THE REPORT OF THE PUBLIC DEFENDER OF GEORGIA

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

2016

SHORT VERSION

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The European Union for Georgia

PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

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INTRODUCTION

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

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

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

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

In the reporting period, there were incidents where several state agencies, including the Ministry of Internal Affairs of Georgia and Tbilisi City Court, failed to submit the information and materials requested by the Public Defender. The absence of the data processed in the form as requested by the Public Defender was the reason cited for the failure. This is evaluated as a wrong practice. Such approach, apart from amounting to breach of law, significantly hampers the activities of the Public Defender.

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

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

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

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

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

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

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

Prevention of violence among prisoners, taking effective actions against criminal underworld of the prison and maintaining good order remains a serious challenge in penitentiary establishments. This is preconditioned, among other factors, by scarcity of rehabilitation and re-socialisation activities in penitentiary establishments. The infrastructure of the closed-type establishments does not allow its inmates to follow sport or be engaged in other activities; this negatively affects their health and wellbeing. The rising number of incidents of placing prisoners in solitary confinement cells as a disciplinary penalty and uneven application of disciplinary penalties in general remain problematic.

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

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

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

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

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

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

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

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

Out of the studied case-files, almost in half of the cases arrestees did not have a lawyer at all.

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

The data processed by the Special Preventive Group shows that the use of excessive force, physical and psychological violence exerted after arrest, failure to provide arrestees with adequate safeguards and shortcomings in documenting bodily injuries remain a challenge for the police system. Therefore, the Public Defender observes that it is particularly important to introduce strict control on policing and increase their accountability. It is necessary that police officers receive a clear message from their superiors that violation of human rights will not go unpunished.

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

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

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

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

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

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

Besides, there is still a provision, preserved in the Law of Georgia on Electronic Communications, allowing the state authorities to have uninterrupted possibility to copy personally identifiable information and receive contents of communication in real time. The authority of a trust group – a mechanism of parliamentary control envisaged by the legislative amendments- is considered to be ineffective by the Public Defender. One member selected by the trust group carries out inspection only twice a year, which practically excludes the participation of parliamentary opposition in this parliamentary control mechanism.

The steps taken by the authorities, after the large-scale amnesty, concerning the persons arrested and criminally prosecuted for political reasons, are considered by the Public Defender of Georgia to be unsatisfactory. The process of restoration of justice cannot be limited to a single act of amnesty, as it is important for the persons of this category not only to have their dignity and reputation restored, but also be compensated for the damages illegally inflicted by the state.

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

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

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

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

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

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

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

The structural problems with regard to **freedom of religion**, tolerance and equality remain the same. Religious minorities wishing to erect religious or other buildings still face barriers when dealing with local self-government bodies in charge of issuing construction permits. **National minorities** are still less involved in the process of decision making on the important events of the country and related issues. Despite reflecting the issue in the State Strategy and Action Plan for Civic Equality and Integration, school manuals, with certain materials of stereotypical contents, remain a significant challenge.

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

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

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

The absence of an effective mechanism responsible for the monitoring of **labour rights and safe labour environment** remains to be one of the most acute problems of the reporting period. This needs urgent action from the Parliament and the Government of

Georgia. According to the data of 2016, as the result of work-place accidents, 58 persons died and 85 were injured. In the opinion of the Public defender, it is imperative to set up immediately a mechanism – Labour Inspectorate- to supervise labour safety and labour conditions.

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

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

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

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

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

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

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

The state faces challenges in terms of high indicators of violence against children within family and educational and care institutions. Children's poverty and inadequate living con-

ditions are among the insurmountable problems, which in turn cause problems in terms of providing children with necessary food and improving their dire living conditions.

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

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

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

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

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

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

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

substantive amendments have been made to the national legislation in terms of ensuring its compatibility with the requirements under the Convention.

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

1. HUMAN RIGHTS SITUATION IN CLOSED INSTITUTIONS (NATIONAL PREVENTIVE MECHANISM)

INTRODUCTION

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

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

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

4 The monitoring outcomes are reflected in the 2015 Parliamentary Report of the Public Defender, see Chapter on Children's Rights Protection, available in Georgian at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last visited on 28.03.2017].

5 Within the European Project – Support to the Public Defender's Office, II.

6 The publication of the report reflecting the results of the research conducted within the project is planned for 2017.

7 At various occasions, in accordance with the necessity, the employees of the Gender Equality Department, Child's Rights Centre, Department of Criminal Justice and Equality Department of the Office of the Public Defender of Georgia also took part in the monitoring.

8 Members of the Special Preventive Group interviewed 650 prisoners.

9 Members of the Special Preventive Group interviewed 60 arrestees.

10 Monitoring in small family-type children's homes was conducted jointly with the Child's Rights Centre of the Office of the Public Defender.

11 Monitoring was carried out with the participation of the employees of the Office of the Public Defender of Georgia at the Department of the Protection of the Rights of Persons with Disabilities and members of the Monitoring Group of Implementation of CPRD. See the monitoring results in this report, under Chapter on Monitoring of Boarding Houses of Persons with Disabilities.

12 The employees of the Prevention and Monitoring Department interviewed 206 citizens of Georgia returned to Georgia.

1.1. SITUATION IN PENITENTIARY ESTABLISHMENTS

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

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

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

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

During the reporting period, the Public Defender addressed the relevant authorities with three proposals concerning the alleged ill-treatment of prisoners in penitentiary institu-

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

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

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

16 The Juvenile Justice Code, Article 69.

tions. During the visits made in 2016, the members of the Special Preventive Group obtained information on isolated incidents of ill-treatment.

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

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

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

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

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

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

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

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

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

The outcomes of the inspection of penitentiary establishments carried out by the Special Preventive Group in 2016, similar to those in 2015, showed that in accordance with the established practice, the decisions ordering surveillance contain scarce information and wording is stereotypic.

In the Parliamentary Reports of 2014 and 2015, the Public Defender recommended to the Parliament and the Minister of Corrections to amend the Imprisonment Code and the Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings to the effect of stipulating that meetings of accused and convicted persons with the Public Defender and members of Special Preventive Group are confidential and eavesdropping or surveillance of any kind are impermissible. This recommendation, however, has not been fulfilled.

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

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

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

out meaningful activities that are of interest for them. The legislation allows the inmates placed in special risk prison facilities fewer visits and telephone calls than the prisoners in other penitentiary establishments.

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

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

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

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

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

In 2016 it is not still ensures that living space of 4 m^2 is made available for each prisoner. Besides, in establishments nos. 2 and 8, accused and convicted persons are placed together in some occasions which is in breach of the Imprisonment Code.

In 2016, compared to the previous year, there has been 16% increase in the number of imposition of disciplinary penalties on prisoners. Despite the fact that in some of the establishments fewer disciplinary penalties were applied, the indicator for the use of these measures alarmingly increased in establishment no. 3 (2 disciplinary penalties per prisoner, in 2015; 9 – in 2016); establishment no. 6 (in 2015, 1 disciplinary penalty was imposed on every second prisoner and in 2016, 2 disciplinary penalties per prisoner); and establishment no. 2 (increase by 2.5%). Besides, in comparison to 2015, in 2016, the

number of placement of prisoners in solitary confinement cells increased by 40.4% in establishment no. 2, which is noteworthy. For the sake of fairness, it should be positively mentioned that, in total, the number of incidents of placement in solitary confinement cells decreased in the penitentiary system by 23%. However, the Public Defender is, at the same time, alarmed that, in the reporting period, there were again incidents of placing prisoners with mental problems in solitary confinement cells in some establishments.

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

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

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

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

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

The number of personnel in social units remains insufficient. E.g., two psychologists deal with 1218 prisoners in establishment no. 2, and 1922 prisoners in establishment no. 17. Only one psychologist worked with 1152 prisoners in establishment no. 14, and 1706 prisoners in establishment no. 15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Until 2 January 2016, an accused person could use one short-term visit only with the permission of either a prosecutor, or an investigator; could use the right to correspondence and telephone calls with the permission of an investigator, a prosecutor or a court.

18 Under Article 15.3 of the Imprisonment Code, living space per accused person in a prison facility should not be less than 3 m^2.

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

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

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

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

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

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

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

19 Penitentiary establishments nos. 7, 8, 9.
20 Penitentiary establishments nos. 18 and 19.

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

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

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

1.2. THE SITUATION IN AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS

The present chapter deals with the findings of the monitoring conducted by the National Preventive Mechanism in police divisions and temporary detention isolators within the Ministry of Internal Affairs of Georgia. In 2016, monitoring was carried out in 58 police divisions and 27 temporary detention isolators. Apart from the monitoring visits, the members of the Special Preventive Group had meetings in regions with local lawyers and NGO representatives. The Special Preventive Group obtained information regarding protection of the rights of arrested persons. In total, six such meetings were held in 2016.

The members of the Special Preventive Group examined the arrestees' logbooks in police divisions and inmates' registration journals maintained in temporary detention isolators; visually inspected the administrative buildings of police divisions; and interviewed division personnel. In temporary detention isolators, monitoring group members inspected the isolators' infrastructure and interviewed personnel, inmates, studied case-files of inmates. The monitoring group used a specifically designed questionnaire for obtaining systematised information from case-files.

In 2016, similar to 2015, the group members examined the case-files of all arrestees placed into isolators from 1 January 2016 until the day of the visit. The questionnaire was filled only in those cases where a particular case-file raised suspicions within the monitoring group considering the circumstances of an arrest, localisation, number and nature[21] of injuries. In total, 950 such case-files were examined. The qualitative analysis of the data obtained through the pre-designed questionnaire was performed using the Statistical Program (SPSS). For interviewing police officers, the Special Preventive Group used

21 The questionnaire would not be filled in if an arrestee only had scar marks, scabs or minor scratches.

pre-designed questionnaire. Furthermore, the Group requested additional information about involvement of lawyers and contacting families in particular cases. The monitoring group examined 439 case-files through the random selection method.

In the course of the report preparation, seven proposal sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2016 have also been used. These suggestions relate to the incidents of alleged violence by police officers against arrestees. In the process of the report drafting, the data obtained from the Ministry of Internal Affairs have also been analysed, and desk research of Georgian legislation and international standards was performed.

In 2016, the number of inmates of temporary detention isolators is less in comparison to 2015. However, there is an increase in the average number of placement of arrestees with injuries as well as the complaints lodged by inmates against police. For the past four years, the average number of placement of arrestees with injuries as well as the complaints lodged by inmates against police is the highest in 2016. Furthermore, in 2016, the number of incidents of inflicting injuries during arrests or thereafter has also increased in comparison to 2015.

The monitoring revealed a trend of not registering injuries in arrest reports described in external examination report; or external examination reports describe more bodily injuries than arrest reports. While this could be caused by shortcomings in examination and documentation of bodily injuries during arrest, there are serious misgivings that injuries might have been inflicted under police control.

During the study those cases were analysed where, considering the arrest circumstances, it can be assumed with high probability that police would resort to force. However, it is clear that police officers are reluctant to indicate the use of force in arrest reports, which increases suspicions that they could have used excessive force and ill-treatment.

The Public Defender regretfully observes that, in 2016, there were incidents in which people were held in police custody when it was less likely to be necessary. This is an extremely alarming practice as this is the situation where there is a high risk of inflicting physical violence and psychological pressure by the police. Accordingly, the Public Defender observes that it is necessary to transfer arrestees to temporary detention isolators as soon as possible as these are relatively secure places.

The Public Defender observes with regret that the Chief Prosecutor's Office maintained the previous practice of instituting criminal proceedings. Instead of instituting criminal proceedings regarding incidents of alleged torture and inhuman or degrading treatment, investigation is launched based on Article 333 (abuse of official power) of the Criminal Code.

One of the problems that still persisted in the reporting period was the notorious practice of 'interviews' conducted in police vehicles or police stations without the consent of the persons concerned, which was dealt with in the 2015 Parliamentary Report of the Public Defender. As the members of the Special Preventive Group became aware, those persons

who recently left a penitentiary establishment, or those who are perceived as risk group by police due to their criminal past or other reasons, are the main target of this practice. The Public Defender observes that public order and security should not be maintained at the expense of unreasonable restriction of fundamental human rights.

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

It is an alarming trend that out of the studied case-files, almost in half of the cases arrestees had no lawyer at all. Besides, in those cases where an arrestee did have a lawyer, the latter was involved in the proceedings after the lapse of certain time from the arrest (in one or two days).

In terms of accessibility of legal consultation, it is important to increase the number of legal aid lawyers employed in the bureaus of the Legal Aid Office. Requisite finances should be allocated to this end so that those persons who cannot afford to hire a legal counsel are promptly and effectively provided with legal services.

The Public Defender of Georgia positively assesses the approval of the Instructions on Medical Assistance of the Inmates of Temporary Detention Isolators. The Instructions comply with the CPT standards and reflect the Public Defender's recommendations made in the past years concerning prompt and adequate medical services, medical ethics and documenting injuries, which is a step forward. At the same time, the Public Defender emphasises the importance of accurate and comprehensive implementation of the Instructions. The Public Defender also calls upon the Ministry of Internal Affairs to consider creating additional safeguards for isolators' medical personnel by transferring the system to the Ministry of Health-Care.

In the opinion of the Public Defender, the confidentiality of the initial medical examination of persons placed in isolators remains a challenge. Usually, there is a notice in external examination reports and examination was conducted together with a doctor, which means that a health-care professional and the isolator's staff member jointly carried out screening and medical examination of a person placed in a temporary detention isolator.

The fact that the minimum term of storage was defined in the reporting period is assessed positively. During video surveillance, information is automatically recorded. The recorded material is stored in a central control room for no less than 24 hours. When the memory of the recording device is full, fresh information is recorded on the same device after erasing the existing information. However, the Public Defender believes that the storage of

recordings for 24 hours does not ensure attaining the objective sought and, accordingly, all measures should be taken so that the recordings are stored for a reasonable time.

It was still a problem in 2016 to have external and internal premises of police divisions covered adequately by video cameras. There were no video cameras installed either on external or internal premises of some regional police divisions. In a great majority of those divisions, where internal premises are covered by video surveillance, the cameras are mostly installed at the entrance, in front of the place allocated for an on-duty operator. This does not ensure complete surveillance of the internal premises of the administrative buildings.

The Public Defender welcomes the introduction of five-day term for the consideration of complaints lodged from temporary detention isolators, as well as the statutory regulation of the provision of inmates with envelopes for confidential complaints.

The Public Defender considers it to be most important to regulate the police work schedule not only in terms of protection of police officers' labour rights, but also in the respect that it has significant effect on adequate treatment of arrestees by police. The police officers, working long hours without adequate breaks, are likely to get exhausted and be under stress. This, in turn, would adversely affect their psycho-emotional condition and, hence, behaviour.

The Public Defender welcomes the fact that there are mandatory special education programmes for the youths recruited by law-enforcement bodies, junior lieutenants, district inspectors, detective-investigators and patrol-inspectors. It can be concluded, as the result of examination of the syllabuses of the study programmes, that major human rights topics are included. The Public Defender, however, considers that a single training on important human rights issues and the duration allocated for human rights topics in the curriculum cannot ensure theoretical and practical comprehension of key human rights problems within special educational programme of law enforcement officers. The Public Defender considers it important that the methodology of each study programme and training session includes examination and assessment of participants through observation of their involvement in various practical situations and role-plays. Furthermore, in the opinion of the Public Defender, close attention should be paid to teaching police officers how to use force so that they could correctly assess particular situations and use adequate methods of the use of force that have been predetermined.

The Public Defender welcomes the renovation of the infrastructure and living conditions at the temporary detention isolators of the Ministry of Internal Affairs in 2016. However, the existing conditions in temporary detention isolators still need considerable improvement and bringing closer to international standards.

The Public Defender observes that, along with the positive changes, the negative trends identified in 2015 still unfortunately persist in 2016. The data processed by the Special Preventive Group show that the use of excessive force, physical and psychological violence exerted after arrest, the failure to provide arrestees with adequate safeguards and

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

1.3. MONITORING OF THE JOINT RETURN OPERATIONS

Since 2014, the Prevention and Monitoring Department of the Office of the Public Defender of Georgia has been monitoring the joint return operations to Georgia of Georgian citizens who do not, or no longer, fulfil the conditions for entry into, to be present in, or residence on the territories of one of the Member States of the European Union.

The joint return operations are conducted based on the Agreement between the European Union and Georgia on the Readmission of Persons Residing without Authorisation (hereinafter "Readmission Agreement"). The main objective of the Readmission Agreement is to strengthen cooperation between the High Contracting Parties in order to combat illegal immigration more effectively and safe and orderly return of persons from Europe to Georgia or *vice versa*. European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) is in charge of coordinating the joint return operations.

In the course of 2016, the employees of the Prevention and Monitoring Department of the Office of the Public Defender, on five occasions (10 March, 15 April, 7 June, 27 September, and 29 November) carried out monitoring of joint return operations of 206 citizens of Georgia residing without authorisation on the territories of one of the Member States of the European Union.

The representatives of the Public Defender at the special place arranged in the airports of Dusseldorf (Germany) and Athens (Greece) observed the process of check-in, loading luggage, escorting on board by the representatives of the respective EU member state, and the transfer of the persons to be returned to Georgia by the escort of the Ministry of Internal Affairs of Georgia, flight and admission to Georgia.

In 2016, all joint return operations were mostly carried out in a peaceful environment. However, there were important issues identified during the return operations, which need adequate follow-up.

The monitoring of joint return operations revealed incidents where the doctor within the escort of the Ministry of Internal Affairs of Georgia was not duly notified about the health condition and diagnoses of some of the returnees.

The Public Defender observes that the medical personnel of the Organising Member State's escort should have prior information about the health condition of returnees. It will assist the personnel to make provisions for the special needs of returnees and be ready to give adequate medical assistance.

The monitoring of joint return operations revealed incidents where some of the returnees had mental disorders and abstinence syndrome.

The monitoring of joint return operations revealed that the provision of telephone contact of returnees with their family is problematic.

During the execution of joint return operations, due to the absence of specific regulations on ensuring returnees' telephone contact with their families, the representatives of the Public Defender were submitting information to the authorities of the relevant Participating Member State and Frontex representatives, who within their competence ensured the returnees' contact with their families.

2. HUMAN RIGHTS PROTECTION IN THE DEFENCE FIELD

In 2016, the Department of Human Rights Protection in the Defence Field carried out monitoring in the Department for Coordination of Military Mobilisation and Draft at the Ministry of Regional Development and Infrastructure of Georgia; Aviation Brigade of the Georgian Armed Forces; Military Weapons and Equipment Maintenance Base of the Logistic Support Command of Georgian Armed Forces; External Protection Units of penitentiary establishments nos. 5, 6, 8, 15, 16, 17, and 19; Special Tasks Divisions I and III of the Special Tasks Department of the Ministry of Internal Affairs of Georgia; and Unit I of Division II of the Department of Protection of Premises of the Ministry of Internal Affairs of Georgia. Monitoring visits were made to the State Service of Veterans Affairs and Clinical Hospital of War Invalids and Veterans

In the reporting period, the recommendation of the Public Defender of Georgia to bring Order no. 441 of the Minister of Defence of Georgia of 4 April 2014 in compliance with Article 14 of the Law of Georgia on the Status of a Military Serviceman was not fulfilled. The recommendation is aimed at ensuring that, if needs be, transfer of an apartment into possession, motioned by a military serviceman's application, should be granted based on the decision of a commission and should not depend on the recommendation of the Head of the General Staff.

The measure of structural/staff optimisation was carried out in the Ministry of Defence in 2016 which resulted in the dismissal of several tens of military and civil staff members.

2.1. PROTECTION OF THE RIGHTS OF CONSCRIPTS

There were changes made in this field in 2016 that are worth mentioning.

On 27 June 2016,[22] compulsory conscription in the system of the Defence Ministry of Georgia was suspended. However, on 29 November 2016 compulsory conscription in the system of the Defence Ministry of Georgia was restored.

In the reporting period, the recommendations of the Public Defender on determining the terms of notifying conscripts about the dates of appearing before conscripting units as well as the ensuring the right to education of conscripts was not fulfilled.

Similar to 2015, in 2016, the situation in the Department for Coordination of Military Mobilisation and Draft at the Ministry of Regional Development and Infrastructure of Georgia remained essentially the same. Confidentiality of conscripts is not respected during medical examination; diagnoses and health problems of conscripts can be heard by outsiders and other conscripts; the procedure for medical examination is the same; and conscripts are not examined in a comprehensive manner.

22 Order no. MOD 21600000605 of the Minister of Defence of Georgia of 27 June 2016.

The effects of this method of health assessment are later manifested in the life of the conscripts. The soldiers that are declared fit for military service by a military commission, due to various health problems, are unable to perform their duties and commanders of military units have to send them back for medical examination and dismiss from compulsory military service. Such incidents are confirmed by official letter of the Ministry of Defence of Georgia,[23] according to which, in 2016, 97 conscripts were declared unfit for military service due to various diagnoses, among them, mental health problems.

Apart from mental and emotional disorders, the physical conditions that are medically examined in conscription units have been served as the ground for dismissal from the compulsory military service. However, it seems that health-care professionals could not diagnose these diseases under the existing procedure of medical examination. This has its objective reasons too. In particular, cardiologic examination is carried out only when a conscript indicates a problem. Internal organs cannot be examined due to the absence of ultrasound equipment. However, an ultrasound scan is necessary for identifying a number of diseases. Abdominal cavity, renal and genital systems should be scanned in order to enable the identification of more pathologies before conscription. In order to diagnose tuberculosis, conscripts undergo X-ray examination and, in case of doubt, laboratory tests are performed. However, there has been a case, where, after conscription, a military serviceman was diagnosed with tuberculosis.

As early as in 2013, the head of the permanent military medical expertise commission, functioning by the Central Conscription Commission, presented the problematic issues persisting in the decision making process regarding conscripts[24] that appear during their medical examination. The head observed that it is imperative to equip the military medical expertise commission adequately. However, the situation has not improved to date.

Earlier, conscripts had to walk barefoot from a changing room to a doctor's room. It is positively assessed that this situation has been addressed and now they are given shoe covers. Following the recommendation of the Public Defender, there is a partition provided in the doctor's room and if a conscript wishes, he can stay there alone with a doctor during full body examination. However, voices can still be overheard.

The recommendation of the Public Defender made in 2015 concerning individual approaches towards conscripts has been partially fulfilled.

According to the established practice, after the finalisation of the examination of conscripts, in the conscription units, priority is given to the representatives of the Ministry of Internal Affairs and the State Security Service. The conscripts are selected on account of their physical traits and linguistic barriers are also checked. Later, the conscripts are allocated to the External Protection and Convoy Division and the Ministry of Defence. Therefore, conscripts are not equally sent to agencies. This practice gives rise to a risk for uneven development of armed forces and raises questions about the rationale of the compulsory military service for the country.

It is noteworthy that this practice is not governed by any law or sub-legislative act.

23 Letter no. MOD 61700172671 of the Ministry of Defence Letter.

24 The Minutes of the Central Conscription Commission of 25 March 2013.

2.2. MINISTRY OF DEFENCE OF GEORGIA

The recommendation of the Public Defender of Georgia concerning the employment of a physiologist in all military bases is not fulfilled. However, according to the correspondence[25] the Social Affairs and Psychological Support Department was set up. One of the structural units of the Department is the Division of Psychological Support. The latter incorporates the Division of Psychological Selection and Psychological Monitoring. In accordance with the annual plan and the schedule of frequency of visiting military units, the Psychological Selection and Monitoring Department actively carries out meetings with military service members, both within the structural subunits of the Ministry as well as the territory of the department. These meetings consist of preventative and clinical interviews aimed at early identification and eradication of problems; educational lectures and training sessions; researches related to psychological conditions; monitoring psychological situation of military servicemen, etc. It is significant that for prevention, timely identification and eradication of psychological problems, there are respective notifications sent to every unit, containing information about contacting a specialist upon finding out symptoms of psychological problems. Based on the application of a subunit, specialists (a psychologist or a psychiatrist) visit military units and examine military service members who reportedly suffer from psychological problems. If needs be, for observing and providing psychological assistance, psychologists are seconded to the respective subunits. Any officer of the Ministry of Defence has the possibility to contact a psychologist/psychiatrist on a hotline.

AVIATION BRIGADE OF THE GEORGIAN ARMED FORCES AND MILITARY WEAPONS AND EQUIPMENT MAINTENANCE BASE OF THE GEORGIAN ARMED FORCES

In the reporting period, the representatives of the Public Defender monitored the situation of conscripts in the Aviation Brigade of the Armed Forces and **Military Weapons and Equipment Base of the Georgian Armed Forces.**

At **Aviation Brigade t**he living conditions are generally satisfactory.

The conditions and infrastructure at **Military Weapons and Equipment Base** are unsatisfactory. Due to the unbearable stench, the barrack latrine is closed down. The latrine located in the yard also smells badly. According to the conscripts, despite the fact that the latrine is cleaned on a daily basis, the smell does not go away because of the outdated and out of order sewage pipes.

There is a crumbling ceiling in the diner and the kitchen of the base; walls are damp and peeling. Therefore, it is difficult to observe appropriate hygiene standards under such conditions. The uninsulated electricity wires are over the walls in the kitchen warehouse, which is dangerous for life and limb.

25 Order no. MOD 61700156787 of the Minister of Defence of Georgia.

Due to the lack of knowledge of Georgian, ethnic Armenian and Azeri soldiers face communication problems. The conscripts themselves act as interpreters and therefore those soldiers who do not have the command of Georgian cannot have confidential conversations with their superiors.

According to the correspondence from Dmanisi[26] and Bolnisi[27] municipalities, the information on the rights and duties of conscripts is only given in Georgian in the respective *Gemgeoba* services of mobilisation, military census and conscription, whereas these municipalities are mainly populated by ethnic minorities.

The conscripts have the possibility to observe personal hygiene. However, at Aviation Brigade there have been complaints that they do not have washing machines and have to hand wash their military uniforms and clothes in sinks with cold water or in showers.

At Aviation Brigade the reason for dissatisfaction is the regime in the barracks because of which several conscripts inflicted self-harm in order to be exempted from compulsory military service. There are certain logistical problems as well. Cleaning and disinfection means are not provided in due time.

THE INCIDENTS OF DEATHS REPORTED IN MILITARY SERVICE

In 2016, according to the data of the Ministry of Defence of Georgia,[28] 10 incidents of death and 66 incidents resulting in bodily injuries were reported on the premises of the military units of the armed forces of Georgia; 14 incidents were reported outside of those premises.

In 2016, the Office of the Public Defender on its own initiative started examination of the incidents of death of six conscripts. Out of these incidents, one was declared as suicide and investigation was discontinued; in the rest of the five cases, investigation is pending. The Military Police Department is in charge of the investigation under the supervision of the Office of the Chief Prosecutor of Georgia.

It is important to note that the investigation has not yet been completed into any of three deaths that happened in 2015. The most important among these cases is the one which was qualified under Paragraph 2 of Article 117 of the Criminal Code of Georgia, envisaging intentional infliction of grave injury that caused death. Those responsible are not identified yet.

26 Letter no. 07/261 of Dmanisi Municipality of 26 January 2017.
27 Letter no. 11/500 of Bolnisi Municipality of 27 January 2017.
28 Letter no. MOD 31700196465 of the Ministry of Defence of Georgia of 1 March 2017.

2.3. MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

The fulfilment of the recommendation of the Public Defender made in 2015 concerning abolishing military prison is positively assessed. Similar to the Ministry of Defence, under the amendment of 24 August 2016, the military prisons under the Ministry of Internal Affairs of Georgia were abolished.[29] It is also a positive event that in the Department of Protection of Strategic Premises, there was no extra service of duty in 2016.

SPECIAL TASKS UNITS I AND II OF THE SPECIAL TASKS DEPARTMENT

Special Tasks Units I and III of the Special Tasks Department of the Ministry of Internal Affairs of Georgia are staffed with regular military servicemen (sergeant-officers) and conscripts. The major task of the conscripts is to serve 24-hour guard and sentry duties. They also participate in maintaining order during sporting and cultural events. The monthly salary is 27 GEL.

The living barracks are in good condition. There are surveillance cameras installed in barracks, which are always on.

There are medical centres in the military units. In these centres, only outpatient service is provided. The solders for inpatient services are transferred to public clinics. Medications are always available in sufficient quantities. A logbook for injuries and outpatients is kept. There is also a physiologist on the bases.

According to the military servicemen, there are incidents of collective punishments, which can be a reason for disagreements and conflicts among solders.

UNIT I OF DIVISION II OF THE DEPARTMENT OF PROTECTION OF PREMISES OF THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

There is the company of hundred servicemen in Unit I, which is staffed by conscripts. They serve the 24-hour duty once in three days. The duty comprises of two shifts. Salary amounts to 25 GEL.

The subsistence costs are borne by the Ministry of Internal Affairs. Transportation costs are not covered. There is no medical centre in the military unit and, if needs be, an ambulance is called in. The items of personal hygiene are handed out monthly in sufficient quantities

The soldiers are content with the quality and amount of the food. The quality of military uniform and shoes is satisfactory as well.

29 Resolution no. 411 of the Government of Georgia of 24 August 2016 concerning amendment of Resolution no. 615 of the Government of Georgia of 3 November 2014 approving Military Disciplinary Statute.

In the reporting period, the Public Defender's Office became aware that the compulsory military servicemen, serving in one of the military units of the Department of Protection of Strategic Premises of the Ministry of Internal Affairs that took an oath on 26 September 2015, were completing their military service on 2 October 2016 instead of 26 September 2016. The Department of Protection of Strategic Premises of the Ministry of Internal Affairs violated Article 32.I.a) of the Law of Georgia on Military Duty and Military Service by arbitrarily extending the conscripts' term of military service.

2.4. THE MINISTRY OF CORRECTIONS OF GEORGIA

UNITS NOS. 5, 6, 8, 15, 16, AND 19 OF THE EXTERNAL PROTECTION DIVISION AND CONVOY OF THE PENITENTIARY DEPARTMENT

The said Units of the External Protection Division and Convoy of the Penitentiary Department are staffed with the conscripts.

The living conditions in the shift restrooms in Units nos. 5 and 6 are unsatisfactory. There is only cold water in Units nos. 6 and 8; servicemen have to wash their hands with cold water which is particularly problematic in winter. There are no medical rooms in the units.

Monitoring revealed that in all the above Units of the penitentiary system, conscripts serving in these Units do not undergo physical training; no Unit staffs have undergone any training after quarantine. Their monthly remuneration amounts to 52.8 GEL. Once in three days, they have to reach a military unit by transport and bring their food in containers for which the aforementioned sum of 52.8 GEL is not enough.

Apart from Georgians, there are ethnic Azeri and Armenian servicemen in the units of external protection, the majority of whom do not speak Georgian. Official interpreters are unavailable. The soldiers, who do not know Georgian, cannot have a confidential conversation with their superiors.

UNIT No. 17 OF THE EXTERNAL PROTECTION DIVISION AND CONVOY OF THE PENITENTIARY DEPARTMENT

Unit no. 17 of the External Protection Division and Convoy of the Penitentiary Department is the only barrack-type establishment in the penitentiary system. It is staffed with the conscripts and regular military servicemen. The duty comprises of three shifts.

There is a medical unit in the above-mentioned unit. If needs be, an ambulance is called in and the soldiers will be taken to a provider clinic of the town.

There are concrete tiles on the kitchen floor; walls are damp and peeled; there is a plastic bag instead of glass in windows; and exhaust fans are not working.

In the barracks building ventilation system is out of order. Individual cupboards for soldiers to store their personal belongings are not provided.

There is a shower building in the yard. Individual taps in shower booths are not provided and it is impossible to regulate temperature. None of sinks is working. There is no ventilation in the toilet room.

Soldiers mentioned that sometimes they have group punishments and have to do exercises or squats. There has been an incident where an offender was made to look at others exercising for his offence. Such actions cause confusion and conflicts among military servicemen.

The common problem of soldiers is that they cannot use their holidays. Several soldiers have been serving for eight months but have not used their holiday yet.

Apart from Georgians, there are ethnic Azeri and Armenian servicemen in the units of external protection the majority of whom do not speak Georgian. Given the fact that interpreters are not unavailable, the soldiers, who do not know Georgian, cannot have a confidential conversation with their superiors.

2.5. PROTECTION OF VETERANS' RIGHTS

THE STATE SERVICE FOR VETERAN AFFAIRS

In 2014, the Department of Veteran Affairs was separated from the Ministry of Defence of Georgia and transformed into an independent agency called LEPL State Service for Veteran Affairs. The Service is presently located in a building located at 89 Gorgasali Street, Tbilisi, where there is a lack of space and poor working conditions.

According to the information submitted to the Office of the Public Defender of Georgia,[30] the 2017 budget of LEPL State Service for Veteran Affairs allocates 1,270,000 (one million two hundred and seventy thousand) GEL for the renovation and repairs of the administrative building and the adjacent area of the Service which is assessed positively.

The situation of the war veterans and armed forces veterans residing on the premises of LTD Real Invest at 71 Ketevan Tsamebuli, Tbilisi, remains the same. The Public Defender discussed this issue in detail in his 2015 Report.

In various regions of Georgia, war veterans and armed forces veterans occupy certain buildings either arbitrarily or based on a document giving them the title to the property. However, the State Service for Veteran Affairs does not have any systematised information on this type of residences.[31] It is important that the State Service for Veteran Affairs had accurate data and registered the residences and residential conditions of the veterans that are within its jurisdiction.

The decision of the *Sakrebulo* of Tbilisi Municipality of 6 December 2016[32] is positively assessed. This decision fulfils the recommendation made by the Public Defender in 2015 about extending transportation allowances to the war veterans and armed forces veter-

30 Letter no. 186/02-02-22/03-01 of LEPL State Service for Veteran Affairs of 25 January 2017.
31 Letter no. 1357/02-02-22/04-01 of LEPL State Service for Veteran Affairs of 01 August 2016.
32 https://matsne.gov.ge/ka/document/view/2669691.

ans, not only registered in Tbilisi but all veterans referred to in the Resolution, irrespective of the place of their registration.

Unfortunately, the recommendation made by the Public Defender in 2015,[33] was not fulfilled. The recommendation concerned making the situation of the persons benefiting from subsistence allowance equal and to allow all persons having veteran status to benefit from this allowance as it was provided by this government Resolution[34] until the amendment effected on 1 September 2012.

THE HOSPITAL FOR VETERANS

In the Parliamentary Report of 2015, the Public Defender described in detail the dire situation of LEPL V. Sanikidze Clinical Hospital for Veterans in Tbilisi. Due to the poor conditions, the hospital is not functioning anymore and Clinic Lantseti remains to be the provider for veterans.

33 http://www.ombudsman.ge/uploads/other/3/3891.pdf, p. 376.
34 https://matsne.gov.ge/ka/document/view/8122.

3. THE FAILURE TO COMPLY WITH THE LEGAL REQUESTS OF THE PUBLIC DEFENDER

Under the Organic Law of Georgia on the Public Defender of Georgia,[35] 'the Public Defender of Georgia shall monitor the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction.' The legislation in force also determines the means for follow-up to be used by the Public Defender within his statutory powers.

The failure to comply with the legal requests of the Public Defender is an offence under Article 173^4 of the Code of Administrative Offences of Georgia, the penalty for which is prescribed by the same Code.

Based on the above statutory provision, in the reporting period, the Office of the Public Defender of Georgia started proceedings on account of administrative offences in six cases.[36] A report on one case of administrative offence was submitted to a court. This was a case against the Director General of LTD Georgian Post. Under the resolution of Tbilisi City Court of 23 May 2016, the claim of the Public Defender was rejected.[37] The Director General of the Georgian Post was not held responsible for an administrative offence. Under the resolution of Tbilisi Court of Appeals of 17 September 2016, the appeal of the Public Defender in the same case was declared inadmissible.[38] Under the legislation in force,[39] a decision of a court of appeal in the case of an administrative offence is final and not subject to appeal.

35 Organic Law of Georgia on the Public Defender of Georgia, Article 2.

36 Among them: 5 cases concerning the violation of the term determined by Article 23 of the Organic Law of Georgia on the Public Defender of Georgia for submission of the information necessary for the examination of a case; 1 case concerning the failure to comply with the legal request of the representative of the Public Defender (delay in ensuring a meeting of the representative of the Public Defender with a person arrested in administrative proceedings) – Article 18.a) of the Organic Law of Georgia on the Public Defender of Georgia.

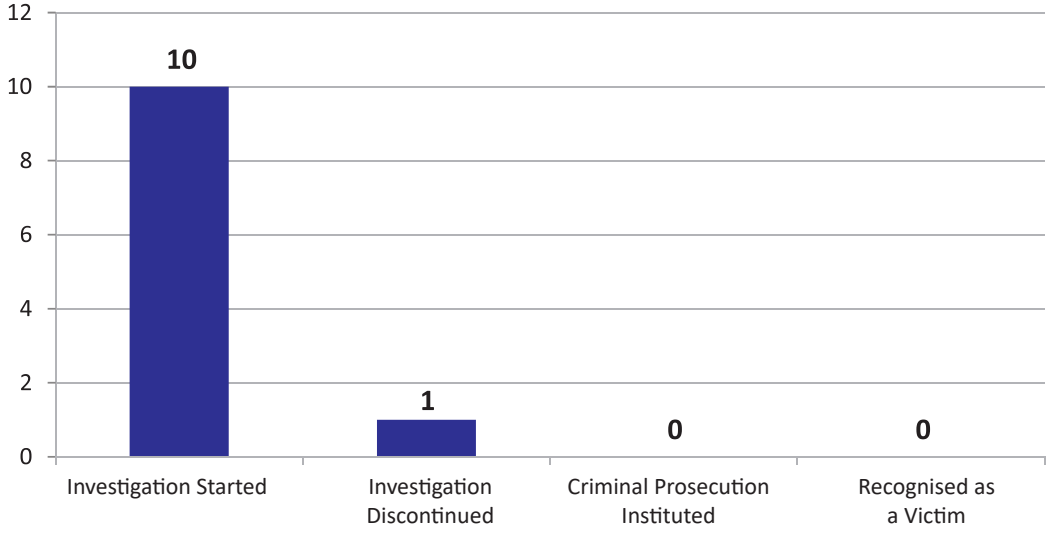
37 Case-file no. 4/2682-16.

38 Case-file no. 4/a-814-16.

39 The Code of Administrative Offences, Article 276.5.

4. PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT

Based on the analysis of the study conducted by the Public Defender's Office, it can be concluded that alleged ill-treatment by police and penitentiary personnel remains one of the pressing issues for the county. Similar to the previous years, in 2016, investigation on the incidents of ill-treatment still was ineffective: no accused person was identified, nobody was granted a victim status in any of the cases studied and referred by the Public Defender, and in some cases, investigations started with delay.[40] The qualification of a treatment under the relevant article of the Criminal Code remains a significant problem.



No. 1. The Results of Investigations Started on the Basis of the Suggestion Made by the Public Defender in 2016

Against the background of identified trends, the necessity for setting up an independent investigation agency vested with the investigative and prosecutorial powers remains topical. The Public Defender of Georgia has been pointing out this necessity since 2014.

In 2016, the number of incidents of alleged ill-treatment by police exceeded the number of the incidents of alleged ill-treatment by penitentiary personnel. The same trend persisted in the last year too. It is noteworthy that, in comparison to the previous year, the number of the occasions where the Public Defender called upon the Prosecutor's Office to start investigation decreased by 1/3.[41]

In 2016, on ten occasions, the Public Defender requested the Prosecutor's Office to start investigation on the incidents of alleged ill-treatment and, in 25 other occasions, request-

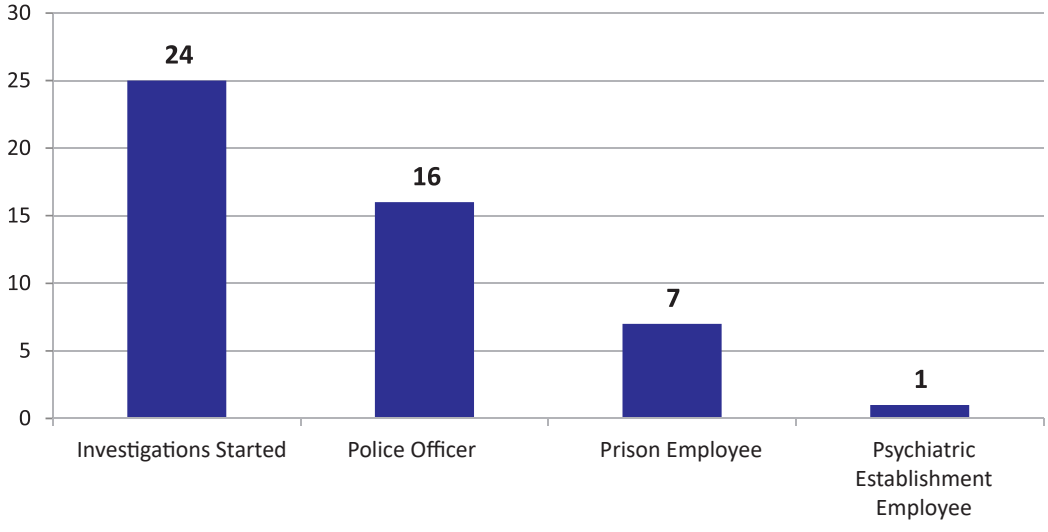
40 See diagram no. 2.

41 In particular, in 2015, the Public Defender submitted to the Prosecutor's Office 15 suggestions about starting investigation.

ed information on pending investigations on the incidents that applicants had referred to the Office of the Public Defender. No one was given the status of either a victim or accused in any of the 35 cases. In five cases, the investigation discontinued due to the absence of *corpus delicti*.

Out of ten suggestions to start investigation, **seven cases concerned alleged ill-treatment by police and three cases concerned actions committed by penitentiary employees**. Only in two cases, investigation started under a special article of the Criminal Code of Georgia - Article 144[3] (degrading or inhuman treatment); in seven cases, investigation started under Article 333 of the Criminal Code (abuse of official power), and, in one case, under Article 115 (driving to suicide).

Out of 25 incidents of alleged ill-treatment, about which the Public Defender requested information, 16 concerned illegal actions allegedly committed by police; seven – by penitentiary employees; one – investigator of Prosecutor's Office and 1 by **LEPL Academician B. Naneishvili National Centre for Mental Health (Khoni district)**.[42] Our of 25 facts, investigation was not commenced on one fact (by the representative of prosecution) since the prosecutor's office informed that the applicant did not submit a complaint on this matter). Out of these 25 incidents, 11 cases were reported in the regions.



No. 2. Alleged perpetrators of Alleged Incidents of Ill-treatment Identified in 2016 and under the Consideration of the Public Defender

The Public Defender requested information also about investigation instituted on the incidents of alleged ill-treatment in 2016. According to the information submitted by the Chief Prosecutor's Office, investigation on alleged ill-treatment by police started on 173 incidents and out of these cases, criminal prosecution was instituted only in 5 cases out of which, 2 cases were finalised with convictions.[43] It is noteworthy that in none of these

42 See Diagram no. 2.

43 Letter no.13/13873 of the Office of the Chief Prosecutor of Georgia of 1 March 2017.

cases, prosecution was instituted on the account of ill-treatment or torture but on abuse of official power.

A better situation is in terms of investigation of ill-treatment allegedly committed in penitentiary establishments as according to the information submitted by the Prosecutor's Office, out of 11 cases of investigation, criminal prosecution was instituted in 5 cases and always on the account of ill treatment.

The Office of the Public Defender, from the case-files studied in the reporting period, revealed the following trends in ineffective investigation:

- Delayed institution of investigation;
- Not allowing alleged victims of ill-treatment to be sufficiently involved in the investigation;
- Delayed interrogation of eyewitnesses/witnesses, as well as persons of interest; and
- The failure to conduct requisite investigative actions such as examination of alleged crime scene; identification parade of the alleged perpetrator indicated by a victim; failure to obtain full video recording depicting incident at stake, etc.

The representatives of the Public Defender of Georgia visited accused B.B. in a medical institution, who was arrested on 23 August. According to B.B., about 30 members of the Special Forces participated in the arrest. One of them hit B.B. hard on the forehead with a truncheon and the blow caused the victim to faint. The frontal bone of B.B. was shattered and the health condition was critical. His right palm was also fractured. According to the accused, no medical assistance was provided for almost 12 hours. The open wound to his skull was so serious that a temporary detention isolator refused to admit B.B. It should be pointed out that according to a later forensic report, the wound was life threatening.

The Public Defender of Georgia, on 23 August 2016, publicly addressed the Office of the Chief Prosecutor to conduct an effective investigation on the alleged crime committed against B.B.[44] The investigation has been instituted, however, no perpetrators have been identified to date and B.B. has not even been given the status of a victim.[45]

The Public Defender of Georgia requested information about the number of investigations the Office of the Chief Prosecutor instituted on notifications about alleged ill-treatment in 2016. It has turned out that, both in Tbilisi and in the regions, investigations are not started on most of the notifications.[46] According to the information requested and received in instalments from the Chief Prosecutor's Office, the following data has been identified:

44 *The Public Defender called upon the Chief Prosecutor to institute investigation on the alleged ill-treatment of BB.*, the Office of the Chief Prosecutor of Georgia, 23.08.2016, at: http://www.interpressnews.ge/ge/samartali/393664-ombudsmenma-mthavar-prokurors-mimartha-beqa-beqauris-mimarth-shesadzlo-arasathanado-mopyrobis-faqtze-gamodzieba-daitsyos.html?ar=A.

45 Letter no. 13/8617 of the Office of the Chief Prosecutor of Georgia of 7 February 2017.

46 The requested information contains separate data on Tbilisi and Regions. The Office of the Public Defender of Georgia did not merge these data in order to avert conflict with the total official statistics. The information submitted regarding Tbilisi and the regions separately already indicates that investigations are not instituted on a substantial number of notifications.

In 2016, the Office of the Chief Prosecutor of Georgia received 240 notifications from temporary detention isolators of Tbilisi; criminal investigation started only in 60 cases; in other cases, prosecutors only interviewed the temporary detention facilities' inmates.[47] According to the information from the regions, in 2016, the Office of the Chief Prosecutor did not start investigation on 146 notifications of alleged ill-treatment by police.[48]

According to the reply from the Office of the Chief Prosecutor of Georgia, investigation has not started on the account of those notifications where the incidents of physical or psychological violence on the part of law enforcement officers have not been confirmed. Such an approach contradicts the principles established both by the criminal procedural legislation of Georgia and international human rights law. The legislation in force does not empower investigative authorities with discretion to asses on their own motion whether to institute investigation on alleged crimes. The obligation of investigative authorities is moreover significant when the notifications received concern the allegations of ill-treatment.

47 Letter no. 13/13869 of the Office of the Chief Prosecutor of Georgia of 1 March 2017.

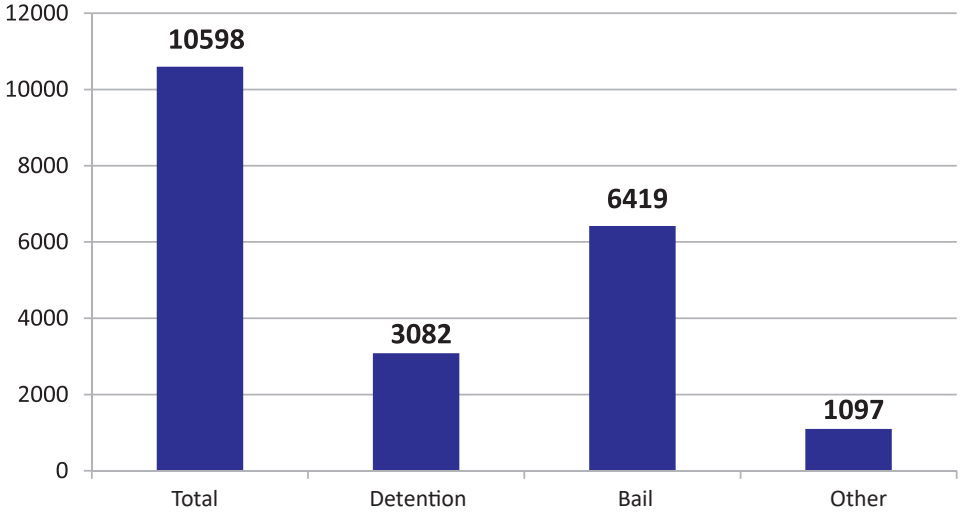
48 Letters nos. 13/10333, 13/10376, 13/10342, 13/10326, and 13/10336 of the Office of the Chief Prosecutor of Georgia of 14 February 2017 and Letters nos. 13/10440, and 13/10425 of 15 February of 2017.

5. THE RIGHT TO LIBERTY AND SECURITY

The circumstances, examined by the Public Defender during the reporting period, again showed the incidents of the violations of the right to liberty and security both at legislative and administrative levels.

PREVENTIVE MEASURES

Compared to the previous years, the reporting period was marked with insignificant decrease (less than 1%) in the number of application of detention as a preventive measure[49] in criminal proceedings. In particular, in the previous year, detention constituted 29.6%[50] of the total number of the preventive measures applied, whereas, presently, it amounts to 29.1%.



No. 1. The Statistics of the Preventive Measures Applied

The Office of the Public Defender of Georgia examined the decisions on application of detention taken by Batumi, Poti and Kutaisi City Courts, as well as Gurjaani and Gori District Courts.[51]

The study of the above-mentioned decisions show that the courts mostly apply detention as a preventive measure against those accused persons, who are charged with grievous and/or especially grievous violent crimes.[52] Besides, in number of cases, the courts fail

49 See the statistics published on the official web site of the Supreme Court of Georgiahttp://www.supremecourt.ge/files/upload-file/pdf/2016w-statistic-7arkv.pdf, http://www.supremecourt.ge/files/upload-file/pdf/2016w-statistic-7arkv.pdf.

50 According to the data published on the website of the Supreme Court, in 2015, there were 11,243 preventive measures; among them, detention was applied in 3387 instances. This statistics is reproduced in the Parliamentary Report of Georgia of 2015, p. 426.

51 Tbilisi City Court has not submitted materials to the Office of the Public Defender of Georgia.

52 There are isolated cases where detention has been applied against the accused persons, charged with non-violent crimes.

to substantiate the risks posed by particular accused persons in terms of absconding, obstructing investigation, suborning witnesses, and/or destroying evidence. Accordingly, these decisions are indiscriminate and ill-founded.

In the cases where bail has been applied, there is no information in court decisions about the property owned by either accused persons or those who could pledge to bail out accused persons with sums and/or immovable property.

There are examples of best practices where the courts decided against the application of detention due to the inability of an accused person to pay bail. There are cases where the courts decided against the use of any preventive measure, which is positively assessed.

In the context of proportionality of preventive measures, unjustifiably narrow statutory grounds allowing the application of an undertaking not to leave and duly behave should be pointed out.[53] This measure cannot be applied, inter alia, in those cases where, on the one hand, detention is completely unreasonable and, on the other hand, an accused person does not have sufficient means to pay bail. Such regulation raises the risk for the application of a disproportionate preventive measure.[54]

The Criminal Procedure Code[55] provides for the possibility of the parties to appeal a preventive measure with the Investigative Board of a Court of Appeals. However, according to the statistics submitted by Tbilisi Court of Appeals to the Office of the Public Defender of Georgia, the majority of appeals have not been admitted. In particular, out of 1652, only 104 appeals have been admitted.[56] As regards Kutaisi Court of Appeals, out of 750, only 45 appeals have been admitted.

ARREST

Arrests have been punctuated with several noteworthy incidents of the violation of procedural safeguards, causing flagrant breach of an individual's right to liberty.

Information and social networks disseminated a photo and video material depicting E.D.'s arrest.[57] E.D. was handcuffed and made to get into a patrol police car. The arresting police officers explained to E.D. that his arrest was made based on Article 255 of the Criminal Code of Georgia. However, his arrest was denied both by the Office of the Chief Prosecutor of Georgia[58] and the Ministry of Internal Affairs of Georgia.[59] According to their

53 Under Article 202 of the Criminal Procedure Code of Georgia, undertaking not to leave and duly behave can only be applied in those cases, where the penalty of deprivation of liberty does not exceed one year.

54 The risk for disproportionate preventive measure arises inasmuch a judge is authorised to apply either bail or detention. If a judge applies bail to an indigent accused person, it will be commuted with detention due to the failure to pay the bail: in accordance with the procedural legislation, the violation of the terms of a preventive measure causes the application of a stricter preventive measure. In the aforementioned case, the failure to pay the bail amounts to the violation of the terms of the bail and detention is the stricter preventive measure.

55 Article 207 of the Criminal Procedure Code of Georgia.

56 Letter no. 4/50 of Tbilisi Court of Appeals of 23 January 2017.

57 See https://www.youtube.com/watch?v=YGiQEz5gqYU , date of posting: 11 March 2016; [Last visited on 10 March 2017]. http://netgazeti.ge/news/100983/, date of posting 12 March 2016; Last visited on 10 March 2017

58 Letter no. 13/32233 of the Office of the Chief Prosecutor of Georgia of 23 May 2016.

59 Letters nos. 992255 and 1523122 of the Ministry of Internal Affairs of 21 April 2016 and 21 June 2016.

statements, E.D. was at the administrative building of the Ministry of Internal Affairs as a witness to be interviewed. The Georgian legislation does not allow handcuffing, transporting, or arresting a person for interviewing.

Another noteworthy incident in this context is identified: during the first appearance before a court, G.O. submitted that the arrest had been actually made on 5 September 2014 instead of 12 September 2014. According to various information outlets, G.O. was arrested on 5 September 2015. G.O. motioned for an investigation to be instituted on alleged illegal arrest, which was dismissed.

The Constitution of Georgia[60] and the Criminal Procedure Code of Georgia[61] stipulate that an arrestee or a detainee shall be informed of the reasons for their arrest in a language they understand and made aware of their right to have a lawyer; the arrest and whereabouts shall be notified to a family member and/or a third person of their choice.

In 2016, the Office of the Public Defender studied the case-files of 14 arrestees[62] and identified violations of the above rights. While a report on reading rights is drafted during arrest, the rights are not explained in a language arrestees understand. Similarly, rights are not explained during administrative arrests. The Office of the Public Defender studied two case-files where police officers did not inform family members about arrests.

In the reporting period of 2016, three defence counsels applied to the Public Defender of Georgia.[63] According to their allegations, arrestees and detainees were restricted in their right to a legal counsel. One of the incidents reported concerned the refusal to allow a lawyer to the temporary detention isolator; in another incident, a lawyer was admitted to a patrol police building with an hour and a half delay. There have been occasions where various investigative actions were carried out without a lawyer.

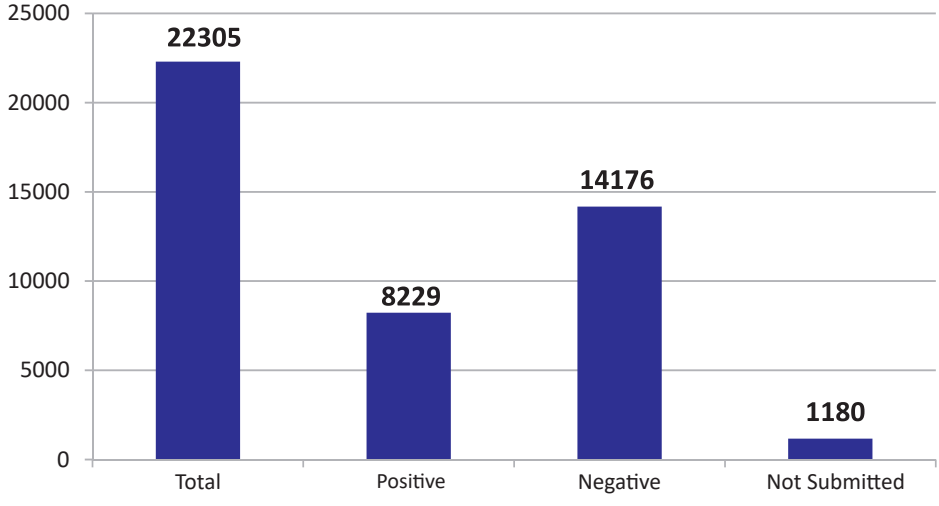
EXTRADITIONS

In 2016, the Office of the Public Defender of Georgia identified various incidents where the wanted accused persons were not brought before a court within statutory 48 hours after arrest.[64] Instead, they were brought before the court at the next hearing of the trial, 20 days after the arrest. Furthermore, the court opined that[65] the statutory terms set forth by the procedural legislation only apply to investigation and not trial. Such an interpretation essentially contradicts the rationale of bringing an arrestee before a court, the right which is guaranteed by not only the criminal procedural legislation of Georgia but by the international instruments as well.[66]

60 The Constitution of Georgia, Article 18.5.
61 The Criminal Procedure Code of Georgia, Article 38.2.
62 Applications nos. 4138/16, 3253/16, 12055/16, 7575/16, 10903/16, 11863/16, 2507/16, 2509/16, 10911/16, 10240/16, 15004/16.
63 Applications nos. 11863/16, 4138/16, 3253/16.
64 The Criminal Procedure Code of Georgia, Article 206.10.
65 Minutes of the court hearing of 6 April 2016, audio recording no. 006, from 00:43:10 to 00:45:00.
66 *Bergmann v. Estonia*, *Gutsanovi v. Bulgaria*; *Ipek and Others v. Turkey*; *Kandzhov v. Bulgaria*; Guide on Article 5 of the Convention: Right to Liberty and Security, 2014, 2nd edition, paras. 132–133, p. 24.

TESTING FOR DRUGS

Various incidents of random selection on the streets for testing for drugs were identified during the reporting period. In particular, in several cases, police officers took particular persons against their will to a forensic building for administering drug tests. These acts were based on subjective suspicions that the person concerned could be under the influence of narcotics and/or other psychotropic drugs. Besides, the majority of these drug tests results are negative. According to the information submitted by the Ministry of Internal Affairs to the Office of the Public Defender of Georgia, the majority of the test results are negative:[67]



No. 2. Personal Data of the Persons Subjected to Testing for Drugs

Numerous incidents were identified[68] where persons arrested in administrative proceedings refused in writing to submit biological sample for narcotics and/or other psychotropic drug tests. However, they were released after the lapse of the statutory term of twelve hours for administrative arrest. Such practice amounts to flagrant breach of an individual's right to liberty and security and is in breach of both the Constitution of Georgia and international standards. The Public Defender of Georgia, with regard to this problem, lodged a constitutional complaint[69] with the Constitutional Court and requested pronouncement of those legislative acts that expressly or tacitly allow law enforcement officers to transfer individuals to a forensic institution for administration of drug tests without their will as unconstitutional.

Furthermore, the Public Defender of Georgia lodged a constitutional complaint[70] with the Constitutional Court of Georgia and requested pronouncement of restriction of liberty and the administrative detention for the use of narcotics and/or other psychotropic drugs as unconstitutional.

67 Letter no. 293477 of the Ministry of Internal Affairs of Georgia of 6 February 2017.
68 Eight incidents.
69 Constitutional complaint no. 697 of 25 November 2015.
70 Constitutional complaint no. 770 of 17 June 2016.

6. THE RIGHT TO A FAIR TRIAL

The breaches of the various aspects of the right to a fair trial were identified in the reporting period. In particular, in the reporting period, the Office of the Public Defender looked into the implementation of two[71] judgments[72] of the Constitutional Court of Georgia of 2015. It was revealed that the courts of general jurisdiction frequently ignore the reasoning of these judgments: they follow a formalistic approach and only apply the operative part of the judgments.

It is noteworthy that the mechanism for the revision of legally binding court sentences does not allow full possibility for redeeming those incidents, where justice was administered with substantial violations of the Constitution of Georgia, as the grounds for revision are unreasonably limited.[73] The draft law submitted by the Public Defender of Georgia in 2016 concerns the review of constitutionality of the legally binding decisions of the courts of general jurisdiction adopted on the rights and freedoms safeguarded by the Constitution of Georgia.[74] The initiative is not followed-up.[75]

It is important to address the issue of the principle of legal certainty as an aspect of due process. In the reporting period, the Public Defender submitted an *amicus curiae* brief[76] to the Constitutional Court of Georgia in the criminal case pending in respect to the employees of the Ministry of Defence N.K., G.Gh., A.A., G.L., and D.Ts. (the so-called the *Cables Case*). The Public Defender argued that the 'embezzlement', a crime envisaged under the Criminal Code of Georgia and its application in practice by common courts, allegedly violated the foreseeability and legality principle.

One of the most important aspects of the right to a fair trial is the equality of arms during investigation. The Public Defender studies the case-file of a clergyman G.M. where on defence side prosecutors imposed the obligation not to divulge the information related

71 *Citizen Zurab Miqadze v. the Parliament of Georgia*, judgment of the Constitutional Court of Georgia of 22 January 2015.

72 *Citizen Beqa Tsiqarishvili v. the Parliament of Georgia*, judgment of the Constitutional Court of Georgia of 24 October 2015. Letter no. 27G/K of Batumi City Court of 16 January 2017; Letter no. 499–1 of Kutaisi City Court of 16 January 2017, and Letter no. 20897 of Tbilisi City Court of 13 January 2017.

73 The Criminal Procedure Code, Article 310 (g)[1].

74 See at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-iniciativa-saqartvelos-sakonstitucio-sasamartlos-uflebamosilebis-gafartoebastan-dakavshirebit.page.
The initiative, as a measure of exception, provides for the possibility of challenging before the Constitutional Court of Georgia, within a year after enforcement of the law, of the legally binding decisions of the courts of general jurisdiction that have been adopted since 24 August 1995 and become final.

75 On 29 February 2016, the Committee of Human Rights and Civic Integration of the Parliament of Georgia examined the draft law based on the submission of the Public defender. See at: http://www.ombudsman.ge/ge/news/saqartvelos-parlamentma-saqartvelos-sakonstitucio-sasamartlos-uflebamosilebis-gafartoebastan-dakavshirebit-saxalxo-damcvelis-iniciativa-ganixila.page; The Public Defender presently submitted the initiative to the State Constitutional Commission set up under Resolution no. 65 of the Parliament of Georgia of 15 December 2016 and it is under consideration within the human rights working group.

76 See the *amicus curiae* brief of the Public Defender of Georgia on the so-called *Cables Case*; the Public Defender of Georgia, 31.08.2016, available at: http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-curiae2/saqartvelos-saxalxo-damcvelis-sasamartlos-megobris-mosazreba-ew-kabelebis-saqmeze.page.

to the case, whereas the prosecution itself publicised the case details according to their discretion. The Public Defender called upon the Office of the Chief Prosecutor of Georgia to inform the public about the purpose of imposing such an obligation on the defence and to discontinue the restriction when it is no more absolutely necessary, in order not to violate the principle of equality of arms.[77]

In the reporting period, the Public Defender took interest in the practice of voluntary interviewing witnesses since there were several incidents where witnesses reported that they were coerced into interviews conducted by police.[78] In particular, the obtained information showed that 1750 witnesses were interviewed in criminal cases only in Police Station no. 5 of Tbilisi Vake-Saburtalo Division, in 2016.[79] On the other hand, according to the report of the Office of the Chief Prosecutor of Georgia,[80] covering the period from 20 February 2016 to 28 November 2016, out of the motions to a court on questioning witnesses, only 27 were based on the refusal to interview.[81] The big contrast between these numbers without going into much argument still gives rise to misgivings about just how voluntary these interviews are that the investigative authorities conduct without a court's involvement in so many cases. The Public Defender also identified those cases where witness interviews were automatically followed by arrests.

The delay in examination of cases by courts of appeals is noteworthy. Out of 825 appeals that reached and were admitted by the Chamber of Criminal Cases of Tbilisi Court of Appeals[82] , the consideration of the merits of 92 cases was delayed from four to nine months out of 825 appeals which were logged and reviewed in 2016. Out of the case-files studied by the Office of the Public Defender, in two occasions, Tbilisi City Court delayed the consideration of the merits for a considerable time.[83] According to the information submitted to the Public Defender,[84] in 2016, the consideration of the merits was delayed in the Chamber of Criminal Cases of Kutaisi Court of Appeals, in 47 occasions (from four months to a year and one month) out of 716 cases.[85]

In the reporting period, the Public Defender identified numerous incidents of violation of presumption of innocence by law enforcement authorities when making public statements.[86] For example, the news posted on the official website of the Ministry of Internal

77 See the statement of the Public Defender of Georgia in the case of archpriest Giorgi Mamaladze; the Public Defender of Georgia, 16.02.2017, available at: http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-dekanoz-giorgi-mamaladzis-saqmestan-dakavshirebit.page.

78 Under the changes made to the Criminal Procedure Code on 20 February 2016, an investigator can interview a witness regarding a range of crimes only with his/her consent.

79 Letter no. 293477 of the Ministry of Internal Affairs of Georgia of 6 February 2017.

80 See: http://pog.gov.ge/res/docs/angarishi-2016.pdf p. 38.

81 According the report of the Chief Prosecutor's Office, 71 motions on witness interrogation have been submitted to a court.

82 Letter no. 33 of Tbilisi Court of Appeals of 15 March 2017 contained information indicating the dates of filing appeals and completion of proceedings.

83 The case of convicts: M.I., and L.A., Letter no. 1/B-887-15 of Tbilisi Court of Appeals of 26 July 2016; the case of convicts: S.V., and H.H., Letter no. 1/1B–537–15 of Tbilisi Court of Appeals of 31 January 2017.

84 Letter no. 26–2/10 of 13 January 2017 and Letter no. 72–2/10 of 8 February 2017. The letters contained the details of appeals: case numbers, date of filing, date of adoption of judgments.

85 717 appeals have been filed, 716 appeals have been considered.

86 See, *the Ministry of Internal Affairs and the State Security Service arrested two persons for grievous extortion;* the Ministry of Internal Affairs, 14.09.2016, at: http://police.ge/ge/shss-m-didi-odenobit-qrtamis-gamodzalvis-faq-

Affairs contained a statement about an accused being guilty and referred to the full name. The public statements made by the State Security Service of Georgia,[87] also by the Office of the Chief Prosecutor of Georgia,[88] contain affirmative findings of accused persons being guilty. Besides, the identification of the persons is possible as their names are mentioned in full. One of the statements on the State Security Service also contains information that an arrestee confessed to the commission of a crime.[89] The statements made by the Office of the Chief Prosecutor of Georgia concerning the criminal case against the clergyman[90] are in violation of presumption of innocence.

The study of the high-profile cases, in the reporting period revealed shortcomings related to jury trials and other breaches. In particular, the Office of the Public Defender observed the consideration of two cases by juries. Shortcomings were identified in one set of proceedings that compromise various aspects of the principle of a fair trial; whereas, the shortcomings identified in another proceedings are specifically linked to a jury trial.

In the criminal proceedings against M.P., the court failed to take appropriate measures to ensure order in the courtroom. This failure caused damage to the reputation and dignity of the accused. The proceedings were conducted so that neither a judge nor a prosecutor ensured the respect for confidentiality of personal data of the accused, despite the fact that certain parts of the hearing were held in camera. Besides, in the proceedings, the prosecution focused on the matters that consolidate the social stereotypes about women.

It was revealed in the criminal case against G.O. that there is no effective mechanism for averting incompatibility of candidate jurors. This case has proved that there is no mechanism whereby jurors would be protected from social pressure and the media and thereby ensure passing a verdict based on evidence only. The same case showed that the legislation does not provide for sufficient safeguards for the legality of a verdict. A verdict cannot be clear if, due to the absence of the possibility for posing questions to jurors, a court of appeals does not examine the comprehensiveness of information given in the resolution of bringing charges or individual nature of the evidence used against an ac-

tze-ori-piri-daakava/10003; the statement of the Ministry of Internal Affairs, 19.08.20016, at: http://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/9945.

87 See, e.g. *Anti-Corruption Agency of the State Security Service arrested one person for bribery*, the State Security Service, 29.02.2016, at: http://ssg.gov.ge/news/135/sus-is-antikorufciulma-saagentom-qrtamis-aghebis-faqtze-erti-piri-daakava; *Anti-Corruption Agency of the State Security Service and the Ministry of Internal Affairs arrested one person for bribery,* the State Security Service, 02.03.2016, at: http://ssg.gov.ge/news/74/sus-is-antikorufciulma-saagentom-da-shss-m-qrtamis-aghebis-faqtze-erti-piri-daakaves.

88 See, e.g. *the Chief Prosecutor's Office closed the case of Besarion Khardziani murder* , the Office of the Chief Prosecutor's Office of Georgia, 21.01.2016, at: http://pog.gov.ge/geo/news?info_id=857; *the Chief Prosecutor's Office closed the case of Shutting down TV company Iberia and forceful discontinuation of broadcasting licence,* the Office of the Chief Prosecutor of Georgia, 16.02.2016, at: http://pog.gov.ge/geo/news?info_id=869.

89 See, *Counter Terrorism Centre of the State Security Service arrested one person,* the State Security Service, 30.07.2016, at: http://ssg.gov.ge/news/156/sus-is-kontrteroristulma-centrma-erti-piri-daakava.

90 See, *the Chief Prosecutor's Office arrested archpriest Giorgi Mamaladze as an accused for the preparation of a murder*, the Office of the Chief Prosecutor of Georgia, 13.02.2017, at: http://pog.gov.ge/geo/news?info_id=1137; *the Chief Prosecutor publicises the of the intermediate findings of investigation into the case of Giorgi Mamaladze*, the Office of the Chief Prosecutor of Georgia, 08.03.2017, at: http://pog.gov.ge/geo/news?info_id=1154.

cused during a trial. The fact that the Court of Cassation completely distances itself from the assessment of the body of evidence also violates effective right to appeal. The existing statutory reality does not enable a convict to continue proceedings in higher instance courts by invoking that a verdict clearly contradicts the body of evidence existing in the case-file. Accordingly, the risk for arbitrariness on the part of jurors is not sufficiently curtailed which is in violation of the *Taxquet* standards.

Another problem is the lack of regulations for the use of hearsay by the jurors. Giving jurors abstract instructions regarding the probative force of hearsay (only where either party motions for such instructions) does not adequately avert reliance on this evidence. Finally, even in those cases, where a case is heard by jurors, a presiding judge has the duty to provide reasoning for the imposed category and measure of the punishment so that a sentence is not ill-founded.

In the reporting period, on 29 December 2016, the Parliament of Georgia adopted with the third hearing the draft law elaborated within the third wave of justice reforms.[91] It is noteworthy that one of the major recommendations made by the Public defender concerning the introduction of electronic case management in the court system has been taken into account. However, the delay of the date of enforcement by one year, until 31 December 2017, should be negatively assessed.[92]

Despite certain positive aspects of the third wave of justice reforms, the draft law adopted through the third hearing contains such problematic provisions that fail to secure independence of the judiciary and to ensure that the reforms move in the right direction. In this regard, appointment of a president of a court/chamber/section by the High Council of Justice is noteworthy.[93] Besides, as the result of the third wave of justice reforms, out of nine judges of the courts of general jurisdiction that are members of the High Council of Justice, five judges can be, at the same time, a president of a court/chamber/section, the first deputy president of a court/chamber/section, or the deputy president of a court/chamber/section. Such representation of presidents in the High Council of Justice gives rise to a real risk for concentration of power in their hands and increases the existing hierarchy among judges.

The Legislation still does not provide for the rules and procedures for the promotion of judges. Under the changes, the authority to elaborate criteria for promotion of judges remains with the High Council of Judges of Georgia.[94] It is necessary to provide for statutory, objective, fair and transparent criteria for promotion of judges. The shortcomings of the

91 See the so-called draft law on the third wave of justice reform prepared by the Ministry of Justice of Georgia, 2 July 2015, III hearing, the Parliament of Georgia, available at: http://info.parliament.ge/#law-drafting/9716 [Last visited on 8 February 2017].

92 See Article 1 section 32 and Article 2 of the Organic Law of Georgia on the Amendment tothe Organic Law of Georgia on the Courts of General Jurisdiction, Law (21), available at : http://info.parliament.ge/file/1/BillReviewContent/142443.

93 See Article 1. Section 10 (b) and section 14 of the Organic Law of Georgia on the Amendment to the Organic Law of Georgia on the Courts of General Jurisdiction.

94 See Article 1. Section 22 (a) of the Organic Law of Georgia on the Amendment to the Organic Law of Georgia on the Courts of General Jurisdiction.

legislation in force became evident during the competition for the promotion of judges conducted in 2015.[95]

Despite the changes carried out within the third wave of justice reforms, the statutory regulation and practice of disciplinary responsibility of judges remains problematic. The Public Defender observes that the provisions regulating disciplinary responsibility of judges, as well as the relevant practice of the High Council of Justice, need serious revision.[96]

In the reporting period, the Public Defender of Georgia, on his own motion, studied the legality of dismissal of the President of Tbilisi City Court and the Section of Criminal Cases, Mamuka Akhvlediani. The Public Defender submitted his finding to the High Council of Justice. The study of the case revealed that the High Council of Justice of Georgia took the aforementioned decision about dismissal having circumvented the Law of Georgia on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings. According to the finding of the Public Defender of Georgia, the decision of the High Council of Justice is in violation of law and bound to have expressly negative ramifications for the interests of justice. The Public Defender expresses his hope that the High Council of Justice discontinues such practices in the future.

95 See the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia, 2015, the Public Defender of Georgia, pp. 443-444, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf [Last accessed on: 13 February 2017]. See, also the statement of the Public Defender of Georgia: The Public Defender of Georgia on the Ongoing Promotion of Judges at the High Council of Justice, 30 October 2015, available at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-iustici-is-umagles-sabchoshi-mimdinare-mosamartleta-dawinaurebis-process-exmaureba.page [Last accessedon: 13 February 2017].

96 *Ibid.,* p. 444.

7. RIGHT TO PRIVACY

In 2016, the right to privacy became an object of fierce attacks. Inadequate response to these violations further bolstered impunity.

Over the period between 11 March and 13 June 2016, video recordings featuring private lives of various people were released via social networks and webpages. In a call for fast and effective investigation into these facts, the Public Defender launched the campaign "Timer is turned on." The campaign aimed at urging the Chief Prosecutor's Office towards adequate response to these facts. Although the Chief Prosecutor's Office carried out a number of investigative actions and charged several persons with illegal acquisition and storage of recordings of private lives, a person who released them has not been identified yet. Inadequate response of the state to violations of private life is even more alarming given that the similar crimes committed in October-November 2015 have not been investigated yet. Identification of culprits is of great importance to dispel doubts about the involvement of state authorities in the above mentioned facts.

Adequate measures were not taken either against the release of torture video in August 2016. The availability of the footage was degrading for the people featured in it and inflicted a moral pain on them.

Given the scale of violations of private and family lives, the Public Defender kept a close watch on legislative amendments concerning covert investigative actions, which were drafted in response to the decision of the Constitutional Court. These amendments, adopted on 1 March 2017, envisaged the creation of a legal entity of public law Operative-Technical Agency of Georgia to carry out covert investigative actions. Although bearing certain elements of formal independence, the Agency remains subordinated to, and under the effective control of, the State Security Service and is thus inconsistent with the decision of the Constitutional Court of Georgia of 14 April 2016. Yet another ineffective result of the legislative amendments was the determination of powers of the Group of Trust, a mechanism of parliamentary control. The control can be carried out only twice a year and by one member alone, who is selected by the Group of Trust; this, together with other deficiencies, virtually excludes the participation of parliamentary opposition in the control.

Among the steps taken on the legislative level, one should also mention toughened liability for the disclosure of information on private life or personal data. In particular, Article 157^1 added to the Criminal Code sets four years in prison as a minimal liability for violating secrecy of private life.

The reporting period also saw the violation of personal correspondence in penitentiary facilities. Regarding these facts, the Office of Public Defender applied to the Minister of Corrections of Georgia and the General Inspection of the Ministry.

To eradicate a vice practice of illegal collection of information from various public or private entities, the Public Defender called on the Parliament of Georgia to set up a tempo-

rary commission for investigation into the use of so-called ODR (officers of active reserve) in those entities where their activity was excluded by the law. The Public Defender also applied to the Chief Prosecutor's Office of Georgia with recommendations to study the information about illegal activity of so-called ODRs in various entities. The public is not informed about the measures taken in this respect.

The study conducted by the Public Defender into the presence of so-called ODRs at the Tbilisi State University (TSU) revealed that I.Kh., who was labelled as the ODR by TSU students, was not a TSU student at all but he took part in the activity of TSU student self-government and held important positions there; he also participated in the election processes at various universities. It was further identified that before 1 May 2016, I.K who was advisor to the Chief of Administration in Security Issues of State University. It is also worth to note that I.Kh. and I.K. (another person was also labelled as the ODR by TSU students) got jobs at the TSU without going through any competition.

In 2016, on a number of occasions, district inspectors inquired about personal data of those persons/family members thereof, who voiced their protest against this or that issue and got media attention.

Visits of Interior Ministry representatives to families of those citizens who voice protest, raise doubts that such visits pursue the aim of exerting pressure on these citizens or their family members to make them refrain from expressing critical opinions rather than of fulfilling the main duties of district inspector-investigators.

8. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Challenges faced by the country in regard to freedom of religion, tolerance and equality have remained unchanged over the years. The main challenge is the lack of adequate and effective response from the state to offences committed on the ground of religious intolerance; this, for its part, is the main cause that the indicator of such crimes either remains unchanged or shows an upward trend. Compared to previous years, some improvements were observed in 2016 in terms of initiating investigations and giving adequate qualifications to offences. At the same time, however, one cannot see concrete legal outcomes on the majority of crimes allegedly committed against Muslims in the past few years.

Persecuting and abusing representatives of Jehovah's Witnesses, as well as preventing them from conducting religious services remained a trend in 2016. As in 2015, the main problem was the application of Article 187 of the Criminal Code (Damage or destruction of property) by law enforcement authorities to crimes committed on the ground of religious intolerance. During the reporting period, the Public Defender learned about two attacks on the Kingdom Hall of Jehovah's Witnesses into which the investigations were launched as into the damage of property; however, they were terminated because the value of damage was set at less than 150 GEL. The Public Defender believes that the application of Article 187 alone to such cases while the Criminal Code provides the punishment for the persecution on religious ground (Article 156), contributes to the establishment of wrong practice.

In the reporting period, the Public Defender learned about several instances of obstructing representatives of the Muslim community, including creating additional barriers for various reasons and searching persons of Muslim denomination at the Sarpi border checkpoint, and prohibiting a student of public school in Mokhe to wear hijab at school.

The Office of the Public Defender studied the fact of obstructing the opening of a boarding school for Muslim pupils in Kobuleti in 2014 from the standpoint of freedom of religion and the right to property and the fulfillment by law enforcement authorities of positive obligation to ensure the exercise of these rights.[97] The court partially satisfied the claim of the chair of Georgian Muslim Relations, R.K., and the director of M&B LLC, M.B., and instructed several defendants (natural persons) to stop continuous discriminatory action and ensure that property in Kobuleti is freely used, including for opening and operation of the boarding school for Muslim pupils. Defendants were also ordered the payment of compensation for moral damages in a symbolic amount of 1 GEL as demanded by the latter. The Batumi city court, however, did not uphold the claim of the plaintiff for the establishment of discriminatory treatment on the part of Interior Ministry although the police, which were mobilized at the boarding school building, failed to prevent offenders from obstructing Muslims to enter the boarding school, and to protect their rights. The plaintiff appealed this decision to the court of appeals of Kutaisi.

97 See the Public Defender's parliamentary report 2014; pg. 269. http://www.ombudsman.ge/uploads/other/3/3510.pdf

The Muslim community of Adigeni village, which does not have a separate cemetery, applied to the Adigeni municipality's executive body for a plot of land for the cemetery. On 29 February 2016, the head of executive body of Adigeni municipality, Zakaria Endeladze, with other employees, was holding a meeting with local population of the village to study the issue when representatives of local population verbally and physically abused Muslims. According to information available to the Public Defender, the Adigeni district department initiated investigation into this incident under Paragraph 1 of Article 156 of the Criminal Code of Georgia which envisages persecution, but the investigation was terminated. Six locals of the Adigeni village were penalized with a fine of 100 GEL each for disorderly conduct under the Article 166 of the Code of Administrative Offences. Also, the parties agreed to allocate a separate cemetery to Muslims.

At his own initiative, the Public Defender of Georgia studied the discharge of former Sheikh of Muslims of Georgia Vagif Akperov from his religious post. According to the former Sheikh, he was forced to step down. Although Vagif Akperov spoke about alleged crime committed against him in TV interviews,[98] the Chief Prosecutor's Office of Georgia did not initiate the investigation. The investigation into this crime was launched only after the application of the Office of Public Defender of Georgia; the investigation, according to information provided by the Chief Prosecutor's Office on 25 March 2017,[99] is still underway.

No one has been prosecuted for alleged crimes committed on the ground of religious intolerance during the period between 2012 and 2014, and investigations into them are still underway. The termination of, or refusal to initiate, investigation into several criminal cases on the ground of absence of signs of crime, in the Public Defender's view, proves inadequacy of response from the state. In particular, these are the incidents against Muslim population which occurred between 2012 and 2014 in the villages of Nigvziani, Tsintskaro, Samtatskaro and Kobuleti and which show signs of offences envisaged by the Criminal Code; also violations of Muslims' rights in the villages of Mokhe and Chela in Adigeni municipality and in Kubuleti municipality. In some of abovementioned incidents, law enforcement officers used excess force and/or failed to properly perform their duty.

In the reporting period, religious associations faced resistance from local self-government bodies again to issue construction permits for religious or other types of building.

The Caucasus Apostolic Administration of Latin Rite Catholics had waited for a construction permit for the construction of a cult building on its own land since 2013. After three years of resistance from the government and for fears that a court hearing on the issuance of construction permit, which was underway in parallel, would continue for an indefinite time, the Catholic Church agreed to an alternative territory offered for the construction of the cult building.

98 Tabula TV, Talks about Religion program, 25 February 2014; information available at https://www.youtube.com/watch?v=uD65KaTCQ7M [last accessed on 27.03.2017]; Rustavi 2 TV, P.S. program, 4 October 2015; information available at http://rustavi2.com/ka/video/9452?v=2 [last accessed on 27.03.2017].

99 Letter N13/19751 of Chief Prosecutor's Office of Georgia.

As regards the so-called disputed building in the village of Mokhe in Adigeni municipality,[100] a two-year-long consideration by a commission of the issue of confessional belonging of the building[101] ended with no result although the argument (the need of large financial resources) cited by the commission as the ground of refusal to establish the origin of the building, did not require such a long consideration.

The construction of a new mosque remained the main challenge of Batumi Muslims in the reporting period. Steps taken by the state in this direction were not suffice to solve the key problem – overcrowding of existing mosque and praying outdoors.

In the reporting period, the state failed again to take effective steps toward the restitution of property to the religious associations, seized from them during the Soviet period.[102] Unfair practice of state funding of religious associations remained a problem. The state continues to finance only four religious associations as a compensation for damages sustained during the Soviet period, while refraining to take similar steps towards other religious associations.[103] Moreover, the state refrains from recognizing any other religious association but the already recognized four religious associations, as victims of Soviet totalitarian regime.

Although the constitutional agreement and the ordinance of the government of Georgia of 27 January 2014 speak about partial/symbolic compensation of damage caused to religious organizations in the Soviet period, the current model does not have a form of compensation of damage but rather the form of direct annual financing of mentioned religious organizations. This assessment follows from the fact that, on the one hand, the damage incurred by concrete religious denominations has not been measured and on the other hand, the limits within which a partial/symbolic compensation should be carried out, have not been determined. The Public Defender of Georgia believes that the model applied today does not match the above mentioned normative acts and therefore, needs to be brought in line with the legislation.

Unfair taxation regime, which puts the Georgian Patriarchate in an advantageous condition, remained unaltered in the reporting period. In particular, in contrast to other religious associations, the Patriarchate enjoys tax breaks and in certain cases, is exempt from property, VAT and profit taxes.[104]

Observing religious neutrality at schools and fulfilling requirements of the Law on General Education remained a problem. To overcome this problem, the Ministry of Education and Science must effectively monitor the compliance of schools with the requirements of the Law on General Education regarding religious neutrality and undertake correspond-

100 See the Public Defender's parliamentary report 2014; pg. 271. http://www.ombudsman.ge/uploads/other/3/3510.pdf

101 In 2014, the State Agency for Religious Issues set up a commission to inquire into the circumstances related to the building having the status of a club and located in Village Mokhe of the Adigeni Municipality was established.

102 See Public Defender's parliamentary reports for previous years.

103 Government Ordinance №117 of 27 January 2014 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.

104 See the Public Defender's parliamentary report 2010.

ing measures. Moreover, the content of school education is problematic too. Textbooks approved for various grades and subjects contain texts and editorial comments that are intolerant, xenophobic and biased.

In the reporting period, penitentiary facilities showed inconsistency in allowing extra parcels for inmates of various denominations on religious holidays. The Public Defender received several reports that Christian Orthodox inmates enjoyed preferential terms in receiving holiday parcels.

9. PROTECTION OF THE RIGHTS OF ETHNIC MINORITIES AND CIVIL INTEGRATION

A bulk of challenges in the area of ethnic minority rights and civil integration remained pressing in the reporting period. In particular, more educational efforts are needed to promote state language and communicate more information about positive results of learning Georgian language to population of the regions densely populated by ethnic minorities. Also, it is necessary to effectively monitor and analyze existing programs to further improve and tailor them to the needs of target groups.

Various Georgian language programs were implemented in the reporting period for representatives of ethnic minorities within the scope of school education at several village schools in Kvemo Kartli, Samtskhe-Javakheti and Kakheti. To promote the state language it is important to continue and further elaborate Georgian language programs. Textbooks containing stereotypes about ethnic minorities remain a systemic problem. To contribute to civil integration, textbooks must discuss issues of tolerance and diversity and provide more comprehensive information about citizens of Georgia of various ethnicities.

Schools delivering education in minority languages continued to use those bilingual textbooks which had been repeatedly criticized by representatives of ethnic minorities. The reporting period did not see a new model of bilingual education as promised by the Education Ministry. Inconsistence of native language and literature textbooks of Armenian and Azerbaijani schools with the requirements of Georgia's education system remained a problem too.

Admission to and study at universities under the so-called 1+4 system successfully continued in 2016. The Public Defender of Georgia gives a positive assessment to this system but believes that it should be further elaborated. In particular, majority of youth using this program is from regions densely populated by ethnic minorities and is therefore not fluent in Georgian; this creates barriers in interaction with persons of the same age. For eliminating this problem and learning language to facilitate the integration, special programs must be implemented in a proper manner and in adequate amounts. Besides, the Ministry of Education and Science should study and analyze why students, engaged in 1+4 program, drop the education or/and have poor academic performance.

In the reporting period, the above mentioned system was also extended to Ossetian school graduates. However, the fact that the amendment was introduced to the law therewith opening up a possibility to enter Georgia's higher educational institutions was not communicated to a target group through an information campaign, which may explain a low indicator of applicants for the program.

A commendable move seen in 2016 within the scope of school education was the launch of teaching native languages to small ethnic nationalities living in Georgia.

Despite achievements in preservation and development of cultural heritage of ethnic minorities, a whole set of issues remained. It is worth to note that with its letter of 1 February 2017 (N04/13–457), the Ministry of Culture and Monument Protection informed the Office of Public Defender that "[on 6 February 2016] the Petros Adamian Tbilisi State Ar-

menian Drama Theatre and the Heydar Aliyev State Azerbaijani Drama Theatre were put on the list of priority buildings to be rehabilitated." The rehabilitation of these theatres has been a repeated recommendation of the Public Defender.

Hundreds of monuments of cultural heritage badly need rehabilitation, fortification or other works and these require large sums. In contrast to other monuments of Christian culture located in Tbilisi, part of Georgia's cultural heritage which is related to ethnic minorities (Armenian community) is in a dilapidated condition. Of these monuments one should mention: Surb Gevorg of Mughni Church (at 6, Akhospireli Street), Shamkhoretsots Karmir Avetaran Church (at 6, Peristsvaleba Street, Avlabar); Erevantsots Surb Minas (basilica at 13, Gelati Street, Avlabar), Surb Nshan (Surb Nikoghayos) Church (at 6, Vertskhli Street), Tandoyan Surb Astvatsatsin (basilica at 40 (38), Davit Aghmashenebeli Avenue).

Although the above listed monuments are included in the list of cultural heritage of Georgia, works for their preservation – be it restoration, conservation or any other - are not undertaken.[105] The rehabilitation of the above listed monuments cannot be linked to a resolution of the issue of ownership and all necessary steps that are needed to preserve and rehabilitate them must be taken promptly.

The involvement of ethnic minorities in a decision-making process remains a challenge. As noted in previous parliamentary reports of the Public Defender, the number of representatives of ethnic minorities in the central government is extremely small.

Yet another problem remaining in the reporting period was the failure to provide ethnic minorities with comprehensive information about developments in the country. There is no media outlet in Georgia which would provide comprehensive information about developments in the country to ethnic minorities. Although the Georgian Public Broadcaster regularly produces news programs on minority languages, this cannot be seen as sufficient partly because only a small segment of the target population has set-top-boxes which are necessary to receive digital broadcasting. Armenian-language and Azeri-language newspapers, Vrastan and Gurjistan, respectively, contribute to informing ethnic minorities but their print run and material resources are not enough to fill up the information gap.

For the process of civil integration to be successful, it is not suffice to ensure access to information for ethnic minorities alone; the majority population must receive accurate and stereotype-free information about minorities too. In the Public Defender's view, the participation of ethnic minorities in media is important not only in discussions of issues related to them but also of all important issues concerning the country. The Public Broadcaster has an obligation stipulated in the law to cover the mentioned topics.[106]

When joining the European Council in 1999, Georgia assumed an obligation to adopt and ratify the European Charter for Regional or Minority Languages. It should be noted that the process of acceding the Charter is protracted and discussions on the issue is politicized. To evaluate and form an unbiased opinion about the Charter, society needs to get more information about the content of the Charter and experience of its implementation in other countries.

105 The exception is the church at 6, Vertskhli Street, on which fortification works were carried out several years ago, but the process was not continued and completed.

106 Article 16 of the Law of Georgia on Broadcasting.

10. FREEDOM OF EXPRESSION

Although 2016 was not distinguished for the abundance of offences against media representatives, several incidents still took place. On certain occasions the response was effective, including the investigation into verbal and physical abuse of journalists of Tabula TV.

However, there were instances of ineffective response, including five facts of interference into professional activities of journalists at the Ivane Javakhishvili Tbilisi State University,[107] when the police and university security service, on the one hand, failed to prevent the mentioned interference and on the other hand, to respond to them effectively.

Given the heightened public interest, the Office of Public Defender monitored court cases concerning the Rustavi 2 TV company. Consideration of the case without oral hearing in the court of cassation adversely affected the confidence of society towards the court process; questions were also raised about alleged meddling in the activity of judges of the Supreme Court of Georgia, the investigation into which is still in progress.

Although frequent attempts were made to consider the Rustavi 2 court dispute in the context of the ownership right, the circumstances in which Kibar Khalvashi became the owner of Rustavi 2 in 2004, were not assessed legally.[108] Bearing in mind these circumstances, had the decision taken by the court been enforced, the plurality of media environment in Georgia, especially the operation of critical media would have been endangered.

The release of several surreptitious recordings, featuring Rustavi 2 general director, ahead of elections was assessed by the Public Defender of Georgia as a threat to healthy media environment. Despite various investigative actions carried out concerning these facts, no person has been accused yet.

The Public Defender also reacted to the detention of LGBT activists for stenciling near the building of Patriarchate on 17 May 2016; the detention was carried out not only in violation of procedures but by using homophobic and hate speech towards detainees by law enforcement officers.

An interesting case in terms of freedom of expression on the Internet was the case of S.Ts. who, according to a topic on Tbilisi forum, was allegedly going to attack the US Ambassador to Georgia. The Tbilisi city court first charged the Internet user with this crime and then sent to a two-month pretrial detention.[109] Although the restriction of liberty was based on a legitimate ground such as the prevention of crime and ensuring public safety, the proportionality principle, which requires direct and immediate link between the expression and expected threat, was not observed.

107 These persons are: journalists of "Liberali" – Mamuka Mgaloblishvili and Sopho Gogishvili; Journalist of Netgazeti – Giorgi Diasamidze; Journalist of "17 May" – Vakhtang Kvaratskhelia; Journalist of "Palitra TV" – Mariam Lortkipanidze.

108 Regardless of the fact that Rustavi 2 founders, as they stated, applied to the Prosecutor's Office in 2012. According to the letter #13/19020 of Chief Prosecutor's Office dated 22 March 2017, investigation on this matter was commenced on 8 December 2012.

109 On 8 May 2016, S.Ts. was released on bail; he was detained from 15 April to 8 May 2016; according to S.Ts., investigation into his case is still in progress.

2016 saw the increase in applications/complaints of citizens and nongovernmental organizations complaining about illegal restriction of the right to information. Consequently, recommendations of the Public Defender concerning the necessity to establish effective guarantees for the protection of freedom of information remained in force; these recommendations envisage the initiation of a new law on the freedom of information and the introduction of amendments to the Law of Georgia on Personal Data Protection in order to establish the right balance between the freedom of information and the protection of personal data.

11. FREEDOM OF ASSEMBLY AND MANIFESTATION

Although assemblies were not dispersed with the use of force in the reporting period, the implementation by the police of a positive obligation to ensure the right to peaceful assembly and the prosecution of violators remained a challenge.

Results of the monitoring carried out by the representatives of the Office of Public Defender of Georgia showed that quite large rallies staged by the political party United National Movement on 6 March and 5 October were held without excesses. The Public Defender of Georgia also conducted a permanent monitoring of student rallies staged in the Tbilisi State University, where instances of ineffective activity of the university's security service and the police were observed.

In the absence of guarantees for a safe conduct of an event, LGBT activists refrained from marking the international day against transphobia and homophobia in the reporting period again. Unfortunately, homophobic attitudes in the society and lack of effective investigation into crimes committed on the ground of homophobia and hate still pose a threat to the exercise of the constitutional right.

A regrettable incident in terms of exercise of the right to assembly was a physical assault on persons gathered outside a district elections commission in the village of Kortskheli, Zugdidi municipality, on 22 May 2016, in which the police failed to ensure safety of assembled people. Although the investigation into this incident is in progress and accused persons have been identified, a summary decision on this case has yet to be delivered. Loyal attitudes towards such facts bolster impunity and encourage violence.

The Public Defender assessed several incidents[110] which occurred in the reporting period as unjustified interference in the freedom of assembly; in particular, the police and the Tbilisi city hall denied citizens the permit to express their protest by installing tents and other temporary structures without blocking roads for traffic or entrances to buildings and thus, not disrupting the operation of organization.

An example of gross violation of the freedom of assembly was the detention of one of the most active participants in the rally, staged in protest against the construction of power transmission line in the village of Tsdo, under Article 173[111] of the Code of Administrative Offences. Although the evidence presented to the court failed to prove that Z.Ts. disobeyed any demand of a police officer, courts of both instances found him guilty. Apart from the fact that the court decisions, which rest on the information of law enforcement

110 On 26 December 2016, in Tbilisi, the police did not allow people on hunger strike to put up a patio umbrella and a tent; several days before, N.Ch., during the protest, was not allowed to put a chair in front of the administration building; The Tbilisi city hall did not allow Guerilla Gardeners to put up a tent in a square outside the city hall building, though the court considered this decision illegal on 31 August 2016. On 22 June 2016, police officers used force to seize matrasses from residents of Gonio rallying in the territory of square near the administrative building of the government of Adjara Autonomous republic and detained several participants in the rally.

111 Envisages sanction for non-compliance with the lawful order or demand of a law-enforcement officer, or verbal abuse of such person while such person is in performing his/her duty.

officers alone, indicate about the lack of reasoning, such a practice may have a chilling effect on the use of constitutionally guaranteed right of citizens to freedom of assembly and manifestation.

The protest of citizens, which started with verbal altercations between citizens and a patrol police officer regarding a wrongly parked car in Batumi on 11 March 2017, swiftly stepped over limits of freedom of assembly and manifestation and degraded into conflict which resulted in violence, harm to human health and damage to property. In this process, the response of law enforcement authorities was unsatisfactory. Consequently, in the Public Defender's view, there is a need to analyze existing shortcomings and evaluate the degree of readiness of security services and law enforcement system of the country for timely and effective handling of similar critical situations,

12. RIGHT TO EQUALITY

On 2 May 2014, the Parliament of Georgia adopted the Law on Elimination of All Forms of Discrimination (hereinafter referred to as Law) which defined the Public Defender as a legal mechanism for the protection of the right to equality in the country.

Although three years have passed since the adoption of the Law, there are problematic issues that impede its effective implementation. One of such remaining challenges is the need to introduce the so-called first-wave amendments to the Law; in this regard the Public Defender's legislative proposal was initiated by the Parliamentary Committee on Human Rights and Civil Integration Issues in 2015. One of important aspects of the package of amendments is the imposition of an obligation on private persons to provide information requested by the Public Defender.

One of main challenges in the fight against discrimination is raising public awareness about equality issues and forming a tolerant environment.

Unfortunately, recommendations concerning the right to equality provided in the 2015 parliamentary report of the Public Defender were not fulfilled.

THE SITUATION REGARDING EQUALITY IN THE COUNTRY AND STATISTICAL DATA

The Equality Department operates in the Office of Public Defender since 2014 and based on the Law, it represents a legal mechanism for the protection of the right to equality. Since the entry of the Law into force until the end of 2016, the Public Defender considered 333 applications regarding the right to equality.

In 2016, the Public Defender received 175 applications concerning issues of equality; the study into seven of them was launched on the initiative of the Public Defender.

The largest share of cases studied in 2016 related to alleged discrimination on the grounds of political or other opinions (18%), religion (17%) and nationality/ethnicity (14%). A substantial amount of applications were related to alleged discrimination on the grounds of sex (10%), sexual orientation/gender identity (8%) and disability (7%). Eight percent of applicants complained about discrimination on other grounds. It is worth to note that there is a difference between the above provided statistics and the data of previous reporting period; in particular, increase is seen in complaints about alleged discrimination on the grounds of political or other opinions (by 3%), religion (by 6%) and nationality/ethnicity (by 4%). Conversely, the complaints about alleged discrimination on the grounds of sexual orientation/gender identity and disability decreased by 3%.

In 2016, the Public Defender issued 15 decisions on issues of equality, including nine recommendations and six general proposals. Besides, the study into 65 cases were terminated while seven cases were considered inadmissible.

The Public Defender presented five friend-of-the-court opinions to five courts, which concerned the facts of alleged discrimination on the grounds of membership of a professional union (1), religion (2), age (1) and sex (1). Moreover, seven public statements on equality issues were released.[112]

DISABILITY

When the equality of persons with disabilities is violated, discrimination/encouragement of discrimination, as a rule, occurs in starkly different circumstances; this indicates that persons with disabilities may be discriminated and treated differently in any sphere of public life, which, in the majority of cases, is degrading for their dignity.

Results of studies make it clear that unequal treatment of persons with disabilities is caused by lack of awareness of this issue and sensitivity.

Inadequate attitude of society towards persons with disabilities is especially conspicuous in the attitude towards children with autism spectrum disorders and their parents.

Furthermore, a problem, on the one hand, is the lack of awareness of law enforcement bodies about specific needs of persons with disabilities and on the other hand, shortcomings of the state policy which is not focused on the needs of representatives of this group.

SEX AND PREGNANCY

Alleged discrimination on the ground of sex, which in the majority of cases is directed against women, occupies an important place in the activity of the Public Defender. Moreover, the Public Defender specified pregnancy as an independent ground protected against discrimination.

One of the spheres in which women particularly often face discrimination is pre-contractual and labor relations. As the cases studied by the Public Defender revealed, employers are prone to see men as suitable candidates for managerial positions whereas look for "from 20 to 25 year-old nice-looking girl" for those jobs that do not require serious qualification. Despite the abundance of such job announcements, none of defendants suc-

112 See, http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-telekompania-maestros-mier-saias-socialuri-reklamis-etershi-gantavsebaze-uaris-shesaxeb.page>
http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-transgenderi-qalis-mimart-dzaladobis-faqttan-dakavshirebit.page
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http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-shshm-adamianebis-mimart-diskriminaciuli-stereotipebis-xelshewyobis-faqttan-dakavshirebit.page;
http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-miichnevs-rom-gadacema-kacebis-dros-promo-genderuli-stereotipebis-gamyarebas-uwyobs-xels.page;

ceeded in naming even a single legitimate reason which would justify the listing of such criteria in job announcements.

Such announcements are not rarity and apart from the sex, they often include requirements concerning the age and marital status of applicants. These announcements put women in a disadvantaged position, while such attitude further strengthens negative stereotypes existing in the society, which portray women as inferior to men in their abilities to handle a responsible job.

In the reporting period, a subject of Public Defender's particular interest was sexist advertisements and announcement; in this regard, general proposals were issued and public statements released.

As the practice of the Department of Equality showed, pregnant women represent a separate group of victims of discrimination on the ground of sex. An unjustified different treatment of women during their pregnancy is a specific form of discrimination, since a woman, when performing her biological function, is impeded in exercising various rights.

SEXUAL ORIENTATION AND GENDER IDENTITY

Much like other vulnerable groups, the violation of equality of people on the ground of sexual orientation is often caused by deep-rooted stereotypes. Cases in which the rights of members of LGBT community are violated are a glaring example of how a stereotype existing in a society may form an opinion that association of a person with a certain group may become the ground of his/her isolation regardless of whether that persons identifies him/herself with that concrete group.

RELIGION

Cases related to alleged discrimination on religious ground, studied by the Public Defender in 2016, mainly concerned the prevention of religious associations from using buildings to exercise their right to freedom of religion. In this regard, the Public Defender submitted friend-of-the-court opinions in 2015 and 2016, which concerned the issuance of permits on the construction of religious buildings to Jehovah's Witnesses[113] and the Catholic Church[114] as well as the fact of putting up by local population of the pig's head on the boarding school owned by the Muslim community.[115]

In September 2016, the Public Defender issued the first recommendation on the establishment of discrimination against equality on religious ground,[116] addressing it to the Kobuleti executive body and Kobuleti Water LTD. According to factual circumstances of the case, a building leased by a Muslim community to open a boarding school for Muslim children, were denied the connection to the water supply system because the local popu-

113 See full information: https://drive.google.com/file/d/0B9BM3M8hbgAUaFRva1h3bFVWa28/view
114 See full information: http://www.ombudsman.ge/uploads/other/4/4016.pdf
115 See full information: https://drive.google.com/file/d/0B9BM3M8hbgAUWVVXZHhFSWkxRjQ/view
116 See complete version at http://www.ombudsman.ge/uploads/other/3/3908.pdf

lation, who identify themselves as the Orthodox congregation, was against the operation of the boarding school and impeded the ongoing water pipeline works.

CITIZENSHIP

According to cases studied by the Public Defender, a different treatment on the ground of citizenship basically occurs between citizens of Georgia and citizens of other countries/ stateless persons. Also, instances of discrimination were observed in the treatment by commercial banks, when a service was not rendered to citizens of concrete countries.

PROPERTY STATUS

The Public Defender paid a great deal of attention to discrimination on the ground of property status as to a ground protected from discrimination and noted that an advertisement of a company on fast loans featured people in need as people lacking moral values.

It is worth noting that in one of the cases concerning the discrimination, the Public Defender, for the first time ever, deliberated on positive measures and the importance to implement such measures as they may prove the most effective means in the fight against inequality in certain instances; however, such measures must be undertaken in light of concrete factual circumstances and should not violate other peoples' right to equality.

MEMBERSHIP OF ASSOCIATION

As the practice of the Public Defender showed, alleged discrimination on the ground of association membership was observed in relation to the membership of professional unions and other similar associations. The Public Defender submitted two friend-of-the-court opinions concerning alleged discrimination on the ground of professional union.[117]

INVESTIGATION INTO ALLEGED HATE CRIMES

As the practice of the Public Defender showed, effective investigation by law enforcement authorities into hate crimes is a serious challenge in terms of protection of the right to equality.

The Public Defender studied a number of cases in which the applicants complain about offences committed against them on the grounds of religion, ethnic origin or sexual orientation. The Public Defender notes that the disregard by law enforcement bodies of a motive of discrimination in investigation leads to the neglect of the importance of such category of crimes and a person, even when found guilty, fails to realize what he/she was punished for and this undermines a preventive effect of the punishment.

117 See full information: http://www.ombudsman.ge/uploads/other/4/4014.pdf>; http://www.ombudsman.ge/uploads/other/4/4012.pdf

The Public Defender believes that the disregard by investigative bodies of a possible hate motive or an inadequate emphasis on such a motive may serve as a ground of establishing discrimination in respect to these entities. Moreover, it is a problem that public is not aware of those regulations which the prosecution applies in identifying the motive of hate.

It is worth noting that often, a discriminatory treatment is not the result of a deliberate, motivated act of a discriminator, but the result of those negative stereotypes and strong stigmas which are deeply rooted in society.

Raising public awareness will be no less effective than legal remedies in the elimination of discrimination in the country; however, it is a long process and requires a hard work with various groups of society.

13. RIGHT TO VOTE

The Public Defender of Georgia monitored the election campaign for 8 October 2016 parliamentary election, the day of election and the consideration of election complaints.

In the pre-election period, the Office of Public Defender received information from political parties and election subjects about instances of pressurizing voters. The applicants mainly complained about violations such as physical attacks when disseminating promotional materials, threats to be fired from jobs because of political affiliations, and demands for the attendance of meetings.

The majority of violations or criminal actions that occurred in the pre-election period, including the damage and destruction of placards and billboards of electoral subjects, as well as incidents and facts of violence having taken place in election headquarters of various candidates, were a result of lack of sensitivity among activists and a segment of society towards democratic values and healthy election process. The Public Defender of Georgia believes that alongside the state and civil society, political associations must themselves play an active role in the improvement of existing reality.

The most alarming among violent incidents was the explosion of the car of Givi Targamadze from the United National Movement, injuring Giorgi Targamadze, his driver and passersby. The investigation was launched into premeditated murder attempt under aggravating circumstances. Two persons were charged with the crime. One person has already been convicted. It is crucial that the adequate measures are taken against the offenders.

From other pre-election violent incidents one should also mention the damage of election headquarter office of single-seat candidate for Vake constituency Elene Khoshtaria; the investigation into this fact has been launched. By contrast, according to the information provided by the Ministry of Internal Affairs, offence committed in the office of single-set candidate Levan Gogichaishvili was not proved.

Damaging, tearing away promotional materials, spreading placards over existing placards, et cetera, were done on a massive scale across Georgia. There were seventeen instances of damaging banners of United National Movement in Tbilisi and Mtskheta; a relevant expertise was carried out on them and the investigation was launched into five incidents.[118]

In the pre-election period the Public Defender was notified about an alleged bribery of voters by Rima Beradze, a single-seat deputy from Chugureti district of Tbilisi city council. In particular, teachers of public schools in Chugureti district were offered free medical tests in the St. Michael clinic. Rima Beradze participated in this event on behalf of the Georgian Dream. The Public Defender reckoned that the participation of a political party representative in social, cultural or educational events and the spread of information

118 As regards remaining incidents, according to the interagency commission, it was not possible to identify either indicated locations or violators.

about it via social networks or media may mislead voters as such events may be seen as organized by the political party.

In regard to advertising various infrastructural and economic programs implemented by the government on various broadcasters, the Public Defender concluded that broadcast of such video clips allegedly indirectly served the election aims of the government team.

On 8 October 2016, mobile teams of the Office of Public Defender monitored the voting process on more than 900 polling stations. The monitoring revealed procedural violations which had no significant effect on the voting results. The bulk of violations could be attributed to the lack of qualification of members of precinct electoral commissions. These violations included: delay in opening polling stations in Kutaisi, Borjomi, Akhaltsikhe, Aspindza, Bolnisi, Tetritskaro and Zugdidi; dozens of instances of filling out control sheets incorrectly; problems in lists of portable ballot boxes and voting procedures; also, instances of representatives of various political parties campaigning at polling stations and interfering in the activity of commissions.

In contrast to the process of casting ballots, the vote counting involved violence in several polling stations. Although large numbers of police officers were mobilized near polling stations, they largely failed to prevent physical confrontation. Especially violent were the incidents in the villages of Jikhashkari and Kizilajlo.

In particular, during the vote counting, the polling stations N108 and N79 in the village of Jikhashkari, Zugdidi municipality, were raided resulting in the damage to election inventory and the destruction of ballot papers. Although members of electoral commission identified participants in the raids, the police did not undertake corresponding measures. A criminal proceeding was instituted against three persons in this criminal case.

No less violent was the incident in the polling station N48 in Kizilajlo of Marneuli precinct N36, where tensions rose because of commission members' campaigning for the Georgian Dream, instances of voters casting ballots without being marked and the refusal to register complaints. Police officers who were mobilized outside the station did not take any effort to diffuse the tensions. After the confrontation degraded into physical abuse, activists tried to storm the building with shouts and stone pelting, inflicting injuries on several police officers. Arrival of a special force regiment, called in to the scene, further whipped up tensions but without a repeat of the incident. Persons suspected of participating in the incident were detained in a special operation five days later. Out of six detainees four had physical injuries which, according to them, were sustained during their detention.

14. RIGHT TO PROTECT CULTURAL HERITAGE

Despite recommendations of the Public Defender, the reporting period did not see any changes to the Law of Georgia on the Protection of Cultural Heritage to rectify an unjustified exception from the rule which releases an owner/legal holder of a cultural monument owned (held) by the Georgian Orthodox Church and other religious denominations from a liability related to its maintenance. Particularly, over the period between 23 October 2015 and 29 December 2016 alone, violations of the rules of conducting works on 13 cult buildings[119] and maintaining cultural monuments were identified.

In 2016, the legal entity of public law National Environmental Agency carried on its practice of taking decisions on the implementation of large-scale land works without applying to the Ministry of Culture and Monument Protection for a relevant opinion. This is a total neglect of the legal obligation to protect cultural heritage.

The investigation launched in 2014 into the destruction of archeological sites during the construction of Ruisi-Rikoti road continued in the reporting period. Nor was the investigation into a criminal case on the destruction of ancient Sakdrisi-Kachagiani gold mine completed, in which neither an accused nor a victim has been established. Bearing in mind a heightened public interest and legitimate questions raised by society in regard to the ancient Sakdrisi-Kachagiani gold mine, investigative authorities must inform society about the status of investigation into this criminal case.

119 These monuments are: Gelati Monastery, Abisi Castle, church in the vicinity of village Baraleti, Dzama Fortress, church of Christ the Savior in the village of Dzabe, church of Christ the Savior in the village of Matskhvarishi in Latali community, church of Archangel in the village of Matskhvarishi in Latali community, church of prophet Jonah in the village of Ienashi in Latali community, church of St. George south to the village of Lahili in Latali community, church of Christ the Savior in the territory of cemetery of the village of Lakhushdi in Latali community, Pkhutreri church of Archangel in Etseri community, monastery of Virgin Mary in the village of Tsilkani, church of Virgin Mary in the village of Akaurta.

15. RIGHT TO WORK

The absence of effective mechanism to monitor labor conditions and safe working environment remained a pressing issue in the reporting period. The power to monitor labor conditions on the place of employment is granted to the sole entity – the Department of Inspection of the Ministry of Labor, Health and Social Affairs, which lacks a mechanism to detect, and respond to, violations if an employer does not desire so; it also lacks a power to issue binding recommendations and apply relevant sanctions. Consequently, the Department of Inspection cannot be seen as an effective body monitoring labor conditions, including safety of working environment. The problem is further aggravated by the absence of a legislative act to regulate labor safety. Alarming statistics – 58 persons killed and 85 injured as a result of incidents in industry in 2016, speaks about the necessity of prompt and effective steps from the government.

The Public Defender's recommendation to amend the Labor Code was not fulfilled in the reporting period, which would eliminate shortcomings in the law, set maximum amounts of daily working hours and weekly working hours, a maximum limit of overtime, an exhaustive list of grounds for the dismissal from job, the rule of compensating for harm to health of employee while performing his/her duties or death of an employee, et cetera.

The size of minimum wage is still not set in the legislation. It is specified in the Presidential Decree №351 and comprises 20 GEL per month which is eight times lower than the official minimum subsistence level. As of March 2016, there were more than 62 681 persons with the income lower than the minimum subsistence level of an adult man, 130 282 persons having the income lower than minimum subsistence level of a family, and 25 001 persons with the income less than 100 GEL. This rather grave reality is yet another proof of the need to set an adequate minimum wage.

The rule of appointing and discharging heads of structural units in local self-government bodies remained a problem in the reporting period. In particular, heads of structural units in local self-government bodies are appointed by gamgebeli/mayor without a competition while decisions on their dismissals are not properly reasoned. The Public Defender commended the amendments to the Local Self-Government Code, adopted in October 2015, which will enter into force on 1 July 2017 and require that heads of structural units in local self-government bodies are appointed/dismissed by gamgebeli/mayor in accordance with the rule specified in the Law of Georgia on Civil Service.

The Office of Public Defender studied a complaint of the candidate for the position of the rector of the Technical University of Georgia, questioning the lawfulness of the election of the rector of the Technical University and resolved that the election conducted at the Technical University of Georgia on 18 January 2016 was conducted in violation of requirements of the law. Consequently, the Public Defender addressed the Ministry of Education and Science and the election commission of the Technical University of Georgia with a recommendation to nullify the results of election which was conducted with violations and to ensure the conduct of new election in full conformity with the law. Unfortunately, addressees did not agree to the recommendation of the Public Defender.

16. RIGHT TO A HEALTHY ENVIRONMENT

Protection of the right to live in a healthy environment is one of priority areas in the Public Defender's activity. Today, Georgia faces difficult challenges in realization of this right both in terms of legislative regulations and practical application thereof.

On 13 February 2017, Draft Code of Environmental Assessment with an enclosed legislative package, which had been prepared since 2013, was submitted to the Parliament of Georgia. Given that this process was very protracted, the finalization of the work on the code in 2017 should be assessed as an important development. Besides, fundamental changes need to be introduced to existing legislative regulations. In particular, activities that are subject to environmental impact assessment must be brought in line with international standards; this, inter alia, implies the involvement of society in decision making on environmental issues at the very onset of the process and the replacement of simple administrative proceeding with public administrative proceeding. None of the activities which, under the law, requires an environmental impact assessment shall be launched without the conduct of such assessment. However, several regulations remain in force which obligate an investor to prepare environmental impact assessment report only after signing a memorandum of understanding between the investor and the state.

According to the ordinance of the government of Georgia, a legal basis for the start of construction consists of an engineering-geological survey, a construction drawing of a building, an assessment of impact on adjacent buildings, et cetera. However, the ordinance allows the issuance of construction permit without submitting the documents specified in the mentioned normative act. In the Public Defender's view, a construction launched without the study of important circumstances runs counter to the principle of sustainable development and spatial arrangement.

In the reporting period, the Public Defender conducted a study into the response undertaken by the state to a grave ecological problem that emerged as a result of works carried out by Georgian Manganese LLC in Chiatura. The company carries out ore mining works in breach of environmental standards and license terms. The environmental damage caused by the Georgian Manganese LLC in 2013-2015 exceeds GEL 357 million. Investigation into this fact is underway and a criminal proceeding has been instituted against Georgian Manganese LLC for illegal entrepreneurial activity and the violation of rules for the use or protection of mineral resources. A separate criminal proceeding was initiated against an accused legal entity - Georgian Manganese LLC and it was sent to court for the hearing on the merits. However, the explanation of the prosecution does not make it clear whether the investigation into the crime is still in progress or whether anyone has been accused or how is the case qualified, that was handed over to the court.

Although the company failed to fulfill the terms of permit, the Ministry of Environmental Protection and Natural Resources, under its decree of 5 July 2016, granted the right to Georgian Manganese LLC to carry out the licensed activity until 31 December 2017. According to the decree, Georgian Manganese LLC assumed the obligation to build a new

enrichment factory of European standards, which will fully meet environmental standards. Bearing in mind that the company has not fulfilled relevant obligations for years, it is important to closely monitor the fulfillment of the obligations stipulated in the decree and in the event of breach, apply the measures envisaged in the law against the company.

In the reporting period, when studying a case concerning the award of special zonal agreement, the Office of Public Defender revealed significant systemic problems. In particular, a decision on a special (zonal) agreement within the administrative borders of Tbilisi is taken by the mayor of Tbilisi municipality on the basis of a conclusion of council for regulating the use and development of urban territories. The law requires from the council to substantiate its conclusion. In particular, a protocol of a council's meeting shall reflect a decision of every council member on the issue in question and a relevant rationale of the decision. As the study conducted by the Office of Public Defender made it clear, decisions of council members, whether positive or negative, on the increase of parameters of urban development are general in nature and lack proper reasoning and thus do not comply with requirements of the law. Such approach casts doubt on the lawfulness of a further decision of the mayor of Tbilisi municipality because the decision on awarding special (zonal) contract, which is based on the unsubstantiated conclusion of the council, must be regarded as a decision taken without investigating the circumstances important to the case.

In the reporting period, the Office of Public Defender studied problems related to the construction of Nenskra hydro power plant. Results of the study showed that the Italian company started the preparation works for the construction of the hydro power plant before obtaining a construction permit and approval of ecological expertise. Moreover, questions are raised about the reliability of environmental impact assessment report prepared by the JSC Nenskra. According to specialists, a substantial part of the report is identical to environmental impact assessment reports of other hydro power plants, which casts doubt on the reliability of assessment. A cause of dissatisfaction among population is the prospect of constructing a new power transmission line which may entail the resettlement of local population from the village of Lakhami. In the summer of 2016, the construction of power transmission line was still on the planning stage when its route was not determined. The Public Defender believes that before starting the construction of power transmission line, it is necessary to thoroughly consider all possible alternative routes and with the involvement of local population, take into account their interests to the maximum possible extent.

The Public Defender gave a negative assessment to the continuing practice of decision making on the Tsdo power transmission line without the involvement of interested public. In particular, under the decree of the Minister of Environmental Protection and Natural Resources of Georgia, the project of reconstruction of Dariali 110, a power transmission line of the JSC Georgian State Electrosystem, was released from the obligation to conduct environmental impact assessment.

The consideration of environmental impact assessment itself represents the only decision making stage during which public may engage in the process to receive comprehensive information and express their opinions. In the abovementioned case, public interests to-

wards the construction of the power transmission line was high as four transmission line pylons were crossing the village Tsdo. The Public Defender disapproves of the continuing practice of decision making on large projects without the involvement of interested society and calls on state entities to stick to the principles enshrined in the Aarhus Convention in all such cases.

Cutting of 45 trees in a privately owned land plot in Kazbegi Street on 17 August 2016, attracted a great deal of attention of society and the Public Defender. According to materials available to the Public Defender, the issue of lawfulness of the permit on cutting the trees is being studied within the scope of criminal investigation launched by the Chief Prosecutor's Office. The Public Defender urges law enforcement authorities to take all effective investigative actions within the scope of this criminal case in a timely manner.

One should also note legislative initiatives concerning the felling of trees, which were submitted to the Parliament of Georgia in the reporting period. The effective legislation requires that a private owner seeks permit for cutting diseased trees from the Tbilisi municipality and moreover, undertakes compensation measures that are commensurate with the impact. A legislative initiative of the MP Davit Songhulashvili allowed for the felling of diseased trees under private ownership without undertaking compensation measures commensurate with the impact on biodiversity. In a public statement, the Public Defender expressed his disapproval of the legislative initiative. At present, the Parliament of Georgia considers a modified draft law. The Public Defender believes that with the situation with greenery in the capital and in general, ecology being grave, the Parliament of Georgia should adopt regulations that are oriented on the environmental interests and the protection of the right to live in a healthy environment.

17. RIGHT TO HEALTH CARE

In his 2015 parliamentary report, the Public Defender noted that persons engaged in private insurance schemes as of 1 July 2013, were not able to enjoy a universal health care program. Under the amendments introduced to the program in the reporting year, the universal health care program cannot be enjoyed by persons engaged in private insurance schemes as of 1 January 2017 (instead of 1 July 2013). Thus, the problem which the Public Defender raised in the 2015 report remained unsolved. Only the dates have been changed. Persons who will leave private insurance schemes after 1 January 2017, will receive different treatment in the provision of health services and will again have to use the so-called minimum insurance package. Conversely, those persons who will engaged in private insurance schemes after 1 January 2017, will not be deregistered from the state program and will enjoy the so-called dual insurance.

The state programs of village doctor and referral service were implemented in the reporting period. In regard to the village doctor program, the Public Defender sees the need to enhance geographic coverage of the program as well as the volume of medical service rendered under it. As for the referral service program, the Public Defender believes that the criteria of eligibility for the program must be more clearly defined, the program must cover various social groups of population and it must enable a seeker to receive maximally effective and timely health service.

In 2016, the Office of Public Defender studied applications which concerned the quality of rendered health services and facts of alleged restriction of the right to health care. Pursuant to the Georgian legislation, the Council of Professional Development at the Ministry of Labor, Health and Social Affairs considers applications/complaints about the activity of medical personnel and takes decisions concerning a professional liability. Organizational and technical support to the activity of the Council is provided by the State Regulation Agency for Medical Activities. The analysis of citizens' applications received by the Office of Public Defender regarding the work of the Agency makes it clear that the Agency needs to draw up common legal regulations for the implementation of effective legislation in the area of patients' rights and to ensure a uniform standards of communication with applicants.

In June 2016, a draft law on the amendments to the tobacco legislation was submitted to the Parliament of Georgia in accordance with the procedure for legislative initiative; this package of amendments envisages the ban on smoking in all public buildings and transport (except for living spaces, prisons and hotels), significant toughening of regulations for the use and sale of tobacco products and the establishment of effective mechanisms for the enforcement of the law. Unfortunately, the government administration disagreed with the amendments submitted as a legislative initiative. 30.6% of adult population of Georgia consumes tobacco.

According to the information provided by the Ministry of Labor, Health and Social Affairs to the Office of Public Defender, the number of beneficiaries of a helpline for cessation

of smoking is extremely small against the number of those who want to quit smoking. Similarly small is the number of enforced court decisions on the neglect of legislative requirements in the field of tobacco control. The documentation provided by the Ministry of Internal Affairs of Georgia shows that the majority of violations of requirements for the use and sale of tobacco products is detected in May-June 2013 and first quarter of 2014; in 2015, the Ministry registered only two cases of violation of rules of the use and sale of tobacco products.

18. SITUATION OF THE RIGHTS OF THE CHILD

Despite positive changes implemented by the state in 2016, the rights of the child remain a problem in terms of their consideration, protection and promotion. Measures undertaken to eliminate violence against children, extreme poverty and other violations of children's rights are well below sufficient. No notable change has been seen in the situation with the rights of children placed in alternative care, let alone unseen children left beyond the state care. Child remains the most vulnerable member of a family and society, whose voice is often unheard.

One should commend measures undertaken by the state to improve legislation, which positively affect the situation of children's rights. It is now important to ensure that it is effectively enforced – something which, unfortunately, remains problematic.

A high indicator of violence against children in families and at care and educational institutions is a challenge faced by the state.

Child poverty and inadequate standard of living, which implies malnutrition and grave living conditions of children, remain among unresolved issues.

Education and health care of minors remained a problem in the reporting period. The situation of the right of children living and working in street requires special attention since the response undertaken by responsible entities is often ineffective and belated.

The Public Defender fully supports the call of the UN Committee on the Rights of the Child on the government of Georgia to adopt a law on the rights of the child,[120] which will incorporate all provisions of the Convention on the Rights of the Child and its optional protocols.

UNDER-FIVE CHILD MORTALITY

According to 2016 data, the situation is grave and problematic in the prevention of mortality among infants and children aged between 1 and 5 years.

Results of the examination carried out by the Office of Public Defender of Georgia show risk-factors causing infant mortality; they include problems in providing affordable, quality and timely health care service, the need of relevant equipment and infrastructure for health institutions, especially antenatal hospitals and maternity homes, et cetera. Moreover, availability of funds and geographic access remain serious challenges in the field of protection of children's rights to life and health care.

Implementation of measures designed to improve quality of perinatal services in Georgia began in 2015, but they have not been completed yet and the geographic area covered by these measures is small.

120 UN Committee on the Rights of the Child. Concluding observations on the fourth periodic report of Georgia; General measures of implementation. (Articles 4, 42, 44(6)). A. legislation (6).

On the positive side, it should be noted that to improve health of mothers and newborns, the government of Georgia developed a long-term strategy (2017-2030) and a three-year action plan (2017-2019). These documents cover issues such as strategic interventions, reduction of mother and child mortality rates, family planning, priority directions of sexual and reproductive health development of youth. A matter of utmost importance is the effective implementation of the strategy and action plan.

EXERCISE OF THE RIGHT TO HEALTH AT EDUCATIONAL INSTITUTIONS

General educational institutions have a crucial role in the protection of children's health. Although the Ministry of Education and Science of Georgia undertakes particular measures in regard to the protection of health and sanitary-hygienic standards at schools, serious problems are observed in the areas of water supply, rules of organizing catering and observing hygiene and sanitation.

According to the study conducted by the Public Defender of Georgia, water and sanitary-hygienic standards at general educational institutions do not correspond to national and international standards. This tendency is particularly visible at public schools located in mountainous and rural areas. The situation is deteriorated by the fact that no monitoring institution is determined by law which would regularly check water and sanitary-hygienic conditions at general education institutions.

THE RIGHT OF CHILD TO BE PROTECTED FROM POVERTY AND INADEQUATE STANDARD OF LIVING

Child poverty remains a problem in the country.[121] In its concluding observation,[122] the UN Committee on the Rights of the Child emphasizes this issue and reiterates its recommendation issued to the state in 2008, concerning the actions to be implemented for the alleviation of child poverty.

As the results of the monitoring carried out by the Public Defender's Office revealed, grave social and economic condition is one of main causes of removing minors from their biological families to place them under the state care. This raises questions about the efficiency of social programs. It is worth noting that 30% of beneficiaries of alternative care, studied by the Public Defender's Office within the framework of monitoring of foster care subprogram, were placed there because of poverty and inadequate living conditions.[123]

121 The Well-being of Children and Their Families in Georgia - Georgian Welfare Monitoring Survey, Fourth Stage 2015. See http://unicef.ge/uploads/WMS-2015-GEO.pdf

122 Concluding observations on the fourth periodic report of Georgia, CRC/C/GEO/CO/4. 2017.

123 Special Report on the Monitoring of State Subprogram of Foster Care. Pg. 24. http://www.ombudsman.ge/uploads/other/3/3823.pdf

CHILD LABOR AND WORST FORMS OF LABOR

Serious challenges existing in the sphere of child labor in Georgia require effective response from the state. The effective legislation needs to be significantly improved and developed in order to come in line with international standards. Effective enforcement of the conventions concerning Minimum Age for Admission to Employment and the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of the International Labor Organization (ILO) is especially problematic on the national level.

The main factor as to why children happen to perform the work unsuitable with their age and psyco-physical development is poverty and inadequate living conditions. In line with these factors, ineffectiveness of fulfilling positive obligations by relevant state authorities shall be emphasized. In many occasions, child labor or labor exploitation cases are not identified in timely manner. The cases of early withdrawal from school or missing classes to perform seasonal works in families are frequent as well. Child labor migration issue is also problematic[124].

VIOLENCE AGAINST CHILDREN

Georgia continues to face problems in the prevention of violence against children, identification of such cases in a timely manner and effective implementation of protection and assistance measures. In addition to negative stereotypes deep-rooted in the society, shortcomings in the delivery of service negatively affect the protection of children from any form of violence.

Domestic violence against children is an especially acute problem. The results of study conducted by the Public Defender's Office show that the identification of neglect and other forms of violence against children and timely response to these offences to prevent repeat violence remain problematic. A low indicator of identification of such cases can be attributed to lack of awareness among society of the impact of violence on the child and lawless nature of such action as well as, in often cases, indifference towards such violence. Moreover, the failure to effectively deliver child-friendly services and a poor coordination between responsible entities further aggravate the problem.

VIOLENCE IN EDUCATIONAL INSTITUTIONS

Since 2016, with the support from UNICEF, the Office of the Public Defender of Georgia conducts the monitoring of public schools and boarding schools on issues of violence.[125]

Preliminary results of the monitoring show that violent and humiliating attitude of teachers towards pupils is commonplace in general educational institutions. Moreover, bullying among pupils is apparent on a large scale.

124 "Practice of Child Labor Migration to Turkey from Adjara and Guria Regions", Young Pedagogues' Union, 2015–2016.

125 Results of the monitoring of public schools and boarding schools will be fully provided in a special report of the Public Defender.

THE RIGHT OF THE CHILD TO HAVE RELATION WITH BOTH PARENTS

Consideration of cases by the Center of Child's Rights of the Office of Public Defender made it clear that when there is a disagreement between the parents about the place of residence of the child, until they apply to court, a parent, whom the child lives with, denies another parent the contact with the child. This process procrastinates and until a court delivers its decision, frequently causes a substantial harm to a child.

The above described problems indicate that professionals working with children fail to properly ensure a child's contact with both parents based on the principle of parents' equal rights, while taking into account the safety of minor, not only before a court's decision but during the enforcement of the decision too.

THE RIGHT TO EDUCATION

Early and preschool education

The adoption by the Parliament of Georgia of the Law on Early and Preschool Education must be recognized as an important development.

Nevertheless, there are important issues which, despite recommendations of the Public Defender, are still missing from the law. Besides, the reporting period saw the protraction of the procedure of drafting and approving the following documents within a reasonable time: State Standards for Early and Preschool Education,[126] Professional Standards for Caregiver-Pedagogues,[127] technical regulations of catering, sanitary and hygienic standards at and infrastructure of institutions.[128]

The reporting period saw problems in terms of protection of children safety in preschool educational institutions and efficiency of monitoring system.

Adequate infrastructure and the educational inventory necessary for the development of children remain problems in the field of early and preschool education. Therefore, responsible bodies of municipalities should allocate proper funds to meet the mentioned needs of kindergartens.

Children dropping education

The number of children dropping education is alarming; along with other types of violations they are deprived of a possibility to exercise their right to education. Early marriage, social and economic hardships of families, neglect of the best interests of children and other factors are among reasons pushing children to drop schools.

The situation is further aggravated by the fact that persons working in general educational institutions lack information about violence against children, referral procedures in case

126 Subparagraph B of Paragraph 1 of Article 28 of the Law of Georgia on Early and Preschool Education.
127 Ibid., Subparagraph C of Paragraph 1 of Article 28.
128 Ibid., Subparagraphs D, E, F of Paragraph 1 of Article 28.

of violation of their rights. This adversely affects the indicator of timely and effective interference of responsible entities. Moreover, they fail to prevent children from dropping schools.

Informal education (school Olympiads, camps)

Consideration of cases by the Center of Child's Rights of the Public Defender's Office in 2015 and 2016, showed a number of shortcomings in the protection of child's rights in the implementation of school Olympiads and camps organized by private entities. In particular, there is no control over the conduct of Olympiads and camps. Also, the law does not require from organizers, before planning the activities, to undertake procedures of accreditation or agreement.

The study of cases revealed that when camps and Olympiads are organized by legal entities of private law and natural persons, the state does not monitor such activities. Moreover, to conduct such activities, organizers do not have to undertake mandatory procedures of any kind and inform any entity. The state does not control the topics of materials used during school Olympiads or the results thereof either. All this raises questions about taking the best interest of minors as a primary consideration and protecting their rights in the process.

Therefore, in accordance with the best interests of the child, this issue must be regulated by the law and entities responsible for the progress of each and every Olympiad and camp must be identified; besides, social workers must get involved in case of violating rights in this process and a controlling mechanism and corresponding standards must be developed.

CHILDREN UNDER STATE CARE

Situation of the rights of beneficiaries involved in state reintegration service

According to the results of the monitoring conducted by the Center of Child's Rights of the Public Defender's Office,[129] the process of reintegration of beneficiaries from the alternative care into their biological families does not meet the criteria of the best interests of the child. A greater attention should be paid to the protection of safety of reintegrated children, prevention and elimination of violence and any type of ill treatment against them.

A small amount of reintegration allowance is especially problematic for families living in villages and mountainous regions where children live in extremely poor households. Moreover, the involvement of beneficiaries in non-monetary social programs is not properly implemented. In this regard, central and local government bodies do not conduct a

129 See http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/specialuri-angarishi-mindobit-agzrdis-saxelmwifo-qveprogramis-monitoringis-shesaxeb.page

coordinated state policy in order to ensure social empowerment of children living in comparative poverty in a timely and efficient manner.

Situation of rights of the children involved in the state subprogram of foster care

In the reporting period, a draft law on Adoption and Foster Care was drawn up and submitted to the Parliament of Georgia. To improve the effectiveness of regulation in this sphere, the draft law envisages significant changes. At the same time, the Public Defender of Georgia expresses hope that the Parliament of Georgia will support his opinions submitted concerning this draft law.[130]

The identification and rehabilitation of child victims of violence, protection of their rights to health care and education represent a challenge. Sometimes, social workers do not maintain stable and regular relations with beneficiaries; foster families do not receive comprehensive information about state services.

The monitoring revealed the need for the upgrade of qualification and retraining of social workers in the area of identification of ill-treatment of children. Apart from this, shortage of psychologists in local guardianship/custodianship centers shall be underlined as well.

The consideration of cases by the Public Defender's Office shows that effective double-checking of the conditions of children placed in foster care service remains a problem. The monitoring also revealed the absence, on the normative level, of effective mechanism of preparing beneficiaries for an independent life.

SITUATION OF THE RIGHTS OF CHILDREN IN SMALL FAMILY-TYPE HOMES

The issue of protection of children's rights in small family-type homes remains a problem.

A serious problem is the preparation of minors for an independent life, especially after they reach full legal age and leave the alternative care. The fact that the State Program of Social Rehabilitation and Child Care does not envisage service to minors who have left alternative care, represents a huge problem.

Yet another matter of special importance is the protection of child's rights in religious boarding schools. Although the process of licensing has begun in part of boarding schools subordinated to the Orthodox Church, existing situation still opposes the requirements of deinstitutionalization and the principle of upbringing a child in family-type environment is not observed.

130 See http://ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-winadadeba-shvilad-ayvanisa-da-mind-obit-agzrdis-shesaxeb-saqartvelos-kanonis-proeqtshi-cvlilebebis-shetanis-shesaxeb.page

CHILDREN LIVING AND WORKING IN STREET

The situation of the rights of children living and working in street is especially grave. Despite some steps taken by the state, their rights to education and health services and their integration into society remain a serious challenge.

The shortage of social workers, impedes the effective implementation of subprogram on the Provision of Shelters to Neglected Children of the state program of social rehabilitation and child care.

It must be noted that shelter for neglected children is not available countrywide. A problem of overcoming stigma towards street children remains a problem as well as communication of proper information on this issue to society.

The results of consideration of cases by the Center of Child's Rights of the Public Defender's Office showed that due to social and economic hardships adults beg along with their children. According to them, they do not have any other source of income and are unable to meet needs of their families otherwise. In parallel to living in shelters, the majority of children continue begging.

The attitude of patrol police and level of awareness of issues concerning street children is a problem. They often lack information whom to address in case of identifying street children. They lack adequate information about the service under the subprogram on the provision of shelters to neglected children.

19. GENDER EQUALITY

RIGHTS OF WOMEN

INTRODUCTION

The grave situation in the country in regard to the rights of women and gender equality has not changed during the reporting period. Despite the steps taken by the state, challenges remain that require special attention and efforts.

2016 did not see effective steps towards the improvement of legislation concerning gender equality and women's rights. Even more, the Parliament did not support legislative initiatives designed to introduce quotas and define sexual harassment and femicide. In the Public Defender's view against the challenges existing in the country, they would have been steps forwards.

In the beginning of 2017, the Parliament was submitted a ratification package of the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence, which would establish a number of important guarantees for the prevention of violence against women, protection of and assistance to victims of violence. Unfortunately, the draft law does not define sexual harassment which represents an obligation under the convention and a serious challenge posed to Georgia.

One should commend the measures undertaken to prevent violence against women and domestic violence, which translated into an upward trend in incidence detection. The increase in reporting, however, more clearly revealed systemic shortcomings.

Although the number of shelters for victims of domestic violence has increased and a crisis center has opened, services against violence clearly require improvements in the areas of social and economic empowerment and support to independent living and employment, which cannot be attained through shelter services alone.

A low level of awareness and indifference by society towards early marriage remains a problem. Especially worrying is the practice of female genital mutilation, which was a hidden problem for many years but was exposed in the reporting period. The mentioned issues require coordinated, consistent and needs-based response from the state.

The situation in the sphere of women's reproductive and sexual health and rights did not show any tangible improvement. Fetal sex selection remains a problem as well as scarcity of family planning services and low level of awareness about the issue.

The monitoring of the 2016 parliamentary election and its results provide the grounds to say that female participation in the decision-making process is again extremely low. It should be emphasized that a four percent rise in women's participation in the Parliament of Ninth Convocation is spontaneous rather than the result of gender-sensitive political planning.

WOMEN'S PARTICIPATION IN DECISION MAKING

Women's involvement in political life remains one of the most serious challenges in the area of women's rights and gender equality.

According to the 2016 Global Gender Gap Index, Georgia ranks 114th among 144 countries by female representation in parliament. According to the Inter-Parliamentary Union, as of 1 March 2017, Georgia, with 24 women in the parliament, ranks 124th among 192 countries. After the parliamentary elections, out of 18 ministers only two are women, which is a decrease from the previous indicator.

The analysis of the number and gender composition of employees in the executive power shows an alarmingly small indicator of number of women in managerial positions and on the decision-making level.

The increase in women's participation is also not a priority for political parties. The gender balance, which is financially incentivized under the law, was observed by only four out of 25 political parties/election blocks standing in the election. Moreover, the election programs of political parties running for the 2016 parliamentary election were devoid of women-specific issues while election programs of several political parties did not even include the issue of gender equality.

Considering the above, it is unfortunate that the parliament of Georgia refused to adopt temporary special measures designed to increase women's political participation during the election. The Public Defender continues to believe that the introduction of a quota system will be one of the most effective solutions to the existing inequality in political decision making.

WOMEN'S PARTICIPATION IN RURAL DEVELOPMENT PROGRAMS AND MUNICIPAL COUNCILS

The representation of women in decision-making positions of local municipalities remains low. None of the self-government cities has a female mayor, and only one head of an executive body is a woman. In regard to female participation the in decision-making process, in 2016 there were twice as many men as women participating in various village meetings and other types of assemblies. This low number of women participating in public domain and public meetings has various causes, but often men themselves oppose the involvement of female family members in such activities. Moreover, persons organizing such events often do not notify women about expected meetings.

ECONOMIC ACTIVITY AND LABOR RIGHTS OF WOMEN

Equal engagement of women in economic activities remains a challenge in Georgia.

According to the Global Gender Gap Index, participation of women in the labor market is lower than that of men. Compared to 2015, Georgia's indicator declined and ranked

90th of 144 countries. According to the same study, Georgia ranks 34th in the indicator of equal pay for similar jobs. The average income differs by sex too, with the average annual income of men being almost twice that of the average annual income of women. Although many factors contribute to this inequality, the key factor is that the country lacks legislative guarantees against gender discrimination of employed women, including, the prohibition of sexual harassment and regulation of ensuring equal pay for equal jobs, among others.

Yet another persisting problem is the so-called "glass ceiling", which means invisible but real barriers to advancement in a profession. The gender segregation of positions is also a significant problem. According to the 2016 Global Gender Gap Index, 66% of lawmakers, high level officials and managers are men, whereas the majority of women (62%) perform technical tasks.

Unequal economic involvement also results from unequal distribution of care. Along with a paid job, women often perform unpaid work, which includes doing housework and rearing children.

The Public Defender commends the availability of a free kindergarten service in the country, though the availability of infrastructure tailored to the needs of mothers of infants remains a problem and restricts women's involvement in the economy.

SINGLE AND MULTI-CHILDREN MOTHERS

The rights of single and multi-children mothers continue to be a problem. Public attitudes towards single mothers, coupled with social and economic problems, results in their twofold vulnerability. Almost two years have passed since the determination of a single parent status, but no results have been seen in terms of relevant social support. The Public Defender repeatedly commented on the need to amend the rule of granting and abolishing the status as the current wording of the rule excludes a possibility of legal existence of a single father. Moreover, a status of single parent is granted only when a birth certificate of a child lacks an entry about mother/father. In all other cases, a parent, solely rearing a child, has no possibility to obtain a status of single parent.

No effective steps were taken towards supporting multi-children families either. In 2016, as many as 11 955 women became mothers of three or more children. Nevertheless, the law does not regulate the issue of granting a status of multi-children mother. Consequently, the state does not maintain statistics on multi-children mothers and does not assist them by providing relevant social and economic services.

The Public Defender deems it necessary to have the rule of granting a status of multi-children mother developed and relevant statistics maintained, which will enable the state to plan gender-sensitive assistance programs for children and their parents.

THE RIGHTS OF WOMEN HUMAN RIGHTS DEFENDERS

Persecution and intimidation of women human rights defenders are unusual in Georgia. Last year, the Public Defender of Georgia studied several cases of threat to women human rights defenders. The analyzed cases showed the failure of law enforcement entities to properly evaluate the facts and risks of intimidation of women human rights defenders.

ROLE OF MEDIA IN PROMOTING GENDER EQUALITY

According to the Code of Conduct of Georgian Public Broadcaster, sexist expressions, evaluations or comparisons shall not be used when discussing women. Nonetheless, the Public Defender of Georgia made a number of statements regarding sexist programs and advertisements that occurred in media which promoted the practice of gender-based oppression and established negative gender stereotypes about women's abilities and development.

WOMEN, PEACE AND SECURITY

In 2016, the government of Georgia approved a national action plan for the implementation of UN Security Council resolutions on women, peace and security, which covered five main areas: participation, prevention, protection, implementation and monitoring.

As the analysis of information received by the Office of the Public Defender proves, various state entities have planned and implemented activities in accordance with the directions of the action plan; however, the Public Defender believes that internal institutional documents could better reflect obligations specified in the action plan. Moreover, it is necessary to plan and implement specific measures because, as past experience shows, the fulfillment of the action plan was only manifested in non-specific, daily actions of the activities.

REPRODUCTIVE AND SEXUAL HEALTH AND RIGHTS

Challenges in the area of reproductive and sexual health and rights in Georgia remain pressing. Limited access to information and education, as well as financial, geographic and cultural barriers, create obstacles to the effective exercise of reproductive and sexual health rights, especially, for rural women.

In the Public Defender's view, it is important to raise the awareness of reproductive health issues among youth so that they receive adequate information about family planning, modern methods of contraception, and risks related to early marriage. Unfortunately, this issue is not part of the formal education process in Georgia. Consequently, the government of Georgia must ensure the incorporation of issues related to gender

equality, violence against women and women's reproductive and sexual health rights into educational programs at every level of education.

CHALLENGES TO FAMILY PLANNING AND ABORTIONS

Women in Georgia lack access to modern methods of family planning and contraception, which is further aggravated by problems in availability of various services and a low awareness of reproductive health issues among society.

There were 26 838 abortions registered in Georgia in 2016. The number of abortions has decreased compared to previous years, which probably suggest an increase in the application of modern methods of contraception. Like 2015, the highest number of abortions accounted for women aged between 25 and 29, though the number of abortions among girls under 15 has increased.

Fetal sex selection remains indicator is still high in Georgia, affecting gender inequality; increasingly less girls are born every year as a result of this discriminatory practice. According to the 2016 Global Gender Gap Index, Georgia is 137th among 144 countries by sex ratio at birth, showing no change as compared to 2015. The government of Georgia must take measures to prevent sex selective abortions and ensure regular publication of birth registration data by gender and regions in order to identify causes of such abortions and raise public awareness of negative long-term consequences of the practice.

HUMAN TRADE (TRAFFICKING)

The Central Criminal Police Department of the Interior Ministry of Georgia has a unit for combatting trafficking and illegal migration which investigates cases of trafficking. However, the problem is an initial identification of possible cases of trafficking in the territorial bodies of the Interior Ministry.

In 2016, investigation was launched into 20 cases of alleged trafficking, including 15 cases of sexual exploitation, four cases of forced labor and one case of both forced labor and sexual exploitation. A status of affected person was given to two women and a status of victim was given to one person for being subject to sexual exploitation. The Office of the Public Defender studied a case in which state entities failed to pay attention to information that suggested a possible case of trafficking. The investigation into the case began only on the basis of Public Defender's proposal; the investigation is still underway.

In the reporting period, the Office of the Public Defender conducted the monitoring of service facilities (shelters) for victims of trafficking. Monitoring showed the adequacy of the situation in the shelters. However, problems were also observed, including in regard to examination of beneficiaries' health and availability of physical environment for persons with disabilities. Moreover, the Batumi shelter does not meet safety standards. Rehabilitation and educational measures also require improvement, which would enable beneficiaries to better re-integrate into society.

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

Violence against women and domestic violence remain a serious problem. Gender stereotypes that are deeply rooted in society encourage the increase in the scale of violence against women and domestic violence.

Domestic violence takes an especially heavy toll on women with low or no income, minors, women of non-Georgian ethnicity and women with disabilities. One of the factors contributing to this is the failure of law enforcement authorities to identify violence and take further steps to stop it.

Due to small number of social workers and work overload, the problem of effective involvement of social workers in the study of domestic violence was still observed in the reporting period.

A lingering trend is a refusal of victims to continue proceedings after violence on the part of partners has been reported. Reasons are basically associated with lack of confidence in law enforcement authorities, fear of more severe violence, disbelief in the efficiency of existing mechanisms, lack of economic independence and future prospects, and problems with accommodation. The mentioned trend leads to unidentified and unregistered cases violence that remain without response from the state.

Despite repeated calls by the Public Defender of Georgia, common statistics on violence against women and domestic violence are not maintained and analyzed. This is further proof that in conducting activities, tendencies are disregarded.

ASSESSMENT OF MECHANISMS OF PROTECTION AGAINST DOMESTIC VIOLENCE

According to the analysis of data on restraining orders issued in 2016, which was provided by the Interior Ministry of Georgia, cases of violence were identified in 3,012 families, and restraining orders were approved 2,877 times and involved 5,667 persons. According to victim and offender statistics, 92% of offenders are men and 87% of victims are women.

By age distribution of victims, the highest risk groups are still women between the ages of 24 and 55 years (57%) and men aged above 45 (59%).

Low numbers of reports from the regions about domestic violence remains a problem. Indicators from reports are extremely low from the Racha-Lechkhumi, Samtskhe-Javakheti, Guria and Mtskheta-Mtianeti regions.

In regard to response to domestic violence as cases of criminal offence, the statistic has almost doubled compared to the previous year. This suggests that domestic violence is shifting, in a slow but consistent way, from a private domain to a public domain.

POSSIBLE IMPACT OF WOMEN'S ECONOMIC INDEPENDENCE ON DOMESTIC VIOLENCE

According to the Global Gender Gap Index, women are twice as less likely to have the opportunity to inherit property as men. Women are also twice as less likely as men to use, own and dispose of immovable or movable property.

Cases studied by the Office of the Public Defender show that sometimes, women tolerate violence form their husbands due to lack of material means or support from members of their biological families. A temporary shelter is not a final solution, as it only temporarily solves the problem, whereas acquiring more permanent accommodation or independent income remains an enduring problem. The analysis of cases shows that women often have no other option but to sell or yield their own property in favor of male family members because of violence or threat of violence.

Law enforcement bodies find it difficult to identify economic violence in such cases and take into account gender specificity when working on these cases. Identification of victim and form of violence becomes even more complicated when it comes to economic violence against women with disabilities. In this case, social service finds it difficult to offer adequate services and assistance to women with disabilities.

ASSESSMENT OF SERVICES AVAILABLE FOR VICTIMS OF DOMESTIC VIOLENCE

In 2016, five state institutions (shelters) operated in Georgia for victims of domestic violence, which were used by 91 women and five men.

The monitoring conducted by the Office of the Public Defender in 2016 showed that beneficiaries appreciated the work of shelter personnel and felt safe in shelters. However, shelters failed to ensure a proper realization of beneficiaries' capabilities, empowerment and psycho-social rehabilitation. After leaving shelters, beneficiaries find it difficult to independently continue life and often have no other option but to return to violent environments.

Moreover, infrastructure of shelters is in disorder. Shelters should pay greater attention to the health of beneficiaries placed in the institution. Internal regulations of shelters also require improvement, while their implementation and supervision of the implementation remain a serious challenge.

FEMICIDE AND SUICIDES

Despite repeated recommendations by the Public Defender, the analysis of incidents of femicide and incitement to suicide based on gender, including the maintenance of accurate statistics, is not being carried out.

Cases studied by the Public Defender show that women most frequently become victims of violence from partners or former partners. Special attention should be paid to cases

of suicide that likely stem from systematic domestic violence. Since 2014, the Public Defender has been monitoring investigations into two cases of alleged incitement to suicide due to domestic violence. Although investigations into both cases have been in progress for almost three years now, no concrete result has been achieved in either case. Drawn-out investigations indicate ineffectiveness of investigation into cases of incitement to suicide in Georgia.

The Public Defender links a large number of femicide cases to the absence of systems of monitoring and risk assessment in regard to incidents of violence. Cases studied by the Office of the Public Defender make it clear that law enforcement bodies find it difficult to identify gender-based violence, especially psychological violence and intimidation. Emphasis is primarily focused on visual, physical injuries. Out of analyzed cases, especially worrying is the case of premeditated murder of a woman, where police got report about the violence several hours before the murder, but failed to prevent the crime.

In a number of cases, the police named cancellation of notification as a reason for non-response. In such cases, the police do not inquire why a victim cancelled the notification, whether it was because of fear of or intimidation by an offender. The problem is that police consider each report by a victim as a separate case and do not take into account the systematic and continuous nature of domestic violence.

The study of cases also revealed a coordination problem between the LEPL Social Service Agency and the Interior Ministry. Sometimes both entities study an incident of violence though results of each study differ. Although the Social Service Agency succeeded in identifying violence in a number of cases, the police did not accept the information obtained by this Agency.

FEMALE GENITAL MUTILATION

Instances of female genital mutilation were detected in one region of Georgia in 2016. The information obtained by the Public Defender revealed that the local population is unaware of the complexity, risks and complications related to female genital mutilation. They are also not aware of the reason for this practice and associate it with traditions or/and religious customs.

The Public Defender commends the fact that, after the package of amendments envisaged in the Istanbul Convention has been approved, the legislation will define female genital mutilation. There is a need to increase work in the area of raising awareness about this issue. It is extremely important to devise an interagency action plan in a timely manner based on international practice and with coordinated involvement of various entities.

EARLY MARRIAGE

Early marriage remains one of the most worrying manifestations of gender inequality. Early marriage is closely linked to the right to education. Minors who marry often drop

out of school, which increases risks of domestic violence. In 2016, as many as 115 pupils aged 13 to 17 years dropped school because of early marriage.

Yet another problem is coordination between entities in regard to cases of early marriage. Although early marriage is often accompanied with a sexual abuse, abandonment of education, neglect from parents, these circumstances are not perceived as offences by the state child care institutions and law enforcement entities because of existing actual family relationships. They often cite voluntary marriages or traditional factors as a ground to not undertake effective measures for the protection of true interests of minors.

The marriages of 611 minors were registered in 2015 while the corresponding indicator stood at only five in 2016. This decrease is the result of a legislative amendment, which proves that the state can play an important role in regulating certain gender issues. Compared to 2015, a slight decrease was seen in the number of underage parents at the moment of child registration; however, the trend of underage parents at child birth significantly exceeding the number of early marriages continued in 2016.

Despite violence against a minor in case of early marriage the Social Service Agency finds it difficult to take a decision on the removal of a child from family. In such cases, the Social Service Agency tries to conceal problems in the family.

Bearing in mind the above said, steps taken to combat early marriage are effective but not sufficient. Effective steps have not been taken to raise awareness of this crime, which is important to prevent sexual offence and decrease the number of early marriages.

RIGHTS OF LGBT

LGBT individuals continue to experience systemic violence, oppression, persecution, intolerance and discrimination in every sphere of life in Georgia. Violence and inequality towards them is often manifested in psychological violence, marginalization, bullying and social exclusion from families, public space or various institutions. Public aggression is further increased by hate speech used by those in political positions, thereby adversely affecting rights of the LGBT community. Steps taken by the state in response to homophobic and transphobic attitudes with the aim of improving the situation and rights of LGBT individuals are minimal and only of a formal nature.

The state still fails to create an educational system free from homophobic and transphobic perceptions that promotes the development of values of tolerance from a very early age. Homophobic sentiments are not rare among teachers, which encourage activity towards violence against the LGBT community. In terms of the right to education, public school and universities in Georgia are still dominated by homophobic and transphobic attitudes, which further limits the exercise of the right to education by the LGBT community, creating hostile environments and causing their exclusion from educational domains.

The serious situation regarding LGBT rights takes an especially heavy toll on relatively vulnerable groups in the LGBT community, such as LBT women. Homophobic attitudes towards them are coupled with the generally poor situation in terms of women's rights; as a result, the number of LBT women who are victims of three or more episodes of violence, exceeds the number of gay and bisexual men with the similar experiences. Nonetheless, visibility of this problem is low, even in the LGBT community.

THE CASE OF 17 MAY 2016

In 2016, an independent group of LGBT activists, according to their statement, decided not to stage a public event due to the danger of expected violence and the absence of guarantees from the state to ensure peaceful conduct of the event. It is alarming that the situation has worsened in comparison to 2015 when LGBT activists, after the state undertook some safety measures, were able to publicly mark the International Day Against Homophobia and Transphobia, albeit in a very modest way within a limited time and space.

Early in the morning on 17 May 2016, ten LGBT activists were detained for making stencils and disobeying a lawful order of a police officer. According to detainees, the detention was carried out in violent forms, without any explanation and accompanied by homophobic language. The activists were detained by persons in plain clothes and they were not transported in police vehicles. The whereabouts of detainees were unknown for several hours. According to the detainees, while being detained they were not informed about their rights and were not allowed to make a phone call to relatives.

ACCESS OF TRANSGENDER COMMUNITY TO PUBLIC SERVICES

Legal recognition of sex remains a key challenge for transgender persons. Since transgender persons are not given the option to change their sex in civil documents or public records in accordance with their gender identity, the risk of discrimination and ill treatment or violence against them increases when they use documents that do not match their gender identity.

Although a procedure for changing one's sex is not provided at the legislative level, the practice established by the Ministry of Justice of Georgia is to allow change in the record about sex on the basis of a medical certificate proving sex reassignment surgery. This practice runs counter to international standards. In 2015, the Public Defender applied to the Ministry of Justice with a proposal to develop and approve a procedure for changing one's sex record in civil documents. The practice, however, still remains unaltered.

GENDER VIOLENCE AGAINST LGBT COMMUNITY

Cases studied by the Office of the Public Defender of Georgia clearly depict the violent reality existing against the LGBT community. These cases show that the attitude towards

the LGBT community is not only worsening, but is manifesting itself in mass violence against members of the community.

The monitoring conducted by the Office of the Public Defender in 2016 on shelters for victims of domestic violence showed that the personnel of shelters lack relevant knowledge and experience in working with LGBT victims, and that the training conducted to raise their awareness mainly covers areas of domestic violence and trafficking.

In a number of cases studied by the Office of the Public Defender, LGBT individuals speak about alleged offences on the part of police officers, such as degrading treatment, homophobic attitudes, verbal and physical abuse, and indifference. In several cases, LGBT individuals also speak about alleged abuses during administrative detentions. Namely, applicants note that they were not informed about the grounds of their detention and were not allowed to contact lawyers, among other things. All of this indicates the need to improve the skills of police officers in identifying administrative offence and obtaining evidence to prove offence against members of the LGBT community.

20. HUMAN RIGHTS SITUATION OF PERSONS WITH DISABILITIES

In 2016, it's been 2 years after the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the Convention) was ratified by the State of Georgia.). Nevertheless, challenges in the effective implementation of the Convention remain. Despite a number of recommendations from the Public Defender, the optional protocol to the Convention has not been ratified yet.

No substantial amendments were introduced to the national legislation so as to bring it in line with the requirements of the Convention. Part of legislative acts is not only inconsistent with the approaches of the Convention but also in some cases contradicts it. One can still see terms such as "person with limited abilities,"[131] "become incapacitated."[132] The Georgian legislation does not use terms "reasonable accommodation" and "universal design."

Establishment of an effective mechanism for the implementation of the Convention remains a challenge. It is important to finalize the formation of this mechanism to ensure the coordination of entities that are responsible for the implementation.

the main challenges faced by the state are social protection, realization of the right to adequate housing and employment of persons with disabilities. Moreover, the accessibility of physical environment, infrastructure, transport and information remains a problem. Majority of public entities, including the ministries, do not apply alternative forms of services/information delivery to persons with disabilities. Webpages are not modernized and adapted.

There are shortcomings in the process of implementation of inclusive education. A substantial segment of children with disabilities, especially those living in regions, are not engaged in this process. Moreover, the quality and continuity of education remain problematic.

State programs on employment are not sufficient. Even existing small-scale programs promoting employment are not implemented effectively. A proof of ineffectiveness of various measures carried out by the state in the area of employment is a small number of persons with disabilities who have jobs. According to 2016 data, as few as 52 persons with disabilities were employed in the public sector[133] and even fewer – 32 persons with disabilities were employed in the private sector.

131 Annex №2 to the Code of Ethics of Police of Georgia. http://police.ge/files/2016/%E1%83%9E%E1%83%9D%E1%83%9A%E1%83%98%E1%83%AA%E1%83%98%E1%83%98%E1%83%A1%20%E1%83%94%E1%83%97%E1%83%98%E1%83%99%E1%83%98%E1%83%A1%20%E1%83%99%E1%83%9D%E1%83%93%E1%83%94%E1%83%A5%E1%83%A1%E1%83%98.pdf

132 Article 3 of the Law of Georgia on Health Protection; https://matsne.gov.ge/ka/document/view/29980 Article 48^5 of the Law of Georgia on General Education; https://matsne.gov.ge/ka/document/view/29248 Articles 12 and 25 of the Law of Georgia on the Rights of Patient; https://matsne.gov.ge/ka/document/view/16978

133 The letter №g215-18.01.2017 of the Public Service Bureau.

Acts of discrimination against persons with disabilities have also occurred during the reporting period. The Public Defender addressed relevant state agencies with recommendations in certain cases.

ACTIVITY OF THE MONITORING MECHANISM OF THE PROMOTION, PROTECTION AND IMPLEMENTATION OF THE CONVENTION

The monitoring mechanism of the Public Defender of the promotion, protection and implementation of the UN Convention on the Rights of Persons with Disabilities, together with the Department of Protection of the Rights of Persons with Disabilities, includes the Consultative Council and the Monitoring Group. As of 2016, the Council consisted of 15 members.[134]

In 2016, Monitoring of the Governmental Action Plans concerning Persons with Disabilities were conducted, Legal Capacity Reform was analyzed, Boarding Houses for Persons with Disabilities were monitored together with the National Preventive Mechanism and Special Reports were Prepared within the frameworks of the Monitoring Mechanism of the popularization, protection and implementation of the Convention. Monitoring of legal capacity reform

The aim of the study, Legal Capacity - Reform Without Implementation, was to evaluate, after the decision of Constitutional Court of Georgia of 8 October 2014, that part of the legal capacity reform which concerns the recognition of a person as a support recepient and its scope. Decisions taken by common courts on the given issue were studied and analyzed in the course of working on the report.

The study revealed a number of challenges. The post-reform legislative reality mostly takes into account individual needs of persons with psycho-social needs and except of few exceptions, it is in conformity with the requirements of Constitutional Court and Convention; however, systemic problems of blanket appointment of support, full deprivation of legal capacity and plenary guardianship are still observed in the implementation of reform.

The Public Defender drafted recommendations in response to existing challenges and they have been reflected in the report.[135]

MONITORING OF THE STATE CARE INSTITUTIONS FOR PERSONS WITH DISABILITIES

In 2016, the monitoring of state care institutions for persons with disabilities was conducted within the scope of two significant mandates granted to the Public Defender of Georgia - the National Preventive Mechanism and the mechanism for the monitoring of implementation of UN Convention on the Rights of Persons with Disabilities.

134 http://www.ombudsman.ge/uploads/other/4/4005.pdf

135 "Legal Capacity – Legislative Reform without Implementation", report available at: http://www.ombudsman.ge/uploads/other/3/3948.pdf.

The institutional arrangement of specialized residential institutions for persons with disabilities, the shortage of psycho-social services and qualified personnel as well as low level of professionalism create serious problems in offering services that are tailored to individual needs of persons with disabilities.

Inaccessible infrastructure, lack of contact with outer world and families (including children), social passivity and isolation from the society as well as shortcomings in administration of institutions and medical assistance represent a challenge.

The monitoring revealed that the level of care for the safety, emotional and psychological wellbeing and mental health of beneficiaries as well as that of knowledge of legal regulations concerning violence and standards among service providers is very low. Beneficiaries are not informed about their rights. Heads of institutions do not consider the consideration of these issues as an important standard of care.

PARTICIPATION OF PERSONS WITH DISABILITIES IN POLITICAL AND SOCIAL LIFE

The right of persons with disabilities to participate in political and social life means the right of these persons to exercise active and passive right to vote, to hold position on every level of state administration, and carry out public functions, when needed, with the use of assistive and new technologies.

In order to support the participation of persons with disabilities in political and social life it is important to involve these persons and their representative organizations in a decision-making process on various levels of authority. Measures towards this end have been specified in a number of state action plans since 2010, but no tangible results have been achieved yet.

RIGHT OF PERSONS WITH DISABILITIES TO VOTE

To ensure the exercise of the right of persons with disabilities to participate in political and social life, it is important to create an equal electoral environment.

Although the national legislation acknowledges the passive and active right of citizens of Georgia to vote, persons with disabilities encounter certain barriers in exercising this right, which are linked to the problems of accessibility of physical environment, public transport, information and communication.

Existing challenges create impediments to persons with disabilities to be represented in electoral commissions and carry out functions of election observers. A passive right to vote of persons with disabilities is important; certain prerequisites need to be in place to exercise this right, including the willingness of political parties and associations to engage persons with disabilities in their activities on a larger scale, to promote them and acknowledge their role. No less important is the change in society's attitude towards persons with disabilities.

During the 2016 parliamentary elections, political manifestos of only three parties[136] were accessible for persons with disabilities.

The webpage of the Central Election Commission which, according to the entity, is fully adapted to the needs of persons with disabilities, including visually impaired ones, cannot be accessed without the use of special electronic program.[137]

STATISTICS AND DATA COLLECTION

Statistics concerning persons with disabilities in Georgia is limited to the total number of persons with disabilities that were registered in the process of conducting general population census based on information provided by them, i.e. self-identification, ; this approach fails to provide comprehensive information about needs of persons with disabilities. Similarly, the statistics maintained by the Social Service Agency, which reflects only the number of those persons with disabilities who receive social package or other state allowances and who seek jobs, cannot provide relevant information about functional disability of persons with disabilities; nor does it make possible to properly identify persons with disabilities who seek jobs.

Given a multifaceted nature of concept of disability, the available statistics cannot ensure the collection of data that is necessary to monitor their rights.

Statistics and data maintained by the state about persons with disabilities do not depict impartial and clear picture about the protection of the rights of these persons.

CHILDREN WITH DISABILITIES UNDER THE STATE CARE

By 2016, two state care institutions were functioning for children with disabilities – branches of State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking: Tbilisi Infants 'House and Kodjori boarding house for children with disabilities, both of which counted 86 beneficiaries in total.

The monitoring conducted by the Public Defender revealed the need of regular supervision by the state of conditions of children with disabilities placed in foster care and reintegration services.

The monitoring of the ongoing process makes it clear that there is a needthat the state, within the shortest possible time, provided a quality alternative family type service for beneficiaries (foster care, small family-type home, et cetera).

136 Political parties: the Georgian Dream, the United National Movement and the Republican Party.
137 A policy paper "Restriction of the right to vote for persons with disabilities." Giorgi Noniashvili, 2016. ISFED.

RIGHT TO SOCIAL PROTECTION

The analysis of cases studied by the Office of Public Defender in 2016 made it clear that children with disabilities cannot properly and effectively exercise the right to be protected from poverty and inadequate level of living.

Receipt of social allowances is an acute problem for families with children with disabilities. The approval of the new Methodology for Evaluation of Social and Economic Condition of Socially Vulnerable Families (Households)[138] made it more difficult for many such families to obtain the right the stateallowance.[139]

Since 1 July 2016, the size of social package for persons with severe disabilities and children with disabilities increased to 180 GEL; however Increased social package is still insufficient to meet needs of children with disabilities.

Effective social protection of children with disabilities is also impeded by the fact that the determination of status is not based on social model and does not outline functional needs. Moreover, the issue of determination of status of disability in early age (0-3 years) is unaddressed. Establishment of disability status in early age (0-3 years) remains problematic. Current regulations do not allow for early identification of, intervention into and effective management of problems.[140]

RIGHT TO HEALTH, CHILD CARE AND SOCIAL REHABILITATION

Some children due to economic situation of families and inadequate involvement of state/local self-government bodies, do not receive comprehensive medical consultation, cannot undertake tests and get assistance in medication.

Subprograms envisaged under the State Program of Social Rehabilitation and Child Care[141] do not cover existing needs, including in terms of funding and geography. Moreover, the number of services available at a municipality level is small.

RIGHT TO EDUCATION

The dynamics of the implementation of inclusive education, in terms of access to education, on the vocational and general education level (especially in the capital) is increasing, while there are significant barriers in terms of access to inclusive education on the preschool stage.

138 https://matsne.gov.ge/ka/document/view/2667586

139 http://www.ombudsman.ge/uploads/other/3/3727.pdf Rights of Person with Disabilities. Special report, 2015.

140 The Situation in Human Rights and Freedoms in Georgia. Report of the Public defender, 2013. http://www.ombudsman.ge/uploads/other/1/1934.pdf

141 Articles 7, 8, 10, 14; https://matsne.gov.ge/ka/document/view/3206217

Adoption of the Law of Georgia on Early Preschool Education[142] is a forward step; however, cases studied by the Office of Public Defender in 2016[143] show that numbers of problems remain on the preschool education level. Official database on children enrolled to kindergartens is still missing. Teachers lack support in working with children with disabilities.

The existing funding mechanism is fragmented and cannot meet educational needs of all children. The legislation still fails to regulate issues related to special teacher status and integrated classes. The problems include shortage of special teachers and their poor qualification, unadjusted physical environment, poor transportation, accessibility of educational institutions, school inventory and educational materials.[144] Moreover, in contrast to conventional approaches, specialized education system continues to operate. The situation is especially grave in regions.

Current state policy is unproductive towards children who are left outside the education system and fails to ensure their integration into the general system. It is necessary to establish an effective referral mechanism which would enable children to be proactively involved in services offered by the state and ensure an effective implementation of the process of identification and transition of these children.

A challenge on the level of vocational education is the full accessivility of educational space and materials.[145]

VIOLENCE AGAINST CHILDREN WITH DISABILITIES

The analysis of reporting period proved that the main challenge in the area of protection of children with disabilities against violence is the problem of identification of violence. Among other problematic issues are: protection of underage victims of violence; implementation of rehabilitation measures; shortage of professionals including psychologists in the field of social service, and lack of cooperation among relevant entities. The absence of monitoring mechanism and information database also remains a challenge; they would enable to plan effective preventive measures.

On the legislative level, Georgia still lacks a separate regulation regarding domestic violence against persons with disabilities (including children); this aspect is integrated into the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence.[146] The interests of particularly vulnerable group and specific approach to them are not taken into consideration even within the framework of the public bodies' internal guidelines and methodologies.

142 https://matsne.gov.ge/ka/document/view/3310237 Adopted by the Parliament of Georgia on 8 June 2016.
143 N10401/16
144 The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia. 2015. http://www.ombudsman.ge/uploads/other/1/1934.pdf.
145 Availability of vocational education to vulnerable groups in Georgia. 2015. http://www.inclusion.ge/res/docs/2015071614133366745.pdf.
146 https://matsne.gov.ge/ka/document/view/26422

WOMEN WITH DISABILITIES

The state policy on health care and social protection is not sensitive to interests and needs of women and girls with disabilities. Although pursuant to a Convention-based approach the above mentioned persons represent a group with special needs, neither the country's policy documents nor the state programs on the protection of human rights view them as a separate target group. Issues relevant to them are not taken into consideration in the development and budgeting of state programs. This is true for healthcare, social rehabilitation, education, employment and other programs.

The state health insurance system of the country covers persons with disabilities; however, women with disabilities are still not able to enjoy specific medical services tailored to their needs. Especially worth noting is the problem in the access to reproductive and sexual healthcare services. There are problems in providing necessary medication too. The majority of beneficiaries financially depend on the state social package which is not enough to purchase medications necessary for health.

One of the main challenges with regard to the rights of women with disabilities in state care institutions is their hospitalization in mental health institutions.

The study of the issue by the Office of Public Defender in 2016 revealed the established practice of residential institutions to hospitalize beneficiaries in mental health institutions in order to resolve conflicts which arise among beneficiaries.[147] Women represent an absolute majority of beneficiaries moved to mental health institutions.

RIGHT OF PERSONS WITH DISABILITIES TO HEALTH CARE

No tangible changes were implemented in the reporting period to ensure proper exercise of the right to healthcare by persons with disabilities. Some state health care programs fall short of needs of these persons. A problem remains of engaging these persons in screening programs as well as offering them services in reproductive and sexual health.

The availability of health care system to persons with disabilities is significantly impeded by the lack of relevant infrastructure. The problems still exists in respect to persons with hearing, speech and visual impairments to communicate with the medical personnel and to receive needed information.

Doctors and other Medical stuff are not educated on the rights of persons with disabilities in a systemic way, although this is crucial for establishing correct and effective communication and providing comprehensive services to them.

147 Situation of the Rights of Persons with Disabilities in State Care Institutions. http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/shezguduli-shesadzleblobis-mqone-pirta-uflebrivi-mdgomareoba-saxelmwifo-zrunvis-dawesebulebebshi [last accessed on 16.03.2017].

MENTAL HEALTH AND EXISTING PROBLEMS

Mental health is a most serious challenge faced by the state in ensuring the right of persons with disabilities to health care.

In the reporting period, the Office of Public Defender of Georgia monitored the implementation of 2015-2020 action plan for the development of mental health care. The study into the issue revealed that the measures planned for the current period have not been completed while the work on the strategy for the implementation of some of those measures has just started.[148]

The number of psycho-social rehabilitation centers did not increase in 2016. A strategy of deinstitutionalization of mental health sphere was not drafted. According to the Ministry of Labor, Health and Social Affairs, the development of this document is planned for 2017.[149]

The field of mental health care in Georgia experiences acute shortage of human resources which, if expressed in absolute terms, is the lack of at least 230 psychiatrists countrywide. 2016 did not saw an official indicator of the rise in the number of medical personnel.

Yet another challenge to the state is the development of mental health services in the penitentiary system.

To achieve success in the sphere of mental health care it is important to carry on measures specified in the action plan without interruption and thus ensure proper realization of the mentioned right by persons with disabilities.

148 The letter N01/2518 of the Ministry of Labor, Health and Social Affairs (16.01.2017), the letter MES 9 17 00033835 of the Ministry of Education and Science (17.01.2017), the letter MOC 3 17 00060376 of the Ministry of Corrections.

149 The letter N01/2518 of the Ministry of Labor, Health and Social Affairs (16.01.2017).

21. LEGAL SITUATION OF RIGHTS OF OLDER PERSONS

The situation concerning the protection of the rights of older persons has not improved notably in 2016 and they remain as one of most vulnerable groups in the country.

Since 1 July 2016, the size of the state pension increased to 180 GEL. Since 1 September 2016, the pension increased by 20%, reaching 216 GEL, for older persons living in mountainous regions. However, on the lights of existing economic situation in the country and the absence of alternative services oriented on the interests of older people, mentioned increases are still short to meet the needs of older persons.

In the reporting period, the Parliament of Georgia adopted the State Policy Concept on Issues of Aging of Population in Georgia[150] which contains main directions and objectives in the area. According to the Concept, the executive branch was instructed to draw up and approve the national action plan for 2016-2018 before 1 August 2016.

According to information available to us,[151] the Ministry of Labor, Health and Social Affairs drew up the action plan for 2016-2018 and submitted it to the government of Georgia on 8 December, but it has not been approved yet. In the Public Defender's view the implementation of obligations specified in the state policy concept is impeded and it adversely affects the situation of the rights of the older persons.

The situation of older persons in residential institutions remains a challenge. Heads and personnel of these institutions have not undertaken professional training in the area of care and protection of the rights of older persons. A minimal catering standard has not been developed so far.

The number of medical personnel have not been specified by legislation and a detailed description of their duties and responsibilities has not been provided to service providers. The absence of psychologists and social workers remain a problem in service providing institutions.

Risk factors of violence and ill treatment, degrading and humiliating attitude towards beneficiaries or other forms of violence against them are not identified and adequately responded to; effective monitoring system is not established.

No tangible changes were implemented for the protection of the rights of older persons by local self-governments. Needs of older persons living in municipalities are not properly studied; nor are targeted programs planned which would consider their interests.

The state did not undertake effective steps to improve social and economic conditions of older persons. A large segment of these people still face a problem of proper living place.

Community services provided within the framework of state program are not available for all persons with relevant needs. The number of places in boarding houses is limited.

150 https://matsne.gov.ge/ka/document/view/3297267

151 The letter N44855 of the of Human Rights Protection Secretariat, dated 19.12.2016.

Moreover, rendered services are fully funded only for those older persons who are registered in the database of socially vulnerable families receiving state allowance. Consequently, some of them are left without proper living place and shelter.

One of the benefits for older persons is a subsistence state allowance for socially vulnerable families; however, following the changes that were introduced in 2014, the allowance was terminated to a segment of families of older personswho were receiving state allowance before those changes. Out of 38 applications concerning the rights of older persons, which were received by the Office of Public Defender, 28 applications concerned the problem of termination of the mentioned state allowance to socially vulnerable families.

The study into the rights of older women revealed that the state lacks an effective mechanism to protect them from violence. The situation is further aggravated when older women have disabilities.

The protection of the rights of older people is undermined by impunity as there are extremely few instances of identifying offenders and holding them liable. Law enforcement authorities often protract investigation; the identification of facts of violence committed against older persons represents a problem. The practice proves that in case of violence, victims do not apply to law enforcement bodies. Often, they prefer to leave their families and ask for shelter instead of having an offender punished.[152]

Considering the above said, the state should plan measures for proper protection of the rights of older persons and implement them in a timely manner.

152 Case N2762/16 of the Office of Public Defender.

22. RIGHT TO ADEQUATE HOUSING

In 2016, a number of citizens applied to the Office of Public Defender, concerning the lack of shelter or adequate living conditions. The study of applications showed that the problems and the circumstances impeding the realization of the right have remained unchanged for years. Although the national strategy on the protection of human rights identifies the obligations to ensure the right to adequate housing and to eradicate homelessness as priorities, the new government action plan (for 2016-2017) does not specify concrete measures and responsible entities for the implementation of objectives set in the strategy.

In contrast to the central government, the Tbilisi city hall took positive steps to ensure the realization of the right to adequate housing. However, considering the scale of the problem, steps taken on the local level are not sufficient.

A regulation of the commission for the registration of homeless and provision of shelter was approved in December 2015. In the reporting period, the commission received up to 6 100 applications[153] and held 10 sittings. At present, more than 5 000 applicants await the consideration of their issues. Considering a large amount of applications, the work of the commission should be of adequate intensity to the dynamics of applications and commission sittings should be held more frequently.

When assessing the ordinance of the Tbilisi city council on the Approval of the Rule for Registration of Homeless and Provision of Shelter on the Territory of Tbilisi Municipality, the Public Defender found that a paragraph of the ordinance giving preference to persons, defined by the Tbilisi government ordinance, in providing shelter, was discriminatory on the ground of place of residence and caused direct discrimination of a segment of homeless persons. In accordance with the recommendation of the Public Defender, the ordinance was amended to delete the discriminatory provision.

The Public Defender also criticized that part of the Tbilisi city council ordinance, according to which the registration of a person as homeless does not obligate local self-government to provide that person with a shelter within a specific period of time. A person seeking shelter must have a real expectation that at a certain stage, his/her request will be met. Consequently, the above mentioned provision must be annulled and a person registered as homeless be informed about possibilities, resources or/and planned measures of the local municipality concerning the provision of shelter.

The Public Defender also sees problems in the rule of compensating rent to homeless persons since it grants broad discretion to local self-government bodies in deciding on the issue of assistance. In particular, in considering the issue of assistance under exceptional/special rule, it is not clear how are beneficiaries selected. Given limited financial resources, it is especially important to set objective criteria for the selection of beneficiaries.

153 Of which 335 persons got registered as homeless, 360 persons were denied the registration while in relation to 37 persons, additional information is being sought.

Yet another problem, faced by applicants in certain cases, is the lack of reasoning of decisions of the city health care and social service on the refusal to register persons as homeless. Ignorance of reasons of refusal, deprives a person of possibility to present new evidence, ask for re-consideration of the case and avoid court proceedings.

Much like in previous years, the problems in the reporting period were the maintenance of municipal and centralized database of homeless persons, lack of financial means for homeless persons and absence of needed infrastructure resources. The approach to this issue is not uniform in all local self-governments. Part of municipal budgets do not allocate any funds. Some municipal budgets allocate funds for rent while other allocate funds for the issuance of one-off assistance and the purchase of housing. At the same time, the absence of legislation regulating the issue of adequate housing as well as the absence of normative instruction concerning the provision of shelter or rent represents a serious shortcoming.

It has been five years now that the issue of studying social and economic conditions of persons who arbitrarily occupied territories of former 25th and 53rd battalions in Batumi and providing assistance tailored to their needs remains a serious challenge. To study the problem and find solutions to it, the local self-government set up a commission, but the commission has not drawn up a strategy and recommendations which would improve the conditions of these homeless persons.

23. RIGHT TO SOCIAL SECURITY

In the reporting period, the Office of the Public Defender worked on several aspects of social security, including the right to adequate nutrition, amendments to the rule of evaluating social and economic conditions of families and problems identified in practice, also on issue of granting the status of mountainous settlement.

The Constitution of Georgia does not explicitly refer to the right to social security and even more so, the right to adequate nutrition; however, this right is recognized in the context of Article 39 of the Constitution of Georgia. Moreover, within the scope of powers of municipalities, defined in the Local Self-Government Code, the capital city and self-governing cities implement soup kitchen programs to ensure availability of food. These programs are not implemented on the territories of self-governing communities, which does not automatically mean that population of communities does not face the problem of availability of food.

The instruction defined in the Tbilisi Mayor's Decree N1879 of 26 November 2014, allows those beneficiaries who are approved under the decree of heads of district self-government bodies and represent socially vulnerably persons with the rating scores up to 200 000, to enjoy the service of soup kitchens. According to the instruction, there are main and additional lists of beneficiaries. Beneficiaries on the main list are entitled to free meals on a daily basis, whereas beneficiaries on the additional list may receive food only when a main list beneficiary does not, for some reason, turn up for dinner on a concrete day. The monitoring of soup kitchen program by the Office of Public Defender showed that the lists of soup kitchen beneficiaries are somewhat permanent, which results in having people remain in the additional list forever. According to the instruction, applications for the inclusion in the list are considered in the order of dates of their registration. Consequently, the risk of having a growing number of families in need on the waiting list increases as other applicants were registered earlier. It is of importance that in the course of planning of the above-mentioned program, financial resources are considered in a way that it fully correspond the existing needs. In cases of maintaining the *status quo*, it is reasonable to pay attention to needs of families in terms of availability of food rather than the dates of registration of applications.

Compared to 2014-2015, the number of persons receiving subsistence allowance notable increased in the reporting period, reaching 476 084. Over the same period, several amendments were made to normative acts regulating the evaluation of social and economic conditions of families. One of such amendments relates to the rule of filling out a protocol about the termination of evaluation of social and economic conditions of families. Before this amendment, a representative of the agency had the obligation to pay three visits to an address specified in an application in order to make sure that the family does not live there permanently. Under the new amendment, paying three visits is no longer obligatory. Consequently, it is not clear on what factual and legal grounds will a representative of the agency establish, without paying visits, that a family does not live at the specified address. The legislation may be interpreted in such a way as to have the fam-

ily de-registered from the database for one year after the very first visit if during it family members were not at the specified address. Consequently, the risk that the mentioned amendment will cause unjustified damage to a family is real. It is important to introduce certain counter-mechanisms in this process, for example, in the form of obtaining information from other sources in addition to a visit.

Among shortcomings observed in the evaluation of social and economic conditions of socially vulnerable families, one should note procedural mistakes made by separate representatives of the agency (agents): incorrect indication of information in the declaration when evaluating social and economic conditions of a family; communication of incomplete information about the data entered into declaration and legal grounds of termination of subsistence allowance to citizens.

On 1 January 2016, the Law on the Development of Mountainous Regions entered into force. The Office of the Public Defender studied the application of residents of the village of Shakhvetila in Ilto gorge, seeking the status of mountainous settlement. Although the level of migration from villages of the Ilto gorge is very high, 70 percent of remaining population comprises elderly and pensioners, the villages are bordering settlement and consequently, the level of migration is important to decrease, the villages of the Ilto gorge still did not make it into those 99 villages which were added as exceptions to the list of mountainous settlements in 2016.

24. RIGHTS OF INTERNALLY DISPLACED PERSONS – IDPs

According to 2016 data, as many as 273 765 internally displaced persons (IDP) are registered in Georgia. Out of the total number of IDPs, 144 014 persons live in so-called private sector whereas 129 751 persons are registered in facilities of former compact settlements.[154]

During the reporting period, more than 250 visits were paid to facilities of former compact settlements of IDPs and more than 700 IDPs were rendered legal advice.

Similarly to the previous year, in 2016, the Office of Public Defender was actively engaged in the work of the Commission on IDP issues of the Georgian Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. Also, the Public Defender is a member of supervisory board of the action plan for the implementation of state strategy on IDPs.

2016 was distinguished for the most wide-scale process of long-term resettlement of IDPs. Although in the reporting period accommodation was provided to 179 families, who lived in dilapidated compact settlement buildings with increased threat to life or health, the issue of IDPs living in shaky buildings remains an acute problem.

A general analysis of situation of rights of IDPs provides the ground to declare that main problems faced by this group of people have remained unchanged over the years. One of them is a low level of awareness of IDPs of developments in the area of IDP rights. Among other problems are grave living conditions of IDPs in certain buildings, the rehabilitation of former collective centers and a poor quality of repair works.

PROCESS OF DURABLE ACCOMMODATION OF IDPs

Four main programs of Durable Accommodation of IDPs exist under the effective legislation.[155] They are:

- ✓ Resettlement of IDPs to rehabilitated and newly constructed buildings;
- ✓ Purchase of individual houses and apartments for IDPs (within the Rural House project);
- ✓ Transfer of IDP settlements in private property into their ownership (through privatization);
- ✓ The mortgage loans repayment program.

154 Letter N01-01/07/6 of 3 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

155 Letter N01-02/08/32576 of 28 December 2016 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

Throughout the year, representatives of the Public Defender of Georgia kept a close watch on the process of distribution of apartments among IDPs by the Commission on IDP issues (hereinafter, the Commission) as well as on the conduct of draw. In 2016, some 1 552 families were provided with long-term accommodation.[156] Of these, 608 families were purchased houses (Rural House), 44 families were satisfied within the mortgage loans repayment program, 900 families were resettled to rehabilitated and newly constructed buildings. As many as 52 886 families remain in need of accommodation.[157]

One should commend the fact that the priority in the resettlement process was given to the IDP families who lived in dilapidated buildings with increased threat to life or health, which were duly transferred into their lawful possession. The state of a building must be confirmed by an opinion of Levan Samkharauli National Forensics Bureau. The Ministry should ensure the study of the condition of buildings or/and update of existing opinions, when needed, on a periodic basis.

As in 2015, the IDP resettlement process in 2016 was carried out on the widest scale in Tbilisi.

In December 2016, the Ministry provided 400 families with apartments in newly constructed buildings in Tbilisi.

As regards the drawing process, it was conducted in a peaceful and transparent manner. One should also note that the process of draw took into consideration the needs of persons with disabilities and they were provided with accommodation on the ground floor without the draw.

As of today, 52 886 IDP families still await accommodation.

PRIVATIZATION OF ACCOMMODATION FOR INTERNALLY DISPLACED PERSONS

There are 129 751 IDPs registered in the facilities of former compact settlements across the country. 2016 saw the completion of transfer of accommodation into private ownership of IDPs in 125 facilities.[158]

The monitoring showed that problems of IDPs living in the facilities of compact settlements remained unchanged. The rehabilitation of former collective centers and poor quality of repair works are still very acute issues. Lack of information on homeowner associations is one of most significant problems. The enactment of the Law of Georgia on Homeowner Associations enabled homeowner associations to enjoy financial assistance from municipalities in the matters related to the maintenance of buildings.

IDPs lack sufficient information about the system of associations. Even in those compact settlement facilities where associations have already been established, IDPs have very

156 Letter N01-02/08/32576 of 28 December 2016 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

157 Letter N01-01/07/6 of 3 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

158 Letter N01-01/07/6 of 3 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

vague understanding of how this system works or how they can benefit from it. There are instances of IDPs in compact settlement facilities not regarding themselves as participants in decision making process in associations. The process of establishment of associations is often led by most active leaders of IDP community, who then almost automatically become chairmen of associations. Municipalities should provide proper information to representatives of IDP community in order to avoid decision making by a single or few persons without seeking consent of other homeowners.

It has been years that the Public Defender has raised the issue of those facilities which fall short of even minimal living standards.[159] Rehabilitation needs mainly relate to sewerage and water supply systems, roof and load-bearing walls. These are those minimal living standards that must have been ensured by the Ministry before the transfer of the buildings into legal ownership of IDPs. The monitoring revealed that the degree of intensity of work on problems of living conditions of IDPs varied by municipalities. Consequently, a coordinated work of the Ministry of refugees and local municipalities is important to eradicate such problems.

The so-called partially legalized buildings remain a problem, where measurement works have been performed several times but their full privatization has not happened yet.

"COLLAPSING" COLLECTIVE CENTERS

One must give a positive assessment to the fact that 1 552 IDP families were provided with long-term accommodation in 2016. Of these, 179 IDP families, who lived in dilapidated buildings posing increased threat to life or health, were provided with accommodation . However, the problem of IDPs living in shaky buildings remains acute.

The monitoring showed very grave living conditions in several buildings. Some of them require special attention, including the hotel Ushba in Tbilisi, the Hydrogeology Bureau in the village of Digomi, the former kindergarten #78 in the Navtlugi settlement, the building of Saktsigni at 26 Kiziki Street, the enetrprise Kikicha at 5 Mevele Street and the building of JSC Duzani at 2 1 Yumashev Street.

The monitoring showed grave living conditions in cottages in the Okrokana settlement.

Same holds true for the buildings in Western Georgia, which are in the gravest state: in Kutaisi – Mukhnari base at turn 5 of Akhalgazrdoba Avenue, Sulkhan-Saba settlement, Kutaisi 99 LTD at 5 Mshenebeli Street, the former outpatient clinic, Training Enterprise of Persons with Disabilities, Culinary Training Institution, the hotel Tbilisi; in Bagdati – the former Vocational Institution; in Chiatura municipality – the buildings of Jarbela, Chiatura sanatorium.

159 According to Paragraph M of Article 4 of the Law of Georgia On Internally Displaced Persons from the Occupied Territories of Georgia, a proper accommodation is an accommodation transferred into the ownership or lawful possession of an IDP, which provides conditions necessary for dignified living, including fair conditions regarding safety and sanitation.

The monitoring made it clear that one of priorities for the Ministry in 2017 should be the resettlement of IDPs from such buildings or the full rehabilitation of buildings.

Today, the Ministry of Refugees "closes down" compact settlement administratively when all IDPs living there are provided with long-term accommodation. This process is carried out in one of three main forms:[160]

1. Privatization: a compact settlement which is fully privatized and its maintenance is already a responsibility of owners living there and homeowner association;

2. Vacation: IDPs are resettled or temporarily removed to other place because of potential or actual collapse of compact settlement building. The responsibility for a building rests with the Ministry of Economy and Sustainable Development or a municipality;[161]

3. Vacation: IDPS are removed to other place on their own will or within the program of the Ministry of Refugees, but a compact settlement is not falling apart. The responsibility for a building rests with the Ministry of Economy and Sustainable Development or a municipality.

After a compact settlement building is closed down administratively, the building is deleted from the database of the Ministry of Refugees and the responsibility for the building goes back to the Ministry of Economy and Sustainable Development or a municipality.

Even in case of a closedown of a building administratively in any of the above listed three forms, IDPs or other homeless/socially vulnerable persons often occupy the building and continue living there regardless of the fact that they (in case of IDPs) were offered/provided with temporary or long-term accommodation. To describe such a situation, the Ministry of Refugees uses a term "partial closure." As of today, IDPs arbitrarily occupy 23 buildings in Tbilisi.[162] Therefore, the term "closure" should mean the closedown of a building both administratively and physically. A person responsible for the building must ensure its protection from an arbitrary occupation by various persons since these buildings still pose increased threat to life and health of people.

In addition to the provision of long-term accommodation, the Ministry should continue work on the transition towards the assistance tailored to needs. It is important to study social and economic conditions of IDPs and provide the assistance that is tailored to these needs. The effective management of the sector of ensuring availability of income sources to IDPs should be enhanced and relevant studies conducted to develop programs of income sources that are really based on revealed needs.

160 Social and economic profiling f compact settlements, resettlement of families and closedown of prioritized dilapidated living facilities.

161 Facilities of compact settlements are not a property of the Ministry of Refugees; the Ministry is responsible for them until IDPs have not been provided with long-term accommodation; after that the responsibility, in most cases, is transferred back to the Ministry of Economy and Sustainable Development or a municipality.

162 Letter N01-02/08/32576 of 28 December 2016 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

25. HUMAN RIGHTS SITUATION OF CONFLICT-AFFECTED PERSONS

THE HUMAN RIGHTS SITUATION OF RESIDENTS OF VILLAGES ALONG THE DIVIDING LINE (ABL)

General observation of the rights of residents of villages along the dividing line in Samegrelo and Shida Kartli shows that despite social and infrastructural projects implemented by the government, the local population still severely suffers from consequences of the war. The installation of barbed wire fences restricted the access to agricultural lands and irrigation water of residents of villages along the dividing line in Shida Kartli. For example, all except for one out of 15 Kareli municipality villages along the ABL suffer from the lack of irrigation water., while it is only partially solved in four villages.[163]

In March 2016, in the village of Jariasheni, Gori municipality, allegedly Russian military officers started road works on the territory adjacent to the dividing line, as a result of which dozen families lost access to their farm lands. After the war 60 families out of 138 residing in the village have lost access to farmlands[164] In places where the access to farmlands and irrigation water is not a problem, local communities complain about farming costs and difficulties related to selling their products. Yet another concern of the population is low quality fertilizers and chemicals.[165]

The above said suggests that income generation is the most pressing problem of the local population. the Public Defender of Georgia recommended the Interim Governmental Commission for Responding to the Needs of Population Residing alongside the Diving Line (hereinafter, governmental commission) to discuss the development of programs tailored to specific needs of conflict-affected population.[166] However, the governmental commission has not discussed the issue of initiating such a program yet. It should be noted that in 2016, in the villages adjacent to the dividing line, 147 beneficiaries received funding within the scope of the state program on supporting micro and small-size entrepreneurship.

The problem of land registration persists in the ABL villages. The law that entered into force on 31 July 2016 simplifies the registration of land ownership. However, the existing legislation does not provide a special legal regime for territories along the dividing line. The Public Defender commends the measures undertaken by the Ministry of Justice, but believes that villages along the dividing line require a greater deal of attention to ensure that the registration of their lands is carried out within the shortest possible time.

Yet another commendable development is the granting of the status of mountainous settlements to 23 villages out of 57 villages along the dividing line in Shida Kartli. The popu-

163 Letter N 2646/17 of Kareli municipality executive, 22 February 2017.

164 Visits of the Office of Public Defender to Jariasheni village in March 2016 and February 2017. "Entrees from the occupied territory at Jariasheni village carry out road works in orchards of local residents," 12 March 2016, Interpressnews, http://www.interpressnews.ge/ge/konfliqtebi/370316-sofel-jariashenthan-okupirebuli-teritoriidan-gadmosulebs-adgilobrivebis-baghebshi-gza-gahyavth.html?ar=A [last accessed on 15.02.2017].

165 Visit of the Office of Public Defender to Jariasheni village in February 2017.

166 Human Rights Situation of Conflict-affected Population in Georgia, Public Defender of Georgia, 2015.

lation ABL villages with in Shida Kartli were again allocated 200 GEL for heating, although the gasification of these villages has been virtually completed. This assistance, however, was not allocated to villages at the dividing line in Samegrelo, including those villages which do not have natural gas supply and have been affected by the borderization. The Office of Public Defender appealed to the co-chairs of Governmental Commission to consider the issuance of 200 GEL worth vouchers to the population of Samegrelo ABL villages, namely, to the villages of Khurcha, Ganmukhuri and Pakhilani, for heating in winter.

An important step was the construction and rehabilitation of drinking water wells, irrigation system, educational institutions and community centers. Intensive construction works of emergency clinic in the village of Tkviavi, Gori municipality, and a general university clinic in the village of Rukhi, Zugdidi municipality are underway.

Access to certain services for residents of Khurcha village in Zugdidi municipality has improved over the past few years. After the 2008 war, the ambulance car refrained from entering this village on safety considerations. This problem has been resolved. The village has two doctors, but does not have a properly equipped outpatient clinic. The same problem is faced by residents of Pakhulani village in Tsalenjikha municipality.

In 2015, the Public Defender studied and found that the water supply system was damaged in Pakhulani village, leaving half of the population without clean drinking water. It is commendable that the Tsalenjikha municipality started the rehabilitation of drinking water pipeline and supply networks in April 2016.[167]

Supply of natural gas is a problem in the village of Ganmukhuri, Zugdidi municipality, where, according to the local population, the construction of natural gas supply system stopped four years ago.[168] According to the head of Zugdidi municipality, gasification works in the village of Ganmukhuri are planned in 2017.[169] The municipality allocated 3 cubic meters of firewood or GEL 100 to socially vulnerable people for heating in winter.[170]

In 2016, teachers of schools along dividing line in Samegrelo and Shida Kartli were involved in the professional development program. Also, inclusive education was introduced in 25 schools of villages along the ABL. In 2016-2017 academic year, 166 students living along the dividing lines received higher education grants within the framework of social program of the Ministry of Education and Science.. In total 846 students received funding further to a respective decision made by the Interim Governmental Commission.

For years, the Public Defender of Georgia is regularly approached by those citizens who have been requesting the authorities to help rehabilitate/restore residential buildings damaged by military actions or compensate against the loss. Among the cases studied by the Office of the Public Defender, the village of Zardiaantkari in Gori municipality and the village of Khurcha in Zugdidi municipality are especially problematic.[171] In response

167 Letter N43 of the head of Tsalenjikha municipality; 12 January 2017.
168 Application N12459/16 of the citizen T.Sh.; 26 September 2016.
169 Letter N02/743 of the head of Zugdidi municipality; 14 February 2017.
170 Letter N02/743 of the head of Zugdidi municipality; 14 February 2017
171 Please see details in the Public Defender's special report: Zardiaantkari: Consequences of War and the Burden of Existence, 2014; http://www.ombudsman.ge/uploads/other/2/2242.pdf; the Public Defender's special report: Human Rights Situation of Residents of Villages along the Dividing Line in Samegrelo-Zemo Svaneti, 2016; http://www.ombudsman.ge/uploads/other/3/3902.pdf

to Public Defender's recommendations, the government commission co-chairs informed the Public Defender that the entities are working on attracting donor resources.[172] The Public Defender, however, believes that the government commission should take a final decision on compensating or rehabilitating houses damaged due to the conflict from the state budget.

Illegal detentions continue to remain one of the key security challenges facing the local communities. However, unlike 2015, in 2016 cases of disappearance and killings further aggravate security issues on the ABL.

The killing of the citizen G.O. at the checkpoint in the village of Khurcha, Zugdidi municipality, on 19 May 2016, is an indication of vulnerability of the ABL communities. On 28 May 2016, a 26-year-old N.S. went missing from the village of Kordi in Gori municipality. According to the family, he went to shut the irrigation water headwork, located near the occupation line. From there he went missing.[173] These issues were discussed at a number of meetings of Incidence Prevention and Response Mechanism. However, a low level of cooperation impedes effective investigation and punishment of perpetrators.

According to information of the State Security Service of Georgia, 327 persons were detained in 2016, including 32 women and 21 minors. Bearing in mind that the central government is not able to document every detention on the occupied territory, this data is incomplete.

On 10 March 2016, the government of Georgia and de facto authorities of Abkhazia and South Ossetia achieved agreement on the exchange of prisoners on "all for all" , a step that the Public Defender had been recommending. The Public Defender commends the launch of dialogue on this issue between Georgian government and de facto authorities.

However, it should be noted that the exchange of prisoners did not result in the release of G.L. an inmate of Abkhazian prison, who is sentenced to 20 years in prison. Furthermore, the citizen of Georgia G.G., who was detained at the dividing line in June 2016, is also sentenced to 20 years in prison. The issue of release of both persons has been raised by the Georgian side for more than six months now but without result.

SITUATION OF THE RIGHTS OF PERSONS LIVING IN THE OCCUPIED TERRITORIES

One of key problems in occupied territories is the right to health. In 2016, Abkhazian media reported about poor state of maternity home and increase in the mortality of newborns and children. A neonatal service does not operate in the Gali district, which poses risks to the life of newborns. Moreover, there is no children's reanimation department in Zugdidi and patients need to be transported to Kutaisi or Tbilisi which may lead to a significant delay in providing medical assistance.

172 Letter N01/3895 of the Ministry of Infrastructure and Regional Development, 20 December 2016.

173 Information provided to the Public Defender. 16 February 2017; "According to security service of Georgia, Nika Saghirashvili is not detained in Tskhinvali isolator." Trialeti, https://www.youtube.com/watch?v=NwF-SKT0sTQo [last accessed on 15.02.2017].

Around 10.000 residents of so called Upper Gali zone had no access to emergency medical service for three months because it broke in December 2016. According to the letter from the Ministry of Labor, Health and Social Affairs, it is planned to allocate funds for the repair of ambulance in the 2017 budget.[174]

The state of persons with disabilities in the occupied territories requires attention. Due to lack of relevant documents, they are often unable to cross the dividing line to participate in social and health care programs. With the assistance of international organizations, three rehabilitation centers operate in Abkhazia for children with disabilities and an additional center operates in Sokhumi.[175] However, there are problems in terms of supply of medical and hygienic means and relevant equipment as well as the quality of service.[176]

The transportation of patients across the dividing line remained extremely problematic in 2016 because the movement of ambulance along the Enguri bridge is prohibited. Patients from the Gali district who have no relevant documents face problems while crossing the dividing line, whereas other population of Abkhazia crosses it with special permits.

As regards South Ossetia, several hospitals were repaired and equipped over the past few years, but the local population uses it for receiving first aid alone. Given that the dividing line is totally closed (except in the Akhalgori district[177]), emergency patients are transported to Georgian clinics by International Committee of the Red Cross. The Office of Public Defender is aware of a number of cases when due to belated permit of the management of Tskhinvali hospital and de facto authorities, patients could not be saved. For a planned treatment, population of South Ossetia enters Georgia via Larsi customs checkpoint.

In early 2016, the Public Defender applied to the Prime Minister with a proposal to extend the state program of C hepatitis management to persons having neutral identity cards. The Ministry of Labor, Health and Social Affairs first denied a possibility of making such a change to the program on safety considerations.[178] However, later, the Office of Public Defender was informed that agreement was achieved between the Ministry and the pharmaceutical company Gilead and the drafting of relevant legal documents is underway.[179] According to information available to us, negotiations are now held with the Justice Ministry of Georgia.[180] The Public Defender commends the government of Georgia for considering this recommendation.

Frequent facts of domestic violence were a problem in Abkhazia and so-called South Ossetia in 2016. According to information of a nongovernmental organization operating in the Gali region, 107 cases of domestic violence were documented in Ochamchire, Tkvarcheli and Gali districts in 2016. In addition to ineffective response of de facto law enforcement

174 Letter 1955/17 of the Ministry of Labor, Health and Social Affairs, 9 February 2017.
175 Special report of the Public Defender of Georgia On the Rights of Women and Children in Conflict-Affected Regions, 2016.
176 Speech of the Minister of Health and Social Affairs of the Autonomous Republic of Abkhazia to the Parliamentary Committee on Healthcare and Social Issues of Georgia, 6 February 2017.
177 Residents of the Akhalgori district alone have the right to move using Akhmaji-Mosabruni checkpoint. Population of Znauri, Java and Tskhinvali districts are not allowed to move via this checkpoint.
178 The letter N01/13196 of the Ministry of Labor, Health and Social Affairs, 18 February 2016.
179 The letter N01/38169 of the Ministry of Labor, Health and Social Affairs, 17 May 2016.
180 The letter N01/8698 of the Ministry of Labor, Health and Social Affairs, 14 February 2017.

authorities, a problem is the absence of shelters and crisis centers for victims of domestic violence, including in Zugdidi.[181]

Early marriage is also a problem in occupied territories. A nongovernmental organization operating in Abkhazia registered 23 cases of early marriage in Ochamchire, Tkvarcheli and Gali districts in 2016.

The issue of Abkhazian documents for residents of Gali district remains unsolved. Despite a decision taken by the de facto government to issue residence permits to those residents of Abkhazia who have citizenship of Georgia, as of 1 March 2017 this process had not started. Instead, the residents of Gali district started receiving again Form N9 to cross the dividing line since June 2016. However, this document is not available for the majority of local population as it is expensive and requires the submission of additional documents.

Problems related to documents have especially negative effect on children. To receive an Abkhazian birth certificate, both parents of a child must have Abkhaz passports. The absence of documents prevents minors from crossing the dividing line and receiving documents certifying Georgian citizenship. As a result, there are children in Ochamchire, Tkvarcheli and Gali districts who have neither Abkhazian nor Georgian documents.

Thus, the number of detentions is high on Abkhazian ABL. According to the border service of the Russian Federation, 14 000 persons were detained over the period from 2009 to 2016.[182] It is extremely alarming that the treatment of detainees, including minors is degrading and inhuman at military bases of the Russian Federation.[183]

The situation will probably worsen in 2017. As of 4 March 2017, checkpoints were abolished except that of Enguri. The de facto authorities offer Gali district residents the transportation by bus to the Enguri bridge. Apart from the fact the villages of so-called lower and upper zones of Gali district are quite far from the bridge, the broken infrastructure creates additional problems.[184]

Movement inside the Gali district becomes complicated too. Since December 2016, military officers of the Russian Federation conduct detailed inspection of documents of local residents when they go from one village to another within the Gali district. The remaining population of Abkhazia is no longer allowed to enter the so-called bordering zone, i.e. villages of the Gali district, without special permits.

The dividing line with the South Ossetia, save from the Akhalgori district section, remains closed for the local population. According to the information of the State Security Service

181 For more information about domestic violence see a special report of the Public Defender of Georgia On the Rights of Women and Children in Conflict-Affected Regions, 2016.

182 "Border protection department of federal security service of Russian federation marks it seventh anniversary of inception in Abkhasia," 29 April 2016, Apsnypress. http://www.apsnypress.info/news/pogranupravlenie-fsb-rossii-v-abkhazii-prazdnuet-sedmuyu-godovshchinu-so-dnya-obrazovaniya/ [last acceded on 24.02.2017].

183 See concrete facts in a special report of the Public Defender of Georgia On the Rights of Women and Children in Conflict-Affected Regions, 2016. http://www.ombudsman.ge/uploads/other/4/4201.pdf.

184 The Public Defender made a statement regarding this initiative of the de facto authorities; see, The Public Defender of Georgia comments on a possible closedown of a checkpoint on the dividing line with Abkhazia, 6 January 2016, http://www.ombudsman.ge/ge/news/saxalxo-damcveli-afxazetis-gamyof-xazze-gamshvebi-punqtebis-shesadzlo-gauqmebas-exmaureba.page.

of Georgia, 134 persons were detained along the dividing line in 2016.[185] However, according to the data of de fact South Ossetian authorities, 549 persons (including persons living in South Ossetia) were detained for the "violation of border regime."[186]

Residents of Akhalgori district can move with the use of permits; however, they are impeded by the fact that the checkpoint does not operate at night and on holidays or politically intensive days. According to information available to the Public Defender, the closure of the checkpoint on the New Year eve brought about a fatal result. Moreover, from January 2016, a total ban was imposed on the invitation of relatives to Akhalgori.

The problem of quality education and the right to obtain education in native language remains unsolved. The Ministry of Education and Science of Georgia supports and assists the education process in the occupied territories, but to compensate the loss, it is important to increase the amount of informal education programs and support teachers.

In the autumn of 2016, the parliament renewed the discussion on a draft law on the Amendments to the Law of Georgia on Occupied Territories. The Public Defender responded to this discussion with a special report, reflecting his views concerning restrictions in the law.[187]

The Public Defender believes that the entry of occupied territories must be punishable only under the administrative law and puts forwards an initiative of easing the restrictions on international organizations and their representatives.

The Public Defender also reckons that the Law must not restrict economic activity on the occupied territories fully and the government should come up with flexible mechanisms for the development of trade relations between residents on both sides of the divide.

The Public Defender also believes that the issuance of Georgia's legal documents must be simplified for persons living on occupied territories. To this end, the government must discuss the issue of taking note of documents issued by illegitimate bodies. The Public Defender believes that a relevant entry to the Law on the obligation of the State to protect the rights of population living on the occupied territories would positively affect their human rights situation.

185 Letter N1494/17 of the State Security Service of Georgia, 2 February 2017.

186 "South Ossetian government expelled a border violator from Georgia," 28 December 2016, Sputnik Ossetia, http://sputnik-ossetia.ru/South_Ossetia/20161228/3522804.html, [last accessed on 24.02.2017].

187 For more information see a special report of the Public Defender "Analysis of the Law of Georgia 'On Occupied Territories' And Recommendations," 2017, available at http://www.ombudsman.ge/uploads/other/4/4196.pdf [24.02.17].

26. SITUATION OF THE RIGHTS OF ECO-MIGRANTS

In 2016, the situation of the rights of eco-migrants improved a little, though main problems remained unsolved. Similarly to previous years, the main problem in 2016 was the lack of uniform vision and legal framework in the field of victims of natural disasters, which manifested in the absence of a common law, special strategy and action plan. Although the new action plan on human rights (for 2016-2017) dedicates a chapter to natural disaster-affected families, it, in contrast to 2014-2015 action plan, no longer envisages the adoption of a special law, which must be assessed as a negative step. The draft law on eco-migrants, drafted by a commission, which was set up under the decree of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter, Minister), was disapproved by the government; consequently, it was not initiated in the parliament. The effective legislation, however, does not regard persons displaced due to natural disasters as refugees. Consequently, social guarantees which are enjoyed by refugees do not apply to eco-migrants. In particular, eco-migrants do not receive status-related assistance as well as compensation for rent and one-off assistance.

Today, the term "eco-migrant family" is applied for resettlement purposes alone. The issues of resettlement is regulated by a normative act (hereinafter, Minister Decree №779) adopted for the aim of resettlement of families affected by the natural disasters. This act underwent several significant amendments in the reporting period: the rule of maintaining a common electronic database of eco-migrant families was approved and the term "eco-migrant family" became more specific. Moreover, the department of eco-migrants was granted a power to de-register an eco-migrant from the database if the latter provided false information. In the Public Defender's view, a decision on deregistration should better be taken by a commission set up on the basis of the Minister's decree.

An important step in the reporting period was the creation of database of eco-migrants; to this end, certain measures were undertaken since 2015. As of 2016, there were 3 909 eco-migrants registered in the database. The reporting period saw the continuation of the process of transferring residential places into the private ownership of eco-migrants that were resettled during the period from 2004 to 2012. In 2016, some 311 families of 1062 who were resettled in 2004-2012, received flats in private ownership. In the reporting period, 93 houses were purchased for eco-migrants.

According to the Minister Decree №779, there are several options of resettling eco-migrants. They are: transfer of occupied living space into the ownership; resettlement in a residential flat purchased by the Ministry, and purchase of a residential space found by an eco-migrant. In satisfying an application for residential space, a priority is given to applicants with high scores. However, in exceptional cases scores are disregarded. The ground of such exception may be a decision of a superior administrative body or a court, a conclusion of an authorized body about a heightened risk to the living space of eco-migrant family and a targeted grant of donor organizations for concrete families. According to the Ministry, 27 families were given housing on the ground of heightened risk. However, the

Ministry does not have information on how many eco-migrant families were issued such conclusions in total, which shows lack of coordination in the activities of state entities in the area of eco-migrants.

In his 2015 parliamentary report, the Public Defender of Georgia spoke about the natural disaster of 13-14 June, emphasizing that the absence of common legislative framework conditioned the introduction of special regulations for measures to be undertaken towards affected families in the Vere ravine. These regulations proved ineffective because it is impossible to comprehensively respond to existing challenges with a normative act that is adopted in force majeure situation. The normative act regulating compensation of damages sustained as a result of natural disaster of 13-14 June does not envisage the compensation of damages to those persons whose land plots and garages were damaged/destroyed. There was a case in which instead of being compensated, the owner was deprived of its land plot, located within the natural disaster zone, on the basis of the Organic Law of Georgia on Rules for Expropriation of Property in the Public Interest, which raises certain questions from legal perspective.

27. REPATRIATION OF PERSONS FORCEFULLY SENT INTO EXILE FROM THE SOVIET SOCIALIST REPUBLIC OF GEORGIA BY THE FORMER USSR IN THE 1940s

Upon joining the Council of Europe in 1999, Georgia assumed an obligation[188] to repatriate persons deported by the Soviet regime from the Soviet Socialist Republic of Georgia in the 1940s. Within two years of the adoption of the document, the Georgian government was required to develop a legal framework permitting repatriation and integration while within twelve years, to complete the process of repatriation. Although substantial procrastination has been seen in the implementation of assumed obligation and relevant procedures, Georgia now has the Law of Georgia on Repatriation of Persons Internally Displaced by the Former USSR from the Soviet Socialistic Republic of Georgia in the 1940s of the 20th Century (hereinafter, the Law on Repatriation) which is designed to regulate the dignified return and repatriation process of deported persons. Moreover, Georgia took a further step by developing and approving the state strategy; the action plan has been also drafted and now awaits approval.

Although the legislative framework is in place and the state expresses readiness to carry out the repatriation process, there are a number of challenges which require a complex approach in order to be overcome.

As of December 2016,[189] as many as 5,841 persons were registered, within the scope of the Law on Repatriation, as repatriate status seekers at the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter, the Ministry of Refugees). The status of repatriate was granted to only 1,533 of them. The data has not changed over the past two years since none of status seekers has been awarded the status of repatriate in 2014-2016.

As regards the award of Georgian citizenship to the persons with repatriate status, according to the information on the webpage of the Ministry of Refugees, 494 persons were granted Georgian citizens. According to information provided by the Public Services Development Agency of the Ministry of Justice[190], only 15 persons with the status of repatriate were granted Georgian citizenship in 2015.

INTEGRATION

The repatriation strategy and action plan have a decisive role in the effective management of the process of dignified return and integration of persons deported from Meskheti. To facilitate the repatriation process, the approval of action plan must be accelerated.

188 PACE Opinion, January 27, 1999 - http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16669&lang=en

189 Information of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia: Letter N02–02/03/505 (11.01.2017).

190 Information of LEPL Public Services Development Agency of the Ministry of Justice of Georgia: Letter N 01/31755, 03.02.2017

For a successful integration of deported persons, there is a need to eliminate those problems which may emerge in case of repatriation, including the problems related to availability of education, employment and health care.

The Law on Repatriation and other normative acts adopted on its basis do not envisage any social assistance to repatriated persons, thereby discouraging their return and having an adverse effect on ensuring their dignified life in Georgia.

An important element in terms of their integration is the State Strategy on the Repatriation of Persons Deported by the Former USSR from the Soviet Socialistic Republic of Georgia in the 1940s of the 20th Century, which is designed to facilitate the dignified and voluntary return of repatriates and the civil integration of repatriated population. However, the document contains only general information. To support post-repatriation integration measures it is important to speed up the approval of the action plan of strategy.

So-called self-repatriated Meskhetians

The analysis of applications received by the Office of Public Defender in the past few years makes it clear that there is a group of persons who have failed to collect and submit all necessary documents within the term set in the law and accordingly, to obtain a status of repatriate; consequently, a simplified rule of acquiring Georgia citizenship does not apply to them and their legal status in Georgia is unclear to date.

In order to prevent these persons form living in Georgia in breach of immigration standards, the Ministry, with the assistance of international and nongovernmental organizations, must identify these persons and give them a possibility to bring their stay in Georgia in line with the law.

Repatriate status seekers must be informed about Georgia and the process of repatriation. Also, they must receive information about possibilities of educational and social and economic development and must be supported in this endeavor. The majority of these persons do not speak Georgian, which is an impediment to their integration.

28. SITUATION OF THE RIGHTS OF MIGRANTS

2016 did not see any improvement in reasoning of decisions on the refusal to grant residence permit in Georgia or Georgian citizenship on national or/and public security considerations by the LEPL Public Service Development Agency.

In the reporting period, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter, Ministry) launched a state program of reintegration assistance for returning migrants. As of 31 December 2016, some 303 returned migrants were registered as beneficiaries of this program.

The support of reintegration of returning migrants is envisaged in the 2017 state budget as well. It is therefore important to tailor programs, to be funded from the budget, to the needs of migrants. At present, offered programs do not fully envisage migrants' needs. In particular, the program does not ensure the transportation of migrants throughout the territory of Georgia, which is especially problematic for migrants living in rural areas, who need transportation to a point of destination. Since the majority of migrants are not allowed to contact their families during the process of deportation, it is important to consider an issue of transportation of such persons to their points of destination.

Also issues of transportation of returned migrants to a temporary housing, catering in temporary housing and in case of need, providing them with round-the-clock shelter for a certain period were seen as problematic. The state program, in exceptional cases, provides shelter to homeless persons for four days. However, it is not clear what happens after the expiry of a four-day term. It is important to discuss this issue in a coordinated manner with relevant self-government bodies.

Under the state reintegration support program, a representative of the Ministry meets deported persons at the airport, speaks with them there and offers various social programs implemented by the Ministry. Deported persons should be distributed booklets about state programs before they arrive, on board the plane, thus giving them more time to familiarize themselves with offered programs and realize their importance.

29. RIGHTS OF ASYLUM SEEKERS, REFUGEES AND HUMANITARIAN STATUS HOLDERS

Against the backdrop of population moving on an unprecedented scale worldwide, the number of asylum seekers has grown in Georgia over the past few years. Compared to the previous year, however, 2016 saw a decrease in asylum seekers. Conflicts and human rights violation have resulted, in the reporting period, in the increase of asylum seekers from such regions as Africa, Western and Eastern Asia.

In 2016, on the initiative of the Ministry of Refugees, Georgia adopted the Law on International Protection and drafted a package of normative acts, which shall be assessed positively.

OVERVIEW OF THE LAW OF GEORGIA ON INTERNATIONAL PROTECTION AND NORMATIVE ACTS

On 1 December 2016, the Parliament of Georgia adopted the Law on International Protection. The Law envisages provisions of qualification directives adopted by the European Union in relation to international protection standards in 2011 (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011) and 2013 (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013). In contrast to the effective law, the new law is approximated to the 1951 Convention Relating to the Status of Refugees and alike the latter, regulates grounds for granting, excluding, and denying international protection and for termination, cancellation or revocation of refugee and humanitarian statuses as well as temporary protection status.[191]

Although the Law envisages directives on qualification standards of international protection and provisions of the UN Convention Relating to the Status of Refugees, it still has shortcomings which need to be discussed and put to right. In particular, the term for the review of application for international protection (Article 29), set at six months and if extended at nine months plus the term for consideration of complaints by a court, is quite a long period, in the Public Defender's opinion, and adversely affects especially those asylum seekers who lack a source of income (except for those who live in reception centers for asylum seekers and along with a monthly allowance receive other benefits too) to live in a foreign country. The provision in the law saying that the term of review may be extended to nine months when "complex factual or legal issues are revealed" is too general in its nature and requires clarification. Consequently, the provision of the law saying that in exceptional cases, the consideration of an application shall not exceed 21 months is, in the Public Defender's view, unreasonable and may have a negative impact on an asylum seeker who will have to stay in uncertainty for a long period of time.

The Law requires the conduct of first interview with an asylum-seeker within four months from the date of registration of application, which also seems an unreasonably long period of time.

191 Explanatory note to the draft law on International Protection.

The Public Defender also believes that the law as well as procedure for granting asylum must include a phrase "to determine best interests of minor"; although the Georgian legislation does not provide a procedure for such determination, the Public Defender thinks that it must be drawn up. Moreover, it is necessary that the Ministry of Refugees, in the best interest of a minor, undertakes all measures to find family members of a minor, left without a legal representative, within the shortest possible time.

The criteria for granting humanitarian status, listed in Article 19, must be extended to include an additional criterion "who requires other reliable humanitarian aid." Without this criterion, the definition of "humanitarian status" in the Law narrows down and excludes instances of humanitarian aid such as medical aid, natural calamities, et cetera. It is worth noting that such criteria were provided in the Law of Georgia on Refugees and Humanitarian Status and thus represented a relevant protection mechanism for persons seeking such statuses.

In regard to Paragraph 3 of Article 43 of the Law which concerns the non-delivery of a decision because of an asylum-seeker, it is necessary to consider additional means for the delivery of a decision such as phone call and SMS with corresponding registration as asylum seekers often change their addresses and it will be difficult to establish who is to be blamed for the non-delivery of the decision.

A greater deal of attention should be paid to Paragraph 4 of Article 7 of the Law, which was added to the draft law after it passed its second reading. According to Paragraph 1 of the article, a foreigner or stateless person is released from criminal responsibility for the illegal crossing of the state border of Georgia, or preparation, use, purchase of forged identity card or other official documents or for keeping such documents for later use if he/she asks Georgian authorities for international protection. However, according to Paragraph 4 of the same article, if the final decision determines that a foreigner or stateless person does not require international protection, he/she will not be released from criminal responsibility.

This provision runs counter to the 1951 Geneva Convention Relating to the Status of Refugees and the above mentioned provision must be deleted.

The above cited article also conflicts with the note to Article 344 of the Criminal Code of Georgia, which says that the criminal liability envisaged in this article does not apply to foreign citizens or stateless persons, having entered Georgia, who seek asylum from the authorities of Georgia in accordance with the Constitution of Georgia.

The provision of interpreter service is an important issue in addition to the issues in Asylum Procedure, drafted in the reporting period, which we already mentioned in the comments about the Law. There must be an authorized person who will examine the knowledge and skills of an interpreter. Review procedures of asylum application shall not be attended, save exceptional cases, by an interpreter who is not presented by an asylum seeker. Moreover, an interpreter must be among signatories of a protocol on the withdrawal of application for international protection and the repeat application.

STATISTICAL DATA ON ASYLUM SEEKERS, REFUGEES AND PERSONS WITH HUMANITARIAN STATUS

As of 31 December 2016,[192] there were 1 513 refugees and persons with humanitarian status living in Georgia (of which 238 persons were granted the status of refugee based on the principle of prima facie,[193] 176 persons were granted the status of refugee based on individual principle and 1 099 were granted a humanitarian status).

Compared to previous year,[194] the amount of granted refugee and humanitarian statuses has decreased. While in 2015, a positive indicator of considered applications stood at 75 percent (69 persons were granted the status of refugee and 878 persons were granted the humanitarian status), a corresponding indicator in 2016 was 43 percent - 48 persons were granted the status of refugee and 203 persons were granted the humanitarian status whereas 332 asylum seekers were denied the statuses. One should note here that the consideration of quite a large amount of applications was terminated because asylum seekers left the country before the completion of the consideration. According to the information provided by the Ministry of Refugee, 256 cases of asylum seekers were closed down in 2016 because applicants did not turn up while 403 cases were terminated based on personal applications before final decisions on them were taken.

As regards the entry of the country by asylum seekers, a downward trend has been observed since 2014. Compared to 2015, the number of asylum seekers has notably reduced. 2016 saw the registration of 947 persons in total, compared to 1 449 persons in 2015.

As noted above, a significant rise was seen in asylum seekers from African countries in 2016, though the highest number of asylum seekers were from Iraq – 259.

ASYLUM PROCEDURE IN GEORGIA – POSITIVE AND NEGATIVE TRENDS

According to the amendment to the regulation of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the units for determining the status, and the quality control and trainings have been operating within the Department for Migration, Repatriation and Refugee Issues since 2016, which is a commendable development. According to the information from the Ministry of Refugees, the unit for determining the status has five while the unit for quality control and trainings has three permanent positions. However, the monitoring revealed that only three positions are manned in the unit for determining the status. Existing human resources are not sufficient to study that amount of applications of asylum seekers which the Ministry receives on a daily basis. The lack of human resources will especially become a serious impediment after the new law and procedures enter into force as new asylum procedures are detailed and require additional time and properly trained human resources.

192 Letter N02-01/05/862 of 18 January 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

193 Latin; based on the first impression.

194 The 2015 report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia. http://www.ombudsman.ge/uploads/other/3/3891.pdf

Procedures for determining refugee and humanitarian statuses, which are applied by the Ministry of Refugees, have notably improved over the past years. However, a matter of great interest in 2016 data is the number of denials to citizens of the Republic of Iraq. According to provided information, there are 103 such persons, including 61 persons who were denied for the lack of reasons, 15 persons were denied for their unsuitability based on considerations of state security, 27 persons were denied because they had an alternative of internal movement; these numbers raise questions.

As regards the asylum procedure, the monitoring showed certain shortcomings in relation to consideration of an application of a minor. The process of consideration disregarded the peculiarity of the case; the length of interview exceeded the standard length; questions were not meticulously selected and processed therewith negatively affecting psychological and emotional state of the minor, especially in the case of child victim of domestic violence. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity.[195] Therefore, to fully protect interests of a minor applicant, a decision maker, during the interview, must pay special attention to questions and the behavior of a minor.

When considering a case of unaccompanied minor, it is especially important to give priority to children's refugee status applications and to make every effort to reach a decision promptly and fairly.[196]

In the reporting period, along with the monitoring of procedures for determining the status of refugee, we also studied randomly selected cases; in examining them our attention was caught by the information reflected in the conclusion prepared by the Department for Migration, Repatriation and Refugee Issues. When monitoring the court, we also observed special interest of judges towards countries of origin in several cases.

The study of the cases revealed shortcomings of several types, such as common inaccuracies, use of outdated materials, omission of such details which contained essential information on asylum case, lack of analysis, inappropriate use of sources, et cetera.

MONITORING RESULTS – AVAILABILITY OF ASYLUM AT THE STATE BORDER

In the reporting period, monitoring was conducted on the following border-immigration control departments of the Patrol Police of the Ministry of Internal Affairs of Georgia: Sarpi, Batumi Airport, Kutaisi Airport, Tsodna (Lagodekhi), Dariali (Kazbegi). Poti Port, Vale, Sameba (Ninotsminda), Tsiteli Khidi, Geguti, Sadakhlo, as well as border-immigration control main department, Tbilisi Airport. Visits were paid to structural units, including sectors, of Georgia's border police – a state entity subordinated to the Ministry of Internal Affairs.

195 Handbook on Procedures and Criteria for Determining Refugee Status (under the 1951 Convention and the 1967 Protocol).

196 Office of the United Nations High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum. http://www.refworld.org/docid/3ae6b3360.html [Last accessed on 1 March 2017].

The monitoring showed that border police officers lack proper information about measures to be undertaken in case of application for asylum at the border and about the cooperation with the Ministry of Refugees.

The monitoring at the state border and in penitentiary facilities revealed concrete cases of foreign citizens having asked for asylum at the border but representatives of relevant service having failed to carry out procedures envisaged under the law. In particular, in one instance there was a direct and clear appeal for asylum at the state border, which was verbally confirmed both by the asylum seeker and a representative of the border police. The foreign citizen named his ethnic origin, expressed his political opinions and explained that he was persecuted in the country of his citizenship. He made the similar statement at court but, nevertheless, a criminal proceeding was instituted against the foreign citizen under Paragraph 1 of Article 344 of the Criminal Code which envisages punishment for illegal crossing of the state border.

Despite impediments, this person was registered as an asylum seeker but was not released from criminal liability though this is stated in the note to Article 344.

As regards two similar cases, two persons were also crossing the state border illegally when the border police detained them. In case of both persons, they made indirect applications stating that they were persecuted in their own country since they were perceived as being connected to a terrorist organization because they lived in Turkey for a certain period of time. The border police neglected this statement and sent applicants to a penitentiary facility.

The above mentioned cases suggest the likelihood of detention of more asylum seekers at the border. Consequently, there is a need to conduct intensive training to both Patrol Police and border police employees on issues of refugee law, including, the grounds for the release of asylum seekers from criminal liability.

30. RIGHT TO PROPERTY

A number of new regulations concerning the right to property were enacted last year, among them was the adoption of the Law on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land and the abolition of so-called police eviction. On 1 August 2016, the Law on the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project was fully enforced with its term of validity set at 1 August 2018. The law aims at ensuring the creation of comprehensive cadastral data and registration of rights to plots of land. At this stage, the Public Defender commends the amendments to the law for the aim of addressing systemic problems related to property registration.

The above named law provides for mediation - an alternative means of dispute resolution between parties in the process of implementation of state projects. The Office of Public Defender inquired about the role performed by, and efficiency of, mediation in the elimination of most serious problem related to land registration - interference/duplicate registrations. According to information received from the National Agency of Public Registry, the registration proceedings on 16 092 applications were terminated on the basis of interference. Notarial mediation was applied to 348 applications for registration due to property dispute having arisen during the registration proceedings, 80 cases of which ended in settlement between the parties. The provided information indicates that the problem of so-called interference is still pressing, which shows that such problems cannot be resolved through notarial mediation.

At the end of 2015, the Civil Code of Georgia was amended, abolishing the institution of so-called police eviction. From 1 March 2016, disputes of such type were to be resolved by court. The law set limited period of time for the consideration of such disputes. Given the past experience, the Public Defender reckoned that the consideration of such disputes in courts would procrastinate thereby prolonging the violation of property right. To conduct a comprehensive monitoring of the process, the Office of Public Defender of Georgia requested from all courts in Georgia the information about the total number of complaints on soliciting immovable property from illegal ownership, registered per court, also, the number of complaints on soliciting immovable property from illegal ownership that were left without consideration as well as those that were underway. The information provided by courts[197] reveals that in the majority of cases complaints on soliciting immovable property from illegal ownership are not considered within the timeframe set in the Civil Procedures Code, which is yet another proof of the Public Defender's position that the consideration of such complaints requires much more time than specified in the procedural legislation and creates a precondition for the prolongation of the violation of the right to property.

The issue of so-called traditional ownership of plots of land remained unsolved in the reporting period, thereby posing a threat to persons, who have owned and cultivated

197 The requested information was not provided by the Tbilisi City Court.

agricultural lands for decades, of being left without their main source of living.

Yet another pressing issue was the problem related to registration of ownership right on agricultural land plots distributed among residents of town of Bakuriani and village of Didi Mitarbi during the implementation of land reform; this issue is linked to the investigation which has been in progress since 2006. Under this investigation, the investigative unit of Samtskhe-Javakheti district prosecutor's office seized the documentation necessary for comprehensive consideration of applications concerning land ownership. Investigation in relation to separate land plots is still underway.

According to the Law of Georgia on Public Debt, an obligation assumed by the state in relation to housing development cooperatives is recognized as a domestic public debt. This problem was pressing in 2016 too. The analysis of information requested by the Office of Public Defender from various entities makes it clear that the steps taken by the state in this direction cannot be considered effective. It is necessary to draw up a common rule for the fulfillment of obligation to citizens suffered from unconstructed residential buildings under housing development cooperatives, which will detail the forms and terms of fulfillment of obligation assumed to these persons. To reinstate the rights of these persons, it is necessary to undertake, within the shortest possible time, the measures for the transfer of immovable property, specified for members of housing development cooperative, at a symbolic price and the execution of relevant agreements with them, also, to timely undertake measures to complete unconstructed residential buildings.