are only four cells in **Khashuri Temporary Detention Facility.** All cells are identical: there is no heating, ventilation and isolated WC.

Cells in **Dusheti Temporary Detention Facility** have concrete floors, walls and ceilings. There is one small window in each of the cells which provides neither natural lighting nor ventilation. The artificial lighting in the

210 Annex 1, Article 4 of Decree 108 of the Minister of the Interior dated February 1, 2010 on *Approving the Additional Instructions for the Regulation of Standard Statutes and Operations of Temporary Detention Facilities under the Ministry of Interior'.*

211 Cells 4, 7 and 8

212 Electric bulbs are turned on/off from outside the cell.

cells is insufficient while there is absolutely no ventilation system. Humidity and unpleasant odor are felt in all the cells. There is no space for out-walks.

In **Mtskheta Temporary Detention Facility** floors, walls and ceilings are of concrete. Unpleasant odor was felt inside the cells. Small windows are not enough to provide sufficient lighting and ventilation. WCs in the cells are not isolated. Flush button is outside the cells. One cell in the facility[213] is designated for female detainees. It should be noticed that there is no WC in this cell and detainees use shared WC in the facility. What is a positive feature of Mtskheta facility, is that it has the space for out-walks.

Tetritskaro Temporary Detention Facility has no space for out-walks. Nor is there sufficient heating and adequate lighting and isolated WC. As reported by a director of the facility, detainees are accompanied by several staff members to an outer yard of the facility for out-walks.

There are four cells in **Rustavi Temporary Detention Facility.** Both artificial and natural lighting and ventilation are not sufficient. There are no isolated WCs and sinks in the cells and therefore, detainees collect drinking water for a water pipe used for flushing toilets.

Gardabani Temporary Detention Facility was under rehabilitation works during the monitoring mission. It should be noted that the facility is located in the basement of Gardabani District Department of Ministry of Interior's Kvemo Kartli Regional Agency. A monitoring mission to this facility back in 2013 found that the cells did not have natural lighting and ventilation. The Public Defender of Georgia through his reports to the Parliament has repeatedly recommended the Minister of Interior to provide ventilation systems to cells of temporary detention facilities. As found out during the 2014 visit, the ongoing rehabilitation works served to improve accommodation of detainees in the cells as recommended by the Public Defender who welcomes the responsiveness demonstrated by the relevant authorities.

There are six cells in **Marneuli Temporary Detention Facility** to accommodate 6 detainees. Artificial and natural lighting are insufficient. Although there is a ventilation system, it still cannot provide adequate ventilation. WC is not isolated. The facility has the space for out-walks. It is worth noting that when it rains or snows it is not possible to take out detainees as the space is not fit for various climate conditions.

The monitoring group members found out that in one of the cells detainees did not have such hygienic items as soap and toilet tissue.

According to the European Prison Rules 'prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy'.[214] It should be noted that none of the temporary detention facilities mentioned above has isolated sanitary facility. In addition, the space of the cells fails to uphold standards. The Public Defender has repeatedly raised the issue in his reports to the Parliament. Namely, the Public Defender recommends that the space of 4m2 be considered for a prisoner. The same recommendation has been developed by the European Committee for the Prevention of Torture stating that in cells for multiple prisoners the space must be minimum $7m^2$.[215]

Detainees in temporary detention facilities are provided standard food consisting of bread, tea, pate, canned beef and ready-to-eat soup. Considering the fact that some detainees who have to be kept in facilities for 15 days may not have families or friends to provide additional food, the above described package is insufficient as individuals serving administrative sentence must be provided with food which contains vital components for life and health.[216]

213 Cell 4
214 European Prison Rules, Rule 19.3.
215 European Committee for the Prevention of Torture (CPT), 2010 Report to the Government of Georgia, Paragraph 117
216 Annex 4, Article 2, Part IV of Decree 108 of the Minister of the Interior dated February 1, 2010 on *Approving the Additional Instructions for the Regulation of Standard Statutes and Operations of Temporary Detention Facilities under the Ministry of Interior*'.

Finally, it should be noted that there are CCTVs installed in temporary detention facilities, outside cells. However, recordings are not kept within reasonable period of time. We believe that such recordings must be kept within reasonable period of time to serve as evidence should claims be made for inappropriate treatment in temporary detention facilities.

MEDICAL CHECKUPS IN TEMPORARY DETENTION FACILITIES

According to Article 4, Part II, Paragraph G of Decree 108 of the Minister of the Interior dated February 1, 2010 on Approving the Additional Instructions for the Regulation of Standard Statutes and Operations of Temporary Detention Facilities under the Ministry of Interior, the prison administration shall be responsible to provide medical treatment, and 'if the detainee complains about his/her health condition or there are apparent signs of illness, the officer in charge shall immediately call the Ministry of Interior's medical staff or an ambulance or a physician from the nearest healthcare facility to obtain a credible report on the expediency of keeping the detainee in the facility.[217] 'if the health condition of the detainee deteriorates, the officer in charge shall be responsible for calling medical staff and make a record on rendered medical assistance in a log for emergency medical assistance to detainees. S/he shall also be responsible for transferring the detainee to the nearest in-patient facility accompanied by the guards.[218]

It should also be noted that according to statistical data provided by the Ministry of Interior, 241 individuals were transferred to healthcare facilities because of deteriorated health condition in 2014. There were 3 registered attempts of suicide by the detainees.[219]

The members of the Special Preventive Group at the Public Defender's Office of Georgia checked the documentation filed in temporary detention facilities in Gori serving Shida Karlti and Samtskhe-Javakheti regions revealing tens of cases occurring in January/ February 2014 whereby detainees were not subject to checkups by medical staff upon the admission. The staff of the facilities explained that called medical brigades called to the facility refused to examine detainees in question. Therefore, the staff of the facility had to carry out only external examination of detainees.

It should also be noted that during a monitoring mission to Dusheti Regional Agency of the Ministry of Interior the members of the Special Preventive Group found that in four cases medical brigades had not indicated whether or not detainees had bodily injuries while such injuries had been recorded in an external examination protocol.

During a monitoring visit to Kutaisi Temporary Detention Facility, detainees Z.B. and R.C. informed the monitors that they had been living and working in Tbilisi. They were involved in Methadone Replacement Programme. They said it had been more than 24 hours since the last intake of their standard dosage prescribed by a physician as a result of which they suffered abstinence syndrome. In addition, R.C. said he had diabetes.

With regards to this situation, the members of the Special Preventive Group applied to a director of the facility who, in his own turn, submitted a referral to Kutaisi Regional Addiction Centre which runs the Methadone Replacement Programme. The director also requested guards from the Crime Police. Meanwhile, before a group of guards came to the destination, a counselor from Imereti-Kutaisi Legal Bureau of the Legal Assistance Service talked to R.C.

The same evening, the members of the Special Group met with detainees. As relayed by the director of the Facility, Kutaisi Addiction Centre turned down their request to render relevant medical assistance to the

217 Ibid, Annex 3, Article 3, Part II
218 Ibid, Annex 3, Article 5, Part IV
219 In Temporary Detention Facilities of Batumi, Khobi and Sighnaghi

detainee as a result of which a health condition of the detainee considerably deteriorated and an ambulance was called. The physical rendered general medical support.

As the above described situation suggests management of abstinence in detainees who are drug abusers is problematic. To mitigate the situation the Ministry of Labour, Health and Social Affairs on the one hand and the Global Fund on the other must take steps reciprocal steps to ensure that beneficiaries of Methadone Replacement Programme are rendered emergency assistance if the need be. In addition, the Ministry of Interior should undertake measures to ensure the provision of medical assistance to detainees in temporary detention facilities.

Recommendation to the Ministry of Interior:

- Undertake all relevant measures to ensure that documentation on detainees are fully filled out
- Ensure that each and every detainee is able to communication his/her whereabouts to family members or close relatives, notify on his/her conditions and also inform any creditor or other physical or legal body towards whom s/he is legally bound.
- Ensure that each and every detainee is able to communicate the fact of his/ her detention as well the whereabouts to any person named by the latter, as well as the administration of his/her work and education institution
- Ensure that the responsibility of staff of temporary detention facilities to immediately notify a prosecutor on any bodily injuries sustained by detainees is embedded in a legal act. In addition, exercise strict control over the implementation of this responsibility and take relevant measures towards persons in charge.
- Install CCTVs in the premises of all police agencies and keep recordings for a reasonable period of time.
- Keep recordings from CCTVs in temporary detention facilities for a reasonable period of time.
- Install central heating in cells of temporary detention facilities and ensure the provision of adequate lighting and ventilation in cells.
- Completely isolate water closets in all temporary detention facilities
- Create conditions for personal hygiene for detainees in every temporary detention facilities including the installation of taps, sinks so that detainees can have an unrestricted access to water and sanitation.
- Provide individual beds instead of wooden planks for detainees
- Provide every detention facility with adequate food with necessary components
- Ensure the access to timely and adequate medical service to detainees in temporary detention facility

Recommendation to the Chief Prosecutor of Georgia:

- Ensure timely and effective investigation of all cases involving ill-treatment

ROTECTION OF MIGRANTS FROM ILL-TREATMENT

While international law permits states to establish immigration policies and deportation procedures, it does not grant them discretion to violate human rights in the process. The prevention of ill-treatment of migrants implies the compliance of migration policies with the international standards protecting human rights. More specifically, the prevention rests upon fear treatment of migrants, proportional sanctions, freedom from arbitrary detention, respectful deportation procedures and provision of migrants with adequate accommodation.[220]

Georgian legislation on migration includes various National legislative regulations, which together create an immigration policy. For the purposes of the current chapter, Deportation of migrants in Georgia, situation in relation to proper placement and safeguards against ill-treatment, as well as the results of the monitoring according to EU-Georgia Readmission[221] Agreement were reviewed.

ALIEN REMOVAL/DEPORTATION PROCEDURES

Procedures related to deportation and removal of aliens from Georgia are regulated by the Law of Georgia on Legal Status of Aliens and Stateless Persons as well as by Decree 525 of the government of Georgia on *Approving the Rule for the Removal of Aliens from Georgia*. Importantly, the removal of an alien from the country should take place in accordance with the Georgian legislation and in compliance with the principles of the international law.

Closer look at the migration regulations revealed that a series of flaws which were reflected in remarks of the Public Defender of Georgia on decrees and by-laws submitted to the government of Georgia on August 14, 2014.

According to Article 2, Clause 4 of Decree 525 of the government of Georgia on *Approving the Rule for the Removal of Aliens from Georgia*, in the process of removal, an alien must have an access to legal counseling. In spite of this regulation, legal counseling cannot be qualified as comprehensive legal assistance, as it is important that an alien be rendered exhaustive legal assistance while making a decision on the removal of an alien from the country. Comprehensive legal assistance implies filing legal documents, representation in the court of laws and an administrative agency.

220 Human Rights Watch, „Unfair Immigration Policies“ Available at: http://www.hrw.org/united- states/us-program/unfair-immigration-policies [Last accessed 24.03.2015].

221 Agreement between the European Union and Georgia, “readmission of persons residing without authorization” agreement (Hereafter “Readmission Agreement”) entered into force in March 2011.

It should be considered that the law of Georgia on Legal Assistance defines the circle of those individuals who are eligible for legal assistance. However, an alien to be removed does not fall under this category. Therefore, the mentioned law needs to be amended accordingly.

Article 14, Clause 1 of the decree lists those factors which should be considered by an authorized agency of the ministry while making decision to remove an individual from the country with escort. It would be expedient to upgrade the mentioned norm to consider such cases when, due to the personality of an alien, the authorized agency either has information or grounds to presume that the alien may be subject to violent act while leaving the country.

According to Clause 3 of the same article, an alien will be escorted in a specially equipped vehicle to a place of departure as escorting a foreign citizen in inadequate conditions may cause inhuman or degrading treatment of the alien.[222] It is important that adequate equipment for a vehicle be defined by the normative act referred above. More specifically, vehicles should be equipped in such a way to ensure adequate lighting, ventilation, ample space, the access to food, water and medicaments.

The escorted should also be given the possibility for taking a break in reasonable intervals.[223] Special needs of women, children, elderly and persons with disabilities must be considered while providing escort. It is also important that handcuffs and other means of restraint are used as the last resource and situations defined by the Georgian Police Law. [224]

According to Article 14, Clause 6, the results of medical examination must be handed in to a chief of escort which may lead to divulging confidential information pertaining to an individual to be deported. It is desirable, that a copy of a medical report be provided to an alien, while an original will remain within an authorized agency of the Ministry.

According to Article 14, Clause 14 of the same Decree, if persons in charge for taking relevant measures to assist escort staff in emergencies or hazardous situations are not available in a recipient country, escort staff are authorized to undertake all reasonable and relevant measures to prevent a subject of the removal from escaping, inflicting self-injuries or harming other individuals or damaging property owned by others. The above described norm allows unrestricted discretion for escort staff in regards to an individual subject to the removal. It is expedient to specify those measures or means that escort staff are eligible to use to avoid the implementation of incommensurable measures.

PLACEMENT OF AN ALIEN IN A CENTRE OF TEMPORARY ACCOMMODATION

According to Article 2, Clause 4 of the Decree 631 of the Minister of Interior on *Approving the Rule of the Detention and Placement of the Alien in Temporary Accommodation* a person authorized for the detention has the right to superficial checkup and external examination of items as per the rules determined by the legislation. It is important that the same article defines what superficial examination of items implies and enshrine the following legal guarantees for the protection of rights of a subject of examination/checkup which specifically implies: 1. Superficial examination of an individual means touching his/her clothes on the surface either by hands or with a special device or an instrument; 2. Superficial examination is conducted a person of the same sex as a subject of the examination who is authorized to do so. In cases of emergency any authorized person regardless of sex may be allowed to examine but only with a special device or an instrument; 3. Superficial

222 With regards to prisoners, Ananyev and Others v. Russia, with regards to aliens Georgia v. Russia (I), Para.196

223 A judgement on the case Yakovenko v. Ukraine the European Court of Human Rights, based on a report by the European Committee against Torture deliberated on conditions of the transportation and highlighted several important factors in their judgement.

224 For the use of handcuffs and other means of physical restrains by escort staff refer to the 13th General Report of the European Committee against Torture. Available in English: http://www.cpt.coe.int/en/annual/rep-13.htm [last accessed 25.03.2015].

examination of an item implies visual examination in the presence of an owner 4. At the same time it is important that a relevant protocol be filed according to a rule determined by the legislation to convey the findings of the examination, or the information be indicated in a detention protocol.[225] 5. It is imperative that an entry be made in a detention protocol on existing bodily injuries (if any) of the detainee.[226]

According to Article 14, Clause 6, the results of the examination must be handed in to a chief of escort which may lead to divulging personal data of a person to be removed and therefore, it is recommended that the latter is provided with a copy of the protocol while an authorized agency of the ministry keeps an original.

It is important to reword Clause 1 of Article 7 so that it reads as follows: 'before the placement of a detained alien in a centre, an authorized staff members shall make an inquiry about his/her health, conduct a thorough external examination in a separate room in the absence of others. The staff member shall then compile a protocol with exact date and time, and indicate his/her name, surname, position and rank of the examiner and personal information of the detained alien (name, surname, paternal name, date and place of birth), types of bodily injuries (if any) sustained by the detainee as well as explanation provided and claims voiced by the latter.[227]

It is undoubtedly a positive fact that Article 7 of the Decree stipulates the provision of medical checkup and additional tests for detained aliens upon their admission to temporary accommodation centre. However, neither Article 7 nor Article 8 defining the rights of the detained aliens, says anything about the right of an alien placed in temporary accommodation to receive timely and adequate medical assistance at any time either at his/her own or at the state's expenses. Nor do mentioned articles indicate anything about regular medical checkups.

GUARANTEES FOR THE PROTECTION OF THE RIGHTS OF DETAINED ALIENS

The guarantees for the protection of detained aliens are enshrined in Article 66 of the Law of Georgia on Legal Status of the Alien and Stateless Persons. More specifically these guarantees include the protection of aliens placed in temporary accommodation centres from discrimination, degrading or humiliating treatment, the treatment of aliens with respect for their sex, age and cultural background, the protection of the principle of family unit if a family is placed in a temporary accommodation centre, the protection of the rights of minors and separation of men and women. In accordance with Article 30 of the same law, aliens have the right to healthcare as per the Georgian legislation. Article 12, Part I of the International Covenant on Social, Political and Cultural Rights the states parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners also highlights the right of prisoners to medical services.

Based on the above said, it is recommended that the normative act clearly define the right of an alien placed in a temporary accommodation centre to receive adequate medical service at his/her expenses as well as provided by the state.

It is important that the normative act clearly outlines the rights and guarantees of legal protection for detained aliens. Accordingly, the following issues need to be identified: 1. the right of the detained alien to be introduced to his/her rights and responsibilities in a language that s/he comprehends and to a service of an interpreter; 2. The right of a detained alien to seek and be granted with an asylum as per the Georgian Constitution, international covenants to which Georgia is a signatory country and other normative acts; 3. Status-appropriate treatment of a detained alien[228] 4. Protection of the personal safety; 5. Contact to the outside world; 6. Sending

225 It is important to harmonize a draft law with Article 22 of the Police Law of Georgia

226 As in an administrative detention protocol

227 As determined by Article 3 of *Additional Instructions for the Regulation of the Temporary Detention Facility* approved by Decree 108 of February 1, 2010 of the Minister of Interior

228 UN Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment (1989), Principle 8.

and receiving parcels and remittance; 7. Access to information through printed and other media, as well as to fiction and non-fiction literature; 8. Right to making complaints, claims including confidential complaints 9. Adequate living conditions, nutrition, personal hygiene, clothing 10. The right to recreation, spend time on fresh air and rest; 11. Possibility for meeting special needs 12. Right to exercise religious practices; 13. Direction to rights and freedoms enshrined in the Constitution of Georgia, international covenants to which Georgia is a signatory country, other laws and by-laws. Ensuring access to information pertaining to these rights and freedoms is also very important for detained migrants.[229]

Article 9 of Decree 631 of the Minister of Interior on *Approving the Rule for the Detention and Placement of an Alien in a Temporary Accommodation Centre* is inconsistent with the Article 31 of the Police Law of Georgia (referring to the right to coercive measures). Article 30 of the law defines notion of coercive measures as the use of physical force, special means and firearms by the police for the implementation of their functions. According to Clause 1, Article 31 in order to fulfill their obligations the police officers are authorized to use coercive measures as a last resort and proportionally with the intensity which is necessary to achieving a lawful goal. Article 9 of the Decree does not refer to such important issues as the necessity to use force and proportion. Nor does it reflect on the warning before engaging physically as stipulated by Article 31 of the Police Law. [230]The same article also regulates issues related to medical assistance after using the force and notification of such occurrence to an immediate supervisor or a prosecutor. Therefore, it is important that Article 9 of the bill of decree reflect all important aspects which are covered by Article 31 of the Police Law.

Decree 631 of the Minister of Interior on *Approving the Rule for the Detention and Placement of Aliens in Temporary Accommodation Centre* should reflect the provision of Article 35 of the Police Law which bans using physical force, special means and firearms against the pregnant, minors, persons with disabilities or individuals with clear signs of old age except for the cases when such persons are armed and resist, or attack in a group endangering lives and health of the police and other persons, also if it is the last resort to deter such attach or resistance.[231]

Based on the above said, it is important to further improve by-laws and normative acts so that they are in full compliance with standards enshrined in international and national legislation.

MONITORING OF JOINT OPERATION FOR THE RETURN OF MIGRANTS

In 2014 the National Preventive Mechanism acquired a new function of monitoring a joint operation of the return of migrant. The monitoring was implemented within the frames of the Agreement on the Readmission of Persons Residing without Authorisation signed between Georgia and the EU.

On November 19, 2014 staff of Prevention and Monitoring Department at the Public Defender's Office implemented the monitoring of deportation of 18 citizens of Georgia from the EU countries. The citizens were deported from France, the Netherlands, Germany, Denmark, Poland and Lithuania. Border police of France and Poland handed in deportees to the Georgian side (escort staff assigned by the Ministry of Interior) on plane boards in Paris and Warsaw respectively.

European Union agency FRONTEX coordinated the process of deportation. Staff of Migration Department and patrol police of the Ministry of Interior of Georgia represented the Georgian side in the operation.

229 The list of issues has been compiled in accordance with Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention. Available at: http://www.unhcr.org/505b10ee9.html [last accessed 28.03.2015].

230 Police officer shall give a prior warning to a person before restoring to physical force, special means or firearm and allow a reasonable period of time for following his/her lawful demand except for cases whereby delay may cause harm to health or life or cases whereby such warning is unjustifiable or impossible.

231 Use of force must be strictly regulated in relevant articles of the resolution of the government of Georgia on approving the rule for the removal of aliens in respect with provisions of the Police Law and international standards.

Staff members of Prevention and Monitoring Department at the Public Defender's Office travelled from Tbilisi to Paris and Warsaw for monitoring purposes.

Deportees were examined with a metal detector by the Ministry's staff after which they were allowed to take their respective passengers seats. One or two representatives of the Ministry sat next to each deportee. Handover, examination and journey involving the returnees were monitored continuously.

While on plane, the members of the National Preventive Mechanisms talked to the deportees who voiced no concerns or claims. Nor were there any kinds of incidents during the return. Escort members did not use force or any special means. No violation of the rights of the deportees had been observed.

Recommendation to the Government of Georgia:

- With regards to Decree 525 of the Government of Georgia on *Approving the Rule of the Removal of Aliens from Georgia,*
- To replace a term *legal counseling* in Article 2, Clause 4 with *legal assistance,* which will enable an alien to be able to receive not only legal counseling, but also to represented in the court of law and administrative agencies.
- To add a provision to Article 14, Clause 1, under which an authorized agency knows or has the ground to assume, that because of personal characteristics of a subject of the removal, s/he may be subject to abuse or violent act while leaving the country
- Article 14, Clause 3 to specify basic requirements for adequately equipped vehicle.
- Amend the Article 14, Clause 6 in such a manner to allow an alien receive a copy of his/her medical report rather than a chief of escort and an authorized agency of the Ministry have the original.
- Article 14, Clause 14 to specify what special means escort staff are allowed to use during emergencies

Recommendation to the Minister of Interior of Georgia:

- With regard to Decree 631 on *the Rule of the Detention and Placement of an Alien in a Temporary Accommodation Centre*,
- Article 2, Clause 4 must specify the meaning of superficial examination and superficial examination of items and identify in detail the guarantees for the protection of the rights of a subject of examination
- Add Article 7, Clause 1 a provision to reflect on the need of a detailed protocol on the external examination and observation of a detained alien.
- Add an entry on the right of a detainee on a temporary accommodation centre to timely and adequate medical service at any time at his/her own or the State's expenses to Articles 7 and 8.
- Harmonize Article 9 with the Police Law which describes procedures and circumstances of using coercive measures.
- The Decree to clearly outline the rights of detained aliens and their legal guarantees.

PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES IN PENITENTIARY INSTITUTIONS, IN FACILITIES OF VOLUNTARY AND REQUIRED MENTAL HEALTH - ANALYSIS OF THE IMPLEMENTATION OF RECOMMENDATIONS

INTRODUCTION

The present report provides information on the implementation of recommendations in a special report of the Public Defender on the situation pertaining to persons with disabilities placed in penitentiary institutions, as well as in voluntary and required mental health facilities and temporary detention facilities.[232] For the purpose of assessing the process of the implementation of the recommendations and with a financial support of Open Society – Georgian Foundation, a control visit was paid to Penitentiary the Institutions N2 and N3, medical facility for the treatment of untried and convicted prisoners and Naneishvili National Centre for Mental health (hereinafter referred as National Centre for Mental Health) on December 4-12, 2014. The institutions were selected based on the following criteria:

1. During a visit to the Institution N2 in November 2013 the team found out that the institution had the highest number of persons with disabilities as compared to other institutions.
2. Penitentiary the Institution N3 is a new rehabilitated facility opened in May 2014 and therefore it was interesting to observe to what extent it met the needs of persons with disabilities.
3. There is a unit specilising in providing long term care and rehabilitation programme for persons with disabilities in the medical treatment facility for untried and convicted prisoners. In addition, there is a mental health unit in the facility. The ministry of Corrections considers the opening this facility as one of the key instruments for addressing problems that prisoners with disabilities faced.
4. The National Centre for Mental Health represents a voluntary and required treatment facility for convicts.

In order to check on the status of recommendation the Ministries of Corrections and Labour, Health and Social Affairs were requested to provided relevant information.

232 Situation pertaining to Persons with Disabilities in Penitentiary Institutions, Temporary Detention Facilities and Required Mental Health Institutions. Available at: http://www.ombudsman.ge/ge/ projects/angarishebi/ssnp-mdgomareoba-fsiqiatriul-dacesebulebebshi.page

THE STATUS OF THE IMPLEMENTATION OF THE RECOMMENDATIONS – PENITENTIARY INSTITUTIONS

PROCESSING STATISTICAL DATA FOR THE INMATES WITH DISABILITIES

An inspection revealed that social services at the penitentiary institutions file monthly reports and submit to the Penitentiary Department. Reports normally include information on inmates in the institution and indicate whether or not an inmate has any form of disability. It should be noted that processing data in this manner only produces information on the number of prisoners with disabilities in a particular institution.

It should also be noted that there are no criteria to determine a disability status of prisoners in penitentiary institutions which not only prevents local staff from running valid statistics, but also questions the accuracy of these statistical data.

Certain criteria for registering prisoners with disabilities were used only once in 2014 in the Institution N2. For this purpose the medical staff filled out a form provided by the Medical Department of the Ministry of Corrections designed to assess physical and mental health status of inmates in the institution.

It is said that the registration of prisoners with disabilities took place only once and that it is not regularly practiced. .

DEVELOPING A MECHANISM FOR THE IDENTIFICATION AND ASSESSMENT OF PRISONERS WITH DISABILITIES

There are no standards in placed in the penitentiary system for the initial assessment of physical and mental health of prisoners. Nor is there a system of managing detected problems. A GP is responsible for the initial examination of prisoners upon their admission to penitentiary institutions.

Examination of prisoners' mental and physical health upon their admission to an institution is a formal procedure which does not involve a multidisciplinary assessment or any measures to identify somatic, psychological/psychiatric, social and legal needs of inmates. Therefore, there is no practice of planning and implementing interventions aiming to manage and address identified problems.

Mental problems induced by imprisonment and relatively light mental disorders usually go unnoticed.

Prisoners are not examined for their mental health open admission to an institution. It is very rare that medical staff make an entry on mental health status which is far from being exhaustive and complete. Even when such entries are made in medical records, medical staff or a GP do not check a prisoner's mental condition because of lack of relevant qualification. Psychiatrists are only consulted later on and mostly after acute psychotic symptoms start to show up or prisoners' behaviors are clearly inadequate.

According to a chief doctor of the Institution N2 of the Penitentiary Department general practitioners are the ones who carry out primary assessment of the disabilities in inmates upon their admission. A special form is filled out if an inmate shows any signs of indicating to disabilities. The form, which contains criteria to determine whether or not an inmate has disabilities, was provided by Medical Department of the Ministry of Corrections. It is worth noting that as relayed by the chief doctor, such forms were filled out just once. In 2014 up to the day of the monitoring the institution provided information only on 10 inmates. As for determining the status of inmates suffering mental health conditions, a decision is made in medical treatment facility for untried and convicted prisoners only after they have been transferred to this facility.

The facility for treating untried and convicted prisoners has not developed formalized criteria for the identification of persons with disabilities. According to the facility's administration consultations on

developing criteria has been ongoing for the last six months within the Ministry of Corrections. The staff at the Institution N3 has yet to develop instruments for the identification of persons with disabilities and their specific needs.

Determining the status of disability for untried and convicted prisoners in the penitentiary system still remains a problem, which in its turn makes it impossible to meet the needs of prisoners with disabilities and provide them with adequate services while they are serving their sentences in penitentiary institutions.

There is no structured information available to staff of penitentiary institutions on those inmates who have their disability status determined before their imprisonment.

DEVELOPING STANDARDS FOR THE CARE OF PRISONERS WITH DISABILITIES ADAPTED TO PRISON CONDITIONS

In light of problems related to statistics and the identification of the needs of prisoners with disabilities, as well as of the scarcity of specialized services, penitentiary institutions including newly opened ones, have no standards for the care of inmates with disabilities adapted to prison conditions. Therefore, it can be assumed that the recommendation has not been implemented.

INTRODUCING SPECIALIZED SERVICES FOR PRISONERS WITH DISABILITIES (LONG-TERM CARE, REHABILITATION, PERSONAL AIDE)

Prisoners with disabilities may suffer from health conditions which are specific to their status. Failure to meet the special needs may result in drastic decline of their functional status and even more restricted abilities to take care of themselves, dislocate in the space and perform other basic activities. Prisoners under this category require regular physical and occupational therapy, auditory and eyesight checkups etc in order to meet their special needs. Access to those auxiliary instruments without which they cannot exercise their rights is equally important. These auxiliary instruments include but are not limited to wheelchairs, hearing aids, walking sticks, prosthetic and orthotic devices.

Persons with disabilities may be in dire need for psychiatric services in penitentiary institutions. Inmates with sensorial restrictions (the blind, the deaf, those with hearing impairment etc) or those having poorly developed communication abilities are frequently exposed to such needs especially when they are isolated or subject to abuse and bullying. The need for medical services becomes acute in the absence of psychological counseling. The importance of an easy access to healthcare services for inmates with disabilities is highlighted in UN's Handbook on Prisoners with Special Needs.[233]

None of the facilities which were re-monitored had specialized services for inmates with disabilities. *Long-term care service* was introduced in the Institution N18 for the treatment of untried and convicted prisoners in July 2014 which also offers the service of personal aides provided by health-nurses. The service has the capacity to support 52 beneficiaries and provide both social and medical rehabilitation. However, a rehabilitation room is still closed and inaccessible to prisoners with disabilities. It is worth noting that none of the rehabilitation programmes functioning in penitentiary institutions had a beneficiary with disabilities.

Sport and recreational activities aimed to maintain and restore physical and phycho- social functions are highly recommended for the prevention of the deterioration of physical and functional status of prisoners with disabilities.

233 United Nations Office of Drugs and Crime (2009). Criminal Justice Handbook Series, Handbook on Prisoners with disabilities. ISBN 978-92-1-130272-1

Occupational therapy to help prisoners acquire skills for maintaining/improving personal care is also highly recommended. There were no such rehabilitation programmes developed in any of the monitored penitentiary institutions. There were only singular cases of psycho-social rehabilitation measures undertaken in relation to inmates in the treatment facility for untried and convicted prisoners.

Although there is one aide in the treatment facility for untried and convicted prisoners, but one person is hardly enough to assist all patients with mobility problems. This is the reason why the functions are also performed by officers on duty. A patient G.M. has difficulty in dislocation due to the damage to central nervous system sustained in the penitentiary system. In addition, s/he also suffers from chronic dysfunction of small pelvis cavity organs. The patient often finds it difficult to go to toilet on time and therefore has to call officers on duty for help rather than the personal aide. S/he often needs wet tissue papers to maintain personal hygiene which is not available to him/her.

There is no staff assigned to aid prisoners with disabilities in penitentiary the Institution N3. A chief doctor of the Institution N2 explained to the team that there is only one wheelchair in the facility currently used by one of the inmates. If there is a need for a wheelchair upon the admission of an inmate with disabilities they have to request additional wheelchair from the Medical Department which is a time consuming procedure.

ENSURING PHYSICAL ACCESS AND ACCESS TO SERVICES AND INFORMATION

According to the Convention on the Rights of Persons with Disabilities, access refers to not only physical environment, but also to accessibility of information, social programmes etc. Ensuring access with a broad meaning of the word for prisoners with disabilities is critical so that the latter can enjoy their rights and freedoms on an equal basis for others. A principle of reasonable accommodation must be employed in order to ensure accessibility for prisoners with disabilities. Reasonable accommodation means the adaptation of environment, prgorammes and specific activities to special needs of such prisoners.

The monitoring mission also aimed to assess the progress of the implementation of those recommendations which had been developed to address the issues related to access for prisoners with disabilities in penitentiary institutions. The monitoring team closely examined the status of the implementation of the recommendations during the renovation of infrastructure in the penitentiary the institution N3 as well as in the facility for medical treatment of untried and convicted prisoners.

PHYSICAL ACCESS

A unit for the special care of prisoners with disabilities was opened on the third floor of the medical treatment facility for untried and convicted prisoners. However, the monitoring mission found that prisoners with disabilities in this facility face serious problems in terms of exercising their rights and accessing physical environment.

There is a ramp on the entrance stairs to the facility with the decline of 26.4 per cent (versus standard 6 per cent, ≤ 6 per cent)[234]. The stairs to the corridor leading to out- walk space are equipped with a ramp with the decline of 15 per cent. Prisoners with disability can use a shared bathroom located on the third floor. The bathroom consists of four semi-isolated shower cabins. There is a chair equipped with a removable tap in one of the shower cabins. The height of the step to the door of the cabin is 30 cm while the width of the door is 66 cm. There is a ramp with without a handrail with the width of 66 cm (versus standard 120 cm) and the height of 30 cm at the entrance. The decline of the ramp is 44 per cent.

234 Decree 41 of the government of Georgia dated January 6, 2014 on *Approving Technical Statute for the Spatial Arrangement, Architectural and Planning Elements for Persons with Disabilities*

There are three hospital wards in the long-term care unit which are equipped with adapted WCs for prisoners with disabilities. There are no thresholds at the entrance doors of the wards and handrails installed at the toilet pans. There is sufficient space in WCs.

The monitoring visit found that there are several prisoners in wheelchairs who are accommodated in the wards which are not adapted to their special needs. There are no handrails at a toilet pan and a sink in one of the wards which also homes a prisoner in a wheelchair. The width of the WC door is 66 cm, an ascend - 11 cm without a ramp. The width of the space to the right of the toilet pan is 42 cm (versus standard 90 cm). The width of the corridor at the entrance to the ward is 88 cm, to the WC 66 cm (standard – 120 cm), a pathway along the bed is 112 cm (standard – 150 cm). The prisoner living in the ward explained that it was impossible for him/her to enter the WC in a wheelchair and therefore, s/he had to lean on various objects on the way to the toilet which caused unbearable pain. The patient was not able to torn on and off light independently and s/he had to call one of the staff members. S/he also found it difficult to reach for a handle to open a window.

A blind prisoner lived in a ward which was not adapted for special needs. As the prisoner explained he tried to survive independently and would request assistance only as the last resort. He needed to shave and the administration had told him that they would call a barber from the Institution N8. He had his nails cut three days after he had made a request. The patient reported that the administrative staff regularly helped him reach the bathroom, open a tap, dial numbers on the phone even though they were not officially tasked to do so.

The monitoring mission also revealed that prisoners with disabilities in the Institution N3 experience serious problems in exercising their rights. The monitoring team talked to a prisoner in a wheelchair who lived in a ward which was not adapted to his special needs. The height of the entrance to the WC was 25 cm and had no ramp. The prisoner explained that as he was unable to independently use the toilet he had to be assisted by a prisoner who performed housekeeping duties.

The situation in terms of ensuring access for the prisoners with disabilities in the Institution N2 had not much changed. The monitoring team talked to prisoners with disabilities currently in the medical unit. Only one of them used wheelchairs, while the other one did not have one in spite of his diagnosis (polyneuropathy) and disability to walk independently. The latter explained that he never asked for a wheelchair as there was not enough space in the cell for a wheelchair. Measuring the cell corroborated that the space was hardly enough to allow the prisoner dislocate in a wheelchair. The width of the space between beds in the cell did not exceed 45 cm (versus standard 150 cm), while a step to a WC was 37 cm and had no ramp. The prisoner had reportedly asked the administration to install steps to the WC but to no avail. Nor was the ward of another prisoner in wheelchair adapted to special needs. The space in the ward allowed movement of a wheelchair, but similar to the previous case, a 36 cm step to a WC had no ramp. The prisoner had difficulties using a sink as its height (86 cm from the floor) did not allow him to remain seated in a wheelchair. Instead he had to stand up, lean on one leg and reach for the sink which caused him severe pain.

None of the cells in Penitentiary the Institution N2 is adapted to special needs of prisoners with disabilities (the similar situation as found in the Institution N3). The monitoring group identified three prisoners with apparent signs of disability. A prisoner using a wheelchair had been placed in a cell which had no adapted infrastructure to accommodate to special needs of the prisoner with disabilities.

There is no call button to be used by individuals with disability to call for medical staff or prison staff in the long-term care unit of the treatment facility for untried and convicted prisoners.

In spite of the fact that the Institution N3 is newly rehabilitated, it is far from being adapted to meet the basic needs of prisoners with disabilities.

ACCESS TO SERVICES AND INFRASTRUCTURE

Out-walk spaces in the treatment facility for untried and convicted prisoners were located mostly outside the main building. The spaces were covered with just metal nets. All interviewed prisoners with disabilities stated that they were reluctant to go out for a walk in the winter because of cold. However, they can access phones only by going out to those places as phones are installed on the outside walls. It is worth noting that phones were fixed on the walls at 150 cm height which made it impossible for prisoners with disabilities to independently use phones. Therefore they would ask prison staff to help them dial numbers.

There is a complaints box attached to the wall of a corridor leading to a bathroom on the third floor. The box is fixed at 170 cm from the floor which means that prisoners in wheelchairs cannot drop complaints independently which in its turn compromises the confidentiality of complaints. On the other hand, decline of a ramp at the entrance of the bathroom (44.8 per cent) prevents prisoners with disabilities to enter the bathroom without help.

Access to a local shop is a serious problem for prisoners placed in the treatment institution for untried and convicted prisoners. To be exact, the shop does not work and patients are only allowed to purchase tobacco, safety match, single-use razors and phone cards from the shop at the Institution N8 while other products and goods are unavailable to the patients. It is worth noting that the inaccessibility to the shop severely affects patients under a long-term care as they are the ones who spend the longest period of time in the facility.

There is a library in the same facility with quite outdated books. There is no catalogue to help prisoners choose books they prefer. Interviewed prisoners stated that they are not taken to the library to personally select books and they only choose books according to favourite genres. Likewise, the Institution N2 has no book catalogue either.

A phone in the Institution N3 of the Penitentiary Department is fixed on a wall at 150 cm which makes it difficult for a prisoner in a wheelchair to dial a number while a complaints box is installed at the entrance of the out-walk space at 155 cm. A corridor leading to the out-walk areas is not adapted for persons in wheelchairs as it has three thresholds of 4 cm each and three stair cases.

Out-walk areas in the Institution N2 of the Penitentiary Department are located on the fifth floor, while a medical unit occupies the third floor. However the stairs are not adapted as a result of which prisoners with disabilities report that they often refrain from going out for a walk. A prisoner with polyneuropathy stated that he had been out only three times for 1 year and 7 months he had spent in the institution.

There are no information boards in the treatment facility for untried and convicted prisoners while such boards in the Institutions N2 and N3 are fixed in such a manner that makes it difficult for prisoners in wheelchairs to read information placed on the boards. None of the institutions listed above has a sign language translator or a list of responsibilities and obligations available Braille which poses serious problems for prisoners with auditory and vision impairments.

ACCESS TO QUALITY AND TIMELY PSYCHIATRIC ASSISTANCE, PROVISION OF ADEQUATE PSYCHIATRIC ASSISTANCE AND PSYCHO-SOCIAL REHABILITATION FOR PRISONERS IN DIFFERENTIATED REGIMES

Comparatively high quality psychiatric service is available in the treatment facility for untried and convicted prisoners where a team of specialists (psychiatrist, psychologist, psychotherapist) provide the service. However, they do not liaise much and a psychologist's service is not included in a psychiatric service provision. The administration of the treatment facility for untried and convicted prisoners lack knowledge of types of specific trainings to be provided for their staff. A rehabilitation specialist has

already been appointed in the facility and it is believed that s/he is responsible for developing a strategy for the provision of special services. Staff at the Institutions N2 and N3, including medical staff lack awareness on the special needs of persons with disabilities.

There is no effective system in place in the Institution N3 for the adequate psychological and psychiatric management of prisoners with auto-aggressive behavior. Nor is a suicide prevention programme implemented in the facility.

Psycho-social rehabilitation is considered one of the special needs of persons suffering from mental disorders. However, this type of a service is provided to few patients in the psychiatric care unit of the treatment facility for untried and convicted prisoners. Sadly, the staff's confidence in and expectations towards positive behavioural management and personal development strategies are quite low.

According to the General Comment 20 of UN's Human Rights Committee[235] solitary confinement of the detained or imprisoned person may amount to such acts as torture or inhuman or degrading treatment. As stated in a conclusion prepared by the UN Subcommittee on the Prevention of Torture, prolonged solitary confinement may equal to torture and it shall not be used against juveniles and persons suffering from mental disorders[236]. According to the 2007 Istanbul Statement on the Use of Solitary Confinement[237] this practice must be absolutely prohibited with regard to prisoners with mental disorder.

Sadly, the monitoring mission revealed that placing prisoners with mental disorders in a solitary confinement has been practiced in the Institution N3. While reviewing personal files of a prisoner who had been placed in solitary confinement, the team found out that the inmate was placed in the Institution N3 of the Penitentiary Department on September 17, 2014. Since the day of the placement, he had been placed in solitary confinement three times (once for four days, then for 15 days and the third time for ten days as indicated in an order). Examination of the prisoner's medical record yielded that the prisoner did not have access to a psychiatric counseling since he was placed in the institution even though his medical history clearly indicated to such need. It is worth noting that the prisoner inflicted self-injuries four times since his placement in the institution.

All measures must be taken to prevent the placement of prisoners with mental problems under solitary confinement. The measures to be undertaken must ensure that such inmates receive timely and adequate psychiatric assistance.

It is undoubtedly positive development that the government of Georgia with Decree 762 of December 31, 2014 approved of *Strategy and 2015-2020 Action Plan for the Development of Psychiatric Health*. The document alongside the development of psychiatric health services in Georgia also covers issues related to psychiatric health in penitentiary institutions and seeks to ensure equal access to standards of psychiatric services in penitentiary facilities.

Based on the above said, it can be assumed that the recommendation has been partially implemented. While the Georgian government made a significant step ahead towards the implementation of the recommendation by approving the action plan, more needs to be done in order to ensure the provision of adequate and timely psychiatric assistance for prisoners with mental health problems.

235 CCPR, General Comment 20/44, April 3, 1992

236 UN Subcommittee on Prevention of Torture (2010), report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the republic of Paraguay (par 184).

237 International Psychological Trauma Symposium (2007), The Istanbul Statement on the use and effects of solitary confinement.

ADDITIONAL TRAININGS FOR STAFF OF PENITENTIARY INSTITUTIONS FOR THE IDENTIFICATION OF PRISONERS WITH DISABILITIES, ASSESSMENT THEIR PSYCHOLOGICAL/SOMATIC/SOCIAL NEEDS AND THE PROVISION OF ADEQUATE SERVICES ON EVERY STAGE OF IMPRISONMENT

The above recommendation has only partially been implemented. Some of medical personnel at the psychiatric unit of the treatment facility for untired and convicted prisoners have undergone a series of trainings on stress response management, adaptation disorders, depression, prevention of auto and hetero-aggressive behavior, detection of signs and symptoms, risk assessment and management, identification of acute outcomes of psychotropic substance abuse and its management. A psychiatrist of Facility 2 of the Penitentiary Department has also undergone a series of trainings.

PREVENTION OF PSYCHOTROPIC SUBSTANCE ABUSE FOR NON-MEDICAL PURPOSES

Some measures have already been undertaken in this regard in the treatment facility for untried and convicted prisoners, Institution 2 of the Penitentiary Department and partially in the Institution 3. In the Institutions N2 and N3 of the Penitentiary Department inmates have to take psychotropic medication in the presence of a nurse which is an attempt to control over psychotropic drugs. In addition, a psychiatrist of

the Institution N2 often counsels inmates on risks and complications associated with the abuse of psychotropic substances. Sadly, the doctor of the Institution N3 is still under pressure for excessive demand for psychotropic medicaments.

RETRAINING DENTISTS ON THE BASICS OF DENTAL CARE FOR SPECIAL NEEDS PATIENTS

It is important that every prisoner have an access to the services of qualified dental officer (Standard Minimum Rules for the Treatment of Prisoners, Rule 22).

A dental officer at the treatment facility for untried and convicted prisoners has not been trained on the basics of specialized dental care. A service of an orthodontist is not available in the Institution N3 while a dental officer, how has not given any training on treating patients with special dental care needs, performs his/her without a nurse. Based on the above said, it can be assumed that this recommendation has not been implemented.

A STATUS OF THE IMPLEMENTATION OF RECOMMENDATIONS IN THE NATIONAL CENTRE FOR MENTAL HEALTH

The National Centre for Mental Health provides non-voluntary in-patient care within a state programme for mental health, according to which targets not only Georgian citizens but also other persons placed in the penitentiary system.

During a visit to the National Centre, the monitoring team members visited wards in IX, X, XI and XII units. It is worth noting that cells in IX, XI and XII units need to be rehabilitated. At the same time, sanitary situation in units IX, XI and XII is alarming. There is no ventilation system in any of the wards, flushing system is dysfunctional in WCs and some of taps are out of order. Out-walk spaces are not adequately equipped

and covered for rainy weather. It is worth noting that the situation has not changed since the last monitoring visit in November 2013 and still remains a problem.

PROVISION OF ADEQUATE PSYCHIATRIC ASSISTANCE TO UNTRIED/ CONVICTED PRISONERS WITH DISABILITIES

The National Centre for Mental Health is understaffed. Most of the patients are not involved in therapy and lack awareness on illness, treatment and side effects of medicaments they take.

No standards for mental health have been developed by the National Centre for Mental health. There is a lack of rehabilitation programmes tailored to individual needs of prisoners. The director of the centre explained the reason behind the absence of such programmes is the lack of staff with adequate qualification and expertise while available resources only make it possible to provide rehabilitation activities for few patients. Art therapy, ergo therapy, cinema therapy, psychotherapy are provided as a part of psycho-social rehabilitation activities. However, only few of the patients, mainly women, participate in rehabilitation activities. Psych-social rehabilitation activities are not structured and systemic. The facility is understaffed in regard to psychologists. There is no occupational therapists who would work on habilitation/ rehabilitation programmes.

Standard Minimum Rules for the Treatment of Prisoners states, which deals with the key issues related to health services at great length, states that the relevant institutions need not provide the same degree of security for every group. Moreover, it is desirable that severity of security measures vary across groups (Rule 63).

The regimen of prisoners transferred from the penitentiary system and that of patients in non-voluntary care are identical. However, it is different from the regimen applied to other non-voluntary patients. There are no standards for the provision of psychiatric assistance under the conditions of differentiated regimen.

Based on the above said, we believe that currently untried/convicted prisoners placed at the National Centre for Mental Health under non-voluntary in-patient care are not provided with adequate psychiatric assistance. While having underlining this flaw, it should also be noted that the Georgian government has made a significant step forward towards the implementation of the recommendation in question.

REVISING THE ROLE AND FUNCTION OF THE SECURITY SERVICE AT THE NATIONAL CENTRE FOR MENTAL HEALTH

Under Order 12 of a director general of the National Centre for Mental Health dated February 28, 2013 and according to a renewed manning table, the security service was renamed and since March 1, 2013 it is officially called Supervision Service. A new statute of Supervision Service of the National Centre for Mental Health was approved on the same day. However, the service changed only the title while a scope of main activities has remained the same.

Patients interviewed during the monitoring visit still reported measures of physical restraint were undertaken by the staff of the Supervision Service. Moreover, the latter often threaten patients to 'chain them up'.

According to Rule 8 of Decree 92/o dated March 20, 2007 of the Minister of Labour, Health and Social Affairs on *Approving the Rules and Procedures for the Use of Physical Restrain Methods against Patients with Mental Disorder* 'physical restraint measures shall be applied by authorized staff with adequate qualification and experience in applying physical constraint measures.'

According to Article 3.8 of the Statute of the Supervision Service at the National Centre for Mental Health 'the scope of the activities of the Service includes undertaking every measure defined by the law together with medical staff against violators of public order if a condition of a patient deteriorates […].'

The analysis of the norms mentioned above shows that the staff of the Supervision Servce are allowed to physically restrain patients but only if they have relevant qualification and experience in applying the methods of physical constraints. The monitoring revealed that the staff members of the Supervision Service have not been given any training on applying procedures aiming to physically restrain patients. However, they still undertake measures to restrain patients which is unacceptable.

According to information provided by the Ministry of Labour, Health and Social Affairs[238] a module of training of trainers is being developed to provide cascade trainings for staff of mental health staff including the personnel of the National Centre for Mental Health.

Based on the above said, it can be assumed that practical implementation of roles and functions assigned to the Supervision Service of the National Centre for Mental Health still remains a problem.

DEVELOPING A NORMATIVE FRAMEWORK FOR A MECHANISM OF APPEALS

A commission to review complaints and proposals filed by the patients was set up further to Order 34 of the Director General of the National Centre for Mental Health on December 23, 2008. The commission which consists of various staff members of the Centre is responsible for opening complaints boxes and reviewing complaints and proposals during sessions. It is worth noting that there is pre-determined interval for opening the boxes. As clarified by a deputy director of the Centre and a member of the commission, they have never reviewed any complaints or proposal as they never find complaints in the boxes.

Complaints boxes are attached to the walls of the corridors in units IX, X, XI and XII close to resting rooms for medical personnel and security staff which means that no patient can go unnoticed if s/he wants to drop a complaint in either of the boxes.

A staff member of the unit XI explained that complaints boxes are opened at least once a week, however, no protocols are filed upon the opening. Interviews with the patients revealed that social workers are actively engaged in writing letters on patients' behalf. This statement was corroborated by one of the social service staff (XI unit). The monitoring team found out that none of the patients had a paper and a pen in his/her wards.

No complaints had been found in the complaints boxes throughout 2014 which clearly indicates to the fact that the mechanism for appeals is not effective in the National Centre for Mental Health.

According to information provided by the Ministry of Labour, Health and Social Affairs[239] an assessment of a mechanism of appeals, a full revision of legal/normative framework related to psychiatric assistance and development of recommendations based on international standards is planned to take place within the frame of a joint project *Human Rights Protection in Prisons and other Closed Institutions* commissioned by the Council Europe and the European Union.

238 Letter N01/99693 of December 12, 2014.
239 The letter 01/99693 dated December 12, 2014

DEVELOPING STANDARDS FOR THE RELEASE OF PATIENTS FROM IN-PATIENT FACILITIES AND RETURN OF LONG-TERM PATIENTS TO THEIR COMMUNITIES AND FOR THE PROVISION OF BENEFITS RELEVANT TO THEIR PSYCHO-SOCIAL STATUS

Keeping patients in institutions over a lengthy period of time in isolation from society tends to result in disappearing life skills and a complicated process of resocialisation. Long-term patients lose social benefits relevant to their illness or old-age and have no family support.

With regard to the terms of non-voluntary and coercive treatment and further to an amendment of July 26, 2014 to the law of Georgia on Psychiatric Care and the Criminal Proceedings Code, criminal court is authorized to apply non-voluntary psychiatric treatment in the events stipulated by Article 191, Part II of the Criminal Proceedings Code. Based on Article 191, Part II of the Criminal Proceedings Code, provided that there is evidence corroborating insanity of the accused at the moment of committing a crime, the court shall terminate criminal prosecution and a judge in charge shall apply non-voluntary psychiatric care for the accused in the same judgement. Non- voluntary psychiatric care shall be applied based on a report submitted by psychiatric experts confirming the presence of circumstances stipulated by Article 221, Clause 1 of the Law on Psychiatric Care while the duration of care shall not exceed 4 years as stipulated by Article 191, Part II1 of the Criminal Proceedings Code.

In addition, also further to aforementioned amendments, the Minister of Labour, Health and Social Affairs with Order 70/o of October 1, 2014 approved the list of those activities which aim to develop the standards for the risk assessment and reduction, improve resocialisation and mental health. Also, the order approved the constitution and rules of operation of the special commission in a mental health facility for assessing the mental health condition of patients subject to non-voluntary psychiatric care.

In addition, based on the information provided by the Ministry of Labour, Health and Social Affairs[240] within the frame of the Mental Health Strategic Paper and the Action Plan for 2015-2020 approved by Decree 762 of the government of Georgia on December 31, 2014 also considering existing context and situation assessment (including financial resources, the quality of training provided to staff) progressive process of implementation of community based services will soon take a start to serve as a finishing unit in a chain of mental health services.

It should be noted that in spite of above mentioned improvements, there are tens of patients in the National Centre for Mental health who have been staying in the facility for more than 15 and even 20 years. This fact corroborates the need for community based services and the implementation of the law.

THE USE OF PHYSICAL RESTRAINT MEASURES AGAINST PATIENTS WITH MENTAL DISORDER IN ACCORDANCE WITH THE NATIONAL LEGISLATION AND INTERNATIONAL STANDARDS

There are two accepted ways of restricting patients with mental disorder: isolation in a specialized ward and physical restrain. At the same time, in the period of fixation, the patient must be under continuous medical supervision. Every occurrence of fixation must be entered in a special log. Immediately after the expiry of the need for restraining the patient, the psychiatrist makes a decision to terminate or continue the application of the measure and makes relevant entry on a type of intervention and its timeframe.

No internal standards for physical restrain of patients have been developed in the National Centre for Mental Health. The staff of the Centre run a log where they make entries on restraining patients. There

240 The letter 01/99693 of December 12, 2014

is a specialized room in the Centre where patients are restrained. There are sheets and restraining jackets however, the latter are not much used because local staff do not find them practical for use.

There were 13 cases of applying physical restraint measure against patients in all four units during 2014. Interviews with the patients revealed that medical staff assisted by the Supervision Service of the National Centre for Mental Care periodically apply the methods of physical restraints against patients with acute mental conditions. Restraining measures are applied in the presence of other patients in the corridors of the facility which is against the national legislation and international standards. Based on the above said, using restraining measures against patients still remains a problem.

DEVELOPING A SYSTEM OF SPECIAL SUPERVISION OVER THE OPERATION OF PSYCHIATRIC SERVICES AND THE PROVISION OF PSYCHIATRIC CARE

Quality Control Service for the National Centre for Mental Care was set up on February 1, 2013. Order 15 signed off by the Director General of the Centre on April 1, 2013 approved the rule of the operation of internal assessment system for quality assurance of medical services and security provision for patients.

According to aforementioned rule quality management system ensures that relevant measures are developed for monitoring, control, outcome assessment and quality improvement. Quality Management System for medical staff registers and examines cases with lethal outcomes, situation involving deterioration of health conditions, both mental and somatic of patients, medical errors; complaints filed by patients/ their representatives, statistically frequent complications, detection and management of statistically frequent side effects.

The rule also refers to internal retraining system which includes the implementation of periodic measures with the staff. Ongoing activities of the quality management system implies regular supervision of medical practices and revision of patients' conditions through panel discussions. In addition, ongoing activities also includes in-depth panel inspections of those medical cases which involve drastic deterioration of patients' health and lethal outcomes.

One of the important directions within the activities of quality management service at the National Centre for Mental Health is the provision of trainings to medical staff of the Centre to improve their skills and enhance qualification.

Based on the above said, it can be assumed that quality management service does function as internal supervision system within the National Centre. However, we also find it expedient that the Ministry of Labour, Health and Social Affairs strengthen a special supervision system for psychiatric services and care to evaluate the efficiency of the internal control service together with the quality of psychiatric services. It is important that system be based on partnership and cooperation rather than repression and punishment.

CONCLUSION

Repeated monitoring visits to the treatment facility for untried and convicted prisoners, the Institutions N2 and N3 of the Penitentiary Department and to the National Centre for Mental Health revealed that in spite of some positive development there has been little progress in terms of the implementation of the recommendation. Alarmingly, some recommendations have been ignored completely and there has not been any measure implemented to at least partially address the issues highlighted in these recommendations.

Opening the treatment facility for untried and convicted prisoners was considered by the Ministry of Corrections as one of the important measures to respond to the challenges faced by prisoners with

disabilities. It is true that a long-term care unit within the facility has positively contributed to improving conditions of prisoners with disabilities, however, there are still prisoners with physical disabilities and mental disorders in penitentiary institutions. On the other hand, a whole range of problems including inadequate psychical infrastructure, is still to be solved in the long-term care unit of the treatment facility for untried and convicted prisoners.

Approval of the Strategic Document for Mental Health Development and the Action Plan for 2015-2020 by the government of Georgia on December 31, 2014 is undoubtedly a positive development, which clearly indicates to the political will to provide psychiatric services to patients in penitentiary system and other closed institutions in accordance with the national legislation and international standards. Therefore, it is of utmost importance to consistently implement activities and measures outlined in the Action Plan.

Therefore, we call on the government of Georgia and the Ministry of Corrections as well as the Ministry of Labour, Health and Social Affairs to undertake all necessary measures for the implementation of recommendations provided below.

Recommendations to the Ministry of Corrections:

- Develop a mechanism for the identification of prisoners with disabilities and their needs to be implemented in all p penitentiary institutions for continuous statistical data processing
- Develop standards for care of prisoners with disabilities tailored to prison conditions
- Ensure personal aides for prisoners with disabilities in all penitentiary institutions and take measures to ensure social and medical rehabilitation for prisoners with disabilities
- Ensure full physical access and complete adaptation of physical environment as well as access to services and information in all penitentiary institutions
- Ensure quality and timely psychiatric care in all penitentiary institutions
- Ensure adequate psychiatric care and psycho-social rehabilitation for prisoners in differentiated regimes
- Ensure continuous trainings for staff in all penitentiary institutions
- Ensure stronger protection of medical staff for the prevention of pressure on the latter and implement measures for a stricter control on the distribution of psychotropic medicaments
- Ensure retraining of dental officers in the basics of dental care for special needs patients

Recommendation to the Minister of Labour, Health and Social Affairs:

- Ensure that untried/convicted prisoners are provided with adequate psychiatric assistance in the National Centre for Mental Health
- Revise the role and functions of the supervisory service at the National Centre for Mental health so that staff of the supervisory service are banned from participating in undertaking measures for physically restraining patients or are trained in applying such restraining measures and procedures
- Set up a normative framework for the regulation of the appeal mechanism in the National Centre for Mental Health

- Develop standards for discharging patients from in-patient facilities and ensure that patients released from a long-term care are back to their communities and receive all benefits relevant to their psycho-social status
- Ensure that restrain methods against patients with mental disorder are applied in accordance with the national legislation and international standards
- Develop an external system for overseeing the operation of psychiatric services and the provision of psychiatric care, carry out an efficiency assessment of the quality control service of the National Centre for Mental Health

RIGHTS OF THE CHILD IN SMALL GROUP HOMES

INTRODUCTION

In 2014 the Special Preventive Group members together with Child's Rights Centre of the Public Defender under the scope of National Preventive Mechanism carried out the monitoring of following 14 Small Group Homes (hereinafter referred as SGH) located in the village of Bajiti, Sachkhere municipality (1), Ambrolauri (1), Kutaisi (3), Khoni (1), Chkhorotsku (1), Tsalenjikha (2), Batumi (1), Ozurgeti (2), Lanchkhuti (1) and Zestaponi (1) The monitoring aimed to assess the situation in regard to the protection of the rights of the child and consistency of services provided to the beneficiaries with the requirements enshrined in the national legislation and international standards.

On a preparation stage the monitoring teams planned the activities, identified the number of SGHs and their beneficiaries to be visited during the monitoring, developed thematic questionnaires tailored to each target group. After the completion of the actual monitoring visits, the team members summarized the findings, developed technical reports which served as a basis for the present report and recommendations.

In November 2014 two monitoring teams consisted off the staff members of Department of Prevention and Monitoring and the Child's Rights Centre (Nikoloz Khvaratskhelia, Daniel Mgeliashvili, Tamta Babunashvili, Tamar Chkolaria) and five guest experts from the National Preventive Mechanism (Ketevan Pilauri, Maia Tsiramua, Ketevan Gelashvili, Lali Tsuleiskiri and Nana Koridze).

The present report is based on technical reports prepared by the monitoring teams. The monitoring of child care institutions was carried out in accordance with the Child Care Standards.[241]

The members of the teams closely examined the consistency of the situation in SGH with requirements under each of the standards. The report has been designed in such a manner which does not allow for identification of beneficiaries interviewed during the monitoring missions.

While implementing activities within competences defined by the organic law on Public Defender of Georgia the monitoring teams adhered to the Georgian Constitution, the UN Convention on the Rights of the Child, the Child Care Standards and other relevant normative acts.[242]

The findings of the monitoring have demonstrated that qualification of personnel at SGH, violence against

241 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

242 Law of Georgia on Social Assistance, Law of Georgia on the Adoption and Foster Care, the joint decree N152/N-N496-N45/N of the Minister of Labour, Health and Social Affairs, the Minister of Internal Affair and the Minister of Education and Science of May 31, 2010 on approving the procedures for referral; the decree N52/N on Approving Rules and Terms of the Placement and Discharge of Persons in and from Specialized Institution.

children, protection of their right to healthcare, psycho-social rehabilitation, the right to education and the preparation for independent life still remain a problem in SMGs.

Pursuant to Article 20 of the UN Convention on the Rights of the Child 'a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State'. Article 27 of the Convention protects the right of the child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development while Clause 3 of the same article states that 'States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'.

Sustainable and strong families are the foundation of child's welfare. Nowadays, not every family in Georgia can afford to meet all needs children may have. In this case the State has to step in and take over the responsibilities for creating adequate environment for care and development of children.

Placing a child in a small group home and creating an environment which is close to family situation in the child's best interest is one of the forms of care the state can provide for a child deprived of his/her own family. Beneficiaries of such care should receive services that are tailored to their individual needs. Individually tailored services are important for the child's development and increases chances that juveniles can fully develop their capacities and skills.

STANDARD 1 – INFORMATION ON SERVICES[243]

According to Article 3, Clause 3 of the UN Convention on the Rights of the Child institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities. Article 1 of the Child Care Standards provides a list of those documents that service providers must file and make accessible to stakeholders.[244]

All SGHs kept an information page and a license granting them the right to provide care together with child care curriculum containing methodology and order of daily activities. Statutes in most cases cover all matters stipulated by the Child Care Standards. SGHs had all contracts with caretakers and filed in accordance with the Georgian legislation.

Batumi small group home[245] has developed child care curriculum, however, a schedule of daily activities is not complete. More specifically, standard activities for week-ends are missing from the schedule. SGH failed to introduce a license for child care which, according to the staff was kept in the office of provider organization. As for the statute, it does not include rules and methods for the management of socially unacceptable behavior of beneficiaries, privacy and confidentiality issues, code of conduct for the staff, volunteers or interns, or rules for the prevention of infectious diseases.

Schedule of activities are available in almost all SGH, however, some of them the schedules were incomplete.[246]

The SGHs keep the following documents: a log for registering accidents, a log for registering cases of abuse, registry of the opening of a trust box, a log for recreational and cultural activities attended by children and youth, a registry for infectious disease occurrences.

243 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 1

244 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

245 Batumi Centre for Education, Development and Employment, 26 Maisi street №106, Batumi

246 The Charity Humanitarian Centre *Apkhazeti*, Lagodekhi, the village of Baisubani

The monitoring found that there are inconsistencies observed in the logs. Opinion journals are accessible at only few SGHs and are mostly empty, which means that they are kept because of formal requirements. Accidents registry are mostly empty which indicates that facts are not properly documented. The monitors also learnt that in most cases caretakers do not fully understand the meaning of an accident as logs often have entries on cases when beneficiaries escape from homes.[247]

It should be noted that in Ozurgeti SGH[248] measures undertaken further to anonymous complaint letters retrieved from a special box conform to the rules defined by the legislation. Documentation on these measures also include explanatory notes, which is undoubtedly a positive practice. Conferences following up on such cases and attended by a manager of the home, caretakers, beneficiaries and a social work is also an example of a good practice. The participants of the conference discuss issues, needs and objectives of the operation of the SGH.

Zestaponin SGH[249] keeps a registry of meetings which is undoubtedly a positive fact. The registry contains information on needs of children and notes from meetings with school principal. In addition, there is a parents' council at the small group home which regularly discuss children's needs together with a psychologist.

STANDARD 2 – INCLUSIVENESS OF SERVICES[250]

Article 2 of the Child Care Standards[251] outlines the responsibility of a service provider to provide a beneficiary with a service which meets his or her needs and is consistent with his or her abilities. Beneficiaries should also have an access to other community based services.

Beneficiaries, to the extent that is allowed by the capacity of the organisations, have an access to community based services. Children attend school, vocational training facilities, collage and participate in various classes. However, a level of their engagement in activities varies across age-groups and interests and depends on the capacity of an organization. In this respect choices[252] are particularly limited in the regions. Seniors have to commute to the administrative centre to access available resources while juniors cannot commute independently. Because of limited resources, caretakers cannot always afford taking junior children to the centre.

In certain cases caretakers are not able to identify a child's individual needs and an individual service plans do not always reflect needs of beneficiaries and the importance of the provision of services.[253] There was a case when beneficiaries were not able to access various services available in town (sports, music, dancing). It should also be noted that several activities or engagement in various classes often are not practically implemented.[254]

The monitoring revealed that sometimes communities attach stigma to beneficiaries of small group homes and children residing in such homes are often negatively perceived by their classmates and teachers.[255]

247 Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajiti
248 Non-profit legal entity Association *Imedis Skhivi*, D. Aghmashenebeli Street 148, Ozurgeti
249 Association "SOS Children's Villages Georgia, Zestaponi, the village of Kvaliti
250 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 2
251 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards
252 Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajieti, non-profit legal entity Association *Momavlis Skhivi,* Lanchkhuti, the village of Lessa; Association "SOS Children's Villages Georgia, Shengelia Street 24, Borough of Chkhorotsku.
253 Association "SOS Children's Villages Georgia. Tsereteli Street 8, Ambrolauri, Association "SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni, Association "SOS Children's Villages Georgia. Tsalenjikha, the village of Kvemo Mazandara; the Batumi Centre for Education, Development and Employment, 26 Maisi Street 106, Batumi
254 Association "SOS Children's Villages Georgia, Shalva Dadiani Street 17, Kutaisi.
255 Association "SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni, non-profit legal entity Association 'Momavlis Skhivi", Lanchkhuti, the village of Lessa, Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajiti

STANDARD 3 – PROTECTION OF CONFIDENTIALITY[256]

Article 3 of the Child Care Standards[257] protects the confidentiality of personal information of beneficiaries.

Confidentiality of beneficiaries' correspondence, conversations and meetings are protected to a certain extent. However, it should be noted that individual meetings mostly take place in a beneficiary's room. In order to ensure a better protection of confidentiality of a conversation, it is advised that a room is designated in every SGH so that conversations, consultations and individual activities take place in a confidential environment.

Documents and personal records of beneficiaries are kept in caretakers' offices and are inaccessible for strangers. Information pertaining to children are confidential and are not subject to open discussions. However, it should be noted that caretakers are not fully aware of Paragraph H of Standard 3.[258]

STANDARD 4 - INDIVIDUAL APPROACH TO SERVICE PROVISION[259]

Article 4 of the Child Care Standards[260] highlights the importance of individual approaches while providing child care services which should be tailored to a child's individual skills and requirements.

Pursuant to Article 25 of the UN Convention on the Rights of the Child state parties recognize the right of a child who has been placed for the purposes of care to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

All SGHs keep personal records on each of beneficiaries. However, individual development and service plans are kept only for formal purposes as they fail to provide information on objectives, planned activities, expected outcomes, individual needs of beneficiaries. Beneficiaries do not participate in developing their own plans and there are cases when health problems of beneficiaries are not reflected in individual development plans.[261]

A social worker is responsible for guiding a provider through a personal file of a child to be placed in a small group home. However, this is not always the case. For instance,bseveral children had no required health certificate NIV-100/a upon their admission.[262]

Also, caretakers stated that there were cases when they did not have full information on beneficiaries when they were admitted to SGHs.[263] The monitoring revealed that one of the beneficiaries had been placed under care for two months in a manner which violated the rule for placing a person in a specialized institution.[264]

256 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 3

257 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

258 If services are no longer provided for a child, information related to the child shall be kept at the service provider for three years. In cases when an organization terminates its activities and beneficiaries are transferred to the care of other organization, all documentation pertaining to the child shall be handed over upon the agreement with foster or care agency. However, if the child reunites with his or her biological family the documentation will be handed over/destroyed upon the primary agreement with a legal representative of the child.

259 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 4

260 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

261 Non-profit legal entity *Momavlis Skhivi,* Ozurgeti, Association "SOS Children's Villages Georgia, Zestaponi, the village of Kvaliti, Association "SOS Children's Villages Georgia, Shalva Dadiani Street 17, Kutaisi

262 Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajiti; Shengelia Street 24, the borough of Chkhorotsku. Non-profit legal entity *the Union of Young Teachers,* Aghmashenebli Street 53, Ozurgeti, Charity and Humanitarian Foundation "Breath Georgia", 26 Kekelidze St. Kutaisi

263 Association "SOS Children's Villages Georgia, Zestaponi, the village of Kvaliti

264 Non-profit legal entity *Association 'Momavlis Skhivi',* Lanchkhuti, the village of Lessa

In some of the SGHs individual development plans were developed by social workers in January 2014, and activities which were scheduled for six months were subject to revision. There are no updated individual development plans in personal files of beneficiaries.[265]

There are no evidence that a multidisciplinary approach has been used with regard to difficult to manage cases which means that there is no practice of planning joint measures to address problems.[266]

STANDARD 5 – EMOTIONAL AND SOCIAL DEVELOPMENT[267]

According to Article 27 of the UN Convention on the Right of the Child every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. Article 5 of the Child Care Standards[268] states that an environment created by a service should accommodate to emotional and social development of beneficiaries, prepare them for independent life, support their social integration and contribute to maintaining contacts between beneficiaries and their families.

Emotional and social circumstances in small group homes and forms of care are different and depend on financial capacities of an organisations as well as on administration and management models. (a British model[269], a Polish model). In a Polish model five caretakers, including a lead one, work in one small group home. Each of beneficiaries is under patronage of different caretakers, which in monitoring team's

opinion creates a series of problems in the provision of care. One caretaker is not aware of the needs, problems, vulnerabilities and mental and physical health of a child being under the care of a fellow caretaker which in its turn prevents a holistic care strategy to be developed. Creating an enabling emotional and social environment for the development of beneficiaries in small group homes is also largely determined by caretakers' skills.

Engagement of both caretakers and social services in measures aimed to seek and rebuild contacts with biological families of beneficiaries is undoubtedly a positive trend. Communication with families are mostly maintained through mobile telephones. Biological families rarely visit beneficiaries most of whom cannot remember the last time they met their family members.[270]

Most of beneficiaries living in small group homes are well integrated in host communities and school environment. They often visit families of their friends and also receive guests. Children have friends.[271] In order to encourage children to develop their life skills, they are often invited to participate in household errands. They prepare meals and do housework together. On the other hand, there are cases when children experience negative treatment from school teachers and fellow students.[272]

Environment in some of small group homes lacks coziness and creativity and therefore does not contribute to children's emotional and intellectual development.[273] For instance, Batumi small group home is in need of rehabilitation, furniture is old and damaged. Entertainment means for junior beneficiaries is limited by few dolls and books. There is no computer or internet but a TV set.

265 Charity and Humanitarian Foundation "Breath Georgia", 26 Kekelidze St. Kutaisi
266 Charity and Humanitarian Foundation "Breath Georgia", 26 Kekelidze St. Kutaisi
267 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Standard 5
268 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards
269 A British model stands closest to a family environment. A number of children placed in small group
270 Association "SOS Children's Villages Georgia, Shengelia Street 24, the borough of Chkhorotsku
271 Association "SOS Children's Villages Georgia, Tsalenjikha, the village of Kvemo Mizandara, Association "SOS Children's Villages Georgia, Tsereteli Street 8, Ambrolauri, non-profit legal entity *Momavlis Skhivi,* Ozurgeti, D. Aghmashenebeli Street 148
272 Association "SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni; non-profit legal entity *Association Imedis Skhivi,* Lanchkhuti, the village of Lessa; Association "SOS Children's Villages Georgia, Sachkhere, the village of Bajiti.
273 The Batumi Centre for Education, Development and Employment, 26 Maisi Street 106, Batumi; Association "SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni

Some of SGHs only meets basic needs of children as there are not enough books and toys as well as other means for children's cognitive, emotional and social development.[274]

In spite of requirements under statutes to keep records on daily activities and progress of beneficiaries caretakers often fail to do so. They explain that they have little time keep daily records. Records lack information on how problems related to children are resolved, or what incentives are used to encourage good behavior among beneficiaries as well as details of activities undertaken to encourage beneficiaries' positive learning experience.

STANDARD 6 - NUTRITION[275]

Article 6 of Child Care Standards[276] determines the responsibilities of service providers for nutritional matters.[277] Children under the state's care must be provided with sufficient amount of food adequate for their age.

The monitoring has revealed that caregivers do not calculate calories and conform to principles of balanced diet. Portions are often determined based on caretakers' personal experience

Children's' desire to take processed meat (sausages), frozen meat dumplings (khinkali), and excessive amount of sweets is often satisfied. Occurrences like this do not meet children's best interest and requirements necessary for healthy growths and development. A menu at one of the SGHs contained particularly excessive amount of gassed drinks,[278] while a closet of one of the SGHs[279] contained a large amount of ready-to-eat soup *Anakom*. As foster parents explained soups were purchased at the request of the children.

No cases of food restrictions have been revealed during the monitoring visits to west Georgia's SGMs.

The monitoring team learnt that drinking water is a problem in most of small group homes as organisations failed to introduce a certificate for safe potable water. Most of the leaders are not aware on the level of safety of water consumed at SGHs. In one of the SGHs where there is a well, it turned out that the well dries out for 8 months a year and therefore they have to fetch water from a village spring. [280]

SGHs can only purchase food through an electronic waybill, a practice that is not common in the regions. There may just one shop which provide service in such a manner. Therefore it is necessary to adjust menus to options available in such shops which affects the availability of food as well as its diversity.[281]

STANDARD 7 – REST, LEISURE AND RECREATION[282]

Article 31 of the UN Convention on the Rights of the Child recognizes the right of children to rest and leisure. Article 7 of the Child Care Standards[283] delineates the responsibilities of services providers with regard to rest, leisure and recreation.

274 Association "SOS Children's Villages Georgia, Shengelia Street 24, the borough of Chkhorotsku; Association "SOS Children's Villages Georgia, Tsalenjikha, the village of Kvemo Mazandara

275 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 6.

276 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

277 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards, Article 6.

278 non-profit legal entity *Association Imedis Skhivi,* Lanchkhuti, the village of Lessa

279 Association "SOS Children's Villages Georgia", 24 Shengelia St, Chkhorotsku.

280 Association 'SOS Children's Villages Georgia', Sachkhere, the village of Bajiti

281 Non-profit legal entity *Association Imedis Skhivi,* Lanchkhuti, the village of Lessa; Association 'SOS Children's Villages Georgia'. Shengelia Street 24, the borough of Chkhorotskhu; Association 'SOS Children's Villages Georgia', Sachkhere, the village of Bajiti

282 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 7

283 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

Opportunities for rest and recreation in SGHs vary according to resources of a provider as well as to a level of caretakers' engagement in leisure and recreational activities.

Beneficiaries are engaged in informal activities in most of SGHs. There are several problems in this regard. More specifically, caretakers report that children often get bored with classes and regularly change them. There are cases when desired classes are not available in a community and therefore children cannot engage in informal activities.[284]

There are TV sets and computers in most of the SGHs. Each beneficiary spends an hour on a computer on average. Beneficiaries spend most of their leisure time in front of TV which is often the only means of entertainment.

The monitoring mission also revealed that not every SGH has the Internet[285] which isdirectly linked with children's educational needs.

Staff at SGHs keep a log for children's leisure and cultural activities that take place outdoors. Beneficiaries are eligible to exercise their right to a seasonal holiday defined by the Child Care Standards. However, children living in SGHs are rarely taken out for excursions and cultural activities.

STANDARD 8 - EDUCATION[286]

The right to education is enshrined in national legislation and international law. Pursuant to Article 28 of the UN Convention on the Rights of the Child, children have the right to education and with a view to achieving the right progressively and on the basis of equal opportunity, the state must support children to exercise this right. Article 3 of the Law of Georgia on General Education determines the major directions and objectives of the national education policy including the principles of openness and equal access, inclusive education etc. Above mentioned commitments gain particular importance when it comes to children under the state care. Article 8 of the Child Care Standards[287] outlines the responsibilities of services provider with regard to the realisation of the right of children to education.

In most SGHs children do their homework without help. They require private tutors in some of school subjects, in particular, math and foreign languages, which is not always available. Beneficiaries talk about abusive behaviors of teachers and bullying. Some of them expressed their hatred towards schools.

Juveniles do not tend to be willing to continue with education and are mostly focused on vocational education. Caretakers think that laziness accounts for unwillingness to further pursue education. Only two out of six beneficiaries in Chkhorotsku[288] SGH attend public schools. The rest of the beneficiaries stated that they have completed nine grades and do not want to continue to upper grades. At this moment some of the beneficiaries are not included in either of formal or informal education activities. Four beneficiaries of Chkhorotsku SGH spend most of their time at home in front of a computer. They do not receive any kind of education including vocational trainings.

It is worth noting that SGHs are assisted by various organisations in providing for education needs of beneficiaries. However, many of beneficiaries' education needs are to be met. The resolution of this

284 Bajeti Small Group Home - Association 'SOS Children's Villages Georgia', Chkhorotsku Small Group Home - Association 'SOS Children's Villages Georgia', non-profit legal entity *Association Imedis Skhivi,* Lanchkhuti, the village of Lessa

285 Bajeti Small Group Home - Association 'SOS Children's Villages Georgia'. The Union of Young Teachers, Ozurgeti, Ozurgeti Small Group Home

286 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards. Standard 8.

287 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

288 Association "SOS Children's Villages Georgia". Shengelia Street 24, Borough of Chkorotsku

problem cannot be solely dependent on goodwill and charity of organisations and it is critical that the state develop a systemic approach to issues related to children's education in SGHs.

In Khoni SGH[289] the monitoring team identified cases involving pedagogical negligence, lack of learning skills of beneficiaries, a low level of cognitive development and poor communication and social skills. In spite of this situation there is only one child engaged in an inclusive education programme upon his/her written refusal to continue education.

The monitoring to Batumi Small Group Home[290] revealed that most of the beneficiaries residing in the SGH require additional classes and need to be engaged in an inclusive education programme.

The children of Batumi SGH demonstrated academic underperformance as they fail to handle school's curriculum and therefore require intensified measures. It is undoubtedly a positive practice that a development teacher has been working with three beneficiaries of the SGH, however, this is far from being sufficient to meet the needs of all beneficiaries of Batumi SGH.

Libraries in SGHs are limited and lack in choice of fictions. Books are old and undiversified and irrelevant to age and interest of beneficiaries. In most cases libraries in SGHs are formalities and not of much use.

Situation with regard to children with special learning needs is particularly difficult. They do not always have teachers with special qualifications and they have to study independently. Activities that are designed for them do not meet their special education needs.

The monitoring of SGH demonstrated that some of staff members lack understanding of inclusive education. Nor are they aware of types of activities and measures they need to undertake in order to protect the right to education of children with special education needs.

Often providers fail to prepare beneficiaries for higher education institutions. In such cases they occasionally apply to free of charge preparation classes and volunteer students.[291]

Together with the identification of beneficiaries who require individual curriculum, the implementation of such curricula is also of utmost importance. In order to achieve this goal, staff at a SGH are responsible for building working relations with an education institution and take a lead in controlling this process. On the other hand, schools also have important roles to cooperate with SGH and beneficiaries. However, the monitoring team revealed that school staff demonstrated negligent attitudes towards fulfilling their obligations on various occasions.

Either one or both foster parents are responsible to oversee school attendance by beneficiaries of small group homes. However, in most of the SGHs foster parents are not fully aware of children's education needs and problems they encounter in schools.

The monitoring revealed that a majority of beneficiaries have never heard about the UN Convention on the Rights of the Child. Therefore, it is critical that adequate measures be taken in order to raise awareness of beneficiaries and caretakers on the rights of the child.

STANDARD 9 - HEALTHCARE[292]

Pursuant to the Article 9, Clause 1 of the Child Care Standards[293], the beneficiaries should be raised in an environment promoting healthy lifestyle, where proper attention is paid to the state of their health.

289 Association "SOS Children's Villages Georgia". Ip Khvichia Street 28, Khoni
290 Batumi Centre for Education, Development and Employment. 26 Maisi Street 106, Batumi
291 Charity and Humanitarian Foundation "Breath Georgia", Kekelidze Street 26, Kutaisi.
292 Technical Regulation about "Child Care Standards" adopted by the Resolution #66 issued by the Government of Georgia on January 15, 2014
293 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

According to the Child Care Standards[294] service provider shall provide the availability of the immunization and preventive medical examination of the beneficiaries.[295]

In terms of immunization, all beneficiaries of the small group homes have received the age appropriate vaccinations. Children are also regularly vaccinated against seasonal influenza. During the monitoring visits only several beneficiaries revealed the signs of post vaccination complications. The children were hospitalized, where their health status was assessed and necessary treatment was prescribed.[296]

The foster parents are informed about the necessary measures for preventing the transmission of viral infections. In general, small group homes do not have the means to isolate the infected children.

Beneficiaries undergo preventive medical examination, as evidenced by the provided form #IV-100/a. Medication is purchased with the doctor's prescription. Generally, small group homes have a small supply of medicines available. One particular small group home did not have any emergency medical supplies[297]. According to the internal regulations, the medical supplies have to be stored in a specifically designated area, however in some small group homes the medicines are kept within the reach of children.[298]

Several problems were identified in terms of availability of medical services, including the issue of territorial accessibility. In several cases the polyclinic, where the small group home beneficiaries are registered, is located too far away, which makes the monitoring of children's health status and proper healthcare provision more difficult[299]. Problems linked with the availability of medications at the local pharmacies were identified in the small group homes located in remote villages.

There is an apparent need to conduct more educational activities promoting healthy lifestyle. The beneficiaries of the majority of small group homes consume tobacco and children are less involved in sports and fitness activities.

During the placement of beneficiaries in the small group homes, along with other necessary documents, it is essential to provide medical certificate (medical documentation form #IV-100/a).[300]

The role of social worker in terms of administrating the child's healthcare remains a problem. In most cases, in the individual development plans prepared by the social worker the section about "healthcare" is filled only formally. During the review of individual plans the assessments stay the same, failing to reflect the actual health status and needs of a child. This particular circumstance emphasizes the lack of cooperation between social workers and foster parents.

In the small group home of "Breath Georgia" all medical documentation was stored by the physicians and social workers; the given fact prevents the dynamic supervision of beneficiaries' health status.[301]

Cost of healthcare services for the beneficiaries of small group homes are covered by the state insurance vouchers, however in the reports of previous years the Public Defender noted that the funding within the frameworks of the voucher does not envisage the age related specifics of children and youth, which affects the effectiveness of availability of medical services.

Endocrine disorders and issues linked with puberty are common in adolescents, vision correction is also frequently required and the glasses need to be purchased. Monitoring revealed that dental services are

294 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards
295 Article 9, Clause A, Paragraph 2
296 Association "SOS Children's Villages Georgia". Akhalgazrdoba Ave. turn 3, south west, House #1, Kutaisi.
297 Association "SOS Children's Villages Georgia". Levan II Dadiani St. Tsalenjikha
298 Association "SOS Children's Villages Georgia. Shalva Dadiani Street 17. Kutaisi
299 "Caritas Georgia", 8 Bezhanishvili St. Small Group Home "Satnoeba"
300 Article 6 of the Decree #52/n "about adopting the rules and conditions of placement and withdrawal of a beneficiary in and out of the specialized institution" issued by the Ministry of Labor, Health and Social Affairs of Georgia on Feburary 26, 2010
301 Charity and Humanitarian Foundation "Breath Georgia", Kekelidze Street 26. Kutaisi

still problematic in the majority of small group homes, since the medical insurance package does not cover them. The service providers of small group homes bear the responsibility of providing the dental care tothe beneficiaries.

STANDARD 10 – PROCEDURES FOR FEEDBACK AND COMPLAINTS[302]

Pursuant to the article (10) of the Child Care Standards[303] the service provider shall develop clear and simple procedures for providing feedback and expressing complaints regarding the quality and type of services by the child and his/her legal representative.

As a result of monitoring it was revealed, that in most cases, the small group homes maintain the records of the activities implemented to respond to the expressed opinions. Mostly the records are being kept, although the timeframe for providing a response and the respective outcomes are unclear or the document is not filled at all. Therefore, it is often of formal nature.

In order to ensure the feedback provision, the small group homes have complaint boxes, which, in most cases, are empty. The procedures for providing feedback and complaints are not promoted by the service providers, therefore the service beneficiaries, due to the lack of information, do not exercise this right.

The complaint boxes are installed in the visible places of the small group homes. Several beneficiaries interviewed by the monitoring experts claim that they do not use the boxes frequently. During the monitoring feedback or complaint logs in the majority of homes were either blank or not filled completely. This issue was especially evident in Batumi small group home[304]. The box was placed out of the reach of children. It did not have a label. It was quite apparent that in this particular home the box did not serve its purpose. The monitors found the feedback logs empty.

In Chkhorotsku small group home[305] the beneficiaries are not informed about their right to express their opinion or protest against the quality of services. There is no agreed procedure enabling the beneficiary or his/her legal representative to express his/her opinion anonymously.

STANDARD 11 – PROTECTION FROM VIOLENCE[306]

The article (11) of the Child Care Standards[307] defines a right of a child to be protected from violence. Article (19) of the Convention on the Rights of a Child obliges the participating states to protect children from all types of violence, and the UN Committee on the Rights of the Child, in its general comment #8, urges member states to provide a rapid response to all types of physical violence against minors[308]. In the given comment the committee specifies, that the disciplinary actions must be clearly separated from violence. The latter, unlike the first, causes a certain intensity of pain, discomfort and humiliation.

Majority of the beneficiaries of small group homes have a history of psychological and physical violence (abandonment, neglect, death of a mother, physical and psychological violence from a parent, lack of food,

302 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 10

303 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards

304 Education, Development and Employment Center of Batumi, 26 Maisi Street 106. Batumi

305 Association "SOS Children's Villages Georgia", Shengelia Street 24, Chkhorotsku

306 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 11

307 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 11

308 General Comment №8, the Right of the Child to Protection from Corporal Punishment and other Cruel or Degrading Forms of Punishment, Committee on the Rights of the Child, 2006, Para. 2.

experience of institutional care, frequent changes in the types of care, etc.)

All small group homes maintain the violence registration journal or a special notebook, but the records do not correspond to the existing reality of small group homes and do not properly reflect all incidents of abuse.

The violence registration journal of a particular small group home[309] reveals an entry recorded in 2013 regarding the statement of a child about being abused by the foster father. The individuals responsible for child care did not carry out any procedures for further investigation of the given issue; no actions were taken to prevent the violence and provide the psycho-social rehabilitation services to the child with a traumatic experience. Public Defender's report of 2012 provides the facts linked with the given case, although during the current monitoring mission, the above mentioned foster father was still employed at the small group home.

The majority of beneficiaries of a particular small group home[310] have problems at school. They have emotional and behavioural disorders and require professional help, individual programs tailored to their educational or mental needs. The given procedure was not implemented. For several months already they have been under care of a foster parent, who has not been properly trained; foster mother hardly interacts with children and the majority of information regarding the beneficiaries is kept by foster father. A newly appointed representative of the provider organization is motivated to assist the beneficiaries. He (She) is actively involved in the everyday life of a small group home, takes children to school, organizes various events for them and frequently addresses the family physician. Although, he (she) has not taken appropriate training and his (her) efforts are not adjusted to the specific needs of the beneficiaries.

The individuals involved in child care, in most cases, cannot independently, without the help of a specialist, identify the psychological/psychiatric problems of the beneficiaries and are unable to determine their needs before the crisis. Respectively, they do not take preventive actions or try to overcome the crisis by ignoring and concealing the problem or through general discussions, which, in most cases, are ineffective. During the conversation with monitors, a foster mother of a particular small group home[311] stated that she does not "enjoy" taking a child to the psychiatrist. So she arbitrarily stopped giving the beneficiary the medicines prescribed by the psychiatrist, as she considered that the medications had negatively affected the child. According to the observations of the monitoring group, several children under care of the given foster parent demonstrated signs and symptoms of behavioural and emotional disorders. The foster parent was definitely unable to independently manage the behaviour of these beneficiaries.

It is noteworthy, that the presence of beneficiaries with complex and expressed behavioural disorders negatively affects other beneficiaries of the particular small group home[312], given that the service provider is unable to regulate his/her behaviour. Majority of foster parents do not possess any knowledge about the influence of a traumatic experience on the development and behaviour of a child. In many cases, unwanted behaviour of children with such complicated pasts is interpreted as "stubbornness", "ungratefulness", "genetics", etc.

In the majority of small group homes the violence among children has a systematic nature, which creates unsound situation in the homes. The incidents of bullying were reported at several small group homes.[313]

The beneficiaries of a particular small group home[314] had various physical injuries sustained during fights and as a result physical violence against each other. According to the foster parents' notes, the children

309 Education, Development and Employment Center of Batumi, 26 Maisi Street 106, Batumi
310 LEPL Association "Momavlis Skhivi" (Beam of Future), Village Lesa, Lanchkhuti
311 Association SOS Children's Villages Georgia, Village Kvaliti, Zestaponi
312 Charity and Humanitarian Foundation "Breath Georgia", Kekelidze Street 26, Kutaisi.
313 Education, Development and Employment Centre of Batumi, 26 Maisi Street 106, Batumi; Association SOS Children's Villages Georgia, 28 Ip. Khvichia St, Khoni; Association SOS Children's Villages Georgia, Levan II Dadiani St, Tsalenjikha, LEPL "Momavlis Skhivi", Village Lesa, Lanchkhuti; Association SOS Children's Villages Georgia, Village Bajiti, Sachkhere.
314 Association SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni.

frequently demonstrate physical and verbal aggression towards each other. The situation is similar in Batumi small group home.[315]

Foster parents usually do not trust children's reports about violence without objective data and frequently refer to the violence among the children as "small quarrels".

The situation in the biological families of the beneficiaries is especially noteworthy. The information provided by the beneficiaries and their foster parents points out different types and cases of violence in the biological families, which, in most cases, are not fully investigated. The situation within the biological family of the beneficiary is not taken into account during his/her temporary withdrawal. In this regard, it is important to involve a social worker in the processes of identification and addressing of a child's problem.

STANDARD 12 – CARE AND SUPERVISION[316]

Article (12) of the Child Care Standards defines the obligations of a service provider and protects the right of a child to live under proper care and supervision.

The small group homes maintain a journal for "registration of child disappearance", but the monitoring revealed that usually it is filled only formally and some cases have not been recorded at all.

In most cases the procedures for assessment and management of a complex behaviour of a child are included in the individual development plan; however they lack the multidisciplinary nature and usually burden the foster parents.

Monitoring revealed several cases of children secretly leaving the small group homes to return to the biological families, when foster parents had to locate and return them independently or with the help of social services and police.

The named reason for secretly leaving the facility is usually a desire to see parents and siblings – due to the financial problems the family members do not visit the beneficiaries of small group homes frequently.

The monitoring group paid special attention to the problems with child care identified in the small group homes of Kutaisi[317] and Khoni[318]. After several years of unaddressed and neglected behaviour, children demonstrated violent and in some cases asocial conduct. In the small group home of Khoni[319] children often leave the house without permission and return late. The foster parents' notes do not show whether the they were notified about the reasons of child's absence and also reveal that they are not informed about children's problems, interests and the time spent outside the house. It is also unclear what kind of correctional actions were taken by the foster parent in each individual case.

The atmosphere in one of the small group homes[320] indicates that only the basic needs of the beneficiaries are being met. During the discussions with the foster parents it was apparent that the foster mother is less involved in rearing of the beneficiaries.

Most likely, she is only involved in performing the household chores and is hardly acquainted with the children's problems. She claimed that the adolescents do not have any difficulties aside of the fact that they sometimes stay out until late. She is less familiar with the individual needs of the beneficiaries.

315 Education, Development and Employment Centre of Batumi, 26 Maisi Street 106, Batumi.
316 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 12
317 Association SOS Children's Villages Georgia, Shalva Dadiani Street 17, Kutaisi
318 Association SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni
319 Association SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni
320 Association SOS Children's Villages Georgia, Shengelia Street 24, Chkhorotsku

STANDARD 13 – PREPARATION FOR LIVING INDEPENDENTLY AND LEAVING THE FACILITY[321]

According to the recommendation of the Committee of Ministers of the Council of Europe, after leaving the facility the adolescent needs state support and adequate assistance[322] in order to ensure his/her integration within the family and the society. In its 2008 conclusion, the UN Committee on the Rights of the Child urges Georgia to introduce measures for providing assistance and care to the adolescents who leave the care centres[323].

In its parliamentary report of 2012, the Public Defender addressed the Ministry of Labour, Health and Social Affairs of Georgia to develop an effective program to respond to the specific needs of the beneficiaries leaving the small group homes upon reaching the age of majority to live independently. It includes the provision of a living space and employment opportunities.

Child Care Standards oblige the service provider to prepare a child for independent life and support him/her during the process of leaving the facility. Monitoring clarifies that the state has not implemented appropriate activities in this direction. As for the service providers, unlike the previous years, they are actively involved in planning of the beneficiary's future. The government essentially needs to take effective steps.

Provider organizations try to use their own or charitable organizations' resources to provide professional education to the beneficiaries. It is also noteworthy, that the Foundation "Natakhtari" helps the children lacking parental care lead independent lives. The representative of the foundation works with the small group homes, assesses the needs of the beneficiaries and develops their future plans. Usually social workers are also involved in this process. In spite of this, the whole burden falls on the provider organizations and funding acquired from various sources. In most cases the biological families of the beneficiaries of small group homes are not involved in the process of preparation for living independently.

During the monitoring process the small group homes did not possess clearly defined development plans for preparing an adolescent for living independently. Consistent work with the beneficiaries in this direction and assessment of their interests and needs is an urgent priority.

Majority of beneficiaries express their desire to receive professional education. They have no interest in learning, as they want to have their own income as soon as possible in order to be prepared for leading independent lives.

Several beneficiaries of the Chkhorotsku small group home attended respective professional courses. After reaching the age of majority they returned to their biological families, where the living conditions were quite poor. It is notable that these adolescents were never employed. Several cases of early marriage were reported, which were probably caused by the unpreparedness for leading independent lives and the reluctance to return to the biological families[324].

It is remarkable that the majority of beneficiaries possess self-care skills. They help their foster parents in daily chores and assist in cooking and cleaning.

321 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 13

322 Recommendation of the Committee of Ministers of the Council of Europe Rec(2005)5, *Regarding the rights of children living in closed institutions in the member states of the Council of Europe, General principles.*

323 48th Session of the UN Committee on the Rights of the Child, CRC/C/GEO/CO/3, Recommendation 37.

324 Association SOS Children's Villages Georgia, Shengelia Street 24, Chkhorotsku

STANDARD 14 – BENEFICIARY ORIENTED ENVIRONMENT[325]

According to the UN Convention on the Rights of a Child[326] "every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral or social development." State, in its turn, shall provide appropriate conditions for the implementation of this responsibility. Full development of a child requires a normal environment similar to the one in a family.

According to the Child Care Standard 14, the service shall be provided in an environment, which corresponds to the goal of the service and meets the needs of a beneficiary. The service shall be provided in clean and comfortable environment. The physical environment of the service should be similar to the one in a family.

Tsalenjikha small group home[327] has a damaged roof, where the rain water leaks in the living room. During the rain the kitchen wall also leaks. The railings of the second floor stairs are amortized. Small group homes of Lanchkhuti[328] and Village Bajiti[329] do not have electricity and the children have to study by candlelight.

In Batumi small group home[330] humidity causes specific unpleasant odour. Paint on the walls is crumbling and needs to be repaired.

The water taps of the bathrooms of small group homes of Ambrolauri[331], Khoni[332], Zestaponi[333] and Kutaisi need to be changed, water supply and sewage systems need to be repaired, artificial ventilation needs to be installed. In the kitchens of small group homes of Kutaisi[334], Village Bajiti[335] and Khoni[336] the exhaust systems are out of order.

STANDARD 15 – SAFETY AND SANITARY CONDITIONS[337]

According to the Standard 15[338] the beneficiaries shall receive the services in a safe environment, where the sanitary measures are being met; service provider shall keep the service area clean and dispose litter in a closed container placed in a specifically designated area.

In the bathrooms of small group homes the children's toothbrushes are stored in open vessels without any hygienic protection and distinguishing labels. Therefore, it is quite possible that the toothbrushes get mixed, fall on the floor or get contaminated in any other way, which certainly contains health hazards.

It is also noteworthy that most of the garbage bins in the small group homes do not have covers. This refers to the bins both inside and outside of the house. During the monitoring mission, there were several partially filled garbage bins without covers installed at the entrance of Kutaisi small group home[339]. Part of the garbage had been placed by the side of the bins, which is a violation of sanitary rules.

325 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 14
326 UN Convention on the Rights of a Child, Article 27, Part I.
327 Association SOS Children's Villages Georgia, Levan II Dadiani St, Tsalenjikha
328 LEPL "Momavlis Skhivi", Village Lesa, Lanchkhuti
329 Association SOS Children's Villages Georgia, Village Bajiti, Sachkhere
330 Education, Development and Employment Centre of Batumi, 26 Maisi Steet 106, Batumi
331 Association SOS Children's Villages Georgia, Tsereteli Street 8, Ambrolauri
332 Association SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni
333 Association SOS Children's Villages Georgia, Village Kvaliti, Zestaponi
334 Charity and Humanitarian Foundation "Breath Georgia", Kekelidze Street 26, Kutaisi
335 Association SOS Children's Villages Georgia, Village Bajiti, Sachkhere
336 Association SOS Children's Villages Georgia, Ip. Khvichia Street 28, Khoni
337 Technical Regulation about "Child Care Standards" adopted by the Resolution 66 issued by the Government of Georgia on January 15, 2014, Standard 15
338 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards
339 Charity and Humanitarian Foundation "Breath Georgia"; Kekelidze Street 26, Kutaisi

Recommendations to the Ministry of Labour, Health and Social Affairs of Georgia:

- Prior to their employment, the service providers should provide the basic training to the individuals working at small group homes according to the training course agreed with the Ministry of Labour, Health and Social Affairs;
- As per the article (1) of the Child Care Standards (Standard #1 – Information about the services) and Annex #3 of the decree #52/n "about adopting the rules and conditions of placement and withdrawal of a beneficiary in and out of the specialized institution" issued by the Ministry of Labour, Health and Social Affairs of Georgia on 26 February 2010, the proper processing of the documentation should be supervised;
- Ensure the availability of necessary services for small group homes functioning in the regions; the beneficiaries need to be supported with additional resources;
- Social services need to work more actively in terms of improving the economic and social conditions of biological families, in order to improve the quality of contact between the child and his/her biological family and ensure future reintegration;
- Ensure multidisciplinary assessment of child's individual needs, reflecting them in the individual development plan and developing of the indicators of achievement of set targets;
- Introduce the planning of short-term individual activities, based on the urgency of the problem. Develop indicators for measuring the achieved progress;
- Strictly monitor the small group homes in terms of creating and maintaining a reliable environment necessary for the emotional and social development of a child defined by the "Child Care Standards";
- Provide trainings to the employees on the procedures of developing the individual learning plans for the beneficiaries with special educational needs and controlling their achievement;
- Ensure the cooperation between the service providers and educational institutions in order to identify the educational needs of the beneficiaries;
- Provide an additional systematic and qualified tutoring in the necessary disciplines to the beneficiaries and increase their motivation;
- Ensure that the beneficiaries and their foster parents are informed about the rights of a child and the mechanisms of their protection;
- Ensure the timely provision of adequate healthcare to the beneficiary;
- In case of urgent placement in a small group home, the health status of the beneficiary should be assessed immediately in order to eliminate the health risks of other beneficiaries;
- Promote a healthy lifestyle. Increase the role of physical activities and different sports in the daily lives of the beneficiaries of small group homes;
- Fully meet the requirements of disease control. Provide information about contagious diseases to the foster parents and beneficiaries;
- Ensure a safe storage of medical supplies and documentation of handing over the medicines to the small group homes;
- Ensure the development of Psychological and Psychiatric Assistance Standards for the Children

under State Care, implement the psychological assistance based on the beneficiaries' needs by training relevant staff, introducing supervisory mechanisms, providing adequate psychiatric assistance and timely development and initiation of psycho-social rehabilitation programmes;

- Provide regular training to the service providers and beneficiaries on the issues of child's rights and prevention of violence. Develop special programs of psycho-social rehabilitation for the foster parents;
- Pay special attention to the social conditions and prevention of violence towards children during the temporary withdrawal of the beneficiaries to the biological families.

Recommendations to the Social Service Agency of the Ministry Of Labour, Health and Social Affairs of Georgia

- In order to protect confidentiality of conversations, assign a special room for this purpose in every small group home;
- In order to protect confidentiality, develop a consent form for the authorized individuals, which will be signed upon the release of personal information of the beneficiary of a small group home;
- Provide trainings to the employees of small group homes in order to ensure the proper development of individual plans of beneficiary service provision. During the process of designing the mentioned plans the opinions of the beneficiaries and foster parents need to be considered;
- Supervise the elaboration of individual development plans;
- Ensure timely provision of a child's documentation upon the placement of the beneficiary in a small group home, adequate risk assessment and defining of the alternate forms of care considering the true interests of a child;
- Develop specific nutrition standards for small group homes;
- Provide regular trainings to the foster parents on the topics of child's development, food storage, quality control and healthy and balanced diet of a child;
- Introduce appropriate measures for uninterrupted purchase of food products;
- Regularly test the water quality;
- Implement the multidisciplinary management of a complex behaviour of a child and actively involve a psychotherapist or if necessary a psychiatrist in the process;
- Ensure the active and effective involvement of the social workers from the regional centres in the process of providing necessary care to the beneficiaries of small group homes;
- In order to avoid undermining of child care processes and prevent the abuse of child's rights in the case of ineffectiveness of psychological/psychiatric/ pedagogic/social activities, initiate timely discussions about selecting the alternate form of care for the beneficiary and implementation of adequate measures;
- Repair and furnish those small group homes, which do not provide proper living conditions for the children;
- Provide the trainings to the foster parents on disaster risk response;

- Develop the evacuation plan for each small group home, which will be shared with both the foster parents and the beneficiaries;
- Provide small group homes with fire extinguishers; assign a specific area for storing the fire extinguishing supplies;
- Regularly monitor whether the hygienic norms are being followed.

Recommendations to the Education, Development and Employment Centre of Batumi Ensure:

- The improvement of psycho-social environment in the Batumi small group home by actively involving a psychologist and foster parents in the process;
- Training of the foster parents on the issues of child care;
- Active involvement of social services in the processes of child care;

Recommendations to the Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia and the Provider Organizations:

- Systematically involve the beneficiaries in different activities based on their needs, work on improvement of their motivation, aim to acquire funding and transportation;
- While defining the locations of the small group homes consider the needs of the beneficiaries and the existing resources within the local community;
- Clearly define complete procedures for providing feedback and complaints in the documentation of small group homes; inform the beneficiaries about the rules of providing feedback and expressing complaints and record each feedback and complaint according to specific rules;
- Make sure that the beneficiaries of small group homes can exercise their right to provide feedback and complaints by informing them on a regular basis, simplifying the rules, using the anonymous feedback surveys and addressing the emerging problems through interactive discussions.

Recommendation to the Government of Georgia:

- Develop a state system, which will ensure the employment and financial assistance of a minor upon his/her withdrawal from the state care until his/her complete independence; provide qualified information to the beneficiaries about the issues of planning the future and proforientation.

AMNESTY; RELEASING LIFE PRISONERS ON PAROLE

Like in 2013, in the reporting period the Office of the Public Defender received a large number of requests from life prisoners asking for application of the "Amnesty Law" dated 28 December 2012 to them. Some of the cases of non-application of the Amnesty Law were attributable to deliberate actions of various individuals; such cases require adequate reaction by the relevant authorities so that beneficiaries are protected from infringement upon their rights.

Once again, the Public Defender welcomes the adoption of the Amnesty Law as a one-off, temporary and special measure to respond to the public demand for restoration of justice. Based on humanitarian principles, the amnesty was aimed at reducing the number of prisoners and conditional convicts, while paying due consideration to the interests of public safety by maintaining control over criminality and taking appropriate preventive measures.

However, the Public Defender detected flaws in the implementation of the Amnesty Law in the reporting period of 2014, which findings are discussed in this chapter. Some of these shortcoming related to the implementation of the Amnesty Law were discussed in the Public Defender's 2013 Report to the Parliament.[340]

340 2013 Report of the Public Defender to the Parliament, pp. 148-153 [Georgian version]

FAILURE TO APPLY THE LAW OF GEORGIA ON AMNESTY DATED 28 DECEMBER 2012

The Law of Georgia on Amnesty dated 28 December 2012 introduced the obligation to terminate criminal proceedings against individuals who had been accused and/or convicted of commission of "less serious" crimes. In addition, the Amnesty Law of 28 December 2012 prescribed its own period of implementation: 2 months following the entry into force of the Law.[341]

Despite the specific implementation term envisaged by the Amnesty Law of 28 December 2012, the Public Defender became aware of the case non-application of the Amnesty Law to an individual. In order to look into the case in detail, the Public Defender's Office studied both the application lodged with the Public Defender and information it obtained from the Chief Prosecution Office and the Tbilisi City Court.

THE CASE OF CITIZEN S.M.

According to the materials studied by the Public Defender's Office, in 1998, Citizen SM was brought to criminal liability under Article 241(1) of the Criminal Code of Georgia ("violation of traffic safety and transport exploitation rules by persons driving a vehicle, which is any type of automobile, tractor and other self-propelled machines, tram, trolley-bus, motorcycle and other mechanical transport, which caused physical injury to a victim to a less serious degree).

It is important to mention that a motion for scheduling the hearing of SM's criminal case and a request to apply the Amnesty Law of 28 December 2012 to SMwere sent to the Criminal Cases Panel of the Tbilisi City Court in October 2014; this happened only after the Public Defender's Office requested the Chief Prosecution Office on 29 September 2014 to provide information about the case.

By its Letter no. 13/66648 dated 27 October 2014, the Chief Prosecution Office furnished the Public Defender's Office with a copy of a decision adopted by the Chugureti District Court of Tbilisi at a preparatory hearing on 1 July 1998 in the criminal case against SM, an individual charged with a crime under Article 241(1) of the Criminal Code. According to the decision, the interim measure applied to SM – an affidavit to remain in a territory – was replaced with arrest and he was declared wanted. Also, according to the Letter of the Tbilisi City Court no. 1-01336/39246, the Criminal Cases Panel of the Tbilisi City Court has never received the Criminal Case no. 01097323 against defendant SM In other words, on the one hand, we have a copy of a decision adopted by the Chugureti District Court at its preparatory hearing on 1 July 1998, which confirms that

341 Under Article 23(4) of the Law of Georgia on Amnesty dated 28 December 2012, "The amnesty referred to in Articles 1 to 21 (except Article 11) shall be implemented within 2 months after the Law enters into force. The amnesty referred to in Article 11 shall be implemented within 4 months after the Law enters into force."

the Prosecution Office sent the criminal case to the court, which prevents the Chief Prosecution Office from applying the Amnesty Law of 28 December 2012 to SM; but on the other hand, the Criminal Cases Panel of the Tbilisi Court could not find SM's criminal case file in its records – a circumstance that prevents the Tbilisi City Court too from using its power under the Amnesty Law of 28 December 2012.

The Public Defender is of the view that the relevant investigative authorities should open a criminal case due to the loss of SM'scriminal case materials.

According to Article 105(1)(f) of the Criminal Procedure Code, "investigation must cease and criminal prosecution must not be commenced or must be ceased, whichever is appropriate, if an act of amnesty has been issued that releases a person from criminal liability and punishment for the conduct he/she committed." Under Article 12(2) of the Criminal Procedure Code, "a Chief Prosecutor carries out criminal prosecution according to the rules envisaged by this Code". Further, under Article 33(6)(g) of the Code, "a prosecutor may terminate criminal prosecution". Article 166 of the Code stipulates that "commencing and carrying out a criminal prosecution is part of a prosecutorial discretionary power only".

In other words, for SM to benefit from the rights and advantages granted by the Georgian legislation, the Chief Prosecution Office has to take relevant measures under law and terminate a criminal prosecution against him.

A MECHANISM ENVISAGED BY THE AMNESTY LAW OF 28 DECEMBER 2012 FOR RELEASING PERSONS WITH A POLITICAL PRISONER STATUS FROM PUNISHMENT

The Public Defender's Office detected another flaws of general nature in the Amnesty Law of 28 December 2012 while was looking into one of the individual cases during the reporting period. In particular, we noticed a defective mechanism of implementationin regard to convicted persons who have been granted the statuses of persons detained on political motives.

The Amnesty Law of 28 December 2012 prescribes grounds for and rules on releasing defendants from criminal liability and releasing convicted persons from punishment or reducing the punishment imposed. In addition, the Parliament recognized that in Georgia there were *persons detained on political motives* and *persons prosecuted on political motives*. Accordingly, the legislature announced a political amnesty in the same Law.

The statuses of "a person detained on political motives" and "a person prosecuted on political motives" were granted to accused and convicted persons on the basis of a Resolution of the Parliament no. 76-IS dated 5 December 2012 "on persons detained on political motives and persons prosecuted on political motives". Pursuant to the Resolution, the Parliament was to create, in the shortest time possible, mechanisms for releasing the mentioned persons from criminal liability and punishment and/or mechanisms for them to use their right to fair trial.

In the Amnesty Law of 28 December 2012,[342] the Georgian Parliament determined a mechanism for releasing from criminal liability and punishment the persons detained on political motives and persons prosecuted on political motives. Pursuant to the relevant provision, "persons who have been awarded the statuses of persons detained on political motives or persons prosecuted on political motives shall be released from criminal liability and punishment."

Articles 23 and 24 of the Law prescribed rules of implementation of the Law and the implementing authorities differently for persons detained or prosecuted on political motives on the one hand and other accused/convicted persons on the other hand.

In addition, the Amnesty Law of 28 December 2012[343]differentiated between a State body responsible for applying the Law to persons detained on political motives and that responsible for applying the Law to persons prosecuted on political motives:

> *"1. The Chief Prosecution Office shall move for lifting an interim measure imposed upon a person prosecuted on political motives on the basis of this Law before an authorized court or shall terminate criminal prosecution at the accused persons' consent. In relation to convicted persons, it shall address the convicting district (town) court with a request to release a convicted person from punishment."*

342 Law of Georgia on Amnesty, 28 December 2012, Article 22
343 Law of Georgia on Amnesty, 28 December 2012, Article 24.

2. In relation to persons detained on political motives, the Chief Prosecution Office and the Ministry of Corrections and Legal Assistance shall enforce the political amnesty envisaged by Article 22 of this Law within 1 week after the entry into force of this Law. In relation to persons prosecuted on political motives, interim measures or imposed punishment shall be lifted within the same term."

It should be pointed out that, according to the Amnesty Law of 28 December 2012,[344] the amnesty had to be applied equally and proportionally to all the convicted persons (including persons detained on political motives) who were actually serving their sentence, were sentenced conditionally or were on parole, whether or not their punishment was a primary or an additional type of punishment, except for fines and confiscations of property.

Pursuant to the Amnesty Law, State organs responsible for implementation of the Law in relation to persons detained on political motives (convicted persons) were the Chief Prosecution Office and the Ministry of Corrections and Legal Assistance (currently having the title of Ministry of Corrections). The Amnesty Law of 28 December 2012 did not refer to courts of law as State organs responsible for implementation of the Amnesty Law in relation to persons detained (convicted) on political motives. It means that courts would not discuss and decide amnestying such convicts. The Law released such persons only from their imprisonment sentences, while additional punishments such as the deprivation of the right to occupy a position or to carry out an activity continued to be enforced. The Chief Prosecution Office and the Ministry of Corrections did not and could not discuss releasing convicted persons from such punishments because these bodies are not authorized to do so; they cannot lift a punishment (such as the right to occupy a position or to carry out an activity) ordered by a court of law. The Prosecution Office is a body responsible for criminal prosecution and the Ministry of Corrections is authorized to enforce a court-imposed deprivation of liberty.

It should be pointed out that the Amnesty Law of 28 December 2012 envisaged releasing individuals only from fines and confiscation of property. As regards deprivation of the right to occupy a position or to carry out an activity, convicted individuals (including those who were granted the status of persons detained on political motives) should have been released from these punishments, according to Articles 18 and 20 of the Law. However, in reality, persons detained on political motives were not released from deprivation of the right to occupy a position or to carry out an activity imposed as an additional punishment because the Amnesty Law of 28 December 2012 does not prescribe a mechanism for releasing persons detained on political motives from additional punishments (in particular, the Law does not determine rules of consideration and decision-making by courts on this matter). In other words, persons detained on political motives were, in fact, unable to make use of their amnesty rights (the right to be released from additional punishments) under Articles 18 and 20 of the Law

THE CASE OF CITIZEN Z.KH.

The Office of the Public Defender has studied Citizen Z.Kh.'s application thoroughly. According to our findings, in 2010, the Tbilisi City Court convicted Z.Kh. for crimes under Articles 180(3)(b) and 182(3)(b) of the Criminal Code and sentenced him to deprivation of liberty for 17 years, a fine of GEL 50,000 and deprivation of the right to carry out an activity for 3 years. On 13 January 2013, Z.Kh. was released from the Penitentiary Institution no. 16 on the basis of Article 22 of the Law of Georgia on Amnesty dated 28 December 2012 as a person detained on political motives, a status granted under the Resolution of the Parliament no. 76-IS dated 5 December 2012 "on persons detained on political motives and persons prosecuted on political motives".

Z.Kh. was released from serving the imprisonment sentence under the Amnesty Law of 28 December 2012. However, he was not released from the additional punishment of deprivation of the right to carry out an activity; this additional punishment continued to be enforced. By its Letter of 22 July 2013, the Tbilisi City Court informed Citizen Z.Kh. that the Court was unable to discuss this matter and could not make a decision releasing him from criminal liability.

344 Law of Georgia on Amnesty, 28 December 2012, Article 18(10)

RULES OF RELEASING LIFE PRISONERS FROM THEIR SENTENCE OR ALTERING THE LIFE SENTENCE; APPLICATION OF THE AMNESTY LAW OF 28 DECEMBER 2012 TO LIFE PRISONERS

The case law of the European Court of Human Rights suggests that all prisoners, including those serving life sentences, must be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.This follows from the Convention, the very essence of which is respect for human dignity and human freedom.[345]

In *Vinter and Others v. the United Kingdom*, the Court held that if a domestic law does not provide for the possibility of its review, a life sentence cannot measure up to the standards of the European Convention on Human Rights.[346]In the Court's view, it is derivative from the humanity principle and the interest of protecting human dignity that any type of punishment and even a life sentence must strive for rehabilitation of a prisoner. Hence, the Court considered in the quoted case that *a life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence* (provided that his/her rehabilitation process was successful) before he can raise a complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3. The European Court has emphasized that alife prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought.[347]

In other words, the European Convention on Human Rights and its autonomous interpretation mechanism – the case-law of the ECtHR – leaves the margin of appreciation up to the Governments to determine a specific term and stipulates that life prisoners are not obliged to wait for an indefinite number of years. This means the legislature is authorized to determine a threshold and subsequent procedures, which a convicted person may follow to obtain conditional release. In the case of lifetime prisoners, the legislature should establish a time period required for the convicts' resocialization – this would not be regarded a violation of law.

A law of 31 October 2014[348] amended the rules of the Criminal Procedure Code concerning the release of life prisoners from serving their sentence or replacing the remaining sentence with a milder punishment. After the changes, paragraph 7 of Article 72 of the Criminal Procedure Code stipulates:

> *"A convicted person may be released from a lifetime deprivation of liberty if he/she has actually served 20 years of his/her imprisonment sentence and if a local council of the Ministry of Corrections considers that it is no longer necessary for the convicted person to continue serving this sentence."*

345 See*Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III; and V.C. v. Slovakia, no. 18968/07, § 105, ECHR 2011.

346 See *Kafkaris v. Cyprus*, application no. 21906/04, ECHR 2008.

347 See *Vinter and Others v. The United Kongdom*, 09/07/2013. Para: 119-122; See also para: 102-118. Available at <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-122664#{"itemid":["001-122664"]}> [Last Accessed on 12th of March].

348 The Imprisonment Code was amended in the same way, Article 40(6)

Pursuant to paragraph 7 of Article 73:

"A life sentence may be replaced with a community work or limitation of liberty if the convicted person has actually served 15 years of his/her imprisonment sentence and if a local council of the Ministry of Corrections considers that it is no longer necessary for the convicted person to continue serving this sentence."

It should be noted that before the above amendment was made, on 1 August 2014, the Public Defender addressed the Parliament with its proposal no. 04-8/9982 suggesting to alleviate life prisoners conditions and deal with the unfair treatment they had been subjected to by considering the possibility of reducing the minimum term to be served down to 15 years (a threshold that entitles a convicted person to apply for conditional release).

The Public Defender hereby uses this opportunity to welcome the adoption of new Pardon Rules approved by Decree of the President of Georgia no. 120 on 27 March 2014, which reduced the minimum term to be actually served by lifetime prisoners from 25 years to 15 years.

The Public Defender notes with satisfaction that both the President of Georgia and the Georgian Parliament have been acting more intensely for upholding the dignity of, and ensuring proportionality of sentence imposed on, life prisoners. Pursuant to the case-law of the European Court of Human Rights, if a life prisoner changes while serving his/her sentence to the extent that it is no longer justified and legitimate to continue enforcement of the life sentence, there must be a mechanism in place to allow for a review and reduction of the sentence.

The Public Defender takes the view that such a mechanism is particularly important in Georgia because the large-scale amnesty introduced by the Amnesty Law of 28 December 2012 did not apply to life prisoners. It is clear, however, that the shortcomings and injustices of the criminal justice and penitentiary systems affected these individuals at least to the same degree as other prisoners serving their termed imprisonment sentences in the same time period.

The Public Defender wishes to emphasize, once again, that the Amnesty Law of 28 December 2012 did not affect the rights and conditions of life prisoners; in particular, although the Law formally applied to such category of prisoners, it was never actually implemented in relation to them. The Public Defender takes the view that non-enforcement of the Amnesty Law infringed upon the lawful interests of life prisoners.

The Public Defender believes that, because his proposal is to make life prisoners eligible for applying for release, which does not necessarily mean that they will be released unconditionally, reduction of the review period does not constitute a threat to the society. On the contrary, granting these individuals the right to apply for release will serve as an important incentive for them to change and improve, while making it also possible to mend the systemic breaches and injustices they had to endure.

We would like to point out here as well that, in submitting the above-mentioned proposal to the Parliament, the Public Defender relied on not only a research paper prepared by the Office of the Public Defender independently, but also an explanatory note of the legislative amendments referred to above. Both of these documents clearly suggest that, developed democracies of the Council of Europe allow convicted individuals to request review of their sentence after having served 15 years of imprisonment.

Recommendation to the Prosecution Office:

- Terminate the criminal proceedings against Citizen S.M. on the basis of Article 105(1)(f) of the Georgian Criminal Procedure Code.

FAILURE TO COMPLY WITH A LAWFUL DEMAND OF THE PUBLIC DEFENDER

According to the Constitution of Georgia,[349] the Public Defender of Georgia oversees the protection of human rights and freedoms on the territory of Georgia.

> *"For the purpose of securing state guarantees for the protection of human rights and freedoms, the Public Defender shall oversee the protection of and respect for human rights and freedoms ensured by the State to every person within the territory of Georgia and subordinated to Georgia's jurisdiction, by Georgia's central and local authorities, public institutions and officials, regardless of race, color, sex, language, religion, political or other opinion, national, ethnic and social belonging, origin, property status, rank, place of residence or other status."*[350]

The Georgian Constitution and the Organic Law have vested the Public Defender with levers to perform its tasks. Under the Organic Law on the Public Defender,[351] when conducting an inspection, the Public Defender shall have unimpeded access to the premises of any central and local government body, enterprise, organization and institution, including military units, remand facilities and places of deprivation of liberty, detention facilities and other places for restriction of liberty. It should also be noted that Georgian supreme law would be breached if the Public Defender (or its trustee) is hindered from entering any State body at any time and in any circumstance (including war or emergency)[352] or if the Public Defender (or its trustee) is subjected to limitations when meeting and talking to individuals whose liberty is restricted.

The Organic Law on Public Defender prescribes response mechanisms the Public Defender may resort to in order to effectively perform its functions. According to Article 18 of the Organic Law,[353] when conducting an inspection with a view to looking into a human rights violation, a Public Defender is entitled to demand and receive, immediately or not later than within 10 days, all the information, documents and materials required for inspection from public institutions and officials; demand and receive a written explanation on issues under its consideration from any official, civil servant and persons equated to them; use State and/or non-State organizations to conduct expert researches and/or to prepare reports; invite specialists/experts for the provision of consultative services and view the materials of criminal, civil and administrative cases in which the courts have rendered final decisions.

For the purpose of performing these functions, the Organic Law on the Public Defender has equipped the Public Defender with relevant legal guarantees. In particular, all central and local government bodies,

349 The Constitution of Georgia, Article 43(1)
350 The Organic Law of Georgia on the Public Defender, Article 3(1)
351 The Organic Law of Georgia on the Public Defender, Article 18(a)
352 Pursuant to Article 11 of the Organic Law on the Public Defender, declaring war or emergency shall not cause ceasing by the Public Defender of its activities or limiting the rights of the Public Defender.
353 The Organic Law of Georgia on the Public Defender, Article 18, paras.b, c, d and e.

officials and legal entities have the legal obligation to assist the Public Defender by all means, furnish materials, documents and other information the Public Defender requires for the performance of its duties.[354]

Successful performance of its functions by the Public Defender greatly depends on the performance of their obligations by persons who have the duty to provide the Public Defender with materials, documents and other information required for the Public Defender to examine a case.

It is for this reason that, in order for the Public Defender to perform its functions without impediment, the applicable legislation establishes a term in which the central and local authorities, officials and entities must comply with a Public Defender's lawful demand:

> *"The Public Defender must be furnished with the required material, document or other information immediately after receipt of a relevant request except when the material, document or other information has been requested in writing, in which case they must be provided to the Public Defender in 10 days."*[355]

Furthermore,

> *"Within a month after receiving the Public Defender's recommendations or proposals, a central or local government body or official shall examine them and inform the Public Defender in writing about the results of such examination."*[356]

Under Article 26(1) of the Organic Law on the Public Defender:

> *"An Office of the Public Defender is established to assist the Public Defender in carrying out its activities. The Public Defender enacts a statute governing the structure, rules of operation and organization of the Office. The Office acts on behalf of and within the authority determined by the Public Defender."*

Under Article 27(1) of the Organic Law,

> *"A deputy Public Defender and members of the Office of the Public Defender as well as members of the Special Preventive Group shall carry out the powers referred to in Article 18 and 19 of this Law, in full or in part, on the basis of a special power of attorney issued by the Public Defender."*

The importance of the Public Defender being able to perform its functions without impediment s highlighted in Article 43(2) of the Georgian Constitution, which prohibits making obstacles in the way of carry out the activities of the Public Defender. Article 173[4] of the Code of Administrative Offenses considers incompliance with the Public Defender's lawful demand an administrative wrongdoing.

To summarize, hindering the performance of its constitutional functions by the Public Defender (or his trustees) is inadmissible. However, there were a number occasions in 2014 when the Public Defender's trustees were prevented from carrying out their official duties.

354 The Organic Law of Georgia on the Public Defender, Article 23(1)
355 The Organic Law of Georgia on the Public Defender, Article 23(3)
356 The Organic Law of Georgia on the Public Defender, Article 24

ADMINISTRATIVE OFFENSE CASES INVOLVING INCOMPLIANCE WITH A PUBLIC DEFENDER'S LAWFUL DEMAND

In the reporting period of 2014, the Public Defender employed legal mechanisms under law to react to the occurrences of incompliance with the Public Defender's lawful demands. In particular, in the period between the second half and December 2014 inclusive, the Office of the Public Defender opened administrative offense proceedings in 16 cases. The Office forwarded the administrative offense materials to courts for decision-making in 5 cases, in which the courts found the following public officials to have committed the impugned administrative offensesand imposed a fine (GEL 800,00) as a measure of punishment: Chairman of the Public Law Entity "National Agency of State Property" of the Ministry of Economy and Sustainable Development,[357]Artistic Director of the Z. Paliashvili Tbilisi Professional State Theater of Opera and Ballet,[358] and Governor of Khulo Municipality.[359] The court found the Governor of Kareli Municipality to have committed the mentioned administrative wrongdoing and imposed a verbal admonishment.[360] Another case is pending before a court.

357 Resolution of the Administrative Cases Panel of the Tbilisi City Court of 6 November 2014 (Case no. 4/7068-14).
358 Resolution of the Administrative Cases Panel of the Tbilisi City Court of 9 September 2014 (Case no. 4/5280-14).
359 Resolution of the Khelvachauri District Court of 26 November 2014 (Case no. 820510014655529(N4-559).
360 Resolution of the Khashuri District Court of 18 September 2014 (Case no. 4-350-2014)

MEMBERS OF THE ANTI-CORRUPTION DEPARTMENT AND THE CENTER FOR SPECIAL AND EMERGENCY MEASURES OF THE INTERIOR MINISTRY HINDERING THE WORK OF THE PUBLIC DEFENDER'S TRUSTEES

On 15 July 2014, at about 16:00 hrs, the Public Defender's trustees arrived at the administrative building of the Anti-Corruption Agency (Department) of the Interior Ministry (the so-called "module building"). They were planning to meet Citizen G.T. who was inside the building. GT's lawyer M.Ch. stated that he was not allowed to meet with GT, his client, in the Interior Ministry's "module building". The trustees of the Public Defender showed their powers of attorney to the representatives of the Interior Ministry's Center for Special and Emergency Measures. They explained they had the right to enter the premises of any State institution without obstacles and demanded that they be allowed to enter the "module building". The representatives of the Interior Ministry's Center for Special and Emergency Measures did not ensure the PD's trustees with immediate access to the premises ("the module building") of the Interior Ministry (under the pretext that the PD's trustees did not have passes and no entry was possible without passes). At about 17:00 hrs – which means a delay for an entire hour – was it made possible for the PD's trustees to enter the building.

At about 17:10hrs the Public Defender's trustees met with Kh.P., Director and U.L., Deputy Director of the Anti-Corruption Agency (Department) of the Interior Ministry who confirmed that GT was inside the building. According to their words, G.T. was not detained; he was under interrogation as a witness and once this procedure would be over, the Public Defender's trustees would be able meet him. Later, at about 21:20hrs, the Public Defender's trustees again demanded a meeting with Citizen GT. Director of the Anti-Corruption Agency stated GT's interrogation was not over yet. On 16 July 2014, at about 00:10hrs, at a meeting with the Public Defender's trustees, Kh.P, Director of the Agency and U.L., Deputy Director said GT's interrogation was over but another investigative measure – examination of the documents recovered – commenced.

It was only on 16 July 2014 at 00:25hrs that the Public Defender's trustees were allowed to meet with Citizen GT as a witness in the so-called "module building" of the Anti-Corruption Agency (Department). GT had been kept at the "module building" between 15 July 2014 07:20hrs and 16 July 2014 00:54hrs.[361] GT's interrogation started on 15 July 2014 at 11:25hrs and ended at 20:20hrs the same day. GT was allowed to take a rest from 15:25hrs until 16:25hrs. After the interrogation was over, the investigative authorities conducted examination of extracted documents from 15 July 2014 21:00hrs until16 July 2014 00:50hrs, in which GT participated as well.[362]

Although no investigative measures were being conducted with GT's involvement in the interval between the end of interrogation (20:20 hrs, 15 July 2014) and the start of examination of documents (21:00hrs), members of the Interior Ministry's Anti-Corruption Agency did not allow the Public Defender's trustees who were inside the Agency's premises at that time ("the module building") to meet with Citizen GT, under the pretext that GT was under interrogation.

361 Letter from the Ministry of Interior dated 6 August 2014
362 Letter from the Chief Prosecution Office dated 28 July 2014

The Public Defender examined this case and, on 21 October 2014, addressed the Interior Minister with a recommendation to open disciplinary proceedings against the above-mentioned representatives of the Ministry. By its Letter,[363] the Interior Minister informed the Public Defender that the Ministry's Inspectorate-General commenced an internal examination into the above-mentioned event. Further, by its Letter of 4 February 2015, the Interior Ministry informed the Public Defender that, as a result of an internal examination carried out by the Inspectorate-General, U.L., Deputy Director of the Anti-Corruption Agency, and T.G., Head of Shift, 1st Sub-unit, 2nd Unit, 3rd Division, Department for Guarding Strategic Objects, Center for Special and Emergency Measures, were imposed admonishment as a disciplinary punishment for the disciplinary misconduct under Article 2(2)(b) of the Disciplinary Statute of the Ministry of Interior Servants (negligent attitude to official duties).

RECOMMENDATIONS:

To the central and local government bodies, public institutions, officials and legal entities:

- Comply with lawful demands of the Public Defender in accordance with the rules prescribed by the Organic Law on the Public Defender so that the Public Defender is able to function without impediment

To the Interior Ministry:

- Raise the knowledge of the Interior Ministry's employees of the rights and powers of the Public Defender of Georgia
- Instruct all units/employees of the Ministry of Interior to allow the Public Defender's trustees to perform their functions without impediment; eliminate any obstacles in the way of performing their functions by the Public Defender's trustees immediately
- Take legal measures to deal with each and every occasion of hindering the work of the Public Defender (or his trustees)

363 Letter from the Inspectorate-General of the Ministry of Interior dated 9 November 2014

THE RIGHT TO LIFE

The right to life is a fundamental right, which implies that every human being has an inherent right to live. According to the standards enshrined in the European Convention on Human Rights and established by the case-law of the European Court of Human Rights, the State has not only a negative obligation (the obligation not to infringe upon a person's life) but also a positive obligation (the obligation to protect life from infringement). The positive obligation involves a procedural duty too. If someone's life is encroached on, the State must conduct effective investigation to detect the perpetrators and carry out justice.

Protection of the right to life of those detained in closed institutions is especially important. The State is responsible for protecting the right to life of people in remand facilities and places of deprivation of liberty (accused and convicted persons) and for conducting effective investigation into cases concerning violation of this right.

The present chapter of the Public Defender's report discusses the cases that raise questions about the loss of lives by individuals and/or in which the Office of the Public Defender revealed potential liability ofthe penitentiary staff. We should point out as well that the cases the Public Defender reported on and issued recommendations in its 2013 Report are still pending.

In its 2012[364] and 2013[365] Reports to the Parliament of Georgia, the Public Defender addressed in detail the violations of human rights, including the right to life, and crimes possibly committed by Special Forces in the Lopota Ravine, near Village Lapankuri, on 28 August 2012 and the defects in the investigation process. In addition, in 2014, the Civil Council at the Public Defender's Office prepared its report about the same SWAT operation of 28 August 2012.[366]

Despite the Public Defender's numerous statements about possible violation of human rights and relevant recommendationsin regard to the above-mentioned event, these recommendations remain unfulfilled.

The Public Defender takes the view that, the following measures ought to be taken for an effective, objective and independent investigation into the Lapankuri SWAT operation case to be made possible: an investigation to look into the legality and proportionality of use of lethal force by the law enforcement agents should be launched; the circumstances of planning and implementing of the SWAT operation should be investigated; the deceased individuals' family members should be granted the statuses of victims' legal successors and their effective participation in the investigation process should be ensured.

364 2012 Report of the Public Defender to the Parliament, pp. 408-413

365 2013 Report of the Public Defender to the Parliament, pp. 164-167

366 See the website of the Public Defender's Office at http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/saqartvelos-saxalxo-damcveltan-sheqmnili-sazogadoebrivi-sabchos-angarishi-2012-wlis-28-agvistos-sofel-lafanyurtan-lopotas-xeobashi-chatarebuli-specialuri-operaciis-shesaxeb.page

On 12 February 2015, the Chief Prosecution Office presented its report on the fulfillment of Parliament's recommendations to the Chief Prosecution Office under the Resolution of the Parliament on the 2013 Parliamentary Report of the Public Defender as of 1 August 2014.

Among other issues, the Chief Prosecution Office's report tackles investigation of crimes committed during the 2008 armed conflict. Although the Chief Prosecution Office reports the carrying out of large-scale complex investigative measures in these cases, the investigation into the disappearance of individuals mentioned in the Public Defender's 2013 Report to the Parliament has not been completed and no final decisions have been made.

* * *

Article 2 (the right to life), Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 13 (availability of an effective remedy) of the European Convention on the Protection of Human Rights and Fundamental Freedoms makes it incumbent upon the States to conduct an effective investigation into allegedbreaches of the rights protected by these provisions.

In a number of its judgments, including in the cases against Georgia, the European Court of Human Rights has repeatedly emphasized the importance of institutional independence of investigation, finding the investigation by a government entity into an allegation of commission of crime by its own employees a violation of the independence requirement – one of the constituent elements of effective investigation.

In this context, we would like to emphasize the stance of the European Court of Human Rights expressed in one of the most important recent cases; in particular, in its judgment in *Enukidze and Girgvliani v. Georgia,* the Court stated:

> *"For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence. The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility."*[367]

In *Tsintsabadze v. Georgia*, the European Court of Human Rights stated: "All the main investigative measures were conducted by the Western Georgian investigation department of the very same ministry, and that department's findings were then straightforwardly endorsed by the public prosecutor, without any additional inquiries of his own, as the basis for dismissing the case […] That institutional connection between the investigators of and those implicated in the incident, in the Court's view, raises legitimate doubts as to the independence of the investigation conducted."[368]

Attention has to be heeded to measures the State is taking to protect prisoners' right to healthcare as well as to the quality of medical services (effectiveness, adequacy) and concrete outcome of healthcare services provided to each convicted or accused person. The health of individuals kept in custody must be adequately protected. For this purpose, qualified medical tests should be made available and appropriate medications should be supplied.

Prison healthcare must include at least the following:

- Access to a doctor
- Equal healthcare services

367 *Enukidze and Girgvliani v. Georgia*, The European Court of Human Rights, 2011
368 *Tsintsabadze v. Georgia*, The European Court of Human Rights, 2011

- Confidentiality
- Preventive healthcare
- Occupational independence
- Professional competence
- Regular consultations with general practitioners and specialized physicians
- Outpatient treatment under monitoring
- Dental services
- Infirmary
- Access to full medical services at a civilian clinic or prison hospital
- Medical intervention in emergency cases

Prison healthcare includes not only medical treatment but also complete and systematic documenting practices.

The European Court of Human Rights has held that the State is responsible for ensuring proper healthcare services to persons deprived of their liberty, including psychiatric assistance.

In a case against Bulgaria, the European Court of Human Rights found violation of the right to life because belated medical treatment served as a major reason of the person's death.[369] In *Keenan v. UK,* in which a person with mental health problems and a record of inflicting self-injuries ended his life by killing himself, the European Court assessed whether the actions of responsible persons and the treatment given were adequate. The Court discussed the quality of psychiatric treatment provided to him while in custody and whether the psychiatric observation provided was capable of avoiding the actual outcome. In the judgment, the European Court stated that, against the background that a person is confirmed to have mental health problems, even if he is inflicting injuries to self and even if he is malingering, the Court will assess whether the prison administration took all the reasonable measures to evaluate a threat posed by the person to himself.[370] In the same case, the European Court found that the healthcare services provided, which involved daily observation by a doctor and taking of medications as well as visual observation over the patient, were not adequate and contrary to Article 3 of the European Convention.[371]

We would like to recall a report of the Committee for the Prevention of Torture dated 25 October 2007, which describes the situation in the Georgian penitentiary institutions and proposes recommendations. One of the matters discussed in the report is that, on admission to penitentiary institutions, prisoners were not being provided with complete medical examination and relevant treatment. Doctors were examining prisoners only if they had special complaints or it was necessary to treat the prisoner. The Government tried to justify such practice by insufficient number of medical staff. The Committee recommended the Government to take steps to ensure that a healthcare staff member sees all newly arrived prisoners within 24 hours of their arrival and that medical examination on admission is comprehensive, including diagnostic information.

What also matters in the context of to the right to life, is the standard of protection of a prisoner's security. It is incumbent on prison administration to protect the safety of prisoners.

Article 69 of a Statute for Places of Deprivation of Liberty approved by Annex 2 to the Order of the Minister of Corrections no. 97 dated 30 May 2011 ("on approving statutes for remand facilities, places of deprivation of liberty, mixed-type institutions for remand and convicted prisoners, the Treatment Institution for Accused and

369 *Anguelovav.Bulgaria,applicationno.38361/97,13June2002,paras.125-130).*
370 *Keenanv. UK*, applicationno.27229, Judgment of 3 April 2001, paras.159–172
371 *Keenanv. UK*, applicationno.27229, Judgment of 3 April 2001, paras.179-186

Convicted Persons and the Center for Treatment of Tuberculosis and Rehabilitation") reads:

> "1. Where a convicted person's personal security is threatened and the source of the threat is other convicted persons or other persons, he/she may address any official of the institution, with an oral or written application. The administration must take measures to protect the personal security of the applicant.
>
> 2. If a threat referred to in paragraph 1 exists, an institution director will, based on such an application or at his/her own initiative, decide to either move the convicted person to a safe place or to take other measures to ensure the convicted person is secure.
>
> 3. An institution director may move a convicted person to a secure place for not more than 30 days; in urgent cases, a deputy director acting at the director's authorization may move a convicted person to a secure place until the time the director arrives but for not more than 24 hours.
>
> 4. If necessary, the duration of stay at a secure place may be extended for another 30 days.
>
> 5. If the security measures do not yield relevant results, an institution director will propose to the Department that the convicted person or the persons who pose threat to the convicted person be moved to another institution according to the established rules. Expiration of this 60-day term is not required for lodging the previously mentioned proposal if the relevant circumstances exist."

As it follows from the above-quoted paragraph 1, the prison administration must take measures to ensure an applicant's personal security. Under paragraph 5, if the security measures taken by the administration do not entail a desired result, a prison director will recommend the Department to move either the convicted person in question or the persons who are the source of threat to the person of convict to another institution, according to the established rules.

To summarize the above-cited provisions, an institution's administration, in general and an institution's director in particular, is obliged to ensure a prisoner's security and to take effective measures to that end.

Article 54 of the Georgian Code of Imprisonment determines rules of subjecting accused and convicted persons to visual and/or electronic surveillance and control. Under paragraph 1 of this Article:

> *"Where a probable cause exists, the administration may, in the interests of ensuring security of accused or convicted persons or other persons or deriving from other lawful interests such as prevention of suicide, self-harm, violence against an accused or convicted person or other persons, property damage, other crime or wrongdoing, establish visual and/or electronic surveillance and control. Electronic surveillance is carried out by means of audio-video equipment and/or other technical equipment of control. The administration is authorized to record the electronic surveillance or control and the information obtained as a result of these processes."*

Further, paragraph 4 states:

> *"A decision to establish visual and/or electronic surveillance and control may be taken if other means would be ineffective. The decision must be reasoned and be proportionate to the goal."*

The State is fully responsible for protecting the security of prisoners in the penitentiary system. A prison administration is obligated not only to refrain from violating lawful interests of accused and convicted persons (a negative obligation), but to take measure to protect their rights (a positive obligation).

On 17 March 2015, the Chief Prosecution Office informed the Office of the Public Defender that 19 (nineteen) deaths of prisoners were registered in the penitentiary institutions during 2014.

According to the data furnished by the Prosecution Office, only in 1 out of the 19 cases were charges brought against several individuals; the case has been forwarded to a court for examination. In another case,

investigation was terminated due absence of criminal conduct envisaged by the Criminal Code. In 17 other cases, investigation is ongoing and no criminal prosecutions have commenced yet.

It is worth noting that in only one case has a deceased prisoner's family member been granted the status of a victim's legal successor. Also, only in one out of the nineteen cases was the conduct legally qualified under Article 108 of the Criminal Code (deliberate murder); 11 cases have been qualified under Article 116 of the Criminal Code (depriving a person of his/her life due to recklessness) and 7 cases have been qualified under Article 115 (driving a person to suicide).

For better illustration, we are hereby describing some of the cases the Office of the Public Defender took on to examine, in which the right to life may have been violated.

THE CASE CONCERNING PRISONER A.CH.

On 25 November 2014, the Public Defender's trustees were visiting the penitentiary institution no. 15 to inquire into the death of convicted prisoner A.Ch. in the institution's so-called quarantine division.

As we found out from the documents and information the penitentiary institution no. 15 provided to the Office of the Public Defender, on 25 November 2014, at 20:15hrs, the institution's legal regime inspector found convicted prisoner A.Ch. hanging on iron bars with a bedsheet, as the inspector was on his evening security patrol mission. A doctor was called up who recorded death at 20:40hrs.

The prisoner's death anamnesis states that the prisoner was in an unconscious condition in the cell; in the neck, more on the right side, he had a constriction mark; no pulse was sensible on carotid arteries, heartbeat was not audible. Heart and lung resuscitation measures were conducted but, despite the medical assistance rendered, the prisoner could not be revived. Biological death was recorded at 20:40hrs. Probable diagnosis: asphyxia.

According to the materials examined, convicted prisoner A.Ch. was moved from the penitentiary institution no. 8 to the penitentiary institution no. 15 on 16 October 2014. He was accommodated at the so-called quarantine division. On 24 October 2014, he was sent to a secure place (a solitary confinement cell) for 30 days, on the basis of an order of the institution director no. 614. The director's order, on its turn, was issued based on paragraphs 1 to 3 of Article 69 of the Statute for places of deprivation of liberty approved by Order of the Minister of Corrections no. 97. By its order no. 685 dated 24 November 2014, the institution director extended the placement in the solitary confinement cell for another 30 days.

Protocols (minutes) drafted by the legal regime unit of the penitentiary institution no. 15, which have been submitted to the Office of the Public Defender at its request, confirm that prisoner A.Ch. was refusing to use his right to a walk.

On 26 November 2014, the Public Defender's trustees talked to DN, Head of the Security Unit of the penitentiary institution no. 15 and VM, Inspector from the same unit. They confirmed that prisoner A.Ch. had a conflict with other prisoners and was under a threat. However, they knew this only from the words of deceased A.Ch. himself.

Consideration should be given to a letter from the director of the penitentiary institution no. 15 dated 26 November 2014. According to the letter, the institution has a closed-type section with three cells, each designed for one prisoner, equipped with the technical means for visual and electronic surveillance. Since 22 October 2014, no one has been accommodated in those cells.

The letter further explains that, between 22 October and 25 November, prisoner A.Ch. was accommodated separately, in cell no. 3 designed for one prisoner, which is not equipped with visual and electronic control equipment.

It should also be pointedout that, on 24 November 2014, a day before his death, prisoner A.Ch. wrote a letter to the chairperson of a non-governmental organization. In his letter, the prisoner was asking for a meeting in a shortest time possible as he wanted to discuss his health and security issues. Head of the Social Unit of the penitentiary institution no. 15 asserts that prisoner A.Ch. has not produced any other letter or application except the mentioned one.

According to the prisoner's medical file entries, A.Ch.was provided with a psychiatrist's consultation on 27 June 2014. The psychiatrist's finding was that A.Ch. was suffering from hallucinatory depression syndrome and suicidal thoughts. The psychiatrist recommended the prisoner's inclusion into the suicide prevention program. The medical consultation file drafted by the psychiatrist on 27 June 2014 also mentions that the prisoner had been inflicting self-injuries since his age of 14. On 28 July 2014, A.Ch.was provided with another consultation by a psychiatrist and was diagnosed with unstable personality disorder. This time, the prisoner was not expressing suicidal thoughts as actively as before. He was prescribed drugs for treatment.

The medical files include a timetable showing the issuance of medications to the prisoner until 15 October 2014. The prisoner's outpatient medical file does not mention anything about A.Ch.'s inclusion in the suicide prevention program.

On 26 November 2014, the Public Defender's trustees drafted a record (protocol) of their interview with M.B., Chief Doctor at the penitentiary institution no. 15. According to the Chief Doctor, prisoner A.Ch. was not provided with any medication during his stay at the institution no. 15. In addition, the Chief Doctor stated, while in the institution no. 15, A.Ch. had not expressed any complaints and had never addressed the healthcare personnel for help. In other words, since the day of his admission to the penitentiary institution no. 15, prisoner A.Ch.was not provided with any medical examination or consultation. The Chief Doctor further mentioned that the penitentiary institution no. 15 does not run a suicide prevention program.

As it follows from the above-described circumstances, which the Public Defender's Office has zealously inquired into, convicted prisoner A.Ch. was not provided with medical examination and adequate/effective protection of his health at the institution no. 15 and the institution's administration did not take sufficient measures to protect his security. On this basis, on 12 December 2014, the Public Defender sent a recommendation to the Chief Prosecutor to open investigation into possible commission of a criminal offense by the staff of the institution no. 15.

In the same recommendation, the Public Defender requested that the Chief Prosecution Office takes the lead in conducting this investigation in order to measure up to the principle of institutional independence.

By its letter no. 13/80822 dated 27 December 2014, the Chief Prosecution Office informed the Public Defender that the Chief Prosecution Office reviewed the Public Defender's recommendation deciding, on 26 December 2014, to take away the criminal case concerning the possible commission of a crime under Article 115 of the Criminal Code from the Investigative Department of the Ministry of Corrections and to assign the investigation of the case to the Investigative Unit of the ShidaKartli and Mtskheta-Mtianeti Regional Prosecution Office.

According to the same letter from the Prosecution Office, the investigation in ongoing under Article 342[1](2) of the Criminal Code of Georgia – alleged violation of rules of service by some of the staff members of the penitentiary institution no. 15.

THE CASE CONCERNING PRISONER E.Q.

The Public Defender's Office studied the case of death of EQ, convicted prisoner. Based on the documents it obtained, the Office ascertained that prisoner EQ was transferred from the penitentiary institution no. 17

to the institution no. 18 (which is a hospital) with the diagnosis "chronic calculous cholecystitis coupled with post-surgical ventral hernia".

According to the medical documents furnished to the Public Defender's Office, the prisoner had undergone a surgery on 6 November 2014 (the surgery started at 12:10 hrs).

The prisoner's death epicrisis suggests that, as a result of the surgery, his gallbladder was removed andsanitation of the abdominal cavity and drainage was performed. The patient was bleeding from 16:30hrs till 16:45hrs. The total weight of discharge amounted to 300ml, for which reason an urgent surgery was decided.

After the surgery (20:00hrs), the patient was transferred to an intensive care unit.

At 21:00hrs, cardiac standstill developed suddenly. Despite medical measures taken, the prisoner's biological death occurred at 21:40hrs.

By its letter of 17 March 2015, the Chief Prosecution Office informed the Office of the Public Defender that, on 6 November 2014, investigation was commenced into an alleged deprivation of EQ's life by recklessness (a crime under Article 16, par. 1 of the Criminal Code) at the institution no. 18 of the Penitentiary Department.

According to the same letter from the Prosecution Office, a series of investigative measures had been conducted. Forensic medical examination and chemo-toxicology examination were ordered. However, no one has been found an accused or a victim yet.

THE CASE CONCERNING PRISONER J.I.

The Office of the Public Defender examined the case of alleged commission of suicide on 2 December 2014 by JI, a convicted prisoner, at the institution no. 18 of the Penitentiary Department.

Analysis of the materials collected by the Office of the Public Defender suggests that Convicted Prisoner J.I. was admitted to the Penitentiary Department's institution no. 18 on 1 December 2014 at about 20:00hrs with the diagnosis "depression, suicidal thoughts". The prisoner was accommodatedat the institution's psychiatric ward.

According to a medical certificate drafted jointly by a psychiatrist from the institution no. 18 and the head of the institution's psychiatric ward on 3 December 2014, the patient looked relatively orderly and well oriented on admission. His facial expression displayed concern, was hesitant to communicate, complained of irritation, trouble, anxiety, gloominess, difficulty sleeping, noise in ears and head, constant headaches, unpleasant thoughts, had swallowed nail clippers and a toothbrush; demanded a transfer to a psychiatric institution.

A comprehensive analysis of the medical documentation showed that convicted prisoner JI was susceptible to self-harm and suicide. It turned out that he had been treated several times at a psychiatric hospital.

According to the case materials, the prisoner was suffering from unstable personality disorder F60.3; depressive condition; psychic and behavioral disorders caused by consumption of different substances simultaneously or of other psychiatric substances F19.

On 3 December 2014 the Public Defender's trustees talked to TM, head of the psychiatric ward, Institution no. 18 of the Penitentiary Department. TM stated that JI was placed into the psychiatric ward immediately upon admission to the institution on 1 December 2014. The patient was involved in a suicide prevention program (since January 2014) but he was not accommodated in such a room, since the rooms equipped with surveillance equipment were full at that time.

Based on a the Public Defender's trustees' written request, Director of the Penitentiary Department's institution no. 18 informed the Office of the Public Defender that the psychiatric ward of the institution no. 18 had five rooms equipped with surveillance cameras. Two of these rooms were vacant on 2 December 2014 (one of these two rooms was vacated at 12:40hrs on 2 December 2014).

At 14:35hrs, 2 December 2014, the patient killed himself by hanging.

By its letter of 17 March 2015, the Chief Prosecution Office informed the Office of the Public Defender that, on 2 December 2014, investigation into the allegation of "driving JI to a suicide" (a crime under Article 115 of the Criminal Code of Georgia) in the institution no. 18 was commenced.

According to the same letter from the Prosecution Office, a series of investigative measures have been conducted. A forensic medical examination was ordered. However, no one has been found an accused or a victim's legal successor yet.

THE CASE CONCERNING CITIZEN SH.T.

On 24 March 2014, Teleti Division, Gardabani District Department, Interior Ministry, opened an investigation into an allegation of driving Citizen Sh.T. to suicide, a crime under Article 115 of the Criminal Code of Georgia.

On 27 March 2014 the case was transferred to the Inspectorate-General of the Chief Prosecution Office for investigation.

It has been ascertained by the investigation[372] that on 23 March 2014 that Sh.T.'s dead body was found at his own residential home in Village Tsalaskuri, Gardabani District.

According to the case materials furnished to the Office of the Public Defender, Sh.T. was interrogated about the so-call Navtlugi SWAT operation at the Tbilisi Prosecution Office on 24 February 2014, in the presence of this lawyers EB and VT. The same day, at his own request and based on a prosecutor's resolution, Sh.T. was included in a special protection program.

It follows from the case materials, that on 25 February 2014 Sh.T. arrived at home in Village Tsalaskuri,Gardabani District. Then he disappeared. Later, on 18 March 2014, police officers found Sh.T. in Tbilisi, at a nightclub located in the territory of the Lilo Fair. The same day, on 18 March 2014, Sh.T. was interrogated again as a witness by the Tbilisi Prosecution Office concerning the so-called Navtlugi SWAT operation.

It is ascertained as well that the Inspectorate-General of the Chief Prosecution Office was conducting an internal inquiry into the disappearance of Sh.T. Within the framework of this internal inquiry, Sh.T. was requested to provide explanations on 18 March 2014. During the interview, he stated he had not been subjected to any physical or mental pressure, violence or threat neither on 24 February 2014 nor on 18 March 2014, at the Tbilisi Prosecution Office and that his statements about the facts were all voluntary. The Chief Prosecution Office also published a video recording of Sh.T.'s interrogation.[373] The Public Defender had the chance of watching the video footage that showed the process how Sh.T. entered an interrogation room and was interrogated.

That said, however, after the death of Citizen Sh.T., his family members and relatives spread information that Sh.T. was pressured and menaced by law enforcement officials with a view to obtaining incriminating evidence against law enforcement agents who participated in the so-called Navtlugi SWAT operation, including against D.S.

372 The Office of the Public Defender received the materials of the mentioned criminal case by a letter from the Inspectorate-General of the Chief Prosecution Office dated 29 May 2014

373 http://pog.gov.ge/geo/news?info_id=462

Account should also be taken of the chemo-toxicology, forensic medical and histology reports,[374] which provided the following description of Sh.T.'s corpse: excoriations on the left forearm, both knee joints, waist, ankle-shin joint and the first finger of the right hand; the injuries are caused by some solid and blunt item, while the person was alive. The injuries would qualify as minor injuries if the examination was carried out on an alive person. The report further says that the bruises occurred in the period immediately before death. In particular, the excoriation on the first finger of the right hand is 6-7 days old and all other bruises are 1-2 days old.

Although the forensic report excludes any possible connection between these injuries and the actual outcome (death), the State is under the obligation to provide credible answers to all the questions in Sh.T.'s case be conducting an effective investigation.

RECOMMENDATIONS:

To the Chief Prosecution Office, Ministry of Internal Affairs and the Ministry of Corrections

- Conduct an independent, impartial, prompt and effective investigation into all of the cases of alleged violation of the right to life; the State's obligation to uphold the principle of institutional independence of investigation is particularly relevant if the violation of the right to life occurred in a situation under the State's effective control.

To the Minister of Internal Affairs and the Chief Prosecutor

- The Chief Prosecution Office to take charge for investigating the cases of individuals deceased as a result of the SWAT operation in the Lopota Ravine on 28 August 2012 and ensure that the investigation is conducted in observance of the principles of independence, impartiality, promptness and effectiveness

To the Chief Prosecutor:

- Launch a prompt, intensive and effective investigation into disappearance of individuals
- Investigate the crimes committed during and after the August 2008 hostilities, including the cases of disappeared individuals, effectively and in the shortest time possible

To the Minister of Foreign Affairs and the Parliament of Georgia

- Implement the Public Defender's recommendation issued in 2013 to commence ratification of the United Nations Convention on the Protection of All Persons from Forced Disappearance of 20 December 2006

374 Furnished to the Office of the Public Defender on 4 April 2014 by the Levan Samkharauli National Forensics Bureau

PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

Prohibition of torture, inhuman and degrading treatment – a right guaranteed by the Georgian Constitution[375] and the European Convention[376] – is an absolute right. Consequently, it may not be subjected to any limitations and no restriction of this right may be justified by any reason or seriousness of crime.

Pursuant to the Constitution of Georgia,[377] the supreme law of the country,

> *"1. Human honor and dignity are inviolable.*
>
> *2. Torture, inhuman, cruel or degrading treatment or punishment of a human being is impermissible.*
>
> *3. Physical or mental coercion of a person who is detained or whose liberty is otherwise restricted is impermissible."*

The European Convention on Human Rights and Fundamental Freedoms prescribes that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."[378]

Article 3 of the European Convention on Human Rights makes it incumbent upon the States, on the one hand, to refrain from torturing or treating a human being inhumanly or in a degrading manner (a negative obligation); on the other hand, States must prohibit torture and inhuman or degrading treatment by law and, if the prohibited treatment occurs, conduct effective investigation to detect its perpetrators, administer justice and impose fair punishment on them (a positive obligation).

Along with prevention of torture, inhuman and degrading treatment, of crucial importance is to carry out a comprehensive, independent and effective investigation into alleged commissions of such conduct. Moreover, effective investigation, and detection and punishment of perpetrators are major tools to prevent such occurrences.

Although the Georgian legislation envisages mechanisms to investigate torture, inhuman and degrading treatment, their effectiveness have been questionedmany times both at national and international levels, including by the Public Defender. Shortcomings in such investigations and possible remedies are discussed in a separate chapter of this Report. The current chapter, however, describes several cases the Public Defender's Office was seized of during the reporting period which relate to ill-treatment allegedly administered by law enforcement officials and/or penitentiary personnel.

Torture and inhuman treatment are no longer commonly practiced in penitentiary institutions and law enforcement bodies but, like in 2013, detained or imprisoned individuals continued to complain of the penitentiary staff or police officers ill-treating them.

375 The Constitution of Georgia, Article 17
376 The European Convention on the Protection of Human Rights and Fundamental Freedoms, Article 3
377 The Constitution of Georgia, Article 17
378 The European Convention on the Protection of Human Rights and Fundamental Freedoms, Article 3

In the reporting period, the Office of the Public Defender received dozens of complaints in which citizens were referring to unlawful actions and ill-treatment allegedly committed at penitentiary institutions and by police officers. Having looked into these complaints, the Public Defender recommended the Chief Prosecution Office to launch investigation in 28 cases. Other cases, in which the materials furnished to the Public Defender's Office were insufficient to make sound conclusions about violations of law, were forwarded to the Chief Prosecution Office for addition inquiry. In this Report, we will discuss some of these cases for illustration purposes.

In the context of extradition, the State obligation to protect a human being against torture, inhuman or degrading treatment implies the taking of all measures so that a person is not subjected to such treatment in the receiving country if extradited. This Chapter discusses cases in which the Public Defender, having studied the case materials, urged the Chief Prosecution to comprehensively analyze suck risk before making an extradition decision.

CASES OF ILL-TREATMENT POSSIBLY ADMINISTERED BY LAW ENFORCEMENT OFFICIALS AND PENITENTIARY STAFF

On 5 February 2015, the Office of the Public Defender requested the Chief Prosecution Office to provide information about the number criminal cases run by the Chief Prosecution Office's Investigative Department related to possible commission of ill-treatment (in particular, crimes under Articles 144[1], 144[3], 332 and 333 of the Criminal Code) by law enforcement officers before 2012 and during 2014. The Office of the Public Defender also requested information about the number of cases in which investigation under ill-treatment articles is ongoing.

By its letter of 17 February 2015, the Chief Prosecution Office informed the Office of the Public Defender that Chief Prosecution Office's Investigative Department has opened investigation under Articles 144[1], 144[3], 332 and 333 of the Criminal Code into allegations of ill-treatment in 7 cases. Criminal prosecution under Articles 144[1], 144[3], 332 and 333 of the Criminal Code has commenced against 42 individuals, of whom 38 individuals were convicted and 4 were acquitted. Investigation is ongoing in those criminal cases that have been detached from the already decided cases.

According to the same letter, in 2014, the Investigative Department of the Chief Prosecution Office has not commenced any investigation regarding ill-treatment administered by law enforcement officers.

THE CASE OF CONVICTED M.F. AND ACCUSED M.U.

On 12 November 2014, the Public Defender's trustees were visiting the Institution no. 8 of the Penitentiary Department. They requested a meeting with the institution's director. The staff of the institution told the PD's trustees the director was at the Smart Reception Unit located on the first floor of the institution's administrative building.

The PD's trustees heard sounds of quarreling and yelling as they were on the staircase that goes down to the Smart Reception Unit. As they arrived at the place the sounds were coming from, they saw IP and ZM, deputy directors of the institution, GF, head of the legal regime unit, BF, GB and VJ, officers and staff on duty, and others. In the corridor, near the shower room, they observed a trace of newly wiped off blood and a stain. The prison staff looked troubled, talking to each other with abrupt phrases and showing anger towards the Public Defender's trustees.

After persistent demands by the Public Defender's trustees, they were allowed to enter the shower room where they saw the prison staff were keeping MU and MF, detained prisoners.

As the Public Defender's trustees entered the shower room, they saw both prisoners, in wet clothes, lying on the floor. MU's hands and legs were fastened to each other with a special chain (the entire shackles were a single

structure). Both prisoners had traces of violence on their bodies, including their faces. MU had a bleeding cut in his forehead; he had other multiple injuries too. Prisoner MF had a bruise in his right eye.

The Public Defender's trustees demanded that the prisoner injuries be described and documented in the relevant journal. The trustees observed how ZQ, prison doctor, was under pressure by the institution's administration; this is why the injuries on the prisoners' bodies were not entered in detail in the journal entries.

On 17 November 2014, the Public Defender recommended the Chief Prosecutor to open a criminal investigation into possible ill-treatment administered by the staff of the institution no. 8 against these prisoners. With a view to ensuring independent investigation, the Public Defender requested that the Chief Prosecution Office not only commence investigation formally but actually carry out the investigation so that the perpetrators were brought to justice.

The Public Defender also requested taking all the relevant and necessary investigative measures timely, including a forensic medical examination to ascertain the nature, degree, age, origin and cause of the injuries found on the accused persons' bodies and timely extraction of video recordings (footages) showing the facts subject to investigation.

On 24 November 2014, the Chief Prosecution Office replied to the Public Defender that the Investigative Department of the Ministry of Corrections launched investigation into the mentioned case. It was not until 20 November 2014 that the Chief Prosecution Office took away the case from the Ministry of Corrections Investigative Department to hand it over to the Tbilisi Prosecution Office's Investigative Division for objective investigation.

On 21 November 2014, the legal qualification of the conduct changed and the investigation is now being carried out under Articles 333(3)(b)-(c) and 378^2(1) of the Criminal Code.

We wish to note here that, in many of its public statements, the Public Defender has been calling the investigative authorities for conducting investigations under the correct legal qualification, which is Article 144^3 and not Article 333 of the Criminal Code. In the interests of effective investigation and security of prisoners, the Public Defender has also been demanding suspension of officials who allegedly perpetrated these crimes from office pending investigation. The Public Defender's calls remained futile through.

We would like to point out as well that prisoners MF and MU were transferred from the institution no. 8 to the institution no. 15 for security reasons only on 8 December 2014. This transfer took place only after the Public Defender addressed the Minister of Corrections with a request to move these prisoners to another penitentiary institution, in order to preserve the security of their persons.

THE CASE OF ACCUSED G.TS. AND G.A.

On 2 May 2014, the Public Defender's trustees visited a pre-trial detention facility of Tbilisi and MtskhetaMtianeti, Chief Division for Human Rights Protection and Monitoring, Ministry of Internal Affairs. The PD's trustees interviewed accused persons G.Ts. and G.A. at the facility.

The accused persons explained that they had been arrested on 1 May 2014 by the Interior Ministry representatives and had been ill-treated (physically abused) many times both during and after their arrest. The accused persons stated that, after arrest, they were moved to 8th Division of the Gldani-Nadzaladevi Police where they were physically and verbally insulted by head and officers of the Gldani-Nadzaladevi Police.

While the PD's trustees were interviewing GTs, they observed multiple injuries in his face, head and neck. GA had a bruise on his right eye and multiple injuries in his back, shoulders, wrists, knees, neck and abdomen.

The injuries on the bodies of GTs and GA were documented in external observation protocols (reports) drawn up at the pre-trial detention facility, a health certificate about GTs's health condition issued on 2 May 2014 and a certificate no. 27/9-292 issued by the Interior Ministry's Tbilisi Chief Division.

Based on these findings, on 6 May 2014, the Public Defender addressed the Chief Prosecutor demanding that the prosecution office launch investigation into ill-treatment possibly administered by law enforcement officers against GTs and GA.

By its letter of 14 May 2014, the Chief Prosecution Office informed the Public Defender that 12 May 2014 the Gldani-Nadzaladevi District Prosecution Office opened investigation into a criminal case concerning possible exceeding of official powers against accused GTs and accused GA, a crime under Article 333(3)(b) of the Criminal Code.

THE CASE OF CITIZEN M.Q.

The Office of the Public Defender is examining an application of the mother of Citizen MQ. The applicant claims the Ministry of Interior representatives beat up her son on 1 July 2014.

According MQ, after his arrest, the Ministry of Interior representatives took him to the 1st Unit of the Gldani Police in Tbilisi and beat him. In the beginning, they were hitting him in the face (nose); then, they fastened MQ to a chair with handcuffs and continued to beat him. The same day, at dawn, MQ was taken from the police station to the pre-trial detention facility of Tbilisi and Mtskheta-Mtianeti.

A protocol (report) of external observation of the detainee conducted at the Interior Ministry's pre-trial detention facility of Tbilisi and Mtskheta-Mtianeti on 1 July 2014 states that "on his entire face, neck and both arms, MQ had multiple bruises, excoriations and areas of hyperemia."

According to a report produced by the Levan Samkharauli National Forensics Bureau, it has been ascertained by personal examination that MQ had multiple injuries such as excoriations and bruises whose age did not contradict the date the examinee said was injured at (according to the examinee, he was injured about 10 or 12 days before).

The Minister of Internal Affairs informed the Public Defender's Office by its letter of 19 September 2014 that, on 1 July 2014, the Chief Prosecution Office commenced investigation in a criminal case concerning alleged exceeding of official powers by members of the 1st Unit, Gldani-Nadzaladevi Division, Tbilisi Chief Division of the Interior Ministry, under Article 332(1) of the Criminal Code. The same day, based on a deputy Chief Prosecutor's resolution, the case was transferred to Interior Ministry's Inspectorate-General for inquiry.

According to the same letter from the Interior Ministry, investigation started on the ground that on 1 July 2014 the Interior Ministry's Inspectorate-General was notified about the beating of Citizen MQ. The same day, a forensic medical examination was ordered to determine the degree of injuries sustained by MQ. A forensic medical report was produced. The Chief Prosecutor then decided to transfer the criminal case concerning alleged exceeding of official powers by the Interior Ministry representatives to the Interior Ministry's Inspectorate-General for investigation.

On 26 December 2014, the Public Defender addressed the Chief Prosecutor with a recommendation that, in the interests of effective investigation, it would be prudent to have the allegations of ill-treatment by police officers investigated by the Chief Prosecution Office.

By its letter of 3 February 2015, the Chief Prosecution Office replied to the Public Defender that the above-mentioned criminal case concerning possible exceeding of official powers by Interior Ministry representatives (a crime under Article 332(1) of the Criminal Code of Georgia) was transferred to the Investigative Department

of the Tbilisi Prosecution Office on 30 January 2015, for investigation, based on the Chief Prosecutor's resolution.

THE CASE OF CITIZEN D.KH.

The Kutaisi Branch of the Public Defender's Office examined a case of Citizen D.Kh. According to the citizen, on 18 September 2014, he was apprehendedwhile he was at home by members of the Tskaltubo District Police and was then taken to Village Gubistskali where more than ten police officers physically insulted him. The citizen reported that the police officersbeat him mercilessly wanting him to confess to a robbery. For that purpose, they were closing acar door on his head (smashing his head); one of them fired thrice from a gun for intimidation.

According to DKh, after the beating, he was kept in a car parked in the entrance of a forest near Village Gvishtibi. The whole night he was in the car, handcuffed and half naked (wearing only the underwear). The police officers were physically and verbally insultinghim; they were constantly making telephone calls and talking to their superiors. It was not until 19 September, 06:00hrs, that DKh was taken to the Tskaltubo Division of the Interior Ministry and then to a pretrial detention facility in Kutaisi.

At the time the Public Defender's trustees were interviewing DKh, he had visible scabby injuries on his hands, feet and back.

The Public Defender addressed the Chief Prosecution recommending commencement of investigation into ill-treatment possibly administered against DKh. The Prosecution Office replied that investigation into possible exceeding of official powers by representatives of the Tskhaltubo District Police has commenced under Article 333(3)(b) of the Criminal Code.

THE CASE OF CITIZEN T.G.

Citizen TG reported that on 26 August 2014, at about 16:15hrs, he was driving his car in the Kekelidze Street, town of Zestaponi, when police offices suddenly blocked his way. The police officers took him out of the car without explanation, brought him down on the ground on his back and tried to pour some liquid into his mouth.

TG stated that police officers handcuffed him and started beating him as he was lying on the ground. They then started searching him. A police officer who was searching him implanted some rolled paper into his sock on the left leg. It turned out afterwards that there was a narcotic drug in the folded paper. The detainee was verbally protesting the implantation of drugs and on-purpose videotaping. According to the TG, after the search was over, chief and deputy chiefs of the Zestaponi Division of the Interior Ministry physically insulted him in the head and sides. He was then put in a car.

According to the documents at the Zestaponi pretrial detention facility, TG was admitted to the facility on 29 August at 00:13hrs. On admission, he had the following visible injuries: excoriations on the left side of forehead, bruises on the right shoulder and forearm, an open cracked skin in the bending part of the right elbow, bruises on the front surface of the chest, and bruises on the left shin and upper part of the foot.

The Public Defender addressed the Chief Prosecutor with a recommendation to open a criminal investigation into possible ill-treatment of TG. The Prosecution Office replied that investigation into possible exceeding of official powers by representatives of the Zestaponi District Division of the Interior Ministry has commenced under Article 333(3)(b) of the Criminal Code. A series of investigative measures have been conducted but no specific person(s) are being prosecuted currently.

THE CASE OF CITIZEN B.R.

On 11 December 2014, the Public Defender's trustees visited and interviewed accused B.R. at the penitentiary institution no. 2 in Kutaisi. According to the accused, on 20 November 2014, he was at his friend's place in Village Ajameti, Bagdati District. At about 12:00hrs, a Skoda stopped in front of the house. Three members of the Bagdati District Division of the Interior Ministry (including one in a mask) got out of the car. They arrested BR, forced him into the car, covered his eyes with a hat and took him in an unknown direction. BR then found himself in the woods; according to his words, one of the deputy chiefs of the Bagdati District Police was there too. A police officer, who BR refers to with a nickname, wanted BR to confess to a crime, which he did not commit, he said. BR stated that he was being subjected to different forms of physical violence between 13:00 and 19:00hrs. During this time, he had been fastened to a tree with handcuffs and had been beaten. After that, they hanged him by his feet on a rope for about 10-15 minutes and continued beating him in such condition. BR stated that after the beating he no longer was able to walk. Later, he was again forced into the car and taken to the Bagdati District Police for interrogation. Verbal abuse continued during the interrogation.

According to the documents kept at the Bagdati pretrial detention facility, BR was arrested on 21 November 2014 at 04:15hrs by MJ, a detective investigator from the Bagdati District Division of the Interior Ministry. The detainee was brought to the facility the same day at 10:30hrs. On admission, he had the following injuries: excoriations on the right ear and the right side of the abdomen; a small cut on the internal side of the upper lip. The document contains BR's comment that he received these injuries in the forest, before arrest, as a result of being beaten by the representatives of the Bagdati District Division of the Interior Ministry.

The Public Defender addressed the Chief Prosecutor with a recommendation to open a criminal investigation into possible ill-treatment of BR, however the Public Defender has not been informed yet about any measures taken by the Prosecution Office in response.

THE CASE OF CITIZEN D.F.

On 5 December 2014, a representative of the Kutaisi Branch of the Public Defender's Office met with and interviewed convicted DF at the penitentiary institution no. 2 in Kutaisi. According to the convict, on 10 September 2014 he was at his friend's place. At dawn, about 05:00hrs, a special police force members wearing masks, representatives of the Tsalenjikha District Division and representatives of the Zugdidi Regional Division of the Interior Ministry burst into the house. According to DF, members of the SWAT team and the police officers knocked him down on the ground, handcuffed him and beat him brutally. One of the police officers put a gun on the bed and started asking DF about where the gun came from. As DF stated, he was then taken to the Jvari Police Station of the Tsalenjikha District Division. His request for contacting his family members was denied. According to DF, the police officers wanted him to sign various documents without giving him a chance to see what the documents were. Any refusal on his side was met with verbal and physical abuse. One of the police officers then read out a police protocol (report) of arrest and search of an accused person. The protocol mentioned that the search revealed that DF had a narcotic drug in the right pocket of his pants. Immediately after DF heard this, he interrupted the officer who was reading the protocol demanding a lawyer. The police officers denied this request too and physically insulted him again. After the beating, DF stated, he was kept lying on the floor several hours. He was then taken from the police station out for a drug test. After testing, he was transferred to the Zugdidi Regional Division. Finally, he was accommodated in the Chkorotsku pretrial detention facility.

According to the documents made available at the Chkorotsku pretrial detention facility, the detainee had the following visible injuries: a cracked skin and swelling on the forehead an erythema on both shoulders, right knee, waist and sides. The document contained the detainee's comment that he was injured during arrest and he wished to complain against the police officers.

It should be pointed out that, in a majority cases similar to those described above, the arrestees were not rendering any resistance to police officers – a fact that reinforces the assumption that they got injuries described in the documents of pretrial detention facilities after arrest while they were under police control already.

The Public Defender addressed the Chief Prosecutor with a recommendation to open a criminal investigation into possible ill-treatment of DF, however the Public Defender has not been informed whether the prosecution office took any response measures yet.

POSITIVE OBLIGATION OF STATES IN THE CONTEXT OF EXTRADITION

Both the international law and domestic legislation consider extradition of detained persons from one country to another primarily in the light of human rights protection.

The absolute nature of a right under Article 3 of the European Convention on Human Rights makes it possible for extradition to raise an issue under this provision. It is for this reason that the case-law of the European Court of Human Rights obliges the States to comply with the requirements under Article 3 and pay due consideration to whether a person to be extradited may face the risk of being subjected to torture, inhuman and degrading treatment.

In defining the scope of application of Article 3 of the European Convention on Human Rights to extradition, the European Court of Human Rights stated:[379]"the question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3.[...] It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed.Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3, would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article (art. 3)."

The European Court of Human Rights held[380] that if the United Kingdom extradited the applicant to the United States of America (in particular, the State of Virginia, which had death penalty), it would breach the applicant's right not to be subjected to torture, inhuman or degrading treatment or punishment because the "death row phenomenon" violated the right guaranteed by Article 3. Accordingly, the United Kingdom would have to answer for violation. The European Court of Human Rights has stated[381] that, if deported, an Iranian national would face stoning to death and flogging – a form of capital punishment prohibited under Article 3.

According to an interpretation provided by the European Court of Human Rights,[382] "when the Court examines an extradition measure under Article 3 of the Convention, it first assesses the existence of an objective danger which the extraditing State knew or ought to have known about at the time it reached the disputed decision.

379 See *Soering v. the United Kingdom*
380 See *Soering v. the United Kingdom*
381 See *Jabari v. Turkey*
382 See *Shamaev and 12 others v. Georgia and Russia*

[…] the Court has consistently and repeatedly stated that there is an obligation on Contracting States not to extradite or expel an alien, including an asylum-seeker, to another country where substantial grounds had been shown for believing that he or she, if expelled, faced a real risk of being subjected to treatment contrary to Article 3 of the Convention […] the Court's examination of whether a real risk of ill-treatment exists must necessarily be a rigorous one, in view of the absolute character of Article 3 and the fact that it enshrines one of the fundamental values of the democratic societies making up the Council of Europe. […] in order to assess the risks in the case of an extradition that has not yet taken place, the material point in time must be that of the Court's consideration of the case."

The above-described standard established by the European Court of Human Rights can be found in Georgia's national legislation too: "No extradition shall be implemented if there is reasonable assumption that the extradition is sought for subsequently bringing the person to liability or punishing him/her on account of his/her race, nationality, ethnic belonging, religious or political beliefs or other similar reasons."[383]

Pursuant to the Council of Europe Convention on Extradition,[384] extradition shall not be granted if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons. A similar provision exists in the Georgian domestic legislation:

"No extradition will be implemented if there is a reasonable assumption that the person will be subjected to torture, cruel, inhuman or degrading treatment or punishment, such as one related to the person's torture, cruel, inhuman or degrading treatment in the State that moved for extradition."[385]

"A request for legal assistance may be denied if the implementation of the request for legal assistance may harm universally recognized human rights and fundamental freedoms."[386]

THE CASE OF CITIZEN B.L.

The Office of the Public Defender looked into the case of B.L., a citizen of Kazakhstan. According to an application lodged by BL and GK, his lawyer, with the PD's Office, on 11 March 2013, BL was arrested by representatives of the Counter-terrorism Center of the Georgian Interior Ministry based on a request from the Prosecutor-General's Office of the Republic of Kazakhstan. On 13 March 2013, the Tbilisi City Court ordered BL's three-month extradition detention, which was extended twice up to 9 months. BL and his lawyer asserted that BL was being prosecuted under criminal law in Kazakhstan on account of his ethnicity as a Chechen person. According to BL, if extradited to the Kazakh Republic, he would be subjected to torture and inhuman treatment. He said he also risked losing his life. BL's family members had already become victims of ill-treatment in Kazakhstan for which reason AL, BL's sister,had been granted political asylum by Austria.

The Office of the Public Defender was informed[387] that the Chief Prosecution Office had received a request from the Prosecutor-General's Office of the Republic of Kazakhstan for extraditing BL who had been wanted by the Kazakh law enforcement authorities. On 5 August 2014, the Criminal Cases Panel of the Tbilisi City Court declared BL's extradition to the Kazakh Republic admissible with a view to ensuring criminal prosecution of BL. The Tbilisi City Court's decision on the admissibility of BL's extradition to Kazakhstan was appealed in the Supreme Court of Georgia.

383 Law of Georgia on International Cooperation in Criminal Law Matters, Article 29(1)
384 The Council of Europe Convention on Extradition, Article 3(2)
385 Law of Georgia on International Cooperation in Criminal Law Matters, Article 29(3)
386 Law of Georgia on International Cooperation in Criminal Law Matters, Article 12(d)
387 Letter from the Chief Prosecution Office of 7 August 2014

On 15 August 2014, the Public Defender acting as *amicus curiae* lodged its opinion with the Chief Justice of Georgia.[388]It was important for the Supreme Court, before it would make a final decision allowing BL's extradition to Kazakhstan, to look into and consider with scrutiny the threat of BL becoming subjected to torture and ill-treatment in Kazakhstan because both the international norms recognized by Georgia and Georgia's domestic legislation require that sufficient guarantees for securing the detainees' rights in the requesting State are provided. In many of its judgements the European Court of Human Rights confirmed that existence of the practice of ill-treating detainees and hence violations of Article 3 of the European Convention on Human Rights in the Kazakh Republic. In the above-mentioned extradition case, there was a high likelihood that BL would be subjected to degrading treatment if extradited. It should be noted that, according to a report by Human Rights Watch,[389] despite the adoption of a law on the national mechanism for the prevention of torture, torture is still rampant in places of detention and deprivation of liberty in the Republic of Kazakhstan.

In its opinion in the capacity of *amicus curiae*, the Public Defender stated that, in the legal process related to BL's extradition, the Supreme Court had to be guided by principles enshrined in Georgia's supreme law and international treaties and standards established by the case-law of the European Court of Human Rights, with a view to giving effect to the human right of prohibition of torture, inhuman and degrading treatment. However, the Supreme Court did not take into consideration the Public Defender's *amicus curiae* opinion.

RECOMMENDATIONS

To the Chief Prosecutor, Minister of Internal Affairs and the Minister of Corrections

- For the purpose of eliminating torture, inhuman and degrading treatment, provide the employees of the Ministry of Internal Affairs, the Ministry of Corrections and the Chief Prosecution Office with constant training

To the Minister of Justice and courts with general jurisdiction

- In making decisions on extradition matters, comprehensively study and examine a human rights situation in the receiving country and any risk of ill-treatment faced by the persons subject to extradition; take heed of upholding human rights when making their decisions.

388 An *amicus curiae* opinion of the Public Defender as of 15 August 2014
389 See http://www.hrw.org/world-report/2014/country-chapters/kazakhstan

INDEPENDENT, IMPARTIAL AND EFFECTIVE INVESTIGATION

This chapter aims at stressing once again that in investigating allegations of loss of life, torture, and inhuman and degrading treatment, the State has special obligations to promptly, effectively and independently investigate the crimes committed and to detect and punish the perpetrators. According to the case-law of the European Court of Human Rights, the following criteria determine effective investigation: 1. Independence and impartiality; 2. Thoroughness; 3. Expediency; 4. Competence; 5. Victim participation in public scrutiny. The State must satisfy these five criteria in order for an investigation to be effective, which will help achieve the ultimate goal of doing justice. Where the crimes committed have resulted inviolations of Article 2 (the right to life) and Article 3 (prohibition of torture, inhuman and degrading treatment or punishment) of the European Convention on Human Rights, payment of damages to the victim may not be sufficient;[390] conducting an effective investigation to identify and punish the perpetrators may be a remedy for the breached right in such cases.

One of the strategic directions prescribed by Georgia's National Strategy for Human Rights Protection for 2014-2020[391] is prevention of crime within the law enforcement system and improvement of effective investigation standards, raising human rights protection standards and making them compatible with the international standards. These strategies are aimed at minimizing crime commission by representatives of the law enforcement authorities and effectively responding to any misconduct within the law enforcement system as well as making the operation of Georgian law enforcement bodies compatible with the international standards with a view to taking full account of human rights standards.

One of the goals of Georgia's National Strategy for Human Rights Protection for 2014-2020[392] is to form a system that ensures prevention of human torture and other forms of ill-treatment, effective investigation and effective mechanisms for victim protection and rehabilitation. The Strategy envisages achieving this goal by the following tasks:

"1. Form a system that ensures prevention of torture and ill-treatment as well as a timely, thorough and effective investigation into torture and ill-treatment;

2. Implement effective measures to prevent perpetrating torture and ill-treatment by members of the Ministry of Corrections, law enforcement bodies and civil servants and ensure timely, impartial and thorough response to any misconduct committed by them."

The National Strategy for Human Rights Protection for 2014-2020[393] contemplates the following activities/ measures to achieve timely, thorough, effective and impartial investigation into torture and other forms of ill-treatment: increase the accountability of and democratic supervision over the power ministries; set up a

390 See *McKerr v. the United Kingdom*, no. 28883/95; *Mahmut Kaya v. Turkey*, no. 22535/93.
391 Resolution of the Parliament of Georgia No. 2315-IIS dated 30 April 2014
392 Resolution of the Parliament of Georgia No. 2315-IIS dated 30 April 2014
393 Annex 1 to the Resolution of the Government of Georgia no. 445 dated 9 July 2015

professional system able to provide credible answers to complaints against police officers and prosecutors; consider creation of an independent and effective mechanism to examine such cases.

Despite these issues being included in the National Strategy for Human Rights Protection and the Government Action Plan for the Protection of Human Rights, concerns raised in the 2013 Report of the Public Defender to the Parliament about effectiveness of law enforcement-led investigation remained unresolved in the reporting period. Lack of institutional independence, refusal to grant a victim's status and incorrect legal qualification of crimes remained an issue in proceedings on crimes possibly committed by law enforcement officers and crimes committed in the territories of penitentiary institutions. Accordingly, the Public Defender's previous recommendations on these matters, including a recommendation to establish an independent investigative body, remain relevant and valid.

The Public Defender allocated significant attention to discussing effective investigation of crimes possibly committed by law enforcement officers in its 2013 Report to the Parliament of Georgia;[394] in addition, in 2014, we published a special report of the Public Defender entitled "Investigation practices, legal regulation and international standards of effective investigation of offenses allegedly committed by law enforcement officers".[395] Both documents thoroughly examine gaps in the legislation hindering effective investigation, in accordance with international human rights standards and the existing practice. The documents conclude, as a summary, that the legal defects coupled with current practices make up a system, which by definition does not facilitate to effective investigation into loss of life, torture and inhuman treatment when these crimes are possibly committed by representatives of law enforcement authorities or penitentiary bodies.

In the reporting period, the Public Defender addressed the Chief Prosecution with 28 recommendations for investigating ill-treatment possibly committed by police and the staff of correctional institutions or cases of loss of life under effective control of the Government. Twenty-one (21) recommendations were about commencing/conducting effective investigation into allegations of ill-treatment of or loss of lives by accused and convicted persons in the correctional institutions. Of these recommendations, no investigation commenced in 7 cases; in 1 case, the prosecution office forwarded the Public Defender's recommendation to the Investigative Department of the Ministry of Corrections; investigation commenced in 12 cases but 11 cases are being investigated by the Prosecution Office itself, while the remaining 1 case is being investigated by the Investigative Department of the Ministry of Corrections under Article 118 of the Criminal Code. In a majority of other cases, investigation is being conducted under the legal qualification of exceeding of official powers. In only one case has the investigation started under Article 144^3 of the Criminal Code.

As regards the Public Defender's recommendations to commence/conduct effective investigation into ill-treatment possibly administered by police officers against citizens, 6 out of 7 cases are being investigated by the Prosecution Office and no investigation has started in one case.

It should be pointed out that, according to the information furnished by the Chief Prosecution Office,[396] investigations into cases referred to in the Public Defender's recommendations are ongoing but no criminal prosecution has started yet. This means no final decisions have been handed down in these cases yet.

Pursuant to the information provided to the Public Defender,[397] in 2014, nineteen (19) deaths of prisoners were registered in penitentiary institutions. In one of these criminal cases, investigation has been terminated; in 17 cases investigation is ongoing. A series of investigative measures have been conducted (including extraction of surveillance camera recordings) but no final decisions have been made. Only one case is dealt with by a court on merits.

394 See http://www.ombudsman.ge/uploads/other/1/1563.pdf pp. 189–220

395 See the Public Defender's special report entitled "Investigation practices, legal regulation and international standards of effective investigation of offenses allegedly committed by law enforcement officers", 2014, available at http://www.ombudsman.ge/uploads/other/1/1702.pdf

396 Letter from the Chief Prosecution Office dated 9 March 2015

397 Letter from the Chief Prosecution Office dated 17 March 2015

EFFECTIVENESS OF INVESTIGATION INTO THE BEATING OF NUGZARTSIKLAURI, MEMBER OF PARLIAMENT

The Public Defender addressed a series of recommendations to law enforcement authorities in 2014 publicly demanding effective investigation into this case, including on the basis of a media report about the beating of NugzarTsiklauri, Member of Parliament, on 31 March 2014.

The Public Defender initiated proceedings in this case on its own initiative and, within this ambit, on 4 April 2014, addressed the Chief Prosecution Office with a request to furnish detailed information about the progress of investigation. By its letter of 14 April 2014, the Chief Prosecution Office informed the Public Defender that on 31 March 2014, 1st Unit of the Didube-Chugureti Division (Tbilisi) of the Interior Ministry launched investigation into infliction of injuries onNugzarTsiklauri, under Article 120 of the Criminal Code of Georgia. The same letter stated that on 31 March 2014, the case was transferred to the Investigative Unit of the Chief Prosecution Office for investigation. More than 60 witnesses have been interrogated, including NugzarTsiklauri himself, various forensic examinations were ordered and intensive investigative measures have been conducted.

ABOUT THE BEATING OF ZURAB CHIABERASHVILI, MEMBER OF THE "UNITED NATIONAL MOVEMENT" POLITICAL PARTY AND THE RESULTS OF INVESTIGATION

On 27 May 2014, ZurabChiaberashvili and NL were attacked in the "Literary Café" located in the Abashidze Street. The media reported attackers were RT and GM. ZurabChiaberashvili asserted the attack had to do with his political activity.

The Interior Ministry commenced investigation into the case under Article 120 of the Criminal Code – infliction of minor injuries. RT was charged under Article 120 for infliction of minor injuries and was ordered payment of a bail of GEL 2,000 as an interim measure. On 15 September 2014, RT was found guilty of the crime under Article 120 of the Criminal Code and was ordered to pay a fine of GEL 2,000 as a measure of punishment.

INVESTIGATIONAL JURISDICTION AND SHORTCOMINGS PREVENTING ADHERENCE TO THE INDEPENDENT INVESTIGATION PRINCIPLE

Carrying out an objective investigation is an important obligation of the State. It implies that the State must effectively investigate a crime committed. Investigational jurisdiction is an issue that directly affects independence and impartiality of investigation, one of the criteria of effective investigation.

Investigation means conducting a set of activities envisaged by this Code for collecting crime-related evidence.[398] As regards bodies authorized to conduct investigation, the Georgian legislation[399] stipulates that criminal investigation shall be carried out by investigating officers of the Ministry of Justice, Ministry of Internal Affairs, Ministry of Defense, Ministry of Corrections and the Ministry of Finance. Investigators from any of these agencies must conduct investigation comprehensively, thoroughly and objectively.[400]

Although the law imposes a peremptory obligation upon investigating bodies/persons to conduct investigation independently and impartially, institutional independence of investigation into allegations of commission of crimes by representatives of law enforcement bodies and correctional institutions remains a problem.

The Justice Minister determines investigational jurisdiction based on a proposal submitted by the Chief Prosecutor.[401] According to a bylaw governing investigational jurisdiction, the Prosecution Office investigators shall investigate crimes committed by police officers as well as by officers holding official positions with highest military or special ranks and equated persons.[402] Crimes committed by the Prosecution Office employees also fall within the investigational jurisdiction of the Prosecution Office investigators.[403]Investigating officers of the Ministry of Corrections investigate crimes under Articles 342[1], 378, 378[1], 379, 380 and 381 (within the scope of failure to comply with an imprisonment sentence imposed by a convicting judgment) of the Criminal Code as well as crimes committed in the territory of places for restriction of liberty; the places for restriction of liberty are territorial bodies of the "National Agency for Enforcement of Non-Custodial Punishments and Probation", the Public Law Entity under the Ministry of Corrections.[404]

The Georgian legislation does not make provision for institutional independence of investigation of crimes committed in the territory of correctional institutions and crimes committed by Prosecution Office employees in the following circumstances:

398 The Criminal Procedure Code, Article 3(10)
399 The Criminal Procedure Code, Article 34(1)
400 The Criminal Procedure Code, Article 37(2)
401 The Criminal Procedure Code, Article 35
402 Paragraph 2 of Annex to the Order of the Minister of Justice no. 34 dated 7 July 2013 determining investigational and territorial jurisdiction in criminal cases
403 Paragraph 2 of Annex to the Order of the Minister of Justice no. 34 dated 7 July 2013 determining investigational and territorial jurisdiction in criminal cases
404 Paragraph 8 of Annex to the Order of the Minister of Justice no. 34 dated 7 July 2013 determining investigational and territorial jurisdiction in criminal cases

- According to the applicable rules on investigational jurisdiction, crimes committed by Prosecution Office employees shall be investigated by the Chief Prosecution Office.[405] It is one of the tasks of the Inspectorate-General of the Chief Prosecution Office to conduct investigation into crimes allegedly committed by Prosecution Office employees.[406] In other words, the Prosecution Office investigates crimes possibly committed by its own employees.

- Correctional institutions are responsible for enforcing pretrial detention and imprisonment of accused and convicted persons accommodated in remand facilities and places of deprivation of liberty.[407] These bodies are part of the Ministry of Corrections system and employ individuals with military or special ranks and other civil servants.[408]The Prosecution Office shall investigate cases involving crimes committed only by officers having highest military or special ranks or persons equated to them,[409] while the penitentiary system employs not only persons with highest military or special ranks but also civil servants.

- The Investigative Department of the Ministry of Corrections investigates crimes committed in the territory of penitentiary institutions[410] including torture, inhuman and degrading treatment administered against accused and convicted persons and loss of life by them. If a crime has been committed in the territory of a penitentiary institution (including a death of an accused or convicted person or torture, inhuman or degrading treatment administered against the detainees, it will be investigated by the Investigative Department of the same Ministry. If follows that such investigations raise legitimate questions about independence and impartiality.

The European Court of Human Rights held the investigation was not independentdue to existence of institutional links:[411]"All the investigative measures were conducted by the Investigation Department of the Ministry of Justice, the very same Ministry which was, at the material time, in charge of the prison system. […] This institutional connection between the investigators and those implicated by the applicant in the incident, in the Court's view, raises legitimate doubts as to the independence of the investigation conducted."

It is worth pointing out that the applicable legislation allows for removal of cases concerning crimes committed in the territory of penitentiary institutions from the investigative jurisdiction of the Ministry of Corrections Investigative Department and its handover to the Prosecution Office. In other words, despite the jurisdictional rules determined in the bylaw,[412] the Criminal Procedure Code[413]– a normative act having a superior force than a bylaw – provides that the Chief Prosecutor or other person authorized by the Chief Prosecutor may take away a case from one investigation body and give it to another for investigation regardless of normally applicable jurisdictional rules.

By using its power under the Criminal Procedure Code, the Chief Prosecutor or his plenipotentiary can cause the Prosecution Office as an independent body to investigate crimes committed in the territory of penitentiary institutions. In many of the cases we dealt with at the Public Defender Office, we identified that possible crimes committed in penitentiary institutions are being investigated by the same Ministry that is in charge of the penitentiary institutions and the cases are not being transferred to the Prosecution Office for investigation.

We would like to separately mention the problem of institutional independence of investigations related to crimes possibly committed by police officers. Although crimes committed by law enforcement officers fall

405 Law on Prosecution Office, Article 38(3)
406 Order of the Minister of Justice no. 38 dated 10 July 2013 approving the Statute of the Chief Prosecution Office, Article 6(2)(f)
407 The Imprisonment Code, Article 2(3)
408 The Imprisonment Code, Article 6(1[1])
409 Paragraph 2 of Annex to the Order of the Minister of Justice no. 34 dated 7 July 2013 determining investigational and territorial jurisdiction in criminal cases
410 Paragraph 8 of Annex to the Order of the Minister of Justice no. 34 dated 7 July 2013 determining investigational and territorial jurisdiction in criminal cases
411 Mikiashvili v Georgia, no. 18996/06, 09.10.2012, par. 87. See also Tsintsabadze v Georgia, no. 35403/06, 15.02.2011, par. 78.
412 The Order of the Minister of Justice no. 34 dated 7 July 2013
413 The Criminal Procedure Code of Georgia, Article 33(6)(a)

within the Prosecution Office's investigational jurisdiction,[414] the Criminal Procedure Code envisages the possibility for the Interior Ministry's Inspectorate-General to investigate police crimes.[415] It has to be mentioned that the Interior Ministry's Inspectorate-General can carry out investigative and procedural measures within its competence under the Criminal Procedure Code to investigate cases at the request of the Chief Prosecutor or his plenipotentiary.[416] In several cases dealt with by the Office of the Public Defender, criminal cases concerning possible commission of crimes by police officers have been transferred to the Inspectorate-General of the Interior Ministry for investigation. Investigation into alleged commission of crimes by Interior Ministry representatives against citizens, where investigation is carried out by the same Ministry's Inspectorate-General, cannot ensure the level of independence required of an effective investigation.

"When a person makes the claim that he/she has been subjected to ill-treatment by the police in violation of Article 3, the said Article in conjunction with the general obligation of States under Article 1 to secure to everyone within their jurisdiction the rights and freedoms defined in this Convention implies that an effective official investigation be carried out. The investigation should allow for detection and punishment of those responsible. […] in order for an investigation to be carried out effectively it may be necessary that those in charge of the investigation are independent of persons implicated in the events in question. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence."[417]

Consequently, the State's obligation to take measures in response of crimes committed (including those committed by representatives of law enforcement authorities) by conducting an effective investigation necessarily implies that it must be both institutionally and practically independent.

THE CASE OF CITIZEN M.Q.

In the reporting period, the Office of the Public Defenderwas approached by Citizen MQ whose criminal case involving possible commission of a crime by police officers was transferred to the Inspectorate-General of the same Ministry of Interior for investigation.[418] On 26 December 2014, the Public Defender addressed the Chief Prosecutor with a recommendation to use his authority under Article 33(6)(a) of the Criminal Procedure Code to transfer the case involving possible commission of a crime by the Interior Ministry representatives to the Prosecution Office to ensure effective investigation and, namely, its essential component – independence. The Chief Prosecution Office replied to the Public Defender that, on 30 January 2015, based on a Deputy Chief Prosecutor's resolution, the mentioned criminal case was transferred to the Investigative Department of the Tbilisi Prosecution Office for investigation. The Public Defender welcomes the fact that the Prosecution Office took the Public Defender's recommendation into consideration; however, it is even more important that mechanisms of institutional independence of investigation is guaranteed by laws and bylaws by default.

THE CASE CONCERNING CITIZENS GK AND GS

On 26 September 2014, the Public Defender's trustees met with and talked to convicted prisoners GK, GS, VCh and GKk in the penitentiary institution no. 3. According to the prisoners, on 12 September 2014, they

414 Paragraph 2 of Annex to the Order of the Minister of Justice no. 34 dated 7 July 2013 determining investigational and territorial jurisdiction in criminal cases

415 The Criminal Procedure Code of Georgia, Article 33(6)(a)

416 Article 2(c), Annex to the Order of the Interior Minister no. 123 dated 23 February 2015

417 *Ghavtadze v. Georgia*, the European Court of Human Rights, application no. 23204/07.

418 Citizen MK stated that, after his arrest, members of the Interior Ministry transferred him to the 1st Unit, Gldani Police of Tbilisi, where they beat him. The Ministry of Interior informed the Public Defender's Office by its letter that on 1 July 201 the Chief Prosecution Office launched an investigation into a criminal case concerning possible exceeding of official powers (a crime under Article 332, par. 1, of the Criminal Code) by employees of the 1st Unit, Gldani-Nadzaladevi Division, Tbilisi Main Division of the Interior Ministry. The same day, based on a Deputy Chief Prosecutor's resolution the mentioned criminal case was transferred to the Inspectorate-General of the Interior Ministry for investigation..

were admitted to the penitentiary institution no. 2. During admission, the prison staff verbally and physically insulted GK and GS.

According to GK, at the penitentiary institution no. 2, he was taken to a solitary confinement cell. On the way to the cell, he got subjected to verbal abuse and physical violence (pushing and shoving). At that time, he felt bad but the administration representatives drove him into the solitary confinement cell, undressed and handcuffed him and then beat him. KG, deputy director of the institution, hit him in the face several times with his hand and in the right leg with his foot; other members of the prison staff hit him in the back several times. Convicted prisoner GK made the same statement at an interview with the Public Defender's trustee in the penitentiary institution no. 7 on 2 December 2014.

According to Prisoner GS, on 12 September 2014 he was transferred to the penitentiary institution no. 2. After he was accommodated in a cell, he saw KG, deputy director, and other staff of the institution taking prisoner GK by force (with his arms twisted behind his back) through the corridor just because GK was asking for an appointment with a doctor due his health problems. To express his protest, GS inflicted injuries to self on his hand; thereafter, he was taken out of the cell towards the "A" building; on the way to there, deputy director KG was beating him with a rolled paper in the face and head. In the entrance of the A building, GS saw GG knocked down on the floor whom the prison staff where dragging to somewhere.

On 6 October 2014, the Office of the Public Defender addressed the Chief Prosecution Office in writing requesting the launching of investigation into possible ill-treatment of convicted prisoners GK and GS in the penitentiary institution no. 2.

The Chief Prosecution Office informed the Public Defender's Office that on 15 September 2015 the Western Georgia Division of the Investigative Department of the Ministry of Corrections commenced investigation in the criminal case no. 073150914001 under Article 118(1) of the Criminal Code.

On 12 December 2014, the Public Defender addressed the Chief Prosecutor with a recommendation to use its authority under Article 33(6)(a) of the Criminal Procedure Code to transfer the criminal case involving possible commission of a crime by Penitentiary Department employees against convicted prisoners GK and GS to the Prosecution Office with a view of ensuring effective investigation and, namely, its essential component – independence.

THE NEED FOR AN INDEPENDENT INVESTIGATION AUTHORITY

In many of its judgements against Georgia, the European Court of Human Rights has stressed the importance of institutionally independent investigation and considered it a violation of the Convention for the same Government agency to investigate a crime possibly committed by its own employees.

Of the judgements passed by the European Court of Human Rights against Georgia, the Committee of Ministers of the Council of Europe[419] has marked out 6 cases[420] clustered as one group, which is under special supervision of the Committee of Ministers with a view of ensuring their execution. The Committee of Ministers has mentioned that the cases in that group concern violation of the right to life and ineffective investigation into allegations of ill-treatment (Article 2 of the Convention – the right to life and Article 3 of the Convention –prohibition of torture and inhuman or degrading treatment or punishment). In three of these cases (*Khaindrava and Dzamashvili*; *Tsintsabadze*; *Enukidze and Girgvliani*), the Government did not carry out an effective investigation into the death of the applicants' closest relatives and the assault on the applicant. In the three remaining cases (*Gharibashvili*; *Mikiashvili*; *Dvalishvili*), no effective investigation into ill-treatment allegedly administered at the time of arrest or during detention was carried out.

In regard to enforcement of the above-mentioned judgments, the Committee of Ministers has stated that, in view of similarity of these cases and the complexity of the problems revealed, it is proposed to deal with them jointly as a group. Within the framework of supervising the enforcement of these judgments, the Committee of Ministers identified not only individual measures but also the need for general measures to prevent similar violation of the Convention-protected rights in the future.

In terms of general measures taken in relation to the State, the Committee of Ministers stated at its 1208th meeting held through 23-25 September 2014 that, in view of the shortcomings identified by the European Court, further legislative and regulatory measures may be necessary, at all stages of proceedings, to ensure effective investigation and make the judicial proceedings compatible with the requirements of the Convention.

Once again, the European Court of Human Rights found procedural violation of Articles 2 and 3 of the Convention on account of lack of effective investigation into the above-mentioned cases. It has to be stressed

419 The Committee of Ministers of the Council of Europe supervises the execution of final judcments of the European Court of Human Right, Article 46(2) of the European Convention on Human Rights and Fundamental Freedoms

420 See http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=GEO&SectionCode=ENHANCED+SUPERVISION

1. *Gharibashvili v. Georgia*, 29.07.2008; became final on 29.10.2008, application no. №118030/03.
2. *Khaindrava and Dzamashvili v. Georgia*, 08.06.2010, became final on 08.09.2010, application no. 18183/05.
3. *Tsintsabadze v. Georgia*, 15.02.2011, became final on 18.03.2011, application no. 35403/06.
4. *Enukidze and Girgvliani v. Georgia*, 26.04.2011, became final on 26.06.2011, application no. 25091/07;
5. *Mikiashvili v. Georgia*, 09.10.2012, became final on 09.01.2013, application no. 18996/06.
6. *Dvalishvili v. Georgia*, 18.12.2012, became final on 18.03.2013, application no. 19634/07.

that lack of effective investigation is a general, systemic problem, which is not the case in only individual cases. The fact that the Committee of Ministers of the Council of Europe has grouped the above-listed cases against Georgia into one group to deal with the issue in a complex way confirms this course of thought.

The need for establishing an effective and independent complaints system has been discussed in a special report published by the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia in 2013.[421] Pursuant to the report, time has come for Georgia to decide, without delay and in the light of a history of past systematic abuses, on the best way to conduct independent and impartial investigations of violations of human rights whenever there is a suspicion that law enforcement agents may be involved. By doing so, decision-makers should try to minimise the pernicious consequences of "colleagues investigating colleagues". Considering the country's recent past and the urgent need to build trust between the population and law enforcement, the introduction of a fully independent investigatory body appears to be necessary. The Public Defender has been stressing the importance of independent investigation in its reports as well, including the special report entitled "Investigation practices, legal regulation and international standards of effective investigation of offenses allegedly committed by law enforcement officers".[422]With a view to securing effective investigation, the Public Defender has recommended the Georgian Parliament to draft and adopt changes in the relevant normative acts with a view of establishing an independent investigative authority that would be tasked with investigating allegations of killing, torture, and improper or degrading treatment administered by law enforcements officers (members of the Ministry of Justice, Ministry of Correction, Interior Ministry, Prosecution Office as well as crimes committed in the territory of penitentiary institutions).

By its Order no. 62 dated 13 February 2015, the Minister of Justice approved a Statute of the Chief Prosecution Office's Department for Investigating Crimes Committed during Legal Proceedings. Pursuant to the Statute, the newly-established Department of the Chief Prosecution Office is responsible for full-fledged investigation and prosecution of crimes possibly committed during legal proceedings, including torture, inhuman and degrading treatment, involuntary property concessions and other forms of coercion, in the cases selected by the Chief Prosecutor.

The Public Defender, in general, considers the establishment of a Department for Investigating Crimes Committed during Legal Proceedings at the Chief Prosecution Office a positive event. The Department is one of the units of the Chief Prosecution Office that is supposed to conduct full-fledged investigation into cases selected by the Chief Prosecutor. It is relevant to point out that, under the Criminal Procedure Code, the Chief Prosecutor (or his plenipotentiary) may remove a case under investigation from one investigative body and give it to another investigative body for investigation. Consequently, it is the view of the Public Defender that the mentioned Department cannot be regarded an independent body for investigating crimes possibly committed by law enforcement officers. That is particularly true against the background that, in 28 cases referred by the Public Defender to the Chief Prosecution Office in 2014, there is a whole series of legitimate questions about promptness and effectiveness of the investigations carried out.

To summarize, the Public Defender deems that, in terms of effectiveness of investigation (including its institutional independence), against the background of the shortcomings existing in the Georgian legislation, it would be prudent for the State to draft and adopt appropriate legal changes and practical measures to the effect of establishing an independent investigative body to effectively investigate the violations of Articles 2 and 3 of the European Convention on Human Rights and Fundamental Freedoms.

421 See http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf p. 23

422 See http://www.ombudsman.ge/uploads/other/1/1702.pdf

LEGAL RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS

The positive obligation of the State implies the duty of the Stateto implement workable measures to protect human rights. Respect for and effective protection of human rights requires the taking of various positive actions by the Contracting Parties. The European Convention on Human Rights does not contain a precise definition of positive obligations, which the States have to fulfill to effectively protect individual human rights. However, the case-law of the European Court of Human Rights allows for identifying the basic aspects of inferred obligations of States in the context of individual rights.

Inferred positive obligations are indispensable constituents of the fundamental rights such as the right to life and prohibition of torture guaranteed under Articles 2 and 3 of the European Convention. Although there is no express mention of positive obligations in the provisions of Article 2 and Article 3 of the Convention, the European Court of Human Rights has established through its case-law that considering the fundamental value safeguarded by the mentioned provisions, the Signatories to the Convention are under obligation to allow effective exercise of the rights under Articles 2 and 3; in particular, pursuant to the European Court's jurisprudence, the State must

- Enact legislation effectively protecting the right to life;
- Conduct prompt and effective investigation into every single violation of the right to life or ill-treatment supposedly committed not only by State agents but also by non-State actors;
- Provide victims and their near people with effective legal remedies and compensation.

According to the case-law of the European Court of Human Rights, in order for Article 2 of the Convention not to be violated, close relatives of the deceased must be allowed to take part in an investigation to determine the reason of death.

In *Slimani v. France*,[423] the Court found violation of the procedural component of Article 2 because the deceased person's close relative was denied to have access to the case file and was not informed about termination of the proceedings.

Although the close relative could have availed herself of the opportunity to request the investigator and the judge to open a criminal case against unknown persons under the murder charges and thus become eligible for obtaining access to the case materials, the European Court stated such legislative and practical arrangement contradicted the requirements of Article 2 holding, therefore, that the investigation had been ineffective.

423 Judgment of 27 July 2004, The European Court of Human Rights, application no. 57671/00

In *Enukidze and Girgvliani v. Georgia,*[424] the European Court of Human Rights stated that one of the most serious omissions of the Tbilisi Prosecution Office at the time of investigation was its obstinate refusal to grant the applicant leave to take part in important investigative measures, despite their strenuous efforts to remain involved. The European Court has held that "it is regrettable that, under the relevant domestic law and practice (see Article 69(j) of the Criminal Procedure Code), the applicant could not have access whatsoever to the relevant case materials during the investigation stage." The Court condemned the fact that the Prosecution Office did not even inform the applicants of the findings of the investigative measures conducted in their absence. According to the Court's evaluation, as a result, the applicantswere left in a complete vacuum as regards the progress of the investigation, which clearly deprived them of the opportunity to safeguard their legitimate procedural interests as it unfolded.

Moreover, the Strasbourg Court held that neither was the second victim, LB, able to effectively participate in the investigative measures, given that, apart from lacking a qualified legal counsel, he too was denied access to the case materials during the investigation stage. However, being the only survivor of and eyewitness to the crime,LB was a source of information of paramount, undeniable importance. On this ground, the Court considered that the relevant domestic authorities were under the particularly compelling obligation to take active measures to provide him with all the necessary means to ensure the full and effective exercise of his procedural rights.

The Court concluded that the part of the investigation carried out by the Tbilisi City Prosecutor's Office manifestly lacked the requisite thoroughness, objectivity and, most importantly, integrity. In addition, by not allowing the applicants and the second victim to have access to the criminal file or at least to be regularly updated on the developments in the investigation, coupled with certain other serious omissions, the Prosecution Office fell short of its obligation to safeguard the interests of the next of kin and to ensure that the investigation received the required level of public scrutiny.

The Criminal Procedure Code of Georgia of 9 October 2009 has offered a new regulation of the victim's status and rights. Victims are no longer parties to a criminal case but participants. A victim has the right to receive information and consultation from the prosecution; however, a victim is no longer entitled to appeal and intervene in the progress of the process as it was under the previous code. Also, victims may pursue their property interests by civil action. Examining a civil lawsuit no longer depends upon the outcome of a criminal case.

Chapter 7 of the new Criminal Procedure Code[425] is dedicated to victims. Victims now have all the rights and obligations of witnesses. If legal entities are victims, they can participate in criminal proceedings through their legally authorized representatives who enjoy all the rights and bear all the obligations of a victim.

In 2014, the provisions of the Criminal Procedure Code concerning rights of victims have been amended several times. Below we examine these changes and their implementation in practice by the time this report has been drafted.

GRANTING THE STATUS OF A VICTIM OR A VICTIM'S LEGAL SUCCESSOR

Under the new regulation contained in Article 56(5) of the Criminal Procedure Code:

> *"Where there is an appropriate ground for finding a person a victim or a victim's legal successor, the prosecutor will make a resolution at his/her own initiative or based on that person's request. If the prosecutor rejects the request within 48 hours after the request has been lodged, the person has the right, as a one-off measure, to address a superior prosecutor requesting that he/she be found victim or victim's legal successor. The superior prosecutor's decision is final and not*

424 *Enukidze and Girgvliani v. Georgia*, The European Court of Human Rights, 26.04. 2011.
425 The Code has been adopted on 9 October 2009

subject to appeal unless the crime committed is particularly serious. Where this is the case and a superior prosecutor rejects a complaint, the person may challenge the prosecutor's decision in a district (town) court according to the place of investigation."

To know more about the actual enjoyment of this right, on 8 December 2014, the Office of the Public Defender sent written requests for information to the Tbilisi City Court, Zugdidi District Court, Telavi District Court, Kutaisi City Court and, on 12 December 2014, the Batumi City Court. The Office of the Public Defender asked these courts to provide information on the number of individuals using their right under 56(5) of the Criminal Procedure Code since 24 July 2014 to challenge a superior prosecutor's refusal to grant the status of a victim or victim's legal successors. The Public Defender's Office also requested the courts to provide statistics of such complaints upheld and rejected by them.

According to the letters from the courts (Tbilisi City Court – 11 December 2014; Zugdidi District Court – 15 December 2014; Telavi District Court – 12 December 2014; Kutaisi City Court – 17 December 2014), thecourts have not received a single complaint under Article 56(5) of the Criminal Procedure Code.

On 19 December 2014, Batumi City Court informed the Public Defender's Office that, since 24 July 2014, the Batumi City Court received only one complaint under Article 56(5) of the Criminal Procedure Code with a request to terminate a resolution on terminating the investigation. However, the decision made was to leave the complaint unexamined.

Batumi City Court furnished the Office of the Public Defender with a copy of its decision on leaving the complaint unexamined as of 24 November 2014. According to the decision, the complaint was not meeting the formal requirements envisaged by the procedural law. The court deemed the complaint had been submitted by an unauthorized person in violation of the procedural law. In particular, the court explained that the complaint did not include supporting materials such as a prosecutor's refusal to grant a victim's status and a superior prosecutor's refusal (if any) to the same effect.

In follows from the information supplied by courts that the right under Article 56(5) of the Criminal Procedure Code has almost never been used in practice in the period between the entry into force of Article 56(5) and December 2014.

As we mentioned above, a prosecutor's decision can be challenged in the court only if the crime committed is a very serious crime. It is of particular importance, in the interests of justice first of all, for the victims' legal successors to be involved.

Under the current practice, in death cases, including those occurred in the territories of penitentiary institutions, investigation commences and progresses under Article 115 of the Criminal Code (driving a person to suicide) – a provision envisaging an imprisonment sentence of maximum two to four years. In other words, this is a minor crime and, under this pretext, the deceased persons' next of kin are not allowed to challenge a superior prosecutor's decision in the court. It is worth mentioning here that, considering the currentpractices, the public does not expect a superior to make any different decision from a lower prosecutor's decision.

With these circumstances in mind, we think enjoyment of a victim's rights should be possible not only in cases of very serious crimes. The above-mentioned provision should cover also the persons who have possibly been subjected to ill-treatment and the persons who have lost their next of kin (as a result of violation of the rights under Articles 2 or 3 of the European Convention).

In a number of cases examined by the Public Defender during the reporting period, victims or their next of kin were not grantedthe status of a victim or a victim's legal successor.

Participation of a victim and a victim's close relative in the process of investigation of alleged ill-treatment constitutes one of the components of an effective investigation. The European Court of Human Rights has

held that "in all cases, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.[426]

Although the Criminal Procedure Code defines "a victim" as a person directly harmed as a result of a crime,[427] this does not necessarily mean the commission of crime has to be ascertained and confirmed for a victim's status to be granted. Such an interpretation effectively prevents a victim from enjoying his/her rights. Only the court is authorized to say whether a crime occurred, while the investigation stage is designed for collecting the crime-related evidence. Under the applicable law, the right to grant a victim's status belongs to the prosecutor, not to the court. This means, a victim's status can be granted to a person without having a determination first whether a crime has been committed or not. Furthermore, it is possible under the Georgian law to cancel a prosecutor's decision granting a victim's status: if a person has been granted a victim's status but it turns out later that the appropriate ground no longer exists, a prosecutor can cancel the decision granting a victim's status, which the victim must be informed of in writing.[428]

THE CASE OF CITIZEN TS.SH.

The Office of the Public Defender has reviewed an application filed by Citizen Ts.Sh. According to the applicant, R.Sh., her husband who was a sergeant at the Ministry of Defense of Georgia was killed in Batumi on 16 August 2008. As the Chief Prosecution Office informed the Office of the Public Defender by its letter, the Prosecution Office of the Achara Autonomous Republic is investigating a criminal case concerning deliberate killing of R.Sh. under Article 108 of the Criminal Code. Neither RSh's wife nor other close relative have been granted the status of victim's legal successor to this date.

THE CASE OF CITIZEN N.DZ.

The Office of the Public Defender has reviewed an application filed by Citizen N.Dz. In the application, the citizen claimed the investigation into the death of her son V.Dz. was not going effectively. According to the information furnished by the Prosecution Office to the Office of the Public Defender, 2nd Unit, Old Tbilisi Division, Tbilisi Main Division of the Interior Ministry is investigating a criminal case under Article 115 of the Criminal Code. Witnesses have been interrogated and a forensic medical examination was carried. According to the forensic report, VDz died as a result of acute intoxication with ethyl alcohol. The injuries on the deceased's body are caused by some solid blunt object. If found on a body of an alive person, the same injuries would be qualified as mild injuries and therefore they are not in causal relationship with the actual outcome – death. By age, the injuries do not correspond to the time indicated in the resolution and they have probably been inflicted 7-10 days before the death. According to the same letter, "at this stage of investigation, the prosecutor has issued directions to the investigating body on further investigative measures to be conducted. If the evidence gathered indicate commission of a crime, a decision will then be made whether to grant the status of a victim's legal successor."

A VICTIM'S RIGHT TO CHALLENGE A PROSECUTOR'S DECISION (RESOLUTION) ON TERMINATION OF CRIMINAL PROSECUTION AND/OR INVESTIGATION

We wish to emphasize here that the new version of Article 106(1) of the Criminal Procedure Code has been in force since 1 October 2014. According to the new version, a prosecutor shall send a copy of a resolution

426 Judgment in *Enukidze and Girgvliani v. Georgia*, the European Court of Human Rights, 26.11.2011, par. 243

427 "A victim may the State, a natural person or a legal entity who has sustained moral, physical or property damages directly as a result of a crime," The Criminal Procedure Code of Georgia, Article 3(22)

428 The Criminal Procedure Code of Georgia, Article 56(6)

terminating criminal prosecution and/or investigation to a victim within a 1 week after he/she makes the decision. Also, before a prosecutor enacts a resolution terminating criminal prosecution at his/her own discretion, he/she must first inform the victim about this intention and draw up a protocol according to the rules established by Article 56(5[1]) of the Criminal Procedure Code.[429]

Under the new version of Article 106, which now prescribes expanded rights of victims, victims are not entitled to lodge a complaint, as a one-off measure, against a prosecutor's resolution on termination of criminal prosecution and/or investigation with a superior prosecutor. The superior prosecutor's decision is final and not subject to any appeal unless the case involves a very serious crime.[430] Where the latter is the case and a superior prosecutor dismisses a complaint, the victim may challenge the prosecutor's decision in a district (town) court according to the place of investigation. The court will decide the complaint in 15 days, with or without an oral hearing. A decision of the court is not subject to appeal.[431]

The Public Defender views it as a positive change that, under Article 108(1) of the Criminal Procedure Code, if a superior prosecutor cancels a challenged resolution on the termination of criminal prosecution or a court cancels a resolution/decision on the termination of prosecution and the prescription term for holding a person liable has not expired yet, the criminal prosecution should be renewed. Where this is the case, the Chief Prosecutor or his plenipotentiary will task another prosecutor with renewing the prosecution and performing the prosecutorial functions in the case.

Pursuant to Article 108(2) of the Criminal Procedure Code, the defendant, the defendant's lawyer and the victim will be informed in writing about renewed criminal prosecution.

In order to obtain information on whether and how the mentioned complaints mechanism is being used by victims and victims' legal successors, on 24 November 2014, the Office of the Public Defender requested this information in writing from the Tbilisi City Court, Zugdidi District Court, Batumi City Court, Telavi District Court and Kutaisi City Court.

According to the replies received from the courts (27 November 2014 – Tbilisi City Court, 28 November 2014 – Batumi City Court, 28 November 2014 – Telavi District Court and 1 December 2014 – Kutaisi City Court), since 24 July 2014, victims or victims' legal successors have not made use of their right under Article 106(1[1]) of the Criminal Procedure Code to challenge prosecutors' decisions (on termination of criminal investigation and/or prosecution in very serious cases). The actual use of the mentioned complaints mechanism by victims and the practice of courts and investigative bodies in responding to victims' complaints will show whether this amendment to the Criminal Procedure Code has proved to be effective.

INFORMING THE VICTIM ABOUT THE PROGRESS AND RESULTS OF INVESTIGATION

The changes in the law significantly affected the rules on keeping the victim informed. The Code has expanded a circle of issues that a victim or victim's legal successor must be informed about. Of the changes, we would like to point out Article 57(10)(h) of the Criminal Procedure Code, which grants victims the right to be informed about the progress of investigation and view the criminal case materials unless these would be contrary to the interests of investigation. Subparagraph (j) of the same Article peremptorily states that a victim has the right to view criminal case materials at least 10 days before a pretrial hearing.

429 "A prosecutor or investigator acting at the prosecutor's assignment will familiarize a victim with a resolution finding the person a victim and will explain all of his/her rights under this Code and the procedures related to enjoyment of these rights. The prosecutor or investigator shall document this process by drawing up a protocol, which must be signed by the victim and the drafter of the protocol. The victim has the right to make a comment inside the protocol. If the victim refuses to sign the protocol, reasons of refusal must be recorded in the protocol." - The Criminal Procedure Code of Georgia, Article 56(5[1])

430 The Criminal Procedure Code of Georgia, Article 106

431 The Criminal Procedure Code of Georgia, Article 106(1[1])

On the one hand, it goes without saying that granting the right to victims to be informed about the progress of investigation is a positive development; However, on the other hand, the legislature made the enjoyment of this right dependent on the interests of investigation.

The term "interests of investigation" admittedly allows for a too broad interpretation and a risk of bad practice development. An investigative body's refusal to inform a victim about the progress of investigation must be based on specific grounds. The Public Defender believes such refusal must be reasoned; it must also be necessary and proportionate to the objective it is supposed to achieve (protection of the interests of investigation). At the same time, a victim should be able to foresee an investigative body's stance and reasons for restricting this right; this is necessary to prevent perception of or real bias, subjectivity and obscurity.

We welcome the fact, as already mentioned above, that victims can have access to criminal case materials at least 10 days before a pretrial hearing. However, it is important that this change does not turn into a formality of merely having access to case materials. If, having reviewed the case materials, the victim addresses the investigator with a reasoned request for conducting additional investigative measures and/or exploring other circumstances, which the victim thinks have not been conducted within the investigation already carried out, the prosecution must respond to such request by replying with an adequate and reasoned reply. Otherwise, the changes effected to the procedural legislation will remain a formality and will not actually affect the level of victim's involvement in the criminal proceedings.[432]

The Criminal Procedure Code[433] allows a victim to testify or submit a written account about damages he/she sustained as a result of a crime during a hearing on merits, a hearing on a request to deliver a judgment without a hearing on merits and a hearing on imposing punishment. However, the procedural law does not allow a victim to express his/her views about the effectiveness of investigation regardless of whether or not the prosecution gave the victim access to case materials. We consider this a defect of the procedural law because, especially in cases related to loss of life, torture and inhuman or degrading treatment, the State's positive obligation is not confined only to payment of damages. In many of its judgments has the European Court of Human Rights held that in case of a breach of these rights, a redress for the victim implies carrying out an effective investigation that is capable of leading to identification and punishment of those responsible.[434]

It should also be pointed out that Article 58(1) of the Criminal Procedure Code has expanded the scope information to be provided to the victim. In particular, the victim can be informed about the place and time of a court hearing to discuss a prosecutor's motion for delivering a judgment without hearing the case on merits. However, the wording of the mentioned paragraph 1 changed so that the prosecutor is no longer obligated to provide the said information by default. Pursuant to a new wording of the provision, a prosecutor must inform the victim in advance about the time and place of procedural measures indicated in the same Article,[435] if the victim so requests.

Further, consideration should be given to the fact that victims or victims' legal successors often are unaware of the timeframes envisaged by the criminal procedure law, which leads to an increased likelihood of the victims not being able to figure out when exactly to lodge a request with the prosecution office for getting the above-referenced information (time and date of procedural measures).

THE VICTIM'S RIGHTS IN PLEA BARGAINING

As regards the rights of victims in the process of plea-bargaining, we would like to mention that victims again do not enjoy the right to challenge a plea agreement. However, they do have the possibility of bringing a civil action in a civil court.

432 See *Ramsahai and others v. the Netherlands*, no. 52391/99
433 Criminal Procedure Code of Georgia, Article 57(1)
434 *McKerr v. the United Kingdom*, no. 28883/95; *Mahmut Kaya v. Turkey*, no. 22535/93
435 Criminal Procedure Code of Georgia, Article 58(1)

The victim's involvement in the process of entering into a plea agreement is kept to the minimum and is confined merely to a prosecutor's obligation to consult with the victim. Also, under Article 217(11) of the Criminal Procedure Code, at the time of approval of a plea agreement by a court, the victim may inform the judge, in writing or, verbally at a hearing, about the harm he/she sustained as a result of the crime.

However, there is no possibility for such information to affect a plea bargaining process. Consequently, the above provision does not expand the scope of formal rights of the victim.

RECOMMENDATIONS

To the Parliament/Government

- Draft and enact changes in the law to the effect of establishing an independent investigative body to investigate killings, torture, and inhuman and degrading treatment committed by law enforcement officers or in the territory of penitentiary institutions;
- For effective investigation, draft and enact changes in the law with a view to increasing the scope of rights of victims; to help facilitate to prohibition of killing, torture, inhuman and degrading treatment or punishment, entitle the victims to receive and access investigation materials and information about the progress of investigation.

To the Chief Prosecutor:

- The Prosecution Office to take over criminal cases concerning commission of crimes in the territory of penitentiary institutions or by law enforcement officers;
- Grant the status of a victim or victim's legal successor at the initial stage of investigation whenever relevant grounds exist.

THE RIGHT TO LIBERTY AND SECURITY

Applicable Georgian law recognizes the right to liberty and security of person as one of the fundamental human rights. Protection of the right to liberty and security of person is incumbent upon the State under both the Georgian Constitution[436] and various international treaties Georgia is a party to.[437]

The right to liberty and security is not an absolute right. However, on account of the importance of this right, the State can interfere in it strictly in accordance with rules prescribed by law lest the right be violated.

In his annual reports to the Parliament, the Public Defender has been permanently emphasizing violations of the right to liberty and security of person occurring in Georgia. On numerous occasions has the Public Defender addressed, among other issues, the lack of reasoned judicial decisions imposing imprisonment as a type of interim measure upon accused persons in criminal cases. The Public Defender has also been reporting about breaches of legally prescribed rules applicable to apprehension of persons.

USE OF INTERIM MEASURES AND REASONING OF COURT DECISIONS

In its 2012 and 2013 reports to the Parliament, the Public Defender has been stressing the problem of lack of reasoning of court decisions imposing imprisonment as an interim measure under the criminal procedure law.

In the 2013 parliamentary report, the Public Defender recommended the Supreme Court of Georgia to task the commission, which the Supreme Court had created on its own initiative, with not only working on avenues of improving legal reasoning of final judgments but elaborating standards for Georgian judges to meet when drafting decisions imposing different interim measures upon the defendants.

In 2014, the Supreme Court-authored commission drafted guidelines on the form, reasoning and stylistic accuracy of judgments in criminal cases. However, the guidelines do not contain suggestions about reasoning standards other types of court decisions should meet, including judicial decisions imposing different interim measures envisaged by the Criminal Procedure Code upon defendants.

During the 2014 reporting period, with a view to analyzing this issue, the Office of the Public Defender studied the practice of application of interim measures against accused persons by Tbilisi, Kutaisi, Batumi and Poti town courts, district courts of Bolnisi, Akhaltsikhe, Gurjaani and Zugdidi and by magistrate judges operating within the jurisdictional territories of the above-mentioned courts.

436 The Constitution of Georgia, Article 18
437 The European Convention on Human Rights and Freedoms, Article 5; The UN Covenant on Civil and Political Rights, Article 9

Article 198(1) of the Criminal Procedure Code provides a strict definition of objectives of interim measures; it prohibits resorting to an interim measure if its objective can be achieved without applying the interim measure. Only if without an interim measure it would be impossible to prevent the fleeing of a defendant, commission of a new crime, hindering the progress of investigation and/or obstruction of enforcement of a final judgment, the measure can be applied. The selected measure must be capable of achieving the objectives envisaged by Article 198(1) of the Criminal Procedure Code. The Georgian criminal procedure law prohibits use of stricter interim measures against a defendant if the objective sought by application of these measures can be achieved by using a less strict measure.

We would like to note some positive changes compared to the previous years; in particular, the Tbilisi and Batumi town courts as well as some of the district courts such as Zugdidi, Akhaltsikhe and Bolnisi district courts were better reasoning their decisions on imposing interim measures and better describing the circumstances they had taken into consideration. The courts have significantly improved the standard of reasoning in their decisions on prosecution offices' motions for application of interim measures, especially where courts deemed using stricter measures necessary to achieve the objectives under Article 198 of the Criminal Procedure Code.[438] We also welcome the fact that, in their decisions on imposing interim measures, the courts have started referring to the case-law of the European Court of Human Rights in which the European Court had discussed issues similar to those faced by the courts. Further, we praise the Georgian national courts for heeding the Council of Europe recommendations and the provisions of the Convention on the Rights of the Child.

Despite the courts' endeavor to improve the reasoning of their decisions imposing interim measures and, in particular,the imprisonment measure, the Public Defender's Office's finding after reviewing the decisions on interim measures furnished by the Kutaisi and Poti town courts and the Gurjaani district court is that, in examining the prosecution's motion for imposing imprisonment as an interim measure, the courts merely quote the grounds listed in Article 198(2) saying that there was a probable cause to believe that the defendant would escape, fail to appear in the court, destroy information relevant to the case or commit a new crime. However, apart from simply referring to the formal grounds for imposing interim measures, the courts do not explain in their decisions what facts and circumstances led them to conclude that the objectives of interim measures could not be achievedwithout using the strictest measure putting the defendant put behind bars. The courts choose to pursue this practice even though existence of even one of the grounds listed in Article 198(2) of the Criminal Procedure Code suffices for imposing an interim measure, which does not have to be imprisonment.

Interestingly, some decisions by one and the same judge are reasoned providing a description of the circumstances on which basis the judge decided a less strict measure was incapable of achieving the objectives of interim measures, while other decisions by the same judge contain only a dry list of formal grounds for imposing interim measures without any inquest into the circumstances of the case and the personality of the defendant.

In its 2013 report to the Parliament, the Public Defender tackled the issue of unreasoned decisions imposing imprisonment as an interim measure by the Poti town court. Despite that, as it derives from the copies of decisions on interim measures furnished by the Poti Town Court to the Office of the Public Defender, the Poti Court has not taken the Public Defender's recommendations into account to provide better reasoning in these decisions.

Analysis of the decisions on interim measures forwarded by courts to the Office of the Public Defender shows that, of the defendant behavior control measures envisaged by Article 199(2) of the Criminal Procedure Code, defendants are subjected to not only interim measures, but also measures such as surrendering passports and

438 Pursuant to Article 198(1), "An interim measure is used for the purpose of preventing the defendant's failure to appear before the court, precluding the defendant's continuation of criminal activity or ensuring enforcement of a judgment. A defendant may not be subjected to imprisonment or other interim measure if the goals described in this paragraph can be achieved with other, less strict procedural measures of coercion."

other personal identification documents to the law enforcement authorities and the obligation to show up in the investigative body at established intervals.[439]

Having analyzed the decisions supplied by courts, we found out that there has been no single occurrence in the reporting period of courts using, in addition to interim measures, measures such as electronic surveillance and/or the obligation to stay at certain place during a certain period of time, the obligation not to leave or not to enter a certain territory, and the prohibition of meeting with certain persons without special permission. Neither have courts used "other measures" at their discretion, under Article 199(2) of the Criminal Procedure Code.

The measures envisaged by Article 199(2) are additional mechanisms of defendant behavior control that give the State the possibility of achieving the objectives of interim measures restricting the defendant's rights to a lesser extent. It is therefore prudent for courts to more frequently use the additional measures described in Article 199(2) of the Criminal Code allowing for achieving the objectives of interim measures by the State with less strict measures.

While analyzing the court decisions on interim measures, the Office of the Public Defender has discovered that, in the proceedings on imposing bail as an interim measure, it is unclear whether the courts have been furnished with and whether they have looked into documents showing the financial status of the defendants or persons who are assuming to pay the bail in favor of the defendants.The court decisions do not refer to any information about the defendant's employment status, their earnings, real estate registered to the defendant's name or persons who financially depend on the defendant. Lack of accurate information about the financial status of the defendant or other persons intending to pay a bail in favor of the defendant may possibly lead to a reality that the defendant is actually unable to pay – a circumstance that allows the prosecution office to request application of a stricter interim measure such as imprisonment, under Article 200(5) of the Criminal Procedure Code.Although the court is to make a final decision based on the parties' motions and materials submitted, it is likely that the court will uphold the prosecution office's request for imposing imprisonment as an interim measure without having regard to whether the defendant complied with the court-imposed obligations such as the duty to appear before investigative bodies and court, not to exert influence on witnesses and not to commit a new crime.

We welcome the fact that, according to the decisions furnished by the courts to the Public Defender's Office, in some cases the courts did not substitute bail with imprisonment just because the bail was not paid as long as the defendants have honestly been complying with their obligation to appear before the investigative bodies and the courts.

As regards the practice of application of interim measures, pursuant to the official statistics, the situation has changed compared to the year of 2013. According to the 2014 statistics published on the webpage of the Supreme Court of Georgia, in 2014, courts have used interim measures in relation to accused persons in 13,644 cases, of which imprisonment was imposed in 4,365 cases, bail in 8,207 cases and other non-custodial measures in 1,072 cases. In 2014, both quantitative and percentage figures of use of custodial interim measures increased compared to 2013.

According to the information received by the Office of the Public Defender from the courts of appeals, in the reporting period, parties have lodged appeals complaints with the Investigative Panel of the Tbilisi Court of Appeals against 1,339 decisions of 1,339 magistrate judges and district (town) courts on application of interim measures. Of the number of complaints lodged, the Investigative Panel of the Tbilisi City Court declared 1,198 complaints admissible, which makes 89.4% of the number of complaints. 141 complaints or 10.55% of all complaintswere examined at an oral hearing.

439 The Criminal Procedure Code of Georgia, Article 199(2)

In the reporting period, the Investigative Panel of the Tbilisi Court of Appeals received the parties' complaints against 28 decisions of magistrate and district (town) courts on substitution or refusal of substitution of interim measures imposed on defendants. Of this figure, the Panel found 9 complaints (32.14% of the total number of complaints) inadmissible. 18 complaints (62.29%) were dismissed without an oral hearing. 1 complaint (3.57%) was examined at oral hearing but was dismissed.

In the reporting period, the parties challenged 5 decisions of magistrate judges and district (town) courts on cancelling interim measures before the Investigative Panel of the Tbilisi Court of Appeals. Two of these complaints (40% of the total number) were declared inadmissible. Three complaints (60% of the total number) were dismissed without an oral hearing.

The Office of the Public Defender also requested information about complaints lodged by the parties with the Kutaisi Court of Appeals against judicial decisions on applying interim measures.

Pursuant to the information furnished by the Kutaisi Court of Appeals, in 2014, the Investigative Panel of the Kutaisi Court of Appeals received 770 complaints concerning the application of interim measures. In 736 cases, the parties were asking for substitution of the interim measure imposed, while in 34 cases, cancellation of the imposed measure was requested. According to the statistics provided by the Kutaisi Court of Appeals, its Investigative Panel declared 722 complaints inadmissible, left 3 complaints unexamined and examined 45 complaints at an oral hearing.

The Public Defender subscribes to the view that well-reasoned final judgments in criminal cases are crucially important for the protection of the right to a fair trial. However, of no less importance is to provide good reasons when restricting a person'sright to liberty and security, especially where commission of a crime by the person has not been confirmed yet and the person is considered innocent.

VIOLATIONS OF THE CRIMINAL PROCEDURE CODE AT THE TIME OF ARRESTS

Liberty of person is protected by Article 18 of the Constitution of Georgia. Under paragraph 1 of the mentioned provision, a human liberty is inviolable. The Constitution declares violation of this provision a criminal offense.[440]

Under paragraph 3 of Article 18, "A human being may be arrested in the events prescribed by law, by a person having a special authority to that effect." These constitutional provisions, like the entire Article 18, are designed to protect the liberty of person. Liberty of person is guaranteed by not only substantive provisions but procedural norms elevated to the rank of constitutional norms – a fact that underlines the special place occupied by this fundamental right in the system of human rights.[441]

Article 170 of the Criminal Procedure Code explains the concept of arrest. Pursuant to paragraph 1, arrest is a short-term deprivation of liberty; under paragraph 2, a person is considered arrested since the moment his/her liberty is restricted. Since the moment of a person's arrest, the person is considered accused.

In its judgment, the Constitutional Court of Georgia has held that a person may be considered arrested since the moment an authorized person restricts his/her constitutionally guaranteed liberty in the events prescribed law and on the basis of grounds prescribed by law.[442]

As regards "liberty of person", it means a physical freedom of a human being, his/her right to physically move freely as he/she wishes, to stay or not to stay at a particular place. Liberty of person is a freedom of movement in its narrow sense. However, the degree and severity of interferences, which the Constitution guards these rights against, are manifestly different. Interference with the liberty of person is weightier and the Constitution envisages special regulation to safeguard this right."[443]

Despite these legal safeguards in place, in the reporting period of 2014, the Office of the Public Defender revealed violation of the legal requirements at the time of arrest and unlawful deprivation of liberty of persons by law enforcement officers.

THE CASE OF BULGARIAN CITIZENS

The Office of the Public Defender examined the circumstances of arrest of Bulgarian citizens in Batumi on 15 August 2014.

440 *Commentary to the Constitution*, Meridiani Publishing House, Tbilisi, 2005, p. 96

441 The Constitutional Court of Georgia, Judgment of 6 April 2009 in *The Public Defender of Georgia v. The Parliament of Georgia*

442 The Constitutional Court of Georgia, Judgment of 29 January 2003 in *Citizen PiruzBeriashvili, RevazJimsherishvili and the Public Defender v. the Parliament of Georgia*

443 The Constitutional Court of Georgia, Judgment of 6 April 2009 in *The Public Defender of Georgia v. The Parliament of Georgia*

According to the materials obtained by the Office of the Public Defender, on 15 August 2014, at about 15:00hrs, Bulgarian citizens Kh.Kh., V.V. and I.G. were on their way on a taxi to the Batumi Airport to board a flight to Sofia (Bulgaria). Suddenly police officers stopped the taxi, ordered each of the three passengers to get in different police cars and searched them. The search ended at about 24:00hrs. The police officers did not provide the citizens with an interpreter, did not allow them to contact a lawyer, did not explain their rights and did not allow the possibility to move. The police officers made the citizens sign documents in a language the citizens did not have knowledge of (the Georgian language). Immediately after the search of their persons was completed, at about 24:00hrs, the citizens were taken to a police station where they stayed until 12:00hrs of 16 August. On 16 August 2014, at 12:00hrs, the police officers took KhKh, VV and IG to a pre-selected hotel and accommodated them in one room. Police officers were stationed in the corridor to watch for the Bulgarian citizens. Only at 17:00hrs on 16 August 2014 did the police officers officially arrest these persons and draw up the relevant documents (protocols).

On 16 August 2014, a prosecutor from the Batumi district prosecution office addressed the Batumi Town Court with a motion to order detention of Bulgarian citizens KhKh, VV and IG. The same day, by decisions of the Batumi Town Court (issued at 13:11hrs, 13:23hrs and 13:38hrs respectively), the prosecution offices' motions were upheld.

According to the arrest protocols, KhKh, VV and IG were arrested on 16 August 2014 at 17:00hrs at the administrative building of the Kent Hotel located at HaydarAbashidze Street, Batumi.

In its decision adopted at the hearing of first appearance before the judge, the Batumi Town Court held that the defendants had been arrested not at the time suggested in the arrest protocol (report) but when the police officers factually restricted their freedom of movement, that is, the moment the police officers started searching them, because Article 170(2) of the Criminal Procedure Code regards a person arrestedimmediately after his/her freedom of movement is restricted.

The Courtnoted that by the time the search of their persons started, the defendants had already been under the control of the police officers who were not allowing them to move. A prosecutor who appeared at the court hearing corroborated this saying that KhKh, VV and IG were going to the airport to leave the country but their intention was hindered by the members of the investigative authority who did not allow the defendants to move – to proceed to the airport. In other words, this is when the police officers arrested the defendants. In addition, the prosecutor confirmed that the defendants were temporarily "stopped" on their way to the airport because the law enforcement officers did not manage to timely get a Bulgarian interpreter for them. In other words, the prosecutor confirmed that the "stopping" occurred and continued until the law enforcement officers found a Bulgarian interpreter and brought him to the place where the defendants were "stopped".

The Court held that the actions of the law enforcement body were not difficult to understand: they did not allow potential criminals to escape and depart from the country; however, the Court said, it was unclear why the law enforcement officers did not draw up the documents and take relevant measures in accordance with the rules and procedures prescribed by law at the moment they actually arrested these persons; that is particularly true against the background that the law enforcement body had already possessed all the evidence on which basis they requested the Court the next day to order detention.

Having looked into the circumstances of the case, the Public Defender recommended the Chief Prosecutor to launch investigation into unlawful detention of the Bulgarian citizens.

We would like to point out that as the Office of the Public Defender learnt from the judicial decisions on first appearance of defendants before the court and application of interim measures furnished by the Batumi Town Court, the Court has been checking the legality of arrest in every single case, at the hearing of first appearance before the court, including whether there really was an urgent necessity referred to in paragraphs 2 and 3 of

Article 171 of the Criminal Procedure Code at the time of arrest.[444] In other words, at the hearing of first appearance of the defendant before the court, the Batumi Town Court has been examining whether the arrest without a pre-issued judicial warrant was substantiated. We welcome the practice established by the Batumi Town Court by checking both the legality of arrest and existence of urgent necessity at the time of arrest in every single case, which the Court does at first appearance of the defendant before it.

THE CASE OF G.K.

On 12 December 2014, investigation in criminal case no. 009121214004 was launched. An internal report by a detective investigator of the Central Criminal Police Department of the Interior Ministry has served as a ground for commencing the investigation. The report said that GK could possibly be storing a firearm and ammunition in the car he was driving or at the indicated address.

On 12 December 2014, on the basis of a resolution of the detective investigator of the Central Criminal Police Department, the person of GK and his car were searched, in the mode of urgent necessity.

The search report (protocol) said: "As a result of the search of the car, we found and extracted a metal thing that looked like a gun, which was disassembled in four parts and was kept in a black plastic bag." A forensic report no. 14004/b concluded that "the gun extracted during the search of the car is a German-made 9mm-caliber Parabellum, make of the year of 1908 (no. 4625). It belongs to a firearms category and is fit for shooting. The gun is registered to GK with the right to store it on 19 November 2014 on the basis of a permit no. IB0185482 issued by the Interior Ministry. As GK testified to the law enforcement officers, he was bringing the gun back from the gunsmith's."

According to the arrest report (protocol), GK was arrested on 12 December 2014 at 18:40 hours in the administrative building of the Central Criminal Police Department of the Interior Ministry, after his interrogation was over, for a crime under Article 236(2) of the Criminal Code of Georgia.

On 14 December 2014, at the first appearance before a judge to decide on the legality of his arrest, the judge said there was no probable cause to believe that the defendant would escape because he had known before about the criminal investigation taking place against him but had never tried to avoid any investigative measures. […] The evidence and circumstances in the case all worked to exclude any doubt that the defendant would escape and hence there was no ground for ordering his detention. The court thus concluded that "the requirements of Article 171 of the Criminal Procedure Code had been materially breached – a fact that constitutes a ground for releasing the detainee."

On 30 December 2014, the Public Defender sent a recommendation to the Chief Prosecution about the criminal case concerning GK.

On 15 January 2015 the Tbilisi City Court ordered termination of criminal prosecution against GK. The city court's decision was sustained by a decision of the Tbilisi Court of Appeals of 23 January 2015.

444 Under Article 171 of the Criminal Procedure Code, "2.A person may be arrested in the absence of a court order if a) the person has been caught in the process of or right after committing a crime; b) the person was seen at the crime scene and he is being prosecuted immediately in order to obtain his/her arrest; c) a manifest footprint of crime commission is found on the person, with the person, or on the person's clothes; d) the person escaped after committing a crime but was subsequently recognized by an eyewitness; f) the person is wanted.3. Arresting a person without a court order is allowed only if there is a probable cause to believe that the person has committed a crime and the treat of the defendant failing to appear in the court, destroying information relevant in the case or committing a new crime cannot be prevented by some other, alternative measure that would be proportional to the circumstances of the possibly committed crime and the personality of the defender."

ARREST OF A MEMBER OF PARLIAMENT IN VIOLATION OF CONSTITUTIONAL RULES

The supreme law of Georgia protects members of the country's highest lawmaking body with immunity: "Only with the consent of the Parliament may a Member of the Parliament be arrested or his/her residence, car, workplace or person be searched. An exception is when a Member of the Parliament is caught in the process of committing a crime, in which case the Parliament must immediately be notified thereabout. If the Parliament does not give its consent, the arrested or detained Member of the Parliament must be released immediately."[445]

A person may be arrested on the basis of either Article 171 of the Criminal Procedure Code or Article 244 of the Code of Administrative Offenses. As regards Members of Parliament, the above-cited norm of the Georgian Constitution unequivocally declares that a Member of the Parliament may not be arrested without the Parliament's consent. Article 52(2) of the Constitution implies any kind of arrest be it under the Criminal Procedure Code or the Code of Administrative Offenses, since it speaks about impermissibility (in general) of arresting an MP without the consent of the Parliament.

The Constitution of Georgia andother normative acts such as the Criminal Procedure Code,[446]Rules and Procedures of the Parliament[447]and the Law on the Status of Members of Parliament[448] declare that arrest of a Member of the Parliament is impermissible without the Parliament's consent. The immunity enjoyed by Members of the Parliament under the Georgian legislative acts is fully consonant with the prohibition prescribed by Article 52(2) of the Constitution.

In the meanwhile, Article 52(2) provides for an exception to the general rule: the only possibility of legally arresting a Member of Parliament is when he/she is caught in the process of committing a crime but provided that this circumstance must immediately be made known to the Parliament. If the Parliament does not give consent, an arrested or detained member of the Parliament must be released immediately. The above-reference provision clearly and unambiguously speaks of catching a Parliament Member while committing a crime. Administrative arrest of a Member of Parliament or, to say in other words, arresting a Member of Parliament for an administrative offense envisaged by the Code of Administrative Offenses, is contrary to Article 52 of the Constitution.

THE CASE OF LEVAN BEZHASHVILI, MEMBER OF PARLIAMENT

The Office of the Public Defender, acting on its own initiative, inquired into the legality of the arrest of Levan Bezhashvili, Member of Parliament, at the Tbilisi City Court on 4 July 2014.

According to the administrative arrest report (protocol), "On 4 July 2014 at 23:50hrs, citizen Levan Bezhashvili was arrested under the administrative rule in the yard of the Tbilisi City Court located in the Davit Agmashenebeli Valley, Tbilisi, on the basis of Articles 166 and 173 of the Code of Administrative Offenses.[449]A section of the protocol entitled "place of work and position held", along with other details, indicates that the arrestee is

445 The Constitution of Georgia, Article 52(2)

446 Pursuant to Article 173 of the Criminal Procedure Code, "The following persons may not be arrested: persons having diplomatic immunity and their family members, President of Georgia, a Member of the Parliament of Georgia, Auditor General of Georgia, Public Defender of Georgia, Personal Data Protection Inspector, and a judges. The immunity does not apply in the circumstances referred to in Article 171(2) of this Code, except in relation to the President of Georgia or persons with diplomatic immunity and their family members."

447 Pursuant to Article 20 of the Parliament Rules and Procedures, "Only with the consent of the Parliament may a Member of the Parliament be arrested or his/her residence, car, workplace or person be searched. An exception is when a Member of the Parliament is caught in the process of committing a crime, in which case the Parliament must immediately be notified thereabout. If the Parliament does not give its consent during 48 hours, the arrested or detained Member of the Parliament must be released immediately."

448 Pursuant to Article 18(1) of the Law on the Status of Members of Parliament, "Only with the consent of the Parliament may a Member of the Parliament be arrested or his/her residence, car, workplace or person be searched. An exception is when a Member of the Parliament is caught in the process of committing a crime, in which case the Parliament must immediately be notified thereabout. If the Parliament does not give its consent, the arrested or detained Member of the Parliament must be released immediately."

449 On 7 July 2014, proceedings in an administrative offense case against Levan Bezhashvili, which was commenced on the basis of a protocol on administrative offense, terminated by a resolution of the Tbilisi City Court on account of no occurrence of an administrative offense.

"A Member of the Parliament". The protocol further goes to say that "The arrestee has explained that he is a Member of Parliament, for which reason the process of drafting the protocol was temporarily paused with a view to verifying this information." The same explanation from the arrestee (that he is a Member of Parliament) is found in a police report drafted on 5 July 2014 by a Patrol Inspector, Gldani Platoon, Tbilisi Main Division of Patrol Police. According to the latter report, "immediately after verifying this information Levan Bezhashvili was released." A note made in the protocol says that the protocol was drafted on 5 July 2014 at 02:10 hrs. Consequently, the arrestee was released immediately after the protocol was drafted, which is 5 July 2014, 02:10 hrs. This means Levan Bezhashvilihad been detained for 2 hours and 10 minutes, which is contrary to the law.

Pursuant to a comment included into the arrest report (protocol) at the arrestee's request, the arrestee (Levan Bezhashvili) stated to the arresting officer immediately after arrest that he was a Member of Parliament. Therefore, it is clear that the relevant officer of the Ministry of Interior had to verify the information provided by the arrestee immediately in order not to allow arrest of a Member of Parliament in violation of the constitutional norms. Levan Bezhashvili, Member of Parliament, was arrested under an administrative procedure, not in the exceptional circumstance envisaged by Article 52(2) of the Constitution (that is, in the process of committing a criminal offense). Hence, Levan Bezhashvili's arrest was contrary to the peremptory requirement of Article 52(2) of the Constitution.

RECOMMENDATIONS

To the courts of general jurisdiction

- Render more reasoned decisions on application of interim measures to defendants; explain in the decisions the circumstances that led the court to concluding that imprisonment was necessary and that other less strict interim measures would be incapable of achieving the objectives of interim measures.
- Whenever they decide to impose bail as an interim measure, conduct an evidence-based scrupulous inquiry into the financial status of the defendant or of a person intending to pay the bail sum.
- More frequently make use of all of the measures, as appropriate, listed in Article 199(2) of the Criminal Procedure Code.
- At the hearing of first appearance of a defendant before a court, examine the legality of arrest and existence of an urgent necessity under Article 171 of the Criminal Procedure Code.

To the Supreme Court of Georgia:

- Develop standards for courts of general jurisdiction to consider when making decisions on imposing interim measures with a view to improving the form and reasoning of these decisions.

To the Prosecution Office:

- Apply the authority of arresting people without a judicial order in the mode of urgent necessity only where the existing circumstances actually make up a situation of urgent necessity, as envisaged by Article 171 of the Criminal Procedure Code.

To the law enforcement authorities:

- Police officers to strictly and impeccably respect the right to liberty and inviolability of person at the time of arrest and document every measure in full accordance with the Georgian law
- Police officers to immediately draw up arrest protocols (reports); also, if they resort to restricting a person's liberty in the course of conducting other investigative measures, ensure that they indicate exact time and place of arrest in the relevant protocols (reports).

RIGHT TO A FAIR TRIAL

The principle of a rule of law-State requires that justice be administered through a fair trial. Article 42 of the Georgian Constitution[450] contains important elements of the right to a fair trial.

Article 6 of the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms guarantees the right to a fair trial: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."Article 6 of the Convention prescribes very important and fundamental guarantees such as the presumption of innocence, the right to defense, the right to be provided with interpretation services, equal opportunities of collecting evidence, the opportunity of examining evidence on equal terms – all aimed at ensuring equality of the prosecution and the defense as parties, and the adversarial nature of the process. These components make a minimum standard a trial should meet in order to be considered a fair trial.

This Chapter discusses shortcomings revealed in the justice system during the reporting period of 2014, in particular, the changes made to the criminal procedure law concerning plea bargaining, protracted review of cases by courts, violations of the right to fair trial by law enforcement officers,[451] violations of equality of arms and the principle of adversarial process, violations of the presumption of innocence and administrative offense cases.

We would like to note that a Public Defender's recommendationvoiced in the 2013 report to the Parliament to set up a mechanism for reviewing court judgments remains unfulfilled. Neither the Government nor the Parliament has taken steps in 2014 to regulate this matter.

450 Article 42 of the Constitution stipulates:
"1. Everyone shall have the right to apply to the court for protection of his/her rights and freedoms.
2. Everyone shall be tried only by a court having jurisdiction over his case.
3. The right to a defense is guaranteed.
4. No one shall be convicted twice for the same offence.
5. No one shall be held responsible for conduct that did not constitute an offence at the time it was committed. No law shall have retroactive force unless it mitigates or abrogates liability.
6. An accused shall have the right to obtain attendance and examination of witnesses on his/her behalf under the same conditions as the prosecution witnesses.
7. Evidence obtained unlawfully shall have no legal force.
8. No one shall be obliged to testify against themselves or against their near people defined by law.
9. Everyone who sustained damages as a result of illegal actions of the central government, governments of autonomous republics, local self-governance bodies or civil servants shall have the right to be reimbursed fully through courts from the funds of the central government, governments of autonomous republics or local self-governance bodies, as appropriate."

451 The European Court of Human Rights has explained that the right to fair trial applies to not only the trial of a case in a court but also other stages of proceedings preceding and following a judicial examination of the case. In criminal matter, the Court has held, an investigation process conducted by competent authorities at a pretrial stage falls within the scope of application of Article 6 (see *Imbroscia v. Switzerland*). In criminal cases concerning Citizen G.O and Citizen G.O., the law enforcement authorities have committed violations of the criminal procedure law at the investigation stage. Having examined these violations, on 12 March 2015 and 23 March 2015, the Public Defender addressed the Chief Prosecutor and the Interior Minister with recommendations.

The Public Defender's another recommendation[452] that was issued in 2013 but has not been fulfilled to-date concerns the need for amending the rules of case allocation in courts envisaged by the current version of the Law on Courts with General Jurisdiction. The recommendation is aimed at ensuring transparency of the case allocation process and judicial independence.

The National Human Rights Protection Strategy for 2014 – 2020[453]sets the following strategic goals:

1. Improve the criminal legislation and reinforce the principle of equality of arms. The objective is to adopt a criminal procedure legislation that fully corresponds to the constitutional and international standards of human rights protection and ensures true equality of parties;

2. Improve the exercise of the right to a fair trial by implementing a continuous reform of the judiciary. The objective is to create an effective justice system capable of guaranteeing, along with other procedural rights, the right to a fair trial, to the highest extent possible. This objective can be achieved by launching a large-scale judiciary reform encompassing both creation of guarantees of independence of judges and establishing an effective investigation and litigation system.

The Governmental Action Plan on the Protection of Human Rights for 2014-2015[454] sets the following tasks in the sphere of criminal justice: initiate changes to improve the criminal procedure law; draft changes with a view to liberalizing the Criminal Code, increasing judicial discretion and developing foreseeable criminal law provisions; increasing the role of judges to improve human rights protection by the criminal justice system.

Under the Action Plan, the purpose of an independent, accountable and transparent justice system is to improve the exercise of the right to a fair trial through continuous reform of the judiciary. The Plan intends to achieve this purposes by fulfilling the following tasks: increase judicial independence in accordance with the fair court principles; improve accountability of judges on the basis of the principles of fairness, objectivity and independence of the judiciary; increase transparency of the court system by striking a fair balance between the interests of the society and those of justice; raise qualifications of judges.

In 2014, the Parliament of Georgia produced a draft law amending the Criminal Procedure Code.[455] The draft proposed changes to Article 120 of the Code no longer requiring an investigator to make a resolution authorizing investigative measures such as search and seizure in cases of urgent necessity. The Public Defender addressed the Parliament with a recommendation on 13 January 2015 concerning this initiative.[456]

In its recommendation, the Public Defender expressed the concern that, if adopted, the draft would make the whole exercise of giving reasons for proving the existence of an urgent necessity a complete formality because investigators would no longer have the duty to issue a resolution authorizing searches and seizures. The Public Defender's view was that the proposed change in the Procedure Code would not facilitate to making reasoned decisions in criminal proceedings, which is one of the important standards established by the European Court of Human Rights.

The Public Defender also stressed that whenever the right under Article 20 of the Constitution of Georgia (inviolability of personal life) is interfered with under the pretext of urgent necessity, a written document needs to be produced to provide an explanation of the reasons, objectives and need for conducting a search and seizure operation without a judicial warrant. Producing a written and reasoned resolution is important for a court to evaluate whether an urgent necessity justifying justify the relevant investigative measures as a matter

452 2013 Report of the Public Defender to the Parliament of Georgia, pp. 246-250

453 Resolution of the Parliament of Georgia no. 2315-IIS dated 30 April 2014

454 Resolution of the Government of Georgia no. 445 dated 9 July 2014

455 Full text of the draft law together with its explanatory note is available at http://www.parliament.ge/ge/law/7792/15860 [last viewed 11 February 2015]

456 Proposal to the Parliament on amending the Criminal Procedure Code, available at http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/winadadeba-parlaments-sisxlis-samartlis-saproceso-kodeqsshi-cvlilebebis-shetanis-shesaxeb-kanonproeqttan-dakavshirebit.page [last viewed 11 February 2015]

of urgency existed. Not only the court, but the person subject to the investigative measures should be given the possibility of evaluating and challenging the measures carried out if he/she believes no urgent necessity existed to justify the search and seizure operation. It follows that lack of a written document (resolution) would constitute an impediment for the exercise of its rights by a party.

We welcome the fact that the authors of the draft law took heed for the Public Defender's recommendation withdrawing part of their legislative initiative of 25 December 2014 that envisaged amending Article 120 of the Criminal Procedure Code.[457]

457 Full text of the draft law together with its explanatory note is available at http://www.parliament.ge/ge/law/7805 [last viewed 11 February 2015]

PLEA BARGAINING-RELATED CHANGES

One of the recommendations issued by the Public Defender in its 2013 parliamentary report was to amend the legislation to prohibit complete release of accused or convicted persons from criminal liability under Articles 144^1, 144^2 and 144^3 of the Criminal Code. According to the change made in the Criminal Procedure Code on 24 July 2014, even if a contract of special cooperation is concluded with the law enforcement authorities, persons charged with or convicted of crimes under Articles 144^1, 144^2 and 144^3 of the Criminal Code many not be released from criminal punishment completely.[458] The Public Defender has given a positive evaluation to the fulfillment of its recommendation to amend the Criminal Procedure Code as described above.

As a result of amendments made to the Criminal Procedure Code on 24 July 2014, the plea bargaining rules changed.

Under the version in force before the 24 July amendment, a plea agreement could be concluded about guilt or punishment. After the amendment, agreement on punishment only can no longer be entered into (previously this was possible if the person was not either opposing to or agreeing with the charges brought but was consenting to punishment). We welcome the change that says: "A judgment can be rendered without hearing a case on merits, on the basis of a plea agreement, in which the accused confesses to the crime *and* enters into an agreement with a prosecutor on punishment, mitigated charges or dropping of some of the charges."[459] Admission of guilt is therefore necessary for entering into a plea agreement.

A new rule introduced by the above-mentioned changes is that, in addition to the terms and conditions envisaged by paragraph 1 of this article, a defendant and a prosecutor may agree on reimbursement of damages in a plea agreement.[460] Furthermore, a prosecutor is now obliged to warn a defendant, before entering into a plea agreement, about the consequences of the agreement and explain that, after the plea agreement is concluded, the court will render a convicting judgment without evidence being examined directly at an oral hearing.[461]

According to the changes in the Criminal Procedure Code, a protocol (report) describing the negotiation process between a defendant and a prosecutor (a protocol on plea agreement) should be drawn up. The defendant and his/her lawyer will receive a copy of the protocol. The defendant and his/her lawyer have the right to comment about the protocol; their comments must be included into the protocol. A protocol on plea agreement must be signed by the prosecutor, the defendant and the defendant's lawyer, and the defendant's

458 The Criminal Procedure Code, Article 218(8)
459 The Criminal Procedure Code, Article 209(1)
460 The Criminal Procedure Code, Article 209(2)
461 The Criminal Procedure Code, Article $210(1^2)$

legal guardian, if any.[462] A protocol on plea agreement must be attached to a prosecutor's motion to a court for rendering a judgment without hearing the case on merits.[463] It should be noted that the above-mentioned changes introduced the concept of a protocol on plea agreement but the version of the Code before the change envisaged that a plea agreement had to be made in writing.[464] Accordingly, a document confirming the conclusion of a plea agreement (protocol) was being drafted in practice also before the changes.

As regards examination by a court of a motion for approving a plea agreement, the amendment has introduced a peremptory requirement for courts not to approve plea agreements in case they do not get proper assurances[465] about the circumstances listed in Article 212(2) of the Criminal Procedure Code.[466]The Public Defender believes that vesting the judges with the above-mentioned power was important because, despite the defendant's admission of guilt, the above-mentioned guarantees must be assured and, if a judge is not satisfied that the listed guarantees have been met, he/she is obliged not to approve the plea agreement.

We note with satisfaction that the judges now have an increased role if they deem the defendant's rights had been breached in the process of the parties entering into a plea agreement. In particular, according to the changes in the Criminal Procedure Code, if, before a pretrial hearing, a court is examining a prosecutor's motion for rendering a judgment without hearing the case on merits and the court deems that the plea agreement has been concluded as a result of torture, inhuman or degrading treatment or other violence, intimidation, deception or an illegal promise, the court will forward the case to a superior prosecutor. The superior prosecutor will then assign the duty of prosecutorial supervision to other prosecutor.[467]

As a result of the changes in the Criminal Procedure Code, the list of grounds for challenging a judgment on approving a plea agreement increased.[468] In particular, within 15 days after such judgment is rendered, a convicted person has the right to lodge a complaint with a higher court requesting cancellation of the judgment approving a plea agreement, if

1. The plea agreement was concluded despite the fact the evidence referred to in Article 3(11^1) were insufficient for rendering a judgment without hearing the case on merits;

2. The trial court neglected the substantive requirements envisaged by the Criminal Procedure Code and this chapter.

The version of the Code in force before these changes allowed for challenging a judgment approving plea agreement if substantive requirements of the same chapter (chapter on plea bargaining) had been neglected,[469]

462 The Criminal Procedure Code, Article 210(6)
463 The Criminal Procedure Code, Article 211(7)
464 The Criminal Procedure Code, Article 212(1)
465 The Criminal Procedure Code, Article 213(3^1)
466 Under Article 212(2) of the Criminal Procedure Code, before a court approves a plea agreement, it must asures itself of the following:
a) The plea agreement has been entered into without torture, inhuman or degrading treatment or punishment, intimidation, deception or any illegal promise;
b) The plea agreement has been entered into force voluntarily and the defendant voluntarily admits the charges;
c) The defendants fully understands legal consequences of the plea agreement and of having criminal record;
d) The defendant had the possibility of receiving a qualified legal aid;
e) The defendant fully understands the nature of the crime he is charged with;
f) The defendant fully understands the measure of punishment expected for the crime, which he has confessed to;
g) The defendant is aware of all the legally prescribed requirements for admission of guilt needed for entering into a plea agreement;
h) The defendant understands that, should a court refuse to approve the plea agreement, no information he provides to the court in the course of examination of the plea agreement may be used against him in the future;
i) The defendant understands that he/she has the following rights: i.a. the right to defend himself/herself; i.b. the right to reject a plea agreement; i.c. the right to have his/her case reviewed on merits;
j) The defendant consents to the factual grounds of the plea agreement on admission of guilt;
k) The plea agreement articulates all the terms and conditions agreed to between the defendant and the prosecutor;
l) The defendant and his/her lawyer have full knowledge of the case materials.
467 The Criminal Procedure Code, Article 213(5)
468 The Criminal Procedure Code, Article 215(3)(c)-(d)
469 The Criminal Procedure Code, Chapter 21

while after the changes in the Code, such judgments can be challenged also on the ground of neglected substantive requirements of theentire Criminal Procedure Code. It is without hesitation that the Public Defender views the allowing for challenging a judgment on account of lack of evidence a positive change.

Despite the positive change, the Public Defender believes that some of the newly-shaped rules serve to aggravating the defendants' situation. In particular, a novelty in the plea bargaining process is the evidentiary standard that must be attained in order for a court to render a judgment approving a plea agreement. Before the changes, 3 different evidentiary standards were known to the Georgian criminal procedure law: a probable cause,[470] high likelihood[471] and beyond reasonable doubt.[472] The draft law's explanatory note says"the current version requires a prosecutor to furnish the court with sufficient evidence to show that a defendant committed a crime. This contradicts Article 13(2) of the Criminal Procedure Code."[473]The evidentiary standard a prosecutor has to meet in its motion for approving a plea agreement (i.e. a probable cause standard) is obviously a lower standard than the one required for handing down a judgment; likewise,judgments on approving plea agreements cannot be based on the probable cause standard.

A standard required for rendering a convicting judgment has always been and currently is the beyond-the-reasonable-doubt standard: Article 13(2) of the Criminal Procedure code requires that a convicting judgment be based only on a collection of coherent, clear and credible pieces of evidence capable of proving a person's guilt beyond reasonable doubt.

The same rule applied to rendering judgments approving plea agreements: "If a court believes that the evidence presented irrefutably confirm the charges against a person and the punishment requested is lawful and fair, it will render a judgment within 15 days after a prosecutor lodges a motion for rendering a judgment without hearing the case on merits.[474]The Criminal Procedure Code had not been envisaging any other additional evidentiary standard before the entry into force of the above-mentioned changes. After the changes, however, a judgment approving a plea agreement can be rendered on the basis of*a collection of sufficient evidence* but not *a collection of irrefutable evidence*. In other words, "if a court deems that sufficient evidence listed in Article 3(11[1]) of this Code for rendering a judgment without hearing the case on merits have been submitted, the court has received assurances in regard to the circumstances listed in Article 212(2) of this Code, and the court deems the requested punishment is lawful and fair, it will decide to render a judgment without hearing the case on merits."[475]

Evidence are sufficient for rendering a judgment without hearing the case on merits if they are capable of convincing an objective person of the defendant's commission of crime against the background that the defendant has admitted the crime, does not oppose to the evidence adduced by the prosecution and waives his/her right to have his/her case heard on merits.[476] It is therefore safe to say that the changes made to the Criminal Procedure Code have, in effect, resulted in lowering the evidentiary standard required for courts to render judgments approving plea agreements.

It should be pointed out that the aim of plea bargaining is to expedite administration of justice. If a plea agreement is concluded, the court will hand down a convicting judgment without examining the evidence directly and at an oral hearing. The defendant waives his/her right to examine evidence and agrees with the evidence submitted by the prosecution; however, this does not mean a lower evidentiary standard is required or the objective of plea bargaining is to prove charges at a lower standard. It should be borne in mind that conclusion of a plea agreement results in a convicting judgment. A convicting judgment then can be made only

470 The Criminal Procedure Code, Article 3(11)
471 The Criminal Procedure Code, Article 3(12)
472 The Criminal Procedure Code, Article 3(13)
473 See http://parliament.ge/ge/law/1371/3812
474 The Criminal Procedure Code (the version in force before 24 July 2014), Article 213(4)
475 The Criminal Procedure Code, Article 213(4)
476 The Criminal Procedure Code, Article 3(11[1])

on the basis of an evidentiary standard required for making convicting judgments, regardless of whether the convicting judgment is the outcome of plea bargaining.

Another change that is capable of aggravating a defendant's situation is the procedure of returning a case by a judge to a prosecutor. According to the version of the Criminal Procedure Code in force before the changes of 24 July 2014, "If a motion for rendering a judgment without hearing the case on merits is being examined before a pretrial hearing and the court considers that there are insufficient evidence to confirm the charges or the court establishes that the motion for rendering a judgment without hearing the case on merits has been lodged in violation of the requirements envisaged by this Chapter, the court will return the case to a prosecutor. Before returning the case to a prosecutor, the court will offer the parties to change the terms and conditions of a plea agreement during the examination of the prosecutor's motion; such change must have been agreed by a superior prosecutor. If the court is again dissatisfied with the modified terms and conditions, it will send the case back to the prosecutor.[477]

As follows from the above rule, before the changes of 24 July 2014, a judge could return a case to a prosecutor only if the judge was examining a motion for having a judgment rendered without hearing the case on merits *before a pretrial hearing*. After the changes in the Code, a judge can return case to the prosecutor on the same grounds not only before a pretrial hearing, but *at any stage*; in particular, the relevant provision reads: "If a court considers that there are insufficient evidence envisaged by Article 3(11[1]) of this Code for rendering a judgment without hearing a case on merits or the court establishes that the motion for rendering a judgment without hearing the case on merits has been lodged in violation of the requirements envisaged by this Chapter, the court will return the case to a prosecutor. Before returning the case to a prosecutor, the court will offer the parties to change the terms and conditions of a plea agreement during the examination of the prosecutor's motion; such change must have been agreed by a superior prosecutor. If the court is again dissatisfied with the modified terms and conditions, it will send the case back to the prosecutor."[478]

The Public Defender believes that a judge's authority to return a case to a prosecutor at any stage of criminal proceedings when a judge thinks there are insufficient evidence to prove the guilt is not justified. Return of a case to prosecutor should be possible only when a motion for rendering a judgment without hearing the case on merits is being examined*before a pretrial hearing* because it is possible to collect additional evidence before the pretrial hearing. However, if at the hearing of a case on merits a judge thinks the evidence are insufficient to prove the charges, he/she should just proceed with making a decision according to the law.

477 The Criminal Procedure Code (a version in force before 24 July 2014), Article 213(5)
478 The Criminal Procedure Code, Article 213(6[1])

PROCRASTINATED JUDICIAL REVIEW

During the reporting period we revealed several criminal cases in which trial courts did not serve the copies of judgments on the parties (convicted persons) timely or did not forwardappeals complaints to courts of appeals on time.

A copy of a judgment or of a dissenting opinion must be served on the convicted or acquitted person and the accuser within 5 days after the judgment is announced; in complex cases, involving several volumes of case materials or involving several accused persons, a copy of a judgment or a dissenting opinion must be served within 14 days.[479] In other words, courts are under obligation to hand the copies of judgments to the parties within the legally established term. The law does not envisage any exception to this rule. As regards forwarding an appeals complaint to a court of appeals, according to the applicable law, an appeals complaint must be lodged with the trial court, which must then send the complaint to a court of appeals according to a procedure provided for in the law.

A trial court should send a copy of appeals complaint to the other party within 5 days so that the other party has the opportunity to lodge a counterclaim. The other party should lodge its counterclaim with the court within 5 days after it receives the complaint.[480]After a counterclaim is lodged or after the 5-day term expires with no counterclaim lodged, the trial court (first instance) must send the criminal case materials, the appeals complaint and the counterclaim (if the latter has been lodged) to a court of appeals. The law however does not prescribe a specific term in which the trial court must send these materials to the court of appeals. The Criminal Procedure Code simply says a criminal case file, a complaint and a counterclaim must be forwarded to a court of appeals.[481] Although no specific term is prescribed, the trial courts must not take the liberty of forwarding the case materials to courts of appeals only after several months thereby causing procrastinated judicial review in the second instance court for unreasonable periods.

Below we describe some of the cases in which the applicants complained to the Public Defender of trial courts failing to send their appeals complaintsto the courts of appeals. In particular, in their applications to the Public Defender's Office, the convicted persons were stating that the Gori District Court, which was a trial court, fell short of its duty to forward their cases to the court of appeals.

THE CASE OF CITIZEN J.M.

According to JM's application lodged with the Public Defender's Office, the Gori District Court passed his convicting judgment on 27 June 2014. The defense appealed the judgment in about 20 days. According to JM,

479 The Criminal Procedure Code, Article 278
480 The Criminal Procedure Code, Article 294(2)
481 The Criminal Procedure Code, Article 295

he received a copy of the judgment only on 23 October 2014. The convict contacted the Gori District Court through a prison social worker and found out that his appeals complaint had not been forwarded to the Tbilisi Court of Appeals even by 25 November 2014.

On 12 December 2014, the Office of the Public Defender addressed the Gori District Court with a request to provide precise information on this matter (in particular, we asked the court the following questions: when did the court pass a judgment against JM and when was JM's appeals complaint registered at the court of appeals). However, we have not received any reply from the court to-date.

THE CASE OF CITIZEN N.T.

According an application filed by citizen NT with the Office of the Public Defender, the Gori District Court passed his convicting judgment on 13 April 2014. The defense appealed the judgment but, according to NT, his appeals complaint had not been forwarded by the Gori District Court to the Tbilisi Court of Appeals by 13 February 2015. When meeting with a Public Defender's trustee on 8 September 2014, NT stated that he had not received a copy of this judgment even by that date.

THE CASE OF CITIZENS L.I. AND G.K.

Convicted citizen LI addressed the Office of the Public Defender with an application stating that the Gori District Court passed a convicting judgment against him on 8 December 2014. Convicted citizen GK stated that his convicting judgment was passed on 17 December 2014, by the Gori District Court. Both citizens stated that, by 5 February 2015, they had not received copies of their convicting judgments. For these reasons, they had been unable to use their rights prescribed for convicted persons (the right to a visit in prison, to make a telephone call, etc.).

In the 2014 reporting period, the Office of the Public Defender identified a series of cases in which the right to fair trial had been violated due to unduly delayed proceedings (for example, because of the prosecution's failure to appear at the hearing).

The applicable Georgian law, including Georgia's commitments under international treaties and the European Convention on Human Rights, prescribe a person's right to have his criminal charges reviewed by national courts within a reasonable time, without any undue delay.[482]

In many of its judgments has the European Court of Human Rights found violation of the right to a fair trial due to undue delay in the proceedings. The Court has established a reasonable review standard by its case-law. In one of its initial cases, the Court clearly and convincingly explained the meaning of the right to have one's case heard in a reasonable time: "the precise aim of this provision in criminal matters is to ensure that accused persons do not have to lie under a charge for too long and that the charge is determined."[483]

A court can effectively implement the right to a trial only if it is able to decide a case in a reasonable time. The only way other than this would be to postpone decision-making for an indefinite period – something that would amount to denial of justice. Furthermore, there is a public interest in preventing undue delay in hearing case. It is universally recognizedthat the criminal justice system has rather broader objectives than mere handing down of a court judgment.

482 Pursuant to Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedom, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

483 *Wemhoff v. Germany*, §18.

When looking into cases concerning undue delay of judicial review by national courts, the European Court of Human Rights evaluates both the complexity of the case and the parties' behavior in the sense of whether the parties themselves contributed to the occurrence of delay in hearing their case by a national court. The European Court has been persistently stating that it is incumbent on the Contracting Parties under the Convention to arrange their legal system in a way to meet the requirements under Article 6(1), including the requirement of hearing a case within "a reasonable time."

Below we provide a short description of cases concerning citizens G.S. and L.M. as sample cases.

THE CASE OF CITIZEN G.S.

The Office of the Public Defender was approached by G.S., an accused person. According to media reports, a hearing on merits by the Telavi District Court of the case concerning Citizen GS has been postponed for 41 times already. Pursuant to the media outlets, the prosecution did not appear at the hearings on merits 13 times.

According to the information received by the Office of the Public Defender from the Telavi District Court, the hearing in the mentioned case was postponed six times due to a prosecutor's failure to appear, three times under the pretext of viewing the case file and once on the basis of a prosecutor's motion.

Also, according to the documents furnished by the Telavi District Court, in the criminal proceedings against GS and other criminal proceedings, hearings are being postponed many times due to various reasons cited by the prosecution. In particular, the documents furnished by the Court suggest that the prosecutor addressed the Court several times with *an application* for postponing the court hearing, while the Criminal Procedure Code stipulates that postponement of a hearing should be requested by *a motion*.[484]

Concerning the application, the Telavi District Court explained to the prosecutor a procedure under Article 185 of the Criminal Procedure Code for changing the date of hearing but the prosecutor has kept addressing the court with applications instead of motions.

THE CASE OF CITIZEN L.M.

The Office of the Public Defender has review an application of Citizen LM. Pursuant to information provided by the Tbilisi City Court, a Criminal Cases Panel of the Tbilisi City Court is dealing with a criminal case against accused persons GD and LM under Article 143(1), 333(3)(c) and 144[1](2)(a)-(b)-(e) of the Criminal Code. No hearing on merits took place in the period between June 2014 and February 2015. The hearing was adjourned twenty-two (22) times. Prosecutors were either not appearing at the hearings or were unprepared and were asking for adjournment under the pretext that they were unprepared.

The Georgian legislation does not say a prosecutor assigned to a particular case cannot be replaced during the examination of the case, unlike judges who must stay all the way until the proceedings are over. The Public Defender believes that whenever there is a situation that a prosecutor who supervised investigation and supported State accusations in the court is unable to appear at court hearings for a long period of time, the Prosecution Office must send another prosecutor to attend the hearings; this other prosecutor must then be properly prepared by having acquainted himself/herself with the case materials and being able to support the charges. This would allow for avoiding undue delays in hearing a case in the court.

484 "Pursuant to paragraphs 4 and 5 of Article 185 of the Criminal Procedure Code, "4. A party has the right to move for changing the date of hearing (i.e. for scheduling the hearing prior or after the scheduled date) by lodging a reasoned motion with the court in advance, in which case it must notify the other party thereabout. The court will review the motion without an oral hearing. A decision of the court may not be appealed. 5. Parties may, based on a mutual agreement, jointly move for changing the date of hearing (i.e. for scheduling the hearing prior or after the schedule date) by lodging a reasoned motion with the court in advance. The court will review the motion without an oral hearing. A decision of the court may not be appealed."

EQUALITY OF ARMS AND ADVERSARIAL PROCEEDINGS

Pursuant to the Constitution of Georgia,[485] legal proceedings shall be carried out on the basis of the principles of equality of arms and adversarial proceedings. This constitutional principle is restated in the Criminal Procedure Code.[486] The Criminal Procedure Code lays down a peremptory requirement that criminal proceedings must be carried out on the basis of the principles of equality and adversarialityfrom the onset of criminal prosecution.

Equality of arms and adversarial proceedings are the cornerstones of the right to a fair trial, which, if absent, would render a fair judicial examination unimaginable and impossible. An accused person has the right to a fair process.[487] The criminal procedure law prescribes a series of guarantees to enable the enjoyment of the rights to equality of arms and adversarial nature of proceedings.

With a view to reinforcing the principles of equality of arms and adversarial proceedings, the Parliament of Georgia adopted changes in the Criminal Procedure Code in June 2013. The rule that witnesses may be interrogated at the stage of investigation is applicable until 31 December 2015. The Public Defender takes the view that timely entry into force of the rule that witnesses can only be interrogated in the court is crucial to full-fledged operation of the principles of equality of arms and adversarial proceedings. Besides, it would be prudent for the relevant authorities to provide full information about the steps they have taken to promote timely entry into force of the above-mentioned rule. In order to actually ensure equality of the parties and adversarial nature of criminal proceedings, the rule of interrogating witnesses at the investigation stage must be abolished as soon as possible and the term indicated in Article 332 of the Criminal Procedure Code must be reduced.

With a view to ensuring the principles of equality and adversarial proceedings, a court must create equal opportunities for the parties in a way not to grant privilege to any of them. In order for the parties to be truly in equal conditions during judicial proceedings, they must have equal opportunities, have equal access to the case materials, be aware of each other's evidence, take part in examining the evidence, and provide opposing arguments and evidence.[488]

In order to protect the rights of the defense vis-à-vis the prosecution in accordance with the equality-of-arms principle, the law grants the defendant and his lawyer the right to view the prosecution's evidence and to obtain copies of evidence and criminal case materials to the extent and in observance of a procedure established by law.[489] The Criminal Procedure Code clarifies the rule of exchanging information about each

485 The Constitution of Georgia, Article 85(3)
486 The Criminal Procedure Code of Georgia, Article 9(1)
487 The Criminal Procedure Code of Georgia, Article 8(1)
488 The Criminal Procedure Code of Georgia, Article 25(1)
489 The Criminal Procedure Code of Georgia, Article 38(13)

other's potential evidence between the parties. The defense's request for obtaining access to information held by the prosecution, which the prosecution is intending to present as evidence in the court, must be granted at any stage of criminal proceedings. The prosecution is also obliged to convey to the defense any exonerating evidence it possesses.[490] Before the defendant's first appearance before the court, the parties are obliged to give each other the opportunity to view the information and evidence they are intending to use in the court. The parties must also exchange copies of any written pieces of evidence.[491]

The obligatory nature of letting the other side view the evidence collected and the obligation of exchanging information between the parties emphasize the importance attached to the principles of equality of arms and adversarial process in criminal proceedings. Especially remarkable in this context is the rule envisaged by the Criminal Procedure Code that failure to fully exchange with the other party the materials available by the time the other party requested them will result in finding such unexchanged material inadmissible evidence.[492] No evidence can be brought up before a court (jury) if the parties have not had an equal opportunity of examining it, except for in exceptional circumstances envisaged by this Code.[493]

The European Court of Human Rights has held that the principle of equality of arms in conjunction with Article 6(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms imposes upon the investigative authorities the obligation to ensure to the accused the right to have at his disposal, for the purposes of exonerating himself or having his/her sentence reduce, all relevant elements that have been or could be collected by the investigative authorities.[494]

According to the European Court of Human Rights, the right to adversarial proceedings means the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed.[495] National courts should not base conviction primarily upon evidence the content of which is unknown to the applicant.[496] Access to case material must be ensured right from the onset of legal proceedings, in other words, from the moment of bringing charges, arrest or substantial change of his situation as a result of proceedings."[497]

In *Chahal v United Kingdom* (1996), the Court stated that the use of confidential material may be unavoidable where national security is at stake, but national authorities are not free from effective control by the domestic courts whenever they choose to assert that national security and terrorism are involved. Therefore, in each case, in considering whether evidence report could be withheld from the defendant, given that the prosecution objects to the disclosure of this material on the grounds of national security, the trial court must balance the public interest in non-disclosure against the importance of thematerials in question to the defence. At the same time, only such measures restricting the rights of the defence which are "strictly necessary" are permissible under Article 6(1).[498]In *Dowsett v United Kingdom*, the Court held that "any decision to withhold information must be placed before a court; the prosecution may not unilaterally decide to withhold information. Further, an assessment of relevance of such material must be made by the trial judge."[499]

The only exception to the general rule of exchange of case materials between the parties is the following: the defense's right to receive information from the prosecution may be restricted by a court, based on a

490 The Criminal Procedure Code of Georgia, Article 83(1)
491 The Criminal Procedure Code of Georgia, Article 83(8)
492 The Criminal Procedure Code of Georgia, Article 83(3)
493 The Criminal Procedure Code of Georgia, Article 14(1)
494 See *Jespers v. Belgium*
495 See *Vermeulen v. Belgium*
496 See *Rowe and Davis v. the United Kingdom*
497 Stefan Trechsel, "Human Rights in Criminal Proceedings", 2009, p. 254; See *Harris, O'boyle and Warbrick* (1995); *Robertson and Merrills*, 2001, par. 121
498 "Right to a Fair Trial under the European Convention on Human Rights" (authored and edited by YonkoGrozev, DovydasVitkauskas, Soan Lewis-Anthony), 2008, p. 83
499 "Right to a Fair Trial under the European Convention on Human Rights" (authored and edited by YonkoGrozev, DovydasVitkauskas, Soan Lewis-Anthony), 2008, p. 84

prosecution's motion, if the information concerned is the one obtained as a result of criminal intelligence measures or undercover investigative measures and only before a pretrial hearing takes place.[500]

As regards information containing State Secrets, the Georgian Criminal Procedure Code says nothing on this matter. In the reporting period the Office of the Public Defender was seized with a case that raised this issue (the so-called "cables case"). In particular, the whole case has been classified as "secret" for which reason the defense was not allowed to view the case materials.

The Public Defender takes the view that, where authorities wish to classify a criminal case as "State secret", they should evaluate propriety of classifying each individual material (document) as "secret"; furthermore, only the part of a criminal case containing the information described in the Law on State Secrets can be classified lest the defendant be deprived of the possibility of exercising his rights under the Georgian Constitution and international instruments, including the right to access criminal case materials, in pursuance of the principle of equality of arms.[501]

THE CASE CONCERNING HIGH-RANKING OFFICIALS OF THE MINISTRY OF DEFENSE (THE SO-CALLED "CABLES CASE")

Members of the Ministry of Defense – G.Gh., A.A., N.K., G.L. and D.Ts. – were arrested on 28 October 2014. In response to a request for information by the Office of Public Defender, the Chief Prosecution Office wrote*: "On 20 June 2014, the Investigative Unit of the Chief Prosecution Office opened an investigation in the criminal case no. 074200614801 concerning embezzlement of State funds by some of the employees of the Ministry of Defense of Georgia, a crime under subparagraphs (a) and (d) of paragraph 2 and paragraph 3(d) of Article 182 of the Criminal Code of Georgia. Having in mind that the case concerned classified State procurement by the Ministry of Defense and all of the purchase-related documents had been classified as "secret" […], a Deputy Chief Prosecutor issued a resolution classifying thecriminal case as "secret". […] After we found out that none of the defense lawyers had the right to access the secret documents and were not able to present a document permitting such access, they were explained that they could not receive copies of the case materials because the materials were secret and had been classified as "secret".*

According to an announcement made by the Chief Prosecution Office on 25 November 2014,[502] *"The Interior Ministry's Counterintelligence Department, which is the only competent body under the Georgian legislation, based on a request of the Ministry of Defense and the Prosecution Office, studied the materials of the mentioned case and considered appropriate to remove the label of "secret" from the materials except the part that contains secret information about military security. [...] The small part of the case that remained classified will be made known to the parties in observance of the relevant procedures. […] In percentages, only about 7 percent of the whole material of the criminal case retained the "secret" label, which will be made accessible to the defense within the scope of the law."*

As it is clear from above, the Prosecution Office classified not some part of the materials, but the entire criminal case as "secret". Certain types of military information may qualify as State secret under the Georgian law;[503] however, although some part of the criminal case materials were classifiedin observance of the legal procedure, an overwhelming part of the criminal case materials, as the Prosecution Office's above-cited announcement

500 The Criminal Procedure Code of Georgia, Article 83(5)

501 See http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcveli-tavdacvis-saministros-tanamshromlebis-saqmis-nawilis-gansaidumloebas-sachirod-miichnevs.page

502 See http://pog.gov.ge/geo/news?info_id=593

503 Under Article 7(1) of the Law on State Secrets, the following information may categorized as State Secret in area of military: "a) information containing strategic and operational plans, documents about preparation and implementation of military operations, information about strategic and operational transportation of troops, their mobilization, alertness and use of mobilization resources; b) information about programs for developing armament and military techniques, information about scientific, research and construction activities related to development of a new type of weapons, military equipment and defense technologies; c) information about rules and procedures, structure and staffing of highly protected military and civilian defense objects."

suggests, did not belong to State secrets. It was useful that the authorities removed the "secret" label from part of the case materials but it should be mentioned that the materials were declassified on 25 November 2014, while criminal prosecution against the defendants started on 28 October 2014; it follows that during this whole period the defense did not have the opportunity of acquainting itself with the case materials. Consequently, during the mentioned period, the defense was not able to fully exercise its right to defense guaranteed by the Georgian law.

PRESUMPTION OF INNOCENCE

An individual shall be presumed innocent until his guilt is proven in accordance with a procedure prescribed by law by a final convicting judgment of court.[504] This constitutional principle is further enshrined in the Criminal Procedure Code of Georgia.[505] Presumption of innocence is one of the fundamental principles of criminal law.

One of the constituent parts of the right to a fair trial guaranteed by the Convention for the Protection of Human Rights and Freedoms is the right to be presumed innocent: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."[506] According to a judgment of the European Court of Human Rights, protecting the right to a fair trial and in particular the right to be presumed innocent, is intended to enshrine the fundamental principle of the rule of law.[507]

The only body that has the competence of ascertaining whether a specific person has committed a crime and of finding such person guilty is the court. Until a court passes its judgment, there is only a substantiated assumption that he/she committed a crime envisaged by the Criminal Code of Georgia.[508]

Presumption of innocence operates during the whole length of criminal proceedings, starting at the investigation stage, on to judicial examination and even after a judgment is delivered. The "right to be presumed innocent until proved guilty according to law" is not only a procedural guarantee in criminal proceedings, but requires all State organs to refrain from statements about the defendant's guilt until the guilt is ascertained by the competent court."[509]

The case of *Allenet de Ribemont v. France decided by the European Court of Human Rights provides important guidance when it comes to breaching the presumption of by making statements. In particular, in the cited case, a high-ranking police office made a statement about a detained person at a press conference referring to the detainee as "an instigator of murder". The European Court held that State authorities are bound by the presumption of innocence after a person is charged with commission of a crime. In the mentioned case, some of the highest-ranking officers in the French police referred to the applicant, without any qualification or reservation, as one of the instigators of a murder and thus an accomplice in that murder. This was clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe he was guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. The Court therefore deemed these statements violated the presumption of innocence. The Court held the authorities are not prevented from informing the public about criminal investigations in progress, but they have to do so with all the discretion and circumspection necessary to respect the presumption of innocence.*

504 The Constitution of Georgia, Article 40(1)
505 The Criminal Procedure Code of Georgia, Article 5(1)
506 The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedom, Article 6(2)
507 See *Salabiaku v. France*, application no. 10519/83, §28.
508 The Criminal Procedure Code of Georgia, Article 3(19)
509 Decision in *P. and R.H. and L.L. v. Austria, application no.* 15776/89.

The European Court of Human Rights has explained that the presumption of innocence will be violated if a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law.[510]

In the reporting period of 2014, the Office of the Public Defender has revealed numerous occasions of law enforcement bodies referring to arrestees (defendants) as perpetrators of crimes. Effective performance of their duties by law enforcement bodies – i.e., fight against crime, crime investigation and detection of those responsible – protects citizens against crime and maintains order a good order and security. It is important to inform the public about the progress of investigations, criminal prosecutions and convictions with a view to ensuring that the work of the law enforcement is subjected to the public scrutiny. However, public officials must act within the limits of presumption of innocence in spreading information about opened crimes, arrests of persons and charges brought.

Many of the statements made by the Minister of Interior and the Prosecution Office during the reporting period contained reference to the accused persons being guilty.

Sometimes the Ministry of Interior refrains from indicating full names of accused persons when placing public information about their arrests on its official website (only the initials of the person are provided), however we detected quite a number of cases when official statements by the Ministry of Interior referred to specific persons (indicating their full names) as perpetrators of crimes or criminals. It should be noted that these statements have been made while the persons were accused persons at the material stage of proceedings.

Furthermore, on some occasions, the Prosecution Office's public announcements contained conclusions of probative nature about specific persons (who had the status of accused persons) being guilty. Certainly, the public needs to be informed about the progress of investigations, especially in high-profile criminal cases, but in any event such information must be distributed in a way that the defendant is not depicted as guilty. Abidance by the constitutional principle of presumption of innocence is necessary and mandatory for the Prosecution Office and its representatives despite the fact that this body is responsible for criminal prosecutions. The Public Defender takes the view that law enforcement bodies and/or their officials have to take heed of the right to presumption of innocent in making public statements about ongoing criminal cases.

THE CASE OF MINISTRY OF DEFENSE REPRESENTATIVES

According to the Prosecution Office's announcement made on 28 October 2014,[511] "The investigation carried out by the Chief Prosecution Office of Georgia revealed embezzlement of State Budget money in the amount of GEL 4,102,872 by high-ranking officials of the Ministry of Defense. […] Current officials of the Ministry of Defense – G.Gh., G.L., A.A., N.K. and D.Ts. decided to embezzle sums from the State Budget in favor of JSC Silknet. [..] Having done so, G.Gh.,[512] G.L., A.A., N.K., D.Ts. and other persons with leading positions at the Ministry of Defense abused their official positions to embezzle the State Budget money of GEL 4,102,872 in favor of JSC Silknet."

It is necessary to point out that the day the investigating authorities made the above-mentioned statement these persons were arrested (they were accused persons) and no convicting judgment had been passed against him at that time. Despite this, the Prosecution Office stated they "embezzled sums from the State Budget".

510 See *Daktaras v. Lithuania*, application no. 42095/98, §41; *Böhmer v. Germany,* §54;(Stefan Trechsel, "Human Rights in Criminal Proceedings", Tbilisi, 2009, p.186)

511 See http://pog.gov.ge/geo/news?info_id=567

512 The Prosecution Office's statement refers to these individuals by their full names

THE CASE OF CITIZENS G.M. AND A.G.

According to the Prosecution Office's announcement made on 14 May 2014,[513] "Members of the KvemoKartli prosecution office arrested Lawyer G.M. and his accomplice A.G. for fraudulent misappropriation of a large sum of money. The investigation ascertained that GM and AG extorted GEL 51,000 by deception from prisoners' families."

THE CASE OF CITIZEN G.S.

On 8 February 2015, the Prosecution Office made a public announcement[514]entitled "The person who committed IuriVazagashvili's murder has been arrested". According to the announcement, "The Prosecution Office arrested a person who has perpetrated the murder of IuriVazagashvili who was killed as a result of explosion in Village Karapila, Kaspi District. In particular, as a result of investigative and criminal intelligence measures undertaken, G.S., a police officer, has been arrested. […] We can say without any doubt that IuriVazagashvili was killed by G.S. through a hand grenade installed on the grave."[515]

Although the Prosecution Office said the person was arrested, which means he had the status of an accused person by that time and had not yet been convicted by a criminal court, the statement made by the Prosecution Office contained an assertive sentence naming the person as a murder perpetrator.

THE CASE OF SO-CALLED "TENNIS COURTS SWAT OPERATION"

According to a statement made by the Prosecution Office on 2 February 2015,[516] the Prosecution Office has found that "[…] ZurabVazagashvili and Alexandre Khubulov were killed as a result of an attack organized by I.P., former Deputy Director of the Central Criminal Police Department of the Interior Ministry. The attack was falsely labeled as a successful SWAT operation directed at prevention of armed robbery. […] I.P. took on implementing his criminal plan. He mobilized members of the Criminal Police Department and a SWAT team to commence planning a SWAT operation, which was disguised as a criminal intelligence and search measure to take persons suspected of preparing an armed robbery. […] Immediately after IP issued a verbal order through a portable radio transmitter, SWAT team members – IM, GG, ATs, ZJ, DA, SCh, AS and KN – who were armed with firearms got off the car and proceeded towards a car ZurabVazagashvili was driving. Without any verbal warning or a warning shot, they opened fire against the car driven by ZurabVazagashvili and the people inside the car. […] Immediately after the heavy fire ceased, G.Ts., Deputy Chief, Searches Unit, the Criminal Police Department, who was taking part in the so-called "SWAT operation", acting in pursuance of a pre-made plan and driven by the intention of concealing the I.P.-organized crime, destroying eyewitnesses and getting assurance of the operation's success, approached the car driven by ZurabVazagashvili and made verifying shots from his firearm in the direction of ZurabVazagashvili and Alexandre Khubulov who were seated in the front seat of the car."

In this context, it should be stressed that, in every case involving deprivation of life, the State must conduct an effective investigation leading to administration of justice on the one hand, but the State must also ensure to the defendant all the rights under the Georgian legislation and international instruments, including the right to a fair trial. Consequently, abidance by the constitutional principle of presumption of innocence is mandatory for State bodies (the prosecution office, in this case) and public officials in the process of informing the public about an ongoing investigation. There is no exception to this rule.

513 See http://pog.gov.ge/geo/news?info_id=487
514 See http://pog.gov.ge/geo/news?info_id=632
515 The Prosecution Office's statement refers to the arrested individual by his full name
516 See http://pog.gov.ge/geo/news?info_id=629

THE CASE OF CITIZENS G.K., L.Q. AND T.CH.

In its statement of 27 December 2014, the Interior Ministry said:[517] "Members of the Anti-Corruption Agency of the Interior Ministry exposed GK[518] and LQ, former employees of the Achara Regional Division of the National Food Agency of the Ministry of Agriculture as well as TCh, chief of Batumi field office of the Ministry of Agriculture laboratory. These individuals acted in complicity with IZ, head of Fumigator Ltd. In addition to the official fee payable by citizens, the were extorting additional sums from the citizens in the form of bribes, instead of making decisions within their scope of competence."

THE CASE OF G.GH.

According to a statement made by the Ministry of Interior on 18 December 2014,[519]"Members of the Gurjaani District Division, Kakheti Regional Division, Interior Ministry, conducted criminal intelligence and investigative measures. As a result, G.Gh, 1956, Representative of the Kvareli Municipality in Village Gremi, was arrested on charges of falsification by abusing official position. It was ascertained by investigation that the arrestee was abusing his official position to systematically issue falsified documents in the name of an individual citizen on the purchase of grapes during the vintage in Fall this year. GGh issued false documents in the name of the mentioned citizen for a total of 108 tons of grapes."

THE CASE OF CITIZEN D.G.

On 26 November 2014, the Interior Ministry made the following announcement:[520] "Members of the Anti-Corruption Agency of the Interior Ministry conducted criminal intelligence and investigative measures to expose and arrest DG, Representative of the Borjomi Municipality in Village Bakuriani, on charges of bribe-taking. It was ascertained by investigation that DG, Representative of the Municipality in Village Bakuriani, colluded with a group of people in advance to abuse his official position and reputation. As a result, he demanded and extorted USD 3,000 from a citizen in exchange for construction of a commercial building on a territory of Village Bakuriani belonging to the Borjomi Municipality without a construction permit."

ADMINISTRATIVE OFFENSE CASES

In its 2012 and 2013 reports to the Parliament, the Public Defender has been stressing the need for elaborating and adopting a new Code of Administrative Offenses to replace the current one. The Public Defender takes the view that the Code now in force falls short of meeting the standards required of modern normative acts, contains vague sentences and needs to be systematized. Overall, these problems have negative impact upon decision-making in administrative offense cases by courts of general jurisdiction.

One of the objectives set forth in the Governmental Action Plan for the Protection of Human Rights for 2014-2015[521] is a systemic revision of the Code of Administrative Offenses. The Action Plan contemplates achieving this objective by the following activities: produce a systemically new version of a Code of Administrative Offenses; make the administrative arrest-related provisions compatible with the right to a fair trial.

We welcome the fact that a Governmental Commission to Promote Reformation of the Administrative Offenses System was set up by an individual order of the Government of Georgia.[522] The Commission's

517 See http://police.ge/ge/shss-m-gaqtseuli-patimari-daakava/7743
518 The Prosecution Office's statement refers to these individuals by their full names
519 See http://police.ge/ge/shss-m-samsakhurebrivi-sikalbis-braldebit-sofel-gremis-rtsmunebuli-daakava/7513
520 See http://police.ge/ge/shss-s-antikoruftsiulma-saagentom-qrtamis-aghebis-faqtze-daba-bakurianis-rtsmunebuli-daakava/7379
521 Resolution of the Government of Georgia no. 445 dated 9 July 2014
522 Individual order of the Government of Georgia no. 1981 dated 3 November 2014

tasks have been determined as follows: develop proposals, recommendations and concepts for reforming the administrative offenses system, while taking into consideration the principles of rule of law and human rights protection; produce a draft Code of Administrative Offenses; prepare other draft legal acts concerning the administrative offenses system and submit them to the Government. It has to be mentioned that the Office of the Public Defender is actively participating in the meetings of the Commission's working group. The Office has submitted its remarks and recommendations about general administrative offenses to the group.

We note with satisfaction that the administrative detention term has decreased from 90 days to 15 days. In particular, the changes made in the legislation on 1 August 2014 took into account the Public Defender's recommendation about reducing the term of administrative detention. It goes without saying that we are glad to this change.

In the reporting period, the Office of the Public Defender requested the Tbilisi City Court and the Kutaisi City Court to furnish the Office with copies of their judicial decisions (resolutions) in administrative offense cases. We received 842 resolutions from the Tbilisi City Court and 166 resolutions from the Kutaisi City Court (1,008 cases in total). Analysis of the cases showed a number of positive trends. However, some of the shortcomings related to administrative case proceedings remain a challenge.

Having examined these cases, the Office of the Public Defender revealed problems such as lack of examination of evidence at trials and lack of reasoned judicial decisions. In fact, nothing has changed in this regard since the previous reporting year. Analysis of cases looked into by the Public Defender's Office has demonstrated that, in imposing administrative punishment, judges rely only on police officers' explanations, protocols (reports) on the commission of administrative offenses and arrest protocols (reports). In an overwhelming majority of their decisions in administrative offense cases, the judges have been reiterating that they are guided by the presumption that whatever law enforcement officers are saying is true and it is under this pretext that they *are not taking* the administrative offenders' point of view into consideration. That happens against the background that the case files do not contain any information other than law enforcement officers reports and protocols on the commission of administrative offense, and there are no witnesses in the cases.

Another matter that needs to be taken into account is that, despite meeting a formal requirement of existence of cumulative evidence, all of such evidence are in principle collected and submitted by a single law enforcement body or official who simply repeats at trial what the protocol says. In addition, effective examination of administrative offense cases are negatively affected by the fact that the Code of Administrative Offenses does not prescribe an evidentiary standard for which reason representatives of law enforcement authorities never bother to provide a sufficient amount of evidence. Unlike this general practice, in all of the cases concerning commission of an administrative offense under Article 45 of the Code of Administrative Offenses[523] examined by the Public Defender's Office, law enforcement officers have always submitted forensic reports to confirm use of narcotic substances. The same is practiced in regard to cases involving abuse of alcohol.

In a majority of cases examined by the Office of the Public Defender, the perpetrators have not submitted their evidence; they usually confine to verbal explanation and confession instead.

Further, a majority of court decisions in administrative offense cases simply reiterate the definition of offenses contained in the relevant provisions of the Code of Administrative Offenses without discussing whether the conduct of a specific person matches with the descriptive provisions of the Code. The court decisions are saturated with information furnished by those who drafted the protocols (reports) on the commission of administrative offense. A significant part of the court decisions does not contain judges' discussion of the circumstances of the case and ascertainment of occurrence of the wrongdoing.

523 Definition of the administrative offense under Article 45 of the Code of Administrative Offenses reads: "Illegally buying or storing a small amount of narcotic item without the intention of selling it or consuming a narcotic item without a physician's prescription."

Judges also do not give reasons when imposing punishment. Article 33(2) of the Code of Administrative Offenses provides a list circumstances a court should take into consideration when imposing punishment upon a perpetrator of an administrative offense. These circumstances are the nature of the offense, the perpetrator's personality, degree of the perpetrator's guilt, the perpetrator's financial status, and any circumstances mitigating or aggravating the perpetrator's liability. In a majority of their decisions, courts are simply stating that they relied on the criteria contained in Article 33[524] but almost never do judges explain why these criteria have been met and which specific circumstances made them choose a particular type of punishment.

Neither do judges discuss mitigating or aggravating circumstances. Of the mitigating circumstances listed in Article 34 of the Code of Administrative Offenses, only "sincere confession to guilt" is practiced in reality. As regards aggravating circumstances described in Article 35 of the Code, one can encounter only two of them in practice: commission of an administrative offense while being drunk and continued commission of an administrative offense in contravention of authorized persons' demand to stop the conduct. It should be noted that court decisions in administrative offense cases simply refer to mitigating or aggravating circumstances without explaining what the specific circumstance has been in the case and how it affects the administrative punishment of the person concerned.

Further, analysis of the cases we looked at shows that lack of reasoning is also a problem with other court decisions in which courts impose administrative detention as a measure of punishment. According to the cases examined by the Office of the Public Defender, the court decisions do not contain explanations why exactly the use of administrative detention was deemed necessary and why other milder measures would prove ineffective. Although administrative detention differs from all the other measures of administrative punishment by its nature and severity having the effect of limiting a person's capability of exercising his/her fundamental rights, courts do not take this into consideration and do not explain the facts and circumstances in the reasoning part of their decisionsthat led them to conclude that administrative detention was the right measure to use in a particular case.

With these realities in mind, we would like to stress once again that court decisions in administrative offense cases are cut-and-dried and mostly fail to meet the standard of reasoning required of court decisions.

For better visualization, we provide description of some of the cases examined by the Office of the Public Defender.

THE CASE OF CITIZEN G.CH.

On 5 August 2014, the Administrative Cases Panel of the Tbilisi City Court reviewed materials on imposing administrative punishment upon Citizen G.Ch. for the conduct envisaged by Articles 166 and 173 of the Code of Administrative Offenses. The court decision: "On 5 August 2014, GCh was arrested under administrative rule in Tbilisi for insulting patrol police officers and disobeying their repeated lawful requests."

The above decision is a sample of court decisionslacking any reasoning and substantiation. In the described example, despite the fact that the perpetrator did not admit commission of the offense, the court relied only on a police officer's verbal explanations and police-authored protocol(reports) on the commission of the administrative offense and the arrest protocol. In the cited case, the judge imposed a seven-day administrative arrest upon GCh whom it found guilty of the offense. In the decision, the judge simply reiterated verbatim the content of Article 33 of the Code of Administrative Offenses stating that "In imposing punishment,

524 Pursuant to Article 33 of the Code of Administrative Offenses, "Administrative punishment must be imposed within the limits established by a normative act that envisages liability for the administrative offense, in strict accordance with this Code and other acts governing administrative offenses. In imposing punishment, consideration should be given to the nature of offense, the perpetrator's personality, the degree of the perpetrator's guilt, the perpetrator's financial status, and any circumstances mitigating or aggravating the perpetrator's liability."

consideration should be given to the nature of the offense, the perpetrator's personality, the degree of perpetrator's guilt, the perpetrator's financial status, and any circumstances mitigating or aggravating the perpetrator's liability."

The Court stated that, in view of the perpetrator's personality and degree of guilt, GCh was imposed administrative detention. It must be mentioned that nowhere in the judgement can one find the court's reasoning about why, for what specific personality trait, it was necessary to impose administrative detention upon the perpetrator and why another, less strict punishment would prove ineffective.

The problem of reasoning is conspicuously visible in decisions rendered by the Administrative Cases Panel of the Batumi City Court. Decisions of some of the judges from the same court contain rather longer reasoning but they, too, often repeat the passages and phrases used in previous decisions. This practice, again, points to the fact that cut-and-dried use of texts of court judgments remains a problem.

THE CASE OF CITIZEN L.T.

Problems similar to those described above were identified in the decisions of the Kutaisi City Court. On 7 August 2014, a judge of the Administrative Cases Panel of the Kutaisi City Court examined case materials concerning commission of an offense under Articles 173 and 166 of the Code of Administrative Offenses by Citizen A.J. A decision of the court in this case reads: "Drunk AJ was calling names and loudly using foul language directed at no specific individual; by doing so, he was breaching the public order. At that time, police officers called for AJ to respect public order but AJ failed to comply with the police officers and rendered resistance during arrest."

It is clear from the above-cited decision, too, that it does not contain reasoning and sufficient description of facts of the case. Obviously, the court left the allegation of breach of public order undiscussed and disobedience to the police officers unexamined. The court simply assumed that the information provided by the police officers in the protocol (report) on the commission of an administrative offense was true.

THE CASE OF CITIZEN J.K.

Batumi City Court examined an administrative offense case against Citizen JK under Article 45 of the Code of Administrative Offenses. A decision of the court reads: "According to the materials submitted to the court, on 12 August 2014, a protocol on the commission of an administrative offense by JK was drafted due to the fact that test results conducted at the Forensic Examination Service of the Achara Autonomous Republic showed he had illegally consumed a narcotic substance. On this ground, MB, Community Inspector/ Investigator, Community Inspectors' Division, Achara Main Division of Internal Affairs, drafted a protocol on the commission of an administrative offense by JK […]"

As we see from the above-cited decision of the Batumi City Court, Citizen JK was tested at the Forensic Examination Service and the test results showed he had consumed drugs. However, the decision rendered by the court – which is a final decision in the case – does not contain a reference to the forensic report, its number or the date it was drafted. The decision also does not contain a list of pieces of evidence adduced; it confines itself to merely making a reference to the evidence in general.

RECOMMENDATIONS

To the Parliament and Government:

- Develop a mechanism to allow for revision of final judgments in criminal cases and full rehabilitation of victims, including by reimbursing damages inflicted as a result of illegal actions of the State
- Amend the Criminal Procedure Code with a view to 1) setting one and the same standards for handing down both a judgment approving a plea agreement and a convicting judgment and 2) allowing the sending of a case back to a prosecutor only if it is before a pretrial hearing that a court is examining a prosecutor's motion for rendering a judgment without hearing a case on merits
- Develop and adopt a new Code of Administrative Offenses providing for guarantees for the protection of human rights during administrative proceedings
- *(Recommendation to the Government and the Parliament: develop a mechanism to allow for revision of criminal cases in the event of miscarriages of justice and full rehabilitation of victims of faulty administration of justice, including by restoring the damages inflicted as a result of the State's illegal actions)*

To the Ministry of Justice and the Parliament:

- Revise the provisions of the Organic Law on Courts of General Jurisdiction and the case allocation rules in courts of general jurisdiction, including the powers of presidents of courts in regard to case allocation; adopt rules that are capable of excluding subjective decision-making completely and ensuring independence and transparency of the judicial system

To the Prosecution Office:

- Ensure prosecutors' participation in trials with a view of avoiding procrastinated judicial review of cases due to prosecutor's failure to appear at trials
- Ensure access to case materials to the defense
- In deciding to classify criminal cases as "secret", evaluate propriety of and need for classifying every single piece of the materials taking into consideration whether the specific document contains information falling within the definition of State secrets

To the Ministry of Interior and the Prosecution Office

- When making public statements about ongoing investigations, commencement of criminal prosecution or arrest of defendants, abide by the requirements of presumption of innocence by refraining from making any probative conclusions about the guilt of specific individuals

To courts of general jurisdiction:

- Give reasons for their decisions in administrative offense cases
- Ensure that copies of judgments in criminal cases are served on the parties within the legally prescribed term
- Forward appeals complaints and appealed cases to courts of appeals without delay, immediately after a counterclaim against an appeals complaint is lodged or the legally prescribed term for lodging such counterclaim expires

THE RIGHT TO PRIVACY AND INVIOLABILITY OF FAMILY LIFE

The right to inviolability of private life envisaged by Article 20 of the Georgian Constitution[525] ensures to persons the rights to physical and moral inviolability, inviolability of name, personal data, home, confidentiality of family and sexual life, and confidentiality of correspondence and telephone conversations.[526]

Article 8 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to respect for privacy and family life: "Everyone has the right to respect for his private and family life, his home and his correspondence." The European Court of Human Rights has explained that the notion of "private life" is such a broad one that it is not susceptible to exhaustive definition.[527]

One of the strategic courses of action envisaged by the National Human Rights Protection Strategy for 2014 – 2010[528] is to introduce higher standards so that the domestic standards of protection of private life and personal data are compatible with the international standards.

The Governmental Action Plan for the Protection of Human Rights[529] envisages several tasks and a whole series of activities aimed at implementing high standards of private life protection.[530]

According to the National Human Rights Protection Strategy for 2014 – 2010,[531] betterment of the criminal legislation and reinforcement of the right to equality of arms are a strategic direction, with the aim of having a criminal legislation in place that is fully compatible with the constitutional and international standards of human rights protection. For approximation with international standards of human rights protection, the Governmental Action Plan for the Protection of Human Rights[532] envisages initiation of changes in the criminal justice legislation to implement European standards of private life protection.[533]

525 Pursuant to Article 20 of the Georgian Constitution, "1. Every individual's private life, place of private activity, home, personal papers, correspondence, communication by telephone, and by other technical means, including messages received through other technical means, shall be inviolable. These rights may be restricted only by a court decision or failing such decision, in cases of urgent necessity provided for by law. 2. No one shall have the right to enter a place of residence and other possessions against the will of the possessors, nor search the place absent a court decision or urgent necessity provided for by law.

526 See a judgment of the Constitutional Court of Georgia in *The Georgian Young Lawyers' Association and Citizen EkaterineLomtatidze v. The Parliament of Georgia*

527 See a judgment of the European Court of Human Rights in *Costello-roberts v. The United Kingdom, par. 36 [1993]*

528 Resolution of the Parliament of Georgia no. 2315-IIS dated 30 April 2014

529 Annex 1, Resolution of the Government of Georgia no. 445 date 9 July 2014 approving a Governmental Action Plan for the Protection of Human Rights for 2014-2015, establishing a Coordinating Inter-Agency Council on the Action Plan and approving the Council's statute

530 The Governmental Action Plan for the Protection of Human Rights envisages implementation of the following activities: 1. Improve the legislation to make it compatible with international and European standards; 2. Effectively implement the laws and introduce correct practices of personal data protection and processing with a view to respecting the right to inviolability of private life; 3. Raise public awareness of inviolability of private life and personal data protection.

531 Resolution of the Parliament of Georgia no. 2315-IIS as of 30 April 2014

532 Annex 1, Resolution of the Government of Georgia no. 445 date 9 July 2014 approving a Governmental Action Plan for the Protection of Human Rights for 2014-2015, establishing a Coordinating Inter-Agency Council on the Action Plan and approving the Council's statute

533 Governmental Action Plan for the Protection of Human Rights, par. 1.1.5

In regard to above-mentioned activity (initiating legal changes in the criminal justice legislation to implement the European standards of private life protection), an interim report on the implementation of the Governmental Action Plan for the Protection of Human Rights stipulates that "As a result of changes in the Criminal Procedure Code adopted on 1 August 2014, some of the measures previously prescribed by the Law on Criminal Intelligence Activities that are associated with severe limitation of constitutional human rights were moved into the scope of criminal procedure. In particular, a new Chapter XVI[1]was inserted into the Criminal Code determining types, procedures and principles of undercover investigative measures, which are compatible with international standards. Worth noting, among the changes implemented, is the possibility of undertaking undercover investigative measures and subsequent activities. Besides, the Supreme Court will maintain a register of undercover investigative measures and their statistics. Another change concerns the amended Personal Data Protection Law, which now requires involvement of the Personal Data Protection Inspector in the process of undercover operationsas an outside control body."

Pursuant to the same report, "On 1 August 2014, the Georgian Parliament adopted a set of legislative changes for the purpose of approximating the Georgian legislation with the international standards of personal data protection. The changes serve to expanding the scope of the Personal Data Protection Law to cover issues related to crime prevention, investigation, undercover operations and maintenance of good order."

The report also indicates that the changes made in the Criminal Code on 2 May 2014 envisage stricter sanctions for crimes related to interference with private life such as the crimes under Articles 157, 158 and 159 of the Criminal Code.

UNDERCOVER INVESTIGATIVE MEASURES

The right to private life protected by Article 20 of the Georgian Constitution does not constitute an absolute right. Undercover operations are a form of interference in the area protected by this right. The changes in the Georgian criminal procedure law[534] have determined rules and procedures of conducting undercover investigative measures. There are the following types of undercover investigative measures:[535]

a) Covert eavesdropping and recording of a telephone conversation

b) Removal and recording of information from a channel of communication (by hooking up with the means of communication, computer networks, linear communications and stationary equipment) or from a computer system (both on the spot and remotely) and installation of relevant software on a computer system for achieving the previous objectives;

c) Control over postal and telegraphic notifications and parcels (except diplomatic post);

d) Covert video and audio recording, film shooting and photography;

e) Electronic surveillance using technical means that are not harmful to human life or health, or environment.

It is worth noting that the Criminal Procedure Code has limited the scope of conducting undercover investigative measures: under the new regulations, they cannot be employedfor investigating any crime.[536]The new rules have also defined the principles which undercover investigative measures have to meet:[537] they can be resorted to only in the events prescribed by the Criminal Procedure Code and in order to achieve legitimate aims in a democratic society such as ensuring national security or public safety, prevention of disorder or crime, securing the economic wellbeing of the country or protection of others rights and freedoms. Furthermore, the scope (intensity) of covert investigative measures carried out must be proportional to the legitimate goal to be achieved. Bodies and persons implementing undercover investigative measures are now obligated to limit as much as possible their communication with and monitoring of persons whom the investigation does not concern.[538] As regards the period in which an undercover measure should be conducted, a judicial order authorizing a covert operation will be issued for a period required for achieving the investigation objective but

534 A new Chapter XVI[1] was inserted in the Criminal Procedure Code

535 Article 143[1](1) of the Criminal Procedure Code

536 Pursuant to Article 143[3](2)(a) of the Criminal Procedure Code, investigation must commence and/or criminal prosecution must be conducted on account of serious intentional crimes, very serious crimes, or any crime under the following provisions of the Criminal Code: 117(1), 134, 139(2), 140, 141, 143(1), 143[3](1), 180(1), 181(1), 186(2), 187(2), 198(1), 210(1), 253(1), 255[1], 259[4], 284, 285(1), 286, 287, 288(1)-(2), 289, 290, 292 – 303, 304(1), 305, 306, 318(1), 322[1](1)-(2), 340 and 341.

537 The Criminal Procedure Code of Georgia, Article 143[2]

538 The Criminal Procedure Code of Georgia, Article 143[7](1)

this period cannot exceed 1 month. If this term is insufficient, it may be extended on the basis of a prosecutor's motion, by a judicial order, but for not more than 2 months. The term for conducting convert measures can be extended once more, for no more than 3 months, on the basis of the Chief Prosecutor's motion. No further extension is possible.[539]

According to the Criminal Procedure Code of Georgia, an undercover investigative measure can be conducted on the basis of a judicial order or, absent a judicial order, based on a prosecutor's resolution, if a delay may entail destruction of factual information important to a case or render obtaining such information impossible. Where this is the case, a prosecutor must, within 24 hours after the undercover investigative measureshave started, address a district (town) court with a motion. The court will examine the prosecutor's motion and make one of the two decisions: find the undercover investigative measure legal and continue its application or find the measure illegal, discontinue it, cancel its results and destroy the information obtain as a result of it.

According to the data from the register of undercover investigative measures published by the Supreme Court,[540] in the period between 18 August 2014 and 1 December 2014, the prosecution office lodged 738 motions for authoring undercover operations with the first instance courts. The courts left 15 motions unexamined; 723 motions were examined. 451 motions were upheld, 63 were upheld in part and 209 were rejected.

A two-stage electronic system of conducting undercover investigative measures will be introduced on 31 March 2015. The system is a combination of technical and computerized solutions to exclude the possibility of law enforcement bodies independently switching on an object without the Personal Data Protection Inspector's electronic consent.[541] In other words, covert eavesdropping and recording of a telephone conversation can be undertaken only through this two-stage system involving the Personal Data Protection Inspector.[542]

The Personal Data Protection Inspector will immediately receive a court decision (order) authorizing undercover investigative measures (only the basic data and the operative part of the decision be furnished),[543] a prosecutor's reasoned resolution to conduct the undercover measures[544] and a protocol (report) on the destruction of materials obtained as a result of undercover measures signed by the relevant prosecutor and the judge.[545]

According to the Personal Data Protection Law, the Personal Data Protection Inspector supervises undercover telephone eavesdropping and recording by the following:[546] verifies the legality of data processing by means of an electronic system of control; issues electronic consent to conducting undercover investigative measures by means of a two-stage electronic system; verifies the legality of the processing of data by a data processor (authorized person).

The Personal Data Protection Inspector oversees the undercover measures envisaged by Article $143^{1}(1)(b)$ of the Criminal Procedure Code *[Removal and recording of information from a channel of communication (by hooking up with means of communication, computer networks, linear communications and stationary equipement) or from a computer system (both on the spot and remotely) and installation of relevant software on a computer system for achieving the previous objectives]* by verifying the legality of processing of databy a data processor (authorized person).[547] As regards supervision over undercover operations related to computer data, the Personal Data Protetion Inspector does so by comparing pieces of information furnished by the court, the prosecution office and the electronic communication services provider and by verifying (inspecting) the legality of grounds for processing data by the data processor (authorized person).[548]

539 The Criminal Procedure Code of Georgia, Article $143^{3}(12)$
540 See http://www.supremecourt.ge/files/upload-file/pdf/faruli-reestris-cxrili-2014.pdf
541 The Criminal Procedure Code of Georgia, Article 3(31)
542 The Criminal Procedure Code of Georgia, Article $143^{4}(2)$
543 The Criminal Procedure Code of Georgia, Article $143^{3}(7)$
544 The Criminal Procedure Code of Georgia, Article $143^{3}(6^{2})$
545 The Criminal Procedure Code of Georgia, Article $143^{8}(5)$
546 Law on Personal Data Protection, Article $35^{1}(1)$
547 Law on Personal Data Protection, Article $35^{1}(3)$
548 Law on Personal Data Protection, Article $35^{1}(2)$

As we see, the Personal Data Protection Inspector exercises control over undercover eavesdropping and recording of telephone conversations, on the one hand, and issues electronic consent authorizing undercover investigative measures, on the other hand.

Of special attention is the rule that undercover investigative measures *[Removal and recording of information from a channel of communication (by hooking up with means of communication, computer networks, linear communications and stationary equipment) or from a computer system (both on the spot and remotely)]* are conducted by a State body having the relevant competence (Operative and Technical Department of the Interior Ministry[549]). In conducting undercover operations, the Operative and Technical Department uses the technical possibility of intercepting real-time information from physical liaison and communication lines and their connectors, mail servers, bases, communication networks and other communication connectors. The Operative and Technical Department affixes to or installs appropriate equipment and software on these communication means for the purpose of conducting undercover operations.[550]

However, it is worth pointing out that despite the activation of the above-described two-stage electronic system, the Interior Ministry still retains the power of intercepting such information in real time. Notably, the Georgian legislation does not prescribe any mechanism of control over the activity of the Interior Ministry's Operative and Technical Department (interception of real-time information). According to the Georgian law, an electronic communications company must inform the Personal Data Protection Inspector about the transmission of an electronic communication ID information within 24 hours after the transmission (if the transmission is carried out in a way that getting real-time information is not possible).[551] In other words, we are facing a situation whereby not only there is no mechanism to control real-time transmission of data, but electronic communication companies are not obliged to inform the Personal Data Protection Inspector about such transmission.

Similar to the Criminal Procedure Code, the Law on Electronic Communications[552] allows a competent State body, with a view to carrying out undercover investigative measures, to have the technical possibility of intercepting real-time information from physical liaison and communication lines and their connectors, mail servers, bases, communication networks and other communication connectors. For this purpose, the competent State body is authorized to install legal interception management system and other appropriate equipment and software free of charge. However, unlike the Criminal Procedure Code, the Law on Electronic Communications states that the competent body implements directly, based on a judicial order or a prosecutor's reasoned resolution, the actions to be carried out after the real-time information is obtained. In other words, the Law requires a judicial order or a prosecutor's resolution only for conducting the activities necessary after getting real-time information.

Besides, a State body having the competence of conducting undercover investigative measures has the right to copy the identification data existing in the communications channel and to store them for 2 years. Where this is the case, the competent body will carry out the undercover measures to be carried out after the information has been removed from a communication channel (computer system) and recorded through the above-mentioned copied databaseson the basis of a judicial order or a prosecutor's reasoned resolution.[553] In other words, covert investigative measures can be carried out without a judicial order or a prosecutor's resolution because the above-mentioned provision allows for copying and recording data without such order or resolution; it requires a judicial order or a prosecutor's resolution only for the measures to be carried out after the information has been removed and recorded.

549 The Criminal Procedure Code of Georgia, Article 3(32)
550 The Criminal Procedure Code of Georgia, Article 143^3(4)
551 Personal Data Protection Law, Article 20(4)
552 Law on Electronic Communications, Article 8^3(1)
553 Law on Electronic Communications, Article 8^2(b)

On 2 February 2015, having analyzed the above-mentioned provisions from the Georgian legislation, the Public Defender lodged a constitutional lawsuit requesting the Constitutional Court to declare Article 8^3(1) of the Law on Electronic Communications unconstitutional in relation to Article 20(1) of the Georgian Constitution.

The Public Defender takes the view that the ground for conducting undercover measures envisaged by Article 8^3(1)(a)-(b) of the Law on Electronic Communications is different from the ground envisaged by the Criminal Procedure Code. The disputed provision of the Law does not say the rules and procedures under Chapter XVI[1] of the Criminal Procedure Code apply to the covert measures prescribed by the Law. Consequently, the Public Defender believes that the text of the disputed provision allows competent State authorities to intervene in the right to private life almost in an unlimited manner without having to indicate the public interest they wish toachieved by such interference. Under Article 8^3 of the Law on Electronic Communications, no judicial authorization is required for undertaking undercover investigative measures such as getting real-time information from physical liaison and communication lines and their connectors, mail servers, bases, communication networks and other communication connectors, installing relevant equipment and software and copying databases existing in the communication channel. The Law on Electronic Communications, as the Public Defender reads it, does not say criminal intelligence bodies can utilize these powers only in the event of urgent necessity – something that allows them to intrude into private life at any time. The relevant State authorities may use this Law as a separate legal ground for carrying out undercover operations.

In its constitutional lawsuit, the Public Defender emphasized that the changes effected in the Law on Electronic Communications do not offer guarantees against possible misuse, loss, damage, substitution or breach of secrecy of personal data by the competent State authorities. In the view of the Public Defender, the changes inserted in the Law on Electronic Communications on 30 November 2014, in principle, vest the State with unlimited and uncontrolled power of undertaking "undercover investigative measures" against vast numbers of honest citizens turning the State in a sort of Panopticon Prison. The Public Defender believes that the fact the State has uncurbed access to both identification data and content of a large number of communicated information gives it the possibility of knowing the everyday behavior of a majority of citizens, their customs, social connections and environment – a fact that constitutes a serious threat of psychological control over the society. Eventually, this situation badly affects not only the private freedom and social connections of individual human beings but also the healthy development of the entire society.

We wish to mention that, while the draft changes in the Law on Electronic Communications were under discussion, the Public Defender called on the Parliament of Georgia,[554] to establish a collegiate body under the auspices of the Personal Data Protection Inspector,for the sake of transparency of the process, to exercise control over the protection of information in area of communications. The collegiate body could be named a Council and could include *ex officio* members from the legislative, executive and judicial branches of Government and the Public Defender. Unfortunately, the Parliament did not share the Public Defender's recommendation in the process of consideration of the draft changes to the Law on Electronic Communications.

554 See the Public Defender's statement of 28 October 2014 http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcvelistvis-miugebelia-faruli-miyuradebisas-informaciis-mopovebis-kontrolis-meqanizmis-taobaze-gadawyvetilebis-gadavadeba.page [last viewed 21 March 2015]

INCOMPLETE EXAMINATION OF THE LEGALITY OF INVESTIGATIVE/CRIMINAL INTELLIGENCE MEASURES BY COURTS

One of the issues raised in the Public Defender's 2013 report to the Parliament[555] has remained a concern in the reporting period too. In particular, the courts have been incomplete and formalistic in reviewing the legality of investigative measures (criminal intelligence activities) resulting in interference with private life in the circumstances of urgent necessity. In addition, the courts have not been providing reasoning in their decisions on this matter, which, among other problems, makes it difficult to evaluate the factual and legal grounds of the decisions made.

It should be mentioned that the Parliament did not take into account the Public Defender's recommendation[556] to amend the Criminal Procedure Code in a way to oblige a judge, when examining the legality of investigative measures conducted, to thoroughly acquaint himself/herself with the criminal case file and documents containing criminal intelligence information as well as to make it mandatory for judges, when examining the issue, to interrogate the implementers and other participants of investigative measures (criminal intelligence activities) about the circumstances related to the investigative measures (criminal intelligence activities) conducted. In its recommendation, the Public Defender also pointed out that the minutes of a court hearing should indicate the fact that a judge has acquainted himself/herself with materials containing criminal intelligence information. Furthermore, the Public Defender expressed the view in the same recommendation, that it should be mandatory to produce the minutes of a court hearing on recognition of legality of investigative measures conducted without a judicial order; the minutes must provide comprehensive information about any materials examined by a judge.

555 The Public Defender's 2013 Report, pp. 262-267
556 26 February 2014

JUDICIAL CONTROL OVER INVESTIGATIVE MEASURES CONDUCTED IN THE MODE OF URGENT NECESSITY

In order for interference with the fundamental human right under Article 20 of the Georgian Constitution to be legal, the interference must be based on a constitutional ground. The Constitution itself lists these grounds: a judicial decision or urgent necessity.

A search of an object or a person within criminal proceedings is an interference with the right protected by Article 20 of the Constitution. "A search is the severest form of intrusion into a protected area. […] Entry into a person's residential premises, conducting a search or observation of a home by the State can be undertaken only in the concrete events described in the law and must be based on a judicial decision. Interference can also take place in cases of urgent necessity, which must be prescribed by law."[557]

"The constitutional rights and freedoms of a participant of criminal proceedings may be restricted only on the basis of the Constitution of Georgia and special provisions of this Code."[558] The Criminal Procedure Code prescribes rules and procedures for searches and legal guarantees protecting citizens against abuse of powers by State authorities when conducting searches.

"An investigative measure that restrict access to private property, possession or inviolability of private life may be carried out on the basis of a judicial order upon request (motion) of a party."[559] Article 112(5) of the Criminal Procedure Code allows for conducting an investigative measure that restricts private property, possession or private life without a judicial order if there is a situation of urgent necessity.

As the Constitutional Court has explained:[560]

> *"Other than based on a judicial decision, a right may be restricted in a situation of urgent necessity prescribed by law. […] Circumstances that fall within the definition of "urgent necessity" are those when, bearing in mind the principle of proportionality, a public interest envisaged by the Constitution cannot be achieved, for objective reasons existing in reality, without immediate and instantaneous restriction of private interests. It should also be absolutely clear, obvious and unambiguous that there is not even a small likelihood of otherwise protecting the public interest within the Constitutional frames. Urgency implies lack of time, which does not allow the possibility of obtaining a judicial order authorizing limitation of rights and an immediate action is required."*

If investigative measures are to be carried out as a matter of urgent necessity, the the competent State bodies are bound to take a number of steps; in particular, the prosecutor must inform the judge within whose territorial

557 See "Fundamental Rights" by KonstantineKublashvili, JCI Publishing House, 2008, 2nd Ed., p. 162
558 The Criminal Procedure Code of Georgia, Article 6(1)
559 The Criminal Procedure Code of Georgia, Article 112(1)
560 See a judgment of the Constitutional Court of Georgia in *The Georgian Young Lawyers' Association and Citizen EkaterineLomtatidze v. The Parliament of Georgia*

jurisdiction an investigative measure was conducted or, within 24 hours after the investigative measure has commenced, furnish the judge according to the place of investigation with the criminal case materials (or copies thereof) corroborating the need for carrying out the investigative measure as a matter of urgent necessity. However, the Criminal Procedure Code envisages some additional procedures. "Within not more than 24 hours after receiving the materials, a judge will decide a motion without an oral hearing. […] When examining the motion, the judge must examine the legality of the investigative measure conducted without a judicial decision."[561] Having reviewed the materials, a judge will make one of the following decisions: 1. Declare the conducted investigative measure legal or 2. Declare the conducted investigative measure illegal and any information obtained as a result of such measure inadmissible evidence.[562]

Both the country's basic law and the Criminal Procedure Code envisage a mandatory and necessary judicial control over investigative measures restricting private life. Such judicial control is a peremptory legal requirement with no exception allowed.

In some of the cases dealt with by the Office of the Public Defender in the 2014 reporting period, for reasons not mentioned in the law, judges rejected prosecutors' motions for declaring searches of objects or persons in the mode urgent necessity legal (for example, a judge stated the Criminal Procedure Code did not require courts to verify the legality of searches if the relevant person consented to conducting the search in the mode of urgent necessity).

It should be noted that, according to the Criminal Procedure Code,[563] the consent of a co-owner or co-possessor of an object or the consent of one of the parties to a communication suffices to conduct any investigative measure under this section without a judicial decision. What is implicated here is a situation where a co-owner (co-possessor) of an object or one of the parties to a communication have issued their informed consent, before an investigative measure was carried out, to having the measure carried out and the consent constitutes a true expression of the person's will (in other words, the person was capable of expressing his/her will and this will must have been expressed freely, without any coercion). It is a right of the person to agree or to refuse to issue such consent. Before a search of an object or a person commences, the investigator will have the person acquainted with a relevant judicial order or an investigator's resolution.[564] Consequently, the law does not even mention the person's consent because the person is under obligation to comply with legal requests of those conducting the search (representatives of law enforcement bodies) and refrain from hindering the investigative measure (commencement or progress). Such person does not have the right to either consent to or refuse conducting the investigative measure. We should also differentiate between consenting to an investigative measure and voluntarily handing over, within the scope of a seizure operation,an item, document, substance or other object containing information because the latter has nothing to do with a person's consent to having the seizure conducted. As a general rule, before a search and seizure operation begins, an investigator will offer the person whose premises are are to be searched to voluntarily surrender the object the investigator is looking for.[565] An investigator is authorized to conduct a search and seizure on the basis of a judicial decision or an investigator's resolution if there is an urgent necessity, and does not need the person's consent to do so. Besides, an object can be surrendered voluntarily when a decision authorizing the investigative measure already exists.

The grounds for and rules of interference with an area protected by the right to a private life are determined in the Georgian Constitution. The Criminal Procedure Code does not and cannot prescribe rules differing from those enshrined in the supreme law – the Constitution. According to the Criminal Procedure Code, an object or a person can be searched and an item can be seized on the basis of a judicial decision or an investigator's resolution, absent a judicial decision, where there is an urgent necessity. However, in the latter case, the legality

561 The Criminal Procedure Code of Georgia, Article 112(5)
562 The Criminal Procedure Code of Georgia, Article 112(6)
563 The Criminal Procedure Code of Georgia, Article 112(1)
564 The Criminal Procedure Code of Georgia, Article 120(2)
565 The Criminal Procedure Code of Georgia, Article 120(4)

of a search and seizure operation conducted in an urgent necessity must be verified by a court. The Criminal Procedure Code allows for conducting a search of a person without a judicial decision in a situation of urgent necessity if either 1. The person physically is at the place where a search is being conducted[566] or 2. The person subject to search is the detainee himself/herself.[567] In both cases the legality of search of the person, as in the event of any search conducted as a matter of urgent necessity, must be checked by a court. The law is not ambiguous or indeterminate; on the contrary, it is quite clear and straightforward in stating that the court must check the legality of the search of the person conducted in the circumstances of urgent necessity.

Consequently, in case of searches of objects or searches of the person conducted in the mode ofurgent necessity (even if the person voluntarily surrenders an item subject to seizure), it is both necessary and mandatory for a court (judge) to verify the legality of the investigative measure conducted. If we assume that no judicial control is exercised over investigative measures conducted in the absence of judicial orders, we will get a situation that a constitutionally-guaranteed right can easily and legally be interfered with – something that is clearly unjustified.

When a judge refuses to verify the legality of a search and seizure operation carried out in the mode of urgent necessity, not only he/she breaches his/her obligation but risks making administration of justice impossible in terms of admissibility of evidence because any court decision must be based on evidence obtained in accordance with the law. Pursuant to Article 42(7) of the Constitution of Georgia, evidence collected in violation of law haveno legal force. Evidence obtained in material violation of the Criminal Procedure Code and any other evidence legally obtained on the basis of such evidence, if they deteriorate the defendant's legal position, are inadmissible and have no legal force.[568]

Rendering a judicial decision (order) restricting constitutional human rights and authorizing investigative measures that involve coercion fall within the competence of magistrate judges of district (town) courts.[569]

Consequently, the Public Defender takes the view that, on the one hand, a judge has the authority of hearing a prosecutor's motion to verify the legality of a search and seizure operation (including the search of the person) conducted in an urgent necessity without a judicial order; on the other hand, under the same Code,[570] the judge is under obligation to discuss and decide a prosecutor's motion (declaring a completed investigative measure legal or declaring a completed investigative measure illegal and the information collected as a result of the measure inadmissible).

THE CASE OF CITIZEN SH.I.

The Office of the Public Defender was approached by Citizen Sh.I. with an application. The applicant was arrested as an accused person by an assistant detective (investigator) from the Interior Ministry's Senaki District Division on 14 September 2013 at 05:25 hrs in a criminal case led by the Senaki Division. The applicant was searched at the time of arrest, in the mode of urgent necessity, by the assistant detective (investigator) and community inspectors (investigators). Offered to surrender a narcotic drug, Sh.I.voluntarily handed over a disposable syringe containing some limpid liquid, which he got out of the left back pocket of his trousers.

On 15 September 2013, D.K., a judge at the Senaki District Court, issued a decision rejecting a prosecutor's motion for declaring the investigative measure (the search of the person of Sh.I.) conducted in urgent necessity legal; the judge explained the rejection by saying that "the Criminal Procedure Code of Georgia does not require judicial control to verify the legality of investigative measures that have been conducted with the consent of the person (the owner or possessor) and at his own will. Consequently, there is no need for the court to verify

566 The Criminal Procedure Code of Georgia, Article 120(8)
567 The Criminal Procedure Code of Georgia, Article 121(2)
568 The Criminal Procedure Code of Georgia, Article 72(1)
569 The Criminal Procedure Code of Georgia, Article 20(2)
570 The Criminal Procedure Code of Georgia, Articles 112(5)-(6), 121(2) and 120(8)

the legality of the investigative measure conducted without a judicial decision." The court further held that "we have to refuse to uphold the motion lodged by its author because the Criminal Procedure Code of Georgia does not envisage verification of legality of such investigative measures (those that have been consented to by one of the parties to communication)."

Having thoroughly reviewed the materials of the above-mentioned case, the Public Defender recommended the Justice Minister to commence disciplinary proceedings against DK, Senaki District Judge,[571] for neglecting the requirements of Article 121(2) and 112(5)-(6) of the Criminal Procedure Code.

THE CASE OF CITIZEN G.K.

D.G., Detective Investigator, 3rd Unit, 1st Division, 2nd Main Division, Central Criminal Police Department of the Interior Ministry, allegedly acting in a mode of urgent necessity, conducted the following investigative measures on 12 Decemer 2014 on the basis of prosecutor's resolutions (1. A resolution authorizing a search of the person under urgent necessity and 2. A resolution authorizing a search under urgent necessity):

1. The person of Citizen G.K. was searched in Tbilisi on 12 December 2014 between 15:35 and 15:45 hrs.

2. A Jaguar (car) driven by GK was searched in Tbilisi on 12 December 2014 between 15:50 and 16:30 hrs.

On 13 December 2014, Judge L.L. of the Tbilisi City Court rejected a prosecutor's motion for declaring the search of the person of GK conducted in the mode of urgent necessity legal. The judge based its decision on the ground that "GK agreed to the search of his person. Consequently, a judicial decision authorizing the investigative measure in advance was not necessary, and the Criminal Procedure Code does not envisage verification of the legality of an investigative measure conducted with consent of one of the parties to a communication."

The same day, Judge L.L. of the Tbilisi City Court rejected the prosecutor's another motion for declaring the search of GK's car in a situation of urgent necessity legal. The judge stated that "if one of the parties to a communication or at least one of the co-owners or co-possessors of an object agrees to his/her premises being searched, such investigative measure should be conducted without a judicial decision. Consequently, no judicial control is required for investigative measures carried out in the mode of urgent necessity in such cases."

RECOMMENDATIONS

To the Parliament:

- Amend the Law on Criminal Intelligence Activities and the Law on Electronic Communications in a way to set up a mechanism to exclude arbitrary interference on the part of the State authorities in private lives of human beings and to establish an effective monitoring mechanism
- Amend the legislation so that undercover investigative measures cannot be conducted without a judicial decision and a prosecutor's resolution
- Set up an operational and effective mechanism to control the collection of real-time information by the Interior Ministry
- Amend the legislation to oblige judges, when discussing the recognition of legality of investigative measures conducted without a judicial decision, to thoroughly get acquainted with criminal case materials and materials containing criminal intelligence information; also, adopt changes in the

571 A recommendation of the Public Defender no. 04–12/7144 dated 13 May 2014

law to make it mandatory for judges, when examining the issue, to interrogate the implementers and other participants of investigative measures (criminal intelligence activities) about the circumstances related to the investigative measures (criminal intelligence activities) conducted. Further, it would be prudent for the minutes of the court hearing to indicate the fact that a judge has acquainted himself/herself with materials containing criminal intelligence information. Finally, the changes in the law should make it mandatory to produce the minutes of a court hearing on recognition of legality of investigative measures conducted without a judicial order; the minutes must provide comprehensive information about any materials examined by a judge.

To the courts with general jurisdiction

- Examine the legality of investigative measures carried out under the auspices of urgent necessity and give reasons for a decision adopted as a result of such examination

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Freedom of religion is protected by the Georgian Constitution[572] and international legal instruments.[573]

The right to feedom of thought, conscience and religion includes, *inter alia*, the freedom to hold or not to hold a religious belief and to pursue or not to pursue a religion.[574]

The area protected by Article 19 of the Georgian Constitution covers both a person's internal religious belief and view of the world (internal freedom) and the freedom of expressing the religious belief and view of the world (external freedom). The rights protected by this provision are applicable to any individual and not only to citizens of Georgia.[575] A person may enjoy his religious freedom both individually and with others.

The freedom of religion and belief makes negative and positive obligations incumbent upon the State. The State is obliged not only to refrain from interfering with enjoyment of the freedom of religion but to promote effective enjoyment of this right.

Article 19 of the Constitution of Georgia allows for interference with the right protected by that provision if the expression infringes upon others' rights. In particular, restriction of the freedom of religion and belief would be justified only if the way this freedom is exercised infringes upon the right of others. Although the cited provision entitles the State to restrict the expression of freedom of religion, every time the State intends to restrict this right, it has to weigh and compare to each other the rights and interests that are contradictory to each other in the given circumstances. Based on such evaluation, the State should then decide which party's rights and interests are weightier needing more protection.[576]

2014 saw a number of important novelties in the field of protection of religious freedom and development of tolerant environment, alongside the problems existing and remaining unresolved for years.

In 2014, the State adopted a Human Rights Protection Strategy and Action Plan, which addresses activities to be undertaken for the protection of the freedom of belief and religion and the rights of religious minorities in a separate chapter.

Besides, in the reporting period, Public Law Entity "State Agency for Religious Issues" was established. Four religious associations were allocated State funds for reimbursement of damages inflicted by the State in the past.

572 Article 19 of the Constitution of Georgia
573 Article 9 of the European Convention on Human Rights and Fundamental Freedoms
574 *Buscarini v. San Marino*, application no. 24645/94;
575 Commentary to the Constitution of Georgia, Tbilisi, 2005
576 Commentary to the Constitution of Georgia, Tbilisi, 2005

Violence on account of belonging to a certain religion and law enforcement authorities' inadequate response to such violence have remained a challenge. Investigations into actions committed against Georgian Muslims in 2012-2013 are still pending and have not been completed yet.[577]

Restitution of property confiscated during the Soviet era, taxation inequality, discriminatory environment at schools on religious grounds, access to public space and inclusiveness, and use of hate language have still been matters of concern.

577 Letter from the Chief Prosecution Office no. 13/76718 dated 16 December 2014

THE GOVERNMENTAL ACTION PLAN FOR THE PROTECTION OF HUMAN RIGHTS FOR 2014-2015

For the purposes of improving human rights protection and bringing the executive branch's major policies in line with the Parliament-approved National Human Rights Protection Strategy,[578] the Government of Georgia developed a Governmental Action Plan for the Protection of Human Rights[579] and established a Coordinating Inter-Agency Council on the Governmental Action Plan for the Protection of Human Rights.[580]

Chapter 12 of the Action Plan is dedicated to issues of protection of the freedom of belief and religion and the rights of national minorities. According to Chapter 12, the Action Plan's objectives in this field are to establish religious tolerance and eliminate religious discrimination. These objectives are planned to be achieved by the following tasks: create legislative guarantees for the protection of religious groups against discrimination; prevent and effectively investigate crimes motivated by religious hatred; reinforce secularism in civil service; reimburse damages inflicted upon religious organizations; inculcate religious equality principles in the education system; raise awareness.

On a series of issues, the Governmental Action Plan refers to the Public Defender's reports and opinions as indicators for measuring the success of this part of the Action Plan.

PUBLIC LAW ENTITY "STATE AGENCY FOR RELIGIOUS ISSUES"

On 29 November 2013 the Government of Georgia issued its Resolution no. 305 establishing an Interagency Commission on Certain Issues related to Religious Associations.[581] The Commission included representatives from various government ministries.

According to its statute, the Commission was designed to analyze and develop laws governing the construction of religious objects and places of worship and other laws related to religious associations, to study the matters of property of religious associations, etc.

Between 29 November 2013 and 10 February 2014, the Commission held 5 meetings and produced two draft normative acts:

578 Resolution of the Parliament of Georgia approving the National Human Rights Protection Strategy for 2014 – 2020

579 Resolution of the Government of Georgia no. 445 date 9 July 2014 approving a Governmental Action Plan for the Protection of Human Rights for 2014-2015, establishing an Inter-Agency Council for Coordination of the Action Plan and approving the Council's statute

580 *Ibid.*

581 Resolution of the Government of Georgia no. 305 dated 29 November 2015 establishing an Interagency Commission on Certain Issues Related to Religious Associations and approving the Statute of the Commission

- Draft Government Resolution approving Rules and Procedures of Implementing Certain Activities related to Partial Reimbursement of Damages Inflicted on Religious Associations in Georgia during the Soviet Totalitarian Regime (27 January 2014); and
- Draft Government Resolution establishing a Public Law Entity "State Agency for Religious Issues" and approving its Statute (19 February 2014).

The Commission ceased its existence after the Public Law Entity "State Agency for Religious Issues" was established on 30 June 2014.

Pursuant to the statute[582] of the PLE State Agency for Religious Issues (hereinafter, "the State Agency"), the State Agency is an informative, research, scientific, educational and advisory body to the Government and the Prime Minister with the following competences: analyze the existing religious situation, draft legal acts, projects and recommendations, draft recommendations to fulfill the objectives enshrined in the Constitutional Agreement, draft recommendations concerning the construction of places of worship and religious education, act as an intermediary in case of conflicts among religious associations, support a tolerant environment, etc.

Religious associations' criticism of the State Agency is based on the fact that the Counicl of Religions existing under the auspices of the Public Defender's Office and the non-governmental organizations working on similar issues had not been involved in the process of establishment of the State Agency and determination of its competences. Besides, the State Agency is not a representation-based body.

In the meanwhile, in its 2010 report,[583] the European Commission against Racism and Intolerance (ECRI) has been recommending the Georgian Government to create a specialized body to fight racism. In the same report, ECRI stressed the success of the Council of Religions and the Tolerance Center existing under the auspices of the Public Defender in promoting religious tolerance:

"The Council of Ethnic Minorities and the Council of Religions were established in 2005 under the auspices of the Public Defender, which play a significant consultative role … The Office of the Public Defender also runs a Tolerance Center which monitors the situation and addresses problems of intolerant acts against members of ethnic, religious or other minorities."[584] "Given the key role played by the Public Defender in combating racism and racial discrimination, ECRI recommends that the Georgian authorities continue to support this institution."[585] "ECRI recommends that the Georgian authorities pursue their dialogue with representatives of religious minorities, in particular in the framework of cooperation with the Council of Religions under the auspices of the Public Defender."[586]

ALLOCATION OF FUNDS FOR RELIGIOUS ASSOCIATIONS

On 27 January 2014, the Government of Georgia issued a resolution[587] on reimbursing financial and moral damages inflicted during the Soviet rule to four more religious associations in addition to the Georgian Orthodox Church.

582 Resolution of the Government of Georgia no. 177 as of 19 February 2014 establishing a Public Law Entity "State Agency for Religious Issues" and approving its statute

583 Available at < http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-IV-2010-017-GEO.pdf > [last viewed 29 March 2015]

584 Report on Georgia, European Commission against Racism and Intolerance, CRI (2010)17, 28 April 2010, par. 23.

585 Report on Georgia, European Commission against Racism and Intolerance, CRI (2010)17, 28 April 2010, par. 26.

586 Report on Georgia, European Commission against Racism and Intolerance, CRI (2010)17, 28 April 2010, par. 70.

587 Resolution of the Government of Georgia no. 177 as of 27 January 2014 on Certain Measures related to Partial Reimbursement of Damages Inflicted upon Religious Associations during the Soviet Totalitarian Regime

The damages have been reimbursed partly to "religious associations with Islamic, Judaic, Roman Catholic and Armenian Autocephalous confessions registered as entities of public law" before 27 January 2014 only.[588]

It remained unclear for the religious associations that were part of the Council of Religions what criteria and/or what historical data were used to select only these four confessions, since other religious groups (Yazidis, Lutherans and other protestant confessions, Krishna followers, etc.) had been equally persecuted during the Soviet Union.

Rules of determining the amount of damages also remained unclear: "The exact amount of damages is unknown and accordingly damages will be paid symbolically … by allocating sums from the State Budget every year."[589]

If a religious confession is represented by more than one public law entities, they have to unite into one legal entity, establish a coordinating council or yield the right to compensation in favor of one of the associations in order to be able to get the compensation.[590]

588 Resolution of the Government of Georgia no. 177 as of 27 January 2014 on Certain Measures related to Partial Reimbursement of Damages Inflicted upon Religious Associations during the Soviet Totalitarian Regime, Article 1(3)

589 Resolution of the Government of Georgia no. 177 as of 27 January 2014 on Certain Measures related to Partial Reimbursement of Damages Inflicted upon Religious Associations during the Soviet Totalitarian Regime, Article 2(a)-(b)

590 Resolution of the Government of Georgia no. 177 as of 27 January 2014 on Certain Measures related to Partial Reimbursement of Damages Inflicted upon Religious Associations during the Soviet Totalitarian Regime, Article 3(2)

RELIGIOUS NEUTRALITY IN CIVIL SERVICE

The principle of secularism, which should be regarded a significant achievement of a legal system, constitutes one the important cornerstones of ensuring equal rights to all citizens in a democratic and rule of law State. In Georgia, which is a multiethnic and multi-religious country, strengthening the culture of tolerance and inculcation of the secularism principle are of crucial importance.

In a secular regime, religion is shielded from a political role. In secularist constitutionalism religion is absent from public life, and from political-legal decisions in particular.[591] The principle of secularism is among the values that are derivative of the Georgian Constitution.[592] Besides, Article 13(g) of the Law of Georgia on Civil Service provides a list of basic principles on which civil service is based in Georgia; one of these principles is secular nature of civil service, which means religious neutrality in civil service.

During the reporting period, the Office of the Public Defender reviewed an application of the Human Rights Education and Monitoring Center concerning the baptizing of a Turkish national an Orthodox Christian in the Penitentiary Institution no. 8 on 2 October 2014. The Public Defender takes the view that the subjective statements[593] made by LA, Head of Social Unit of the Penitentiary Department, during the baptizing process contradict the principle of secularism civil servants have to adhere to in accordance with the Constitution and other laws.[594]

591 "Constitutionalism and Secularism: the Need for Public Reason", AndrásSajó, 2009, p. 4; 33

592 "Commentary to the Constitution of Georgia.Chapter Two.Citizenship. Fundamental Human Rights and Freedoms.", Eva Gotsiridze, 2013, p. 164

593 In particular, the mentioned person stated: "Today we came here with a very serious mission. Six people wanted to receive their crosses at His Beatitude's blessing. So we fulfilled this mission. Most importantly, one of the defendants who is a Turkish national but one of us – a Georgian by origin, today returned to his roots, his origins and his genes because today he was baptized an Orthodox Christian. We, the Social Unit, participated in this. But the most important is that the Patriarch's Office and His Beatitude himself have made a major contribution. It is under His blessing that many good things are performed."

594 Under Article 78(1)(a) of the Law on Civil Service, one of the types of misconduct is culpable non-performance or improper performance of official duties. Violation of the binding principles of the Law on Civil Service is also considered improper performance of official duties. However, the Penitentiary Department of the Ministry of Corrections decided not to examine the applicant's complaint requesting commencement of disciplinary proceedings on account the above-described matter. [Letter from the Ministry of Corrections no. MCLA41400590055 as of 31 October 2014]

PROBLEMS FACED BY MUSLIMS

In 2014, like in previous years, violations of the rights of a group of Islam followers were revealed. Unfortunately, the wrongdoings against Muslimsoccurred in 2012-2013 have not been investigated and the perpetrators have not been brought to liability.

KOBULETI

On 10 September 2014, local residents protested against the opening of a Muslim children's boarding school at 13 Lermontov Street, Kobuleti Municipality. The protesters slaughtered a pig at the entrance of the boarding school and nailed the pig's head to the school door. Some of the local residents blocked the road protesting the construction. The population's rally did not stop in subsequent days too. They continued keeping duty in front of the boarding school building. On 15 and 16 September 2014, the citizens blocked a way to the building again not to let the students enter the premises.

Another boarding school designed for 15 Muslim children located at 33 Rustaveli Street, Kobuleti, has been operational for several years. However, because of the increase in the number of pupils, it was decided to open a new boarding school for 40 pupils at 13 Lermontov Street.

The children living and studying at the boarding school are attending regular public schools at the same time. At the boarding school, they are assisted in preparing their lessons and are able to receive additional knowledge. According to the Georgian legislation, no special permission or licensing is required for opening and running such boarding schools because of their nature and designation. Neither are boarding schools regarded educational institutions and hence need no authorization or accreditation.

According to both the information obtained by the Public Defender and the information spread by media outlets, members of the Interior Ministry's Patrol Police were present at the protest rallies held in front of the Muslim children's boarding school at 13 Lermontov Street, Kobuleti on 10, 15 and 16 September 2014.

As the local Muslims stated to the Public Defender on 10 September 2014,[595]they were asked by members of the Patrol Police to leave the building to ease the tension. Law enforcement officers remained in the territory surrounding the building.

Later the Muslims learned about the fact that a pig was slaughtered and its head was affixed to the door. According to their explanations,[596] as the protest rally was unfolding on 15 and 16 September 2014, the local

595 Explanation given by GD, BI, ShK and RK on 15 September 2014
596 The same as above.

Muslims were inside the building and the protesters were not letting them leave the building. On the other hand, the protesters were not letting the pupils into the building. According to the local Muslims' reports, although the patrol police were present in the territory around the boarding school on both days observing the rallies, they did not assist the pupils in accessing the school building; neither did the police help those inside the building leave the premises.

In other words, despite the fact that the staff and the pupils of the boarding school were not able to move freely and peacefully make use of their property and the pupils could not exercise their right to education, the law enforcement officers did not put end to the continued violation of their rights.

The Public Defender's Office recommended the Inspectorate-General of the Interior Ministry[597] to evaluate the measures taken by the representatives of law enforcement authorities during the events in Kobuleti. The Interior Ministry repliedthey did not find any violation of misconduct by the Interior Ministry employees.[598]

The Public Defender's Office also approached the Chief Prosecution Office requesting information about the progress of investigation into the incident of 10 September 2014 in the Kobuleti Municipality, 13 Lermontov Street.[599]

The Chief Prosecution Office informed the Public Defender's Office[600] that, in regard to the above-described events, investigation has started into alleged threatening of MM under Article 151 of the Criminal Code of Georgia. The investigation and criminal prosecution are ongoing but no specific persons have been identified.

During the reporting period, the Office of the Public Defender also studied an application of RK, Representative of "Georgian Muslim Relations", a not-for-profit entity. According to the application, on 26 June 2014 Chairperson of the "Georgian Muslim Relations" addressed the "Kobuleti Water" LLC with a request to hook up the building located at 13 Lermontov Street in the Kobuleti Municipality (the building to house a Muslim children's boarding school) to the Kobuleti water supply system. According to the documents submitted, on 24 June 2014, the consumer paid the fee of GEL 1,650 for hooking up to the water supply system. However, the Kobuleti Water LLC did not perform the connection works.

The Public Defender's Office requested the Kobuleti Water LLC[601] to provide explanations about the protracted process of connecting the building located at 13 Lermontov Street in the Kobuleti Municipality to the Kobuleti water supply system. The Kobuleti Water LLC informed the Office of the Public Defender[602] that the company's technical team arrived at the indicated addressed several times but were prevented from performing their job because of the local population's resistance. The company informed Kobuleti Municipality Government and the police about the problem. According to the letter from the company, the Kobuleti Water LLC agrees to return the paid fee to the consumer and to renew the works for connecting the building to the water system after the problem is eliminated.

VILLAGE MOKHE

Another incident related to religious intolerance occurred in Village Mokhe of the Adigeni Municipality in October 2014.

It has been years since the Muslim community living in Village Mokhe of the Adigeni Municipality has been requesting the handing of the disputed building over to them. The building has been property of the local

597 Letter of the Office of the Public Defender no. 04-9/12270 dated 6 October 2014
598 Letters from the Ministry of Interior nos. 2072683 and 2516371 dated 20 October 2014 and 12 December 2014
599 Letters of the Office of the Public Defender nos. 04-9/11965 and 04-9/1216 dated 23 September 2014 and 16 February 2015
600 Letters from the Chief Prosecution Office nos. 13/61116 and 13/11035 dated 1 October 2014 and 24 February 2015
601 Letter of the Office of the Public Defender no. 04-9/13524 dated 18 November 2014
602 Letter of the Kobuleti Water LLC no. 01-18/201 dated 29 November 2014

self-government of the Adigeni Municipality since 2007. In May 2014, the local Muslims lodged an application with the Adigeni Municipality Government requesting transfer of the building to the Mufti Office of Georgian Muslims.

In September 2014, the Adigeni Municipality Government declared an electronic tender for rehabilitation works of the club building in Village Mokhe.[603] A winning company started the repair works on 18 October 2014. On 22 October, the local Muslim parish protested against the ongoing construction and repair works led by the company. Patrol Police were called to the place of incident. 14 Muslim participants of the rally were arrested.

Three persons – TM, OM and MB – were arrested for the conduct under Article 353(2)[604] of the Criminal Code and eleven others were arrested under Articles 166[605] and 173[606] of the Code of Administrative Offenses.

On 23 October 2014, the three defendants were released from the pretrial detention facility. By a resolution of the Akhaltsikhe District Court,[607] 11 detainees were found guilty of commission of administrative offenses of whom 2 persons were released from the administrative punishment by a resolution of the Tbilisi Court of Appeals.[608]

According to the information furnished by the Chief Prosecution Office to the Office of the Public Defender,[609] investigation into alleged commission of a crime under Article 353(2) of the Criminal Code by TM, OM and MB is ongoing. Based on this information, we suppose that, despite the fact that the detainees were released, criminal prosecution against them has not been terminated. On 22 January 2015, the Office of the Public Defender addressed the Chief Prosecution again requesting information about the progress of this criminal case. In response to our letter, the Chief Prosecution Office informed us on 2 February 2015 that they have already furnished the Public Defender's Office with information about the case on 8 December 2014. Consequently, we suppose both investigation and criminal prosecution against TM, OM and MB are ongoing.

The Office of the Public Defender was additionally informed that, on 2 February 2014, a criminal case concerning alleged commission of a crime under Article 333[1] of the Criminal Code[610] by the police officers has been detached as separate proceedings.

The Public Defender's trustees travelled to Village Mokhe of the Adigeni Municipality to inquire into the case. They talked to the local Orthodox Christians and Muslims and met with the Chairman of the Adigeni Municipality Legislature and the Deputy Governor of the Municipality; the Public Defender's trustees visited the pretrial detention facilities in Akhaltsikhe and Borjomi and examined protocols (reports) of external observation of the detainees on 22 October 2014. As shown in the protocols, the detainees had physical injuries. Muslims who were at the place of incident reported that the local police, including those dressed in civilian clothes, had arrived at the place of incident. A governor of the Adigeni Municipality and a Governor of the Samtskhe-Javakheti region were also present.

The detainees stated that the law enforcement officers were verbally abusing them and referring to them as "Tatars". According to the detainees, the police officers physically insulted some of the detainees both during arrest and thereafter at the police station.

On 2 December 2014, an inquiry commission to study the circumstances related to the building having the status of a club and located in Village Mokhe of the Adigeni Municipality was established. The commission

603 See http://tenders.procurement.gov.ge/public/?go=123766&lang=ge [last viewed 29 March 2015]
604 Rendering resistance to a police officer or other representative of authorities by a group
605 Petty hooliganism
606 Disobedience to a legal order or request of a member of law enforcement bodies
607 Resolution of the Akhaltsikhe District Court of 24 October 2014
608 Resolution of the Tbilisi Court of Appeals of 28 November 2014
609 Letters from the Chief Prosecution Office nos. 13/76134, 13/76390, 13/5931 dated 8 December 2014, 9 December 2014 and 2 February 2015
610 Exceeding official powers by a civil servant or a person equated to civil servants

is chaired by the Chairman of the Public Law Entity "State Agency for Religious Issues". The commission includes Muslims and Orthodox Christians and representatives from the Ministry of Protection of Culture and Monuments, the Adigeni Municipality Government and the Government of the Samtskhe-Javakheti province.

In view of its mandate, the Public Defender addressed the PLE "State Agency for Religious Issues" with a request to include the Public Defender in the work of the commission as an observer.[611]

Unfortunately, for a lengthy period after its establishment in December 2014, the commission did not make a relevant decision and the Public Defender had not had the possibility of attending the commission's meetings.[612]

Having in mind the public turmoil related to the purpose and ownership of the disputed building in Village Mokhe of the Adigeni district and because the freedom of religion, a fundamental human right, may be at stake and the social peace and co-existence of Orthodox Christian and Muslim communities might be at threat, the Public Defender believes he must be included in the work of the commission as an observer and must be able to monitor the process.

In discussing religious freedom, the European Court of Human Rights has held that the State must reconcile the interests of various groups in order to neutrally and impartially protect social peace and understanding among believers (*Kokkinakis v. Greece*, 1993, §33). On neutrality and impartiality is a country's democracy and pluralism based (*Metropolitan Church of Bessarabia and Others v. Moldova, 1999,* §115-116). The right to freedom of religion excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (*Manoussakis and Others v. Greece*), 1996, §47). The role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (Serif v. Greece, 1999, §53).

611 Information available at http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcveli-sofel-moxeshi-mdebare-sadavo-shenobastan-dakavshirebit-sheqmnil-komisiashi-damkvirveblis-statusit-chartvas-itxovs.page [last viewed 29 March 2015]

612 A letter from the PLE "State Agency for Religious Issues" no. 1/54 dated 6 February 2015 reads: "The inquiry commission to study the circumstances related to the building having the status of a club and located in Village Mokhe of the Adigeni Municipality has been established to examine the issues related to a building located in Village Mokhe, Adigeni Municipality, which has not been alienated yet and belongs to the Municipality as a club. The commission is designed to inquire into historic and religious origins of the building but not in the sense of its property status and/or freedom of religion or from the angle of universally recognized human rights and fundamental freedoms. For this reason, the commission's work falls beyond the scope of Article 2 of the Organic Law on Public Defender." The letter further states that "the commission has been set up as consultative group based on mutual agreement and it has no power of adopting legally binding administrative acts. Besides, most of the commission members are not civil servants and the commission is not a public institution by its format. It is for this reason that the rule under Article 3(1) of the Organic Law on Public Defender is not applicable to the commission. However, taking into account the existing high interest of the public toward the matter of discussion, PLE "State Agency for Religious Issues" as a party represented in the commission has no objection to the Public Defender's participation in the work of the commission with an observers' status."

ACTIONS CARRIED OUT AGAINST JEHOVAH'S WITNESSES

In the reporting period the Public Defender learned about 45 cases of persecution, physical and verbal abuse, and discrimination against Jehovah's Witnesses. 13 of these cases involved physical violence, while 30 others were related to verbal abuses. According to the information we received, religious literature or information boards were damaged in 11 cases, including with the involvement of religious servants in 7 cases; vehicles were damaged in two cases and construction was hindered in one case.

Investigation into wrongdoings against Jehovah's Witnesses in the reporting period started

- Under 156 of the Criminal Code (persecution) in 8 cases;
- Under Article 155 of the Criminal Code (obstructing a religious service) in 1 case;
- Under Article 125 of the Criminal Code (beating) in 3 cases, of which the legal qualification of the conduct was changed in two cases.

Two persons were found guilty of crimes against Jehovah's Witness in the reporting period. One of these people was imposed a fine of GEL 3,000 and the other person was sentenced to 2 years of imprisonment; the imprisonment sentence was converted into a conditional punishment and the person was ordered to 2 years of probation period under Articles 63-64 of the Criminal Code.

Diversion was used in 3 cases.

Some of the cases continued to be under investigation during the reporting period.

CONSTRUCTION OF A ROYAL HALL BY JEHOVAH'S WITNESSES IN TERJOLA

In the reporting period, the Office of the Public Defender examined an application lodged by M.Ts., representative of the "Terjola" unregistered association. Members of the association – T.Ts., A.V. and N.B. – are the followers of the Jehovah's Witnesses' religious organization. The applicant requested the Public Defender to study the legality of the suspended permit for the construction of a building at Four Brothers Street, Lane 1, Terjola Municipality.

According to the case materials, by order of the Chairman of the Terjola Municipality Legislature as of 19 February 2014,[613] the "Terjola" unregistered association was granted the permission to construct a building at Four Brothers Street, Lane 1, Terjola Municipality.

613 Order of the Chairman of the Terjola Municipality Legislature no. 67 as of 19 February 2014 on issuing a permit for the construction of a residential house in Terjola Town

Representatives of the association started the construction works of a residential house on the land plot owned by them in May 2014. Commencement of the construction works triggered a protest of local residents.[614]

A new order of the Chairman of the Terjola Municipality Legislature as of 3 June 2014[615] suspended the previous order of 19 February 2014 on allowing construction of a residential house in Terjola.[616] The suspension order[617] was based on a complaint lodged by K.M., an individual residing at Four Brothers Street, Lane 1,Terjola. The complainant asserted that the ongoing construction was threatening the integrity of a land plot owned by KM and durability of the motor road.

The term for examination of KM's administrative complaint was extended until 31 July 2014.

At an oral hearing of the administrative complaint,[618] representatives of the "Terjola" unregistered association submitted a geological report on the construction of a single-storeybuilding on land plot no. 108 located at Four Brothers Street, Lane 1,Terjola.[619] According to the report, "the territory under examination on which construction of a single-storey building is contemplated is satisfactory and no negative physical or geological factors were identified". Another report issued concerning the territory was the one by the Levan Samkharauli National Forensics Bureau, which said: "Construction of a residential house atFour Brothers Street, Lane 1, Terjolawill not affect negatively the residential houses of I.Ts. and K.M. located at the same address and will not constitute a threat to their sustainability."[620]

Having looked into the issue, the Office of the Public Defender found out that the order of the Chairman of the Terjola Municipality Legislature no. 244 dated 3 June 2014 was issued in violation of legal requirements; in particular:

The order refers to Article 184 of the General Administrative Code as a legal basis for suspending the order no. 67 dated 19 February 2014.[621] However, there is another *lexspecialis*provision setting a different rule applicable to construction permits; the rule stipulates, in particular, that lodging an administrative complaint will not suspend the validity of a construction permit. In addition, a decision suspending a construction permit must be reasoned and must indicate specific facts that served as a ground for making such a decision.

Also, Article 53 of the General Administrative Code prescribes that an individual administrative act issued in writing must be reasoned.[622] Since the order of the Chairman of the Terjola Municipality Legislature no. 244 dated 3 June 2014 does not refer to legitimate aims such protection of public order, health, morals or others rights and freedoms, it falls short of meeting the requirement that written individual administrative legal acts must be reasoned.

Moreover, the Terjola Municipality Government breached the term for examining administrative complaints[623] as envisaged by Article 183(1) of the General Administrative Code.[624]

In particular, the administrative body commenced examination of the complaint on 3 June 2014. The term was

614 https://www.youtube.com/watch?v=ZhDZ-ZKHhE0 [last viewed 27.11.2014].
615 Order of the Chairman of the Terjola Municipality Legislature no. 244 as of 3 June 2014 requiring that the applicants submit a geological report before they proceed with the construction of a building in Lane 1, Four Brothers Street, Terjola
616 Order of the Chairman of the Terjola Municipality Legislature no. 67 as of 19 February 2014
617 Order of the Chairman of the Terjola Municipality Legislature no. 244 as of 3 June 2014
618 The oral hearing of KM's complaint was held on 3 July 2014 at the Terjola Municipality Government
619 "Results of geological examination of the land plot no.. 108 located at Lane 1, Four Brothers Street, Terjola in regard to construction of a one-storey building"
620 "Expert report by the Levan Samkharauli National Forensics Bureau dated 30 September 2014"
621 Unless a law or a bylaw issued on the basis of a bylaw prescribes otherwise, a challenged act will be suspended from the moment an administrative complaint is registered. The administrative body must issue an individual administrative legal act on this [suspension].
622 An individual administrative legal act issued in writing must contain reasoning in writing.
623 Article 183(2) of the General Administrative Code
624 Unless a law or a bylaw issued on the basis of a bylaw prescribes otherwise, an authorized administrative body must examine an administrative complaint and make a decision within one month.

extended till 31 July 2014;[625] consequently, 31 July 2014 was the deadline for deciding the complaint. Although the applicant submitted two geological reports with similar conclusions[626] pending submission of which the complainant was asking for suspension of the construction permit and which refute the complainant's assertions, the Terjola Municipality Government failed to make a final decision about KM's administrative complaint and the "Terjola" unregistered association was not given the possibility to continue the construction works.

For the reasons described above, the Order of the Chairman ofTerjola Municipality Legislature no. 244 dated 3 June 2014 contradicts the applicable Georgian law. It has been issued in violation of the rules and procedures set forth by the law. In addition, the Terjola Municipality Government has been unduly procrastinating decision-making on the complaint – something that might eventually result in violating the freedom of religion of the members of the "Terjola" unregistered association by the Government.

Having examined the issue, the Public Defender addressed the Terjola Municipality Governor and the Chairman of the Terjola Municipality Legislature with a recommendation no. 04-9/1404 dated 20 February 2015 concerning the violation of the rights of the "Terjola" unregistered association members. The Terjola Municipality Government informed the Public Defender[627] that there was an ongoing litigation in the Zestaponi District Court on the validity of the disputed individual administrative legal act and the matter would be decidedafter the court would render its decision.

Understanding the likelihood of religious discrimination occurring in this case, on 16 February 2015, the Public Defender furnished its *amicus curiae* opinion to the Zestaponi District Court on the basis of Articles 43(2) of the Constitution of Georgia, Articles 12 and 21(e) of the Organic Law on Public Defender and Article 6(1) of the Law on Elimination of All Forms of Discrimination.[628]

As the applicant informed the Office of the Public Defender, the Zestaponi District Court rendered a decision on the lawsuit of members of the "Terjola" unregistered association on 19 March 2014. The court partially upheld the plaintiffs' claim. The orders of the Terjola Municipality Government suspending the construction and the Government's letter refusing the continuation of the construction were cancelled. The defendant was ordered to extend the validity of the construction permit. However, whether or not the court decision became final remains unknown.

The applicant has also been reporting that school teachers and pupils were taking part in the rallies during the school time. A legal representative of the Jehovah's Witnesses informed the Ministry of Education and Science about this fact. The representative also submitted a video footage. On the video footage is seen Dean SpiridonTskipurishvili stating at the rally of 2 June 2014 that the principal of Public School no. 2 offered him on behalf of the school to collect signatures of citizens opposing the construction.[629] In its reply, the Ministry of Education and Science reported that the school principal denied giving promise of collecting signatures or taking part in the rallies. According to the reply,[630] the school pupils were participating in the protest on their own initiative and not during schooling time.

It should be pointed out that, after the events in Terjola, the Jehovah's Witnesses have been reporting increased number of threats, insults and persecution against them. On 24 June 2014, the Public Defender's Office was approached by a legal representative of Citizen T.Ts. who reported that on 22 June 2014 some people threw stones against T.Ts.'s residential house uttering religiously motivated verbal abuses.

625 Order of the Terjola Municipality Governor no. 154 dated 10 June 2014

626 "Construction of a residential house in Lane 1, Four Brothers Street, Terjola, will not affect negatively the residential houses of I.Ts. and K.M. located at the same address and will not constitute a threat to their sustainability" and "The territory under examination on which construction of a single-storey building is contemplated is satisfactory and no negative physical or geological factors were identified"

627 Letter from the Terjola Municipality Government no. 305 as of 11 March 2015

628 Opinion of the Public Defender acting as *amicus curiae* no. 13/1257 dated 16 February 2015

629 https://www.facebook.com/photo.php?v=608770665899513&set=vb.378911675552081&type=2&theater

630 Letter from the Ministry of Education and Science no. 71400498237 dated 11 July 2014

The Office of the Public Defender requested the Chief Prosecution Office to provide information about measures taken by the investigative authorities in regard to the above-mentioned reports. The Chief Prosecution Office informed the Public Defender's Office[631] that on 27 June 2014 Zestaponi District Prosecution Office opened criminal investigation in the case of T.Ts.'s persecution on account of belief under Article 156 of the Criminal Code. The same letter reported that witnesses have been interrogated and the investigation is ongoing.

DAMAGED ROYAL HALL IN DUSHETI

On 2 June 2014, the Public Defender became aware of a damaged royal hall of Jehovah's Witnesses in the Dusheti Municipality. In particular, unidentified persons damaged a night lamppost and a wall of the royal hall by throwing bricks into the yard of the Jehovah's Witnesses' royal hall. It has to be mentioned that similar events have happened in the past too. The damaging of the Jehovah's Witnesses' royal hall in the Dusheti Municipality was reported to the Police.

The Office of the Public Defender requested the Chief Prosecution Office to provide information about any investigative measures taken in relation the above-described incident.[632] The Chief Prosecution Office replied[633] that the Dusheti Division questioned IK and GA, followers of the Jehovah's Witnesses' religious organization. They stated there was print of a brick thrown against the wall of the royal hall and a lamppost was damaged. Total damages equaled GEL 30 (thirty). No investigation was launched due to lack of elements of crime.

1 January 2014, Ozurgeti. Teenagers damaged a car belonging to Sh.Kh., Jehovah's Witness. They smashed the car windows by throwing stones. The incident was reported to the police. The perpetrators reimbursed the damages. According to the information provided by the Chief Prosecution Office,[634] investigation into the damaging of Sh.Kh.'s car was launched under Article 187(1) of the Criminal Code. However, the investigation was terminated later due to the fact that the perpetrators had not attained the age of criminal liability.

4 January 2014, Senaki. L.N. was inside the royal hall of Jehovah's Witnesses. An unidentified male person burst into the building demanding that LN leave the territory. The stranger was hitting the building with a hammer damaging the façade of the building and breaking the signboard. The police took the man to the local police station. Senaki District Division of the Interior Ministry launched investigation into persecution of Jehovah's Witnesses under Article 156(2)(a) of the Criminal Code. Investigation revealed Z.Ts. to be the perpetrator who was then included in a diversion program. On this ground, investigation was terminated on 24 March 2014.[635]

15 January 2014, Kutaisi. Unidentified persons verbally and physically insulted G.Dz., G.K., M.K. and others, Jehovah's Witnesses. Investigation was launched into alleged injuring of B.Dz.,G.Dz. and Sh.Dz., a crime under Article 118(1) of the Criminal Code. Charges under Article 156(2)(a) of the Criminal Code were brought against VS. On 1 April 2014, Kutaisi City Court found VS guilty and ordered him to pay a fine of GEL 3,000.[636]

24 August 2014, Village Chkhari, Terjola District. T.Ts. and B.Ts. wereholding a religious service when a group of aggressive young people demanded them to go away. The group verbally and physically insulted the praying persons. Verbal abuse and threat against T.Ts. and B.Ts. repeated on 12 September 2014 too.

On 16 October, the Chief Prosecution Office informed us that, on 25 August 2014, Terjola District Division of the Interior Ministry opened investigation into a criminal case under Article 156(2)(a) of the Criminal Code. Witnesses were interrogated and forensic medical examinations were ordered and carried out. On 3 September

631 Letters from the Chief Prosecution Office nos. 13/46268 and 13/5927 dated 22 July 2014 and 2 February 2015
632 Letters of the Public Defender's Office no. 04-9/8431 dated 6 June 2014 and no. 04-9/10293 dated 8 August 2014
633 Letters from the Chief Prosecution Office no. 13/40764 dated 27 June 2014 and no. 13/53006 dated 21 August 2014
634 Letter from the Chief Prosecution Office no. 13/48628 dated 1 August 2014
635 Letter from the Chief Prosecution Office no. 13/48628 dated 1 August 2014
636 The same as above

2014, LD was charged with a crime under Article 156(2)(a) of the Criminal Code. As an interim measure, he was ordered to pay a bail of GEL 3,000. By a judgment of the Zestaponi District Court as of 26 November 2014, LD was found guilty of the crime under Article 156(2)(a) of the Criminal Code and was sentenced to 2 years of imprisonment. However, under Articles 63-64 of the Criminal Code, the imprisonment sentence was replaced with a conditional punishment and LD was ordered a 2-year probation period.

4 November 2014, Gardabani Municipality, Village Birkil. GT and EQ, Jehovah's Witnesses, were holding a religious service when A.Sh., a local resident, insulted them verbally and physically on account of their religious belief. Patrol police were called. They were taken to the Gardabani police station to testify about the incident. The applicants stated that a member of the Gardabani District Division, KvemoKartli Regional Main Division, Interior Ministry, was forcing them, during interrogation, to sign a testimony favorable to the police where there would be no mentioning of verbal and physical abuse on account of religious belonging.

The application further states that on **5 November 2014** GT and EQ were in Village Birlik, Gardabani Municipality where A.Sh. verbally abused them in the presence of Patrol Police officers but the officers took no action. According to the application, during a religious service on 9 November 2014, GT's car was damaged.

The Chief Prosecution Officehas informed us that the Gardabani District Division of the Interior Ministry opened investigation under Article 156(1) of the Criminal Code. No specific individuals are being prosecuted. The investigation is ongoing. The Interior Ministry's Inspectorate-General reported in its letter that a request has been forwarded to the Rustavi District Prosecution Office with a view to evaluating the behavior of Interior Ministry employees.

THE HOPE FESTIVAL

On 6-8 June 2014, International Hope Festival was scheduled to take place at the Sports Palace LLC, in which 150 Christian confessions, many foreign and local guest were to participate.

The Festival organizers concluded a contract with the Sports Palace LLC on 20 June 2013 and paid the rent. On 3 June 2014, 3 days prior to the opening day, the organizers learned that fire broke up in one of the wings of the building. The fire was eliminated quickly. TemurGiorgadze, Chief of Tbilisi Emergency Service, stated the fire did not cause significant damages.[637]

The Sports Palace leaders referred to fire as a reason for refusing to allow the festival organizers conduct the event. The Sports Palace administration stated that, to evaluate and avoid any risks, they requested the Levan Samkharauli National Forensics Bureau the same day to issue a report about the fitness of the building.

The Bureau's report as of 6 June 2014 stated that a detailed lab research was indispensable and the exploitation of the building had to be suspended until the Bureau would issue its report. As it became known, the Bureau needed one month to produce a final report.

The festival organizers asked for an authorization to have an alternative safety analysis conducted. As they reported, on 4 June 2014, the Sports Palace administration did not allow the festival organizers and invited guests to access the place of incident.

The festival organizers lodged another application with the Sports Palace administration asking to allow them conduct an alternative safety analysis of the building. In its letter to the Office of the Public Defender, the Sports Palace administration stated they were not objecting to conducting an alternative expertise and were waiting for the festival organizers to appear on 10 June 2014 but they did not arrive.[638]

637 http://www.netgazeti.ge/GE/105/News/32155/

638 Letter from the Sports Palace LLC no. 07-37 as of 15 July 2015

At the request of the Sports Palace LLC, the Public Law Entity "Levan Samkharauli National Forensics Bureau" issued its final report on 30 June 2014, which read: "The fire in sector 15 of the Tbilisi Sports Palace on 3 May 2014 did not affect the sustainability and the loadbearing capacity of the metal and concrete structures."

The Public Defender's Office sent letters[639] to the Interior Ministry requesting information about investigative measures implemented by the law enforcement authorities regarding this incident. The Interior Ministry replied[640] that on 4 June 2014 5th Unit, Vake-Saburtalo Division, Tbilisi Main Division, Interior Ministry launched an investigation into the occurrence of fire of on the second floor of the Sports Palace under Article 187(2) of the Criminal Code of Georgia.

According to the information furnished, investigative measures were conducted, witnesses were interrogated, an observation of the place of incident was conducted and a forensic examination was ordered. Investigation is ongoing.

Eventually, the festival could not be carried out at the Sports Palace and the festival organizers could do but to arrange it in *force majeure*conditions, at a much lesser scale than scheduled, in the church yard and against the background ongoing protest rallies.[641]

The festival organizers had to overcome a series of obstacles to make the festival happen. After the Sports Palace-related incident, they were unable to hire a large place anywhere in Tbilisi. The *Outdoor.ge* advertisement company removed many of the outdoor commercials several days before the start of the festival despite the legal contract concluded with the festival organizers. The Public Defender is continuing looking into this case in the light of the Law on the Elimination of All Forms of Discrimination.

THE SURB MINA CHURH

On 7 October 2014, a representative of the Georgian Diocese of the Armenian Holy Apostolic Orthodox Church addressed the Public Defender with a request to study the legality of alienation of the so-called disputed temple named after Surb Mina and its adjacent territory located at 13 Gelati Street, Tbilisi, to private persons.

The applicant explained that the Armenian Diocese was deprived of the temple in the Soviet period. By order of the Georgian Minister of Culture and Monument Protection as of 1 October 2007, the temple received the status of an immovable monument of cultural heritage.

On 12 March 2013, the diocese requested the Chief Prosecution Office to look into the legality of privatization of the temple and its adjacent territory. The letter to the Prosecution Office stated the Surb Mina temple and its yard had been privatized by the people residing in the yard; after privatization, the new owners changed the address of the church and started some construction works underneath the temple.

The Office of the Public Defender requested the Chief Prosecution Office to provide information about any investigative measures taken in regard to the mentioned case.[642]

By it letter, the Chief Prosecution Office informed us[643] that on 26 April 2013 1st Unit, Old Tbilisi, Division, Interior Ministry launched investigation into a criminal case concerning the legality of alienation of the Armenian Surb Mina temple and its adjacent territory located at 13 Gelati Street, Tbilisi, to private persons and forgery of a document. Investigation is ongoing under Article 362(1) of the Criminal Code.

639 Letters of the Office of the Public Defender nos. 04-9/8367 and 04-9/13448 as of 2 July 2014 and 14 November 2014
640 Letters from the Ministry of Interior nos. 13046 and 124853 as of 16 July 2014 and 20 January 2015
641 http://pia.ge/show_news.php?id=16071&lang=geo
642 Letter of the Office of the Public Defender no. 04-9/12873 as of 28 October 2014
643 Letter from the Chief Prosecution Office no. 13/70401 as of 14 November 2014

RECOMMENDATIONS

To the Chief Prosecution Office:

- Investigate violations of Muslims' rights in Villages Chela and Mokhe of the Adigeni Municipality as well as in the Kobuleti Municipality, in particular, from the point of view of possible use of force and improper performance of official duties by law enforcement officers

To the Ministry of Interior and the Chief Prosecution Office:

- Conduct effective investigation into and ensure timely rendering of final decisions in regard to the actions possibly containing elements of criminal offenses carried out against the Muslim population in VillagesNigvziani, Tsintskaro and Samtatskaro in 2012-2013
- Conduct qualified training in the protection of the freedom of religion and equality of rights for members of the Interior Ministry and Prosecution Office with participation by international organizations and the Public Defender

To the Government

- Take measures to raise the culture of religious tolerance countrywide but specifically with the aim of raising awareness of civil servants and decision-making persons with a view to maintenance of religious neutrality in civil service
- Establish a commission to study restitution issues with the involvement of the Public Defender and religious and non-governmental organizations

To the Government and the Parliament

- Continue the consideration of compensating, in a fair and non-discriminatory manner, other religious associations based on international experience and taking into account different existing models; involve experts in the relevant areas and representatives of the religious associations proper in the process
- Eliminate the unequal taxation regime under which the religious associations are subject to taxation rules different from those applicable to the Orthodox Church

To the Public Law Entity "State Agency for Religious Issues"

- Involve the Public Defender with an observer status in the work of the "inquiry commission to study the circumstances related to the building having the status of a club and located in Village Mokhe of the Adigeni Municipality"

PROTECTION OF THE RIGHTS AND CIVIL INTEGRATION OF NATIONAL MINORITIES

Through 2009-2014, State agencies were implementing programs envisaged by the Government-approved[644] National Concept Paper on Tolerance and Civil Integration and its Action Plan in six main dimensions: rule of law, education and State language, media and access to information, political integration and civic participation, social and regional integration, culture and preservation of identity. Implementation of the programs yielded some positive results but root changes in terms of protection of the rights of national minorities and their integration are taking place very slowly or, sometimes, are stalled.

In its reports of 2012,[645] 2013[646] and previous years, the Public Defender has been reiterating the challeges in preschool, high school and university education opportunities for national minorities such as access to learning the State language, cultural development and preservation of identity, participation and involvement in the decision-making process, keeping the national minority regions fully informed about the events going on in the country, facilitation to the learning of their native language by small-size national minorities and other issues. The Public Defender's reports have also been listing recommendations which, if heeded, would improve the situation in these areas.

Neither were the above-mentioned issues given due consideration in the Parliament-approved National Strategy for Human Rights Protection for 2014-2020 and the Governmental Action Plan for the Protection of Human Rights for 2014-2015.

The Action Plan for the Implementation of the National Concept Paper on Tolerance and Civil Integration did not address these challenges fully either.

The Council on National Minorities operational under the auspices of the Public Defender has been regularly monitoring the implementation of the National Concept Paper on Tolerance and Civil Integration in 2010-2014 (the Council is being supported by the United Nations Association Georgia and the USAID). Based on monitoring results, the Council has been devising sets of recommendations for various State agencies. The Public Defender and the Council of National Minorities at the Public Defender have been paid significant consideration in the report authored by the European Commission against Racism and Intolerance.

On 15 June 2010, the European Commission against Racism and Intolerance (ECRI) published its report about the problems of ethnic minorities and discrimination, in general, in Georgia. This was its third report on Georgia.

In the report, ECRI stressed the role of the Public Defender in the protection of the rights of national minorities and civil integration.

644 http://www.smr.gov.ge/docs/doc43.pdf
645 http://www.ombudsman.ge/uploads/other/0/86.pdf p. 531
646 http://www.ombudsman.ge/uploads/other/1/1563.pdf p. 318

The report contains a set of recommendations ECRI deems should be taken into consideration and/or implemented.

"Given the key role played by the Public Defender in combating racism and racial discrimination, ECRI recommends that the Georgian authorities continue to support this institution. Special care should be taken to consult the Public Defender as well as the Council of Ethnic Minorities under this institution's auspices, and to co-operate with it fully, in particular by heeding its recommendations." (par. 26)[647]

Through 2014 and beginning of 2015, a new Action Plan for the Implementation of the National Concept Paper on Tolerance and Civil Integration was in the process of elaboration. It is important for the new Action Plan for 2015-2020 to be duly focused on overcoming the challenges in terms of protection of the rights of national minorities and their civil integration. Additionally, the Action Plan should fully reflect the recommendations of the Council of National Minorities operational under the auspices of the Public Defender and of the Public Defender.

In 2005, Georgia ratified the Framework Convention for the Protection of National Minorities. The Framework Convention contains many provisions about promotion of national minorities and their civil integration. In particular, equality before the law of persons belonging to national minorities is recognized and any discrimination based on belonging to a national minority is prohibited; the national minorities must be provided with conditions necessary to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage; national minorities must be protected against policies or practices aimed at assimilation against their will; the Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory in the fields of education, culture and the media; the Parties shall ensure that national minorities have access to the media; the Parties undertake to ensure access to education at all levels for persons belonging to national minorities.A major part of recommendations of the Public Defender and the Council of National Minorities at the Public Defender in the previous years were based on these provisions and requirements of the Framework Convention. Specifically, our recommendations echoed the Convention requirements in issues related to national minorities' preschool, high school and university eduation; access to learning the State language; cultural development and preservation of identity; participation and involvement in the decision-maing process; keeping the national minority regions fully informed about the events going on in the country; facilitation to the learning of their native language by small-size national minorities and other issues. Georgia assumed certain international legal obligations by ratifying the Framework Convention and heeding these recommendations is therefore necessary.

2014

647 http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/georgia/GEO-CbC-IV-2010-017-GEO.pdf

NATIONAL MINORITIES' INVOLVEMENT AND PARTICIPATION IN THE DECISION-MAKING PROCESSAND IN THE EVENTS TAKING PLACE IN THE COUNTRY

One of the determinants of the national minorities' inclusion and participation in the decision-making process is the opportunity for them to participate in all the public processes and to be appointed or elected to representation-based public offices in a full-fledged manner.

We welcome the fact that national minorities are represented in the composition of the Parliament, including at the level of deputy heads of committees.

In the regions densely populated by national minorities, persons belonging to the national minorities occupy offices such as municipality governors, deputy governors, heads of legislatures, deputy heads of legislatures and other leading positions. The situation is different in the capital, though. It should be mentioned that Tbilisi has always been a munti-national city historically (by the 2002 census, about 15% of the Tbilisi residents were national minoirites) but it is unfortunate that they are not involved in governing the town.

No single representative of the national minorities is a member of the Tbilisi legislature (the so-called "sakrebulo"). This was true also for several previous compositions of the Tbilisi sakrebulo. Unfortunately, none of the qualified election subjects included representatives of national minorities in their"winners' lists". The state of affairs currently, like in the previous years, is that national minorities do not occupy offices such as heads of services within the Tbilisi Town Hall, deputy heads of services, district governors or deputy district governors.

Lack of national minorities in the capital's government remains one of the serious challenges in terms of full-fledged involvement of individuals belonging to national minorities.

EDUCATION SYSTEM; PROTECTION AND INTEGRATION OF NATIONAL MINORITIE

The education system has still been falling short of resolving issues such as availability of quality translation in Armenian and Azerbaini languages of textbooks, teaching of Georgian as a second language, effective bilingual textbooks and other issues, which the Public Defender has been describing in detail in his previous reports.

PRESCHOOL EDUCATIONAL INSTITUTIONS

In the regions densely populated by national minorities, especially in the part of the KvemoKartli region, the local residents are willing to have their children attend Georgian schools. The Ministry of Education and Science did take some steps in this direction in 2009-2014; pilot programs were implemented in some of the schools and kindergartens in KvemoKartli and Samtskhe-Javakheti. A special textbook entitled "Georgian language for preschool age children representing ethnic minorities" was drafted for preschool educational institutions.[648]

With a view to easing the learning process and teaching at least spoken Georgian, parents want to send their children to preschool education institutions where they will have the opportunity of learning the Georgian language at least at an elementary level. Despite a high demand, the number of preschool institutions in the KvemoKartli and Samtskhe-Javakheti regions is inadequate.

TEACHER TRAINING

Staff deficiency at schools offering curricula in national minority languages is acutely increasing. In villages, the number of teachers is decreasing on the one hand and the young people are lesser interested in becoming teachers. The problem is further exacerbated by lack of programs offered by universities to train minority language-speaking school teachers in various subjects. If the *status quo*is maintained in the coming years, a majority of minority-language schools may have to shut down due to lack of personnel.

ACCESS TO UNIVERSITY EDUCATION

The Georgian high education institutions are successfully admitting national minority prospective students by the so-called "one plus four" system. The system has made it possible for hundreds of national minority

648 http://elibrary.emis.ge/ge/books/details/154

representatives to continue studying at universities. However, there are challenges related to the learning process. In particular, the program would improve if run in parallel with various programs promoting inter-cultural and inter-ethnic dialog so that both national minority and national majority are equally prepared to communicate with each other and learn in a multi-ethnic environment.

One of the problems with the high education that has been unresolved to-date is the lack of the possibility of taking multiple-choice tests in Ossetian language. Despite a legal requirement and actual demand from the Ossetian communities, Ossetian people wishing to enter the universities (like Armenians and Azerbaijanians) cannot make use of the "one plus four" system. According to the applicable law, for the academic year of 2015-2016, Ossetian prospective students must be able to enroll in the universities by taking only one examination in general skills through the multiple-choice tests in Ossetian language. One of reasons adduced by representatives of the National Examinations Center to explain the inoperability of this legal requirement is the difficulty of translating the exam test into the Ossetian language.

Despite the requests of the Public Defender's Office and the Ossetian community, Ossetian students will again not be able to take only one examination (in general skills) at the 2015 General National Exams. Representatives of the National Examinations Center have been referring to some alternative models for Ossetian prospective students but no specific model has been offered yet.

TEACHING SMALL ETHNIC COMMUNITIES THEIR NATIVE LANGUAGES AT SCHOOLS

When it comes to education for national minorities, it has been an unresolved problem for years to create opportunities for small ethnic communities to learn their native languages at school.

Regardless of numerous requests and many promises given by State agencies to the Public Defender's Council of National Minorities, in villages and towns densely populated by small nations, the representatives of these minorities have not given the opportunity to learn their native languages at school. This is true for the communities of Kists, Dagestanians, Kurds, Assyrians, Ossetians and Udi people.

Teaching their native languages to representatives of small nations is important not only for education purposes but in order for their communities to preserve their national identities.

As the Ministry of Education and Science informed us, they have amended the Ministry's subprogram entitled "Linguistic education – quality education" with a view to developing "Standards ofsmall national minorities' native languages (Ossetian, Udi language, Avarian, etc) and subject courses in those languages for Georgian-language general education institutions". According to the words of the Ministry representatives, teaching of the languages of small national minorities will be made possible in several schools since 2015.

CULTURAL IDENTITY OF NATIONAL MINORITIES

For civil integration purposes, it is crucially important not only to preserve the cultural heritage of national minorities but also to implement programs promoting civil integration. Cultural projects are necessary to preserve the cultural identity of individual ethnicities and to facilitate to their integration into the society.

The Georgian Constitution and other laws as well as international legal instruments grant citizens of Georgia, including the representatives of national minorities, considerable rights in terms of expression and development of their culture and identity. According to Article 34(1) of the Georgian Constitution,

"The State supports development of culture, unrestricted participation of citizens in cultural life, demonstration and enrichment of cultural origins, recognition of national and universal values, and expansion of international cultural relations."

Article 38 of the Constitution prescribes that citizens are equal in their social, economic, cultural, and political lives irrespective of national, ethnic, religious or linguistic origin. Citizens are entitled to develop their culture without any discrimination or interference.

The right to cultural identity is reinforced by international legal norms such as the Council of Europe Framework Convention for the Protection of National Minorities, which states in its Article 5 that

"The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."

Under paragraph 2 of the said provision, "the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation."

Article 15 of the Framework Convention makes in incumbent upon the States to create conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life.

Consequently, the State has the obligation of not only preserving the identity and ensuring equal participation of national minorities in cultural life but also the duty to protect them from assimilation.

In this context, a special role is played by the Armenian and Azerbaijanian theaters in Tbilisi. However, in practical terms, the theaters are dysfunctional. The Armenian Theater named after PetrosAdamyan and the Azerbaijanian Theater named after Heydar Alyev have been in need of a major overhaul for years. It is worth mentioning that these theaters are the oldest ones in the South Caucasus. Because of the dilapidated buildings, the audience is unable to attend performances.

This problem has been raised by the Public Defender in its 2013. The Ministry of Culture and Monument Protection was recommended to rehabilitate the Armenian and Azerbaijanian theaters. On 17 February 2015, at a session of the Parliamentary Committee on Human Rights and Civil Integration to discuss the implementation of the Public Defender's recommendations,[649] Mr. Giorgi Bakradze, Deputy Minister of Culture and Monument Protection stated: "The sketches and the research results will be ready in two months and, for 2015, about one million Georgian Lari has been reserved to reinforce and repair the buildings of both theaters." We hope, as promised by the Ministry, repair works will commence in the theaters in 2015 so that eventually the theaters not only protect and popularize the Armenian and Azerbaijanian cultures, but also promote an inter-cultural dialogue.

Another recommendation of the Public Defender included in the PD's 2013 report was to repair the so-called Ossetian House in the Tbilisi Ethnographic Museum named after Giorgi Chitaia and to make it operational again. At the above-mentioned session of the Parliamentary Committee on Human Rights and Civil Integration to discuss the implementation of the Public Defender's recommendation, Mr. Giorgi Bakradze, Deputy Minister of Culture and Monument Protection, stated that the issue of rehabilitation of the Ossetian House will be completed in 2015 in cooperation with the South OssetianAdministration (D. Sanakoev).[650] We wish to welcome the statement of the Ministry concerning the upcoming resolution of this matter.

The so-called "culture houses" in the villages in regions densely populated by national minorities remain a problem. Traditionally, these places have been playing a significant role in the cultural life of the rural population. The buildings of culture houses in KvemoKartli and Samtskhe-Javakheti villages (much like in the villages of other regions) are worn and torn. It is necessary to rehabilitate the culture houses in villages and implement civil integration projects using their premises.

649 http://www.ombudsman.ge/ge/news/kulturisa-da-dzeglta-dacvis-saministros-angarishi-saxalxo-damcvelis-rekomendaciebis-shesulebis-taobaze.page

650 http://www.ombudsman.ge/ge/news/kulturisa-da-dzeglta-dacvis-saministros-angarishi-saxalxo-damcvelis-rekomendaciebis-shesulebis-taobaze.page

MEDIA AND ACCESS TO INFORMATION IN REGIONS DENSELY POPULATED BY NATIONAL MINORITIES

Like in the previous years, in 2014 too it remained difficult for the residents of regions densely populated by national minorities to stay in the know of the events going on in the country. In 2014, the Georgian Public Broadcaster was traditionally preparing news programs in Ossetian, Abkhazian, Russian, Armenian and Azerbaijani languages – a fact that we certainly wish to welcome. However, in contemporary life, 10 to 15-minute programs are insufficient for keeping the population of national minority regions informed in a full-fledged manner. As already mentioned in the Public Defender's previous reports, the Public Broadcaster alone cannot deal with the problem. The Government ought to take more active steps and implement focused programs to ensure that regions largely populated with national minorities receive complete information about the events taking place in the country.

Empowering and modernizing the newspapers "Gurjistan" and "Vrastan" are also needed for keeping the national minority population better informed.

RECOMMENDATIONS

To the Government:

- Implement special State programs to keep the population of regions densely populated by national minorities informed

To the Government and the Ministry of Culture and Monument Protection

- Allocate funds for rehabilitation of the buildings of the Armenian Theater named after PetrosAdamyan and the Azerbaijanian Theater named after Heydar Alyev, located in Tbilisi

To the Ministry of Education and Science

- Facilitate to the establishment of preschool education institutions in municipal centers and villages where there is a demand for such institutions
- Facilitate to setting up, as part of the national education system, a mechanism for training and re-training teachers for schools offering curricula in national minority languages

- To implement the requirement of the Law on High Education by ensuring to Ossetian prospective students, since 2016, the possibility of enrolling in the universities by taking only one examination in general skills through the multiple-choice tests in Ossetian language, or by offering them some other, alternative model
- For students participating in the "one plus four" system, provide advance educational programs promoting inter-cultural and inter-ethnicity dialog in addition to the subjects envisaged by the university curricula
- Ensure to small ethnic communities, upon their demand, the opportunity to learn their native languages at school as part of the school curricula

FREEDOM OF EXPRESSION

The freedom of expression is one of the most fundamental values protected by the Georgian legislation[651]and international law[652]. It implies several aspects such as the rights to have an opinion, to express one's opinions and to receive and impart information. Full enjoyment of the freedom of expression is vitally important to existence of a democratic society. Consequently, this freedom makes both positive and negative obligations incumbent upon the State.

Freedom of thought is protected regardless of what the thought is about. The right to freedom of expression covers all the areas of communication and it matters not whether the expression of thought serves to a public or a private goal. The Constitution protects any kind of thought notwithstanding how logical or emotional, how reasonable or irrational it is and whether it is perceived as a good idea or a bad idea. It is unacceptable under the Constitution to discriminate in expression of a thought on account of the importance or value of the thought. Expression of a thought may be subject to restriction in exceptional cases when staying loyal would endanger fundamental constitutional values.[653]

As the Public Defender has mentioned in its 2013 report, according to the political declarations and resolutions adopted by the Council of Europe Committee of Ministers in Belgrade in 2013, bloggers and other media actors are also covered by the guarantees enshrined in Article 10 of the European Convention on Human Rights and Fundamental Freedoms. According to a Freedom House report, Georgia with the score of 26 is among those countries where the level of Internet freedom is high. The same organization reports that, in terms of freedom of press, Georgia remains one of the "partly free" countries. Scoring 47, Georgia occupies 93rd place among 197 countries.[654] Georgia improved its position by 15 units in the annual freedom of the press index reported by an international organization "Reporters without Borders" occupying 69th place among 180 countries.[655]

While discussing freedom of expression, we feel we should note a draft law initiated by the Georgian Government (and authored by the Ministry of Interior)on 14 January 2015 amending the Criminal Code. According to the initiative, a call aiming at fueling strife would be declared a criminal offense.[656]

Pursuant to Article 4 of the Law on the Freedom of Speech and Expression, a call will entail legal liability only if it creates a manifest, direct and substantial threat of bringing about an illegal outcome. The Constitutional

651 Article 24 of the Georgian Constitution; Law on Freedom of Speech and Expression as of 24 June 2004

652 1950 European Convention on Human Rights and Fundamental Freedoms; 1966 International Covenant on Civil and Political Rights

653 "Commentary to the Constitution of Georgia.Chapter Two.Citizenship. Fundamental Human Rights and Freedoms.", BesarionZoidze, 2013, pp. 255-6

654 Freedom of the Press 2014 published on 1 May 2014

655 http://index.rsf.org/#!/index-details/GEO.

656 In particular, Article 239[1] of the draft law stipulated: "Making a call aimed at fueling strife, in other words, using oral, written or other means of expression to publicly call for violent actions with a view to bringing about animosity or rift between or among groups of persons on account of their race, religion, nationality, region, ethnicity, social belonging, language and/or other property, – is punishable with two to four years of deprivation of liberty.

Court of Georgia has explained that a threshold should be drawn between calling for commission of a crime with no outcome contemplated and calling for commission of a crime where there is a realistic threat that the crime will actually be committed. In particular, the Court held that "in determining whether a threat of violence was realistic, the context and the conditions in which such call was made must be evaluated. On a case-by-case basis, an authorized body (person) has to evaluate whether a particular statement constitutes a call for ousting or violently changing the Government and whether there is a threat of occurrence of violence. The State is authorized to intervene to stop [such expression] only if the call meets both criteria. *A provision would contradict the Constitution if it allows for restriction of the freedom of expression without having regard to the above-mentioned criteria.*" The Court deemed that legal liability can only be triggered if a violence and/or crime has occurred or if there was a realistic threat of commission of such conduct.[657]

With these principles in mind, the Public Defender has sent a recommendation to the Parliament of Georgia discussing in detail the changes needed for the draft law not to restrict the freedom of expression unduly, if adopted. In its recommendation, Public Defender emphasized some of the following important issues:

1. The proposed text (in particular, the term "animosity and rift") is too broad falling short of meeting the requirement of foreseeability of law and allowing for different interpretation and incorrect application of the norm in practice. The provision does not envisage any objective and realistic criteria for measuring this purpose. In particular, the proposed provision does not require existence of a manifest, direct and substantial threat of bringing about an illegal outcome. A call can fall within the regulation of the criminal law only if it creates a manifest, direct and substantial threat of occurrence of an illegal outcome. A call that does not create such a threat, however unacceptable it may be for different groups or even for the whole society, is protected by the freedom of speech.

For the freedom of speech and expression as a fundamental value in a democratic society guaranteed by the Georgian Constitution not to be violated, the provision must refer to a manifest, direct and substantial threat of bringing about an illegal outcome as a mandatory component. Consequently, we believe this component should be inserted in Article 239[1] of the draft law.

2. The impugned provision refers to a call for fueling strife whereby the call is aimed at causing animosity or rift between "groups of persons". To be specific, the provision *is not* referring to a call whose addressees or victims are groups of persons on account of their race, religion, nationality, region, ethnicity, social belonging, language and/or other property. The proposed definition contravenes the international human rights standards. Specifically, the definition does not fit into the explanation provided in recommendation no. 7 of the European Commission against Racism and Intolerance (ECRI), which seeks to protect the very marginalized groups from expression of racism and racist-based theories. The State's margin of appreciation is strictly limited when it comes to introducing substantive restrictions on freedom of expression. According to the Venice Commission's report as of 23 October 2008, the application of hate legislation must be measured in order to avoid an outcome where restrictions which potentially aim at protecting minorities against abuses, extremism or racism,have the perverse effect of muzzling opposition and dissenting voices, silencing minorities, and reinforcing the dominant political, social and moral discourse and ideology. The disputed provision of the draft law is incompatible with the international practices as well. For these reasons, the word "between" should be replaced with "against/in relation to" in the text setting a higher standard for the protection of the right and decreasing the chance of interpreting the provision broadly or applying it incorrectly in practice.

3. Article 239[1] of the draft law does not explicitly refer to sexual orientation and gender identity as qualifying properties of the criminalized conduct. This is against the background that mass violence in the recent years has been targeted on account of these properties exactly. Although such individuals could fit into the words "and/or other properties", the increased violence against them warrants the need for explicitly referring to these groups in the text of the provision. For these reasons, the Public Defender has taken the view that the list of

657 Judgment of the Constitutional Court of Georgia no.2/482,483,487,502 as of 18 April 2011, paras. 93, 96, 104

groups of persons susceptible to becoming victims of a crime under Article 239[1]should be expanded to include people with different sexual orientation and gender identity as qualifying properties of the conduct. This would vest such groups with stronger guarantees for the protection of their rights and freedoms than those envisaged by the proposed version.

4. It is worth noting that Article 239[1] envisages too toughsanctions for the commission of the conduct described in this provision (making a call aimed at fueling strife). The conduct under paragraph 1 is punishable with deprivation of liberty from two to five years and the conduct under paragraph 2[658] with deprivation of liberty from eight to fifteen years. It would be prudent to revise these sanctions so that they are proportional to the nature of the crime concerned.

The Public Defender furnished his comments and notes about the draft law to the Ministry of Interior and the Parliament in writing. We note with satisfaction that there is a readiness to consider the Public Defender's comments. At this stage, the draft law has not been heard by the leading committee even for the first time. We hope the initial version of the draft law will not be adoptedbut the Public Defender's comments will be heeded instead.

658 "The same conduct if it has brought about hostility or disagreement between or among groups of persons on account of any of the reasons indicated in paragraph 1 of this Article and this conduct resulted in infliction of a serious health injury to a human being, loss of life or some other grave result."

MEDIA ENVIRONMENT

It is no longer contested in contemporary world that existence of a healthy media has vital importance to maintaining a democratic constitutional and legal order. Unimpeded dissemination of information is a precondition for forming a pluralist society and developing it continuously.

In its 2013 report,[659] the Public Defender welcomed the setting up, on the basis of a resolution of the Parliament Bureau as of 1 May 2013, of a Temporary Investigative Commission of the Parliament to Study the Actions of the National Communications Commission. The Commission completed its work in the reporting period. According to the Resolution of the Parliament no. 2090-IIS dated 7 March 2014, the Parliament made the following findings: that the National Communications Commission had been breaching the requirement of promoting free entrepreneurship and competition as envisaged by Article 30 of the Georgian Constitution; that the National Communications Commission had been rudely violating consumer rights protected by Georgian laws and bylaws, neglecting the prohibition of monopolizing mass media and means of spreading information by individual persons, improperly performing and often neglecting its obligations under law; that the National Communications Commission had been exceeding its official powers and performing its duties in a discriminatory manner. The Parliament decided to forward the inquired materials and documents to the Chief Prosecution Office for further action and to request the National Communications Commission to eliminate the identified violations by taking specific measures. In view of the National Communication Commission's special role in ensuring the freedom of expression, we note with satisfaction that the fact the Parliament managed to exercise its parliamentary control. This will set a precedent and affect the work of the National Communications Commission in the future as well.

The National Human Rights Protection Strategy and the Governmental Action Plan for the Protection of Human Rights are important authorities to discern the State's obligations, goals and activities in the area of freedom of expression.

The National Human Rights Protection Strategy approved by the Resolution of the Parliament of Georgia no. 2315-IIS dated 30 April 2014 prescribes that it is one of the goals of the State to devise guarantees for the protection of the freedom of expression enshrined in the Georgian Constitution and international standards, ensure freedom of the media, protect journalists from intrusion into their professional activities and to prevent and suppress occurrences obstructing the exercise of the freedom of expression.

According to paragraph 9, Governmental Action Plan for the Protection of Human Rights approved by Resolution of the Government of Georgia no. 445 dated 9 July 2014, it is one of the goals of the State to ensure freedom of expression. Among the activities contemplated to achieve this goal is prompt and

659 Page 333.

effective investigation by the investigative bodies into the occurrences of obstruction of the professional work of journalists. We note with satisfaction that investigative bodies have been tasked with keeping special statistical data about crimes hindering the professional activities of journalists and the percentage of such crimes investigated. However, it would be desirable to keep statistics not only about offenses hindering the professional duties of journalists but also about all the criminal offenses directed against journalists on account of their professional activity. Since often times journalists are becoming victims of not only the crime under Article 154 of the Criminal Code, but other criminal offenses such as beating, it is important to systematize the record-keeping about all the actions directed against journalists. This would make it possible to readily have comprehensive data about crimes committed against journalists on account of their professional activity.

According to information provided by the Chief Prosecution Office to the Office of the Public Defender, the prosecution office is not registering information about victims by their occupation.[660] As the Interior Ministry informed us,[661] they are also not registering statistical data about investigations opened into journalists' complaints. It is therefore difficult to know how effective criminal proceedings are in protecting the freedom of the media environment or how adequately violations are responded to.

INVESTIGATING ALLEGED CRIMES COMMITTED AGAINST JOURNALISTS

Freedom of expression is on the list of the Public Defender's priorities each year. It should be welcomed that, unlike the previous years, neither 2014 nor 2013 distinguished by multiplicity of interference with and obstruction of the professional activities of journalists.

However, it is indispensable to investigate all of the cases referred to by the Public Defender in its previous reports.[662] That is particularly important for strengthening the rule of law principle and preventing similar occurrences in the future.

According to the information received from the Chief Prosecution Office at various dates, investigations into crimes under various articles of the Criminal Code committed against representatives of media facilities have not completed yet.

One of such cases concerns the threatening and verbal abuse of N.Ch., a journalist from the 9th Channel TV Company, on 23 and 26 July 2012. The Public Defender has reported about this case in its 2012 report.[663] As we know it, investigation into alleged threatening of N.Ch. is ongoing under Article 151 of the Criminal Code and it has not been completed yet.[664]

There is a similar situation with the investigation into crimes committed against I.Ch., a journalist from the Obiektivi ("Object Glass") Media Union, and J.P., a journalist from the "Caucasus" TV Company. The investigation is continuing under Article 333(1) of the Criminal Code – exceeding official powers. The investigation is not over yet.

Lastly, we would like to mention a case concerning hindrance to the performance of professional activities by Sh.R., a journalist of the Maestro TV Company on 18 September 2011.[665] Despite numerous efforts of the Public Defender's Office for obtaining information from the Chief Prosecution Office, the progress or the results of the investigation into this case remains unknown to us.

660 Letter from the Chief Prosecution Office no. 13/6242 dated 3 February 2015
661 Letter from the Interior Ministry 441511 dated 4 March 2015
662 2013 Activity Report of the Public Defender, p. 334
663 http://www.ombudsman.ge/uploads/other/0/86.pdf pp. 497–498.
664 As reported by the Chief Prosecution Office in its letter no. 13/50513 dated 9 August 2014
665 2011 Activity Report of the Public Defender, pp. 90-91

THE CASE OF Z.D., JOURNALIST

According to media reports, on 30 September 2014, ZD, a journalist from the "Asaval-Dasavali" Newspaper, was physically insulted. It was reported, in particular, that the journalist was attacked by representatives of the Free Zone. The journalist's colleague explained that the attackers broke ZD's ribs. The colleague also mentioned that one of the attackers was P.Ch., one of the leaders of the Free Zone. ZD became a victim of another possibly criminal offense on 22 October 2014. An unidentified person suddenly attacked and beat him near the first building of the IvaneJavakhishvili Tbilisi State University. According to the reports, ZD was taken to the Tbilisi Central Hospital. The Public Defender made a public statement on this occasion. The Public Defender called on the law enforcement authorities to effectively investigate the incident, reveal the perpetrators and apply sanctions envisaged by law.[666]

According to information provided by the Chief Prosecution Office to the Office of the Public Defender,[667] on 30 September, the Investigative Service, Crime Combating Unit, Tbilisi Main Division, Patrol Police Department, Interior Ministry, launched investigation into alleged commission of crimes under Articles 353(1)[668] and 239(2)(a)[669] of the Criminal Code against DG and PCh. ZD was found a victim. As regards the incident of 22 October, investigation into this case has started under Article 125(1) of the Criminal Code. On 24 October 2014, AK was charged with a crime under Article 156(2)(a) of the Criminal Code, which is "persecuting a human being for his/her speech, thought, conscience, religion, belief or creed and in relation to his/her political, public, occupational, religious or scientific activities, if committed using violence or threat of violence". Since the Public Defender has been stressing the importance of giving correct legal qualification to crimes committed against journalists, we welcome the fact that, in the above case, the law enforcement authorities launched a criminal investigation and did not confine themselves to merely imposing administrative liability.

THE CASE OF N.M., JOURNALIST

The Public Defender's Office, acting on its initiative, is studying a public statement made by N.M., Journalist, and "Anatomy" Studio on 23 September 2014. According to the statement, the studio was preparing a TV program about who owned what business within the new government in place. The TV program was intending to focus on ZviadJankarashvili, former Head of the Interior Ministry's Inspectorate-General. According to NM, Jankarashvili was verbally threatening her and the Interior Ministry's Inspectorate-General made her husband resign from his position at the Interior Ministry.

The Public Defender made a statement on this issue on 24 September this year[670] calling on the Chief Prosecution Office to take prompt and effective investigative measures to look into the alleged threatening of Journalist N.M., with a view to securing a free and safe environment for journalists.

As the Chief Prosecution Office informed the Office of the Public Defender,[671] investigation into the above allegation has been launched under Article 151 of the Criminal Code.[672] The investigation is ongoing. The referenced provision of the Criminal Code envisages criminal liability for threatening. As already mentioned, the journalist asserts she has been threatened in relation to her occupational activity as a journalist. In particular,

666 1 October 2014, http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saqartvelos-saxalxo-damcveli-jurnalistis-cemis-faqtsa-da-tavisufali-zonis-ofistan-momxdar-incidents-exmianeba.page

667 Letter from the Chief Prosecution Office no. 13/68491 dated 3 November 2014

668 Rendering resistance, threatening or using violence against a keeper of public order or other representative of the authorities

669 Hooliganism

670 http://www.ombudsman.ge/ge/page/saqartvelos-saxalxo-damcveli-jurnalist-natia-miqiashvilis-gancxadebis-taobaze

671 Letters from the Chief Prosecution Office nos. 13/66655 and 13/7604 dated 27 October 2014 and 10 February 2015

672 Threatening with killing, inflicting health injuries or damaging property if the person threatened had reasonably feared that the threat would be fulfilled

she was admonished not to carry out her planned journalistic investigation. Because of the special role played by journalistic investigations in a pluralist democratic society, it is indispensable for the law enforcement bodies to give correct legal qualification and conduct investigation under the appropriate article of the Criminal Code – hindering a journalist from performing his/her professional activity. It is vitally important to conduct this and all other similar investigations in a prompt manner so that they are completed in reasonable terms.[673]

THE CASE OF J.A., JOURNALIST

On 8 June 2014, TV Company "25" broadcast J.A.'s copyright movie on journalistic investigation into the activities of the members of the High Council of the Achara Autonomous Republic. According to the journalist, several minutes after the movie was shown(at 22:25 hrs.), he received a call to his private mobile phone from Medea Vasadze, Chairperson of the Human Rights Commission of the High Council of the Achara Autonomous Republic.

JA states that, according to the recorded phone conversation, Medea Vasadze, Chairperson of the Human Rights Commission of the Achara High Council, exerted pressure and threatened the journalist on account of the contents of the movie shown on the TV.

On 10 June 2014, the Public Defender requested the Chief Prosecution Office to inform us whether investigation into the above-mentioned allegations was launched as well asa provision of the Criminal Code under which a criminal case was opened.

On 1 July 2014, the Chief Prosecution Office replied that they analyzed the recording of the telephone conversation between JA, Journalist, and Medea Vasadze, Member of the Achara High Council, as well as other materials and concluded that there were no elements of any conduct envisaged by the Criminal Code. For this reason, no investigation has been launched.

The applicable criminal procedure law does not contain any exceptional provisions to allow the investigative bodies to refuse opening a criminal investigation; moreover, the investigative bodies are obliged to use all the legal means at their disposal to effectively reveal criminal conduct and take appropriate responsive measures. Also, Article 100 of the Criminal Procedure Code prescribes the obligation of opening a criminal investigation. For these reasons, the Public Defender took the view that the Chief Prosecution Office had to immediately open investigation into possibly illegal actions carried out by Medea Vasadze against the journalist because only a timely and effective investigation could ascertain objective truth in the case. However, the Chief Prosecution Office replied that they disagree with the Public Defender on this. Consequently, it was decided not to launch any investigation.

673 The Criminal Procedure Code of Georgia, Article 154

LIMITS OF POLITICIANS' FREEDOM OF EXPRESSION

The Office of the Public Defender reviewed an application as of 9 September 2014 by E.J., a journalist, who complained of comments made by a Member of Parliament about her. According to the journalist, EkaBeselia, Member of Parliament, publicly insulted her, which the journalist perceived as an attempt of discrediting and exerting pressure on her. The journalist concatenated the politician's statements with her activities as a journalist.

In discussing the freedom of expression as one of the fundamental rights, it is important to determine the relationship between the freedom of expression of a journalist and that of a politician. Interpretations provided by the European Court of Human Rights provide useful guidance in this regard.

The European Court has been consistently emphasizing the importance of the freedom of the press. The Court has stated that not only does the press have the task of imparting information and ideas on political issues just as on those in other areas of public interest but the public also has a right to receive them.[674]

Of special interest is the Court's opinion about the scope of application of the freedom of expression principles to politicians. The Court has stated that "Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders." It is for this reason that "the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance."[675] That is especially true when politicians themselves are making public statements that are capable of attracting criticism.

"The pre-eminent role of the press in a State governed by the rule of law must not be forgotten."[676] The Court's approach is that political actors should demonstrate a high degree of tolerance towards severe criticism, even if the latter is expressed in an insulting manner. The limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. The Court held that, in view of the special role played by the freedom of the press, politicians must display a great deal of reticence in response to criticism emanating from the media.[677]

The Court's tolerance of politicians and political debates ends where they are no longer aimed at informing the public or freely exchanging thoughts but when instead they have turned into statements calling for and

674 *Lingens v. Austria*, application no. 9815/82, 8 July 1986, Series A, no. 103, par. 41
675 *Lingens v. Austria*, application no. 9815/82, 8 July 1986, Series A, no. 103, par. 42.
676 *Castells v. Spain*, application no. 11798/85, 23 April 1992, Series A, no. 236, par. 43
677 *Ceylan v. Turkey*, application no. 23556/94, 8 July 1999, Reports 1999-IV, par. 34

incitement to hatred.[678]

Politicians must always be mindful of the need for upholding democracy and its principles because their final goal is to come to power.[679]It follows that members of the legislature as one of the branches of the Government are subject to even higher standards.

As it is clear from the European Court's interpretation, in order to free the media environment from pressure as much as possible, it is unacceptable for politicians to make evaluations that may be perceived as an attempt of influencing journalistic activities and discrediting journalists in the eyes of the public. Every such occurrence may pave the way for unhealthy and negative trends that are inadmissible, given the special role of the media.

In addition, politicians bear a special responsibility in disseminating their views. This is because the public is especially interested in them and because they possess increased levers of affecting the society. It is therefore necessary for politicians, deriving from their status, to understand their responsibilities and obligations before the society.

For these reasons, the Public Defender takes the view that politicians, whether from the Government or the Parliament should not make comments and evaluations that may be perceived as interference with or exertion of pressure upon journalists.

678 "Eliminating hate language in political discourse: from criminal liability to self-regulation mechanisms", available in Georgian at http://gdi.ge/uploads/other/0/192.pdf.

679 *Féret v. Belgium*, application no. 15615/07, par. 75

USE OF HATE LANGUAGE BY PUBLIC OFFICIALS AND CIVIL SERVANTS

In its recommendation, the Council of Europe Committee of Ministers has stressed that "public authorities and public institutions as well as officials have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech."[680] The Council of Europe Parliamentary Assembly has also stated that hate speech by public persons are of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speeches likely to legitimize and fuel discrimination or hatred based on intolerance.[681]

There is no universal definition of "hate speech" but, according to a recommendation adopted by the Council of Europe Committee of Ministers in 1997, it covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including nationalism, ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.[682]

The European Court's approach is that hate language is not protected by the European Convention on Human Rights. The Georgian Constitutional Court's approach suggests that the freedom of speech and thought does not belong to absolute or unlimited rights and the Court would tolerate restriction of this right should the display of freedom of expression violate others rights – this being the only circumstance able to serve as a ground for limiting the freedom of speech or thought.[683]

The freedom of expression – a right certainly enjoyed also by public officials – has certain limitations, as construed by the European Court. If abused, the freedom of expression will legitimately entail sanctions because the Convention is "an instrument designed to maintain and promote the ideals and values of a democratic society."[684]

Adamant adherence to these principles is, in the first place, the obligation of public officials such as civil servants, politicians and high-ranking persons. Thoughts expressed by representatives of State authorities are subject to public scrutiny and every single case where their evaluations may be facilitating to encouragement of violent actions must be condemned. Such statements hinder the democratic process because values such as respect for different opinion, full-fledged exercise of the freedom of expression and prohibition of hate language are fundamental in a democratic State.

680 Recommendation of the Council of Europe Committee of Ministers No. R(97)20 on "Hate Speech"
681 Resolution of the Council of Europe Parliamentary Assembly 1728 (2010) on discrimination on the basis of sexual orientation and gender identity, par. 7
682 Recommendation of the Council of Europe Committee of Ministers No. R(97)20 on "Hate Speech"
683 Judgment of the Constitutional Court of Georgia no. 2/1/241 as of 11 March 2004, par. 1
684 *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, application no. 5926/72, 7 December 1976, par. 53

THE CASE OF "IDENTITY"

In the reporting period the Public Defender was approached by a representative of the "Identity" organization. According to the applicant, an interview of Alexandre Bregadze, Deputy State Minister on Diaspora, published on 25 October 2014 in the "KvirisPalitra" Newspaper[685] was offensive and degrading and contained a threat of physical settling of accounts against an executive director of the non-governmental organization "Identity"; the statements made in the newspaper also constituted exertion of pressure upon the "Identity"non-governmental organization in general.

The Deputy Minister later explained that he was not supportive of any violence or hatred and that he condemned and distanced himself from such occurrences.[686] Even more alarming is a letter from the State Minister on Diaspora no. 01-10/800 dated 10 November 2014, which says that the Deputy Minister's statements were triggered by the activities of the director of "Identity" and the director's sayings should rather be responded by taking measures envisaged by law lest the people execute justice by themselves.

Deputy Ministers are public officials, according to the Law on Incompatibility of Interests in Civil Service and Corruption". Deputy Ministersare considered public persons under the Law on Freedom of Speech and Expression.[687]

Article 13 of the Law on Civil Service determines the fundamental principles of civil service, including respect for the rights, freedoms and dignity of human beings and citizens. Freedom of expression is one of most important rights reinforced by the Constitution.

A Deputy State Minister on Diaspora is a State official who takes part in forming the State policy and bears the corresponding responsibility towards the society. It should be such persons, in the first place, to promote pluralist and tolerant policy in relation to dissenting views.

In the case described above, it matters not whose actions or thoughts triggered the Deputy Minister to make the evaluations he made. Further,it matters not whether the statements publicly made by different individuals or organizations are shocking or even offensive to the society. The freedom of information is applicable also to "information" or "ideas" that offend, shock or disturb the State or any sector of the population because without this there is no democratic society;[688] this principle must be upheld by high-raking officials most of all.

Lastly, because of the special role played by non-governmental organizations and strong civil society in a democratic society, the State mustensure, both at legislative and practical levels, appropriate conditions for such organizations to exist and operate without obstructions. The authorities' attitudes and actions are crucial in this process.

685 25.10.2014 http://www.kvirispalitra.ge/public/23148-sandro-bregadze-didi-imedi-maqvs-rom-araraoba-irakli-vatcaradzes-arsad-shevkhvdebiq.html

686 30.10.2014 http://iverioni.com.ge/8659-ras-mimarthavs-sandro-bregadze-saerthashoriso-organizaciebs-da-ras-ganmartavs-uckhoeli-megobrebis-da-thanamemamuleebis-gasagonad.html.

687 A rule under Article 1(i) of the Law of Georgia on Freedom of Speech and Expression

688 *Handyside v. The United Kingdom*, application no. 5493/72, 7 December 1976, Series A, no. 24, par. 49

FREEDOM OF INFORMATION

The Public Defender has been constantly emphasizing the importance of freedom of information and the positive obligation of the State to make information in which the public is interested available to people subject to reasonable limitations.

In Georgia, freedom of information is guaranteed by the Constitution of Georgia, the supreme law of the country, which imposes on the State not only a negative obligation – not to hinder a person from obtaining information, but also a positive obligation – to issue information it possesses. In a legal State, for full-fledged functioning of a democratic system, it is important that the society has access to information held by public institutions. Effective exercise of the right to freedom of information greatly contributes to strengthening trust between the Government and the society, forming stabile democratic institutions, preventing and suppressing corruption, increasing transparency of what the Government does and the Government's accountability before the society. Freedom of information is a paramount mechanism of "public control" over the operation of public institutions, which eventually helps increase citizens' participation in the process of administration and form good governance practices.[689]

For better publicity of and access to information, the law should be amendedto set up a mechanism to monitor freedom of information.

According to Article 24 of the Georgian Constitution, everyone shall be free to receive and impart information, to express and disseminate his/her opinions orally, in writing, or otherwise. It should be noted that the said provision protects freedom of information, including the right to freely receive and impart information from publicly available sources that are fit for obtaining and disseminating information. It is important to point out as well that State institutions are not regarded publicly available sources. As for the State institutions, Article 41 of the Constitution grants every citizen[690] the right to view information about himself/herself and official documents kept by the State institutions, unless they contain state, professional, or commercial secrets.

Legal norms governing access to public information are articulated in higher detail in Chapter 3 of the General Administrative Code of Georgia. According to Article 37(1) of the Code, everyone has the right to request public information regardless of its physical form and storage conditions, the right to choose the form of receiving public information if it exists in different forms and the right to view an original copy of information.

689 A judgement of the European Court of Human Rights in a case against Hungary rendered in 2009 is considered a breakthrough in this context because the Court recognized that Article 10 of the Convention (freedom of expression) includes a right to obtain information from State institutions: http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{„fulltext“:[„tarsasag“], „itemid“:[„001-92171“]}

690 Article 41(1) endows the right to obtain information from public institutions to "every citizen of Georgia" verbatim, but the Constitutional Court explained in its judgment no. 2/3/264 as of 14 July 2006 that "the said article considers official information kept by State institutions open for public entitling every natural person and legal entity to view such information…"

Analysis of cases reviewed by the Public Defender in 2014 shows that in the reporting period, like in the previous years, some State institutions failed to properly fulfill their positive obligation under Article 41 of the Constitution to release public information they possessed. As we found out from the specific cases we examined in the reporting period, administrative bodies have been violating the legality principle envisaged by the General Administrative Code by refusing to release information under the pretext that they thought it would be "inappropriate to release the information" – a reason that one cannot find in the applicable legislation. Besides, there were cases in which the State institutions did not completely release the requested public information. In some cases, the State institutions were incorrectly referring to the Personal Data Protection Law to justify denial of public information.

Unfortunately, the Parliament has not taken steps yet to legally establish administrative liability for unlawful refusal to release public information. Finally, appropriate bodies have not taken measures to start necessary procedure for Georgia to ratify the Council of Europe Convention on Access to Official Documents.[691]

THE CASE OF THE INSTITUTE FOR DEVELOPMENT OF FREEDOM OF INFORMATION

In the reporting period, the Public Defender found violation of the right to access public information in the case of the Institute for Development of Freedom of Information, a not-for-profit legal entity. On 27 January 2014, the entity requested the Ministry of Economy and Sustainable Development to provide the following information: bonuses, salary add-ons, and so-called roaming costs and travel allowances paid to public officials; documents certifying the level of education of the minister and deputy ministers; letters sent and received by the minister through his work email; representation costs borne by the ministry; goods and services procured in the mode of urgent necessity; technical maintenances costs of the ministry-owned vehicles; auditing papers (internal, external, State and non-State audits); number of cases in which audit conclusions were forwarded to law enforcement authorities for their response and other information.

Part of the information furnished by the Ministry of Economy and Sustainable Development to the requestor was incomplete; in regard to another part of information, the Ministry stated they considered release of such information inappropriate;[692] and in respect of the remaining part, the Ministry said they did not have it.[693] The Institute for Development of Freedom of Information lodged an administrative complaint with the Minister but no decision has been madeeven though a legal term for making a decision expired in vain.

It should be noted that neither did the Ministry of Economy and Sustainable Development provide the Public Defender's Office with complete information requested by IDFI in its letter of 27 January 2014.

Having reviewed the circumstances of the case, the Public Defender takes the view that the authorized person(s) of the Ministry of Economy and Sustainable Development breached the requirements of the Georgian legislation on the release of public information and, by doing so,they also breached the rights of the Institute for Development of Freedom of Information.

691 By its letter no. 01/6026 dated 20 February 2015, the Ministry of Foreign Affairs informed us that they took into consideration our letter in which we were asking for information whether the authorities have started procedures to ratify the Convention on Access to Official Documents as of 18 June 2009. In particular, the Ministry reported that they renewed the process.

692 Pursuant to Article 5(1) of the General Administrative Code, an administrative body may not carry out an activity in contravention of the requirements of law. The Georgian legislation does not envisage the possibility of refusing to release public information under the pretext of such release being "unreasonable".

693 According to Article 40(1) of the General Administrative Code of Georgia, a public institution must release public information, including electronically requested public information, immediately but not later than 10 days if for replying to the request it is necessary to a) retrieve and process information from its structural subdivisions in another locality or from another public institution; b) retrieve and process unrelated individual pieces of considerable size; c) consult with its structural subdivision in another locality or with another public institution.

THE CASE OF D.M.

On 28 February 2014, the Public Defender was approached by Citizen DM with a request to study the legality of his dismissal from the job by the Ministry of Corrections. With a view to studying the matter thoroughly, the Public Defender's Office requested the Ministry of Corrections to provide the findings of inquiry by the Ministry's Inspectorate-General on which basis DM was imposed disciplinary liability and dismissed from office he occupied at the Ministry. DM himself requested the Ministry as well to provide these materials but the Ministry refused to make the inquiry findings available to either DM or the Public Defender's Office under the pretext that they contained personal data.

The Office of the Public Defender received the materials of the findings of the Ministry's Inspectorate-General from DM who sued the Ministry in the court. Only through litigation was the citizen able to get the materials and the Office of the Public Defender took on checking the legality of DM's dismissal.

We wish to point out that the Ministry could have just crosshatched the personal data of persons who conducted the inquiry on behalf of the Inspectorate-General and release the material to both the requesting citizen and the Office of the Public Defender. By denying release of the requested information, the Ministry of Corrections violated the right to access to information.

WHETHER THE 10 DECEMBER REPORTS MET THE LEGAL REQUIREMENTS

The Office of the Public Defender looked into the quality of compliance by all the government ministries and up to 30 public law entities with their obligation under Article 49 of the General Administrative Code of Georgia.[694] The referenced provision obliges every public institution to furnish the Parliament, the President and the Prime Minister with its report on access to information and to publish the report in the Legislative Herald of Georgia.

It should be noted here that the Georgian legislation does not require the addressees of these reports to check the data provided by the authoring public institutions in their annual reports. Because there is no such obligation and mechanism, the public institutions' obligation under Article 49 of the General Administrative Code is merely formalistic. The Office of the Public Defender decided to check the formal side of the reports published by the public institutions on the official website of the Legislative Herald and found that

- Some of the public institutions did not report about them collecting, processing and storing personal data
- The reports do not reveal the identities of civil servants who made the decisions releasing or denying release of the requested information

694 Under Article 49 of the General Administrative Code of Georgia, on 10 December each year, each public institution must submit a report on the following issues to the Parliament, the President and the Prime Minister as well as publish the report in the Legislative Herald of Georgia:
a) number of applications for release of public information or correcting a piece of public information received by the public institution and number of decisions rejecting such applications;
b) number of decisions on granting or rejecting applications, name of a civil servant who made the decisions, as well as decisions of a collegiate public institution closing its own sessions for public;
c) databases of public information and information on collecting, processing, storing and transferring personal data by the public institution to others;
d) number of violations of the requirements of this Code by civil servants and number of civil servant discipline for these violations;
e) pieces of legislation the public institution relied on in refusing to release public information on in closing its sessions by a collegiate public institution for public;
f) decisions refusing to release public information that have been challenged;
g) costs, including any sums paid in the favor of a party, related to processing and releasing public information, costs related to challenged decisions refusing release of public information or challenged decisions on closing sessions of a collegiate public institution for public.

- The reports do not contain references to the normative acts on which basis the public institutions refused to release information

Public institutions' a merely declaratory obligation, which if not performed or performed incompletely, is not backed up by any sanctions under law, explains why public institutions are often times improperly fulfilling the requirement of Article 49 of the General Administrative Code.

RECOMMENDATIONS

To the Parliament:

- Heed the Public Defender's comments in discussing and adopting the changes in the law directed at criminalizing strife-fueling calls
- Elaborate ethical rules for MPs and set up a mechanism to ensure compliance with such rules in order to bring the parliamentarians' behavior into ethical frames
- Take steps, as necessary, for the legislation to prescribe administrative liability for unlawful refusal to release public information
- Amend the legislation to set up a mechanism ensuring access to information and monitoring of freedom of information
- Ratify the Council of Europe Convention on Access to Officials Documents as of 18 June 2009 so that the Convention standards of making official documents become applicable, as additional legal requirements, to entities discharging public functions in Georgia
- Adopt legal changes to create a mechanism for verifying the accuracy of public institutions' yearly freedom of information reports under Article 49 of the General Administrative Code and to make it mandatory for public institutions to furnish the President, the Parliament and the Prime-Minister with complete reports envisaged by Chapter 3 of the General Administrative Code on 10 December every year

To the Government

- Members of the Government and public officials representing the executive authorities to refrain from making evaluations that might be perceived as encouragement of hate language or incitement to violent actions and/or violation of the neutrality principle prescribed by the Law on Civil Service

To the Chief Prosecution Office

- In every case of obstruction of journalists' professional activity, give the conduct the correct legal qualification and take effective measures to complete the ongoing investigations into all of the above-described cases
- The investigative bodies to keep statistics of offenses committed against journalists

To the Ministry of Foreign Affairs

- Take measures to start implementing procedures for ratifying the Council of Europe Convention on Access to Official Documents as of 18 June 2009

THE RIGHT TO ASSEMBLY AND MANIFESTATION

The right to assembly and manifestation is enshrined in both national[695] and international[696] legislation. The full realization of the right to assembly and manifestation is critical for a democratic nation state. The right should be considered as one of the aspects of freedom of expression. Therefore, we are pleased to report that unlike the past experience there has not been massive violation of this right during the reporting period. However, there were cases involving alleged unjustified intervention in the right to association and manifestation by the law enforcement agencies.

When it comes to freedom of assembly and manifestation, the following criteria come to the fore: transparency, peaceful nature and the access to assembly upon prior permission.[697] The right includes such components as the right to initiate, organize and participate in an assembly/manifestation.[698] Also, with regards to the right to assembly and manifestation the State has both negative and positive responsibilities.

These very responsibilities are highlighted in the National Strategy for Human Rights of Georgia[699] and the Action Plan for the Protection of Human Rights of the Government of Georgia.[700] As outlined in the strategy, one of the goals of the State is to create an enabling environment for effective protection of the right to assembly and manifestation, as well as the protection of participants of assembly and manifestations in order to fulfil the State's positive and negative responsibilities, undertake legal actions against violators and prevent violations, provide constant trainings of the law enforcement staff for effective fulfilment of the State's positive responsibilities for the protection of the right to assembly and manifestation.

The Public Defender welcomes a training on mass management delivered in the Police Academy as a follow up of his 2013 recommendations. The training made an emphasis on the following aspects: legal foundations of mass management (normative acts), rights, obligations and responsibilities of organizers, specifics of policing, ethical norms and the protection of human rights, a role of Police during the rallies organized by LGBT activists etc. The training was attended by 30 participants representing MIA;s Patrol Department, Central Crime Police Department, Special Task Force Department and Police Academy.[701] It is important that such trainings become a routine practice otherwise it will not suffice to achieve tangible impact.

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695 The Constitution of Georgia, Law of Georgia on Assembly and Manifestation

696 European Convention on Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights.

697 Judgements N2/482, 483, 487, 502, Paragraph 7, 99, 100, 138 of the Constitutional Court of Georgia of April 18, 2011

698 Judgement N2/482, 483, 487, 502 of the Constitutional Court of Georgia of April 18, 2011. II P. 131.121

699 Resolution of the Parliament of Georgia N2315-IIS of April 30, 2014 on Approving the Strategy on the Protection of Human Rights for 2014 – 2020.

700 Resolution N445 of the Government of Georgia of July 9, 2014 on Approving the Human Rights Action Plan (for 2014-2015) of the Government of Georgia and the rules and the statute of a coordination interagency council for the implementation of the human rights action plan (for 2014-2015)

701 A report prepared by the Human Rights Secretariat, p. 56. Available at: http://police.ge/ge/shinagan-saqmeta-saministros-latvieli-eqspertebi-etsvivnen/6226 25.02.2014

Similar to 2013 the year 2014 did not see any changes to the legislation regulating the right to assembly and manifestation. The 2013 report of the Public Defender highlighted the importance of following up with the recommendations voiced in Public Defender's 2011-2012 reports which remains important up to date especially when one of the objectives of the Action Plan for the Protection of Human Rights of the Government of Georgia for 2014 – 2015 is to harmonize legislation pertaining to the right to assembly and manifestation to the international standards which in turn requires the preparation of a set of changes in accordance with recommendations developed by the Venice Commission, Constitutional Court of Georgia, European Court of Human Rights and Public Defender of Georgia. The proposed changes will be submitted to the Parliament.

For the State to effectively protect the right to assembly and manifestation and carry out its negative and positive responsibilities it should investigate all previous cases involving the violation of this right. The violations of the right guaranteed by the Constitution of Georgia took place on November 7, 2007 (dispersion of the a rally on Rustaveli Avenue), June 15, 2009 (repression of a rally by Police in front of the Maine Police Department), January 3, 2011 (dispersion of a rally organized by veterans), May 26, 2011 (dispersion of a rally on Rustaveli Avenue) and May 17, 2013 (because of violence demonstrated by opponents of an event dedicated to the international day against homophobia and transphobia, the event could not take place while the State failed to provide effective security for a and protection to participants). As a response to a letter sent by the Public Defender's Office[702] Georgian Chief Prosecutor's Office[703] notified us that with regards to the criminal proceedings initiated in relation to May 26, 2011 ex-Prime Minister Ivane Merabishvili was charged and found guilty on February 27, 2014 pursuant to Clauses B and G of the Article 333 of the Criminal Code of Georgia. Merabishvili was sentenced to four years and six months of imprisonment and was banned from accepting a position for one year, one month and 15 days. As for an occurrence of May 17, 2013 four individuals charged for committing a crime stipulated by the Article 161 of the Criminal Code of Georgia. The case will be heard by the Tbilisi City Court. The extent of valance used by counter-protesters against a peaceful rally on May 17, 2013 was so great that charging only four individuals with the crime is not sufficient to deem an investigation as comprehensive, effective and adequate. Besides, the criminal proceedings on the case described above are not over even in the first instance and there is no final judgement made in relation to the persons involved. Based on the information available to the Public Defender's Office of Georgia, proceedings are still ongoing in relation to the cases described above and final decisions are yet to be made. The Public Defender of Georgia has repeatedly stressed the importance of timely investigation of similar cases and called on the State to effectively take all necessary legal measures.

Rallies/manifestations which took place during the reporting period were not many and most importantly and unlike the year 2013 there were no cases of reported repression of such events by the law enforcement in 2014.

In 2014 sometime shortly before the local elections in Zugdidi a rally was held in front of an office of United National Movement and several incidents took place during the rally. These incidents are dealt with in the chapter on election rights of the present report.

A rally organized by a youth movement Free Generation in front of an office of NGO Free Zone also concerns the right to assembly. According to the information disseminated by media the demonstrators threw eggs to a poster put up on the façade of the office. The police responded with arresting several protesters. On the day of the incident the representative of the Public Defender's Office paid a visit to Free Zone and talked to its representatives. Based on the materials provided to the representatives of the Public Defender eight individuals were arrested for allegedly committing crimes stipulated by the Article 166 (petty crime), Article 173 (disobedience to a lawful demand or an order of the law enforcement or undertaking an unlawful action against the third body) and the Article 150, Part I (distortion of a view of a self-governing entity), of the Administrative Code of Georgia. The Tbilisi City Court ruled that in five cases the administrative proceedings

702 A letter of the Public Defender's Office N04-11/654 dated January 28, 2015
703 A letter of the Chief Prosecutor's Office N13/6916 dated February 5, 2015

be terminated and based on the decision the individuals involved were given verbal reprimand while in other cases the perpetrators were imposed fines)

However, the incident was not over. According to information spread by media outlets, physical altercation occurred between representatives of Free Zone and Free Generations on September 30, 2014. According to statements made by the representatives of Free Generation they gathered to protest against beating of a journalist Z.D. working for 'Asaval-Dasavali' newspaper. As clarified by the members of the Free Zone, around 50 representatives of the Free Generation broke into the office. The action resulted in confrontation during which several individuals were injured including a representative of the Free Zone K.K. During the physical confrontation office windows were smashed. K.Kh. argues that the MIA had been informed on an upcoming assault however, no adequate measure had been taken. The Public Defender of Georgia issues a statement with regard to the occurrence on October 1.[704]

An investigation carried out by the Chief Prosecutor's Office of Georgia ensued under the Article 239, Part II, Clause A of the Criminal Code of Georgia. Investigators interviewed more than 20 witnesses and medical examinations scheduled. No one has been charged so far. [705]

The Public Defender of Georgia condemns violent acts including physical confrontations between the representatives of Free Zone and Free Generation and holds that such behaviors hinder the country's democratic development. In addition, it is critical that the law enforcement undertaken an effective investigation in order to impose adequate legal sanctions on perpetrators. Importantly, the law enforcement agencies must respond in a prompt and efficient manner to any information with regard to potential incidents for the prevention of such occurrences. It is also important that punishment imposed against all perpetrators be proportionate to criminal actions committed by the letter even more so when it comes repeated crimes of violent nature. Both law enforcement agencies and courts must adequately assess criminal acts at every instance and impose punishment that is proportionate and strict in order to prevent the occurrence of such actions in future.

With regard to the right to assembly and manifestation the events taking place on May 17, 2014 are of particular importance. May 17 is an internationally recognized day against homophobia and transphobia. However, unlike previous years there was no demonstration held on May 17, 2014 in Georgia which may be linked to fear of potential violence against organizers and participants of demonstrations based on the experience of the years 2012 and 2013. As highlighted in the reports of 2012 and 2013 of the Public Defender, law enforcement agencies failed to protect the right to assembly and manifestation for LGBT community and supporting NGOs. Respectively, the assumption that some groups may refrain from exercising their constitutional right to assembly and manifestation because of fear of violence may generate a threat of dangerous tendency. This is directly linked with the necessity of conducting effective investigation of all cases involving violence and disrespect towards the right to assembly and manifestation as a guarantee for the State to carry out its positive responsibilities.

In 2014 the Patriarchy of the Georgian Orthodox Church announced May 17 a day of family integrity and respect of parents which was celebrated with a street rally of clergy and parishioners. Representatives of the Public Defender's Office were monitoring the developments while a hot line was made available at the Office. However, no serious incidence were report during the day.

An event organized by partisan gardeners in front of the Tbilisi City Hall by the end of December 2014 hit the headlines. The Partisan Gardeners were protesting against hasty decision by the Tbilisi City Council to change a status of several zones in Tbilisi's Mtsatsminda district and construct Panorama Tbilisi. The police detained four protesters participating in a sit-in with the charge of blocking an entrance even though the building had

704 http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saqartvelos-saxalxo-damcveli-jurnalistis-cemis-faqtsa-da-tavisufali-zonis-ofistan-momxdar-incidents-exmianeba.page

705 A letter N13/1985 of the Chief Prosecutor's Office of Georgia dated January 14. 2015

other entrances. Media footages of the event showed the police using quite rough methods while detaining the four individuals. Court found the detainees guilty for breaching the law pursuant to Article 173 (disobedience to lawful instruction or demand of the law enforcement staff) and Article 174[1] (violation of the rule for organizing and conducting manifestation) of the Administrative Code. However, later on they were discharged from the administrative punishment.

The Public Defender's Office also monitored a rally organized by the United National Movement on November 15, 2014. Participants of the rally started to gather on the Rose Square and eventually moved to the former building of the parliament. No violations of the right to assembly and manifestation were reported to the Public Defender's Office. It should be noted that a counter-rally was also held on the same day by several dozens of Public Hall gathered at Rustaveli Avenue. The police did not allow them to approach the Rose Square. This act should be considered as an effective and proportionate measure undertaken by the State for fulfilling its positive obligation.

According to information disseminated by media sources on March 15, 2015 activists of the Georgian Dream Coalition held a rally in front of the United National Movement's office in Zugdidi to protest a planned event planned by the latter on March 21. Footages aired by various TV channels showed the participants of the rally braking in an office of an organization Freedom and Support Centre with some of them using maces and stones. According to widespread information around 10 individuals got injured. An entrance door to the organization was broken and windows smashed. The footages confirmed an apparent lack of the law enforcement present at the place of the incident. Few police officers failed to constrain the violators and prevent violent acts. According to information spread on the very day of the accident representatives of local self-government participated in violent actions.

In a public statement made on the following day[706] the Public Defender of Georgia stressed on the importance of timely and effective investigation without any delay and of charging every person involved pursuant to the law. The investigate must also look at the factors which had prevented the law enforcement agencies from precluding physical confrontation between the parties. Behavior demonstrated by the public servants must also be examined as if the information is confirmed this will compromise one of the key principles of public service that is impartiality and neutrality.

RECOMMENDATIONS

To the Government/Parliament of Georgia

- Develop and initiate legal changes in order to harmonize the national legislation related to the right to assembly and manifestation with the international standards considering the recommendation provided by the Public Defender and the Venice Commission. The changes should provide, inter alia, possibility to hold spontaneous rallies and an individual rather than a blueprint approach while making decision on a specific issue.

To the Chief Prosecutor's Office

- Take all relevant measures to investigate and make judgement on mass violation of human rights on November 7, 2007; June 15, 2009; January 3, 2011; May 26, 2011 and November 17, 2013 in a timely and effective manner.

706 http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcvelis-gancxadeba-zugdidshi-momxdar-incidenttan-dakavshirebit.page

- To investigate incidents occurring at the office of the Free Zone on September 30, 2014 and in Zugdidi on March 15, 2015 in a timely and effective manner to identify individuals involved in the incidents and pursue adequate sanctions against the latter.

To the Minister of Interior of Georgia

- To take all relevant measures for maintaining peace, prevent violence of any type during a rally/manifestation immediately after receiving a notification on an upcoming rally/manifestation. The MIA should ensure that interests of all parties and human rights be effectively protected including during the actual implementation of a rally/demonstration

RIGHT TO NON-DISCRIMINATION

The parliament of Georgia passed the law on the elimination of all forms of discrimination on May 2, 2014 thus recognizing the fight against discrimination one the State's key priorities as establishing discrimination-free environment is critical for normal functioning of democratic society based on pluralism and for the formation of society tolerant to diverse groups. The above mentioned law is of utmost importance for the protection nof minority rights and for the elimination of discrimination in general.

A positive feature of the law is that is it directly refers to sexual orientation and gender identity as signs prohibited by the law. Also the law defines the concept of direct and indirect discrimination and prohibits acts involving coercion, encouragement of and support to discrimination.

The law holds the Public Defender responsible for providing an oversight over the elimination of discrimination and ensuring quality. The Public Defender is authorized to examine cases of discrimination, develop recommendations and general proposals addressing both public and private sector.[707] The law also provides mechanisms for victims of discrimination to apply to court and demand compensation of material and moral damage.

The review provided below covers the period to December 30, 2014 inclusive. A specific report to be published in June 2015 to will provide detailed review of implemented activities and tendencies taking place since the adoption of anti-discrimination legislation.

2014

707 In order for the Public Defender to execute the above mentioned function, a department of quality was founded which took off on November 20, 2014

CASES INVOLVING DISCRIMINATION

During the period including December 30, 2014 38 individuals applied to the Public Defender's Office to establish facts of discrimination. 10 out of these 38 applications had been referred to other departments for further processing as these cases involved the violation of rights rather than discrimination. 10 more cases has been terminated as no evidence corroborating discriminatory treatment was found; 3 cases had been suspended as applicants referred to court while a general proposition was elaborated on one case. Most of these cases involve discrimination at workplace induced by political or other views, affiliation to professional unions or ethnicity. Complaints also concern refusal of service providers to provide services based on sexual orientation and skin color. The cases also made reference to the usage of discriminatory words and phrases in vacancy announcements.

A GENERAL PROPOSAL OF THE PUBLIC DEFENDER TO JSC BANK OF GEORGIA

A commercial placed by the Bank of Georgia titled as 'husband-ATM'. A picture shoes a women asking her husband to give her 100 GEL and then 20 GEL again. At the end of the commercial it is assumed that the husband of the woman is personified with an ATM machine.

Based on the content of the commercial, it can be assumed that a woman is financially dependent on a man while she has no source of income of her own.

The commercial further reinforces deeply engrained perception which suggests that women belong to families and their major responsibility is to take care of their husbands and children, while men are expected to be breadwinners for families.

The title of the commercial 'husband-ATM' deserves special attention as the reference to ATM machine echoes its association with obtaining finances in a simplified manner. Naturally, after reading the title of a photo and captions readers develop an idea that women are devoid of any capacity to generate their own income, depend on men and bother them by constantly asking for money.

Based on the above said the Public Defender holds that the commercial bears sexist nature which reinforces gender stereotypes which in turn gives ground to gender based discrimination in a long run.

It goes beyond doubt that in spite of significant changes that the Georgian society have gone through over the past few years, gender inequality still remains one of the key challenges facing the society in Georgia.

Commercials placed in both traditional and social media effectively influence and shape opinion of significant part of the society and may have destructive and dangerous effects on children and youth. Considering the fact

that in the era of technological advancement a great majority of people and particularly children are becoming alarmingly dependent on media and the internet and naturally the impact of commercials and information on people's mentality is irreversible. While television and virtual space are among the key sources of information for children, the content of commercials sends information to their subconscious thus ideologizing them in a wrong direction. The stereotypes justifying gender based discrimination become deeply engrained and further reinforces historically established forms of discrimination. Sexist commercials reassert and promote deeply enrooted stigmas on a constant basis.

Sexist commercials deepen a gap of inequality between women and men and further reinforce stereotypes that men have dominant role in the society which in turn hinders efforts to establish gender equality and pushes the society to develop and strengthen harmful stereotypes towards women. Men develop a vision that they can treat women, weak and soft creatures as they wish and justify violence against them afterwards.

It is true that private companies are interested in selling their products and therefore promote them through commercials, however, their freedom of expression is not without limitations. Rights of others, dignity and equality are the very limitations that companies have to abide.

Considering the ability of commercials to play positive role in debunking stereotypes and contribute to improving gender equality and eliminating violence against women, the Public Defender called on JSC Bank of Georgia, enjoying high rating in the country, to refrain from developing and disseminating commercials with sexist contents and promote dignity and respect to women and their portrayal as equal with men. In addition, the Public Defender finds it expedient that persons in charge of preparing commercials and public relations attend trainings on gender equality.

NORMS AND BARRIERS TO THE ELIMINATION OF DISCRIMINATION

As mentioned above in spite of the efforts made by legislators to grant the Public Defender effective mechanisms for the elimination of discrimination, there are still various legal norms and flaws which create barriers for the Public Defender to effectively take measures for the elimination of discrimination and ensure equality. More specifically:

Pursuant to Article 38, Clause 6 of the Law of Georgia on the Labor Code of Georgia and Article 127, Clause 1 of the Law of Georgia on Public Service an employee may appeal to court within a month after receiving a notification on his/her dismissal. As laid down in Article 363[2] of the Civil Procedures Code of Georgia 'any individual who considers himself/herself a victim of discrimination may appeal to court against a person/company which allegedly discriminated him/her'.

The alleged victim of discrimination may appeal to court within 'three months after s/he found after or ought to find out about the circumstances which s/he deems as discriminatory'.

Pursuant to Article 9, Clause 1 of the Law on the Elimination of all Forms of Discrimination the Public Defender suspends the proceedings if the dispute is being reviewed by court.

Based on practical experience of the Public Defender it can be assumed that majority of discrimination cases involve the termination of labor agreement on discriminatory grounds. Under the circumstances whereby employees are given little time to appeal against a decision and no compensation is paid for a missing period in case the complaint is reviewed by the Public Defender's Office, in most cases the claimant applies both to the Public Defender and court which results in suspending the case by the Public Defender. This happened in relations to two important cases. Currently the Public Defender's Office is reviewing the case involving the firing from work of eight individuals on the ground of discrimination. However, the Office will have to terminate the review process as claimants have applied to court.

The same refers to other disputes which also allow three months for appealing to court. In this cases the underlying reason for the claimant to apply to court is the possibility of being compensated against the loss. As a result of such conditions many disputes and the possibility to resolve them in a timely manner goes beyond the competence of the Public Defender.

Appealing to the Public Defender and court are the main leverages at the State's disposal to effectively implement its policy of a fight against discrimination. The legal framework should prevent an overlap pertaining to the functions of the Public Defender and those of court. Their coexistence must be complimentary and oriented on effective protection against discrimination.

In order to ensure the coexistence of two very important institutes of the Public Defender and court, it is important that changes be made to Article 363[2] of the Civil Procedures Code of Georgia, Article 38 of the

Labor Code of Georgia and Article 127 to Law of Georgia on Public Service and norms added to allow the suspension of the timeframe for appeal laid down in these articles while the case is being reviewed by the Public Defender's Office.

Pursuant to Article 9, Clause 1, Paragraph B of the Law of Georgia on the Elimination of all Forms of Discrimination the Public Defender of Georgia shall suspend proceedings if due to the same alleged discrimination 'administrative proceedings are under way'. Administrative proceedings is part of functions of the executive government enjoying wider discretion and expediency. Considering the nature of its activity, it may 'easily' come to clash with human rights. If a fact of discrimination involving a subordinate administrative body, a superior administrative body has no right to react to the occurrence and lack the possibility effectively restore a violated right (ascertain a fact of discrimination, damage compensation as a result of which it cannot be considered an alternative mechanism for proceeding cases by the Public Defender's Office; administrative proceedings often involve prolongation of the process and therefore waiting for the completion of the proceedings may further delay the response to the fact of discrimination. Respectively, Paragraph B of Article 9 must be omitted completely.

Pursuant to Article 8, Clause 4 of the Law of Georgia on the Elimination of All Forms of Discrimination

'Any administrative, local self-government and state body (including the Prosecutor's Office, investigation and court bodies) shall be obliged to transfer materials, documents, other information and explanations related to the case hearing to the Public Defender within 10 calendar days after request as provided for by law.'

Pursuant to the same article, obtaining information from a private body is voluntary.

The Public Defender's Office has been processing 8 cases with 15 plaintiffs involving private bodies as defendants. There have been cases of two legal bodies of private law refusing to provide information to the Public Defender.

There is no leverage stipulated by the law which would oblige legal and natural persons of the private law to provide materials, documents, explanations and other information related to such cases. Currently information provision depends solely on good will of parties. This is a serious challenge in practice as it creates barriers to comprehensive investigation of a matter, assertion of discrimination and adequately responding to such cases.

An entry should be made to the Law of Georgia on the Elimination of All forms of Discrimination pursuant to which if private persons or public institutions fail to provide requested information while case materials give ground to reasonable assumption that discrimination has taken place, such materials and factual circumstances outlined in a claim/complaint shall be deemed as truthful.

Considering factual circumstances valid will be an effective instrument for the Public Defender to set antidiscrimination mechanism in motion and impose indirect obligation on private persons to provide information. The instrument may serve as an incentive of private persons and public institutions to stand their grounds regarding alleged discrimination and shoulder the burden of proving otherwise.

Pursuant to Article 6, Clause 2, Paragraph G of the Law of Georgia on the Elimination of All Forms of Discrimination and Article 14^1, Clause 2, Paragraph H of the Organic Law of Georgia on the Public Defender the latter

Is authorized to apply to the court as an interested person, according to the Administrative Procedure Code of Georgia and request issuance of an administrative legal act or taking measures if the administrative body does not respond to or adopt his/her recommendation and there is sufficient evidence of discrimination

Also, pursuant to Article 24 of the Organic Law of Georgia on the Public Defender of Georgia

> 'State and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.'

Based on the contents of the above mentioned articles, the Public Defender has a leverage to ensure the implementation of his decision in regard to administrative agencies. However, the same mechanism does not concern legal persons of physical and private law. If discrimination committed by natural or legal persons is confirmed, the Public Defender can only issue a recommendation with regard to such cases. There is no other leverage to ensure the implementation of recommendation by private bodies.

In this circumstance it is importance to extend the above mentioned obligation to legal and natural persons of public law as currently the supervision function of the Public Defender enshrined in Article 3, Clause 1^1 of the Organic Law of Georgia on the Public Defender lacks executive power in relation to above mentioned persons and weakens the efforts aimed at fighting discrimination.

Therefore, it is expedient that responsibility of legal and natural persons to review recommendations related to the elimination of discrimination and notify the Public Defender on the results shall be added to Article 24 of the Organic Law of Georgia on the Public Defender.

The Public Defender has appealed in writing to the Parliament of Georgia regarding the proposed change which is currently being reviewed by the committees.

Recommendation to the Parliament of Georgia

- Amend the legal acts so that they to support the elimination of discrimination and gender quality

FREEDOM OF MOVEMENT

Pursuant to Part III of Article 22 of the Constitution of Georgia, the right to leave the country's territory 'may be restricted only in accordance with the law, in the interests of securing national security, or public safety, protection of health, prevention of crime or administration of justice that is necessary for maintaining the democratic society'.

In accordance with Article 10 of the Law of Georgia on the Rules for Georgian Citizens to leave and enter the country'

> *The citizen of Georgia may be denied the issuance of the passport of the Georgian citizen for temporarily leaving the country, or extension of the validity of the passport as well as for crossing the border if 1) the individual is wanted by law enforcement agencies or 2) submits either fake or invalid documentation.*

There are no other known legal limitations restricting citizens of Georgia to leave the country.

Similar to the year 2013[708] the Public Defender's Office examined the cases of those citizens who had been refused their rights to leave the territory without justification taking place during the reporting period.

Citizens of Georgia T.M. and T.M. submitted their statements to the Public Defender's Office of Georgia. According to the applicants they had attempted to leave for Turkey on several occasions. However, police officers did not allow them to cross the border with Turkey through Sarpi customs checkpoint without explanation. However, in a letter sent to the Public Defender's Office the MIA stated that no restrictions had been imposed on the persons in question to cross the state border of Georgia.

State security, public order and fight against terrorism are among the State's key functions. However, restricting the right of citizen to free movement violating the legal requirements is unacceptable. Pursuant to General Comment 27 of the UN Human Rights Committee clarifying Article 12 of the UN's 1966 Covenant on Civil and Political Rights, the law must identify terms of the restriction of freedom of movement. The permissible limitations which may be imposed on the rights must not nullify the principle of liberty of movement and the restrictions must not impair the essence of the right, the relation between the right and the restriction, between norm and exception must not be reversed. At the same time, the laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution. As clarified by the Committee, it is not sufficient that the interference serve only one of the above mentioned objectives. It is necessary that decisions on such restrictions are necessary, while the restrictions must be proportionate to the objective and affect the freedom to movement to the least extent possible. According to the Committee, it is critical that the law provide a precise procedure of appealing of a decision to restrict the right. UN HRC explains that the principle of proportionality must be protected not only by the law which authorizes these restrictions, but also all administrative and judicial agencies which applies this law.

708 The 2013 report of the Public Defender of Georgia to the Parliament, pp. 361-370.

However, applications and statements submitted to the Public Defender's Office demonstrates that there are specific cases involving the restriction of right of citizens of Georgia to freedom of movement including the right to leave the country which is against the law. It should be noted that in several cases reviewed by the Public Defender's Office applicants were later on allowed to cross the state border.

CASE OF G.D.

Citizen of Georgia G.D. appealed to the Public Defender of Georgia (application N9066/1, dated April 15, 2014) to declare that on January 22, 2014 staff of the police department deployed at the Sarpi customs checkpoint did not allowed him/her to cross the state border of Georgia without providing any explanation. At the same time, the applicant stated that s/he had applied in writing to the Patrol Police Department of the MIA on the above issue, however, no information was provided to the applicant on a decision made in regards to his/her appeal.

Based on the statement of G.D. on April 5, 2014 the Public Defender's Office wrote a letter N11-12/6844 to the MIA requesting information on legal grounds of the refusal prohibiting G.D. to cross the border.

With its letter N1068951 of May 6, 2014 the MIA notified the Public Defender's Office that G.D. is not subject to any restriction to cross the state border of Georgia. The above letter was delivered to the applicant as a result of which G.D. was allowed to cross the state border of Georgia.

CASE OF D.K.

On May 30, 2014 citizen of Georgia D.K. applied to the Public Defender's Office (application N12073/1) with regard to alleged restriction of the right to freedom of movement. As D.K. claimed on April 15, 2014 and June 14, 2014 patrol police at the Sarpi customs checkpoint did not allow him/her to cross the state border of Georgia. As stated by D.K. s/he applied in writing to the Patrol Police Department of the MIA however s/he had not received any feedback on a decision in reference to his/her appeal.

Based on the statement of D.K. on July 17, 2014 the Public Defender's Office wrote a letter N11-12/9420 to the MIA requesting information on legal grounds of the refusal prohibiting D.K. to cross the border.

The letter N11-12/9420 made a reference to a timeframe for the provision of information stipulated by the Organic Law of Georgia on the Public Defender. However, the MIA failed to provide the requested information on D.K.'s cases within the period laid down by the law. On September 29, 2014 the Public Defender sent another letter N11-12/12980 to the MIA requesting the same information. However, the MIA has not provided a response to this day. It should be noted that D.K. remains restricted to cross the border.

CASE OF G.G.

On July 4, 2014 citizen of Georgia G.G. applied to the Public Defender of Georgia (application N12468/1) with regard to the restriction of his/her right. As stated by the applicant s/he had tried several times to cross the border through the Sarpi customs checkpoint, however, the staff of the Patrol Police Department prevented him/her from doing so. In his/her statement G.G. stated that s/he applied in writing to the Patrol Police Department of the MIA. However, s/he had received no feedback on a decision made with regard to his/her appeal.

Based on the statement of G.G. on July 12, 2014 the Public Defender's Office wrote a letter N11-12/9599 to the MIA requesting information on legal grounds of the refusal prohibiting G.G. to cross the border.

The letter N11-12/9599 made a reference to a timeframe for the provision of information stipulated by the Organic Law of Georgia on the Public Defender. However, the MIA failed to provide the requested information on G.G.'s cases within the period laid down by the law. On December 26, 2014 the Public Defender sent another letter N11-12/14753 to the MIA requesting the same information.

However, the MIA has not provided a response to this day. It should be noted that G.G. remains under the restriction to cross the border.

Based on the examination of cases the Public Defender's Office has found that during the reporting period there have been repeated attempts to impose restrictions on freedom of movement by investigative bodies during the criminal proceeding violating the Georgian legislation.

CASE OF GIORGI (GIGI) UGULAVA

On July 1, 2014 counselors G.G. and B.B. representing the citizen of Georgia Giorgi Ugulava appealed to the Public Defender. They stated that an investigator of the Investigation Agency violated the right of the convicted prisoner Giorgi Ugulava to movement of freedom.

The applicants presented the Public Defender a warning protocol issued by an investigator V.U. working with the second unit of the Tbilisi main division of the investigation department of the Ministry of Finance's investigation department to the convict Giorgi Ugulava. Based on the protocol it appears that the investigator V.U. warned Giorgi Ugulava against crossing the state border of Georgia and leaving the country's territory so that the latter could participate in investigation proceedings including determining custody measures after the latter had been charged.

Any form of custody must be clearly identified by the law and must be the last resort against an individual in any specific case.[709] The right of untouchability of a liberty of an individual can only be revoked by a decision of a judge based on legitimate grounds and in cases stipulated by the law. Law enforcements agencies have no authorization to restrict a person's freedom of movement based on their sole discretion. Pursuant to the criminal proceedings legislation of Georgia case file investigator and a prosecutor have no right to determine terms of custody of a convict and hold him or her responsible for remaining in the country.

In spite of the above mentioned legal regulations, the investigator V.U. of with the second unit of the Tbilisi main division of the investigation department of the Ministry of Finance's investigation department warned Giorgi Ugulava against leaving the country. Therefore, such a demand and warning go beyond the limit of the law and represents an unlawful behavior of the law enforcement representative.

Based on the above said, on July 18, 2014 the Public Defender of Georgia appealed to the Investigation Agency of the Ministry of Finance of Georgia to initiate disciplinary proceedings against investigator V.U. working with the second unit of the Tbilisi main division of the investigation department of the Ministry of Finance's investigation department but to no avail.

Recommendation to the Ministry of Internal Affairs of Georgia

- Not to tolerate the violation of the constitutional right of the Georgian citizens to leave the country by the staff of the border department

709 Winterwerp vs. Netherlands, European Court of Human Rights (1979).

PROPERTY RIGHTS

Property rights enshrined in Article 21 of the Georgian constitution is a guarantee of ownership as an institution on the one hand and a guarantee of the human right on the other.[710] Constitutional right to property is first and foremost the human right rather than a guarantee for a property.[711] 'Pursuant to the Georgian Constitution as well to the internationally recognized principles and norms of the international law, the property right is a supreme and constant human value, a basic right and a cornerstone of democratic society and welfare state. Property is the critical foundation of the existence of human beings.[712]

Pursuant to the Constitution of Georgia property right is the absolute right. It can be subject to restrictions under circumstances laid down in the constitutions: 'The restriction of the rights referred to in the first paragraph shall be permissible for the purpose of the pressing social need in the cases determined by law and in accordance with a procedure established by law'.[713]

Similar to 2013 one of the priority directions identified by the Public Defender's Office was to review cases concerning the property right. Issues highlighted in 2013 report of the Public Defender to the Parliament were partially addressed in the course of reporting period.

Revision of hundreds of cases involving the deprivation of property under coercion or with illegal methods remained a priority for the Public Defender's Office for 2014. Over the course of the reporting period the Public Defender of Georgia was approached by numerous individuals with a request to examining cases of abnegation of their property rights, abnegation or donation of the property free of charge on behalf of the State or a third party. The key barrier to reviewing such cases is of legal nature. More specifically, pursuant to Article 89 of the Civil Code of Georgia a transaction made by duress is voidable within one year from the moment at which the duress ended. The moment at which the duress is ended is the moment of signing the transaction as deemed so by the existing judicial practice.[714] By the time they were been referred to the Public Defender of Georgia most cases had been subject to limitations laid down by the Georgian legislation which means that there is no point in initiating disputes on these cases. At the same time duress is qualified a crime by Article 150 of the Criminal Code of Georgia and induces the criminal responsibility of an individual who commits the fact of duress. However, investigation of criminal cases can be time consuming and therefore none of the cases referred to the Public Defender are yet to be resolved. Respectively, it is important that investigations be conducted as soon as possible in an effective manner and the State ensure the restoration of property right where the violation of the right is confirmed.

710 'Commentaries to the Constitution'. Group of authors, publishing house MERIDIANI, 2005, p. 145
711 Commentaries to the Constitution'. Group of authors, publishing house MERIDIANI, 2005, p. 147.
712 A decision of the Constitutional Court of Georgia of July 21, 1997
713 Article 21, Clause 2 of the Constitution of Georgia
714 Supreme Court of Georgia, July 21, 2014, Case №b-333-31432014

It should be noted that on February 13, 2015 a department to investigate crimes committed during legal proceedings was created at the Public Prosecutor's Office. One of the functions of the department is to investigate and execute possible crimes which may have occurred during proceedings including but not limited to property abnegation under duress and other cases of duress. The Public Defender hopes that the Department will be effective and prosecutor will make decisions on such cases without much ado.

On April 30, 2014 the Parliament of Georgia adopted a resolution N2315 to approve the National Human Rights Strategy for 2014-2020. The strategy rests upon the idea of human rights protection in every-day life and identifies the State's long term priorities and objectives in the sphere of human rights for the establishment of inter-sectoral, multi-sectoral, unified and consistent policy and for the implementation of good governance and effective protection of human rights.[715].

Article 18 of the Resolution stipulates the implementation of high standards for human rights protection through meeting the following objectives:

(A) Perfection of the legal framework and institutional mechanism for the human rights protection

(B) Protection of constitutional and international standards in the course of deprivation of property and at urgent public need.

(C) Make every decision concerning the recognition of property rights on lands in ownership/utilization or the denial of property rights upon careful consideration and in-depth examination and in accordance with the law.

Pursuant to Clause 22.1.1 of the Resolution N445 of the Government of Georgia of July 9, 2014 on approving the National Human Rights Action Plan (2014-2015) of the Government and Establishing the Coordination Council for the National Human Rights Action Plan (2014-2015) and Approving its Statute [716] in order to effectively protect property rights, guarantees for the inviolability of property rights must be laid down in accordance to the internationally recognized standards. In addition, forms of registration of real estate need to be further improved and da unified cadastral database created so that properties registered with paper based drawings are smoothly transferred in an electronic format. [717]

It is important to note that currently the total amount of registered metrical drawings found in the archive of the National Agency of Public Registry is 10 068. At the same time, graphic data on 6 853 unit of real estates have been restored in the electronic cadastral database. [718] At the same time 6 853 entries containing graphic representation of real estate have been restored to the electronic cadastral database. As the National Agency of Public Registry explained difficulties related to transferring certain data to an electronic format is caused by a series of reasons. However, the activities stipulated by Clause 22.1. of the Resolution N445 by the Government of Georgia dated July 9, 2014 are still ongoing and will be exhausted when all cadastral data covering the whole country are revised and mapped on a unified cadastral map.

It should also be noted that issues related to registering storages/cellars referred to in 2013 parliamentary report were not raised in the reporting periods due to the changes in approaches to registering storage facilities/cellars and consequently no facts of violations of property rights in this regard were reported to the Public Defender.

In spite of the changes, it can be assumed that issues of registering property rights on real estate still remain pressing.

Issues related to the registration of property rights, land reform and the legalization of lands under lawful ownership in borough of Bakuriani and the village of Didi Mitarpi, as well as Zemo Svaneti (including Khaisi) and Adjara stand of particular importance as they often serve as a basis for unjustifiable restriction of property

715 Resolution N2316 of April 30, 2014 of the Parliament of Georgia on Approving National Human Rights Strategy of Georgia (for 2014-2020)

716 Resolution N445 of July 9, 2014 of the Government of Georgia

717 The National Action Plan for the Protection of Human Rights approved by the Resolution N445 of July 9, 2014, p. 105

718 A letter N9184 of the National Agency of Public Registry of the Ministry of Justice of Georgia

rights of the local population. The problem is that the land reform has not been implemented in the village of Didi Mitarbi, while in Mestia municipality the reform suffered numerous flaws. More specifically, Mestia's household books contain no information on the land area and/or lists of land tax payers. Nor is there any indication of how lawful owners were identified. It is evident that ensuring the protection of property rights of the local population residing in the above mentioned districts requires the State's involvement. Otherwise a pressing and long standing problem will continue to remain unsolved.

As for issues related to the registration of real property and restoration of violated rights of citizens, in spite of progressive steps made by the Public Register for the elimination of errors and clarification of data, so called duplicated registration still remains an issue. Common courts hear hundreds of cases pertaining to this issue and the rate of referral to the Public Defender is also high. The 2013 parliamentary report of the Public Defender dealt with the duplicated registration issue in detail.[719] Therefore, the present report will not touch on the issue in great detail, however, a case reviewed by the Public Defender's Office in 2014 will be used as an example to illustrate problems pertaining to this sphere.

Apart from the above said, systemic problems ensued as a result of so called overall registration stipulated by the June 28, 2012 Resolution N231 of the Government of Georgia on Addressing Specific Issues Related to Property Rights Registration on Agricultural Lands and the Perfection of Cadastral Data. The overall registration had numerous flaws which in turn caused the violation of property rights of some parts of population and inflicted the problem of duplicated registration.

In such case there are usually three party to relationships: owner, the National Agency of Public Register (a territorial service of the Public Register) and a new owner (the latter can be the State, natural or legal person). In order to understand the factual as well as legal underlying cases and also to examine the ways in which the problems can be addressed, relevant legal framework must be examined which in turn uncovers yet another problem of identifying which party (owner, the National Agency of the Public Register, and a new owner) to hold responsible in specific situations.

Rights and responsibilities of participants of registration proceedings are laid down in an instruction on the public register. Therefore, pursuant to Article 3. Clause 6 of the law of Georgia on the Public Register, registering agency or its employee are not responsible for the authenticity of presented registration document. However, the same norm holds a registering agency and its employee responsible for the consistency and safety of registered data and all registration or other documents kept with a registering agency.[720]

According to the General Administrative Code of Georgia, an administrative agency is responsible for making a decision during administrative proceedings only after having carefully examining all circumstances relevant to the specific case.

The Chamber of Administrative Cases at the Supreme Court of Georgia has highlighted the responsibilities of the Public Register [721] and commented that:

> '... The meaning and importance of primary provisional registration is not that of only reference and therefore it can be deemed solely as a factual entry which has no legal implication to a subject of registration. The registry entry has a legal reference while the formality of the registration is guaranteed by the Public Register. Registration procedures are followed by the issuance of entitlement document, which certifies the lawfulness of a legal fact.' Registration has a prejudicial meaning and represents a condition for the realization of legitimate interest and the rights. Registration is a judicial act confirming the generation of and/or change to entitlement to real estate by the State by which the registering

719 Please refer to 2013 parliamentary report of the Public Defender of Georgia, pp. 375-386
720 Clause 6 of the law of Georgia on Public Register of December 19, 2008
721 Decision Nბს-367-363(კ-12) of February 28, 2013 of the Supreme Court of Georgia

> agency commits to the responsibility to carry out a complex of legal relations with regard to real estate. In general, the state registration is designated to foster the stability of civil turnover and serves a formal condition for the protection of an individual's titles and rights by the State.

In this case, the court of cassation ruled that

> '…the legislation does not exclude the possibility of unverified registration and therefore verifying the registration only through electronic drawing does not confirm that a decision made by an administrative organ has been based on thorough investigation and assessment of a case in question. The above said make unverified registration devoid of any reason.'

Explanations included in the decision of the Georgian Supreme Court are fully based on the existing legislation and responsibilities of an administrative organ laid down in these legal norms.

CASE OF G.K.

The Public Defender's Office studied the cases of the citizen of Georgia G.K. involving the violation of property rights by the Gardabani Registration Service of the National Agency of Public Register of the Ministry of Justice of Georgia.

After having examined the case materials the Public Defender's Office ascertained that pursuant to the law of Georgia on the privatization of agricultural lands under the State's ownership the citizen G.K. was issued a protocol N45 certifying the purchase of land and other real estate. More specifically the protocol stated that G.K purchased land with the registration number 810800668 located in Gardabani, on the territory of D/Lilo Council with total area 0.94 ha.

On November 20, 2006 a protocol N46 was also issued indicated that G.K. purchased land with the registration number 810800669 located in Gardabani, on the territory of D/Lilo Council with total area 12.19 ha.

On November 29, 2006 Gardabani Registration Service of the National Agency of Public Registry registered the property right of G.K on unverified area of 0.94 and 12.19 ha and prepared respective cadastral maps.

On February 12, 2014 G.K. applied to the Gardabani Registration Service of the National Agency of Public Registry and requested changes to the property rights registered on real estate.

The Gardabani Registration Service of the National Agency of Public Registry suspended the registration proceedings and explained to the applicant that there was an overlap stipulated by the instruction between the cadastral data pertaining to real estate submitted for registration and of already registered real estate. More specifically, according to cadastral drawing enclosed with the application, cadastral data of the land submitted for registration did not match the cadastral data of the adjacent real estate and that borders of the land was overlapping with the adjacent land. Therefore, the Gardabani Registration Service of the National Agency of Public Registry asked the applicant to submit corrected cadastral drawings. Later on, the Gardabani Registration Service of the National Agency of Public Registry made a decision to terminate the registration proceedings based on the failure of the applicant to submit documentation/information within the term for the suspension of registration proceedings which would have served as grounds for the elimination of the suspension.

On February 19, 2010 the agricultural land with the total area of 468350.00 m^2 located in the village of Norio, Gardabani was registered as the State's property based on the letter N16-334 of the Georgian Ministry of Economic Development. The land was later own registered as the property of Tbilisi self-governing unit. At the same time, the function of the land in question was changed to non-agricultural. 'Tbilservice Group LTD' was registered as an ultimate owner of the land in question.

According to a letter N326332 dated December 13, 2010 of the Gardabani Registration Service of the National Agency of Public Registry the real estate owned by G.K. covered the land belonging to Tbilservice Group LTD.

It should be noted that up to February 23, 2010 lands adjacent to those belonging to G.K. had not been registered in the Public Register as the primary registration in the State's ownership took place on February 23, 2010 while G.K. had submitted his registration application on January 14, 2010 which means that this fact could not have served as grounds for the termination of registration proceedings.

It should also be noted that prior registration of lands owned by G.K. took place on the basis based on a letter N458 dated October 2, 2006 of the Gardabani Department of Property Registration and Privatization of the Ministry of Economic Development of Georgia with enclosed privatization plan, selection protocol and cadastral information of the privatization plans. Cadastral maps of the lands in question were also available.

The Gardabani Registration Service of the National Agency of Public Registry should have examined and ascertain whether or not the agricultural land located in the village of Norio, Gardabani with the total area of 468350.00 m^2 registered under the State's ownership as per the letter 16-334 dated February 19, 2010 of the Ministry of Economic Development of Georgia[722], covered the lands registered under the G.K.'s ownership at the Gardabani Registration Service of the National Agency of Public Register. Also, the Gardabani Registration Service should have determined and explained the exact location of the lands under G.K.'s ownership to the latter.

In such case the registering agency would have discovered that the registration of non-agricultural lands under the State's ownership would have violated G.K.'s property rights by overlapping the land under the latter's ownership[723]. The Public Defender of Georgia issued a recommendation to the National Agency of Public Registry to examine the case and make a new decision. However, the latter has failed to consider the above recommendation.

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722 The above mentioned land was registered under the ownership of Tbilisi self-governing unit on April 7, 2010 with changed function (it turned into non-agricultural land) and later on, on July 30, 2010 the real estate was registered under ownership of Tbilservice Group LTD based on a decision N13.24.662 dated May 5, 2010 of the Tbilisi city government.

723 A recommendation of the Public Defender of Georgia of July 28, 2014 on the violation of G.K.'s property right

PROPERTY RIGHTS IN CRIMINAL PROCEEDINGS

Impounding property while investigating criminal cases is one the cases of the restriction of property rights. It should be noted that the property rights are enshrined in Article 21 'which protects the property provided that the ownership is legal. Illegal procession of property is not covered by Article 21 as in such cases it is the property right itself that is dubious'.[724] Although fight against crime and the carriage of justice serves the public interests, it is the imperative of the supreme law that any restriction of property right be legitimate and consistent with the legal requirement. Such decisions must always be based on the proportionality and balance between public and private interests.

IMPOUNDING PROPERTY WITHOUT LEGAL GROUNDS AND IN ABSENCE OF A GOAL

Criminal Proceedings Code of Georgia[725] lays down grounds and aims for impounding property. There are the following reasons for impounding property: Possible appropriation of property as a perforce measure of the criminal procedure; suspicion that property in question may be hidden or used and/or in an event of property being acquired through criminal activities. Property belonging to a defendant, an individual financially responsible for his/her action and/or his/her associate can be subject to impoundment. Impoundment can only be exercised to meet the goal determined by the criminal procedures code and in an event of the presence of grounds identified in the same code.

When it comes to impounding property owned by public servants, it is critical that conditions determined by Article 151, Part I of the Georgian Criminal Procedures Code exist in these circumstances. More specifically, the law specifies that decision on impoundment must serve aims laid down by the law.

CASES OF T.J. AND K.N.

The Public Defender's Office examined statements submitted by a lawyer B.B. representing interests of K.N. and T.J. On August 13, 2014. According to the statement former head of Special State Security Service T.J. was charged with criminal actions stipulated by Article 182, Part II, Paragraphs A and D and Part III, Paragraph B. Criminal file N081260213001 was being investigated by the investigation unit at the Chief Prosecutor's Office. On August 18, 2014 Tbilisi City Court ruled that impoundment be imposed on the property owned by T.J. and other individuals related to him/her (ex-spouse K.N. and children).

724 A decision of the Constitutional Court of Georgia on July 2, 2007
725 Article 151 of the Georgian Criminal Procedures Code

In spite of the fact that the Georgian Criminal Procedures Code the aim of impounding property is not to ensure the reimbursement of damage, the judge indicated a risk of hiding away or selling the property by the convict as a ground for impounding, which will hinder the reimbursement of damage. The aim of impoundment was to appropriate the property so that 'it is not alienated'.

The aim of impounding property is to ensure the implementation of duress and possible appropriation of property stipulated by the Georgian Criminal Procedures Code. Duress can only be used in circumstances determined by the law and in accordance with the rules and cannot be extended to family members of the convict or other individuals. Therefore, the Public Defender of Georgia holds that the implementation of duress under the Criminal Procedures Code cannot serve as the ground for impounding the property owned by K.N.

As for appropriation of property it implies 'free of charge appropriation of crime weapon and/or an item, or an item intended for committing a crime and/or of property acquired through criminal action on behalf of the State'.[726] Importantly there is no indication that the property subjected to impoundment had been used for committing the crime or used otherwise for criminal actions in a decision made by Tbilisi City Court. It means that the property is not an instrument or weapon of crime.[727]

According to the decision of Tbilisi City Court T.J. is charged with 'embezzling budgetary funds in the period from June 24, 2010 to February 25, 2013 while s/he served as a public servant. In spite of the fact that impoundment only affects solely the property which has been acquired through criminal actions by the convict, the decision by the court affected not only the property owned T.J. but that of his/her ex-spouse K.N.[728] which, based on the materials and documents submitted to the Public Defender's Office, had been acquired several years before T.J. was charged with above mentioned crimes.

The assessment of the circumstances pertaining to the above case found that a judge of Tbilisi City Court[729] ignoring the requirements stipulated by Article 151 of the Criminal Procedures Code of Georgia impounded every asset indicated by the Prosecutor including the property without any legal grounds (as none of the assets and the property had been used as crime weapon or instrument or acquired through unlawful actions or purchased in alleged period when the crime was committed). This means that there have not been any grounds for impounding the property to ensure the possible appropriation of the property.

It should be noted that a decision to impound property owned by public servants must be based on the aim and ground stipulated by the Georgian Criminal Procedures Code. Incomes, property or income generated from the property owned by a public servant, his/her family members, close relatives or any associated individual without proper evidence that the property was acquired through lawful actions shall be deemed as the property of a public servant.[730] Further to the decision made by the judge impoundment was imposed on the property which had been purchased by K.N. long before T.J. was charged with the crime. Documents submitted to the Public Defender's Office confirmed that the property in question had been purchased legally and with adherence to the law.

Restriction of property/inheritance rights because of prolongation of the investigation of a criminal case

726 The Criminal Procedures Code of Georgia, Article 52, Part I.

727 The Criminal Procedures Code of Georgia, Article 52, Part III.

728 1. Real estate (research experimental economy, area: 0.0800 ha) K.N. purchased in 2006.
2. Real estate (area 1501 m^2) purchased by K.N in 2007
3. Real estate (research experimental economy), area: 606m^2) was handed over to K.N. in 2008
4. A residential apartment was handed over to K.N. in 2009 as a winner of JSC TBC Bank lottery
5. Real estate was handed over to K.N. and his/her family members in 1983 and 1993
6. Real estate (area: 0.15 ha) was registered as T.J.'s property in 2001
7. Real estate (total area: 104.00 m^2) was purchased by T.J. in 2007 which s/he later on gave as a gift to his/her son/daughter S.J.
8. Real estate (a garage with the total area: 18.00 m^2) was purchased by K.N. in 2008

729 Based on a decision made by the Investigation Collegiate at Tbilisi Court of Appeal, dated August 22, 2014, a decision of Tbilisi City Court dated August 18, 2014 on impounding the property owned by T.J. and his/her associates was declared valid.

730 The Civil Procedures Code of Georgia, Article 356^1, Paragraph L

Rights to property and inheritance may be restricted as a result of ungrounded prolongation of a criminal case investigation during which owner/heir cannot exercise their right to property.

Investigation may be ongoing in a reasonable period of time which should not exceed the statute of limitations for criminal prosecution identified by the Criminal Code of Georgia.[731] The Georgian legislation refers to the reasonable timeframe for undertaking investigation, which is an evaluative category. Timeframe for investigation proceedings pertaining to a specific case may be determined based on specifics and circumstances related to this particular case. While investigation must be undertaken within reasonable terms, statute of limitation must also be taken into consideration.

It is possible to carry out investigation within the limitation determined per individual criminal case from the moment of its commitment to the commencement of criminal prosecution. However, this condition must not be used as a ground for purposeful prolongation of investigation. Article 71 of the Criminal Code of Georgia establishes the ground for discharging an individual from criminal responsibility as a result of the expiry of statute of limitation and therefore, it determines the maximum period for carrying out investigation. Article 103 of the Criminal Procedures Code of Georgia should not be interpreted in such a way to which allows an investigator or investigating agency to finalize the investigation right before the expiry of the maximum term and ignore the promptness standard of investigation. The Public Defender of Georgia argues that such approach must be evaluated as the prolongation of investigation which fails to meet the standard of promptness, one of the criteria of efficient investigation regardless of the complexity of a particular case (in terms of both factual and legal perspectives) and other circumstances.

CASE OF G.E.

The Public Defender's Office examined the case of G.E. Based on the materials pertaining to the case, the investigation department of Tbilisi Prosecutor's Office has been investigating a case involving the crimes stipulated by Articles 362 and 332 of the Criminal Case of Georgia. As a part of investigation and based on a decision made by a judge of Tbilisi City Court notary protocols pertaining to an inheritance certificate of G.E. were retrieved from notary archive of a notary M.L. on August 21, 2008 as a result of which the latter has been restricted in his/her right to the utilization/management of the inherited property.

The investigation launched on July 21, 2008 has been ongoing for more than 5 years (almost 6 years). The statute of limitation on criminal actions stipulated by Article 362 of the Criminal Code of Georgia extends to 6 years from the moment of its commitment[732] while the same limitation for crimes stipulated by Article 332 of the same code covers 15 years.[733] It should be noted that on July 21, 2014 the statute of limitation determined by Article 362 of the Criminal Code of Georgia was expired, as even though the exact date of committing the crime is unknown to the Public Defender of Georgia, the investigation on the falsification of the inheritance certificate commenced on July 21, 2008. Therefore, it is logical to assume that the commitment of the crime preceded the commencement of the investigation however minimum the time between these two actions may have been. As for the statute of limitation the crime stipulated by Article 332 of the Criminal Code of Georgia it extends over 15 years. Undertaking investigation over this period of time is deemed as unreasonably protracted procedure by the Public Defender of Georgia.

Based on the above said, the Public Defender of Georgia argues that the duration of investigation ongoing since 2008 on not so severe crimes (stipulated by Article 362, Part I and Article 332, Part I) fails to meet such an important element of an effective investigation as the responsibility of the State to ensure the promptness of investigation. Therefore, the Public Defender of Georgia has concluded that in this particular case G.E. is

731 The Civil Procedures Code of Georgia, Article 103
732 The Criminal Code of Georgia, Article 71, Part I, Paragraph B
733 The Criminal Code of Georgia, Article 71, Part I, Paragraph C[1]

exposed to the violation of his/her legitimate right as the right to inheritance and property enshrined in Article 21 of the Constitution of Georgia is unjustifiably violated.

On March 18, 2014 the Public Defender of Georgia issued a recommendation to the Chief Prosecutor of Tbilisi to carry out the investigation in a prompt manner in accordance with one of the standards of effective investigation and ensure that G.E.'s rights to inheritance and property enshrined in Article 21 of the Georgian Constitution are respected.

RECOMMENDATIONS

To the Georgian Prosecutor's Office

- To consider the possible ungrounded restriction of property/inheritance rights of an individual during investigation of criminal case and take all possible measures to avoid such violations
- To review claims submitted to the Prosecutor's Office concerning the abnegation of property under any form of duress on behalf of the States or a third party in a timely and efficient manner

To Common Courts of Georgia

- To impound property involved in criminal proceedings only in a manner which is consistent with the law in order to prevent the restriction of rights on property acquired through lawful actions

To the National Agency of Public Register at the Ministry of Justice of Georgia

- To ensure the examination and scrutiny of documents and materials under its possession as required by the legislation before making any decision on the registration of any real estate to prevent an overlap affecting already registered property

RIGHT TO ELECTION

The right to participate in elections for the citizens of Georgia is enshrined in Article 28, Clause 1 of the Constitution of Georgia. Election principles and related issues are regulated by various articles of the Georgian Constitution and the organic law of Georgia Election Code of Georgia. Right to elections as one of the fundamental political rights plays an important role in public life of any democratic nation-state.

Local self-government elections of 2014 appeared to be one of the important events for the country.

LOCAL ELECTIONS

The Pubic Defender of Georgia welcomes the fact that mayors and Gamgebelis were elected through direct elections in 2014. Considering the principles of democratic governance, the novelty is undoubtedly a positive step forward. At the same time, a second round of local elections held in several cities indicates to competitive and free election environment and must be evaluated as a positive precedent.

2014 local elections was preceded by yet another reform of the election legislation which is evaluated positively in general. Further to an order of the Speaker of the Georgian Parliament of December 26, 2013 an inter-fractional group was set up to work on issues related to elections. The goal of the group was to prepare draft amendments to the existing election legislation and submit them to the Parliament. In addition, an interagency commission to prevent and respond to violations of the election legislation by public servants was also formed at the Ministry of Justice of Georgia.

As noted above introduction of a norm stipulating direct elections of mayor and Gamgebelis is considered as one of the drivers of successful implementation of the legislation reform. At the same time, a 50% + 1 and 4% thresholds were introduced for mayors/Gamgebelis and proportionate majoritarian members respectively. It is important that the process of perfecting election legislation continue in future with regard to the optimization of voters lists, staffing of election administration and the proportional reflection of votes. Importantly, according to the National Human Rights Strategy[734] one of the Government's responsibilities is to develop an election system which ensures free and fair elections through improving legislative norms and practical implementation.

734 A decree N2315-IIb of the Parliament of Georgia dated April 30, 2014 on Approving the National Human Rights Strategy of Georgia (for 2014-2020)

In spite of a series of positive changes including election of Gamgebelis (mayors) through direct elections, the Public Defender holds that the norm under which a council has the right to initiate vote of no confidence against an elected mayor/Gamgebeli contains serious threats. The existence of this legal norm in relation to a directly elected official cannot be justified as it contradicts the principle of representative democracy.

In spite of undoubtedly positive tendencies, an election bloc United National Movement had submitted numerous claims involving pressure on candidates during the run-up, the removal of candidates from lists under duress, violation of the principle of secret voting and other issues. The statements had been referred to relevant agencies for further response. The details are provided below.

THE RUN-UP

Run-up to the local elections and the election day itself proceeded without any particular problems. However, a commercial aired through mass media sources two days prior to the elections on July 12 stirred some turmoil among the population.[735] According to the commercial, several legal bodies of private law offered one day discount for their service to those who would agree to participate in the local elections. Having examined the case as well as materials provided by a respective agency[736] the Public Defender of Georgia found no connection between the above mentioned legal body of private law and election subjects. This is also confirmed by information provided to the Public Defender's Office by Monitoring Service of Funding of Political Parties of the State Audit Service according to which none of the participants of the promotion was enlisted as a source of donation for election subjects. As a result of the examination of the case by the Public Defender's Office, it was established the promotion did not violate requirements laid down in Article 47 of the organic law of Georgia on Election Code of Georgia and Article 164[1] of the Criminal Code of Georgia. At the same time, the slogan of the promotion calling on the citizens to participate in the elections represents a civil activity which is determined by the importance of the right to election as one of the fundamental political rights. The aim of similar activities is to improve civil participation and raise awareness on responsibilities pertaining to active citizenship.

The Public Defender identified several cases involving pressure on journalists and attempts to prevent them from carrying out their professional duties.[737] Based on the information provided by the Chief Prosecutor's Office to the Public Defender of Georgia [738] an investigation on a criminal case of alleged unlawful interference in journalist activities stipulated by Article 154 of the Georgian Criminal Code involving an incident between a majoritarian MP from Akhmeta Zurab Zviadauri and Studio Re journalists. The Public Defender of Georgia deems it necessary to effectively investigate the incident and charge those who are responsible. At the same time, it is important that public servants refrain from any action which may prevent or hinder media representatives to carry out their professional duties or be deemed as political intimidation of opponents.

Based on the statements submitted to the Public Defender's Office twenty five candidates from United National Movement withdrew form their candidacy under duress. The Public Defender's Office applied to the Chief Prosecutor's Office of Georgia requesting information on their response. According to a letter of August 5, 2014, the Chief Prosecutor's Office examined the case and in the course of the investigation ascertained that some of the former candidates did not confirm the information regarding duress. Therefore, no investigation was commenced on intimidation, threat or other criminal actions. The Public Defender's Office re-addressed the Chief Prosecutor's Office requesting copies of minutes compiled during interviews with candidates and other relevant materials pertaining to the response of the Chief Prosecutor's Office. So far we have not received any response.

735 10.07.2014, 14:57 PM, Available at: http://www.myvideo.ge/?act=dvr&chan=rustavi2&seekTime=10-07-2014%2014:57.
736 A letter N2587/57 dated November 26, 2014 of the Political Parties Financial Monitoring Service of the State Audit Service
737 A letter N04-11/923 dated July 14, 2014 of the Public Defender's Office to the Chief Prosecutor's Office
738 A letter N12/49894 dated August 6, 2014 of the Chief Prosecutor's Office of Georgia

An incident resulted in bodily injuries of a majoritarian candidate S.M. took place few days prior to the election in Zugdidi's office of the United National Movement. An investigation of a case involving signs of a crime stipulated by Article 125 of the Criminal Code of Georgia (beating) has been ongoing in Zugdidi District Unit of the Ministry of Interior. Witness of the case have been interviewed, video recordings retrieved and reviewed. As a result of a medical examination it was assessed that injuries on S.M.'s body were qualified as minor injuries.

An investigation on an incident which took place at palling station N50 in the village of Talaveri, Bolnisi municipality. More specifically, according to the information provided by the Ministry of Interior of Georgia the case involves alleged beating of M.G., a crime stipulated by Article 125 of the Criminal Code of Georgia.

An investigation is also ongoing on a case involving intimidation and duress over G.J. who is a spouse of Tetritskaro community council member candidate S.J under Article 151 of the Criminal Code of Georgia.

Based on the information available to the Public Defender's Office of Georgia, none of the investigation has been completed and therefore, no decision made on any of these cases. In order to prevention of violence and violent actions it is critical that all incidents be investigated in a timely and efficient manner which has not been a case with regard to these incidents.

THE ELECTION DAY

The principle of secret balloting was violated in Zugdidi's polling station N97 on the election day. The Public Defender of Georgia addressed the Chief Prosecutor's Office and the Central Election Commission of Georgia calling on in-depth investigation of the incident.[739] Based on the information and documentation provided by the Central Election Commission,[740] the Central Election Commission reviewed the incident taking place at polling station N97 in Zugdidi. Based on the decision N78/2014 of the Zugdidi Election Commission it was ascertained that a chairperson of the commission and some of the commission members violated the election legislation. More specifically they violated the principle of secret balloting, however, no cases involving intimidation and duress had been reported. As a respond to the incident, the chair of the commission at the polling station N97 of Zugdidi T.S. and members N.T., E.D., I.K., and M.K, were subject to a measure of disciplinary responsibility, a warning. According to the information provided by the Chief Prosecutor's Office of Georgia[741] the Prosecutor's Office of Samegrelo-Zemo Svaneti examined the case, however, no action stipulated by the criminal legislation had been ascertained and therefore no investigation ensued. Even though there had been an apparent violation of the principle of secret balloting corroborated by the CEC and the signs of a crime[742], it is not clear based on which factual/legal grounds the Prosecutor's Office based their conclusion on the absence of criminal actions and a decision to not launch an investigation.

Based on one of the statements reviewed by the Public Defender's Office election administration officials committed electoral fraud at palling stations N15, N25 and N57 of N22 election precinct of Marneuli. According to a letter of the General Prosecutor's Office of Georgia[743] an investigation was launched in Marneuli District Department of the Ministry of Interior of Georgia on June 16, 2014. The investigation evolved around an incident taking place on June 15, 2014 at the above mentioned polling stations of the N22 of the election precinct involving the fraud of electoral fraud and signs of a crime stipulated by Article 164[3]. Criminal prosecution on 13 individuals including a head of an election commission, deputy head of the commission, registers, observers and voters at polling district N25 of the election precinct N22. On June

739 Letters N04-11/10085 and 04-11/12151 dated August 4, 2014 of the Public Defender's Office of Georgia
740 A letter N01-03/2002 dated October 8, 2014 of the Central Election Commission of Georgia
741 A letter N13/50515 dated August 9, 2014 of the Chief Prosecutor's Office of Georgia
742 Article 164 of the Criminal Code of Georgia on the secret balloting
743 A letter N04-11/8867 dated July 7, 2014 of the Public Defender's Office of Georgia, a letter N13/46993 dated July 24, 2014 of the Chief Prosecutor's Office of Georgia

20, 2014 Bolnisi District Court sentenced them to bailment. Currently, the Public Defender's Office has no information on results of court hearing of the case.

The Public Defender's Office will examine the incident taking place at polling station 32 of the village of Anaklia, Zugdidi municipality at their own discretion. More specifically the incident involved the termination of voting procedure for a certain period on the election day. As stated by the head of the election commission, on June 15, at around 10 AM a group of individuals raided the polling station, broke a ballot box, tore ballot papers and damaged other inventory. According to the information provided by the Central Election Commission, as a result of the above mentioned incident elections were declared annulled at N32 polling station and based on a decision of the CEC on June 29 of the current year repeated balloting took place.

In spite of the fact that overall 2014 local elections were conducted in a satisfactory manner, the incidents described above are undoubtedly negative events for the country's democratic development. At the same time, it is critical that each incident be investigated in-depth by respective agencies so that those who are in charge are punished proportionately with their actions. Otherwise, similar violent action will never be prevented.

RECOMMENDATIONS:

To the Parliament of Georgia:

- To ensure further advancement of the electoral legislation for its approximation to the international standards: to advance electoral system in order to proportionately reflect voters choices, abolish an institute of vote of no confidence against Gamgebelis (mayors), optimize voters lists through the implementation of biometric registration, develop relevant regulations to ensure the high qualification of potential members of electoral administration etc.
- To resume the activities of the interfractional group working on electoral issues to prepare project and recommendations

To the General Prosecutor's Office of Georgia

- To ensure effective investigation on criminal cases described above and make final decisions within reasonable period of time.

THE RIGHT TO THE PROTECTION OF CULTURAL HERITAGE

Cultural rights are among the most important and integral parts of the human rights system. People often find their identities in cultural traditions among which they were born and raised. Maintaining identity is of utmost importance of well-being and dignity of an individual. In this regard cultural rights must prioritize the access of an individual to his or her culture, and the ability to contribute to the promotion and development of this culture.[744]

It is because of immense importance attached to cultural rights that they are regulated by and enshrined in numerous international acts thus enabling the realization of the cultural rights of an individual. More specifically,

Pursuant to Article 27 of the Universal Declaration of Human Rights everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'.[745]

Pursuant to provisions of the International Covenant on Political, Social and Cultural rights, the States Parties recognize the right of everyone to take part in cultural life[746]. At the same time, the steps to be taken by the States Parties to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.[747].

Cultural rights are recognized in the supreme law of Georgia, the constitution. More specifically, pursuant to Article 37, 'the State shall promote the development of culture, the unrestricted participation of citizens in cultural life, expression and enrichment of cultural originality, recognition of national and common values and deepening of international cultural relations'. At the same time, the Constitution of Georgia also obliges the citizen 'to take care of the protection and preservation of the cultural heritage'.

According to Article 22 of the Law of Georgia on Cultural Heritage Protection 'the main principle of listed property protection implies the preservation of those features and characteristics, and in the case of immovable listed properties – of the environment, which determine the historical, cultural, memorial, ethnological, artistic, aesthetic, scientific and other values of a listed property.

At the same time, pursuant to Article 1 of the European Convention on the Protection of the Archaeological Heritage,[748] The aim of this Convention is to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study.[749] The same convention identifies

744 Economic, Social and Cultural Rights, Edited by Asbjorn Eide, Katarina Krause and Allan Rosas. Textbook. 2nd revised edition, p. 342
745 The Universal Declaration of Human Rights, Article 27, Clause 1
746 The International Covenant on Economic, Social and Cultural Rights, Article 15, Clause 1, Paragraph A
747 The International Covenant on Economic, Social and Cultural Rights, Article 15, Clause 2
748 Ratified by Resolution N158-IIს of the Parliament of Georgia on February 23, 2000.
749 The European Convention on the Protection of Archaeological Heritage, Article 1, Clause 1.

archaeological heritage as structures, constructions, groups of buildings, developed sites, moveable objects, monuments of other kinds as well as their context, whether situated on land or under water.[750]

The analysis of the above mentioned norms demonstrates that the protection of heritage whether would it be cultural or archaeological is tightly linked with the protection of host environment of the subject. The right to information on environmental issues is enshrined in Article 6, Clause 2 and Article 7 of Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)[751] which establishes the requirements to adequately, timely and effectively inform the public at an early stage of decision-making on environmental issues.

According to the Convention public authority means natural or legal persons and their associations, organizations and groups as per the existing legislation.[752] At the same time 'the public concerned' means the public affected or likely to affected by, or having an interest in, the environmental decision-making, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.[753]

750 The European Convention on the Protection of Archaeological Heritage, Article 1, Clause 3
751 Ratified by the Resolution N135-IIს of February 11, 2000 of the Parliament of Georgia
752 The Aarhus Convention, Article 2, Clause 4
753 Aarhus Convention, Article 2, Clause 5

CASE OF SAKDRISI-KACHAGIANI ANCIENT GOLD MINE[753]

The Public Defender of Georgia examine the case to assess the legitimacy of removing the status of a monument of cultural heritage monument from the perspective of rights to culture, as well as life and living in safe environment.

First of all it should be noted that economic development is vital for any country and in particular for countries like Georgia. However, a process of economic development and creating an enabling environment for investments, it is critical to maintain a balance between the economic development and the protection of such fundamental human rights as the rights to culture and life in a safe environment.

While examining the case of removing the status of a monument of cultural heritage, it had been revealed that the responsible agencies failed to adequately adhere to the requirement stipulated by national and international legislation regard to the protection of cultural heritage and had not taken measures to ensure the involvement in a decision making process of the public concerned.

More specifically, legal relationships in the sphere of cultural heritage are regulated by the Law of Georgia on Cultural Heritage Protection.[755] Pursuant to Article 3, Paragraphs I.J. a monument of cultural heritage is immoveable or moveable cultural heritage property (a moveable or immoveable object as defined under Georgia's Civil Code), which has been granted a listed property status under the procedure prescribed by the present Law. Pursuant to Article 59, Clause 3 'the legal acts concerning the inscription of cultural heritage listed properties on the state register of immoveable listed properties, granting a grade of national significance, the approval of the list of properties features and designation of protection zones of cultural heritage listed properties prior to the registration as required by the present Law shall be deemed as issued in compliance with the present law'.

Sakdrisi-Kachagiani ancient gold mine was enlisted in the state register of immoveable listed properties under an order N3/133 of March 30, 2006 of the Minister of Culture, Monuments Protection and Sports while under the decree N665 of the President of Georgia of November 7, 2006 the gold mine was enlisted as cultural immovable monument of national significance. However, based on the above indicated extract from the law, enlisting Sakdrisi –Kachagiani as a monument of cultural heritage under the law on Cultural Heritage Protection passed on May 8, 200. Based on the above said, removal of a monument from the registry of cultural heritage monuments must be implemented in accordance with the legal regulations existing at the time such decisions are made.

754 Case N7093/1
755 Adopted on May 8, 2007 (N4708-Ib)

The enlisted property status of Sakdrisi-Kachagiani gold mine was revoked by an order N03/108 of the Minister of Culture and Monuments Protection of July 5, 2013 based on a conclusion compiled by a commission set up under an order N03/82 of the Minister of Culture and Monuments Protection of May 28, 2013 to look at the issues related to the ancient mountainous mining monument located in the borough of Sakdrisi, Bolnisi municipality.

Pursuant to Article 17 of the Law of Georgia on Cultural Heritage Protection, 'cancellation of a listed property status shall be admissible only on the basis of a relevant opinion of the Board and if the listed property in question has obliterated or damaged to such a degree that has lost its historical or cultural value and cannot be restored, or if, judging by scientific (methodological) criteria it has lost features for which it had been granted a listed property status' [756]

Pursuant to Article 5, Clause 4 of the same law 'an advisory body – Cultural Heritage protection Board (hereinafter referred to as the Road) – is set up at the Ministry in accordance with the procedure prescribed by the legislation of Georgia' while according to Article 5 the Board shall be staffed with experts of the field and public figures. The procedure of operation and the competences of the Board shall be defined under the decree of the Board approved by the Minister.

The law of Georgia on Cultural Heritage determines the competences of the Board including granting and revoking a status of enlisted property, as well as determining the definition and alternation of a listed property grade.[757]

The above mentioned legal norms corroborate that the commission set out by the order N03/82 of May 28, 2013 of the Minister of Culture and Monuments Protection was not authorized to discuss the issue of revoking the status of a monument of cultural heritage.

Later on, on December 12, 2014 the Minister of Culture and Monuments Protection of Georgia[758], declared an individual-legal act on revoking the status of listed property of cultural heritage annulled. However, Sakdrisi gold mine was also revoked the status of a monument of cultural heritage.

A decision made by the Ministry of Culture and Monuments Protection was based on decisions made by the National Agency for Cultural Heritage Preservation of Georgia of December 12, 2014.[759]

In addition, no consideration had been given to opinions voiced by numerous Georgian and foreign experts and scientists on the importance of the preservation of the listed property status and the continuation of archaeological excavations. Nor is it clear what measures did respective agencies take while making decision on dismantling (removal) the property, even more so when according to the existing legislation, a primary goal which the National Agency for Preservation of Cultural Heritage must pursue, is to protect listed property and take all relevant measures for this purpose.

According to relevant case materials, it can be concluded that while making the decision to revoke the listed property status of Sakdrisi-Kachagiani on December 12, 2014 decision makers ignored requirements laid down in the General Administrative Code of Georgia[760] and norms enshrined in the Convention on Access to Information, Pubic Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)[761] Article 6, Clause 2 and Article 7 of the Convention obligates states parties to provide information to the public concerned at an early stage of decision-making in an adequate, timely and effective manner.

756 July 5, 2013 edition
757 Article 5, Clause 6, Paragraph (A) of the Law of Georgia on Cultural Heritage
758 Order N03/226 of the Minister of Culture and Monuments Protection of Georgia (dated December 12, 2014)
759 A minute of a session held by Strategic Matters Section under Cultural Heritage Board of the National Agency for Cultural Heritage Preservation of Georgia on December 12, 2014, Order of a director general of the National Agency for Cultural Heritage Preservation of Georgia N2/271 (dated December 12, 2014)
760 Georgian General Administrative Code, Articles, 8, 13, 32, 34, 53, 96
761 Ratified by resolution N135-IIს of the Parliament of Georgia on February 11, 2000.

ONI REGIONAL HISTORIC MUSEUM

The Public Defender of Georgia studied a case involving the Oni Regional Historic Museum. At a meeting of the Public Defender with local community members in Oni, it was revealed that the building of Oni Historic Museum is in a devastating condition and the items protected at the museum are exposed to damage and destruction.

The same day, the Public Defender paid a visit to Oni Historic Museum (located in Oni, 26, Rustaveli Street) to meet with the museum staff and get to know the situation first-hand.

Based on the information provided by the staff, it was ascertained that the museum moved to its current address in 1975. The building is old further deteriorated as a result of the earthquake and fails to respond to museum requirements.

Even during a visual examination one can see that the building is falling apart with cracked walls, damaged ceiling and floor. There are no anti-fire, central heating, ventilation or air conditioning and security systems. It is impossible to adequately clean the building which puts the museum items at risk.

The museum homes items pertaining to history and culture of Racha-Lechkhumi from the Stone Age all the way through late Middle Ages. The items include a statue of a sheep from the Bronze Age, Chvirian astral buckles, fly control for cattle, woman's jewelry, war weapons and labor instruments, architectural details and relief fragments of St. George and Trinity churches dating back to X-XI centuries, monetary signs from X-XIV centuries, ethnographic materials from XIX centuries, manuscripts and printed books, canvasses by famous Georgian artists Ucha Japaridze, Valentin Sherpilov, Vasil Shuakhevi and others, in total up to 1500 items which cannot be protected from dust, insects, temperature and humidity considering the existing conditions in the museum.

According to Article 34, Part II of the Georgian Constitution, 'cultural heritage is protected by law'.

Pursuant to Part I of Article 4 of the Georgian law on Cultural Heritage, 'State supervision of cultural heritage shall be exercised by the Ministry of Culture, Monument Protection and Sport of Georgia, the Ministry of Justice of Georgia, local self-governing entities, as well as state bodies and legal entities of public and private law within the authority prescribed by the legislation of Georgia, on the territories of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara by respective bodies of Abkhazia and Adjara respectively.

Pursuant to Law of Georgia on Culture, Article 24, Part I, 'the State higher and local self-government bodies shall be obliged to protect libraries, museums, archives and similar funds under the ownership, ensure their maintenance, functioning and development'.

According to the Law of Georgia, Article 5 '1. State shall serve as a guarantor of the rights of museums regardless of their status of ownership 2. The Ministry of Culture and Monuments Protection is an agency responsible for the regulation and control over museum activities'. In addition, Article 20, Part II of the same law states that 'a museum item shall be kept and exhibited in a building equipped appropriately and adhered to humidity standards and other relevant regimes in a museum treasury'.

Based on the principles provided by the above mentioned normative acts, it is the State's responsibility to carry out legal, financial or economic activities with regard to museums in a manner that enables the effective protection of heritage, their maintenance and promotion with the support of the museum (with relevant infrastructure).

RECOMMENDATIONS

To the Ministry of Culture and Monuments Protection and the National Agency for Cultural Heritage Preservation:

- To ensure the revision of individual administrative-legal acts to revoke the status of listed property of Sakdrisi-Kachagiani Ancient Gold Mine in order to ascertain their legitimacy and issue respective acts in a manner consistent with the existing legislation.
- To make decision on revoking the status of listed property of Sakdrisi-Kachagiani Ancient Gold Mine upon the engagement of all parties concerned and based on the examination of circumstances with the direct reference to the case in question.

To the Ministry of Culture and Monuments Protection

- To implement relevant measures to provide a new building for Oni Regional Historic Museum to adhere to the principle of cultural identity which includes material-technical support with relevant infrastructure as well as the protection of everyone's right to cultural values. [762]

762 Law of Georgia on Culture, Article 11, Part I: '1. Everyone has the right to enjoy cultural values, access state libraries, museums, funds of archives and other relevant materials of cultural activities within the permits of the legislation'.

LABOR RIGHTS

Labor rights are among fundamental human rights and their protection is of great importance for any democratic nation state. Labor rights are enshrined in Georgia's supreme law, which is the Constitution as well as in various international treaties,[763] organic law of Georgia on Labor Code of Georgia, law of Georgia on Public Service and other laws, legislative and sub-legislative normative acts.

Article 30 of the Georgian Constitution protects individuals' labor rights, while Article 13 obliges the State to protect its citizens regardless of their whereabouts[764], which means that the State should take active measures to fulfil its responsibility. The State's positive obligations towards the employed are not limited to only granting them legal guarantees, but the State must effectively undertake its responsibility stipulated by the regulations above.

On August 3, 1994 Georgia joined the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations on December 16, 1966. By ratifying the Covenant the State became bound to taking relevant measures to protect labor rights including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[765]

Pursuant to the Labor Code of Georgia, any and all discrimination in a labor and/or pre-contractual relations due to race, skin color, language, ethnic or social belonging, nationality, origin, material status or title, place of residence, age, sex sexual orientation, marital status, handicap, religious, social, political or other affiliation including affiliation to trade unions, political or other opinions shall be prohibited. [766]

In addition, the Georgian legislation holds the employer responsible to provide the employee with a working environment that is safe for the life and health of the employee to the maximum extent possible[767] and to pay full compensation to the employee for work related damage that caused any deterioration to the employee's health and shall cover subsequent, necessary treatment costs.[768]

Changes to the country's labor legislation and following positive tendencies in 2014 are worth noting.

As a result of positive changes brought to the organic law of Georgia on Labor Law and the Law on Public Service taking effect on January 1, 2014 duration of maternity leave for an employee/servant has been prolonged. The same change refers to a leave as a result of the adoption of an infant.[769]. Due to these changes

763 International Covenant on Economic, Social and Cultural Rights, European Social Charter etc
764 Constitution of Georgia, Article 13, Clause 1
765 International Covenant on Economic, Social and Cultural Rights, Article 6, Clause 1
766 Labor Code of Georgia, Article 2, Part III
767 Labor Code of Georgia, Article 36, Part I
768 Labor Code of Georgia, Article 35, Part VI
769 Labor Code of Georgia, Articles 27 and 28, see also the Law on Public Service, Article 41[1]

the duration of a leave for an employee/servant for pregnancy, birth-giving and childcare has increased from 477 calendar days to 730 days including paid leave from 126 to 183 calendar days. In addition, the duration of leave due to the adoption of an infant was also been increased from 365 to 550 calendar days with paid leave from 70 to 90 calendar days.

Further to changes made to the Law of Georgia on Public Service on May 29, 2014 an article according to which all local governments servants would be deemed as interim to carry out their responsibilities before their successors selected through competition occupied positions, was removed from the law.[770] The Public Defender of Georgia deemed the above article as anti-constitutional and his representatives had filed an appeal to the Constitutional Court of Georgia. Therefore, the Public Defender welcomes the fact that the contested article was removed from the law before the commencement of court hearings. However, some norms stipulated by the Organic Law of Georgia on the Local Self-Governance Code still remain problematic. More specifically, the norms which state that heads of structural units of Gamgeboas or town halls were terminated their responsibilities due to the election of new Gamgebelis/mayors (upon the commencement of their responsibilities).[771] Based on the above mentioned norms, servants who has been recruited for an indefinite period of time and expected so, where forced leave without any explanation or additional justification which is a violation of their constitutional labor rights.

One of the recommendations issued by the Public Defender of Georgia with regard to the protection of labor rights and included in 2013 report, was to take concrete measures in order to set up a state institute for monitoring safety at work. In resolution of August 1, 2014 the Parliament of Georgia stated that 'the establishment of high standards of human rights protection will be greatly dependent on the implementation of recommendations developed by the Public defender of Georgia and provided in the Report on the Protection of Human Rights and Freedoms for 2013'. The Parliament concluded that the Ministry of Labor, Health and Social Affairs must set up a state institution for monitoring safety conditions at workplaces (labor inspection). In addition, a strategy for social-economic development Georgia 2020 approved under the resolution N400 of the Government of Georgia dated June 17, 2014 includes a sub-chapter dealing with the labor market development stating as follows:

In the process of labor market development not only it is important to provide the employed with jobs, but also ensure firm protection of their rights and provision of adequate remuneration for their services in order to ensure their normal living standards. To that end, Government of Georgia will work on further improvement and harmonization of labor and employment legislation with European standards. Besides, taking into consideration the existing conditions, the Government will create institutional mechanisms for monitoring the observance of labor rights in accordance with European practices, which will protect the employed individuals' right to have safe and adequate work environment and work conditions; at the same time, the Government will supervise observance of other rights stipulated by law."

Improvement of labor safety and the establishment of a mechanism for inspection of work environment is one of the objectives of the resolution N4445 of the Government of Georgia on dated July 9, 2014 on Approving Human Rights Action Plan (2014-2015) of the Government of Georgia and Setting up an Interagency Coordination board and Approving its Statute for the Implementation of Human Rights Action Plan for the Government of Georgia (2014-2015). Ministry of Labor, Health and Social Affairs will be responsible for the implementation of this objective no later than 2015. It is worth noting that a state program for monitoring work conditions was approved by resolution N38 of the Government of Georgia on February 5, 2015. The aim of the program is to assist employers in creating safe and sound working conditions. Only those employers who provide written consent are monitored by the program staff. It should also be noted that this program cannot be deemed an inspection mechanism for improving conditions and safety at work places while observable

770 On amending the Law of Georgia on Public Service, May 29, 2014, Article 1
771 Organic Law of Georgia on Local Self-governance Code, Articles 59.2 and 60.4

tendencies indicate that the implementation of the inspection mechanism mentioned above may fail to fit the set deadline.

In spite of some positive developments mentioned above and legal regulations, labor rights still remain one of the most problematic areas for the realization of economic, social and cultural rights which is corroborated by the number of claims related to violations of labor rights submitted to the Public Defender's Office during the reporting period. The next chapter of the Public Defender's Report will deal with the existing problems with regard to labor rights in public service, unjustified dismissal of servants from self-governing entities and other public services, work safety and realization of rights of the victims of occupational traumas.

THE STATE POLICY FOR THE FORMATION OF LABOR MARKET IN GEORGIA

In order to comply with the requirements of the international conventions and covenants in the area of labor and employment ratified by Georgia, as well as to develop effective and operational labor market, support labor force employment and improve socio-economic background in the country, Government of Georgia has developed a state strategy and an action plan for the labor market formation.[772] In accordance with the action plan, the Ministry of Labor, Health and Social Affairs is held responsible to coordinate and monitor specific activities and provide progress reports to the Government of Georgia.[773]

In addition, on December 26, 2014 with the resolution N721 the Government of Georgia approved the concept for the development of professional counseling and universal career planning service and an action plan of its implementation for 2015-2017. The resolution also approves the development of a document in line with the state policy to reflect a holistic vision on and approaches to the development of professional counseling and career planning service as well as short and long term perspectives of responding to existing problems based on their prioritization and a role to be played by state structures in developing the responses.[774]

Based on the above mentioned document a department of employment programs was set up in the Social Service Agency (a legal body of public law) under the Ministry of Labor, Health and Social Affairs. The department has already implemented a project titled Information System for Labor Market Management – worknet.gov.ge, which is a database of job seekers, employers, vacancies, education programs and providers. As of today only job seekers can be registered in the database. The Social Service Agency serves employment seekers in ten regional offices and sixty-nine regional centre where the Agency's staff provide counseling on the following topics: techniques of seeking employment, self-assessment, CV and motivation letter writing and preparation for a job interviews.

According to the information provided to the Public Defender's Office by the Social Service Agency[775] registration of job seekers in the system started on December 25, 2013. As of today 34 356 job seekers are registered at worknet.gov.ge, the Agency has provided its service to 17 716 job seekers, 29 755 have been consulted on the registration procedure while 8 054 refused to get registered as job seekers in the system.

The information provided by the Social Service Agency also suggests that all territorial units of the Agency provides mediation services and 5 176 employers have been advised on this type of a service. 645 employers

772 Resolution N199 of the Government of Georgia on Approving the State Strategy for the Formation of Labor Market of Georgia and the Action Plan for 2015-2018 for the Implementation of the State Strategy for the Formation of Labor Market of Georgia (dated August 2, 2013)

773 Ibid, Article 1.6

774 Resolution N721 of the Government of Georgia on the Action Plan for the Development of Professional Counseling and Career Planning Service 2015-2017 (dated December 26, 2014). P. 2

775 A letter of the Social Service Agency N04/831109.02.2015

accepted offered positions, 243 employers provided information on openings in their companies (the number of openings amounts 1 922) and 1 776 job seekers have been referred to companies with vacancies. 407 job seekers (including 12 persons with disabilities) were hired as a result of mediation services. Based on the information provided by the Ministry of Infrastructure and Regional development of Georgia 12 809 job seekers were employed on temporary basis in various infrastructural projects.

In addition to the above said, the Social Service Agency, as per the action plan, provided s series of group counseling sessions to job seekers in every municipality and village with 5422 attendees including 113 probationers and 25 persons with disabilities.

LABOR RIGHTS IN PUBLIC SERVICES

Law of Georgia on Public Service is one of the most important national legal acts which regulates labor-legal relations of public servants. It is the very law which grants public legal competence to public servants and at the same time determines their rights and guarantees.

During the reporting period of 2014 a number of claims had been submitted to the Public Defender's Office by former public servants for the purpose of ascertaining the legitimacy of dismissal and the imposition of disciplinary responsibility over the latter. Pursuant to the Organic Law of Georgia on the Public Defender of Georgia and within the competences stipulated by Article 12 of the mentioned law, the Public Defender studied the claims the analysis of which demonstrated that individuals with relevant authorities at both state and local government levels often engage in a practice of dismissing public servants and imposing disciplinary responsibility over the latter without legal grounds.

DISCHARGING DURING THE REORGANIZATION WITHOUT LAY-OFF

Chapter X of the Law on Public Service of Georgia lays down the grounds for the discharge from public service reduction of the number of posts being one of them.[776]

The examination of claims submitted to the Public Defender's Office revealed a series of violations of law in cases involving the discharge of servants under conditions stipulated by Article 97 of the Law of Georgia on Public Service. Also, further to orders of state or local self-governance organs, reorganization of structural units ensued with cut backs in staff lists as a result of which some public servants where discharged from their positions. However, the comparison of position lists before and after the reorganization, revealed that there was no lay off on the positions held by some of former servants. Nor were functions of positions changed after the reorganization. In spite of the above said, the formal reason for the discharge of the servants was reorganization stipulated by Article 97 of the Law of Georgia on Public Service. Reorganization does not represent the valid ground for the discharge of servants from their position. Servants can be discharged only when the reorganization is accompanied by reduction of staff lists of an institution.[777] State and local self-government organs belong to administrative agencies[778] whose orders on discharging servants represent[779]

776 Law of Georgia on Public Service, Article 97, Clause 1

777 Law of Georgia on Public Service, Article 96 and Article 97, Clause 1
Pursuant to Article 2, Part I, Clause A all state or local self-government organ or agency, legal body of public law (except for religious and political associations), or any other person/body which performs public legal competences as per the Georgian legislation shall be deemed as an administrative agency.

778 Article 2, Part II, Para A of the General Administrative Code of Georgia

779 Article 2, Part II, Para D of the General Administrative Code of Georgia

Individual administrative-legal acts, which in turn, must comply with requirements stipulated by Chapter IV of the General Administrative Code of Georgia.

After having examined the cases the Public Defender's Office concluded that while making decision on discharging public servants on the ground of the reduction in staff lists following reorganization as stipulated by Article 97 of the Law of Georgia on Public Service, administrative organs do not look at skills of the public servants in question. Nor do they consider the consistency of the latter's personal characteristics with the positions they hold. The administrative organs do not provide justification as to why they prefer other individuals holding the same grade and position while making such decisions. Moreover, in many cases only names of positions are changed while number of positions and job descriptions remain the same. Therefore, there is no legal grounds for discharging public servants whose rights are thus violated. A common practice observed during the reporting period suggests that administrative organs tend to ignore the principle of supremacy of law enshrined in the General Administrative Code of Georgia [780] according to which they have no rights to undertake any action which is against law.

As a result of revision of the cases in 2014 the Public Defender's Office found that public servants were discharged from their positions without legal grounds stipulated by Article 97 of the Law of Georgia on Public Service of Georgia from the Ministry of Internally Displaced Persons from the Occupied Territories, Refugees and Accommodation of Georgia, the Ministry of Labor, Health and Social Affairs of the Autonomous Republic of Abkhazia, Kareli municipality Gamgeoba and Rustavi Municipality Town Hall. Respectively, based on Paragraph B, Article 21 of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender addressed the above listed agencies and demanded that violated rights be restored. However, this recommendation has not been taken into consideration.

CASE OF T.M.

The Public Defender of Georgia examined the case related to the citizen of Georgia T.M. who was discharged from his/her position of a head of administrative department at Ministry of Labor, Health and Social Affairs of the Autonomous Republic of Abkhazia on December 10, 2013 as a result of structural reorganization on the grounds of cutting back the staff list.

Having studied the circumstances of the case the Public Defender ascertained that the reorganization measures[781], resulted only in changing an organizational form of the structural unit and its name while the above mentioned position was re-approved under the staff list.[782]

The Public Defender of Georgia concluded that labor rights granted to T.M. by the Constitution of Georgia had been violated. More specifically, a respective order on his/her dismissal from the position above failed to provide an explanation as to why the claimant had been discharged while the reorganization measures sought only to change an organizational form and the name and not the cancellation of his/her position. On March 26, 2014 the Public Defender of Georgia recommended the Ministry of Labor, Health and Social Affairs of the Autonomous Republic of Abkhazia to take measures for restoring the rights of the claimant but sadly to no avail.

CASE OF V.G.

The citizen of Georgia V.G. filed a request to the Public Defender's Office to review the legitimacy of his/her discharge from a position of a military conscription and registration service specialist at the Rustavi City Hall.

780 General Administrative Code of Georgia, Article 5, Part I

781 The reorganization affected the administrative department of the Ministry which was formed as an administrative and legal division

782 There were 8 tenures on the staff lists of the administrative department while only there appeared to be 9 tenures in an re-organized structural division. Only three tenures – those of chief specialists' had been cut down.

V.G. was discharged from the position above based on an order N750 signed by the Mayor of Rustavi City municipality signed on August 13, 2014 on the grounds of the liquidation of the institution.

It appears that during administrative proceedings prior to the issuance of the order on discharging V.G. from the position s/he had been holding those in charge ignored the circumstances which suggests that both structural and staff position previously held by V.G. still exists in Rustavi Municipality City Hall indicating that no liquidation of the service had taken place. The only change involved changing the name of the service by adding 'municipality' and the service was ultimately called the military constriction and registration service of the Rustavi Municipality City Hall.

Dismissal of the public servant from the position s/he held would have only been possible had the service been liquidated and had there been appropriately justified administrative-legal acts compiled in accordance with the Law of Georgia on public Service and based on thorough investigation and consideration of all important circumstances and facts which had not been the case with V.G.'s dismissal.

Based on the above said, it was ascertained that the order to discharge V.G. from the position s/he had been holding contradicts norms established by the Georgian legislation and violations the claimant's labor rights.

On October 2, 2014 the Georgian Public Defender recommended the Mayor of Rustavi Municipality City Hall to restore the rights of the claimant. Regretfully, the recommendation has not been considered to this day.

Discharge due to Disciplinary Delinquency

Under Article 99 of the Law of Georgia on Public Service it is possible to discharge a servant because of disciplinary delinquency. The same law determines the types of both disciplinary delinquency [783] as well as disciplinary responsibilities[784] application of which is the discretionary power of an official in charge of an administrative agency.[785]

At the same time an administrative agency is responsible to include reference to all factual circumstances that were substantially important for the issuance of an administrative decree on the discharge of a servant because of disciplinary delinquency.[786]

Sadly it is quite often that authorized officials in a number of administrative organs ignore legal requirements while discharging servants from their positions. More specifically, the former often make unjustified decisions on imposing administrative responsibility over and ultimately dismissing public servants without investigating and referring to factual circumstances of substantial significance in relevant documentation which in turn violates legally guaranteed rights of public servants.

As a result of the examination of decrees/orders and respective administrative proceedings materials compiled in the process of the issuance of individual administrative-legal acts on discharging former employees of the Ministry of Interior and the Ministry of Corrections during the reporting period of the year 2014, the Public Defender's Office identified cases involving unjustified discharge of the servants because of disciplinary delinquency.

More specifically, while issuing individual administrative-legal acts on discharging the servants, the above mentioned agencies had ignored the requirement stipulated by Article 96, Part I of the General Administrative Code of Georgia according to which an administrative organ must investigate every circumstance with substantial significance to the case during administrative proceedings and make any decision solely on the basis of assessment and cross-checking of these circumstances. The inspection of the claims submitted by the

783 Article 78 of the Law of Georgia on Public Service

784 Article 79 of the Law of Georgia on Public Service

785 Pursuant to Article 2, Part I, Paragraph K of the General Administrative Code of Georgia discretionary power means the authority which provides an administrative agency or official with some degree of latitude in regard to choosing the most reasonable decision among several decisions in compliance with public and private interests.

786 The General Administrative Code of Georgia, Article 53, Part IV

former public servants has revealed that the above mentioned administrative agencies had not investigated the circumstances with substantial significance for the cases involved which would have corroborated that the discharged public servants had in fact committed disciplinary delinquency. With regard to specific cases, the Public Defender's Office also concluded that the above mentioned public servants were imposed disciplinary responsibility by individual administrative-legal acts issued by authorized officials of the above mentioned administrative agencies in the absence of appropriate evidence corroborating the occurrence of a specific disciplinary delinquency.

With regard to the above said and based on Paragraph B of Article 21 of the Law of Georgia on the Public Defender of Georgia, the Public Defender of Georgia issued recommendations for the Ministry of Interior and the Ministry of Corrections to restore the violated rights. However, none of the recommendations has been considered.

CASE OF J.V.

The citizen of Georgia J.V. applied to the Public Defender of Georgia for assessing the legitimacy of his/her discharge from the position of the head of logistics department at N3 regional division of border police department, Ministry of Interior of Georgia.

J.V. was dismissed from the position s/he held based on the decree N60 signed by the head of border police department on February 9, 2006 on the grounds that s/he was not merited for the above position, lacked competences and had been failing to manage his subordinates.

While issuing a decree on the dismissal of J.V. the border police department had not investigated all circumstances with substantial significance to the case which would have indicated how they had ascertained that J.V. had no sufficient knowledge to perform his/her duties or what were his/her management failure (there is no document in the case file which would have served as evidence of the above said).

Based on Article 53, Part V of the General Administrative Code of Georgia, the Ministry of Interior of Georgia (the border police department) had no authority to rest their decision on those circumstances, facts, evidence or arguments which had not been investigated and examined during the administrative proceedings. It would have only been possible to discharge J.V. had all significant circumstances and facts been examined and reflected in a respective administrative-legal act which had not been the case with J.V. whose rights have been violated.

On September 15, 2014 the Public Defender of Georgia recommended the Ministry of Interior of Georgia to examine the legitimacy of a decision on the discharge of J.V. but sadly to no effect.

Mass Discharge of Servants from the Local Self-Government Agencies Based on their Personal Application or on the Grounds of Reorganization

Over the course of the reporting period of 2014 the Public Defender of Georgia examined the issues related to mass discharge of employees of the local self-governance bodies, reorganizations taking place in self-governing entities and attestation of employees. For this purpose the Public Defender's Office requested information from various self-governing agencies pertaining to the number of discharged servants and grounds for the discharge.

The examination of the submitted documents has revealed that there is a common practice employed by the local self-governing agencies which suggest that those with authority in these agencies tended to exert pressure on public servants so that the latter resign voluntarily. In most cases this was used as a formal grounds for the discharge of public servants.[787]

787 Article 95 of the Law of Georgia on Public Service stipulates the discharge of a servant based on his/her personal decisioin

During the year 2014 the Public Defender received numerous applications submitted by former public servants who, in their claims stated that, they had filed resignation letters under demand for their supervisors. In some of claims the claimants named specific individuals who had exerted psychological pressure on them write resignation letters and give up on their positions. As the above mentioned claims contained alleged signs of the crime stipulated by the Georgian Criminal Code, the Public Defender's Office, as per the Law of Georgia on the Public Defender of Georgia, referred these claims and enclosed documentation to the Chief Prosecutor's Office for further response. It is worth noting that in some cases the Chief Prosecutor's Office initiated investigations with regard to alleged misuse of authority and power against public servants, persecution [788] and the violation of the labor legislation.[789] As of today, according to information provided by the Georgia's Chief Prosecutor's Office, the investigation is still ongoing on some of the cases, while criminal proceedings were terminated on several cases due to the absence of the signs of criminal activities.

Within the competences granted by Article 12 of the Law of Georgia on the Public Defender of Georgia and based on the analysis of the examined cases, the Public Defender's Office ascertained that mass discharge of public servants formerly employed by the local self-government agencies on the grounds of personal decision or institutional reorganization (with a cutback of staff lists) had taken place in the year 2014. Considering the high rate of unemployment in the country, decision to resign made by massive number of former public servants undoubtedly raises legitimate questions.

2014 saw the same tendency in Tbilisi municipality where 312 employees filed resignation letters after the local elections. Other Georgian municipalities are also affected by this practice.[790]

The period aftermath the 2014 local elections saw the processes of reorganization or liquidation in numerous local self-government agencies throughout the country. The Public Defender of Georgia requested information on acts adopted with regard to reorganization including staff lists before and after the reorganization as well as the number of public servants discharged on the grounds of reorganization/liquidation.

The number of employees discharged on the grounds of reorganization and liquidation is strikingly in the municipalities is strikingly high. Several municipalities show particularly strong tendency of discharging employees due to the above mentioned reasons. More specifically, as of December 2014 313 public servants had been discharged from Gori municipality on the grounds of liquidation (only 97 of 313 were employed in a newly formed municipality). 86 employees had been discharged from Marneuli municipality Gamgeoba because of liquidation, 53 public servants had been dismissed from Senaki municipality Gamgeoba on the same grounds. 37 public servants had been discharged following the liquidation of a territorial organ in Ninotsminda municipality Gamgeoba. The liquidation of territorial organ claimed 74 public servants in Shuakhevi municipality Gamgeoba and 51 public servants in Khelvachauri municipality Gamgeoba. 44 public servants had been discharged due to the reorganization taking place in Kvareli municipality Gamgeoba, 46 public servants lost their jobs in Kareli municipality Gamgeoba due to the liquidation of a territorial organ, 37 public servants were left unemployed in Adigeni municipality Gamgeoba while the reorganization in Dmanisi municipality Gamgeoba saw 40 public servants losing their jobs. Public Servants in other municipalities had also been discharged on the same grounds. [791]

788 The Criminal Code of Georgia, Article 156, Part II, Paragraph B

789 The Criminal Code of Georgia, Article 169

790 5 public servants had been discharged from their positions based on their decision in Mestia municipality, 1 public servant from Borjomi municipality Gamgeoba; 1 public servant from Tsalenjikha municipality Gamgeoba; 2 public servants from Batumi municipality; 3 public servants from Poti municipality City Hall; 1 public servant from Akhalkalaki municipality; 5 public servants from Sagarejo municipality Gamgeoba; 4 public servants from Keda municipality Gamgeoba; 3 public servants from Gurjaani municipality Gamgeoba; 2 public servants from Aspindza municipality Gamgeoba; 8 public servants from Kutaisi municipality City Hall; 2 public servants from Tetritskaro municipality Gamgeoba; 9 public servants from Dedoplistskaro municipality Gamgeoba; 3 public servants from Akhmeta municipality Gamgeoba; 3 public servants from Dmanisi municipality Gamgeoba; 1 public servant from Shuakhevi municipality Gamgeoba; 1 public servant from Kareli municipality Gamgeoba; 2 public servants from Adigeni municipality Gamgeoba; 6 public servants from Kaspi municipality Gamgeoba.

791 73 public servants were discharged from Keda municipality Gamgeoba because of cancellation of positions of territorial organs and representatives: 73 public servants were discharged from Chkhorotsku municipality Gamgeoba; 19 public servants were discharged

Considering the issues related to widely spread unemployment in the country, the assessment of the above cases raises questions regarding the truthfulness of decisions allegedly made by former public servants to resign from their positions and respectively the legitimacy of individual administrative-legal acts issued by state and local self-government agencies on their resignation.

It is worth noting that filing resignation under instructions of supervisors has been a vicious practice engrained over the course of many years. Importantly, duress is not always used as an instrument to make servants file for their resignation. Occasionally they are given verbal promises that after the resignation they will be reappointed on other positions. However, there is no guarantee of this promise and public servants are thus exposed to the risks of unemployment if such promise is not kept. One of the important underlying factors contributing to such developments is a low level of awareness of public servants on their rights. In addition, weak protection mechanisms of public servants weakens the institute of local democracy in the country, undermines the development of sustainable institutes and institutional memory. The absence of the perception of security and stability, and a constant fear of losing one's job as a result of political changes largely contributes to poor performance and labor capacity.

Therefore, it should be noted that in 2014 there had been numerous cases involving ignorance of both domestic and international obligations by the local self-government agencies resulting in the violation of labor rights as vital social-economic rights.

The Public Defender of Georgia was also approached by citizens of Georgia discharged from various state agencies claiming that they applied for resignation under duress. These claims had been referred to the Chief Prosecutor's Office of Georgia.

CASE OF N.B.

The Public Defender of Georgia examined the case of the citizen of Georgia N.B. who claimed that a deputy head of penitentiary institution N19 of the Penitentiary Department G.P. exerted duress on N.B. holding a position of inspector (controller) of a legal regime at penitentiary institution N19 to file for resignation against the latter's wish.

On June 6, 2014 the Public Defender of Georgia addressed the Chief Prosecutor's Office of Georgia to follow up with the case. The Chief Prosecutor's Office notified the Public Defender's Office that a letter with enclosed documents had been forwarded to Penitentiary Department at the Ministry of Corrections of Georgia.

With a letter sent by the Penitentiary Department the Public Defender's Office had been notified that N.B. had been discharged from his/her position further to a decree issued by 2014 by the head of the Penitentiary Department based on N.B.'s resignation letter.

The Public Defender's Office is aware of such resignation letter, however, the fact that the letter did not represent the manifestation of his/her free will but was filed under duress exerted by G.P. acting in his/her capacity of the deputy head of penitentiary institution N19 of the Penitentiary Department is the main argument of N.B.'s claim. Forwarding Public Defender's letter by the Georgia's Chief Prosecutor's Office to the Penitentiary Department and therefore, providing information provided above to the Public Defender's

from Borjomi municipality Gamgeoba on the grounds of the liquidation of territorial organ; 32 public servants were discharged from Tsalenjikha municipality Gamgeoba on the grounds of the cancellation of territorial organs; 26 public servants were discharged from Akhalkalaki municipality Gamgeoba; 1 public servant was discharged from Sighnaghi municipality; 9 public servants were discharged from Rustavi municipality City Hall; 7 public servants were discharged from Akhmeta municipality Gamgeoba; 7 public servants were discharged from Lanchkhuti municipality Gamgeoba; 1 public servants was discharged from Tetritskaro municipality Gamgeoba; 29 public servants were discharged from Dedoplistskaro municipality Gamgeoba; 5 public servants were discharged from Gurjaani municipality Gamgeoba; 20 public servants were discharged from Kaspi municipality Gamgeoba; 2 public servants were discharged from Tsalka municipality Gamgeoba; 27 public servants were discharged from Kutaisi municipality Gamgeoba; 1 public servants was discharged from Sagarejo municipality Gamgeoba; 6 public servants were discharged from Khobi municipality Gamgeoba

Office of Georgia cannot be deemed as an effective measure to investigate alleged duress as advised by the Public Defender's Office.

On July 18, 2014 the Public Defender of Georgia proposed that the Chief Prosecutor of Georgia launch an investigation of alleged duress exerted by the head of the penitentiary institution N19 of the penitentiary department G.P. over the citizen of Georgia N.B.

The Georgian Chief Prosecutor's Office notified the Public Defender of Georgia that no evidence had been found to corroborate the commitment of any illegal act against N.B. and therefore no investigation into this matter had been launched.

LABOR RIGHTS OF THE DISCHARGED FROM GEORGIAN POST LTD

Based on a statement submitted by a chairperson of the united trade union of the Georgian Post the Public Defender of Georgia examined the legitimacy of the former employees discharged from the Georgian Post Ltd. The statement indicated that more than 120 individuals were discharged due to the expiry of contracts with the Georgian Post Ltd. The Public Defender of Georgia argued that the labor rights of the discharged had been violated.

The Public Defender held that the terms of collective agreement concluded between the administration of the Georgian Post Ltd, the trade union of the Georgian communications workers and the united trade union of the Georgian Post Ltd had been breached. The above mentioned agreement suggested that the employees were hired on the bases of a long term contracts. Based on the same collective agreement, parties had no right to either change or terminate responsibilities stipulated by the agreement unilaterally before the expiry of the agreement while changes agreed upon by the parties would not deteriorate the working conditions of the employees. Therefore, under no circumstances could the terms and conditions of the agreement be changed unilaterally. However, changes had been made to employment contracts concluded by the Georgian Post Ltd further to a decree N15-01/120 signed by the Director General on November 27, 2012. As a result of the changes the employees at the Georgian Post Ltd were given new contracts with the duration of one month instead of long term contracts which would automatically be deemed prolonged for another month had there been no disagreements between the employer and the employees.

The Public Defender of Georgia evaluated the above mentioned agreements from both temporary and permanent contractual perspective and concluded that these agreements do not represent typical agreements stipulated by the Organic Law of Georgia on Georgian Labor Code and contain characteristics of both types of agreements. More specifically, temporary contracts are terminated together with the expiry of the period of time indicated in the agreement and there is no need for a claim of an employer against an employee for the agreement to terminate, while permanent contracts can only be terminated on the grounds stipulated by Article 37, Part I of the Georgian Labor Code[792] and claims which an employer might have against an employee do not suffice.

792 Pursuant to the Labor Code of Georgia, Article 37, part I the following shall serve as grounds for termination of a labor agreement: a) economic circumstances, technological, or organizational changes making it necessary to reduce workforce; b) expiry of the labor agreement; c) completion of the work provided for by a labor agreement; d) voluntary written application for resigning from a position/work by the employee; e) written agreement between the parties; f) incompatibility of the employee's qualifications or professional skills with the position held/work to be performed by the employee g) gross violation by the employee of his/her obligation under an individual labor agreement or a collective agreement and/or rules and regulations; h) violation by the employee of his obligation under an individual labor agreement or a collective agreement and/or rules and regulations, if any of the disciplinary actions under such an individual labor agreement or a collective agreement and/or rules and regulations has already been administered in relation to the employee for the last one year; i) unless otherwise provided for by the labor agreement, a long-term disability, if the period of disability exceeds 40 calendar days in a row, or the total disability period within six months exceeds 60 calendar days, and, at the same time, the employee has used the leave indicated in Article 21 of this Law; j) entry into force of a court judgment decision precluding the fulfillment of work k) the final decision of finding a strike illegal delivered by the court in accordance with Article 51(6) of this Law; l) death of an employer as a natural person or of an employee; m) commencement of liquidation proceedings of an employer as a legal entity; n) any other objective circumstance justifying termination of the labor agreement.

The Public Defender's Office concluded that the breach of law was present even if agreements above were deemed as having temporary nature based on the fact that the labor agreement contradicts collective agreement as the administration was responsible for concluding agreements with employees for more than a month (3 months with regard to the first contract, while the agreements should have been permanent for employees with the employment record for more than three years). However the administration concluded monthly contracts thus causing the deterioration of the work conditions of the employees. Based on the above said, the Georgian Post Ltd violated the social guarantees enshrined in the collective agreement without having any authority of doing so based on the above agreement.

RECOMMENDATIONS

To the State and local self-government agencies/institutions

- While making decision to discharge a public servant from his/her position even if such decision is made upon the resignation letter of such public servants, to examine the circumstances having significance for any individual case and indicate those factual and legal precursors in individual legal acts which serve as the grounds for making such decisions.

To the Parliament of Georgia

- To bring changes to the legislation in order to prevent the possibilities of discharging mid and low career public servants regardless of the changes of the authorities and ensure the implementation of high standards for the protection of public servants.

THE RIGHT TO SAFE AND HEALTHY ENVIRONMENT

Environmental issues represent one of the most burning challenges of the modern world induced by harmful anthropogenic impact on environment. These challenges make the environmental protection a must not only to save particular societies but the whole mankind.

The right to live in healthy environment is enshrined in both Georgian and international law. More specifically, pursuant to Article 37, Clause 3 of the Constitution of Georgia

Everyone shall have the right to live in healthy environment and enjoy natural and cultural surroundings. Everyone shall be obliged to care for natural and cultural environment.

Based on the above said, the mankind must realize the threat caused by the environmental pollution and progressively address these issues. At the same time, measures need to be taken globally in order to reinforce mechanisms for the protection of human rights such as the rights to live in healthy environment, and access to the adequate compensation as well as exhaustive, timely and impartial information about environment. [793]

At the same time, Article 37, Clause 4 of the Georgian Constitution states that

With the view of ensuring safe environment, in accordance with ecological and economic interests of society, with due regard to the interests of the current and future generations the state shall guarantee the protection of environment and the rational use of nature.

The right to live in safe and healthy environment is enshrined in many international legal acts which are binding for signatory countries and which pinpoints the guarantees for the protection of environmental rights. More specifically, the Universal Declaration of Human rights holds that every individual has the right to such living conditions which are critical for upholding his/her own welfare as well as that of his/her family.[794]

The International Covenant on Economic, Social and Cultural Rights obliges the State Parties to improve all aspects of environmental and industrial hygiene.[795]

According to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.[796]

793 Maia Bitadze. European Standards of Human Rights and their impacts on Georgian legislation and practice (collection of articles published by the German Technical Assistance (GIZ), 2006), p.8

794 The Universal Declaration of Human Rights, Article 25, Clause 1.

795 The International Covenant on Social, Cultural and Economic Rights, Article 12, Clause 2, Paragraph B.

796 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Article 1.

The same right and opportunity is referred to in Clause 5 of Article 37 of the Georgian Constitution, according to which 'everyone shall have the right to exhaustive and impartial information on environment protection matters.'

For the purpose of the implementation of the norms stipulated by the Constitution of Georgia, the Law on Environmental Protection was adopted. The major objective of the law is to 'protect fundamental human rights with regard to environment enshrined in the Constitution of Georgia, which are the right to live in safe and healthy environment and enjoy natural and cultural surroundings'[797]

In spite of the fact that the Georgian legislation includes norms to regulate the above mentioned matters, the analysis of cases related to environmental issues demonstrates that there is a need to make the national legislation more specific through developing rules and procedures in order to ensure the public participation in decision-making on environmental matters and the provision of access to information.

Numerous cases examined by the Public Defender of Georgia and included in 2013 Report of the Public Defender of Georgia on the Protection of Human Rights and Freedoms in Georgia corroborate the above said.[798] This time will focus on issues pertaining to the construction of Shuakhevi hydroelectric plant cascade by Acharistskali Ltd revealed as a result of the inquiry into the legitimacy of the construction.

797 The Law of Georgia on Environmental Protection, Article 3, Clause 1, Paragraph (B)
798 N20131/1 on the legitimacy of the construction of Khudon hydroelectric power plant

THE CASE OF THE CONSTRUCTION OF SHUAKHEVI HYDROELECTRIC PLANT [798]

It is a well-known fact that Georgia is rich with hydro resources which need to be utilized in a rational manner to support the sustainability of the country's energy system and economic development. However, while doing so it is critical to protect such fundamental human rights as the right to live in safe and healthy environment. In order to ensure the full realization of this right the Georgian legislation stipulates both administrative[800] and criminal[801] responsibilities for actions violating the rules for environmental protection and the utilization of natural resources.

Pursuant to Article 35, Clause 1 of the Law of Georgia on Environmental Protection 'environmental permit is essential for the implementation of an activity on the territory of Georgia, in order to take into consideration ecological, social and economic interests of public and state and to protect human health, natural surroundings, material assets and cultural heritage'.

However, it should be noted that the system of environmental impact assessment is ineffective both in terms of providing information to the public and ensuring access to and participation in decision-making processes by relevant authorities. The system also fails to comply with the requirements stipulated by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

As noted above, the conclusion was based on the findings of the inquiry into the legitimacy of Shaukhevi hydroelectric power plant construction. For this very purpose the present chapter will deal a decision making process pertaining to the construction of a hydroelectric power plant on the river Adjaristskali in detail. More specifically,

On March 22, 2010 under the order N15 of the Minister of Energy of Georgia the Ministry announced a statement of interest on the construction of the hydroelectric power plant cascades on Adjaristskali river in the Adjara region and approved the 'terms and the rule' for expressing interest in 'the construction of hydroelectric power plant cascade on Adjaristskali river in the Adjara region' according to which the criteria for identifying the best proposal were the terms of the construction and the commencement of exploitation, as well as the availability of sufficient bank guarantees to ensure the commitment to the responsibilities by an investor.[802] The cascade to be constructed consisted of four hydroelectric power plants: Zomleti power plant,[803] Vaio power

799 Case N295/1 and N9480/1.
800 The Administrative Delinquency Code of Georgia, Chapter 7
801 The Criminal Code of Georgia, Section X
802 The letter N04/158 dated January 20, 2014 of the Deputy Minister of Energy of Georgia
803 30.10 MW output 142.60 KW/hour

plant,[804] Koromkheti power plant[805] and Chorokhi power plant.[806]

Based on the information provided by the Ministry of Energy of Georgia, three proposals were submitted to the Ministry of Energy of Georgia before the deadline and as per terms and rule stipulated under the statement of interest of 'the construction of the hydroelectric power plant cascade on Adjaristsskali river in the Adjara region: Limak Construction Industry and Trade Co, LTD (a Turkish company); Kolin Construction, Tourism, Industry and Trading Co, INC (a Turkish company) and Clean Energy Invest AS (a Norwegian company).

The Norwegian company Clean Energy Invest AS was awarded the contract to ensure the construction, possession and operation of the four hydro power plant cascade due to the amount of bank guarantee which was deemed sufficient for the fulfilment of the investor's responsibilities as per the terms and conditions for the commencement of exploitation and construction.[807] The company also expressed interest in the implementation of the project on the construction of Adjaristksali hydroelectric power plant 1, Adjaristksali hydroelectric power plant 2 and Adjaristksali hydroelectric power plant 3 on Adjaristskali River.[808]

As a result of negotiations between Clean Energy Invest AS and the Government of Georgia, it was deemed expedient to construct seven hydroelectric power plant on Adjaristskali River: Zomleti hydroelectric power plant (30.1 MW), Vaio hydroelectric power plant (35.1 MW), Koromkheti hydroelectric power plant (21.1 MW), Chorokhi hydroelectric plant – 3 (6.09 MW), with the total capacity of 175 MW.

With the resolution N812 signed on April 12, 2011 the Government of Georgia approved a draft contract to be concluded with Clean Energy Invest AS. On June 10, 2011 a memorandum was signed between the Government of Georgia, Clean Energy Invest AS and Adjaristskali Ltd on the construction, possession and operation of seven hydroelectric power plants on Adjaristskali River.[809]

Importantly, the above mentioned memorandum was declared as a commercial secret by the order N136 of the Minister of Environmental Protection and Natural Resources of Georgia signed on August 5, 2011. Therefore, issues related to tariffs on energy and general economic benefits of the projects are not known to the public.

Pursuant to Article 2, Clause 2 of the Constitution of Georgia 'the legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts'.

The norms stipulated by Article 6, Clause 2 and Article 7 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)[810] obligate states parties to provide information to the public concerned at an early stage of decision-making in an adequate, timely and effective manner.

Article 5 of the state program on Renewable Energy 2008 – The Rule for the Construction of New Sources of Renewable Energy approved by the resolution N107 of the Government of Georgia signed on April 18, 2008[811], determined a scheme (schemes) of potential placement of hydroelectric power plants and their key parameters which would become a subject of a memorandum between the State and investors.

The same rule is referred to in the rule for expressing interest in technical-economic assessment, construction, possession and operation of hydroelectric power plants in Georgia approved by the resolution N214 of August

804 35.10 MW output 169.30 KW/hour
805 21.10 MW output 114.50 KW/hour
806 29.10 MW output 1152.00 KW/hour
807 Resolution N527 of the Government of Georgia (dated April 28, 2010).
808 These hydroelectric power plants were included on the list of potential sources of renewable energy during the year 2010
809 The changes were made on September 28, 2012
810 Ratified by the resolution N135-IIს of the Parliament of Georgia on February 11, 2000
811 Removed by the resolution N212 of the Government of Georgia dated August 21, 2013

21, 2013. More specifically, Article 1, Clause 2 of the above mentioned rule, the Ministry of Energy of Georgia with individual administrative-legal acts confirms the list of potential power plants to construct and places the list on its official webpage. In addition, the Ministry shall also place basic information on this matter available to the Ministry.

Pursuant to Article 2, Clause 1 of the same rule, an administrative-legal act issued by the Ministry of Energy of Georgia shall include: title of a hydroelectric power plant to construct, a place of placement (even if it is preliminary), tentative scheme and tentative key parameters. In addition, such acts shall also include the terms of technical-economic assessment of the construction, commencement of the construction and the launch of exploitation based on a permit for the construction, tentative investment capacity of the construction of the power plant etc. Also, the above mentioned administrative-legal act must provide a draft memorandum to be concluded with the winner of expressing interest.

It is evident that according to the rule laid down by the existing legislation[812] and as a result of the issuance of administrative-legal acts a memorandum is formed between the State and an investor on the construction of any hydroelectric power plant. It is only after these procedures when the investor is required to prepare and submit a report in order to receive environmental impact permit, positive evaluation of the environmental expertise and a permit to construction.

There are no guarantees to ensure the access to information and public engagement in decision making processes at the state of issuing an individual administrative-legal act concerning the construction of potential hydroelectric power plants. At the same time, as mentioned above and with regard to the cases in question, the terms of the construction and the commencement of exploitation as well as the amount of bank guarantee to ensure the fulfillment of the investor's obligations, rather than the critical issues related to the environmental impact assessment were deemed the most important criteria for selecting the best proposal.

According to the existing legislation,[813] a permit for the environmental impact is critical to ensure the protection of the State and public environmental, social and economic interests and human health as well as cultural and material assets.

The assessment of the above mentioned legal norms as well as that of the agreement concluded between the Government and the investor on the construction of hydroelectric power plant cascades corroborates that the procedure to obtain necessary permits for the construction of a hydroelectric power plant is of formal character. At the same time, both capacity and output, as well as the responsibilities of the parties have already been determined in the memorandum and/or the contract without any prior assessment or examination which would have provided the grounds to determine whether or not a power plant could have been built at the selected location and if yes with what capacity. It should also be noted that the agreement signed on June 10, 2011 fails to regulate a situation whereby the implementing company is refused permits stipulated by the Georgian legislation regardless of the fulfilment of responsibilities by the parties to the agreement.

Therefore, the procedure of decision making on the construction of a power plant stipulated by the current legislation makes the environmental impact assessment devoid of meaning. As indicated above, a memorandum is formed between the State and an investor on the construction of a power plant is formed at the initial stage. By signing the memorandum the State takes responsibility towards a private company and only after that is the impact checked against such critical issues as ecological, social and economic interests of the state and public, human health, natural environment as well as cultural and material values.

Above described rule of decision making on the construction of hydroelectric power plants[814] fails to comply

812 The rule was applied to during the conclusion of a memorandum on the construction of the hydroelectric power plant cascade on Adjaristskali River.

813 Article 35 of the Law of Georgia on Environmental Protection

814 The issuance of an individual administrative-legal act by the Minister of Energy of Georgia on the construction of hydroelectric power plant, conclusion of a memorandum with an investor, submission of environmental impact assessment to the Ministry of Environment and

with the norms stipulated by Articles 6, 7 and 9 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.[815]

At the same time, the environmental impact assessment system does not conform to the EU directives.[816] For instance, the Georgian legislation does not stipulate the stages of screening and scoping and allows exemption from the obligation of environmental impact assessment if implemented by the state or local authorities and does not obligates the provision of information to the public at an early stage of decision-making etc.

This fact deserves special attention in light of the obligation to bring the Georgian legislation closer to EU's legal acts including the environmental and energy legislation that the Georgia Government committed to by signing the Associatio Agreement with the EU on June 27, 2014.

RECOMMENDATIONS

To the Ministry of Environmental Protection and Natural Resources and the Ministry of Energy of Georgia

- To minimize time for drafting laws for the purpose of approximating the legislation pertaining to environmental protection and energy with that of the EU
- To fulfil the international obligations and ensure the access to information related to the environmental protection and the public participation in every stage of decision making regarding the construction of hydroelectric power plants and develop detailed procedures for the existing legislation to ensure the protection of this right.

Natural Resources to be followed (after the consideration of remarks) by an ecological expertise and receipt of a permit for construction which in turn consists of three stages: check whether or not soil can be used for the construction (identification), agreement over an architectural-construction project and the issuance of the construction permit.

815 The public participation in an initial stage of decision making is not ensured

816 The directive for environmental impact assessment, a directive for the strategic impact assessment, a directive for public engagement etc.

RIGHT TO HEALTH CARE

World Health Organization defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[817]

According to the Article 25 of the Universal Declaration of Human Rights everyone has the right to a standard of living adequate for the health and well-being of himself and of his family. One of the fundamental rights of each individual is to enjoy highest attainable standards of health care. Being in good health and enjoying health care services is the integral part of the Right to Health Care.

Right to Health does is not limited solely to the right to being in good health or the right to its protection, it is rather a complex perception of the nuances of the Right to Health. General Comment N14 of the UN Committee on Economic, Social and Cultural Rights explains that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the underlying determinants of health.[818]

After analyzing the definition of the Right to Health Care, it is clear that the right implies the highest attainable standard of physical, psychological and social conditions, which in its turn depends on the limit of discretion of the state and the existing resources. However it requires the development of legislation and action plan by the state, according to which the health care is accessible for everyone, in the shortest time possible. At the same time, the state should respond to the requirements of social state in order to successfully realize the Right to Health Care.

The Right to Health Care can be differentiated on two levels: 1. creating obligations on international level, which is to a certain extent mandatory for a state and 2. On the national level. These are two parallel rights – wide and narrow; wide, derived from international covenants and definitions of the World Health Organization and narrow, which achieves the realization of the mentioned right through the immediate enforcement of legislation.[819]

All international organizations agree on several important considerations. 1) A person's Right to Health is a legal right rather than a moral obligation; 2) Real efforts and programmatic activities are necessary for the provision and implementation of the mentioned right; 3) All fields of efforts affecting health are provided in the concept on the Right to Health; 4) The obligation is universal, poverty does not justify inaction; 5) The right requires both preventive and fitness activities.

817 WHO – www.who.org, World Health Organization

818 Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000). http://www1.umn.edu/humanrts/gencomm/escgencom14.htm

819 18 Jamar S.D., The International Human Right to Health, Southern University Law Review, 1994, page 56

International declarations of rights to health and health care either include mere suggestions for enforcement or have no schemes for domestic enforcement at all. While these documents may offer moral direction for policymaking to international organizations like the World Health Organization, they provide no protection for individuals seeking access to health care. It is absurd to demand the government provide access to health care based on rights enumerated in the Universal Declaration of Human Rights. In other words, this means that "I have a human right to health care but the law gives me no means of enforcement.[820]

Constitutional justice is mostly stipulated by political and social reality rather than various legal acts. This makes the rights to housing, employment, education and health care fundamental, together with other traditional rights including the rights to demonstration, assembly and conscience; however, codification of these rights and their virtual realization are two entirely different things.

Legal obligations are crucial for the achievement of highest attainable standards of health. The health system must have a comprehensive national health plan; outreach programme for the disadvantaged; a minimum package of health related services and facilities; effective referral systems; arrangements to ensure the participation of those affected by decision making in health; respect for cultural difference; and so on.[821]

The right to health is closely linked with and depends on the realisation of other human rights. This contain the rights to food, housing, employment, education, human dignity, life, non-discrimination, equality, prohibition of torture, information availability and the freedoms of assembly, union and movement. These and other rights and freedoms apply to the indivisible components of the Right to Health.

One of the strong indications of the improvement of life expectancy and quality of healthcare by state is the expenses envisaged in the state budget in this particular direction. As in previous years, two of the priorities of the state budget for 2015 are high quality health care and social security, which envisage the availability of programs ensuring the accessibility of healthcare services, improvement of service quality and provision of needs-based social guarantees to the entire population of Georgia.

Article 15 of the Law on the State Budget of Georgia for 2015 defines the healthcare budget with the amount of 2 785 000 GEL, which is 127 000 GEL higher than the budget of 2014.[822] It is noteworthy that the growth trend has decreased, as in 2014 the funding of this direction was increased by 313 000 GEL.

As in the reports of previous years, the present report analysis the problems related to health care revealed in 2014 as well as the dynamics of realization of obligations by state.

State believes that access to health care is an important priority of further development strategy. For this purpose it is essential to: a) concentrate the existing resources to the highest extent possible in order to ensure the implementation of the Right to Health; b) implement effective activities in order to provide the access to health care services for the vulnerable groups of beneficiaries.[823]

820 Sandhu P.K., A Legal Right to Health Care: What can the United States Learn from Foreign Models of Health Rights Jurisprudence? California Law Review, 2007

821 Backman G., Hunt P… Health systems and the Right to Health: an assessment of 194 Countries, The Lancet, Vol. 372, 2008.

822 Chapter 4, Article 15, Law on State Budget of Georgia for 2015

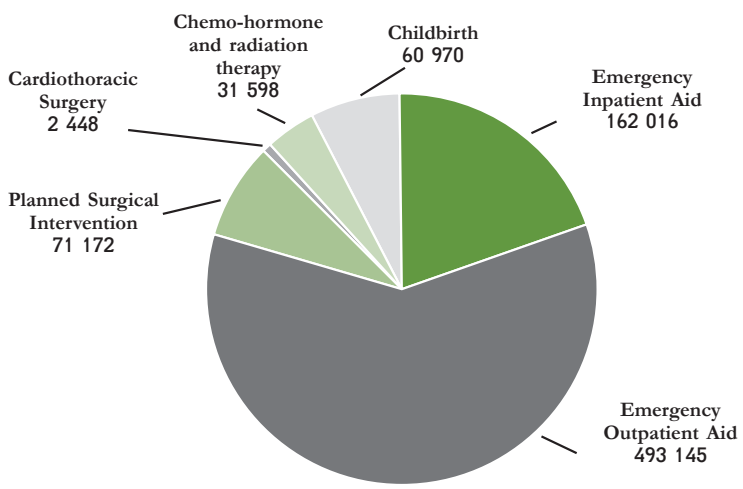
823 Resolution of the Parliament of Georgia on the Approval of the National Human Rights Strategy of Georgia for 2014-2020, dated April 30, 2014

UNIVERSAL HEALTH CARE PROGRAMME

Introduction of the Universal Health Care Program in 2013 was one of the biggest achievements in terms of accessibility of health care. The program provided every citizen of Georgia with a basic package of health care services. The research conducted by the US Agency for International Development in 2014 revealed that 80.3% of the beneficiaries were satisfied with the outpatient services provided by the Universal Health Care Programme and 96.4% were satisfied with the quality of urgent medical services provided at hospitals.

The further development of healthcare policies and programmes, including the Universal Health Care Programme, aims to improve the life expectancy and health conditions of the population. The population of Georgia enjoys higher level of protection from the risks of catastrophic health care expenses and impoverishment.[824]

As of 2014, 2,882,238 persons are registered on the level of primary health care, which in comparison with previous years, is on the increase. Population mostly addresses the medical institutions to receive emergency inpatient or outpatient treatment.[825]



On February 21, 2013 the Resolution N36 of the Government of Georgia on Certain Activities to be carried out with the view of introducing Universal Health Care entered into force. The programme aimed to increase the geographic and physical accessibility of primary health care, outpatient, emergency and planned inpatient

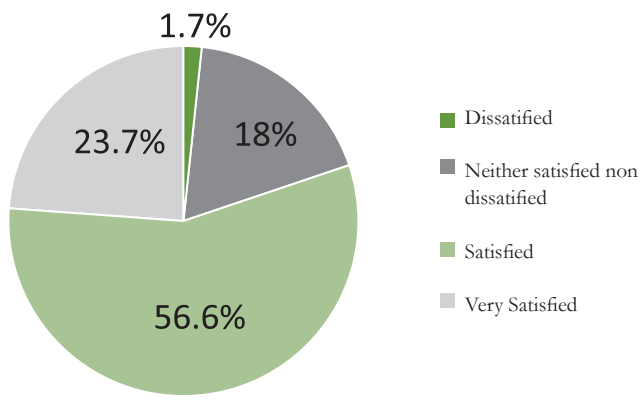
824 Government Programme Strong, Democratic, United Georgia, 2014
825 The Report of the Ministry of Labor, Health and Social Affairs of Georgia, 2014

services and to ensure the financial affordability of medical services.

In 2014 the persons with state health insurance joined the Universal Health Care Programme. There was a risk that, the implementation of the mentioned plan would deteriorate the factual situation of the beneficiaries determined by the Resolution N165 of the Government of Georgia dated May 7, 2012 and the Resolution 218 of the Government of Georgia dated December 9, 2009. According to the amendment made to the resolution of the Government of Georgia in 2014, the beneficiaries of various health care programmes maintained the conditions of medical care, which they used to enjoy within the frameworks of State Health Insurance Programme.

A research was conducted within the frameworks of Health Services Support Project of the US Agency for International Development (USAID HSSP), with an aim to evaluate the Universal Health Care Programme and reveal its strength and weaknesses. The research included two subgroups of the programme target group: a) patients, who had benefited from the planned outpatient services and b) patients who, during the last year of programme implementation received inpatient and/or emergency outpatient services.

It is noteworthy that the half of beneficiaries believes that they need more information regarding the planned outpatient services and procedures funded by programme and considers this a priority issue in terms of programme development. General level of satisfaction of the beneficiaries of the Universal Health Care Programme is very high (80.3%).[826]



GENERAL LEVELS OF SATISFACTION OF THE UNIVERSAL HEALTH CARE PROGRAMME BENEFICIARIES, WHO RECEIVED PLANNED AMBULANCE SERVICES.

12.3% (53 respondents) of the surveyed programme beneficiaries stated that during last year there was a case when they were not able to receive qualified ambulance services due to specific reasons. The respondents named the following factors as obstacles to receiving medical aid:

- Specific service costs were not subsidized by the Universal Health Care Programme.
- Refusal of a service provider (because the service costs were not subsidize by the Universal Health Care Programme).

85% of the beneficiaries think that the biggest achievement/advantage of the Universal Health Care Programme is the improvement of the accessibility of medical services, rather than the state funding.

826 Evaluation of the Universal Health Care Programme with the view of Beneficiaries and Service Providers (final report) USAID HSSP, 2014, page 8

It is also noteworthy that the programme should be enhanced further – the inpatient service package of the Universal Healthcare programme should include certain additional services, the list of subsidized pharmaceutical supplies should also be expanded. The situation in terms of covering the medication expenditures remains unchanged: annual limit is 50 GEL with a 50% co-funding.[827] We believe that it is vital to enhance the list of subsidized medications, as well as the limit of contribution, which will significantly increase the financial access of the beneficiaries to the positive health care.

The level of satisfaction of those beneficiaries who have received inpatient and emergency outpatient services is high (96.4%). Maximum percentage of dissatisfied beneficiaries (5.7%) is stipulated by the Conditions for the Patient's Caregiver to stay in the Medical Facility and the quality of services provided by the Agency of Social Services (more than 4% of the beneficiaries negatively evaluates the response provided by the Agency of Social Services and politeness of its staff).[828]

One of the preconditions for the successful implementation of a health care programme is to address the issue of geographical accessibility. The Report of the Public Defender of Georgia for 2013 notes that in this regard, the population of mountainous regions faces certain challenges. They have limited access to local comprehensive medical services. The population of mountainous regions have to resort to distant medical establishments as the private companies managing local medical establishments cannot provide them with comprehensive medical services due to low work-load and difficulty in maintaining highly qualified personnel.[829]

As of 2013, there was no geographic division of emergency medical aid; the principle of the early provision of the optimal emergency aid was not observed; several operators working within the same region created the problems of movement between the municipalities, the auto park was old and amortized, etc.

In 2013-2014 the state started the renationalization of medical centres owned by insurance companies located in mountainous regions, as the operating companies were not able to provide full-scale medical services.

On the basis of the decision of the Government of Georgia LTD Regional Health Care Centre was established with 100% co-funding, which aims to rehabilitate, develop and manage hospitals in regions of Georgia. Afterwards, the state renationalized 100% share of the LTD Regional Medical Centre owned by LTD Alians Medi+, which is operating on the infrastructural (movable and immovable property) basis of medical centres in the municipalities of Mestia, Oni, Tsageri and Ambrolauri.[830] Currently the medical services in abovementioned municipalities are provided by government. The government has also made a decision to renationalize medical centres owned by insurance companies Irao and GPI (Kazbegi, Tianeti, Bakuriani, Tsalka, Tetritskaro).

In 2013 LEPL Centre for Emergency Medical Aid was established in order to address the problem related to the provision of high quality emergency medical aid and improve the health status of the population living in respective administrative-territorials units; the centre will effectively manage emergency medical aid services on national level (except Tbilisi).

Mandatory number of medical personnel in the emergency medical aid brigades has been defined.[831] Within the frameworks of implemented activities the auto park and relevant medical equipment were notably renovated. In 2014 the Ministry of Labour, Health and Social Affairs of Georgia purchased 180 high and medium performance vehicles[832], which will solve the problem of geographical accessibility to a certain extent. Within

827 Resolution N36 of the Government of Georgia on Certain Activities to be carried out with the view of introducing Universal Health Care dated February 21, 2013.

828 Evaluation of the Universal Health Care program with the view of Beneficiaries and Service Providers (final report) USAID HSSP, 2014, page 13

829 The Report of the Public Defender of Georgia for 2013, page 337

830 Order N2093 of the Government of Georgia on the Inter-agency commission created with the purpose of determination of the price of vouchers based on regional division, identification of insurance company and the monitoring of the activities of insurance company or a partnership selected through a fair competition approved by the protocol of the meeting N19 held on October 22, 2014

831 Resolution N89 of the Government of Georgia dated January 17, 2014

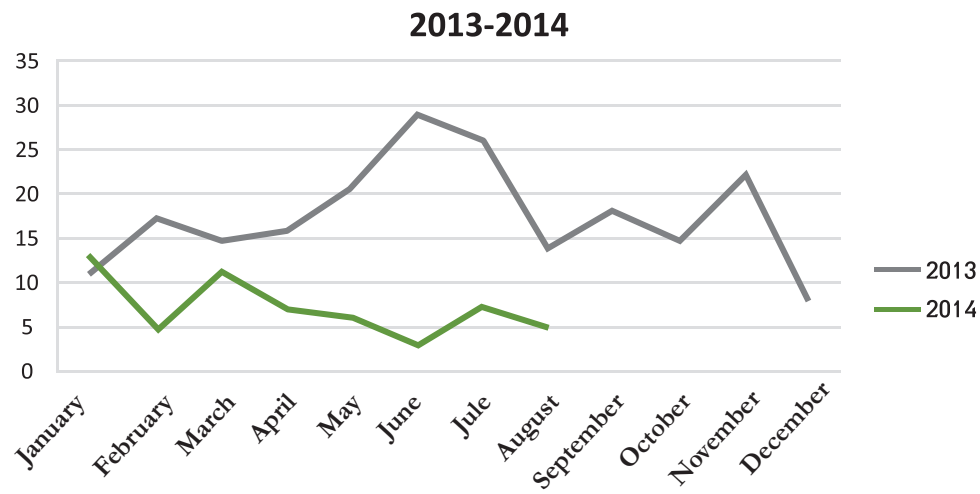
832 The Report of the Ministry of Labour, Health and Social Affairs of Georgia, 2014

the frameworks of the programme Village Doctor the number of medical and nursing units was defined as well.[833]

It is noteworthy that the number of defined units in the mountainous regions cannot fully meet the medical needs of population living there. E.g. the population (900 residents) of villages of Magaroskari of Dusheti municipality (including Chargali) are being served by one doctor and one nurse.[834]

Access to medical supplies and their unaffordability remains to be a serious problem in the mountainous areas of Georgia. Small number of authorized pharmacies operating in these areas cannot fully meet the medical needs of the population, which in frequent cases result in dissatisfaction and avoidance of outpatient treatment by the beneficiaries, which may lead to a drastic deterioration in their health. It is also noteworthy that, in order to improve the local population's access to pharmaceutical supplies, a person with a pharmaceutical education or an independent medical practitioner has the right to a retail sale of pharmaceutical supplies in the villages and rural settlements.[835] The population is not fully informed about such services.

For the effective implementation of the state health care programmes it is necessary to have an independent, efficient mechanism for the examination of the complaints of programme beneficiaries. With this purpose, LEPL Medical Mediation Service was established in 2012, the main function of which was to settle the disputes within the frameworks of state insurance programs and act as a mediator in the respective processes. After the integration of the beneficiaries of State Insurance Programme to the Universal Health Care Programme, the number of applications to the LEPL Medical Medication Service was significantly reduced,[836] which is evaluated quite positively.



After the integration of beneficiaries into the Universal Health Care Programme, LEPL Medical Mediation Service factually lost all of its functions.

833 Order N01-264/o of the Minister of Labour, Health and Social Affairs of Georgia dated December 23, 2013
834 Letter N01/2785 of the Ministry of Labour, Health and Social Affairs of Georgia dated January 16, 2015
835 Article 16, The law of Georgia on Drug and Pharmaceutical Activity
836 The Report of the Ministry of Labor, Health and Social Affairs of Georgia, 2014

PROTECTION OF THE RIGHT OF CHILDREN AND YOUTH TO HEALTH CARE

One of the priorities of the National Human Rights Strategy of Georgia for 2014-2020 is the improvement of child protection and assistance systems, development of social services, reduction of poverty and mortality levels and provision of a high quality education.[837]

In 2012 the UN Assembly's Special Session recognized the absolute necessity to develop national strategies and programmes in the direction of Protection of Adolescent's Right to Health Care, including the identification of respective objectives and indicators.[838]

In this respect, United Nations Population Fund (UNFPA) developed four keys, which includes incorporating youth issues into national development and poverty reduction strategies; expanding access to gender-sensitive sexual and reproductive health education that encourages the development of life skills; promoting a core package of health services and commodities for young people; and encouraging youth leadership and participation, in order to increase their involvement in the decision making process affecting their lives and health.[839]

One of the priorities of the Apparatus of the Public Defender of Georgia for 2014 was to monitor the exercise of the Right Health Care. With the support of the Public Defender of Georgia international organizations Oxfam and Welfare Foundation conducted a research on the Situation of the Right to Health Care among the Population Aged Less than 18 Years. The main purpose of the research was to assess the provision of existing medical services to the children and youth, accessibility (geographic, financial) of medical services within the frameworks of Universal Health Care Programme, availability of information regarding the medical services subsidized by the insurance package and the satisfaction of beneficiaries with the volume and quality of services.

The Ministry of Labour, Health and Social Affairs of Georgia elaborated a national recommendation (guideline) for the clinical practice: The Basic Principles for Monitoring Child Health. Guiding principles envisage the unity of consistent activities with an aim to monitor the health and development status of a child, support his development, identify and manage existing problems, identify the diseases and ensure the timely referral. The recommendations are intended for the primary healthcare personnel.

Monitoring studies of Right of Children to Health Care were conducted in two regions (municipalities of Gori and Zugdidi). It included both quantitative and qualitative research. Three representing groups of stakeholders were selected: 1) Medical personnel 2) Mothers of minors 3) School aged children. The research was conducted in qualitative and quantitative terms.

837 Resolution N2315-IIs of the Parliament of Georgia on the Approval of the National Human Rights Strategy of Georgia for 2014-2020 dated April 30, 2014

838 http://www.unicef.org/specialsession/

839 http://www.georgiaunfpa.ge/unfpa/supporting-youth

The main findings of the research (together with other identified flaws) are:

Problems revealed by the quantitative research:

- Under conditions of the Universal Health Care Programme the share of medical expenses in the monthly income is quite high;
- Awareness of population on the medical services offered by the Universal Health Care Programme is very low;
- Population frequently complains about the fact that the insurance package does not subsidize medicines and they have to purchase medical supplies with their own means;
- The number of those respondents, who were not able to receive healthcare services, is quite high due to various reasons (mainly lack of funds);
- Population frequently complains about the absence of dental services at their respective medical facility;
- The number of those respondents, who were not able to receive dental services due to the lack of funds, is quite high.[840]

In both regions the number of those respondents, who claim that schools do not provide primary health care services (medical unit does not operate), is very high. There are some serious problems in terms of preventive medicine component (primary prevention) in the services of primary health care. Population is not aware of the major behavioural risk-factors (prevention of tobacco, drugs and alcohol consumption, healthy diet, physical activity) and disease prevention. The rate of providing high quality drinking water is low (especially in schools). The number of children consuming inadequate amount of fruits on a daily basis is very high.

Problems revealed by the qualitative research:

- Low awareness of population and medical personnel;
- Increased number of applications and a heavy workload of medical personnel;
- Low remuneration of medical personnel at provider clinics;
- Unqualified medical personnel and a lack of good specialists;
- High levels of responsibility and no adequate protection of doctor's rights;
- Negative attitude of the population towards immunization.

In order to address these problems it is essential to increase the awareness on the medical services offered by the Universal Health Care Programme. It is necessary to improve primary health care services at schools, so that pupils can receive emergency medical aid on spot. More attention needs to be paid to child nutrition. We believe it is necessary to introduce short information-educational courses on healthy diet for children, as well as their parents at schools.

It is necessary to strengthen the component of preventive medicine in primary health care services. Information on major behavioural risk-factors (prevention of tobacco, drugs and alcohol consumption, healthy diet, physical activity) and disease prevention should be available for general population.

The National Human Rights Strategy of Georgia for 2014-2020 plans to support the Right of Children to Health Care. Activities for reducing maternal and child mortality will be implemented. Child health care services will be improved on the level of primary health care. Starting from 2015, the village doctors will be trained in the monitoring of health and development status of 0-3-year-old infants in several pilot regions of Georgia.

840 The Research on the Situation of the Right to Health Care among the Population Aged Less than 18 Years, Welfare Foundation, pages 58-61

PROTECTING THE RIGHT TO MENTAL HEALTH

Georgia, as a democratic state, recognizes that the mental health is a fundamental part of persons' health and one of the main preconditions of society's well-being; protection of rights of persons with mental disorders is a state responsibility.[841]

Mental health and wellbeing determines the quality of life and productivity of a person, family, community and the population in general. Mental disorders exert severel pressure not only on the individual, but also on his/her family and society in general. Persons with mental disorders are one of the most vulnerable groups of society, as, despite their working age and education, their absolute majority is unemployed.

Unfortunately, health care systems cannot adequately respond to the problems of mental disorders; difference between the need for treatment and its provision is very high worldwide. In low and middle income countries 76-85% of persons with mental disorders do not have access to medical treatment; even in high income countries the given indicator is high and ranges from 35% to 50%.[842]

On average, the private share of expenses for mental health is 17.8%; in low income countries (including Georgia) it is 11%, although in Georgia the mentioned indicator is (approximately) 40%.[843] Georgia spends a large part (71%) of funds allocated for mental health on inpatient treatment and the given index remains unchanged (from 2006 to date).[844]

Neuro-psychic diseases in Georgia draw up 22.8% of global disease rate.[845] Mental disorder in Georgia is as widespread as in other countries. It is one of the contributing factors of mortality, disability, economic backwardness and poverty. According to official data on Mental Health in Georgia, as of 2012, the prevalence index of mental disorders among 100,000 residents is 1743.5. In addition, 4,075 new cases of mental disorders were diagnosed, respectively - 90.7 among 100.000 residents. Number of psychiatrists and psychiatric beds is also very low. In this regard, Georgia is considered a less developed country.

The situation of the medical facilities and services in this direction is characterized by low geographic and financial accessibility, low quality and effectiveness and a lack of qualification. Georgian mental health system suffers from a severe lack of human resources, which in absolute figures is a deficit of at least 250 psychiatrists countrywide. The situation of other personnel is even more alarming.[846]

841 Law of Georgia on Psychiatric Care
842 WHO (2013) Mental Health Action Plan 2013-2020; WHO-Geneva
843 Global Initiative in Psychiatry – Tbilisi (2008). Better Mental Health Care for Socially Unprotected Groups of Society. Situation and Needs of Persons with Mental Disorders in Georgia. Analytical Report
844 Resolution N1741-Is on the Approval of a State Concept on Mental Health Care
845 Mental Health Atlas 2011.
846 Protection of Mental Health in Georgia: Problems and Possible Ways of Their Solution. Results of the Assessment of Financial Barriers. Policy Brief. Curatio International Foundation (2014)

It is necessary to improve the mental health and the sense of financial stability of the population in this direction and increase the awareness of society. The resources necessary for the improvement of mental health system include both technical and methodological direction. It is necessary to attract financial resources from the state sources as well as donors. It is also essential to train professional personnel and build their capacity.

In 2012, a special group of the Public Defender of Georgia, within the frameworks of the mandate of national preventive mechanism, conducted monitoring of mental institutions of Georgia. Monitoring mission assessed the infrastructure of the mentioned institutions; group members interviewed the patients as well as doctors and management of the institution. The results of monitoring were reflected in recommendations sent to various agencies.[847]

In 2012 the Public Defender of Georgia provided recommendation to the Ministry of Labour, Health and Social Affairs of Georgia to develop the action plan in this direction in cooperation with the representatives of civil society and other professionals; to develop a control mechanism ensuring the actual protection of patient's rights and the prevention of maltreatment.

The Parliament of Georgia was given a suggestion to enact amendments to Article 18 of the Law of Georgia on Psychiatric Care in order to define the obligation to obtain the conclusion of independent psychiatrist while making a decision on involuntary psychiatric hospitalization. The law has not been amended yet.

The State Concept for Mental Health Care developed for an efficient and rapid solution of the identified problems is evaluated very positively. It aims to determine a unified state policy in this direction and support all stakeholders to make their respective contributions to the process of development and proper functioning of a mental health care system based on their needs, capacities and interests.[848]

The Government of Georgia also developed a National Mental Health Plan (for 2015-2020) which reflects the vision of the state in terms of mental health development for the next 5 years. It defines and values and principles, based on which the mental health will be managed, and the basic needs essential for the realisation of the vision for future. The document is also used as a guide for the development of respective state programmes.[849]

The conceptual basis for this reform is a new approach – balanced care for mental health, which envisages a balanced inpatient and community based care; drug and no-drug therapy; protection of interests of an individual and his family; in addition, it includes the methods for prevention, treatment and rehabilitation.

847 The Report on the Situation in the Mental Institutions of Georgia, 2012

848 Resolution N1741-IS of the Parliament of Georgia on the Approval of the State Concept of Mental Health Care

849 Resolution N762 of the Government of Georgia on the Approval of a Strategic Document on the Development of Mental Health and Action Plan for 2015-2020 dated December 31, 2014

NATIONAL TUBERCULOSIS PROGRAMME

TB infected people are directly linked to the field of human rights protection with an aim to protect their own health. According to Global Fund to Fights AIDS, TB and Malaria: TB is a disease of poverty and inequality… most factors increasing the risks of TB infection and limit the availability of testing, prevention and treatment are linked with the capacity of people to protect their own right.[850]

Negligence of human rights increases the risk of TB transmission and creates economic, social and environmental conditions that facilitate TB transition. Key TB vulnerable groups are: people living in poverty, ethnic minorities, women, children, people living with HIV, prisoners, homeless persons, migrants, refugees and IDPs. These groups most likely live in the settings facilitating TB transition and possess the minimum necessary information, opportunities and resources for the improvement of their health. Additional at-risk groups are the persons working in institutions and alcohol, tobacco and drug users.[851]

TB compromises the realisation of human rights by increasing the vulnerability to the disease. TB patients are victims of a disease on one hand, and on the other hand of the fact that the disease deprives them of other rights as well.[852] TB causes poverty: it hinders a person's ability to work and at the same time increases the expenses related to treatment and care. Individuals may become victims of unjustified and harmful actions, including forced treatment, detention, isolation and imprisonment. In the end, the stigma and discrimination related to TB – additional discrimination stipulated by gender, poverty and HIV status – limits the person's access to employment, housing and social services.

A modern model of TB control is based on the principle of patient management from the very first day of diagnosis and envisages the need for hospitalization only in rare cases. According to the international experience and recommendations, in many countries, including the post-soviet states, hospitalization of regular as well as drug-resistant patients was and still remains to be a widespread model of treatment of TB patients. Prioritization of the model of hospital treatment was justified by various factors, including monitoring of treatment, disease control, management of side-effects and a better chance of treatment adherence.[853]

The World Health Organization elaborated recommendations, according to which the countries with a high TB prevalence should preferably choose the outpatient treatment model. As for the inpatient treatment, it should be used only in exceptional cases. In recent years, in Georgia the focus shifts to outpatient treatment.

850 Global Fund to Fights AIDS, Tuberculosis and Malaria, Global Fund Information Note: TB and Human Rights (2011). http://goo.gl/vyb6Z

851 Global Fund, Global Fund Information Note: TB and Human Rights (2011)

852 IPU, UNAIDS, UNDP, Taking Action Against HIV: A Handbook for Parliamentarians (2007)

853 Bassili A. Fitzpatrick C. Qadeer E. Fatima R. Floyd K. Jaramillo E -A systematic review of the effectiveness of hospital- and ambulatory-based management of multidrug-resistant tuberculosis. American Journal of Tropical Medicine & Hygiene. 89(2):271-80, 2011

Regional Distribution of Hospitals According to Geographical Location

National TB Control Programme operating as well, which aims to decrease the disease rates, mortality and transmission and prevent the development of anti-tuberculosis drug resistance.[854] The beneficiaries receive the services envisaged by the programme in the form of state assistance.

To date, National TB Control Programme is implemented with state and other donor's financial support. State implements its activities within the frameworks of National TB Control Programme, which envisages outpatient and inpatient services, epidemiological surveillance and the components of laboratory services. Anti-tuberculosis drugs and test systems of TB diagnosis are implemented with the financial support of Global Fund and the Foundation for Innovative New Diagnostics (FIND); another important component of sector development is implemented by the Tuberculosis Prevention Project of US Agency for International Development (USAID).

The Law on State Budget of Georgia for 2015 allocated 11 850 00 GEL for the National TB Control Programme, which has increased insubstantially compared to the previous years

Insufficient access to the health care services causes a gap in TB testing and treatment, which stipulates the increase in the number of active TB cases, worsened clinical symptoms and anti-TB drug resistance rates. Due to the economic, social and legal factors an individual is unable to contact respective health care systems in a timely manner. Main barriers are: lack of funds, transportation to the medical facility, insufficient information about the treatment regime, fear of stigma in case of positive diagnosis and absence of social support while living with the disease. For a lot of people employment is of higher importance than being in good health.

On a systematic level, unprotected and at-risk groups have a little access to health care systems, which provide alternate treatment, referral procedures and a strong mechanism for treatment coordination.

The cases of fragmented or terminated treatment as well as the loss of social services are more common among the mobile and migrant population. Affected groups include the migrants, stateless persons, the homeless, refugees and IDPs. According to Human Rights Watch:

Normally, TB is easily and cheaply treated. However the prevalence of difficulties to treat drug-resistant strains of TB, high incidence of co-infection with HIV, lack of cross-border mechanisms for referral and follow up

854 Resolution N92 of the Government of Georgia on the Approval of State Health Care Programmes for 2012 dated March 25, 2012

care and surveillance, and the difficulty of treatment adherence while in transit, make mobile and migrant populations face a serious health challenge.[855]

In 2014 the European Office of the World Health Organization conducted a study in Georgia with an aim to support the National TB Control Programme and promote the protection of human rights and the development of legislation in this direction. Conclusion of the mission revealed that the national legislation does not have a clear approach to this issue. There are various guiding principles and instructions, which do not determine the cases when the patient can be engaged in a forced treatment process.[856]

According to the legislation of Georgia the Department for Public Health has a right to request the mandatory medical check, if there is a reasonable doubt that an individual is a carrier of a contagious disease and endangers public health. It is necessary to observe basic human rights and freedoms while implementing the mentioned action. Isolation and quarantine of a person is allowed only during emergencies. The decision on the isolation or quarantine of a person is made by the Department of Public Health in consistence with the principles of European Convention for the Protection of Human Rights and Fundamental Freedoms.[857]

The Public Defender of Georgia believes that it is necessary to develop a special legal package providing the protection of individuals and society through an effective control of tuberculosis. This envisages the issues of TB prevention, treatment and long-term care of people living with TB. The given law should be based on the respect and protection of individual and social rights of the patient. It is also essential to develop a long-term national strategy and action plan consistent to the internationally recognized norms.

It is also noteworthy that one of the main directions of the Apparatus of the Public Defender of Georgia is to monitor the protection of human rights of people living with TB. After the evaluation of current situation, through cooperation with the respective agencies, it is necessary to strengthen the relevant aspects of the health care system, including Health Care Policy and Management, availability of financial and human resources, improved laboratory capacity for a better system of diagnosis and identification of drug resistance. After the evaluation of current situation and cooperation with respective agencies, it is necessary to strengthen the relevant aspects of health care system, including the Policy and Management of Health Care, mobilization of financial and human resources, improved laboratory capacity for a better system of diagnosis and identification of drug resistance, management of health care services, provision of supplies, management of medical technologies, data and information. In addition, it is important to review and improve existing legal framework and make necessary adjustments based on public health needs.

RECOMMENDATIONS

To the Parliament of Georgia

- Enact necessary amendments to the legislation, which will provide the protection of individual and social rights of people living with TB as well as interests of society as a whole.

To the Ministry of Labour, Health and Social Affairs

- Elaborate proposals in terms of enhancing the services covered by the Universal Health Care Programme;

855 Human Rights Watch, No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa (Dec. 7, 2009). www.hrw.org/node/86959

856 Human Rights Applied to Tuberculosis (TB) Control in the National Legislation of Georgia Mission Report 9-12 December 2014

857 Law of Georgia on Public Health

- Review and expand the list of medicines subsidized by state programmes as well as their coverage limit;
- Implement effective measures for ensuring the maximum geographical access to the right to health care;
- Develop a unified state strategy providing the accessibility of medical services and availability of pharmaceutical supplies for the population living in the mountainous regions of Georgia;
- Elaborate the guiding principles for the implementation of Children's and Adolescent's Right to Health Care;
- Undertake effective measures to improve the primary health care services at educational institutions. Develop awareness raising informational and educational measures;
- Develop complex activities aiming to raise awareness, improve the quality of medical services and train medical personnel, in order to protect and promote the Right to Mental Health.

INTRODUCTION

Highlights of positive developments undertaken by Georgian state in 2014 for improving children's well-being include the following: Parliamentary Committee for Human Rights Protection and Civil Integration declared the year 2014 as the year of protection of the rights of the child[858]; the Parliament adopted a concept and an action plan on the Declara-tion of 2014 as the Year of Protection of the Rights of the Child with the goal to develop specific laws and policies for full protection of the rights of the child; the Government of Georgia presented the fourth report on the implementation of the Convention on the Rights of the Child to the UN Committee on the Rights of the Child; Georgia joined the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[859]; the Government of Georgia approved[860] the Governmental Human Rights Action Plan for the years 2014-2015, which includes the protection of the rights of the child as a separate chapter. Its implementation will facilitate the improvement of the protection of the rights of the child; on April 14, 2014 the Government of Georgia ap-proved National Programme for Social Rehabilitation and Childcare of 2014 by resolution No 291. The Programme has served as the basis for developing sub-programmes aimed at the protection of social rights of children including the sub-programme of Providing Shel-ter for Homeless Children and sub-programme of Emergency Help for Families in Crisis with Children; draft Code of Juvenile Justice has been developed, which is an important step in the process of introducing specialized justice system for children; the Ministry of Education and Science of Georgia developed a draft Law on Preschool Education. Howev-er during 2014 no amendments were made to the Law of Georgia on General Education for fully eliminating corporal punishment; during the reporting period the Government of Georgia approved a renewed system of social assistance within which all families with children whose rating score does not exceed 100,000, are entitled to receive additional monetary assistance; in December 2014 the Government of Georgia initiated several tar-get activities for the children with disabilities[861] such as increasing the amount of pension, designing new special services including homecare programme to be introduced in 2015.

At the same time it should be noted that effective implementation in practice of the Law of Georgia on the Protection of Minors from Harmful Influences and implementation of the Law on Prevention of Diseases Caused by the Deficiencies of Iodine, other Microele-ments and Vitamins still remains a challenge. This is caused by legal drawbacks in these acts.

Failure to finalize the process of signing and ratification of Additional Protocol No 3 of the Convention of the Rights of the Child on Communication Procedures[862], despite several re-quests from the Public Defender to do so starting from 2013, deserves a special mention.

858 http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/adamianis-uflebata-dac-visa-da-samoqalaqo-integraciis-komiteti/axali-ambebi-adamianis/parlamentis-ada-mianis-uflebata-dacvisa-da-samoqalaqo-integraciis-komitetma-2014-weli-bavshvta-ufle-bebis-dacvis-wlad-gamoacxada.page

859 Resolution of the Parliament of Georgia No 2145-IIs dated March 19, 2014

860 Governmental Decree N445 dated July 9, 2014 on the: approval of the Governmental AP (2014-2015) on the Protection of Human Rights, HR Interagency Council, HR Secretariat of the Administration o f the Government of Georgia.

861 http://unicef.ge/62/unicefis_gantskhadeba_shezguduli_shesadzleblobebis_mqone_bavshve-bis_shesaxeb/301

862 Adopted by the resolution N17/18 of UN HRC dated July 14, 2011.

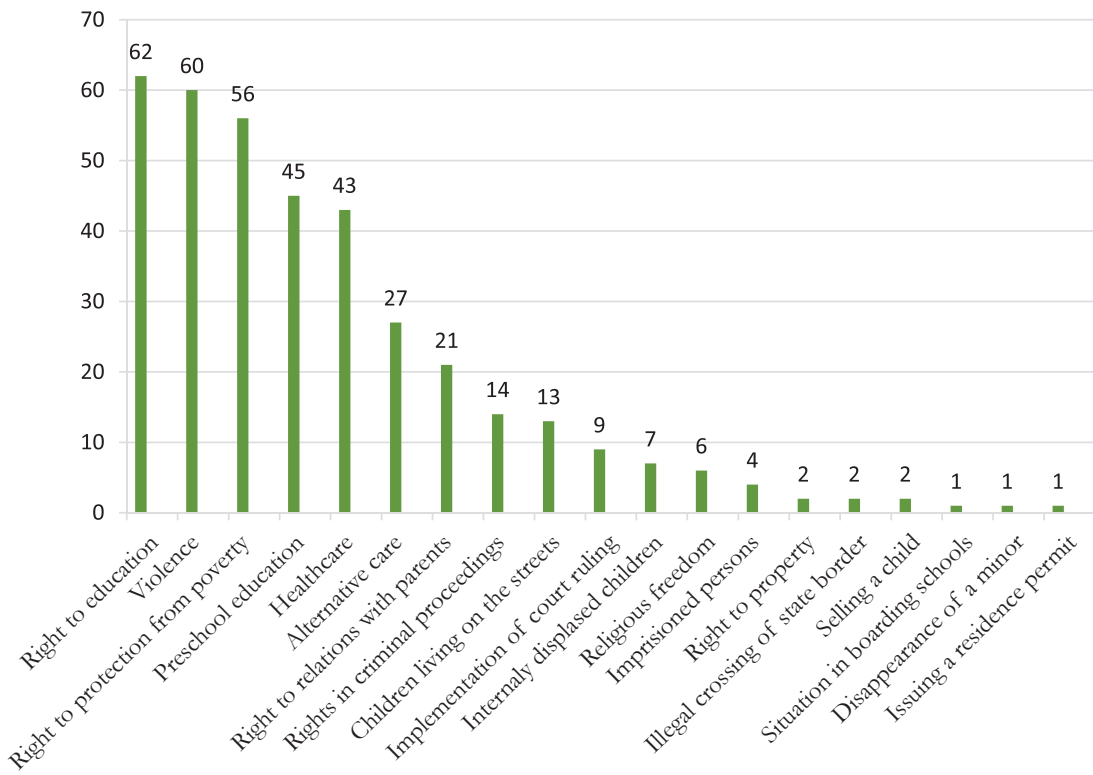
The Child's Rights Centre of the Public Defender's Office prepared and issued 9 recom-mendations and proposals to various agencies based on the information received as a result of evaluation of the situation regarding the rights of the child. Out of these 9, 4 have been implemented, 3 have been partially implemented and 2 have not been imple-mented. Further, proceedings started regarding 419 cases of rights violations. Analysis of these cases has shown, that based on quantitative indicators, the rights to education, protection from violence and other types of inappropriate treatment against children, right of protection from poverty and inadequate living conditions, rights to preschool ed-ucation and healthcare are not fully realized. Prevalence of death among children below 5 years is high; deinstitutionalization is still a challenge and so is the introduction of state services targeted at the needs of children living and working in the street.

Child's Rights Centre of the Public Defender's Office regularly monitored the situation regarding the protection of the rights of the child during the reporting period. Preschool education institutions, juvenile penitentiary institutions, as well as small family type homes have been monitored. Quality of the protection of the rights of the child has been assessed in the highland regions of Georgia, in public schools, in boarding schools, in the day care centres functioning within the scopes of the sub-programme of Providing Shelter for Homeless Children, in 24-hour shelters for crisis intervention and transitional centres, in children's healthcare institutions.

Through the support from the UNICEF, the Centre developed a strategy for the years 2014-2017. The strategy calls for systematic monitoring of the protection of the rights of the child within the Human Rights Action Plan and for strengthening the capacity of Public Defender's regional offices in the area of the rights of the child.

It should be noted that within the scopes of the power of attorney of the Public Defend-er, for the first time, monitoring of children's homes (orphanages) operated by religious confessions was conducted. The monitoring was carried out together with the experts of a special prevention group and its results will be presented as a special report.

Figure 1 Numbers and types of the cases studied by the Child's Rights Centre during the reporting period



2014

THE STATE OF PROTECTION OF THE RIGHTS OF MINORS IN HIGHLAND REGIONS OF GEORGIA

From May 1, 2014 to January 31, 2015 the Child's Rights Centre of the Public Defender's Office of Georgia conducted an assessment of the state of protection of child's rights in highland regions of Georgia, namely in administrative units of Mestia, Kazbegi, Akhmeta, Oni, Ambrolauri, Shuakhevi and Keda. The assessment took place within the scopes of the project supported by the UNICEF – Strengthening the Capacity of Child's Rights Cen-tre. The goal of the monitoring was to study the state of the protection of child's rights in these regions and establish its compliance with national and international standards.

THE RIGHT OF THE CHILD TO PROTECTION AGAINST POVERTY AND INADEQUATE LIVING CONDITIONS

In highland regions many children live in extreme as well as relative poverty. National programmes for early childhood development and prenatal care are not implemented adequately. Currently operating inclusive and integration policies and programmes for children under 6, especially for the most vulnerable groups, have certain flaws in the process of implementation.

According to the evidence from the UNICEF[863], 9.4% of children back in 2011 were living in extreme poverty. The UNICEF report[864] states that in order to reduce child poverty, it is necessary to improve social protection mechanisms over the next five years for better distribution of social assistance: adequate reflection of children's needs in targeted assis-tance programmes, expanding the scope of social assistance and healthcare programmes to cover all poor households.

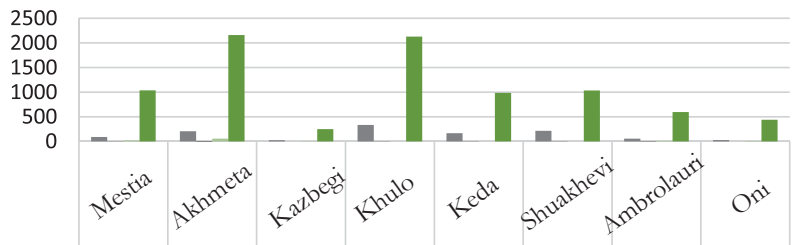
On April 14, 2014 the Government of Georgia approved the National Programme of Social Rehabilitation and Childcare with the resolution No 291. One of its sub-programmes – Emergency Help for Families in Crisis with Children – includes provisions for satisfying the basic needs of poor families with children. However target groups of this sub-programme are not clearly defined and criteria for inclusion in the list of beneficiaries are not deter-mined. In practice, the number of beneficiaries from highland regions participating in this sub-programme is very low – only 38 families with children in 8 highland regions are ben-eficiaries while 1510 recipients of social assistance package and 8638 recipients of living subsistence are registered in these regions[865] (see table 1).

On March 31, 2014 the Government of Georgia approved the National Programme for Improving Demographic Situation with resolution No 262. 102 families from highland re-gions participated in this

863 UNICEF, Georgia – Reduction of Child Poverty, Tbilisi 2012
864 UNICEF, Georgia and the Convention of the Rights of the Child, Tbilisi, 2011
865 http://ssa.gov.ge/index.php?lang_id=&sec_id=882; http://ssa.gov.ge/index.php?lang_id=&sec_id=766

programme during the reporting period. Families with children living in Khulo, Shuakhevi and Keda are not included in the target groups for this pro-gramme while the indicators of child poverty and other risk-factors are significantly high in these regions as well (see table 1).

Table 1



	Mestia	Akhmeta	Kazbegi	Khulo	Keda	Shuakhevi	Ambrolauri	Oni
Number of children receiving social package	92	207	26	336	167	217	57	29
Number of families in crisis with children participating in the Emergency Assistance sub-programme	5	10	1	5	4	4	8	1
Number of families with children participating in the National Programme for Improving Demographic Situation	21	56	7	0	0	0	10	8
Number of children receiving living subsistence	1037	2159	251	2129	986	1033	598	440

Analysis of national programmes and sub-programmes designed for ensuring the real-ization of social rights has demonstrated that these programmes do not duely reflect socio-economic needs of children living in highland regions. Accordingly, effective inter-ventions, which could facilitate protection of minors living in the highland regions from poverty and inadequate living conditions, are not sufficient.

Analysis of municipal social programmes and sub-programmes aimed at the reduction of child poverty and inadequate living conditions has demonstrated that anti-poverty mech-anisms at municipal level are mostly targeted at families with many children. However the level of funding is very low, and so is the number of beneficiaries participating in the programmes. Thus for example the programme for Social Assistance for Infants and Orphans in Families with Many Children in Oni municipality allocates 80 GEL for 3 chil-dren and 100 GEL for 4 children as a single-time monetary assistance. There were only 3 children beneficiaries participating in the target sub-programme of Free Municipal Lunch-room in Khulo in 2014.

Low level of awareness about the services available within the scopes of targeted social assistance among families with many children living in highland regions is another issue. This is true of national as well as local municipal programmes. One of the factors contrib-uting to the low access to information is inefficient communication of municipal social services with population, especially with the most vulnerable groups.

According to article 31 of the Constitution of Georgia the Government shall support equal socio-economic development throughout the whole country while paragraph 2 of article 36 states that the state should support well-being of families.

According to paragraph 1 of the article 27 of the Convention on the Rights of the Child, 'states Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development' while paragraph 3 states that 'states Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support pro-grammes, particularly with regard to nutrition, clothing and housing'.

Paragraph 54 of the Concluding Observations of the Committee on the Rights of the Child (CRC), dated June 23, 2008, maintains, that the state party shall take necessary steps to eliminate poverty among children, especially for families living in rural and remote areas[866].

According to the Governmental Action Plan of Human Rights Protection, it is necessary to improve children's social protection system in order to eliminate poverty among chil-dren. This should include the enhancement of targeted social protection system to better reflect the needs of children.

RIGHT TO PROTECTION AGAINST VIOLENCE AND OTHER TYPES OF INAPPROPRIATE TREATMENT

Georgia still faces serious issues in effective prevention of violence against children, elim-ination of violence, provision of help and protection to the victims of violence[867]. This is evidenced by the study on Violence against Children in Georgia, conducted by the UNICEF in 2013.

Inspection of the situation regarding the protection of child's rights has revealed certain violations in terms of violence and other types of inappropriate treatment against chil-dren.

Referral procedures[868] of child protection establish that the cases of violence should be exposed and prevented, victims of violence should be protected by the representatives of patrol police and district services of the Ministry of Internal Affairs[869]. Accordingly, ef-ficiency of identifying cases of violence against children and implementation of further activities by the Ministry of Internal Affairs has been studied during the reporting period.

Registered data and evidence on the cases of violence against children have been anal-ysed. According to statistical data provided by territorial units of the Ministry of Internal Affairs of Georgia[870], the Ministry started proceedings on violence against minors in high-land regions in 208 cases that were registered during 6 months in 2014 (January-June). However the Ministry of Internal Affairs has not provided responses to these appeals within the period of time determined by law[871].

The role of general schools is very important for the protection of children against vi-olence and other types of inappropriate treatment. Schools have the responsibility to analyse the case on the spot where violence is believed to have taken place. They are also responsible for monitoring the conditions of the victim of violence in cooperation with police or the agency[872].

866 http://www.refworld.org/type,CONCOBSERVATIONS,CRC,GEO,4885cfab0,0.html

867 Report of the Public Defender of Georgia on the Protection of Basic Human Rights and Freedoms, 2013, p. 454

868 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures

869 Ibid., Article 4, paragraph 2

870 http://police.ge/files/pdf/9%20%E1%83%9D%E1%83%AF%E1%83%90%E1%83%AE%E1%83%A3%E1%83%A0%E1%83%98%20%E1%83%AB%E1%83%90%E1%83%9A%E1%83%90%E1%83%93%E1%83%9D%E1%83%91%E1%83%9-0%202007-2014--6%20 %E1%83%97%E1%83%95%E1%83%94___.pdf

871 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures, Article 4, paragraph 4

872 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures, article 4, paragraph 4

In highland regions of Georgia cases of violence against minors are often not exposed (this is particularly true of domestic violence, including psychological threat and abuse). Legal proceedings and measures for protection of children who are victims of violence are often not effective. The case of 16-year-old A. Ch. in one of the villages of Keda municipal-ity is an illustration of this. According to the information provided by LEPL Social Service Agency of the Ministry of Health, Labour and Social Protection to the Public Defender's Office, the child was systematically subject to psychological violence in the family, which resulted in a suicide attempt. However representatives of local law-enforcement bodies were not engaged in the case at any point, and no protective measures were taken to help the victim. LEPL Social Service Agency studied the case of A. Ch. and preventive measures were taken to protect the child from further maltreatment.

It is essential that all cases of violence are exposed by schools, healthcare centres, village doctors, specialized children's institutions, district service and patrol police[873]. As demon-strated by the activities carried out within the scopes of the project, practical implemen-tation of the above-mentioned regulation is hindered by the following circumstances: lack of the position of a psychologist among the staff of district centres of LEPL Social Service Agency, the need of training and professional development for social workers to better prepare them for assessment of children, issues related to planned and unplanned field visits (including inadequate infrastructure, such as lack of the means of transporta-tion constraining planned and unplanned visits by social workers), issues related to timely execution of proceedings and in-depth study of actual evidence. Similar to the report of 2014, the report of the Public Defender of 2013 stated that improving qualifications of social workers was a necessary condition for realizing child's rights in highland regions. Moreover, in 2013 the Public Defender addressed the Minister of Labour, Health and So-cial Protection with a request to provide LEPL Social Service Agency (the body responsible for childcare) with adequate means of transportation. However this proposal was not implemented in 2013 and 2014.

CASES OF N.TCH., T. TCH. AND D. TCH.

A typical case of violence against children was the case of N. Tch, T. Tch. and D. Tch. Fol-lowing the monitoring conducted in highland regions of Georgia, representatives of Pub-lic Defender's Office received information[874] about minors N. Tch, T. Tch. and D. Tch. living in one of the municipalities in Zemo Svaneti region. It has been reveled during the inspec-tion of the case that children were victims of domestic violence. They were subjected to systematic physical and psychological violence. According to factual evidence collected, no relevant criminal proceedings have taken place and no child protection measures have taken place in connection with the likely instance of violence against N. Tch, T. Tch. and D. Tch.

The Child's Rights Centre of the Public Defender's Office addressed the Ministry of La-bour, Health and Social Protection with the request to respond to the case and to carry out relevant child protection measured[875]. Based on this request, a social worker from the district social service centre of the LEPL Social Service Agency visited the family[876]. Eval-uation of conditions of these minors has revealed that they had indeed been subjected to violence and other types of inappropriate treatment including neglect and coercion. Through the report prepared by the social worker the need to remove children from the family and place them in state care facilities became apparent. As a result, the minors were included in the foster care sub-programme[877].

873 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures, Article 6 (1)
874 Case No 12507/1
875 Letter No 10-2/10099, dated August 5, 2014
876 Letter No 14277/1, dated September 04, 2014
877 Letter No 19923/1, dates December 23, 2014

According to article 19 of the Convention of the Rights of the Child, state parties shall take all appropriate legislative, administrative, social and educational measures to pro-tect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. The Committee for the Rights of the Child, in paragraphs 31 to 33 of the Concluding Observa-tions of the Committee on the Rights of the Child (CRC)[878], dated June 23, 2008 pointed out to the responsibility of Georgia to take all necessary measures to prohibit violence against children, especially domestic violence.

In 2014 Georgia joined the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Article 4 of the Convention obligates the state to take all legislative and other appropriate measures in this sphere for prevention and further protection of minors.

The Law of Georgia on The Law of Georgia on Preventing Domestic Violence, Protecting and Assisting the Victims of Domestic Violence specifies procedures for protection and assistance of children in cases of domestic violence.

Articles 3 and 20 of the Law of Georgia on General Education outline responsibilities of the state to prevent violence in general educational institutions.

ACCESSIBILITY TO CHILD HEALTHCARE

According to the report Georgia – Evaluation of the Efficiency of Healthcare System, pre-pared by World Health Organization (WHO), ensuring the accessibility of quality medical services through continuous professional development of medical staff should be the pri-ority of national healthcare in Georgia[879].

Results of the inspection have demonstrated that in a number of administrative units and villages in highland regions medical centres are not functioning, outpatient clinics do not employ children's doctors, which causes problems for accessibility of public medical services. Poor conditions of facilities in out-patient clinics, insufficient number of medical staff in existing out-patient clinics, lack of necessary equipment in emergency medical centres is another serious issue. In order to solve problems with accessibility of health-care in highland regions, the Public Defender of Georgia issued a recommendation[880] for the Minister of Labour, Health and Social Protection and requested to take appropriate measures. However these measures have not been taken until this day.

According to the information requested form the Ministry of Labour, Health and Social Af-fairs on November 17, 2014, issues of accessibility of child healthcare services in highland regions are largely caused by the lack of doctors of specific highly demanded priority spe-cializations. The Government is planning to address this problem by funding post-grad-uate educational courses (residency) for the students seeking to acquire qualifications of a doctor. Even though this measure might improve the realization of child's rights to healthcare, it could be less efficient for ensuring uninterrupted services and proportional/ adequate staffing.

As for the healthcare programmes implemented by local self-governing bodies within the scopes of their power of attorney, problems related to regular supply of healthcare ser-vices by representative and executive bodies, small scopes of municipal programmes and insufficient funding are all issues to be addressed. For example, target groups and priori-ties listed in article 5 of the resolution No 2 of January 2014 of Akhemta municipality on Social Assistance Programme and Budget for 2014 do not include children and healthcare services for them.

878 http://www.refworld.org/type,CONCOBSERVATIONS,CRC,GEO,4885cfab0,0.html
879 http://www.healthrights.ge/wp-content/uploads/2011/07/2009_Shepaseba_Jand.-Sistemis-An-garishi_Georgia.pdf
880 Letter No 10/14687, December 24, 2014

Some municipal programmes include measures to provide necessary medications for children. However these programmes are underfunded. Thus for example financial as-sistance programme designed to provide medicines for sick children under 18 in Mestia municipality allocates only 100 GEL for each beneficiary as a single-time assistance.

The right to healthcare, as a reflection of the principle of a social state, is reinforced by Article 37 of the Constitution of Georgia, which determines three interconnected criteria of accessible medical care – geographical, financial and informational accessibility.

In accordance with paragraph 1 of Article 24 of the UN Convention of the Rights of the Child, States Parties recognize the right of the child to the enjoyment of the highest at-tainable standard of health and to facilities for the treatment of illness and rehabilitation of health. In paragraph 44 of the Concluding Observations of the Committee on the Rights of the Child (CRC)[881], dated June 23, 2008 it is stated that in Georgia many children have restricted access to healthcare services and facilities due to geographical conditions.

Paragraphs "A", "B" and "J", article 4 of the Law of Georgia on Healthcare reinforce the principle of equal and universal accessibility of medical care, protection of human rights and freedoms in the field of healthcare, recognition of respect, dignity and autonomy, sig-nificance of first medical aid including emergency care, improvement of family medicine and family doctor system and related services.

RIGHT TO GENERAL EDUCATION

The following major criteria of the constitutional right to general education are not met in public schools located in highland regions: 1) effective implementation in practice of equal access to basic/general education; 2) observation of the principle of geographi-cal accessibility in public school operation; 3) creation of safe and adequate physical in-frastructure and environment for students at basic/general schools; 4) right to effective and quality education; 5) introduction of inclusive education and adaptation of physical/ educational environment of educational institutions for children with disabilities/special educational needs.

Right to access to general education – in highland regions the problems of equal access to education are related mainly to the insufficient number of general schools, physical and geographical inaccessibility, low indicators of participation of public schools in 'School Accessibility'[882] programme (see table No 2).

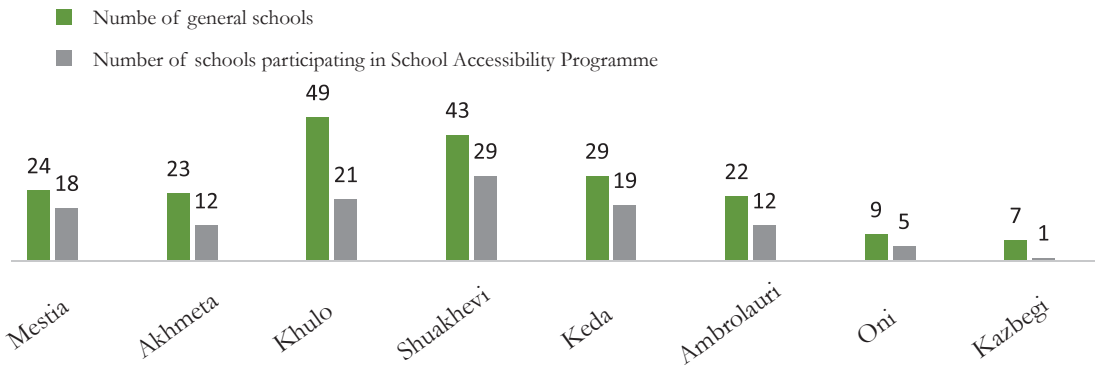
Physical/geographical accessibility of general education is a problem in village Adishi of Mestia municipality. There is no public school operating in the village and the closest public school is located in village Ipari. Distance between the two villages is 9 kilometres. Ipari school is not in possession of a school transportation vehicle and therefore right to general education of the children living in village Adishi is limited.

Access to general education is also limited in public schools located in Kazbegi municipal-ity. Out of 7 general schools located in Kazbegi municipality, only Gudauri public school is participating in the 'School Accessibility' programme even though barriers to physical accessibility and related risk factors have also been found in other 6 schools in the mon-itoring process.

881 http:/www.refworld.org/type,CONCODSERVATIONS,CRC,GEO,4885cfab0,0.html

882 Decree of the Minister of Education and Science of Georgia of April 11, 2014, on the Approval of the Pro-gramme for Improving General Education, on Declaring Invalid the Decree of the Minister of Education No 1171 of November 26, 2012, and on amending the Decree of the Minister of Education and Science No 1124 of December 30 on the Approval of the Programme for Improving General Education.

Figure 2



Situation in village Dzibakhevi of Akhmeta district is also challenging in terms of access to general/ basic education. There is no functioning public school in Dzibakhevi. In 2005, primary education classes were opened in a 'wooden cabin' as a result of the request form local population. 4 primary grades were operating – 1st, 2nd, 3rd and 4th mixed age classes[883]. Three teachers were employed to teach these classes. The closest school was located in village Birkiani and these mixed classes were administratively part of Birkiani school. Parents in Dzibakhevi requested to properly equip the existing classes however in 2014 the mixed classes in Dzibakhevi were altogether abolished[884].

In order to achieve full equality, access and inclusion in basic/general education in high-land regions of Georgia it is essential for the state, to fulfil its positive obligation, to in-crease geographical scopes of operation and improve quality of its general schools and when needed allocate increased amounts of per capita funding[885]. In addition, in order to meet requirements of International Standard Classification of Education[886] special target programmes should be designed for accessible and efficient implementation of formal/ non-formal education.

The right to quality and efficient general education – operation of efficient, inclusive and quality educational system is related to a number of challenges such as the need for teacher training and professional development. Improvement of teacher qualifications should be achieved through attracting new highly qualified personnel to teach at edu-cational institutions as well as through systematic professional development of current teachers. The challenges also include a low quality of effectiveness of methodological system of teaching embedded in the national curriculum, as well as of the limited scope of implementation of state funded programmes designed for this specific purpose.

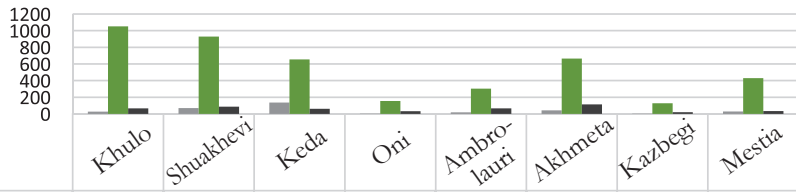
The right to quality general education fails to be realized in highland regions of Georgia due to such problems as low teacher qualification levels and the need for professional development. Low number of certified teachers in highland municipalities is one of the indicators pointing out this problem (see table No 3). For example out of 430 teachers in Mestia public schools only 34 are certified and out of 1051 teachers in Khulo public school – only 67.

The Ministry of Education and Science of Georgia carried out several major programmes in 2014 to support professional development of teachers in highland regions[887]. Howev-er these activities are not enough to ensure high quality of education. Another factor impeding the provision of quality education is the large

883 Letter of the Ministry of Education and Science of Georgia No 10675/1, dated May 22, 2014
884 Letter of the Ministry of Education and Science of Georgia No 10675/1, dated May 22, 2015
885 Paragraph 2, article 7 of the Law of Georgia in General Education
886 UNESCO, „International Standard Classification of Education", 2011
887 http://www.tpdc.ge/uploads/pdf_documents/consolidated%20program%202014%20Inclu-sion%20May%201.pdf

number of mixed-age classes in public schools located in highland regions (see table 3). Thus for example, in public school of village Maghraani in Akhmeta municipality there are 10 mixed-age classes while there are 6 mixed-age classes in village Tunadzeebi of Khulo municipality.

Table 2



	Khulo	Shuakhevi	Keda	Oni	Ambro-lauri	Akhmeta	Kazbegi	Mestia
Number of mixed-age classes	27	70	137	3	18	43	4	29
Number of teachers	1051	929	654	155	304	665	128	430
Number of certified teachers	67	87	61	32	66	114	21	34

Infrastructure at public schools – monitoring of public schools has revealed that infra-structure and sanitary-hygienic conditions at many of these schools are not fully safe and suitable for students.

Infrastructure at general schools located in Mestia municipality is in particularly dire state. For example an external primary class in village Zemo Marghu, which administratively belongs to the public school in village Karsgurishi, does not have any allocated building. Children have to attend lessons at a privately-owned house. External class of village Mu-lakhi school, which is located in village Mushkeli has similar problem – the class is located in an abandoned house and accommodates 3 students and 4 teachers.

Public school of village Sno in Kazbegi is also in need of improvement of physical environ-ment and infrastructure. Infrastructure needs to be modernized (teaching and learning materials have not been updated for decades, and majority of them date back to 1960s), the building needs rehabilitation and sanitary-hygienic conditions need to be improved.

Public school of village Tsvirmi is in unfavourable condition as well. 10 classrooms in this schools cannot be considered safe for children. The school building needs urgent repair, it is damp and fungi are growing on classroom walls. Level of humidity in the school is so high that windows are permanently wet. The floor in the building is deformed and library wall is torn down. The Public Defender issued a recommendation for the Ministry fo Edu-cation and Science (No 10/9591, dated July 22, 2014) to improve physical environment at the school. As a result, necessary procedures for the construction of a new building have been started.

Sanitary and hygienic conditions are not satisfactory in public schools in Karsgurishi com-munity, village Latali, village Nakra and Mulakhi community (Mestia municipality). There are no bathrooms inside buildings of these schools and they are not equipped with per-manent water supply system.

On the positive side, based on the information provided by the Ministry of Education and Science[888], rehabilitation works were carried out in a number of public schools in highland regions.

In 2013 the Public Defender issued several recommendations to increase accessibility of public schools in highland regions. However, only some of them have been implemented in 2013-2014. The same trend can be observed regarding the rights of students with disabilities/special educational needs. As a result, adaptation of physical environment at schools, increasing geographical and physical accessibility, low levels of qualification of teachers, etc. still remain unresolved issues.

888 Letter of the Ministry of Education and Science of Georgia No 19908/1, dated December 16, 2014

According to paragraph 4, article 35 of the Constitution of Georgia, the state should sup-port the operation of educational institutions in accordance with relevant laws.

According to article 28 of the Convention of the Rights of the Child, the state parties shall make primary, secondary and tertiary education available and accessible on the basis of their capacity. Sub-paragraph (a) of paragraph 57 of the Concluding Observations of the Committee on the Rights of the Child (CRC), dated June 23, 2008[889] emphasizes the obliga-tion of the state to allocate additional funds to ensure that everybody's right to education is realized. Sub-paragraph (b) of the same paragraph recommends to the state to focus on an overall improvement of the quality of education provided, particularly in rural and minority regions. According to sub-paragraph (c), quality of education should be improved through bettering material provisions of schools.

Article 3 of the Law of Georgia on General Education maintains that the state should en-sure openness and equal accessibility to general education system for all.

IMPLEMENTATION OF FOSTER CARE AND REINTEGRATION SUB-PROGRAMMES

Monitoring of the rights of the child in highland regions by the representatives of the Public Defender has revealed several shortcomings in the operation of the foster care and reintegration sub-programmes.

The foster care sub-programme faces constraints in implementation in highland regions of Georgia. Only 16 children are participating in this sub-programme in 8 municipalities and 3 out of these 16 are children with disabilities. The sub-programme is not being im-plemented in Mestia, Khulo and Shuakhevi municipalities despite the actual need for it. This is caused by the fact that no recipient families are registered in these municipalities. As for the sub-programme of reintegration in biological families, there are 12 families and 21 children participating in 8 highland municipalities: 2 beneficiaries in Ambrolauri, 9 in Akhmeta and 10 in Mestia. There are no beneficiaries in Kazbegi, Oni, Khulo, Shuakhevi and Keda.

Low efficiency of district centres of LEPL Social Service Agency is a constraint for suc-cessful implementation of foster care and reintegration sub-programmes. Social workers are unable to pay frequent planned and unplanned visits to recipient families (in case of reintegration to biological families). Disruptions in the activities of social workers result in failures in the identification of the needs of the children participating in foster care and reintegration sub-programmes and inappropriate follow-up procedures.

CASES OF L.M. AND L.P.

Representatives of the Public Defender received information about two minors with dis-abilities – L.M. and L.P. participating in foster care sub-programme. Inspection of the case revealed that the children with disabilities participating in the foster care sub-programme were facing violence and other types of inappropriate treatment. The social worker did not appropriately carry out the obligations specified by the Law of Georgia on Adoption and Foster Care and by the Decree on the Approval of Procedures and Forms of Foster Care. Namely, the social worker did not visit the family as required and therefore, the needs of the children and the instances of their maltreatment were not identified on time. After receiving a letter from the Child's Rights Centre of the Public Defender's Office, representatives of LEPL Social Service Agency studied the facts of maltreatment towards the children and it was deemed necessary to move L. M. to a different recipient family.

According to paragraph 1, article 20 of the UN Convention on the Rights of the Child, a child temporarily

889 http://www.refworld.org/type,CONCOBSERVATIONS,CRC,GEO,4885cfab0,0.html

or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. Article 39 of the Convention also calls for reintegration of a child in an environment that fosters dignity of the child.

Article 11 of the Law of Georgia on Adoption and Foster Care specifies the powers and responsibilities of the local competent authorizes in foster care.

Appendix 1.9 to the resolution No 291 of the Government of Georgia dated April 14, 2014 on the Approval of the National Programme of Social Rehabilitation and Childcare of 2014 regulates foster care sub-programme. The sub-programme includes activities for raising the children deprived of care in family-like environments, providing psychosocial support to these children and helping them to prepare for independent life, strengthening the contacts with biological family provided it is not against the best interests of the child[890].

RIGHTS OF CHILDREN WITH DISABILITIES

Monitoring of the rights of children with disabilities living in highland regions has demon-strated that there are serious constraints to the realization of their rights to healthcare and education.

Rights of students with disabilities – major problems regarding the rights of students with disabilities/ students with special needs in highland regions of Georgia are mainly related to inefficient implementation of inclusive education programme, lack of special teachers and lack of physical accessibility of educational facilities. Thus for example, in Kazbegi – in Stefantsminda and Gudauri – 6 children with disabilities are enrolled general schools. However these schools do not have a position of special teacher in their person-nel. Physical environments of these schools are not adapted to the requirements of inclu-sive education. Similar situation can be found in Mestia municipality where many children with disabilities cannot socialize and participate in educational process efficiently.

It should be noted that children with disabilities living in highland regions also face prob-lems regarding the realization of their right to healthcare. Using services covered by uni-versal health insurance programme, access to necessary medication and lack of special-ized medical personnel are all challenges to be addressed.

As for the level of engagement of local self-government bodies in providing social assis-tance to children with disabilities, it is necessary to emphasize that the amount of so-cial assistance assigned by municipal administrative bodies for children with disabilities, even in combination with the social assistance from the Government of Georgia[891], is not enough to provide adequate living conditions for children[892]. In some cases, social assis-tance is not allocated to all minors with disabilities. For example in Akhmeta only persons under 16 years are identified as the target group of social assistance in 2014 budget[893]. Lo-cal budgets of Shuakhevi, Keda and Khulo do not contain any assignations for single-time financial assistance for children with disabilities.

890 Resolution No 291 of the Government of Georgia dated April 14, 2014 on the Approval of the National Programme of Social Rehabilitation and Childcare of 2014

891 Resolution No 279 of the Government of Georgia on the Allocation of Social Package, dated July 23, 2013

892 Resolution No 2 of Akhmeta Municipality on the Approval of Social Assistance Programme for 2014 and its Budget, dated January 20, 2014; Resolution No 3 of Oni Municipality on the Approval of the Proce-dure to Allocate Social Assistance from the Budget of 2014, dated January 16, 2014; Resolution No 33 of Ambrolauri Municipality on the Approval of the Procedure to Allocate Social Assistance from the Budget of 2014, dated September 1, 2014; Resolution No 16 of Kazbegi Municipality on the Approval of the Procedure to Allocate Additional Medical Service and Social Assistance to the Population Registered and Residing Permanently on the Territory of Kazbegi Municipality from the Local Budget, dated August 12, 2014; Resolution No 14 of Shuakhevi Municipality on the Approval of Local Budget for 2014, dated De-cember 25, 2013; Resolution No 38 of Mestia Municipality Council on the Approval of Mesita Municipal Budget for 2014, dated December 17, 2013;

893 Resolution No 2 of Akhmeta Municipality on the Approval of Social Assistance Programme for 2014 and its Budget, dated January 20, 2014

Paragraph 1, article 23 of the Conventions of the Rights of the Child reinforces the right of a child with mental or physical disabilities to full and decent life, in conditions which ensure dignity.

According to article 4 of the UN Convention of the Rights of Persons with Disabilities, states undertake to ensure and promote the full realization of all human rights and fun-damental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

According to sub-paragraph (h), paragraph 3, article 3 of the Law on General Education of Georgia, the State undertakes to introduce inclusive education throughout the country.

MONITORING OF PRESCHOOL INSTITUTIONS

Paragraph 5, article 35 of the Constitution of Georgia establishes that 'the State provides preschool education in accordance with the procedure established by the law'. This con-stitutional provision legally binds the State to ensure effective operation of preschool education institutions within the scopes of its positive obligations on the one hand, and not to carry out an unlawful intervention in this part of the protected sphere within the scopes of its negative obligations on the other.

Paragraph 1 of article 2, paragraph 1 of article 3 and article 4 of the Convention of the Rights of the Child maintain, that state parties shall ensure full realization of the rights of children in educational institutions. Sub-paragraph (e), paragraph 57 of the Concluding Observations on the Rights of the Child in Georgia of 2008 contain recommendations to the State about carrying out necessary measures in preschool institutions to improve the realization of the rights of young children[894].

Governmental Action Plan on Human Rights adopted in 2014 also emphasizes the need to integrate the issues related to violence against children in educational programs of preschool institutions and to ensure accessibility of non-formal education programme, as well as development and implementation of preschool care policy at local self-govern-ment level.

Within the scopes of the power of attorney of the Public Defender[895], situation regarding the rights of the child in preschools was monitored for the first time during the reporting period[896]. 61 preschools were randomly selected for monitoring in Tbilisi and different regions of Georgia.

SAFE AND ADEQUATE ENVIRONMENT, SANITARY AND HYGIENIC CONDITIONS

According to paragraph 3, article 3 of the Convention of the Rights of the Child States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent author-ities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

According to the internal legal standard regulating the rights of beneficiaries at preschool institutions, a medical cabinet and a laundry room must necessarily be present at a pre-school institution[897]. An isolator with a separate entrance should be located on the first floor to ensure the isolation of sick children. At

894 http://www.refworld.org/type,CONCOBSERVATIONS,CRC,GEO,4885cfab0,0.html
895 Articles 12 and 18, Organic Law on the Public Defender of Georgia
896 Project implemented through the support from UNICEF Strengthening the Capacity of the Child's Rights Centre
897 Decree No 308/n of the Minister of Labour, Health and Social Protection on the Approval of Rules and Norms concerning the Design, Equipment and Operational Sanitary Norms of Preschool Institutions, dated August 16, 2001

the same time, medical personnel should carry out daily control of child nutrition, physical development, implementation of an-ti-epidemic measures, observation of the schedule of activities[898].

Visual inspection of preschool institutions and analysis of relevant documentation has shown that 20% of them are in need of urgent rehabilitation works and 35% are in need of repair works, physical environment at 25 % of preschools is satisfactory and 20% have accessible and safe physical environment. Physical environment is not adapted to the needs of children with disabilities. Out of 61 preschools monitored, only preschool No 91 in Tbilisi has a partially adapted physical environment.

In 40% of the inspected preschools basic furniture and equipment and sanitary-hygienic products have not been renewed or updated for several decades (from 10 to 30 years). On average, 60% of preschools renew their furniture and equipment every 5 years and purchase additional ones every year. Medical cabinet is not present and nurse is not part of the personnel in 40% of the preschools inspected. 50% of the preschools were not provided with necessary medications for first aid.

The following violations in the provision of safe and adequate environment have been found in various municipalities.

Mestia municipality – physical environment needs to be rehabilitated at preschools in the following communities and villages: Etseri, Latali, Mujali, Ifari and Karsguri. Mold and fungus were observed on the walls of these institutions during the monitoring process. Walls of some classrooms were starting to come down, central heating and ventilation systems were not functioning. Classrooms were heated with wooden heaters, which were not sealed and were not partitioned from children. On August 20, 2014 the Public Defender of Georgia issued a recommendation (No 10/10900) to the Council of Mestia Municipality to take necessary measures to address these problems. Based on the recommendation, physical environment of the preschools was partially rehabilitated. In addition, construction of new preschools have been planned for years 2015-2016 in the following communities and villages: Tskhumari, Idliani, Khaishi, Mulakhi, Mazeri, Nakra, Chuberi, Fari, Karsgurishi, Lenjeri, Latali[899]

Khulo municipality – inadequate physical environment was found in preschools of Khu-lo, villages Dioknisi and Khikhadziri. As demonstrated by the proceedings[900], Dioknisi preschool is in need of capital repair works. The area of the building is 136 square meters and it was initially designed for only one groups but currently 2 groups are operating in it. As for the preschool in Khikhadziri, the floor on the second floor of the building needs to be fully replaced. According to the information received from Khulo municipality[901], rehabili-tation works are planned in these preschools in 2015.

Kazbegi municipality – out of 7 preschools monitored, inadequate environment was found in Sioni preschool[902]. This preschool is located on the second floor of a private rented house. The building does not correspond to the standards of preschool institutions and cannot satisfy the needs of children: classrooms are not completely furnished, bath-room and shower are not functioning, drinking water is provided from the sink installed on the balcony. Material provision and learning materials have not been updated in the preschool since 1980s.[903]

Akhmeta municipality – access to safe environment is limited for children at village Kistauri preschool No 1 and at village Ozhio preschool. Factual evidence gathered around the case[904] demonstrate, that the buildings do not have a centralized heating system. Main rooms are heated by wooden heaters, which are

898 Ibid.
899 Letter No 19693/1 dates December 8, 2014, No 12366/1 dated 25/2014
900 Case No 16943/1, dated October 15, 2014
901 Letter No 18646/1, dated November 18, 2014
902 Case No 17319/1, dated October 19, 2014
903 Letter No 10-4/13280, 10/11/2014, No 10-4/267,15/01/2015
904 Case No 10593/1, dated July 22, 2014; No 10595/1, dated August 20, 2014; No 10596/1, dated August 20, 2014

not sealed. Equipment and material in Ozhio preschool has not been renewed since 1983. The Public Defender issued a recommendation to the Akhmenta Municipal Council[905] concerning this case. Based on the recommendation, the Council made a decision to allocate additional funds to improve infrastructure and sanitary conditions at village Kistauri preschool No 1 and village Ozhio preschool[906].

Signaghi municipality – Conditions at preschool No 9 of village Bodbiskhevi were very poor and unsafe for children[907]. The preschool failed to meet sanitary and hygienic needs of children. Based on the information received from Signaghi municipality[908], construction of new buildings for preschools is planned in the local budget of 2015. Before the completion of the construction, the preschool was moved to a privately-owned building under a rental agreement.

Tbilisi preschools – proportional disparity between physical environment and sizes of children's groups was found in preschools No 71, 117, 98, 60, 201, 205. In 80 % of all preschools monitored in Tbilisi bedrooms are not in place for the children in the second group of early age and the first group of preschool age. Dining and main rooms are not differentiated from each other.

REALIZATION OF THE RIGHT TO ACCESS TO PRESCHOOL EDUCATION

Visual inspection, examination of documentation and requested official data has revealed that average accessibility of preschool education at municipal level is 70%. However access is particularly low in certain administrative units. These include preschools in Tbilisi, Marneuli, Kutaisi, Oni, Mestia, Khulo, Shuakhevi and Keda.

Tbilisi – evidence shows[909], that 75,000 online registration applications were received by Tbilisi Preschool Management Agency in 2014. Out of this number, 52,000 children were registered at preschools including 7,000 children additionally registered by preschool rep-resentative councils. As a result, 23,000 children who applied for preschools did not get access in 2014. According to information provided by the non-entrepreneurial non-commercial legal entity Tbilisi Preschool Management Agency[910], construction and establish-ment of 8 new preschools and creation of new groups at existing preschools is planned in different parts of Tbilisi to increase accessibility.

Marneuli municipality – 9,000 early and preschool age children are registered in this municipality. However preschools located in the administrative units of this municipality have the capacity to accept only 890 children. According to the data form September-December 2014, 1500 children were actually enrolled in municipal preschools[911]. Children liv-ing in villages Algeti and Sabirkend also have limited accessibility to preschool education as there are no preschools operating in these villages[912].

Oni municipality – monitoring process has demonstrated that geographical accessibility to preschool education is limited in this municipality. Namely, in the entire municipality – 64 villages and 1 administrative centre – only one preschool centre is operating in village Ghari. Conditions at the centre are not appropriate for a preschool institution. It is located in a privately-owned house, a rented building and minimal sanitary and hygiene criteria are not met.

Khulo municipality – problems related to accessibility have been found in this municipality[913]. There are 9

905 Letter No 10/9596, dated July 22, 2014
906 Letter No 14560/1, dated August 12, 2014
907 Case No 12914/1, dated July 15, 2014
908 Letter No 1514/1, dated August 26, 2014; No 1869/1, dated November 19, 2014
909 Letter No 15660/1, dated September 12, 2014
910 Letter No 20205/1, dated January 6, 2015
911 Case No 18056/1, dated November 6, 2014; letter No 18870/1, dated November 28, 2014
912 Case No 18056/1, dated November 6, 2014; letter No 18870/1, dated November 28, 2014
913 Case No 17049/1, dated November 12, 2014

preschools operating in this municipality, however there are no preschools in some villages and communities including villages Bako and Mtis Ubani of Tkhinvala community, in Upper and Lower Tkhinvala. Therefore children living in these villages and communities do not have access to preschool education[914].

APPLICATION OF INDIVIDUAL APPROACHES AT PRESCHOOL INSTITUTIONS

Internal legal mechanisms relevant to preschool education include Decree No 958 of the Ministry of Education and Science of Georgia on the Approval of National Goals of Pre-school Education, dated November 11, 2008. This decree emphasizes the rights of children to the development based on individual approach.

Quality of individualization of services in educational process was one of the focuses of inspection. Individual approach at educational institutions implies educational process, which is adapted to the needs of the child, management and prevention of challenging behaviour, individualization of learning, provision of appropriate resources for the benefit of children with disabilities including material and human resources.

According to the UN Convention on the Rights of the Child, state parties recognize the right of children with disabilities to enjoy special care in appropriate conditions.

The following problems related to the implementation of individual approach were identified as a result of analysing the semi-structured interviews conducted during the monitoring process:

Qualification of personnel – teacher and caregivers as well as administrative personnel re-quire training and professional development in prevention and management of challenging behaviour among children and towards children, rights of children with disabilities, identification and prevention of discrimination against children.

One of the constraints for efficient implementation of individual approach in educational process is neglecting individual needs and capacities of beneficiaries. Results of the monitoring demonstrate that many educators and caregivers use a uniform approach to all children and they completely ignore the principles of individual approach.

Rights of children with disabilities – issues in this regard include: lack of adapted educa-tional environment for children; irregular and unsystematic evaluation of the needs of beneficiaries by a multi-disciplinary group; lack of the positions of curriculum specialist, speech therapist, psychologist and a special teacher at preschools. In large majority of the inspected preschools educational and physical environment is not adapted to the needs of children with disabilities and multi-disciplinary group is not working on address-ing their individual needs.

Positive developments were observed in preschool No 45 in Tbilisi where a multi-disciplinary group is operating, which consists of a special teacher, a psychologist, a speech therapist, a paediatrician and a curriculum specialist. The multi-disciplinary group has evaluated 15 beneficiaries. Individual development plans have been designed for 10 of them and implementation of these plans is regularly controlled.

RIGHT TO PROTECTION AGAINST VIOLENCE AND OTHER INAPPROPRIATE TREATMENT

Realization of this right at preschool institutions should be guaranteed by article 19 of the UN Convention on the Rights of the Child, general observation No 8 of the UN Committee on the Rights of the Child

914 Letter No 18482/1 17/11/2014

of 2006, Council of Europe Convention on the Protection of Chil-dren against Sexual Exploitation and Sexual Abuse, article 7 of the International Covenant on Civil and Political Rights, general observation No 13 of the International Covenant of Economic, Social and Cultural Rights. Paragraph 1 of article 4, sub-paragraphs (a), (b) and (c) of article 5, paragraph 2 of article 6 of the Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures maintain, that preschool institutions are obligated to evaluate conditions of a child who has been a victim of violence and initiate appropriate referral procedure.

Definition of violence against minors as provided by the UN Committee on the Rights of the Child was used at every stage of the monitoring process. According to this definition, violence and other types of inappropriate treatment is understood as all forms of physical or mental harm and all these forms are considered as degrading treatment.[34]

Inspection of situation regarding the rights to protection against violence and types of inappropriate treatment has demonstrated the following:

In a number of preschool institutions the personnel uses different forms of violence and types of inappropriate treatment against children - corporal punishment, psychological violence and exploitation take place regularly. Out of 61 preschools included in the monitoring, cases of psychological violence were identified in 70% and cases of physical violence and use of corporal punishment – in 40%. 30% of all interviewed caregivers considered it acceptable to reduce meal portions of children when they display challenging behaviour or disobedience. The instances of use of referral procedure mechanisms in practice are very rare. 90% of preschool teachers and care-givers do not possess information about this referral mechanism[915]. Those who do possess information about the referral mechanism believe that referral procedure should be initiated only in cases of extremely grave and repeated forms of violence.

Special attention should be paid to frequent instances of violence and other types of inappropriate treatment against children with disabilities as well as intolerant attitudes towards them in Tbilisi and Kutaisi preschools. In Tbilisi preschool No 6 the case of re-peated psychological violence from a caregiver towards a child with autistic disorders was identified. An appeal[916] was submitted to Tbilisi Preschool Management Agency in connection with this case. According to the reply from the Agency[917] preventive measures have been taken at preschool No 6 – teachers and care-givers attended additional training sessions on early education.

The interviews with teachers and care-givers have demonstrated their low levels of awareness and insufficient experience in identifying and responding to the cases of vio-lence against children, initiating referral procedure and preventing all types of inappropriate treatment against children. According to teachers and caregivers they need a training course to improve their competencies in identification of cases of violence against children, prevention and adequate response in these cases[918]. 60% of the interviewed care-takers have not had any training in the prevention of violence, 30% had such training, however there level of awareness is still low.

IMPLEMENTATION OF THE ORGANISATIONAL RULES FOR NUTRITION

According to sub-paragraph (c), paragraph 2 of article 24, UN Convention on the Rights of the Child, state parties shall carry out all necessary measures to ensure provision of nutritious food and drinking

915 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures

916 Letter No 10-2/13660, dated November 5, 2014

917 Letter No19441/1, dated November 21, 2014

918 This is true of preschools in regions as well as in Tbilisi. These issues have been identified in Tbilisi pre-schools No 98, No9, No 205; preschools No 9 and 10 of Bodbiskhevi village, preschools of villages Mah-garo and Tsvrimi

water. According to general observation No 12 of the Com-mittee of Economic, Social and Cultural Rights (1999), all children should have access to nutritious food at any time.

Paragraph 1, article 12 of the Resolution No 78 of the Government of Georgia on Statu-tory Regulations - Approval of Sanitary Rules and Norms of Nutrition in Preschool Insti-tutions, dated January 15, 2014 maintains, that recommendations of the World Health Organization concerning safe nutrition should be taken into consideration at preschool institutions; according to paragraph 3 of article 3, it is essential to establish daily control over the quality of child nutrition.

Fulfilment of the requirements established by the standards of child nutrition[919] and ca-pacity to address individual needs of children with special nutritious essentials were inspected in the monitoring process. The following problems have been identified in the analysis of the results of monitoring:

Deficient nutrition – according to paragraph 2 article 2 of the standard[920], ration of food allocated to children in preschools should correspond to the needs of a child's organism on basic food products and energy with consideration of age-appropriate norms. At the same time, it is necessary to take into consideration such factors as seasonality, physical environment, health conditions, nutritional characteristics etc. According to paragraph 6 of the same article, daily meals should contain the products necessary for a child's organism. Despite the mandatory nature of this requirement, meals provided in most preschools under inspection did not meet these standards and did not contain products necessary for children. Nutrition was deficient in 35 out of 61 inspected preschools.

Neglect of individual nutritional needs of children – special nutritional needs of children are not appropriately reflected in bi-weekly and daily menus of preschools. At the same time, out of the spectrum of nutritional needs, insufficient attention is paid to the needs of overweight and allergic children. Problems related to the neglect of special nutritional needs of children have been found in 36 preschools.

Product storage/handling procedures – mandatory requirements for storing and handling of products are violated in many preschools[921]. Refrigerators, storage areas and special containers for storing products are not operating; rules for storing vegetables and prod-ucts with short shelf life separately are not observed. Appropriate equipment in kitchen areas was missing in 31 preschools. Besides, violations of sanitary and hygienic norms were observed in 20 preschools. These include preschools of villages Becho, Etseri, Mu-zhali, Karsgurishi of Mestia municipality, preschool No 6 of Mtskheta municipality, pre-school No 1 and Maghlaki preschool of Tskhaltubo municipality.

Supply of food products – preschools operating in highland regions do not receive supply of food products frequently enough.

Personnel – nutrition specialist is not a part of preschool personnel and preschool direc-tors, or representatives of preschool unions design diets.

THE RIGHT TO EARLY AND PRESCHOOL EDUCATION

Article 28 (1) of the UN Convention on the Rights of the Child focuses on the right of the minor to education. Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights reinforces universal right to education.

919 Resolution of the Government of Georgia on Statutary Regulations - Approval of Sanitary Rules and Norms of Nutrition in Preschool Institutions, dated January 15, 2014

920 Resolution No 78 of the Government of Georgia on Statutary Regulations - Approval of Sanitary Rules and Norms of Nutrition in Preschool Institutions, dated January 15, 2014

921 Paragraph 1, article 5 of the Resolution No 78 of the Government of Georgia on Statutary Regulations - Approval of Sanitary Rules and Norms of Nutrition in Preschool Institutions, dated January 15, 2014

According to sub-paragraph (a) of paragraph 1, article 17 of European Social Charter, contracting parties assume responsibility to take all necessary measures for providing adequate education and learning for children and for developing and maintaining instruments needed to achieve this goal.

Ensuring high quality and efficiency of early development programmes and preschool curricula is one of the major focuses of Early Learning and Development Standards[922]. Implementation of these standards in practice depends on such factors as the use of quality educational material in the process of early learning, accessibility of learning materials, accessibility of physical environment for children with special educational needs, creating appropriate conditions for ethnic minority children.

Use of educational and methodological material in practice

Several educational resources have been developed to facilitate the realization of the right to early education: Early Learning and Development Standards[923], Preschool Education Curriculum[924], instrument for assessment of a preschool age child[925], Georgian Language for Minority Children[926] etc. 60% of the interviewed caregivers mentioned that they do not have methodology books and evaluation forms. 70% of the caregivers require training on the application of early education curricula and methodological material in practice; 25% of the teachers interviewed have been trained through various training programmes. However their professional qualifications still are not satisfactory.

Marneuli preschool No 3[927] accommodates Georgian as well as Azeri children and there-fore it is recommended[928] to use the methodological textbook of Georgian Language for Ethnic Minority Children of Preschool Age in the educational process. Even though these textbooks were present in each group, they are not being used in practice in most cases[929].

Application of educational resources in preschool education

70% of preschools monitored are not equipped appropriately with educational materials. Environment and resources are not adapted to the needs of children with disabilities; ed-ucational material and resources for children did not meet the requirements of safety and accessibility[930]. In 35 of all monitored preschools educational material and environment is partially safe, in 40 preschools it is safe but is not tailored to the needs of children, in 25 preschools it is mainly safe and accessible while in 30 monitored preschools physical environment is not safe for children.

Number of children in groups

One of the major constraints for provision of quality preschool education is inadequately large size of groups at preschools. According to the currently operating standard[931] no more than 20 children can be accepted to the first junior group, and no more than 25 children can be accepted to the second junior,

922 National Curriculum and Evaluation Centre, Ministry of Education and Science of Georgia; Early Learning and Development Standards, Tbilisi 2011

923 Resolution No 78 of the Government of Georgia on Statutary Regulations - Approval of Sanitary Rules and Norms of Nutrition in Preschool Institutions, dated January 15, 2014

924 http://preschooleducation.ge/admin/uploads/5.%20skolamdeli%20ganatlebis%20programa.pdf

925 http://preschooleducation.ge/admin/uploads/4,%20INSTRUMENT[1].pdf

926 http://preschooleducation.ge/admin/uploads/metod.pdf

927 Case No 18056/1, dated November 7, 2014

928 http://preschooleducation.ge/admin/uploads/metod.pdf

929 Letter No 10-2/13398/1, dated November 11, 2014

930 Methodological document of National Curriculum and Assessment Centre of the Ministry of Education and Science – Physical Environment of Preschools: principles and practice, 2010

931 Decree No 308/n of the Minister of Labour, Health and Social Protection on the Approval of Sanitary Rules and Norms for Equipment and Operating Schedule of Preschools, dated August 16, 2001

middle and senior (preschool age) groups. Results of the monitoring revealed that in junior groups of preschools of Tbilisi, Kutaisi, Batumi, Marneuli and Samtredia average number of children was 30, average number of children in the second junior group was 35, in middle group – 37 and in preschool group – 38. According to 70% of caregivers interviewed major constraints in educational process are related to excessive number of children in groups and the lack of relevant material.

INFANT MORTALITY

High rate of mortality of children aged zero to 5 is one of the important problems in Georgia. Based on the data provided jointly by the Ministry of Labour, Health and Social Protection of Georgia, LEPL L. Sakvarelidze National Centre for Disease Control and Public Health, and the Agency for the Development of State Services[932], 635 children under 5 died in 2014 (including 259 cases of early infant (0 to 6 days) mortality, 295 cases of in-fant (7 to 28 days) mortality, 148 cases of mortality of children from 28 days to one year and 69 cases of mortality of children from 1 to 5 years). Mortality rate under 5 per 1,000 children i 9.7, which is a significant decrease compared to previous years[933] and is the lowest indicator in Caucasus.[934] Despite significant progress, based on World Bank data, Georgia still has high children mortality rate compared to other countries. Average child mortality in all the countries of the world is about twice as low – 4.6 per 1,000. In addition, among countries in Europe, only Albania, Molova, Armenia and Azerbaijan have higher child mortality rates than Georgia.

Factors affecting child mortality in Georgia include: extreme poverty, quality of food, sys-tem of care for pregnant women, qualifications of medical personnel and obstetricians[935], quality of pre-natal services. Together with these factors, low level of awareness of many parents also plays a significant role. In most cases parents do not have appropriate skills of caring for their children; they do not possess information about needs and true interests of children, information about minimum norms of universal healthcare system. The role of social workers working at administrative units of LEPL Social Service Agency – district centres of social service, and the role of the personnel of local out-patient clinics is very important in addressing these issues. Cooperation of these agencies with families and their engagement in improving the skills of parents to care for their infants can be an important pre-condition for decreasing child mortality rates. According to statistical data from 2014[936], major causes of death among children under 5 are the following: respiratory distress syndrome – 32%, pneumonia, bronchitis and respiratory insufficiency - 21%, shock and unidentified causes of death – 14%, infant sepsis – 8%, asphyxia – 4%, congenital heart defects and developmental anomalies – 5%. Negligence from the side of medical personnel and inadequate implementation of their responsibilities is to be separately mentioned among the reasons of child deaths. In 2014, 19 cases of death of children under 5 were studied by a special examination commission. As a result of the decision of the professional development council state medical certificates of 40 doctors were revoked and 64 doctors were given a written warning.

932 Letter of the Ministry of Labour, Health and Social Protection No 01/14396, dated February 27

933 According to the data provided by the Ministry of Labour, Health and Social Affairs, rate of mortality per 1,000 born children was 13.9 in 2013 and 13.5 in 2014

934 The World Bank, Mortality RAte Under -5 (per 1000 live births), http://data.worldbank.org/indicator/SH.DYN.MORT

935 Report of the Public Defender on Human Rights and Freedoms in Georgia, 2013, p.447

936 Letter of the Ministry of Labour, Health and Social Protection No 01/14396 dated February 27, 2015

Positive obligation to protect the right to life is warranted by the Constitution. This right is reinforced at international level by such documents as the European Convention on the Protection of Human Rights and Fundamental Freedoms (article 2) and International Covenant on Civil and Political Rights (article 6).

Sub-paragraph (a) of paragraph 2, article 24 of the UN Convention on the Rights of the Child obligates state parties to take necessary measures to reduce infant and child mor-tality. UN Committee on the Rights of the Child, in its General Comment No 15 empha-sizes the need of state parties to carry out all legal, administrative and other measures to ensure implementation of the rights described in article 24 without discrimination[937].

According to paragraph 2, article 12 of the International Covenant on Economic, Social and Cultural Rights, contracting parties are obligated to take measures necessary to re-duce child and infant mortality, prenatal death and to ensure healthy development of all children.

Paragraph 1 of article 133 of the Law of Georgia on Healthcare points out that 'managing medical aspects of child mortality and reduction of diseases, providing medical care of highest possible quality including first medical aid, is the top priority task of the health-care system'.

In accordance with international and domestic legal standards, in order to prevent mor-tality among children and infants, on December 2 the Government of Georgia adopted the Decree No 650, on the Approval of the National Programme of Healthcare of 2014. The document, which is adopted every year, contains a programme on mother and child healthcare (appendix 9). One of the goals of this programme is to reduce infant mortality. The Decree adopted in 2014 differs from its predecessors[938] in that premature birth and congenital anomalies are added as important causes of infant death and therefore elim-ination of these causes is also identified as a goal of the programme. 2014 programme also for the first time contains a clause on the provision of medications for pregnant wom-en (including pholium acid and iron medicines).

RIGHT TO PROTECTION FROM VIOLENCE AND OTHER TYPES OF INAPPROPRIATE TREATMENT AGAINST CHILDREN

Right to protection from violence, abusive actions and other types of inappropriate treat-ment against children is a fundamental principle of international legal standards. Mon-itoring process conducted by the Public Defender in 2014 has demonstrated that con-straints to the implementation of this principle in practice are related to the following issues: identification of the victims of all forms of inappropriate treatment, including sexual violence and corporal punishment, implementation of referral procedures, and psy-cho-social support activities, effective investigation procedures within reasonable dates in case of identification of violence by relevant state agencies[939], identification of offenders, prevention of potential and direct risks of maltreatment[940] and other follow-up actions. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, of which Georgia became a party in 2014, determines the instruments, which are important for elimination and prevention of sexual violence against children. According to articles 2 and 14 of this Convention, responsible agencies of state parties should take legislative and other measures to prevent violence and provide assistance to victims without discrimination. Article 5 of the Convention establishes the necessity to raise awareness of persons working in educational, healthcare, social protection, court and law-enforcement agencies on the issues related to child sexual exploitation and vio-lence against children.

937 Committee on the Rights of the Child, General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), 2013, P. 20.

938 Decree No 279 of the Government of Georgia on the Approval of the National Healthcare Programmed for 2013, dated October 31, 2013, appendix 9

939 Assenov v. Russia, October 28, 1998, para. 102; Lapida v. Italy, App. N 26772/95, para. 131; Kaya v. Turkey, February, 19, 1998, para. 124; ECHR.

940 Z v. United Kingdom, (1998), ECHR, App. No. 29392/95 (Comm. Rep 10.9.99), para 94.

Even though CRC issued recommendations to Georgia in the Concluding Observations of 2008 concerning necessary measures to be taken to prevent violence, exploitation and other types of inappropriate treatment against children[941], the state does not possess until now an effective instrument for reduction of risk factors causing the above-mentioned problems.

Investigation of cases at Public Defender's Office during the reporting period have demonstrated that violence against children is a serious issue at preschools and at gener-al schools, in families and against beneficiaries of national foster care programmes. Iden-tification of violence against children has been particularly difficult at public schools. This is mainly caused by low level of awareness of teachers and administrative personnel at public schools on the referral procedures against violence. Cases of corporal punishment against children at preschools and general schools are still frequent. Disciplinary penalties have been used only in few of these cases[942].

Low effectiveness of law-enforcement bodies in 2014 in responding to cases of violence and abusive action against children should be considered as a challenge. In particular, analysis of cases at Public Defender's Office has demonstrated that often investigation process is delayed and criminal proceedings take unreasonably long periods of time. Ac-cording to the information requested from the Ministry of Internal Affairs[943], 80 cases of actions against sexual freedom and autonomy of minors were registered in 2014. Out of these 80, criminal proceedings started only in case of 38. As for the effectiveness of investigation in case of corporal punishment of children (article 125.2 of Criminal Code of Georgia), violence (article 126.2 of Criminal Code of Georgia) and domestic violence (article 126^1.2. of Criminal Code of Georgia), criminal proceedings started only in case of 12 out of registered 33 cases.

Problems related to practical implementation of protection and rehabilitation systems are relevant when considering violence, exploitation and other types of inappropriate treatment against children. When the case of violence against a child is identified, the child must be placed in a safe and supportive environment within the scopes of the refer-ral procedure[944]. However analysis of cases by the Public Defender's Office in 2014 demon-strates that children are placed in special service programs (mainly within the scopes of foster care sub-programme) only in extreme cases and within an unreasonable period of time. These are mostly cases of repeated physical violence and/or actions against sexual freedom and autonomy[945].

One of the ways to prevent and eliminate violence, exploitation and other types of inap-propriate treatment against children is systematic implementation of the activities that are part of the referral procedure. However it has been evidenced, that during the report-ing period the referral procedure was often not observed causing problems in the imple-mentation of further preventive activities and in effective rehabilitation of the victims. According to the information requested from LEPL Social Service Agency of the Ministry of Labour, Health and Social Protection[946], 336 reports of violence against children were received by LEPL Social Service Agency in the form of oral, telephone and online mes-sages[947]. Out of these cases, social workers carried on with proceedings in 250 cases and psychological service was provided in 94 cases. As for the indicators of the use of referral procedure, 65 reports were presented to the Ministry of Labour, Health and Social Pro-tection from the Ministry of Internal Affairs. Based on the statistical data of the Ministry of Internal Affairs[948], in 2013-2014 (January-June) number of children who faced domestic violence throughout the country was 36. This number seems too small and does not represent the full picture

941 Paragraphs 31-33 of the Concluding Observations of CRC, June 23, 2008
942 Case No 6432/1, dated October 1, 2014
943 Letter No 2134/15, dated February 25, 2015
944 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures
945 Case No 11487/1, Dates June 20, 2014; case No 14993/1, dated September 1, 2014
946 Letter No 04/102901, 26/12/2014 (internal N20223/1, 06/01/2015).
947 This includes cases of domestic violence as well as violence against children in state institutions
948 http://police.ge/ge/useful-information/statistics/skhvadaskhva-sakhis-statistika-kvlevebi?y=2014
http://police.ge/files/pdf/9%20%E1%83%9D%E1%83%AF%E1%83%90%E1%83%AE%E1%83%A3%E1%83%A0%E1%83%98%20%E1%83%AB%E1%83%90%E1%83%9A%E1%83%90%E1%83%93%E1%83%9D%E1%83%91%E1%83%90%202007-2014--6%20 %E1%83%97%E1%83%95%E1%83%94___pdf.

considering the fact that up to 200 cases of domestic violence against children were identified in 2014 only by LEPL Social Service Agency.

CASE OF G. N.

Starting from October 16, 2014, the Public Defender's Office was working on a case[949] of potential physical violence (corporal punishment) against a child with disabilities at a private preschool in Tbilisi.

The Public Defender's Office requested all the necessary documentation for the inspec-tion of the case from the Prosecutor's Office of Georgia and from LEPL Levan Samkharauli National Forensic Bureau[950]. In addition, in order to establish objective circumstances, rep-resentatives of the Public Defender met teachers and caregivers of the child[951].

According to the factual evidence collected on the case, investigation was being conduct-ed in the patrol police department of the Ministry of Internal Affairs of Georgia on the potential case of physical violence against a child with disability. The investigation was conducted under part one of the article 125 (corporal punishment) of the Criminal Code of Georgia. Witnesses were interrogated during the investigation, trasological and foren-sic expertise was conducted. However criminal proceedings were not initiated against a specific person.

It should be noted that potential instrument of crime was not obtained during the inves-tigation. Granting the victim status was delayed. Despite the fact that the Public Defend-er's Office addressed Chief Prosecutor's Office and the Ministry of Internal Affairs several times[952] with the recommendation to complete investigation within a reasonable period of time and use all necessary measures to avoid delay in investigation and to establish the truth, no responsible persons for this case were identified in 2014. Analysis of this case makes it clear that the state has failed to fulfil obligations assumed under articles 3 and 19 of the Convention on the Rights of the Child and article 16 of the Convention on the Rights of Persons with disabilities. Responsible bodies failed to appropriately carry out measures for rehabilitation of the victim and for effective investigation of an offense.

CASE OF S.M.

Starting on November 12, 2014 the Public Defender's Office on its own initiative[953] started proceedings to study the case of potential action against sexual freedom and autonomy of a 12-year-old[954].

Statutory circumstances around the case show that the girl became a victim of group rape through the use of violence and threat of violence. This action was repeatedly conducted against her during 2 months. However identification of sexual violence by relevant bodies and persons did not take place within a reasonable period of time.

According to the evidence gathered by the Public Defender's Office[955], the child was not provided with psychological rehabilitation services and a psychologist was not engaged in the case. No in-depth analysis of psychosocial conditions of the child was conducted and neither were relevant rehabilitation measures planned[956]. Criminal proceedings were initiated on this case and 1 person is convicted[957].

949 Case No 17045/1, dated October 16, 2014
950 Letter No 10-1/1104, dated February 12, 2015; letter No 10-1/12959 dated October 29, 2014
951 Protocol No 17045/1, dated October 16, 2014
952 Letter No 10-1/1104 dated February 12, 2014, No 10-1/12983, dated October 29, 2014; No 10-1/14376, dated December 15, 2014
953 Organic Law of Georgia on Public Defender, article 12
954 Case No 18309/1 dated November 12, 2014
955 Letter No 10-4/14072 Dated December 4, 2014; No 10-4/14270 dated December10, 2014; No 10-2/171, dated January 1, 2015
956 Letter No 19969 dated December 22, 2014
957 Letter No 949/15 dated Januray 22, 2014

MONITORING OF THE SUB-PROGRAMME FOR THE PROVISION OF SHELTER FOR HOMELESS CHILDREN

Representatives of the Child's Rights Centre of the Public Defender's Office conducted monitoring of day care centres, crisis intervention shelters and transitional centres oper-ating within the scopes of the sub-programme for the Provision of Shelter for Homeless Children. Monitoring was conducted in accordance with the childcare standards[958].

Providers of the sub-programme were partner NGOs: World Vision International Georgia, Charitable Foundation Caritas and the union Child and Environment.

In 2014 sub-programme for the Provision of Shelter for Homeless Children was imple-mented in Tbilisi and Rustavi. Two day care centres, two crisis intervention and one 24-hour transitional centre is operating in Tbilisi, and one 24-hour crisis centre in Rustavi. Besides one mobile group of the Charitable Foundation Caritas, and two mobile groups of World Vision Georgia are also in place. These groups consist of four members: psycholo-gist, peer educator, administrative worker and a state social worker. The service is funded through a non-materialized state voucher, issued in accordance with the sub-programme for Provision of Shelter for Homeless Children of the National Programme of Social Reha-bilitation and Childcare approved by the resolution No 291 of the Government of Georgia dated April 14, 2014. At the end oh July 2013 the staff working for this service attended a two-month training programme developed by World Vision Georgia.

The union Child and Environment operates the transitional centre located in Tbilisi, which is designed to offer services to 15 beneficiaries. 7 beneficiaries were in the centre during the monitoring process. During one year the centre had 12 beneficiaries. Charitable Foundation Caritas organizes services provided by the Rustavi Transition Centre, Tbilisi Crisis Intervention Shelter and Tbilisi Day care Centre. The Transition Centre is designed for 20 beneficiaries and 9 children were at the Centre during the monitoring. The Centre offered services to 9 children during the year. Crisis Intervention Centre and Day care Centre are operating in the same building. Crisis Intervention Centre can accommodate 8 beneficiaries and Day care Centre can accommodate 21 children. The service provider World Vision Georgia operates another Day care Centre and Crisis Intervention Centre in Tbilisi. The two are also located in the same building. The Crisis Intervention Centre has the capacity to accommodate 10 beneficiaries and there were 7 during the monitoring. Day care Centre can accommodate 20 beneficiaries. It was impossible to establish the exact number of beneficiaries during the monitoring process due to frequent alternation.

958 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards

PLACEMENT OF BENEFICIARIES IN SERVICES AND GENERAL INFORMATION ABOUT THE SERVICE

According to paragraph 3, article 3 of the UN Convention on the Rights of the Child, States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall comply with the standards established by competent au-thorities. Article 1 of Childcare Standards provides the list of documents that all service providers should prepare and provide to the interested parties upon request[959].

Beneficiaries are placed in day care centres, crisis intervention centres and transitional centres operating within the scopes of the sub-programme for the Provision of Shelter for Homeless Children by the mobile groups, and in rare cases – by patrol police or on their own. Right after being placed in the service, children go through medical check-ups. In case they require further inspection, they are transferred to medical institutions. The mobile groups visit potential beneficiaries everyday at the places of their residence/work. The group members initiate relevant activities in the street immediately after discovering a child.

In accordance with the Child Protection Referral Procedures[960], patrol police departments is one of the bodies participating in these procedures and its responsibility is to identify and prevent violence against children, as well as initiate relevant proceedings, take mea-sured to protect the victims of violence and inform the agency. According to the informa-tion received from the members of the mobile group patrol police divisions are often not informed about the referral procedures and they are not effectively cooperating with the mobile group.

In order to receive 24-hour service, a beneficiary has to go through several staged. In the beginning she/he is placed in a crisis intervention shelter. Beneficiaries receive psychoso-cial rehabilitation help, their basic needs are attended and they are engaged in education-al process. Beneficiaries remain in the shelter for 3 to 6 months. After this they change the environment – they are transferred to the transitional centre where working with them continues. Organizations providing services and beneficiaries claim that change of the place of residence and environment negatively affects them and often the effects achieved through individual work with the children in crisis intervention centres are lost.

It should also be noted that two day care centres within the scope of the sub-programme are operating in the same location as crisis intervention centre. Beneficiaries of both ser-vices are engaged in a number of activities together during the day, which, according to service provider organizations, facilitates the process of their re-socialization and has a positive effect on the motivation of the children. Representatives of Caritas Georgia in-formed us that children residing and working in the streets, as well as socially vulnerable and at-risk children are beneficiaries of the services provided by their day care centre[961].

Most of the beneficiaries using the services provided within the scopes of the sub-pro-gramme for Provision of Shelter for Homeless Children do not have their documentation in order. Social workers are working on addressing this issue. However the process of organizing documentation takes very long, which results in the limitation of a number of rights for these children. Many beneficiaries using these services are not the citizens of Georgia, in many cases they are not willing to identify themselves and it makes addressing the above issue even more difficult. At one crisis intervention centre[962] management failed to present documentation certifying the qualifications of caregivers and the certificates of additional trainings. We were informed that these documents are kept at the facilities of the organization conducting the training. Moreover, journals and records required by childcare standards were not complete.

959 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards

960 Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures

961 Charitable Foundation Caritas Georgia; daycare centre – 59, Manjgaladze Street, Tbilisi

962 World Vision International Georgia Crisis Intervention Centre – 29, Gotsiridze/Chikobava Street, Tbilisi

We consider it a positive fact that staff meeting protocols were kept and presented to us at the Transitional Centre of Child and Environment. Issues related to each beneficiary are discussed at these meetings. At Rustavi Transitional Centre child observation journals are kept, which documents daily activities of a child and her/his psychosocial status.

Inspection of personal documentation of beneficiaries has revealed that individual de-velopment plans of children were incomplete and mostly of formal nature. These plans specified activities conducted with children, but did not contain information about the results achieved.

Caregivers have not had special training on keeping the documentation.

Violence – Article 11 of the Childcare Standard determines the right of a child to be pro-tected from violence[963]. According to article 19 of the Convention on the Rights of the Child every child should be protected from any kind of violence and article 36 of the Convention obligates state parties to protect every child from all forms of exploitation.

As a result of the monitoring it became clear that beneficiaries of the sub-programme for Provision of Shelter for Homeless Children are victims of violence. Most of the beneficia-ries have psychological/mental issues and are in need of professional help. Children with challenging behaviour and emotional disorders face issues in relationships with caregiv-ers. Thus for example an employee of a centre was physically attacked by one beneficiary and patrol police was engaged in the matter. No specific preventive measures have taken place with this beneficiary. It is noteworthy that most beneficiaries continue to beg in the streets while they reside in the shelters as they are coerced to do so by their family mem-bers. There are cases when beneficiaries escape form shelters and information about this is provided to the police. However in most cases children return to shelters themselves or mobile groups discover them. Sometimes beneficiaries, who might be suffering from severe health conditions, return to shelters for several days to get sleep, medical treat-ment and food and afterwards return to streets and carry on their activities. A 16-year-old beneficiary of one of the centres, who is allegedly victim of groups rape and domestic violence, is now pregnant. She was forced to return to her family by her parents, shelter staff appealed to the police regarding the case however the case was not followed-up. Manager of one of the shelters provided information during the interview about the case of paedophilia involving a 14-year-old. Police was informed about this case as well, but no response has been taken place. Current location of this beneficiary is unknown. There is unconfirmed information, that she is pregnant and is engaged in prostitution together with another beneficiary. According to the members of the mobile group, a Turkish bar located near hotel Radisson at the Roses Square might be a potential location where un-derage prostitution takes place. Mobile group is regularly monitoring this location. So far no appropriate legal measures have been taken regarding this case as well.

There is an alarming trend of spending nights at internet-cafes by the children – their daily schedule is unorganized and as a result they become aggressive.

A member of the mobile group informed us about a 9-year-old, who was beaten by a family member with a hammer. The child was to be placed in foster care. However, social worker, according to her, was not allowed to do so by the police. The child is until now with his/her biological family and continues to be the victim of domestic violence. The family exercises coercion over him/her to continue begging on the street together with smaller brother and does not allow social worker to place them at the crisis intervention centre. Often parents take children from shelters using force. This is caused by the fact that as soon as children are admitted to shelters, they are entitled to receive social as-sistance. A member of the mobile group of Caritas Georgia provided information about extremely poor living conditions of 6 Azeri families living in Isani-Samgori (Africa settle-ment). Children living in these families are regularly forced to beg on the street.

963 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards

Cases of bullying and violence among children are also very common. Psychologists of shelters and mobile groups are working with them. Shelter beneficiaries find it particular-ly difficult to observe rules and regulations operating there. Caregivers have problems in controlling the location of children, their activities outside shelters. They get information about this through mobile group or from other beneficiaries. Members of the mobile group have pointed out that children residing and working in the streets have supervisor, who, in most cases are their family members. This is particularly noticeable in Tbilisi met-ro, where these supervisors do not allow mobile group members to work with children.

Public Defender's Office started proceedings on the cases described in this report within the scope of its power of attorney and has already appealed to relevant bodies.

Education and leisure time – According to article 28 of UN Convention on the Rights of the Child, every child has the right to education and state parties have to facilitate achiev-ing this right progressively and on the basis of equal opportunity. Article 8 of Childcare Standards[964] defines the responsibilities of service providers to help realize the right of children to education.

Majority of beneficiaries using the benefits of services under the sub-programme for Pro-vision of Shelter for Homeless Children are not engaged in general or vocational educa-tion. Most of the children do not have relevant learning skills and appropriate cognitive development level. The children do not display interest in educational process. Some of them are not enrolled in general educational institutions, as they do not meet the require-ments of enrolment defined by the Law of Georgia on General Education due to absence of relevant documentation. Most of the children study independently even though they are in need of additional pedagogical and training assistance. Multidisciplinary group conducts assessment of the children in the shelters. However they face problems at schools since many school directors do not wish to enrol them at their schools and often they justify their action with the claim of overload of schools.

Service provider organizations try to engage children in various informal activities. Chil-dren are taken to cinemas, theatres; film screenings and discussions are being organized in the centres; centres have volunteers who teach music and dance, working with felt material, train them in taiquando. At the Crisis Intervention Centre/Day care Centre of Caritas Georgia[965] children can also attend training sessions, which are tailored to their needs according to their age. At the 24-hour transitional centre[966], however, evidence shows that children are not engaged in any informal activities, as they do not display in-terest in focusing on the same activity for an extended period of time.

Monitoring at the transitional centre of Child and Environment[967] has revealed that the garden of the centre is not appropriately taken care of and does not correspond to the standards. Sewage system is damaged causing poor sanitary conditions and spreading of insects. Therefore children cannot spend leisure time in the garden. The centre also has a pitch but it is not operational. Head of the organization Child and Environment claimed that they have appealed to the Didube district administration with the request to address these issues without any results.

Right to Healthcare – according to article 9 of the Childcare Standard[968] beneficiaries have to be placed in environments supportive to cultivating healthy lifestyle and where their health needs are adequately addressed.

After beneficiaries are placed in centres, first-hand information about their health condi-tion is obtained from them mainly through interviewing, or physical inspection. Children are checked for any signs of physical injuries, signs of violence, rash. Children are asked questions about infectious or chronic diseases.

964 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards
965 Caritas Georgia, 59 Manjgaladze Street
966 Caritas Georgia, Transitional Centre; 18 Paliashvili Street, Rustavi
967 Organization Child and Environment; 4, Abastumani Street, Tbilisi
968 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards

There is a risk that children might with-hold this kind of information or that they themselves are not aware of the conditions of their own health. In cases where doubts about a specific disease arise, the child is taken to the health specialist. Beneficiaries without relevant documents cannot enjoy the ben-efits of universal healthcare programme. In such cases the costs of their treatment are covered by the service provider organization given that necessary funds are available. The situation is very unfavourable in this respect at the transitional centre of Child and Envi-ronment[969] as the organization is entirely dependent on voucher funding form the state.

Almost all children have issues with intestines when they are admitted to centres which subside after children start receiving healthy food. Most children do not have any certif-icates about their health conditions. At Rustavi Transitional Centre[970], if such certificates are needed, they are prepared by the doctor of the centre. It is commendable that the centre has a special isolation room for placing children with infectious diseases. In addi-tion, medical records are kept for every beneficiary documenting their health conditions and complete information about the entire treatment course.

Majority of beneficiaries at the centres are users of tobacco and cases of drug-use have also been identified. According to information received from the staff of one of the cen-tres, medications, namely Dimedrol, purchased without prescription were discovered in possession of children several times. Several tablets of Dimedrol can cause drug effects. The Child's Rights Centre of the Public Defender's Office informed LEPL Medical Regula-tion Agency about this case. The response from the Agency states that this information was confirmed and that protocol of administrative offense was sent for consideration to the Administrative Cases Panel of the Tbilisi City Court.

Nutrition – article 6 of Childcare Standards[971] defines the responsibilities of providers in the process of food provision[972]. A child placed in state care should be provided with ap-propriate amount of food according to his/her age.

Meals are provided four times a day at crisis intervention shelters and transitional cen-tres, twice a day for beneficiaries of the services at Caritas Georgia Day care Centre and twice a day for World Vision International Day care Centre. At Crisis Intervention Shelter of World Vision International Georgia[973] representative of provider organization received necessary food products once in every two weeks. Menu is designed by the director. Calories are not calculated and taken into consideration when designing the menu. At Caritas Georgia Transitional Centre[974] the doctor designs menus taking into consideration amounts of calories needed for children. Managers of centres in most cases do not have information about the safety of drinking water. Organization Child and Environment re-ceives part of its food products as donations. One private school provides dinners for beneficiaries every day. Representatives of provider organizations purchase food prod-ucts based on their needs with varying frequency. Children's preferences to eat sausages, frozen products and sweets are taken into consideration in most cases and these prod-ucts are often part of children's diet. This is not in the best interest of children and is not consistent with the principles of healthy nutrition and lifestyle. Children often drink soda drinks as well. Kitchens in all the centres are well-equipped and furnished with sufficient kitchenware.

Preparation for independent life – Childcare Standards oblige service providers to pre-pare children for independent life and support them leave the centres[975].

969 Organizarion Child and Environment; 4 Abastumani Street, Tbilisi
970 Caritas Georgia Transitional enter; 18 Paliashvili Street, Rustavi
971 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards
972 Article 6, Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards
973 World Vision International Georgia Crisis Intervention Shelter; 29 Chikobava Sreet/2 Gotsiridze Street, Tbilisi
974 Caritas Georgia Transitional Centre; 18 Paliashvili Street, Rustavi
975 Standard No 13, Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Reg-ulations approving Childcare Standards

Provider organizations are trying to provide vocational education and training through their own resources or through the help of various charity organizations. Establishment of the Youth House funded by Caritas Georgia was a positive development. Currently there are four young people living in this youth house who received professional training and were employed through the efforts of the organization. 2 beneficiaries of World Vision International Georgia are participating in a project implemented by the private company Natakhtari and the company rented an apartment for one of the young people. Cultivat-ing the interest of beneficiaries in specific activities, vocational education is a very diffi-cult task. This is particularly evident in case of older beneficiaries. Most beneficiaries find it hard to develop skills of caring for themselves. It was found that children often reject the offers if employment because remuneration is considerably lower compared to the income they can receive by begging in the street.

RIGHT OF THE CHILD TO HEALTHCARE

Article 37 of the Constitution of Georgia guarantees the right to healthcare which as-sumes the responsibility of the state to support realization of this right.

Article 12 of the International Covenant on Economic, Social and Cultural Rights recog-nized 'the right of everyone to the enjoyment of the highest attainable standard of physi-cal and mental health'. According to article 24 of the Convention on the Rights of the Child every child has the right to receive quality medical service.

General Comment No 15 of the Committee on the Rights of the Child reinforces these principles and defines the right of child to healthcare more broadly.

Child's Rights Centre of the Public Defender's Office of Georgia studied 43 cases concern-ing inadequate realization of the right of the child to healthcare throughout 2014. The situation in this respect is particularly challenging at the Leukaemia Section of the Depart-ment of Oncology and Haematology of M. Iashvili Children's Central Hospital, and at the Children's Section of the National Centre of Tuberculosis and Lung Diseases.

M. IASHVILI CHILDREN'S CENTRAL HOSPITAL

Representatives of the Public Defender visited M. Iashvili Central Hospital following re-ceiving the information about the situation there. The representatives found out that repair works conducted at the Emergency Department created risk for health condition of the patients with leukaemia of the Oncology and Haematology Department. Children were exposed to dust for several days. Hospital rooms were damaged as a result of repair works. Parents claimed, hat repair works took place even during the night preventing the patients from sleep and negatively affecting their nervous system. Despite repeat-ed requests of parents, hospital administration did not take any necessary preventive measures. Apart from this specific issue, problems related to infrastructure, especially in bathrooms and hospital rooms. There are no individual rooms for children diseased with leukaemia. Ventilation system is not functioning in the department.

Child's Rights Centre of the Public Defender's Office addressed the Deputy Minister of Labour, Health and Social Protection with the request to respond to this case and take necessary measures required by law.

After the review of the case, repair works in the emergency department continued ob-serving safety norms. Besides, necessary repair works were carried out in the kitchen and bathrooms.

Based on the appeal from the Child's Rights Centre of the Public Defender's Office, rep-resentatives of the LEPL National Agency for Regulation of Medical Activities visited the hospital. The hospital was given reasonable period of time till May 1, 2015 to fulfil the requirements defined by the Resolution No 385 of the Government of Georgia, dated De-cember 17, 2010 on the Approval of Rules and Conditions for Issuing License for Medical Activities and Permits for Hospitals. Situation at the hospital will be inspected again after this reasonable period of time has passed.

The case proceedings have demonstrated that the hospital administration was not guided by the best interests of the children with leukaemia, which caused risk to their health. Currently health conditions of the children in this department are safe. However a number of issues at the hospital still remain to be addressed indicating inadequate implemen-tation of obligations in healthcare by the state.

NATIONAL CENTRE OF TUBERCULOSIS AND LUNG DISEASES

Representatives of Public Defender's Office visited children's department of the National Centre of Tuberculosis and Lung Diseases and have found that conditions in the depart-ment are extremely poor.

Walls of the building were patients are placed have cracks. Medical personnel noted that water comes through the roof during rain. According to the director of the Centre, the building is not repairable. Further serious issues include problems with heating of the building, hot water supply and poor sanitary norms. There are only two bathrooms in the building and neither of them is heated. It is possible to take shower in only one of them however hot water supply is not regular even in this bathroom. Sanitary conditions are extremely poor in toilets and bathrooms. The building is not adapted to the needs of persons with disabilities.

Particularly alarming is the fact that patients with the contagious and non-contagious forms of the disease are placed together in the children's department. Parents terminate the treatment process before its completion due to the extremely poor physical condi-tions in the department and leave the centre causing significant risk of spreading the disease outside the clinic, particularly at educational institutions. There is no emergency bloc and an intensive care room in the department with relevant equipment.

Representatives of the Public Defender's Office inspected the condition at the kitchen and the menu. Even though meals are cooked separately for children, transporting it to the children's department is a problem due to the distance between the kitchen and the department.

National Strategy of Healthcare of Georgia defines the political responsibility of the state to protect its citizens from tuberculosis. According to the National Strategy and Action Plan of Tuberculosis for 2013-2015 'for successful treatment outcomes, it is t sufficient to enrol patients in treatment. Completing the full course of treatment is a necessary condition for recovery'[976].

Child's Rights Centre of the Public Defender's Office wrote to the Deputy Minister of La-bour, Health and Social Protection in the middle of proceedings. The reply from the Dep-uty Minister stated that a special working groups was set up by the Decree No 01-115/o dated May 13, 2014 of the Minister of Labour, Health and Social Protection of Georgia to work on the issue of physical environment at the paediatric department of the JSC National Centre of Tuberculosis and Lung Diseases. The Ministry is also cooperating with other organizations and public agencies to solve this problem. Particularly, the options of moving the paediatric department to alternative space in one of the buildings of the National Centre or constructing a new building on the territory of the Centre are being considered. However no specific

976 National Strategy and Action Plan of Tuberculosis for 2013-2015; strategic area 2: high quality of tuber-culosis treatment and management and full coverage

actions have been taken yet. Therefore situation in the paediatric department of JSC National Centre of Tuberculosis and Lung Diseases remains unchanged.

Dire conditions at the children's department of the National Centre of Tuberculosis and Lung Diseases not only fails to provide quality medical services and facilitate completion of the full course of treatment for the children, but provides additional risk to their health conditions. This indicates failure on the part of the state to fulfil obligations assumed in the field of healthcare and disregard of article 24 of the Convention of the Rights of the Child about rights of the child to healthcare.

RIGHT TO PROTECTION OF THE CHILD FROM POVERTY AND INADEQUATE STANDARDS OF LIVING

Results of the inspection conducted by the Public Defender's Office demonstrate that re-alization right to protection of the child from poverty and inadequate standards of living still remains an important issue for the realization of social rights of children.

According paragraph 2, article 36 of the Constitution of Georgia, the state should support well-being of families. Normative contents of this article maintains that it is a legitimate constitutional goal and positive obligation of the state to effectively implement immanent statutes guaranteeing rights and fundamental freedoms with the purpose of promoting child well-being.

According to the Constitutional Court of Georgia[977], the goal of a social state is to create equal conditions for population to the fullest extent possible and create adequate stan-dards of living throughout the country. This is particularly important in case of the chil-dren living in extremely poor households and imposes greater responsibility on the state to carry out effective interventions.

Legal standards for protecting children from poverty and inadequate standards of liv-ing are defined in article 27 of the Convention on the Rights of the Child. According to paragraphs 1 and 3 of this article, the state assumes positive and negative obligations to ensure access for every child to a standard of living adequate for the child's physical, men-tal, spiritual, moral and social development. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to achieve this goal within every branch of government.

Analysis of cases by the Public Defender's Office throughout 2014 has demonstrated such problems as inadequate reflection of the needs of extremely and relatively poor families with children in the existing national sub-programmes of social protection, drawback in carrying out effective interventions to improve the protection of the rights of children living in extremely poor households, delays in the provision of state social services and failure to identify the needs of children living in inadequate conditions within reasonable period of time by relevant childcare agencies.

Analysis of target social programmes throughout the reporting period demonstrates that the number of children living in poverty is quite high: 51,435 children aged 0 to 6, and 105,540 children aged 6 to 18 were recipients of targeted social assistance in 2014[978]. Out of them, 35,826 children aged 0 to 6 and 72,009 children aged 6 to 18 were recipients of living subsistence[979].

977 Decision No 2/1-392 of the Constitutional Court of Georgia of March 31, 2008 on the case Citizen of Georgia Shota Beridze and Others against the Parliament of Georgia

978 http://ssa.gov.ge/index.php?lang_id=&sec_id=769

979 http://ssa.gov.ge/index.php?lang_id=&sec_id=769

National Programme for Social Rehabilitation and Childcare approved in 2014[980] includes several sub-programmes[981] aimed at improved realization of social rights of the child such as: sub-programme of Emergency Assistance to Families with Children in Crises, sub-pro-gramme on the Provision of Mothers and Children with Shelter, Child Rehabilitation sub-programme, Early Childhood Development, Provision of Food for Children at Risk of Abandoning. Analysis of these sub-programmes demonstrate that financial and material resources allocated for them and target numbers of beneficiaries of various services are low considering specific needs and compared to the number of children receiving living subsistence. For example, 382 beneficiaries participated in the Early Childhood Develop-ment sub-programme, 103 beneficiaries participated in the sub-programme for Provision of Shelter for Homeless Children, 988 beneficiaries – in the Food Voucher sub-programme and 563 beneficiaries in the Child rehabilitation/habilitation sub-programme.

It has also been found that an important constraint for the protection of children from inadequate standard of living if low level of awareness of families with children about services provided by the state within the scopes of social assistance system. This is true of national services as well as services provided by self-governing bodies within municipal social programmes. Ineffective communication of national and municipal social services with the most vulnerable groups of population is one of the main barriers to the accessi-bility of information.

CASE OF CITIZEN L. G.

Case of Citizen L. G. living in Tbilisi was one of the most problematic cases in terms of child poverty and exploitation in 2014[982].

According to the factual evidence gathered during the inspection of the case citizen L.G. had 9 children living in extreme poverty. Even though the family was registered as the recipient of state living subsistence, the children did not have adequate living conditions, educational material, sufficient food and other material resources necessary for development. In order to improve the extremely poor living conditions, the children were engaged in labour and none of them was engaged in the educational process. At the same time the instances of manipulation by children from the side of their legal representatives (parents) were revealed.

After gathering the evidence around the case Public Defender's Office addressed[983] LEPL Social Service Agency with the request to carry out necessary measures to improve the realization of the rights of these children. According to the reply received from the Social Service Agency, a social worker started working on the case and living conditions of the children were assessed. However essential activities for addressing poverty and inade-quate standards of living of these children have not been taken by relevant bodies.

RECOMMENDATIONS:

To the Government of Georgia

- to proportionately reflect the socio-economic needs of children in national social sub-programmes aimed at the identification of specific needs of children living in extreme and relative poverty and addressing these needs
- to develop a special strategy and an action plan to improve living conditions of the children living in extremely poor households and in relative poverty in high-land regions, including increased access to information

980 Resolution No 291 dated April 14, 2014 on the Approval of the National Programme for Social Rehabili-tation and Childcare
981 Ibid, article 1, appendix 1, article 2, sub-paragraphs (a) (b) (c) (h) (k) (m)
982 Case No 17690/1, dated November 7, 2014
983 Letter No 10-1/13661 dated November 21, 2014; No 10-1/1178 dated February 13, 2015

- to introduce interventions within the scopes of Mother and Child Healthcare pro-gramme in order to prevent the death of children under 5; especially for fighting against most common causes of child mortality

To the Ministry of Labour, Health and Social Protection

- to develop a strategy and an action plan for improving access of children to healthcare in highland regions
- to develop special national programmes for preventing diseases caused by defi-cient nutrition among young children and design effective mechanisms for their implementation in highland regions
- to take necessary measures to improve the quality of work of social workers within the scope of foster care/reintegration sub-programme
- to take all necessary measures in accordance with international standards to study and eliminate all potential causes of death among children under 5. Take measures such as training of medical personnel in order to reduce the instances of inadequate completion of their responsibilities, which is one of the main caus-es of child mortality
- to take necessary measures to increase effectiveness and proactivity of social workers in to efficiently identify families with problems, to support the develop-ment of necessary skills among parents. Take immediate concrete measures to solve problems with physical environment existing in the paediatric department of JSC National Centre of Tuberculosis and Lung Diseases; make a decision about moving the department to alternative location or to build a new modern building for it.

To the lepl social service agency for the beneficiaries of day care centres, crisis intervention shelters and transitional centres operating within the scope of the sub-programme for provision of shelter for homeless children

- to provide additional regular training for beneficiaries in school subjects and in-crease their motivation
- to develop a uniform strategy for handling and solving the problems of children without necessary documentation
- to reconsider the rationality of moving beneficiaries from crisis intervention cen-tres to transitional centres
- to ensure timely provision of medical services to beneficiaries
- to promote healthy lifestyle; plan more physical and sports activities and actively engage beneficiaries
- to ensure adequate levels of awareness among beneficiaries and caregivers about contagious diseases and about preventive measures
- to engage multidisciplinary group in managing challenging behaviour among beneficiaries through active participation of a psychologist and when needed – a psychiatrist
- to facilitate development of an effective programme for supporting independent life
- to improve physical environment of the garden at the transitional centre of Child and Environment in accordance with relevant standards

To the Ministry of Education and Science of Georgia

- to develop target programmes for children living in highland regions to ensure effectiveness, accessibility and inclusive nature of educational system
- to implement wide-scale regular programmes for professional development and qualification improvement of teachers; widen geographical scope of currently operating programmes
- to improve physical environment and sanitary conditions at general schools; up-date learning material
- to improve the protection of rights of the children with disabilities, efficiently implement inclusive education programme and adapt physical and educational environment at schools

To the ministry of education and science of georgia, to the ministry of labour, health and social protection of georgia, to the ministry of internal affairs of georgia

- to provide necessary information to relevant bodies about the use of child refer-ral mechanisms; to introduce psycho-social rehabilitation services for victims of violence and provide the services to beneficiaries; to ensure constant exchange of information between different bodies and implement coordinated activities to prevent violence against children including children at preschools

To the Ministry of Internal Affairs

- to immediately take necessary legal measures to respond to the potential cases of violence, prostitution among minor, coercion to begging; to provide necessary information to every employee of the patrol police about child referral proce-dures and facilitate their cooperation with Social Service Agency

To the Ministry of Internal Affairs and to the Chief Prosecutor's Office of Georgia

- to carry out timely and effective investigation of the cases involving violence against children including violation sexual freedom and autonomy; to identify the convicted persons within reasonable period of time and take necessary measures to prevent violence

To representative and executive bodies of Local Self-governments

- to allocate funds to increase access to preschools in respective municipalities
- to take timely and effective measures for improving safety and quality of physical environment and infrastructure as well as sanitary conditions at preschools
- to raise awareness of preschool teachers and caregivers about identification and prevention of the cases of discrimination against children with disabilities and children with challenging behaviour
- to fully observe the organizational rules concerning food provision at preschools
- to ensure systematic professional training of early and preschool education teachers for improving quality of preschool education.

GENDER EQUALITY AND WOMEN'S RIGHTS

Achieving gender equality still remains a serious challenge in the area of human rights protection in Georgia. Society still lives in stereotypical environment, where in most cases violence against women in families is justified, the number of early marriages is high, women constitute a minority at the level of decision-making and cases of the violation of rights due to gender identity and sexual orientation are frequent.

Women's rights are violated mostly in families – a place where a person must feel herself most protected. In the reporting period the scale and severity of violence against women and domestic violence has been disturbing. In the previous year 17 women have been killed as a result of domestic violence[984].

Numerous steps taken by Georgia's government and parliament for women's rights and gender equality regulation are commendable. A number of recommendations by the Public Defender of Georgia have been taken into account. Nevertheless, it must be noted that the majority of recommendations provided by the parliamentary report of 2013 have not been met.

Regardless of the fact that the Public Defender of Georgia called for the transformation of early marriages into an issue needing special attention, no efficacious steps have been taken to improve the existing practice. It is true, that Parliament of Georgia criminalized forceful marriage, but implementation of existing regulations in practice still remain a main challenge.

It is commendable that in 2014 the status of single parent was defined, legislation of domestic violence was refined, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was signed. The National Strategy of Violence Prevention was elaborated, which covered different areas of violence, but with respect to the specifics of the issue, it would be better to create a document separately addressing strategy of prevention of gender-based violence against women.

We praise the initiative of the President to declare 2015 as women's year, since this initiative will strengthen public interest and bring the issue to the forefront. However, it would be more important if the year 2015 brings real improvement in the condition of women's rights along with its symbolic meaning.

It must be noted that efficacious steps have not been taken towards encouragement of women's political participation; none of the recommendations on the improvement of rights of LGBT people has been considered. Economical empowerment of women still remains a challenge, especially economic activity and participation in country-wide processes of economic development of women living in rural areas, IDP women, and conflicts affected women.

In 2014 Georgia presented the 4th and 5th united report to the Committee on Elimination of all Forms of Discrimination against Women, which was discussed by the committee at the 58th session. The Public Defender

984 Chief Prosecutor's Office of Georgia; Letter # 13/16016; 17/03/2015

of Georgia used for the first time his right endowed by the status of the national institute on human rights protection to present an alternative report to the committee. Also, shadow reports were presented by non-governmental organizations. The committee expressed in a set of conclusive recommendations[985] its concern with the absence of temporary special measures for encouraging women's political empowerment, the especially high index of femicide cases by husbands or partners, and the lack of effective steps for the improvement of all the above mentioned.

985 Information is available at the webpage: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en > [last seen on March 15th of 2015].

GENDER MAINSTREAMING IN THE OFFICE OF THE PUBLIC DEFENDER OF GEORGIA

Integration of gender equality issues in all types of activities is a matter of serious importance. The Office of the Public Defender of Georgia is a first state institution, which created a structural unit on gender equality issues – the Department of Gender Equality - and pays special attention to integrate gender equality issues in human rights protection activities.

It must be noted that the practice of the Public Defender of Georgia attracts attention on the international level and is exemplary for other institutions. In 2014, the Geneva Center for the Democratic Control of Armed Forces (DCAF) published the guidance note on the Public Defender's office for the best practice in creating and developing Department of Gender Equality in the field of human rights institutions[986].

After discussion of the 4th and 5th united reports of Georgia the Committee for Elimination of All Forms of Discrimination against Women underlined the importance of the activities of the Public Defender's Office of Georgia in its recommendations and called on the state to allocate sufficient resources for the Office of the Public Defender of Georgia.[987]

Activities of the Public Defender of Georgia in the field of gender equality cover both, internal institutional development, as well as contribute to the process of achievement of gender equality. For achievement of the set goal, the Public Defender of Georgia worked out a gender equality strategy and action plan for the 2014-2016 years. It is noteworthy that the Public Defender's Office of Georgia is a leading institution based on the index of women's promotion to high positions. Among the deputies of the Public Defender of Georgia the gender balance is 50%; women occupy 55.6% of head positions and 62% at the level of specialists. Overall, the gender balance of staff is 60.4% women and 39.6% men.

The Public Defender of Georgia pays great attention to the capacity building of employees in the field of gender equality, which can be confirmed by the successfully implemented training – "Gender, Stereotypes and Equality," in which 86 employees of the Public Defender's Office participated, including technical-administrative personnel.

On November 25th of 2014 the Public Defender of Georgia approved the policy-defining document for prevention of sexual harassment. With this initiative, the Public Defender of Georgia decided to support and emphasize the importance of prevention of sexual harassment at workplace, to create environment free of sexual harassment for its employees and make this experience available for interested parties. The integration

986 Information is available at the webpage: < http://www.dcaf.ch/Publications/Integrating-Gender-into-Oversight-of-the-Security-Sector-by-Ombuds-Institutions-National-Human-Rights-Institutions > [last seen on March 15th of 2015].

987 Conclusive statutes on the 4th and 5th united periodic reports of Georgia: The Committee for Elimination of All Forms of Discrimination against Women

of gender equality issues in the activities of the Public Defender of Georgia significantly encouraged the inculcation of principles of equality in the general activities of the office.

Considering the condition of women's rights and gender equality in the country, it is important for the state as well as for private organizations to share successful practice of the Public Defender of Georgia and inculcate principles of equality in activities, documents of policy implementation and strategies.

An important step towards gender mainstreaming is the appointment of the Assistant to the Prime Minister on Human Rights Protection and Gender Equality Issues. Activity of the Council on Gender Equality of the Georgian Parliament deserves a special esteem. The strengthening of these institutions by means of administrative and financial resources and enhancement of inter institutional coordination would be very important for effective implementation of the country's gender policies. It is no less important to support and develop structural units responsible for gender equality issues at the level of ministries.

It must be noted that in some regions the person responsible for the issue of gender equality is appointed at the level of the local municipalities, but the creation of a structural unit would underwrite the institutionalization these issues, initiate an institutional memory and further support the orientation toward gender politics.

ROLE OF MEDIA IN THE FIELD OF WOMEN'S RIGHTS PROTECTION AND ACHIEVEMENT OF GENDER EQUALITY

In the process of the eradication of gender inequality and discrimination, the role of media is very significant. By signing the Convention on Elimination of All Forms of Discrimination against Women, Georgia clearly expressed the direction chosen by the country and also took responsibility for the implementation of the principles of the convention. The convention stems from the goals of the United Nations – to strengthen the belief in the basic rights of human beings, in humans, in the dignity and value of the person, and in equality of rights of women and men. Already many steps have been taken in this direction, although awareness raising and informing the population is a continual process which can be completed only with the involvement of the media.

In the latest period, the media intensely covered facts related to violence against women. It is the result of this work that so many cases were exposed and public interest has increased significantly. Although, it must be noted that domestic violence is a sensitive issue and correct coverage is important for people who face this problem right now. They must see the way out and experience hope in the possibility of change for the better. Also, the issue of victim confidentiality is very important since we should bear in mind the threats and stereotypes that are faced by these people.

The dissemination and publishing of sexist remarks and ads is especially worrisome. For example, on the 9th of December of 2014 the Public Defender of Georgia addressed JSC Bank of Georgia regarding the sexist content of its advertisement and appealed to them to refrain from publishing ads of sexist content and to support as much as possible respect for women's dignity and their depiction as equals to men.[988]

The most widespread stereotypes in the media are related to woman's gender role. Women are depicted as housewives who are busy with housework: they advertise detergents, food, and other household products. Frequently, the advertisement affirms the view that for women the most valuable and important asset is their beauty. As for men, in advertisements they are characterized as educated and having authority.

According to Article 5 of the Convention on Elimination of All Forms of Discrimination against Women, participant states are to take measures to eradicate practices based on the idea of inferiority or superiority of one or the other gender and stereotypical perceptions of male and female roles.[989]

In order to crush negative stereotypes and increase gender equality, resolution 1751[990] of the European Council's

988 Information available at the webpage: http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saxalxo-damcvelma-ss-saqartvelos-banks-diskriminaciis-tavidan-acilebisa-da-mis-winaagmdeg-brdzolis-sakitxze-zogadi-winadadebit-mimarta.page [Last viewed on March 15th of 2015].

989 Information available at the webpage: http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf [Last viewed on March 15th of 2015]

990 Information available at the webpage: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1751.htm [Last viewed on March 15th of 2015].

Parliamentary Assembly of 2010 calls on states to introduce changes in their legislation which aim at combating gender stereotypes. According to the same resolution sexist stereotypes used in media have an unfortunate influence on public opinion and especially on the formation of opinion among youth. These stereotypes immortalize simple, unchangeable, caricatures of women and men; they justify daily sexism and discriminatory practices and can facilitate and justify gender-based violence. Also, the European Council called on states with recommendation 1555 of 2002 – "Woman's Face in Media" [991] – to inculcate a concept of "sexism" defined as ignoring human dignities based on sex.

According to the resolution[992] of European parliament of March 12th of 2013 on "Elimination of Gender Stereotypes", gender based discrimination occurring in media, broadcasts and the advertisement field facilitate transfer of gender stereotypes, especially when they depict women as sexual objects, as a stimuli to making a purchase. According to the same resolution, children come across gender stereotypes in media from a very early age, which affects their perception of themselves, their family members, and the outer world. Stereotypes played in the media decrease respect toward women and support violence against them.

Unfortunately, Georgian legislation doesn't contain articles on prohibition of sexist advertisements. According to part 2 of Article 63 of the law of Georgia on Broadcasting the allocation of advertisements that are inappropriate, unconscientious, unreliable, unethical, misleading or that breach requirements posed by Georgian legislation in terms of content, time, place, or rule of dissemination are prohibited.

Considering challenges existing in the field of achievement of gender equality and responsibilities taken by the signing of international agreements, it is important to have a corresponding regulation in Georgian legislation that will regulate the expression of sexist opinions in the process of preparation and transmission of ads in TV.

991 Information available at the webpage:http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EREC1555.htm [Last viewed on March 15th of 2015]

992 Information can be viewed on the webpage: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT+TA+P7-TA-2013-0074+0+DOC+XML+V0%2F%2FEN [Last viewed on March 15th of 2015].

WOMEN'S PARTICIPATION IN DECISION MAKING PROCESSES

Georgia has had no progress according to the index of women's political activity. According to data from local government elections, women made up 11.1% of elected officials. The percentage of women among Georgian government is only 12%.

According to the Global Gender Gap[993] in 2014 Georgia was in the 94th place among 142 countries according to women's political participation. According to the data[994] of women's representation in parliament, Georgia holds 107th place. According to data of inter-parliamentary Union, Georgia is in the 106th place among 190 countries as of the 1st of February of 2015.

On July 29, 2013 paragraph 7[1] was added to article 30 of organic law of Georgian on political unions of citizens, which provided for additional 30% on party funding in case if in the party list submitted by the party, 30% of every ten members would be opposite sex. Regardless of this change, the gender statistics[995] of the results of local government elections published by the Elections' Administration of Georgia show that steps taken by parties for achievement of gender equality are not noticeable. In particular, only 2 were women among the 14 candidates for the Tbilisi mayoral position; in self-governing cities, among the registered candidates for mayoral positions the gender composition was as follows: 65 men, 8 women. Also it is important to consider discrimination of candidates in party lists presented by election subjects; among 1129 candidates only 427 were women. In Majoritarian System of elections the gender composition of registered candidates was as follows: among 5707 candidates only 846 were women. Accordingly, in elections of local self governance organs we have particularly deplorable results: there are no women mayors and among 59 governors, only 2 are women.

Analysis of women's political participation of the last decade makes clear that the process is static. It must be noted that the political system which excludes or doesn't support the equal participation of both genders in decision making processes can not be considered successful because on the path toward democratic development the most important is to use women's talent, experience and possibilities in the inculcation of principles of justice and equality. It can hardly be considered an achievement when women represent 53% of the country's population, but their voice in decision making processes barely reaches 20%.

It is noteworthy that according to data[996] of Global Gender Gap, Georgia is in 61st place among 138 countries.

993 Information can be seen on the webpage: <http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf > [last seen on the March 15th of 2015].

994 Information can be viewed on the webpage: < http://www.ipu.org/wmn-e/classif.htm > [last viewed on March 15th of 2015].

995 Information can be viewed on the webpage: < http://www.cesko.ge/uploads/other/29/29124.pdf > [last viewed on the March 15th of 2015].

996 Information is accessible at the webpage: <http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf > [Last viewed on 15th of March of 2014].

It is noteworthy that the level of education of girls in higher education institutions is higher (31) than of boys (25). Yet they are not represented at the decision making level.

In parliamentary reports of 2012 and 2013 of the Public Defender of Georgia, special attention is paid to recommendations on the facilitation of women's political participation in Georgia; they have unfortunately not been taken into account. During 2014 the Public Defender of Georgia repeatedly responded to the current processes in the country and talked about the necessity of inclusion of women in decision making processes, but the data existing for this period still cause hopelessness and concern.

Considering all the aforementioned, it is inevitably important to start work on the creation of temporary special measures which will help the state to overcome this unequal situation. It must be noted that the experience of many developed countries with high democratic values shows that gender balance can be achieved by means of a quota system. An example of the success of a gender-based quota system is the practice and experience of Scandinavian countries, which are currently the leading countries according to the Index of Women's Political Participation regardless of the fact that the system of quotas doesn't exist anymore in these countries.

In 2014 discussing the 4th and 5th united reports the Committee on Elimination of All Forms of Discrimination against Women expressed its concerns with the absence of mandatory quotas and measures. The committee is concerned that these mechanisms are not applied to reach real or de facto equality between women and men in all aspects provided by the convention. Committee gave the recommendation to the state to take temporary special measures, including statutory quotas, in accordance with the Article 4 (1st paragraph), Article 7, and general recommendations 23 and 25 of the committee, as part of a necessary strategy to accelerate the achievement of substantive equality of women and men.

The 25th general recommendation[997] of the Committee for Elimination of Discrimination against Women calls on participants to facilitate the increase of women's participation by means of the creation of special temporary mechanisms. They shall estimate national context and select a corresponding mechanism that will be oriented toward the achievement of de-facto equality. The general recommendation 23 immediately deals with women's participation in political and public fields. This recommendation calls on participant parties to eradicate discrimination against women in public and political fields, as well as to provide equal participation in voting and decision making processes.

997 Information is accessible at the webpage: < http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf > [Last viewed on March 15th of 2015].

WOMEN, PEACE AND SECURITY

Women's role in the peace-building process is immeasurable. The spectrum of problems which women and girls face in conflict and post-conflict situations is very wide. A number of conflicts in Georgia, consequent displacements and territorial occupation have affected women as a group.

The role of women's organizations who work with girls and women affected by conflicts and living in border villages as well as in the peace-building process is commendable. They gather information about identified needs and problems which are to be taken into account and reflected in political documents as much as possible.

In 2000, the United Nations Organization adopted resolution 1325 which emphasized the needs of women and girls in conflict and post-conflict situations and called on states to inculcate gender sensitive approaches in their policies and programs, ensure protection of women's and girls' security from sexual and gender violence and use every means to listen to women's voices in decision making processes. [998]

Considering events taking place in the world, the United Nation's Organization adopted additional resolutions by means of which it is possible to regulate specific issues.

Countries expressed their commitment to implement the resolution by adopting action plans. In Georgia on December 27th of 2011 the National Action Plan (further referred as №1325 resolution action plan) for 2012-2015 was adopted to implement UNSC resolutions NN 1325,1820, 1888, 1889, and 1960 "On Women Peace and Security".

The action plan covers all aspects of resolution 1325: prevention, participation, protection and assistance. Among the implementers of the Action Plan the most important role is imposed on the Ministry of Defense of Georgia and the Ministry of Internal Affairs. In this direction both institutions took important steps but many issues still remain unsettled.

In the frames of the Action Plan, The Ministry of Defense of Georgia is obligated to provide overview of physical normatives (considered in physical fitness tests) to stimulate women's participation in subdivisions of the armed forces and as peacekeepers and in case of need, implement related changes. And the Ministry of Internal Affairs of Georgia is responsible to conduct relevant training on gender issues and UNSC resolutions № № 1325, 1820, 1888, 1889 and 1960, especially on prevention, exposition and response to gender violence against women and girls.

It must be noted that women's representation remains low and one of the most important aspects of the action plan for supporting women's participation requires a special approach.

998 1325 Resolution 1325 of the UN Security Council.

The Public Defender of Georgia requested statistical information on women's representation[999] in the Ministry of Defense of Georgia. The received figures are:

- There are no women among the 3 deputies of the Minister of Defense;
- In the Ministry of Defense there are 400 employees, among them only 182 are women;
- Among 116 offices with leading positions only 34 are women;
- Among 132 officers with leading positions in the Armed forces of Georgia only 4 are women;
- Among 22614 participants of peacekeeping missions (Kosovo, Iraq, Afghanistan, Africa) only 219 were women.

As for women's participation in the Ministry of Internal Affairs, statistics are as follows[1000]:

- Among 5 deputies of the Minister of Internal Affairs none are women;
- Among the persons occupied in the ministry 15.2% are women; and in leading positions – 4.4%;
- Among persons occupied in territorial subdivisions 16.5% are women.

In 2014 with support of the UN Women's organization, an independent expert conducted intermediate assessment of the implementation of the National Action Plan for Resolution 1325 to outline main trends. According to this assessment, quality of completion of the National Action Plan is different for different directions and responsible institutions. It was outlined that high quality of implementation was observed in institutions where regulation of implementation of commitments in the frames of the National Action Plan is achieved through specific documentation or dedicated official's appointment[1001]. Exactly for this reason, it is very important for institutions to work out a strategy and action plan for completion of responsibilities assumed in the frames of the National Action Plan.

It must be noted that there was an interagency coordination group established by the initiative of the Gender Equality Council of the Georgian Parliament, which is responsible for coordination of implementation of the action plan and reporting on implementation. It is important that since 2015 the noted group will be moved structurally to the subordination of the Office of the Prime Minister of Georgia. It is necessary to enhance activities of coordination group and elaborate reporting mechanisms to support an effective implementation of the action plan.

As noted above, it is of special importance to appoint a staff unit responsible for gender equality issues in each state institution, to coordinate completion of different national action plans or international obligations, and to report and analyze data fully.

Since at this stage, the responsibility for the implementation of the plan has been imposed on the Georgian Parliament and Government, the initiative of the office of the Public Defender of Georgia in 2015 is to conduct the monitoring of the implementation of the Action Plan within the frames of an authority entitled by the legislation.

999 The Ministry of Defense; Letter #MOD415 00196918; 13/03/2015.
1000 The Ministry of Internal Affairs; Letter #619126; 23/03/2015.
1001 Assessment document of National Action Plan for UNSC Resolution 1325

WOMEN'S ECONOMIC ACTIVITY AND LABOR RIGHTS

Women's economic independence is in direct correlation with existing gender inequality in the country: in 2014, economic activity of women and their participation in economic life of the country has not improved. According to the data[1002] of "Global Gender Gap", Georgia is in the 66th position among 142 countries. According to this source, in 2006 Georgia occupied the 41st position, after which the condition has worsened significantly. According to data from 2013, Georgia was in the 64th position; and in 2012, 57th.

By regions, in Europe and Central Asia Georgia occupies the 85th place among 125 countries according to the index of women's economic activity. Georgia occupies the 29th place according to equal pay for equal work index. According to the ratio between annual income of men and women, Georgia moved from 114th place to 112th. Mean income differs based on gender. Man's annual income exceeds annual income of woman twice and constitutes 9,567 USD when woman earns 4,348 USD in average.

According to the data from 2013 obtained from the National Statistics Office of Georgia, the average nominal pay of hired employees according to activity type and gender is 773.7 GEL; from which – 585.0 is pay for women and 920.3 – for men. As for the business sector, annual income differs by gender as well woman with 566.7 GEL, and man with 881.0 GEL. [1003]

It must be noted that regardless of the repeated calls made by the Public Defender of Georgia, the Union for Professional Development and other organizations, no steps have been made by the state to improve on the labor rights of women who have family obligations. It is true, that with initiative of the Ministry of Justice of Georgia the second wave of improvements of women's labor rights has started, but the process has been stalled until now and the specific date of its re-launching remains unknown.

In the report presented in 2013 by the Public Defender of Georgia, special attention was paid to the ratification of the 183rd convention of the International Labor Organization on "Protection of Maternity", as well as to the importance of implementation of a number of directives of the European Union. However, effective steps haven't been made in this direction either.

In 2014, the office of the Public Defender of Georgia found out facts about possible discrimination. In particular, from the video recording of the meeting of Kareli Municipality Board the person in charge of territorial organ is seen stating that according to the order of the Minister single female doctors should not be hired in villages to outpatient centers (ambulatories), because after they finish trainings they get married and

1002 Information is accessible at the webpage: http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf [last viewed on March 15th of 2015].

1003 Information is accessible at the webpage: The information available at the webpage: < http://www.geostat.ge/cms/site_images/_files/georgian/qali%20da%20kaci.pdf > [Last viewed on 15th of March of 2015].

leave their jobs. In the process of the study it became clear that this was merely that person's opinion and that it has not yet found any reflection. Nevertheless, for elevation of awareness of staff members and implementation of preventive measures, the Public Defender of Georgia called on Governor of Kareli Municipality to provide trainings to staff members on gender equality issues. It is commendable that the board took into consideration the recommendation of the Public Defender of Georgia and a special advisor on gender issues was appointed to the board, as well as training conducted for staff members.

SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment at workplace represents the most frequent and at the same time underreported violation of women's rights. In the countries of the European Union 40-50% of women face unwanted sexual treatment, physical contact and other forms of sexual violence at workplaces[1004]. Article 6 of the Georgian Law on Gender Equality stipulates the issue of gender equality in labor relations and provides a general definition of harassment, but the noted law does not allow legal action regarding the fact of sexual harassment at the workplace.

Article 40 of the Convention on Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention) by the Council of Europe sets obligations to states to take all measures and make punishable all exposed forms of sexual harassment. It is noteworthy that the noted convention was signed by the Minister of Justice of Georgia in 2014 and in the nearest period we hope that the prevention of sexual harassment will be defined too as a follow up to the process of ratification.

It must be noted that in the process of fulfilling obligations stipulated by the international documents, the prevention of sexual harassment at places of employment is the most important target; but, in this process inculcation of interior institutional response mechanisms has a great importance too. The practice of successful countries shows that inculcation by the employers of preventive mechanisms of sexual harassment is much more effective in terms of cost effectiveness and recovery of violated rights.

Sexual harassment remains a stigmatized theme, which is not usually discussed. In 2014 an occurrence of sexual harassment in the Department of Environmental Protection and Natural Resources of the Adjara Autonomous Republic became known to the Public Defender of Georgia. In the process of investigation the fact was confirmed and the Public Defender of Georgia addressed the head of the department with a recommendation to work out preventive mechanisms towards sexual harassment, with systems of relevant sanctions, which would create a safe and sexual harassment-free working environment for employees and reduce the risk of sexual harassment to a minimum; also it must be noted that the institution expressed its full readiness to share the practices of the public defender.

RIGHT ON LEAVE FOR CHILD CARE (PATERNITY LEAVE) FOR MEN

In 2014 a group of men addressed the Public Defender of Georgia. They were encountering impediments from their employers in using their right to a paternity leave as provided by Article 27 of the Code of Labor of Georgia.

According to Article 27 of the Labor Code of Georgia, an employee is entitled to the right of a leave related to childcare or childbirth upon request in the amount 730 calendar days; 183 of these calendar days are payable and in the case of a complicated childbirth and the delivery of twins this number becomes 200 calendar days. On the basis of part 3 of Article 3 of Georgia's Labor Code, an employee is a person who performs specific

1004 Information available at the webpage: http://endviolence.un.org/pdf/pressmaterials/unite_the_situation_en.pdf [Last viewed on 15th of March of 2015]

work for an employer based on a labor contract. Accordingly, the directive in Article 27 of this law, that employee can use the right to a leave related with childcare, means that employees of both genders legitimately can take the leave because of childcare.

Also, Order N231/N of the Minister of Labor, Health and Social Protection of 25th of August of 2006 "On Reimbursement of leave for Pregnancy, Childbirth and Childcare, also for adoption of a newborn child" regulates the assignment, calculation and remittance of assistance and compensation for employees and public officers. Regardless of the above mentioned, according to Article 6 of the same order, only a document issued by a hospital can be considered as a basis for the remitting of assistance for pregnancy, childbirth and childcare, also for adoption of a newborn child. According to Article 5 of the Order N232/N of the Minister of Labor, Health and Social Protection, a hospital notice can be issued by an obstetrician-gynecologist from the 30th week of pregnancy for 126 days. And this notice can be given to a father or any other caregiver in case the mother dies as a result of childbirth. Consequently, caregiver unequivocally is a mother and father has an obligation of caring for the child only in case of absence of mother.

The noted record contradicts the rights guaranteed by Article 27 of the Labor Code of Georgia. It also contradicts the important issue of gender equality which provides equal distinctions of responsibilities and obligations for child care and development. Also it contradicts the rules set by international agreements, a participating party of which is Georgia as well.

It must be noted, however, that it is very important to elaborate records from Article 27 of the Labor Code of Georgia due to the many obscurities caused by its cumulative character. The Public Defender of Georgia addressed the Minister of Justice of Georgia to consider the abovementioned issue in the second wave of changes directed toward the improvement of women's labor rights. Also the defender addressed the Minister of Labor, Health and Social Protection with a recommendation to work out relevant changes in order N231/N of the minister. It must be noted that the Ministry of Labor, Health and Social Protection took into consideration the offer of the Public Defender of Georgia and the work has been launched to regulate the noted issue.

REPRODUCTIVE HEALTH AND RIGHTS

The concept of reproductive health does not refer only women, but men as well, because it implies a possibility of making independent decisions regarding safe sex practices, reproduction and other related issues. Couples have the rights to make decisions regarding reproduction free from discrimination, pressure and violence.

In the world, a vast amount of people can not exercise their right to reproductive health, which is caused by the lack of adequate education on the sexual life and reproductive health of human beings, by the lack of appropriate services, or by the low quality of existing services. Random sex contacts can be considered a risk as well and diminish the right to reproductive health. Teenagers represent an especially vulnerable, in fact unprotected, group as they do not have access to information and relevant services.

The level of awareness of our population in the direction of reproductive and sexual health and rights is quite low. Unwanted pregnancies, their termination and the frequent facts of complications as a result of termination among teenagers is related exactly to the lack of access to information, low level of public education on sexual and reproductive health rights, and a widespread negative opinion toward gender equality. It is noteworthy that information campaigns mostly take place in big cities and information rarely reaches regions. Also, spreading information fully is quite difficult because only NGOs work on awareness raising campaigns and they do not have the appropriate resources for coverage of all the regions. Additionally, an information vacuum is more observable in regions populated by ethnic minorities.

According to the research on reproductive health, in 1995-2009 the level of usage of contraception in Georgia (including contemporary methods) has been gradually increasing and in 2010 this indicator made 32%. Increase of index of application of contraception has been due to increase of application of contemporary methods (by 8.9%). [1005]

DATA ON MOTHERS AND CHILDREN MORTALITY

According to the main challenges to world development, member states agreed at the UN Millennium Summit to achieve eight goals of millennium development before 2015. These goals also cover gender equality and the increase of women's rights, decrease of child mortality, and the improvement of mothers' health.

On the 26th of December of 2014, Georgia approved the State Concept of Health Protection System of Georgia for 2014-2020 years – "Universal Health Protection and Quality Management of Protection of Patients'

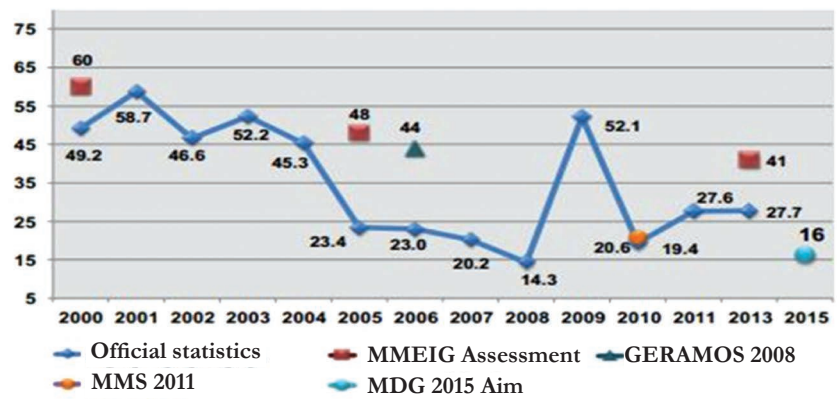
1005 Information is accessible at the webpage: < http://www.ncdc.ge/AttachedFiles/2013_geo.pdf > [Last viewed on March 15th of 2015].

Rights"[1006]. According to this document, one of the priorities of state policies is "promoting the health of mothers and children", which means accounting for mothers' and children's mortality and stillbirths, defining the reasons for death, the improvement of obligatory messaging (notification) system for improvement of the analysis, and the involvement of an active mechanism of supervision.

According to statistics, in 2003-2008 mothers' mortality rate exhibited decreasing dynamics. For improvement of data quality on mothers' mortality rate, reconciliation work of data received on the basis of the order N01-30/N issued by the Minister of Labor, Health and Social Protection in 2013 "On the form and rule of obligatory reporting of mothers' and children mortality/still birth cases" was launched in 2013.

The UN Interagency Group for Assessment of Mothers' Mortality annually publishes assessed indices of mothers' mortality, which as a rule differ from countries' national statistics. In Georgia for many years assessment indices were quite high compared to official as well as research data. According to calculations made in 2012 by the UN Interagency Group for Assessment of Mothers' Mortality, mothers' mortality assessment index in 1990 was 92 and in 2000 wras 113. Preliminary assessment index for 2012 is 77. [1007]

Mothers mortality Index fot 100000 live births, Georgia



According to the latest data of the World Health Organization, in comparison to other countries, mortality rate of mothers in Georgia exceeds data of European, EU and some CIS states.

ACCESSIBILITY OF ABORTION SERVICES

In 2013, 37 000 abortions were registered in Georgia. The major share of these abortions – 34 881 was accounted for the age group 20-44; however, during last years cases of abortions doubled for girls younger than 15 years – 34 abortions. Also, abortion index has increased for women of the age of 45 and older – 270 abortions. [1008] As for the statistics of 2014, based on the information[1009] requested by the Ministry of Labor, Health and Social Protection 31 908 abortions were registered among them 26 013 were artificial abortions. The highest number of abortions is registered in Tbilisi (11 938), followed by Imereti (4903), Shida Kartli (3835) and Adjara (3 629). It must be stressed that in 2014 number of abortions has decreased compared to 2013 almost in all age groups, including adolescents.

1006 Information is available at the webpage: < https://matsne.gov.ge/ka/document/view/2657250 > Last viewed on 15th of March of 2015].

1007 Information is accessible at the webpage: information is accessible at the webpage: http://en.calameo.com/read/0007135297b8958ebd678 [Last viewed on 15th of March of 2015].

1008 Information is accessible at the webpage: http://www.geostat.ge/cms/site_images/_files/georgian/qali%20da%20kaci.pdf [Last viewed on March 15th of 2015].

1009 Ministry of Labor, Health and Social Protection of Georgia; Letter #01/17833, 13/03/2015 .

Starting from the August 1st of 2014, new rules of interviewing of pregnant women and 5 day reflection period have been introduced before medical intervention for abortion purposes. An exception to 5 day reflection period is provided for the cases when due to the pregnancy term (12th week) the legal abortion period expires after 5 days and service delivery shall be limited. As a result, reflection period can be reduced to no less than 3 days.

According to the number of institutions where abortion services are accessible Tbilisi is in the leading position. According to the information[1010] requested by the Minister of Labor, Health and Social Protection, the worst situation in this regard is in Racha-Lechkhumi, where abortion services are accessible only in Ambrolauri and Lentekhi.

According to the information[1011] provided by the Ministry of Labor, Health and Social Protection, medical institutions have no obligation to send any report about abortion procedures or to use any other information transferring option, except of cases when the fact of violence is observed. This is defined by the united Order # 152/N--#496 - #45/N of 31st of 2000 by the Minister of Labor, Health and Social Protection "on Providing Operative Information from Medical Institutions to the Ministry of Internal Affairs". In this regard, we were informed that during 2014 in structures subordinated to the Ministry of Labor, Health and Social Protection no information indicating violence against a minor has been transferred for abortion referral cases, and 2 cases of pregnancy of minors were registered.

During discussion of abortions it is important to pay a special attention to the form of abortion which is related to gender selection, which means termination of pregnancy according to the gender of the fetus. Gender-biased sex selection is widespread mostly in the countries, where dominating patriarchal culture prevails, gender equality is breached and priority is given to the male gender. In Georgia there is no official statistics on selective abortions, which is caused by the fact that nobody indicates gender selection as a reason for abortion. As for the legislation, according to the Order 01-74/N of October 7th of 2014 by the Minister of Labor, Health and Social Protection, "on Adoption of the Rules of Artificial Termination of Pregnancy", medical intervention for pregnancy termination for gender selection purposes is prohibited. [1012]

1010 The Ministry of Labor, Health and Social Protection of Georgia; Letter N01/17833; 13/03/2015.
1011 The Ministry of Labor, Health and Social Protection of Georgia; Letter N01/17833; 13/03/2015.
1012 Information is accessible at the web-page: < https://matsne.gov.ge/ka/document/view/2514236 > [Last viewed on March 15th of 2015] .

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

The scale of violence against women and domestic violence is disturbing; we felt the whole gravity of the problem in 2014 when 17[1013] women were killed as a result of domestic violence. Frequently we hear the argument that it is hard to identify domestic violence, because it takes place in a closed social circle. However, it has been long time since the violence against women went beyond the limits of this closed circle. It is disturbing that often the victims had not addressed the law enforcement organs for help prior to the incidents.

Ineffective implementation of the protection and assistance activities represents the major challenge along with indifference of the general public. Frequently, for protection mechanisms for victims of violence provided by the law aren't used and respectively, their appeal for assistance is disregarded by law enforcers.

Numerous facts of domestic violence were studied by the Public Defender of Georgia in 2014. In the frames of this study monitoring of femicide cases and related services were rendered. Results of the study show that the problem of domestic violence and violence against women needs the complex approach which includes: elevation of public awareness and cooperation between the sectors for timely identification, protection and assistance to victims. The Public Defender of Georgia welcomes signing of the Council of Europe 2011 Convention On "Preventing and Combating Violence against Women and Domestic Violence" by the Minister of Justice on behalf of Georgia, which is one of the steps forward in combating violence against women.

In 2014 important changes were introduced in the legislation of Georgia, which improved mechanisms of protection from violence. The new form of violence such as "neglect" was added to the forms defined by the law of Georgia on "Elimination of Domestic Violence, Protection of and Support to its Victims", which means unfulfillment of physical or psychological needs of a child, incompletion of rendering of necessary medical or other types of services to a child by a parent or other legal representative, if a parent/representative has an access to a relevant service.

The change, which increased the duration of the status of the domestic violence victim to 18 months, was very significant; although the term of shelter service has been left unchanged and it still remains 3 months.

Activities implemented by the Ministry of Internal Affairs in the field of combating domestic violence and violence against women are noteworthy. Among them are: giving authority to inspector-investigators of territorial organs to issue restrictive orders[1014] (which makes activities for victim protection more flexible), training of policemen, enhancement of cooperation with nongovernmental organizations, preparation of information video clip and its release in media, informative meetings with youth etc. However, there still are remaining issues which need a complex approach and an active inter-agency coordination.

The scale of violence against women became a subject of concern for the UN Committee for Elimination of All Forms of Discrimination against Women. In particular, at the 58th session of 2014 as a result of discussion

1013 General Prosecution of Georgia; Letter N13/16016; 17/03/2015.
1014 Order of the Minister of Internal Affairs №491/ 02.07. 2014.

of the 4th and 5th united reports of Georgia, the committee called on Georgian state to take urgent measures for combating increasing number of femicide by husbands or partners and other forms of domestic violence.

Among the problems existing during 2014, suspension of activities of the Group Determining of the Status of Domestic Violence Victim must be singled out, which significantly damaged (affected) persons in need of shelter, because the group represented one of the most effective mechanisms of inclusion of victims in the state services.

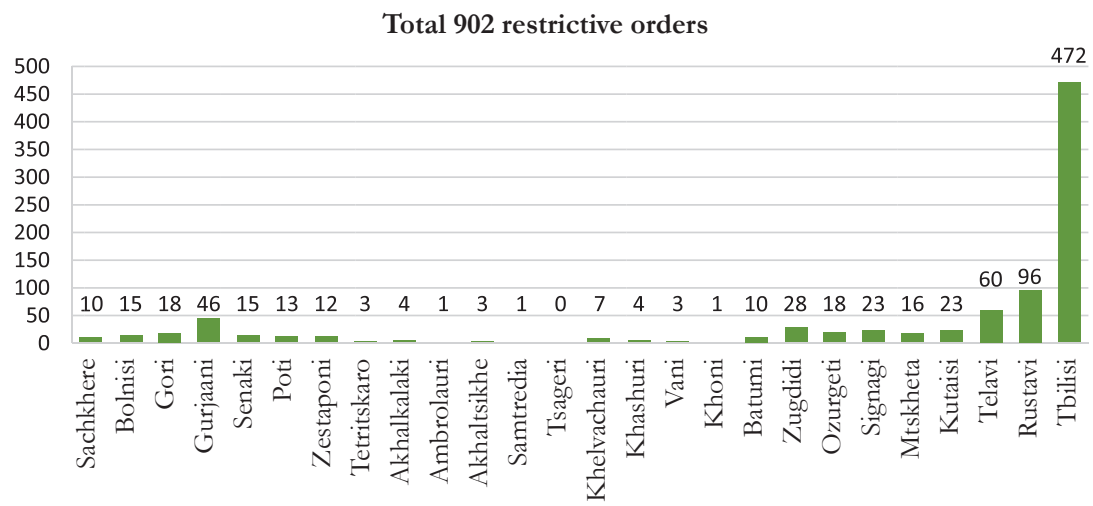
As a result of the study of the Public Defender of Georgia, it was established that there was no legal basis for suspension of the group's activities. It is true, that the Georgian State had to approve the rule of identification of victims before the 1st of April, and this date was set as the deadline for the activities of the existing group. However, at the same time Georgian law on "Elimination of Domestic Violence, Protection of and Support to its Victims" provided continuation of the activities of the existing group until the approval of the new rule by the Georgian government. The reason for suspension of the group's activities as we were informed[1015] from the State Chancellery is unknown. Unfortunately, suspension of the activities of the group had a very negative effect on the protection of domestic violence victims.

Acquisition of the statistical data from the relevant institutions was quite complicated for the office of the Public Defender of Georgia. Regardless of the obligations provided by the law, provision of statistical data took place with a delay, in incomplete and incomprehensive manner. The noted makes it clear that the relevant structures do not process them adequately. It must be noted that the statistical data presented in the report is processed by the office of the Public Defender of Georgia on the basis of data analysis received from different sources.

According to the information provided by the Ministry of Internal Affairs, in 2014, number of calls received on domestic violence/conflict in Urgent Assistance Control Center LEPL of MIA "112" was 9290[1016]. Although noted data represent only initial (first hand) information and information on real situation discovered by the authorized response services has not been processed.

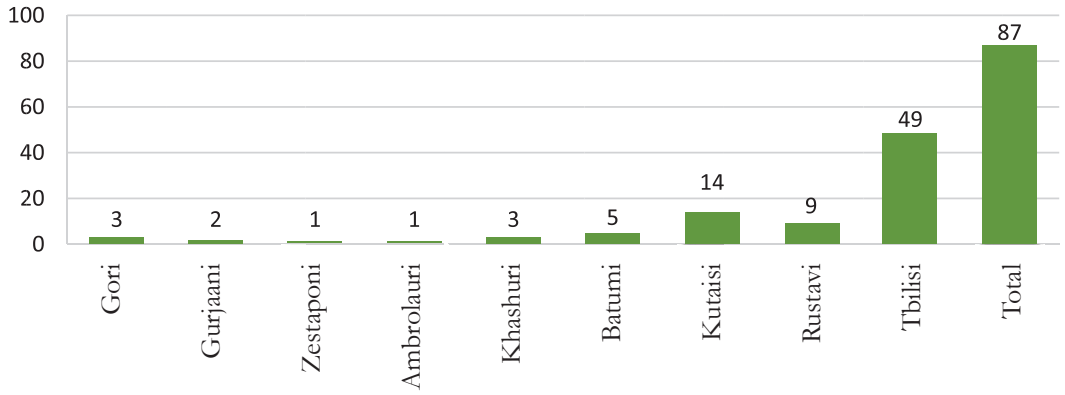
For assessment of the effectiveness of the protection mechanisms the Department of Gender Equality of the Office of the Public Defender of Georgia requested from general and magistrate courts of Georgia statistics on approved protective and restrictive orders. According to the statistics, 87 protective and 902 restrictive orders have been issued countrywide, among which 4 protective orders and 17 restrictive orders were denied or weren't approved for legitimate reasons.

The detailed statistics of approved protective and restrictive orders looks is as follows:



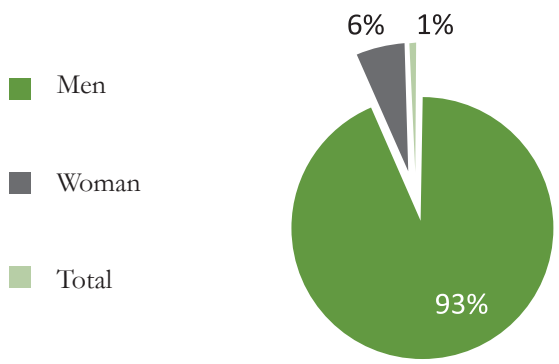
1015 Chancellery of the Government of Georgia; Letter N 3803011/11/2014.
1016 Data include data of December-October of 2014/ the Ministry of Internal Affairs / N2376761 ; 24/11/2014.

Total 87 protective orders



Composition of the statistical data on the response of relevant services on breaching of conditions of restrictive and protective orders is also quite interesting. According to the data of divisions of the Ministry of Internal Affairs of Georgia, during 10 months of 2014, 39 infringements of law were registered according to the part one of Article 175[2] of Criminal Code of Georgia, 15 infringements were registered according to the second part of this article[1017] and 5 prosecution cases were started for infringement of Article 381[1] (incompletion of conditions or/and obligations provided by protective or restrictive orders) against 5 persons[1018]. Statistical data differs by gender for restrictive orders and is following:

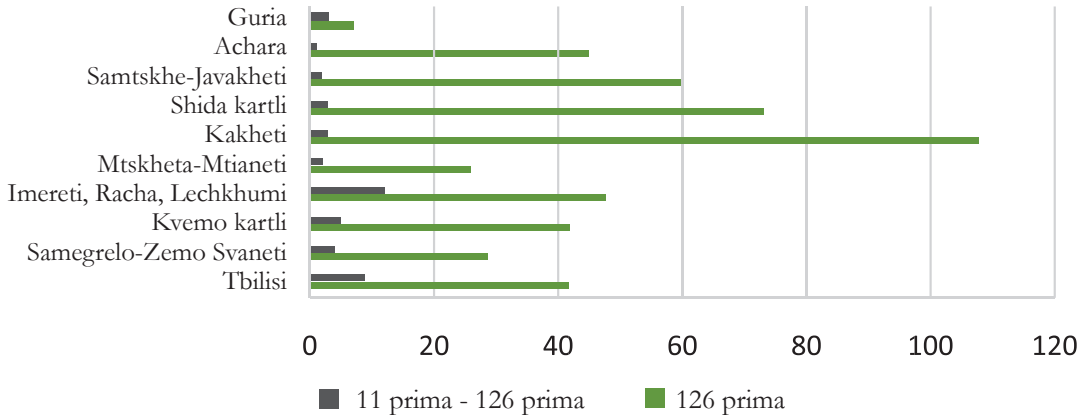
Distribution of restrictive orders by % of perpatrators



As for the statistics of application of the Criminal Code's mechanisms on facts of domestic violence, according to the information provided by the Chief Prosecutor of Georgia, prosecution cases were started against 17 persons according to Article 126[1] of the Criminal Code of Georgia, and according to 11[-1]–126[1] against 33 persons. In total, there are 495 registered victims of domestic violence[1019]. And based on the information provided by the Ministry of Internal Affairs, 480 prosecution cases were started according to Articles 11[-1]–126[1] of the Criminal Code of Georgia, and 44 prosecution cases were started for Article 126[1]; prosecution cases for abovementioned articles were started against 479 men in total (among them one junior) and 37 women, and 525 women among them 32 juniors, 135 men, among them 18 juniors were recognized as victims. [1020]

1017 The Ministry of Internal Affairs of Georgia; N176433 / 26.01.15.
1018 The Ministry of Internal Affairs of Georgia;N 564736 / 16.03.15.
1019 The General Prosecution Office of Georgia; N13/79703 / 23.12.2014.
1020 The Ministry of Internal Affairs of Georgia; N541888/ 12.03.2015.

Number of cases for which investigations where started



MECHANISMS OF PROTECTION AND ASSISTANCE

The problem of domestic violence needs an effective involvement of thematic institutions and a complex approach. Unfortunately, regardless of repeated recommendations, issue related to the role of social workers in the response to facts of domestic violence still remains open. Considering the essence of the problem, inclusion of the law enforcement agencies is not always sufficient and needs additional assistance from the specialists.

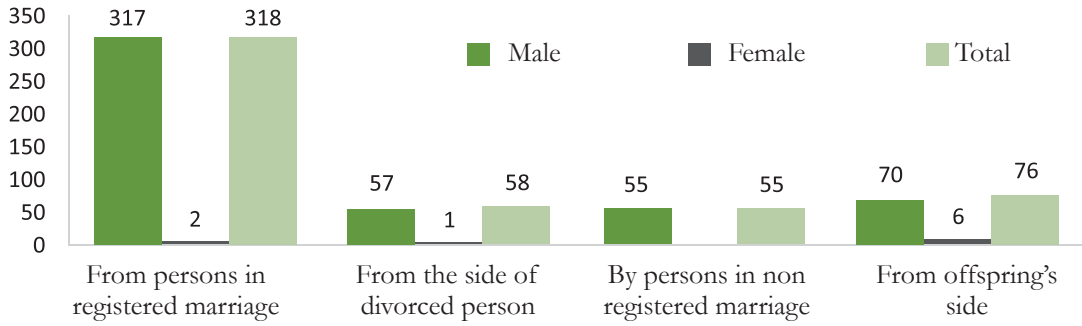
Regardless of the fact that there is a very precise instruction on what kind of measures shall be applied by the law enforcement organs in response to the facts of domestic violence, significant trends outlined in the reporting period point to the insufficient completion of the activities provided by the law.

From number of cases studied by the Public Defender's Office of Georgia, it is established that during response to the facts of domestic violence representatives of the law enforcement organs used so called receipt (letter) of promise. This form is not listed among the judicial mechanisms of protection from violence. The studied cases showed that the receipt of promise is a completely ineffective measure and doesn't ensure victim's protection because it has no accompanying lawful results. It doesn't provide prevention of repeated violence or can not hold a person responsible for already committed violence.

The work made by the Ministry of Internal Affairs for training of policemen, also for placement of persons responsible for cases of domestic violence in every division, are commendable but institutionalization and creation of special structural units for issues of violence against women and domestic violence still is very crucial. In this regard, sharing of the practice of the Public Defender can be very beneficial, when the special department will be created on gender equality issues.

In measures of prevention of domestic violence, protection of victims of domestic violence and their assistance involvement of the institute of social worker is important. 1st of September of 2015 was announced as the day of inaction of responsibilities of social workers according to the Law of Georgia "Elimination of Domestic Violence, Protection of and Support to its Victims". However, due to limited resources, the Ministry of Labor, Health and Social Protection doesn't plan addition of social workers specialized in issues of violence. Instead, training of existing resources in the issues of domestic violence is planned together with the addition of several tens of people. It is noteworthy, that although the spectrum of responsibilities and issues of social workers is very wide, their number and resources are too limited. Respectively, without additional empowerment their work on issues of combating domestic violence will be ineffective.

The Department of Gender equality of the Office of the Public Defender of Georgia processed data on protective and restrictive orders retrieved from courts in 2014. According to this assessment, the most frequent type of violence among the facts of domestic violence was violence from a current partner. Although violence from former partners is also quite frequent. Statistical data by restrictive orders is as follows:



As it was mentioned above, orders issued for women are significantly less and perpetrators are mostly men.

As a result of the analysis of protective and restrictive orders, it can be seen that in the most cases they are issued in situations where both types of violence - physical and psychological, are present (total of 881) and sexual violence cases are the least reported, only 7 restrictive orders are issued for this form of violence.

The ratio of restrictive and protective orders is striking. Restrictive orders on facts of domestic violence exceed number of protective orders by 91% (ratio 9%).

We can assume that after expiration of the term of restrictive order, not everybody will have a desire of using longer protective mechanisms, however, this difference between order types can be caused by order issuance and approval rules. Restrictive order is a proactive measure taken by the patrol police for victim's protection, which is their obligation by the law. When it comes to protective orders, a victim has to apply herself (himself) (or with help of an assisting person) to a court. Not many citizens know about this procedure. Thus, elevation of awareness level and inculcation of preventive measures shall strengthen victims' protection.

FEMICIDE

The department of Gender Equality of the Public Defender's Office of Georgia monitored the cases of femicide. The year 2014 was very tragic due to cases of femicide in Georgia. According to the information provided by the Ministry of Internal Affairs[1021], in 2014 13 women were killed by husbands, ex-husbands, partners (criminal offences defined in Articles 108, 109, 117 of the Criminal Code). In one case father-in-law killed a daughter-in-law and in two cases mothers were killed by their children. In total, 17 women were killed in a family circle. Crimes (in a non-family environment) defined in the 108-109 Articles of Criminal Code of Georgia were committed towards 17 women.

According to the information provided by the Chief Prosecutor's Office of Georgia[1022] court trails are over for 9 cases out of the committed 17 criminal cases, for 3 cases substantial trails are underway, criminal proceedings of 5 cases were suspended by the court for various reasons (1- death of accused, 2 – suicide of accused, 2 – accused turned out to be deranged).

34 women were killed during 2014, although due to unavailability of information in some cases it becomes impossible to identify some of these crimes as gender based. 50% of the women killed in 2014 died as a

1021 Ministry of Internal Affairs of Georgia; N541888/ N541934 / 12.03.2015.
1022 Chief Prosecutor's Office of Georgia; N13/16016; 17/03/2015.

result of domestic violence. According to the statistics the highest number of femicide happened in partner relationships. Unfortunately, it's impossible to count cases in which women were driven to suicide because, as informed by the Ministry of the Internal Affairs[1023], in crime stories the crime circumstances, including information about victims, are not always indicated in details. The registered criminal offences classified under Article 115 (Bringing to the Point of Suicide) of the Criminal Code of Georgia represent a large volume data and their detailed study can't be accomplished.

Often society is aware about the act of violence; however people avoid informing law enforcement authorities and leave victims face to face with perpetrators. Awareness rising concerning the issues of women's rights is yet another precondition for the prevention and reduction of tragic cases. So far based on the practice we can say that society was even accusing victims and in some cases justifying perpetrators in murder cases covered by the media. The motive of violence generally stems from gender inequality. In cases of crimes committed by ex-husbands issues such as jealousy and defense of a male dignity were discussed, while nobody mentioned women's rights and their right to live in liberty.

During the process of research two cases were identified when victims before being killed addressed the law enforcement authorities regarding the acts of violence against them, but due response hasn't followed. There was one case of wounding when victim informed the police beforehand. The tragic cases that took place clearly show possible consequences of ignoring of the defense mechanisms and leaving acts of violence without a response. Active work is necessary in order to reinforce response to domestic violence cases, and to make law enforcement authorities realize their responsibility in defense of victims.

THE CASE OF M.TS.

On 16th of October 2014 the ex-husband of M. Ts. shot her and then killed himself. Police was aware about the permanent violence towards M. Ts. from her ex-husband. The victim addressed law enforcement authorities twice for defense measures, although in both cases police limited its action to a warning and a receipt (letter) of promise to stop violence. Restrictive order was not issued.

THE CASE OF T. M.

On 20th of May 2014 ex-husband stabbed 52 years old T. M. in forearm and chest. Before this fact on 5th of May 2014 T. M. informed Gori Regional Office of the Ministry of Internal Affairs regarding the fact of threats by E. M. with a cold weapon. The Ministry of Internal Affairs did not apply efficient measures such as issuance of a restrictive order. The crime was committed after 2 weeks from the notification. Restrictive order was not issued.

THE CASE OF S. Z.

S. Z. was killed by her ex- husband by means of fire-arm. Patrol police has been called many times concerning the facts of violence from the side of husband who was a policeman himself. But protective mechanisms were not applied by the authorities regardless multiple addressing.

Issue of a crime qualification by investigation organs needs to be noted. On 15th of May 2014 ex-husband shot several times towards ex-wife S. Z. and her brother T. Z. S. Z. died before being delivered to the hospital. A.Ts. was accused in crime according Article N11-117, part 8, and Article N118 part 1 of the Criminal Code

1023 The Ministry of Internal Affairs of Georgia; N541934 / 12.03.2015.

of Georgia – which is intentional infliction of heavy physical damage, which lead to the death of S. Z. As a preventive measure A. Ts. was imprisoned. Assigning of qualification to committed crimes goes beyond the competences of the Public Defender; although it's evident that assignation of qualification has a decisive importance. Such interpretation of the death of the young woman leaves impression of a very loyal disposition towards the violator.

Study of the issue by the Public Defender of Georgia revealed that definition of crimes driven by gender motives and respective inexistence of such practice is an important challenge. Profound research and analysis is needed in this direction. The committed acts of violence make it evident that crime motives stem from gender inequality, existing ideas on women's gender roles and stereotypical attitudes. Thus, it's important to introduce the practice of definition and analysis of acts of violence committed with gender motives.

SUICIDES

The Department of Gender Equality of the Public Defender's Office of Georgia studied cases of women suicides which according to the spread information were possibly committed due to systematic domestic violence. During the investigation it became evident that often qualifying such cases as "Bringing to the Point of Suicide" was not possible because acts of violence were unknown to the law enforcement authorities before the death of victims.

On 19th of March 2014 the Public Defender of Georgia found out about the suicide of 16 years old girl. The possible reason of the suicide was evasion of a forced by her parent's marriage. Telavi Regional Office of the Ministry of Internal Affairs ceased proceedings on this case due to insufficient evidences (inexistence of actions) foreseen by the Criminal Code. However, according to mass-media it was known that the precondition of the committed suicide was either violence or forced early marriage.

On October 9, 2014 the Public Defender of Georgia found out about the suicide of Kh. J. According to the spread information the deceased was severely beaten by the relatives of her husband. Shortly after this she hanged herself. We were informed through the correspondence of the Kakheti Regional Office of the Ministry of Internal Affairs that above-mentioned case was ceased due to inexistence of actions (insufficient evidences) foreseen in the Procedure Code of the Criminal Law. However, mass-media later identified facts that were unknown to criminalists and correspondingly investigation of the criminal case was resumed. It's still under way.

On September 16th of 2014 the Public Defender of Georgia learnt about suicide of 21 years old G. U. According to the spread information the deceased had a permanent conflict with her husband, who was using physical violence and verbal insults against her. Investigation of the criminal case of bringing G. U. to the point of suicide was conducted by Isani-Samgori Department in Tbilisi. It was established by the investigation that acts of violence had not taken place in the family. The regional office of the police never received any complaints regarding acts of violence neither from the deceased nor from the relatives of the deceased.

Above mentioned as well as other cases of suicide studied by us allows us to suppose that Bringing to the Point of Suicide is yet another grave result of violence against women, but the most unfortunate tendency is the difficulty of punishing of culprits; investigations cease as a result of insufficient evidences. Here we return to the attitude of the general public towards the domestic violence. Very often neighbors or relatives are aware of possible acts of violence but they refuse to cooperate with investigation and prefer to keep silence. Result of such attitude, as it becomes clear, may be deplorable. Exactly this is why it is necessary to continue to work on awareness-raising of the population; measures foreseen by the legislation for withholding information on crime from corresponding authorities shall be undertaken. This is when a person knows about acts of violence and refuses to provide the information to the authorities.

EVALUATION OF THE EXISTING SERVICES OFFERED TO VICTIMS OF DOMESTIC VIOLENCE

The Department of Gender Equality of the Public Defender's Office of Georgia with support of the UN Women's Organization conducted monitoring of shelters for victims of domestic violence and the hotline. The aims of the monitoring were: to control three state shelters and hotline services, to evaluate existing situation and to identify needs of beneficiaries.

Establishment of state shelters significantly improved and facilitated mechanisms of protection of victims from domestic violence. However, regardless of these positive sides it is clear that these services need constant refinement. The monitoring was carried out exactly in order to estimate existing gaps and shortages which need to be eliminated in order to improve the services.

Monitoring of three state shelters was carried out in Tbilisi, Gori and Kutaisi. All adults living at that time in the shelters were interviewed. Special questionnaire aiming to collect general information was compiled for the shelter management. The monitoring revealed the gaps and positive aspects of the management process. The living spaces were visually examined and their compliance with existing standards was checked.

STATISTICS OF SHELTER TURNOVER

The legal basis for acceptation into a shelter is following: any victim of domestic violence who is in need of a shelter will be accepted. According to the shelter routines any member of a family can be considered as a victim of domestic violence if this person experiences physical, psychological, sexual, economic violence or compulsion from other family members and who was already given a status of victim by an authorized institutions such as: relevant authorities of the Ministry of Internal Affairs of Georgia, and/or the court (protective or restrictive orders); and/or the Group Determining of the Status of Domestic Violence Victim. According to the information provided by the management of these shelters, two persons were accepted to the Gori shelter on the basis of court's decision.

It should be noted that in comparison to 2013, number of persons who used shelter services was 38% less during 2014[1024]. Since 1st of April of 2014 the Group Determining of the Status of Domestic Violence Victim temporarily stopped functioning, this hampered acceptance of victims to shelters. If closely observed, the statistics of the legal basis of the reception of victims to shelters shows that the number of victims protected with restrictive order increased significantly (by 175%), while number of victims with this status obtained from the Group Determining of the Status of Domestic Violence Victim decreased (by 53%). It's clear that this is caused by the temporary suspension of the work of the status determining group.

Increased involvement of the patrol police and application of measures foreseen by the law for cases of possible violence by the patrol police is important. As mentioned above, compared to 2013 the number of cases of addressing shelters on the basis of restrictive order has increased by 175% during 2014, which is an indicator of a very sound tendency, although much remains to be done in this direction. The Public Defender of Georgia studied several cases in which patrol police used letters (receipts) of promise as preventive measures to stop violence instead of measures foreseen by the law. At the same time almost all respondents remarked that before being accepted to the shelter they addressed police (patrol as well as police officers of their districts) several times and did not get support from them; restrictive order was issued on the first call only in one case. Others underlined deriding attitude of the police staff towards them.

Based on the analysis of the gathered information it's possible to say that decreasing number of beneficiaries in 2014 is a negative tendency, because this didn't happen due to decrease of the number of victims in general

1024 Data received by comparison of data of 2013-2014.

but due to inflexibility of procedures. We hope that these services will be offered to any person in need because work of the commission and status determining group has resumed.

LIVING CONDITIONS

The shelters are well furnished; they are clean and warm, equipped with all the necessary living conditions. Rooms are furnished; children beds are provided, sanitary norms are met.

According to the law locations of the shelters must be kept confidential and can't be divulged in order to protect security of victims. This is regulated by the statute of shelters. For protection of victims an iron door and 24 hour guard is necessary. It is noteworthy that in the regions addresses of shelters are known to any interested party; it's very difficult to keep it confidential in small towns due to the specifics of the environment there. That's why it is reasonable to enhance the security measures. The Gori shelter doesn't have an iron door which is against standards.

The Kutaisi shelter is adapted to the needs of disabled persons in wheelchair. This shelter can accept only one disabled person in wheelchair. One room as well as toilet, and dining room are adapted to the needs of such person, although these shelters can not accept persons with other disabilities (psychic, limited eyesight, etc.).

PERSONNEL

During the monitoring 14 persons were working in Gori, 11 in Kutaisi and 17 in Tbilisi shelters. All of them were trained on the issues of domestic violence. Their tasks are described in detail in the statutes of the shelters.

Gori and Kutaisi shelters don't have a lawyer, although when legislative consultations are needed local nongovernmental organizations are addressed: they are providing consultation services and if needed they also defend interests of victims at courts. The Kutaisi shelter doesn't have a social worker. According to the guidelines for functioning of domestic violence victims' shelters obligatory composition of personnel should be as follows: a shelter manager, a social worker, a psychologist, a medical personnel-nurse, a doctor on duty. The Kutaisi shelter was opened in May of 2014 and its staff is in the process of formation, it is expectable that a social worker will be hired soon and added to the list of the personnel.

MAJOR FINDINGS

Based on the results of monitoring it becomes evident that duration of stay in shelters needs to be reconsidered because at the present time it's impossible to talk about rehabilitation and psycho-social adaptation of victims. Moreover, at the present time it's impossible to resolve issues of primary importance for victims to continue life after leaving the shelter. It is clear from the results that the term is being prolonged for almost every case. Moreover, prolongation of the term longer than provided by the law is frequent, and this happens on the rational grounds when victim is not ready for independent life due to existing situation.

Problems related to food and medication provision were exposed as well. Specifically: lack of diversified menu which is necessary for kids' and infants' healthy development - respondents complained that they have no possibility to buy diverse food and the shelter management doesn't take into account specificity of children diet. As for provision with medications shelter buys medicines prescribed by doctors according to rules of the state purchase, which is a long procedure and thus, timely provision of medications is delayed. It is necessary to elaborate more efficient rules for provision of medications because such treatment is a violation of human rights.

Yet another important issue revealed by the monitoring results concerns possibilities to hire a baby-sitter or mother's helper. In order to make it possible for victims with children to find jobs and to participate in different programs it's necessary to give them a possibility to leave children at least for a short time, since getting jobs and/or taking trainings are vitally important to them.

HOTLINE

4 persons were working on the hotline during the monitoring. They were changing one another in every 4 days; one working day lasted 24 hours depending on the character of the service.

The hotline service covers the following types of services: crisis aid, legal advice, psychological aid, informing, and referral to the shelter or consultation center, also call to police or in case of necessity to ambulance only after consent of the respondent.

Personal data of callers to hotline are confidential, only a gender and age are asked during a telephone conversation. However, respondents said that in most cases they themselves give out their names. In average, one person needs to call 2-3 times in order to get the consultation and to make a final decision about what kind of service to apply for. Several persons remarked during the shelter monitoring that they learnt about existence of the shelter and were given instructions on reception regulations exactly from the hotline.

In 2014 total amount of calls to Hotline is 766, among them 659 were from women and 107 from men. It's remarkable that the four persons who answer calls do not speak foreign languages and thus it's less probable that they will be able to give consultations to non-Georgian speaking persons.

Acts of physical violence were the most frequently registered types of violence through the Hotline in 2013-2014. It followed by psychological violence according to the frequency of calls, which in turn is followed by sexual and economic violence, and the last is compulsion. Most frequently these are women who call the Hotline in order to inform about an act of violence, they are followed by neighbors or relatives, men and children apply to this service very rarely. Duration of a call is not limited.

The hotline staff had several internal trainings, they are lawyers by profession.

For the total monitoring of the hotline it's necessary to check calls by using so called "mystery user" method in order to check the staff's qualification and efficiency of their consultations in practice.

EARLY MARRIAGES

Early marriage is an officially registered or unregistered union between two persons when one of them has not yet reached the adulthood. Early marriage destroys children's health, education, equality, the right to live in an environment free from violence and exploitation. These rights are reserved by the Declaration of Human Rights of the UN, the Convention on the Rights of the Child and the Convention on Elimination of All Forms of Discrimination against Women.

Globally, more than 700 millions of women get married in juvenile age; about 250 millions of girls were not even 15 years old when they got married. Very often girls who marry before 18 don't continue attending school and stop education. They belong to the group at high risk of becoming victims of domestic violence. It's known that pregnancy and birth-giving hold high risks for teenage girls, because very frequently their bodies are not yet ready for such strain. Fatal cases are twice as high for 15-19 years old persons than for persons older than 19. Teenage pregnant persons as well as their newborn infants belong to the risk group. According to the conducted studies such new born infants are underweight and have diverse health problems[1025].

Early marriages of persons who are not yet 18 years old make 18% in Georgia, and of those under 15 – 1%[1026]. Precise data are not known because collection of statistical information at schools and other interested organizations regarding school abandonments and early marriages is not going on.

It is remarkable that at the end of 2014 change was made to the Criminal Code of Georgia and Article 150[1] –and which criminalized forced marriage. The mentioned change will become effective only as off the 1st of April, 2015. It should be acknowledged that the Ministry of Education and Science made a change according to which indication of the reasons of school abandonment has become obligatory.

In 2014 the Department of Gender Equality of the Public Defender's Office of Georgia studied cases of early marriages and kidnapping of teenage girls. The measures and activities undertaken in this direction by relevant authorities were monitored as well.

The study conducted by the office of the Public Defender about the mentioned issue revealed that the major challenge is the low level of consciousness of the public and an inefficiency of mechanisms of access to the relevant services.

1025 Information is accessible at the web-page: http://www.cfr.org/peace-conflict-and-human-rights/child-marriage/p32096?cid=ppc-Google-grant-infoguide_child_marriage-understanding_ad&gclid=CjwKEAjw56moBRD8_4-AgoOqhV4SJADWWVCctba3hsxexTq-yNGGBQtPCj3C-kyPiuwaxFfnZPbOFRoCBgHw_wcB#!/ [Last Viewed on March 15th of 2015]

1026 Information is accessible at the web-page: http://www.cfr.org/peace-conflict-and-human-rights/child-marriage/p32096?cid=ppc-Google-grant-infoguide_child_marriage-understanding_ad&gclid=CjwKEAjw56moBRD8_4-AgoOqhV4SJADWWVCctba3hsxexTq-yNGGBQtPCj3C-kyPiuwaxFfnZPbOFRoCBgHw_wcB#!/[Last Viewed on March 15th of 2015]

The Gender Equality Department organized information meetings in different regions of Georgia in order to profoundly study this issue. Meetings were aiming at collection of information about early marriages, on site studying of causes and problems related to this practice. During visits school teachers, other service providers and school pupils were interviewed. As a general conclusion, several major problems related to early marriages were identified: the population including children is not informed that early marriage is illegal, the principle 'family affair' remains very crucial – and as a result different stakeholders avoid to be involved in 'family affairs', school teachers don't feel responsible and upon learning about facts of early marriage do not act according to the norms foreseen by the law. Moreover, the absolute majority of teachers attending meetings didn't even know that this kind of legal obligation existed.

Correspondingly, consciousness rising of the population is one of the major issues in combating early marriages. Involvement of all interested structures (stakeholders) defined by the law is necessary, and compliance with described instructions is needed. Information regarding reproductive health and contraception is not sufficient. According to the results of the meetings it's evident that one of the major causes of early marriages is pregnancy - youth (even persons younger than 16) get married in order to fit in. According to the situation in the country it is advisable to explain matters of reproductive health and contraception to youth, in order to help them to realize possible outcomes and to evaluate risks that they face.

The Committee for the Elimination of All Forms of Discrimination against Women underlined the problem of early marriages in the resolutions issued after discussion of the 4th and 5th united reports of Georgia and called on the state to make relevant amendments to the Civil Code according to which marriage of 16-18 years old persons will be possible only through the court decision[1027].

CASE MANAGEMENT

Cases of early marriages should be considered as type of violence. In the order of 31st of May of 2010 'on Adoption of Children's Protection Referral Procedures' obligations and responsibilities of the Ministry of Internal affaires, the Ministry of Education and Science and the Ministry of Labor, Health and Social Protection are stipulated in detail for solving cases of violence against children. Although studies of the Public Defender's Office reveal that in case of early marriage the referral procedures are almost never followed.

As it was already mentioned, one of the crucial rings in the chain of early marriage prevention are school teachers. It's their responsibility to inform relevant authorities upon learning about a case of early marriage. After interviews it became evident that school teachers think that identification of the children belonging to the risk group and informing relevant authorities is beyond their competencies. They think that they can't be involved in family affairs and issues that are not related to school. Also they can't count on confidentiality after such involvement. As a result they are passive. Referral mechanism is ignored with such disposition and school teachers refuse to fulfill their legal obligations[1028].

According to the information received from the LEPL (Legal Entity of Public Law) Social Service Agency[1029] in 2014 they haven't received any notification on early marriages from schools or the Ministry of Internal Affairs. The several cases which were studied by them became known to them from the Public Defender's Office, about one case they learnt from hospital.

The practice of the Department of Gender Equality of the Public Defender's Office of Georgia shows that referral procedures are ignored by the relevant authorities:

1027 Summarizing statutes on the 4th and 5th united periodic reports of Georgia; the Committee for the Elimination of All Forms of Discrimination against Women.

1028 Information meeting in Samtskhe-Javakheti Region; 13/03/2015 Information meeting in Samtskhe-Javakheti Region;

1029 The Ministry of Labor, Health, Social Protection; letter N04/16119; 09/03/2015

On 21 February 2014 in Kutaisi M.S. disappeared for several days. The criminal investigation started on this case for the crime classified by Article 140 of the Criminal Code. According to the letter from the Social Service Agency LEPL dated 13th of May of 2014, they received information about the disappearance of M. S. from the letter of the Public Defender's Office of Georgia and not from the law enforcement authorities.

Also, on 7th of May 2014 it became known to the Public Defender of Georgia that in Lagodekhi region Kh. U. was kidnapped and raped. The kidnapper deprived freedom to a girl and achieved sexual intercourse with her through physical force. Two persons were arrested in relation to this case, as a preventive measure they were imprisoned, while search was announced for the third person. According to the letter dated 28th of May of 2014 from the Lagodekhi Regional Department of the LEPL Social Service Agency they started to investigate this case on the basis of the correspondence sent by the Public Defender's Office of Georgia, having no information about this fact prior to this.

On April 10th of 2014 the Public Defender's Office of Georgia learnt about the case of deprivation of liberty of S.G. living in Marneuli. Investigation was started on the crime classified under the subparagraph'd' of the 3rd part of Article 143. According to the information provided on 24th of April of 2014 by the Marneuli Regional Department of the LEPL Social Service Agency, they have not received any information regarding the mentioned case.

The Public Defender's Office according to rules provisioned in the law informed Territorial organs of Guardianship and Care on all above mentioned cases in order to let them respond correspondingly and to defend interests of under aged persons. Apparent trend is that in none of the above mentioned cases did the authorities of the Ministry of Internal Affairs of Georgia provide information to the relevant services of the Social Service Agency, the latter found out about these cases exclusively from the Public Defender's Office.

SERVICES OFFERED TO REPRESENTATIVES OF ETHNIC MINORITIES

During 2014 while studying different cases of non-Georgian speakers, existing gaps in the access to services became apparent. For example, in number of cases local Social Service Agencies don't have a possibility to hire interpreters. Specifically, in ethnic minority communities depending on circumstances of the case it's necessary to speak face to face with a person speaking foreign language. One such example is the case of Kh. U. which was studied by the Gender Equality Department:

On 25th of March Kh. U. when she was returning to home from school was kidnapped from the street by A.S. and his friends who was living in the village K. Girl was put into the car by force and was taken to the forest of the village Chiauri of the Lagodekhi region, where she was kept during two days. A. I. had a forced sexual intercourse (raped her) with Kh. U.

After the study of the case it became evident for the Social Service Agency that the language barrier was a major communication problem with the Azeri community of the village K. The Agency employees had a difficulty to find trustable person who spoke Azeri and Georgian languages and would help them during the visit to the family of Kh. U. The person who agreed could not speak Georgian well. The Social Service Agency representatives listened to K. U. - the brother of Kh. who spoke with them about the condition/situation of Kh.

In the letter of the Social Service Agency we read that: "regardless of the aid of two interpreters, it was difficult to speak openly and face to face with Kh. U. After a several-hour meeting with her and her family, we did guess about the emotions of the child and about the attitude of the family members towards her."

The case proceeding started on the 7th of May of 2014 in the Public Defender's Office. According to the information received from the Social Service Agency we learnt that the service is provided without difficulties,

although it is a fact that during 7 months no psycho-social rehabilitation program has been carried out for the rape victim.

Existing situation made it evident that the Social Service Agency has difficulties to carry out activities foreseen by the law in regions inhabited with ethnic minorities. Language barrier significantly hampers the work process and causes lack of services. As a result, a vulnerable group - such as children victims of violence, is suffering. The Public Defender of Georgia addressed the Ministry of Labor, Health and Social Protection regarding the mentioned issue with a recommendation.

HUMAN TRADE (TRAFFICKING)

While discussing one of the forms of gender based violence - human trade (trafficking), we must stress that the major challenge faced by Georgia in this area is sex trafficking. According to the report of 2014 of the US State Department[1030], the state can not complete minimum standards required for elimination of sex trafficking; There are problems regarding identification of cases and persons involved in it. According to the report, girls and women from Georgia are victims of sex trafficking inside of the country as well as outside of it. They are involved in forced prostitution in touristic places like Batumi and Gonio. In such cases response measures from the state are insufficient.

Initiatives taken in the field of combating of human trade, elevation of awareness of the public and service providers are welcome. It is noteworthy that the interagency council on the meeting of February 12th of 2014 approved the strategy of combating trafficking and the action plan for 2014-2015.

The state fund of protection and assistance to the victims of human trade (trafficking) offers different services to victims and affected by human trade population: hotline, judicial consultation, medical service, provision of shelter. In 2014[1031] thirty four (34) beneficiaries were enrolled in the fund's service: 121 calls were registered on hotline, consultation was given to 19 persons and 5 beneficiaries used an institution (shelter) for victims.

In the Division of Combating Illegal Migration and Trafficking of the Second Division of Criminal Police Department for the purpose of exposing facts of trafficking four mobile groups composed of the representatives of law enforcement organs were created. In January of 2014 the Division of Combating Illegal Migration and Trafficking was created in Adjara Division of the Central Department of Criminal Police. The division is comprised with eight detective-investigators.

According to the data of the Ministry of Justice of Georgia, as a result of measures taken by the mobile groups in 2014 investigations were launched for three criminal code cases on facts of trafficking. In overall, by the Central Department of the Criminal Police investigations were started for 13 criminal code cases. 5 persons were charged for 7 facts of trafficking.

It is noteworthy that although important steps were made for prevention, still in many touristic places, where the risk of sex trafficking is high, case identification measures are not sufficient.

1030 Information is available at the web-page: < http://www.state.gov/documents/organization/226846.pdf > [Last viewed on 15th of March of 2015].

1031 The letter of state fund for protection and assistance of (statutory) victims of human trafficking N07/230; 02/03/2015

LEGAL STATE OF LGBT PERSONS

No effective steps have been made in the direction of improvement of legal status of LGBT people in Georgia. Together with homophobic attitudes existing in the public, conduction of timely, effective and accountable investigation of hate crimes still remains a great challenge. No legal results have been achieved on the facts of violence of 17th of May of 2013 and nobody has been punished for committing hate based physical violence.

On 17th of May of 2014 when the world celebrated the day of combating homophobia and transphobia, the Georgian Orthodox Church and its parishioners announced a day of Family Strength and Respect of Parents. The 17th of May was not celebrated by the representatives of LGBT community and human rights activists in 2014, because based on the experience of the past year they knew, that the state couldn't ensure their safety.

Discussions, signature collection campaigns and other forms of expression of public opinion which took place prior to the adoption of the law on Elimination of All Forms of Discrimination were disturbing. General attitude was that the sexual orientation and gender identity shouldn't be covered by this law. This points to the tenacity of existing clichés and shows the need of the complex approach to the elevation of awareness.

In the parliamentary report of the Public Defender of Georgia of 2013 the detailed information for improvement of the conditions of rights of LGBT people was presented, but none of the recommendations were completed and no significant steps were made in this direction.

In researches and reports[1032] reflecting conditions of LGBT people in Georgia it is acknowledged that the needs of transgender people are not sufficiently met in the legislation. This situation in some cases ends with breaches of their fundamental rights.

According to the recommendations worked out on European Ministerial about "Measures of Combating Discrimination Based on Sexual Orientation and Gender Identity": "member states shall adopt adequate measures, to make it possible to legally acknowledge sex change in all spheres of life. Precisely, the states must make it possible to change name and gender in official documents quickly, transparently, and in easily accessible way; also in case it's needed, they must provide acknowledgement of change of sex recognized by non-governmental units and other related changes in main documents like diplomas confirming education and workbooks." [1033]

Existing in Georgia situation doesn't correspond to the requirements set by the recommendation. Transgender people face problems in changing gender in civil papers, which on its part is an impeding factor in the process

1032 Condition of LGBT people in Georgia. WISG. Tbilisi 2012. View <http://women.ge/wp-content/uploads/2012/12/WISG_situation-of-lgbt-persons-in-Georgia_GEO-www.pdf> [Last viewed on 1.02.2014].

1033 Recommendation of the European Ministerial Council's Committee to the member states "On Measures of Combating Discrimination Based on Sexual Orientation and Gender Identity" – CM/REC(2010)5. Item 21.

of education and employment. Georgia's law "On Civil Acts" (Article N78), defines list of circumstances, which may become a basis for making a change in civil acts. One of the circumstances is "change of sex – if person wants to change a name and/or last name consequent to sex change". Nevertheless there is no list of documents which person should present for making such a change in a civil act. Also it is not defined what is considered as a "sex change". On the basis of the established practice, for a legal change of sex it is necessary to undergo a whole procedure of gender re-giving including special surgical procedures.

In the reporting period protection of the rights of transgender sex workers was a serious challenge. In 2014 transgender sex workers repeatedly addressed the Public Defender of Georgia. They pointed to the possible facts of pressure and demonstration of homophobic attitudes from the side of policemen exhibited during the police control. They noted that the demand from the side of police to leave a place of gathering was not understandable to them, because they didn't breach any law. When we addressed the Department of Patrol Police of the Ministry of Internal Affairs regarding the noted fact we were notified that measures are taken systematically for crime prevention in high risk districts of Tbilisi including territories adjunct to the Circus.

According to Article 172^3 of Code of Administrative Offences of Georgia, prostitution is a punishable action and foresees warning and penalty in the amount of half of the reimbursement, but the established practice usually is limited to the demand from police to leave a place. This measure is followed by measures of administrative responsibilities, like penalty or administrative imprisonment for public order offenses or/and incompletion of legal demands of police.

It is important that during conduction of preventive measures or other activities clear explanation to sex workers of aims of their activities is necessary from police. Also, facts of insulting of sex workers and inappropriate conduct shall be eliminated as much as possible; in case of transgender sex workers, manifestation of homophobic attitudes shall be eliminated.

RECOMMENDATIONS

GENDER MAINSTREAMING

To the Government of Georgia

- Implementation of gender mainstreaming must be supported through enhancement of the mandate of structural units on gender equality issues, as well as of human and financial resources;
- Among the staff members of ministries people responsible for gender equality issues shall be identified, who will be immediately involved in ongoing processes of improvement of women's rights and gender equality issues;
- The Successful practice of the Public Defender shall be shared and institutional mechanisms of prevention of sexual harassment at workplaces shall be implemented;

To the local self-government organs:

- The work shall be started for creation of structural units on gender equality issues; on the level of the city council persons responsible for gender equality must be defined;

THE ROLE OF MEDIA IN WOMEN'S RIGHTS PROTECTION AND ACHIEVEMENT OF GENDER EQUALITY

To the Parliament of Georgia

- The sexist advertisement shall be defined in the law on Advertisement and Broadcasting of Georgia as prohibited with relevant system of sanctions;

To the Public Broadcaster of Georgia

- Measures directed to raising of public awareness regarding women's rights and gender equality issues shall be enhanced;

WOMEN PARTICIPATION IN DECISION MAKING PROCESS

To the Government of Georgia; To the Parliament of Georgia

- Recommendation by the Committee of Elimination of All Forms of Discrimination against Women shall be considered and the work on temporary special mechanisms – such as quota system, shall be launched;

To the local self government organs

- Involvement of leader women in self government processes shall be encouraged, especially involvement of women representatives of ethnic minorities shall be a focus of a special attention;
- Women participation shall be ensured at all stages of implementation and assessment of programs of village development, and/or communities' priority projects;

WOMEN, PEACE AND SECURITY

To agencies responsible for implementation of the Action Plan for 2012-2015 years for implementation of №№ 1325, 1820, 1888, 1889 and 1960 resolutions of the UN Security Council "On Women, Peace and Security":

- For completion of obligations taken according to the action plan a special strategy/order shall be processed and approved in which planned activities will be stipulated with identification of responsible for completion persons;.
- Ensure official rule of definition of responsible officials who shall be involved in completion of taken responsibilities and in reporting processes;

To the Office of the Prime Minister of Georgia:

- Reporting system of completion of the action plan shall be refined. Agencies responsible for completion shall be entrusted with periodic reporting, to enable measurement of the progress of a completion of the plan;
- Enhance interagency coordination to ensure effective exchange of information and planning of result-oriented measures;

To the Public Broadcaster:

- For raising public awareness it is necessary to integrate and inculcate principles of resolution 1325 and gender equality in TV-radio broadcasts of public broadcaster;

WOMEN'S ECONOMIC ACTIVITY AND LABOR RIGHTS

To the Ministry of Justice

- The work on changes for improvement of women's labor rights shall be resumed, which will contribute greatly to the improvement of existing labor legislation, including provision of labor rights of women according to existing international standards;
- Relevant procedures shall be started for further ratification and signing of the convention N183 of the International Labor Organization on "Protection of Maternity" , also participation of all stakeholders shall be provided in the discussion process;
- Sexual harassment at work places shall be defined and the adequate system of sanctions shall be worked out;

To the Ministry of Labor, Health and Social Protection

- In the nearest future rule for pregnancy leave, leave for child birth and child care reasons and reception of consequent allowances shall be revised to exclude cases of discrimination by gender;

REPRODUCTIVE HEALTH AND RIGHTS

To the Ministry of Labor, Health and Social Protection

- Measures raising public awareness on reproductive and sexual health and rights must be planned and implemented;
- The monitoring of compliance to the pre abortion reflection period by medical institutions shall be performed;
- The issue of an access to abortions and other gynecological services free from geographic, financial and language barriers shall be evaluated. The special attention shall be paid to the accessibility of services for women living in rural areas and ethnic minority representatives;
- Measures for prevention of gender selection shall be planned and implemented;

To the Ministry of Education and Science

- Studying of main topics of reproductive and sexual health and rights shall be implemented for school pupils;
- In cooperation with local medical institutions seminar trainings shall be arranged for school pupils on matters of reproductive and sexual health;

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

To the Parliament of Georgia

- Ratification of the Council of Europe 2011 Convention on "Preventing and Combating Violence against Women and Domestic Violence" shall take place in the nearest future after a presentation from the Ministry of Justice;

To the Ministry of Internal Affairs

- Collection of a detailed statistical data on violence against women and domestic violence shall be provided;
- Work on elevation of awareness shall be enhanced and law enforcement organs shall be entrusted with a task of spreading information on protective mechanisms and services provided by the existing law during response to facts of domestic violence;
- A specialized structural unit shall be created which will be immediately responsible for response to the gender based and domestic violence crimes;

To the Government of Georgia

- Collection of the united statistics shall be implemented on facts of violence against women and domestic violence;
- Duration of placement of people in shelters shall be revised and they shall be adjusted to the terms established by the procedures of determining the status of victim defined by the law;

To the Ministry of Labor, Health, and Social Protection

- According to the changes made to the law on "Elimination of Domestic Violence, Protection of and Support to its Victims", training of social workers specialized on issues of domestic violence shall take place and they shall be endowed with relevant authority and work conditions;
- In cases of placement of socially vulnerable persons in shelters suspension of their allowances shall take place so that after leaving the service allowances shall be resumed automatically;
- Methods of spreading information on shelters shall be revised and enhanced, patrol police or district inspector shall be asked to inform victims at crime places about the existing state services;
- Special guidelines shall be provided to the representatives of the medical field on identification of domestic violence and obligatory reporting;

To the Chief Prosecutor's office

- In-depth analysis of incidents of violence against women shall take place for distinction of gender-based crimes and conduction of the relevant response;

EARLY MARRIAGES

To the Parliament of Georgia

- Recommendation of the Committee on Elimination of All Forms of Discrimination against Women shall be taken into account and a relevant change to the Civil Code of Georgia shall take place according to which marriage of persons less than 16-18 years can be possible only by court's decision;

To the Ministry of Education and Sciences

- Awareness raising among teachers shall be provided on existing legal obligations regarding issues of early age marriages;
- Coordination between Social Service Agency and the Ministry of Internal affairs defined by the referral document on children protection shall be supported and adherence to the obligation on notification of the responsible structures provided by the order shall be supervised;
- Organization of lessons/seminars on reproductive and sexual health and rights which will be delivered by specialists shall be provided in schools;
- During teaching the subject of civil education the special place shall be allocated to the provision of information on existing in Georgia issues of early marriages, or other cases of gender inequality;

To the Ministry of Labor, Health and Social Protection of Georgia

- Search of psychologists speaking languages of ethnic minority groups shall be performed to ensure an adequate response to the facts of violence against children or other similar cases;
- Strategy shall be worked out to enable fulfillment of obligations provided by Georgian or international judicial acts including provision of services forseen for early marriage cases to representatives of ethnic minorities;

To the Ministry of Internal Affairs of Georgia

- Implementation of the coordination between the Social Service Agency and the Ministry of Education and Science provided by the referral document on children's protection and completion of relevant obligation on exchange of notifications between them shall be supported;
- Working out of guidelines of response to early marriages and enhancement of the role of district inspectors shall be provided for informing local communities (especially representatives of ethnic minorities) and offering consultations on issues of early marriages;

HUMAN TRADE (TRAFFICKING)

To the Government of Georgia:

- Enhance measures for raising awareness, including spreading information on available services especially in territorial units characterized by high migration and touristic areas;

To the Ministry of Internal Affairs

- Enhance and strengthen measures of identification of sex trafficking in high risk territorial units;
- For exposing of people involved in sex trafficking implementation of preventive measures shall be activated in tourist places and different types of institutions where women citizens of foreign countries and local women are employed;

LEGAL STATE OF LGBT PERSONS

To the Ministry of Internal Affairs:

- Timely, effective and accountable investigation of hate crimes and other incidents motivated by hate shall be implemented;
- Police when implementing preventive measures or other activities shall inform transgender people on aims of conducted activities and manifestation of homophobia shall be prevented as much as possible;

To the Ministry of Justice:

- Quick, transparent and accessible procedures shall be implemented for reflection of gender identity of transgender people in documents issued by the state and non governmental institutions;
- Process of re-giving of gender shall be regulated so that transgender people could effectively access medical services of universally acknowledged international standards;

RIGHTS OF PERSONS WITH DISABILITIES

GENERAL OVERVIEW

The entry into force of UN Convention on the Rights of Persons with Disabilities (UN CRPD) of 2006 on April 12, 2014 has been the single most important development among the positive changes that have taken place during the reporting period.[1034] However ratification of the optional protocol to CRPD still remains an open issue. As is known, the Convention has been ratified without the optional protocol. Despite recommendations issued by the Public Defender, the Ministry of Labour, Health and Social Protection has not yet initiated procedures needed for its ratification. This can be considered as a negative fact since the optional protocol gives an opportunity to persons with disabilities to appeal to the relevant UN committee regarding individual cases of violations of their rights. So far persons with disabilities living in Georgia do not have an opportunity for the realization of this right.

On October 27, 2014 the Government of Georgia named the Public Defender of Georgia as the responsible national mechanism for popularization, protection and implementation of the said Convention.

In order to facilitate interagency cooperation and efficient communication for the implementation of duties and obligations assumed under the Convention, the Secretariat of the Coordination Council for Persons with Disabilities operating within the Ministry of Labour, Health and Social Protection has been transferred under the subordination of the Human Rights Secretariat of the Prime-Minister of Georgia.

Due to the high prominence of the issue, the Public Defender organized a public debate session on the *Challenges to Monitoring and Implementation of the UN Convention on the Rights of Persons with Disabilities* on October 31, 2014. Representatives of national governmental agencies, persons with disabilities, representatives of NGOs founded through their participation, parents of children with disabilities took part in the debate.

At the end of 2014 a working group responsible for developing monitoring mechanisms for the implementation of CRPD was set up within the Public Defender's Office. Several meetings of the working group have taken place.

The Department for the Rights of Persons with Disabilities was established at the Public Defender's Office on January 15, 2015 with the purpose to popularize, protect and monitor the implementation of the UN CRPD. The Department is cooperating closely with the representatives of civil society in order to finalize the monitoring mechanisms for the implementation of the Convention.

Among positive developments that have taken place during the reporting period, a Constitutional Court decision taken on October 8, 2014 in relation to the case – *Citizens of Georgia Irakli Kemoklidze and Davit*

1034 https://matsne.gov.ge/ka/document/view/2334289, enacted since April 12, 2014

Kharadze against the Parliament of Georgia – is of outstanding importance. With this decision the regulation, according to which persons with disabilities due to mental disabilities are declared incapable, along with related legislative regulations have been declared as unconstitutional by the Court. The Constitutional Court assigned the Parliament of Georgia the responsibility to develop and adopt legislative changes that will be aligned with the human rights standards stipulated by chapter 2 of the Constitution of Georgia, as well as with the requirements of the CRPD.

In order to reform legal framework on legal capacity and to bring national laws in compliance with the decision of the Constitutional Court, a working group has been set up by the decision of the Committee of the Legal Issues of the Parliament of Georgia. A representative of the Public Defender's Office is a member of the working group[1035].

The Law of Georgia on Social Protection of Persons with Disabilities was amended, which provides a new interpretation of the term 'person with disability', based on a social model. This is a noteworthy development for bringing national legal framework closer to the standards of UN CRPD[1036]. However as no other important changes have been introduced to legislation, simply altering the interpretation of terms cannot ensure substitution of existing medical approach with a social one.

Another positive development in terms of protection of the rights of persons with disabilities has been the adoption of a resolution No 41 on Approving the Technical Statute for Setting up Areas and Architectural and Planning Elements for Persons with Disabilities[1037]. The goal of the resolution is to facilitate the adaptation of persons with disabilities to modern society, their individual development and their integration in social activities. However the document has a major flaw – mechanism for the implementation of the standard therein is lacking.

In the beginning of 2014 the Government of Georgia issued a resolution endorsing the Action Plan for the Provision of Equal Rights for Persons with Disabilities for the years 2014-2016[1038]. This document, as well as the Governmental Action Plan on Human Rights, was designed with the purpose to fulfil the obligations assumed by the adoption of the Convention. It should, however, be noted that these documents do not contain any information on the research needed to carry out these tasks and on the relevant financial support, which might hinder the implementation of the planned activities.

Technical Statute of Psychosocial Rehabilitation Standards was approved in the beginning of 2014[1039]. The standards have been developed based on the Law of Georgia on Psychiatric Help and they set general requirements for psychosocial rehabilitation centres. On December 31, 2014 the Government of Georgia approved National Strategic Action Plan[1040] for Mental Health based on the principles of the National Concept of Mental Health[1041].

On July 23, 2014 the Minister of Labour, Health and Social Protection approved Minimum Standards of Service at the 24-Hour Specialized Institutions for Persons with Disabilities and the Elderly[1042]. This is a clearly positive development. However it is very important to apply it in practice and execute monitoring over its implementation.

Central Electoral Commission carried out a number of important activities during the local elections in 2014 with the purpose of improving accessibility to elections and creating equal electoral environment for persons with disabilities. As a result the number of polling stations adapted to special needs has increased, all

1035 Protocol of the meeting of the committee of legal issues of the Parliament of Georgia, November 13, 2014
1036 https://matsne.gov.ge/ka/document/view/2283593
1037 https://matsne.gov.ge/ka/document/view/2186893
1038 http://government.gov.ge/index.php?lang_id=GEO&sec_id=381&info_id=40157
1039 https://matsne.gov.ge/ka/document/view/2391005
1040 https://matsne.gov.ge/ka/document/view/2198173
1041 https://matsne.gov.ge/ka/document/view/2667876
1042 https://matsne.gov.ge/ka/document/view/2391345

voters with impaired vision have received access to lenticular lens sheets, all election commercials broadcasts were accompanied with sign language translation. However full participation of persons with disabilities in elections still remains a goal to be achieved.

In order to ensure access of persons with disabilities to inclusive education the Ministry of Education and Science of Georgia carried out a range of activities, such as: introducing inclusive education at public general schools, funding special teacher program, developing a specific MA level program for them at Ilia State University, implementing the strategy for vocational education, including persons with disabilities in vocational education. However early development and preschool education, as well as higher education are yet to be integrated into the inclusive education system. Development of parent education and participation strategy remains another urgent issue. Licensing/authorization of preschool education institutions is currently on agenda, which can facilitate the implementation of the right to education for children with disabilities and prevention of violence.

The process of deinstitutionalization and optimization of large residential institutions within the scopes of child welfare reform has continued during the reporting period. The latest development has been optimization of Senaki institution for children with disabilities. Whenever it was not possible to place the children either in family-type homes or in foster care, they have been assigned to Kojori boarding house for children with disabilities.

The Public Defender of Georgia evaluates this fact positively and at the same time believes that the process of optimization of large residential institutions for children with disabilities should deemed as a temporary measure. Consequently, the Government has to ensure provision of the beneficiaries with alternative services such as: foster care, placement in family-type homes and etc. This will facilitate the provision of services adapted to individual needs of children in the setting similar to family environment.

In 2014 the legal entity of public law '112', working under the Ministry of Internal Affairs, took into consideration the recommendation of the Public Defender of Georgia regarding improving access to emergency and extraordinary services for persons with hearing and speech impairment. In order to ensure easy access to the operational management centre of emergency services '112' designed a project which gives an opportunity to persons with hearing and speech impairments to contact '112' using short message services or video calls. The project was developed through the support of the UN Development Programme and with the participation of persons with disabilities and their NGOs. Implementation of the project started on March 27, 2015.

It should also be noted that despite a number of recommendations issued by the Public Defender of Georgia to the Ministry of Internal Affairs, mechanism for identification of violence against persons with disabilities, relevant support services and rehabilitation referral procedures has not been developed yet.

At the end of 2014 representatives of the Department of Prevention and Monitoring and representatives of the Centre of the Rights of Persons with Disabilities at the Public Defender's Office visited penitentiary facilities and Ltd Academician Naneishvili National Centre for Mental Health. The goal of these visits was to evaluate the status of implementation of recommendations issued after monitoring the conditions of persons with disabilities in penitentiary facilities, temporary detainment isolators and involuntary mental treatment institutions carried out from October 21 to November 13, 2013.

As a result of the visits it has been revealed that, unfortunately, despite certain positive changes, no significant progress has been achieved to ensure the implementation of the recommendations. Moreover, no measures have been taken whatsoever in relation to several recommendations.

A unit for long-term care has been established in the medical institution for convicted and remand prisoners; however prisoners with physical and mental disabilities still remain in penitentiary facilities and their needs are not being adequately addressed.

The Public Defender's Office of Georgia believes it to be of utmost importance to diligently carry out all the activities included in the strategic document for mental health and the action plan for 2015-2020. This can ensure the provision of mental services that are in compliance with national legislation and international standards (see detailed report in the section on prevention and monitoring) for the patients in penitentiary facilities and other closed institutions. During the reporting period, the Public Defender's Office has prepared comments to the draft progress report on the implementation of the Governmental Action Plan on Human Rights for 2014-2015. The comments mostly reflected upon: reforming the system for assessment of disabilities and granting disability status, and transition to social model; dates for developing a statute for the National Coordination Council working on the issues of persons with disabilities and forms of participation of these persons in its activities; changes to be introduced to national legislative acts; setting up monitoring and support groups for the levels of education other than vocational education; terms for training special teachers for public schools; introducing mechanisms of accessible communication for public school students with disabilities enabling them to transmit information on rights violations to relevant bodies; needs assessment for setting up habilitation and rehabilitation services etc.

The comments prepared by the Public Defender's Office also emphasize the lack of detail in the account of the activities planned for the improvement of focus, structure and management efficiency as well as health insurance system of these persons.

Midterm performance report of the Action Plan of Human Rights Protection of the Government of Georgia for the years 2014-2015 does not contain any information on the activities carried out or planned by the executive branch of the government for improving physical access to public institutions and services. The performance report does not provide any information about regulations to be developed in order to facilitate equal access to adapted means of transportation, travel and relocation.

The Public Defender's Office has sent comments to the draft progress report of the Action Plan to the Secretariat of the Government of Georgia on Human Rights Issues.

The reporting period, as well as the previous year, saw intensification of public discussion on various issues regarding persons with disabilities. Active participation of the parents of children with disabilities is particularly noteworthy.

Together with positive developments that took place in 2014, there have also been series of drawbacks in the realm of human rights protection.

Setting up a unified service system for children with disabilities, developing family support services, granting disability status to the children aged 0 to 3, non-existence of national program for adolescent rehabilitation, insufficient development of community-based services and social housing projects – all remain challenges to be addressed.

The issues that have been emphasized by the parents of children with disabilities in the petition, which they have prepared requires urgent attention. These include: increasing funding for national programs for supporting children with disabilities (day care centres, home services, early development and medical rehabilitation services); increasing financial assistance for children with disabilities to the minimum subsistence level; allocating financial assistance for persons caring for the children with disabilities (parents, caretakers); adjusting universal health insurance program in order to better reflect the needs of children with disabilities; setting up special services for persons of 18 years and older with severe mental disabilities (daycare centres, medical rehabilitation, home services, community-based organizations, small family-type homes etc.).

The Ministry of Labour, Health and Social Protection of Georgia (letter No 01/92212 dated 14.11.2014) has expressed readiness to consider the possibility to develop and carry out a programme for providing homecare services for children with disabilities within the scope of the National Programme for Social Rehabilitation and Childcare in 2015.

According to the Ministry, the issue of increasing/allocating financial assistance to the children with disabilities and their parents has been referred to the Ministry of Finance of Georgia[1043].

Absence of employment opportunities for persons with disabilities remains one of the most important challenges. The government has yet to develop a policy aimed at facilitating employment of these persons and relevant legislative framework since this is the most effective way for inclusion of persons with disabilities in social life.

Full realization of the right of persons with disabilities to healthcare remains a problematic issue as well. Despite certain positive changes brought about by the introduction of universal health insurance program, special needs of these persons are still not taken into consideration and provision of necessary medications for them is not ensured.

Non-existence of accessible infrastructure and means of transportation throughout the country is another big issue as it significantly limits the opportunities for persons with disabilities to live independently and often serves as the basis of their discrimination. Public Defender's Office started investigating a case of possible discriminatory treatment of persons with disabilities attending an anniversary concert of Paata Burtchuladze on February 12, 2015. Persons in wheelchairs who were invited to attend the event were not able to do so as they could not access the building – the ramps in the possession of the Palace of Sports were not installed at the entrance. Persons with disabilities, therefore, were forced to resort for help to the security staff. As a result they left the building as a sign of protest. In this case the Public Defender is planning to use a new and a very important mandate of supervision over the elimination of discrimination and ensure equality.

1043 Letter No 01/92212 dates 14.11.2014

RIGHTS TO EQUAL ACCESS TO PUBLIC FACILITIES AND ROAD INFRASTRUCTURE FOR PERSONS WITH DISABILITIES

Realization of the right of accessibility and its practical implementation is one of the fundamental pre-conditions for enabling persons with disabilities to participate fully in all aspects of life. That is why the Public Defender's Office has dedicated special attention to accessibility as a broad and a complex concept (including spatial access, as well access to services and information) in the process of the rights of persons with disabilities. Right of access to public facilities is one of the major components of the road understanding of accessibility.

High significance of this issue was highlighted during the inspection of several cases by Public Defender's Office. Cases regarding adaptation of a branch of legal entity of public law (LEPL) House of Justice[1044] and Tbilisi road infrastructure[1045] were analysed in 2014 in light of realization of the right to access to public facilities. Human right analysis of these cases has demonstrated violation of the rights guaranteed by national legislation as well as international human rights documents.

UN CRPD recognizes the importance of physical and social accessibility, access to economic and cultural environments as well as access to information and communications for persons with disabilities. This gives them an opportunity to fully enjoy all human rights and fundamental freedoms.

Article 9 of the Convention obligates all member states to take appropriate measures to ensure that persons with disabilities, on par with other persons, have access to physical environment, to transport, information and communication, technological systems including information and communication technologies, other facilities and services open or provided to public.

The Law of Georgia on Social Protection of Persons with Disabilities serves as the basis of national policy towards these persons and sets a goal of ensuring equal rights for them, creating favourable conditions for their full integration in social, economic and political activities. The Law stipulates the right of access to physical environment and sets out obligations to create all the conditions needed to ensure unrestricted access to public facilities for persons with disabilities. This act calls for taking into account special needs of persons with disabilities during design and construction process as well as modification of already existing buildings.

The Governmental Action Plan for Ensuring Equal Opportunities for Persons with Disabilities for years 2014-2016, approved by decree No 76 of January 20, 2014 by the Government of Georgia provides a list of activities that have to be carried out to ensure access to facilities for general population. These measures include: development and adoption of Technical Statute for Setting up Areas and Architectural

1044 Case No 09-1/7326
1045 Case No 09-1/14470

and Planning Elements for Persons with Disabilities, implementation of monitoring over the execution of new constructions norms and standards, identifying barriers to access to physical environment, developing suggestions for removing these barriers, improving physical environment of universities and preschools, developing norms for adapting vehicles of public transportation to the needs of persons with disabilities, developing mechanisms to monitor the execution of these norms, adapting transportation infrastructure: transport stops, pedestrian crossings and streetlights in accordance with the established standards. It is equally important to designate special spots on car parking lots for persons with disabilities and taking into account their needs when purchasing new vehicles.

VIOLATION OF THE RIGHTS OF PERSONS WITH DISABILITIES TO ACCESS PHYSICAL ENVIRONMENT OF PUBLIC FACILITIES

On November 21, 2014 a representative of the Public Defender of Georgia visited Marneuli in order to hold meetings with national and ethnic minority persons with disabilities. According to the information collected during this field visit, the House of Justice in Marneuli is not adapted to the needs of persons with disabilities. A lot of public services provided exclusively by the state are located in the House of Justice. Therefore it has to provide fast and efficient service and thus facilitate communication of persons with disabilities with public institutions.

On December 17, 2014 the Office of the Public Defender of Georgia formally addressed the Ministry of Justice of Georgia with a request to start adaptation of the building[1046] to make sure that persons with disabilities have access to the services provided to the public.

The response received from the Ministry of Justice dated January 4, 2015,[1047] states that a tender for installation of a ramp at the LEPL House of Justice, which falls under the governance of the Ministry of Justice, was announced twice during the last year. However both times it was cancelled, as no proposals were received.

On February 2, 2015, the Department for Persons with Disabilities at the Public Defender's Office of Georgia addressed the deputy director of LELP House of Justice[1048] with the request for information concerning accessibility of the facilities of the House of Justice branches (in Gori, Ozurgeti, Gurjaani, Telavi, Kutaisi, Rustavi, Tbilisi, Batumi, Kvareli, Marneuli, Akhaltsikhe, Mestia, Zugdidi) for persons with disabilities.

In the response dated February 12, 2015, LEPL House of Justice informed the Public Defender's Office that facilities at all the branches have been adapted to the needs of persons with disabilities and they have unobstructed access to all the services. The only exception is Marneuli branch – a tender has already been announced for its adaptation works and completion of these works is planned by the end of March 2015. Further, it was stated, that plans for design and construction of all new branches will be made only with the consideration of the needs of persons with disabilities[1049].

As mentioned above, in January 2014 the Government of Georgia adopted a new action plan for Ensuring Equal Rights for Persons with Disabilities. This action plan contains proposals to ensure access to physical environment of all facilities open to or provided for public including public institutions. The same plan imposes certain obligations upon the Ministry of Economy and Sustainable Development of Georgia, together with other public agencies, to facilitate the process of adapting means of transportation and facilities open to public.

1046 Case No 091/14470 dated 17.12.14
1047 Case No 18, dated 15.01.2015
1048 Case No 09/2863 dates 02.02.2015
1049 Letter No 322, dates 12.02.2015

On January 6, 2014 the Government of Georgia endorsed the Decree No 41 on Approving the Technical Statute for Setting up Areas and Architectural and Planning Elements for Persons with Disabilities[1050]. Article one of this decree specifies that the technical statute is designed with the purpose to facilitate the integration of persons with disabilities in all aspects of public life and their individual development as well as to take into account physical environment accessibility standards in the process of design and construction. Provision 3 of the same article sets obligations to take into account all relevant requirements while designing and constructing public facilities. In order to meet these requirements it is necessary to design buildings with wide corridors and entrances, to install ramps. It is recommended that new buildings are designed and constructed in accordance with the principles of "universal design"[1051]. Provision 3 of the same article also stipulates the necessity to present information both through audio and visual channels in the places open to public. Streetlights and other facilities used for regulating pedestrian mobility, as well as places that are dangerous for visually impaired people, should be equipped with sound signals. The decree also defines standards for constructions and buildings. However it only covers access to physical environment and does not touch upon other components included in the Convention to ensure accessibility (physical environment in all its forms, service and information).

As mentioned above, the main drawback of the document is the lack of understanding about execution of the standards defined within. At the same time, it lacks flexibility, as priorities are not organized in accordance with the urgency of issues. Accessibility standard approved with the technical statute pertains to public as well as private facilities and buildings. According to the statute, the existing buildings have to be adapted to meet the standard within 5 years. There are no special regulations for faster adaptation of public buildings and facilities (LELP House of Justice, other public institutions). There are no midterm process evaluation requirements and therefore monitoring the implementation of new construction standards might be impossible.

Despite the fact that the technical regulations are formally adopted, the issue of response in case of their violations remains largely open. Due to all these factors accessibility of buildings still remains a goal to work towards.

The question of adaptation of stops for buses, mini-buses and other means of transportation is directly related to the implementation of the right to access to public facilities for persons with disabilities.

CASE OF V. M. – VIOLATION OF THE STANDARD OF ACCESS TO ROAD INFRASTRUCTURE FOR PERSONS WITH DISABILITIES

On April 15, 2014, a representative of the organization *Ampute* for persons with disabilities, citizen V. M. addressed the Public Defender of Georgia with an appeal[1052] regarding the absence of special signage on Tbilisi bus stops allowing persons with disabilities to follow the information shown on information boards. Further, it was claimed, that left wall of bus stops was covered with advertisement banners thus making it impossible to discern bus numbers. These circumstances might create significant challenges for persons with disabilities and the elderly.

Considering the above circumstances, the Office of Public Defender of Georgia addressed Tbilisi Mayor's Office on May 16, 2014 with a formal request[1053] to facilitate safe mobility of persons with disabilities and the elderly and therefore to secure: presenting all relevant information in public spaces both through

1050 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2186893

1051 "Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed

1052 Case No 8842/1 dated 15.04.14

1053 Case No 091/7326 dates 16.05.14

visual and audio channels; providing bus stops (M3 category) with technical equipment to easily understand information on electronic boards and ensuring that bus stops are entirely transparent.

The reply received from Tbilisi Mayor's Office[1054] holds that according to the leasing agreement between the Office and Ltd Color Media and Ltd Bus Stop – owner of constructions for waiting at transport stops – parts of the land plots designated for public use have been transferred in the possession of the said companies to design and install waiting constructions at transport stops in accordance with the project agreed with LEPL Tbilisi Architecture. These companies were also granted the right to place advertisements on the constructions using their own financial resources. LEPL Tbilisi Architecture discussed the issue about transparency of the left wall of the constructions together with the representatives of Ltd Bust Stop and Ltd Color Media. During these meetings it was revealed that the companies installed waiting constructions for passengers at the stops with their own financial resources hoping to cover the land leasing costs and maintenance costs with the revenue generated from placing advertisements. Removing advertisement banners from one wall of the construction would have resulted in significant reduction of revenues thus making it impossible to clean, repair and conduct other maintenance works. Therefore this request was not satisfied.

The reply did point out that in future companies willing to install constructions at bus stops would be requested to keep left walls of the constructions transparent (already by the end of 2013 Tbilisi district government offices announced a tender for setting up waiting constructions where transparency of both sides of constructions was one of the requirements). As for the ease to understand the information placed on electronic boards concerning times of departure/arrival of buses, a relevant body studied the issue and electronic boards at some bust stops were relocated and adjusted in a way to make them easier to read for persons with disabilities and the elderly.

By June 2014 there have been 900 (nine hundred) electronic boards showing bus departure/arrival times installed in the capital. Out of these only 10 (ten) are installed in parallel with the sidewalk (due to the narrow width of the sidewalks). Tbilisi Mayor's Office states that relocation of an electronic board installed next to building 1 in Gldani 8th micro-district is planned in the near future.

Regarding visual and audio representation of information, it is claimed, that audio signals are being installed next to the streetlights located in public places to ensure that persons with disabilities have the possibility to cross streets safely without any restrictions (by June 2014 audio signals have been installed next to 16 streetlights). At the crossroads with safety islands, pedestrian crossing points are being lowered to make sure that persons with disabilities can easily cross the street.

It should be emphasized that despite a number of changes public spaces, transport, public roads and medical services are still largely not accessible for persons with disabilities[1055].

Renovated road infrastructure (car parking lots, transport signs and facilities) still fails to meet the minimal accessibility standards. Information outlets – electronic media, local TV and radio broadcasting still remains inaccessible.

Practical implementation of legislative and administrative regulations is problematic as well. Due to the absence of relevant resources and functions as well as technical drawbacks in the code (administrative body responsible for case consideration is not designated by the code) it is still impossible to actually implement the norms defined by articles 178[1], 178[2] of the Code of Administrative Violations. The Public Defender of Georgia, using the power of attorney granted by the legislation of Georgia, issued a recommendation to the Government of Georgia back in 2013[1056] to revise, improve and update relevant legislative and administrative regulations in order to take necessary measures in all aspects of the lives of persons with

1054 Case No 091/7326 dates 16.05.14
1055 Recommendation of the Public Defender of Georgia No 4603/08/2353–12, dated19.10.12
1056 Recommendation of the Public Defender of Georgia No 452.09 dated 30.04.2013

disabilities for ensuring accessibility of physical environment, transport, information and communications technologies and systems, to other public facilities and services in urban as well as in rural areas. The recommendation also called for monitoring of implementation of the regulations set by various normative acts as well as enactment of imposed sanctions.

Evidence suggests that absence of the accessible environment is one of the main problems for persons with disabilities. Public spaces, buildings, facilities and means of transportation are not accessible. These persons have limited accessibility to their own homes, educational institutions, healthcare facilities, streets, squares, and public institutions. Internal as well as external infrastructure of buildings is not adapted and standards of the technical statute are not taken into consideration in the process of design and construction.

Save a few exceptions, accessibility requirements set by the law are severely violated. This is true of the infrastructure of existing as well as new buildings. As a result, persons with disabilities do not have an opportunity to relocate independently and to access public facilities. These problems are especially grave outside large urban areas. The problem can be solved with adequate governmental effort and resources, through developing a unified vision, which will ensure eliminating all barriers to accessibility.

RECOMMENDATIONS

To the Parliament of Georgia

- to ratify the optional protocol to the UN Convention on the Rights of Persons with Disabilities to ensure that persons with disabilities have an opportunity to appeal to relevant UN committee on individual cases of violation of rights

To the Government of Georgia

- to revise, improve and update relevant legislative and administrative regulations in order to take necessary measures in all aspects of the lives of persons with disabilities for ensuring accessibility of physical environment, transport, information and communications technologies and systems, to other public facilities and services in urban as well as in rural areas
- to start working on a unified national strategy for advancing employment opportunities for persons with disabilities and ensure participation of all interested parties in this process

To the Ministry of Regional Development and Infrastructure

- to take into consideration special needs of persons with disabilities in the process of implementation of regional development projects related to the improvement of regional infrastructure and institutional development in order to ensure their access to public buildings as well as possibility to use internal as well as external infrastructure
- to take into consideration special needs of persons with disabilities in the process of renovation of road infrastructure (sidewalks, car parking lots, transport signs and devices) in accordance with the requirements set by the Technical Statute for Setting up Areas and Architectural and Planning Elements for Persons with Disabilities

To Tbilisi Mayor's Office

- to include transparency of both sides of bus stops as a necessary condition in tender announcements for bus stop waiting constructions; to ensure implementation of tender conditions in accordance with the requirements set by the Technical Statute for Setting up Areas and Architectural and Planning Elements for Persons with Disabilities
- to transform messages regarding the times of arrivals and departures on electronic boards at the bus stops in a way to make them better understandable by persons with disabilities and by the elderly
- to install information boards on pedestrian roads, public places, streets, squares, especially on crossroads, parks, railway stations, public transport stops that will provide warning to persons with disabilities regarding any barriers or hazards ahead if needed
- to ensure that all information in public places is provided both through audio and visual channels. To equip streetlights and other devices regulating transport communications, as well as places that might be hazardous for persons with visual impairments with audio signals

RIGHTS OF WOMEN WITH DISABILITIES

In 2014 implementation of the project for strengthening the Centre of the Rights of Persons With Disabilities of the Public Defenders Office was continued. The project is supported by the UN programme on Supporting Gender Equality in Georgia.

A number of activities have been carried out within the scopes of the project including a study of 'the implementation of Article 6 of the UN CRPD: existing challenges and prospects'.

The research covered four regions: Kakheti, Samegrelo, Imereti and Mtskheta-Mtianeti.

The research demonstrated once more the problems concerning protection of rights of women with disabilities and related challenges. The following specific issues have been identified:

- lack of information and awareness on human rights issues
- limited inclusion and participation of persons with disabilities, including women (girls) in decision-making processes
- hard socio-economic conditions of women/girls with disabilities
- low level of access to healthcare, education and employment opportunities
- absence of medical services tailored to the needs of women with disabilities
- limited geographical access to medical facilities in the regions
- inadequate provision of necessary medications to persons with disabilities
- unresolved issued of access to environment and adapted means of transportation
- inadequate level of inclusion of children (girls) with disabilities in mainstream education
- low levels of awareness of parents about these issues and lack of information thereof
- limited accessibility of educational facilities
- absence of adapted means of transportation in educational institutions
- problems related to professional training and employment of persons with disabilities
- absence of the referral system for identification of the cases of violence against persons with disabilities including women (girls), support and rehabilitation services

- low levels of involvement of local government bodies in the matters concerning persons with disabilities. Lack/absence of information regarding problems and needs of persons with disabilities
- absence/lack of support mechanisms for civil sector, particularly new organizations working on the issues of persons with disabilities

The problems revealed by the project have once again demonstrated crucial need on the part of the state to carry out effective measures to implement Article 6 of the UN CRPD. The national policy in this respect should be based on the consideration of special needs of women with disabilities in every realm.

The Public Defender of Georgia has developed recommendations to address the challenges identified by the study.

RECOMMENDATIONS

To the Government of Georgia:

- to acknowledge international recognition of the importance of protecting the rights of women with disabilities and ensure focus of national policies and strategies on women with special needs, in order to implement Article 6 of the 2006 UN CRPD
- to ensure equalopportunities for and prevention of discrimination against women (girls) with disabilities as identified by international agreements, the Constitution of Georgia and anti-discrimination legislation
- to ensure development of governmental strategies based on the principle of inclusion of persons with disabilities, including women, identifying special needs of women with disabilities in national programmes and action plans on human rights protection, taking other related measures
- to ensure participation of persons with disabilities, including women, in decision-making processes; to increase their level of independence
- to place special emphasis on protecting the rights of women (girls) with disabilities in the process of developing anti-violence policies and legislative regulations; to identify and investigate cases of exploitation, violence and offense against persons with disabilities and taking relevant punitive measures against offenders
- to ensure justice and accessibility of legal protection mechanisms in cases of violence against women (girls) with disabilities
- to support and facilitate participation of persons with disabilities in political and social activities
- to take necessary measures in order to ensure equal employment and labour opportunities for persons with disabilities including women

To the Ministry of Education and Science of Georgia

- to carry out activities supporting inclusive education for children (girls) with disabilities living in regions (especially in high-mountainous regions), including information and awareness-raising campaigns; to realize their right to inclusive preschool, general, higher and vocational education

- to ensure accessibility of physical environment of educational institutions

To the Ministry of Labour, Health and Social Protection

- to improve the 'social package' of social services and financial assistance allocated for persons with disabilities considering individual needs and gender aspects
- to improve health insurance system for persons with disabilities, including women; providing medical services tailored to their special needs
- to resolve the issue of geographical accessibility of medical facilities for persons with disabilities, including women (girls) in the regions of Georgia (particularly in high-mountainous regions) as soon as possible
- to improve provision of necessary medications for persons with disabilities including women (girls) within the scopes of the national healthcare programme
- to undertake legislative changes obligating the institutions providing specialized medical services to conduct
- to undertake legislative change obligating medical service providers to conducts medical-social examinations at the place of residence of those persons, who, due to financial constraints cannot travel to where facilities of these providers are located

To the Ministry of Regional Development and Infrastructure of Georgia

- to take into account information regarding the problems and needs of persons with disabilities in the process of developing and improving continuous training system of local self-government officials
- to ensure engagement of local self-governing bodies in addressing the issues concerning persons with disabilities

To the Ministry of Economy and Sustainable Development

- to facilitate to process of ensuring accessibility of physical environment of public facilities and services, including public institutions

AWARENESS-RAISING ON THE RIGHTS OF PERSONS WITH DISABILITIES FOR ETHNIC AND NATIONAL MINORITIES

In November 2014 the Centre of the Rights of Persons with Disabilities at the Public Defender's Office conducted an awareness-raising campaign on the rights of ethnic and national minorities with disabilities. The campaign was supported by the UN Development Programme. At the same time, the Centre investigated the alleged cases of violations of human rights in the regions inhabited by national and ethnic minorities and developed appropriate recommendations/suggestions.

The project covered the following areas: Kakheti (Iormughalo, Kabali, Pankisi); Samtskhe-Javakheti (Akhalkalaki); Kvemo Kartli (Bolnisi, Marneuli).

Several urgent issues have been identified in the course of the field visits planned within the scopes of the project. Some of these issues are:

- socio-economic hardships/poverty
- low levels of awareness on the rights of persons with disabilities
- lack/absence of information about rights
- language barrier
- limited participation of women
- disregarding the needs of persons with disabilities and failing to fulfil relevant responsibilities on the part of village (family) doctors
- accessibility of environment
- lack of psychotropic medication supply
- geographical accessibility of expertise facilities
- determining the status of persons with disabilities
- full-scale realization of the right to inclusive education
- necessity to train local self-government officials concerning the rights of persons with disabilities and related obligations of the state
- necessity to strengthen civil sector in the regions

Socio-economic hardships are prevalent in all regions of Georgia. Large portion of citizens consider themselves to be extremely poor and living under tough socio-economic conditions. Level of unemployment is high, the amount of social package (pension) is very low.

Unemployment is particularly problematic for the families whose members are persons with disabilities. Many of them are not receiving living subsistence. Low amounts of state social financial assistance to which they are entitled, cannot guarantee financial stability of these persons and their families and cannot satisfy their needs. Inefficiency of the procedure of determining eligibility of families for social assistance, and inflexible procedure for revising the decisions is often identified as a big challenge.

Majority of citizens are demanding allocation of financial assistance.

POTENTIAL VIOLATION OF SOCIO-ECONOMIC RIGHTS OF CITIZEN M.N.

Representatives of the Office of Public Defender found out about the case of potential violation of socio-economic rights of citizen M. N. during their visit to Kakheti.

Citizen M. N. is a veteran of Afghanistan war and has physical disability. Both of His lower limbs are amputated and his mobility is limited even in a wheelchair. He is a receiver of state social package but does not get state subsistence.

Based on the information received from the citizen, socio-economic conditions of his family were assessed on April 14, 2014 and the family was awarded 84 990 points of the assessment scale. This meant that the family did not qualify for the subsistence. The citizen believes that this score does not correspond to actual socio-economic conditions of the family. The decision on awarding the high score might have been determined by the inclusion of a Soviet car in the declaration – according to M. N. this car is the only and irreplaceable means of transportation due to his disability. Because physical environment is not adapted and accessible in the region where the citizen M. N. lives, it is impossible to locate for a person without lower limbs.

According to article 7 of the Law of Georgia on the Protection of Persons with Disabilities, state agencies must create adequate conditions through means of transportation and communication for persons with disabilities to freely relocate and function independently. According to the first provision, article 24 of the same law, social assistance of these persons should include purchasing automobiles for them. This provision is particularly relevant for citizen M. N. due to above described circumstances.

In this case the obligation of the state to ensure dignified conditions of life, guaranteed by Georgian legislation and international legal norms, is not being fulfilled unfortunately.

LANGUAGE BARRIER

Meetings with national and ethnic minorities have exposed that language barrier is one of the factors that prevents citizens from obtaining relevant information including the information regarding state activities and programmes, services, social assistance.

Due to language barriers local population finds it difficult to communicate with representatives of various sectors. There are instances, when local self-government officials lack the state language skills.

DISREGARDING THE NEEDS OF PERSONS WITH DISABILITIES AND FAILURE TO FULFIL OBLIGATIONS ON THE PART OF VILLAGE (FAMILY) DOCTORS

One of the pressing challenges identified by the focus group sessions conducted in the regions, was the failure on the part of village (family) doctors to fulfil their obligations, namely their disregard of the special needs of persons with disabilities.

Based on the information received during field visits, a few citizens have failed to obtain the disability status due to insufficient information provided to them at medical facilities regarding required diagnostic tests and medical-social examination.

NECESSITY TO STRENGTHEN CIVIL SECTOR IN THE REGIONS

It is important to carry out activities for strengthening civil sector in the regions, including setting up new organizations with the participation of persons with disabilities and strengthening existing ones to make sure that they participate actively in the protection of rights, regular collection and provision of information for the community of persons with disabilities, raising public awareness.

Non-governmental sector should place an emphasis on analysing challenges facing persons with disabilities. This will help them offer services and programmes to these persons that are tailored to their special needs.

Empowering persons with disabilities should be high on agenda as most of these persons are deprived of the opportunity of personal realization and full participation in different aspects of life. It is important to facilitate their participation in civic processes thus supporting to build a truly inclusive society.

RECOMMENDATIONS

To the Government of Georgia

- to support economic activities of national and ethnic minorities with disabilities living in the regions with the purpose to provide them with the minimum living conditions and employment opportunities; to carry out other activities to support inclusion of these groups abiding by the principle of gender equality
- to support the implementation of small business and entrepreneurship programmes in the regions and thus stimulate the activities of persons with disabilities, acquisition of necessary knowledge and skills by them

To the Ministry of Labour, Health and Social Protection

- to improve social services and financial provisions for persons with disabilities taking into account their individual needs
- to improve health insurance system for persons with disabilities, provide medical services tailored to their needs abiding by principles of gender equality
- to address the issue of geographical accessibility of medical facilities carrying out medical-social examination

- to provide necessary information about national programmes of healthcare and health insurance, various services and activities in the field of healthcare to the population in the their native languages.

To the Ministry of Education and Science of Georgia

- to facilitate introduction of inclusive education, to carry out information and advocacy campaigns in the regions for children with disabilities to realize their right to inclusive education at preschool, general, professional and higher education levels
- to facilitate the process of ensuring accessibility of physical environment at educational institutions

To the Ministry of Economy and Sustainable Development

- to facilitate the process of promoting physical accessibility of public facilities and services, including public institutions

To the Ministry of Regional Development and Infrastructure

- to take into account information on the problems and needs of persons with disabilities in the process of developing and improving continuous training system of local self-government officials
- to ensure engagement of local self-governing bodies in addressing the issues concerning persons with disabilities

To local self-government bodies

- to ensure participation of persons with disabilities, including women with disabilities, and/or their organizations in the decision-making processes and in planning of special activities and programmes for these persons in the process of budget development
- to provide information to persons with disabilities about the programmes/activities implemented by local municipalities in a timely and accessible manner

To the Public Broadcaster and regional media outlets

- to raise awareness regarding persons with disabilities including: using appropriate terms, fostering positive attitudes towards persons with disabilities, facilitating elimination of stigma and discrimination, fostering respects for the rights and dignity of these persons
- to ensure accessibility to educational and news programmes for persons with disabilities
- to transmit all the public information using sign language

To internet providers

- to support the delivery of services in a manner easily accessible for persons with disabilities

RIGHTS OF CHILDREN WITH DISABILITIES

Several positive developments have been observed in the area of rights of children with disabilities. However the situation has not been changed substantively.

Desinstitutionalization and optimization of large residential institutions continued in 2014. According to the information received from the Ministry of Labour, Health and Social Protection[1057], assessment of the residents of the branch of LEPL National Foundation for the Support and Protection of the Victims of Human Trafficking – Senaki children's home for children with disabilities took place with the purpose of their further placement in alternative (foster) care. 8 children were moved from Senaki home to the Kojori children's home for children with disabilities. According to the same letter, many children left the home as they have achieved 18 years.

The Public Defender of Georgia considers that optimization of large residential institutions should be a temporary measure. Therefore it is necessary for the state to provide alternative services for beneficiaries as soon as possible (foster care, small family type services etc.). This will ensure providing family-like services that are tailored to individual needs of children with disabilities.

During monitoring of the deinstitutionalization process, the Public Defender of Georgia focuses specifically on the rights of those residents of the institutions who have left these institutions due to attaining full legal age. Many of these persons face problems with place of residence, employment, social and other rights. Unfortunately, there is no national policy in place to support them to live independently and to ensure their integration in society with dignity.

Various activities conducted by the Public Defender's Office in 2014 (field visits to various regions) have repeatedly revealed the problems associated with the realization of the rights of children with disabilities. These problems include: lack and/or absence of quality inclusive education, programmes of rehabilitation and habilitation, day-care services (particularly in the regions); provision of services for the families caring for children with disabilities.

Children with disabilities are still highly stigmatized in the society. Several cases that were observed on the streets in 2014 are evidence to this. In one instance a swing installed for children with disabilities on a playground on Tsereteli street in Tbilisi was dismantled (case No 12130/1, dated June 26, 2014); another case involved St, Michael school of Free Pedagogy Centre, where iron door of the secondary entrance was welded by residents of the neighbourhood (case No 15910/1 dated September 18, 2014).

The Public Defender's Office studies these cases. We addressed Didube district administration about the

1057 Letter No 01/12240 dated February 20, 2015

case of dismantling the swing[1058]. Reply received from the local self-governing body[1059] stated that they were not aware of the identity of person/persons who dismantled the swing. The reply also stated that the swing would be re-installed in the near future.

As for the case with the St. Michael School of Free Pedagogy Centre, according to the information received by the Public Defender, the school is bordered from one side by a tuberculosis centre. Parents of the children with disabilities attending the school are not allowed to drive in through the garden of the centre. The secondary iron door was welded by the residents of the area and therefore parents have to carry children to school by hand.

Inspection of the case by the Public Defender's Office revealed that parents of children with disabilities were using the central entrance of Ltd Tbilisi Tuberculosis Centre No 2. Administration of St. Michael's School was informed that they have to request solving the parking problems from Tbilisi Mayor's Office, and address relevant law-enforcement bodies in case of obstruction of reopening the secondary entrance or its sealing again after it is re-opened[1060].

Several cases of violence against children with disabilities were detected during the reporting period, which will be discussed in detail in the following sections.

VIOLENCE AND MALTREATMENT AGAINST CHILDREN WITH DISABILITIES

Effective protection of children against violence and maltreatment is one of the fundamental principles of international standards for the protection of rights with children with disabilities. According to normative contents of paragraphs 1 and 2 of article 17 of Georgia Constitution, prevention of the use of torture, inhuman, cruel or degrading treatment and punishment should be ensured in order to protect human dignity. This article obligates the state to take all timely and effective measures to prevent actual and direct risks of violence against children with disabilities[1061] and for its effective elimination, within all branches of government, within the scopes of positive as well as negative obligations.

Among international legal standards prohibiting exploitation, violence and other maltreatment, of particular relevance in the UN Convention on the Rights of Persons with Disabilities of 2006 (UN CRPD), which, with article 16, obligates state to put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted; to develop effective legislation and strategies. Together with CRPD, article 19 of the Convention on the Rights of the Child establishes that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child[1062].

Practical implementation of legal standards for the protection of children with disabilities against violence and maltreatment is related to a number of issues such as: timely identification of children who are victims of exploitation, other maltreatment, especially violation of sexual freedom and autonomy; implementation of further protective referral and rehabilitation procedures; investigation of alleged cases of violence by relevant bodies within the reasonable period of time and identification of responsible persons etc. According

1058 Letter No 09/8860 dated July 4, 2014
1059 Reply No 13058/1 dated July 17, 2014
1060 Letter of LEPL Social Service Agency No 04/82742 dated October 9, 2014
1061 Z v. United Kingdom, (1998), ECHR, App. No. 29392/95 (Comm. Rep 10.9.99) (para 94).
1062 https://matsne.gov.ge/ka/document/view/1399901

to the UN Committee on the Rights of the Child (CRC)[1063], public agencies should take all necessary measures in each case to prevent violence against children, especially for children placed in family and state care services.

In 2014 Georgia joined the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[1064] (adopted on October 25, 2007 in Lanzarote, Spain). According to articles 2 and 14 of this Convention, responsible agencies of state parties should take legislative and other measures to prevent violence and provide assistance to victims without discrimination.

Within national legislation, the Law of Georgia on Preventing Domestic Violence, Protecting and Assisting the Victims of Domestic Violence focuses on the issues of protection of minors. Fourth chapter of the Law (articles 14 and 15) describe specific measures that should be taken to protect minors, as particularly vulnerable group[1065].

From internal legal normative acts in the area of prevention of exploitation and any kind of violence against children with disabilities, Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures is very importance. The referral procedure obligates relevant public bodies to identify children who are victims of violence, assess their conditions and carry out regular supervision[1066].

Despite legal regulation, unfortunately many children cannot enjoy their rights. A study on Violence against Children in Georgia conducted by UNICEF in 2013 demonstrated that use of violence against children is a widely accepted practice in the country. Every second Georgian thinks that violent methods of punishment are more effective than non-violent, pedagogical methods. Women tend to think that violence is an acceptable form of punishment more often than men. Large majority of Georgia population including professionals – teachers, social workers and the police – believe that internal affairs of a family concerns only this particular family and external people should not interfere. This is one of the constraints in effectively identifying cases of violence against children and carrying out referral procedures[1067].

It should be taken into consideration that according to General Comments to the UN Convention on the Rights of the Child[1068], girls with disabilities are a more vulnerable to discrimination and violence. Considering this, state parties should take all necessary measures to ensure effective protection of girls with disabilities and their access to relevant services. It should also be taken into account that in case of communicational and/or mental disabilities, complaints of children regarding violence are often misunderstood. It is repeatedly emphasized that children with disabilities are one of the most vulnerable group among children.

CASE OF N. V. AND T. V., VIOLENCE IN DOMESTIC ENVIRONMENT

On August 4, 2014 citizen T. B. addressed[1069] the Public Defender with information concerning children with disabilities – N. V. and T. V., about potential use of violence against the by a friend of their parent. Representatives of the Public Defender planned a visit to the family to investigate the issue. However mother of the children, I. B., refused them and declared that no violence had taken place against her children.

1063 Paragraphs 31-33, Concluding Observations of the UN Committee on the Rights of the Child, June 23, 2008
1064 https://matsne.gov.ge/ka/document/view/2684715
1065 https://matsne.gov.ge/ka/document/view/26422
1066 https://matsne.gov.ge/ka/document/view/1021481, sub-paragraphs (a) (b) and (d) of article 5, Joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures
1067 http://unicef.ge/uploads/Unicef_VAC_GEO_Final3_02_09.pdf
1068 9th general comment, 43th CRC session, September 16-29, Geneva; p. 4, p. 21
1069 Statement No 13359/1, August 4, 2014

The Public Defender's Office appealed to Isani-Samgori police division of the Ministry of Internal Affair of Georgia[1070] and LEPL Social Service Agency of the Ministry of Labour, Health and Social Protection of Georgia[1071].

According to the response received from Tbilisi Isani-Samgori police division[1072], attempts of rape or other sexual violence had not taken place against children. However according to the information provided by LEPL Social Service Agency[1073], cases of sexual violence against children are apparently confirmed. On this basis, Isani-Samgori Social Service Centre addressed Isani-Samgori district department of the Ministry of Internal Affairs[1074] with the request to take necessary measures. Visit of the representatives of Social Service Agency also revealed that parents did not have necessary skills for caring for children. Therefore they were offered alternative services and the children were placed in a small family-type home.

In relation to this case it should be remembered that according to General Comments to the UN Convention on the Rights of the Child[1075], girls with disabilities are a more vulnerable to discrimination and violence. Considering this, state parties should take all necessary measures to ensure effective protection of girls with disabilities and their access to relevant services. It should also be taken into account that in case of communicational and/or mental disabilities, complaints of children regarding violence are often misunderstood. It is repeatedly emphasized that children with disabilities are one of the most vulnerable group among children.

In this case, neglecting the interests of children by parents is revealed together with potential use of violence by a friend of the family. The parents did not take necessary measures to prevent violence against children, they refused to be interviewed by the representatives of the Public Defender's Office, they did not provide necessary information to the police (as seen from the letter of the Social Service Agency[1076]). So-called 'refusal to interfere'[1077] needs to be emphasized separately as a form of violence. This implies ignoring the information on alleged use of violence against children from family members, neighbours, social or healthcare workers. Neglecting the rights of the child by a parent is considered a form of violence.

According to part 2 of article 4 of the joint Decree No 152/N – No 496 – No 45/N, dated May 31, 2010, of the Minister of Labour, Health and Social Protection of Georgia, Minister of Internal Affairs of Georgia and Minister of Education and Science of Georgia on the Approval of Child Referral Procedures, patrol police and district departments of the Ministry of Internal Affairs are responsible for identification and prevention of cases of violence against children, for initiation of relevant proceedings, protection of victims, informing Social Service Agency. District departments are engaged in the monitoring process of the victim child within their competencies.

As mentioned above, Isani-Samgori Social Service Centre addressed Isani-Samgori district department of the Ministry of Internal Affairs with the request to take necessary measures.

Public Defender's Office continues monitoring of the case.

1070 Letter No 09/10189, August 6, 2014
1071 Letter No 09/101130, August 5, 2014
1072 Letter No 1613760, August 19, 2014
1073 Letter No 04/84807; October 20, 2014
1074 Letter No 04-05/6948, November 8, 2014
1075 9th general comment, 43th CRC session, September 16-29, Geneva; p. 4, p. 21
1076 Letter No 04/84807, October 20, 2014
1077 UNICEF final report, July 28, 2005

CASE OF G. N., VIOLENCE AT AN EDUCATIONAL INSTITUTION

On August 29, 2014, during the reporting period, the Public Defender's Office was informed about the use of physical violence at a preschool against G.N. – a child with disability. According to the information received, parents found their 4-year-old child G.N. at a private preschool operating at the school Saduni with injuries. According to independent experts, the injuries were caused by repeated hits by a solid blunt objects. Considering the severity of the injury, parents thought that it was caused by an adult.

Child's Rights Centre and the Department of Persons with Disabilities started investigating the case[1078].

According to the letter received from the Ministry of Internal Affairs[1079], proceedings have started about the case[1080], forensic examination was conducted[1081]. On November 28, 2014 a decision was taken about recognizing citizen G.N. as a victim in the criminal case under investigation at the Investigation Unit of Fight Against Crime of Tbilisi Central Department[1082]. The decision was communicated to the legal guardian of the victim. Criminal proceedings about the case are underway[1083].

Public Defender's Office continues monitoring of the case.

Cases of violence against persons with disabilities observed during the reporting period demonstrate that use of violence in Georgia is still common in families as well as at educational institutions. However use of violence against persons with disabilities is often 'invisible' and is not addressed appropriately. This is caused by such factors as absence of information, low awareness of the society about the rights of persons with disabilities, stereotypic attitudes, legal and administrative regulations not reflecting specific needs of persons with disabilities. All this factors together make it difficult to identify the cases of violence against persons with disabilities.

RECOMMENDATIONS

To the Government of Georgia

- To develop a national policy for the support and integration in the society of those beneficiaries of children's residential institutions who have left these institutions because of attaining full legal age.

To the Ministry of Internal Affairs

- To develop the system of notification adapted to the needs of persons/children with disabilities taking into account significance of preventing domestic violence and specific needs of children with disabilities

To the Ministry of Labour, Health and Social Protection of Georgia

- to ensure appropriate operation of protection of children with disabilities against violence and/or neglecting their interests by their parents or other legal guardians; to enforce relevant sanctions against violators of children's rights

1078 Case No 16336/1, August 29, 2014
1079 Letter No 09-1/12311, October 6, 2014
1080 No 008280914009
1081 No 005408514, November 7, 2014
1082 No 238589, February 3, 2015
1083 Letter of the Ministry of Internal Affairs No 238589, February 3, 2015

- to register and keep statistics regarding cases of violence against children with disabilities; further monitoring

To the Ministry of Education and Science of Georgia

- to take necessary measures to train the staff of educational institutions where children with disabilities are enrolled to ensure their protection against violence and neglect of their interests
- to take necessary measures (develop educational programmes) to raise awareness of students and their parents of those educational institutions where children with disabilities are enrolled
- to introduce the accessible system of notifications and messages for children with disabilities in order to ensure identification and prevention of the cases of violence

HUMAN RIGHTS STATUS OF THE ELDERLY

The eldery residing in Georgia belongs to one of the especially vulnerable groups, who are facing quite serious challenges. While a certain part of this group is trying to get involved in social life, the rest are facing the risks of homelessness, poverty and isolation due to the absence of adequate services and protection mechanisms. The facts of discrimination against the above mentioned group are based on different characteristics, including gender, socio-economic status, ethnic origin and even health status. The state does not have an effective policy in regard to the elderly, nor the strategy for providing their social wellbeing and protection of their rights. State programs and services are insufficient and inadequate.

A large part of the elderly are living below the poverty line. The number of persons receiving subsistent benefits in 2014 was 421 358, out of which 105 202 were aged over 60. The biggest part of vulnerable population are represented by persons aged over 70 (57 934 persons). Among the recipients of social assistance package the number persons with disabilities aged over 59 exceeds 14 080.[1084]

During past few years the parliamentary reports of the Public Defender of Georgia highlighted the problems of the elderly population. In the parliamentary report of 2013 on The Situation of Human Rights and Freedoms in Georgia we discussed the tough social and economic conditions and financial hardship of elderly persons, as well as the cases of violence against them. Public Defender addressed the government with recommendations for improving the current situation, including the development of governmental strategy and action plan, implementation of legislative changes, introduction of alternate services and ensuring the geographical availability of care services. Although, most of the above mentioned recommendations were not fulfilled.

It is noteworthy that in December 2013 a multi-sectoral working group coordinated by the Ministry of Labor, Health and Social Affairs of Georgia was established. The Public Defender of Georgia evaluates the given fact very positively and hopes that the activities of the mentioned working group will be more productive in future. The fact that in 2014 the Minister of Labor, Health and Social Affairs issued an order N01-52/n on the Minimum Standard Rules for Providing Services to the Persons with Disabilities and Elderly People in the Specialized Institution for Overnight Stays is evaluated positively, although unless it is properly implemented the quality of provided care shall not be improved. It has been announced that from September 1, 2015 the age pension will be increased by 10 GEL, although the given increase will not change the current situation significantly, nor provide the adequate living standards to the elderly people.

During last couple of years certain changes have been observed globally in terms of strengthening the policy and vision of protecting the rights of elderly persons, although no significant progress has been achieved in Georgia in this particular direction. Only in April 2002, the United Nations Second World Assembly on Ageing held in Madrid adopted a Political Declaration and the Madrid International Plan

1084 See. http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=610 [last time viewed on January 30, 2015)

of Action on Aging and the strategy for its implementation[1085]. In 2010 UN established a working group aiming to strengthen the protection of the rights of elderly persons, identify potential problems and the best possible ways of their solution[1086]. The UN Economic Commission for Europe is also actively working on the issues of elderly persons.

Madrid International Plan of Action and the Regional Implementation Strategy (MIPAA/RIS) defines the following basic obligations of a state: emphasize the issues of aging in all policy directions; fully integrate and include the elderly persons in the society; promote the stable and sustainable economic growth in response to the population aging; regulate/adjust the system of social protection; enable the labor market to adequately respond to the social and economic implications of population aging; promote a lifelong learning and adjustment of education system; attempt to provide the adequate quality of life among all age groups and support independent life, including healthcare and wellbeing; mainly focus on gender-based approach in the aging society; support the families, who take care of elderly persons and promote the solidarity among generations; ensure the introduction of the Plan of Action and the Regional Implementation Strategy.

Within the frameworks of implementation of Madrid International Plan of Action the Ministry of Labor, Health and Social Affairs organized more than 30 meetings and visits to three elderly shelters of Tbilisi, Kutaisi and Batumi[1087]. Besides, as mentioned above, a special task force was established in December 2013, which included the representative of the Public Defender of Georgia as well as other governmental and non-governmental actors. The main purpose of the activities of given task force was the development of state strategy and a plan of action in regard to the rights of elderly persons, although, to date, such documents have not been developed. Also, there is no regular and stable mechanism, which would ensure the cooperation between the state agencies in regard to the given issue. The above mentioned facts lead us to conclude that the process of implementation of the Madrid International Plan of Action on Aging and its Regional Implementation Strategy is being delayed.

MAINSTREAMING AGEING

Development of the Road Map for Mainstreaming Ageing: Georgia under the auspices of UN Economic Commission for Europe, which provides the country specific reality-based guidelines for the introduction of Madrid International Plan of Action on Aging and the Regional Implementation Strategy, can be considered as a major step forward. Given document can be used as a national strategy or be a basis for extension in another strategic document.

According to the Road Map: Mainstreaming ageing is a strategy, process and multi-dimensional effort of integrating ageing issues into all policy fields and all policy levels. This means considering consequences for the growing share of older persons in society from the perspective of all policy areas - the economy and labor market, housing, transport, health and social protection, education, intergenerational relations and gender. Based on the broader policy directions set out in the national strategy for a certain time frame (e.g. ten years), interdisciplinary working group should translate it into an Action Plan which covers a shorter period (e.g. two years). The Action Plan should include some activities which can be realized quickly at no additional cost, as well as others which would require longer-term change processes and bigger investments. It will be useful to consult with a broader group of stakeholders when preparing the Action Plan, too. At the same time, when preparing the Action Plan, responsibilities in different areas should be clearly attributed, in consultation with all ministries.[1088]

1085 See <http://undesadspd.org/Ageing/MadridPlanofActionanditsImplementation/RegionalImplementationStrategiesoftheMIPAA.aspx> [Last viewed on January 28, 2015]

1086 Resolution of the UN General Assembly dated December 21, 2010. See http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/182 [Last viewed on January 28, 2015]

1087 Letter N01/11983 of the Ministry of Labour, Health and Social Affairs of Georgia dated February 19, 2015

1088 Road Map for Mainstreaming Ageing: Georgia, Page 40, UN Economic Commission for Europe, Geneva, 2014

STATE POLICY AND PROGRAMS FOR THE ELDERLY PERSONS

Madrid International Plan of Action compels the state: to provide adequate living conditions, social protection and healthcare to the elderly persons; reduce and prevent poverty, develop respective strategy and programmes; ensure the equal availability of employment, revenues and credits.[1089] Adequate pension/social assistance and health insurance should be also provided.[1090] Various social packages providing minimum living standards to the most-at-risk groups should be considered as well. At the same time, the state should implement pension and insurance system reform in order to improve the living standards.[1091]

Despite the obligations, the state does not possess a clear vision and effective policy for a proper realisation of the rights of elderly persons. In addition, the state programs are not diverse enough.

Insufficient income hinders the integration of the elderly persons in social activities. Obviously, the top priority is to cover the vital expenses, respectively, it is no longer possible to allocate resources for cultural, entertainment and sports activities, unless they available for free or at reduced prices.

Social policy is mainly oriented on the pension increase; according to the Article 32, Clause 6 of the Law on the State Budget of Georgia for 2013, from September 1, 2013 the pension amount for the pensioners of all ages is 150 GEL. As already mentioned above, 10 GEL increase is planned to be implemented from September 1, 2015. Besides, according to the information provided by the Ministry of Labour, Health and Social Affairs of Georgia, the average life expectancy of the population has increased, which indicates that more people have reached the pension age. In 2008 their number was increased by 8000 and the number of pension recipients was 697 240. Respectively, in comparison with the previous years, during current and future years the state will have to fulfil more pension obligations.[1092]

Parallel to the state programs, local government has the right to develop and administer social assistance measures on a local level. This enables the municipalities to adjust the system of social protection to the local environment and satisfy regional needs. Accordingly, self-governments frequently develop specific programs and benefits for the elderly citizens within the frameworks of their own budgets. E.g. in Tbilisi the pensioners are eligible for concessionary fares and the veterans and visually impaired persons use public transport free of charge.[1093]

STATE PROGRAMS OF SOCIAL REHABILITATION

In 2014 the elderly persons were enlisted as beneficiaries of certain subprograms of the State Program of Social Rehabilitation, including: subprogram of supporting the rehabilitation of war veterans; the component of mobility aids subprogram providing crunches, canes and mobility canes/aids for the visually impaired.[1094]

The main direction of the state care policy for the elderly is aiming to provide nursing homes and catharsis services, which on one hand makes it possible for the elderly persons to lead more or less decent lives, but on the other hand causes their isolation and segregation from the society. Such services are delivered within the frameworks of subprograms of large residential institutions and community based organizations.

State residential institutions operate under the State Fund for Protection and Assistance of (Statutory) Victims of Trafficking. The Social Service Agency coordinates the issues related to the placement of elderly

1089 ibid, Paragraph 48, UN Economic Commission for Europe, Geneva, 2014
1090 ibid, Paragraph 52, UN Economic Commission for Europe, Geneva, 2014
1091 ibid, Paragraph 53, UN Economic Commission for Europe, Geneva, 2014
1092 See. <http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=29&info_id=2138> [Last viewed on January 30, 2015]
1093 For more information, please refer to: http://ttc.com.ge/index.php?lang_id=ENG&sec_id=157.
1094 Annexes 1.4 and 1.6, Resolution N291 of the Government of Georgia dated April 14, 2014, on Approving the State Program of Social Rehabilitation and Child Care for 2014

persons in the elderly shelters, processes applications, assesses needs and makes placement decisions. To date, there are two state elderly shelters (in Tbilisi and Kutaisi), which provided services to 214 persons in 2014 (94 persons in Tbilisi and 120 in Kutaisi).[1095] Since the number of elderly shelter applicants is quite high, there is a "waiting line" for those who have not received housing yet. In this regard, in its parliamentary report of previous year, the Public Defender of Georgia addressed the Ministry of Labour, Health and Social Affairs of Georgia with the recommendations to define the number of elderly persons in the "waiting line", assess their needs and if necessary provide alternate services. According to the information provided by the ministry, currently there are 33 persons registered in the database of individuals willing to be placed in elderly shelters and community based organizations.[1096] In the given correspondence no data was provided about the results of the needs assessment and a delivery of alternate services.

Together with the elderly population, the people with disabilities are the target group of a subprogram of community based organizations. Program budget of 836 000 GEL was approved in 2014.[1097] The objective of this subprogram is to create the family-like living conditions for its target groups, support independent life and promote social integration. In order to achieve this objective: the beneficiaries are provided with housing, daily services and three meals a day; receive necessary first aid and inpatient and outpatient medical services; individual service program is being developed and implemented in order to increase the levels of independence of the beneficiaries; the beneficiaries attend capacity building activities (based on their individual skills and the readiness to participate, they identify the vocational skills they wish to develop, and are trained and supported to use the acquired skills in practice); age, gender and season appropriate clothing and the items of personal hygiene are provided; other activities for social integration are implemented.[1098] The given services are implemented by 6 different institutions providing care to 73 persons.[1099]

The day care centres providing services to the people with disabilities aged over 60-65 are also operating within the frameworks of a social rehabilitation program. The main objective of this program is to support the families of the beneficiaries and prevent their abandonment. The service envisages: daily (except for weekends and holidays) care with two meals a day; supporting the beneficiaries by building their professional and vocational capacities and improving their life skills; engaging beneficiaries into sports and fitness activities; providing outpatient medical services and psychological assistance if necessary; transportation of the beneficiaries to the centre and back home.[1100] In 2014 426 persons with disabilities aged over 18 (including the elderly)[1101] benefited from the given program. Although, since the demand is much higher, the services of day care centre are unavailable for the absolute majority of potential beneficiaries. The Public Defender considers that strengthening of day care centre services and significantly increasing the number of beneficiaries is of paramount importance.

The advantage of day care centres over those of elderly shelters is that, at the day care centres the elderly persons are offered higher levels of independence and have more opportunities to get engaged in social activities. Although, providing proper "home care" services would be the best option for improving the social and economic conditions and situation of the rights of the elderly persons and their families. The state should be aiming to introduce "home care" services across the country, based on the assessment of the actual needs of the elderly, in order to make sure that all individuals are able to stay in their families until the end of their lives, maintain independency and have appropriate living conditions. Private and non-

1095 See http://www.atipfund.gov.ge/images/stories/pdf/statistika/2014/statistika4.pdf [Last viewed on September 2,2015]
1096 Letter N01/11986 of the Ministry of Labour, Health and Social Affairs of Georgia dated February 19, 2015
1097 Annex 1.2, Article 4, Clause 1, Resolution N291 of the Government of Georgia on the Approval of a State Program of Social Rehabilitation and Child Care for 2014 dated April 14, 2014
1098 Annex 1.2, Article 2, Resolution N291 of the Government of Georgia on the Approval of a State Program of Social Rehabilitation and Child Care for 2014 dated April 14, 2014
1099 Letter N01/8200 of the Ministry of Labor, Health and Social Affairs of Georgia date February 9, 2015.
1100 Annex 1.5, Article 2, Resolution N291 of the Government of Georgia on the Approval of a State Program of Social Rehabilitation and Child Care for 2014 dated April 14, 2014
1101 Annex 1.5, Article 3, Clause 1, Subclause C, Resolution N291 of the Government of Georgia on the Approval of a State Program of Social Rehabilitation and Child Care for 2014 dated April 14, 2014

governmental providers should be encouraged to provide such services. Certain types of services should be envisaged for those elderly persons and their families, which are not included in the database of socially unprotected families. According to the information provided by the Ministry of Labour, Health and Social Affairs of Georgia[1102] at this stage the standards of "home care services" have not been approved by the normative act, although in several regions local self-governments finance the home care services administered by non-governmental organizations. The ministry, together with the other strakeholder organizations, which have had successful practices in this regard, is planning to resume its work in this direction, in order to develop standards for home care and promote further development of the given service.

State Healthcare Programs

According to the international standards, the elderly persons must have access to the healthcare services, including those intended for disease and disability prevention. The quality of life of the persons with disabilities should be improved as well. Healthcare service programs should include the trainings for respective personnel and should adjust the environment/infrastructure to the specific needs of the elderly population. Increasing necessity of elderly care calls for the implementation of adequate policy promoting lifetime healthcare, disease prevention, rehabilitative care and required psychiatric health services.[1103]

In Georgia elderly persons benefit from certain components of healthcare programs, although there are no specific programs based on the deep analysis of their problems and long-term vision for their solution. There are around 20 "vertical" (individual disease-oriented) programs in the country. One of them is Palliative Care for the Incurable Patients, which aims to relieve pain and pathological symptoms as well as to provide social, psychological and moral support to the patients. The program also aims to achieve higher quality of life of the patients and their families.[1104] Outpatient palliative care of the patients with incurable diseased includes: the provision of outpatient home care to the patients with incurable diseases in Tbilisi, Kutaisi, Telavi, Zugdidi, Ozurgeti and Gori municipalities by the palliative mobile teams (doctors/nurses); inpatient palliative care and symptomatic treatment of incurable patients; providing medicines. The program budget for 2014 was 1 413 000 GEL.[1105] It is noteworthy that the potential beneficiaries do not possess sufficient information about the program, nor are they aware of the enrolment mechanisms. Accordingly, while relying mainly on the care provided by family members and community based organizations, the patients suffer from severe pains until the end of their lives.

Like other citizens, the elderly persons have access to state insurance program, which covers the following services: emergency medical care and transportation; ensuring patient hospitalization according to medical diagnosis; management of the referral cases of critical and emergency patients; outpatient services; outpatient services provided by family/village/district doctors and nurses; outpatient medical services provided by medical specialists based on the prescriptions of family/village/district doctors; all types of laboratory, clinical and instrumental tests performed on the outpatient level as prescribed by doctor; necessary tests for determining the status for the social expertise of people with disabilities; issuing all types of medical reports, conclusions and prescriptions on the outpatient level; emergency outpatient services; inpatient services (co-payment of 10% for the persons of retirement age), etc.[1106] Despite the improvement in the quality of elderly health care provided by the State Health Insurance Program, the practice revealed that there are frequent complaints related to insurance administration, including the waiting lines at the medical facilities, uncovered medicine costs and in some cases neglect/negligence from the side of medical personnel.

1102 Letter N01/11983 of the Ministry of Labour, Health and Social Protection dated February 19, 2015
1103 Roadmap to Mainstreaming Aging: Georgia, UN Economic Commission for Europe, Geneva, 2014, paragraphs 58-60
1104 Annex, Article 1 Resolution N157/n of the Minister of Labour, Health and Social Affairs of Georgia dated July 10, 2008, on the Instructions for Providing Palliative Care to the Patients with Chronic and Incurable Diseases.
1105 Annex N15, Resolution N650 of the Government of Georgia, on Approving the State Healthcare Programs for 2014
1106 See <http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=36> [Last viewed on January 30, 2015]

Inequality in terms of access to medical facilities in the cities and villages has been observed as well.

Sometimes the negligence from the side of medical personnel and the representatives of social protection system leads to fatal results. Similar incident took place in the case of elderly V.T.

CASE OF V.T.

On March 13, 2014, at its own initiative, the Public Defender of Georgia commenced examination of the case of 78-year-old V.T, a beneficiary of a shelter for the elderly persons and people with disabilities LEPL Taobata Kera in the Village of Bodbiskhevi, Sighnaghi region. V.T. was placed in the above mentioned facility on February 14, 2014 from JSC Zugdidi Multiprofile Clinical Hospital Respublika, as per the decision of Samegrelo-Zemo Svaneti regional council of the Social Service Agency. The letter of the Social Service Agency dated April 17, 2014 clarifies that V.T. was placed in a hospital on December 30, 2013 with a femoral neck fracture. During the interview the patient claimed that he did not have any material possessions, lived temporarily in the houses of different neighbours, was bedbound and required necessary medical care and shelter. Due to his status of significantly expressed disability, the agency offered him to enrol in the program of a community-based organization. V.T. accepted the offer. Although the agency's letter also stated that:

V.T.'s patient rights were violated by JSC Zugdidi Multiprofile Clinical Hospital, where he did not receive appropriate treatment. He developed deep bedsores and was discharged from the inpatient facility in a cachectic, uncared state. Despite the graveness of his health status, the beneficiary was transported from Zugdidi to the village of Bodbiskhevi by ambulance. It is also noteworthy, that the health status of the beneficiary was not consistent with the medical diagnosis and history indicated in the form NIV-100 issued by the JSC Zugdidi Multiprofile Clinical Hospital Respublika. The given inconsistency misled the social worker of the Zugdidi Regional Division of Social Service Agency, who did not provide a careful description of the given situation, after which, despite the critical health condition, the patient was transported from Zugdidi to Sighnaghi region on an ambulance vehicle. Despite the fact that the patient was in critical condition, the head of community-based organization did not return the homeless beneficiary back to Samegrelo, instead he was placed in the organization facility where he received necessary daily wound treatment by certified doctor and qualified medical personnel. Given that the beneficiary was in a critical condition from the day of his enrolment, he passed away on March 10, 2014.

With the purpose of examining the above mentioned case the Apparatus of the Public Defender of Georgia addressed the Healthcare Department of the Ministry of Labour, Health and Social Affairs of Georgia and LEPL State Regulation Agency for Medical Activities. According to the correspondence N02/86365 of the mentioned agency, dated October 27, 2014, the commission examined the facts indicated in the Public Defender's application and on October 24, 2014, at the session N8 it adopted the final decision regarding the professional responsibility of seven doctors of JSC Zugdidi Multiprofile Clinical Hospital "Respublika" (M.S, P.A, M.R, V.P, L.G, M.J, K,Ts.), I.M, a doctor of Medical Ambulatory of Village Ingiri of Zugdidi Region and T.B, a doctor of LEPL Taobata Kera (1 month suspension and a written warning). According to the information provided by the agency the doctors of JSC Zugdidi Multiprofile Clinical Hospital "Respublika" did not provide essential treatment to the patient. The doctors and administration of LEPL Taobata Kera failed to provide consultations of respective medical specialists and emergency ambulance services.

The response of a competent state agency to the case of elderly V.T. is evaluated positively by the Public Defender, although, more serious measures should be taken while dealing with a case of a serious violation of human rights, rather than a post-factum questioning of medical personnel's professional responsibility. It is especially important to prevent similar cases in future.

Everyone has a right to the adequate standard of living providing his and his family's good health and well-being, including food, clothing, housing and medical and essential social services.[1107]

UN International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include the creation of conditions which would assure to all medical service and medical attention in the event of sickness.[1108]

According to the general comments of UN International Covenant on Economic, Social and Cultural Rights, The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body and to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.[1109] According to the specifics of the elderly persons, the right to health contains the combined elements of prevention, treatment and rehabilitation, as well as the services providing pain relief and dignified death.[1110]

The right to health is closely related to and dependent upon the realization of other human rights, including the right to life.[1111] Right to life imposes two types of responsibilities on a state: not to take anyone's life and take reasonable measures to protect lives, the latter envisages the practical implementation of positive activities.

According to the national legislation, every citizen of Georgia shall have the right to receive medical care from any medical care provider that complies with professional and service standards recognised and practiced in the country.[1112] The State shall protect the right of patients to receive medical care, the delay of which shall inevitably cause death, disability or significant health deterioration of patients.[1113]

We believe that in the above mentioned case the patient V.T.'s right to health was violated. The mentioned case reveals that the ineffective/inconsistent healthcare and social protection activities implemented by the state in regard to the elderly persons violate the universally recognized human rights and freedoms as well as the obligations imposed by international documents and national legislation.

The ministry of Labour, Health and Social Affairs of Georgia notes that the development of alternate (community) services for the elderly persons remains a priority, which includes universally recognized, modern, so-called social model approaches towards the development of the elderly care services. The given approach provides the beneficiaries with individual needs-based daily care and rehabilitation activities promoting the development and realization of their capacities.[1114] Although, the practice revealed, that in the case of V.T, the administration of a residential institution failed to provide appropriate minimum care, which led to fatal results. It is also noteworthy, that up to now, systematic monitoring and evaluation of treatment of elderly persons placed in the residential facilities, as well as their health status and living conditions has never been conducted. The Public Defender of Georgia will always evaluate the situation of the rights of elderly persons and monitor the achievement of the Minimum Standards of Services Provided by the Specialized Institutions for Overnight Stays for the Elderly and Disabled Persons, which was recently approved by the ministry.

1107 Article 25, Universal Declaration of Human Rights, UN, 1948
1108 Article 12, UN International Covenant on Economic, Social and Cultural Rights, UN, 1966
1109 Paragraph 8, the Right to the Highest Attainable Standard of Health, General Comment N14, E/C.12/2000/4 (2000), UN International Covenant on Economic, Social and Cultural Rights
1110 Paragraphs 34-35, Rights of Older Persons, General Comment N6, E/1996/22 at 20 (1996), UN International Covenant on Economic, Social and Cultural Rights
1111 Paragraph 3, the Right to the Highest Attainable Standard of Health, General Comment 14, E/C.12/2000/4 (2000), UN International Covenant on Economic, Social and Cultural Rights
1112 Article 5, Law of Georgia on Patient Rights
1113 Article 12, Clause 1, Law of Georgia on Patient Rights
1114 Letter N01/11983 of the Ministry of Labour, Health and Social Affairs of Georgia dated February 19, 2015

RECOMMENDATIONS

To the Government of Georgia

- Adopt national strategy and a plan of action, which will have a universal approach and will respond to the needs of the ageing population of Georgia. The plan of action should provide clear attribution of responsibilities to the respective state offices;
- Develop adequate programs for social protection and healthcare responding to the challenges of elderly persons, based on the comprehensive needs assessment;
- Ensure the implementation of information and education activities in order to raise awareness on the rights and special needs of the elderly persons;
- Review the laws, draft laws and programs, in order to make sure they contain the principles of Madrid International Plan of Action/Regional Implementation Strategy (MIPAA/RIS).

To the Ministry of Labour, Health and Social Affairs of Georgia:

- Ensure accessibility of healthcare services for the elderly persons by offering effective programs and services (including medicine provision);
- Based on needs assessment, reflect the long-term care elements in the National Health Care Strategy;
- Introduce and improve the services of the institutions providing geriatric care, elderly palliative care, community and daycare center services;
- Develop standards for home care services and ensure the introduction and implementation of the mentioned service;
- Create a unified database for managing the quality of elderly care services, including the development and regular update of guiding principles and institutional standards;
- Train/retrain the personnel in compliance with the developed standards;
- Conduct a public awareness campaign regarding the state programs/services and their utilization.

Local Self Government Bodies

- Within the frameworks of local budgets, provide adequate services and programs to the elderly persons based on the assessment of their needs.

RIGHT TO ADEQUATE HOUSING

Right to Adequate Housing is one of the rights protected by Georgia in accordance with the number of international documents. Accordintly, the state recognizes the positive and negative obligations derived from the right.[1115] International Covenant on Economic, Social and Cultural Rights and its Article 11 protecting the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions is considered as a major international document related to the discussed right.

The Committee on Economic, Social and Cultural Rights defines the meaning of this article, which is crucial for a conscientious implementation of the right by the member states. According to the definition the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.[1116] Accordingly, the Right to Adequate Housing does not merely envisage a roof and four walls; rather it provides a unity of those minimum conditions essential for physical and moral integrity.

In his report on the Right to Adequate Housing the UN Special Rapporteur emphasized the major aspects required to be implemented by the state for a progressive realization of the right. According to the report, the state shall use all necessary measures for ensuring everyone's access to the housing resources consistent to the standards of health, safety and living conditions. Should a person be homeless or inadequately housed, he/she should claim the provision or access to housing resources. The State will undertake a series of measures which indicate policy and legislative recognition of the right.[1117]

It should be also noted that due to the complexity and increasing importance of the Right to Adequate Housing, it is frequently misinterpreted in practice. One of the most common mistakes is assuming that the state is is required to build housing for the entire population and housing will be provided to all who request it.[1118] Conversely, according to the principles of international law, the state shall provide the individual with adequate housing only under certain circumstances. Second common mistake is the misinterpretation of the Right to Adequate Housing as a right to property. Adequate housing rights are more fundamental than property rights and respectively, despite property rights, the homeless persons should be provided with secure, peaceful and dignified conditions. Also, the state does not bear an obligation to transfer the offered housing space under the ownership of a person in need.

1115 See e.g. 1) Article 5, Clause E, Subclause 3, International Convention on the Elimination of All Forms of Racial Discrimination, 1965; 2) Article 14, Clause 2, Subclause h, Convention on the Elimination of All Forms of Discrimination against Women, 1979; 3) Article 27, Clause 3, Convention on the Rights of the Child, 1989; 4) Article 21, Convention relating to the Status of Refugees, 1951, etc.

1116 Article 7, General Comment N4, The Committee on Economic, Social and Cultural Rights, 1991

1117 Special Rapporteur on the Right to Adequate Housing, UN doc. E/CN.4/Sub.2/1995/12, Clause 12

1118 Special Rapporteur on the Right to Adequate Housing, UN doc. E/CN.4/Sub.2/1995/12, Clause 11

Another common mistake is to assume that the state is not required to implement all aspects of adequate housing right away.[1119] Conversely, the state is required to implement the activities using all existing resources in order to gradually and completely realize the given right. Also, these activities should be deliberate, specific and oriented to implement the obligations imposed by the covenant.[1120]

One of the most noteworthy human rights regional agreements related to the Right to Adequate Housing is the Article 31 of European Social Charter. The present norm rules that in order to effectively implement the given right, the states bear responsibility aiming to: 1) promote the availability of adequate standard of housing; 2) avoid and gradually reduce homelessness with an aim of its elimination; 3) make the housing prices affordable for those citizens who do not have sufficient resources. Given that Georgia has not made a reservation on this article, the state currently does not recognize the obligation of its acknowledgement, protection and implementation. Although, in the case of fulfilling the recommendations provided by different reports of the Public Defender of Georgia, development of a unified policy and strategy will enable Georgia to annulle its reservation on the given article.

Despite the fact that Georgia has recognized obligations derived from the Right to Adequate Housing by several international agreements, they are rarely implemented in practice and violations of the given right are of alarming nature. Like in previous years, in 2014 the number of received applications regarding the absence of shelter or a living space was very high. The results of the application review reveal that the problems in this direction and the issues of hindering circumstances of the right remain unchanged.[1121]

In 2014 the major problems of homelessness are the absence of centralized database and inexistence of infrastructural resources and scarcity, or in some cases complete lack of financial means for meeting the needs of homeless persons. Inclusion of the homeless in the program of socially unprotected families remains to be a serious problem. Since the Public Defender of Georgia discussed the above mentioned problems in the parliamentary reports of past 5 years, we will not talk about them in the present chapter.[1122] The recommendations provided for improving the situation related to the Right to Adequate Housing remain the same as well. It should also be noted, that given the relevance of the issues, in March 2015 the Public Defener of Georgia pubished a special report discussing the challenges related to the realization of the Right to Adequate Housing in Georgia in detail.[1123]

Therefore, in the present chapter we will highlight the problems revealed in the reporting period of 2014. Particularly, we will dicsuss the relevant legislative changes carried out during last year and the issue of forceful eviction of homeless families from the premises they are occupying arbitrarily; also the situation of the inhabitants of tents set up as temporary shelters for homeless persons.

1119 Special Rapporteur on the Right to Adequate Housing, UN doc. E/CN.4/Sub.2/1995/12, Clause 11

1120 Paragraph 2, General comment N3, The Committee on Economic, Social and Cultural Rights, 1991

1121 See the parliamentary report of the second half of 2009 of the Public Defender of Georgia On the Legal Situation of Human Rights and Freedoms in Georgia, chapter: Right to Adequate Housing, pages 204-209; Parliamentary report of 2010, Chapter: Right to Adequate Housing, pages 575-584; Parliamentary report of 2013, chapter: Right to Adequate Housing, pages 551-561.

1122 See the parliamentary report of the second half of 2009 of the Public Defender of Georgia On the Legal Situation of Human Rights and Freedoms in Georgia, chapter: Right to Adequate Housing, pages 204-209; Parliamentary report of 2010, Chapter: Right to Adequate Housing, pages 575-584; Parliamentary report of 2013, chapter: Right to Adequate Housing, pages 551-561.

1123 http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/ufleba-satanado-sacxovrisze-specialuri-angarishi.page

LEGISLATIVE CHANGES

In 2014 the Parliament of Georgia adopted a resolution on the approval of the National Human Rights Strategy of Georgia for 2014-2020, which determinted the obligations derived from the Right to Adeqaute Housing as one of the priorities. It is noteworthy that until now no political/strategic document has been adopted in order to develop a systemic approach towards fighting homelessness by central government. Article 21 of the strategy on the Right to Adequate Housing envisages the achievement of following objectives: a) Concentration of existing resources to the maximum extent possible in order to ensure the implementation of the Right to Adequate Housing; b) implementation of the Right to Adequate Housing without any discrimination; c) in order to implement the Right to Adequate Housing, development of relevant legislation and state housing strategy envisaging the interests of all groups in compliance with the international standards; d) registration of homeless persons and creation of a unified database; e) providing minimum living conditions.

In 2014 another significant document – National Action Plan on Protection of Human Rights for 2014-2015 was adopted, defining the general directions of the policy to be implemented by the executive government in order to achieve the objectives set within the frameworks of the strategy.[1124] Unfortunately, the national action plan does not envisage a specific package of actions, essential for achievement of the objectives set by the strategy regarding the Right to Adequate Housing. Hence, we are facing a situation when dealing with the issues of homelessness is the subject of special attention for the state, although, at this stage, the essential action plan defining specific activities, appropriate resources, responsible bodies and timeframe ensuring the achievement of set goals does not exist.

Besides the above mentioned legislative changes, a technical regulation on the minimum standards of operation of homeless shelters was approved in 2014.[1125] The document defines the essential issues of setting up and exploitation of a shelter. Against the background of legal guarantees related to the shelters and their operation envisaged by law, according to the information provide by the local government bodies none of the municipalities, exepct for Batumi, include similar institutions.[1126] Although, according to the data provided by the Mayor's Office of Tbilisi Municipality, local government body is planning to build and commission a shelter on the territory of Lilo district by the end of 2015. The Budget of Capital City for 2015 approved by the Resolution N18-57 of the Tbilisi Legislature (Sakrebulo) dated December 19,

1124 Resolution N445 of the Government of Georgia on the approval of the Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015) and the creation of an inter-agency coordination council for the implementation of the Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015) and the approval of its regulation, dated July 9, 2014

1125 Resolution N131 of the Government of Georgia, Technical regulation on the Minimum Standards of Operation of Homeless Shelters dated February 7, 2014.

1126 1) Letter N051/416 of September 17, 2014 of the Gamgeoba of Zugdidi Municipality, 2) Letter N1403/645 of September 22, 2014 of the Gamgeoba of Kutaisi Municipality, 3) Letter N06/14288340-10 of October 21, 2014 of the Mayor's Office of Tbilisi Municipality

2014 allocates 1 211 300 GEL for building of a homeless sheter (program code 6.2.21.). Mayor's Office of Kutaisi also plans to build a shelter in 2015 and has allocated 300 000 GEL in the local budget for this particular direction.[1127]

Based on the Clause 2 of the Article 2 of the above mentioned regulation, the notion of a homeless person appeared in the national legislation, defined as a person who lives in the street, does not have a permanent living space, legal income and immovable property registered to his/her name, or a person, who currently lives in streets and his/her life is at risk. As a result of development of the present definition of a homeless person, the problem of its interpretation emerged in practice. In particular, the problem emerged in terms of compatibility of the notions of a dispossessed person defined by the regulation and a homeless person envisaged by the Law of Georgia on Social Assistance.[1128]

During 2014 the Public Defender of Georgia revealed serveral cases, when, against the background of an ambiguous definition of a homeless person provided by the Law of Georgia on Social Assistance, the Mayor's Office of Tbilisi Municipality defined a homeless person as per the notes of the Resolution N131 of the Government of Georgia dated February 7, 2014. The mentioned approach is unjustified, since the dispossessed persons belong to one of the vulnerable groups of homeless individuals – the peoples without roof over their heads, while the term homeless has a broader meaning and envisages different expressions of homelessness, which also need to be provided with adequate housing. It is also noteworthy, that because of its specific profile, the Program of Temporary Shelters of Tbilisi cannot be offered to all categories of homeless persons. Accordingly, it is unacceptable for the local governments to review all applications for housing provision by default within the frameworks of the given program.

The Public Defender of Georgia evaluates the approval of a regulation necessary for the operation of a homeless shelter and development of a long-term strategy related to the Right to Adequate Housing in 2014 very positively. It should be also noted that the steps taken by the government are not sufficient for eliminating homelessness in Georgia and it is necessary to continue working actively in this direction. The Public Defender of Georgia hopes that the processes commenced for fulfilling the obligations derived from the Right to Adequate Housing will be irreversible.

PROGRAM SOCIAL HOUSING IN A SUPPORTIVE ENVIRONMENT

The parliamentary report of Public Defender for 2013 discusses the project Social Housing in a Supportive Environment implemented in various regions as well as in capital in 2013 with the financial support of Swiss Agency for Development and Cooperation.[1129] Like in 2013, during last year placement of the families selected by the temporary Commission established in Tbilisi within the frameworks of the given program in the living spaces was a major problem. In particular, the living spaces intended for the selected beneficiaries were arbitrarily occupied by other individuals. According to the information provided by the Mayor's Office of Tbilisi Municipality by the end of 2014 7 out of 24 selected families are unable to live in the provided housing,[1130] which they are legally entitled to use. It is noteworthy that the part of authorized users has appealed in the court to protect their own interests and currently the legal proceedings are in progress.[1131] The Public Defender of Georgia is carefully observing the developments in this regard and hopes that the authorized bodies will use all means envisaged by law in order to protect the interests of authorized users.

1127 http://www.kutaisi.gov.ge/news/id/876 [Last viewed on January 26, 2015]

1128 Clause J, Article 4 of the Law of Georgia on Social Assistance, dated December 29, 2006.

1129 See the Parliamentary Report of Public Defender of Georgia for 2013 on The Situation of Human Rights and Freedoms in Georgia, chapter: The Right to Adequate Housing, pages 551-561.

1130 Letter N2568135 of the Mayor's Office of Tbilisi Municipality dated October 21, 2014

1131 Resolution of the Administrative Panel of Tbilisi City Court issued on 28 May 2014 (case #4564-13) remained uncharged according to 28 November 2014 verdict of Tbilisi Court of Appeals (Case #3/b-1132-14). Second instance verdict has been appealed to the Supreme Court of Georgia.

In regard to the said project, one of the important issues is to implement the programs promoting the social integration of the beneficiaries. This envisages the social and economic rehabilitation of the families and creation of opportunities for leaving the temporary housing, which will support the transitiveness of the Right to Adequate Housing. The state must exert all efforts to make sure that the Right to Adequate Housing is not interpreted as a property right. As already mentioned in the Introduction, the said right does not compel the state to transfer the living spaces to the ownership of individuals with respective needs. Besides, the rights to adequate housing are more fundamental than property rights; despite property rights, the homeless persons should be provided with secure, peaceful and dignified conditions

Statistical data on the families provided with housing within the frameworks of the project, provided by the capital city and the regions, reveal that from 2009 to 2014 75 homeless families, including the Internally Displaced Persons, received housing in Tbilisi.[1132] 14 Families including 6 local and 8 IDPs received housing in Kutaisi in 2010-2014.[1133] 15 local and 14 IDP families were provided with adequate housing in Batumi in 2010-2013.[1134] Despite the request the Mayor's Office of Zugdidi and the Gamgeoba of Gori Municipality did not provide the statistical data on the provision of adequate housing within the territory of administrative unit in the frameworks of the program.

As for the statistics of the beneficiaries leaving the social housing, the data received from local governments confirm that there is a significant problem of the transitiveness of social assistance. Particularly, there were only two cases observed when the beneficiaries left the institution in Tbilisi. The reasons for the said event were the death of beneficiary and provision of alternate housing by the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia. As for Kutaisi, only once was the housing vacated because of the death of the beneficiary. Due to the absence of social integration program for the beneficiaries, on one hand the beneficiary is unable to leave the shelter, since he/she cannot provide housing for him/herself, and on the other hand the said fact causes the unreasonable increase in the state expenditures. For the same reason, other individuals with the problems of homelessness cannot benefit from the services of the institution.

Based on the above, it is of paramount importance for the state to put all efforts in supporting the beneficiaris of social housing or a homeless shelter through offering various targeted programs, to independently generate necessary financial means for creating adequate living conditions for themselves. In this case, the state supports a homeless person to overcome his dependence on the state assistance, creates preconditions for his social integration and thus, in a long run, saves the state resources. To achieve this objective, it is essential to identify resources oriented to the systemic solution of the problem (elimination of homelessness) rather than addressing it on an initial stage (offering housing/shelter). After the identification of existing resources, it is necessary to define the best possible ways of their exploitation.

1132 Letter N 2568135 of the Mayor's Office of Tbilisi Municipality dated October 21, 2014
1133 Letter N 1-766 of the Mayor's Office of Kutaisi Municipality dated September 19, 2014
1134 Letter 04-04/29908 of the Mayor's Office of Batumi dated November 27, 2013

PROTECTION FROM FORCED EVICTION

In his 2013 Parliamentary Report the Public Defender of Georgia discusses the cases of forced eviction of homeless and socially unprotected persons arbitrarily occupying private or state owned objects.[1135] It is noteworthy that the said issue is still urgent in 2014. The most notorious case of the reporting period was the forced eviction of homeless, socially unprotected and internally displaced persons from former Military Hospital in Isani district by the Mayor's Office of Tbilisi Municipality.

The Public Defender of Georgia actively observed the lawfulness of activities implemented by central and local governments with regards to the persons arbitrarily occupying the object. In particular, the representatives of the Public Defender of Georgia monitored the occupied object several times in order to examine the case in detail. Besides, detailed data on the present issue was requested from respective administrative bodies. According to the information provided by the Ministry of Internal Affairs of Georgia, LEPL National Agency of State Property requested the supression of enfringement of immovable property. According to the data provided by the mentioned agency, from December 8, 2014 to December 15, 2014 the internally displaced persons left the occupied objects voluntarily in agreement with the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia.[1136] According to the statistical data provided by the ministry, 126 internally displaced families were removed from the occupied building after offering them the rent for apartments.[1137] As per the information of the Public Defender of Georgia, central government is planning to rehabilitate the mentioned object and provide living spaces to the internally displaced families.

According to the information provided by the Mayor's Office of Tbilisi Muncipality in December 2014 with regards to the above mentioned case, the building is being occupied by 117 families, out of which 81 are socially unprotected.[1138] Based on the same information, the Gamgeoba of Isani Disctrict examined the housing needs of these families and revealed the absence of housing of 100 families, ownership of a plot of agricultural land by 9 families and property rights on a living space of 3 families. In addition, the local government informed us that Gamgeoba of Isani District provides the accommodation rent to 63 families registered on its territory for a period of 1 fiscal year. As for the remaining families, they will be offered targeted assistance by the Gamgeobas of the Mayor's Office of Tbilisi Municipality according to the place of their registration.

The activities implemented by the state with regards to so-called Isani Hospital Case clarify the fact that housing issues of homeless and socially unprotected families are addressed locally by the local government

1135 See the Parliamentary Report of Public Defender of Georgia for 2013 on The Situation of Human Rights and Freedoms in Georgia, chapter: The Right to Adequate Housing, pages 551-561

1136 Letter N 6979 of the Ministry of Internal Affairs of Georgia dated January 6, 2015

1137 Letter N 5/02-12/38062 of the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia dated December 29, 2014

1138 Letter N 2685928 of the Gamgeoba of Isani District of the Mayor's Office of Tbilisi Municipality dated December 26, 2014

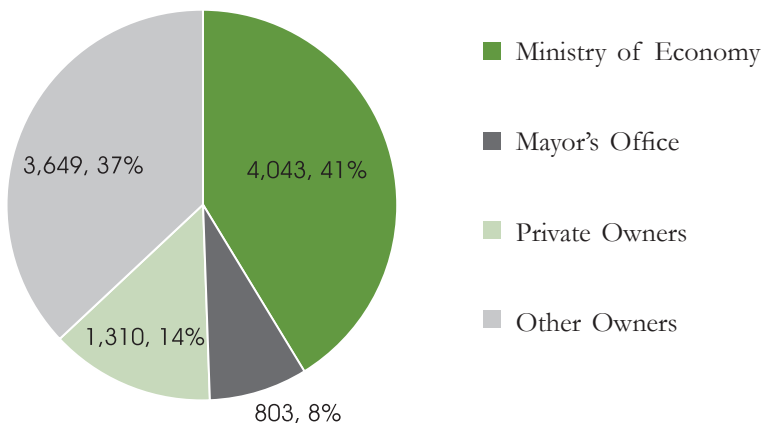
bodies. The situation does not change when there is a large number of homeless persons requiring immediate implementation of the Right to Adequate Housing. Given that, locally, the infrastructural resources are not sufficient for dealing with large-scale issues, it is of crucial importance for the central government to provide support in terms of locating and creation of respective resources. The Public Defender of Georgia considers that the accommodation rent offered by local government is a short term activity, pointless in long-run. The said statement is further confirmed by the statistical data provided by the Mayor's Office of Tbilisi Municipality on the arbitrarily occupied objects on the territory of capital city and the families unlawfully living there.

In November 2014 Tbilisi Mayor's Office hosted a meeting attended by the representatives of the Apparatus of Public Defender of Georgia with regards to the collection of data on various arbitrarily occupied objects on the territory of capital city and the addressing of the housing problems of families living there. Within the frameworks of the meeting, the information presented by the Gamgeobas of Tbilisi revealed that there are 401 objects in Tbilisi arbitrarily occupied by 9,805 families. The diagrams presented below display the statistical data on the owners of the objects as well as the categories and numbers of families arbitrarily occupying the buildings provided during the meeting.

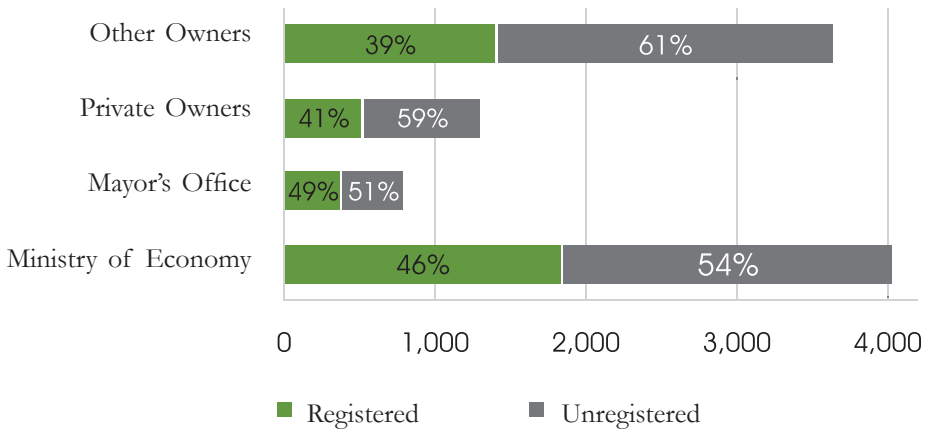
1. Diagram

a) Disagreggation of families according to the building ownership

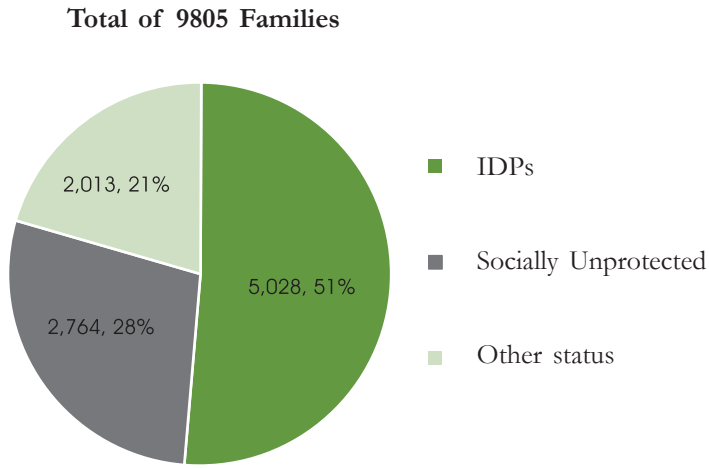
Total of 9805 Families



b) Property rights of the individuals arbitrarily occupying the objects



2. Diagram on the status of persons arbitrarily occupying the objects



ON THE SITUATION OF HUMAN RIGHTS OF THE CITIZENS LIVING ON THE TERRITORIES OF FORMER 25TH AND 53RD BATTALIONS OF BATUMI

Besides the capital, Autonomous Republic of Adjara is another problematic region, where the cases of arbitrary occupation of state-owned objects are frequently revealed. During the reporting period the citizens living on the territories of former 25th and 53rd Battalions of Batumi frequently appealed to the Public Defender of Georgia regarding the severe social and economic conditions they live in.

The citizens started to live on the mentioned territory since October 2012. At the initial stage, the number of inhabitants was quite small, but as of today, based on the information at hand, there are more than 1,000 families living on the territory of former 25th and 53rd Battalions of Batumi. The inhabitants of the settlement live in severe conditions. The situation of the Rights of a Child is also alarming, as the unfavourable living conditions and absence of pre-school institutions pose a serious threat to their development. Majority of families had to settle on the above mentioned territory due to the lack of alternate living space. According to the protocols of local commissions, the residents frequently point out the age of the buildings and the damage caused by natural disasters.

According to information at hand, the residents of the territories of former 25th and 53rd battalions of Batumi started building of capital houses arbitrarily by their own means.

On April 7, 2014 the Public Defender of Georgia met with the residents of the former 25th and 53rd Battalions of Batumi[1139] and got acquainted with their social and economic conditions. The Public Defender of Georgia provided the information on the severe living conditions of the families living on the mentioned territory to the Government of Autonomous Republic of Adjara and made some suggestions on addressing the identified issues.

In order to fully examine the issue, the Apparatus of the Public Defender of Georgia requested information in written form[1140] on the activities of the government of the Autonomous Republic of Adjara, Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia, Batumi Mayor's Office and the Municipalities of Keda, Shuakhevi, Khulo, Khelvachauri and Kobuleti

1139 http://ombudsman.ge/ge/about-us/struqtura/sammartveloebi/regionuli-sammartvelo/siaxleebi-region/saxalxo-damcveli-batumshi-ew-muyaos-dasaxlebis-macxovreblebs-shexvda.page [Last viewed on January 24, 2015]

1140 Letters N04-9/12328; N04-9/7898; N04-9/12329; N04-9/14929; N04-9/7895; N04-9/14927; N04-9/47 and N04-9/726 of the Apparatus of the Public Defender of Georgia

implemented for the examination of the social and economic situation of the families living on the territories of former 25th and 53rd Battalions of Batumi and their assistance.

Review of received information[1141] revealed that a government commission, examining the facts of arbitrary occupation of state-owned (owned by the Autonomous Republic of Adjara) immovable property by the citizens, was established on November 16, 2012 pursuant to the order[1142] of the President of the Government of Autonomous Republic of Adjara. In addition to that, 5 local commissions[1143] were established examining the social and economic conditions of the families living on the territory of former 25th and 53rd Battalions of Batumi registered within their respective municipalities.

At this stage, the materials provided to the Apparatus of the Public Defender of Georgia reveal that in 2013 the aforementioned commissions examined the social and economic conditions of the families living on the territories of former 25th and 53rd Battalions of Batumi. According to the information provided in 2014 the ministry did not possess the data on the exact number of families, as the processes of arbitrary settlement were still ongoing.[1144] Although, the data received from the local commissions confirm that among the families arbitrarily occupying the Military Battalions 224 are registered in Shuakhevi Municipality, 223 in Khelvachauri Municipality, 237 in Batumi Municipality and 7 in Kobuleti Municipality.[1145] As for the Municipalities of Keda and Khulo, they did not present any statistical data.

Local commissions also examined the issues related to the ownership of immovable property by the families living on the territory of former 25th and 53rd Battalions of Batumi. According to the provided materials, part of residents own a living space or a plot of land and a smaller part has already received material assistance from the state.

The commission established on November 16, 2012 pursuant to the order[1146] of the President of the Government of the Autonomous Republic of Adjara developed a proposal to demolish the houses built withough respective construction permits on the territories of former 25th and 53rd Battalions of Batumi. The demolition of buildings built without construction permits was implemented in 2013 and the area of 3,378 m^2 became vacant, although the demolition works were ceased due to the resistance from the side of local population. According to the provided information, during 2014 Batumi Mayor's Office issued 6 orders ruling penalty payments and demolition of the buildings built without construction permits.

It is also noteworthy that the Ministry of Health and Social Affairs[1147] of the Autonomous Republic of Adjara informed the Apparatus of the Public Defender of Georgia that only 3 families living on the territories of former 25th and 53rd Battalions of Batumi were displaced as a result of natural disasters (eco-migrants). As the materials examined by the Apparatus of the Public Defender of Georgia clarify that other families living on the aforementioned territory also point out the damage of their property caused by natural disasters or a location of their living spaces in the landslide zones, the mentioned facts need to be responded respectively by local and central governments.

According to the information provided by local self-governments, pursuant to the order[1148] of the President

1141 Letters N 25/20996 and N 25/12086 of Batumi Mayor's Office; N 04/02-09/14770 and N 04/02-09-17046 of the Ministry of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia; N 05-113/26 and N 01-19/1571 of the Government of Autonomous Republic of Adjara; N 01-19/938 and N 01-19/1081 of the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara; N01-15/52 of the Gamgeoba of Shuakhevi Municipality; N01-12/558 and N01-12/1 of the Gamgeoba of Khelvachauri Municipality; N01-17/25 of the Gamgeoba of Khulo Municipality and N01-21/265 of the Gamgeoba of Kobuleti Municipality dated March 6, 2015

1142 Order N402 of the President of the Government of Autonomous Republic of Adjara dated November 16, 2012

1143 Shuakhevi Municipality, Keda Municipality, Khulo Municipality, Khelvachauri Municipality and Kobuleti Municipality

1144 Letter N0109/1571 of the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara dated October 30, 2014

1145 Letters N25/20996 and N25/12086 of Batumi Mayor's Office; Letter N01-15/52 of Shuakhevi Municipality; Letters N01-12/558 and N01-12/15 of Khelvachauri Municipality

1146 Order N402 of of the President of the Government of the Autonomous Republic of Adjara dated November 16, 2012

1147 Letter N01-19/1081 of the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara

1148 Order N402 of the President of the Government of Autonomous Republic of Adjara dated November 16, 2012

of the Government of the Autonomous Republic of Adjara, the materials examined by them was sent to the commission established on November 16, 2012 for further response. During the reporting period, the commission established on November 16, 2012 stopped functioning on the basis of the order[1149] of the President of the Government of the Autonomous Republic of Adjara, by the end of the same year, on December 5, 2014 a governmental commission examining the facts of citizens arbitrarily occupying the immovable property owned by the Autonomous Republic of Adjara and its municipalities was established.[1150]

Despite the fact that commissions studying social and economic conditions of the citizens residing on the territory of former 25th and 53rd Battalions of Batumi were established by the government of the Autonomous Republic of Adjara and local municipalities, due to the scope of the given problem the implemented activites are not sufficient for its elimination and the respective offices are expected to provide timely and adequate response. In addittion, effectiveness of the established commission is of paramount importance, as it is responsible to fully and comprehensively study the cases of families/persons; only after such comprehensive examination of the case is it possible to develop a response plan. In other cases, the problem will be addressed only temporarily and after a certain period it will emerge again and will have to be solved using additional financial means.

HOMELESS PERSONS LIVING IN POTI

During the reporting period dozens of applications requesting the allocation of shelter were received by the Apparatus of the Public Defender of Georgia from Poti. The examination of applications revealed that the allocation of adequate housing to the homeless persons was one of the pending problems of Poti; in addition, the list of 632 (six-hundred and thirty two) persons requesting the allocation of living space was handed over to the Apparatus of the Public Defender of Georgia by Poti Mayor's Office. After the examination of the said list several groups were classified, including:

1. Families lacking living space unlawfully occupying private property, which was previously inhabited by internally displaced persons;
2. Families, owning a living space, unhabitable due to severe living conditions;
3. Families residing in the spaces under state ownership, although living there posed serious dangers to their lives and health;
4. Families arbitrarily occupying private property, which had to leave the said spaces upon the owner's request.

Several applications can be used for a better illustration of the existing situation:

1. In his application submitted to the Public Defender of Georgia, citizen E.G. described the unbearable conditions he had to live in together with his family of seven: the adults and children took turns sleeping in a partly roofed room with unplastered walls with only two beds and a couch.The only source of income indicated by E.G. was a social assistance in amount of 348 (Three-hundred and forty eight) GEL. The family ate only one meal a day, which negatively affected their health status; due to the lack of necessary supplies, a school-aged family member was unable to attend school.
2. The applications of T.M. and L.G. described severe social conditions, particularly: both families lived in the damaged buildings on the sea shore. The examination of the mentioned buildings by the representatives of the Apparatus of the Public Defender of Georgia revealed that they were

1149 Order N402 of the President of the Government of Autonomous Republic of Adjara dated November 16, 2012
1150 Order N407 of the President of the Government of Autonomous Republic of Adjara dated December 5, 2014

fully amortized and posed a threat to lives and health of persons living there. During strong wind, the applicants' families stayed at neigbors'.

On November 17, 2014, on the basis of Georgian Legislation and international obligations, the Public Defender of Georgia addressed the Mayor of Poti I. Kakulia with a recommendation to ensure the development of respective action plan and implementation of obligations imposed by the Law of Georgia on Social Assistance, with all due consideration of the situation of homless persons in terms of allocation of living space. Particularly, to envisage the respective expenses for housing fund and/or implementation of other alternate projects ensuring the implementation of the Right of Homeless Persons to Adequate Housing during the process of budget formation. Poti Mayor's Office did not provide response to the Public Defender's recommendation.

The statistical data confirm that the problem of homelessness in Tbilisi, Batumi and Poti has a large-scale nature. In such case, the state should focus on addressing the problem on a systemic level rather than on its temporary solution. Thus, offering the rent for apartments to the homeless occupying different buildings as a major means for implementation of obligations imposed by the Right to Adequate Housing is inadmissible. The mentioned targeted assistance should be considered as a supplementary activity during the removal of homeless families from the occupied buildings before locating infrastructural resources. In such cases it is of crucial importance for a state to take steps towards the effective protection of Property Righhs and a systemic solution of issues related to the housing of the homeless unlawfully occupying different objects.

TEMPORARY SHELTERS/TENTS OF THE HOMELESS

In his Parliamentary Report for 2013 the Public Defender of Georgia provides an overview of the issue of setting up temporary shelters/tents for the homeless in Tbilisi, Gori, Batumi and Kutaisi in the winter period of 2013. For this purpose, the government established a temporary inter-agency commission to work on the problems of homeless persons.[1151] The Public Defender of Georgia positively evaluated the measures taken for assisting one of the most vulnerable social groups, although he emphasized the importance of finding a long-term solution to the problems of homelessness among the dispossessed population.

In 2014 local government bodies were requested to provide beneficiary statistics and detailed information about the operation of shelters. Unfortunately, besides the Mayor's Office of Tbilisi Municipality, none of the government bodies provided the Public Defender of Georgia with the requested data on the aforementioned issues. According to the data provided by Tbilisi Mayor's Office, the tents set up on Moskovi Avenue are intended for 240 persons and currently are hosting 180 homeless individuals[1152].

Like in 2014, in January 2015 the representatives of the Public Defender of Georgia monitored the tents set up in Tbilisi. The gathered data confirm that most of the beneficiaries of the tents are homeless persons, who, due to various reasons, have broken ties with their families and relatives and have to live in streets. Various factors are identified among the reasons for homelessness of the persons living in tents, including the isolation from families due to disability, old age and alcohol addiction. One of the major problems of the tent beneficiaries is the issue of involvement in the program of socially unprotected families and receiving the social benefits envisaged by the program. In addition, it is noteworthy that the persons living in tents suffer more isolation than the families arbitrarily occupying the state owned building; especially in terms of organizing home economics and maintaining family life, which is impossible for the tent beneficiaries. Thus, the services offered to the tent residents by the state do not promote their resocialization.

1151 Decree N946 of the Government of Georgia on the Assistance Measures for the Homeless in the Winter Period of 2013-2014 dated December 13, 2013

1152 Letter N568135 of the Mayor's Office of Tbilisi Municipality dated October 21, 2014

In order to improve the living conditions of tent beneficiaries and address the problems of the homeless in a long run, central and local governments took several positive steps in 2014. As already mentioned above, the government of Georgia developed the minimum standards the shelters must meet in 2014. Besides, on the basis of the Decree N1918 of the Government of Georgia on the Assistance Measures for the Homeless in Tbilisi Municipality dated October 24, 2014 the temporary inter-agency commission was abolished and the Tbilisi Municipality was ordered to create a temporary commission to work on the issues of the homeless.The latter planned to build a homeless shelter in 2015 in order to improve the social services for the homeless, which after its commissioning, would replace the existing services for tent beneficiaries and assist the homeless living in Tbilisi.

The Public Defender of Georgia hopes that like in capital, the tents for the homeless set up in other cities will also be replaced by stationary institutions in future, offering its beneficiaries the services tailored to their needs. The state must consider that in a long-term perspective, a tent cannot be used as housing for the homeless. In addition, it is important to ensure the availability of social assistance for the homeless during transition period, in order to ensure their protection from homelessness to some extent.

RECOMMENDATIONS

To the Government of Georgia

- Develop an action plan and housing strategy within the frameworks of the National Human Rights Strategy of Georgia (for 2014-2020) defining specific measures, responsible bodies and timeframes ensuring the achievement of set targets, in order to achieve the objectives derived from the Right to Adequate Housing;
- Make necessary amendments to the method of assessing social and economic status of socially unprotected families (households) and respectively, ensure the involvement of most vulnerable category of beneficiaries – persons without roof over their heads, into the program.

To the Mayor's Office of Tbilisi Municipality and the Ministry of Economy and Sustainable Development of Georgia, as well as the Government of the Autonomous Republic of Adjara and Local Self-government Units

- After examining the housing issues of socially unprotected, homeless families occupying state and municipal buildings individually and identifying the scope of the problem, develop an essential plan/strategy minimizing the risks of homelessness of the mentioned families.

To the Mayor's Office of Tbilisi Municipality and the Ministry of Economy and Sustainable Development of Georgia

- Within the shortest possible time improve the living conditions in those spaces where the situation is especially severe and there is no basic infrastructure, including electricity, drinking water and sewage system, so that they match the minimum/basic standards of the Right to Adequate Housing.

To the Ministry of Labour, Health and Social Affairs of Georgia and LEPL Agency of Social Services

- In order to reveal the scope of homelessness in the country, monitor the implementation of the Right to Adequate Housing and create a unified database of homeless persons. Use the gathered data to develop an action plan for eliminating homelessness in Georgia.

To the local Self-Governments

- In order to monitor the problem of homelessness, maintain a database and ensure its availability to the LEPL Agency of Social Services;
- In order to meet the obligations imposed by the Article 18 of the Law of Georgia on Social Assistance, in all regions (except for Tbilisi and Kutaisi) where the issue of allocating living space to the homeless is still a problem, the local government should direct his efforts towards the creation of infrastructural resources in order to protect the dispossessed persons from homelessness;
- After commissioning the shelters of the project Social Housing in a Supportive Environment in Tbilisi and Kutaisi start working on the programs of socio-economic rehabilitation of the beneficiaries, promoting the resocialization of the homeless persons.

To the Government of the Autonomous Republic of Adjara and Local Self-governing Units

- Conduct a coordinated and comprehensive examination of the facts of homelessness of the families living on the territory of former 25th and 53rd Battalions of Batumi and implement the adequate activities for providing them with relevant, long-term assistance.

STATE PROGRAM OF SOCIAL PROTECTION FOR FAMILIES BELOW THE POVERTY LINE

The present subchapter discusses the changes made to the system and methodology for assessing socio-economic situation of the beneficiaries within the reporting period of the Public Defender of Georgia. In Parliamentary Report for 2013 the Public Defender of Georgia discusses the systematism of the problem in the methodology for assessing socio-economic situation.[1153] This particularly concerns the problems of beneficiaries, who lived in especially severe socio-economic conditions and their only income was the age pension provided by state. Such families were awarded higher than the threshold rating score for the eligibility for social benefits and medical insurance. The Public Defender of Georgia suspected that the mentioned problem might be linked with the flaws of the methodology for assessing socio-economic situation.

The Government of Georgia developed a new methodology for assessing socio-economic situation of socially unprotected families (households) in accordance with its Order N758, dated December 31, 2014.[1154] The given resolution includes the transition period before the introduction of a new methodology. In particular, the economic situation of the families registered in the Unified Database of Socially Unprotected Families of LEPL Agency of Social Services will be assessed with new methodology from April 1, 2015. Before launching a new system the methodology approved by the Resolution N93 of the Government of Georgia, dated March 30, 2010, remains in force.[1155] Respectively, the conditional unit (rating score) indicating the socio-economic situation of the families examined using the "old methodology" stays in force.

In accordance with the Resolution N758 of the Government of Georgia, from January 1, 2015 to April 1, 2015 the situation of socially unprotected families (households) would be assessed in a testing mode. As per the information provided by LEPL Agency of Social Services, the assessment in a testing mode has not been started yet.[1156] Preparatory activities, including the selection of families to be assessed in a testing mode, are in process.

The chapter on the Right to Social Security of the Parliamentary Report of the Public Defender of Georgia for 2013 widely discusses the issue linked with the problematic nature of the subjective data entered in declaration by authorized official of the agency. In particular, according to the Order N141/n of the Minister of Labour, Health and Social Affairs of Georgia dated, May 20, 2010 the sections of 'F' window of the declaration on the economic status of a family is entirely based on the visual observations of an

1153 See the Annual Report of Public Defender of Georgia for 2013 on The Situation on Human Rights and Freedoms in Georgia. Chapter: Right to Social Protection, pages 561-570

1154 Resolution N58 of the Government of Georgia on the Approval of the Methodology for Assessing Socio-Economic situation of Socially Unprotected Families (households), dated December 31, 2014

1155 Resolution N93 of the Government of Georgia on the Approval of the Methodology for Assessing Socio-Economic situation of Socially Unprotected Families, dated March 30, 2010

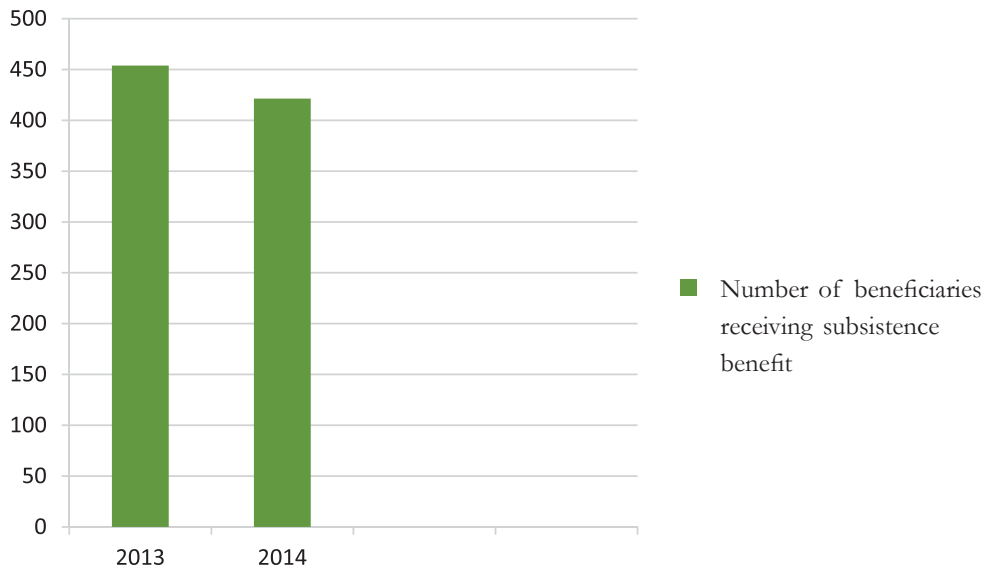
1156 Letter N4/8208 dated February 9, 2015

official. Respectively, the given assessment entirly depends on the subjective opinions of a social worker and the obtained information may not describe objective reality.

In regard to the mentioned issue, the fact that the new methodology approved by the Resolution N758 of the Government of Georgia, dated December 31, 2014 ensures that the assessment of the economic status of the beneficiary does not solely depend on a subjective opinion of a social worker is evaluated very positively. In particular, the new methodology for assessing socio-economic situation of socially unprotected families does not envisage the entry to the family declaration made by an authorized official of the agency based on his visual observation (the only exception is the entry to the declaration regarding the floor material of a familiy's living space). In addition, the declaration no longer includes a subjective description of socio-economic situation of the family made by an authorized official of the agency.[1157] Accordingly, after the mentioned ammendment of the document of assessment of socio-economic situation of a family, subjective opinions of a social worker are brought to a minimum and receiving subsistent benefit does not depend on a subjective viewpoint of a social worker; although, the effectiveness of given change will be determined only after the practical implementation of activities.

It is also noteworthy that, in spite of the changes made to the methodology for assessing socio-economic situation of the applicant, the issue of the homeless/dispossessed persons' eligibility for social assistance is still pending. The mentioned problem is a subject to permanent discussion in the reports of the Public Defender of Georgia.[1158] Specifically, the methodlogy approved by the Resolution N758 of the Government of Georgia does not envisage the accessibility of the social program for the homeless population; respectively, particularly vulnerable (homeless) persons, still cannot access a number of social benefits and assistance packages. On this basis, the recommendation of the Public Defender of Georgia regarding the aforementioned problem remains the same.

In accordance with the information obtained from the website of LEPL Agency of Social Services, the number of beneficiaries receiving subsistent benefit registered in the Unified Database of Socially Unprotected Families has slightly decreased in 2014 compared to 2013; so, we can say that the situation has not changed.



1157 Letter N4/8208 of the LEPL Agency of Social Services of Georgia, dated February 9, 2015

1158 See the Reports of the Public Defender of Georgia for 2012 and 2013 on The Situation on Human Rights and Freedoms in Georgia. Chapter: Right to Social Protection, pages 561-570 and 584-597.

PERSONS ARBITRARILY OCCUPYING STATE-OWNED OBJECTS

In order to prevent the process of socially unprotected and homeless families arbitrarily occupying the state-owned building, Resolution N126 of the Government of Georgia on The Measures of Reduction of Poverty in the Country and Improving Social Security of Population, dated April 24, 2010 implemented a legislative change. In particular, according to the Clause 5, Article 5 of the normative act: the application for registration in the database will not be accepted if the applicant is unlawfully occupying a state-owned object, while a legal owner of the building does not approve the given fact and has submitted respective application to the agency. Thus, after the application of state agency LEPL Agency of Social Services shall not examine the applications for registration in the database of socially unprotected families submitted by individuals arbitrarily occupying state-owned objects.

The Public Defender of Georgia requested the information from the Ministry of Labour, Health and Social Affairs of Georgia about those objects in Tbilisi, inhabited by the homeless and socially unprotected families who are prohibited to apply for the registration in the database and after the mentioned limitation some of them had to leave the state property. According to the data provided by the ministry, currently there are 49 objects registered in the capital city which limit their residents' right to apply for registration in the database of socially unprotected families. We were also informed, that the ministry does not have any data on those families who left the objects after the introduction of abovementioned mechanism.[1159] On this basis, we can conclude that the government does not monitor the effectiveness of adopted legislative regulation, nor does it measure the achieved results.

As a result of monitoring carried out by the representatives of the Public Defender of Georgia in the state-owned objects, majority of the building residents belong to the category of homeless families and live in extremely severe socio-economic conditions. Thus, discontinuation of providing subsistent benefits to the families arbitrarily occupying state-owned buildings increases their social vulnerability and leads to their isolation. It is obvious, that the legislative change essentially worsens the situation of a vulnerable group and contradicts to the social state principle, obliging the government to implement progressive social policy.

By the definition of the Committee on Economic, Social and Cultural Rights, the state is responsible to take necessary steps for a gradual and complete implementation of the rights recognized by the covenant. In addition, the state is responsible to move towards this goal quickly and effectively.[1160] Regressive activities can be legitimized only by two circumstances: 1) when there is a need to abolish targeted social assistance; 2) when it can be replaced by alternate or improved program. In terms of the principle of prohibiting regress in the implementation of social rights, the approach of Constitutional Court of Georgia needs to be considered as well. The court states that it is inadmissible to abolish or worsen existing benefits, advantages, rights and allowances, unless other equal guarantees are introduced: ... only stable and fair legislation guarantees the protection of human rights recognized by constitution. Only this way can a normative act fully preserve its typical characteristics. Neglecting the mentioned request violates the principles of law fairness and irreversibility.[1161]

On the basis of the above-mentioned facts, the Public Defender of Georgia believes that the repressive policy preventing the arbitrary occupation of state-owned objects unequivocally violates the Right to Social Security of the homeless. Therefore, it is of a paramount importance to make amendments to the discussed legislative regulation and the state to take alternate steps for protecting the interests of a state as well as the homeless persons effectively, through using all legitimate measures.

1159 Letter N1/78245 of the Ministry of Labor, Health and Social Affairs of Georgia dated September 24, 2014
1160 Paragraph 9, General Comment N3, The Committee on Economic, Social and Cultural Rights, 1991
1161 Paragraph 4 of the Resolution 1/1/126,129,158 of Constitutional Court of Georgia dated April 18, 2002

RECOMMENDATIONS

To the Ministry of Labour, Health and Social Affairs of Georgia

- Develop and present to the Georgian Government the project of amendments and annexes to the Methodology for assessing socio-economic situation of socially unprotected families, which will enable homeless families arbitrarily occupying state-owned buildings to receive respective assistance.

To the Government of Georgia

- Abolish the amendment introduced by the resolution N126 of the Government of Georgia on The Measures of Reduction of Poverty in the Country and Improving Social Security of Population, dated April 24, 2010

THE LEGAL STATUS OF IDPs

All internally displaced persons in Georgia have the right of return to Abkhazia and South Ossetia [1162]

INTRODUCTION

The Office of the Public Defender of Georgia conducts an annual study on the human rights situation regarding internally displaced persons ("IDPs") living in Georgia. Throughout 2014 the Public Defender was involved in almost every process that had implications for the rights of IDPs. Within the framework of the Public Defender's work regarding IDPs more than 600 visits were carried out in places with dense IDP populations. Additionally, more than 800 IDPs were provided with legal consultation. In addition to regular monitoring, the Public Defender of Georgia also studied the individual applications of IDPs filed at the Public Defender's Offices throughout Georgia.

The Public Defender personally visited IDP settlements of IDPs in regions,, including the Potskho-Etseri and Tskaltubo settlements. Moreover, the Public Defender also submitted his opinion for the Report of the UN Special Human Rights Rapporteur on the Human Rights situation facing IDPs in Georgia. The submission of the Public Defender focused on both encouraging and problematic trends significantly affecting the rights of IDPs.

The representatives of the Public Defender of Georgia were actively involved in the workings of the Study Commission on the Issues of IDPs, which was carried out by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. The Public Defender is also a member of the "Steering Committee of the Action Plan for Implementation of the National Strategy for Internally Displaced Persons (IDPs) from the Occupied Territories of Georgia." Our employees observed the evictions of IDPs that were carried out in Tbilisi, as well as the resettlement of IDPs in regions across Georgia. It is noteworthy that the evictions were mostly conducted in a peaceful, unforced manner.

Based on a general analysis of the situation facing Georgia's IDPs, we can accurately state that the problems experienced by this segment of society have remained unchanged throughout recent years. Despite the fact that each family may have unique problems, aa number of general problematic areas were identified in the process of our monitoring. The work of the Office of the Public Defender should focus on these areas in order to solve the most pressing problems faced by IDPs. The issue of primary concern is related to the durable settlement of IDPs; the internally displaced population has suffered from this problem since the beginning of its forced displacement. A related issue is the state of living accommodations, where IDPS are often compactly settled and forced to live under the most deplorable conditions. The process of transfer of ownership ofliving accommodation is a positive initiative in itself. However, it is carried out with serious delay. In addition to the above-mentioned issues, the major portion of the internally displaced population faces myriad social problems, without solution to which they cannot fully integrate in Georgian society.

1162 Resolution №68/274 adopted by the General Assembly of the United Nations on 5 June, 2014.

2014 saw a number of legislative novelties with respect to IDPs. On 1 March of the reporting year the new Law of Georgia On Internally Displaced Persons (IDPs) went into effect. From the moment of the Law's entry into force the monthly allowance provided to IDPs increased. Additionally, Order N320 of 2013 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia,which determines the criteria of long-term settlement of IDPs, was amended. In 2014 the Strategy of Support of Access to Livelihood Sources for the Internally Displaced Persons (IDPs) and the Action Plan of the National Strategy for Internally Displaced Persons (IDPs) were developed. The above-mentioned legislative novelties and ongoing problems are covered in detail in the following chapters of this Report.

NOVELTIES IN THE NATIONAL POLICY ON INTERNALLY DISPLACED PERSONS

As noted above, the new Law of Georgia on Internally Displaced Persons (IDPs) entered into force on 1 March, 2014. The Law changed a number of approaches employed by the State toward IDPs in previous years. The most important of them is the definition of an internally displaced person - IDP, which is no longer limited to persons displaced from the occupied territories of Abkhazia and South Ossetia. It is noteworthy that before entry into force of the new Law, the Constitutional Court of Georgia declared the words "from the occupied territories of Georgia" in Article 1 (Definition of IDP), paragraph 1 of the Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia – IDPs to be unconstitutional under Article 14 of the Constitution of Georgia.[1163] Under the effective definition of an internally displaced person in the new Law, the status of an internally displaced person can be acquired not only by a person who was displaced from the occupied territories, but also by a person who was forced to leave any location due to human rights violations.

In addition to a new, novel definition, the new Law does not contain the concepts of compact and private settlements which led to disparate treatment of two categories of IDPs during recent years. The legislation also clearly defined the State's obligation to integrate and protect internally displaced persons from eviction.

However, the above-mentioned Law contains notable flaws which are analyzed in the Report of 2013 of the Public Defender.[1164] In 2014 the Study Commission was established under the Order of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with the purpose of revising the law. The Commission was assigned to refine the Law in order to align it with international standards; to switch to a needs-based allowance system; and to increase the role of self-government bodies in attending to issues faced by IDPs. Unfortunately, the Ministry did not summon the meeting of the Commission in 2014. It is necessary that the Commission start working on the above-mentioned issues in a timely manner so that legal amendments to the Law, which are crucial for provision of assistance by the State to the most vulnerable category of IDPs, are adopted.

For achieving a long-term solution toproblems faced by IDPs it is necessary to introduce a needs-based allowance system. This should be done in view of the scarce resources the StateState has at its disposal with a view to providing priority assistance to the most vulnerable persons among the IDP population. The status-based approach, which is employed by the State at present, cannot ensure the improvement of conditions faced by those IDPs in the worst social situation. The process of transitioning to a needs-based approach will be long and difficult; therefore it is necessary that the State start working on this issue in a timely fashion and ensure the engagement of the non-governmental sector, as well as IDPs themselves, in the process.

1163 The Judgment of the Constitutional Court of Georgia of 11 May, 2013 – Citizen Tristan Mamagulashvili v. The Parliament of Georgia.
1164 The Law entered into force on 1 March, 2014 though it was adopted by Parliament in 2013.

In 2014 the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia developed the Action Plan for 2015-2016. Non-governmental organizations were not involved in the initial stages of the development of the Action Plan. Non-governmental organizations and the Public Defender of Georgia got involved only at the end of 2014. The comments provided by us were only partially taken into consideration by the Ministry. It is noteworthy that, according to the Action Plan, the Ministry ensures the full access of the representatives of the Public Defender to the process of settlement, which includes the exchange of information, joint monitoring missions and other activities.

The Action Plan is divided into three central components: a) improvement of the living conditions of IDPs through operation of the alternative durable settlement programs; b) improvement of the social and economic conditions of IDPs; and c) the raising of awareness in IDP communities. There are various activities provided in the Action Plan for achieving each of these goals; some of those activities considered especially novel have not been implemented to date.

For example, a one-time monetary allowance provided by the State to those internally displaced families who had bought a residential house/flat through mortgaged loan prior to 1 January, 2015 (and where that house/flat is their only factual residence) is one such novelty. [1165]

The Action Plan still does not address the problems facing so-called "compensated" IDPs. This issue was raised by the Public Defender in his 2013 Report on the Situation of Rights of IDPs.[1166] According to the explanation provided by the Ministry, an internally displaced family is provided living accommodation or monetary compensation only once, and has not right to request any compensation from the State, local self-governing unit or other person except in cases prescribed by the legislation of Georgia.

In spite of this legal position, under Decree No. 1940 of the Government of Georgia dated 30 October 2014 a sum was allocated from the reserve fund of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to provide compensation to the internally displaced families who were evicted from the building of the Hotel "Abkhazia" located at Vaja Pshavela av. 52 in August 2011. It is noteworthy that the IDPs evicted from the Hotel "Abkhazia" had already received the one-time monetary compensation. Therefore it is unclear why the same practice should not applied to IDPs residing in the Autonomous Republic of Ajara who were forcefully evicted from the former "collective centers" in 2006 and who were previously provided small monetary compensations. The current approach used by the State places the various groups of IDPs in an unequal position.

In 2014 Order No. 320 of 9 August, 2013 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia was amended. These amendments set limits for the maximum sum that may be provided for purchase of privately-owned living accommodation in view of the number of members in a given family. According to the amendment, the maximum amounts of the price of the purchase are as follows:

a) maximum 17,000 GEL for a family consisting of 1-2 members;

b) maximum 21,000 GEL for a family consisting of 3-4 members;

c) maximum 26,000 GEL for a family consisting of 5-7 members;

d) maximum 31,000 GEL for a family consisting of 8 members or more.[1167]

1165 Decree of the Government of Georgia No. 127 of 4 February, 2015, On Approval of the Action Plan for Implementation of the National Strategy of Internally Displaced Persons - IDPs for 2015-2016", par. 2.1.7.

1166 "Situation of Human Rights of IDPs and Conflict-Affected Population in Georgia," the Public Defender of Georgia, 2013, pg. 34.

1167 Order No. 28886 of 12 December, 2014 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, Article 1, par. 2.

In our opinion this approach is fairer and better adjusted to the needs of the internally displaced families when compared to the pre-amendment practice, when a maximum of 20,000 GEL was provided for any displaced family without consideration of the number of family members. In addition to the above-mentioned amendment, other amendments were also made to Order No. 320 which will be subsequently discussed in this report's section on the durable settlement of IDPs.

Despite the fact that Order 320 underwent several amendments, fine-tuning is still required. For example, Article 9 of the Order regulates the possibility to assist the internally displaced families whose member(s) are foreign citizens but who have Georgian citizenship in line with Georgian legislation at the last stage of the Action Plan. A similar provision is also present in the Action Plan.[1168] The reason for restriction on grounds of citizenship is not clear. These families are not allowed to participate in the durable settlement settlement.

As to other new trends, especially noteworthy is the establishment of the Agency of Provision of the Sources of Livelihood to IDPs. The Agency was founded on 31 May, 2013[1169] and began to operate in October, 2014. As noted above, in active cooperation with the non-governmental sector the Ministry developed the Strategy of Support of Access to the Sources of Livelihood for the Internally Displaced Persons, which sets out priorities for provision of IDPs with sources of livelihood, as well as the means of implementation. The main goal of this strategy, and formation of the agency itself, is to improve the long-run social and economic prospects of IDPs. According to the Concluding Observations of the UN Human Rights Committee on the Fourth Periodic Report dated 19 August, 2014, the State should reinforce its efforts for provision of sources of livelihood in the new places of accommodation of IDPs, in addition to accommodation itself.[1170] The Agency is to fund the various projects proposed by IDPs. In 2015 the Public Defender of Georgia will observe the working of the Agency and present the findings of the observation in the next year's report.

1168 Decree No. 127 of 4 February, 2015 of the Government of Georgia On Approval of the Action Plan for Implementation of the National Strategy of Internally Displaced Persons for 2015-2016, par. 2.1.11.

1169 Ordinance of the President of Georgia No. 367, dated 31 May, 2013.

1170 Available at: http://daccess-dds-№y.u№.org/doc/U№DOC/GE.№/G14/141/85/PDF/G1414185.pdf?Ope№Eleme№t (last visit on 10 January, 2015).

PROCESS OF DURABLE ACCOMMODATION OF IDPs

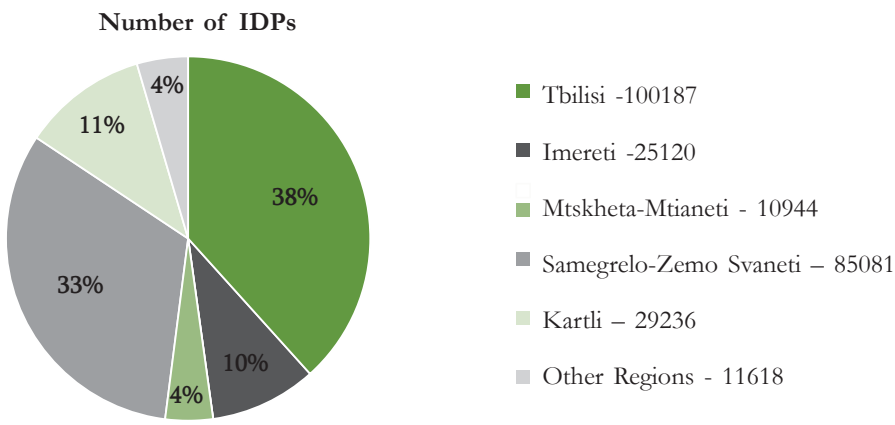
All internally displaced persons have the legal right to shelter.[1171] This principle is established by a legal instrument adopted by the UN on 28 June, 2005 which is referred to as "Pinheiro Principles":

"All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore."[1172]

The State has the primary obligation of settlement of IDPs, [1173] as the above-mentioned principles have no conventional nature and do not impose binding legal obligations onto sovereign states. However, these principles are based on international, regional and national legal frameworks. The principles were drafted by the UN experts and should be considered by UN member organizations.[1174]

Georgian legislation is in line with the above-mentioned international principles. All IDPs have the right of access to adequate housing within the territory of Georgia, and the State is obliged to provide every IDP with such housing.[1175] Despite that fact, and that legislation on provision of adequate housing to IDPs is mostly free of flaws, the major part of Georgia's IDP population have not been provided with living accommodation by the State.

The last registration of IDPs was launched on 27 December, 2013 and ended on 1 June, 2014. At present 262,186 IDPs are registered in Georgia.[1176]



1171 UN Guiding Principles on Internal Displacement, Article 18.
1172 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, Article 2.1.
1173 Housing and Property Restitution for Refugees and Displaced Persons – Implementing the "Pinheiro Principles", 2007.
1174 Ibid.
1175 The Law of Georgia on Internally Displaced Persons – IDPs from the Occupied Territories of Georgia, Articles 12 and 14.
1176 Letter of the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/01-14/33815, dated 2 December, 2014.

Of the total number of IDPs, 140,584 live in the so-called "private sector," while 121,602 IDPs are registered in former compact settlement accommodations.

The primary problem faced by IDPs is durable housing. There are over 90,000 IDP families, and at the end of 2014 only 33,349 families were provided with durable housing, with another 60,000-some families still in need of accommodation.[1177]

At present there are three programs available for durable settlement for IDPs:

- Settlement of IDPs in renovated or newly-constructed buildings;
- Purchase of individual houses and flats for internally displaced families;
- Purchase of privately-owned facilities where IDPs are settled and property is transferred to IDPs.

The durable resettlement of IDPs in newly-constructed and renovated buildings is regulated under the Order of the Ministery of Internally Displaced Persons, Accommodation and Refugees of Georgia №320 dated 9 August, 2013. This Order approved the Procedure for Provision of Durable Living Accommodation to IDPs, which determines the criteria. After completing a questionnaire, the Commission assigns scores to the internally displaced family based on such criteria. The number of scores determines which internally displaced families will be given priority in the provision of living accommodation. It falls under the competence of the Commission to organize the process of provision of durable living accommodation to IDPs and to consider the applications of IDPs on acquiring accommodation, and the provision of durable living accommodation in both State-owned facilities of compact settlements as well as in buildings that were purchased, renovated and/or newly constructed by the State in line with the Procedure and the Decree of the Government of GeorgiaNo.1162 On Approval of the Action Plan for Implementation of the National Strategy for Internally Displaced Persons from the Occupied Territories of Georgia – IDPs for 2012-2014.

In view of the completed applications and assigned scores under Order No.320, the Ministry has transferred living accommodations in several facilities throughout Georgia to internally displaced families. In the course of a specific project the Public Defender's Office of Georgia, carried out the monitoring on allocation of accommodation according to the established criteria. During the course of the monitoring it was found that the provided living accommodations complied with the orientation standards regulating the area of the living accommodation in view of the number of family members. The facilities where living accommodations were transferred to IDPS are as follows: building of the former School No. 142 located in micro-district 3 in Temka; building of the former factory located at Jikia st. 5; building of the former kindergarten at Davit Gareji st. 4, in Rustavi; facility at Paliashvili St. 24 in Rustavi; accommodation at Rustaveli St. 16 in Rustavi; 121 flats in the building of the former hospital located in Tetritskaro district; former kindergarten building in Marneuli; former school building at Gogoberidze st., in Tbilisi; and building of the former School No. 78 in Tbilisi.

In spite of being in line with legal standards, there are still problems with the above-listed buildings. Namely, the majority of the above buildings have no gas supply infrastructure. In Tetritskaro the building's water supply is made available to IDPs according to a schedule, and residents are dissatisfied with renovation works.

It should be noted that according to Order No. 320 priority is granted to the internally displaced families who reside at the living accommodation in their lawful possession, and when such accommodation is in the process of disintegration or poses heightened risks to life or health. This fact should be confirmed by the conclusion of the Leval Samkharauli National Forensic Bureau (e.i., the IDPs settled at Jikia 5 had been living in a "collapsing facility" located at Chavchavadze av. 49). In 2014, the Ministry applied to Levan

1177 Ibid.

Samkharauli National Forensic Bureau for information on 34 facilities, with the purpose of checking the stability of the compact settlement facilities.[1178] Part of these facilities are damaged according to the conclusions of the Forensic Bureau, therefore IDPs should be moved out at the earliest possible time. The Public Defender will observe the process of moving out the IDPs from the damaged buildings, and will include the findings in the Report of 2015.

With regard to provision of durable living accommodation to IDPs, the renovation and transfer to IDPs living at the Pharmacy Administration Building located at B. Berandze St. in Zugdidi, which was effectuated in March, 2014, should be assessed as a step forward. The Ministry selected 74 internally displaced families out of the applications that were submitted for provision of the living accommodation in Zugdidi.

Renovation works undertaken in the collective centers in Kutaisi with the financial support of USAID should also be noted, as they led to significant improvement in the living conditions of the IDPs.

Former House of Infants, renovated within the frames of the USAID Project, Kutaisi

The most wide-scale resettlement process was carried out in Poti. The representatives of the Public Defender of Georgia observed the process of calculation of scores by the Commission as well as the subsequent process of allocating the available flats. The monitoring revealed certain flaws in the process. Namely, the allocation of living accommodations was preceded by the sitting of the Special Commission founded by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. The Commission considered the issues of acquisition of living accommodations by IDPs in the newly-built district of Poti. It took the Commission approximately one week to resolve this issue, which involved considering 440 application forms completed by IDPs. The Commission also considered the applications of the IDPs residing in Building No. 3 of the Study Center located at Chavchavadze st. 30 in Poti, who requested the acquisition of living accommodations. According to the conclusion of the Levan Samkharauli National Forensic Bureau, this building was given the status of a disintegrating facility. The Commission considered a total of 550 applications byinternally displaced families during the proceedings, and 262 families out of that number were provided with living accommodation.

1178 Letter of the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/38169, dated 29 December, 2014.

On 7 August, 2014, the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia held voting in the gym of Public School No. 2 of Poti with the purpose of allocating living accommodations among IDPs. The Study Commission on IDP Issues contacted each of the internally displaced families whose applications had been upheld after consideration by the Commission one day prior to inform them of the opportunity to participate in the voting. According to the list presented by the Commission, 231 familiesparticipated. It is noteworthy, however, that the voting process left the impression of having been disorganized. It was determined in advance who should attend the voting; in spite of this, the internally displaced families whose applications were dismissed by the Commission also appeared with the purpose of voting. They tried to immediately receive explanations as to why they were not on the list of selected internally displaced families, which led to a chaotic situation.

The voting started at 12 a.m. and lasted until 12 p.m. The allocation of the lots was announced following the voting. After taking part in the drawing of the lots, the IDPs were to register on the basis of submitted documents. The fact that many families were unaware that each adult member of every internally displaced family were to be present to sign the contract, led to delays.

The details ofthe living accommodations offered by the Ministry was a source of discontent for IDPs, leading to conflict. Asserting that there were no three-room apartments available, families with 5-6 members were offered two-room apartments. In spite of discontent the majority of IDPs still accepted the Ministry's offer and signed the contract, fearing that at later times there might be no accommodations available at all. There were cases when a family of five members was originally promised by the Commission one two-room flat and in addition to one one-room flat . Then, on the day of allocation, they had to agree to a single two-room apartment. In allocation of living accommodations the presence of adults of different sexes and in some cases, of disabled persons, were not considered. There was even a casewhen a three-person family was provided both a one-room and two-room flat, however a member of the Commission noticed the discrepancy while concluding the contract and postponed the case for additional consideration. There were cases where families of 5 or 6 persons were offered two two-room apartments or one two-room and one one-room apartments. What was not clear, was the basis for such differential treatment.

The allocation process was further delayed due to complications with concluding contracts with those families which had disabled members. These families were not informed that in order to sign the contract on behalf of the disabled person they should arrange power of attorney. Additional problems were caused by the fact that IDPs arrived from different regions and were not given the possibility to return home and secure all the necessary documents in the same day.

It would be desirable to better organize the voting procedure and to better inform the IDPs on the required documentation to be presented at the voting. It would prevent additional misunderstandings, allowing the process to be carried out without delay.

In 2014, a large-scale construction of residential buildings in Zugdidi ended. From 15 May the same year, the process of submission of applications for accommodation was opened. The latter process was badly organized. IDPs had to stand in line overnight, partly due to lack of information. Many IDPs thought that in case of an equal number of scores, the family who applied first would be given priority.

When we discuss the durable settlement of IDPs, it is necessary to underscore the problem of poor quality of renovation. The problem of poor renovation work carried out in the facilities was faced in all regions of Georgia during the monitoring. The buildings which had been renovated 3-4 years ago are already in a deplorable state. This is true for the bath building in Abasha as well as former school buildings in Martvili. The renovation of these buildings were carried out a number of years ago, and the sewage systems are already damaged. The roofs of buildings are also damaged, allowing rain water to leak into

the living accommodations. The problem of poor renovation is also encountered in Kutaisi in theformer Boarding School No. 44 building.

The poor quality of renovations is also one of the main problems faced by IDPs residing in the Adjara region. As of the end of 2014 renovation works were still ongoing in the Tamar Settlement. Problems related to living conditions are evident in the former narcology hospital in Batumi and the former Georgian School building in Chakvi.

The problem of the poor quality of renovations remained a problem in IDP settlements across Georgia in 2014. The building of the former hospital in Gori collapsed during the process of renovation. Following incidences such as these the State should that contractors comply with construction standards when renovating living accommodations.

It is commendable that the process of constructing new residential buildings for IDPs continues throughout Georgia. According to the information available to the Public Defender of Georgia, the State plans to resettle the IDP communities currently living in Kvemo Kartli, Imereti, Samtskhe-Javakheti, Shida Kartli, Samegrelo and Tbilisi during 2015. The IDPs will be resettled in the following facilities: **Vaziani Military Settlement** – 224 flats; **Kutaisi**, Nikea st. 21, Avtomshenebeli st, Shervashidze St. 53 – 321 flats; **Akhaltsikhe**, Rustaveli st. 113 – 66 Flats; **Poti**, Pirosmani st. – 9 flats; **Gori** – 62 flats, **Khashuri,** Rustaveli St. 38 – 111 flats and **Tbilisi,** Varketili and Bagdati st. – 378 flats.[1179] As in the previous year, the Public Defender of Georgia will observe the resettlement process in each of these facilities.

1179 Letter of the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia № 05/01-14/33862, dated 3 December, 2014.

PROCESS OF EVICTION OF IDPs IN TBILISI

In 2014, there were cases of eviction of IDPs from several buildings. The Public Defender's Office of Georgia was actively involved in monitoring the eviction processes in each of these cases.

In the Parliamentary Reports of 2010-2013 of the Public Defender of Georgia, the processes of evictions and resettlement of IDPs carried out in Tbilisi were covered in detail. The Public Defender was actively involved in these processes. Multiple statements were made regarding inaccurate planning and implementation of the process, particularly in respect of procedural violations during the eviction of IDPs from various facilities.[1180]

In the Parliamentary Report of the Public Defender of Georgia of 2012, detailed description of 53 facilities are provided, each of which having been forcefully occupied by IDPs after the Parliamentary Elections of 2012. The Public Defender's Office of Georgia was actively involved in identification of a number of IDPs who arbitrarily occupied the various buildings, as well as the collection of relatedinformation.

Over the course of monitoring[1181] it was found that the majority of facilities from which IDPs were evicted from were not former compact settlement facilities.

It was also found that certain categories of socially -vulnerable families resided at these facilities together with IDPs. The majority of the IDPs stated that the main reason for occupying these buildings were problems related to housing and the grave social and economic situation facing IDPs. In the process of monitoring, we also met internally displaced families who left former collective centers in the regions due to the inability to receive needed medical help there, therefore going on to occupy buildings in Tbilisi.

As for the socially vulnerable families residing in the buildings, the Public Defender of Georgia provides detailed analysis of the problems related to inadequate housing in its annual reports and applies to the respective local self-government bodies for provision of housing to persons who have no access to accommodation. Unfortunately, local self-government bodies often point to the lack of available flats in each respective administrative unit, due to which it is impossible to uphold the requests of each applicant. [1182]

In 2014, IDPs were evicted from the former Mikhailov Hospital located at Marjanishvili av. 60, in Tbilisi. This facility was not a former compact settlement for IDPs. There were 16 families residing in the building overall, out of which 12 families were internally displaced and the remaining four were socially vulnerable.

According to the explanations of several IDPs interviewed, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia had concluded written agreements

1180 The Statement of the Public Defender of Georgia, 21 January, 2011, available at: http://www.ombudsma№.ge/ge/№ews/1458-saxalxo-damcvelis-ga№cxadeba.page (last visit on 10 January, 2015).

1181 The monitoring was carried out at the following facilities: former food industry institute, Guramishvili st. 17, Tbilisi, former Mikhailov Hospital, Agmashenebeli Av. 60, former Military Hospital located at Richard Hallbruck st. 8.

1182 See the Parliamentary Report of 2014 of the Public Defender of Georgia – Chapter on Right to Adequate Housing.

with them and assumed the obligation to provide them with rent allowances for housing until the provision of permanent accommodation.

In August 2014 internally displaced persons were evicted from a building located at Guramishvili st. 17, in Tbilisi. During the monitoring it was found that this building represented a former compact settlement facility. The building was occupied by various categories of IDPs, including internally displaced families who were expressly allowed to live in the compact settlement, as well as families who arbitrarily resided there. The Ministry assumed different obligations toward these groups in respect of the provision of living accommodation.

In respect of eviction of IDPs from the above-mentioned facility, the Public Defender sent a letter[1183] to the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and requested the following information:

1. The number of IDPs evicted from the above-mentioned facility;
2. Out of total number of evicted IDPs, the number of them who were assigned to live, and registered, at Guramishvili st. 17, in Tbilisi, as well as the number of them who resided there arbitrarily; and
3. Whether the persons evicted from the above-mentioned real property were offered alternative living accommodation.

The Ministry informed us in a response letter[1184] that only nine internally displaced families were registered at Guramishvili st. 17, while the other 40 families occupied the residential space arbitrarily.

The same letter also informed us that the nine families registered in the building would be provided with compensation of rent by the Ministry until the provision of permanent accommodation. These families will be directly, and in view of the number of the family members, provided with living accommodation in renovated or newly constructed facilities. This is in accordance with the Order of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia No. 320 of 9 August, 2013.

It is noteworthy that the overall process was conducted in a peaceful manner. The process of eviction lasted for one week and the IDPs moved out of the building voluntarily. However, a number of problems were revealed during the eviction process, namely:

1. The lack of reasonable time for eviction: – the IDPs were notified of the eviction on 28 August, 2014. The process of eviction started on 29 August. Therefore they had hardships to find and rent replacement accommodation.
2. As IDPs noted, some of them received money to cover rental costs on the day of eviction, while some others were only transferred money on the next day. Many landlords required payment of three months' rent beforehand.

It is important that in future eviction procedures the Ministry take these problems into consideration.

EVICTION FROM THE BUILDINGS OF FORMER MIKHAILOV AND ISANI HOSPITALS

In 2014 the eviction of IDPs and socially vulnerable persons from the former Military Hospital building located at Richard Hallbruck st. 8 in Tbilisi was the cause of particular concern.

1183 The Letter of the Public Defender's Office of Georgia №04-9/13706 dated 24 November, 2014.

1184 Letter of the Ministry of Internally Displaced Persons, Accommodation and Refugees of Georgia №05/02-12/33649, dated 1 December, 2014.

Eviction of IDPs started on 8 December and lasted for more than 2 weeks. The Public Defender's Office actively observed the process of vacating the former Isani Military Hospital building by IDPs and socially vulnerable families.

The Public Defender's Office of Georgia sent a letter[1185] to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia requesting detailed information on the eviction of IDPs from the above-mentioned facilities.

The response letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia informed us[1186] that there were 134 internally displaced families who had arbitrarily occupied living accommodation in the Isani Military Hospital. As for the provision of alternative living accommodation, the letter informed us, financial assistance had been provided to the IDPs evicted from the building.

During the monitoring it was discovered that various categories of IDPs had resided in the building, namely:

- IDPs who were evicted from the building of the former Military Hospital in 2011 but had returned in 2012 due to the absence of alternative living accommodation;
- So-called IDPs in the private sector;
- IDPs who had received one-time compensation once but did not purchase durable housing with the received money;
- IDPs who have legal rights to accommodation in another facility but, due to the lack of space, had to live in this building; and
- IDPs who had been assigned to live at certain compact settlements but, however, did not possess that accommodation and had never lived in the respective facility.

The majority of IDPs required renovation of their living accommodations as well as the transfer of ownership of these accommodations to themselves.

As for the socially vulnerable families, it was explained, they applied to the City Hall of Tbilisi,as well as the local district government for provision of housing on several occasions. However, due to the absence of available accommodations, their requests were not upheld.

The Public Defender's Office of Georgia published a statement[1187] on eviction from the former Isani Military Hospital, which called for a coordinated study of the facts of homelessness of the socially vulnerable families residing at the above-mentioned building by the City Hall of Tbilisi as well as the Isani District local government, and for implementation of the relevant measures for providing assistance to these persons.

It can be stated that eviction processes in 2014 were conducted in a more peaceful environment than the forced evictions which were discussed in the Public Defender's reports of previous years. In some cases the eviction processes had flaws, but many of them were rectified immediately, and on site. There was no significant tension between the IDPs and the employees of the Ministry. Most importantly all the internally displaced families, including those who occupied the space arbitrarily, received sums to cover three months rent.

1185 The Letter of the Public Defender's Office of Georgia №04-09/14572 dated 24 December, 2014.

1186 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/38062, dated 29 December, 2014.

1187 Statement of the Public Defender on Eviction from the Isani Hospital.

PROCESS OF PRIVATIZATION OF THE LIVING ACCOMMODATIONS

As was noted above, according to the Action Plan for Implementation of the National Strategy for IDPs, an important component of durable settlement is the transfer of ownership of the living accommodations located in the former compact settlement facilities.

The above process started in 2009 (pursuant to Decree of the President of Georgia No. 62) and provides for the transfer of ownership to the internally displaced families living on state-owned former collective centers. It should be noted here that the process of privatization is voluntary and, in case of consent of the IDPs residing in the same settlement facility, the State transfers ownership rights to the area possessed by them. In addition to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, a number of other agencies are involved in the process of privatization.[1188]

According to the information obtained from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia,[1189] in 2014 the living accommodations possessed by the 1698 internally displaced families were transferred into private ownership.[1190] (493 families in Tbilisi, 282 in Shida Kartli; 202 in Kvemo Kartli; 309 inImereti, 183 in Achara, and 229 in Samegrelo). In comparison to 2013, the number of living accommodations transferred into private ownership has significantly increased. In 2013 there were only 604 IDP families who were transferred ownership of the living accommodation possessed by them.[1191]

Throughout the years, the main problem in the process of privatization is the lack of awareness among IDPs. In general, they have no information regarding when the living accommodation will be transferred to their ownership. Within the frame of the project[1192], monitoring was carried out in compact settlement facilities in various regions of Georgia, part of which is already legally owned by IDPs or is in the process of transfer of ownership. The questionnaire which was completed by IDPs as part of the monitoring mission covered issues related to privatization.

The monitoring revealed a number of problems. Our representatives enquiredwhat information IDPs had in respect of the privatization process. The majority of those interviewed had no information about the timeline for privatization of collective accommodation centers.

1188 LEPL National Agency of Public Registry and LEPL State Services Development Agency of the Ministry of Justice of Georgia; Ministry of Economy and Sustainable Development of Georgia; Administration of the President.

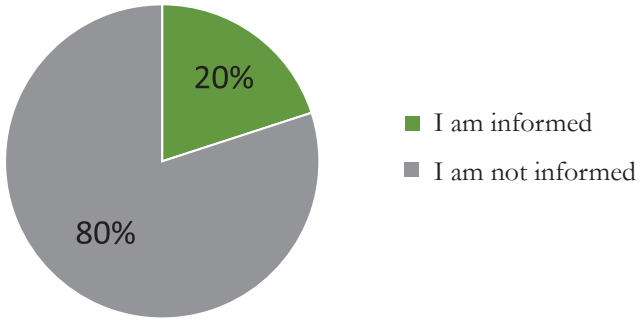
1189 Letter of the Public Defender's Office of Georgia №54003/01, dated 26 November, 2014.

1190 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/34549, dated 8 December, 2014.

1191 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/53953, dated 18 December, 2013.

1192 "Support the Public Defender's (Ombudsman's) Office of Georgia to Resolve the Problems of the Internally Displaced Persons and Conflict-Affected Population."

When will be the collective center privatized?



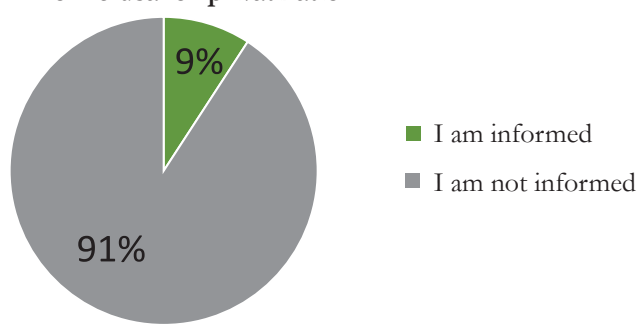
Under Article 4, paragraph "m" of the Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia - IDPs, "adequate housing" means housing that is transferred to ownership or lawful possession of IDPs and where living conditions are compatible with the respect of dignity, sanitation and safety considerations.

As already noted, the provision of durable housing involves transfer of ownership of former compact settlement facilities to the IDPs, which is commendable in itself. However, it should be noted that living conditions in the compact settlement facilities can vary greatly. Living conditions are quite good in some collective centers, however there are a whole range of facilities where living conditions do not even meet minimum standards. Therefore, the requirements of Article 4, paragraph "m" of the Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia (IDPs) are not observed in full.

Despite grave living conditions, IDPs still give consent to the Ministry to transfer the ownership of the living accommodation possessed by them, as they have no information about the available options in case they refuse privatization of the living accommodation.

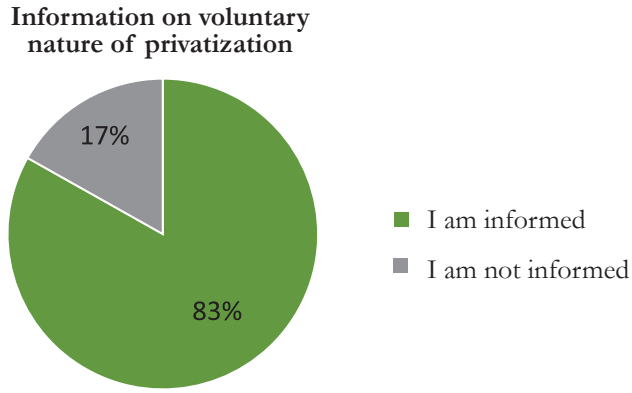
When questioned whether they had information on durable settlement options in case of refusal to privatize the living accommodation, the majority of interviewed IDPs responded in the negative.

Information on alternative options in case of refusal of privatization

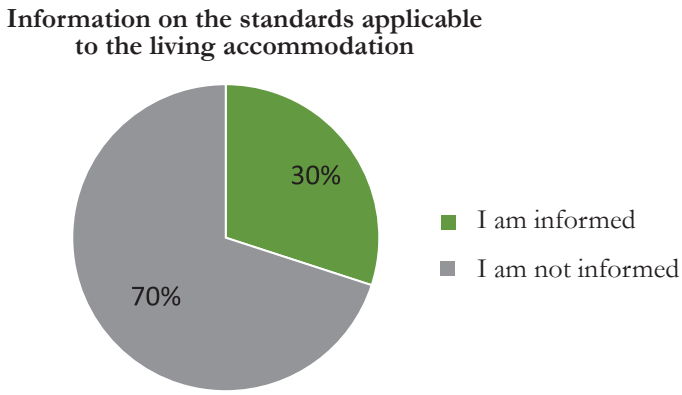


The Public Defender addressed the issue of the voluntary nature of privatization process in a number of his reports. In contrast to previous years, it is commendable that the majority of the interviewed IDPs appear to be informed that the process of privatization is voluntary.[1193]

1193 Parliamentary Report of the Public Defender of Georgia of 2011, pg. 189.



The problem of lack of awareness related to the allocation of living accommodation in view of the number of persons in each respective internally displaced family is a persistant problem.[1194] The majority of interviewed IDPs had signed the contract without checking the area of the living accommodation, and in many cases it was not suitable for their family's needs. In response to the question whether they were informed about the area of the living accommodation, the majority of the interviewed IDPs responded, "no."



Disparate allocation of living accommodations and the so-called "semi-legalized facilities," (where areas were measured multiple times but have not been fully privatized until now) still remain problems. Due to the fact that only part of the building is owned by the IDPs, they cannot establish the association of homeowners, nor can they dispose of the property as they wish or exercise other rights under the civil law of Georgia. These issues are also discussed in the Report of 2013.

In 2014, the process of transfer of ownership of living accommodations to the IDPs was launched for 476 separate facilities. As of 2015, this process is still ongoing.[1195] In November, 2014, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia launched the project, within the frames of which it is planned to transfer ownership of living accommodations to 10,000 internally displaced families over a period of 10 months. If the project is successful, it will be the first case of transfer of ownership to such a great number of internally displaced families and in such a short period. Beyond the wide scale of the project, there is also the risk that the living accommodations transferred to the ownership of IDPs for the purpose of securing durable housing may not be in line with standards on living accommodations. It is necessary that IDPs are provided comprehensive information regarding the various options of resettlement. The process of privatization will be observed by the Public Defender of Georgia and the findings will be provided in the next year's report.

1194 Annex no. 6 to the Order of the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Accommodation and Refugees No. 320 of 9 August, 2013.

1195 Letter of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/34549, 8 December, 2014.

FACILITIES IN A PARTICULARLY DEPLORABLE STATE

In spite of certain positive developments, deplorable living conditions remain the most pressing problem facing IDPs. It was discovered during the monitoring that living conditions are very grave in the so-called former collective centers throughout Georgia. Those facilities which are in a particularly deplorable state were also discussed in the Parliamentary Report of 2013 of the Public Defender of Georgia.[1196]

The Public Defender's Office sent a letter[1197] to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia requesting the list of facilities in respect of which the Ministry had obtained forensic conclusions on structural integrity.

According to the provided information, the Ministry has obtained information on 34 facilities from the National Forensic Bureau.[1198]

Several facilities, including the building of "Sakinformagroprom" located at K. Tsamebuli st. 71, in Tbilisi, call for particular attention. The building's roof, plumbing and sewage are all damaged. Moreover the conclusion of the LEPL Levan Samkharauli National Forensic Bureau states that the building is not satisfactory, does not comply with seismic norms and has damages of the second and third degrees. In spite of this, IDPs have been living at this address for several years.

1196 The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, pg. 602.
1197 Letter №04-9/14569 dated 22 December, 2014.
1198 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/38169, dated 29 December, 2014.

Building of Sakinformagroprom, Ketevan Tsamebuli st. 71, Tbilisi

The Public Defender of Georgia has previously documented the facility located at Dadiani st. 2[1199], in Tbilisi, which is in the gravest state of any covered in the Report of 2013. Approximately 12 families reside there. Already deplorable, in 2014 the state of the facility worsened further. The building poses risks to the life and health of its residents. The IDPs as of yet have received no information regarding when alternative living accommodation will be provided to them.

1199 There is the conclusion of LEPL Levan Samkharauli National Forensic Bureau on this facility, which states that it is damaged and structurally unstable.

Dadiani st. 2, Tbilisi

The building of Duzani, located at Iumashevi st. 21 in Tbilisi and the former Hotel "Airport" in the airport settlement are also in the gravest state.

In the Hotel "Airport" up to 400 IDPs reside. The walls of the building are cracked and the sewage system is malfunctioning. The IDPs explained that they had been applying to the Ministry of Internally Displaced Persons, Accommodation and Refugees for years requesting the allocation of alternative living accommodations.

On 14 November, 2014, the IDPs residing in this building were informed by a letter of the Ministry of Internally Displaced Persons, Accommodation and Refugees of Georgia[1200] that, according to the engineering expertise conclusion, the building has damages of the third (grave) degree based on the accepted classification of damages. The overall technical condition of the building is not satisfactory. Therefore, internally displaced families should be provided living accommodation in the first available renovated or newly constructed building in Tbilisi.

1200 Letter of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №05/02-12/31872, 14 November, 2014

Iumashev st., Duzani building, Tbilisi

Grave living conditions are present in the building "Tourist" belonging to the automobile base, located at Chantladze st. 4/2. The building has no doors and windows, no road leading to it, water leaks into the building and sanitary conditions are deplorable.

Automobile Base "Tourist," Tbilisi

From the perspective of damaged buildings, the situation is also grave in the Samegrelo and Zemo-Svaneti regions. Several damaged compact settlements call for particular attention as they pose risks to the health and safety of the IDPs living there. Living conditions of the IDPs residing in Onaria Settlement in the village of Chitatskari in Zugdidi Municipality are particularly deplorable. Approximately 45 internally displaced families reside there.

All the cottage-type, two-story residential houses are unfit for exploitation, the load-bearing walls are damaged and water leaks through roofs of all of the houses, which leads to severe dampness. The foundations of residential houses are also damaged. The sewage systems are malfunctioning, leading to a grave lack of sanitation. There was a case of small children being poisoned. The IDPs residing in this settlement also face the problem of a lack of drinking water. Several stated that they drilled small wells with their own resources, but this was not sufficient to solve the water problem.

The IDPs residing in this settlement applied to the Ministry of Internally Displaced Persons, Accommodation and Refugees of Georgia for improvement of present living conditions or provision of alternative living accommodation as early as 2010. However the application has not led to any tangible results thus far.

Common residential building for IDPs, Onaria, Zugdidi District

It is noteworthy that in addition to IDPs, socially vulnerable families also reside in Onaria. The total number of families is up to 350. In 2014 the Public Defender recommended that the Government of Georgia consider the grave social,economic and material conditions present in the Onaria Community in the village of Chitatskaro in Zugdidi Municipality, and ensure provision of adequate assistance to the population in the shortest time possible.

The response letter of the head of the local governing body of Zugdidi Municipality[1201] informed us that the Action Plan of Zugdidi Municipality for 2015/2016/2017 provides for rehabilitation of the houses in Onaria Settlement. In 2015, there is a sum of 200,000 GEL allocated for repairing the roofs of residential houses.

1201 Letter of the Local Government of Zugdidi Municipality №02/690 dated 29 December, 2014.

The Public Defender will continue to monitor the situation present in this settlement. It should also be ascertained whether renovation works will be carried out in the areas occupied by internally displaced persons, or whether the Ministry will offer them other options for durable settlement.

Common residential house of IDPs, Onaria, Zugdidi region

The building of the "Former Kitchen" located at Gamsakhurdia st. 208 in Zugdidi is also in the gravest state. At present approximately 12 internally displaced families reside there. The facility is at the verge of collapse, and the IDPs residing in this building need to be resettled immediately.

Similar to what is observed in Zugdidi District, facilities located in the Imereti Region are in particularly deplorable condition. One such facility is the building of the former Balneological Hospital located in the village of Legva in Tkibuli Municipality. It has no doors or windows, rain water leaks through the roof and the sewage system is malfunctioning.

Former Building of Balneological Hospital, Village Legva

The Public Defender personally studied the situation of the IDPs residing in the collective center in Tskaltubo. Part of the building is damaged. Namely, the roofs require repair and the sewage system is malfunctioning. The Public Defender made a special statement with respect to the grave condition of residents of Tskaltubo.

According to the response letter of the Ministry of Internally Displaced Persons, Accommodation and Refugees of Georgia, various projects are being implemented in the IDP settlements of Tskaltubo and the problems are being resolved. The Public Defender's Office of Georgia continues systematic monitoring in this settlement in 2015 and will analyze the situation of the rights of IDPs residing there in the next year's report.

Similar to Tskaltubo, the situation is also grave in the building of a former boarding school lunchroom in Kutaisi.

The situation is particularly grave in a number of former collective centers located in eastern Georgia. The old building of Sanatorium "Surami," Hotel "Kartli," the former building of the Narcology Hospital, "Wooden Cottages of Turistic Base" and Borjomi Sanatoriums "Likani 2" and "Likani 3" are in the gravest condition.

The old building of sanatorium "Surami," where internally displaced persons from Abkhazia are settled, is in the most deplorable condition. The building is not fit for exploitation and as it was explained to residents is not suitable for renovation. Therefore, IDPs residing there live in constant fear of collapse of the building. The grave condition of the building is exacerbated by small living spaces and a lack of sanitation. The allocation of areas in the building make its use for residential purposes impossible; the area is very small and does not comply with established standards.

Sanatorium "Surami", town Surami.

The main problem faced by IDPs residing in the former Narcology/Combine Polyclinic is the lack of plumbing fixtures and the amount of available space, which is not suitable for residence. There are frequent disputes among neighbors due to the common plumbing fixtures. The residential accommodations are not isolated, therefore IDPs use the halls as a kitchen. There is no light in the entrance of the building and a grave lack of sanitation is present.

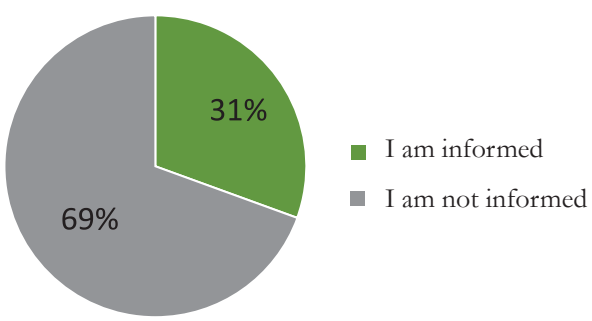
As it is clear from the above-mentioned cases, there are grave conditions in many former collective centers throughout Georgia. Resettlement of IDPs from these buildings should be one of the State's top priorities for 2015. The conclusions of Levan Samkharauli National Forensic Bureau should be acquired on the buildings in grave condition, and, based on these conclusions the IDPs should be resettled in newly constructed residential buildings.

LACK OF AWARENESS AMONG IDPs

One of the main problems suffered by IDPs is the lack of information on the developments and events which have direct implications for their daily lives. The problem of lack of awareness was also raised by the Public Defender of Georgia in previous years' reports. The year 2013 saw many novelties related to the IDPs of Georgia. In 2014 the Public Defender of Georgia and the employees of the monitoring project developed a special questionnaire which was completed by IDPs during our visit to their residences. The questionnaire contained questions from each of the main areas affecting the situation of rights of IDPs in Georgia. The questionnaires were completed by 324 IDPs in Zugdidi, Kutaisi, Gori and Tbilisi.

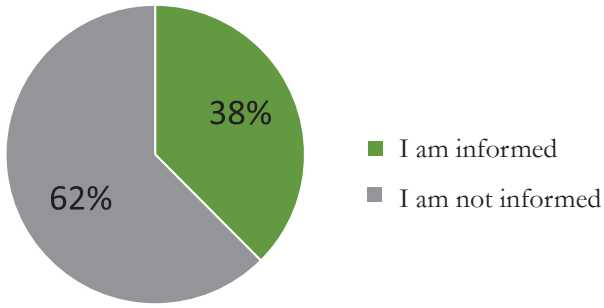
In response to the question of whether they are informed about the novelties of the new law, the majority of IDPs answered in the negative.

General information on the new Law



As was already noted, one of the main novelties of 2013-2014 is the Order of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia No. 320 of 2013, which provides the general procedure for durable resettlement of IDPs. In view of this, it was interesting to find out whether the IDPS were informed about the criteria stipulated in this Order. In response to the question of whether they knew about the procedure for provision of durable living accommodation for IDPs, the majority answered in the negative.

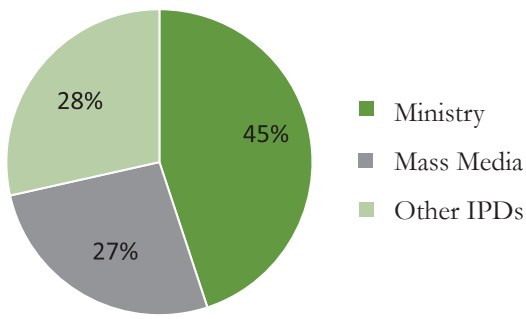
Information on Order No. 320



The majority of IDPs have no information or only partial information on what documentation should be presented to the Ministry in the process of application for living accommodation. Most IDPs also have no information on how to act when their residence is in such grave condition that living is dangerous. Despite the predominantly negative trends in respect of awareness, the majority of IDPs know that in case of dismissal of their application for living accommodation, they have right to appeal the decision.

It was also interesting for usthe discern the main sources by which IDPs obtain information.

Sources of information for IDPs



As the results show, the least amount of information on the legislative novelties in the sphere of IDPs are received from mass media. The main source of information is the Ministry. In view of this, it is necessary that the Ministry reinforce its work in this area. One of the goals of the Action Plan for Implementation of the National Strategy for IDPs for years 2014-2016 is to raise awareness among the IDP population. The Action Plan provides for various activities for this purpose. One of the important courses of action is to utilize the capacity of non-governmental organizations. It is also important to ensure involvement of IDPs in the process of decision-making.

CONCLUSION

In 2014 the human rights situation regarding IDPs was not significantly different from the situation present in 2013. The main problems and challenges, such as deficiencies in the living accommodations necessary for durable resettlement of IDPs, transfer of ownership of living accommodations to DPs(which is progressing very slowly) and the problem of awareness among IDPs, remain unchanged. However, it should be noted that during the monitoring the Public Defender's Office did not reveal any systemic violations of rights of IDPs.

IDPs are one of the most vulnerable groups in Georgia.[1202] They are especially vulnerable from the

1202 See Economic and Social Vulnerability in Georgia, UNDP in Georgia, 2013.

perspective of access to resources. durable lasting solution to the problems faced by IDPs is not limited to durable resettlement. In addition to durable resettlement, it is necessary to integrate IDPs in the places of their resettlement. Unemployment presents a major problem, one that is experienced by the majority of IDPs. The problem of unemployment is particularly grave in those settlements which are far from central cities. In order to reach a long-term solution to the problems faced by IDPs, these individuals and families should be provided with sources of livelihood. In view of this, it is particularly important that the work of the Agency for Provision of Sources of Livelihood to IDPs proceeds along the right course.

It is also important that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia enter into more active and deep cooperation with the non-governmental sector, in order to avoid the transparency of the Ministry being called into question. Beyond the non-governmental sector, it is necessary to involve the internally displaced population itself in the process of decision-making, which will raise individuals' awareness, affecting their everyday lives on one hand and helping to correctly set priorities.

It is important that the process of fine-tuning relevant legislation continue in 2015. Transitioning to a needs-based approach for provision of support should become one of the priorities of the activities of the Ministry. As was already noted, it should be accepted that this process will not be painless. However, its goal is to concentrate State funds on the needs of the most vulnerable groups of IDPs. This approach can eradicate multiple social and economic problems which plague the major part of the IDP community.

RECOMMENDATIONS:

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia:

- In 2015, in the process of durable resettlement of IDPs, give priority to resettlement of IDPs residing in those facilities which are deemed damaged according to expert conclusion;
- Launch work on the refinement of the new law in order to transit to the so-called needs-based approach and involve representatives of the non-governmental sector in this process;
- Reinforce work for raising awareness among IDPs;
- In the process of wide-scale privatization planned for 2015, provide IDPs with comprehensive information on resettlement options and the voluntary nature of the privatization process prior to prior to their making a decision;
- In the process of eviction of IDPs consider the flaws identified in the eviction processes carried out in 2014; and
- Accurately plan the process of flat allocation in order to avoid repetition of the flaws identified in the allocation/voting process in 2014.

RIGHTS OF THE CONFLICT-AFFECTED POPULATION

Armed conflicts that took place in Georgia delivered a heavy blow to the welfare of the country and its democratic development. Therefore, a special attention should be paid to conflict-affected people that comprise 20%-30% of the country's population. Although open military actions have stopped, the conflict-affected population still experiences dire consequences of the war; their fundamental rights and freedoms continue to be violated too.

A welcome development is that the 2014-2015 Action Plan of the Government of Georgia on the Protection of Human Rights pays special attention to the protection of rights of people living near the occupied territories and dividing lines. The Action Plan lists measures the government intends to implement to enhance the protection of rights and freedoms of conflict-affected people. In particular, these measures are designed to improve social and economic rights, security, infrastructure as well as access to health care and education services for people living in the occupied territories.

In 2014, the Office of Public Ombudsman stepped up its activity to study the situation with the rights of conflict-affected population and residents of conflict zones. A number of meetings were held with residents of villages along the dividing line, persons living in Abkhazia and South Ossetia as well as representatives of local and central governments.

SOCIAL AND ECONOMIC RIGHTS OF RESIDENTS OF VILLAGES ALONG THE DIVIDING LINE

Since 2009, the border troops of Russian Federation, deployed at dividing lines with Abkhazia and so-called South Ossetia, commenced active border demarcation works which involve installing barbed wire fences, digging trenches, erecting watchtowers and regular patrolling by border troops. Along the dividing line with South Ossetia, which is 350 km long, barbed wire fences are being installed in settlements, mainly in Gori and Kareli municipalities. Barbed wires have already been erected along a 50 km-long section, that is, 20% of the entire perimeter.

Social and economic conditions of families living in villages near the dividing lines with Abkhazia and South Ossetia are predominantly difficult for a number of reasons, including the lack of security, absence of irrigation water, loss of arable lands and pastures, unemployment.[1203]

After the Russia-Georgia war in 2008, two irrigation canals and two water reservoirs, which supplies Shida Kartli villages with irrigation water, appeared on the territory outside the control of the Georgian government and the de facto authorities shut them off. Moreover, the majority of villages along the dividing line lost arable lands and pastures and with it, villagers lost the main source of their income – land cultivation and animal husbandry. For example, about 50%-60% of agricultural lands of Koshka and Gugutaantkari villages in Gori municipality are now in the uncontrolled territory. Out of 138 households in Jariani village, some 29 families have lost portions of their lands.

Residents of Khurvaleti village in Gori municipality say that even though they were unable to cultivate land due to absence of water after the 2008 war, they, at least, could keep cattle as they had access to pastures. However, since barbed wire fences were installed in 2012 and 2013, they cannot use those pastures either. Moreover, frequent detentions of people by Russian border guards discourage them from going to the forest to collect wood for winter. The region is not fully gasified and wood is still the only fuel for heating there. Residents of other villages who can use the forest declare that the supply of wood has already depleted (the village of Khviti in Kaspi municipality, the village of Perevi in Sachkhere municipality).

Supply of potable water is a serious problem in villages adjacent to dividing line as well as other regions of Georgia; this constitutes a violation of the right of population to health. According to the definition of the UN Committee on Economic, Social and Cultural Rights, the right to health embraces a wide range of socio-economic factors including potable water and adequate sanitation.[1204]

1203 It should be noted that locals came to face problems in the use of agricultural lands, forests and pastures after 2008. Before that residents of Shida Kartli enjoyed unrestricted access to their own land plots as well as surrounding forest and pastures.

1204 See General Comment #4 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), N E/C.12/2000/4. Available at: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/pdf/G0043934.pdf?OpenElement> [accessed on 12 March 2015].

Laboratory tests conducted by the legal entity in public law, National Food Agency, revealed that drinking water in villages along the dividing lines and in compact settlements of internally displaced persons (IDPs) is contaminated.[1205] The Office of Public Ombudsman also learned about residents of Khviti village, Kaspi municipality, complaining about contaminated drinking water. To study the issue, the Office of Public Ombudsman sent a letter to the head of Kaspi municipality. In its response, the municipal government informed Public Defender that in 2014, within the framework of the Rural Assistance Program, a water reservoir was built and installed underground in a sealed condition and therefore, no contaminants could get there.[1206] An independent lab test, however, showed that the concrete cover of the reservoir's bottom and walls is damaged, it is not hermetically sealed and consequently, during precipitations, surface water enters the reservoir. Moreover, the test revealed microbiological contamination of water (with coliform bacteria and faecal streptococci), thereby increasing the risk of intestinal infectious diseases.[1207]

Violations of the right to property did not stop with the end of 2008 war. This process continues and the responsibility for that lies with the Russian Federation as it is the financial, military, human and material resources of Russia that are used to install barbed wire fences, to equip occupation line and control it.

For example, although the barbed wire fence has already been installed in the village of Jariasheni, Gori municipality, and even the sign indicating the "border" of so-called Republic of South Ossetia is erected there, on 3 February 2015, Russian border guards did not allow a local resident Sh. S. to plow his own land adjacent to that sign. While until 2014, this citizen could use his property, after this incident he is unlikely to be able to do the same.[1208]

A case of three families of Gogeti village, Kareli municipality, is also worth mentioning. In early 2013, they planted garlic in their parcels, but soon thereafter, Russian border troops divided their parcels with the fence into two; this became especially obvious when the garlic sprouted on both sides of the divide. According to the information available to Public Defender, out of 77 families in Gogeti village 19 families found themselves on the other side of the barbed wire fence.

The issue of registration of agricultural lands and recognition of ownership right on land is still a mess in the country, but it is especially problematic in villages bordering with the dividing lines and particularly, in Shida Kartli region because of restrictions on the use of land there. In the absence of documentation certifying the ownership, local residents cannot apply legal remedies to defend their rights.

This problem is multifaceted. First, record books to register the number of residents per settlement have not been maintained properly for years and the absence of corresponding documentation, or informal arrangements, prevent the registration of land as well as the recognition of ownership. Second, even those who have some documentation, find it difficult to legalize their property as they cannot afford the corresponding fee which is, at least, 150 GEL. Hence. not only lands are unregistered but also the houses and other constructions thereon.

Needless to say that without active steps of the state this problem will be hardly solved. Sorting out this mess in documentation is important and urgent for protecting property rights of population and applying legal mechanisms of defense in case breach of the rights.

It should be noted that ethnic Ossetians live alongside Georgians in the villages bordering with the dividing line and they suffer much like their neighboring Georgians. The fate of divided families is also grim, unable to visit family members left on the other side of the divide and often, even talk to them by phone.

1205 "Which villages of Shida Kartli have drinking water contaminated with bacteria," Kakheti Information Center, 4 December 2014. Available at: <http://ick.ge/rubrics/society/20269-i.html> [Accessed on 11 March 2015].

1206 Letter #2/62 from Kaspi municipality, 14 January 2015.

1207 Test conducted by G. Natadze Scientific-Research institute of Sanitary, Hygiene and Medical Ecology, LLC. 11.02.2015. Information provided by Gori Information Center and Safeworld.

1208 Results of monitoring conducted by representatives of Public Defender.

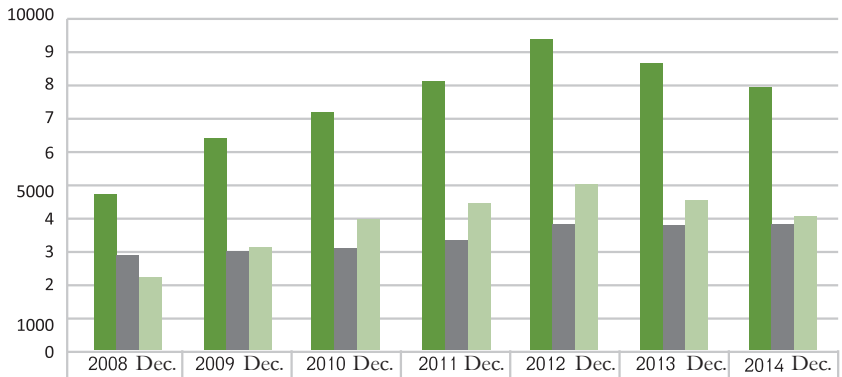
Because of this grave situation, the migration from those villages is intensive. The number of residents in the majority of villages has halved. They leave villages in search of jobs and source of income. For example, over the last decade, the school in Perevi has seen a gradual decline in the number of its pupils, something which is a key indicator of demographic problem.

The number of pupils in the public school of Perevi, Sachkhere municipality[1209]

Year	Grade I	Grade XI
2004	12	17
2005	9	14
2006	10	17
2007	10	15
2008	3	17
2009	3	12
2010	11	14
2011	2	10
2012	7	11
2013	6	16
2014	4	6

During the monitoring conducted by representatives of Public Defender's Office, residents of Gori municipality noted that after the 2008 war, many of them were enrolled in the assistance program to families below the poverty line and received monetary allowance. However, as they say, the payment of this allowance ceased since 2013 although neither their living conditions nor their source of income have changed.

The number of families receiving subsistence allowance



	2008 Dec.	2009 Dec.	2010 Dec.	2011 Dec.	2012 Dec.	2013 Dec.	2014 Dec.
Gori municipality	4,426	6,097	6,875	7,767	9,059	8,363	7,634
Kaspi municipality	2,535	2,706	2,743	3,026	3,554	3,554	3,598
Kareli municipality	1,921	2,815	3,696	4,191	4,753	4,245	3,809

Social conditions of elderly living in conflict-affected regions are especially grave. During the war, the majority of them refused to abandon their homes and witnessed military actions first-hand. Elderly comprised the majority of prisoners arrested by Russian and Ossetian military servicemen as well.[1210] The state did not provide them with systematic health care or psychological services and their health further deteriorated. Due to high migration rate, the number of elderly that are left alone is large too. Many of them applied to the Public Defender's Office with the request to assist them in receiving subsistence allowance.

1209 Information provided by administration of public school in the village of Perevni, Sachkhere municipality.

1210 Human Rights Watch, "Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia," January 2009. Available at: http://www.hrw.org/sites/default/files/reports/georgia0109web.pdf [accessed on 16 March 2015].

The mobile phone connection is also restricted in the villages along the dividing line in Shida Kartli. According to the local population, the area lacks enough cellular communication poles and hence, mobile communication frequency is either restricted or totally unavailable. There are instances of jamming mobile communications signals from the occupied territory. According to the information available to Public Defender, mobile communication is restricted in the villages of Dvani, Ergneti, Gugutiantkari, Plavi, Zardiaantkari, Khurvaleti, Ditsi, Nikozi, Kvemo Artsevi, Mereti, Koshka, Koshkebi and Atotsi. Such a state of affairs makes it impossible for local population to call ambulance or patrol police. Bearing in mind that these villages are located in the conflict zone and they face a constant threat of insecurity, the lack of telephone communication may have dire consequences for lives, health and security of citizens. Public Defender communicated this problem to the interim governmental commission to address the needs of affected communities in villages along the dividing line.

SITUATION IN ZARDIAANTKARI VILLAGE, GORI MUNICIPALITY

Zardiaantkari is one of the smallest villages in Gori municipality and the only one (besides Perevi) where the Georgian government managed to restore its control after the 2008 war. During the war this village was far more severely damaged than others and its residents have not returned there yet. Many problems of Zardiaantkari may be generalized as they are common to many other villages. Nonetheless, this village remains one of worst affected villages of Shida Kartli and its economic viability is endangered unless the problems are dealt with in the shortest possible time.

In particular, during the military actions in 2008, the majority of houses were badly damaged and became unfit to live. However, only three families, whose houses were burnt down totally, were paid the compensations of 15,000 USD. Consequently, it may be said that except for providing several corrugated asbestos sheets to two families to repair their roofs, no measures were carried out in the village to mitigate the consequences of the 2008 war.

Due to grave socio-economic problems, a large segment of Zardiaantkari residents decided to stay in a kindergarten of Gori and to seek new opportunities there. This, actually, means that the village is on the Georgian-controlled territory, but villagers refuse to return there. Even those who returned keep their living space in the kindergarten for fears of the resumption of hostilities; they want to have a guaranteed shelter in case war breaks out and they will again become refugees. These people cannot receive a status of displaced persons and accompanying social assistance package because their houses are on the Georgian-controlled territory.

A space allocated to the displaced people in the Gori kindergarten is in a very bad shape: toilets are broken, floor is damaged, corridors have no windows, and each family, no matter how large, has one room. Moreover, people sheltered there do not receive those state assistance programs that are intended for conflict-affected population, for example, wood for heating. The kindergarten has no natural gas supply while its residents pay electricity bills out of their pockets.

SITUATION IN ATOTSI VILLAGE, KARELI MUNICIPALITY

The location of Atotsi village at the dividing line is a source of myriad problems for the village. The most painful for local residents, however, is the problem of school and road. The public school in Atotsi with 51 pupils enrolled is dilapidated and the conditions inside it are grave. However, the school administration lacks the opinion of engineering expertise about the critical condition of the school building. A three kilometer-long section of the access road to the village is also in ruined. It is so difficult to move on the road in wet weather that an ambulance hardly reaches the village. In the setting where the village lacks a

doctor and a nurse, the absence of asphalt road creates a serious problem in not only in communication with the municipal center but also in the availability of primary health care.

SITUATION IN KHVITI VILLAGE, KASPI MUNICIPALITY

The village has experienced the lack of irrigation water since 1993, after the pumping stations broke down. It should be noted that neighboring villages – Tvaurebi, Lamiskana, Bozhami and Samtavisi – are supplied with irrigation water from Tezi-Okami irrigation canal. If the pumping station is fixed Khviti village may also receive water for irrigation through this canal. According to Kaspi municipality, some 500,000 GEL is needed to fully solve the problem of Khviti village, however, the municipality budget lacks such monies. A project of rehabilitation of the Khviti pumping station did not make it either into a list of projects to be implemented by the Ministry of Agriculture in the Kaspi municipality in 2015-2017.

SITUATION IN KHURCHA VILLAGE, ZUGDIDI MUNICIPALITY

The village of Khurcha is situated along the dividing line with Abkhazia and it was significantly damaged as a result of 1992-1993, 1998 military conflicts and 2008 war. The local population faces social problems daily: the village does not have a primary school and a medical care center; the timetable of bus traveling to municipal center is very inconvenient; the local population demands that banks of Enguri River be fortified and the state compensate them the damages sustained during the military actions that took place over the period between 1993 and 1998.

Power transmission lines are outdated and power poles worn out, thereby posing threat to population. However, the village receives electricity from the uncontrolled territory of Abkhazia and the company, which operates on the Georgian-controlled territory and does not supply electricity to the village, says that it is not responsible for repair works.

SITUATION IN PAKHULANI VILLAGE, TSALENJISHA MUNICIPALITY

The village of Pakhulani, in Tsalenjikha municipality, is situated at the dividing line with Abkhazia. In 2013, barbed wire fence was erected in the village, leaving one family on the other side of the divide. The Public Defender's Office raised the issue of providing a housing to that family and awarding it a status of a refugee. Barbed wires are installed in farms of households too, preventing them from using their lands and hence, worsening their social conditions. Detentions of residents of that territory by Russian and Abkhaz military servicemen is also a frequent occurrence. According to the locals, the detentions are sometimes accompanied with shootings without warning.

The issue of security is a problem too. As locals declare, in evenings, Russian border troops enter the territory of the village. The villagers, therefore, demand the deployment of an Interior Ministry (police) outpost in the village. Public Defender has learned about one local who cannot stay home for security considerations.

STATE PROGRAMS FOR CONFLICT-AFFECTED PEOPLE AND CHALLENGES

In 2013, the government of Georgia drew up a special program for conflict-affected 50 villages of Shida Kartli and Samegrelo, situated near the dividing lines. The program envisaged an intensive gasification of villages and the rehabilitation of irrigation water system, the construction of health care centers and kindergartens as well as other infrastructure, the full financing of higher education of students from those villages, et cetera.

In October 2013, the interim governmental commission to address the needs of affected communities in villages along the dividing line was established (hereinafter, the governmental commission), co-chaired by the Office of the State Ministry for Reconciliation and Civic Equality and the Ministry of Infrastructure and Regional Development. This commission has taken a number of important decisions for the improvement of welfare and rights of population who suffered as a result of installation of barbed wires.

Intensive gasification works were carried out in conflict-affected villages in 2014, with the government having earmarked 19 million GEL to that end. According to the Ministry of Energy, the gasification of 33 villages out of 58 situated along the dividing line has been completed. Gas pipe has been connected to one gas appliance per house and an individual meter installed per family for free.[1211]

The rehabilitation of irrigation system is also underway in Shida Kartli. According to the Office of the State Ministry for Reconciliation and Civic Equality, the rehabilitation of Saltvisi-Tiriponi irrigation system has been completed with the financial assistance of USAID, improving the irrigation system for up to 20,000 ha land of 39 villages at the dividing line and benefitting 18,000 households.[1212] Until the 2008 war, a majority of villages in Gori municipality used Tiriponi irrigation canal, but after the war, the de facto authorities shut the canal off. Six pumping stations of irrigation water were also repaired in 2014.

The end result of infrastructure works is yet to be seen, however; in the 2014-2015 winter, a large segment of Shida Kartli population was still without natural gas and irrigation water. In the foreseeable future, however, those measures will largely contribute to the improvement of social and economic conditions of conflict-affected population.

1211 "Natural gas supplied from today to villages along the dividing line: Zemo and Kvemo Nikozi, Zemo Khviti and Ergneti." Energy Ministry, 4 March 2015. Available at: <http://www.energy.gov.ge/show%20news%20 mediacenter. php?id =414&lang=geo> [accessed on 10 March 2015].

1212 The cost of the project stood at approximately 14 million GEL. Report on two-year performance of the Office of State Ministry for Reconciliation and Civic Equality. Available at: <http://www.smr.gov.ge/2014angarishi.pdf> [accessed on 2 February 2015]. See also, "Rehabilitation of Saltvisi-Tirifoni irrigation system completed," the Ministry of Regional Development and Infrastructure. Available at: <http://www.mrdi.gov.ge/ge/news/press/54059ac60cf23064fe48cc9d> [accessed on 10 March 2015].

To assist population affected by the installment of barbed wire fences, important programs were implemented by donor organizations, including UNHCR, UNDP, the Turkish Cooperation and Coordination Agency (TIKA), the World Bank, USAID and others.

As regards the right to education, under the decree #501 of the government of Georgia, state education grants were awarded to those students who were enrolled in accredited higher educational institutions as a result of unified national examinations in 2014-2015; in particular:

- Some 170 students who, over the past two years, studied at and obtained certificates of completion of general education from general educational institutions in the occupied territories, or whose completion of general education was recognized in accordance with the rule established by the Ministry of Education and Science;
- Students who, during a year before 7 August 2008, studied in the occupied territories, but obtained certificates of completion of general education outside the occupied territories, including 90 students from Azhara municipality, Autonomous Republic of Abkhazia; 75 students from Tskhinvali region (territories of the former Autonomous Republic of South Ossetia), including Kurta, Eredvi and Akhalgori municipalities; and five students from Perevi village in Sachkhere municipality;
- Some 50 students who over the past three years studied at and obtained certificates of completion of general education from general educational institutions in villages bordering with the occupied territories.[1213]

Yet another important initiative was the establishment of international education center under the Prime Minister of Georgia in May 2014, with the aim to provide persons living in the occupied territories of Georgia with opportunities to undertake master's and doctoral studies in leading universities of USA and Europe.

In October 2014, the governmental commission took a decision to finance the education of 600 students from villages near the dividing line. Local municipalities were tasked to compile lists of such students; however, due to inaccuracies in those lists, the Ministry of Infrastructure and Regional Development sent them back to municipalities for double-checking. Moreover, due to legal restrictions, the Ministry of Education and Science failed to timely transfer the amount to universities and as of May 2015, the education fee for 2014-2015 academic year was still not covered.

The above failure created problems to students who came to face a danger of being suspended the status of students because of non-payment of education fee. On several occasions the Public Defender's Office had to interfere (villages of Kirbali, Atotsi, Tsitelubani). Unfortunately, the higher educational institutions are not aware of student financing program and demand the payment of fees from students. Such instances are flagrant examples of ineffective implementation of good initiatives.

To ensure the right to health and availability of primary health care, health care centers were put up in 23 villages along the dividing lines in 2013-2014. In addition, the construction of a university multi-profile hospital is in progress in the village of Rukhi, Zugdidi municipality, which is fit with modern technologies and its own dormitory. The hospital, apart from hospitals in Tbilisi, Kutaisi, Zugdidi and other cities, will serve residents of occupied regions. Moreover, a new urgent care center is being built in Tkviavi village, Gori municipality.

To protect the rights of conflict-affected population and to build confidence, in 2010, the government of Georgia adopted the State Referral Program (hereinafter, the referral program) enabling citizens living in the occupied territories to receive free medical services. This program has proved to be the most successful initiative in the peaceful conflict settlement policy.

1213 "Funding for bachelor's studies under the program of student social assistance," Ministry of Education and Science of Georgia. Available at: http://mes.gov.ge/content.php?id=4791&lang=geo [accessed on 15 February 2015].

The program component of medical aid applies to persons living in the occupied territories, who are not beneficiaries of other state-funded social programs. Consequently, the referral program does not apply to those living in Abkhazia and South Ossetia, who have Georgian citizenship because they benefit from various social programs (for example, universal health insurance, a status of internally displace person and accompanying allowance, et cetera).

Public Defender learned about two separate instances when two residents of Gali district were not able to enjoy the state financing. One patient approached the referral commission with the request to have his treatment costs compensated, but he was readdressed to the universal health care program which envisages the co-financing of treatment (out of total 1 800 GEL, the patient paid 1 000 GEL). In another case, the patient was denied the consideration of his issue at the referral commission. The patient was advised at the Ministry of Labor, Health and Social Affairs to use the universal health care program.

According to the information available to the Public Defender, such an approach gives rise to serious discontent among the population of Gali district, because this practice, in often cases, concerns the issue of citizenship. Those persons who are Georgian citizens and benefit from various social programs are mainly ethnic Georgians living in the occupied territories. Even a 30 percent co-funding of their own treatment is a heavy financial burden for them. With regard to this issue, Public Defender recommended the Ministry of Labor, Health and Social Affairs to treat all patients living in Abkhazia and South Ossetia equally and to work out a uniform approach towards them.

It should be noted here that Public Defender's appeals regarding three patients from Gali district (including Georgian citizens) were taken into account and treatments of these patients were fully financed under the referral program.

As regards social programs, according to the Georgian legislation, they are designed for Georgian citizens and consequently, are not available for people in Abkhazia and South Ossetia who do not have Georgian citizenship. The so-called Ossetian and Abkhaz passports, and other official documents alike, issued in the occupied territories are illegitimate. However, on certain occasions these passports are used to identify persons. For example, a person having come from Abkhazia or Tskhinvali region to receive free treatment under the referral program of Georgia has to submit an Abkhaz or Ossetian passport for identification. Moreover, Article 8 of the Law of Georgia on Occupied Territories specifies that any act issued in the occupied territories by illegal authorities shall be deemed illegal "except for the cases when the given act is used for the purpose of issuing Status-Neutral Identification Card or/and Status-Neutral Travel Document according to the rule established under Georgian legislation."

So-called Ossetian and Abkhaz passports are also used when family members come to visit prisoners in Georgian prisons. Such instances may only be assessed as positive because they facilitate the protection of human rights, on the one hand, and on the other hand, enable to establish contacts and build trust between divided societies.

The government of Georgia has the obligation to protect the rights of people living in conflict regions and ensure their access to social programs regardless of whether they have documents certifying their Georgian citizenship or not. Public Defender also learned about a case when a citizen with so-called Ossetian passport was denied social assistance.

CASE OF CITIZEN N.P.

Citizen N.P. submitted an application to Public Defender, in which he asked a monthly allowance for his son-in-law, who lived in Tskhinvali, as a compensation for the injuries sustained while performing his official duty. This issue is regulated by the decree #45 of the government of Georgia, dated 1 March 2013. However,

only *persons having the citizenship of Georgia are eligible* for the assistance and hence, the Social Service Agency refused to issue allowance to a person who lived in Tskhinvali and had the so-called Ossetian passport.

Having thoroughly studied the case, the Public Defender approached the Prime Minister of Georgia and the Ministry of Labor, Health and Social Affairs with the following proposal: given that so-called Ossetian and Abkhaz passports are used in the country for identifying persons, people living in the conflict zones should be also able to benefit from social or educational programs by using these documents.

In Public Defender's opinion, at the initial stage, amendments should be made to the below listed legislative and normative acts, thus enabling population in the conflict zone to benefit from social and educational programs offered by the government of Georgia:

- Decree #291 of the government of Georgia, dated 14 April 2014, "On Approval of 2014 State Program to Ensure Social Rehabilitation and Child Care;"
- Decree #45 of the government of Georgia, dated 1 March 2013, "On Approval of Rule of Award and Issuance of Compensation for Damage Caused as a Result of Injury Sustained During Performance of Official Duty;"
- Law of Georgia on Higher Education and Decree #1067 of the Minister of Education and Science of Georgia, dated 1 December 2009.

Although representatives of the Public Defender's Office have repeatedly raised this issue, including at a governmental commission set up "for the aim to implement the action plan of the engagement strategy," no substantive discussions on this issue have begun or active steps taken so far.

The office of Prime Minister redirected the proposal of the Public Defender to the Ministry of Labor, Health and Social Affairs which, instead of drafting legislative amendments, sent a letter to Public Defender, which said: "in order to work out a uniform approach to granting monetary allowances/services, we deem it appropriate to discuss issues of planning/implementing corresponding measures for citizens who live in the occupied territories within the format of interagency working group." It is not clear which working group is meant in the letter or when it is planned to hold such a discussion. The Public Defender's Office continues to work on this issue.

RESTRICTION OF FREEDOM OF MOVEMENT AND SECURITY PROBLEMS

Similarly to previous years, in 2014, detention along the dividing lines with Abkhazia and South Ossetia still remained a serious problem to the security of local population. Representatives of Public Defender's Office personally visited people who were detained in villages at dividing lines in Shida Kartli and Samegrelo-Zemo Svaneti. According to the Ministry of Interior, Russian border troops detained 142 persons at the dividing line with South Ossetia and 380 persons at the dividing line with Abkhazia, with the majority amongst being residents of Gali district, for "illegal border crossing".

Different information is reported by the Border Service of the Federal Security Service of the Russian Federation (FSB) deployed in Abkhazia and South Ossetia. According to their data over 3,500 people were detained in January-September 2014,[1214] whilst during the past five years, over 10,000 people and 1,000 vehicles arrested for "illegal border crossing," and more than 800 cases of "contraband" were prevented in Abkhazia.[1215] As regards South Ossetia, according to the data released by the de facto state security service (KGB) of Ossetia, in 2014, the total of 493 persons were detained for violating the "border regime" including 249 so-called South Ossetian citizens, 140 Georgian citizens, 75 Russian citizens and 29 citizens of other countries.[1216] In 2013, the same service reported about the arrest of 331 persons including 136 so-called South Ossetian citizens, 143 Georgian citizens and 56 citizens of other countries.[1217]

2013 saw the opening of four new border checkpoints, in addition to the existing one at the Enguri Bridge, along the Georgian-Abkhaz dividing line (those of Pakhulani-Chale, Tagiloni-Shamgona, Otobaia-Ganmukhuri, and Khurcha-Nabakevi). Those checkpoints may be used by residents of Gali district alone, provided that they have so-called Abkhaz passports and a document called Form #9. A segment of Gali population does not have Abkhaz passport and Form #9 and they travel to Georgian-controlled territory using bypassing roads and risking to be detained. This explains such a high indicator of detentions at the dividing line with Abkhazia. De facto authorities prohibit persons living on the Georgian-controlled territory, including in adjacent villages, to cross the dividing line.

The opening of four new border checkpoints was a positive development in terms of ensuring freedom of movement of local population. It no longer takes hours to residents of villages to reach the Enguri

1214 "Since the beginning of this year 3,5 thousand violators of Abkhazia's border with Georgia have been detained," RIA Novosti, 01.10.2014. Available at: < http://ria.ru/incidents/20141001/1026508132.html> [accessed on 10 February 2015].

1215 "The border department of the Federal Security Service of the Russian Federation in Abkhazia marks the fifth anniversary of its establishment," Apsnypress, 28.04.2014. Available at: http://apsnypress.info/news/11823.html> [accessed on 10 February 2015].

1216 "Some 493 violations of state border of South Ossetia registered in 2014 - KGB," RES information agency, 27.01.2015. Available at: http://cominf.org/node/1166504080 [accessed on 10 February 2015].

1217 "Some 331 violations of border crossing regime registered in South Ossetia in 2013," Osradio, 10.01.2014. Available at: http://osradio.ru/raznoe/67403-v-2013-godu-v-juzhnojj-osetii-zaregistrirovano.html> [accessed on 10 February 2015].

Bridge, which also cost them money. However, after political changes that occurred in Abkhazia in 2014, the issue of closedown of these four checkpoints has been put on the agenda. If such a decision is taken, the number of people using bypass roads and with it, the number of detainees will increase, further deteriorating the situation with human rights in Abkhazia.

The situation with the freedom of movement is even graver at the dividing line with South Ossetia. There is only one checkpoint, Akhmaji-Mosabruni, operating which may be used by the population of Akhalgori district alone with special passes. In 2014, de facto authorities restricted the issuance of passes to Akhalgori residents, which caused serious tensions in the district. In May 2014, the free movement was restricted to local population for almost entire month. Thereafter, passes were issued chaotically, according to unclear criteria; where passes were denied, no explanations for denial were offered. On certain occasions, passes were issued selectively to members of same family; for example pass was issued to a two year old child, but denied to the mother of the child. Public Defender's representative met with students from Akhalgori who study in Tbilisi; they were denied passes and are unable to visit their parents in Akhalgori whilst their parents are unable to leave Akhalgori as they have no passes either.

Akhalgori KGB offered a solution to persons who were denied passes and need to travel to Georgian-controlled territory: they are to orally inform it that they want to be "deported" from the district, which means leaving the territory for the period of five years. Akhalgori KGB notifies the checkpoint of border troops of the Russian Federation of such request, which formalizes the deportation. This arrangement is mainly used by students who study in the Georgian-controlled territory. However, if during those five years such persons receive passes they will be able to return to the district and cross the administrative line.[1218]

The Akhmaji-Mosabruni checkpoint cannot be used by population of Tskhinvali, Java or Znauri districts. They have only two ways to enter the Georgian-controlled territory: either to use bypassing roads and trails and risk being detained or to enter Georgia with Russian passports via Larsi checkpoint situated at the Georgia-Russia border. It should be noted that Russian border guards do not allow owners of Russian passports issued in Tskhinvali to cross the Larsi checkpoint. To do this, persons must have passports of Russian Federation issued in the territory of the Russia.

Unfortunately, freedom of movement is also restricted when people need urgent or planned medical care. For example, Public Defender learned about a case when it took more than an hour to family members of 13 year old girl, who was in coma in the hospital of Gali district, to find a vehicle and its driver with "exit pass" to carry her into the Georgian-controlled territory.[1219] The situation becomes even more dramatic taking into account the fact that the Gali hospital does not have an intensive care unit while upon the decision of the Abkhaz side, ambulances have been prohibited to cross the Enguri Bridge since 2011. At the end of the day, the girl was carried in an ordinary motor car which is obviously not a suitable vehicle for the transportation of a patient in a critical condition. It has been years that local residents demand that ambulances of the Gali district be allowed to freely cross over to the Georgian-controlled territory.

Public Defender was also informed about the detention at the dividing line of a 12 year old sick girl who was travelling with her mother from the Gali district to Tbilisi to have a planned surgery in December 2014. The girl was placed in a freezing basement of the Russian military base for five hours; as a result, her body temperature went up and she had asthma attacks. This aggravation of 12 year old girl's health led to the postponement of surgery for several months.[1220]

Such facts must be qualified as the violation of the right to health. The right to health is recognized in a number of international documents, including the International Covenant on Economic, Social and Cultural Rights which, in its Article 12, recognizes the right of everyone to the enjoyment of the highest attainable

1218 Information provided to Public Defender of Georgia by contact persons in Akhalgori.
1219 Information provided to Public Defender of Georgia by a contact person in Gali.
1220 Information provided to Public Defender of Georgia by a contact person in Gali.

standard of physical and mental health. The right to health also implies the access to health care services and represents an absolute human right and, consequently, enjoys special legal protection.

Freedom of movement is also often restricted to those pupils who study at schools located on the Georgian-controlled side of the divide. These are schools in the villages of Pakhulani and Tsqou in Tsalenjikha municipality, which enroll 40 schoolchildren from the Gali district, and the school in Ganmukhuri village, Zugdidi municipality, with 18 pupils from Gali district enrolled. These schoolchildren have special passes to cross the checkpoints, which are issued by the de facto Abkhaz administration. The passes, however, are temporary and upon their expiration Russian border guards do not allow them through the checkpoint or may even detain them for several hours. Moreover, schoolchildren have to walk some three or four kilometers to reach the checkpoint whereas after the checkpoint they take a school bus provided by the Ministry of Education and Science of Georgia.

Some six children living in the village of Khurcha, Zugdidi municipality, attend the school in Nabakevi village of Gali district as it is geographically closer than any other school in the neighborhood. Until 2013, the Nabakevi school counted 19 pupils from Khurcha. However, from September 2014, children were strictly prohibited to cross the dividing line without Abkhaz passports and they were forced to continue their studies in schools that are much farther from the village. Those six children take a bypassing road to reach the school and Russian border guards often detain them or prevent from continuing their way to the school, therewith infringing not only their right to free movement but also the right to education.[1221]

Some 14 children from the village of Sinaguri, Java district, study at the school of Perevi village in Sachkhere municipality and therefore, regularly cross the dividing line. They have passes issued by the de facto Ossetian administration and cross the checkpoint relatively easier than their peers in Abkhazia. However, these schoolchildren have to walk six or seven kilometers every day to reach the checkpoint. On the Georgian-controlled territory, they are served with a school bus. Within the meetings of the Geneva International Discussions and the Incident Prevention and Response Mechanism, the Georgian side has repeatedly raised the issue of ensuring free movement and right to education to schoolchildren as well as their transportation to checkpoints. However, the problems persist and require a systemic solution.

CASE OF CITIZEN I.B.

I.B. and his four family members, including two minors, live at the outskirts of village Pakhulani in Tsalenjikha municipality. In the spring 2013, Russian border troops erected the barbed wire fence between their house and the village, thereby isolating the family from the Georgian-controlled territory. Since then, the freedom of movement to the family, including the children, has been restricted. To ensure the continuation of their children's education, the parents sent them to relatives in the village and they try to secretly cross over to the Georgian-controlled territory which results in them being repeatedly detained and fined by Russian border troops.

Public Defender of Georgia approached the Office of the State Ministry for Reconciliation and Civic Equality with the request to raise the issue of this family with the Russian and Abkhaz sides at the Geneva International Discussions. The Office of Public Defender also notified co-chairmen of the Geneva International Discussions of this problem.

Public Defender informed the Ministry of Internally Displaced Persons from the Occupied Territories,

1221 Right to education belongs in the category of social rights and is recognized in the International Covenant on Economic, Social and Cultural Rights, the first Protocol to the European Convention on Human Rights, the Convention on the Rights of the Child and other documents of international law.

Accommodation and Refugees of Georgia about the case of I.B. family. After consulting Public Defender's employee, I.B. applied to the Ministry for housing to his family. This issue will be discussed at the forthcoming meeting of the commission on IDP issues.

CASE OF CITIZEN B.TS.

B.Ts., a military serviceman living near barbed wire fence in a village at the dividing line, applied to the Public Defender. Having studied the case, Public Defender learned that Russian border troops, who know that B.Ts. is a participant of Russia-Georgia war, permanently inquire about his whereabouts. As the risk of his detention or abduction is high, B.Ts. fears to travel to the village to visit his family during his leaves. Presumably, he will not be able to return home until the Russian border troops or infantry forces are deployed along the dividing line.

Public Defender informed the Defense Ministry about the situation with the security and rights of B.Ts., and asked it to study the case; moreover, given that he is actually unable to return home, Public Defender asked the Ministry to consider a possibility of providing B.Ts. with housing. Public Defender was informed by the General Staff of Armed Forces that due to shortage of housing available to the Ministry, the request of B.Ts. cannot be met.

DETENTIONS ALONG THE DIVIDING LINES AND THE CONDITIONS OF DETAINEES

Sense of security among residents of villages along the dividing lines is low. According to locals, sometimes, Russian border troops cross over the Georgian-controlled territory and detain people right in their parcels, on the village roads or at graveyards (villages of Plavi, Bershuti and Zemo Sobisi). May 2014 could be considered the peak month of detentions as from 2 to 12 May, some 26 local residents were detain when they were picking herbs at the dividing line with South Ossetia.

People are usually kept in confinement for several days and then, upon decisions of de facto court, are released upon the payment of fines. Fines at the dividing line with South Ossetia range between 2,000 and 11,000 rubles (approximately 200 – 600 GEL), depending on how many times one and the same person was detained. The fines in Abkhazia range from 1,000 to 1,200 rubles (approximately 35 – 50 GEL), while for those living in the Georgian-controlled territory, from 30,000 to 100,000 rubles (approximately 500 – 5,000 GEL). This amount is a very heavy financial burden for local population. They ask for assistance because the majority of them are economically disadvantaged families. On certain occasions two members of a family are detained. Children, women and elderly are also detained.

Representatives of Public Defender interviewed a 15 year old pupil who was detained by Russian servicemen when he was looking for cattle in the village in November 2014. According to him, he was kept alongside three other detainees in a wet basement for two days, which caused the deterioration of his health. On the third day, he was transferred into a space with better conditions and was released after paying the fine.

In December 2014, six citizens of Georgia were serving their sentence in Tskhinvali prison. Two of them are residents of Akhalgori, charged with espionage and kidnapping; another two are residents of bordering village who were arrested for illegal "border crossing"; the remaining two are brothers who were arrested when attending the funeral of their mother in Tskhinvali and convicted for treason.

In their recounts to Public Defender representatives, former inmates did not complain about ill treatment when being detained, but spoke about intolerable conditions in the prison.

The International Court of Human Rights as well as the Constitution of Georgia recognizes the right of every person to freedom and inviolability, the right to private and family life, to freedom of movement and residence.

Detaining/arresting citizens of Georgia in conflict regions for violating so-called "border regime" is the infringement on the right to freedom and security of people. The right of people to free movement and travel is recognized in a number of international treaties/conventions. Articles 3 and 9 of the Universal Declaration of Human Rights state that everyone has the right to life, liberty and security and that no one

shall be subjected to arbitrary arrest, detention or exile. In *Ilascu and Others v. Moldova & Russia*, the European Court of Human Rights held that there was the violation of Article 5 of the European Convention on Human Rights (right to liberty and security) as the imprisonment of applicants was unlawful because the verdict of imprisonment was delivered by an incompetent court. The European Court found that none of the applicants had been convicted by a "court", and that a sentence of imprisonment passed by a judicial body such as the "Supreme Court of the Transdniestrian region" could not be regarded as "lawful detention."

Seven Ossetian prisoners serve their sentences in Rustavi and Ksani penitentiary facilities in the Georgian-controlled territory. They request to be "exchanged" or transferred to Tskhinvali penitentiary institution. Two of them are women and three male inmates are sentenced to life.

CASE OF GIORGI ZASEEV, GIORGI VALIEV AND SOSLAN KOCHIEV

Giorgi Zaseev, Giorgi Valiev and Soslan Kochiev were sentenced to life in prison for organizing the terrorist attack in Gori on 1 February 2005, which killed three policeman and wounded 30 people. Zassev and Valiev pleaded guilty, but they claim that they met Kochiev first time ever in the prison and he has nothing to do with the terrorist attack. The remaining six members of this subversive group are wanted.

The Ossetian side has been actively raising the issue of their release. Regardless of the two inmate's confession, Tskhinvali maintains that they are innocent and speaks about threats and pressure towards convicts, various procedural violations and restriction of the right to fair trial.

The government of Georgia does not have a final position regarding their release. According to the information provided to Public Defender by representatives of the Interior Ministry of Georgia, the issue of release of three prisoners convicted of the terrorist attack in exchange for all inmates in Tskhinvali prison was repeatedly raised with the Ossetian side within the frames of Incident Prevention and Response Mechanism, but the Ossetian side refused to agree to this arrangement.

In 2014, Public Defender released a special report on the issue of freedom of movement and inmates, which discussed the situation with the free movement and conditions of prisoners.[1222]

2014

1222 Full report is available at: http://www.ombudsman.ge/uploads/other/1/1771.pdf>.

INMATES IN PRISONS OF ABKHAZIA

The government of Georgia does not have neither a full list of Georgian citizens arrested in Abkhazia nor the information about charges levelled against them. On 8 October 2012, de facto foreign ministry of Abkhazia published a list of 15 persons who have been convicted of espionage, terrorism, robbery, unauthorized possession of arms and contraband.[1223] Nine of them are Gali residents whilst the remaining are residents of Zugdidi municipality. Public Defender is not able to either check this list or to study conditions of inmates in Abkhazia. Public Defender received an application from a family of one of inmates, describing grave physical and psychological condition of the inmate and intolerable conditions in the prison, however, for objective reasons, Public Defender is not able to study this case either. Public Defender sent this information to the Interior Ministry, asking to react to it.

On 25 September 2013, media outlets reported that de facto supreme court of Abkhazia sentenced G.L. to 20 years in prison on charges of being a member of guerilla group "Forest Brothers," setting up illegal armed groups, killing and abducting people.[1224] Also, according to media reports, Gali residents Manuchar Shonia, Dato Tordia and Giorgi Narmania were arrested too.[1225]

Public Defender received a letter from a family of one of the inmate, recounting about grave physical and psychological condition of the inmate and intolerable conditions in the prison.

1223 "Report on terrorist activity of special forces of Georgia in the territory of Republic of Abkhazia," Apsnypress, 15.10.2012. Available at: <http://apsnypress.info/docs/7502.html>. [accessed on 20 September 2014].

1224 "A leader of Georgian armed gang Forest Brothers is sentenced to 20 years in prison," Apsnypress, 16.10.2013. Available at: http://apsnypress.info/news/10328.html [accessed on 20 September 2014].

1225 "Georgian intelligence network falls through in Abkhazia," Voice of America, 16 September 2013. Available at: http://m.amerikiskhma.com/a/georgia-citizens-are-condemned-in-occupied-abkhazia-for-espionage/1750271.html [accessed on 20 September 2014].

CRIME SITUATION IN GALI DISTRICT

2014 was an especially difficult year for Gali residents in terms of human rights.[1226] Even though military actions have long stopped in the conflict zones, formal or informal armed groups continue their illegal activities and violate the rights of civilians.

While the government of Georgia claims the reduction in incidents and hotbeds of tension in Gali district owing to its peaceful policy along the occupation line,[1227] no reliable statistics supports those claims whereas residents of Gali district complain about the increase in abductions, assaults and robberies.

Gali district still remains one of the gravest regions in Georgia in terms of human rights situation since fundamental human rights such as the right to life, to property, to personal freedom and security have been violated there.

On the one hand, the central government of Georgia is not able to implement effective control there and consequently, undertake radical measures against criminals. On the other hand, the population of Gali district is left at the mercy of ineffective de facto law enforcement system, crime gangs and the Russian occupation forces. Upon the decision of the de facto Abkhaz authorities and the Russian government, international observation missions, including human rights watchdogs, have been banned from the district and the local population remains totally unprotected.

2014 was distinguished for the frequency of kidnapping local population for ransom. Public Defender learned about a number of such cases, including the kidnappings of five and eight year old children. There were separate kidnappings with fatal outcome as well. According to locals, one may guess the size of group of kidnappers by the ransom demanded. The amount of ransom ranges between 1,500 USD and 30,000 USD. Relatives often refrain from reporting abduction of their family members to the de facto law enforcement authorities.[1228]

According to representatives of nongovernmental organizations operating in Gali district, they are no longer able to work in the so called lower zone of Gali due to deteriorated security conditions. If earlier abductions took place in the villages of lower zone of Gali district, now such facts have also increased in the town of Gali and surrounding villages.[1229]

1226 Information provided to Public Defender of Georgia by contact persons in Gali.
1227 Report on two-year performance of the Office of State Ministry for Reconciliation and Civic Equality. Available at: <http://www.smr.gov.ge/2014angarishi.pdf> [accessed on 2 February 2015].
1228 Information provided to Public Defender of Georgia by contact persons in Gali.
1229 Information provided to Public Defender of Georgia by contact persons in Gali.

On 12 January 2015, a crime gang kidnapped a resident of Chuburkhinji village, G.G., for ransom. G.G. managed to escape at night, killing one abductor, and approached the Abkhaz law enforcers for help, who conducted a special operation against the gang. The special operation was carried out in settlements and took away lives of an employee of counterterrorist center of Abkhazia and an officer of Russian border troops.[1230] Since then, representatives of special services conduct regular patrolling in Gali and inspect documents of locals.[1231]

On 17 December 2014, eight residents of Gali were arrested on charges of participating in 1992-1993 war in Abkhazia. The Abkhaz media even released a confession of one of arrestees in which he admitted to participating in the 1992-1993 military actions,[1232] however despite this "confession" he was released from prison, alongside other seven detainees, and forced to leave Abkhazia.[1233] This fact may be evaluated as unlawful detention. Article 5 of the European Convention on Human Rights guarantees the right to liberty and security. Since the liberty of a person is not an absolute right, it may be restricted by a decision of a court in accordance with the law. In this particular case, however, not only a verdict was not delivered by the court that was illegitimate but also, according to information provided to Public Defender from Abkhazia, the de facto law enforcement bodies did not even institute a criminal proceeding.[1234]

While local residents are regularly detained on charges of illegal "border crossing," crime gangs which comprise both Abkhaz and Georgian criminals freely cross the dividing line, according to Public Defender's information. This may only indicate that they have criminal ties with certain circles in Abkhazia. For example, according to information available to Public Defender, one of organizers of abduction on 12 January, lives in the village of Kakhati, Zugdidi municipality.[1235]

The existing situation indicates about a deplorable crime situation in Gali district, adversely affecting the human rights situation. De facto law enforcement authorities not only fail to stand up to crime situation but also often violate human rights. The Georgian government has positive obligations to use all available means to prevent crime situation and ensure security of people and protection of their rights. To this end, the central government should cooperate with de facto authorities. It is unfortunate that the Abkhaz side continues to oppose the resumption of the Incident Prevention and Response Mechanism and makes protection of human rights conditional upon certain political demands.

1230 "Law enforcement officers killed in Gali district," Apsnypress, 12 January 2015. Available at: http://www.apsnypress.info/news/v-galskom-rayone-ubity-sotrudniki-pravookhranitelnykh-organov [accessed on 12 March 2015].

1231 Information provided to Public Defender of Georgia by contact persons in Gali.

1232 "Eight citizens of Georgia arrested, who cooperated with Georgian occupational authorities during the patriotic war of Abkhaz people in 1992-1993" Nuzhnaia Gazeta, 19.12.2014. Available at: <http://abh-n.ru/zaderzhany-vosem-grazhdan-gruzii-sotrudnichavshie-s-gruzinskimi-okkupacionnymi-vlastyami-v-period-otechestvennoj-vojny-naroda-abxazii-1992-1993-gg> [accessed on 12 March 2015].

1233 "Eight Georgians detained in Gali are released and banned the entry to Abkhazia," Rezonansi, 31.12.2014. Available at: http://www.resonancedaily.com/index.php?id_rub=2&id_artc=23159 [accessed on 12 March 2015].

1234 Information provided to Public Defender of Georgia by a contact person in Gali.

1235 "Father of one of criminals participated in military actions of Georgian army in 1992-1993," Apsnypress, 13 January 2015. Available at: <http://www.apsnypress.info/news/otets-odnogo-iz-prestupnikov-uchastnik-boevykh-deystviy-v-sostave-voysk-gossoveta-gruzii-v-1992-93-g> [accessed on 12 March 2015]. Information provided to Public Defender of Georgia by a contact person in Zugdidi municipality.

RIGHT TO OBTAIN EDUCATION IN NATIVE LANGUAGE IN THE OCCUPIED TERRITORIES

The total of 31 schools operate in Gali district, enrolling 3,358 pupils, according to 2014 data. Almost 97% of these pupils are ethnic Georgians and the remaining 3% of other ethnicities.[1236] Nevertheless, de facto Abkhaz authorities restrict the right of these pupils to obtain education in their native language.

Out of 31 schools in Gali district, only 11 schools teach all subject in Georgian, as of today.[1237] These schools are located in the so called lower zone of Gali district. However, academic hours for Georgian language and literature in all 11 schools were cut by four hours each (if before these subjects were taught 10 hours a week, now they are taught only six hours). Those four hours were used to enhance the teaching of Russian language which starts from the very first grade (until 2014, Russian language was taught from the third grade). This process indicates that the lower Gali zone schools, much like the schools of so-called upper Gali zone, are gradually shifting onto Russian-language teaching.

As regards the villages in the upper zone of Gali district, the teaching there is in Russian and the academic hours allocated for teaching Georgian language and literature have been decreasing year after year. By 2014 academic year, in each class of all upper zone schools, the lessons of Georgian language and literature were cut by one hour each and now, Georgian language and Georgian literature are taught for one hour a week alone (compared to two hours each last years). In both schools of the town of Gali, pupils learn only in Russian language.

Apart from restricting education in native language, the transfer onto the Russian language teaching adversely affects the quality of education. Both schoolchildren and teachers find it difficult to learn and to teach in Russian, respectively, because the majority of them are ethnic Georgians and teachers obtained their professional education in Georgian language. The situation of pupils is especially critical because, at home, they speak Megrelian or Georgian whereas at school, they learn all subjects in Russian and are taught Abkhaz language along with foreign languages.[1238] As a result, they are not proficient in any of the languages and this will limit their opportunities of higher education and career development in future.

Upon the decision of the Abkhaz side, the Abkhaz language is taught in the schools of Tkvarcheli, Ochamchire and upper Gali zone, though it is allocated much fewer hours than Russian.

Situation is somewhat better in Akhalgori district where out of 11 schools six are Georgian and five Russian and pupils face no problem of learning in their native language as the situation has not seen a dramatic change after the 2008 occupation.

1236 Information provided by the education resources center of Gali district.

1237 Until 1992-1993 war in Abkhazia, there were 58 schools in Gali district with only two of them being Russian language schools.

1238 "Education at the dividing line: Access to education in Georgia along the dividing line and for residents of occupied territories," Institute for Study of Nationalism and Conflicts and the Synergy network, Tbilisi, 2015.

SO CALLED PASSPORTIZATION AND ASSOCIATED HUMAN RIGHTS VIOLATIONS

The issue of ethnic Georgian population of Gali district was one of key topics of political development that took place in Abkhazia in 2014. This stirred anxiety among the population of Gali. The situation is tense to date as the issues of documentation and freedom of movement of the population of Gali district have not yet been fully decided.

Earlier, the matter of concern was the forceful passportization of Gali population,[1239] but in 2014 the situation radically changed and passports have been seized from residents. According to de facto prosecutor's office, some 26,197 cases of passportization were examined in Gali, Tkvarcheli and Ochamchire districts, revealing that passports of so called citizens of Abkhazia were issues in violation to established rule to 791 persons in Gali, 387 persons in Tkvarcheli and 10 persons in Ochamchire, which makes up 1,188 persons in the three districts.[1240] According to the de facto administration of Gali district, around 13,000 Abkhaz passports and 10,000 Form #9 have been issued to Gali population.[1241]

As the de facto authorities maintained, the main problem with passportization was in that the Gali population held Georgian passports too. It was therefore decided to issue residence permits to those locals of Gali who will declare that they have Georgian citizenship. As de facto Gali administration explains, residence permit implies possibilities to move across the dividing line and to vote only in local elections. Those who want to obtain Abkhaz citizenship must submit a document certifying that they have withdrawn from Georgian citizenship.

Abkhaz passport is not a legal document recognized by Georgian and international community and consequently, a holder of only an Abkhaz passport will be deemed a stateless person; the offer to obtain Abkhaz passport in exchange for the withdrawal from Georgian citizenship virtually means turning those people into stateless persons whereas there an agreement among the international community that states much undertake measures to reduce statelessness.

Regardless of the fact that the de facto government is not recognized as a subject of international law, it has the obligation to respect human rights and freedoms. This obligation arises from various circumstances: a) a substantial part of the Universal Declaration of Human Rights is recognized as customary law which means that part of those norms is universally recognized; b) de facto government as a non-state entity controlling a certain territory and population, is obliged to respect rights of the population being under its control, including the rights of ethnic Georgian population as minority.

1239 Human Rights Watch, "Living in Limbo - Rights of Ethnic Georgians Returnees to the Gali District of Abkhazia," 15 July 2011. Available at: http://www.hrw.org/reports/2011/07/15/living-limbo-0 [accessed on 16 March 2014].

1240 "Some 1188 citizens registered in violation of the law on citizenship of the Republic of Abkhazia by passport and visa service of Tkvarcheli, Gali and Ochamchire district departments of interior ministry," Apsnypress, 4 April 2014. Available at: <http://www.apsnypress.info/news/v-narushenie-zakona-ra-o-grazhdanstve-v-pvs-tkuarchalskogo-galskogo-i-ochamchyrskogo-rovd-dokumentir> [accessed on 16 March 2014].

1241 "Problem of passportization to be solved," Ekho Kavkaza, 25.02.2015. Available at: <http://www.ekhokavkaza.com/content/article/26869642.html> [accessed on 16 March 2014].

MISSING PERSONS AND ENFORCED DISAPPEARANCE

Georgian investigative bodies have been investigating the facts of missing ethnic Ossetians during and in the immediate aftermath of the war. In particular, under Article 143 of the Criminal Code of Georgia (illegal deprivation of liberty), the investigation is under way into 1) the disappearance of A.Kh., A.Kh. and S.P.; 2) the missing of T.K.; and 3) the disappearance of R.I. No summary judgment has been issued on any of the above listed cases yet. According to the Chief Prosecutor's Office, they have failed so far to interrogate several important witnesses because they are abroad and on the territory uncontrolled by the central government of Georgia.

In its concluding observations on the fourth periodic report of Georgia on 23 July 2014, the UN Human Rights Committee stressed the importance of investigating past human rights abuses. The Committee is concerned about the slow progress in investigating, identifying and prosecuting perpetrators of human rights violations committed during or in the immediate aftermath of the 2008 armed conflict, including cases of enforced disappearances, indiscriminate and disproportionate attacks against civilian population and other protected persons, unlawful detention, torture and inhuman treatment, destruction and appropriation of property that may constitute war crimes and crimes against humanity.

It was not until 2014 after the end of 2008 armed conflict, that the disappearance of a person in Georgian-Ossetian conflict zone was registered.

On 3 June 2014, a 20 year old resident of Akhalgori district, D.B., together with his colleague D.A., was taken from his office to the Akhalgori de facto police for being interrogated as a suspect in theft. D.A. was released after interrogation. Last time D.A. saw D.B. was in the police building; since then whereabouts of D.B. was unknown. According to the information available to family, D.B. was not interrogated by an investigator because later in that day, police officers handed over personal items of D.B. to his distant relative at the latter's house. According to relatives, the police told the family that they left D.B. near his house and he crossed over to the Georgian-controlled territory. Officers of Akhalgori de facto police have repeatedly offender mother of D.B., who tried to find out the truth.

Seven months later, on 4 January 2015, local residents found the dead body of D.B., hanging on the tree near the village of Doliaani in Akhalgori district.

On 20 January, at the 51th meeting of Incident Prevention and Response Mechanism, representatives of Georgian government demanded that they be provided with details of investigation of D.B. case on the scene and that corpse be transported to the Georgian-controlled territory in the shortest possible time. The Ossetian side, however, did not fulfil this demand. Later, the corpse was transported first to Tskhinvali and then to Russia for genetic analysis without giving a possibility to family members to see it. On 28 January,

de facto authorities handed over the corpse of D.B. to Tbilisi and forensic expertise of the corpse was conducted. As of now, Public Defender is not aware of the results of forensic expertise.

The fate of another person, R.Sh., who went missing from the village of Karapila in Kaspi municipality, is still unknown. When conducting the monitoring of villages along the dividing line, representatives of Public Defender learned from a resident of Sakorintlo village, G.A., that he was in custody in Tskhinvali pretrial detention facility together with R.Sh. According to him, Russian border guards arrested R.Sh. in the village of Karapila in Kaspi municipality, threatening him with liquidation because of his participation in the 2008 war. However, R. Sh. told G.A. that he never participated in the war because of poor health and asked G.A. to make his story public. The whereabouts of R.Sh. was an issue raised at meetings of Incident Prevention and Response Mechanism too, but the Ossetian side denied arresting R.Sh.

It is important that investigative bodies conduct investigations into alleged crimes committed during and in the immediate aftermath of the August 2008 war, including into enforced disappearances, in an effective manner and shortest possible timeframes.

CITIZENSHIP OF CONFLICT-AFFECTED POPULATION

Conflicts and ethnic tension in the early 1990s forced many ethnic Ossetians in Georgia to leave the country and obtain citizenship of Russian Federation. After they returned to Georgia they had documents certifying the citizenship of both Russia and Georgia. The Georgian legislation, however, requires the automatic termination of Georgian citizenship in such cases. After the change in power in 2012, a strict enforcement of the law took place, creating numerous legal and practical barriers to Ossetian population. A number of ethnic Ossetians applied to Public Defender's Office for assistance.

In March 2015, Public Defender published a special report dedicated to the issue of acquisition of Georgian citizenship by conflict-affected ethnic Ossetian population of Georgia.[1242]

Holding citizenship of a foreign country (be it the Russian Federation or any other) means an opportunity for them to travel to the Russian Federation to visit their relatives and also to receive social assistance (pension) or/and improve economic conditions; at the same time, however, they cannot enjoy the rights ensured for Georgian citizens in Georgia, such as the right to vote, employment in public service, standing for elections, et cetera.

As regards the Georgian citizenship, it should be noted that Georgian citizenship for ethnic Ossetians living in Georgia has a certain emotional connotation and represent an important form of bond to the country in which they were born and have been living to date. Violations of their human rights in the past are still vivid in their memories. Therefore, Georgian citizenship for them means the restoration of their rights and at the same time, the guarantee for the protection of those rights. Russian citizenship, however, is the main source of their existence.

Considering the created situation, the only acceptable solution for Ossetian population is awarding them Georgian citizenship as exception, which implies the award of Georgian citizenship to foreign citizens by the President of Georgia as an exception. For this to happen, a person must meet certain criteria. In particular, President of Georgia may, as an exception, grant citizenship of Georgia to a foreign national if he/she has *special merit* before Georgia or the award of Georgian citizenship to him/her is *in State interests*.

The inquiry and the study of information provided by applicants revealed cases of denying Georgian citizenship as an exception to persons who were born in Georgia, have permanent residence and property in Georgia and due to poor health, rarely travel to Russia. Consequently, Georgian citizenship for them is the guarantee to feel themselves as fully-fledged citizens, on the one hand, and on the other hand, to avoid any problems regarding their legal stay in Georgia. Nevertheless, they were denied Georgian citizenship.

1242 Special report is based on a research conducted by the Office of Public Defender on the issues of migration and citizenship of ethnic Ossetian population. The research aimed at studying human rights violations in 1989-1992 armed conflict and ethnic tension and to draw up recommendations for the restoration of the rights of wthnic Ossetians of Georgia.

The issue of citizenship, given its importance, represents a starting point of the restoration of legal status and is linked to the issues of restitution of property as well as integration of conflict-affected people.

RECOMMENDATIONS

To delegations participating in the Geneva International Discussions (the Office of the State Ministry for Reconciliation and Civic Equality and Ministry of Foreign Affairs, Ministry of Justice of Georgia, Ministry of Internal Affairs of Georgia):

- Apply all available means to ensure unimpeded movement of ambulances, patients and schoolchildren across the dividing lines.
- Apply all available means to ensure free movement of local population on both sides of the divide; seek ways to free detainees and inmates – this may be "all in exchange for all" release, parole, amnesty or pardon; in parallel to settling the issue of prisoners, the parties should agree on such mechanisms which will ensure the elimination of the vice practice of detentions along the dividing lines.
- Raise the issue with de facto Abkhaz authorities on providing information about ethnic Georgian inmates in penitentiary facilities on the territory under their control.
- Apply all available means to eradicate crime situation in Gali district, ensure security of people and full protection of their rights; to this end, cooperate with representatives of de facto regime and the Russian Federation as groups having effective control on the territory.
- Apply all available means to ensure the activity of higher number of international humanitarian organizations and human rights watchdogs on the occupied territories.
- Intensify the discussion of the issue of divided families and with the help of international organizations, create a venue for family members to spend certain amount of time together.
- Take active steps towards the resumption of meetings of the Incident Prevention and Response Mechanism in Gali.

To members of the interim governmental commission to address the needs of affected communities in villages along the dividing line:

- Discuss and take a decision on the rehabilitation of houses damaged during the 2008 military actions (of those who have not received any compensation from the state so far); pay special attention to the situation in Zardiaantkari village in Gori municipality.
- Discuss and take a decision on the measures to improve cellphone communication service in villages along the dividing line.
- Discuss and take a decision on the provision of conflict-affected villages with clean drinking water.

To State Minister for Reconciliation and Civic Equality of Georgia:

- With the assistance of international organizations, support informal education of youth living in occupied territories.
- Begin the work on the development of a new policy on the restoration of ownership rights and restitution of property of people having suffered from conflicts in Georgia in 1990s.

To Minister of Labor, Health and Social Affairs:

- Develop such social assistance program which will take into account difficult social and economic situation created after 2008. In particular, when assessing families living near the dividing lines, the Social Service Agency must take into account the reality that a family may own immovable property – a plot of land, but be able to use it as a result of installed barbed wires.
- Ensure equal conditions for and develop uniform approach to patients from Abkhazia and South Ossetia; draft amendments to the government decree "On Establishing Commission for the Aim to Take a Decision on the Provision of Adequate Medical Aid under the Referral Service and Determining Rule of its Activity" in order to set an obligation of uniform treatment of every person living in occupied territories, regardless of their citizenship.
- Ensure the access to social programs for local population of conflict regions, regardless of them holding documents certifying Georgian citizenship. To this end, amendments must be made to Decree #45 of the government of Georgia, dated 1 March 2013, "On Approval of Rule of Award and Issuance of Compensation for Damage Caused as a Result of Injury Sustained during Performance of Official Duty."

To Minister of Internal Affairs:

- Enhance patrolling in villages bordering with the dividing lines to ensure the security of citizens; put up additional outposts in the villages of Pakhulani, Tsalenjikha municipality, and Jariasheni, Gori municipality.

To Minister of Education and Science:

- The Ministry of Education and Science, together with the governmental commission, must inform higher educational institutions about the program on financing the education of students having suffered as a result of installation of barbed wires, in order to avoid the suspension of the status of student to these students; timely analyze and remove bureaucratic barriers.
- Support the improvement of secondary education quality in Gali and Akhalgori districts, including in terms of training schoolchildren, school graduates and teachers. Also, ensure timely delivery of books for Georgian schoolchildren, develop exchange programs for pupils living in occupied territories to enable them live in families on the Georgian-controlled territories, especially in big cities.

To Minister of Justice:

- Speed up the process of land and property registration in villages adjacent to the dividing lines.

To Chief Prosecutor of Georgia:

- Conduct investigations into alleged crimes committed during and in the immediate aftermath of the August 2008 war, including into enforced disappearances, in an effective manner and shortest possible timeframes.

To relevant entities engaged in the process of granting citizenship (President of Georgia, Presidential Administration, LEPL Public Service Development Agency, Counterintelligence Department of Interior Ministry):

- When awarding Georgian citizenship as an exception pursuant to Paragraph 2, Article 12 of the Constitution of Georgia and in accordance with corresponding procedures, take into account a criterion of special state interest towards ethnic Ossetians seeking Georgian citizenship, who prove that they live in Georgia and express the desire to obtain Georgian citizenship; state interest must be established as a ground for the award of Georgian citizenship.
- When awarding Georgian citizenship as an exception, evaluate the situation of conflict-affected people adequately; give special considerations to their rights and needs and prepare conclusions by taking into account individual conditions.

SITUATION OF THE RIGHTS OF PERSONS AFFECTED BY AND DISPLACED AS A RESULT OF NATURAL DISASTERS/ECO-MIGRANTS

Georgia is distinguished by the frequency of natural disasters. Respectively, the issue of forcibly moved victims of natural disasters – eco-migrants remains to be a serious problem. The Public Defender of Georgia has been discussing the mentioned problems in the Parliamentary Reports on the Situation of Human Rights and Freedoms for several years already. The Public Defender of Georgia dedicated a special report to the Human Rights Situation of Persons Affected by and Displaced as a Result of Natural Disasters/ Eco-Migrants in Georgia to this issue.[1243] Despite the mentioned fact, as of today, there is no unified state vision/strategy in this direction; Majority of Public Defender's recommendations reflected in special and parliamentary reports have not been fulfilled.

During the reporting period the Public Defender of Georgia was appealed by the persons affected by natural disasters/eco-migrants, with the complaints about severe socio-economic situation, inadequate living conditions and absence of permanent living space.

Examination of applications revealed several problematic issues, which will be addressed by the present report. It is noteworthy that the state has not created a comprehensive legal database regulating the Human Rights Situation of the persons affected by natural disasters and a legal definition of a person affected by natural disasters/eco-migrant has not been elaborated yet. The commission established by the Order N123 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, dated June 6, 2013, which involved the representatives of several governmental agencies, the Public Defender of Georgia and international and non-governmental organizations in its activities, developed a draft law on the Eco-migrants, which has not been adopted yet since it was never presented to the Parliament of Georgia.

The fact that on June 1, 2014 Eco-migrants Department[1244] was created in the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia is evaluated very positively. In the same year, the families affected by natural disasters were given opportunity to fill the application to receive living space approved by the Order N779 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia on the Approval of Criteria for Accommodating the Families affected by and displaced as a result of natural disasters and creation of a Regulatory Commission, dated November 13, 2013.

According to the information provided by the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, within the frameworks of the budgetary assignments for 2015, the ministry will accommodate 90 families affected by the natural disasters, which exceeds the number of families accommodated in 2013-2014 3 times.[1245]

1243 http://www.ombudsman.ge/uploads/other/0/103.pdf

1244 Subclause b[1], Clause 4, Article 6, Resolution N34 On the approval of the Regulation of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated February 22, 2008

1245 http://mra.gov.ge/geo/news/show/189/5750 [Last viewed on January 21, 2015]

CURRENT LEGISLATION ON ECO-MIGRATION

Current legislation on Eco-migration is discussed in detail in the Parliamentary Reports of the Public Defender of Georgia for 2010, 2011 and 2013 and a Special Report for 2013.[1246] Since the law defining the legal status of eco-migrants and regulating the situation of their rights was not put into effect in 2014 either, the recommendations of the Public Defender of Georgia regarding the development of comprehensive legal database provided in the Parliamentary Reports for 2010, 2011 and 2013 still remain in force.

During the accommodation of the persons affected by and displaced as a result of natural disasters/ eco-migrants the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia is guided by the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia on the Approval of Criteria for Accommodating the Families affected by and displaced as a result of natural disasters and creation of a Regulatory Commission, dated November 13, 2013. The aforementioned order represents a normative act (bylaw), regulating the rules of accommodation of persons affected by and displaced as a result of natural disasters. As already mentioned, Georgia does not have a law defining the status of eco-migrants, situation of their rights and the issue of their social protection.

The mentioned order regulates the rules for accommodating the persons affected by and displaced as a result of natural disasters and the forms of evaluating the categories of property damage. The present normative act also approves a questionnaire, which awards the families with rating scores considering the established criteria. The families with higher rating scores enjoy the priority in the sequence of shelter provision. Such families will be given a reasonable time by the Regulatory Commission on the Accommodation of the Families Affected by and Displaced as a Result of Natural Disasters to find an appropriate living space, registered at the LEPL National Agency of Public Registry of the Ministry of Justice of Georgia. Afterwards, the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia will purchase the selected house for the eco-migrant family.

The applications approved by the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, dated November 13, 2013 were accepted by the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia from January 20 to February 20 and from June 30 to July 12, 2014. As a result of the amendment, dated October 29, 2014, made to the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, dated November 13, 2013, the applications for the allocation of a living space are being accepted in a continuous mode since November 5, 2014.

1246 Parliamentary Report of the Public Defender of Georgia for 2010, pages 450-453; Parliamentary Report of the Public Defender of Georgia for 2013, pages 613-617; Special Report of the Public Defender of Georgia on the Human Rights Situation of Persons Affected by and Displaced as a Result of Natural Disasters/Eco-Migrants in Georgia, pages 9-18.

During the reporting period the amendment related to accommodation criteria was made to the Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, dated November 13, 2013. In particular, 4 categories of damage to the living property were reduced to 2.[1247] The number of awarded rating scores to the mentioned categories was also changed.[1248]

Despite the fact that the order[1249] of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, regulating the issues of accommodation of the eco-migrants is currently in force, it is also important to introduce a new law, envisaging the social guarantees, legal status and other issues of the population affected by the natural disasters.

When we are talking about the legislation on eco-migration, it is important to mention the inconsistency between the Georgian legislation and UN Guiding Principles on Internal Displacement of 1998. In particular, according to the Article 2 of these principles:

'With the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.'

The guiding principles do not differentiate the internally displaced persons according to the reasons for their displacement. Meanwhile, according to the Georgian legislation only those persons who were forced to leave their places of permanent habitual residence as a result of occupation, aggression, armed conflict, situations of generalized violence and major violations of human rights, are recognized as internally displaced.[1250] Such approach and the fact that, until now, there is no systematized legal database related to the legal status and rights of the population affected by the natural disasters in the country, puts them in unequal conditions compared to those persons, who were granted the IDP status in accordance with national legislation. The eco-migrants cannot access the social benefits available for the internally displaced persons. Respectively, it is essential to continue work on the draft law on eco-migrants, in order to legally regulate not only the issues of accommodation, but also the aspects of their integration and provision of social allowances in the places of accommodation.

1247 The first category envisages the eco-migrant families, whose houses or their parts have collapsed or were damaged as a result of a natural disaster (landslides, mudslides, rockfalls, river erosion, avalanches, except for earthquakes and volcano eruptions) and are not subjects to repair. Second category unites the families affected by the natural disasters, whose houses have not been damaged, although the existing calamities in the vicinity (landslides, mudslides, rockfalls, river erosion, avalanches, except for earthquakes and volcano eruptions) endanger the lives, health and property of people living there.

1248 First category is awarded with 10 rating points; second category is awarded with 7 rating points.

1249 Order N779 of the Minister of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia on the Approval of Criteria for Accommodating the Families affected by and displaced as a result of natural disasters and creation of a Regulatory Commission, dated November 13, 2013

1250 Article 6, Law of Georgia on the Internally Displaced Persons from Occupied Territories – Refugees, 2014

THE PRACTICES OF ACCOMMODATING THE ECO-MIGRANTS

During 2014 the Public Defender of Georgia continued to examine the applications[1251] of the persons affected by natural disasters/eco-migrants, which indicated that the houses where the eco-migrants live are owned by state and have not been transferred into private ownership of persons affected by natural disasters. The availability of agricultural and pasture land plots for the eco-migrant families accommodated in different regions of Georgia remains a problem to date.

For the further investigation of the issue, the Apparatus of the Public Defender of Georgia requested[1252] information from the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia on the transfer of houses into private ownership of eco-migrants accommodated in different regions of Georgia.[1253]

As per the correspondence[1254] with the Ministry of Economy and Sustainable Development of Georgia the Apparatus of the Public Defender of Georgia was informed that the procedures necessary for the transfer of living spaces into ownership of eco-migrants have not been commenced yet.

During the reporting period the Apparatus of the Public Defender of Georgia also examined the applications of those eco-migrants, who face the risks of repeated eco-migration. In particular, the houses located on the territories[1255] where the government has accommodated the families affected by natural disasters are being damaged as a result of natural calamities "due to the swelling-prone properties of clay rocks forming the area caused by the proximity with the surface of ground waters"[1256].

The Apparatus of the Public Defender of Georgia addressed the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia with a letter[1257] requesting data on the number of applications for the allocation of living space filled during 2014 and the eco-migrants provided with requested shelter. The letter also included a query regarding the availability of a unified database of persons affected by natural disasters.

The letter[1258] of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia informed the Apparatus of Public Defender of Georgia that 210 applications

1251 N1355/1; N1358/1; N1356/1; N1744/1; N2092/1; N6867/1; N6865/1; N6861/1

1252 Letter N04-9/5337 dated March 18, 2014, Letter N04-9/373 dated January 20, 2015 of the Apparatus of Public Defender of Georgia

1253 Villages of Akhmeta, Marneuli and Gardabani Municipalities

1254 Letter N524099 of LEPL National Agency for State Property Management of the Ministry of Economy and Sustainable Development of Georgia dated June 17, 2014

1255 Village Golteti of Tetritskaro Municipality

1256 Letter N12-15/131 of the LEPL National Environmental Agency the Ministry of Environment and National Resources Protection of Georgia dated June 3, 2014

1257 Letter N04-9/377 of the Apparatus of the Public Defender of Georgia dated January 20, 2015

1258 Letter N03-01/03/1551 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated January 23, 2015

for the allocation of living space and 1,786 applications on the located residential housing (by the persons affected by natural disasters) were filled during 2014. On the basis of Applications for the Allocation of Living space 33 families were handed over the houses purchased by state in 2013, as for the Applications on the Located Residential Housing by the Affected Individuals – the requests of 32 families[1259] were satisfied; in addition, within the frameworks of a grant agreement made with the Swiss Agency for Development and Cooperation in 2014 4 families[1260] received residential houses. According to the same correspondence, a draft database of the Families Affected by or Displaced as a Result of Natural Disasters has been developed by the Eco-migrants Department of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia.

1259 601,297.8 GEL were spent to purchase residential houses
1260 77,474 GEL were spent to purchase residential houses

THE PROGRAMMES FOR ADAPTATION AND INTEGRATION

The Regulation[1261] imposes an obligation on the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia not only to accommodate the eco-migrants, but also to implement the activities necessary for further adaptation and integration. Thus, only accommodation of the beneficiary is not sufficient for a complete realization of the present right. The implementation of post-accommodation activities implies the creation of adequate living and social conditions for the eco-migrant, which ultimately leads to the settlement and adaptation of an accommodated person to the new region.

The Apparatus of the Public Defender of Georgia issued a letter[1262] to the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia requesting information on the implementation of the activities related to the programs of adaptation and integration in 2014. The correspondence[1263] informed the Apparatus of the Public Defender of Georgia that within the frameworks of an agreement made between the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia, The Government of the Autonomous Republic of Adjara, non-governmental organization Regional Development and Social Support Centre and Swiss Agency for Development and Cooperation the accomodation and integration of 45 eco-migrant families was planned in 2014.

Unfortunately, the received correspondence also reveals that after the accommodation of eco-migrants, the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia did not implement any activities in terms to their integration and adaptation.

Implementation of the programs for adaptation and integration of the beneficiaries is also stipulated by the UN Guiding Principles on Internal Displacement of 1998. In spite of this, not a single project is being implemented to date, what creates additional problems for the eco-migrants.

As already mentioned, the given problem highlights the necessity to develop legislation on eco-migrants. Provision of a long-term living space is not sufficient for addressing the problems of eco-migrants in a long run. The issues of integration should be regulated on a legislative level. Stemming from the availability of resources the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia cannot be the only governmental agency responsible for the accommodation and integration of eco-migrants. It is necessary to attribute the competencies of accommodation and integration of eco-migrants to the different governmental agencies and self-government units.

1261 Resolution N34 of the Government of Georgia on the Approval of a Regulation of the Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated February 22, 2008

1262 Letter N04-9/694 of the Apparatus of the Public Defender of Georgia dated January, 2015

1263 Letter N03-01/03/1551 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated January 23, 2015

FINANCIAL PROVISION

Providing financial support is one of the important aspects of implementation of the rights of eco-migrants. In his Parliamentary Reports[1264] the Public Defender of Georgia discussed the scarcity of funds allocated by the budgetary assignments with the purpose of protecting the rights of eco-migrants, which made it virtually impossible to plan an effective policy and implement relevant activities.

The Apparatus of the Public Defender of Georgia issued a letter[1265] to the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia requesting information on the amount spent on the shelter provision to the families affected by natural disasters in 2014.

According to the received correspondence[1266], in 2014 601,297.8 GEL were spent from budgetary assignments with the purpose of accommodating the eco-migrants; respectively, 32 houses were purchased for the eco-migrants.

In 2004-2010 1,062 houses were purchased with the purpose of accommodating the eco-migrant families.[1267] According to the correspondence[1268] received from the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia in 2014 the persons affected by natural disasters were accommodated in 32 residential houses purchased in 2013.

To date, there are 35,204 families[1269] affected by the natural disasters registered in Georgia. The ministry does not have any data on the number of eco-migrant families. It is necessary to define the number of eco-migrant families and to plan the processes of their accommodation and integration. In 2004-2014 only 1,131[1270] residential houses were purchased by the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia. Stemming from the number of applicants of the programs for accommodation of eco-migrants, the estimated number of eco-migrants is quite high and the amount allocated by the ministry with the purpose of their accommodation is not sufficient for achieving significant progress.

1264 Parliamentary Report of the Public Defender of Georgia for 2011, page 218; Parliamentary Report of the Public Defender of Georgia for 2013, page 619.
1265 Letter N04-9-377 of the Apparatus of the Public Defender Of Georgia dated January 20, 2015
1266 Letter N03-01/03/1551 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated January 23, 2015
1267 Parliamentary Report of the Public Defender of Georgia for 2011, page 218
1268 Letter N03-01/03/1551 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated January 23, 2015
1269 Letter N4/02-09/8630 of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia
1270 1,062 houses purchased in 2004-2010 and 69 houses purchased in 2013-2014

PREVENTION

One of the major issues in the field of eco-migration is to forecast and prevent natural disasters. According to the Regulation[1271] of the Government of Georgia one of the obligations of the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia is to forecast the anticipated migration from calamity prone regions. The legal entity of public law National Environmental Agency[1272] established under the Ministry of Environment and Natural Resources Protection of Georgia monitors the ongoing geological processes. The obligations of the mentioned agency include, but are not limited to, determining the necessity to displace the population from the areas prone to hydro meteorological and geological disasters, establishing and evaluating the scopes of resettlement of eco-migrants, participation in the processes of assessing the hydro-meteorological, geological and ecological risks.[1273]

LEPL National Environmental Agency develops a special annual publication regarding the geological processes ongoing in the country. The publication is sent to all relevant structures. In addition, the newsletter is published on the website of National Environmental Agency.

The Apparatus of the Public Defender of Georgia issued a letter[1274] requesting information from the LEPL National Environmental Agency on the activities carried out for the determination of the scope of resettlement of eco-migrants and the preventive measures taken in 2014.

The letter[1275] of LEPL National Environmental Agency informed the Apparatus of the Public Defender of Georgia that during 2014 the representatives of LEPL National Environmental Agency evaluated 982 residential houses and agricultural plots of land. Out of all examined families 222 households are subject to resettlement to geologically stable areas.

Based on the above, it is essential to develop a unified state policy and strategy for the protection of the rights of population affected by the natural disasters, elimination of the results of disasters and implementation of preventive measures. Therefore, the main recommendation of the Public Defender of Georgia in this field is to develop and adopt a comprehensive legal framework.

1271 Regulation N34 of the Government of Georgia on the Approval of a Regulation of the Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia dated February 22, 2008

1272 Established on August 29, 2008

1273 Order N27 of the Minister of Environment and Natural Resources Protection of Georgia on the Approval of the Regulation of the legal entity of public law - National Environmental Agency dated May 10, 2013

1274 Letter 04-9/603 of the Apparatus of the Public Defender of Georgia Dated January 2015

1275 Letter of LEPL National Environmental Agency, February 9, 2015 N21/892

RECOMMENDATIONS

To the Government of Georgia/Parliament of Georgia

- Lay down a legal definition of an eco-migrant and the group of persons eligible for this status.

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Create a digital database of the persons affected by and displaced as a result of natural disasters;
- Provide a strategy/action plan for the accommodation of eco-migrants and provision of other social guarantees;
- With the purpose of protecting the rights of the persons affected by and displaced as a result of natural disasters implement the programs for a post-accommodation adaptation and integration.

To the Government of Georgia

- Provide an adequate evaluation of the publications prepared annually by the LEPL National Environmental Agency and ensure the implementation of timely and appropriate responses for preventing or addressing the results anticipated by the mentioned publications.

ABOUT REPATRIATION OF PERSONS FORCIBLY REMOVED FROM THE SSR OF GEORGIA IN THE 1940S BY THE FORMER SOVIET UNION

Compared to the previous years, in 2014 the Apparatus of Public Defender of Georgia received an increased number of applications from the citizens expelled from Meskheti. Respectively, in the present chapter we will discuss the issues related to the repatriation of persons forcibly removed from SSR of Georgia in the 1940s by the former Soviet Union and emphasize their problems.

The issue of repatriation of Meskhetian population removed from the territories of Southern Georgia is a subject to robust discussions to date. As you know, upon joining the Council of Europe in 1999, Georgia undertook the obligation[1276] to repatriate the population forcibly removed from SSR of Georgia in the 1940s by the former Soviet Union. The mentioned document obliged the government of Georgia to develop a legal framework for the repatriation and integration of forcibly removed persons within two years after its adoption, including the right to Georgian citizenship of the population expelled from the Southern Georgia and the obligation to complete the process of repatriation within 12 years. Despite the mentioned terms, the process of examination of applications of persons seeking a Status of Repatriated is still ongoing at the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. Based on the data of 2014, in total 1,533 persons have been granted the Status of Repatriated, out of whom 359 received the mentioned status[1277] and 382 were naturalized in 2014.

1276 PACE Opinion, January 27, 1999 – information is available on the following webpage: http://www.assembly.coe.int//Main.asp?link=http://www.assembly.coe.int/Documents/AdoptedText/ta99/eopi209.htm#1 [Last viewed on December 24,2014]

1277 Information provided by the Department of Migration, Repatriation and Refugee Issues of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (meeting dated February 2, 2015)

With the purpose of legal regulation of the processes of dignified repatriation the Parliament of Georgia, in 2007, adopted the Law on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union.

The purpose of the mentioned law is the create legal mechanisms for the repatriation of forcibly removed persons and their descendants to Georgia, while the system established by the law is based on the restoration of historical justice, principles of dignified and voluntary repatriation and envisages gradual repatriation.[1278] Although, it is also noteworthy, that the given law determines only the procedures of granting the Status of Repatriated to the applicant. It does not establish social and economic guarantees and issues related to the property rights, which, we assume, are one of the major aspects of a dignified repatriation of repatriants.

The law also obliges the state to naturalize the repatriants through a simplified procedure, although there are some problems in this direction as well. Particularly, the analysis of the applications received by the Apparatus of the Public Defender within the reporting period reveals that there is a specific group of persons, who are not able to receive Georgian citizenship. The mentioned category includes the individuals with the Status of Repatriated as well as persons repatriated before the adoption of the aforementioned law, who were not granted a Status of Repatriated. The examination of the mentioned applications revealed that a small part of applicants have already been naturalized, although the edict will come into force only upon the submission of a document confirming renunciation of previous citizenship to the competent government bodies. This is one of the major problems the persons removed from Meskheti region have to face; according to them, this is not a simplified procedure and for a lot of them it is impossible to renunciate previous citizenship, considering the bureaucratic and other barriers existing within the countries of their citizenship. If the mentioned document is not submitted within 2 years after issuing the edict, the Edict of the President of Georgia Granting Citizenship to the applicant is deemed invalid. Respectively, the persons under the mentioned category will be forced to leave or be expelled from the country, as there will be no legal basis for their stay in Georgia.

Statistical data also confirms the existence of problems related to naturalization. According to the information provided by the Department of Migration, Repatriation and Refugee Issues of the Ministry of Internally Displace Persons from the Occupied Territories, Accommodation and Refugees of Georgia, to date only 382 persons with a Status of Repatriated have been naturalized.

The Law of Georgia on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union does not specify the terms of granting the status to the applicants seeking a Status of Repatriated, which is a serious flaw in the law.

1278 Article 1, Law of Georgia on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union

The requirements determined by Clauses 1 and 2 of the Article 7 of the present law, according to which the government of Georgia is authorized to establish additional requirements related to the issue of granting the Status of Repatriated to the applicants are ambiguous, since the terms are not defined and we consider that the said Article does not reflect the interests of persons seeking the Status of Repatriated.

INTEGRATION OF REPATRIANTS

In spite of positive and significant activities implemented by the Government of Georgia for the repatriation of forcibly removed persons, complete social integration of the repatriated population still remains to be a problem. Until 2014 the state did not have a strategy for a dignified repatriation of persons forcibly removed from Meskheti region. The strategy was approved during the reporting period of 2014, which can be considered as a major step forward.

National Strategy on the Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union aims to support the dignified and voluntary repatriation of forcibly removed population and to promote their civic integration.[1279]

The mentioned strategy reflects general regulations, according to which the document determines the state vision and objectives in two main directions: dignified repatriation and a social integration of forcibly removed persons. In order to achieve these objectives it is necessary to raise the awareness of the repatriants and promote their adaptation to a new legal environment.

The strategy applies to the persons, who were legally granted the Status of Repatriated and to those, who were naturalized in accordance with the Law of Georgia on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union and the resolution of the Government of Georgia on the Simplified Procedure for the Naturalization of those having the Status of Repatriated.

According to the strategy, raising the awareness of the repatriants and their adaptation to the new legal environment is essential for their dignified repatriation; for this purpose, it is essential to assess the needs of repatriants, identify the availability of regional resources and provide information in an understandable language.

The mentioned strategy is very important for promoting the processes of repatriation and integration of forcibly removed persons, although it is noteworthy that the document includes quite general information. We consider that it is necessary to speed up the development of an action plan, which will reflect specific mechanism and action, in particular, the activities supporting integration during the post-repatriation period.

One of the most serious problems of the Meskhetian repatriants is that they do not have a command of a state language. Most of the beneficiaries do not speak Georgian, what hinders their post-repatriation integration and their inclusion in the local activities and needs to be addressed urgently.

Special attention should be paid to the inclusion of the repatriants in different state programs, which currently are not accessible for them. According to the information of the Ministry of Internally Displaced

1279 National Strategy on the Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union, Preamble.

Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the given process will be determined by the action plan, which is being currently developed and will be approved in near future.

It is also important to mention the establishment of an inter-agency governmental council working on the issues of repatriation of persons forcibly removed from Georgia in the 1940s by the former Soviet Union, which has been functioning since March 1, 2011. The main purpose of the council is to coordinate the agencies working on the issues of repatriation and support the implementation of specific initiatives and recommendations[1280]; although, it is also noteworthy, that, stemming from the intensity of its meetings, the work of the council is quite inefficient. It is also a fact that the problems of repatriated Meskhetians remain unsolved to date. In particular, the problem of Meskhetian population residing in the country without Georgian Citizenship still exists. Despite their best intentions, they cannot serve in a military service, cannot enjoy the benefits and assistances accessible for the Georgian citizens. Their biggest problem is unemployment. They have to work abroad and provide their income to their families living in Georgia, what definitely hinders the process of their integration. We consider that the inter-agency governmental council working on the issues of repatriation should take more intensive and effective steps in order to address the problems of the repatriated population.

1280 The information is available on the website < http://mra.gov.ge/geo/static/173> [Last viewed on December 18, 2014]

SO-CALLED SELF-REPATRIATED MESKHETIANS

The situation of those Meskhetians, who voluntarily resettled to Georgia, is equally problematic. In 1960-80 several Meskhetian families returned voluntarily and created small settlements in Georgia. To date there are 557 repatriated Meskhetians living in Georgia, split into two settlements in Imereti and Guria Regions – Nasakirali, Guria (139 persons – 28 families) and Ianeti, Imereti (168 persons – 30 families). Only a small number of families lived in Samtskhe-Javakheti, although, in recent years, approximately 150 Meskhetians returned to this region from Azerbaijan. They are mainly concentrated in Akhaltsikhe and Abastumani. Around 100 Meskhetians (repatriated from Kirgizstan and Kazakhstan) reside in Tbilisi. The situation of several families living in Gori, who returned to Georgia in 2006 with a special invitation of the President of Georgia, is of special nature, since their legal status is still ambiguous and they have not been naturalized yet. As for the returnees with the Status of Repatriated, they are settled on the territory adjacent to Akhaltsikhe.[1281]

It is noteworthy, that the majority of persons falling within the mentioned category do not have the Status of Repatriated and respectively cannot access the aforementioned simplified procedure for naturalization. As most of them did not possess sufficient information about the legal requirements for applying for the Status of Repatriated, part of the applicants were not able to gather all the necessary documents and were denied the status. We believe that it is essential for the state to gather the necessary information on the mentioned persons and regulate the legal basis for their stay in Georgia.

Despite the fact that the Georgian government is responsible for the implementation and promotion of the processes of repatriation, to date the development of specific steps for the repatriation process has been delayed. We consider that the state must speed up the process of repatriation, in order to fully meet the obligations to the Council of Europe and support the restoration of historical justice.

RECOMMENDATIONS

To the Parliament of Georgia, the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia

- To review the the Law of Georgia on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union. Specifically, the law does not determine the terms for applying for the Status of Repatriated and for granting the requested status to

1281 The information is available on the website < http://repatriation.ge/uploads/_EC_ECMI_ACF.pdf> [Last viewed on December 11, 2014]

the applicant. Also, review the requirements stipulated by the Clauses 1 and 2 of the Article 7 of the present law, according to which the Government of Georgia is authorized to determine additional requirements in terms of reviewing the application for the Status of Repatriated.

- To speed up the development of an action plan based on the National Strategy on the Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union, prescribing specific measures, in different fields, for supporting the processes of repatriation and post-repatriation activities for the integration of repatriated citizens.

To the Ministry of Education and Science of Georgia

- To introduce Georgian learning programmes for the repatriated and those willing to repatriate to Georgia;
- To implement programmes targeted at the repatriated population to increase the accessibility of professional and higher education.

To the Ministry of Justice of Georgia and the Ministry of Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia

- To take necessary measures for speeding up and supporting the process of naturalisation of self-repatriated persons, as well as those with the Status of Repatriated.

LEGAL STATUS OF ALIENS

LEGISLATIVE CHANGES

One of the determinants of democracy in the country is how the state protects and recognizes the rights and freedoms of aliens and stateless persons. Article 47 of the Constitution of Georgia provides legal guarantees for the rights of aliens in Georgia. The Constitution of Georgia offers aliens and stateless persons rights equal to those of Georgian citizens. On the basis of Constitutional Regulations the human rights status of aliens is governed by the Law of Georgia on Legal Status of Aliens and Stateless Persons.

It is noteworthy, that during the reporting period significant changes were made to the legislation on the legal status of aliens. A new edition of the Law of Georgia on Legal Status of Aliens and Stateless Persons entered into force on September 1, 2014; Normative acts and bylaws were adopted; the Resolution of the Government of Georgia on the approval of a list of countries, the citizens of which can enter Georgia without visa was issued, and the migration strategy of Georgia was approved.

The implemented changes brought about a new visa regime. In particular, the maximum of allowed visa-free stay in Georgia was reduced from 360 to 90 days within any 180 days. Visa-free regime was abolished with 24 countries. Before the legislative changes 118 countries could access the visa-free regime with Georgia, currently the number of mentioned countries is 94.

As per the definition of the representative of governmental agencies, the development of the law was stipulated by unregulated immigration processes in the country caused by the visa policy. Right management of migration processes is of special importance in the process of European integration[1282].

According to the new law LEPL Public Service Development Agency of the Ministry of Justice of Georgia does not issue Georgian visas anymore. Georgian visas are issued by the diplomatic representations and consular offices outside the country. In addition, according to the changes implemented in November, 2014 the Ministry of Foreign Affairs of Georgia issues visas to the aliens staying in Georgia on a legal basis[1283]. Pursuant to the law, in exceptional cases the visas will be issued upon arrival at the state border of Georgia. The new regulation creates certain obstacles for those countries where Georgia does not have a diplomatic mission or a consulate. Respectively, an alien willing to enter Georgia will have to travel to a third country in the vicinity, where Georgia has a diplomatic mission or a consulate. This may pose an obstacle for aliens willing to enter Georgia.

It is noteworthy that according to the new law, an alien, who entered Georgia before March 17, 2014 and by February 19, 2015[1284], was staying in the country, after the expiration of his lawful stay in Georgia has

1282 http://www.mfa.gov.ge/MainNav/ConsularInformation/VisaInfoForeign/100-questions.aspx March 30, 2015
1283 Clause 1^1, Article 6, Law of Georgia on Legal Status of Aliens and Stateless Persons
1284 Amendment N 3101 dated February 19, 2015; Article 72, Clause 5 of the Law of Georgia on Legal Status of Aliens and Stateless Persons

a right to apply for the Immigration Visa until July 1, 2015, unless he was previously denied a residence permit. The unlawful stay of an alien, who in the mentioned case will receive an immigration visa, will be considered valid and he will be released from the obligation to pay the fine determined by the Georgian legislation. Before making a final decision about issuing the immigration visa, an alien cannot be expelled from Georgia.

Certain questions arose within the society regarding the criteria determining the new list of the countries, citizens of which are eligible for a visa free entry to Georgia. This emphasizes the lack of awareness and inclusion of the society in the processes of developing new regulations. Awareness raising of foreign students is of paramount importance, as they have to consider their relatively low financial and time-bound resources while gathering necessary documentations and applying for Georgian visa.

The aforementioned law established new categories of visas and residence permits. In addition, the draft law defines two types of visas – short term and long term.

Obtaining a residence permit represents a basis for a legal stay of aliens in Georgia. Except for the exceptional cases envisaged by Georgian legislation, in order to obtain a residence permit an alien must possess a long-term Georgian visa issued with the same purpose. E.g. pursuant to the new law, the study permit is issued for the foreign citizens only with the purpose of studying at the educational institution authorized by the Ministry of Education and Science of Georgia and the applicant is required to possess a long-term immigration visa for the purpose of studies. According to the old law, the legal stay in Georgia was sufficient for obtaining a residence permit[1285].

The new law provides a temporary identity card, as a provisional identification document issued to the refugees, applicants seeking humanitarian or stateless status and in other cases envisaged by the law.

Stateless persons living in Georgia, who obtained their status before the new law entered into force and whose residence permits have expired, shall apply to LEPL Public Service Development Agency for extending the residence permit before September 1, 2015. If they fail to meet the present obligation, their Status of Stateless Person will be revoked.

One of the innovations envisaged by law is the provision of provisional identity cards to the stateless persons, refugees and the seekers of humanitarian status. The mentioned document supports the implementation of certain rights of relevant individuals.

The new component of a draft law also includes detailed provisions for the expulsion of aliens from Georgia. According to the project, the decision on the expulsion of the alien is executed by the Ministry of Internal Affairs of Georgia.

The amendments to the mentioned law caused some confusion among the foreign citizens residing in Georgia. The Prime Minister of Georgia made a formal statement in this regard, apologizing[1286] to those citizens who were affected by the new regulations for entering and staying in Georgia and claimed that the Government of Georgia would discuss the possible ways of assisting them. As per the order of the Prime Minister of Georgia, the Ministry of Justice of Georgia, the Ministry of Foreign Affairs of Georgia and the Ministry of Foreign Affairs of Georgia shall pay special attention to each alien, in order to place their legal status under the respective regulations of the new law without any additional expenses.

The fact that the implemented legislative changes systematized the important issues related to the migration processes and the intention of the legislator to harmonize Georgian legislation with EU standards are evaluated very positively. Although, it is also worth mentioning that denying the residence permit/visa and

1285 This stipulated the possibility to obtain a residence permit on the basis of any category of visa, or in the exceptional cases prescribed by law – even during a visa-free stay in Georgia.

1286 http://rustavi2.com/ka/news/821, October 8, 2014 [Last viewed on March 28, 2015]

refusing to enter Georgia on the grounds of national security in accordance with the new regulation is one of the major flaws of the mentioned law.

Analysis of the cases appealed to the Apparatus of the Public Defender of Georgia revealed the fact that the abovementioned grounds for decisions are determined in consistence with the conclusions of the Counterintelligence Department of the Ministry of Internal Affairs of Georgia. It is noteworthy, that based on its legal nature, the conclusion of the mentioned department does not represent an administrative-legal act, therefore the interested parties do not have a possibility to appeal. Stemming from this, the conclusion needs to be reasonable and the reference should be made to its factual basis to the greatest extent possible (considering the issues classified as state secret). This will not leave the room for arbitrary decisions made by the respective units of the Ministry of Internal Affairs of Georgia. It is also noteworthy, that the National Action Plan on Protection of Human Rights envisages the introduction of high standards of personal privacy protection and the enhancement of legislative basis in order to ensure compliance with the international and European standards.

During the reporting period the Apparatus of the Public Defender of Georgia examined several cases with regard to issuing visas and residence permits. Certain trend was revealed after examining the applications and the information provided by respecive agencies. The only grounds for denying the aliens the basis for their legal stay in Georgia – visas and residence permits, was the conclusion of the Counterintelligence Department of the Ministry of Internal Affairs of Georgia on the inexpediency of issuing visa/residence permit. The conclusions, as a rule, are of formulaic nature and contain neither respective justifications, nor the references to the factual grounds for denial. The examination of the above-mentioned cases by the Apparatus of the Public Defender of Georgia also revealed that, in the case of appealing the decisions of the LEPL Public Service Development Agency to refuse a residence permit, the national courts did not request additional information from the Counterintelligence Department of the Ministry of Internal Affairs of Georgia and made their decisions referring solely to the conclusion issued by the mentioned agency. In addition to this, the trials focused on the fact that the information available to the Counterintelligence Department of the Ministry of Internal Affairs was classified as a state secret. Using the legal case of the European Court of Justice, during the hearing of the case of O.S.S. at Tbilisi City Court, the Apparatus of the Public Defender of Georgia presented friend-of-court's opinion[1287], prescribing the guiding legal norms for the examination of similar cases, in order to prevent the violations of the Right to Respect Private and Family Life of an alien. The mentioned case is discussed in more detail below.

1287 Friend-of-court's opinion N04-11/12851 of the Public Defender of Georgia dated October 27, 2014

CASES EXAMINED BY THE APPARATUS OF THE PUBLIC DEFENDER OF GEORGIA

CASES OF V.A. AND M.M.

Violation of the rights of an applicant was revealed after the examination of an application of Turkish citizen V.A. by the Apparatus of Public Defender of Georgia. On the basis of a conclusion produced by the Counterintelligence Department of the Ministry of Internal Affairs of Georgia, the mentioned individual was denied permanent residence permit by LEPL Public Service Development Agency of the Ministry of Justice of Georgia on December 2, 2014 and July 4, 2014.

Applicant's child is studying at LEPL Batumi Public School N7 of the Ministry of Education and Science of Georgia, another son is working for LEPL Children and Youth Development Fund of the Ministry of Sport and Youth Affairs of Georgia. The applicant possesses immovable property in his ownership, he has 25 years of experience of medical practice in Georgia and at the time of filing the application he was employed as a doctor at the particular hospital in Batumi.

It was revealed that the applicant, together with his family, is fully integrated in Georgia. The amount of time the applicant and his family spent in Georgia has led to the establishment of their social connections and their adaptation to a new living environment. As V.A.'s both children are Georgian citizens, one of them is employed in the public sector and another one is studying at school, it is clear that they will not be able to maintain relationship with their family in another country. In this case we are dealing with a family settled on the territory of Georgia and according to the Case Law of the European Court of Human Rights, within the frameworks of Article 8 of the, the Convention for the Protection of Human Rights and Fundamental Freedoms, the state has an obligation to respect a family's choice to stay in the country, where they are fully integrated. In addition, state shall allow them to live together with their family members.

According to the results of the examination performed by the Apparatus of the Public Defender of Georgia during the hearing of a case at Tbilisi City Court, the court did not study the factual circumstances of a conclusion produced by the Counterintelligence Department of the Ministry of Internal Affairs of Georgia and without a comprehensive examination of circumstances (?) upheld the decision of LEPL Public Service Development Agency. Considering the mentioned situation, the decision of Tbilisi City Court was unjustified and violated the applicant's Right to Respect Private and Family Life.

On the basis of similar factual and legal grounds, the Public Defender of Georgia determined the infringement of the right to family life of a citizen of Arab Republic of Egypt M.M.

CASE OF O.S.S.

The applicant was a citizen of Nigeria, who has been studying in Georgia since July 26, 2012 pursuant to the Order N722 of the Ministry of Education and Science of Georgia dated July 19, 2012. The four-year study programme ends in June 2016. O.S.S. had an expectation that after finishing the course he would be able to pursue his professional and private goals respectively. The documentation confirms that he is a motivated student and is fully integrated in Georgia.

As per the decision N1000375707 of LEPL Public Service Development Agency of the Ministry of Justice of Georgia, dated March 4, 2014, the citizen of Nigeria was denied the provisional residence permit, as the Counterintelligence Department of the Ministry of Internal Affairs of Georgia considered it inexpedient to grant residence permit to the applicant. The mentioned decision was appealed in the court by O.S.S.

As the given case included important issues (protecting the Right to Respect Private and Family Life pertaining to the right to enter and reside in the country), which are especially noteworthy in terms of human rights protection and addressing them would assist in implementation of guarantees provided by Chapter 2 of the Constitution of Georgia and would support the processes of fulfilling the international obligations by the state, the Public Defender of Georgia addressed Tbilisi City Court with friend-of-court's opinion[1288] on based on the authority granted by the Organic Law.

By analysing Georgian Legislation, as well as international norms and practices, we can conclude that the Right to Enter a Certain Country does not exist and respectively, denying entry is not a violation. Although, the situation changes when an individual has family ties within the country and refusal to allow entry into the country represents a violation of his Right to Respect Private and Family Life.

When the refusal to allow entry into the country leads to the abuse of fundamental human rights, the state is required to introduce more detailed procedures, providing the opportunity to protect respective rights. The practice of the European Court of Human Rights confirms that, even if the basis for denying entry is linked with the security of a country and is classified information, state cannot disregard the explanatory requirements of procedural fairness while refusing the alien to enter the country.

As per the definition[1289] of European Court of Justice, if the applicant has professional relations and interests within a country, refusing him to enter the country is an interference with his private life.

When the rights of a person are limited on the grounds of protecting state safety, this does not imply that he cannot enjoy legal guarantees. On the contrary, in this case, the risk of arbitrary action increases significantly. Respectively, implementation of the Right to Fair Trial is of paramount importance. Implementation of the given right does not solely imply the formal opportunity to appeal in the court, it also envisages the availability to activities providing an effective, efficient and non-illusory mechanism for responding to the facts of human rights violation.[1290] On the basis of Georgian Legislation and the practice determined by the European Court of Human Rights, the Public Defender of Georgia believes that the decision of LEPL Public Service Development Agency of the Ministry of Justice of Georgia should rely on factual circumstances, which can be verified by the court. The activities of the court should not be limited to the examination of formal lawfulness of the decisions made by LEPL Public Service Development Agency.

The Apparatus of the Public Defender of Georgia monitored the trials of O.S.S. The fact that Tbilisi City Court requested and examined the information and documentation of Counterintelligence Department of the Ministry of Internal Affairs of Georgia, according to which the mentioned department ruled granting the residence permit to the applicant as inexpedient, is evaluated quite positively. Given that the response of an administrative body does not contain any justification, due to unavailability of factual circumstances, it

1288 Friend-of-Court's opinion N04-11/12851 of the Public Defender of Georgia dated October 27, 2014
1289 Dalea v. France, 964/07, 2.2.2010.
1290 The Constitutional Court of Georgia, Judgement of June 28, 2010, N /466, II.P.14.

is barely possible to verify whether this is the case of discrimination or unequal treatment of persons with equal status and it minimizes the opportunities for preventing the mentioned risks. These risks emphasized the necessity of the court to examine the aforementioned factual circumstances in detail. Respectively, verification of the aforementioned circumstances by the court is also important for the evaluation of functionality of the administrative body within the frameworks of statutory provision and the principle of proportionality.

On February 9, 2015 Tbilisi City Court partially satisfied O.S.S.'s appeal, partially annulled the decision of LEPL Public Service Development Agency to deny the applicant a residence permit and ruled to re-examine his application.

REGARDING THE RIGHT OF FOREIGN NATIONALS TO ENTER GEORGIA

During the reporting period the Public Defender of Georgia examined the applications regarding the violation of the Right to Respect Private and Family Life due to the refusal to allow entry in Georgia.

According to the applications, foreign nationals[1291], whose family members were citizens of Georgia, were refused to enter Georgia.

In its decisions[1292] regarding the Right to Enter a Country, the European Court of Human Rights, noted that 'the state is entitled to control the entry of aliens into its territory, as well as their residence and expulsion. The Convention does not guarantee the rights of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, contracting States have the power to expel an alien. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society'.

While the essential object of Article 8 is to protect the individual against arbitrary action by public authorities, it does not solely oblige the state to refrain from interference: there may in addition be positive obligations inherent in ensuring effective "respect" for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.[1293]

Interference in the Right to Respect Private and Family Life is not in breach of the Convention if it is "in accordance with the law", pursues one or more of the legitimate aims contemplated in paragraph 2 of Article 8 and may be regarded as a measure which is "necessary in a democratic society".[1294]

The issue of foreign nationals entering Georgia is regulated by national legislation. The Law of Georgia on Legal Status of Aliens and Stateless Persons[1295] (in force since September 1, 2014) rules the basis for denying the foreign citizens the entry into Georgia.

Stemming from the above, on the basis of a comprehensive analysis of the practices of the European Court of Human Rights and a National Legislation, we may conclude that denying entry into the country does not itself violate the right of applicant. Although, when an applicant has family relations with the country, refusing him to enter Georgia may violate his Right to Respect Private and Family Life.

In particular, one of the examined cases stated that a foreign citizen Z.G. was denied entry to Georgia on

1291 Z.G.; Z.B.; S.S.
1292 *Üner v. The Netherlands* № 46410/99 , § 54;
1293 Tavlı v. Turkey, №11449/02, §28
1294 Messina v. Italy, № 25498/94 , §63
1295 Clause 1, Article 11, Law of Georgia on Legal Status of Aliens and Stateless Persons

the bases of Subclauses 'E'[1296] and 'F'[1297] of Article 14 of The Law of Georgia on Legal Status of Aliens and Stateless Persons (edition in force until September 1, 2014);[1298] Foreign citizen S.S. was denied entry to Georgia in pursuance of Subclause 'H'[1299] of Article 14 of The Law of Georgia on Legal Status of Aliens and Stateless Persons (edition in force until September 1, 2014).[1300] The Apparatus of the Public Defender of Georgia requested the Ministry of Internal Affairs to provide an explanation[1301] whether there are any other basis for denying foreign citizens entry to Georgia determined by legal acts/bylaws (except for Article 14 of the Law of Georgia on Legal Status of Aliens and Stateless Persons). Unfortunately, the Ministry of Internal Affairs of Georgia did not provide mentioned information to the Apparatus of Public Defender of Georgia. The information regarding denying foreign citizen Z.B. entry into Georgia is classified as state secret and has been assigned a certain degree of secrecy (griffe) – 'the secret'.[1302] The applicants noted that they were not provided the explanations for the refusal to allow entry into Georgia.

Although, the legislation envisages the obligation of a state to provide explanation for denying a foreign citizen entry into Georgia. In particular, in pursuance of a Clause 2 of Article 14 of The Law of Georgia on Legal Status of Aliens and Stateless Persons (edition in force until September 1, 2014), 'foreign citizen is denied entry into Georgia in a written form providing an explanation of the basis for denial mentioned in the Clause 1 of the present article'.

Given that, upon arrival at the state border, foreign citizens were not provided with factual and legal basis for denying their entry into Georgia, they did not have the opportunity to appeal the mentioned decision in the court.

Unfortunately, in none of the cases did the Ministry of Internal Affairs of Georgia provide the information regarding the factual basis for limiting the discussed right.

The Georgian Legislation on Aliens respects and protects the principle of family unity[1303]. It is also worth mentioning that more detailed regulations regarding the given principle were not included in the edition in force until September 1, 2014. The mentioned issue is discussed in the Parliamentary Report of 2013 of the Public Defender of Georgia[1304]. Unfortunately, the current edition of the mentioned law (in force after September 1, 2014) does not envisage the examination of family relations of a foreign citizen while making a decision on his entry into the country, in contrast to the cases of expulsion of aliens from Georgia.

On the basis of cases examined by the Apparatus of Public Defender of Georgia, we may conclude that the bodies of the Georgian Government entitled to control the entry of aliens into the country, while denying the foreign citizens entry into Georgia, do not consider their family relations within the country. The mentioned practice may be stipulated by the particular circumstance that the legislation envisages the examination of such information only in the cases of expulsion.

It is noteworthy that the Georgian Legislation on Aliens respects and protects the principle of family unity. Stemming from this statement, while making a decision regarding the entry of foreign citizen into Georgia, the relevant representatives of Georgian Government should be guided by Clause 'G' of Article 3 of The Law of Georgia on Legal Status of Aliens and Stateless Persons (edition in force until September 1, 2014).

1296 His stay in Georgia poses threats to public order and security of Georgia, health of Georgian citizens and persons residing in Georgia and protection of their rights and legal interests
1297 His stay in Georgia affects the relationships between Georgia and any other foreign country
1298 Letter N1068594 of the Ministry of Internal Affairs of Georgia date June 6, 2014
1299 Georgian legislation envisages other basis for denying entry to Georgia
1300 Letter N2060176 of the Ministry of Internal Affairs of Georgia date October 16, 2014
1301 Letter N04-/747 of the Apparatus of the Public Defender of Georgia dated January 29, 2015
1302 Letter N2612986 of the Ministry of Internal Affairs of Georgia dated December 22, 2014
1303 Subclause 'G', Article 3, The Law of Georgia on Legal Status of Aliens and Stateless Persons (edition in force until September 1, 2014)
1304 Parliamentary Report of 2013 of the Public Defender of Georgia, page 364

RECOMMENDATIONS

To the Government of Georgia/Parliament of Georgia

- Regulate the issue of examining the family relationships of a foreign citizen while making a decision regarding his entry into Georgia on a legislative level.

To the Government of Georgia

- Raise the awareness of foreign citizens and especially international students residing in Georgia on the planned legislative changes regarding the legal status of aliens in Georgia.

To the Ministry of Internal Affairs of Georgia

- In pursuance to the law, provide the explanations for denying residence permit/visa to foreign nationals on the grounds of national security and, to the extent possible provide necessary information to the persons denied the mentioned right.
- While discussing and making decisions on allowing the entry of foreign nationals into Georgia, the employees of respective agencies of the Ministry of Internal Affairs should always protect the principle of family unity provided by the The Law of Georgia on Legal Status of Aliens and Stateless Persons;
- To provide legal and factual basis for the limitation of the abovementioned right to the persons who were denied entry into Georgia.

To the Common Courts of Georgia

- During the hearing of a case, the court should request and review the information available at the the Counterintelligence Department of the Ministry of Internal Affairs of Georgia, which was the basis for denying a foreign national entry into Georgia.

THE STATE OF PROTECTION OF RIGHTS OF PERSONS HAVING A REFUGEE/HUMANITARIAN STATUS AND ASYLUM SEEKERS

As of December 31, 2014, there are 442 persons having a refugee and humanitarian status in Georgia[1305]. 297 persons have a refugee status and 145 persons have humanitarian status[1306]. Among them, 228 persons are citizens of Russian Federation, who were granted refugee status with the prima facie principle[1307]. While the number of asylum seekers has significantly increased during last three years, in 2014, like in previous years, the number of asylum seekers and persons granted asylum appealing to the Apparatus of Public Defender of Georgia was not high. In spite of this, the Apparatus of Public Defender of Georgia actively monitors the issues of asylum seekers, refugees and persons having humanitarian status, with the purpose to examine and improve their human rights situation[1308].

INCREASE IN THE NUMBER OF APPLICATIONS OF ASYLUM SEEKERS

As already mentioned, in recent years the number of asylum seekers has increased, which was caused by the current armed conflicts across the world, particularly in Iraq, Syria and Ukraine. Compared to 2012-2013, an unprecedented number of asylum seekers was observed during the reporting period. As of 2012, the number of asylum seekers was 599, in 2013 – 717 and in 2014 their number increased significantly and reached 1792.

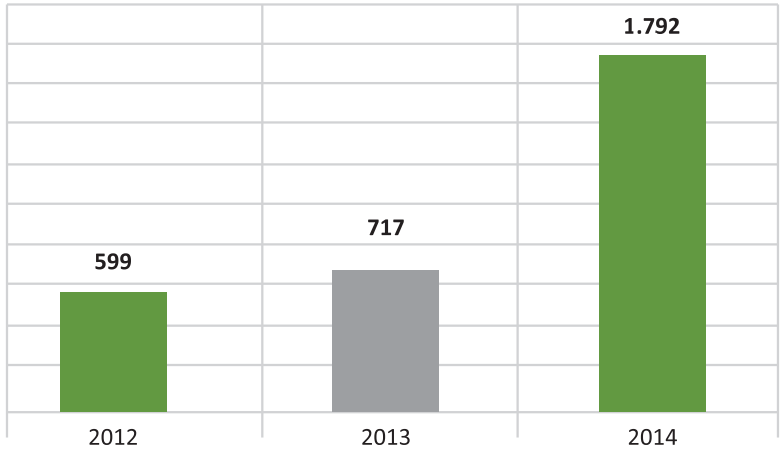
1305 Letter N2-01/05/2449 of the Ministry of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia

1306 Ibid. N2-01/05/2449

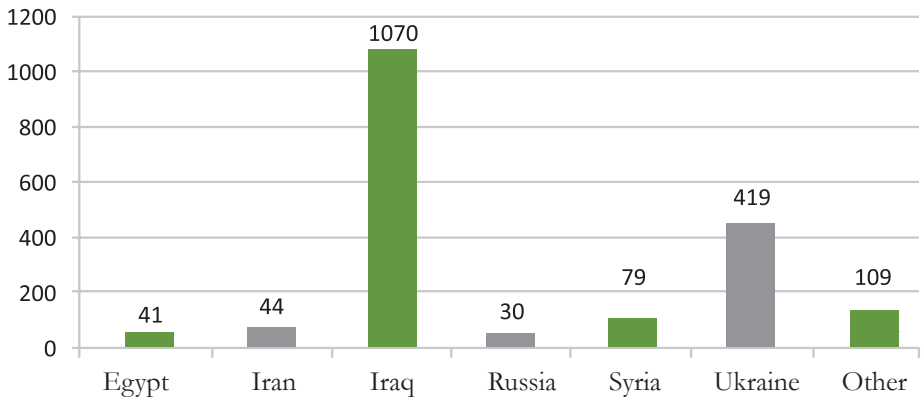
1307 Massive immigration of refugees (lat. at first sight)

1308 Since November 2014, certain activities have been carried out with regards to the asylum seekers, refugees and persons having humanitarian status within the frameworks of Supporting Public Defender's Office to Address the Situation on IDPs And Other Conflict-Affected Individuals Project

Number of Asylum Seekers in 2012-2014



Number of Asylum Seekers According to the Countries of Origin



The increase in the number of asylum seekers should be followed by adequate steps from the state. This includes government's responsibility to protect the rights of the mentioned persons and provide necessary support and procedures congruent with the international standards.

ASYLUM PROCEDURE

The Convention relating to the Status of Refugees adopted in Geneva in 1951 is a key legal document defining the status and rights of refugees and legal obligations for their protection. The main purpose of the mentioned convention was to assist the persons removed from their homelands and displaced as a result of World War II. Although, given that the number of refugees was increasing on a daily basis, in 1967, it became necessary to adopt an additional protocol expanding the scope and terms of the convention. According to the convention, a refugee is a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[1309]

As for Georgia, the Law of Georgia on Refugee and Humanitarian Status and the Order N100 of the Ministry of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia on the Procedures of Granting Refugee and Humanitarian Status define the legal status of asylum seekers, refugees and persons with humanitarian status as was as the rules of granting, cancelling and revoking the mentioned statuses and the rights and obligations derived from them. The Ministry of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia is the only administrative body responsible for receiving and examining the applications of asylum seekers and making respective decisions.

Despite the increased number of asylum applicants, the rate of granting the status to the asylum seekers by the state is quite low. Considering that the majority of asylum seekers originate from Syria and Iraq, where the current armed conflicts have increased the number of persons requiring international protection,[1310] the rates of granting asylum (Refugee and Humanitarian Status) in Georgia are quite law. According to the information of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, during the reporting period 133 persons were granted the status (29 were granted refugee status and 104 – humanitarian status), while 228 persons were denied asylum, 172 cases were terminated on the basis of individual applications of asylum seekers and 234 persons were refused to get registered as asylum seekers.[1311] We believe that the refusal to get registered as an asylum seeker is a serious problem and does not provide fair access to the asylum procedure. The present rate actually indicates that in 234 cases the asylum seekers were not given full access to the asylum procedure.

1309 Article 1a (2), Convention Relating to the Status of Refugees, Geneva, 1951

1310 Mid-Year Trends of 2014, UNHCR, page 5, information available at http://www.unhcr.org/54aa91d89.html [last viewed on March 11, 2015]

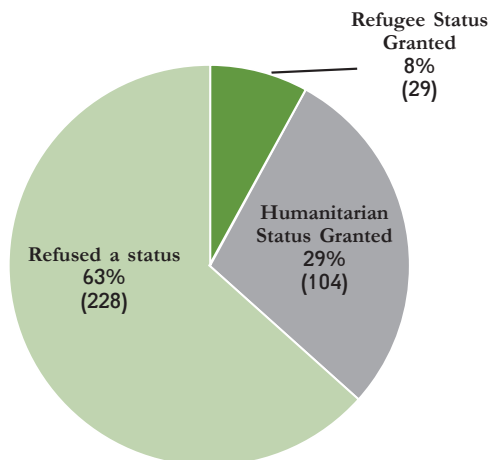
1311 Letter N2-01/05/2450 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

According to Article 12 of the Law of Georgia on Refugee and Humanitarian Status, the responsible body shall examine the expediency of registering a person as an asylum seeker within 10 days, which, we believe is not enough, while under the same law the examination of asylum proceedings can last up to 6 (or in some cases 9[1312] months). The 10-day period of preliminary review cannot be regarded sufficient for a comprehensive examination of factual and legal circumstances. It is also noteworthy that the rate of cases terminated for other reasons (individual applications, absence of asylum seekers at the procedures envisaged by law) is also quite high, which can be attributed to several reasons. The mentioned can be caused by the flaws or the lack of flexibility of the asylum procedure. One of the reasons for this problem could be the terms for reviewing the asylum applications (complete procedure can take up to 9 months), or the goal of a registered asylum seeker, according to which the beneficiary may not consider the country as a place of long-term residence and require only a transit stay in Georgia.

As for the problems related to the length of asylum procedure, it creates obstacles for the most vulnerable group of persons, since during this period the asylum seekers cannot enjoy benefits and allowances (except for the persons living in the center for asylum seekers, who are eligible for monthly assistance). As an example, in the countries of EU, such as Poland, the asylum procedure can last for six months, but in the case if the decision is not made within the said period of time, the asylum seeker appeals to the Office of the Affairs of Aliens, which grants him a document, based on which a person can legally be employed for a specified period[1313]. The legislation of another EU state, Austria, defined the term for reviewing the application for asylum as 6 months, although the given term is reduced to three months, in the case if a person has been detained or the procedures of his expulsion have started.[1314]

The table below shows that, as of 2014, the rate of granting refugee status is 8%, and the rate of granting complete status (which includes additional legal protection through humanitarian status) is 37%. Considering the current reality, with regards to the countries of origin of the asylum seekers requiring special protection, the rate of granting refugee status to the applicants in Georgia cannot be evaluated as satisfactory.

Statistic of Granting a Status in 2014



In regard with the abovementioned, it is necessary to mention a high rate of asylum granting in Western European countries. In particular, the rate of granting asylum to the citizens of Syria and Iraq is from

1312 Law of "Georgia on Refugees and Humanitarian statuses", article 14 (1)

1313 National Asylum Policy in Poland, the information is available on http://www.dublin-project.eu/fr/content/download/557/4483/version/3/file/Long_Brochure_Poland.pdf, [last viewed on March 27, 2015)

1314 Report on Austria dated May 2014, Asylum Information Database, European Council on Refugees and Exiles; information available at http://www.refworld.org/docid/5406c62d4.html [last viewed on March 27, 2015]

62 to 95%.[1315] As for the asylum applications, central Europe is the only region where the decrease in the asylum applications was observed in comparison with the second half of 2013. The rate of application was reduced from 47 to 27%.[1316]

Another significant and problematic issue is the application of Subclause 'E', Clause 1, Article 3 of the Law of Georgia on Refugee and Humanitarian Status as the basis for refusing asylum to the applicants. According to the mentioned article, a person is not granted a refugee status if there is a reasonable doubt that he will threaten the state security, territorial integrity, public order and the public's sense of justice in Georgia. The examination of individual cases revealed that the mentioned article is applied without proper review. The asylum seeker is provided with an explanation that he is eligible for the refugee/humanitarian status, although due to the state interests he cannot be granted the mentioned status. According to the international standards, during the interview the individuals should be given opportunity provide explanations regarding all issues leading to the refusal of status. Respectively, we believe that during the examination of those cases, where the state interests are presented as basis for refusal of status to the applicant, it is necessary to implement another component of asylum procedure: evaluation of exclusion, which defined why a person cannot be granted a refugee or humanitarian status.

According to the information at hand, the majority of cases including the refusal of status are currently being reviewed by court. Based on the existing judicial practice, the cases are not being reviewed essentially and the court only rules the annulment of an administrative act, returning the case to the ministry for re-examination. The Apparatus of the Public Defender of Georgia still believes that the continued monitoring of the mentioned cases is of paramount importance. We are also observing the evidence documents presented by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and the approach the court applies to review the similar cases.

Pursuant to the information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, during the reporting period 47 asylum seekers were denied status on the basis of the mentioned article. Current practice reveals that, in its administrative act (notice) the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia does not provide any explanation; it only indicates the respective article and its content, while the asylum seeker is provided only with a legal explanation for the refusal of status, since the ministry is not aware of the factual circumstances.[1317] Such practice violates the principles of a fair administration of justice, as the information regarding the reasons for refusing the status is unknown both to the asylum seeker and his defense.

The case of the European Court of Human Rights Chahal v. the United Kingdom[1318] reveals that the threats to the state security of a specific country derived from a particular individual, should be balanced, when the issue is being reviewed in terms of Aricle 3[1319] of the European Convention of Human Rights, because such cases increase the likelihood of maltreatment and torture of the mentioned person. Protection of state interests should not lead to a neglect of personal interests, in the case if there is a substantial doubt that he may be a subject to torture and maltreatment in his own country.

1315 Information available at http://www.unhcr.org/532afe986.html [Last viewed on March 20, 2015]
1316 Information available at http://www.unhcr.org/5423f9699.html [Last viewed on March 20, 2014]
1317 Letter N2–01/05/7468 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia dated March 13, 2015
1318 Ruling of the European Court of Human Rights dated November 15, 1996 (Chahal v. the United Kingdom)
1319 No one shall be subjected to torture or to inhuman or degrading treatment or punishment, Article 3 of the European Convention of Human Rights

GEORGIAN LEGISLATION

After the new Law of Georgia on Legal Status of Aliens and Stateless Persons entered into force certain limitations were introduced for aliens, including the asylum seekers. We believe that the new law is a kind of a legal barrier for asylum seekers. In particular, after the new law entered into force (September 1, 2014) issuing visas at the port of entry were prohibited. Considering the fact that there are no Georgia consulates in the majority of countries of origin of asylum seekers (Syria and Iraq), the opportunity to enter Georgia legally for requesting asylum has been limited substantially. According to the Clause 4 of the Article 6 of the mentioned law, the visas are issued at the port of entry only in exceptional cases, including for humanitarian purposes; however, asylum seekers are not specifically mentioned among those individuals who may be granted visa upon arrival, which, we believe, is a flaw in the law, since according to the Article 33 of the Convention relating to the Status of Refugees adopted in Geneva in 1951, the principle of non refoulement[1320] is the main part of the international law on asylum and the rights of refugees. The mentioned article of the convention explicitly indicates that the forced return or expulsion of an asylum seeker is inadmissible.

However, we welcome the change envisaged by the given law on issuing the provisional identification documents to the asylum seekers, which facilitates the involvement of persons under the mentioned category in various educational and healthcare programs.

The Reports of the Public Defender of Georgia for 2011-2013[1321] discussed the Law of Georgia on Refugee and Humanitarian Status, and the mentioned fact was evaluated quite positively in terms of improving the asylum system. Although, it is also noteworthy that none of the flaws[1322] indicated in the reports were addressed and eradicated. The Georgian legislation still needs to be enhanced in order to improve the human rights situation of asylum seekers and persons having refugee and humanitarian status.

Under the Administrative Procedure Code of Georgia, within one month of refusing to issue administrative-legal act, a person can appeal in the court. However, according to the mentioned code, the asylum seeker and a person requesting refugee or humanitarian status is only given 10 days to appeal against a refusal decision.[1323] Considering the fact that the beneficiary has no knowledge of state language or local legislation, which creates additional obstacles for him, hindering the protection of his own rights; the mentioned record places asylum seekers under unequal terms. It is also noteworthy that pursuant to the Law of Georgia on Legal Aid these individuals have access to free legal aid (except for criminal cases). According to the

1320 Prohibition of forced return

1321 See The Report of the Public Defender of Georgia for 2011 available at < http://www.ombudsman.ge/uploads/other/0/85.pdf [Last viewed on March 16, 2015]; see The Report of the Public Defender of Georgia for 2013 available at http://www.ombudsman.ge/uploads/other/1/1563.pdf [last viewed on March 16, 2015]

1322 Parliamentary Report of the Public Defender of Georgia 2011, Parliamentary Report of the Public Defender of Georgia 2013

1323 Article 21^{24}, the Administrative Procedure Code of Georgia

amendment made to the Law of Georgia on Legal Aid, the insolvent individuals under a certain category, including IDPs, war veterans and people with disabilities will be provided with fee legal aid in civil and administrative proceedings. The mentioned vulnerable categories do not include asylum seekers, refugees and persons with humanitarian status, who also do not have sufficient funds to prepare a lawsuit and use the services of a representative in a court. Without the mentioned, persons without any knowledge of the language of legal proceedings and the legislation of Georgia, is unable to effectively implement his right to protection.

We believe that the refugees and persons with humanitarian status should have access to independent, qualified and free legal aid envisaged by the Constitution of Georgia and the International Agreements. Respectively the Law of Georgia on Refugee and Humanitarian Status needs to be reviewed in order to make amendments to the appeal procedure and its conditions. The Law of Georgia on Legal Aid also needs to be reviewed so that it extends to the insolvent persons within the scope of the Law of Georgia on Refugee and Humanitarian Status, as well as other vulnerable beneficiaries.

The Article 12 of the Law of Georgia on Refugee and Humanitarian Status determines the preliminary examination of the applications for asylum, profiling the applicants and their registration as asylum seekers within the period of 10 days, during which the applicant is profiled and the decision regarding his registration is made. We believe that the mentioned period is not necessary for a preliminary review of the case of asylum seeker. It would be more practical to register a person as an asylum seeker as soon as he requests asylum and grant him access to all rights envisaged by law. As already mentioned above, according to the international standards, all asylum seekers should have access to all procedures envisaged by law. In addition, in accordance with the international standards, all asylum seekers should have full access to the asylum procedure and the adequacy and reliability of the application should be determined at the stage of registration. The examination of cases requested from the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia revealed that in a number of cases the asylum seekers were eligible for a refugee or humanitarian status, although the ministry's decision prescribes the alternative or internal displacement, based on which the person is not granted a status. We believe that it is necessary for the law to contain respective article, defining the essense of the alternative of internal displacement and the legal basis for its use, otherwise a person should not be denied requested status on the mentioned grounds. Obviously, we hereby confirm that the alternative of internal displacement as the basis for denial is being used in several countries and we are not against the principle of its use, although it is necessary to conduct a relevant research/evaluation spefically determined by respective law/procedure.

The Law of Georgia on Refugee and Humanitarian Status does not contain an article consistent to the Article 31 of the Convention relating to the Status of Refugees adoped in Geneva in 1951, pertaining to the refuges unlawfully residing in the country of asylum. The mentioned regulation is not included in the Criminal Code and the General Administrative Code of Georgia. Article 344 of the Criminal Code of Georgia related to the illegal crossing of a state border does not envisage the asylum seekers, who are travelling with false documents in order to escape the countries of their origin due to the current war or unstable situation and are seeking asylum in Georgia. According to the Article 344 of the Criminal Code of Georgia the illegal crossing of state border is punishable, and Article 322[1] determines the violation of the rules of entry of occupied territiries as an incriminated activity. Since Georgia is a contracting state of 1967 protocol of the Convention relating to the Status of Refugees adoped in Geneva in 1951, it is obliged not to punish those persons who who are crossing the state border with the purpose to request asylum in Georgia. We believe that, considering the abovementioned reasons, the given flaw in the law should be eliminated and the asylum seekers should not be detained, or in the case of detainment, upon the clarification of circumstances, they should be released from the penintentiary institution.The mentioned problem was discussed in more detail in the Report of the Public Defender of Georgia for 2010.[1324]

1324 The Report of the Public Defender of Georgia for 2010, page 23

ACCOMODATION OF ASYLUM SEEKERS, HUMAN RIGHTS SITUATION OF COMPACTLY SETTLED REFUGEES AND THE PROBLEMS OF INTEGRATION

The issue of accomodating the asylum seekers is also noteworthy. While the number of asylum seekers has increased significantly , the temporary accomodation center for asylum seekers[1325] can accommodate only 60 persons. However, it is also noteworthy that the mentioned center provides good living conditions in compliance with the international standards. The work of the administration of the center and the living conditions of asylum seekers are evaluated quite positively, which is also verified by the beneficiaries. We also welcome the fact that United States European Command is funding the construction of a new, modern center for the temporary accomodation of asylum seekers in Martkopi, which will significnatly improve the living conditions of asylum seekers.

While discussing the problems of asylum seekers it is necessary to emphasize the fact that unlinke the persons with a refugee or humanitarian status the mentioned individuals do not receive subsistent benefits from the state. The monitoring revealed that within the frameworks of the project jointly implemented by the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia and the United Nations High Commissioner for Refugees (UNHCR) only the persons accomodated in shelters are eligible to receive monthly benefits, while the rest of asylum seekers who live in different cities of Georgia at their own expense, are deprived of such assistence.

We believe that the state is responsible to provide equal care to the persons under the vulnerable category of asylum seekers and they should also receive needs-based social assistence like the persons with a refugee and humaniatarian status.

Majority of refugees registered in Georgia are the citizens of Russian Federation. After the events of 1999-2001 they had to leave the Republic of Chechnya and migrate to Pankisi Ravine. The mentioned individuals were granted prima facie refugee status. During the reporting period the annual registration of regufees was not completed yet and as of December 31, 2014 the number of registered refugees was 228 persons.

In 2009-2012 536 ethnic Chechens with a refugee status were naturalised, which is a successful practice in terms of integration. However, to date, there are Chechen refugees still in the Pankisi Ravine, who were denied naturalisation by the state. This issue was discussed in detail in The Report of the Public Defender of Georgia for 2013.[1326] We believe that the state should make a timely decision in order to address the mentioned issue, as the problem remains unsolved to date.

Denying naturalisation caused problems for those refugees who were recipients of different grants. Under the UNHCR[1327] standard operative procedures the grant necessary for a person's integration, the so-called

1325 The temporary accommodation centre for asylum seekers has been operating in Martkopi since June 2010
1326 The Report of the Public Defender of Georgia for 2013, page 632
1327 United Nations High Commissioner for Refugees

"resettlement grant", were afforded only to the naturalised refugees. As a result, the persons denied naturalisation in 2013 were not able to participate in the mentioned programme. Problems were also created for the children attending schools without the status of a pupil. Due to a relevant status not being granted, they will not be awarded secondary education certificate. The refugees will be disadvantaged in terms of higher education as well. While, the Law of Georgia on Refugee and Humanitarian Status affords rights equal to those of Georgian citizens in terms of education, there is often a legislative collision in practice, where state programmes request Georgian citizenship as an eligibility criterion. According to the Article 34 of The Convention relating to the Status of Refugees adoped in Geneva in 1951, the Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. However, the Legislation of Georgia does not envisage a simplified procedure for the naturalization of refugees, which obviously contradicts the abovementioned.

In July 2014 UNHCR and the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia conducted a joint Participatory Assessment for the Identification of Integration Needs of Persons with Refugee and Humanitarian Status, which revealed the priority needs of integration. These include: (1) employment, which is closely related to the languaga barrier and makes it difficult for these individuals to find employment opportunities; (2) housing, persons with the refugee and humanitarian status are afraid that they won't be able to pay rent unless the ministry of UNHCR covers their expenses; (3) Access to healthcare, which in most cases is linked with the lack of access to the information related to the existence of free state health insurance or the obstacles of using the mentioned insurance; in addition, they are often unaware of available state services; (4) issues related to documentation, which are mainly linked with issuing the travel documents to the persons with humanitarian status.[1328]

One of the major recommendations of the abovementioned research is to develop a comprehensive, multi-year strategy for local integration and a relevant action plan on the basis of identified issues and integration needs. The state is also responsible to conduct a research consistent to the strategy and action plan, in order to ensure the development of long and short-term action plans and provide funding for projects.

Supporting the integration of persons with Refugee and Humanitarian Status by 2015 is one of the obligations within the frameworks of EU-Georgia Association Agreement.[1329] The Migration Strategy of Georgia for 2013-2015[1330] obliges the state to integrate persons with status, according to which additional activities will be planned in order to develop and improve the system of persons with refugee and humanitarian status and integrate the refugees. Respectively, we hope that in near future, through close coordination or relevant agencies the documents of integration strategy and action plan will be developed, in which the Apparatus of the Public Defender of Georgia is ready to take an active part.

RECOMMENDATIONS

To the Parliament of Georgia

- In accordance with the recommendations provided in the Reports of the Public Defender of Georgia for 2011-14 review the Law of Georgia on Refugee and Humanitarian Status;

1328 Participatory Assessment for the Identification of Integration Needs of Persons with Refugee and Humanitarian Status, UNHCR, July-August, 2014

1329 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Clause 169

1330 "The Government of Georgia expresses its readiness to implement all necessary measures necessary for protecting the rights of refugees, persons with humanitarian status and asylum seekers and in accordance with 1951 UN Convention related to the Status of Refugees and its 1967 Protocol related to the Status of Refugees" - THE MIGRATION STRATEGY OF GEORGIA 2013–2015

- Review the Law of Georgia on Legal Status of Aliens and Stateless Persons;
- Review the Organic Law of Georgia on Georgian Citizenship;
- Review the Criminal Code of Georgia and the General Administrative Code of Georgia;
- Review the Law of Georgia on Legal Aid

To the Ministry of Internally Displaced Persons From the Occupied Territories, Accommodation and Refugees of Georgia

- Restore/grant the refugee status to those persons, whose family members had their refugee statuses revoked upon naturalisation;
- Prepare a project of amendments to be made to the Law of Georgia on Refugee and Humanitarian Status;
- Make improvements to the Asylum Procedure in compliance with the international standards;
- In coordination with respective agencies develop an integration strategy and action plan.

To the Ministry of Justice of Georgia

- Prepare a project of amendments to be made to the Law of Georgia on Legal Status of Aliens and Stateless Persons (asylum seekers should have the opportunity to get humanitarian visas);
- In order to simplify to naturalisation process for the refugees and persons with humanitarian status review the current legislation on Georgian Citizenship.

To the Government of Georgia

- Make various state educational and health programmes accessible for the refugees and persons with humanitarian status.