ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

The Situation of Human Rights and Freedoms in Georgia

EUROPEAN UNION

2015

PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

The Public Defender of Georgia

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Introduction

The present document provides the Public Defender's account of the situation in the protection of human rights and freedoms in the country throughout 2015 from political, economic, social and cultural perspectives. The document also highlights both positive and negative trends pertaining to the protection of human rights observed during the reporting period and provides key recommendations developed by the Public Defender addressing various agencies and branches of the Georgian authorities.

The document has been developed pursuant to Article 22 of the Organic Law of Georgia on the Public Defender of Georgia and will be submitted to the Parliament of Georgia.

At a plenary session of the UN General Assembly which was held in 2015, Georgia was granted a membership of the UN Committee for Human Rights. It is important that Georgia not only effectively perform its obligations to the UN, but also Georgia should take all measures to implement international standards and utilize a UN system to respond to human rights violations and improve the human rights situation. The membership is a new challenge and incumbent authorities should prioritize human rights protection in both domestic and foreign policies.

In 2015 the Parliament of Georgia considered a large part of the Public Defender's recommendations and tasked respective state agencies to take specific measures by issuing a relevant resolution. The Parliamentary Committee for Human Rights and Civil Integration is in charge of monitoring the implementation progress of the Public Defender's recommendations. Unfortunately, some of the key recommendations still remain overlooked posing serious risks to the protection of human rights in the country.

Applications of citizens to the Public Defender's Office remained high. In 2015 with up to 7000 applications deemed admissible. This number is quite high and points out to growing expectation to the Public Defender's Office, raising awareness of public on violated rights and is indicative of a free environment in the country.

During the reporting year, the Georgian Government continued to implement reforms in the justice sector and the law enforcement agencies to demonstrate their commitment at the international and national levels.

The Public Defender welcomes reforms implemented in the country's prosecution system which has been contributing to strengthening the independence of prosecution services. However, a series of challenges still remain ignored during the implementation of the ongoing reform. One of such challenges pertains to a rule of forming the prosecutor's board and depoliticisation of prosecutor's service.

A reform implemented in the state security sector aiming to separate the State Security Agency from the Ministry of Internal Affairs has been undoubtedly a positive development. However, it should be noted that challenges such as the absence of a civilian monitoring mechanism of the security system still remains. Yet another step

forward is the introduction of legislative changes to the legal framework related to the state security sector as a result of which a notion of so-called institute of "Odeer' (from Russian: офицер действующего резерва. In English: Active Reserve Officer) has changed profoundly and a covert circle of agencies providing volumes of information to the state security services no longer exists. The law now is providing a list of agencies exposed to a high state security risk and specifies the classification of information that can be exchanged. However, in spite of these changes, reports on so-called "Odeers' resurfaced again from Ivane Javakhishvili Tbilisi State University. Therefore, it is imperative that legislative changes are effectively implemented in order to eliminate a hideous practice of collecting information by the police or private institutions acting beyond the legal framework. The Public Defender calls on the Parliament of Georgia to set up a temporary investigation commission to closely look at the impact of legislative changes on the use of institute of "Odeers' in general and in particular by those institutions which are no longer authorized to do so.

Liberalization of the criminal justice policy has remained one of the most significant achievements in the field of human rights protection. These efforts have already had implications and resulted in a number of proportional and reasonable punishments. The rate of pre-trial detentions (in percentages) as a form of the deprivation of liberty has also decreased. In addition, the adoption of a Juvenile Justice Code is yet another move forward and so are the changes to the Criminal Code related to the rule of witnesses' interrogation, taking effect in February 2016. However, in order to attain high standards of witnesses' interrogation, measures need to be taken in future to further improve the law.

The reporting period saw the development of a series of legislative changes within the third wave of the justice reform reflecting on one of the key recommendations of the Public Defender concerning the introduction of electronic distribution of cases in courts. It should be noted that there is a long way to go towards increasing public trust and confidence in courts in spite of an institutional reform seeking greater independence of the judiciary.

A process of promoting and appointing judges in the High Council of Justice of Georgia caused raised concerns as little consideration was given to merits, as well as impartial and unbiased evaluation of professional performance demonstrated by candidates. Over the course of several years, the Public Defender had been calling on the High Council of Justice of Georgia to initiate disciplinary prosecution of those judges who have been known for notoriously violating procedural norms during hearings. However, appeals of the Public Defender have remained without adequate response.

In spite of the fact that inmate torture no longer represents the gravest challenge, thousands of complaints filed by victims of torture, cruel, inhuman and degrading treatment are still being investigated and most of them but few have not yielded any outcomes.

Ensuring effective investigation of alleged cases of ill-treatment while under police custody and penitentiary institutions continued to raise concerns during the reporting period. The Public Defender welcomes changes made to the Imprisonment Code in 2015 according to which the Special Preventive Group at the Public Defender's Office will be allowed to take photos in penitentiary institutions effective from September 1, 2016. Changes aiming to improve a centralized management of the penitentiary system and internal inspection mechanism are also welcome. The Public Defender is pleased with the introduction of a risk assessment system for the convicts and underlines the importance of accurate assessment of risks and systematic review during which convicts should have unrestricted access to guarantees of legal protection.

A practice of documenting bodily injuries of inmates and their causes, as well as recording and responding to such cases is characterized by serious flows. An investigative authority is often unable to retrieve an appropriate recording from a CCTV as they are not kept within a reasonable period of time. In spite of numerous recommendations of the Public Defender suggesting to keep such recordings within a reasonable period of time, Order N35 of the Minister of Corrections and Legal Assistance dated May 19, 2015, determined that such recordings should be kept for less than 24 hours and therefore, a question as of how long the recordings

are effectively kept is yet to be answered. It should also be noted that unfortunately, the Public Defender/ Special Preventive Group member has no access to such recordings which is a challenge to the implementation of a mandate of the National Preventive Mechanism. Based on the above said, the Public Defender ascertains that penitentiary institutions remain exposed to a high risk of ill-treatment.

In spite of a recommendation of the Public Defender of Georgia, administration of a penitentiary institution is remain authorized to visually and using technical means, observe a meeting of the accused/convict with representatives of the Public Defender/members of the Special Preventive Group allowed by Article 54, Part 6 of the Imprisonment Code of Georgia. Even though surveillance is distant and recordings do not have sound, in Public Defender's view, this practice breaches the principle of confidentiality of such interviews. In addition, a growing tendency of placing an inmate in solitary confinement as a form of disciplinary penalty and a diversity of practice of imposing disciplinary punishment over inmates raises questions about the proportionate use of disciplinary penalties.

Prevention of violence among inmates, taking measures against the influence of criminal subculture in prisons and protecting order still remain a grave challenge. The difficulties are caused, inter alia, by the scarcity of rehabilitation and resocialisation activities for inmates in penitentiary institutions. Infrastructure in closed institutions does not allow inmates to engage in sports or other interesting activities which negatively affects their health and wellbeing. These circumstances contribute to growing discontent among prisoners which often snowballs into inflicting self-injuries by patients and other extreme forms of a protest as there is no effective internal mechanism for reviewing claims/complaints to mitigate this situation.

The Public Defender is concerned with the fact that inmates have very little contacts with the outside world which contradicts the presumption of innocence. It is important that legislative changes be implemented in order to better protect the rights of the convict.

The monitoring missions during the reporting period revealed that often inmates are transferred from a penitentiary institution located in Western Georgia to those operating in Eastern Georgia and vice versa. Importantly, often decisions on transfer are based on secret letters by a director of a penitentiary institutions. Such letters are not accessible to the Public Defender/a member of the Special Preventive Group. Inmates transferred to a long distance are likely to develop serious problems of maintaining contacts with their families and lawyers.

It should also be noted that a physical environment and sanitary condition represents the most burning problem for institution N7. The Public Defender has repeatedly issued recommendations for the closure of the facility and before a decision is made on closure, to take concrete measures to alleviate rough conditions to some extent.

Inmate mortality rate including deaths caused by suicide has decreased in comparison to the year before, which indicates to the progress achieved in the field of penitentiary healthcare. However, further efforts need to be taken to improve the penitentiary healthcare system.

In 2015 compared to 2014 saw an increase in proposals submitted by the Public Defender to the Chief Prosecutor's Office in order to advocate for the investigation of maltreatment committed by police staff. High risk of torture and inappropriate treatment is further confirmed by research conducted by the Special Preventive Group.

The Public Defender holds that cases involving maltreatment of detainees by the police stood out as significant during 2015. They are concerned that in most of the cases, explanations provided by claimants exhibit signs of preparedness of police staff for physical and psychological violence which they use in order to obtain a confession and which bear signs of crimes involving torture.

It raises serious concerns that types of injuries and its locations on the body of some of the claimants as well as the fact that because of these injuries they had to be transferred to civilian hospitals outside the penitentiary system. More importantly, in a number of cases before being placed under pre-detention facility detainees had to spend a night in police departments. The duration of time spent under the police surveillance varies from 5 to 23 hours. It should also be noted that in certain cases the time indicated in a detention protocol didn't coincide with that indicated by a claimant in his/her statement to the Public Defender.

The Public Defender is particularly concerned with the fact that investigations were launched on 11 proposals submitted by the Public Defender to the Chief Prosecutor for crimes stipulated by Article 333 of the Criminal Code while circumstances outlined in the Public Defender's proposals exhibited signs of torture, inhuman and degrading treatment.

However, it should be noted that the situation has somewhat improved during the reporting period when it comes to the qualification of crimes committed in the penitentiary system. Numerous alleged crimes referred to by the Public Defender in his proposals and committed within the penitentiary system were qualified under the special Article 144 (degrading or inhuman treatment) of the Criminal Code of Georgia.

The beating of a lawyer G.M by police staff in the building of the police department V in Vake, Tbilisi, on November 8, 2015, stands out as particularly alarming. In spite of the fact that head of the aforementioned department was charged with the crime, the Public Defender argues that other individuals involved in this crime should have also been identified and punished while the failure to do so is deemed to be a flow of the investigation.

Yet another case which raises the Public Defender's particular concern was the notorious case of the convict G.O. who was charged with the false denunciation. According to the law enforcement staff, the prisoner provided information to representatives of the Public Defender which served as grounds for launching an investigation on a crime of alleged maltreatment of G.O. However, eventually the investigation was terminated and the prisoner himself was charged with false denunciation for personal gain.

Information provided to the Public Defender in cases involving torture or maltreatment cannot be used against an individual/inmate and serve as grounds for launching criminal prosecution against the claimant. Based on the absolute prohibition of torture and internationally binding conventions as well as the implementation of the mandate of the National Preventive Mechanism. In addition, the case in question may prevent all detainees from filing complaints as it contains imminent threat for the initiation of criminal prosecution against claimants. This, in turn, may be seen as an unconditional circumstance to hinder the fight against maltreatment.

Unfortunately, the Prosecutor's Office of Georgia remains ineffective when it comes to investigating crimes of torture, inhuman and degrading treatment and prosecuting perpetrators of these crimes. Lack of institutional independence of law enforcement agencies while investigating similar crimes, including those committed in the penitentiary system in 2015 remained a challenge, which, in turn, underlines the urgency of setting up an independent investigation mechanism within shortest possible term to ensure effective investigation of torture, inhuman and degrading treatment committed by law enforcement staff as well as those working in the penitentiary system.

The Public Defender of Georgia argues that measures undertaken by the Government of Georgia in relation to "individuals arrested and prosecuted on political grounds' aftermath a wide-scale amnesty are not enough as justice cannot be restored by a sole act of amnesty and compensation of damage illegally incurred by the Government is also required for full legal rehabilitation of these individuals in addition to the restoration of their dignity and reputation. It should also be noted that on February 13, 2015, a department for investigation of offenses committed during the criminal prosecution was set up in the Chief Prosecutor's Office of Georgia tasked, inter alia, to launch an investigation and prosecute offenses, including coercive handover of property etc, allegedly committed during criminal prosecutions.

In spite of legitimate expectations from the broader public a legal mechanism which would enable interested stakeholders to review decisions on property restitution and compensation for moral damage for illegal conviction has yet to be set up.

In spite of numerous appeals, outcomes of investigations on highly publicized and high profile cases outlined in the Public Defender's parliamentary report of 2013-2015 remain unknown. Nor is information on ongoing investigations and progress available to family members of victims, stakeholders, and the broad public. In the Public Defender's view, it is paramount that actions were undertaken by law enforcement agencies by more effective and transparent.

Results of an official investigation of events that unfolded in Lopota gorge near the Lapankuri village have not yet been revealed. The investigation is still ongoing on events taking place on August 28, 2012, in Lopota gorge. Information on the progress of ongoing investigation is unavailable to family members of victims, other interested individuals, and the wider public. Therefore, the investigation in question can be deemed to be ineffective. After three years the Public Defender stills calls on the Parliament of Georgia to set up an investigation commission that looks closely at these events.

The important event of 2015 was a decision of a prosecutor of the international criminal court to address the first chamber for the request of initiation of the criminal investigation in Georgia regarding the military crimes and crimes against humanity allegedly committed in the course of the August 2008. The permit was issued by the court in within the same year.

A number of former high-ranking officials have been arrested under various allegations. The improper application of pre-trial detention measures n many cases contained signs of selective justice. In this regard, an important and progressive decision of the Georgian Constitutional Court on "Giorgi Ugulava v. the Parliament' stands out with its significance.

It should be noted that assaulting the Georgian Dream coalition MP David Lortkipanidze in Kutaisi resulted in the application of pre-trial detention for three persons while this very measure has never been applied against perpetrators committing the similar crime against members of United National Movement who got by with only administrative penalties. The above said displays signs of selective justice. However, we welcome the fact that the pre-trial detention was later changed.

A part of rallies held in 2015 went without any incident. However, several exceptions during which the state failed to ensure the protection of the right to assembly for participants and/or unjustifiably restricted their right to assembly were detected.

Diverse media environment was maintained throughout the year. However, developments unfolding around court disputes of Rustavi 2 TV Company raised concerns over the threats to media diversity and attempts of the judiciary to meddle with the right to expression without reasonable justification. In addition, openness and access to information still remain a challenge during the reporting period.

During 2015 wide-scale violations of the right to privacy were detected. Footages of torture, inhuman and degrading treatment as well as audio recordings of private phone conversations were spread and shown on a public viewing. Impunity and ineffective investigations of similar offenses have contributed to nourishing new crimes which hit its pick in March 2016 when footages of private life were widely disseminated. The Public Defender of Georgia calls on the Prosecutor's Office to investigate this crime in a timely and effective manner and prosecute all individuals who created, obtained and disseminated the footages. The Public Defender hopes that the Parliament of Georgia will initiate appropriate changes to the Criminal Code within the shortest reasonable timeframe to considerably tighten sentences on cases involving violation of the right to privacy.

Despite the fact that the Georgian Parliament approved a legislative package relating to covert investigative actions which stipulate new regulations for secret surveillance and the protection of personal data – undoubtedly

a step forward, a norm enabling state agencies to copy identification data and have permanent access to the content of communication in real time still remains in the Law of Georgia on Electronic Communications.

The absence of minimum standards of workplace safety and alarming increase in the number of the injured and deceased at workplaces still remains a huge challenge. In spite of numerous recommendations issued by the Public Defender in the course of past several years, we regret to note that no effective measures have been taken to set up a labour inspection, an agency responsible for the monitoring of the protection of labour rights. A program developed by the Ministry of Labour, Health and Social Affairs has failed to respond to existing challenges.

Gender equality still remains a problem in the country. The level of women's participation in political and economic lives remains low. In addition, the scale of abuse against women and domestic violence raises concerns especially when it comes to cases of femicide which has been recognized as a growing problem. In addition, high rate of early marriages also stands out as particularly alarming. In spite of numerous announcements and promises made by high-ranking state officials the government still has not ratified the convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011).

Homophobic attitudes towards LGBT community and timely and effective investigation of hate crimes remains a challenge. The Public Defender of Georgia welcomes the fact that the International Day against Homophobia and Transphobia was celebrated in a peaceful atmosphere on May 17, 2015. However, it should also be noted that none of the individuals who participated in violence on May 17, 2013, has been charged and prosecuted.

The fight against discrimination remains one of the most pressing challenges in Georgia. The adoption of the Law on the Elimination of All Forms of Discrimination is a step forward for the country. However, it should be noted that existing flaws in the law have impeded the Public Defender to effectively perform its function as a safeguard of the equality and eliminate discrimination while victims of discrimination cannot have their rights effectively restored because of these very flaws. In order to eliminate these flaws, the Public Defender has submitted a legislative proposal to the Parliament. However, in spite of the fact that the Parliament initiated the proposal, the changes have not yet been made to the law.

A decision of the Constitutional Court of Georgia to satisfy the constitutional complaint submitted by the citizens of Georgia Ucha Nanuashvili and Mikheil Sharashidze as a result of which the Court ruled norms of the Electoral Code laying down the rule for the determination of 73 single-mandate majoritarian election district unconstitutional, was an important achievement marking the reporting period.

During the same year, mid-term majoritarian elections were held in Martvili and Sagarejo districts. A decision to set up a polling station in Sagarejo military unit as an exception had stirred attention of the wider public. In Public Defender's view, existing legal regulations in this regard should be revised.

The situation regarding the protection of the rights of the children remains alarming. High mortality rate and poverty, poor living conditions of many juveniles, limited access to the state-subsidized health services, and tolerance of the wider public towards violence against children remained a problem during the reporting period. Authorities should take effective measures to address particularly dire conditions affecting the wellbeing of many children residing in high mountainous regions. In addition, problems have been reported in small group homes and boarding schools managed by religious institutions and confessions. In addition, the incomplete process of the separation of juvenile inmates from adult prisoners still remains an issue.

The restricted right to freedom of religion, more specifically, obtaining a permit for the construction of religious buildings, disputed ownership of religious constructions, protection of religious neutrality in general education establishments and the implementation of requirements stipulated by the Law on General Education

continued to be a problem. Effective investigation of alleged crimes committed on religious grounds stood out as a challenge within the reporting period. Additionally, effective implementation of principles of secularism raised questions on numerous occasions.

The participation and inclusion of ethnic minorities in decision-making process remain poor. At the same time teaching the native language at schools, limited opportunities for learning the state language and the minorities' lack of awareness of ongoing processes in the country's also raises concerns.

The absence of a unified database for homeless persons remains a challenge as a number of individuals throughout the country who are in need of the shelter is still unknown. Lack of financial resources allocated by both local and central budgets in support of the homeless poses a serious challenge to accommodating their needs. Dire conditions prevailing in so-called "Cardboard Settlement' in Khelvachauri (close to Batumi) raise serious concerns from the perspective of the realization of the right to adequate living conditions

The social and economic situation is particularly dire for communities residing in high mountainous regions who suffer from limited access to healthcare and poor living conditions. Adoption of the Law on the Development of the High Mountainous Regions is considered a step forward. However, the Government of Georgia needs to develop a holistic state strategy and an action plan in the shortest period of time in order to ensure improved protection of human rights of the high mountainous communities.

Unemployment, poor access to healthcare, increased migration and limited opportunities for agricultural activities represent pressing problems for the country's conflict-affected communities. Problems related to movement and security for communities residing along the administrative borderlines with Abkhazia and South Ossetia continues to raise concerns. Restriction of the right to receiving education in the native language for local Gali communities has been particularly alarming over a long period of time and requires immediate actions to be taken by the state authorities.

In spite of some progress in providing accommodation to internally displaced persons, life-threatening living conditions and accommodation for IDPs are yet to be taken care of.

The realization of the right to safe living conditions remained as one of the most pressing problems during the reporting period. The problems also remain regarding timely access to information and participation of stakeholders in the implementation and decision-making process around the projects which are likely to affect the realization of the right to safe living environment. These include issues concerning the construction of "Adjaratskali', "Khudoni' and other power plants as well as the influence of mining activities near Sakdrisi on natural habitat and public health. The Minister of Culture and Monuments Protection and the director of the National Agency for the Protection of Cultural Heritage of Georgia violated legislative requirements while revoking the status of cultural heritage monument of Sakdrisi-Kachagiani, at the same time the decision signaled a green light to private companies to undertake actions as a result of which the monument of cultural heritage has been destroyed.

The construction of the Panorama Tbilisi project does not require an environmental impact assessment and also, a permit for construction was issued using a simplified administrative procedure disregarding the huge impact the project is likely to have in the capital city. Therefore, there had been no public participation in decision-making processes around the construction which in Public Defender's view is a severe violation of the principles enshrined in international law.

In spite of some progress in providing living space to few dozens of ecomigrants, tens of thousands of families displaced as a result of natural disasters continue to live in dire conditions. A process of adopting a law on ecomigrants has been suspended by the government. There are no programs to support ecomigrant communities in adapting to host environment and to help them integrate into the region. No measures are being taken to prevent the violation of human rights during natural disasters. All these problems resurfaced

during a disaster of June 13-14, 2015 in Tbilisi taking 21 lives and leaving much more without accommodation. However, mobilization of the wider public to mitigate consequences of the disaster was truly exemplary.

The issues around the return of Meskhs displaced from southern Georgia continues to be one of the most debated topics. Granting the Georgian citizenship to the displaced and undertaking measures to support their integration in the society remains a high priority.

The implementation of the UN Convention on the Rights of Persons with Disabilities of December 13, 2006, and ratification of the optional protocol to the aforementioned convention still remains a challenge. Social protection, the realization of the right to adequate living, employment and improved access to the adequate physical environment, infrastructure, transport, and information for persons with disability is one of the serious problems faced by the Georgian Government.

The reporting period saw a series of problems in terms of the realization of the right of senior citizens. Most of the elderly have no access to adequate living, social services, and protection mechanisms as a result of which they are exposed to risks of poverty, homelessness, and isolation. Additionally, there are no effective mechanisms in place to prevent, identify and protect senior citizens of the country. There is no effective state policy for the elderly. Nor is there a strategy for the protection of their rights and social wellbeing.

A series of problems exists in the protection of rights of the conscript, military servants as well as war and military forces veterans. Medical examination of conscripts raises questions and exhibits signs of degrading treatment. Examination of the mental health status of conscripts draws particular attention. At the same time, it should be noted that military servants mostly serve in protection services without providing combat and physical training. Consequently, it is evident that the draft requires systemic improvement. The reporting period saw deaths of six military servants two out of which were ruled as suicide. It was revealed that suicide cases were driven mostly by social conditions.

During reporting period several cases of Georgian citizens facing challenges while crossing the state border were detected. Such practices and the restriction of the constitutional right to free movement are unacceptable under any circumstances.

The major challenge regarding the individual right of asylum seekers, refugees and persons with humanitarian status is the lack of explanation provided upon rejecting the humanitarian statuses on grounds of state security. This practice undermines the principle of effective legal procedures. It is of utmost importance that a response provided by an administrative body contains justification with the indication of factual circumstances in a manner which does not compromise the state security.

STATE OF HUMAN RIGHTS IN CLOSED TYPE INSTITUTIONS (REPORT OF THE NATIONAL PREVENTION MECHANISM)

INTRODUCTION

The present report reflects results of monitoring carried out by the National Prevention Mechanism throughout the reporting period in the penitentiary establishments, place of restriction of liberty, police stations, temporary detention isolators, mental health institutions, hauptwachts and military units,[1] small family type children's homes,[2] boarding houses under religious denominations,[3] houses for elderly people,[4] temporary accommodation center of the Migration Department of the Ministry of Interior, joint return operation of deported migrants. The NPM also actively participated in the monitoring of the state of human rights of asylum seekers, refugees and holders of humanitarian status.[5]

Monitoring of the penitentiary establishments, organs subordinated to the Ministry of Interior, mental health institutions, hauptwachts and military units, small family type children's homes, boarding houses under religious denominations and houses for elderly people was carried out with the financial support of the European Union.[6]

Through the support of the "Open Society – Georgia", the project "Support of the Request/Complaint Mechanism" was implemented in the penitentiary establishments.

In 2015, Special Preventive Group of the Office of the Public Defender of Georgia, in order to inspect state of human rights protection, conducted 54 visits in 15 penitentiary institutions[7] throughout the country and met with 3 300 inmates; 7 visits in the boarding homes under religious denominations and met with 200 children; 10 visits in the small family-type children's houses[8] and met with 69 children; 7 visits in the specialized residential institutions for elderly persons[9] and met with 150 beneficiaries; 1 visit in the temporary accommodation center of the Migration Department under the Ministry of Interior and met with 18 persons. 2 monitoring were carried out to observe the return process of the Georgian migrants deported from the European countries back to Georgia. National Preventive Mechanism also participated in monitoring of state of rights of asylum seekers, refugees and persons having humanitarian status. Moreover, monitoring had been conducted in 32 temporary detention isolators and 59 police stations with total 54 detainees visited. 1 visit was conducted in the place of restriction of liberty and 25 prisoners were met. 1 visit was conducted in the military unit and 35

1 See the Chapter – State of Human Rights in the Defence System.
2 See the Chapter – State of Rights of Children.
3 Ibid.
4 See the Chapter – State of Rights of Elderly Persons.
5 See the Chapter – State of Rights of Asylum Seekers, Refugees and Persons Having Humanitarian Status.
6 Under the EU project "Support of the Public Defender's Office"
7 Staffers from the Gender Equality Department, Equality Department, Children's Rights Center, and Criminal Justice Department of the Ombudsman's Office were also involved in monitoring visits upon necessity.
8 Monitoring in the boarding houses under religious denominations and small family type houses was carried out in cooperation with the Children's Rights Center.
9 Monitoring was carried out with participation of staffers from the Department of Rights of Disabled Persons of the Ombudsman's Office.

soldiers were met. As a result of 2 visits in two hauptwachts[10] 1 military serviceman was met. During 128 visits in 12 mental health institutions totally 661 patients were met.[11]

During the monitoring, attorneys of the Public Defender studied physical environment of closed type institutions and state of rights of persons admitted thereto. Special attention was paid to the treatment of such persons.

10 Monitoring was carried out with participation of staffers from the Department of Protection of Human Rights in the Defecne System of the Ombudsman's Office.

11 Monitoring was carried out jointly with the Department of Rights of Disabled Persons of the Ombudsman's Office.

SITUATION IN PENITENTIARY ESTABLISHMENTS

GENERAL OVERVIEW

The effective fight against impunity is essential for preventing torture and ill-treatment. The state is obliged to adequately react to the allegations of torture and ill-treatment. Notwithstanding the initiation of investigations into alleged facts of ill-treatment of prisoners at penitentiary establishments, not a single employee of these establishments was convicted for ill-treatment in 2015. Consequently, the position of the Public Defender as regards the necessity of creating an independent investigative mechanism to conduct effective investigation into allegations of torture, inhuman and degrading treatment remains unchanged.

In order for the definition of torture under the UN Convention against Torture be adequately internalized in national criminal legislation, Article 144[1] of the Criminal Code of Georgia should be amended to specify that torture may be committed with acquiescence of a public official or other person acting in an official capacity.

The eradication of the effects of torture and other forms of ill-treatment, protection and rehabilitation of victims is one of the main elements of the fight against torture. The Public Defender expresses regret over the absence of any kind of state program securing rehabilitation of victims of torture in the penitentiary system. Criminal sub-culture existing in these institutions creates a serious threat of ill-treatment and often leads to violence and oppression. The failure to document ill-treatment in penitentiary establishments in a timely and methodical manner and absence of the legal obligation imposed upon doctors to report directly to investigative authorities are subject of concern. Presence of representatives of the prison administration at the meeting of the prisoner and the doctor violates medical confidentiality.

Prison administrations are obliged to secure order and safety. The Special Preventive Group found their security and supervision practices problematic. There is a tendency of isolating prisoners for long periods of time, including in de-escalation and safe rooms, without sufficient grounds. Besides, in some establishments, the use of special means, such as handcuffs is frequent and appears to be routinely applied.

There are other challenges, such as those related to the practice of exercising surveillance and control through visual and/or electronic means in penitentiary establishments; compatibility of the Rules about Storing, the compliance of Deleting and Destroying Recordings with international standards of human rights; As well as the practice according to which orders authorizing electronic surveillance contail little information and are of a formal nature.

It is worth noting that notwithstanding the entitlement recognized in the Organic Law concerning the Public Defender, the representatives of the Public Defender do not have a possibility to examine recordings of visual and/or electronic surveillance. Besides, the Imprisonment Code and the Regulations about Storing, Deleting and Destroying Recordings allow visual observation by the administration of the penitentiary establishment of meetings of the representatives of the Public Defender with prisoners, through video recording without sound.

The Public Defender demands changing this provision in relation to the members of the Special Preventive Group/the Public Defender, because it contradicts Article 19 (3) of the Organic Law concerning the Public Defender. According to the mentioned provision, meetings of the Public Defender/members of the Special Preventive Group with detainees, prisoners or persons otherwise deprived of liberty are confidential. Any kind of eavesdropping or surveillance is impermissible.

The Public Defender is concerned that his concerns/recommendations regarding the use of special means were not taken into account in the Imprisonment Code.

The Public Defender welcomes measures taken to increase accountability of employees of the penitentiary system. However, absence of the system for evaluating performance of functions by prison administrations and adequacy of working conditions for the staff of these establishments remain problematic. On the positive side, some steps have been made towards educating the staff. However, qualifications and experience of the staff of penitentiary establishments are still far from satisfactory.

The Public Defender considers introducing the system for assessing risks of convicted persons as a step forward. Notwithstanding this, he considers that it is necessary to introduce changes to eradicate existing flaws.

It is true that in comparison with previous years, environment and sanitary-hygienic conditions have improved in some penitentiary establishments. However, the existing conditions still call for considerable improvement to make them compliant with international standards. The state is obliged to eliminate the flaws in due time, notwithstanding the existing difficulties and create adequate conditions in prisons.

In the Parliamentary Report of 2014, the Public Defender recommended the Minister of Corrections to close the establishment №7, due to inadequacy of conditions. According to the response, the Ministry cannot fully close the establishment at this stage, but intends to significantly reduce number of prisoners and distribute them to other establishments, according to the risk levels. They also plan full rehabilitation of the establishment №7, closure of the first floor of the building and reduction of limit for allocating the accused/the convicted persons. It is worth noting that in February 2016, 19 convicted persons were already transferred from the establishment №7 to the establishment №6.

As regards the position of the Ministry, taking into account the state of infrastructure of the establishment and its initial function (it was built as an investigative isolator), it is difficult for the Public Defender to imagine how the establishment can be rehabilitated so that the infrastructure corresponds to the standards for the institutions for deprivation of liberty. Consequently, the Public Defender reiterates its recommendation about closing the establishment №7.

In most establishments, prisoners are not allocated standard living space of 4 square meters, as required by the Imprisonment Code of Georgia. There are problems with securing natural and artificial ventilation, sanitary-hygienic conditions and privacy in sanitary facilities. Prisoners do not have the infrastructure necessary for physical exercise in the yards in closed establishments.

It is worth noting that the infrastructure for long-term visits has been arranged at the establishment №5. The situation has not changed in this regard at the penitentiary establishments №7, 8 and 9. The Public Defender gives negative assessment to the fact that except for the establishment №8, none of the penitentiary establishments allocates a special room for meetings of the Public Defender/members of the Special Preventive Group with prisoners at any time, without visual surveillance through electronic means.

The Public Defender pointed out in a number of reports that conditions at penitentiary establishments should secure resocialization and reintegration of prisoners into the society. The Public Defender welcomes various measures taken at penitentiary establishments to secure resocialization of prisoners. Despite these steps, the problem of implementing rehabilitative activities at the establishments with special risk levels and at medical establishments with units for long-term care remains acute.

The Public Defender highlights increase in the use of the measures of encouragement, in comparison with the previous year. However, it is also worth noting that disciplinary sanctions are also increasingly applied. Georgian legislation does not specify which disciplinary sanctions may be imposed in specific cases. Consequently, prison administration enjoys broad discretion in selecting appropriate sanctions. This increases the risk of applying disciplinary sanctions disproportionately. In 2015, the instances of solitary confinement of prisoners with mental health problems cause concern. It is also worth noting that contacts with families are not allowed at the establishment №7 in connection with the application of sanctions.

Monitoring carried out in 2015 focused on the effectiveness of penitentiary healthcare and existing challenges. The Public Defender welcomes measures aimed at full re-organization of medical department, review of standards of penitentiary healthcare and increase in healthcare budget. Repairs were carried out in penitentiary establishments №5 and 12 to improve medical infrastructure. The Unit for Regulating Medical Activity of the Medical Department of the Ministry of Corrections (responsible for checking food, sanitary-hygienic conditions and medical services in penitentiary establishments) made some progress. It is worth noting that in the reporting period, no substantial steps have been made in order to secure full integration of penitentiary healthcare with public healthcare. Informing prisoners about preventive healthcare remains a challenge in 2015.

The number of doctors and nurses was increased in 2015, albeit not sufficiently in some establishments. For example, the ratio of prisoners to medical staff (doctors and nurses) is high in the establishments №2, 14, 15 and 17. Regularity and frequency of inviting doctors, processing medical records and provision of dental care remain problematic in 2015. The question of accessibility of brand name medications also arises. Medical personnel mainly prescribe generic medications made available at the given establishment at the expense of the state, limiting the possibility of purchasing brand name medications by patients themselves.

As regards positive developments, emergency medical assistance has been added to the classification of medical interventions. However, it is important that this development is reinforced in a normative act as soon as possible. The timeliness of medical referrals is problematic. The independence and competence of doctors constitutes a significant challenge.

The Public Defender highlights the entry into force of the Georgian Law "Code of Juvenile Justice" in 2015. Informing juvenile prisoners about their rights and obligations in an understandable language remains a problem. It is also problematic that in 2015 juvenile prisoners were placed not only in the rehabilitative establishments for juveniles, but at the establishments №2 and №8. In addition, throughout the reporting period, it is possible to observe the expanding practice of transferring juvenile convicts to the establishments №2 and №8 temporarily, for security reasons. There is no environment appropriate for rehabilitation of juvenile prisoners in the mentioned establishments. Besides, juvenile prisoners are not isolated from adult prisoners. Accordingly, the Public Defender advises placement of all juvenile prisoners in the rehabilitative establishment for juveniles. Importantly, no disciplinary sanctions have been applied to juvenile convicts in 2015.

The general situation at the penitentiary establishment №5 is satisfactory. The Public Defender welcomes creation of necessary infrastructure for long-term visits at this establishment. However, he views the absence of full checkup at the time of admission of prisoners at the establishment an important problem. There is a positive trend of reduced use of solitary confinement as a disciplinary sanction, but there are more transfers to the cell type accommodation. As regards healthcare, there is still a problem of receiving regular/planned medical service in a timely manner. There have been improvements in supplying hygiene items.

Separation of mothers and children after the child reaches the age of three remained a problem in 2015. These procedures are very painful for both children and mothers. The question of engaging mothers with children in various programs and activities remains problematic as well.

The Public Defender has pointed out in a number of reports that conditions in penitentiary establishments cannot secure adequate re-socialization of persons deprived of liberty indefinitely and their reintegration into

the society. In penitentiary establishments in which persons deprived of liberty indefinitely are placed no diverse and regular rehabilitative activities are carried out. The infrastructure necessary for long-term visits is not available in some penitentiary establishments.

It is worth noting that in some establishments, practice of placing the convicts and the accused together remains problematic in some establishments. Importantly, allocation of the living space of at least 4 square meters for the accused that are imprisoned should be regulated at the legislative level. The Public Defender underlines the significance of offering the accused rehabilitative activities and giving the possibility of maintaining contact with families.

Within the framework of visits carried out throughout the year of 2015, general situation of the GBT[12] and especially vulnerable groups[13] has been studied and risks and possible cases of oppression/harassment towards representatives of these groups have been revealed. Criminal subcultures and informal rules have existed in penitentiary establishments for decades. In penitentiary establishments[14] Logistics Unit is divided into two sub-units. One sub-unit is responsible for distribution of food and supply of prisoners with products from the shop of the establishment. The second sub-unit is in charge of cleaning. This Unit is separated from the rest of the prison. Placement by the prison administration of prisoners in the Logistics Unit somewhat constitutes means of isolating them in an attempt to avoid tensions between prisoners. The prisoners responsible for cleaning are especially vulnerable. They do not identify themselves as GBT persons, but for some reasons, other prisoners associate them with GBT persons. Accordingly, dangers of discrimination, violence and stigmatization are considerable in relation to them. The attitude of the staff of these establishments towards the mentioned category of prisoners constitutes a challenge.

Many of the prisoners that are foreign nationals and representatives of ethnic or religious minorities do not know their legal rights due to the language barrier. They are mostly unable to address consulates or diplomatic representatives of their respective countries due to complications with meeting social workers. Foreign nationals and persons that do not know the Georgian language have difficulty with access to medical services.

Direct contact and communication with family members is important for rehabilitation of prisoners. Family visits are hindered because authorities are failing to hold detainees at the most appropriate facility closest to where the detainee's family is located. Due to the glass barrier in the room for short visits, they cannot have direct physical contact with family members. It is worth noting that the infrastructure necessary for video visits is available only in five establishments.

Prisoners have problems with conversation limits when making phone calls. If a prisoner does not use conversation time fully, the remaining time is blocked and the prisoner has to buy a new card. It means additional costs.

In semi-open establishments for deprivation of liberty, there is a shortage of phones. In closed prisons, phones are located in the room for employees on duty. The presence of the controller on duty causes a violation of confidentiality of phone conversations.

The Public Defender is worried that prisoners placed in the de-escalation room cannot send letters and make phone calls. Besides, it is important that prisoners subjected to solitary confinement are able to make phone calls to the Public Defender's Office. This necessitates legislative change.

The right of speedy and impartial examination of complaints against public officials and the existence of the system of effective internal monitoring represent significant elements of the fight against torture. It is worth noting that current practice of informing prisoners about their rights does not secure providing prisoners with

12 Gay, Bisexual and Transgender persons.
13 Prisoners that are responsible for cleaning the establishment.
14 Except for the establishments N5, N11, N16 and N18.

information generally about their rights and specifically about the right to file complaints and procedure of examining those complaints.

In penitentiary establishments, safe, accessible, confidential and impartial procedures for examining applications/complaints are not available. In some cases, applications/complaints are not responded to in a timely manner. The decisions made in connection with these applications/complaints are not properly substantiated. The work of the General Inspection of the Ministry of Corrections and its reactions to the complaints are not effective.

ILL-TREATMENT IN PENITENTIARY ESTABLISHMENTS

In order to secure prevention of torture and ill-treatment, it is essential that the state adequately reacts to the alleged facts of ill-treatment in penitentiary establishments and alleged facts of ill-treatment by law-enforcement officers, so that those involved in torture do not act with impunity.

The Public Defender of Georgia has repeatedly emphasized lack of institutional independence of investigative authorities in law and practice, in connection with the crimes allegedly committed by the law enforcement officers and allegations of crimes committed in the penitentiary establishments. In 2013 and 2014 Reports for the Parliament of Georgia, the Public Defender gave a recommendation to create an independent investigative organ to ensure effective investigation into death, torture, inhuman and degrading treatment by the law-enforcement officers and those committed in the territory of penitentiary establishments. This recommendation has not so far been fulfilled.

According to the information provided by the Chief Prosecutor's Office of Georgia,[15] in 2015, investigation was initiated into 35 criminal cases in connection with facts of torture and ill-treatment in penitentiary establishments. This includes 12 criminal cases in connection with Article 144[1] of the Criminal Code of Georgia, 15 criminal cases in connection with Article 144[3], 8 criminal cases in connection with Article 333. Investigation was terminated into one criminal case in connection with the crime provided by 144[3], based on Article 105 (1) (a) of the Criminal Code of Georgia. All the other investigations are under way.

Under Article 17 (2) of the Constitution of Georgia, torture, inhuman, crucial or degrading treatment or punishment is impermissible.

Under Article 7 of the International Covenant on Civil and Political Rights (ICCPR), no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. According to Article 10 of the ICCPR, all persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. According to the UN Human Rights Committee, respect for human dignity constitutes a norm of international law not subject to derogation."[16]

International human rights law guarantees protection of rights of persons deprived of liberty in their respective establishments. A state should take all necessary measures to ensure that the person does not suffer beyond the inevitable element of suffering connected to punishment. Failure to fulfill this obligation causes the violation of Article 3 of the European Convention of Human Rights.[17]

The European Court of Human Rights emphasizes that Article 3 of the European Convention of Human Rights constitutes one of the fundamental values of democratic society. States are obliged to ensure that every persons is imprisoned under conditions respectful of his/her dignity, that conditions of deprivation of liberty do not put them in the state of despair that exceeds the level of suffering characteristic to imprisonment and

15 The letter N13/11646 of the Chief Prosecutor's Office of Georgia dated 25 February 2016.
16 General Comment No 29, States of emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31. August 2001, para. 13(a).
17 KUDLA v. POLAND, Appl.no. 30210/96; Valašinas v. Lithuania, Appl. no. 44558/98, § 102, ECHR 2001-VIII.

that taking into account practical demands of imprisonment, his health and well-being are properly secured.[18]

Protection of persons deprived of liberty under human rights law is greater than that provided to other persons. According to the case law of the European Court of Human Rights, it is true that ill-treatment must reach minimum level of severity in order to fall within the scope of Article 3, but the use of physical force against persons deprived of liberty that is not strictly required by the conduct of the prisoner violates human dignity and falls within the scope of the mentioned Article.[19]

Based on the standards envisaged by European Convention of Human Rights and developed in the case law of the European Court of Human Rights, in order to give effect to the right to life and prohibition of torture and ill-treatment, states have not only negative obligations (to abstain from violating the right), but also positive obligations (to ensure protection of rights). It is especially important to protect persons placed in closed institutions from torture, inhuman and degrading treatment or punishment and secure their right to life. Prisoners are under the exclusive control of the state and accordingly, competent state organs are obliged to take all reasonable measures to prevent real and immediate risks for physical inviolability, if they knew or should have known about such risks.[20]

A positive obligation of the state to protect persons from torture and other forms of ill-treatment includes taking preventive measures that facilitate protection of persons from ill-treatment. The necessity of these preventive measures is pointed out in international human rights treaties as well as judgments of the European Court of Human Rights, the European Committee for the Prevention of Torture and UN Committee against Torture. Prevention of Torture is a global strategy that is aimed at substantially minimizing risks and creating the environment in which torture and ill-treatment are less expected.

Accordingly, there should be guarantees in law and practice that secure unconditional protection from ill-treatment.

The elements of torture in the Criminal Code of Georgia repeat the elements of the definition given in Article 1 of the UN Convention for the most part. However, there are differences which should be addressed through legal change.

Article 144[1] of the Criminal Code of Georgia defines torture as "exposing a person, his/her close relative or the person who is dependent on him/her materially or otherwise to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral suffering, and which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed.

This Article does not take into account cases when torture is committed with the acquiescence of the official. The Public Defender emphasizes the need for legislative change so that the definition in the Convention against Torture is reflected in the Criminal Code more precisely. Article 144[1] should be amended to add that torture may be committed with acquiescence of the public official or the person acting in the official capacity. Due to the absence of such a reference, omissions by public officials or persons that act in the official capacity in cases of torture do not fall within the scope of this article.

Under Article 14 (1) of the UN Convention against Torture, "each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible'. In order to fulfil the obligations under Article 14 of the Convention, it is necessary to take a range of measures to secure protection for victims of torture. The

18 CASE OF DAVTYAN v. GEORGIA, Appl. no 73241/01.
19 CASE OF TEKİN v. TURKEY, Appl. no. 22035/10.
20 Pantea v. Romania no. 33343/96, §190, ECHR 2003-VI ; Premininy v. Russia, Appl. no. 44973/04, §84, 10 February 2011.

conception for restoring rights includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[21]

There are procedural and substantive aspects to the obligations imposed upon states. In order to meet procedural obligations, it is necessary to adopt legislation, create a mechanism for filing complaints, establish the investigative organ and other institutions, including the independent judicial organ authorized to interpret rights and determine compensation for victims of torture. These mechanisms should be accessible for all victims of torture.

As regards substantive dimension of the obligation, the state has to make sure that the victims of torture get full and effective reparation, including compensation and to an extent possible, full rehabilitation.[22]

Provision of legal aid is one of the important elements of protection of victims of torture and inhuman treatment. The question of legal aid at the expense of the state is governed by the Law Concerning Legal Aid. According to this law, public law entity "Legal Aid Service' is responsible for providing public legal aid. Only persons that cannot afford payment can have access to legal aid, unless otherwise provided by law. The mandate of public law entity "Legal Aid Service' does not envisage provision of free legal aid to victims of torture at places of deprivation or restriction of liberty.

Elimination of results of torture and other forms of ill-treatment, protection and rehabilitation of victims is one of the main aims of the 2015-2015 Action Plan for the Fight against Torture. In order to secure achievement of these goals, the following needs to be done: formation of the state program for rehabilitation of victims and planning necessary activities; analysis and further improvement of legislation in order to secure effective legal aid and legal protection for victims.[23]

Even though these questions have been integrated into the action plan for the fight against torture, there is no state program in Georgia that secures rehabilitation of victims of torture in the penitentiary system. The existence of legislative framework and programs is essential to secure availability of adequate rehabilitation services for victims of torture and other forms of ill-treatment in the penitentiary system.

In addition to the problems listed above, it was established as a result of monitoring of penitentiary establishments in the reporting period that criminal subculture in the penitentiary establishments creates serious danger of ill-treatment of prisoners and frequently causes violence and subjugation among prisoners. The Public Defender believes that it is necessary for the state to take a range of measures to eradicate criminal subculture in penitentiary establishments, albeit without jeopardizing rights and safety of prisoners while seeking the achievement of this objective.

RECOMMENDATIONS

Recommendations to the Government of Georgia

- Take all the necessary measures to introduce the state program for rehabilitation of torture victims.

Proposals to the Parliament of Georgia

- Amend Article 144[1] of the Criminal Code of Georgia to indicate that torture may be committed with the acquiescence of an official or a person acting in the official capacity.

21 General Comment N3, Article 14 (Compensation and Rehabilitation of Torture Victims), para 2, 13 December 2012.
22 Ibid., para 5.
23 2015-2016 Action Plan of Fight against Torture, Inhuman, Crucial or Degrading Treatment or Punishment, p. 21, available at http://police.ge/files/MONITORING/Documents/Action%20Plan%2015-16.pdf

- Amend Georgian Law on Legal Aid so that adequate legal aid is secured for the alleged victims of ill-treatment in all cases.

DOCUMENTING FACTS OF ILL-TREATMENT AND NOTIFYING COMPETENT ORGANS

According to the information provided by the Ministry of Corrections,[24] the numbers of bodily injuries suffered by prisoners in penitentiary establishments are the following:

The number of bodily injuries suffered by prisoners in penitentiary establishments

Establishment	Self-injury	Inflicted by another person	Everyday life injuries	Not clarified	overall
N2	533	100	236	7	876
N3	0	0	16	3	19
N5	21	0	202	0	223
N6	353	0	27	0	380
N7	110	0	5	2	117
N8	771	79	396	54	1300
N9	0	0	6	0	6
N11	1	3	40	0	44
N12	2	1	9	0	12
N14	2	6	105	0	113
N15	42	2	214	0	258
N16	0	0	15	0	15
N17	56	3	168	3	230
N18	172	0	30	0	202
N19	57	4	21	15	97

Timely and methodical registration of bodily injuries of alleged victims of ill-treatment and of their claims and filing reports to the competent organs are essential for securing effective investigation and prevention of ill-treatment in the long run. Medical personnel employed by penitentiary establishments have a special role in documenting alleged facts of ill-treatment. Timely medical examination of prisoners at the time of admission to penitentiary establishments is no less important for prevention of ill-treatment. It is meant to check whether a person was subjected to torture or other forms of ill-treatment from the moment of arrest to the moment of admission to the penitentiary establishment.[25]

According to the recommendation of the European Committee for the Prevention of Torture, the following information should be included in medical files when examining the person in a closed establishment:

- All information provided by the prisoner necessary for medical examination (including his own description of heath state and all claims about ill-treatment);
- Full description of objective medical conclusions based on medical examination;
- Views of the doctor about the above issues, including reflections about correspondence of the claims of the person with objective medical conclusions.

24 The Letter of the Ministry of Corrections dated 10 March 2016, MOC 71600192429 (Registered at the Public Defender with the number N3159/16.

25 General Report No. 23 of the European Committee for the Prevention of Torture, 2013, para 71, 73.

Medical records should include information about all additional tests, conclusions made and medical aid provided. There should be special forms for documenting bodily injuries allowing anatomical illustration of injuries. It would be desirable to obtain photos of injuries.[26]

Istanbul Protocol, the Manual on the Effective Investigation and Documentation of Torture and Inhuman or Degrading Treatment and Punishment emphasizes the need for taking photographs of bodily injuries, in order to secure prevention of torture.[27]

The doctor that examines a detainee should be able to establish probability of infliction of injuries through violence, even if the patient does not report about it. He/she should be able to document physical and psychological evidence of violence and establish the degree of correspondence of the applicant's report about ill-treatment and the results of examination.[28] The doctor can use the following formulations: "does not correspond" "corresponds" "corresponds with high probability" "is characteristic (typical)".[29] The doctor should use a standard medical report for documentation.[30]

At the time of admission of prisoners to penitentiary establishments, a doctor meets them immediately to examine their health state. At the time of meeting, the doctor documents bodily injuries, if any. After injuries are detected, medical documentation is filled in and included in the medical history of the prisoner. Besides, there is "a trauma register for accused persons and convicts' where bodily injuries of prisoners are registered by medical personnel. It is necessary to include the name and last name of the prisoner, time of detecting the injury, location and character of the injury, origin of the injury, the signature of the doctor and the signature of the patient. They describe the injury and specify its origin: "self-injury" "injury inflicted by another person", „everyday life injury". The doctor does not evaluate correspondence of the character of the injury with the information provided by the patient about its origin.

The documentation of bodily injuries of prisoners at penitentiary establishments constituted a problem in previous years. In his parliamentary report of 2014, the Public Defender of Georgia issued a recommendation to the Minister of Corrections to prepare and introduce a new form for registering injuries, in accordance with the Istanbul Protocol, in order to include more detailed information about bodily injuries. Besides, he recommended intensive trainings about documentation of ill-treatment for medical personnel of penitentiary establishments.

As regards fulfilment of these recommendations, according to the Ministry of Corrections of Georgia, the preparation of a new form for registering injuries is under way since the second half of 2014, with the participation of forensic medical expert and support of the Council of Europe. There are working meetings with the involvement of the Penitentiary Department, medical Department, Investigative Department, Training Centre, Ministry of Internal Affairs and Ministry of Labor, Health and Social Affairs. Besides, throughout 2014, cascade trainings were conducted for the staff of the penitentiary system in order to help them acquire knowledge and specific skills in this area.

The Public Defender welcomes the stand of the Ministry of Corrections as regards new forms for documenting injuries of prisoners in penitentiary establishments. However, it is worth noting that these forms of registering injuries are not yet used in penitentiary establishments. The existing practice of describing injuries is still problematic and cannot secure effective detection of alleged facts of ill-treatment. Besides, the checks of penitentiary establishments in the course of reporting period showed that bodily injuries of prisoners are not adequately documented. Mostly, the origin of injuries is not specified. There are traumas of unclear origin, questionable character and location. These are cases in which the prisoner does not explain the origin of the

26 Ibid., para. 74.
27 Istanbul Protocol, para 105.
28 Ibid, para 122.
29 Ibid, para. 187.
30 Ibid, para. 125.

injury or declares that this is an everyday life injury (e.g. inflicted as a result of falling off the bed), but its location and character create doubts that the injury could be inflicted by another person.

If a prisoner says that it is an everyday life injury, the doctor should fully examine the body in order to find other injuries and also check whether the report of the prisoner about the origin of the injury is credible and whether there can be doubts about violence as a source of injury. The doctor should conclude, as a result of examination, if the character and location of injury make ill-treatment as their cause probable.

When admitting the person at the closed institution, the medical examination should be confidential. It is essential that the person is questioned about ill-treatment only by the doctor, without presence of the staff of the given establishment.[31]

It has been established as a result of checks carried out in penitentiary establishments in the reporting period that in most establishments, the representatives of the administration are present at medical examination of the newly admitted prisoners. It has also been established that in some instances, the staff of the establishment attends the meeting of the prisoner with the doctor, including when injuries inflicted in penitentiary establishments are documented. Consequently, the confidentiality of communications of the doctor and the prisoner is not secured.

It is worth noting that in his Parliamentary Report of 2014, the Public Defender of Georgia gave a recommendation to the Minister of Corrections to take all reasonable measures, including through training and instructions so that the confidentiality of conversations between prisoners and medical personnel are fully secured.

According to the information provided by the Ministry of Corrections about fulfilment of this recommendation, the Ministry does not acknowledge the problem indicated above and explains that conversations between medical personnel and prisoners are conducted without involvement of any third party. However, at the request of medical personnel, the representative of the establishment may attend the meeting, for security purposes. Besides, the Medical Department apparently gives instructions to the personnel, there are periodic trainings, including about confidentiality.

As mentioned above, medical personnel responsible for documenting bodily injuries of prisoners has a special role in preventing ill-treatment. The development of trust between a prisoner and a doctor is essential to properly document allegations of ill-treatment. This is impossible without confidential communication. It is no less important to report to the competent organs about allegations of ill-treatment. National legislation and international standards require reporting to the competent organs and proper investigation into the allegations of ill-treatment.

The doctors of the penitentiary system should act in the best interests of their patients and keep in mind the obligation to secure confidentiality. At the same time, the doctor has moral reason to uncover ill-treatment. If the patient agrees to disclose information about ill-treatment, the doctor is obliged to send the information to the respective investigative authority. If the patient refuses to disclose the information, the doctor should weigh potential danger for this patient against benefits of disclosure of information for all prisoners and the entire society interested in eradicating the practice of ill-treatment.[32]

According to the established practice, when the accused enters a penitentiary establishment, the report about bodily injuries is sent to the Prosecutor's Office. Reports about bodily injuries of the convict/the accused during their stay at the establishment are sent to the Investigative Department of the Ministry of Corrections as well as the Prosecutor's Office of Georgia.

The checks carried out throughout the reporting period in penitentiary establishments showed that the reports

31 General Report No. 23 of the European Committee for the Prevention of Torture, 2013, para. 75.
32 Istanbul Protocol, para 72.

were sent to the investigative bodies in all cases. The Special Preventive Group detected one case of failure to report from the penitentiary establishment N15. This was explained by the prison administration by the failure of the doctor to inform the representatives of this establishment that were supposed to send the report to the investigative bodies.

It is worth noting that according to the practice established in penitentiary establishments, if the doctor discovers bodily injuries in the course of medical examination, he/she informs the representatives of the Unit of Legal Regime and Security of this establishment. They consequently provide information to the director of the establishment. The director sends the report to the Prosecutor's Office and the Investigative Department of the Ministry of Corrections. It is also worth noting that the legislation only provides for the obligation of the director of the institution to send reports to the investigative organs about the bodily injuries of patients.

The Public Defender believes that it is appropriate to increase the role of doctors in reporting of alleged facts of ill-treatment. The legislation needs to be amended in order to introduce the obligation of doctors to personally send reports to the Prosecutor's Office about bodily injuries of prisoners detected in penitentiary establishments.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Prepare and introduce a new form for documenting injuries in accordance with the Istanbul Protocol, making it possible to insert more detailed information about bodily injuries.
- Conduct intensive trainings for the medical personnel of penitentiary establishments about identification and documentation of ill-treatment.
- Prepare clear instructions to secure confidentiality of communications between doctors and prisoners and ensure their practical implementation.
- Secure proper fulfilment by the representatives of penitentiary establishments of the obligation to report about allegations of ill-treatment to competent organs.
- Define the obligation of doctors of penitentiary establishments to directly send a report to the Chief Prosecutor's Office of Georgia, whenever he/she receives information or makes a conclusion that the prisoner could have been subjected to ill-treatment in a respective subsidiary normative act.

Proposal to the Parliament of Georgia

- To amend the Imprisonment Code of Georgia and introduce the obligation of doctors of penitentiary establishments to directly send a report to the Chief Prosecutor's Office of Georgia, whenever he/she receives information or makes a conclusion that the prisoner could have been subjected to ill-treatment

ORDER AND SAFETY IN PLACES FOR THE DEPRIVATION OF LIBERTY

According to the European Prison Rules, "Order should be secured in prisons, taking into account the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe

human dignity and which offer meaningful occupational activities'.[33] It requires introducing the system of order and safety that balances security and programs created for re-integration of prisoners into the society. Various elements necessary for effective management of prisons should be taken into account.

Safety measures cover prevention of violence, fire and other emergencies, creation of safe environment for prisoners and personnel of the establishment, prevention of suicide and self-injury. It is possible to classify safety components as follows: physical safety covers physical safety of buildings, including walls, windows, door etc. Procedural safety requires methods and procedures for prison safety. It relates to the regulations necessary for preventing escape and securing order.[34] One of the best means of securing safety is the conception of dynamic security.

The conception of dynamic safety envisages positive relationship between personnel and prisoners under the conditions of fair treatment, also the activities aimed at resocialization and future integration of prisoners into the society. According to the UN Prison Incident Management Handbook, personnel of the penitentiary establishment should understand that human and fair treatment of prisoners will facilitate securing order and safety in the establishment.[35]

Positive relationships between prisoners and personnel of penitentiary establishments are necessary for order and safety in penitentiary establishments. In order to establish these positive relationships, it is important for the prisoners to realize that rules and procedures of the establishment are safe and introduced to create human environment. Prisoners should feel that they are treated fairly and their rights are protected.

Even though securing order and safety in the establishment is essential, in some instances, use of force is necessary. The control of prisoners also envisages such elements of static safety as necessary infrastructure and equipment as well as management of incidents and use of force, if necessary.[36] Importantly, according to the UN Code of Conduct for Law-enforcement Officers, the law-enforcement officials may use force only when strictly necessary and to the extent required for the performance of their obligations.[37] It means that they should take additional safety measures in extreme cases. Use of force is acceptable only through adequate procedures and taking into account the best practices.

In the reporting period, the checks of penitentiary establishments by the Special Preventive Group showed that the practice of surveillance and adoption of safety measures by the administration is problematic. There is a tendency of using the measure of long-term isolation against patients by administration, without adequate grounds. The use of handcuffs is also frequent and seems to be routine.

Securing human rights, order and safety in penitentiary establishments requires complex and systematic measures. The following organizational questions[38] need to be taken into account: appropriate normative basis (regulations); accountability, operative abilities and competence of personnel (personnel-prisoners ratio, organizational structure, skills and experience of personnel, Code of Ethics for the staff, the regulations of the establishment and procedure for disciplinary proceedings); elements of dynamic security (relationship of personnel with prisoners, observation, collection of information, knowledge of personal characteristics of each prisoner, management of conflicts, mediation, etc); plan for managing incidents and special situations. These and other relevant questions will be examined below in greater detail.

33 Committee of Ministers of the Council Of Europe, European Prison Rules, Rule N 49, Recommendation of the Committee of Ministers Rec (2006) 2, adopted on 11 January 2006.

34 Andrew Coyle, International Centre of Prison Studies, A Human Rights Approach to Prison Management, 2009, available at http://www.prisonstudies.org/ [last visited on 15.02.2016].

35 United Nations Prison Incident Management Handbook, 2013, para. 21-22, available at http://www.un.org/en/peacekeeping/publications/cljas/handbook_pim.pdf [last visited 15.02.2016].

36 Ibid. para. 13.

37 UN General Assembly, Code of conduct for law enforcement officials, 5 February 1980, A/ RES/34/169, available at http://www.refworld.org/docid/48abd572e.html [last visited on 16.02.2016].

38 Ibid. para. 15.

ACCOUNTABILITY

Accountability of personnel is essential for protection of human rights and for securing safety and order in penitentiary establishments. There should be legal regulation making it possible to evaluate capacity to secure order and performance of administration and personnel, relying on pre-determined indicators, based on internal and external monitoring. Creation of such legal framework will increase transparency, accountability and reliability of the establishment.[39]

The adoption of the Law of 1 May 2015 about the Special Penitentiary Service should be regarded as a significant step towards securing accountability of personnel of penitentiary establishments. It defined principles, rules and competences of the Special Penitentiary Service of the Ministry of Corrections, the status of its employees, the system of continued professional training, legal, security and social protection guarantees. Besides, Order N 144 of the Minister of Corrections of 19 October 2015 approved Disciplinary Regulations for Employees of the Penitentiary Service of the Ministry of Corrections, encouragement rules, the Code of Ethics which defined bases for imposing disciplinary responsibility and for encouragement, types of disciplinary sanctions and types of encouragement measures, rules for imposition of disciplinary sanctions upon the employees. The Code of Ethics defined standards and rules of behavior that facilitate reinforcement of principles of fairness and responsibility, adequate performance of functions, human rights protection, strengthening trust and respect in the society.

The Ministry of Corrections is preparing projects of work descriptions for the personnel of penitentiary establishments describing rights and responsibilities for each position.

Despite positive steps, creation of adequate working conditions for the employees of penitentiary establishments remains the problem. There should be sufficient number of employees in such institutions. They should be provided with effective legal and social guarantees of protection, so that the lack of such guarantees does not negatively affect their treatment of prisoners, securing safety and order in the establishment.

There is no system of performance evaluation for the administration of penitentiary establishments, which incorporates pre-determined indicators. According to the existing practice, penitentiary establishments send reports to the Penitentiary Department and the Ministry of Corrections on a range of important questions.

As regards accountability of individual employees, apart from accountability to the direct supervisor, the alleged violations by employees will be examined by the General Inspection of the Ministry of Corrections. According to the information provided by the Ministry, in 2015 disciplinary sanctions were imposed upon 159 employees.

In order to secure accountability and adequate performance of functions by employees of penitentiary establishments, it is necessary to prepare clear work descriptions and guidelines for standard operational procedures and for managing incidents. Unfortunately, under the conditions of absence of the compilation of guiding documents and low qualification of employees, it is difficult for the employees of penitentiary establishments to make decisions in a timely manner. It increases risks for excessive use of force and ill-treatment.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Introduce legal regulation allowing internal and external monitoring based pre-determined indicators and evaluation of the capacity to secure order in a penitentiary establishment and performance of functions by administration and personnel,

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

- Create clear work descriptions, guidelines for standard operational procedures and for managing incidents, in order to secure adequate performance by the employees of penitentiary establishments and accountability.

TRAINING OF EMPLOYEES

Under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, "every state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons.' This envisages the obligation of the state to work out the program with the purposive methodology based on human rights.

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

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

According to the information provided by the Ministry of Corrections, the public law entity Training Centre of the Execution of Sentences and Probation, in 2015, new educational programs have been worked out for training employees of penitentiary establishments in national legislation and relevant international standards.

The employees of penitentiary establishments attended trainings on a range of topics throughout 2015. The following trainings were conducted concerning human rights, safety and order:

Themes of Trainings	The number of participants of trainings
Rules and Procedures of Examination	2434
Documentation of Torture under the Istanbul Protocol, Prevention of Torture, Inhuman and Degrading Treatment	90
Securing confidentiality of communications between medical personnel and prisoners	362

Multidisciplinary Teamwork	488
Facilitation and Improvement professional independence and competency of medical personnel, Issues of Observing the Principles of Medical Ethics	99
Prevention of Suicide and Working with vulnerable groups	554
Specificities of Treatment of persons belonging to Special categories, including LGBT persons	419

Besides the above mentioned trainings, after the entry into force of the new Georgian law about Special Penitentiary Service, the regulation for mandatory training and retraining of the employees of the Special Penitentiary Service was adopted. With the Order №148 of the Minister of Corrections of Georgia of 19 October 2015, "the Rule for Conducting the Special Contest, types of mandatory special professional training courses and the rules for attending them, the rule for certification and periodic retraining' was approved. According to the information provided by the Ministry of Corrections, the process of certifying current employees should be completed by 1 January 2017. 148 employees have gone through this process.

Also, in 2015, long-term training course (with the duration of six months) for employees of the Legal Regime Unit at the establishments for deprivation of liberty was continued. It consists of 5 stages and covers both theory and practice. 25 persons participated in this course.

The trainings should be focused on the prevention of torture and ill-treatment and on human rights protection at penitentiary establishments. When preparing the program, the frequency of trainings and topicality of subject-matter should be taken into account. It is also important that the knowledge acquired through trainings is used in practice. Relevant international practices shows that in many prisoners, training programs do not adopt human rights based approach and procedures and are not of much practical use. The personnel of the penitentiary establishments prefer to follow the established practice.[40] In order to maintain sustainability of trainings and their practicality, it is essential to introduce a mechanism for evaluating trainings. There are different ways of evaluating the effectiveness of trainings that can help assess if there have been any improvements.

It is worth noting that the Training Centre of the Ministry of Corrections, the public law entity, has introduced a mentorship program, within the framework of the "long-term training course for the employees of the Legal Regime Unit of the establishments for deprivation of liberty', in order to evaluate effectiveness an sustainability of the results of trainings. The training was conducted for 11 mentors of the system of corrections.

Despite the above mentioned positive steps, qualification and experience of employees of the penitentiary system remain one of the main challenges. The Public Defender considers that the number of participants of trainings in 2015 and subject-matter of these trainings do not adequately address the needs related to knowledge and skills of personnel in order to secure human rights protection as well as order and safety. Special attention needs to be paid to the following issues: safety, including the conception of dynamic safety, management of violent criminals using techniques of prevention and discharge, such as negotiation and mediation.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Introduce training programs, based on the assessment of needs for improving knowledge and skills of personnel, to secure protection of human rights, order and safety in penitentiary establishments;

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

facilitate participation of employees in these training programs. When preparing these training programs, special attention needs to be paid to the topics such as safety, including the conception of dynamic security, management of violent criminals through such techniques of prevention and discharge, such as negotiation and mediation.

- Increase the number of participants of the long-term (six month) training course for employees of the Legal Regime Unit of the Establishments for Deprivation of Liberty.
- Introduce an effective mechanism for evaluation of effectiveness and sustainability of the results of trainings as well as for supervision over the practical use of knowledge and skills acquired through trainings.

CLASSIFICATION OF CONVICTS

Under Article 10 (2) of the Imprisonment Code, the prison establishments are: low risk facility for deprivation of liberty, semi-open establishment for deprivation of liberty, closed type establishment for deprivation of liberty, special risk establishment for deprivation of liberty, juvenile rehabilitation facility, and special facility for women.

According to Article 46 (4) of the same law, "by decision of the chairperson of the Department, a convicted person may be transferred for further service of the sentence to a prison facility of the same or different type if he/she systematically violates internal regulations of the facility; is ill and/or in cases where it is necessary to ensure his/her safety taking into account risk factors; also in cases of reorganization, liquidation or overcrowding of the facility or in circumstances specified in Article 58(1) of this Code; or in other important, reasonable circumstances and/or in the case of a consent of the convicted person. A multi-disciplinary team assesses and periodically re-assesses the risks from a convicted person. The risk types, risk assessment criteria, the risk assessment and re-assessment procedure, the procedure for the transfer of a convicted person to a prison facility of the same or different type, and composition and powers of a multi-disciplinary team are defined by an order of the Minister.

The Order №70 of 9 July 2015 by the Ministry of Corrections approved the rules about types of risks, criteria for risk assessment, rules of risk assessment and reassessment, rule and conditions of transferring convicts to prisons of the same or other type, composition and competences of multidisciplinary teams.

According to the information provided by the Ministry of Corrections, 9 meetings of the multidisciplinary team were conducted in 2015. The risk level of 105 convicts was assessed. 100 convicts were found low risk and 5 convicts were found mid-level risk.

The Public Defender welcomes legal regulation of the matter and views adoption of the system of assessment and periodic re-assessment of risks of convicts clearly a step forward. However, he considers it necessary to change the rules so as to introduce legal guarantees for protecting the rights of convicts, in the course of risk assessment.

In the first place, it is worth noting that under Article 4 of Order №70 of 9 July 2015 issued by the Ministry of Corrections, initial assessment of risk of convicts by a team and distribution of convicts in establishments, according to the risk level by the director of the penitentiary establishment must be completed no later than 1 January 2017.

However, according to the information provided by the Ministry of Corrections, only an insignificant part of risk assessments was completed. There is a risk of failure to manage assessing the risk of convicts within the

above mentioned time-frame. This process will be conducted in a hurry and will most likely cause infringement of interests of convicts. It is important that the Ministry of Corrections takes all measures to ensure that assessment of risks of convicts is not speeded up and the rights of convicts are protected.

Article 15 of these rules envisages providing information to the convict about the decision of the multidisciplinary team about the risk level, when leaving the convict in the same establishment for deprivation of liberty or in case of transfer to another establishment. It also requires providing the decision and case materials, based on a written request.

Article 17 envisages the possibility of challenging the decision of the multidisciplinary team by a convict. However, it is worth noting that the rule does not require involvement of the convict in the process of decision-making by the team.

The Public Defender regards it necessary to oblige the penitentiary establishment or penitentiary department to inform the convict about the initiation of the process of assessing the risk of danger he/she poses by the multidisciplinary team. Besides, the convict must have the right to present additional documentation to the multidisciplinary team at any stage of examination of his/her case, if he/she thinks that it may lead to a desirable decision.

Under Article 6 (1) of the Rules, the process of assessing the risk of danger starts with examining information about the convict. For this purpose, the director of the establishment creates a group and draws up the list of the convicts the cases of which this group has to examine. One group may need to go through information about 700 convicts. If there is a multidisciplinary team for individual planning of sentences at the establishment, no such groups are created and their function is performed by these multidisciplinary team.

Under Article 14 (1), "based on the assessment by the multidisciplinary team, the decision about transferring the convict to the establishment for deprivation of liberty of the same or other type is made by the director of the department, within 20 working days from the moment of transfer of the decision about the risk of danger posed by the multidisciplinary team.

It is worth noting that according to the draft order, doctors cannot be members of the groups that do initial examinations or multidisciplinary teams. Inclusion of doctors is essential, because health state of the convict should be taken into account when transferring the convict from one to another establishment, especially if the convict is transferred to the closed or special risk facility. The decision about such transfers should be made based on the assessment by the doctor of the health state of the convict.

Based on the above said, the chief doctor of the establishment should be a member of the group of initial examination. The Head of the Medical Department or other authorized person should be added to the multidisciplinary team. As the alternative, it is possible to specify the obligation to request information about the health state of the convict in the process of assessing the risk. The multidisciplinary team should take into account the health state of the convict in making the final decision about risk of danger and in recommending the transfer to the type of establishment.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections of Georgia:

- Change the Rules of assessment and re-assessment of risk of the convict, types of risks and criteria for assessing risks so as to:
  - Introduce an obligation of the penitentiary establishment or penitentiary department to inform a convict about initiation of the process of assessing the risk of danger by a multidisciplinary

team. In addition, the convict should have the right to submit additional documentation to the multidisciplinary team at any stage of examination, if he/she considers that this will lead to a desirable decision.

- Make a chief doctor of the establishment a member of the group for initial examination of information and head of the medical department or other authorized person a member of the multidisciplinary team. Alternatively, the obligation to request information about the health state of the convict in the course assessing the risk of danger may be introduced.
- Ensure that the multidisciplinary team takes into account the health state of the convict in making a final decision about the type of risk of danger of the convict. And in recommending the transfer to the establishment of a certain type.

SAFETY MEASURES, MANAGEMENT OF INCIDENTS AND EMERGENCIES

De-escalation and Safe Rooms

In 2015, within the framework of penitentiary reform, the regulations for all penitentiary establishments were adopted by the Ministerial orders. According to these regulations, in penitentiary establishments N2[41], N5, N8 and N18 de-escalation rooms were opened; in establishments N3, N6 and N7 – safe rooms were opened.

According to existing regulations, it is possible to place the convict/accused in the de-escalation and safe rooms if they threaten their own life or health or the life or health of other people. The person placed in such rooms should be under constant supervision of the medical personnel and under constant visual supervision of the person responsible for safety in the given establishment. De-escalation and safe rooms should be equipped with a safe mattress, video camera with toilet falling outside its field of vision, with the remote control, open type toilet, capable of withstanding damage, water tap and adequate ventilation.[42]

Visits of the Special Preventive Group to penitentiary establishment revealed that the supervision systems are installed in de-escalation and safe rooms of penitentiary establishments N3, N6 and N8 so that the toilet area is within the field of vision of video cameras. Whenever the prisoners are placed in such rooms, the requirements of the regulations are violated. This amounts to the violation of the right to privacy of prisoners. In some instances, if the prisoner is placed in such rooms for a long period of time, this can be equated to inhuman and degrading treatment.

According to the regulations, the person may be placed in such rooms based on the decision of the administration of the establishment, but the person responsible for specific decisions is not specified. Besides, according to the regulations, a special file is created whenever a person is placed in such rooms and information is entered about the state of the person with reasonable intervals. However, the standard of substantiation for deciding on the placement in a de-escalation or a safe room is not defined.

Importantly, the above mentioned regulations do not specify maximum term for placing a prisoner in such rooms. According to the existing regulations, the accused/convict can be placed in a de-escalation/safe room until criteria for such placement are fulfilled. Besides, measures of physical restraint and special means

41 In the absence of the adequate infrastructure, there are no de-escalation rooms in the establishment N2.

42 Article 17 of the Regulations of the penitentiary establishment N2 approved by the Order N119 of the Minister of Corrections dated 27 August 2015; Article 17 of the Regulations of the Penitentiary Establishment no 5 Approved by the order N116 dated 27 August 2015; Article 39 of the Regulations of the Medical Establishment for the Accused and Convicted Persons N18 Approved by the Order N114 dated 27 August 2015; Article 26 of the Regulations of the Penitentiary Establishment N3 of the Order N109 dated 27 August 2015; Article 27 of Regulations of the Penitentiary Establishment N6 Approved by the Order N108, dated 27 August 2015; Article 26 of the Regulations of the Penitentiary Establishment N7 Approved by the Order N 107 dated 27 August 2015.

envisaged by Georgian legislation may be used in these rooms, if necessary. Physical restraint should be used for a reasonable period, until criteria given in paragraph 1 of this article are fulfilled.

According to the information provided by the Ministry of Corrections, in 2015, prisoners were placed in a de-escalation room only in the penitentiary establishment N8 (overall, 175 cases). 133 prisoners of the establishment N3 and 20 prisoners of the establishment N6 were placed in safe rooms. There were a few instances of placing prisoners in de-escalation/safe rooms for long terms. There are many instances of placement of prisoners for more than 10 days, and a few instances of placement for 15-20 days. There was one case of placing the prisoner in a de-escalation room for 31 days. 2 prisoners were placed in safe rooms for 35 days.

The above mentioned shows that placement of prisoners in de-escalation or safe rooms is not properly regulated by law. Subsidiary normative acts issued by the Minister do not introduce legal guarantees of protection. This creates a real threat of placing prisoners in de-escalation/safety rooms disproportionately and for unjustifiably long periods, as also confirmed in practice.

In its report prepared based on the visit to Georgia of 2014, the European Committee for the Prevention of Torture indicates that maximum period of placing the person in a de-escalation room (four days, as the delegation was told) is too lengthy. It should be reduced to a few hours and should never exceed 24 hours.[43] Besides, the Committee underlines the importance of de-escalation strategy and points out that due to the absence of such a strategy prisoners may resort to such means of solving their problems as hunger strikes and acts of self-harm.[44]

The Public Defender regards it impermissible to place prisoners in a de-escalation/ safe room under current conditions for a long term, because it amounts to the infringement of human dignity. If there are still reasons for placing a prisoner in a de-escalation/safe room after the expiry of a 24-hour term, administration of the establishment must resort to other means, including provision of adequate psychiatric aid to prisoners. It is also worth noting that during the visits at N8 penitentiary establishment, the members of the Special Preventive Group were told by prisoners that if they were placed in a de-escalation room, they could not send mail, use phone and have visitors.

According to the above mentioned regulations, placement in the de-escalation room should not be the basis for automatic restriction of rights provided by Georgian legislation for the accused/convicts. Therefore, the existence of such a practice is impermissible as it constitutes a breach of law and unjustifiable restriction of the rights of prisoners.

Besides, grounds for placement in a de-escalation/safe room, procedure and legal guarantees are not provided by law and are instead regulated by a subsidiary normative act issued by the Minister. Since placement in such rooms is a restrictive measure by its nature, it should be governed by law.

Since placement of prisoners in the mentioned rooms amounts to a forcible measure applied to the prisoner in order to secure order and safety at the establishment and carries a great risk of ill-treatment of prisoners, it is essential to store the video recordings from these cells for a reasonable time (not less than 1 month).

The Public Defender believes that prisoners should be placed in de-escalation/safe rooms only in accordance with law and with adequate legal guarantees, so as to avoid human rights violations. This will be possible only if the legislation is amended to specify who makes decisions about placement of the prisoner in de-escalation/ safe rooms, standard of substantiation for applying this measure and maximum reasonable time for its use.

43 See the Report of the European Committee for the Prevention of Torture following the 2014 visit, CPT/Inf (2015), para. 94.
44 Ibid., para 54.

Proposal to the Parliament of Georgia

- Regulate grounds, procedure and maximum reasonable time (24 hours) for placing prisoners in de-escalation/safe rooms by law; specify the person that makes decisions about applying this measure, standard for substantiation for such decisions and legal guarantees for prisoners when using this measure.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Define maximum reasonable time for placement in a de-escalation/safe room (which should not exceed 24 hours) by a subsidiary normative act; also specify the person that makes decisions about using this measure and standard of substantiation for such decisions.
- Secure observance of requirements of legislation when placing persons in a de-escalation/safe room through supervision and control.
- Secure storage of video recordings from de-escalation/safe rooms for a minimum period of 1 month.

Surveillance by means of visual and electronic means

According to Article 54 (1) of the Imprisonment Code, "in case of a reasonable belief, the administration is authorized to conduct surveillance and control through visual and/or electronic means, based on safety of the accused/convicted or other persons and other lawful interests - to prevent suicide, self-injury, violence against accused/convicted or other persons, damage to property, and to avert other crimes and offences. Electronic surveillance is conducted with audio and video devices and/or other technical means of control. The administration may, through electronic means, record the process of surveillance and control, and the information received as a result of this process.'

According to Article 54 (9), the Minister defines the procedure for conducting surveillance and control through visual and/or electronic means, and for storing, deleting and destroying recordings.

The Order of the Minister of Corrections of 19 May 2015 approved the regulations concerning visual and/or electronic means of surveillance and control, storing, deleting and destroying recordings. The Public Defender welcomes legal regulation of the question of visual and/or electronic surveillance. Nevertheless, he points out that this regulation is problematic in terms of compatibility with international standards of human rights.

According to Article 3 (5) of these regulations, electronic surveillance and control of the accused/convict cannot be extended to showers, toilets, rooms for long-term visits, except for cases envisaged by Georgian legislation. As regards the mentioned reservation, on 19 December 2014, the Public Defender of Georgia addressed the Minister of Corrections with the proposal to add toilets in prison cells to the list of places that cannot be under surveillance. However, the Minister did not take this proposal into account. The European Committee for the Prevention of Torture clearly specifies in its reports based on visits to various countries that as regards the process of surveillance and control in prisoners, the privacy of prisoners should be preserved when they are using toilets and showers.[45]

45 See http://www.cpt.coe.int/documents/hun/2010-16-inf-eng.pdf p. 19, para 31; See also http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf p. 30, para 60[last visited on 12.03.2016].

It was revealed as a result of visits of the Special Preventive Group to penitentiary establishments that in the absence of the above reservation, privacy of prisoners is not preserved in the establishment N6. Particularly, video cameras are installed in most cells of this establishment and also in some solitary, closed type cells of the establishment N15. Toilet areas are within the camera's field of vision. The privacy of prisoners is not secured.

The European Committee for the Prevention of Torture emphasizes that decisions about surveillance and control through visual and/or electronic means should be substantiated and the use of this measure without adequate substantiation can be regarded as a breach of the prisoner's right to privacy.[46] According to Article 4 (1) of the Regulations Concerning Surveillance and Control through visual and/or electronic means, Storage, deleting and Destroying recordings, if there are grounds provided by Article 2 of these rules, the decision about the use of surveillance and control through visual and/or electronic means is made by the director of the establishment and the respective order is issued. The order is issued until the elimination of grounds envisaged by Article 2 of these rules, but not longer than three months.' Under Article 3, the decision must be substantiated and proportionate to the goal. However, the obligation to substantiate the order is not envisaged. The Parliamentary Report of the Public Defender of 2014 and the Reports resulting from the visit of the National Preventive Mechanism of Georgia of 2015,[47] the Public Defender indicated that in order to provide sufficient legal guarantees, it is necessary to specify in each order an aggregate of facts and circumstances that generated the need for such a measure and also explain why other means are not effective in the given case. In each individual case, risk should be carefully assessed. The order should demonstrate that surveillance and control through visual and/or electronic means is the only option available. Unfortunately, the Ministry of Corrections did not take into account the given recommendation.

The results of monitoring reveal that in practice orders about surveillance through electronic means contain limited information and are similarly formulated. According to the Special Preventive Group that carried out checks at a number of penitentiary establishments in the reporting period, the orders of the director of the penitentiary establishment about surveillance do not explain why the use of this measure was necessary. The orders are currently issued at the request of the Safety Unit of the establishment. In many cases, these requests are not also well-substantiated.

These requests do not show whether the proposed measure is proportionate in terms of achieving the legitimate aim and whether there is any need for using this measure at all. They invoke the following grounds for introducing surveillance: the need for protecting safety and health of the prisoner, prevention of further complications, observation of internal rules, etc. However, these requests do not specify the dangers and what circumstances made the use of this measure necessary.

It is worth noting that in some cases the requests of the Safety Unit does not specify the goals of surveillance. They only indicate that the prisoner was transferred to the cell equipped with the system of visual surveillance, due to re-grouping of prisoners. However, the necessity of applying this measure was not substantiated. Besides, according to these requests, the Safety Unit takes into account personal qualities of the prisoner when requesting surveillance, but it is not specified which qualities are relevant. In some cases, the Safety Unit requests transfer of the prisoner to the cell of the medical unit and introduction of surveillance. The Safety Unit indicates in its requests that the chief doctor requests transfer of the prisoner to the medical unit. However, it was found out as a result of examination that in such cases, the chief doctor requests such transfers only for the purpose of medical supervision and not for visual surveillance.

In some cases, the surveillance is based on the ground that is not envisaged by Article 54 (1) of the Imprisonment Code. For example, the mentioned provision does not list surveillance for the purpose of

46 The European Committee for the Prevention of Torture (CPT), Visit to Ukraine, 1-10 December 2012, para. 52, available at http://www.cpt.coe.int/documents/ukr/2013-23-inf-eng.htm [last visited on 12.03.2016].

47 The visit to the Penitentiary Establishment N3, Report, pp. 8-10, available at http://www.ombudsman.ge/uploads/other/3/3290.pdf The visit to the Penitentiary Establishment N7, Report, pp. 8-10, available at http://www.ombudsman.ge/uploads/other/3/3291.pdf The visit to the Penitentiary Establishment N2 Report, pp. 8-10, available at: http://www.ombudsman.ge/uploads/other/3/3294.pdf [last visited on 12.03.2016].

prevention. Accordingly, such surveillance does not serve a legitimate purpose envisaged by Article 54 (1) of the Imprisonment Code and therefore, it is unlawful. It is true that the mentioned provision of the Imprisonment Code allows the possibility of surveillance "in order to avoid crime or other offence'. However, the reference to "the goal of securing observance of internal regulations' leaves room for broad interpretation and accordingly, some arbitrariness. It is not clear which requirements of internal regulations need to be secured through surveillance and what is an appropriate nature of action. It is also not explained why it is argued as if there are no alternatives for securing observance of internal regulations when there are other means, including procedure for disciplinary responsibility, for achieving the same goal.

It is worth noting that in penitentiary establishment no. 3, all cells for solitary confinement, safe rooms and all cells in the medical unit are equipped with cameras. Therefore, whenever the need for transferring prisoners to these cells arises, they are inevitably subject to the electronic surveillance. Accordingly, when making decisions about surveillance, necessity and proportionality of this measure are not assessed in all cases. Its automatic use is due to the lack of solitary cells and cells in the medical unit that are not be equipped with the system of surveillance. It is worth noting that the surveillance is terminated not when there is no longer any need for such a measure, but when there is no longer any need for keeping the person in the indicated cells (e.g. when there is no need for medical supervision or the term for solitary confinement as a disciplinary measure has expired).

The requests filed by the Safety Unit of the establishment N3 that form the basis for the orders of the director of the establishment about electronic surveillance of prisoners placed in the solitary cell for disciplinary offences are basically identical. The Safety Unit of the Establishment indicates that the surveillance is reasonable for securing prisoner's safety or for health reasons. It is not specified what may threaten the health of the patient.

The electronic surveillance is cancelled with the orders based on the requests that only specify that the time for placement in solitary confinement expired and the prisoner was to be transferred to the common cell.

Apart from the substantiation of the decision about visual and/or electronic surveillance, it is important to periodically review those decisions. Under Rule 50.1 of the European Prison Rules, security measures used against individual prisoners must be minimal, going only so far as needed to secure safe imprisonment. Under Rule 50.4, every prisoner must be under such security conditions that correspond to the risk level. Under Rule 50.5, the needed level of security should be reviewed regularly throughout the entire period of imprisonment.'

It is worth noting that the Minister of Corrections took up the proposal of the Public Defender to change the Regulations Concerning Visual and/or Electronic Surveillance and Control, Storage, Deleting or Destroying the Recordings as regards introducing the obligation to review decisions about surveillance. However, assuming that in practice, the decisions about surveillance and control are not well-substantiated, it does not make much sense to adopt new decisions of the same quality.

It is also worth noting that in 2014 Parliamentary Report, the Public Defender addressed the Minister of Corrections with the recommendation to determine the reasonable time (not less than 10 days) for storing the recordings of video surveillance and secure unimpeded access to such recordings for the members of the Special Preventive Group. However, this recommendation has not been complied with. Under Article 15 (2) of the Regulations Concerning Visual and/or Electronic Surveillance and Control, Storage, Deleting or Destroying the Recordings, the recorded material is stored only for 24 hours.

Besides, notwithstanding Article 18 (b) of the Organic Law of Georgia about the Public Defender that creates an entitlement to demand and receive all necessary documents and materials from state organs and organs of local self-governance, public establishments and officials for examination in 10 days maximum, the representatives of the Public Defender did not have any practical possibility to view these video recordings.

Apart from the above mentioned problematic issues, Article 8 of the Regulations Concerning Visual and/or Electronic Surveillance and Control, Storage, Deleting and Destroying the Recordings repeats the formulation

of the Imprisonment Code and points out that the administration is authorized to observe the meetings of persons indicated in Article 54 (6) of the Imprisonment Code through visual, technical means of remote observation and record without sound.

We gave the recommendation in 2014 Parliamentary Report to the Parliament and the Minister of Corrections to amend the Imprisonment Code and the above mentioned Rules to secure confidentiality of meetings of the representatives of the Public Defender/members of the Special Preventive Group and prohibit any kind of eavesdropping and surveillance. However, this recommendation was not implemented. The Public Defender requires changing relevant provisions of the Regulations Concerning Visual and/or Electronic Means of Surveillance and Control, Storage, Deleting and Destroying the Recordings and the Imprisonment Code in relation to the Public Defender/members of the Special Preventive Group. The existing provisions contradict Article 19 (3) of the Organic Law Concerning the Public Defender, according to which the meetings of the Public Defender/members of the Special Preventive Group with detainees, those imprisoned or otherwise deprived of liberty, convicted persons, should be confidential. Any kind of eavesdropping and surveillance is prohibited.

Proposal to the Parliament of Georgia

- Amend the Imprisonment Code and insert the requirement of confidentiality of the Meetings of the Public Defender/members of the Special Preventive Group with the accused/convicted person and prohibition of any kind of eavesdropping or surveillance.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Change the Ministerial Order Approving the Regulations Concerning Surveillance and Control by Visual and/or Electronic Means, Storage, Deleting and Destroying Recordings and insert the clause according to which the meeting of the Public Defender/member of the Special Preventive Group with the accused/convict is confidential and any kind of eavesdropping or surveillance is prohibited.
- Formulate the Ministerial Order about the Regulations Concerning Surveillance and Control by Visual and/or Electronic Means, Storage, Deleting and Destroying Recordings so that it contains information about the circumstances that made surveillance and control through visual and/or electronic means necessary and without any alternatives.
- Take all reasonable measures to ensure that surveillance with electronic means is carried out only if other measures are ineffective and for so long as they are strictly necessary, taking into account specific circumstances; ensure that the decisions about electronic surveillance are properly substantiated.
- Define reasonable time (at least 10 days) for storing the recordings of the video surveillance and secure unimpeded access of the members of the Special Preventive Group to these recordings.

Separation of Prisoners for Safety Reasons

According to Article 57 (1)(b) of the Imprisonment Code, to avoid self-injury, or damage to other persons and property, to prevent crimes and other offences in the penitentiary facility, to suppress the disobedience of an accused/convicted person to a lawful demand of an employee of the bodies of the penitentiary System, to

repel attacks, to suppress collective disobedience and/or mass unrest, the accused/convict may be separated from other accused/convicted persons based on a substantiated order.

The grounds and procedures for using this measure are governed by the orders of the Minister of Corrections approving the regulations of each of the penitentiary establishments. These regulations provide for the similar procedure for all penitentiary establishments. The decision about placing the convict separately from other convicts for a reasonable time is made by the director of the establishment at the request of the convict or at his/her own initiative if there are adequate grounds. In the absence of the director of the establishment, a properly authorized person will secure separation of the convict from other convicts for maximum 24 hours. The Director issues the order about the separation of the convict from other convicts.

Conditions for extension of the term of separation of convicts are different for the establishments of special risk and other establishments. Particularly, according to the regulations for the special risk establishments, if necessary, separation of a prisoner from other prisoners may be extended with the decision of the director of the establishment for a reasonable term, until the danger that serves as a basis for separation of this prisoner exists. According to the regulations of other establishments, if necessary, the term of separation of the convict from other convicts may be extended with the decision of the director of the establishment for another 30 days. If these safety measures are not successful, the director of the establishment requests the director of the Department to transfer the convict or persons that endanger the safety of the convict to another establishment for deprivation of liberty. If proper grounds exist for making such a request, it is not necessary to exhaust the initial term.

The checks carried out by the Special Preventive Group in the reporting period revealed that the separation of prisoners is actively used. Particularly, in 2015, 120 prisoners were placed separately in the establishment N3, 43 prisoners in the establishment N6, 55 prisoners in the establishment N8, 2 prisoners in the establishment N11, 42 prisoners in the establishment N14, 67 prisoners in the establishment N 15, 2 prisoners in the establishment N 16, 73 prisoners in the establishment N 17, 5 prisoners in the establishment N 18, 5 prisoners in the establishment in N 19, following the above described procedure.

Besides, the checks showed that placement of prisoners in separate, solitary cells is frequent and even systematic, even without following the above procedure and in the absence of an adequate legal basis. It was revealed that in the establishments N 6, N7 and N9 some prisoners were separated from other prisoners against their will for years and remain separated until now. In addition, some of these prisoners did not have long-term visits. One prisoner that has been separated from other prisoners since 2005 is sentenced to life imprisonment.

The practice of separation of prisoners from others shows that this measure is used in penitentiary establishments in violation of important legal principles and guarantees. There are cases of placing prisoners separately for long terms, in the absence of a formal basis for using this measure, namely the order of the director, the issuance of which is mandatory, according to the regulations of the establishment. This practice constitutes a violation of the requirements of law. It is also worth taking into account that the convicts do not have the possibility to challenge the measure (indefinite separation from other convicts).

Besides, it is necessary to pay attention to the grounds and duration for extending the term of separating prisoners, according to the regulations of the special risk establishments for deprivation of liberty. This allows the administration of the establishment to separate prisoners for an undefined term.

The European Court of Human Rights has underlined in a few judgments that under Article 3, the state is obliged to secure serving the sentence under the conditions respectful of human dignity, so that it does not cause distress or suffering intensity of which exceeds suffering inevitably connected to imprisonment and to ensure protection of health of the prisoner properly, taking into account practical demands of imprisonment.[48]

48 See *Valašinas v. Lithuania*, Appl.no N44558/98, para. 102, ECHR 2001-VIII; *Kudła v. Poland* [GC], Appl. no N30210/96, para. 94, ECHR 2000-XI.

The Court also points out that in assessing conditions of imprisonment, their cumulative effect needs to be taken into account, along with specific charges against the applicant.[49]

In the case *Pretty v. the UK*[50], the Court noted that the right covers elements of physical and mental unity. Private life may also cover such aspects as self-perception. The Court explained that Article 8 of the Convention covers the right to personal development and the right to establish relations with other persons and the outside world.[51]

The European Committee for the Prevention of Torture underlines that it "pays particular attention to the convicts under conditions close to separation, despite the reason for placing them under such conditions (disciplinary reasons, the result of their "dangerous" or "difficult" behavior, interests of criminal investigation, their personal request). The principle of proportionality requires balance between the requirements of the case and the use of the regime of separate placement of the prisoner, which may have grave results. The mere fact of such a placement may in some cases amount to inhuman and degrading treatment. In case, such a measure must be short-term.[52] In 2015, the UN Special Rapporteur on Torture paid attention to the practice of isolating prisoners and pointed out that separate placement of prisoners for months may amount to torture, inhuman and degrading treatment and increase the risk that the prisoner will endanger his own life and health or the life of health of others.[53]

Regarding this issue, the Public Defender considers it important to create legal guarantees so that the prisoners separated from others are not placed under conditions that cause suffering beyond what is inevitably caused by deprivation of liberty and isolation. It is also important to define the maximum term for separating prisoners by law, including in the special risk institutions for deprivation of liberty and also introduce the obligation of reviewing this measure, after 14 days.

The temporal framework for using this measure of separate placement of prisoners, and circumstances the presence of which cancels the need for its use are not clear. It is also not explained why it is impossible to achieve the goal of securing safety by placing this specific convict together with other convicts or by transferring him to another institution.

It is impermissible to disregard the requirements of international human rights law obliging the state to periodically review necessity and proportionality of the measures applied to secure safety. According to Rule 50.5 of the European Prison Rules, the level of security should be reviewed regularly throughout the entire period of imprisonment.

In the case *Ramirez Sanchez v. France*, the European Court of Human Rights indicated that the isolation of convicts cannot be imposed on a prisoner indefinitely. Moreover, it is decisive to give a convict the possibility to have the type and grounds for applying this measure reviewed by independent judiciary. In this case, the Court found the violation of Article 13, as the convict did not have the possibility to challenge the measure.[54]

The placement of prisoners separately by the administration of the establishment with the purpose of securing their safety, without adequate grounds violates national legislation and international acts. This undermines the possibility of rehabilitation of prisoners and may even amount to torture or inhuman and degrading treatment.

The Public Defender regards it impossible to isolate the person indefinitely, without relying on the grounds and procedures provided by the orders of the Ministry of Corrections approving the regulations of penitentiary establishments. Isolation of prisoners indefinitely constitutes the violation of the rights provided *inter alia* by Articles 3, 8 and 13 of the European Convention.

49 See *Dougoz v. Greece*, N40907/98, para. 46, ECHR 2001-II.
50 Pretty v UK, 29 April 2002.
51 Burghartz, p. 37, § 47, and Friedl v. Austria, 31 January 1995, p. 20, § 45.
52 The Report of the European Committee for the Prevention of Torture, 1998 Report following the visit in Finland, CPC/Inf(96)28).
53 Report of the UN Special Rapporteur on Torture regarding the 2015 visit to Georgia, A/HRC/31/57/Add.3, para. 85.
54 Ramirez Sanchez v. France, no. 59450/00 para. 145, 152.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Amend the regulations of the Special Risk Establishments for Deprivation of Liberty and specify the maximum term of separating prisoners from other prisoners.
- Make it obligatory to review the decision on placing the prisoner separately in 14 days from the moment of applying the measure and afterwards, with the same intervals.
- Create legal guarantees to ensure that separated prisoners are not placed under conditions that will aggravate suffering characteristic to the deprivation of liberty and also isolation.
- Ensure through supervision and control that prisoners are isolated against their will only for the purpose of securing safety, based on the grounds and procedures provided by the regulations of respective penitentiary establishments.
- Ensure placement of prisoners separated from others against their will and with disregard of the grounds and procedures provided by the regulations of penitentiary establishments together with other prisoners immediately.

Use of Special Means

According to the information provided by the Ministry of Corrections, in 2015 only handcuffs were used as special means in penitentiary establishments. Particularly, there were 15 cases of using handcuffs in the establishment N2, 123 cases in the establishment N3, 22 cases in the establishment N6, 55 in the establishment N8, 1 in the establishment N15 and 3 in the establishment N17.

In the Parliamentary Report of 2014, the Public Defender of Georgia highlighted the concerns that were not taken into account in the process of examining legal amendments to the Imprisonment Code defining special means and determining the rules of their use. The Public Defender underlines that integrating his recommendations in legislation and subsidiary normative acts is essential for securing human rights protection and existence of adequate legal guarantees when using special means. Particularly, legislation prohibits the use of pepper spray in a closed space. However, the use of tear gas in a closed space is not prohibited. The problem also lies in the absence of a clear definition of a non-lethal weapon and its various types.

Apart from the above concerns, in the 2014 Report the Public Defender gave a recommendation to the Minister of Corrections to amend the Rules defining types of special means available to the organs of the correctional system, rules and conditions of storing, carrying and using them and determining the person authorized to use them, approved by the Ministerial Order N145 dated 12 September 2014 and to prohibit having the person handcuffed to a fixed object.

As regards this recommendation, as indicated by the Ministry of Corrections, according to Article 6 of the mentioned Rule, handcuffing a person to a fixed object is impermissible and can only be used in the extreme cases when the legitimate aim defined by law cannot be achieved by other means. Accordingly, there is no need to issue such a recommendation because this question is already regulated by law in detail.

The Public Defender cannot share this position and asserts that handcuffing a person to a fixed object should be prohibited, since this contradicts international standards of human rights. Such treatment may amount to inhuman treatment. Here it is necessary to invoke the approach of the European Committee for the Prevention of Torture, according to which if a detained person acts in an agitated or violent manner, the use of handcuffs can be justified. However, a person should not be handcuffed to a wall or fixed objects and should be under

constant supervision in the adequate environment. If agitation of this person deteriorates his health, the law-enforcement officials should demand medical assistance and follow advice of doctors.[55]

It is worth noting that the frequent use of handcuffs in the establishment N3 (123 cases) shows routine nature of its use by the employees of this establishment. Such practice may cause conflicts between the employees and prisoners and hinder maintaining safe environment and order under conditions of human rights protection.

Proposals to the Parliament of Georgia

- Amend the Imprisonment Code to introduce prohibition on the use of tear gas in closed spaces.
- Amend the Imprisonment Code to define the types of non-lethal weapons.
- Amend the Imprisonment Code to prohibit handcuffing of a person to a fixed object.

Recommendation to the Ministry of Corrections

- Secure thorough supervision and control to ensure that handcuffs are not used routinely at the establishment N 3.

PRISON CONDITIONS

Physical Environment and Sanitary-Hygienic Conditions

According to European Prison Rules, the building provided for prisoners, and in particular all sleeping accommodation, shall respect the requirements of human dignity and, as far as possible ensure the feasibility of solitude. Health and hygiene requirements shall also be protected, taking into consideration the space, airing and HVAC conditions and lighting.[56] In all buildings where prisoners live, work or congregate: the windows have to be large enough to enable the prisoners to read or work by natural light in normal conditions, fresh air circulation shall also be ensured, except where there is an air conditioning system; artificial light shall satisfy recognized technical standards; there must be an alarm system that enables prisoners to immediately contact the staff.[57] According to the ECtHR case-law, apart from ill-treatment and inhuman treatment, violation of Article 3 of the European Convention can be caused by the circumstances in which a person has to live. Following one of the basic principles of the European Rules, lack of resources cannot justify the prison conditions which constitute inhuman treatment.[58]

It should be noted, that compared to previous years, a number of penitentiary establishments have improved physical environment and sanitary conditions. Nevertheless, there is still significant need for improvement of prison conditions to bring them in conformity with international standards. The state is obliged, despite the related difficulties, to timely eliminate these deficiencies and create proper conditions for prisoners.

55 The Report of the European Committee for the Prevention of Torture on the Russian Federation, CPT/ Inf(2013)41, N52, p.29.
56 Rule 18.1
57 Rule 18.2
58 Rule 4

Establishment N2 of the Penitentiary Department

Six prisoner accommodation blocks are functioning in this establishment. A, B, C, D, E and F blocks have 2 (11, 1 m^2), 4 (15.6 m^2), 6 (18, 9 m^2), 8 (22-25 m^2) and 10-place (32, 49 m^2) cells.

The medical unit of the establishment has 3 (18.14 m^2) and 4-place (15.6 m^2) cells. The space calculations do not exclude the table, the bed and the toilet space. It should be noted that the 6, 8 and 10-place cells have less than 4 m^2 space per prisoner. All cells have one window (1.35X0.96 cm). For 2, 3, 4 and 6- place cells natural and artificial lighting is satisfactory. In 8 and 10-place cells one window fails to provide adequate natural lighting and ventilation.

The ventilation system of the cells is not operational. The cells are furnished with two-tier beds, a wardrobe, a table and chairs. The prisoners have TV. Cells have a separate sanitary knot.

The physical environment of female section of the establishment N2 (E Building) was inspected. The section has four cells, each designed for 6 prisoners, with concrete floors. Central heating system is installed and permanent water supply is provided. There is an isolated sanitary knot in each cell. Female prisoners have TV and radio. At the time of our visit[59] there were 13 female prisoners. There is a problem of accessibility of the personal hygiene items for women in the facility.

The juvenile section of the establishment N2 has 5 cells, 2 classrooms, 1 gym, a shared working space for psychologist and a social worker and a shower. At the time of our visit, the section had 8 juvenile inmates. All cells were duly equipped with the necessary utensils.

The quarantine section has 5 cells and shower. Central heating and ventilation systems are installed in the shower. The space per prisoner in cells is less than 4 square meters. Each cell area is about 15 m^2 and is designed to accommodate six prisoners. Natural and artificial lighting in the cells is satisfactory, but the ventilation system does not provide adequate ventilation of cells. Cells are equipped with two-tier iron beds, a wardrobe, a table and chairs and central heating. There is an isolated sanitary knot in each cell.

At the time of admission, the inmates are provided with the bedding and linen. However, the linen is not changed afterwards, due to the shortage of the linen in the facility, according to the administration representatives. Therefore, the prisoners are mostly provided with the clean linen by the members of their families. Linen is either washed in the laundry facilities of the establishment by the prisoners themselves or outside the establishment, by their family members. The majority of the interviewed prisoners said that they do not want their linen to be washed in the common washing machine with other prisoners' clothes. They prefer to wash the linen themselves, or to have it washed by their family members outside the establishment. If the prisoners themselves wash their clothes and linen, they have to dry them in their living cells.

Space of the solitary confinement cells, except those located in the D block is 4.5-5.5 square meters. The cells have a bed (plank), a chair and a table. The cells have central heating and ventilation systems. Lighting is satisfactory. The toilets are partially separated from the cells and the sanitary/hygienic conditions of the cells are unsatisfactory. There is an explicit lack of space. Some cells are under the surveillance cameras.

It should be noted that 16 solitary confinement cells of the D block of 16 have an area of 11 square meters each, and therefore, physical conditions are generally satisfactory. However, these cells are used for placement of the D block prisoners only. Noteworthy that, the Public Defender had approached the Minister of Corrections of Georgia in October 2014[60] that only the solitary confinement cells of D block were suitable for the use in case of disciplinary isolation, but the recommendations were not followed.

59 1-2 July 2015.

60 See the report of the Special Prevention Mechanism following the visit to the Institution N2 on 21 22 October 2014, available at < http://www.ombudsman.ge/uploads/other/2/2191.pdf > [last accessed 25.02.2016].

A block of the establishment N2 has 26 yards (18 m^2 each, C block- 15 yards (18 m^2 each), D block - 36 yards (23 m^2 each), E block - 2 yards. The yards are partially covered from above and equipped with the wooden benches and bins, surveillance cameras are installed. Prisoners spend an hour on the fresh air daily. They are able to train on a daily basis in the special gym, which is equipped with appropriate tools.

There are 9 investigation rooms in the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that an audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting them during the conversation.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections that each inmate should be provided with 4 square meters of space, and all of the buildings - with proper ventilation. It should be noted that these recommendations have not been fulfilled, since the above shortcomings were still reported during the year. The parliamentary report of the previous year recommended creation of conditions compatible with human dignity in the solitary confinement cells and before that, to temporarily place the prisoners in solitary confinement cells only in the D block for disciplinary isolation, though none of the recommendations were followed.

Establishment N3 of the Penitentiary Department

In the establishment N3 the cells are designed for placement of 2 (10 m^2), 4 (15 m^2) and 6 (19.5 m^2) inmates. At the time of the visit[61] most of the 6-place cells (11 cells) were fully inhabited, which does not comply with the rules established under the paragraphs 2 and 3 of Article 15 of the Imprisonment Code.[62]

Article 15, paragraph 4 of the Imprisonment Code provides that the accommodation of prisoners should have windows that allow natural light. The accommodation should have natural and / or artificial ventilation. N3 prison cells have small-sized windows, which are quite high, the wall is about half a meter thick, respectively, and unhindered light cannot reach the cell. They have no proper ventilation and natural light. Artificial lighting of the cells is satisfactory, while the artificial ventilation system is not working properly; 2 horizontal central heating pipes are installed under the windows; Cells are furnished with two-tier iron beds, which do not have a staircase up to the second tier. Cells also have individual wardrobes, a table and chairs; in most cells, the prisoners have TV. The cells have separated sanitary facilities (approximately 1.8 m^2) where it is possible to take a shower; there are, however, problems with the water supply in the facility. The sanitary conditions of the living cells are generally satisfactory.

Establishment has 9 yards. Odd numbered yards have an area of about 37 m^2, and even numbered yards - about 26 m^2. Yards are partly roofed, with artificial lighting inside and equipped with wooden benches, bins and surveillance cameras.

It should be noted that during the visit in October 2014, the 4 and 6-bed cells were not fully inhabited, while in May 2015, the cells were completely filled. Accordingly, in 6- bed cells the prisoners are not provided with requisite personal area of 4 $m.^2$

In the investigation rooms, the prisoners meet representatives of investigative authorities, lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom

61 7-9 May 2015.

62 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner". According to paragraph 3 of the same Article: "the living space per inmate of any temporary detention institution shall not be less than 3 square meters".

conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting their conversation to a certain extent.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure removal of extra beds from the living cells, proper ventilation and water supply of the facility, as well as to arrange the possibility of physical exercise via allocation of extra space for the yards. To eradicate the ventilation problem, air conditioners were installed in the cells in 2015, which is welcome, but it should be noted that it is necessary to tackle the problem of the central ventilation system. The recommendations concerning continuous water supply have not been implemented.

Establishment N5 of the Penitentiary Department

The establishment N5 is designed for the female prisoners of the penitentiary department. There are 7 residential buildings: the imprisonment unit, A, B, C and D blocks, residential unit for tuberculosis patients, maternal and children's department.

According to the information received from this establishment,[63] the unit for long-term dates was built in 2015; 7 rooms designed for the psycho-rehabilitation program "Atlantis" were repaired; the beauty parlor was repaired and equipped; heating systems of A, B and D blocks were upgraded; a special ward for post-operative and health complications was repaired and re-equipped; maternal and child section living rooms were renovated together with the corridor of the building, the floor covers were changed, and the necessary equipment was renewed; living rooms with appropriate equipment were arranged for disabled persons according to their requisite specificities; the green line was created and ornamental plants and conifers were planted.

Imprisonment Code allows all inmates to have regular contact with their families and close relatives via prison dates. Such meetings promote social integration and resocialization.

16 cabins designed for such visits operated in the facility throughout the year. Along a blank wall on the other side of these cabins, there are 16 dysfunctional cabins. Booths installed in the middle of these cabins are made of glass. For years, prisoners had to meet their visitors at rendezvous beyond these glass barriers and their removal is certainly a step forward, but a problem of space of rendezvous rooms remains, which, in turn, creates an impediment to a confidential conversation. In particular, persons who come to visit prisoners in fact have to meet alongside those booths, in the corridor, as the size of the cabin remaining on the other side of the dividing glass is only 1 square meters. The visit revealed that the rendezvous process is observed by prison staff standing nearby.

Blocks have common-use shower rooms. Water consumed in the A, B, C buildings bathrooms' runs through the sewer system and accumulates in the toilet facilities. Ventilation functions poorly, the walls and the floor are out of date and in need of repairs.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to take all necessary measures to create infrastructure necessary for extended visits at the establishment N5 and to renew the obsolete inventory of the maternal and children's unit. It is a positive fact that the inventory was renewed and the necessary infrastructure for the extended visits was set up during the year. As for other recommendations - the establishment of proper ventilation, operation of central ventilation system in the investigation rooms, ensuring the confidential environment for rendezvous and the shower plumbing and ventilation systems maintenance issues - the recommendations have not been implemented.

63 Written response N739/16 of the director of the establishment N5, received by Public Defender on 21 January 2016.

Establishment N6 of the Penitentiary Department

It should be noted that capital renovations of the facility began in 2014 and are ongoing. In 2015, the first and second regime buildings underwent cosmetic repairs, ventilation systems were installed in 11 solitary cells and 15 safe rooms, dining-kitchen building was substantially repaired and yards were roofed with metal nets.

The facility has 2 residential buildings. The first building has 152 cells, and the other one- 90 cells. During our visit to the facility[64] one or two prisoners were placed in the cells. There were 3 prisoners in three cells and 4 prisoners in only one cell. The area[65] per prisoner fully complied with the statutory requirement of Article 15 (2) of the Imprisonment Code in the cells inspected by the Monitoring Group of the National Preventive Mechanism. [66]

The newly renovated toilets of the cells have a semi-insulated door, making the isolation difficult in 2 and more place cells. It should also be noted that there are surveillance cameras in front of the toilets in the cells, which looks directly at the prisoners while they're serving their natural needs. The ventilation is not installed in the toilets of the cells, and the ventilation of the cells themselves is not sufficient. The common showers of the second residential building are only naturally ventilated. In some of the cells, water gets dammed in the bathroom sinks.

There are 6 investigation rooms in the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that the audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting them during the conversation.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper ventilation for residential as well as solitary confinement and quarantine cells, investigation rooms and shower rooms of the establishment N6. It should be noted that the recommendation was taken into account only with regards to solitary confinement cells, and there is still a problem as regards quarantine, investigation and shower rooms.

Establishment N7 of the Penitentiary Department

The establishment N7 is notable for hard living conditions, on which the Public Defender has repeatedly addressed[67] the Minister of Corrections, including the recommendation to close this institution. These problems are described in detail in 2013 and 2014 the Parliamentary Reports of the Public Defender, although the issue has not been resolved and no steps were taken towards the closure either.

The facility has 27 cells. Out of these 14 are double-occupancy cells, 5 cells are meant for 4 prisoners, and the remaining 8 cells are designed for eight prisoners each. In double cells N3 and N6 detainees were not placed due to repairmen works. Double cell area is about 7 square meters, four –place cells - 9 square meters, and eight-place cells - 14.5 square meters. Double cells have area of 3.5 square meters per prisoner, four-place cells - 2.25 square meters, and the eight-place cells -1.8 square meters. The table, the bed and the toilet space are not excluded from these space calculations. On June 19, 2015, the eight-place cells N2 and N18 cells were inhabited by 7 prisoners, cells N7, N9 and N25 by 6 prisoners, N16 cell by 4 prisoners, N11 cell by 3 prisoners.

64 15 September 2015.

65 E.g.: a cell in which one prisoner was placed, the cell area was of 16.34 m^2 to 19.97 m^2; 2-man cells had 20 m^2 to 39.17 m^2 of floor space. As for the single cell where 4 prisoners were placed, the space was 19.07 m^2.

66 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner".

67 30/07/2013 Recommendation N03-3/513; 16/12/2013 Recommendation N894/03-5; 19/02/2014 Recommendation N03/458.

As for the four-person cells, N10 and N17 cells were inhabited by 4 prisoner, cells N8 and N24 by 2 prisoners, while N1 cell only by 1 prisoner. Doubles cells N12, N13, N14, N15, N19, N20 and N22 were inhabited 2 prisoners. 6 prisoners were placed in separate cells.

From the 27 cells described above, 2 cells are inhabited by the prisoners involved in maintenance works, 2 per cell. Both cells are located at the first floor and did not have a number. On the left side of the entrance, near the staff room there is another cell for two prisoners employed in maintenance works. The cell has very small-sized (about 30X30 cm) window that is under the ground, and in fact neither the light nor air are provided to the cell. No other types of ventilation exist either. The cell area is of about 5 square meters (2.5X2). On the left side of entrance there is another cell for other two prisoners working in the maintenance sector. The cell area is 7.5 (3X2.5) square meter and the cell does not have any windows or ventilation. The cells do not have sanitary knots; both are old and damp, and unsuitable for human habitation.

Based on the monitoring results, it can be concluded that the space per prisoner in the living cells in most cases does not comply with the requirements of Article 15, paragraphs 2 and 3 of the Imprisonment Code.[68]

N2 and N18 cells, where 7 persons were placed at the time of our visit, space per person is of about 2 square meters. As for the N7, N9, N16 and N25 cells, which were inhabited by six, five and four prisoners, space per prisoner varies from 2.4 square meters to 3.6 square meters. N10 and N17 cells, inhabited by four prisoners, space per prisoner ranged from 2.25 square meters to 3 square meters. These calculations do not exclude the table, the bed and the toilet space.

Toilet space in the cells varies from 0.4 (0.63X0.69) square meters to 0.5 (0.62X0.78) square meters. Space held by a single row of the beds is approximately 1.3 square meters. Accordingly, in eight-bed 5,2 (1,3X4) square meters shall be deducted from the total space, as well as the toilet and table space for a total of about 1 square meter, which makes about 8.3 square meters. Obviously, in 8-bed cells, even at placement of no more than 4 prisoners, there's shortage of space. The same can be said of the four-person cells.

Cells of the establishment N7 have small windows (75X43 cm) covered by metal bars and the air and sunlight actually cannot reach the cells through these windows. The ventilation system does not provide enough fresh air, and there's explicit lack of natural light in the cells.

Prisoners of the establishment N7 complained about the location and arrangement of the yard. The yards are small and located in a place where the air is not actually moving. Monitoring showed that the walking space is about 13 square meters (4.2X3.1). There are four of such spaces in the facility. Walking spaces are surrounded by the walls about three meters high and covered with metal bars and nets. Because of this, and considering that the area is situated between the buildings, sunlight and fresh air cannot reach these yards properly.

In addition, it should be noted that the facility N7 is special risk prison facility and its prisoners enjoy the right to walk one hour a day in the fresh air. Some of the prisoners who serve their sentences in the facility have the experience of chronical pulmonary diseases and tuberculosis in the past. In such conditions of life, their health conditions are aggravated and the risk of disease recurrence is increased.

Cell toilets of the establishment N7 are too small, there is no ventilation system and the flushing tanks are not installed. Although the toilet is isolated from the rest of the space of the cell, the open space remaining from above the door of the toilet, in the absence of the ventilation system guarantees the unpleasant smells to reach the cell. Toilet area is of between 0.4 (0.63X0.69) square meters to 0.5 (0.62X0.78) square meters. The prisoners say that some of them, due to their physical traits, are not able to normally satisfy their natural needs due to the narrowness of the toilet. Prisoners often have to open the door of the toilet and satisfy their natural needs

68 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner". According to paragraph 3 of the same Article: "the living space per inmate of any temporary detention institution shall not be less than 3 square meters".

in such a humiliating conditions. It should be noted that the beds are located in front of the door of the toilet and solitude virtually is impossible.

The establishment N7 does not have the infrastructure for long visits. Thus, the prisoners do not have the opportunity to enjoy a long date.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to close the establishment N7 due to the dire living conditions. According to the Ministry's reply to the recommendation[69] at this point the ministry cannot make a decision on the complete liquidation of the establishment, but in the near future, significant reduction of the number of the institution's inhabitants is planned via distribution of the relevant inmates to the institutions of appropriate risk. Comprehensive rehabilitation of the establishment N7 is also planned, with the abolition of the first-floor and significant reduction of the limit of inhabitation of the cells. It should be noted that in February 2016, 19 inmates were transferred from the establishment N7 to the establishment N6. With regards to the Ministry's position, it is important to note that considering the existing infrastructure of this establishment and its original function (built as an investigative isolator), the Public Defender has difficulty to imagine how the rehabilitation of the establishment can bring it into line with the standards established for custodial institutions. Therefore, the recommendation to close the establishment N7 remains unchanged.

Establishment N8 of the Penitentiary Department

The establishment N8 has 4 functioning residential blocks. The buildings have 2,4,6,8, and 10-place cells. The space per prisoner in the cells does not comply with the requirements set under paragraphs 2 and 3 of Article 15 of the Imprisonment Code.[70]

It should be noted that the European Committee for the Prevention of Torture, following their visit in 2012 issued the recommendation to the government to remove extra beds and ensure 4 square meters space per prisoner in multi-bed cells.[71] This requirement has not been fully implemented yet.

The artificial ventilation system is poorly functioning in the living cells. In some cells high humidity is observed. It should be noted that the establishment does not have the infrastructure for extended visits.

The establishment has 11 waiting cells. Reasonable reception and waiting section has 4 cells, where prisoners are originally placed when they enter the establishment. The waiting cells are located partially underground, resulting in insufficient lighting and ventilation in the cells. Sanitary conditions in the cells are unsatisfactory. During our visit, specific smells and large number of cockroaches were noticeable in these cells. Inmates were not allowed to linen, and were told that that did not enjoy the right to linen.

At the time of the visit of the Prevention Mechanism Monitoring Group,[72] the sanitary/hygienic conditions of the de-escalation rooms[73] were unsatisfactory. In particular, floor of cell N2 was full of scattered hair and dirt piles, and in cells N1 and N3 water leaked from the toilet bowl. The rooms have only artificial ventilation system, as the windows are not opened. Prisoners, in all three of the cells, were subject to constantly burning light, both day and night.[74] At the time of the visit[75] the inmates of the de-escalation rooms did not have their

69 Letter N186/16 received by the Public Defender's Office on 11 February 2016
70 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner". According to paragraph 3 of the same Article: "the living space per inmate of any temporary detention institution shall not be less than 3 square meters".
71 Report on the visit of 13-23 November 2012 to Georgia, CPT/Inf (2013) 18, para. 33.
72 24-26 November 2015.
73 There are three such rooms in the institution.
74 Switching of the light in the rooms is regulated from the outside, by the employees of the institution.
75 24-26 November2015.

personal hygiene items (toothbrush, toothpaste),[76] linen, towel and pillow. Prisoners could not use their right to take a shower.[77] There is no video surveillance system in the isolated corridor in front of the de-escalation cells.

The N8 facility exercise yards are the bottom floor of the apartment buildings. The walking yards are similar to cells and are covered with a metal grid on the top. Chairs and inventory are not appropriate and there is generally depressing atmosphere.[78] The prisoners did not have the opportunity to exercise. According to them, they often do not enjoy the right to walk in the air, because the walk is offered at 7 or 8 o'clock in the morning.

The investigation rooms are located on the two floors of the administrative block of the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. There are 37 investigation rooms, 36 of which are equipped with a surveillance camera. This remaining one is where the representatives of international organisations generally meet with the prisoners.

There is no heating in the investigation rooms. The rooms do not have windows or central ventilation system either. The rooms are equipped with air conditioners, which in the second floor rooms operate with difficulties, or sometimes they do not function at all. Unfortunately, the above-mentioned problem stands since the opening of the N8 facility.

In 2014, the Public Defender addressed the Minister of Corrections with the following recommendations: to provide each prisoner of the establishment N8 with 4-square-meter area; to remove the extra beds from the cells; to ensure proper ventilation of the facility; to install the heating system and repair existing air conditioners in the investigation rooms, to install central ventilation system in the investigation rooms; to repair the roofs of the buildings in order to avoid water leakage on the from the ceilings of the cells; the prisoners must be allowed to enjoy the fresh air with the right of schedule during the day; to arrange a yard on the ground level; to provide chairs, exercise and other necessary equipment in the yards; to repair and properly equip the shower rooms.

With regards to the above recommendations, it should be noted, that, although air conditioners were installed in the investigation rooms in 2015, to the extent that these rooms do not have windows and other means of natural ventilation, it is not possible to clean the air. Thus, it is necessary to ensure adequate artificial ventilation system. As for the other recommendations, they have not been implemented so far.

Establishment N9 of the Penitentiary Department

The establishment N9 has 1 residential building with 26 cells. During our visit, [79] the space of the living cells per prisoner did not comply with the requirements of paragraphs 2 and 3 of Article 15 of the Imprisonment Code.[80]

Living cells are lit both naturally and artificially. Cells are ventilated through the windows, but it is necessary to install artificial ventilation system. Laundry facility is not functioning and the prisoners are compelled to wash and dry clothes and linens in the cell, or in some cases, to send them to their family members for washing.

Establishment has 5 yards. All five are about the same size, 24-25 m^2. They are partially roofed (1.5X3 m) and equipped with chairs and ashtray bins. To ensure physical activity of the prisoners it is preferable to equip yards with exercise tools.

76 According to the officers on duty to the de-escalation cells, they are not providing the prisoners with toothpaste and toothbrush for the interests of their safety, but these items are stored in the corridor commode, which did not prove true after we checked.

77 Also right to walk, making phone calls, receive visits, to use the shop, with the right to send correspondence.

78 Problems related to the exercise yards are also marked in the CPT report on the visit to Georgia in 2010, para. 81, available in English at the following address: <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.htm>

79 9 December 2015.

80 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner". According to paragraph 3 of the same Article: "the living space per inmate of any temporary detention institution shall not be less than 3 square meters".

According to the information Received from the establishment N9,[81] the quarantine and solitary confinement cells did not function in the establishment throughout the year. The establishment does not have the infrastructure for long visits, and the prisoners did not have the opportunity to enjoy a long-term visit.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to create extended visit infrastructure and to ensure proper artificial ventilation of residential as well as investigative rooms and showers. It should be noted that these recommendations have not been implemented.

Establishment N 11 of the Penitentiary Department

The establishment N11 has 1 residential building. Living cells are lit both naturally and artificially. Cells are ventilated by natural means. All the individual cells have a toilet and shower. There is also a common shower. According to the information received,[82] the repair works were carried out in the spring of 2015 in every cells of the establishment. The sanitary knots of the cells were completely renewed.

The short visits room of the facility also serves as the investigation room. There are several tables in the room, and the practice is that several prisoners receive their visitors simultaneously, which violates the privacy of the conversation. The teenagers have the opportunity to meet the members of their family without any barriers though, which is welcome.

The facility has two rooms allocated for extended visits, which is isolated from other buildings. At the time of our visit[83], only one of these extended visit rooms was properly furnished, whilst the other is in need of some repairs. A video-conferencing facility also operates in the establishment, which was renovated and equipped with appropriate tools.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper artificial ventilation of residential as well as investigative rooms and showers, to eradicate the reasons of humidity in the living cells and to properly renovate them. It shall be noted that according to the information received,[84] the repair works were carried out in every cells of the establishment. The sanitary knots of the cells were completely renewed, which is welcomed. As for the relevant repairs of the extended visit room, this recommendation remains unfulfilled.

Establishment N12 of the Penitentiary Department

Infrastructural problems existed for years at the establishment N 12, as pointed out in detail in the 2013 Annual Parliamentary Report of the Public Defender. It should be noted that according to the information received from the establishment,[85] the following renovations were held in 2015: a room was allocated and renovated for the beauty salon; computer training rooms for prisoners were overhauled; 4th and 5th residential block bathrooms were renovated; the medical block has been repaired in July/August and the specialized rooms for "C" Hepatitis treatment program were allocated, the chief doctor's room was renovated, a new medication storage and a pharmacist cabinet were created.

81 The letter N642/16 of the Director of the Establishment N9, received by the Public Defender's office on 20 January 2016.
82 The letter N741/16 of the Director of the Establishment N11, received by the Public Defender's office on 21 January 2016.
83 11 March 2015.
84 The letter N741/16 of the Director of the Establishment N11, received by the Public Defender's office on 21 January 2016.
85 The letter N11796/15 of the deputy director of the Establishment N12, received by the Public Defender's office on 6 October 2015.

There are 7 residential blocks at this establishment, with different number of cells – 2[86], 3, 4[87], 5, 6[88], 8[89], 10[90] and 12[91]-place cells.

In some cells, the space allocated per prisoner is not in compliance with the requirements of paragraph 2 of Article 15 of the Imprisonment Code.[92] In the newly renovated residential block, in 12-place cell, where 11 prisoners were placed at the time of our visit, the cell area is 36.4 m^2. The 4-place cells, in which 4 prisoners were placed the area of the room was 13.6 m^2. In the old residential block in the 8- place cells, which housed 7 prisoners, the cell area was 26.7 m^2 and 23.8 m^2.

The main residential block[93] is old and in need of major repairs. The building for the inmates enrolled in maintenance service is in even worse conditions. This applies both to infrastructure problems, as well as to sanitary and hygienic conditions. Because of amortized infrastructure, it is impossible to maintain proper sanitation in the cells. Maintenance service prisoners' cells have small windows,[94] thus they have no proper lighting and are not aired.[95] The corridor is dark, with the floors, walls and ceilings being in deteriorated conditions. The electrical networks need to be fixed in every cell of the main block, since the requisite safety standards are not protected.

It should also be noted that in the old residential buildings some of the cell doors / windows had built-in fans. In cells with no fans, artificial ventilation was complicated. There is no ventilation system in the old residential buildings and the building for prisoners involved in maintenance service.

In 4 cells on the third floor of the buildings there are no sanitary facilities. In case of placement of the prisoners in these cells there will be difficulties with use of the toilet at night, when the doors close. The cells of the old residential buildings do not have an individual sanitation knot, prisoners use the common toilets.

The establishment has one 18-seater waiting (quarantine) cell, with an area of 41.7 m^2. Even at the placement of 11 prisoners in this cell will violate the standard 4 square meter per prisoner requirement of Article 15 of the Imprisonment Code.

There are 4 solitary confinement cells at this establishment.[96] One of these cells is currently being renovated and thus temporarily out of use. All cells are under electronic surveilence. The space of the cells are 12.8 m^2, 17.2 m^2, 18.3 m^2, walls and ceilings are plastered and painted. The cells are not provided with artificial ventilation. Each cell has a semi-isolated sanitary facilities. №1 and №3 cells have damaged toilets.

There is one investigation room in the establishment of the room, with an area of 17 m^2; Room is equipped with 2 tables and 4 chairs; In the case of two simultaneous visits the confidentiality of the discussions will be violated. The natural lighting of the room is unsatisfactory.

Since August 23, 2015, the store of the establishment is supplied by LLC "Kalina Georgia". According to the manager of the store, the store is supplied twice a week, however, due to increased demand for the products, it

86 The space of the 2-bed cells in the old residential block is 9.6 m^2.
87 Space of the 4-bed cells in the new residential building was 13.6 m^2.
88 The space of the 6-place cells in the new residential buildings is 17.5 m^2, however in the view of protection of 4 m^2 per prisoner requirement, the number of actual inmates was less than 6.
89 In the old residential building approximately 25.6 m^2/26 m^2/18.5m^2/28m^2, as for the new building, the 8-place cell space is 19.8 m^2, however in the view of protection of 4 m^2 per prisoner requirement, the number of actual inmates in all cells was less than designed for.
90 In the old building the space of the 10-place cell was 24.7 m^2, but it was inhabited by 4-5 prisoners.
91 Space of the 12-bed cells in the new residential building is 36.4 m^2.
92 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner".
93 Where there administration rooms are also situated.
94 N9 window – 0.47cmX0.36cm, N7 cell window – 0.65cm X 0.94cm, N11 cell window – 0.67cm X 0.70cm, N12 cell window – 0,78cm X 0.42, N3 and N8 cell windows – 1.02 cmX1.04cm.
95 N7, N9, N11, N12, N3 and N8 cells.
96 Note: there were no prisoners in solitary confinement at the time of the monitoring.

may be supplied three times a week. The store employs three persons.[97] It should be noted that no complaints about adequate supply of the products to the store were recorded by prison inmates. According to the manager of the store, the shop needs a six-counter refrigerators,[98] to import such kind of products, as fish, dip, meat and meat products - cutlets, kebab and other. Store is in need of air conditioning in order to keep the products at the necessary storage temperature.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper artificial ventilation of residential and solitary confinement cell as well as investigative room and showers. This recommendation, however, remains unimplemented.

Establishment N14 of the Penitentiary Department

According to the information received from the establishment,[99] the following renovations were undertaken throughout the year: in June 2015 the new hot water supply wiring was installed, the showers, pipes and faucets were changed, and common showers were divided into cabins In August 2015 the construction of the kitchen was completed, modern cooking pots, refrigerators and other equipment were acquired.

There are 4 residential buildings in this establishment. Cells have sufficient natural and artificial lighting. Central heating system is operational. Cells are ventilated only naturally. However, it should be noted that in 2015 ventilation hoods were installed in the cells.

The sanitary situation of the medical operating room is not satisfactory, and the room is isolated from medical reception only by a curtain.

Quarantine section consists of 2 parts, which are designed to accommodate 28 and 38 prisoners. The cell has concrete floor, the two-tier beds and individual lockers. Each cell has 3 windows, which have the inside metal grid, and the outside metal bars, limiting the penetration of natural light in the cells and preventing the air movement. The cells have no artificial ventilation.

In the 2014 Annual Report to the Parliament, the Public Defender addressed the Minister of Corrections with the recommendation to ensure proper natural and artificial ventilation of residential, solitary confinement and quarantine cells, which was fulfilled only with regards to residential cells. Although, the problem of lack of natural and artificial ventilation remains in solitary confinement and quarantine cells, the recommendation with regards to the arrangement of the yards was implemented - in 2015 volleyball field was arranged, table tennis equipment installed and garden equipped with exercise tools, benches were installed in the second and third residential yards, which is a positive development. The requirement to ensure the privacy of showers was also fulfilled by the partition of the showers. The recommendation to separate the reception room of the Medical Unit from the operating room has not been met.

Establishment N15 of the Penitentiary Department

The space of the cells in N15 establishment is 17 m^2-18m^2 and they are meant for 6 persons each. Space does not correspond to the requirements of Article 15, paragraph 2 and 3 of the Imprisonment Code.[100]

97 The prisoners are not employed in the store.
98 During their operation of the store "Kalina Georgia" brought into a three-counter refrigerator, and a variety of consumer products.
99 The letter N890/16 of the Director of the Establishment N14 received by the Public Defender's Office on 25 January 2016
100 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner". According to paragraph 3 of the same Article: "the living space per inmate of any temporary detention institution shall not be less than 3 square meters".

The windows of the living cells fully provide natural lighting and ventilation. Artificial ventilation system is not operating. There is central heating, flooring is of stone mosaic, and the walls are rough. The sanitary condition in the corridors and stairs of the residential building is not satisfactory.

Quarantine and solitary confinement cells are located in a closed-type residential building. In total there are 16 single cells, which do not have isolated sanitary facilities. Prisoners have to serve their natural needs in the cell without any sanitary node. Sanitation knot does not allow solitude. Meeting natural needs occurs under surveillance cameras. Sanitary knot does not have water flush.

There are 38 telephones at the establishment,[101] available for prisoners to make telephone calls. Our visit demonstrated that the prisoners have to wait up to half an hour or more in the line before they can call.

On the first floor of the administrative building of the establishment, there's a room for short visits, which houses 33 brief cabins. The cabins are partitioned with glass windows and metal net.[102] Prisoners are deprived of any kind of physical contact with family members.

The laundry facility is operating at this establishment. It is located in the vicinity of the stadium. Laundry is in a one-story building, situated across from the common toilet facilities for general use. Laundry occupies two small rooms connected to each other. In one there are 2 washing machines, whilst the other room is used as dryer. There's no laundry drying machine or ironing equipment. In general, sanitary and hygienic conditions are not satisfactory. Due to the deficit of the washing machines, as well as the sanitary conditions of the building, prisoners for the most part do not use the laundry and do washing in the residential block toilet facilities and / or cells and dry in the common yard, in specially designated areas.

The storage facilities are located outside, in the amortized one-story building. Warehouse has damaged part of the roof, which leaks into the building in the rain and snow. Storage rooms are not arranged properly, there are not enough shelves. Sanitary conditions of the storage are generally unsatisfactory.

In accordance with the recommendation of the Parliamentary Report of the Ombudsman of 2014, 4 square-meter living space should have been ensured in N15 establishment, natural and artificial ventilation of basic living cells, as well as solitary and quarantine cells should have been provided for, plumbing and ventilation systems should have been fixed in the showers. It should be noted that these recommendations have not been implemented.

Establishment N16 of the Penitentiary Department

It should be noted that on July 16, 2015, N16 low risk prison was opened. Establishment has 3 residential buildings. Prisoners live in the "A" building on the first and second floors. Other buildings are free. At the time of our visit[103] each prisoner was provided with the requisite 4m^2 living space.

There is both natural and artificial ventilation system, ensuring proper ventilation of cells. Cells have central heating. Facility has a cell adapted for persons with disabilities. The sanitary and hygienic norms are preserved on whole territory.

The prisoners enjoy the right to walk without restriction, for which the facility has 3 yards. The convicts have the opportunity to benefit from the establishment of sports facilities (football, basketball) and two open football and volleyball stadiums. On the first and second floors the "A" building, there are separated common spaces, equipped with TV, the chairs, tables, and chess and checkers tables.

101 Telephones are set at various places in the residential building, building facades on the walls.
102 From the side of the prisoners' cabin.
103 27 November2015.

At the entrances of the first and second floors of the "A" building the complaint boxes are installed. On the first floor, the complaint box is in front of the room of staff on duty and there is a camera watching the box. On the second floor, the surveillance camera is installed directly above the box, which violates confidentiality.

Establishment N17 of the Penitentiary Department

There are 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 30, 32 and 34-place cells at the establishment N17.[104] The space of the cells does not correspond with the requirements of paragraphs 2 and 3 of Article 15 of the Imprisonment Code.[105]

Residential facilities are outdated and in need of major repairs. The sanitary conditions of the cells are unsatisfactory. The ventilation system cannot provide adequate ventilation in the cells.

The cells of the first floor of the third residential block were characterised with observable humidity. In one of the cell, on top of beds, parts of ceiling plaster were falling down, and a piece of cloth was stretched to accumulate the crumbling plaster.

At the time of the visit[106] 4 cells of the closed block did not have glasses in the windows. They were replaced by the polyethylene, resulting in low temperature in the cells. The sanitary conditions of the cells were unsatisfactory.

Facility operates two short visit rooms. Short visits are carried out via dividing the glass wall, and the room is equipped with phones. The prisoners are deprived of any kind of physical contact with their family members at short time visits.

10 rooms are allocated for long visits in the establishment. All rooms are identical, each with the space of 17 m^2. Rooms are equipped with all the necessary furniture and equipment. The situation of the 6 rooms is satisfactory, while the rest of the 4 rooms are in need of repairs.

Attention should be paid to the sanitary conditions of the kitchen of the establishment. During the monitoring, it was found that the facility does not have dishwashing sink. Dishes are washed on the kitchen floor in the metal box.

Prisoners of semi-closed residential buildings can move freely across their residential buildings and pedestrian area of the yard during the day, while prisoners of the closed-type residential building of the establishment can enjoy a 1-hour per day walk. In the yards of the semi-closed residential buildings there are tables, chairs, playgrounds and the necessary equipment for exercise. Sports and recreational equipment is not provided in the yard of the closed regime building.

There are 4 investigation rooms on the first floor of the administrative building of the establishment. In addition to the investigative authorities, the prisoners meet lawyers, religious leaders, representatives of international organizations and representatives of the Ombudsman, with whom conversation confidentiality is guaranteed by law. All rooms are equipped with a surveillance camera. Most of the prisoners believe that an audio or video recording of their conversation occurs in these investigation rooms, having a negative impact on the openness of prisoners and restricting them during conversations.

According to the recommendations voiced in the Annual Parliamentary Report of 2014, the 4-square-meter space should have been provided for every prisoner in the facility, the sewerage system should have been

104 The letter N829/16 of the director of the Establishment N17 received by Public Defender's Office on 22 January 2016.

105 According to paragraph 2 of Article 15 of the Imprisonment Code: „the living space norm in any type of penitentiary institution shall not be less than 4 square meters per prisoner". According to paragraph 3 of the same Article: "the living space per inmate of any temporary detention institution shall not be less than 3 square meters".

106 7-8 December 2015.

fixed on the whole territory. In addition, appropriate natural or artificial ventilation should have been ensured in the basic cells, as well as solitary and quarantine cells. Despite the efforts, the problems still remain in the establishment.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Abolish the establishment N7.
- Adopt all necessary means to solve the problem of water supply to the establishment N3.
- Create the infrastructure for long visits at the establishments N8 and N9.
- Provide a minimum 4 square meter living space per prisoner at the establishments N2, N3, N7, N8, N9, N12, N15, and N17.
- Remove extra beds from the cells of the establishment N3.
- Ensure adequate ventilation in the living cells of the establishments N2, N3, N6, N8, N9, 12, N15 and N17.
- Install central ventilation system in the investigation rooms of the establishments N5 and N8
- Ensure appropriate ventilation of the solitary confinement and quarantine cells, as well as the investigation rooms and showers at the establishments N2, N5, N6, N12, N14, N15 and N17.
- Ensure appropriate natural and artificial ventilation in the investigation and shower rooms of the establishments N9 and N15.
- Ensure the protection of sanitary norms in the de-escalation rooms of the establishment N8.
- Isolate the sections for solitary confinement and quarantine sections of the establishment N15.
- Take all necessary means to ensure protection of sanitary/hygienic norms in the laundry and corridors of the residential block of the establishment N15.
- Arrange the dishwasher sinks in line with relevant sanitary/hygienic norms in the kitchen of the establishment N17.
- In the renovated block of establishment N6 ensure the separation of the toilet compartment from the cell to ensure the isolation in the toilet.
- Provide clean bed linen to inmates at the establishment N2 on a regular basis and as necessary.
- Repair the roofs of the establishment N8 to avoid water leaking from the ceiling.
- Allow the prisoners to take their daily walks according to the daily agenda in the establishment N8.
- Arrange the yard on the ground level in the establishment N8 and equip it with benches, exercise and other adequate inventory
- Allocate the appropriate space for the yard at the establishment N3 and equip it in the manner to make the exercise possible for prisoners, arrange the sports field.
- Arrangement of the laundry block at the establishment N9 to ensure the accessibility of the clean linen and clothes to the inmates.

- Install the electronic surveillance equipment in the corridor to the de-escalation cells at the establishment N8.
- Provide for the confidential area with requisite space for the visits at the establishments N5 and N11.
- Arrange the investigation room in the manner preserving confidentiality in case of simultaneous visits at the establishment N12.
- Repair and equip the shower rooms at the establishment N8 with necessary equipment
- Fix the sewerage system in the shower rooms at the establishments N5, N15 and N17.
- Arrange the installation of the electric networks in accordance with the safety norms at the establishment N12.
- Secure repairs of the cells of prisoners enlisted in the prison maintenance service and of the old regime building at the establishment N12.
- Adopt all necessary measures to install adequate number of telephones at the establishment N15
- Allocate the room at the establishments N2, N3, N5, N6, N9, N11, N12, N14, N15, N17, N18 and N19 where the Public defender and members of National Prevention Mechanism will meet the inmates without any surveillance and in full protection of confidentiality.

The agenda and rehabilitation activities

According to the European Prison Rules, each prisoner shall be given the opportunity, on a daily basis, to exercise at least one hour in the open air, if the weather permits.[107] In bad weather they shall be provided with alternative training opportunities.[108] According to Article 14 of the Imprisonment Code of Georgia, the accused / convict has the right prescribed by law, to spend at least 1 hour on a daily basis in the fresh air (to take advantage of the right to walk).[109] Typically, in semi-open establishments the inmates can spend their days moving freely in the exercise yards in residential buildings, while closed prisons inmates have the right to walk for at least 1 hour a day.

It should be noted that the prisoners of the closed institutions where they spend 23 hours in the cells and their 1-hour walk happens to take place in the exercise yards similar to cells. This is likely to seriously affect their health. Accordingly, it is necessary to set up appropriate conditions for the presence of fresh air and exercise for prisoners and at the same time increase the length of daily stay in the fresh air. In the exercise yards of closed institutions, prisoners do not have the proper opportunities of physical activity, because there is no exercise equipment. Due to inappropriate setting of the exercise yards, in some cases, prisoners have refused to use the right of walk into the fresh air.

Public Defender has repeatedly noted in its reports that prison conditions shall ensure the re-socialization and reintegration of prisoners. Convicts serving prison terms shall obtain or increase the desired knowledge and skills, be allowed to participate in sports, artistic, intellectual and other events. All of this is necessary, in order to ensure that convict returns to society after serving the sentence as a full-fledged person.

According to Nelson Mandela Rules, the purposes of a sentence of imprisonment or similar measures depriving of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of

107 Rule 27.1.
108 See ibid, Rule 27.2.
109 Paragraph 1.z.

such persons into society upon release so that they can lead a law-abiding and self-supporting life.[110] To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programs, activities and services should be delivered in line with the individual treatment needs of prisoners.[111]

Re-socialization process requires a comprehensive approach, which includes a well-thought-out action plan, which encompasses, along with the general measures, adoption of individual approach as well. The basic tools re-socialization that are used taking into consideration the sentence, the crime committed, the offender's personality, behavior and psychological state of mind, can be determined as: prescribed punishment, rehabilitation programs, employment of convicts, general and professional education, and public relations.

In order to maintain physical and mental health of all the prisoners, they should be provided with the opportunity to rest and cultural activities.[112] All of the penitentiary establishments shall seek to ensure that prisoners are provided with educational programs, which are as comprehensive as possible and meet their individual needs, taking into account their aspirations.[113] A systematic program of education, including skills training, strengthening of the overall level of education of prisoners and encouraging crime-free life, shall be a key part of regimes.[114]

Throughout 2015 a variety of professional and vocational courses were held and are still being held in the prisons. Various types of events, including screenings, writers and other celebrities, poetry, chess tournaments, checkers, table tennis and more were introduced for the re-socialization of the prisoners.

Noteworthy that the rehabilitation programs were introduced at the establishments N2, N3, N5, N6, N8, N11, N12, N14, N15, N16, N17, N18 and N19. The prisoners were given the opportunity to participate in cultural and sports activities, acquire general / vocational education and look into the various trades. In this regard, the best example is the establishment N5. The rehabilitation activities of this establishment are provided in the table below.

N	Vocational Courses	Period	Number of Participants
1	Cosmetology	March/April	25
		October/November	21
2	Sewing	March/April	23
		December/ongoing	12
3	Felt Making	June/August	14
4	Hair stylist	July/August	15
		September/October	19
		November	20
5	Massage	September/October	18
N	**Educational Programs**	**Period**	**Number of Participants**
1	Bangkok Rules	March/April	24
2	Healthy Lifestyle	April/May	15

110 Rule 4.1.
111 See ibid Rule 4.2.
112 Nelson Mandela Rules, Rule 105.
113 European Prison Rules, Rule 28.1.
114 European Prison Rules, Rule 106.1.

3	Operation of small businesses	May/June	16
		November/ongoing	16
		November/ongoing	8
4	English language	June/September	20
		November/ongoing	18
5	Theoretical course of driving license	October/December	48
6	Guide(tourism)	November/ongoing	13
7	Georgian language	November/ongoing	10
8	Hotel Personnel training	November/ongoing	10
9	Computer graphics	November/ongoing	7
10	Computer databases	November/ongoing	5
11	Office Software	November/ongoing	9
N	**Psycho-social rehabilitation activities**	**Period**	**Number of Participants**
1	Training of cognitive and social skills	July/September	5
		October/November	6
2	Psychological rehabilitation via music therapy	June/November	15
3	Psychosocial Rehabilitation of Victims of Violence through art therapy	June/November	12
4	Training- preparation for release	December/ongoing	12

The table below shows the activities in various penitential institutions in 2015 and the number of prisoners involved in these activities.

N	Psycho-Social Rehabilitation	N2	N8	N12	N14	N15	N16	N17
1	Healthy Lifestyle	45	18	17	8	10	28	35
2	Return to Society / Preparation for release	12		9	15		17	12
3	Stress Management	11	18	10	13			7
4	Cognitive and Social Skills	10		22			5	
5	Anger / aggression / conflict management/ resolution		8		14			
6	Useful social skills / Positive thinking			11	16	28		10
7	HIV (AIDS)	50		13		12		
8	Tuberculosis	15	10	11	13	13		
9	Fight against human trafficking	10	24	11			25	19
10	Art-therapy	78			21		28	11

Apart from the activities listed in the above table the following educational / vocational and professional programs were held in prisons: English language, theoretical training on driving license and computer programs,[115] Georgian language,[116] operator of small business,[117] guide (tourism),[118] church service chant and

115 Establishments N2, N8, N11, N12, N14, N15, N16 and N17.
116 Establishments N2, N8, N11, N15, N16 and N17.
117 Establishments N2, N8, N12, N14, N16, N17.
118 Establishments N11and N12.

reading,[119] woodcarving,[120] embroidery,[121] hair-stylist.[122] The cultural / sports events also took place, including a meeting with writers and other famous people; Film screening and discussion; Tournaments of chess, checkers, football, basketball, table tennis, rugby; Staged performances; concerts and a variety of intelligent games - "What? Where? When?","Etalon," poetry readings and meetings with clerics. These various programs and activities in the prison are undoubtedly welcome, but it is necessary for all the programs and activities to be the systematic nature and to be present in large numbers, especially in closed institutions.

As noted in the Parliamentary Report of 2014, although, the establishments N18 and N19 are the medical centres, there are some sections where the prisoners are placed for a long time, hence, it is important that these establishments implement certain activities. According to the information received from the establishments,[123] both agencies have taken steps towards the implementation of rehabilitation activities, although it is necessary to offer the prisoners as much as possible, and a variety of programs and activities. Only one program was held at the establishment N18 throughout the year[124] in October/November and only 4 inmates participated. As for the activities carried out at the establishment N19, please see the chart below.

Programme	Number of Participants
Woodcarving and Painting of Icons	4 convicts
English language	22 convicts

Unfortunately no activities were reported at the establishment N6[125] but for a tournament of chess and checkers. As for the establishments N7 and N9, during the year prisoners were not allowed to engage in valuable, interesting activities for them. This situation creates an unhealthy, stressful environment, which adversely affects the relationship of inmates and staff, as well as the order and security of the facility.

In 2015, N3 facility held chess and checker tournament, carried out in the English language (4 convicted), the Georgian language (2 convicted), web design (4 convicts) and art-therapy (8 convicted) programs. It should be noted that in 2014, according to the Parliamentary Report, N3 facility had no rehabilitation and the Public Defender welcomes the establishment of the steps taken towards the rehabilitation of prisoners and hopes that rehabilitation activities will increase in the diversity and the involvement of prisoners.

2013 and 2014 Reports of the Public Defender addressed the Minister of Corrections, to ensure that a variety of re-socialization programs are introduced and implemented at the establishment N7 of the penitentiary department, as a temporary measure, before its final abolition. It should be noted that this recommendation has not been fulfilled. It is Necessary, that prisoners of closed institutions are allowed to be engaged in something of their interest, be it entertainment, arts, labor, educational and other activities, at least in their cells. It is also important, even in the view of limited possibilities that the institution promotes certain individual sports activities. For example, if requested, a prisoner shall be taken to the yard, where it will be able to train individually. For this purpose with the view of the interests of safety, it is possible to make elementary sports equipment available in a yard.

In the Parliamentary Report of 2014, the Public Defender advised the Minister of Corrections to take all necessary measures to introduce a wide variety of rehabilitation activities in all penitentiary establishments, to encourage the establishment of a social forum, with the participation of the prisoners and to plan and carry

119 Establishment N12.
120 Establishments N2, N11, N16, N17.
121 Establishment N2.
122 Establishments N12 and N15.
123 Letter N822/16 of the director of the establishment N18 received on 22 January 2016 and Letter N575/16 of the director of institution N19 received on 18 January 2016.
124 Letter N822/16 of the director of the establishment N18 received on 22 January 2016 did not specify the contents of this program.
125 While it is true that the establishment N6 was under repairs during the year, several convicts still served their sentences there.

out various activities. Such measures are to be planned, taking into consideration the interests of the prisoners. In order to secure better involvement of prisoners in such activities, various forms of encouragement should be used. It should be noted that the above recommendations have not been implemented. The acute problem is the implementation of the rehabilitation programs in the penitentiary department establishments N3, N6, N7, N9, N18 and N19. This was also indicated in the Public Defender Parliamentary Reports of 2014 and 2013.

Employment of the prisoners

According to European Prison Rules, Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.[126] Prison authorities shall strive to provide sufficient work of a useful nature.[127] As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.[128]

One of the positive developments of 2015, is the proposed amendment to the Imprisonment Code, according to which the convict, who is engaged in the individual working activities, is entitled, under the consent and control of the prison director and with the support of the establishment, to sell his/her products.

A number of inmates are engaged in individual activities in prisons, in particular preparation of different types of articles (crosses, enameling, woolen fabrics, and more.). The existing legislative record does not allow the accused / convicted to sell these works. By virtue of the proposed amendments, the accused / convict will be able to manufacture a variety of products and realize them under the control from the institution. The realisation will be held in accordance with the order of the Minister, likely through the online store and the money will be transferred directly to the accused / convict's personal bank account. The list of the allowable activities, the rules applicable to them and rules of realisation of individual manufactured item (product), will be set by the Minister of Corrections.

The bill specifies the general labor issues of the accused / convicted, in particular, if the penitentiary institution has employment opportunities, it can employ the accused / convict for small repair works. In this case, the Ministry plans setting up a small working group, which will train the prisoners in the relevant profession and provide the fulfilment of those small repair works, which will be held in the particular case of the penitentiary system. In this way the inmates will develop job skills, and will receive the corresponding amount of compensation for the work performed. This type of work will contribute to their re-socialization and rehabilitation.

Accused / convict employment-related issues and the procedure for remuneration, as well as the full list (including small repair works, and their delivery and acceptance procedure) of jobs which can be fulfilled by the accused/convict, shall be determined by order of the Minister.

On 16 July 2015 a new low-risk prison N17 was opened. According to the Order #71 of the Minister of Corrections[129] one of the functions of the institution is organising employment of prisoners. Manufacturing sector was established in the establishment in order to deal with the maintenance works. On 27 November 2015 our visit to the establishment revealed that none of the prisoners had been employed since the start of operation of the institution, when the main purpose of their transfer to this institution was to get them employed. As the visit revealed, certain prisoners took turns cleaning up their living cells and other areas, but none of the work was performed for the appropriate remuneration.

In 2015, the prison inmates enrolled in maintenance service of the institutions fulfilled works such as parcel delivery and distribution of food for the prisoners, serving the church, washing, distribution of the food and

126 Rule 26.1.
127 Rule 26.2.
128 Rule 26.3.
129 the Order #71 of the Minister of Corrections On regulations of the establishment N 16, Article 3.2.d

consumer goods from the institution store, cleaning and library work. The convicts were paid for the work done, the amount of which is determined in accordance with their position.

Remuneration of those enrolled in maintenance	Gross Salary	Net salary
Head of the Service team	250	200
Deputy Head of the Service team	225	180
Service Personnel	200	160

Notable, that in contrast to other establishments, none of the inmates of the establishments N11 (Juvenile) and N18 (medical) were employed. In 2014, 804 inmates were employed in the prison system, while in 2015 the number of prisoners employed increased slightly and amounted to 873 inmates. As for the establishments by the employment of convicts, see the data in the table below.

Establishments	N2	N3	N5	N6	N7	N8	N9	N12	N14	N15	N17	N19	Total
2014	112	28	31	51	4	192	10	37	99	68	138	34	804
2015	101	21	37	26	4	247	7	32	92	60	219	27	873

Prison inmates enrolment in maintenance work is regulated by the "Rules of Convict's involvement in the maintenance work and remuneration" established by the order of the Minister of Corrections N157. According to these Rules, enrolment of the inmate in the maintenance works of penitentiary establishment occurs on the basis of a written application of the inmate, by an order of the director of the institution.[130] Order of the Director on the enrolment of the convict in the maintenance service does not include the information as to the type of work to be done. This requirement is however prescribed by the Labor Code[131] and presents a material term of the employment agreement. The indefinite scope of work leaves the prisoners before the risk of having to do the works which were not known to them at the time of application.

The visits to the establishments during 2015 has revealed that a significant proportion of inmates enrolled in prison maintenance service, notwithstanding their will, have to work on weekends, holidays and nightshifts. Accordingly, it is necessary for all convicts enrolled in maintenance service to have their exact job description defined in the document attached to their order of enrollment. In addition, it is important that all the establishments have the registration form, which will be fixed for recording enlisted person's work schedule and the work done by the hour. This form will make it possible to determine how many hours of work have been performed by each inmate and whether they are to be paid for overtime.

Recommendations

To the Ministry of Corrections:

- Take all necessary measures to ensure that inmates of the closed prisons are allowed to stay in the fresh air for more than 1 hour
- Take all necessary measures to introduce a wide variety of rehabilitation activities in all penitentiary establishments, to encourage the establishment of a social forum, with the participation of the

130 Order N157of the Minister of Corrections on the "Rules of Convict's involvement in the maintenance work and remuneration", Annex 1, Article 4.

131 Sub-paragraph 9.d.

prisoners and to plan and carry out various activities. Such measures are to be taken with consideration of the interests of the prisoners, as well as various incentives be used to involve more prisoners in such activities;

- Take all necessary measures to ensure implementation of rehabilitation activities at the establishments N3, N6, N7, N9, N18 and N19;
- Take all necessary measures to ensure employment of inmates of the establishment N16.
- Determine that the enrolment orders of the inmates define the scope and type of maintenance works the prisoners have to perform
- Introduce the registration form for all establishments, which will be fixed for recording enlisted prisoner's work schedule and the work done by the hour. Determine the issue of the remuneration of the overtime work done by the prisoners

Regime, Disciplinary charges, Incentives

According to the European Prison Rules, disciplinary procedures shall be mechanisms of last resort.[132] Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.[133] The severity of any punishment shall be proportionate to the offence.[134] Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.[135] Disciplinary punishment shall not include a total prohibition on family contact[136]

Disciplinary action should be carried out in accordance with the rule of law and the Nelson Mandela Rules. It should also be noted that Georgian legislation does not determine which disciplinary sanctions should be imposed on the offender in each case, which gives the leadership of the institution a wide discretion in the selection process of disciplinary punishment and increases the risk of disproportionate penalties.

The practice of the Penitentiary Department of the Ministry of Corrections in the application of disciplinary penalties is provided in the table below.

Institution	Placement in the Solitary Confinement Cells		Other Penalties		Overall	
	2014	2015	2014	2015	2014	2015
N2	127	**143**	83	**153**	210	**296**
N3	55	**85**	27	**219**	82	**304**
N5	3	**1**	52	**66**	55	**67**
N6	37	**16**	24	**46**	61	**62**
N7	0	**0**	145	**255**	145	**255**
N8	565	**556**	1058	**1616**	1623	**2172**
N9	0	**0**	3	**3**	3	**3**
N11	0	**0**	5	**0**	5	**0**

132 European Prison Rules. Rule 56.1.
133 ibid, Rule 56.2.
134 ibid, Rule 60.2.
135 ibid, Rule 60.3
136 ibid, Rule 60.4

N12	5	**6**	7	**13**	12	**19**
N14	120	**134**	4	**2**	124	**136**
N15	119	**114**	131	**287**	250	**401**
N16	-	**3**	-	**10**	-	**13**
N17	74	**126**	239	**65**	313	**191**
N18	0	**0**	48	**125**	48	**125**
N19	27	**17**	14	**9**	41	**26**
Total	**1132**	**1194**	**1840**	**2870**	**2972**	**4064**

As outlined in the table, in 2015, compared to last year the use of disciplinary penalties has significantly increased in practice at the establishments N2, N3, N7, N8, N15 and N18, and slightly – at the establishments N5 and N14. It is a positive step that at the establishment N11 no juvenile has been subject to the disciplinary sanction and at the establishment N9 only 3 prisoners received such sanctions.

With regards to the use of disciplinary measures at the establishment N6 in 2015, it shall be noted that as of August 2014 [137] the number of inmates at the establishment N6 was significantly higher than at present. In particular, from January 2014 the number of establishment inmates ranged from 487 to 547, and in August, due to the commencement of the capital repair works a massive transfer of prisoners to other facilities took place. Respectively, in 2015 the total number of prisoners in the facility ranged from 114 to 124 prisoners.[138] Based on the above, given the fact that the number of prisoners in the establishment N6 in comparison to the previous years, is 4 times less, there is increase in the use of disciplinary penalties.

It should be noted, that the Public Defender addressed the Minister of Corrections with recommendations in its 2014 Parliamentary Report, to develop the Guidelines on the use of disciplinary penalties, in order to ensure the use of uniform disciplinary penalties in all the institutions. Unfortunately, the Ombudsman's recommendations were not followed.

According to the data received from the penitentiary establishments, the confinement in the solitary cell as the disciplinary penalty is most actively used by the director of the establishment N14. According to statistics obtained from that establishment,[139] in 2015, solitary confinement as a disciplinary sanction was applied in 134 out of 136 cases. This is contrary to Article 88 (1) of the Imprisonment Code, according to which solitary confinement, as a disciplinary measure, is used only in special cases.

The solitary confinement cell was not functioning throughout the year at the establishments N7 and N9 of the Penitentiary Department and therefore, this form of disciplinary punishment was not used. There are no solitary confinement cells, due to the specifics of the institution, in the establishment N11 for rehabilitation of juveniles and N18 prison hospital.

According to second paragraph of Article 88 of Imprisonment Code, prisoners placed in solitary cells shall be deprived of long and short visits, telephone conversations, purchase of food, which is carried out similarly in practice. CPT has recommended to the government of Georgia, to "take measures to ensure that disciplinary confinement does not amount to prohibition on family communication. A ban on any contact with the family as a form of punishment should be used only when a crime is related to such contacts".[140] In this regard, in 2012, the Public Defender addressed the Parliament with the proposal of relevant modifications to the Imprisonment Code, while the 2013 and 2014 parliamentary report underlined the need for this article to change. However, Article 88 of the Imprisonment Code remains unchanged.

137 January 2014 – 521 Prisoners; February – 528; March – 487; April – 502; May – 515; June – 547; July – 547; August – 493.
138 January 2015 – 118 Prisoners; February – 114; March – 120; April – 118; May – 118; June – 124; July – 121; August – 122.
139 The letter N890/16 of the Director of the establishment N14 received by the Public Defender's Office on 25 January 2016.
140 The CPT report on the visit to Georgia in 2010, para. 115, see the link: <http://www.cpt.coe.int/documents/geo/2010 27-inf-eng.htm> [last accessed20.01.2016].

Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.[141] According to the 2007 Istanbul statement on the use and effects of solitary confinement,[142] the use of solitary confinement should be completely banned with prisoners with mental health problems. It is prohibited to use solitary confinement with prisoners with mental or physical disabilities, when it is possible that such measure will aggravate their condition.[143]

2014 Annual Report of the Public Defender addressed the Minister of Corrections, to take appropriate measures to prevent placement of prisoners with mental health problems in solitary confinement cells, but in 2015, prisoners with the mental health problems were placed under solitary confinement at the establishments N2 and N3 of the Penitentiary Department. For example, one of the prisoners with mental health problems of N3 establishment was subjected to disciplinary sanctions for 5 times in the first 4 months of 2015, 2 out of which were the solitary confinement. Similarly, other prisoners, who had a personality disorder, were subjected to disciplinary sanctions 3 times in the first 4 months of 2015, including, in one case the solitary confinement.

According to European Prison Rules, punishment shall not include a total prohibition on family contact.[144] According to the Imprisonment code, simultaneous restrictions on telephone conversation, sending and receiving of the private correspondence and short visits is prohibited.[145] In 2015 study of the disciplinary punishment practice in the establishment N7, revealed that in 19 cases the prisoners were fully restricted the contact with the outside world,[146] 2 prisoners had been in such conditions twice. In one case, the convict-K.D.'s contact with the outside world was restricted in total for 91 days.

It should also be noted that following a visit to the establishment N7 by the members of the Special Preventive Group on 19 June 2015, the Public Defender addressed the Minister of Corrections, to take all necessary measures to ensure that the complete ban of family contact was not applied in N7 facility at the time of the disciplinary sanctions. The recommendation still has not been implemented since in the second half of 2015 the prisoners under disciplinary penalties had fully restricted the contact with their families.

According to paragraph 6 of Article 17^2 of the Imprisonment Code, long visits are not granted to convicts in the special risk prisons, as well as to the convicts, placed under quarantine, or who had imposed a disciplinary sanction and / or administrative detention. In practice, the above-mentioned norm is misinterpreted, since this paragraph deals with the case when the offender is sentenced to disciplinary punishment (disciplinary punishment has not expired) and the restriction of long visits cannot be extended to the case when the disciplinary action expires, even if convicted may be presumed to be under disciplinary action.

It is very important for prisoners to maintain sufficient contact with the outside world. First of all, they should be given the opportunity to maintain their relationships with family members and close friends. The guiding principle should be to promote contact with the outside world; any restriction of such contact must be based solely on the protection of important security interests or justified by lack of resources.[147] CPT mentioned in the report issued after the visit to Georgia that the restriction of the family contact, as a form of punishment, should be used only where the offense relates to such contacts, and only a very short period of time (more days, rather than weeks or months).[148]

141 Nelson Mandela Rules. Rule 39.3.
142 International Psychological Trauma Symposium (2007), The Istanbul Statement on the use and effects of solitary confinement.
143 Nelson Mandela Rules. Rule 45.2
144 Rule 60.4.
145 Article 82, (5).
146 Right to short visits, right to telephone calls, right to correspondence.
147 Second General Report of CPT, para. 51, CPT/Inf (92), published 13 April 1992, available at: <http://www.cpt.coe.int/en/annual/rep-02.htm> [Last accessed: 03.16.2016].
148 CPT Visit to Georgia. 119, CPT/Inf (2015) available at: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [Last accessed: 02.03.2016].

In accordance with the above, it is necessary to amend Article 82 of the Imprisonment Code to retract all the ways of limiting the contact with outside world from the list of disciplinary sanctions, such as limitations to the telephone communication,[149] limitations to correspondence,[150] and ban on the short term visits.[151]

According to Nelson Mandela Rules, prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.[152] According to European Prison Rules,[153] a prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.

In 2015, a total of 4064 disciplinary measures were used against prison inmates, with 38 orders on the imposition of disciplinary sanction were appealed against by 28 convicts[154], 20 out of whom served their sentences at the establishment N7. As for 2014, only 3 inmates appealed against 3 disciplinary measures imposed upon them.[155] Therefore, we can say that compared to last year, the appeal of disciplinary penalties from prisoners is increased, however, noteworthy is the fact that the prisoners refrain from appealing the orders on the disciplinary charges, because they regard it as useless.

In the CPT's view, the prisoners should have an opportunity to listen to the radio or watch TV, and this should not be regarded as a privilege and should be the right of all prisoners.[156] According to paragraph 2 of Article 20 of the Imprisonment Code, accused/convicted persons, except for those placed in a solitary confinement cell, may be granted the right to listen to radio and watch TV during non-work times, as determined by the internal regulations of the establishment. With the consent of the administration and according to the restrictions of the establishment, an accused/convicted person or a group of accused/convicted persons may have personal radio or TV sets if their use does not violate the internal regulations of this establishment or disturb other accused/convicted persons. Accused/convicted persons may purchase these devices at their own expense or receive them in the form of a parcel.

According to Articles 63,[157] 66[4158] and 66 [159] of the Imprisonment Code, the right to use a personal TV set, computer or radio set is a form of incentive for prisoners, which is also provided in the Regulations of the penitentiary establishments established by the Order of the Minister of Corrections in 2015 (Semi-open, Closed and Special risk institutions). Public Defender considers that the use of television and radio should not be dependent on the good will of the administration. All the accused / convict shall have the right to use TV and radio without any prior permission and the director of the establishment should be able to restrict the rights for a certain period of time only in exceptional cases, on the basis of clearly defined grounds and the reasoned decision.

In addition, the conditions in which cell the prisoners have one TV or a radio in the cell, a disciplinary penalty in the form of withdrawal of the TV / radio receiver takes the form of the collective punishment if the cell mates of the disciplined person will not be able to access TV or radio for some time and if the fellow cell mates will acquire will TV / radio, then a disciplinary action in the form seizing of a TV / radio loses the sense, as does such sanction. Usage of this disciplinary sanction[160] can have particularly direct effects on the wellbeing of the single cell prisoners. In closed institutions, in absence of rehabilitation, sports and cultural activities, TV / radio is one of the main entertainment means and at the same time, the main source of information for prisoners.

149 Imprisonment Code, Article 82, paragraph1.t.
150 see ibid paragraph 1.i.
151 see ibid paragraph 1.m.
152 Rule 41.4.
153 Rule 61.1.
154 Establishments N2, N3, N5, N7 and N9.
155 Establishments N6, N8 and N9.
156 Available at the following link: <http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf> [last accessed: 28.03.2016].
157 Subparagraph E.
158 Subparagraph V.
159 Subparagraph E.
160 Article 82.1.d. of the Imprisonment Code: restriction of the use of permitted items for no more than 6 months.

In 2015, administrative detention was used only in N7 establishment against 3 prisoners (on several counts against each of them). In 8 cases the administrative detention was applied for 1 day, while in one case it was applied for 3 days. Administrative detention was applied on the basis of covering the electronic and visual surveillance cameras by the prisoners.

Previous Annual Report of the Public Defender has submitted a proposal to the Parliament, to reduce the period of administrative detention to 15 days. By 2014 amendments to the Administrative Code the administrative detention period was reduced from 90 to 15 days. It is necessary to apply the same standard to prisoners and limit the usage of administrative detention in prison for a maximum of 15 days, which was not implemented yet.

In 2014, the report of the Public Defender addressed the Minister of Corrections to develop and introduce in all institutions of the form of a journal, in which the records would be kept on the usage of the statutory rights by the prisoners placed in solitary confinement cells (shower, walking, and receipt of hygiene items). It should be noted that this recommendation has not been taken into consideration.

Incentives

According to Article 66 of the Imprisonment Code, in the case of model behavior and honest attitude to the work, the administration of a closed type prison may allow certain forms of incentives for a convicted person. The decision to grant incentive is taken by the director of the establishment. Incentives may take the form of expression of appreciation, additional long or short visits, early lifting of warning or other disciplinary sanctions, etc.

Statistical data on the applied incentives per penitentiary establishment in 2014 and 2015 are provided in the table below.

Incentives	N2	N3	N5	N6	N7	N8	N9	N11	N12	N14	N15	N16	N17	N18	N19	Total
2014	209	127	129	85	5	351	16	60	15	90	267	----	383	0	41	1778
2015	270	47	147	127	0	359	6	42	33	184	579	52	462	8	8	2324

The statistical data in the table clearly shows that in 2015, compared to the previous year, incentives to the inmates have been increased. Significant increases are notable in N15, N2, N6, N14 and N17 establishments, which should be viewed as positive development. Incentives decreased at the establishments N3, N9, N11 and N19. During the reporting period, unfortunately, none of the prisoners was promoted at the establishment N7.

In 2014, the Parliamentary Report of the Public Defender addressed the Minister of Corrections, to increase the incentives to the inmates in prisons. This recommendation was implemented only as regards the establishments N15, N2, N6, N14 and N17. The Ombudsman considers that the frequent incentives to prisoners weaken prison subculture influence and promote their re-socialisation. Therefore, it is necessary that the establishments N3, N7, N8, N9, N11, N12, N16, N18 and N19 of the Penitentiary Department strengthen encouragement of prisoners.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Develop the Guidelines on the use of disciplinary penalties, in order to ensure the use of uniform disciplinary penalties in all the institutions.

- Use disciplinary sanction as the last resort.
- Use solitary confinement as the disciplinary sanction only in special cases.
- Take all the necessary measures to prevent placement of the prisoners with mental health problems under solitary confinement.
- Take all necessary measures to ensure that the use of disciplinary penalty does not result in the complete restriction of the contact with the family.
- React with appropriate measures on the cases of breach of Article 82 of the Imprisonment Code at the establishment N7.
- Frequently apply incentives in different forms at the establishments N3, N7, N9, N11 and N19

Proposals to the Parliament of Georgia:

- Amend Article 82 of the Imprisonment Code in the manner as to remove the norms which list the restriction of telephone communications, correspondence and short visits as the forms of disciplinary sanctions.
- Amend Article 88 of the Imprisonment Code and remove provisions prohibiting short and long term visits, telephone communications and purchase of food products for prisoners subjected to solitary confinement.
- In order to define the possession of TV and Radio as the right rather than privilege, amend the relevant articles of Imprisonment Code (Articles 63.e, 66.v and 66.e) and remove the right to possess the TV as the form of the incentive. Additionally, amend Article 82 of the same code and define that it is not allowed to seize the TV/Radio set or to restrict their usage as a disciplinary sanction.
- Limit the period of administrative detention in prisons to a maximum of 15 days.

PENITENTIARY HEALTHCARE

Right to health is an inclusive Right[161] and encompasses access to safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information and gender equality.

The right to health also includes a right not to be subjected to medical procedures without consent, to torture or other cruel, inhuman, degrading treatment or punishment. By virtue of the substance of the right to health, a person should have access to the health care system; disease prevention, treatment and control; medicines; reproductive health; basic health services (on equality footing and timely); health-related information and education. Health system services should be accessible, affordable and of high-quality.[162]

For effective exercise of the right to health, particular importance shall be placed on the preventive healthcare, which implies: facilitation to health and improvement of general living conditions; food; sanitation; intellectual

161 Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights and World Health Organization, available at http://www.ohchr.org/Documents/Publications/Factsheet31.pdf [last visit on 17.03.2016].

162 General comment N° 14 (2000) on the right to health, adopted by the Committee on Economic, Social and Cultural Rights.

and physical activities; targeted preventive measures in prisons focused on specific problems such as infectious diseases, mental health, drug addiction and violence.

Within the framework of the monitoring conducted in 2015, an emphasis was made on the effective functioning of the prison healthcare system and the existing challenges. In the course of monitoring, we interviewed the prisoners and the prison healthcare staff; we also inspected the conditions in medical units of the penitentiary establishments and the infrastructure at the penitentiary medical facilities.

Statistical reports and information provided by the Medical Department of the Ministry of Corrections and individual penitentiary establishments were used during the research, along with the official statistical data provided on the webpage of the Ministry of Corrections

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

- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997);
- The Optional Protocol to the above-mentioned Convention (2006);
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987);
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") (United Nations; New York and Geneva, 2001 – 2004);
- Principles and case-law of the European Court of Human Rights;
- 3rd General Report on the CPT's activities – healthcare services in prisons;
- The UN Standard Minimum Rules for the Treatment of Prisoners (1955);
- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1989);
- The European Prison Rules (2006);
- Recommendation No. R (87) 3 of the Council of Europe Committee of Ministers (1987);
- Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 20 April 1998);
- Consensus Statement on Mental Health Promotion in Prisons, WHO Regional Office for Europe Health in Prisons Project (The Hague, Netherlands, 18–21 November 1998)
- The UN international principles of medical ethics (1982)
- The World Medical Association: Declaration of Tokyo (1975), Declaration of Hamburg (1997), Geneva Declaration (1948), Declaration of Malta (1991, 2006), Helsinki Resolution (2003, 2007);
- A Guide to International Instruments and Mechanisms against Torture, International Rehabilitation Council for Torture Victims (IRCT) (as of 4 July 2007)
- Health in Prisons, A WHO guide to the essentials in prison health;
- The Madrid recommendation: health protection in prisons as an essential part of public health (WHO, 2010).

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

FUNDING OF THE GEORGIAN PRISON HEALTHCARE; ORGANIZATIONAL ASPECTS; IMPLEMENTED REFORMS

According to the information received from the Ministry of Corrections, the Ministry's Medical Department has three separate units in order to organise the work related to basic healthcare, special services and healthcare regulation: unit for primary healthcare and outpatient services, unit for specialized medical services, and the unit of regulation of the medical activity regulation.

It is noteworthy that by the Order N53 of the Minister of 25 June new regulations of the medical department were established. The new regulation defined and brought under the regulatory framework the activities of the territorial units of the medical department: the medical units of the penitentiary establishments, first-aid points of the pre-trial detention facility, tuberculosis treatment and rehabilitation centre, and the medical prisons.

Penitentiary Healthcare Standard, developed with participation of Council of Europe experts and adopted by Order N31 of the Minister of Corrections on " Standards of medical care in the penitentiary facilities standards, standards for the additional medical services for the persons with special needs, the package of basic penitentiary healthcare services of preventive detention and prison facilities and on approved list of medicines", define the types of medical services provided by Government to inmates of penitentiary system.

According to the information received from the Ministry of Corrections, the medical department underwent a complete reorganization under the reform, and the health budget is increased, which is a positive trend.

In 2015 the net expenditure of the medical department and the medical service of the accused and convicted was 11 942 060 GEL, out of which the employees' salaries were 6 977 626 GEL; Medical expenses - 4 032 634 GEL, other expenses related to the work of medical department - 931 800 GEL. It should be noted that the expenditure is decreased compared to 2014 by 1 358 740 GEL[163].

MEDICAL INFRASTRUCTURE

Establishment N18 for treatment of accused and convicted persons

The capacity of beds at the establishment N18 is 180 prisoners. In late December 2015, 110 patients were placed at this establishment. Chambers are designed for 1, 2, 3, 4 and 5 patients.

According to the information received from the medical department, the diagnostic ward of the establishment was functional during 2015 and provided the following: X-ray, echoscope, endoscopy (gastroscopy, colonoscopy, bronchoscopy), elastoscopy (fibroscan), shock room, laboratory (clinical, bacteriological, biochemical), sterilization room, a dental room, psychiatry/observation room, infections/TB, long term care unit/rehabilitation rooms, therapy, surgery block, department of critical medicine and surgery.

The establishment provides 24-hour services to patients in the areas of general therapy, neurology, cardiology, endocrinology, psychiatry, infections, tuberculosis, dermatology and venereology, surgery, oncology, traumatology, urology, ENT (ear, nose and throat), ophthalmology, resuscitation and other areas.

163 Total expenditures of the Medical Department in 2014 amounted to 13 300 800 GEL.

In 2015, in the establishment N18 visual surveillance was ongoing in 24 cells, in particular, in 4 observation cells, in 11 cells of psychiatry department, in 5 long-term care cells, in 1 cell of the therapeutic unit, 1 cell of the surgical unit, in 1 cell of anesthesia / resuscitation unit and in 1 cell of infectious Division. In 2014 Annual Report of the Ombudsman called the Minister of Corrections for reviewing the decision of the Director of the Penitentiary Department on installing surveillance cameras in all wards at the psychiatry unit, so as to ensure the privacy of patients. However, this recommendation was not followed, and every cell in the psychiatric unit is equipped with surveillance cameras.

In 2014, the public Defender also addressed the Minister of Corrections to install an appropriate ventilation system in the operating room and the X-ray room and ensure good working of the ventilation system at this establishment. According to the response received from the medical department, a ventilation hood was installed in the X-ray room, as for the operating room- a new ventilation system with "Hepa' filters, which corresponds to the requirements of the Order № 385 of the Government of December 17, 2010 on "Rules of Medical Activity Licensing and Issuing the permit for Stationary Institutions" and technical regulations N83 of 16 January2014 on the "Medical radiology diagnostic procedures and the protection of radiation norms in the treatment".

Medical Infrastructure of Penitentiary Establishments

Healthcare services at penitentiary establishments are provided by 37 basic healthcare teams and 2 medical institutions. According to information received from the Medical Department of the Ministry of Corrections, the equipment of the basic healthcare teams encompass a defibrillator, a pair of scales, a stadiometer, a cardiograph, a glucometer, a blood pressure measurement device, an X-ray viewer, dental chairs, negatoscope, little manipulation equipment, the patient couch for examining, operating table, sterilizer, reflector / lamp, quartz lamp, medicine cupboard, iron table, tools and materials for a variety of surgical tools, desk / chairs, a washstand, a different number sewing needles and surgical material, hand-processing solutions.

TB Treatment and Rehabilitation Centre equipment includes X-ray, echoscope and laboratory, dental chair, small manipulations room, sterilization room, resistant TB unit, sensitive TB unit and stationary unit. N18 Establishment for Treatment of Accused and Convicted Persons is equipped with: X-ray, echoscopy, endoscopy (gastroscopy, colonoscopy, bronchoscopy), elastoscopy (fibroscan), shock room, laboratory (clinical, bacteriological, biochemical), sterilization room, a dental room, psychiatry/observation room, infections/TB, long term care unit/rehabilitation rooms, therapy, surgery block, department of critical medicine and surgery.

According to the information received from the Institution,[164] the unit for long-term visits was built in 2015; 7 rooms designed for the psycho-rehabilitation program "Atlantis" were repaired; a special ward for post-operative and health complications was repaired and re-equipped; living rooms with appropriate equipment were arranged for disabled persons according to their requisite specificities. According to the information received from the establishment N12,[165] the medical block has been repaired in 2015. The specialized rooms for "C" Hepatitis treatment program were allocated. The chief doctor's room was renovated. New medication storage and a pharmacist cabinet were created.

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

164 Written response N739/16 of the director of the establishment N5, received by Public Defender on 21 January 2016.
165 The letter N11796/15 of the deputy director of establishment N12, received by the Public Defender's office on 6 October 2015.

Positive assessment shall be given to the work of regulatory unit of the medical department which checked the prison food, hygienic conditions, and medical units, including the X-ray apparatus, and medical waste management and production processes of the archival documentation.

According to the information received from the medical department, the monitoring of the regulatory unit revealed that at the establishments N2, N3, N5, N6, N8, N9, N11, N12, N14, N16, N18, and N19 X-ray rooms did not comply with the requirements of the technical regulations N83 of the Government of Georgia of 16 January 2014 2014 on the "Medical radiology diagnostic procedures and the protection of radiation norms in the treatment".

According to the inspection materials of the regulatory unit, the inspection of the establishments N5, N8, N9, N11, N12, N18 and N19 in 2015 revealed that the walls and floors of medicine storage facilities are surfaced in the manner which makes the wet processing impossible, thus violating the sanitary/hygienic technical regulations established for pharmacies under Article 1 of the Order N575 of 24 September 2014 of the Government of Georgia on "Technical Regulations - , sanitary and hygienic facilities / technical conditions of the pharmacy (specialized trading unit) and the retail trade ".

At the time of the visit of the Special Prevention Group[166] the medicine storage was inspected at the establishment N12. Storage was located in two small rooms. It is worth noting that the conditions of storage rooms did not comply with the requirements of the Order N575 of 24 September 2014 of the Government of Georgia. The surface of the pharmacy ceilings and wall did not allow processing and disinfection as required. Responsible for storage explained that it is planned to relocate the storage in the medical unit. During the visit of the new storage room repairs were ongoing.

The Public Defender approached the Ministry of Corrections with the recommendation to bring the drug storage of the establishment N12 in compliance with the Order N575 of 24 September 2014 of the Government of Georgia. According to the letter of the director of the establishment N12,[167] new storage was arranged on the territory of the medical unit.

In 2014, the Public Defender addressed the Minister of Corrections, to bring the prison medical units in line with the applicable standards. According to the response from the Medical Department, a list of all the inventory and equipment, which is out of order in all institutions was created together with indications as to whether they are in need of repair and / or the purchase of new ones and the demand was issued to acquire them. Equipment / apparatus is already purchased and they will be supplied to all medical units gradually. Although new medical equipment is a positive development, the problems that are still unsolved should also be noted, in particular, the disorganized ventilation systems and the absence of antistatic linoleum.

RECOMMENDATIONS

Recommendations to the Ministry of Corrections:

- Reconsider the decision on the installation of surveillance cameras in all psychiatry wards, in order to protect patients' privacy.
- Make the medical units of penitentiary establishments compatible with the standards applicable in the whole country, including by properly equipping these medical units and controlling the quality of their medical equipment, organizing the ventilation systems in good order and laying antistatic linoleum on the floors

166 The post monitoring report of the visit to the establishment N12 is available at: http://www.ombudsman.ge/uploads/other/3/3456.pdf [last accessed21.03.2016].

167 Response N616/16 of the Director of the establishment N12 received by Public Defender on 18 January 2016.

ACCESSIBILITY OF MEDICINE

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

There is a pharmacy storage in every penitentiary establishment and a person responsible for that pharmacy storage.[168] According to information received from the Medical Department, the tender is held at the beginning of each year, to purchase medicines on the list of basic medicines, and bought medicines are kept by provider. At the end of each month, the person responsible for drugs storage submits the request for medicines the supplies of which are set to be exhausted to Logistics Department, and the required medications are provided within 5 working days to the establishment. If the drugs prescribed by specialist doctors to the patient are not included in the penitentiary healthcare basic medicines list, the chief doctor sends individual request to the medical and logistics departments, based on which, the drug is procured by the simplified purchase, in accordance with Article 10^1 paragraphs 1 and 3.d of the law of Georgia on State Procurement on the basis of the decree N2547 of the Government of December 30, 2014 on the "Acquisition of the medical care goods via simplified public procurement procedures by Ministry of Corrections. Prescriptions are necessary to take out the drugs from prison pharmacies.

The decree N31 of the Minister of Corrections of 22 April 2015 sets basic medicines list in the prison health care system, which defines the list of medicines, which state undertakes to provide to prisoners at its own expense. Cost of medicines and other related medical expenses for the Medical Department in 2015 amounted to 2 375 234 GEL. It should be noted that compared to 2014 medication costs increased by 124 545 GEL.

In 2015, the problem of substitution of drugs still remains an issue. During the reporting period, the prison visits revealed that the prisoners are protesting against the substitution of the doctor-prescribed medication by their analogies from the established basic medications list. Prisoners also complain, in general, about the lack of medications. In addition, the accused / convicts noted during the interviews with members of the Special Preventive Group that the families cannot afford anti-cold medicines.

It should be noted that during the visit of the Special Preventive Group to the establishment N3, they examined the patients' medication supplies. The examination showed that some of the medicines prescribed to prisoners were not available at this establishment. In addition, the issue of expired drugs is problematic. For example, at the establishment N15 the group discovered expired medications in the dentist's office[169].

In 2014 the Public Defender recommended the Ministry of Corrections to take measures to ensure that prisoners have unimpeded access to basic prescribed medications; ensure that, in issuing prescriptions, doctors are not limited to issuing only those medications that are available at the penitentiary establishment. The response of the Ministry of 9 February 2016 MOC11600111071 the prisoners, in case of refusal of the supplied medicines, the prisoners can acquire the prescribed medicine, including the branded medicines at their own expenses. In spite of this answer from the Ministry, there's still a problem in practice with acquisition and sending of such medicines inside the prison.

According to the findings of our monitoring, the healthcare personnel of penitentiary establishments are normally prescribing only generic medications available at the relevant penitentiary establishments at the expense of the state. For this reason, prisoners are precluded from buying branded medications with their own

168 Pharmacist / Provisory / a person with high medical education.

169 DEXDUN (Dexamethasone sodium phosphate injection USP) 1ml 10 ampoule - 07/2015; Suprastin20 mg/ml 3 ampoule – 05/2013; Dexamethasone Darnitsa 1ml 3 ampoule – 10/2014.

money. It is important for the prisoners to be able, in agreement with the doctor and on the basis of a relevant prescription, to buy a branded medication corresponding to the generic one initially prescribed by the doctor in the penitentiary institution's pharmacy or, where there is no pharmacy, to receive such medications from their family members.

RECOMMENDATION

Recommendation to the Ministry of Corrections

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

ACCESSIBILITY AND QUALITY OF HEALTHCARE SERVICES

Accessibility of the Doctors

In *Kudla v. Poland* the European Human Rights Court held that Article 3 of the European Convention imposes an obligation upon the State to secure physical health of detained persons. In many of its judgements the Court stated that it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel is regular and systematic and involved a comprehensive therapeutic strategy.[170]

According to the information received from the Medical Department of the Ministry of Corrections, as of 31 December 2015 there are 9 716 accused/convicts in the penitentiary system, whist the number of healthcare personnel consisted of 189 doctors (15 Chief doctors and 2 deputy chief doctors) and 233 nurses. In 2015, the Medical Department had a contract with the 54 specialised doctors.

37 primary healthcare teams are operational in penitentiary establishments. The teams are composed of family doctors. During 2015, family doctors employed at these establishments issued medical advice to the prisoners 212 782 times (this figure was 214 567 in 2014 and 224 363 in 2013).

As regards the number of doctors and nurses envisaged by the staffing tables of penitentiary establishments, according to the information received from the Medical Department of the Ministry of Corrections, the number of family doctors and nurses increased in 2015 in comparison with 2014 which is a positive development.[171] The number of doctors and nurses according to penitentiary establishments is shown in the table below.

N	Establishment	Doctor	Nurse	Responsible for pharmacy storage
1.	Establishment N2	11	16	1
2.	Establishment N3	6	5	1
3.	Establishment N5	7	9	1

170 Inter alia, Jashi v.Georgia, Judgement of 8 January 2013, para. 61.

171 In 2014, 103 doctors worked in the penitentiary establishments, in 2015- 189. Additionally, the number of nurses in 2014 was 136, and in 2015 - 233.

4.	Establishment N6	7	10	1
5.	Establishment N7	4	4	1
6.	Establishment N8	26	43	1
7.	Establishment N9	4	9	1
8.	Establishment N11	3	4	1
9.	Establishment N12	3	6	1
10.	Establishment N14	10	11	1
11.	Establishment N15	9	18	1
12.	Establishment N16	4	6	1
13.	Establishment N17	11	18	1

The Ratio of doctors and nurses envisaged by the penitentiary establishments' staffing tables to the number of prisoners according to institutions in 2015 is provided in the table below.

N	Establishment	The ratio of the number of prisoners[172] to the number of doctors	The ratio of the number of prisoners to the number of nurses
1	Establishment N2	127	87
2	Establishment N3	20	24
3	Establishment N5	42	32
4	Establishment N6	19	13
5	Establishment N7	17	17
6	Establishment N8	89	54
7	Establishment N9	9	4
8	Establishment N11	5	4
9	Establishment N12	89	44
10	Establishment N14	113	103
11	Establishment N15	189	94
12	Establishment N16	20	13
13	Establishment N17	172	105

The figures in the above table have been calculated by dividing the number of prisoners in each establishment by the number of doctors and nurses according to the establishment's staffing table. These data are valid as of the end of 2015. The table does not take into account the duty schedule of doctors and nurses but, nevertheless, it is clearly visible that ratio of the prisoners to doctors and prisoners to nurses is high at the establishments N2, N14, N15 and N17 .

In 2014, the Public Defender, addressed the Ministry of Corrections, to ensure a sufficient number of doctors and nurses for timely and adequate medical services in all penitentiary establishments. According to the response from the Medical Department of the Ministry of Health, according to the civil sector standard the family doctor and nurse team serve an average of 2,000 adult patients. During the implementation of Primary health care in the prison system the International Red Cross Committee recommended that the family doctor should serve no more than 1 500 inmates / defendant, as provided and implemented in accordance with the recommendation. The penitentiary system, the doctor / nurse ratio of prisoners in small establishments averaged 50 to 150, even in large facilities - from 300 to 500. Despite the fact that in 2015 the number of

172 The ratio is calculated based on the number of accused/convicts in the respective institutions as of December 2015

doctors and nurses has increased, yet it is not enough. Ensuring the equal ration of prisoners and doctors / nurses, as well as ensuring enough number of doctors / nurses is important to all facilities.

In 2015 the problematic practice of the establishments N2 and N3 subsists, namely, according to this practice, for a prisoner to receive treatment, he/she has to write an application for medical services and hand the application in to the controlling officer on duty. The controlling officer collects such applications during the day and files them with the establishment's chancellery where the applications get registered and get sent to the doctor of that establishment later. Only in urgent cases will the controlling officer deliver an application for medical services to the chancellery immediately. It is unclear, however, how a prison controlling officer who does not have medical knowledge will evaluate whether or not an individual prisoner's medical condition is urgent. The above-described procedure constitutes an additional barrier in the process of provision of healthcare services in prison and a breach of the principle of confidentiality. We therefore believe that the above-described practice needs to stop immediately.

According to the information received from the Medical Department of the Ministry of Corrections, invited doctors issued 37 445 medical consultations during 2015. Positive assessment shall be given to the fact that the number of such consultations is increased in comparison to 2014[173]. The number of medical consultations issued monthly is between 2210 and 4276. The study of the visits of specialist consultant doctors to the penitentiary establishments revealed that in some of these establishments frequency and regularity of such visits is not sufficient.

Medical documentation remains a problem in prison. It should be noted that in general, the medical files of prisoners are not unified, which creates the danger of loss of medical records. Also, in some cases, the record indicates neither the identity of the doctor-consultant to the prisoner, nor the time of consultation.

The enrolment of prisoners for consultation is recorded in the journal of the consultation, however, dates appear nowhere in the recording and therefore, it becomes impossible to determine how long the prisoner had to wait for consultation. It should also be noted that in general, all the prison medical units have the consultation records journal, although it is not the form approved by the Minister of Corrections, which would be uniform and created following the uniform rules for all the establishments. Therefore, it is necessary to approve a single special form, indicating the patient's name, date of request of consultations (as well as the identity of the person who determined the need for consultation), the specialist doctor the inmate wishes to consult and advice and recommendations after the receipt of such consultation, with the date specified. The monitoring demonstrated that at the establishment N12 the prisoner G.N. was enrolled for consultation with a dermatologist, but after the whole month the patient was still waiting for consultation of a dermatologist.

Dental care is also a problem in prisons. Dentist does not have an assistant, and often has to service 25-30 patients daily. The orthopedic services function with certain deficiency. There are problems in terms of providing dental services for inmates at the establishment N2, in particular, there are cases when prisoners have severe pain, but they have to wait in line to see the dentist, which can last a week or more, since the prison employs only 1 dentist, who for an average serves 213 patients per month. In addition, the visit to the establishment N8 revealed the practice, that the appointments to the dentist are registered by the officers on duty, who do not have any medical background and qualifications.

In 2014, the rate of use of dental services was 17 090. We welcome the fact that in 2015 the rate has increased. In 2015, the prison dentist therapeutic dental service utilization rate was 11 822. Surgical dental service utilization rate – 4 225 and the rate of utilization of orthopedic dental services -1 819.

173 In 2014 specialist doctors had held 30 726 consultations.

Medical Referral

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

After a request is approved, depending on the number of the request in the list, a medical services provider is contacted and the patient is referred to the provider. If a request is rejected, the rejection is registered in the system and the relevant primary healthcare team is informed about the reasons of rejection. In 2015, 9016 referral requests got registered in the unified medical electronic system. The Medical Department rejected 859 cases after deliberation.

Establishment	Number of rejected cases
№2	23
№3	18
№5	95
№6	20
№7	34
№8	244
№9	1
№11	6
№12	52
№14	14
№15	159
№16	0
№17	159
№18	30
№19	4

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

According to explanations obtained from the representatives of the Medical Department of the Ministry of Corrections, scheduled referrals are impeded by barriers such as prisoners injuring themselves, going on hunger strike or arbitrarily stopping a treatment course. Another problem in regard to medical referrals is the capacity of civilian hospitals to deal with prisoners. According to the information received from the Ministry of Corrections, prisoners are contractually served by 51 civilian clinics. In addition, prisoners are served by the Centre for the Treatment of Tuberculosis and Rehabilitation (the establishment N19) and the Treatment Institution for Accused and Convicted Persons (the establishment N18).

According to the information received from the Ministry of Corrections, in 2015, 2292 referrals were made to the penitentiary hospitals, and **3992 referrals** were made to civil hospitals.

Number of the accused/convicts transferred to civil hospitals both in ambulatory or stationary (urgent, planned) in 2015			
Establishment	Urgent	Planned	
		Ambulatory	Stationary
№2	133	420	91
№3	75	131	14
№5	50	214	30
№6	12	58	6
№7	24	80	4

№8	102	331	26
№9	0	10	0
№11	1	13	3
№12	20	119	16
№14	55	434	103
№15	84	211	22
№16	4	2	6
№17	94	300	20
№18	130	355	47
№19	27	105	10
Total	811	2783	398
	3992		

Number of the accused/convicts transferred to N18 Establishment both in ambulatory or stationary (urgent, planned) in 2015

Establishment	Ambulatory	Stationary	
		Planned	Urgent
№2	8	41	11
№3	0	20	7
№5	67	14	35
№6	42	35	14
№7	46	21	70
№8	283	225	178
№9	0	0	0
№11	6	1	6
№12	59	23	30
№14	4	34	8
№15	208	131	93
№16	2	2	1
№17	260	171	72
№19	36	15	13
Total	1021	733	538
	2292		

According to the paragraphs 2 to 4 of Article 1 of the Order N55 dated 10 April 2014 of the Minister of Corrections approving the "Rules of transferring accused and convicted persons to general-profile hospitals, the Treatment Institution for Accused and Convicted Persons and the Centre for the Treatment of Tuberculosis and Rehabilitation", a prison doctor drafts a reasoned request for transferring a patient to the Treatment Institution and the Centre and sends the request to the Medical Department of the Penitentiary Department. The prison doctor's reasoned request shall be registered in the Medical Services Electronic Software (hereinafter, "the Software"). The prison doctor must inform the prison director about the request in writing. The Medical Department will examine the request within a reasonable time on the basis of the National Clinical Practice Recommendations (the Guidelines) and State Standard on Clinical Situation Management (the Protocol) approved or recognized by the Ministry of Labor, Health and Social Protection; where necessary, the request will also be examined against international guiding documents. If the request is granted, a patient who requires a scheduled medical service will be assigned a list number in the Software and a recommendation on his/her transfer to the Treatment Institution or the Centre will be sent to the prison director and the prison doctor at least a day before the actual transfer.

Paragraph 5 of Article 1 of the Order N55 determines how the waiting list is made. In particular, the Medical Department determines the list according to the location and the type of services requested (inpatient or outpatient). It is unfortunate that the Public Defender's recommendation on improving the medical referral system for avoiding delayed provision of medical services as much as possible was rejected. In particular, we

offered to take into consideration when constructing a waiting list the different grounds such as acute and chronic diseases, progress of the disease, aggravation of a patient's health and other factors. We believe the electronic database of medical referrals needs to be improved because the current procedure of constructing the waiting list does not take into account patients' individual needs and the patient's number in the list depends not on clinical factors but on other criteria such as the number of waiting patients and the capacity of the relevant medical institution.

One of the main deficiencies of the medical referral procedure for planned treatment is that it does not take into consideration a situation where the health condition of a patient on a waiting list is deteriorating but the condition has not achieved the intensity level warranting the provision of urgent medical services under Article 3(s1) of the Law on Health Protection. It should be noted that some diseases develop very quickly and it may be too late to provide the urgent healthcare service when a person's life is already in danger. The medical referral procedure does not envisage the possibility of sorting patients with such diseases as a priority in determining their number on the list. We welcome the fact that the delayed medical intervention was added to the classification of medical interventions (regular or emergency) in 2015, but it is not supported by the normative act. It is important that the order N31 of the Minister of Corrections of 22 April 2015 also introduces the delayed emergency medical intervention standard. The change shall also be made to the Order N55 of the Minister of Corrections on "The procedure of transfer of the accused/convicts to the general hospitals and Tuberculosis Treatment and Rehabilitation Centre " and the record on the delayed emergency medical intervention shall be added.

The Special Prevention Group studied the issues of timeliness of the medical referrals at the time of monitoring of the establishments N8, N15 and N17. In conversations with members of the Special Preventive Group accused / convicts said that in many cases their withdrawal from the cells to receive medical services is delayed and additionally they do have the information, how long they'll have to wait to get medical care.

The Special group prison medical referral study found that there is a problem of the timely confirmation of the referrals through the unified electronic database problem by the medical department. It should be noted that in most cases the doctor promptly submits medical referrals in to the electronic database, although confirmation from the Medical Department, in some cases, it takes from 1 month to 6 months. It should be noted that the Section 4 of Article 8 of the Order №31 of 22 April 2015 by the Minister of Corrections determines the reasonable waiting period for planned services, determined by medical necessity, which shall not exceed the for the planned inpatient services 4 months and for planned outpatient services - 1 month. According to Article 2, paragraph 4 of the Order N55 of the Minister of Corrections of 10 April 2015, the Medical Department shall consider the referral within a reasonable time in accordance with practice approved or recognized by the recommended guidelines (guidelines), and the clinical management standards (protocols) of the Ministry of Labor, Health and Social Affairs and, if necessary, using international guidelines.

Noteworthy that in the view of the above procedures, the accused/convict may have to wait for treatment for months. It is possible that their health conditions deteriorate in this period. For example:

- Convict I.K. had the ophthalmologist consultation on 8 March 2015, the Chief Doctor submitted the referral request on 16 March 2015, which was approved only after 6 months, on 18 September 2015 and the inmate was taken to doctor only on 21 September;
- Convict Z.K. had a consultation on 15 October 2014, the request was sent to the Medical Department on November 14, the Department of Health has confirmed the request on December 26, while the prisoner was taken to the civilian clinic for necessary treatment in the manner of hip endo-prosthetics in August 2015 (1 year after consultation);
- Convict G.M. had the consultation of urologist on February 12 and was diagnosed with necessity of hydrocele emergency surgical treatment, but the request was sent to the medical department on February

18, and while the Medical Department has confirmed the request the same day, the prisoner was taken out for the operation on March 23;

- The establishment N15 prisoner G.K. 29 August 2014, after consultation was instructed to carry out the resection of the nasal septum. On February 28, 2015 the doctor sent a request to the Medical Department, which issued confirmation only at September 18, 2015. In December 2015, the sequence number of defendant's treatment in waiting list was 78;

- Convict Ch.A. was recommended on 18 August 2015 by a medical specialist to undergo allergic sample holding. On 21 August the doctor's request was sent to the Medical Department, which confirmed the same on December 7;

- Convict A.G. was recommended on May 7, 2015 as a result of consultation with an urologist, to undergo the surgical treatment of testicular. The doctor sent the request on May 14, while the Medical Department confirmed only on September 23;

- Convict B.C was on consultation on 2015 April 15, results of which stated that the convict has an umbilical hernia and inguinal hernia on the right and left area of the belly button. Since the patient's abdominal wall and has three hernia, which are driving up belly and hurt, as well as due to the threat of their incarceration, patient requires surgery in the near future. The chief doctor of issued the request to the medical department on April 20, while the Medical Department confirmed on October 7;

- Convicted Ch.G. was recommended on 25 July 2015, during a consultation, to undergo hemorrhoidal disease treatment. The chief doctor of the establishment sent a request to the Medical Department on July 30, which was confirmed on December 7;

- Convict G.M. was given recommendation on 14 August 2015 by the surgeon on the calculous cholecystitis, for which the chief doctor of the establishment sent a request to the medical department on September 29. Demand was confirmed on December 7;

- Convict K.Z. on February 27, 2015, was given recommendation to undergo bilateral phlebectomy. The chief doctor of the establishment sent a request to the medical department on June 19. On December 7, 2015 the Medical Department confirmed the request.

The 2014 Parliamentary Report also highlighted the fact that the exercise of the medical referral and medical services are dependent on the will of the prison director and head of the Medical Department - non-medical staff, which shall be regarded as a potential drawback to the health care delivery process. At the Public Defender's recommendation, this rule should have been abolished. The decision on the medical referrals should have been taken by the head of the Medical Department, after consultation with the Prison Director on the safety of the transfer of the prisoner. Ministry of Corrections did not accept the recommendation.

In 2014, the Public Defender applied to the Ministry of Corrections, to implement the change in the Order N55 of 10 April 2015 and specify that in case of transfer of the prisoner for outpatient services for short period to the civilian medical Institution, if the additional examinations prove necessary, to transfer the prisoner in the extraordinary manner and without another waiting list. According to the information received from the Ministry of Corrections, in case of necessity of additional examinations shows up at the time transfer of the prisoner for outpatient services for short period (the following days) to the civilian medical Institution, a prisoner is transferred if necessary, ahead of schedule in consideration of the patient's condition, medical records / recommendation. In addition, the issue of reflection of this practice in Order N55 of 10 April 2015 is being considered.

Adequacy and Quality of Medical Services

According to the European Prison Rules, medical services in prison shall be organised in close relation with the general health administration of the nation. Health policy in prisons shall be integrated into, and compatible with, the national health policy. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. Prisoners should have access to all necessary medical, surgical and psychiatric services including those available in the country.[174]

2014 Parliamentary Report focused on the need of integration of the prison health care to civil healthcare system. Although in organizing the prison healthcare system consideration should be given to the differences and difficulties inherent in the penitentiary system, implementation of the basic civilian healthcare standards in the penitentiary as soon as possible is of crucial importance for raising the penitentiary health services to a level equivalent to civilian health services. Furthermore, it is necessary to establish an effective mechanism of control over the quality of medical care.

The Order of the Minister of Health N 01-63/N dated 12 September 2012 "on improving the quality of medical services provided by inpatient clinics and the functioning of the internal system of patient safety evaluation" stipulates that inpatient clinics must set up their own internal structures to control quality and to ensure provision of patient-oriented, quality and effective services.

The Quality Department monitors high priority matters such as permissions; functioning of physical infrastructure and medical equipment; personnel qualifications; sanitation, hygiene and epidemiology watching regime; implementation of the National Recommendations (the Guidelines) and Standards (the Protocols); nosocomial (hospital-acquired) infection control; maintenance of medical documents including statistics and referrals.

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

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

In consideration of all the above mentioned, the Public Defender addressed the Minister of Corrections with the recommendation to take all measures to enhance a mechanism for controlling the implementation of civilian healthcare standards in the penitentiary system; introduce an effective system for statistical data collection and analysis; pay more attention to statistical analysis results in designing the penitentiary healthcare action plan; effectively manage the procurement process and evaluate its cost-effectiveness and to assess the

174 European Prison Rules, Rule 40.1-40.5.

quality of penitentiary healthcare services using pre-determined and relevant indicators. According to the response of the Ministry of Corrections, Primary health care model has been successfully operating in all the institutions of the penitentiary department and all medical services are performed in accordance with existing standards. The standard of medical care was developed and approved by the Minister, which is in the process of implementation. NCDC has introduced the form of submission of the monthly statistics, uniform for the whole state. On December 30, 2015 the Minister of Corrections approved Order N8467 on the "The rules of operating the Ministry of Corrections' statistics system - the terms of submission and the implementing service". The steps taken by the Ministry are towards a positive side, but the prison health care still faces great challenges.

According to Article 3(s1) of the Law on Health, medical assistance is urgent if without such assistance a patient's death, disability or serious aggravation of health is inevitable. According to the Order of the Minister of Health N01-25/n dated 19 June 2013 "on determining classification of medical interventions and approving minimum requirements for primary healthcare institutions", there are 4 classes of medical intervention: an urgent (critical) intervention is an intervention to save a life, an organ or an extremity involving resuscitation and the intervention usually starts several minutes after the decision has been made. An emergency (without delay) intervention means intervention when a life-threatening medical condition has already started and/or deteriorated acutely. Such medical conditions are those that may entail a loss of life, organ or extremity, while the actual intervention could be fixating a fracture, pain management and relieving other heavy symptoms. Normally a decision on intervention should be made within no later than 24 hours after the first-category preserving treatment is completed. Emergency (without delay) intervention is an early intervention while a patient's condition is stable and his/her life, organ or extremity is not under urgent threat but the intervention has to be carried out in several days (2-5 days). A scheduled intervention is the one scheduled for a date that is convenient for the patient, the doctor and the medical institution. Unfortunately, the standard established by the above-mentioned ministerial order N01-25/N is often breached and appropriate healthcare services are not accessible timely. Hence, we recommend that the penitentiary healthcare staff be guided with the aforementioned ministerial order in planning their medical interventions.

RECOMMENDATIONS

To the Ministry of Corrections

- Ensure adequate number of doctors and nurses in every penitentiary establishment so that healthcare services can be provided timely and adequately.
- Ensure that invited doctors visit the penitentiary institutions at proper intervals to timely and adequately provide the required medical services; ensure timely provision of their consultations by neurologists, gastroenterologists and psychiatrists.
- With a view of ensuring timely provision of healthcare services, in determining a patient's list number in the medical referrals electronic database, take into account the nature of the disease and dynamic of its development; incorporate this new principle in the Order N55 of the Minister of Corrections dated 10 April 2014
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that only the Chief of the Medical Department of the Ministry of Corrections, after consulting with the Chairman of the Penitentiary Department on issues of security of patient transfer, is authorized to make decisions on transferring patients to both penitentiary medical facilities and civilian hospitals.
- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 on "The procedure of transfer of the accused/convicts to the general hospitals and Tuberculosis Treatment and Rehabilitation

Centre" and determine the reasonable time for the assessment of the referral registered in the unified electronic system by the Medical Department, in order to avoid undue delays in the treatment of the patients

- Amend the Order of the Minister of Corrections No. 55 dated 10 April 2014 so that prisoners do not wait for their turn on the list if they had been incompletely examined in an outpatient clinic or had been examined but require additional examination shortly (a few days) after their visit to the clinic.
- Take all necessary measures to enhance a mechanism for controlling the implementation of civilian healthcare standards in the penitentiary system; introduce an effective system for statistical data collection and analysis; pay more attention to the results of statistical analysis in designing the penitentiary healthcare action plan; effectively manage the procurement process and evaluate its cost-effectiveness. The quality of penitentiary healthcare services should be assessed using pre-determined and relevant indicators.

To the Ministry of Corrections and Ministry of Labor, Health and Social Affairs

- Develop the plan of full integration of penitentiary healthcare into state general healthcare system via joint cooperation.

COMPETENCE AND INDEPENDENCE OF DOCTORS; CONFIDENTIALITY; AWARENESS OF PATIENTS

According to the Recommendation N(98)7 of the Committee of Ministers of the Council Europe, doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.[175] A doctor shall not be involved in an activity the purpose of which is not the protection of the prisoner's health.[176]

The problems related to the Competence and independence of the prison doctors subsist in 2015. With a view of raising the independence and competence of the penitentiary healthcare personnel, it is necessary to ensure professional independence of the healthcare staff. The medical ethics principles must fully be incorporated in the legal framework regulating the penitentiary system. Further, the healthcare personnel should be provided with continuous professional training; existing training modules should be enhanced. Finally, an effective mechanism should be created to evaluate and supervise the sustainability of training results. Clear job descriptions should be elaborated for the healthcare personnel.

The public Defender addressed the Minister of Corrections in 2014 with the recommendation to ensure professional independence and competence of the penitentiary healthcare personnel by fully incorporating the medical personnel's professional independence principle and the medical ethics principles in the legal framework regulating the penitentiary system, providing the healthcare personnel with continuous professional training, enhancing various training modules for them.

Positive assessment shall be given to a number of activities carried out by the Ministry of Corrections in the view of enhancing the professional independence of medical personnel, their competence and protection

175 Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 20 April 1998), paras. 19-20.

176 The UN international principles of medical ethics (1982), 3rd principle, available in English language only on the following link: http://www.un.org/documents/ga/res/37/a37r194.htm [last accessed18.03.2016].

of medical ethics. Specifically, the training of the medical staff of the penitentiary system on national and international standards on the specificity of the treatment of prisoners. As well as by the working group for long-term training programs as well as medical personnel, medical personnel employed in the job descriptions of support staff functions to be discharged, but only the above measures fail to provide medical personnel with a high degree of independence and competence.

In order to ensure the strict adherence to the professional ethics by the prison medical staff the legal framework of the penitentiary system shall be reviewed. According to one of the most important principles of the professional ethics the doctor shall not participate in any activities, which are not directed to protection of the prisoner's health.[177]

According to the Special Preventive Group monitoring results, there is a certain attachment of the medical staff to the administration, violating the principle of confidentiality and impeding the process of medical care.

In the long term perspective, the integration of the penitentiary healthcare system with general healthcare system is important in the view of protection of professional independence.[178] In the short term, however, it is necessary that the regulatory unit of the Medical Department carry out strict supervision on the implementation of ethical principles by prison medical staff and treat violations adequately.

The monitoring conducted by the Special Preventive Group revealed that the medical unit infrastructure, in some cases, violates confidentiality. For example, at the establishment N12 medical unit is a two-room primary care, with the doctor's office and a room to get the drug – sophosbuviris.[179] In order to get to the second room of primary health care the patients have to go through the first primary health care room, and in order to get to the chief doctor's office and the room to get sophosbuviris, the patient has to go through both primary healthcare rooms. The layout of rooms violates the confidentiality of patient care. It should be noted that during the visit, the Special Preventive Group members had witnessed an incident in the first primary health care room. Namely, in the course of ongoing consultation with a prisoner, other prisoners were passing to another primary care room or the doctor's office. Similar problem subsists at the establishment N17, where the medical unit does not have a separate manipulation and procedure rooms, and there are problems of securing privacy of conversations with a doctor.

It is an established practice in remand facilities and closed prisons that prisoners request an appointment with the doctor through the prison staff who are not healthcare personnel and often times doctors examine prisoners and provide their consultation in the cells. This procedure contravenes the principle of confidentiality of the patient/doctor relations because the patient's medical complaints become known to non-healthcare staff of the prison and to other inmates.[180] Save for urgent cases, any medical examination and consultation should be performed in privacy, in observance of the confidentiality principle, in a doctor's office.[181]

The principle of confidentiality is breached also by Article 24.2 of the Georgian Imprisonment Code,[182] according to which a medical account of a prisoner's mandatory medical examination carried out on admission must be kept in the prisoner's personal (non-medical) file.

According to the Order N 198/N of the Minister of Labour, Health and Social Affairs of Georgia, dated 7 July 2002, on the „Rules of storage of medical records by medical institutions", all completed medical files shall be saved in the archives of the medical institution.

177 The UN international principles of medical ethics (1982), 3rd principle, available in English language only on the following link: http://www.un.org/documents/ga/res/37/a37r194.htm [last accessed18.03.2016].

178 CPT also noted the importance of this issue in the Report on their visit to Georgia, where it is emphasized that the integration of the penitentiary healthcare system with the Ministry of Labour, Health and Social Affairs is an important tool in the view of protection of professional independence.

179 At the time of our visit the room for sophosbuvir application was under repairs and not functioning.

180 Outtakes from the general report of the CPT(CPT/Inf (93)12), para.51.

181 ibid., paragraph 35.

182 ibid., paragraphs 50-51.

The monitoring of the establishment N2 undertaken by the regulatory unit of the Medical Department in July 2012 revealed that there is a medical archive in the institution, however, in the archive room the documents are placed on the so called "prison beds"; medical records are not compiled or numbered in accordance with relevant rules, are not boxed, there's no information on the total number of files, etc., however they are piled in the alphabetic order; the room is does not meet the requirements set for archives, requisite temperature is not protected and there's no humidity control, not enough shelves, except for archived documents, there are various non-archive items in the room (wheelchairs, computers, primary care journals, crutches, etc.). According to the Chief Doctor, a majority of documents archived (compressed until 2012) is stored in the special unit (packed in the prisoners personal affairs). To date the archive is unchecked, and it is unknown how many medical files are stored. In addition, there's no responsible for archives allocated in the medical unit of the establishment N2.

The archive does not function either at the establishment N3. Part of the Medical histories are stored in the primary health care room closet, with the active medical files (archived files are stored at the two lower shelves). None of them are described, numbered, in alphabetical order, etc., there's no information on the number of the medical files stored, etc. the other (larger) part of archived medical files are stored in the special unit for the room provided for documentation, where none of the requirements applicable to archives are met (not kept in relevant temperature and humidity, not enough shelves, room polluted, non-archive material, etc.). Medical documentation is boxed in 6 large boxes and placed in different parts of the room. The establishment N14 has the similar problem.

RECOMMENDATIONS

To the Ministry of Corrections:

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

Proposal to the Parliament of Georgia

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

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

Mental health

Protection of mental health constitutes one of the major challenges of the penitentiary healthcare. According to the information received from the Ministry of Corrections, the number of prisoners with mental and behavioral problems reached 1 031 in December 2015.

As explained by the medical personnel, a psychiatrist receives the list of prisoners wishing to get an appointment with the psychiatrist from the primary healthcare doctors. However, in a number of cases, they refuse to put some prisoners on the appointment list despite their requests, because they think the prisoners are simulating. Due to the above reason, the prisoners often cannot receive sufficient psychiatric service.

Identification of prisoners with personality disorders constitutes a problem. Therefore, it is crucial to improve access to psychiatric services, as well as to deepen collaboration of the psychiatrists, psychologists and social workers. These efforts should help improve the mental illness identification rate and provide adequate psychiatric assistance to the prisoners with mental problems in the differentiated regimes. Patients suffering from acute psychosis should be treated not in the penitentiary institutions but in the mental facilities. At the same time, adequate outpatient services should be introduced.

According to the information received from the Ministry of Corrections, in 2015, 12 825 consultations were carried out by the psychiatrist and 8 235 patients were involved in the mental care. During 2015, 104 prisoners were placed in inpatient facilities for involuntary psychiatric assistance. It is worthwhile noting that the number of prisoners placed inpatient facilities for involuntary mental assistance has decreased compared to 2014.[183]

Special attention should be paid to evaluating each prisoner's mental health at the time of admission to a penitentiary institution, during his/her initial medical examination. Prisoners inclined to self-aggression or suicide and drug-addicted prisoners should be target groups for mental health screening. In addition, prisoners who systematically demonstrate asocial behavior and there is a doubt that such behavior may be caused by their mental condition must also be subject to mental health assessment.

Due to the fact that there is no effective mechanism for identifying mental health problems, prisoners who injure themselves, breach the prison regime or commit other disciplinary violations are punished with disciplinary sanctions instead of being provided with timely and adequate psychiatric assistance. Amendment to the Imprisonment Code which obliges a prisoner to reimburse treatment expenses if he/she willfully or negligently injures himself/herself[184] also extends to the prisoners with mental problems who injure themselves. We believe the right approach to prisoners with mental problems who injure themselves should be therapeutic, not punitive.

Prevalence of mental illnesses among the prison population is mostly caused by drug addiction and overuse of psychoactive substances in the penitentiary facilities. In 2015, 313 prisoners were involved in the methadone programme, while the same index in 2014 was 382. Decrease of the number of prisoners involved in the methadone programme in 2015 indicates that considering the scale of drug addiction in the penitentiary system, provision of the above service to the prisoners cannot sufficiently meet the existing demand.

In 2014 the Public Defender recommended the Minister of Corrections to introduce replacement therapy programmes to deal with opioid addiction, however, this recommendation was not fulfilled. It is noted in the

183 In 2014, 174 patients were placed in inpatient facilities for involuntary psychiatric assistance.

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

response received from the Ministry that introduction of the above treatment can start only in 2017. It is not noted why is it impossible to introduce the replacement treatment for opioid addition before 2017 or what processes are ongoing and what are the steps taken in this regards.

The medical personnel should draw special attention to the issuance of the psychotropic drugs. For example, it was revealed during the visit to the Penitentiary Establishment N7 that the prisoners are supplied with the medicines by the doctor on duty which provides them with the prescribed medicines during the day. It should be noted that a nurse is not attending the process of receiving psychotropic drugs.[185] Accordingly, there is no control on the use of psychotropic drugs which creates the risk of their misuse. Namely, it is possible to pass the medicines to the cellmate or to collect the medication and to receive a couple of pills at the same time, which might have a negative impact on the patient's health.

In the process of protecting mental health, of paramount importance is the protection of an individual's interests, respect for his/her dignity and provision of care in as humane environment as possible. According to the General Comment of the UN Human Rights Committee,[186] prolonged solitary confinement of the detained or imprisoned person may amount to torture or other cruel, inhuman or degrading treatment. According to a report of the UN Subcommittee on Prevention of Torture, prolonged solitary confinement may amount to an act of torture and it should not be used in the case of minors or the mentally disabled individuals. [187] According to the 2007 Istanbul Statement[188] on the use and effects of solitary confinement, the use of solitary confinement cell in relation to the mentally ill persons should be absolutely prohibited.

In his Parliamentary Report of 2014, the Public Defender addressed the Minister of Corrections with the recommendation to take relevant measures against the placement of prisoners with mental problems in the solitary confinement cells, however, Public Defender's recommendation was not taken into consideration and there were cases when the individuals with mental problems were placed in the solitary confinement cells. In 2015, the facts of placing the prisoners with mental problems in the solitary confinement cells were revealed in the penitentiary establishments N2 and N3. For example, in the establishment N3, one of the prisoners with mental problems was subjected to the disciplinary sanctions 5 times during the first 4 months of 2015, out of which the prisoner was placed in the solitary confinement cell twice. Similarly, the second prisoner, who suffered from the personality disorder, was subjected to the disciplinary sanctions 3 times during the first 4 months of 2015, including, in one case, to the placement in the solitary confinement cell.

All necessary measures should be taken in order to avoid placing mentally ill prisoners in solitary confinement cells and to ensure timely and adequate psychiatric assistance to such prisoners.

The Case of D.Ph.

Special attention should be paid to the case of D.Ph., individual placed in the penitentiary establishment N7 to serve the life imprisonment. According to the findings of the Psychiatric Commission of the Ministry of Corrections dated 16 July, 3 December and 23 December 2014, convicted D.Ph. has a psychotic mental disorder. The Commission found that it is reasonable to subject the convict to the forensic psychiatric examination and that he/she is in need of involuntary psychiatric treatment. It is noteworthy, that on 2 December 2014 the prisoner had the last consultation with the psychiatrist, was diagnosed with the organic delusional disorder and was recommended to undergone a psychiatric examination.

185 According to paragraph 12 of the Decree N150/N of the Minister of Labour, Health and Social Affairs of Georgia dated 21 July 2003 on "the Rules of Purchase, Storage, Record Keeping, Preparation and Use of the Narcotic Drugs, Psychotropic Substances and Precursors in the Approved Emergency and Ambulance Service" (Annex N5), "substances under special control are injected to the patients with the presence of a doctor and a nurse (or a doctor)."

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

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

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

It should be noted that despite a number of conclusions of the Psychiatric Commission, the convict D.Ph. could not be subjecte to the sufficient psychiatric treatment. The medical documentation of the prisoner reveal that despite a number of proposals throughout 2015, the prisoner refuses to receive medical assistance.[189] The documentation also demonstrates that the convict refused the consultation with the multidisciplinary group.

According to the letter received from the Ministry of Correction on 25 September 2015, on 11 August 2015 the convict was subjected to the forensic psychiatric examination in the penitentiary establishment N7. It is noted in the examination report that the results of the forensic examination should be assessed as a clinically complex forensic case. It is impossible to reach the solution or answer the questions set in the resolution, in the outpatient forensic psychiatric examination format. Therefore, it is necessary to subject D.Ph. to the in-patient forensic psychiatric examination in the LEPL Levan Samkharauli National Forensic Bureau. It is indicated in the letter that the penitentiary establishment N7 has to apply to the Tbilisi City Court regarding the involuntary psychiatric examination of the convict.

The Tbilisi City Court has refused to receive the petition of the penitentiary establishment N7 on D.Ph.'s involuntary psychiatric examination since found that there were no grounds for accepting the petition.

Cases of death, Suicide

In 2015, 12 prisoners died in the penitentiary system. Sharp decline of the death cases in the penitentiary system should be positively assessed.[190] According to the information received from the medical department, the reason of death was multiple organ failure, suicide, heart failure, hepatic encephalopathy, cerebral blood circulation disorder (ischemic type), paralysis of the vital centres. As in the previous year, the majority of prisoners died of cardiovascular failure. It is necessary to draw special attention to the screening and early detection of the cardiovascular and respiratory system diseases in order to provide timely and adequate medical assistance.

The Case of M.D.[191]

The Office of the Public Defender of Georgia studied the case of the deceased convict, M.D. It is noteworthy that on 26 July 2014, the convict underwent a heart surgery in the Kutaisi Intervention Medical Centre. However, due to the purulent wound, another surgery was conducted in the Medical Facility N18 and one more surgery was carried out in the O. Gudushauri National Medical Centre on 9 November 2014. The information obtained by the Public Defender's Office reveals that the convict was repeatedly transferred to the O. Gudushauri National Medical Centre.

It is worthwhile noting that on 30 December 2014, the convict M.D. was subjected to the medical examinations in the Acad. Z. Tskhakaia West Georgain National Centre of Interventional Medicine. The following is noted in the record of the doctor on duty of the penitentiary establishment N14, dated 30 December 2014: "The Convict was diagnosed with the chest wall abscess, sepsis, transfer to the penitentiary department N18 is recommended."

On 16 January 2015, the Office of the Public Defender of Georgia, in order to receive a detailed information on M.D.'s state of health, addressed the medical department of the Ministry of Corrections with the letter N04-19/294. With letter N31500191416 of the medical department, the Public Defender's Office was informed that the patient has not been diagnosed with sepsis on any stage of the disease. It is noteworthy that on 6 April

189 Relevant protocols are drafted on this matter. The last time the convict was offered a medical assistance was on 19 August 2015.

190 In 2014, 27 prisoners died in the penitentiary system.

191 The present case is not included in the death rate of the patients in the penitentiary facilities, since the patient deceased a few hours after the release, in the O. Gudushauri National Medical Centre.

2015, the convict was diagnosed with sepsis in the O. Gudushauri National Medical Centre. In addition, the diagnosis of severe sepsis is recorded in the conclusion of the board of doctors, dated 8 April 2015.

The convict M.D. due to the grave health condition, was released from sentence by the decision of the joint permament commission of the Ministry of Corrections and the Ministry of Labour, Health and Social Affairs of Georgia on 15 April 2015 at 21:00, and on 16 April 2015 at 07:00 died in the O. Gudushauri National Medical Centre.

Special importance has the protection of the right to life of individuals placed in the closed facilities. The State is responsible for the protection of the right to life of the individuals (accused/convict) placed in custody/ penitentiary establishment (including the medical institution of the penitentiary facility) and in case of violating the above right, for the effective investigation.

In addition, for the protection of the right to health of the individuals placed in the penitentiary system, the measures taken by the State and the quality of the concrete medical assistance (effectiveness, adequacy) and the results in relation to each individual accused/convict is significant. The right to health of the prisoner should be adequately protected in custody and to this end, qualified examinations and provision of the relevant medication should be provided.

The European Court of Human Rights, in the case against Bulgaria has found the violation of the right to life since the delayed medical treatment has become a decisive cause of death.[192] In the case *Keenan v. UK* the European Court of Human Rights discussed the quality of treatment the applicant underwent in custody and held that the provided medical treatment, which meant the daily attention for the doctor and receiving the medicines, also, the visual supervision of the prisoner, was not adequate and violated Article 3 of the European Convention.[193]

On 17 April 2015, the Public Defender addressed the Chief Prosecutor of Georgia with the recommendation N04-19/2995 regarding the alleged crime committed by the medical personnel of the penitentiary establishment N17 and O. Gudushauri National Medical Centre, since a number of questions are inquired by the circumstance that despite the record of the doctor on duty of the penitentiary establishment N14 made on 30 December 2014 (the convict was suffering from sepsis), after 9 months (till death) of having a purulent wound (despite the permanent treatment) from the heart surgery conducted on 26 July 2014 in the Kutaisi Intervention Medical Centre, the convict was diagnosed with sepsis in O. Gudushauri National Medical Centre on 6 April 2015, a few days before death.

On 21 May 2015, in response to the letter N13/32702 received from the Chief Prosecutor's Office of Georgia on 21 May 2015, investigation has started in the first unit of the Didube-Chughureti Division of the Ministry of Internal Affairs on the criminal case N002200515002, on the death of the former convict M.D. in the O. Gudushauri National Medical Centre, the crime foreseen by Article 116 Part 1 of the Criminal Code of Georgia.

In the Parliamentary report 2014 the increase of the suicide cases was underlined (7 cases of suicide were revealed). Positively should be assessed the sharp decrease of suicide rate. In 2015, only 2 cases of suicide were revealed in the penitentiary system. It is noteworthy that the penitentiary establishments have a suicide prevention programme, in which 56 convicts, among them 50 men, 4 women and 2 juveniles have been involved in 2015. However, the suicide prevention programme does not cover all establishments and no special normative framework for its functioning is at palce.

Brief information about each case of suicide is provided below:

192 The case *Anguelova v. Bulgaria*, application no. 38361/97, 13 June 2002, paras. 125-130.
193 *Keenan v. UK*, Application no.27229, paras. 179-186.

D.T.

In the penitentiary department N8, on 7 July 2015, at around 15:45, a doctor was called to the convict in the cell. The patient was taken out of the toilet unconscious. The patient's neck had strangulated chute. The prisoner was placed on his back and started taking resuscitating measures. The patient was cyanotic, with no pulse either on the periphery or main blood vessels. Also did not have any breathing movements or a corneal reflex. The ambulance was also called. The patient was transferred to the reasonable acceptance and placement unit where the resuscitation measures were continued by the ambulance, but without a result. Biological death was recorded.

According to the report N003957615 received from the National Forensic Bureau, the reason of death of the convict D.T. is a mechanical (strangulated) asphyxia, developed as a result of the loop pressure on the neck organs.

The convict's body had injuries received while being alive: left eye lid bruise, two notches on the surface of the outer corner of the left eye with the bruises around, a bruise on the right cheekbone area, incision on the left leg at the top third of the front surface of the shin, these injuries were light and did not cause the death. Furthermore, these injuries are developed in the period close to death.

According to the information received from the Ministry of Corrections, on 4 April 2015 the convict was examined by the doctor who noted that the patient complained of heart-waving, anxiety, restlessness. He was diagnosed with nervousness. The doctor prescribed Valerian pills and korvalol. The patient was given advice on healthy lifestyle and was subjected to the monitoring by the nurse. The further consultations and examinations revealed the gallstone disease. The convict was prescribed Drotaverin and the surgeon's consultation, also, the screening on markers of Hepatit C and B, which he refused. Despite the fact that the convict complained of nervousness and restlessness during the consultation carried out on 4 April 2015, he was not visited by the neurologist, or a psychiatrist.

I.S.

According to the information received from the medical department, on 16 May 2015, the day the convict was placed in the establishment N2, he underwent initial medical examination and the anamnesis revealed that he was a frequent user of narcotic drugs. The prisoner has not addressed the doctor regarding the health problems before. The accused has not addressed the psychiatrist either and did not receive psychotropic medication. Tuberculosis was not diagnosed in the last 5 years and therefore, the treatment was carried out. Visual examination did not reveal any bodily injuries.

On 31 May 2015, at 7:10, the doctor on duty was summoned in the cell. The accused was lying on back in the corridor, in front of the cell. Constriction foramen was on the front and side surfaces of the neck. Pulse could not be found on the spoke and carotid arteries, eye pupils were areactive. Suicide by hanging was reported. The doctor on duty did not consider it necessary to take reanimation measures.

According to the report N N003157915 received from the forensic examination bureau, the reason of death of the accused I.S. is the mechanical asphyxia developed as a result of loop pressure on the neck organs. The body of the accused had injuries received during life: multiple incisions on the middle third of the shin's front surface and around the outer spans of the left ankle that were developed as a consequence of pressure with a dense-blunt object in the nearest past before the death. In case of examination of a living person, the above injuries are light and have no causal link with death.

It is important to conduct an effective investigation on each fact of suicide and to find out whethere the prisoners were incited to suicide.

RECOMMENDATIONS

To the Ministry of Corrections:

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

Proposal to the Chief Prosecutor's Office of Georgia

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

WORKING CHARACTERISTICS OF A JOINT PERMANENT COMMISSION OF THE MINISTRY OF CORRECTIONS OF GEORGIA AND THE MINISTRY OF LABOUR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

The rules of procedures of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia has special importance for the prisoners that are suffering from the incurable disease[194] or are the elderly inmates.[195]

The Commission consists of the respresentatives of the Ministry of Labour, Health and Social Affairs of Georgia and the Ministry of Corrections of Georgia. The objectives, composition and responsibility of the Commission is determined by the statute approved by the joint order N181/N01-72/N of the Minister of Corrections of Georgia and the Minister of Labour, Health and Social Affairs of Georgia dated 18 December 2012.

The present chapter will focus on the release process of the convicts suffering from grave and incurable diseases and its results.

It is worthwhile noting that the Commission reviews the documentation reflecting the health conditions[196] and independently makes a final decision on the question of release of the convict. Based on the request from the chairperson of the Commission, the Secretariat of the Commission ensures the invitation of the qualified

194 The list of those grave and incurable diseases which constitute the ground for the release of prisoners from serving a sentence is determined by the Order N01-6/N of the Minister of Labour, Health and Social Affairs of Georgia dated 15 February 2013.

195 According to Article 4 para 11 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia, the Commission reviews the applications only in cases when the female convict is 65 years old and more and the male – 70 years old and more, if he/she is not sentenced to life imprisonment and not less than a half of the sentence is already served.

196 Article 4 para 6 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

doctor specialist of a relevant field through the medical professional associations and taking into consideration the diagnostic group in order to study the state of health of the convict.[197]

The invited doctor specialists study the medical documentation of the convict, in case of need, conducts the clinical examination of the patient and prescribes para-clinical examinations. The Commission decides on the submission of a second medical opinion regarding the studying and diagnosing the convict's health condition by the invited doctor specialists and on the course of disease and the severity of the state of health.[198]

Special importance has the legal nature of the Commission's decision the procedures of its adoption and enforcement.[199]

The decision of the Commission is an individual legal act that should be substantiated and based on:

- The assessment of the health condition of the convict;
- The relevance of the convict's state of health with the special list of grave and incurable diseases which constitute the basis for the release from the sentence;
- Suitability of serving the remaining sentence.

Consequently, besides the fact that the Commission studies the health conditions of the concrete convicts, it also assesses the feasibility of serving the remaining sentence by the convict. Therefore, the Commission enjoys the discretion[200] in the process of deciding on the release of the prison from sentence due to the state of health.

In the reporting period, the Public Defender of Georgia became interested about the certain details of activities of the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia and in order to study the question, requested information from the Commission on 24 December 2015 and 18 January 2016. Namely, how many prisoners were released by the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia in 2013, 2014 and 2015 due to the grave and incurable diseases (indicating the dates of release and identification data of the convicts).

The Office of the Public Defender of Georgia was informed with the letters dated 20 and 28 January 2016 that in 2012-2015 the Commission issued 155 positive opinions out which 107 – due to the sickness.

On 29 January 2016, the Public Defender of Georgia has requested information regarding the above 107 individuals from the LEPL Public Service Development Agency.

The Office of the Public Defender of Georgia was informed with the letter of the LEPL Public Service Development Agency dated 10 February 2016 that to that date, 55 persons were already deceased. Information regarding the death of the other individuals could not be found in the electronic database of the Agency due to the lack of information regarding the alleged date and place of death.

The Office of the Public Defender of Georgia has compared the dates of issuance of the positive decisions of releasing the prisoners due to the grave and incurrable diseases by the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia and

197 Article 4 para 7 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

198 rticle 4 para 8 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

199 Article 6 of the Statute of the Joint Permanent Commission of the Ministry of Corrections of Georgia and the Ministry of Labour, Health and Social Affairs of Georgia.

200 According to Article 2 para 1 sub-paragraph k of the General Administrative Code of Georgia, "Discretionary power" means the authority, which provides an administrative agency or official with some degree of latitude in regard to choosing the most reasonable decision among several decisions in compliance with public and private interests."

the dates of deaths. The analysis demonstrated that the death in a number of cases was revealed in a month or moreover, in a few days after the decision of release was issued by the Commission. In many cases - on the second day from the release.

The Public Defender of Georgia considers that the work of the Joint Permanent Commission of the Ministry of Corrections of Georgia and of the Ministry of Labour, Health and Social Affairs of Georgia should be transparent as possible and its decision shoud be clearly substantiated. Despite the fact that the Commission uses its discretionary power while deciding upon the release of the prisoner and discusses the feasibility of serving the remaining sentence, its decisions should not leave the feeling of injustice and should not be perceived by the society as a measure for reducing the death rate/statistical data of the prisoners in the penitentiary system.

MANAGEMENT AND PREVENTION OF ESPECIALLY DANGEROUS CONTAGIOUS DISEASES

According to the data obtained from the Ministry of Corrections, in 2015, screening on tuberculosis was carried out in 58 208 cases (in 2014 – in 64 672 cases). 56 new and 72 recurrent cases of tuberculosis were revealed.

In 2015, 38 prisoners were suffering from the multi-resistant tuberculosis (36 prisoners in 2014). 16 cases of the terminated treatment were revealed (18 cases in 2014). Positively should be assessed the referral of the patients to the public hospitals for the examination/treatment of the coexistent disease in 2015, while the same number in 2014 amounted to 10 which is a very low figure. The above data demonstrates that the progress in terms of tuberculosis control continues.

In his Parliamentary Report of 2014, the Public Defender focused on the problems related to the infection control measures and treatment of its coexistent diseases in the establishment N19. Recommendation was issued on the above matter. According to the response received from the Ministry of Corrections, in accordance with the State Guideline Principles of TB control, for the proper management of infection control, it is necessary to provide disposable medical supplies continuously. The establishment is ensured with the respirators from the National Center for Tuberculosis and Lung Disease. Disposable gloves and masks are provided by the Ministry.

In 2014, the Public Defender addressed the Minister of Corrections with the recommendation to place the prisoners suffering from tuberculosis in the Tuberculosis Treatment and Rehabilitation Center. According to the response received from the medical department, to this date, 80 accused individuals/convicts suffering from tuberculosis are placed and undergoing the treatment for tuberculosis in the penitentiary system. Among them, the majority of the prisoners (73 accused/convicts) are placed in the Tuberculosis Treatment and Rehabilitation Centre N19. The rest of the patients, due to the security reasons, are placed in different establishments, where the conditions for their treatment are created and the anti-tuberculosis treatment of the diseased accused individuals/convicts is carried out in accordance with the State programme guidelines under the supervision of the doctor specialists of the relevant field. Therefore, the above recommendation was not fulfilled.

Order №01-5/N of the Minister of Labour, Health and Social Affairs of Georgia dated 31 January 2014 on " Approving the Programme on Prevention, Detection and Treatment of Hepatitis C in Prisons and other Detention Institutions" regulates the issues related to the treatment of the convicts with interferon. According to the information obtained from the Ministry of Corrections, in 2015, 5500 prisoners were subjected to the hepatitis examinations (in 2014 – 8711). 308 convicts received the treatment throughout the year.

The Public Defender, in his Parliamentary Report of 2014 issued a recommendation to amend the Order №01-5/N of the Minister of Labour, Health and Social Affairs of Georgia dated 31 January 2014 on "

Approving the Programme on Prevention, Detection and Treatment of Hepatitis C in Prisons and other Detention Institutions" in order to ensure every accused/convict with the anti-viral treatment in case of medical indication demonstrating the need for treatment. Unfortunately, the above recommendation was not fulfilled, since the accused individuals still have no access to the anti-viral treatment.

It is noteworthy that the foreign citizens and stateless prisoners placed in the penitentiary establishments do not have access to the Hepatitis C treatment with Sofosbuvir, which is ensured in the framework of the State Programme on Providing Measures for the Management of Fist Stage of Hepatitis C. According to Article 2 of the Decree N169 of the Government of Georgia of 20 April 2015, beneficiaries of the Hepatitis C management programme are the individuals holding citizenship document of Georgia. On 9 December 2015, the Public Defender addressed the Government of Georgia with the recommendation N13-2/1446 to establish the discrimination fact based on citizenship and the degrading treatment in the semi-open and closed establishment N17 of the penitentiary department. It is important that the foreign nationals and stateless persons placed in the penitentiary system should have access to the Hepatitis C treatment by Sofosbuvir like the persons holding the Georgian citizenship.

According to the response letter MOC91600170588 received from the Ministry of Corrections on 1 March 2016, in accordance with the Decree N169 of the Government of Georgia dated 20 Aprils 2015 on Approving the Hepatitis C Management Programme, the beneficiaries of the programme are all accused/convicts placed in the penitentiary establishment, however, due to certain technical reasons, foreign citizens cannot involve in the above programme. The response received from the Ministry reveals that the Ministry of Corrections of Georgia has an active communication with the Ministry of Labour, Health and Social Affairs of Georgia in order to solve the above problem.

In 2015, the number of prisoners examined on HIV/AIDS is decreased. In 2015, 5 500 prisoners were subjected to the examinations on HIV/AIDS, in 2014 – 9 081. During the current year, 17 new cases of HIV were revealed. During the year, 75 patients, among them 12 new, were involved in the anti-retroviral treatment for HIV/AIDS.

The following issues remain to be problematic in the penitentiary system: thoroughly following the requirements of infection control, ensuring the cold chain in line with the legislation, disinfection and sterilization of the medical tools, objects and materials of multiple use, allocation of safe boxes and relevant containers for collecting sharp objects and used syringes.

The examination conducted by the Regulation Agency for Medical Activities revealed that in the establishments N5, N6, N16 and N18 of the penitentiary department the disinfection and sterilization process is carried out with certain deficiencies which should be eradicated in order to efficiently direct the process. None of the above-mentioned facilities has personnel that has undergone a special course on infection control. In the room where the procedures are conducted, there was no anti-bacterial soap, dispenser with anti-septic solution or the paper to dry the hands. The tools are not divided into critical, semi-critical and non-critical categories since no relevant training was conducted, information was not provided about the necessity of the above process. Control of pre-sterilization processing of tools is not conducted. They have the so called sterilization indicators, therefore, sterilization process is carried out without the control with the indicators. The tools are not placed in the packages and as noted by the personnel, the reason is the lack of the packing materials. Dental cabinets do not have the closet/table for the storage of the sterile instruments. In the establishments N5 and N6 there are no bactericidal lamps in the dental cabinets.

Establishments N5, N6, N16 do not have the steam sterilizer, the so called autoclave; however, autoclaves are purchased and in the nearest future will be brought in every establishment according to the need. In the establishment N18, the central sterilization facility has a steam sterilizer, the so called autoclave, which is used in the working process, however, as noted by the head doctor and the deputy head doctor, the above sterilizer

is partially out of order and in need of reparation. The so called sterilization process registration journal should be printed and brought to the establishments N16 and N18. The above journal is being produced at this stage, however, not in line with the established rules.

In the establishments N6, N16 and N18 there are significant infrastructural deficiencies – no relevant space is allocated for the pre-sterilization processing, which, in turn, should be equipped with the washing bag, table, shelves and etc. No instruction on the preparation/use of the disinfectants is written out.

The lack of access to the information on the preventive health care for the prisoners is striking. According to the information received from the Ministry, the prisoners have access to the brochure "ABC of the Penitentiary Health Care" printed by the Medical Department in 2013, which includes the information on penitentiary health care in 10 languages. Despite the fact that this kind of brochure exists, it was revealed during the visit of the Special Preventive Group to the penitentiary establishments that these brochures are not accessible to all prisoners.

RECOMMENDATIONS

To the Ministry of Corrections of Georgia:

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

To the Ministry of Labour, Health and Social Affairs of Georgia:

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

To the Ministry of Corrections of Georgia and The Ministry of Labour, Health and Social Affairs of Gerogia:

- To ensure the treatment of the foreign citizens and stateless persons placed in the penitentiary institutions with sofosbuvir based on the medical need.

SPECIAL CATEGORIES

Juvenile Prisoners

During the reporting period, the Special Preventive Group and the Child's Rights Centre of the Public Defender were constantly studying the legal status of the accused/convicted juveniles.

According to Article 79 para 1 of the Juvenile Justice Code, an accused minor under pre-trial detention, shall be placed in the juvenile section of a detention facility, and a convicted minor who has been sentenced to imprisonment shall be placed in a juvenile rehabilitation facility. Services in detention and prison facilities where accused or convicted minors are placed shall meet the requirements for the health care of minors and shall respect the dignity of minors. It is noted in the commentaries to rule N19 of the Beijing Rules that during the placement of the juvenile prisoners, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.[201]

A juvenile convict who has not reached the age of 18, must be placed in a rehabilitation institution for juveniles N11.[202] Juvenile accused/convicts are also placed in the establishments N2 and N8 of the penitentiary department. In January 2015, 80 prisoners were placed in the penitentiary system.[203] Positively should be assessed the reduction of the number of prisoners at the end of 2015. At the end of December 2015, 35 prisoners were placed in the penitentiary system, out of which 15 were accused and 20 – convicted.[204]

Positively should be assessed the entry into force of the Juvenile Justice Code in 2015. The Code establishes the features of administrative and criminal responsibility of juveniles, peculiarity of administrative and criminal proceedings involving the juveniles, special rules for serving the sentence and other measures. The objective of the Code is the protection of the best interests of juveniles, resocialization-rehabilitation of the juveniles who are in conflict with the law, prevention of the new crime and protection of order.

Article 21 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) sets the rules for placement of the juvenile offenders in a detention facility, while Recommendation of the Committee of Ministers[205] to member states on the European Rules for juvenile offenders subject to sanctions or measures holds that the placement of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners minors must be kept separately from adults. [206]

Despite the fact that the juvenile inmates are placed in the separate building in the establishments N2 and N8, they still have means of communication with the adult inmates, for instance, when the former are taken to a lawyer or a legal representative. The same also applies during the visit to the dentist cabinet, which is common for the juveniles and adults. In addition, adult convicts employed in the prison maintenance service are distributing the food in each cell, despite the fact that they are carrying out this activity under the supervision of the prison personnel.

According to Article 94 of the Juvenile Justice Code, immediately upon the admission of an accused or convicted minor to a detention/prison facility, the administration of the facility shall allow him/her to read written information about his/her rights and obligations, including the procedure for filing complaints

201 United Nations Standard Minimum Rules for the Administration of Juvenile Justice , Rule N19, available at: http://www.un.org/documents/ga/res/40/a40r033.htm [Last Visited on 11.03.2016].

202 Imprisonment Code, Article 68, Para 1.

203 33 accused and 43 convicts.

204 Statistics published on the web page of the Ministry of Corrections, Available at: http://moc.gov.ge/ka/saqarthvelos-sasjelaghsrulebisa-da-probaciis-saministros-sistemis-statistikis-2015-tslis-angarishi [Last Visited on 11.03.2016].

205 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last Visited on 15.03.2016].

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

and appeals determined by the law. An accused or convicted juvenile shall be provided with the information in a form understandable to him/her.

In the penitentiary establishment the juvenile is informed of his/her rights by the social worker. A written form is developed, which describes the rights and responsibilities of the accused and the juvenile confirms with the signature that he/she has read the form. In this regards, in his 2014 Parliamentary Report the Public Defender has addressed the Minister of Corrections. According to the received response, with the financial assistance from the European Union, the handbook on the rights of the accused/convicted juveniles was updated and published. The social workers of the establishment were provided with two trainings for the juvenile inmates on the topic of "the Rights of the Juvenile Convicts" in the institution N11. Nevertheless, still problematic is provision of the information on their rights and responsibilities to the accused/convicts. It is necessary to provide the juvenile prisoners with the information regarding their rights and responsibilities in a language they understand.

It is possible to temporarily transfer the juvenile accused/convict to another institution based on the order of the Director of the Penitentiary Department only if it is necessary for the security of that inmate or the other juvenile.[207] In 2015, due to the security reasons, based on the secret letter of the Director of the Penitentiary Department, 12 convicts were transferred to the facilities N2 and N8. It is noteworthy that none of them were subjected to the disciplinary sanctions. During the conversation with the trustees of the Public Defender, the juvenile convicts have repeatedly noted that they were not aware of the reason of their transfer. In addition, no concrete term is determined for the transfer of the juveniles.

It should be noted that all convicts transferred to the facility N2 due to the security reasons, were registered in the school and were involved in the educational process. One of the juveniles was registered to pass the school-leaving examinations (CAT), however, the juveniles' unit of the penitentiary establishment N2 was not informed of this and therefore, the convict was not given the possibility to pass the exams. It is worth noting that the transfer to the penitentiary establishment N2 and N8 significantly impedes the rehabilitation process of the convicts.

In the rehabilitation process of the juvenile convicts their involvement in the rehabilitation and educational activities bears special importance. The educational process in the establishments N2 and N8 only ensures the continuity of education, while rehabilitation activities are not as diverse as in the rehabilitation institution for the juveniles.

Positively should be noted that in 2015, disciplinary sanctions were not used against the juvenile convicts. As for the incentives, for the good behavior and involvement in the rehabilitation acitivities, gratitude was announced to 42 convicts, which constitutes a positive practice that should be continued and strengthened.

The juveniles should observe the personal hygiene and the establishment should ensure them with the necessary means.[208] The UN Rules for the protection of juveniles specify that authorities of an institution are responsible for providing juveniles with clothing suitable for weather and necessary for health, while the Council of Europe Committee of Ministers recommends[209] that "juveniles who do not have sufficient clothing of their own should be provided with such clothing by the institution."

In his Parliamentary Report 2014, the Public Defender recommended the Minister of Corrections to ensure all juvenile prisoners of the facility N11 with the sufficient number of hygienic items. According the response

207 Juvenile Justice Code, Article 89.

208 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 65.4, available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last Visited on15.03.2016].

209 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 54. Available in English at: Article 66.2; Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last Visited on 15.03.2016].

MOC11600111071 received from the Ministry on 16 February 2016, the juvenile convicts placed in the facility N11 are provided with the items for personal hygiene twice a week, and in case of need, more often. Positively should be assessed the issue of provision of hygienic items to the juveniles and it is important to maintain the above practice.

According to Article 82 of the Juvenile Justice Code, "an accused or convicted minor shall be provided with regular medical examinations, required medical treatment, preventive medical services, and special medical items." During the reporting period, 21 convicts were transferred from the facility N11 to the medical establishment, out of which 13 were transferred to the Medical establishment for accused and convicts N18 and 8 were transferred to the public hospitals. In 2015, no case of tuberculosis was revealed in the institution N11.

According to Article 79 para 2 of the Juvenile Justice Code, " to protect the best interests of minors, detention and prison facilities shall have sufficient, qualified and trained personnel (pediatrician, doctor, nurse, psychologist, psychiatrist, social worker, etc.). In his Parliamentary Report of 2014, the Public Defender addressed the Minister of Corrections with the recommendation to ensure the relevan number of the psychologists. Positively should be assessed that in 2015, the facility had 2 psychologists.

In line with Article 90 para 3 of the Juvenile Justice Code,[210] based on the application, 3 convicts who reached the age of 18, were kept in the rehabilitation facility for the juveniles. One of the convicts was released after serving the sentence in 2015, calendarilly.

According to the recommendation of the Committee of Ministers of the Council of Europe,[211] a juvenile in an institution, shall enjoy various activities and events as per an individual plan which aims to prepare a juvenile for the release through less severe custody and his/her integration in the society. It is noteworthy that in the facility N11, the rehabilitation programmes are carried out by the institution's social services and non-governmental organisations. It should be mentioned that during the reporting period, majority of prisoners were involved in a numver of programmes. Besides, the juvenile inmates were also involved in other crafting courses.

The recommendation developed by the Committee of Ministers of the Council of Europe[212] in 2008 specifies the key directions of activities to be carried out by the regime, namely: studying at school, vocational training, work and occupational therapy, citizenship training, social skills and competence training, aggression-management, addiction therapy, individual and group therapy, physical education and sports.

According to Article 35 of the Constitution of Georgia "everyone shall have the right to education and the right to free choice of a form of education." Article 7, Paragraph 4 of the Law of Georgia on General Education obliges the State to "provide general education in penitentiary institutions in compliance with the rules set out in the Imprisonment Code,' while Article 14, para 1 sub-paragraph B of the Imprisonment Code enshrines that "an accused/convict shall have the right to receive general and vocational education'.

According to Article 49 of the Order N118 of the Minister of Corrections of Georgia dated 27 August 2015, on Approving the Statute of the Rehabilitation Facility of Juveniles, the institution is obliged to create the conditions that will allow the convicts to receive general and vocational education. General education is provided in the facility according to the programme approved by the Minister of Education and Science of Georgia. The above should ensure the achievement of the goals set by the national educational plan. This educational program is not subject to the conditions and timetable of the national educational plan.

210 To re-socialise a convicted minor, or to provide general education and vocational training, a convicted person who has attained the age of 18 may, upon his/her personal application, be kept to serve his/her sentence in the same facility where he/she was serving the sentence before reaching the age of majority. The decision on this matter shall be made by the director of the Penitentiary Department based on the petition of the director of the facility.

211 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 79.1 and 79.2. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last Visited on 16.03.2016].

212 Recommendation (2008) 11 of the Committee of Ministers to the Member States of the European Rule for Juvenile Offenders Subject to Sanctions or Measures, Article 77. Available in English at: https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM [Last Visited on 16.03.2016].

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

The school is located in a separate building, which also has a library and working rooms for the social workers. The educational programme covers the grades from 8 to 12 and accordingly, inmates who are in the 7th or the lower grade cannot fully engage in the educational process.

According to Article 2 para "n' of the Law of Georgia on General Education, a complete general education in Georgia consists of three levels: primary education (six years), basic education (three years) and secondary education (three years). In accordance with Article 9 para 1 of the same law, gaining of a primary and basic education shall be mandatory. In addition, Article 84 para 2 of the Juvenile Justice Code enshrines that the elementary and basic education should be provided to the accused or convicted minors. Despite this provision in the law, it is voluntary to go to school. The institution is trying to establish certain benefits so that the convicts have a desire to go to school.

The maximum duration of the lessons is 30 minutes. There are 5 lessons per day with the 5 minutes breaks. The above difference is justified by the fact that the convicts should not be overwhelmed, tired from the educational process. The teachers are oriented on the fulfillment of the main tasks during the lesson and do not give independent extracurricular homework. At the end of the reporting period, 12 pupils were officially registered in the school.

Unlike the Institution N11, general education programmes running in the Institutions N8 and N2 are not affiliated with any public schools and therefore, no document certifying the completion of the programme is issued. The main objective of the programmes offered by these institutions is to ensure continuity of the education process as long as a juvenile has a status of a convict. As a result, the offenders do not demonstrate strong interests towards the programme and often skip classes.

It is noteworthy that the juvenile prisoners often face problems when it comes to the enrollment in classes as it entails a series of procedures and requires the active participation of the parents. Often parents cannot afford travel to Tbilisi to sign a document. It should also be noted that in some cases the schools where juvenile offenders had attended classes prior to entering the system, are reluctant to accelerate the process and refrain from partnering with a school affiliated to the Institution N11.

The standard minimum rules for the treatment of prisoners specifies that juvenile education should be obligatory and authorities of an institution must pay special attention to its administration. According to the rule "All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect."[213]

The accused/convicted juveniles placed in the penitentiary system often encounter problems while registering for the national exams. Namely, the juvenile should be registered by the parent, however, there are a number of cases when the family cannot manage this, therefore, the role of the social service is very important in this regards. In 2015, 2 entrants were placed in the institution and both of them wanted to pass the Unified National Examinations. However, there were not registered. Accordingly, it is important to actively involve the teachers and represetatives of the social service agency of the institution in the process.

The UN Standard Minimum Rules for the Administration of Juvenile Justice promulgate the importance of the contact with the outside world for the juvenile offenders and specify that: "all measures should be taken to ensure juveniles' contact with the outside world which is an integral part of fair and human treatment and of

213 The Standard Minimum Rules for the Treatment of Prisoners, Rule 77.

great importance for their reintegration into the society.' [214] In the Rehabilitation Institution of the Juveniles N11 the convicts enjoy the legal right to short and long term visits, video and phone visits. There are two furnished rooms designated for the long term visits. However, a fee related to exercising the right to long term and video visits represents a barrier in this regard. [215] In 2014, 909 short visits and 19 long term visits were conducted in the facility N11. In 2015, the number of the short visits was decreased; however, the number of the long term visits has been increased. During the reporting period, 653 convicts used the right to the short term visit and 29 inmates – to the long term visit.

RECOMMENDATIONS

To the Minister of Corrections of Georgia:

- Ensure all juvenile prisoners with appropriate clothing;
- Provide all juvenile prisoners with hygienic items;
- Take the relevant measures to place all juvenile inmates in the rehabilitation facility for the juveniles;
- Ensure the transfer of the juvenile convicts to the other institutions due to the security reasons, as an extreme and temporary measure;
- Ensure all juveniles with the possibility to receive the proper education, including the higher education.

Legal Status of the Female Inmates

Besides the penitentiary establishment N5, the female prisoners are placed in the establishments N2 and N3. At the end of the reporting period, 52 accused and 257 convicted women were placed in the penitentiary establishments. Out of them, 294 prisoners (46 accused and 248 convicts) were placed in the establishment N5, 9 inmates (2 accused and 7 convicts) – in the establishment N2, 3 accused in the establishment N3 and 3 prisoners in the Medcail Establishment N18 (1 accused and 2 convicts).

In 2015, within the framework of the National Preventive Mechanism of Georgia, with participation of the Gender Equality Department of the Public Defender's Office, the monitoring of the institution N5 was conducted. The objective of the monitoring was to reveal the needs of the female inmates and to prepare the recommendations based on the assessment. In order to achieve the above objective, the monitoring team refered to the national legislation as well as the standards established by the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (The Bangkok Rules).

Recommendations were prepared based on the results and were sent together with the special report of monitoring to the Ministry of Corrections for further reaction. A number of recommendations were fulfilled by the Ministry of Corrections, which had a positive impact on the conditions of the female accused/convicts placed in the establishment.

Despite the fact that the overall situation in the Institution N5 is satisfactory, there still remain few serious problems. Still problematic is the procedure of full strip searches[216] upon admission during which women have

214 The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Rule 59.

215 Article 4, para 1 of the Order N132 of the Ministry of Corrections of Georgia adopted on 22 July 2014, on *Approving the Rules for theLong-Term Visits for the Convicts.'*

216 Decree 97 of the Minister of Corrections of May 30, 2011 on *Approving the Statute of* re-trial Detention, Semi-open and Closed-type Prisons, Medical Establishment and Tuberculosis Treatment and Rehabilitation Centre, Article 32, Para 9.

to get completely naked. In addition, what is particularly traumatizing for them is that they are asked to do squats. It is worth noting that such searches are conducted every time when prisoners leave the establishment and when they come back. Because of this practice which many prisoners find beyond their dignity, female inmates often refuse to receive medical care outside the establishment or attend the court hearings.[217]

In his Parliamentary Report of 2014, the Public Defender of Georgia addressed the Minister of Corrections with the recommendation to receive the female prisoners without violating their dignity. According to the response MOC31600018644 received from the Ministry on 11 January 2016, the above procedure is carried out while placing the inmate in the establishment, also, if the accused/convict has temporarily left the penitentiary institution on the grounds established by law and is returning back. The response received from the Ministry revealed that the issue of searching the female prisoners was reviewed and from 1 September 2015, during the full personal searches, the statute will determine the question of inviting a doctor specialist in case of need. It can be noted that the Public Defender's recommendation was not fulfilled. It is significant that the full search and aggressive (invasive) bodily examination should be substituted by the alternative searching methods, like scanning, in order to avoid the possible harmful psychological and physical impact.[218]

Positively should be assessed the decreased practice of using the placement in the solitary confinement cell as a disciplinary sanction, however, the cases of transferring the inmates to the cell type dwellings have been increased.[219] From January to December 2015, 67 inmates were subjected to the disciplinary sanctions, 1 prisoner was placed in the solitary confinement cell, inmates were transferred to the cell type dwelling in 14 cases, in 2 cases – the contact with the outside world was restricted (restriction of the short term visit – in 1 case, restriction of the telephone conversation – in 1 case). In other cases a reprimand and a warning was used.

During the reporting period, from the establishment N5, 219 prisoners were transferred to the different medical establishments. Out of them, 37 inmates were referred to the medical establishments N18 and N19 and 182 inmates – to the public sector hospitals. The Medical Unit of the establishment N5 houses a doctors' office, also the cabinets of surgery, gynecology, a dentist's, a room for manipulations and intensive observation. Also, the medical staff are qualified to take samples for TB and HIV/AIDS tests.

In the health care sphere the issue of receiving the timely medical service still remains to be a problem. The question of conducting a planned surgical treatment of the female inmates should be taken into consideration. Like the male prisoners, the female inmates are registered in the unified electronic database of the medical department of the Ministry of Corrections of Georgia. There are a number of cases when the patients have to wait for the surgical treatments for months, which causes the deterioration of the health conditions. It should be noted that if the patient has a menstrual cycle during her turn of treatment, she is not taken to the surgery and has to re-register. It is necessary to establish a separate referral line for the female accused/convicts.

According to Rule 6 para "c' of the Bangkok Rules, the health screening of women prisoners shall include comprehensive screening to determine primary health care needs, and also shall determine: the reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues.

In terms of protecting the reproductive health of women, significant problems are in the establishment N2 related to health care. Namely, the establishment does not have a gynecologist; therefore, the consultation of a gynecologist is problematic in this institution. In case of need, the female inmates are transferred to the public hospital, which is related to certain procedures and delay.

217 According to Rules 19 and 20 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

218 The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 20.

219 In 2014, in the facility N5, 3 inmates were placed in the solitary confinement cell and 8 – in the cell type dwellings.

Still problematic is the carrying out of hygienic procedures for the female prisoners. Female inmates constitute a special category with specific requirements. It is critical that these needs be assessed regularly and special programs developed on a regular basis. Prisoners have access to showers from 11:00 to 20:00. Cells in the institution are not heated adequately and in spite of the fact that the convicts have to do dishes and wash clothes, also take care of their personal hygiene during late hours, they do not have hot running water in their cells. Constant contact with cold water has a negative impact on a women's health. It is noteworthy that the Ministry of Corrections of Georgia did not take into consideration the recommendation of the Public Defender of Georgia related to the provision of hot water in the cells.

Positively should be assessed the provision of person hygienic items. It is noteworthy that the facility did not ensure the female inmates with the hygienic pads and those, who could not afford buying them, were forced to use other, often unhygienic items. The above problem was solved and the institution ensured the provision of hygienic pads to the inmates in need.

Public Defender's report of 2014 paid attention to the condition of mothers and children in the establishment N5. The recommendation was issued to the Minister of Corrections to improve the transportation conditions for mothers and children. According to the response received from the Ministry of Corrections, the escort service autopark and office in line with the western standards was opened in July 2015. The cars placed in the autopark are differentiated according to the categories and allocated for the juvenile, female and adult men convicts of all risks.

In the living unit for the mothers and children of the establishment N5 there are 12 rooms and 1 common room for the entertainment of children. In 2015 4 mothers and 4 children were placed in the institution. Separation of mothers and children after the latters reach the age of 3 is a critical problem.[220] Existing procedures are particularly painful for both children and their mothers. In order to protect the best interest of the child, it is crucial to ensure that the system will ease the procedures for children leaving the institution at the age of three. Separation should be flexible and needs based rather than rigid as the child's best interest must be the first priority while making such decisions.[221]

Provision of children with clothing remains to be problematic. In the course of the visit to the establishment it was noted during the interview with the mothers who are placed with their children that the children do not have sufficient clothing, especially the shoes, therefore, they do not take children outside in the cold weather. Warm boots and coats are of special need. The Ministry of Corrections of Georgia referred to the assistance of the Georgian Orthodox Church and other unitary measures related to the above matter, however, did not discuss more effective and sustainable ways of solving the problem.

Women prisoners should be given the possibility to implement various measures in order to ensure the guardianship. In this case the Bangkok Rules give the opportunity of temporary release of the female inmates for a reasonable time. Any decision should be taken in line with the best interests of the child, which should be balanced with the public interest typical to the penitentiary system.[222]

In his Parliamentary Report of 2014 the Public Defender has addressed the Ministry of Corrections with the recommendation to improve and revise the standards of children leaving the institution in line with the best interests of the child. According to the response received from the Ministry of Corrections, the social worker and a psychologist of the facility meet the child and a mother and contact the Social Service Agency in order to find a guiardian. It was noted in the response that in October 2015, with the support of the UNICEF, the meeting took place, which was attended by the representatives of Government, as well as Non-Governmental organizations. According to their explanation, it is planned to conduct another such meeting for regulation

220 Imprisonment Code of Georgia, Article 72.

221 Convention on the Rights of the Child, Article 3.

222 The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 52(2)(3).

of the above issue in accordance with international standards and best practice. It should be noted that this is not sufficient and it is necessary to take effective steps. The Public Defender's Office will further observe the process of children's withdrawal from the establishment and its compliance with international regulations.

In the living building designated for mothers in the institution N5, still problematic is the lack of products to prepare adequate meals for themselves and their children. There are cases when they take food intended for other prisoners. It is important to solve the problem of children's nutrition in accordance with the State's standards, since the State is obliged to take care of the children who are placed in the institution under its control. The Public Defender of Georgia has addressed the Ministry of Corrections with the recommendation related to this matter in his Parliamentary Report of 2014. According to the reponse MOC11600111071 received from the Ministry on 9 February 2015, in case of a mother's request, nutrition products for children are issued additionally. At the same time, mothers are provided with the nutrition products to prepare the meals. Besides, with the UNICEF and the Ministry of Labour, Health and Social Affairs of Georgia, the standard on nutrition and sanitary-hygienic conditions of children under the age of 3 is being developed for the first time in Georgia. The above standard will be approved in the nearest future.

It is important to involve the mothers placed with their children in various programmes and events. Due to the fact that in case of need they cannot leave the child with anyone, the problem arises in case of their participation or deterioration of their state of health.

It is of utmost importance to ensure the maximum contact of the female prisoners with the outside world. Positively should be assessed the creation of the relevant infrastructure for the long term visits in the institution N5.

According to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the prison administration must acknowledge that women prisoners representing various religions and cultures have specific needs. [223] Prison administration should ensure the availability of those programames and services that meet their special needs. A process of the development of such programmes must be designed in a participatory manner with an active participation of the interested groups.

The prison environment should be comfortable rather than disturbing for the female prisoners. The prison might cause discomfort in general but the environment should not violate religious or other beliefs or restrict them beyond reasonable limits. It must be kept in mind that women prisoners do not have only gender-specific needs and therefore, authorities must consider all individual specifics, which require special treatment of the female prisoners. When it comestowomen prisonerswho are foreign citizensthe rightto communication with relevant consular representatives and exercise their religious beliefs are of particular importance.

Issues related to the conditions of LBT prisoners deserves special attention. It is worth noting that the situation of the female LBT prisoners is strikingly different from that of the male GBT prisoners. One of the key differences is related to the practice of their placement and acceptance by the other inmates. GBT prisoners are placed separately and other inmates have restricted communications with them, while in the institution for the female inmates, there is no separation as there are no security and safety threats, which would require such intervention.

It should be noted that neither the prison administration nor the inmates speak of any conflicts occurring on the grounds of gender identity or sexual orientation, or of any cases involving discrimination or inappropriate treatment. In fact, the prison administration does not have sufficient information for the risk assessment. A social worker does not work with the LBT prisoners to provide special assistance. It was revealed as a result of the monitoring that the risk of self-damage is higher among the LBT female prisoners, however, there are no specialized schemes developed by the psychologist in place.

223 The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 54.

RECOMMENDATIONS

To the Ministry of Corrections of Georgia:

- Take all necessary measures to carry out the personal searches without insulting the dignity of the inmates;
- To provide the cells for women with the heating and hot water;
- To ensure the separate electronic database for the female inmates for the timely and effective implementation of the planned medical services;
- To ensure the children living in the facility with the proper clothing and footwear;
- Revise and improve separation procedures involving convicted mothers and their children so that the child's best interests are protected through the adaptation with the outside world and minimizing trauma of separation for children;
- Revise a nutrition standard for mothers and children so that there is a sufficient amount of food;
- In case of need, that might be caused by the involvement of the mother in various activities or her illness, the service of a caregiver or an assistant to take care of the child should be ensured;
- Undertake measures to raise the awareness of the prison staff on LBT rights, international standards and potential risks related to placement in closed institutions;
- Intensify the work of psychologist and a social worker with the LBT prisoners and other female inmates in order to foster acceptance among the non LBT prisoners and prevent potential risk of self-isolation and damage.

Prisoners Sentenced to Life Imprisonment

Individuals sentenced to life imprisonment belong to a particularly vulnerable group of prisoners. Therefore, their treatment should promote their dignity and strengthen a sense of responsibility. [224] The Public Defender in his reports has repeatedly underlined that existing conditions within the penitentiary institutions do not ensure their adequate resocialisation and reintegration into the wider community.

Life sentenced prisoners are placed in the establishments N3, N6, N7 and N8 of the penitentiary department. During the reporting period, positively should be assessed the pardoning of 3 female convicts by the President, who were sentenced for life imprisonment.

According to the recommendation of the Council of Europe Committee of Ministers, the prison administration should seek to ensure that prisoners are explained the prison rules and routine and their rights and responsibilities, including the right to make personal choices in as many of the affairs of daily prison life as possible. In addition, life sentenced prisoners should be offered adequate material conditions and opportunities for physical, intellectual and emotional stimulation and have a maximum contact with the outside world.[225]

It is noteworthy that in the penitentiary institution where the persons sentenced to life imprisonment are placed, diverse and systematic rehabilitational activities are not carried out. During the reporting period, in the establishment N7, not a single rehabilitation programme was implemented. In the establishment N6

224 Standard Minimum Rules for the Treatment of Prisoners, rules 65 and 66.

225 Management by Prison Administrations of Life-sentence and Other Long-term Prisoners, Recommendation REC (2003) 23 adopted by the Committee of Ministers of the Council of Europe on 9 October 2003, Para. 21-25.

one checkers tournament took place. Besides, the inmates sentenced to life imprisonment are not given the possibility of employment. The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, in the report of 2015 focuses on the importance of employment and different activities in order to support the physical and mental health of the imprisoned individulas, especially the ones who are sentenced to life imprisonment.[226]

It is worth noting that a long term imprisonment, and in particular the life sentence, is unlikely to achieve its objectives unless adequate measures are undertaken to ensure the transition of convicts to the major directions and steps of social life.[227] It should be underlined that the Georgian legislation does not promulgate specific approaches required for the resocialisation and reintegration of life sentenced prisoners. Therefore, there is no practice of developing individual action plans and set of indicators for inmates sentenced to life imprisonment. According to the recommendation of the Committee of Ministers of the Council of Europe, the member states must ensure that individual plans are developed for life sentenced and long-term prisoners.[228]

In 2014, the Public Defender has recommended the Ministry of Corrections to ensure the individual plans of serving the sentence to the inmates sentenced to life imprisonment. According to the response received from the Ministry, implementation of the individual planning has started in the penitentiary system. If the classification of convicts and the individual planning of serving the sentence starts in accordance with the danger risks, the plan will be implemented equally, according to the risks based on behavior and not on the term of the sentence.

According to Article 64 of the Imprisonment Code of Georgia, the prisoner is serving a life sentence in the closed establishment. It is important that life sentenced prisoners, under the relevant supervision, have communication with their families and friends with regular intervals both in writing and visits. The Georgian Imprisonment Code provides rules that life sentence prisoners have the right to 2 long-term visits annually and the possibility of 2 more long-term visits as an incentive.[229] As stated by the European Committee for the Prevention of Torture in its report,[230] the number of visits should not depend on the type of the facility or the crime committed. It is important to allow the life sentenced prisoners more short and long term visits, which will support the maintenance of close ties with the family members and rehabilitation.

It is worth noting that in some of the institutions of the penitentiary department there is no adequate infrastructure for the long-term visits and prisoners are transported to the other facilities. However, there were cases when the requests for long-term visits were turned down because of the infrastructural problems.[231]

RECOMMENDATIONS

To the Ministry of Corrections of Georgia:

- Develop action plans tailored on individual life sentenced prisoners for their resocialisation and reintegration in the society;
- Ensure that prisoners participate in diverse activities focused on rehabilitation;

226 The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Report on the Visit to Georgia, 6 November 2015, A/HRC/31/57/Add.3.

227 The Economic and Social Council, in its resolution 1992/1 of 6 February decided to dissolve the committee on crime prevention and control and to establish the Commission on Crime prevention and criminal justice as a functional commission of the Council, as requested by the General Assembly in its resolution 46/152 of 18th December 1991. The commission held its first session from 21 to 30 April 1992.

228 Recommendation (2006)2 of the Committee of Ministers to Member States on European Rules for Prison (adopted on January 11, 2006 by the Committee of Ministers). Available at: http://www.ombudsman.ge/uploads/other/1/1225.pdf [Last Visited on 17.03.2016].

229 Article 65(1)(d) of the Imprisonment Code of Georgia.

230 Visit of the the European Committee for the Prevention of Torture to Georgia, CPT/Inf (2015) Available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last Visited on 14.03.2016].

231 The above is discussed in details in the chapter dedicated to the Contact with the Outside World.

- To give the possibility of employment to the life sentenced convicts placed in the penitentiary institutions;
- Ensure full support to life sentence prisoners to maintain ties with their families.

Proposal to the Parliament of Georgia:

- To amend the Imprisonment Code and increase the number of short and long-term visits for the inmates sentenced to life imprisonment.

Accused Individuals In Detention

According to Article 3 para 19 of the Criminal Procedure Code of Georgia, the accused is a person against whom there is a probable cause suggesting that he/she has committed an offence provided for by the Criminal Code of Georgia.

The accused in detention is placed in the detention facility except the cases determined by the Georgian legislation and/or in case of existence of the mixed type facility. In the mixed facility the accused should be separated from the convicts as a minimum by the separate living spaces.[232] In the reporting period, the accused persons were placed in the penitentiary establishments N2, N3, N5, N6, N7, N8 and N9. In December 2015, 1 316 accused individuals were in detention, out of them – 52 accused were women.

According to the Imprisonment Code of Georgia, immediately upon the admission of an accused/convicted person to a facility, the designated person shall inform him/her of the rights and obligations.[233] According to para 119 of the UN Standard Minimum Rules for the Treatment of Prisoners, Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her. It is noteworthy that the majority of prisoners placed in the penitentiary facility, including the accused, are not aware of their rights.

Accused individuals should be placed separately from the convicts.[234] It should be noted that placing the convicts and the accused together constitutes a problem in the penitentiary establishments N2, N3 and N8. The accused individuals and convicts were placed together in the above facilities during the visit of the Special Prevention Group. Besides, the cases of conflicts were revealed in the penitentiary establishment N2. In one case there was a confrontation among the convict and an accused, which is particularly important since according to the law, the accused and convicts should be placed separately in the institution and it is not clear how did they meet and in what circumstances arose the conflict.

According to Article 15 para 3 of the Imprisonment Code, a living space standard per an accused person in a detention facility shall not be less that 3 square metres. In accordance with the recommendation of the European Committee for the Prevention of Torture, all inmates should be ensured with the space of 4 sq.metres. [235] The Public Defender Considers that it is important to ensure each convict with not less than 4 sq.metres living space. According to the recommendation of the European Committee for the Prevention of Torture, it is necessary to take decisive steps for the creation of diverse activities and rehabilitation programmes for the accused and convicts in detention. It is noteworthy that rehabilitation activities are not foreseen for the accused placed in the penitentiary institution. The accused individuals in detention have the right to take a walk for not less than 1 hour per day.[236] Other activities are not foreseen for the above category. While being in the

232 Imprisonment Code of Georgia, Article 9.
233 Imprisonment Code of Georgia, Article 97, para 1.
234 Nelson Mandela Rules, Rule 119.
235 Visit of the the European Committee for the Prevention of Torture to Georgia, para 119, CPT/Inf (2015) available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last Visited on: 02.03.2016].
236 Imprisonment Code of Georgia, Article 14, para 1, sub-paragraph G.

cell, the accused have not possibility to engage in the activities of their interest. It is important to involve the accused individuals in the rehabilitation activities, which will have a positive impact on their health and well-being.

According to Rule 99 of the European Prison Rules, the accused should have the visits and be allowed to have contact with their families and other persons in the same way as the convicts. They should have additional visits and additional access to the other forms of communication. The accused is placed in the closed establishment where the level of stress is specifically high and maintaining close ties with the family has special importance.

The UN Special Rapporteur in the 2015 report on the visit to Georgia focuses on the presumption of innocence of the individuals in detention and underlines the importance of the accused individuals' contanct with the family.[237] According to Article 123 of the Imprisonment Code of Georgia, Until 1 January 2016 an accused person shall enjoy not more than 4 short visits a month, by the permission of the prosecutor and investigator. Positively should be assessed that until 1 January 2016 an accused person shall enjoy not less than 4 short term visits and that the above right can only be restricted by the decision of a prosecutor or investigator. For maintaining close ties with the family of the accused it is important to increase the number of short-term visits. Besides, it is significant to make changes in the Georgian legislation and give the accused individuals in detention the possibility to use the long-term visits.

RECOMMENDATIONS

To the Ministry of Corrections:

- To increase the time of being on fresh air for the accused individuals in detention;
- To take all necessary measures to ensure the involvement of the accused individuals in various valuable, interesting to them, events.

Proposal to The Parliament of Georgia:

- To amend the Imprisonment Code and determine the 4 square metres as a minimum living space for the accused;
- To make a relevant amendment to the Imprisonment Code and in line with the investigation interests, give the accused individuals in detention possibility to use the long-term visits.

Vulnerable Groups

As it is known, GBT persons constitute a specially vulnerable group. The risks of discrimination, violence and stigmatization is high in the penitentiary institutions.

Within the framework of the visits[238] carried out throughout 2015, the conditions of GBT[239] and most vulnerable groups[240] of the penitentiary establishments were studied and the existing risks and possible facts of harassment were revealed.

237 Report on the Visit of the UN Special Rapporteur, 6 November 2015, [Last Visited on: 2.03.2016].
238 Together with the Special Prevention Group, the Departments of Criminal Justice, Gender Equality and Equality of the Public Defender's Office of Georgia participated in the monitoring.
239 Gay, bisexual and transgender individuals.
240 Prisoners from the maintenance unit, responsible for cleaning.

Persons, whose liberty is deprived, are under the complete control of the State, therefore, constitue one of the most vulnerable categories and the State is obliged to protect them. In particular, to protect their health and well-being.[241] States are responsible for protecting prisoners' security and dignity. States should take special measures for the protection of lesbian, gay, bisexual and transgender individuals. Should ensure that they do not become the victims of rape or other form of violence neither from the prisoners nor from the personnel.[242]

As interpreted by the European Court of Human Rights, the prohibition of discrimination has special importance when the different treatment is related to the imprisoned person; The State in this case has a narrow margin of appreciation and the principle of proportionality not only requires that the applied measure should be proportionate to the pursued aim, but also obliges the state to demonstrate that the means were necessary in concrete cases.[243] When the reason of differentiation is a more intimate sphere, for the justification of a differentiated treatment should be the especially weighty arguments.[244] Besides, the Court noted that if the prisoner should be isolated from the other prisoners, he/she should be placed in a place that fits his/her medical needs and well-being.[245] The States, according to Articles 14 and 3 of the Convention have a responsibility to investigate whether the measures taken are based on the discriminatory treatment that caused the complete isolation of the prisoner from the prison life.[246]

On 6-9 November 2006, during the meeting held in Indonesia, the expert group developed the "Jakarta Principles" which constitute the recommendatory rules of international human rights law related to the sexual orientation and gender identity.[247] Despite the fact that these rules are not of mandatory nature, their implementation in practice has a special importance in terms of elimination of discrimination and protection of fundamental human rights. Rule N9 of the principles concerns the treatment of LGBT prisoners. According to the above rule, the State is obliged to protect a detained individual from marginalization and all forms of violence due to his/her sexual orientation.

In the framework of the monitoring the methodology and approach of the personnel of the penitentiary establishments had been studied in detail in relation to the prisoners enlisted in the prison maintenance service, responsible for cleaning. Due to the security reasons, above individuals are separated and placed in the so called maintenance section.

The criminal sub-culture and informal rules have been applied in the penitentiary establishment for decades. The prison maintenance service sections of the establishments[248] are divided into two parts. One part is responsible for distributing food and providing the prisoners with the products from the establishment's shop. The other part is responsible for cleaning. They are placed separately. The individuals involved in the maintenance service, responsible for cleaning are cleaning the yards, corridors, sanitary knots and showers. They are paid 200 GEL for the above work. [249]

Placement of prisoners in the maintenance service is in some way an isolation by which the prison administration is trying to avoid the tensions among the prisoners. This is exactly why the prisoners responsible for cleaning constitute a vulnerable group and their placement happens in a following way: before transferring to the institution, the administration has the information regarding the prisoners and when there is even a doubt that a person might have had a sexual interaction voluntarily or forcibly with the person of same sex, that person will

241 European Court of Human Rights, 22 November 2011, paras 71-72, *Makharadze and Sikharulidze v. Georgia*, European Court of Human Rights, 16 October 2008, *Renolde v. France*, para 83.

242 Council of Europe, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Marich 31, 2010, § 4;

243 European Court of Human Rights, 27 May 2013, *X v. Turkey*, para 57.

244 *Ibid,* para 50; European Court of Human Rights, 21 October 2010, *Alekseyev v. Russia*, para 108; European Court of Human Rights, 2 March 2010, *Kozak v. Poland*, para 83.

245 European Court of Human Rights, 9 October 2015, *Martzaklis and others v. Greece*, para 71.

246 European Court of Human Rights, 27 May 2013, *X v. Turkey*, para 55.

247 Available at: http://www.yogyakartaprinciples.org/principles_en.htm>

248 Except the facilities N5, N11, N16 and N18.

249 The income tax – 20% is paid from the above amount.

definitely be placed separately from the other prisoners – in the maintenance part or in a closed establishment. Otherwise, that person will be under a serious risk from the other prisoners. Besides, the persons who have committed violent sexual offenses might be placed in the same part. Attention should be paid to the placement of those persons who became victims of violence due to the various reasons. They call it "spoiling." Those individuals, while serving the sentence, and throughout there entire life are stigmatized and together with the above-mentioned groups are excluded from the society both in the system and outside.

According to the informal prison rules, the persons placed separately, responsible for cleaning should not have a physical contact or verbal communication with the rest of the convicts. Based on the established rules, it is forbidden to talk to them, to take items from their hands, to shake hands with them or greet them in any way, to utilize the inventory used by them and generally, to be in the same space with them. Therefore, the above individuals cannot be involved in the rehabilitation or other events of the institution. This kind of classification from the facility's administration is justified by the security reasons and is considered that this is the only way to protect the interests of the prisoners and the general regime of the establishment. This kind of prisoners have a distinctive sign in the institution – they are wearing a special maintenance uniform, which has two grey lines on the trousers. The rest of the inmates recognize them and know that should not go close to them.

The monitoring results demonstrated that the persons involved in the prison maintenance work, responsible for cleaning do not constitute self-identified GBT persons. However, they are identified with GBT persons by the other prisoners and due to the influence of the criminal sub-culture are discriminated on this ground. Persons responsible for cleaning are referred to with the offensive terminology by the other inmates. Unfortunately, it should also be noted that some personnel of the administration also refer to those prisoners with the offensive language. As observed by the Special Prevention Group, the above is also caused by the influence of the criminal sub-culture existing in the penitentiary institutions.

During the conversation with the prisoners in charge of cleaning, their frankness was hindered by stigmatization and self-censorship. The members of the monitoring group had an impression that the persons responsible for cleaning did not wish to talk about the offensive circumstances in which they have to live. There is also an impression that everyone adapted to the existing rules and no one has the wish, hope or ability to fight them.

It is worth noting that during the placement in the facility, if the prisoner wishes to live with some other inmate in the cell, the administration takes it into consideration if there are no problems related to the protection of the prisoner's security. However, if before the placement, the prisoner was registered in the maintenance service of the other establishment, that inmate will by all means be placed separately from those inmates, who are not involved in the maintenance service.

In July 2015, the low risk institution N16 was opened. In this establishment, according to the Order N70[250] of the Minister of Corrections dated 9 July 2015, are placed the convicts whose sentence was determined to be served in the low risk establishment. As noted by the deputy director of the institution, the principle of functionality of the above institution is providing equal conditions for all prisoners so that they are not divided in different castes and groups. All prisoners are responsible for cleaning and maintenance of housing. The institution offers to them various trainings and work, which is equally obligatory for everyone. This is why the establishment does not have a maintenance part. In order to ensure the above arrangement, before transferring to the establishment, in line with the above-mentioned order, the prisoners are assessed. If any prisoner refuses to comply with the rules of the institution, that inmate will be immediately transferred to another facility. As it is known, the prisoners of the penitentiary facilities, due to the criminal sub-culture, are divided into several groups. These groups are headed by the individuals who have authority and refuse to perform various activities in order not to loose the above authority. These kinds of prisoners are not placed in the establishment N16. As noted by the deputy director of the establishment, there is a risk that they will have a bad influence on the other inmates, will not divide the work equally and will try to establish the rules of criminal sub-culture

250 Rules about types of risks, criteria for risk assessment, rules of risk assessment and reassessment, rule and conditions of transferring convicts to prisons of the same or other type, composition and competences of multidisciplinary teams.

through the oppression of the others and division by categories, which essentially contradicts the goals of the institution. He also noted that the institution cannot accommodate individuals employed in the maintenance unit of the other establishments, responsible for cleaning and GBT individuals, since the prisoners placed in the establishment N16 will not agree on living, working and studying in the same space with these prisoners due to the above-mentioned sub-culture rules. Despite the fact that there is a possibility that the above individuals fully comply with the criteria[251] of placement in the establishment, they still might be refused to be transferred to the low riks institution.

Prisoners placed in the maintenance section, in charge of cleaning, placed in the semi-open establishments, due to the informal prison rules, cannot freely walk in the yard during the day, use the sports pitches, enter the church or exercise with the others. In some of the establishments, they have a small territory near the living block and the administration has developed the special rules of taking a walk/using the yard. For instance, in the establishment N12, the individuals in charge of cleaning have separate hours for walking. Their living block closes an hour later than the other blocks and opens one hour earlier. The individuals of the maintenance service can walk in the yard safely only during this period. During the day, they are allowed to take a walk only on the small territory in front of their living block. That space does not have necessary recreational conditions.

If the individuals involved in the maintenance service, responsible for cleaning are excluded from the maintenance service, they are no longer allowed to stay in the semi-open facilities despite the fact that they are sentenced to imprisonment in this kind of institution. This circumstance is caused by the above-mentioned, informal rules, according to which they should not have any physical or verbal communication with the rest of the convicts.

It is noteworthy that the establishment N12 has a barber whose service is not available for the prisoners responsible for cleaning, since the barber won't be able to serve other prisoners after touching those inmates, due to the above-mentioned sub-culture. The hours of using the shop are also divided. Certain time intervals are set when the individuals placed in the maintenance section are given the opportunity to buy the items they want.

In the penitentiary establishments they have separate rooms for the long-term visits so that the rest of the inmates do not accidently appear in the rooms used by them, which, due to the criminal sub-culture, is unacceptable for the prisoners. Unlike the closed type establishments, in the semi-open institutions the individuals in charge of cleaning are not allowed to use the common shower during the day since other inmates are excercising their right to take shower at that time. Although the inmates responsible for cleaning need to take shower during the day due to the specificity of their work, they have to wait till the evening, which, apparently, creates discomfort for them.

In 2015, the prisoners responsible for cleaning were less involved in the social and cultural events. The head of the social department of one of the establishemnts justified this circumstance in a following way: other inmates would not tak part in the group activities together with them and the separate group was not created in the maintenance part due to the lack of interest. Otherwise, the administration was ready to plan separate sports events and other various trainings for them. However, as noted by the prisoners themselves, they have not received this kind of offer from the administration and if they had the opportunity, they would participate in various activities with pleasure.

Every place used by the prisoners, especially the bedrooms, should fully comply with sanitary requirements. In addition, sufficient attention should be paid to the climate conditions, particularly to the cubic contents of air, the minimum space, heating and ventilation.[252] In every establishment where the prisoners live and work the windows should be of the sufficient size so that the inmates have the possibility to read and work in the daylight and should be constructed in a way that the provision of fresh air should be ensured, whether the

251 Individuals employed in the maintenance service of the other institutions, those responsible for cleaning and GBT individuals.
252 Nelson Mandela Rules, Rule 13.

artificial ventilation system exists or not. Artificial lightning should be sufficient for the prisoners to read or work without the risk of deteriorating their eyesight.[253]

In the establishment N12, the living block of the prisoners involved in the maintenance service is outdated and needs renovation. The inmates are buying the ventilators at their own expense in order to cool the rooms. In winter, they use the electric heaters. The cells do not have the sanitary knots or water. In the maintenance section block there is one shower and kitchen that are available for the prisoners for 24 hours, since the cells are not closed. Several convicts noted that the sanitary knots are not enough for the inmates and they often have to stand in line to take care of their personal hygiene. In one of the cells, with the space of 6.29 square metres, 2 inmates were living. Besides, the cell is not in fact aired since the window is too small. The convicts stated that they have been recently transferred to the Estalishment and that is why they are temporarily placed in this cell. They have also noted that in the nearest future, it is planned to transfer one of them to another cell.

In the establishment N6, 2 barracks are allocated for the prisoners involved in the maintenance service, responsible for cleaning. The buildings are depreciated, however, the living conditions are satisfactory. Prisoners in charge of cleaning are in better conditions compared to the rest of the prisoners since the institution is closed and other inmates are taken out of the cells only during the walk. While the movement is not restricted for the inmates of the maintenance service, responsible for cleaning.

In the establishment N7, the inmates of the maintenance service, responsible for cleaning are living in one cell. The cell is located on the first floor of the institution, which is under the land surface from one side. There is no natural light or artificial ventilation in the above cell, the lightning is only artificial. The cell does not have a sanitary knot. The cell is damp and outdated, in fact not compatible for living.

During the monitoring carried out in the establishment N6, the living conditions of the prisoners from the maintenance service, responsible for cleaning was also checked. The condition in the cell accommodating 3 prisoners who refused to work is unbearable. Administration considers them as a marginalized group. The door of the cell's sanitary knot cannot completely isolate it from the cell and therefore, there is a specific smell in the cell. The natural ventilation is insufficient in the cell and the artificial one is not functioning at all.

Representatives of administration of the establishment N12 have explained to the members of the monitoring group that only one training was held for them, which covered the topic of vulnerable groups, including the GBT prisoners. The institution does not have the guideline principles that include the rules of treatment of the above individuals, however, they consider the existence of this kind of document reasonable.

During the conversation with the prisoners, the members of the monitoring group received the information that the administration is threatening the inmates to transfer them to another institution in order to avoid the risks of self-harm. The Special Prevention Group finds this kind of threats unacceptable since the transfer to the other establishment cannot eradicate the reasons of self-harm. Moreover, it has some kind of a punitive nature and might cause a further escalation of the situation. Self-harm can be caused by the numerous factors, including: the feeling of protest, behavioral or mental disorders, grave psychological condition and etc. Timely and adequate intervention of the medical person, social worker and a psychologist of the establishment has utmost importance in this kind of cases.

It is noteworthy that the psychologist of the establishment N12 explained that the prisoners of the maintenance service are not in need of special treatment and they enjoy the service of the psychologist like the others. It should be noted that the GBT prisoners, when they are isolated and abused, have a high need for the psycho-social rehabilitation measures. Therefore, it is important that the administration of the Institution N12 assess correctly the needs of the vulnerable prisoners and focus more on the improvement of the psychological services provided to them.

253 *Ibid,* Rule 14.

Treatment of each prisoner should be based on respect for their, as of human beings' inherent dignity and values. Every inmated should be protected from torture and inhumane and degrading treatment or punishment that can in no way be justified.[254]

During the visit to one of the institutions,[255] the transgender individual[256] who was placed separately was interviewed. The above person's clothing or hairstyle was not different from that of the other inmates'. In order to avoid aggression from the other prisoners, that individual has cut the hair short, however, the other inmates often addressed that prisoner with effensive, discriminatory words; The case of violence also took place from the prisoners. As noted by the above-mentioned convict, the confidentiality of the health condition is violated in the establishment since the nurse is referring to the prisoner as infected with AIDS in front of the other inmates. In addition, the convict has noted that it is not pleasant when the administration is addressing him with the nickname. Although he chose a woman's name for himself, he doesn't want the administration to refer him with this name. He considers that the administration is obliged to respect his wish and during the communication should use the name and surname that is indicated in his identity documents.

According to the all above-mentioned, it can be concluded that the prisoners employed in the maintenance service, responsible for cleaning are isolated in the penitentiary establishments, excluded from the prison life, stigmatized and at the same time, there is a high risk of violence against them. There is an impression that the employees of the institution take into consideration the informal prison rules and thus, demonstrate a conciliatory attitude towards the situation. Solution of the problem is less likely in this situation. Therefore, first and foremost it is necessary to timely acknowledge the problem and search for the ways of solving it. It is important to consistently take decisive steps for the eradication of the existing informal prison rules and for establishing the prison management attitude based on human rights.

RECOMMENDATIONS:

To the Ministry of Corrections:

- Develop a strategy and guideline principles, which will ensure the prevention of discrimination and elimination of the discriminatory segregation of the GBT prisoners based on sexual orientation and gender identity;
- Take special measures for the awareness raising of the personnel of the penitentiary institutions – on the possible risks of the GBT individuals, international standrads and their placement in the closed type establishments;
- Take all necessary measures, including increased control of the fulfillment of their duties and responsibilities by the staff of the institution and the usage of disciplinary sanctions, in order to avoid discriminatory, stigmatizing and degrading treatment of the vulnerable groups placed in the institution;
- Take all necessary measures so that the GBT individuals and those employeed in the maintenance service, responsible for cleaning, are safely involved in various rehabilitational, educational, sports, cultural and other events planned in the institutions;
- Ensure involvement of the international organizations and groups of sivil society working on the GBT issues in the process of developing and implementing the special programmes;
- Take all necessary measures in order to strengthen the work of the psychologist and a social worker

254 Nelson Mandela Rules, Rule 1.
255 The facility is not specified due to the confidentiality reasons.
256 The above prisoner was not employed in the maintenance service, but was identified as LGBT individual.

with the prisoners in the maintenance service to increase the acceptance among the prisoners and to prevent the self-isolation and self-harm. It is significant to talk with the inmates specifically on the adverse effects of the informal prison rules, which leads to violence against prisoners, their abuse, stigmatization and exclusion;

- Take all necessary measures so that all convicts enjoy the walking yard equally.
- Take all necessary measures to involve the prisonsers employed in the maintenance service and the GBT inmates in the rehabilitation programmes.

Representatives Of Ethnic And Religious Minorities, Foreign Citizens And Stateless Persons

The foreign citizens and representatives of ethnic or religious minorities placed in the penitentiary institution, constitute a particularly vulnerable group. The language barrier is a specific problem with this kind of prisoners due to which the majority of the above inmates knows nothing about their legal rights. According to rule 38.3 of the European Prison Rules, linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

At the end of 2015, 368 foreign citizens and stateless accused/convicts were placed in the penitentiary institutions. See below the table demonstrating the monthly number of foreign citizens and stateless persons:

Month	Accused/Convicts
January	265
February	287
March	260
April	271
May	269
June	276
July	276
August	311
September	307
October	338
November	383
December	368

According to para 54 of the Nelson Mandela Rules, upon admission, every prisoner shall be promptly provided with written information about: His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints. Paragraph 61 of the same Rules stipulates that prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter. In 2015, the service of translation was used in 435 cases in the penitentiary establishments.[257]

257 The above amount does not include the data of the facilities N14 and N17, since the relevant information was not provided by the institutions.

It is noteworthy that the majority of the foreign language speaking prisoners is not aware of their rights. In most of the cases the inmates are not informed on their rights, since the employees of the establishment's social service do not speak the language. The communication is also difficult with other employees of the institution.

Article 14 (1) (c) of the Imprisonment Code of Georgia enshrines the right of the prisoners to a meeting with close relatives, with a defence lawyer, with representatives of a diplomatic mission or a consular office, and with other diplomatic representatives. According to Article 62 of the Nelson Mandela Rules, Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. In accordance with para 37.1 of the European Prison Rules, prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state. It is worthwhile noting that during the conversation with the Special Preventive Group, the prisoners of the penitentiary institution N8 explained that in a number of cases, they cannot address the consular office or diplomatic representatives of their countries since the meeting with the social worker is difficult and besides, they cannot use the telephone.

According to Rule 68 of the Mandela Rules, Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. It should be noted that during the conversation with the Special Preventive Group, the foreign citizens of the penitentiary institution N8 stated that they were not aware whether their family members knew about their detention or not.

The prisoners should have the possibility to regularly get acquainted with the most important segment of the news through the newspapers, periodic or special news publications, radio, lectures or other means that are allowed and controlled by the administration.[258] News programmes, newspapers and other informational means are not accessible to the foreign language speaking prisoners in the languages they understand. For instance, as explained by the foreign language speaking accused placed in the establishment N8, they are in the informational isolation, since only one entertainment channel is available on TV in Turkish language, other Turkish and Azerbaijanian channels are disabled.

According to the European Prison Rules,[259] prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. During the conversation with the Special Preventive Group, the convicts of the penitentiary institution N8 who are not Orthodox noted that in many cases they avoid meals with meat since they do not know what it is made of. It is important to take into consideration the needs of representatives of various religions.

Every accused/convict has the right to enjoy the necessary medical service. In case of need, the treatment means allowed in the penitentiary institutions should be accessible to the accused/convicts.[260] The foreign citizens and the prisoners of the penitentiary establishments who do not speak Georgian encounter problems related to the accessibility of medical services. For instance, during the visit of the Special Preventive Group to the establishment N8, the foreign citizen convicts noted that depiste the numerous requests, they cannot manage to meet the doctor; therefore, they cannot receive adequate medical treatment.

According to the European Prison Rules, Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.[261] It is specified by the Mandela Rules

258 Nelson Mandela Rules, Rule 63.
259 Rule 22.1.
260 Imprionment Code of Georgia, Article 24.
261 European Prison Rules, Rule 40.3.

that prisoners should enjoy the same standards of health care that are available in the community.[262] Foreign nationals and stateless persons encounter problems regarding their involvement in treatment of Hepatitis C through Sofosbuvir. Clear example of the above is the case of the convict K.K. placed in the penitentiary institution N17. The prisoner is suffering from the viral hepatitis C (I genotype), liver fibrosis F4, cirrhosis stage K74, as well as the 2nd stage of diabetes. According to the doctor's recommendation, the patient needs treatment with sofosbuvir, which is accessible through the State programme on ensuring the measures of managing the first stage of Hepatitis C. However, the prisoner is refused to be treated with Sofosbuvir, since he is not the citizen of Georgia. In this case, the right of the accused to be provided with the adequate medical assistance is violated, which constitutes discrimination. The Public Defender has addressed the Government of Georgia with the recommendation to make the treatment with Sofosbuvir available to the foreign citizens and stateless persons in need, who are placed in the penitentiary system, like to the citizens of Georgia.

RECOMMENDATIONS

To the Ministry of Corrections of Georgia:

- To take all necessary measures to inform all prisoners about their rights in the language they understand;
- To ensure all foreigh citizen prisoners with the translation service free of charge;
- To ensure the availability of various foreign TV Channels and other informational means;
- To take into consideration cultural and religious characteristics while preparing the meals;
- To take all necessary measures to equally ensure the foreign citizens and stateless persons with the penitentiary health care services. In addition, ensure the provision of information regarding the penitentiary health care services in the language they understand and eliminate the linguistic barriers in the process of medical assistance.

Contact With the Outside World

In its recommendations, the European Committee for the Prevention of Torture emphasizes the importance of maintaining regular contact with the outside world for every prisoner serving a sentence. "The guiding principle here is the support to maintaining contact with the outside world. Any decision to restrict such contact must be determined by the security risks or issues related to material resources."[263]

Rule 88 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) refers to the issue of maintaining the relations of the prisoner with the society. In particular, the treatment of prisoners should aim at their integration into the society. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners. Every institution should have a social worker charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Certain steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule 106 of the Nelson Mandela Rules refers to the issue of maintaining the relations of the prisoner with the family members. Namely, special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

262 Nelson Mandela Rules, Rule 24.

263 Resolution parts of the general reports of the European Committee for the Prevention of Torture (CTP), Strasburg, August 18, 2000. P. 37.

According to para 24.4 of the European Prison Rules, the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal manner as possible.

According to Article 46 para 3 of the Imprisonment Code, a convict shall serve a sentence in an institution closest to his/her place of residence or to that of a family member. Exceptions are made if the placement is impossible because of overcrowding of the institution, or when the placement in another institution is preconditioned by a health condition of a convict, for the protection of his or her safety or upon consent of a convict.

It was revealed during the monitoring of the penitentiary institutions conducted by the Special Preventive Group during the reporting period that the right of prisoners to the family visits cannot be fully exercised because of various reasons. More specifically, one of the most common barriers is the presence of glass partitions and absence of conditions for the protection of confidentiality during the family visits. In addition, the problem of ignoring the place of residence while placing the convicts should also be underlined.

Short-term Visit

Well-being of prisoners and their reintegration after having served their sentence are largely determined by an extent to which they maintain relations with their families and friends. Direct contact and communication with families greatly contributes to the rehabilitation of the prisoners.

Article 17, para 2 of the Imprisonment Code determines a limited circle of those persons who are allowed to visit a convict for a short-time. In particular, the accused/convict is allowed to the short-term visits upon a written request filed by the latter with the following individuals: close relatives (child, spouse, a partner, a parent (adoptive parent), stepmother, stepfather, in-laws, stepchild, adopted children and their descendants, grandchildren, sister, brother, niece, nephew and their children, grandfather, grandmother, great grandparents (both paternal and maternal), uncles (maternal and paternal), aunts, cousins, also a person with whom a convict lived with in a same household for a year before imprisonment). According to Article 2^1 of the same Article, with the consent of the chairperson of the Department, an accused/convicted person may be granted the right to meet with the persons who are not specified in paragraph 2 of this article.

The Imprisonment Code regulates matters related to the right of convicts to short-term visits. More specifically, according to Article 602 (2)(b), a convicted person serving a sentence in a low risk establishment shall enjoy 4 short visits a month, and 2 additional short visits a month as an incentive. According to Article 62 (2)(b) of the same Code, a convict serving a sentence in a semi-closed institution has the right to two short-term visits per month and to one more short-term visit as an incentive. As for the female prisoners, in accordance with Article 72 para 5 of the Imprisonment Code, a convicted woman shall enjoy 3 short visits a month, and 1 additional short visit a month as an incentive.

The Imprisonment Code also determines the issue of enjoyment of the short-term visits by the prisoners placed in the closed type establishments and special risk detention facilities. According to Article 65 (1)(B) of the Imprisonment Code, a convicted person serving a sentence in a closed type establishment shall enjoy 1 short visit a month, and 1 additional short visit as an incentive. In accordance with Article 663 (2)(b) of the same law, a convicted person placed in a special risk establishment may enjoy 1 short visit per month and 1 additional short visit as an incentive.

According to Article 17, para 7 of the Imprisonment Code of Georgia, a short-term visit should last 1-2 hours. A short visit is taking place solely under the visual control from the representative of the administration. Exceptions are allowed only under the terms stipulated by the Georgian legislation.

According to Article 87 (1)(a) of the Juvenile Justice Code, a convicted minor may enjoy 4 short visits a month, and 2 additional short visits a month as an incentive.

It is worth noting that in most penitentiary institutions such visits are implemented in spaces with glass partitions. In such cases prisoners are deprived of the opportunities of physical contacts with their family members. Exceptions may be allowed upon a consent of a director of an institution when such circumstances as a convict's severe health condition, meeting with an underage child of a convict arise. Although physical partitions are necessary in specific cases, it is important to acknowledge physical contact as a norm. In addition, any decision on restricting physical contacts must be reasonable, justified and proportionate to the reason behind such restrictions. Besides, decisions to restrict physical contact must be subject to regular revisions. Otherwise, such interference in prisoners' private and family affairs shall not be justifiable.

The European Court of Human Rights deliberated on this issue while hearing a case *Mesina v Italy*.[264] The case originated in an application filed by a citizen of Italy Antonio Messina (the Applicant). The Applicant alleged that his right to respect for his family life on account of the restrictions on family visits while he was a prisoner, of his right to respect for his correspondence on account of the fact that it was intercepted by the prison authorities, and of his right to an effective remedy against the decisions to extend the period for which he was to be subject to the special prison regime (which stipulated the restriction on the number of visits by the Applicant's family members with maximum two visits a month) were violated. The restrictions also implied supervision on visits (prisoners were separated from visitors by glass partitions). The Court considers that these restrictions represent interference in the Applicant's right to family life promulgated by Article 8 of the Convention. The Court notes that the regime laid down in section 41 bis is designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimize the risk that they will maintain contact with criminal organisations. In particular, the Court holds that as the Government points out, before the introduction of the special regime, imprisoned Mafia members were able to maintain their positions within the criminal organisation, to exchange information with other prisoners and the outside world and to organise and procure the commission of serious crimes both inside and outside their prisons. In that context, the Court takes into consideration the specific nature of the phenomenon of organized crime, particularly of Mafia type, in which family members often play a crucial role. Moreover, numerous state parties to the Convention have high-security regimes for the dangerous prisoners. These regimes are also based on separation from the prison community, accompanied by tighter supervision.

The Court indicates in its judgement that the Italian judiciary reasonably considered such measures to be necessary to achieve the goal. This refers to the critical circumstances of the investigations of the Mafia being conducted by the Italian authorities. However, the Court considered that the extension of the special regime may have violated the right of the Applicant guaranteed by Article 8 of the Convention. The European Court of Human Rights ruled that the right of the Applicant guaranteed by Article 8 of the Convention was not violated by imposing restrictions over the visits of his family members. However, interception of the Applicant's correspondence did breach the above-mentioned right.

According to Article 123 of the Imprisonment Code of Georgia, till 1 January 2016, an accused has the right to enjoy no more than 4 short visits per month with the permission of an investigator or prosecutor. Positively should be noted the amendment to the Imprisonment Code, according to which "until 1 January 2016 an accused person shall enjoy not more than 4 short visits a month, by the permission of the presecutor or investigator."[265] Due to the interests of investigation and security, the employee of the detention facility, who visually observes the short visit of the accused, can immediately stop it." The above amendment will have a positive impact on the maintenance of close ties between the detained individuals and their families.

According to Article 121[1] (3)(a) of the Imprisonment Code of Georgia, during the stay of an accused/convicted person in a general hospital, his/her close relatives (child, spouse, a partner with whom he/she has a common child, parent (adoptive parent), step-parent, spouse's parent, adopted child, stepchild and his/her descendants, grandchild, sister, brother, nephew/niece and their children, grandmother, grandfather,

264 European Court of Human Rights, *Messina vs Italy*, 28 September 2000.
265 Imprisonment Code of Georgia, Article 77.

uncle (mother's and father's brother), aunt (mother's and father's sister), cousin, and the person with whom he/she lived and ran common household for the last one year before being placed in a detention/prison establishment), on the recommendation of the doctor in charge and with the consent of the chairperson of the Department, may visit the accused/convicted person according to the procedure and with the frequency established by the Minister.

In his Parliamentary Report of 2014, the Public Defender of Georgia has underlined the question of using the short term visit by the convict T.Ph. Namely, since 22 October 2013, the convict T.Ph. has been placed in the Centre of Cellular Technologies and Therapy (K. Mardaleishvili Medical Centre). According to the provided medical documentation, he is suffering from a grave and incurable illness. Nevertheless, the convict is not allowed to be visited by the family. However, posistively should be assessed the fact that at the end of 2015, the convict T.Ph. was allowed to meet the grandchildren.

Accordint to Article 46 (3) of the Imprisonment Code of Georgia, a convicted person shall, as a rule, serve his/her sentence in a prison facility of the relevant type, located closest to the place of his/her residence or the place of residence of his/her close relative, except as provided by the paragraph 4 of this article.

One of the impediments to the realisation of the right to visits is the ignorance of places of residence while making decisions on placement of prisoners in the penitentiary institutions. Prisoners from Eastern Georgia who serve their sentences in penitentiaries located in Western Georgia are the ones who most often experience problems related to the rights to visits. This category of prisoners also have problems related to the meetings with their lawyers.

According to Rule 24.1 of the European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. According to Rule 24.5 of the same Rules, prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. It is noteworthy that the convicts in the closed establishments N8 and N9, due to the lack of infrastructure, cannot exercise the right to long-term visits. In addition, the prisoners placed in the special risk establishments are not allowed to have long-term visits.

The European Committee for the Prevention of Torture stressed in its report[266] that all sentenced prisoners should have the same possibility for contact with the family despite the type of the institution he/she is serving the sentence. The entitlement of one visit per month is not sufficient to enable a prisoner to maintain good relations with his family and therefore, it is important to amend the legislation and allow the convicts placed in the closed type facilities and special risk instiutions to have additional short-term visits.

Overall, in 2015, 40 897 short visits were paid in the penitentiary institution. It should be noted that in 2015, compared to 2014, the number of short-term visits has been decreased.

See below the table demonstrating the number of short-term visits:

Penitentiary Institution	The Number of Visits 2014	The Number of Visits 2015
Institution N2	6020	5859
Institution N3	276	450
Institution N5	1374	1593
Institution N6	2077	453

266 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015, available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last Visited on: 02.03.2016].

Institution N7	345	507
Institution N8	7950	8935
Institution N9	552	426
Institution N11	909	653
Institution N12	1690	1575
Institution N14	2940	3286
Institution N15	7863	7545
Institution N16	-	167
Institution N17	12067	8791
Institution N18	35	245
Institution N19	533	412
Total	44631	40897

Long-term Visits

According to Article 8 para 1 of the European Convention on Human Rights ,everyone has the right to respect for his private and family life. Article 23 of the International Covenant on Civil and Political Rights stipulates that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. The right of prisoners to long-term visits is a part of protection of the above right. Maintaining close relations with their families helps prisoners in smoother reintegration with their families and society after the serving the sentence.

According to Article 17^2, para 1 of the Imprisonment Code, a long-term visit is a co-habitation of convicts with persons defined by paragraph 2^{267} of the same article in a room located on the premises of the institution. According to Article 60^2 para 2 (e) of the Imprisonment Code, the convict who is placed in a low risk detention facility may enjoy 6 long-term visits per year and 3 additional long-term visits as an incentive. Artice 62 (2)(e) of the same law stipulates that a convict, who is serving a sentence in a semi-open detention facility, is entitled to 3 long-term visits per year and 2 additional long-term visits as an incentive.

According to Article 65 (1)(d) of the Georgian Imprisonment Code, a convicted person serving a sentence in a closed type prison facility may enjoy 2 long visits a year, and 1 additional long visit as an incentive.

There is no adequate infrastructure for the long-term visits in the establishment N8 and only the prisoners sentenced to life imprisonment may exercise their right to long-term visits. As a rule, life-sentenced convicts are transported to the establishment N6 once a month for the long-term visits upon prior arrangements with the family members.

Like the penitentiary establishment N8, there is no proper infrastructure for the long-term visits in the establishment N7. It should be noted that inmates of the establishment N7 who are sentenced to life imprisonment are not able to exercise their right to long-term visits.

In terms of violating the right to a long-term visits noteworthy is the case of the convict V.A. sentenced to life imprisonment. The convict has not exercised the right to a long-term visit since 2012. In this regards the Public Defender of Georgia has addressed the Ministry of Corrections and the Penitentiary Department with

267 Based on a written application of a convicted person, he/she may be granted the right to enjoy a long visit with his/her child, adopted child, stepchild, grandchild, spouse, a person with whom he/she has a common child, parent (adoptive parent), grandmother, grandfather, sister and brother.

a number of letters[268] and recommendations,[269] however, the recommendation has not been fulfilled and the prisoner still has not enjoyed the above right.

In his Parliamentary Report 2014, the Public Defender of Georgia has recommended the Minister of Corrections to ensure the relevant infrastructure for the long-term visits in all penitentiary institutions. The above issue remains to be problematic in the closed type establishments,[270] however, positively should be assessed the creation of the relevant infrastructure for the long-term visits in the penitentiary institution N5.

The European Prison Rules attach great importance to the right of the prisoners to communicate with the families as often as possible through the visits.[271] The above rules underline the circumstance that the visits should be organized in a way so that the prisoners are allowed to maintain and develop family relations in a normal environment.[272] The right to a long-term visit constitutes a significant possibility for maintaining and strengthening the ties between a prisoner and the family and it serves the interests of both parties.

Contact with the family is a fundamental human right. This means that the visit of the prisoners and their family members should not be considered as a privilege. It is noted in rule 43 (3) of the Mandela Rules the means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

According to Article 17^2 paragraph 6 of the Imprisonment Code, Convicted persons placed in a special risk prison facility shall not be granted the right to a long visit. The provision in the Imprisonment Code that prohibits the convicts placed in a special risk facility to use the long-term visits constitutes a direct blanket restriction, which does not give the possibility of considering a legitimate goal.

Prohibition of direct contact for a long period of time can be justified when there is a real and continuing security risk at hand.[273] The state does not have the freedom to impose general restrictions, without determining whether the certain restriction is appropriate or necessary in a specific case.[274] In the case of *Trosin vs. Ukraine* the domestic legislation imposed automatic restrictions regarding the length of visits of the life-sentenced prisoners and did not offer them any flexible system in order to determine the necessity and relevance of the above restriction in relation to each particular case. The Court noted that the above regulations cannot be rigid restrictions, therefore, the States should develop a proportionality assessment technique in order to give the Government the possibility to balance and take into consideration the peculiarities of individual and social interest in each case.[275]

In the case *Khoroshenko vs. The Russian Federation* the Court held that the prison regime, which allowed only two short-term visits in 10 years violated the prisoners right to private and family life. The Court has emphasized that while analyzing its cases, it has consistently taken the position that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty. The principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned.

Prohibition enshrined in the Imprisonment Code is more of a punitive nature rather than a security measure. The European Committee for the Prevention of Torture has noted in its report on the visit to Georgia that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts and only for the shortest time possible (days, rather than weeks or months).[276] The UN Special

268 Letter 03-3/9073 sent from the Public Defender's Office on 10 July 2014 and Letter 03-3/9788 sent on 28 July 2014.
269 Recommendation N03-3/12102 sent from the Public Defender's Office on 29 September 2014.
270 Institutions N7, N8, N9 of the penitentiary department.
271 European Prison Rules, Rule 24.1.
272 European Prison Rules, Rule 24.4.
273 The European Court of Human Rights, 17 April 2012, *Horych v. Polan*, paras 117-132; Case N13621/08 ;
274 The European Court of Human Rights, 8 October 2008, *Moiseyev v. Russia*, Case N62936/00 ;
275 The European Court of Human Rights, 23 February 2012, *Trosin v. Ukraine*, Case N39758/05 ;
276 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para 119, CPT/Inf (2015) Available at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [Last Visited on: 02.03.2016]

Rapporteur has noted with the concern the fact that the right to the long-term visits can be restricted while applying the disciplinary measures.[277]

According to the all above-mentioned, the possibility of having contact with the family, including the long-term visits should constitute a norm for the prisoners of all kinds of institutions. The exception can be made if this kind of contact is related to the crime or the above restriction is necessary to ensure the safety and security in a particular case. Thus, it is necessary to amend the Imprisonment Code and to reflect the above principles comprehensively.

According to Article 17^2 (6) of the Imprisonment Code, convicted persons placed in a special risk prison facility, and convicted persons, who are in quarantine, or those upon whom have been imposed disciplinary measures and/or administrative detention, shall not be granted the right to a long visit. This paragraph addresses the case when the convict is under the disciplinary sanction and its term is not expired. Restriction on the long-term visit should not cover the case when the term of the disciplinary sanction is expired, even if the convict can be considered as being sanctioned. It is noteworthy that in 2015, still problematic is the above paragraph's incorrect interpretation according to which a convict placed in a solitary confinement cell under the disciplinary sanction was not allowed to enjoy the right to the long visit for a year.

According to Article 4 of the Decree N132 of July 22, 2014 of the Minister of Corrections, the long-term visits are carried out at the expense of the convict or a guest in a non-cash payment. The price of each long-term visit constitutes 60 GEL, and in case of a juvenile convict – 30 GEL. According to Article 4 paragraph 4 of the same Decree, visitors who are registered beneficiaries in the unified registry for socially unprotected households are exempt from paying fees for visits.

Despite the fact that the socially vulnerable families enjoy the benefits, some prisoners are hampered by the grave economic conditions of their families and cannot enjoy their legal right to the long-term visit, which has a special importance for maintaining close ties with the family.

See below the table demonstrating the number of long-term visits in 2015 according to the institutions[278]

N	Penitentiary Institution	The Number of Long-Term Visits	The Number of Prisoners in 2015 (Average Rate)
1.	Institution N2	963	1487
2.	Institution N3[278]	43	161
3.	Institution N5[279]	2	275
4.	Institution N6[280]	163	123
5.	Institution N11	29	37
6.	Institution N12	208	354
7.	Institution N14	1003	1234
8	Institution N15	1712	1808
9.	Institution N16	28	51
10.	Institution N17	1808	1949

277 The Report of the UN Special Rapporteur's Visit, 6 November 2015, para 97. [Last Visited on: 02.03.2016]
278 Institutions N7; N8; N18 and N19 have no adequate infrastructure for the long-term visits.
279 Long-term visits in the facility N3 started from May 2014.
280 Long-term visits in the facility N5 started on 31 December 2015.
281 Including the life-sentenced prisoners transferred from the institution N8.

According to Rule N99 of the European Prison Rules, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, also they may have additional access to other forms of communication unless there is a specific prohibition for a specified period by a judicial authority in an individual case. Accordingly, the Imprisonment Code should be amended in a way to define the rules for untried prisoners to be able to receive long-term visits, while paying due attention to the interests of investigation.

The European Court of Human Rights has discussed the above issue in its case of *Varnas vs. Lithuania*.[282] The case concerns the complaing of the Lithuanian citizen Thomas Varnas, who was refused by the prison administration while serving his sentence to use the long-term visit due to the fact that only convicts could enjoy the above right.

The European Court of Human Rights did not accept the arguments of the Respondent State according to which the accused individuals in detention did not have the right to enjoy the long-term visits due to the interests of investigation. The Court noted that the Applicant's spouse did not constitute an accused in a criminal case, neither a witness and there was no information about her participation in the crime, therefore, the long-term visit of the Applicant and his spouse could in no way hinder the investigation process. The Court found violations of Article 8 (right to private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. While discussing the matter the Court also relied on the position of the European Committee for the Prevention of Torture with respect to the rules of enjoyment of the right to the long-term visits in Lithuania.

According to Article 72 of the Imprisonment Code of Georgia, a convicted woman may enjoy 1 family visit per month. In accordance to Article 17^3 (2) of the same law, female convicts may enjoy the family visits with – a child, adopted child, spouse, parent, adoptive parent, sister and a brother. Visits shall take place in a specially designated room on the premises of an institution for maximum 3 hours. According to the letter MOC51600040146 received from the penitentiary establishment N5 in response to the letter N03-1/10778 of the Public Defender of Georgia dated 31 December 2015, the establishment does not have the adequate infrastructure for the family visits.

In his Parliamentary Reports of 2013 and 2014, the Public Defender addressed the Minsiter of Corrections of Georgia with the recommendation to create proper conditions for the convicted women to enjoy the right to the long-term visits. Positively should be assessed the creation of the proper insfrastrucutre for the long-term visits on 31 December 2015 in the establishment N5.

Video visits

According to Article 17^1 of the Imprisonment Code, convicted persons placed in a prison facility, except for those placed in a special risk prison establishment and those specified in Article 50(1)(f) of this Code, may enjoy a video visit (direct voice and visual teleconference) with any person.

Video-visits play an important role in maintaining relations between the prisoners and their family members and positively contributes to the processes of resocialization of the former. Video visits are of particular importance as both family members and friends and other persons closer to a convict may enjoy it.

According to paragraph 2 of the Decree N55 of the Minister of Corrections dated 5 April 2011, convicts are eligible to one video visit per ten calendar days from 10:00 to 18:00 during the working days and with the maximum duration of 15 minutes.

According to Article 17^1 (4) of the Imprisonment Code, a fee is established for a video visit, which shall be paid to the account of the National Agency of Probation and is used to accomplish its purposes and functions.

282 The European Court of Human Rights, *Varnas v. Lithuania*, Judgement of 9 December 2013.

By decision of the Minister, video visits may be held free of charge. However, part 4^1 of the same Article makes a reservation that persons defined in Article 17(2) of this Code, who are registered in the Integrated Database of Socially Vulnerable Families and whose social and economic status index for receiving a subsistence allowance is below the threshold determined by the Government of Georgia, are exempt from video visit fees.

Fees for the video-visits are paid by a convict, his/her legal representative or a person willing to participate in a video-visit. The Minister of Corrections makes a decision on selecting the institutions to provide video-visits to convicts, the number of the video-visits, duration, and the amount to be paid for such visits and procedures for the implementation.

It is noteworthy that only 5 penitentiary institutions (N5, N11, N15, N16 and N17) have adequate infrastructure for the video visits. The table below provides information on vide visits carried out in 2015:

N	Penitentiary Institution	The Number of the Video Visits
1.	Institution N5	11
2.	Institution N11	0
3.	Institution N15	122
4.	Institution N16	0
5.	Institution N17	210

In his Parliamentary Reports of 2013 and 2014, the Public Defender of Georgia has addressed the Minister of Corrections of Georgia with the recommendation to ensure all institutions of the penitentiary department with the adequate infrastructure for the video visits. However, the above recommendation has not been fulfilled.

Telephone Conversations

Right to a telephone conversation is one of the fundamental rights for the convict/ untried prisoners, which supports to maintaining strong relations with their families and friends. According to Article 14, paragraph 1, sub-paragraphs A-D, convicted/untried prisoners have the right to telephone conversation and correspondence.

According to Article 602 (2)(c) of the Imprisonment Code of Georgia, a convicted person serving a sentence in a low risk prison establishment may enjoy an unlimited number of telephone conversations during one month at his/her own expense, each lasting for not longer than 15 minutes, and telephone conversations of unlimited duration at his/her own expense as an incentive. According to Article 62 (2)(c) of the same law, a convicted person serving a sentence in the semi-open type establishmentmay enjoy 4 telephone conversations per month at his/her own expense, each lasting for not longer than 15 minutes, and as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes. As for the convicts placed in the closed type establishment, in accordance with Article 65 (1)(c) of the Imprisonment Code, they may enjoy 3 telephone conversations a month at his/her own expense, each lasting for not longer than 15 minites, and as an incentive, an unlimited number of telephone conversations, each lasting for not longer than 15 minutes.

The Imprisonment Code also provides the rule of enjoying a telephone conversation for the convicts placed in the special risk establishment, namely, Article 66^3 (2)(c) of the Imprisonment Code provides that, a convicted person serving a sentence in a special risk prison establishment may enjoy 1 telephone conversation a month at his/her own expense, lasting for not longer than 10 minutes, and as an incentive, 1 additional telephone conversation not longer than 10 minutes at his/her own expense.

During the telephone conversations the prisoners encounter problems related to the conversation limits, in particular, if a prisoner fails to spend a total credit on his/her card, he/she can no longer use the remaining credit for the telephone conversations and therefore there is a need to purchase a new card, which incurs additional expenses. A telephone card is also blocked if a prisoner cannot manage to have a conversation within the telephone calls (due to the termination of phone connection, dialing a wrong number etc).

In the semi-open establishments, the special problem related to the enjoyment of telephone conversations by the prisoners constitutes the lack of the telephones. During the conversation with the members of the Special Preventive Group, the inmates noted that they have to stand in a queue and often, some part of the prisoners cannot manage to promptly exercise their right granted by the law. As for the closed-type prison establishments, the telephones are located in the duty room of the personnel and it is impossible to maintain the confidentiality of the conversation.

There are a number of cases when the prisoners placed in the solitary confinement cells cannot make a phone call to the Public Defender's Office. According to Article 88 paragraph 2 of the Imprisonment Code, "an accused/convicted person placed in a solitary cell may not enjoy short and long visits, telephone conversations or purchase food products." During the Special Preventive Group's visit to the penitentiary departments, the inmates noted that the telephone conversations are restricted to the Public Defender's Office and other bodies of inspection. Accessibility to the Public Defender constitutes an important guarantee for the protection from ill-treatment. Especially for the prisoners placed in the solitary confinement cells, since their placement in a total social isolation contains the risk of ill-treatment. Article 98 para 5 of the Imprisonment Code has a reservation according to which "An accused/convicted person may, at any time, file a complaint with the Public Defender of Georgia/Special Preventive Group." According to Article 82 of the same law, the restriction of the private correspondence for a disciplinary offence shall not apply to the correspondence the addressee or sender of which is the Public Defender of Georgia. It is noteworthy that there is no similar reservation regarding the telephone call. It is important to amend the legislation so that the prisoners placed in the solitary confinement cells are given the possibility to contact the Public Defender in any way, including the phone call.

According to Article 17 para 4 of the Order N119; N116, N117 of the Minister of Corrections dated 27 August 2015, "placement in the de-escalation rooms is not the ground for the automatical restriction of any rights of the accused/convict granted by the law," however, in practice, during the placemenet in the de-escalation rooms, the prisoners are completely deprived of the contact with the outside world. For instance, during the visit of the Special Preventive Group to the establishment N8 the prisoners noted that in case of their placemenet in the de-escalation rooms, they are not allowed to send the correspondence, to enjoy the telephone calls or the visits, which constitutes a grave violation of law.

According to Article 124 of the Imprisonment Code, until 1 January 2016, under the control of the administration, an accused person may, at his/her own expense, maintain correspondence and enjoy 3 telephone conversations a month, each lasting for not longer than 15 minutes, only with the permission of the investigator, prosecutor or the court.

RECOMMENDATIONS

To the Ministry of Corrections of Georgia:

- To ensure the enjoyment of the short-term visits without the glass partitions;
- To ensure all penitentiary establishments with the adequate infrastructure for the long-term visits;
- To ensure all penitentiary establishments with the adequate infrastructure for the video visits;

- To ensure a full access to telephone conversations in all penitentiary institutions as provided by law;
- To place the telephones in the closed-type penitentiary establishments in a location where the prisoners can make a call without the prison staff listening to them;
- To add the telephones in the semi-open prison establishments so that all prisoners can exercise their right granted by the law;
- During the placement of the prisoner in the penitentiary institution, taking into consideration the place of residence of the prisoner's family in order to ensure the peaceful enjoyment of the right to visits;
- To take all necessary measures to ensure the confidentiality of correspondence in accordance with the law.

Proposal to the Parliament of Georgia:

- Amend the Imprisonment Code to reflect the need of untried prisoners for the long-term visits with due consideration of interests of the investigation;
- Amend the Imprisonment Code so that prisoners serving in closed type institutions are allowed to increased number of short-term visits
- Amend the Imprisonment Code and allow the prisoners placed in the special risk imprisonment establishment to enjoy the long-term visits;
- Amend the Imprisonment Code so that the prisoners placed in the solitary confinement cells are given the opportunity to make a telephone call to the Public Defender's Office.

REQUESTS/COMPLAINTS MECHANISM IN THE PENITENTIARY SYSTEM OF GEORGIA

Absolute prohibition of torture is one of imperative (Jus Cogens) norms of the customary international law and cannot be a subject to derogation. A crucial component of the fight against torture is the guaranteed right of any person to prompt and impartial review of complaint against representatives of authorities as well as the effective operation of internal monitoring system. It is impossible to implement the mentioned principles without ensuring inmates with procedures of safe submission and review of complaints. States have the obligation to establish such effective system that enables prisoners to submit complaints about ill-treatment and any issue related to the detention conditions. An effective mechanism of handling requests/complaints and monitoring in penitentiary institutions ensures the respect for the inmates' rights and represents a fundamental guarantee against ill-treatment. The absence of such mechanism adversely affects the order and safety in penitentiary institutions. In conditions of inadequate response to requests and complaints, prisoners often resort to extreme forms of protest – hunger strikes and self-harm.

This study was prompted by the information available to the Public Defender's Office, which indicated about certain significant problems in requests/complaints handling mechanism and internal monitoring. The study was implemented with the financial support from Open Society Georgia Foundation within the project Promotion of Complaints Mechanism and Internal Monitoring in Penitentiaries. The study into requests/complaints procedure and the level of trust and attitudes of inmates towards it is implemented for the first time ever in Georgia. It is worth noting that the study involves sociological[283] and legal components. Within the framework of this study, a special preventive group conducted a survey of inmates in 14 penitentiary establishments through applying questionnaires that were developed in advance. The normative base regulating requests/complaints procedure and internal monitoring was analyzed in the context of international standards. The study aimed to identify whether safe, available, confidential and impartial requests/complaints procedures are ensured to complainants; also, whether requests/complaints are responded to in a timely manner and the decisions taken on them are substantiated. Interviews were carried out with the representatives of the prison administration, the correspondence registered in the institutions was examined and the contextual analysis of the materials received from the Ministry of Corrections was conducted based on the random sampling.

The objective of the study was to identify whether safe, available, confidential and impartial requests/complaints procedures are ensured to complainants; also, whether requests/complaints are responded to in a timely manner and the decisions taken on them are substantiated. Also, to assess the level of awareness of this procedure among inmates and the latter's' attitudes towards it.

As a result of researching the reliability and effectiveness of the mechanism handling the request/complaints, a number of significant issues were identified.[284] It was revealed that self-evaluation of prisoners regarding

283 Sociological questionnaire with its subsequent analyses was developed by the Sociologist Iago Kachkachishvili.

284 See the results of the study on the following link: <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/specialuri-angarishi-motxovnissachivris-ganxilvis-meqanizmi-saqartvelos-penitenciur-sistemashi.page> [Last Visited on: 17.03.2016]

the knowledge of complaint lodging right and handling procedure is much higher compared to the objective knowledge of prisoners.

Existing practice of informing prisoners on their rights cannot ensure appropriate awareness of prisoners with regard to either general rights of the prisoners or a particular right to lodging a request/complaint and handling procedure. According to the evaluation of the Special Prevention Group, information regarding their rights and complaints handling procedure is not regularly available to prisoners. There are no lists of prisoners' rights, including information on right to file a request/complaint and handling procedure at any corridors or cells. Prisoners do not have a written document in their cells containing information on the request/complaint handling procedure.

We welcome the fact that the Ministry of Corrections agrees with the position of the Public Defender regarding the measures to be taken for providing the proper information to the prisoners. Noteworthy is the readiness of the Ministry to publish informational brochures on various topics in several languages, to prepare the banners and posters and place them in the penitentiary institutions, so that the accused/convicts have access to the information on their rights and responsibilities.

Positively should be assessed an additional instruction issued in response to the Public Defender's recommendation, according to which the social worker should periodically provide the prisoners with the detailed information on their rights asnd responsibilities and the procedures existing in the institution. Also noteworthy is the readiness of the Ministry of Corrections to take into consideration the obligation to inform the inmates in the job descriptions and training programmes of the social workers.

Positively should be assessed the existing situation in the establishments regarding the availability of material and technical supplies for the realization of the right to lodging a request/complaint. Nevertheless, there are still cases when supplies were not available to the prisoners at various intervals during the last two years. The Ministry of Corrections agrees with the recommendation of the Public Defender and is planning to take additional measures in order to fully ensure the prisoners in the penitentiary institutions with the relevant material and technical means.

With regard to registration of requests/complaints and sending them to recipients, it should be noted that most complainants were notified of their complaint registration number. However, it is noteworthy that with regard to the confidential complaints, every third prisoner notes that they have not received the complaint registration number. According to the majority of the prisoners, the number of the forwarded complaint and the respective envelope code were not posted at a complaint box. It should be underlined that the information regarding the registration numbers is directly provided in the cells, which makes it possible to identify the author of a confidential complaint. Some cases were revealed during the study when the complaint was forwarded to the person whose actions were referred to within the complaint.

The Ministry of Corrections does not share the Public Defender's recommendation related to the problems of placing the complaint registration number and the relevant code of the confidential complaint near the complaint box. Nevertheless, the Ministry expresses its readiness to participate in the discussion of the above recommendation.

The results of the conducted sociological survey demonstrated that 33,6% of the interviewed individuals indicated to the negative practice in this direction.[285] 36,4% of the prisoners were provided with the information on the registration number in person and 34.6% - in the cells. The above demonstrated that the absolute majority of the prisoners is not provided with the registration number confidentially.[286] Therefore, the Public Defender still calls on the Minister of Corrections to sufficiently study the issue and take relevant steps for elimination of the above practice. The Ministry of Corrections agrees with the recommendation of the Public

285 *See* the Public Defender's Special Report " Requests/Complaints Mechanism in the Penitentiary System of Georgia," p. 28.
286 *Ibid,* p. 29.

Defender and plans to take additional measures to eradicate the practice of forwarding the compaints to the to the person whose actions were referred to within the complaint.

Problematic is the use of the complaint box by the prisoner placed in the closed type penitentiary establishments without a person being accompanied.. Also, in a number of institutions, the complaints boxes are placed in the area of the surveillance cameras. Confidentiality is violated when the security officer is present in the cell during drafting the complaint with the assistance of a social worker.

The Ministry of Corrections partially shares the position of the Public Defender and notes that in the penitentiary institutions, except for the penitentiary establishment N9, the complaints boxes are not installed in the area of the surveillance cameras. The Public Defender welcomes the readiness of the Ministry of Corrections to solve the above problem in the establishemnt N9, however, does not agree with the position that the above problem is encountered only in the establishment N9. The results of the monitoring carried out in the framework of the mandate of the National Prevention Mechanism revealed that the complaints boxes in the establishment N5 (in the detention unit), N6, N7, N8 and N18 are located in the area of the surveillance cameras.

The Ministry of Corrections shares the Public Defender's recommendation that the social worker should assist the prisoner in preparation of the confidential complaint without the attendance of the security officer. The Public Defender welcomes the fact that the Ministry has issued a verbal order to all security officers so that during the assistance provided by the social worker in drafting the complaint, the employees of the security unit should be placed in a manner that the confidentiality of conversation between the accused/convict and a social worker is protected.

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

The Ministry of Corrections does not share the position of the Public Defender and considers that the free access to the envelopes of confidential complaints is ensured in the penitentiary institutions. The Ministry notes in its response that the envelopes are placed in libraries of the institutions or near the complaints boxes, where the electronic surveillance is not carried out. Beside, if the prisoners request, the envelopes are provided by the social workers in a way that the confidentiality of the prisoner receiving the envelope is protected.

The Ministry of Corrections shares the Public Defender's recommendation and plans to take additional measures in order to change the practice of openly distributing the correspondence received from the Public Defender's Office among the prisoners.

The monitoring results carried out by the Public Defender revealed that in the closed type establishments it is practically impossible to receive the envelope for writing a confidential complaint without the identification of a prisoner. Namely, in case of need, the prisoner willing to file a complaint addresses a social worker to provide him/her with an envelope (envelopes are not distributed). Also problematic is the fact that when the prisoner requests a confidential envelope, a social worker is noting the number of the envelope and the name and surname of the prisoner receiving it. It is fairly easy to identify the complainant with the number of the envelope.

During sociological survey, significant attention was paid to analyzing the practice of filing complaints. More than half of the surveyed prisoners mention that they have filed complaints for the last two years. Prisoners of the closed facilities are particularly active at filing complaints. The study revealed that the prisoners mostly use open form of complaint. In accordance with the data, the convicted are more active at filing complaints

compared to the accused. In addition, men file more complaints compared to women. Unfortunately, the article in accordance to which penitentiary department was responsible for analyzing requests/complaints entering the institution and preparing appropriate reports is removed from the current Imprisonment Code.. The analysis would make it possible to evaluate the causes of dissatisfaction within the establishments.

As there is different timing for handling complaints, requests and applications, differentiating between the requests and complaints considered in accordance with Imprisonment Code of Georgia as well as applications under General Administrative Code of Georgia by various units of the penitentiary system and responding in due time presents a problem. In response to the prisoner requests there is an established practice of timely but template responses. Namely, request/complaint/application recipient penitentiary system units respond to the prisoner within a very short time, however, the mentioned response is in most of the cases an intermediate response verifying that the recipient has received the request/complaint/application rather than a decision made due to handling the request/complaint/application of the prisoner. Noteworthy is the fact that in case of extending complaint handling time, the complainant/applicant is not appropriately notified in writing on requirement to extend time.

The Ministry of Corrections shares the recommendation of the Public Defender. Consequently, the Minister has instructed the General Inspection regarding the timely responses to the requests/complaints enshrined in the Imprisonment Code by the servants of the Ministry and on the protection of the relevant terms.

In terms of elimination the template response practice the Ministry notes that the Training Centre of the Ministry of Corrections annually ensures the needs assessment of the relevant structural units and sub-units of the Ministry and plans the trainings on various topics throughout the year. The Ministry also mentioned that in the framework of the above event, several trainings were already held in legal writing where one of the main directions was the justification of legal documentation and capacity building of the Ministry's staff in this field.

The Public Defender considers that only the trainings in various field, including the training in legal writing is not sufficient for eliminating the above problem. It is important that the requests/complaints/applications are sufficiently studied by the various units of the penitentiary system and the decisions are properly justified.

With regard to the timing, negatively should be assessed the fact that the complaint handling term is not specified for Medical Department and General Inspection of the Ministry of Corrections under Imprisonment Code.

Sociological survey results reveal that the prisoners mostly abstain from lodging a complaint due to intimidation, which is mainly directed from the penitentiary establishment administration, however, intimidation has also taken place from the prosecutor, investigator or other prisoners. Prisoners also mentioned self-censorship as a significant factor, i.e. the feeling that filing a complaint would aggravate their condition within the penitentiary establishment. Within rehabilitation establishments for the juveniles, the respondents who have not filed a complaint despite the desire to do so name a single factor as a reason – the sense that this step would aggravate their condition. The mentioned factor has significant share in the event of female prisoners and convicts as well.

The Ministry of Corrections does not agree with the Public Defender's position that in a number of cases the prisoners abstain from filing a complaint due to the intimidation. It is revealed from the response of the Ministry that the existing reality and the number and content of the requests/complaints clearly demonstrate that the prisoners are not repressed due to filing the complaints. The Ministry also noted in its response that in each training programme of the training centre special attention is drawn to the standards of treatment of the prisoners and the detention conditions in accordance with the national and international standards. At the same time, for the prevention of the above violations, the Ministry is planning to train the employees and complete their certification process.

It was revealed as a result of studying the materials sent from the General Inspection of the Ministry of Corrections that in a number of cases the decision on which the termination of the proceedings was based did not contain the justification on why the information provided by the prisoner was not taken into consideration and only the information submitted by the prison staff was taken into account. In a number of cases the issue is not completely studied in the medical department either.

The Ministry of Corrections shares the Public Defender's recommendation and notes that after the reforms, the new management of the General Inspection, together with the Legal Department of the Ministry studied the documentation prepared as a result of the official evaluation. In addition, they studied the court decisions based on the above conclusions and developed concrete recommendations and instructions for improving the documentation prepared as a result of the official examination. The Public Defender welcomes the Ministry's position and hopes that the measures for solving the problem will be taken in a timely manner.

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

The Ministry of Corrections shares the recommendation of the Public Defender of Georgia on improving the working methodology of the General Inspection and notes that currently, the working methodology, working instructions and guidelines of the General Inspection are being developed, which should be positively assessed.

In accordance with the conducted survey, only 19.2% of questioned respondents answered correctly to the question regarding the time the prisoner was handed complaint handling results after making the decision. This is a quite low figure with regard to awareness of prisoners. Processing the data indicates that with regard to responding to complaints there is marked difference between open and confidential complaints: if, in case of open complaints prisoners mostly receive response (52.6%), the figure is much lower regarding confidential complaints (37%). During analyzing received data at certain cases it was unclear whether the prisoner was notified of request/response handling outcome, the response is not complete, does not include all issues the accused/convicted mentioned.

For the closed type penitentiary establishments the issue of handing responses to the prisoners presents a problem. In particular, response received with regard to applications are communicated to prisoners, however it is not left in cells. There are situations when prisoner cannot understand the response properly and cannot proceed with further action.

The Ministry of Corrections agrees with the Public Defender's position that the prisoners should be allowed to have a certain amount of envelopes in the cells. According to the response received from the Ministry, the Ministry, in the nearest future plants to review the existing provisions on prohibition, while considering the recommendations of the Public Defender of Georgia and the requirements of the institution's legal regime.

Deleting the part of the Imprisonment Code which restricted appealing request of a prisoner should be mentioned as positive. As a result of qualitative analysis of proceedings data of the system of Ministry of Corrections, it was found that prisoners are not notified of their right to appeal within response. They are also not informed of where and when the decision can be appealed.

The Ministry of Corrections shares the Public Defender's position that the prisoner, together with the results of reviewing the requests/applications/complaints should be informed about the right to appeal and should be indicated where and in what time is it possible to appeal the decision. The Ministry is planning to prepare various informational brochures and pamphlets on the above matter.

Analyzing prisoner complaint responses of the General Inspection of the Ministry of Corrections within the study indicated that official examination carried out by General Inspection during the reporting period is of formal character and cannot be considered as effective activity. The same is true with regard to the activities carried out by Monitoring Division. Intersection of responsibilities of General Inspection and Monitoring Division was the reason for abolishing the latter together with Penitentiary Department which should be undoubtedly assessed as a positive change.

The Ministry of Corrections shares the position of the Public Defender. The Minister has issued a decree regarding the procedures of filing and reviewing the requests/applications/complaints during the systemic monitoring or while styding the facts of official misconduct.

Practice of critical evaluation of the situation and detection of violations by the Division of Medical Activity Regulation should be mentioned as positive. Further strengthening of and providing appropriate resources to the mentioned Division are important. According to the Special Prevention Group, further elaboration of working methodology of the Division of Medical Activity Regulation, professional training of the staff, proper communication of the responsibilities of the Division to prisoners and ensuring transparency of the activities is important.

The Public Defender welcomes the steps taken by the Ministry of Corrections which means the further strengthening of the State Regulation Agency for Medical Activities with the human resources. Currently, the Regulation Agency for Medical Activities has 8 employees, one of them was appointed at the end of 2015 and another employee – at the beginning of 2016. It is also noted in the response of the Ministry of Corrections that it is planned to hire the interns during the year. At the same time the practice of inviting the experts was established in the Unit and the health care specialist was hired under the service contract in the medical department.

The Ministry of Corrections shares the Public Defender's recommendation regarding the further improvement of the working methodology of the Regulation Agency for Medical Activities and notes that it is conducted while taking into consideration the existing practice.

The Public Defender welcomes the general constructive attitude of the Ministry of Corrections towards the results of the study, however, considers it necessary that the Ministry studies in detail and understands each issue revealed by the study. The Public Defender positively assesses the fact that the steps towards the solving of the problems are already taken and hopes that all necessary measures will be taken timely in order to increase the effectiveness of handling the requests/complaints.

RECOMMENDATIONS

To the Ministry of Corrections:

- To take all necessary measures to ensure that prisoners are handed over the information about their rights, including the right to file the requests/complaints and procedure of handling the request/complaints; the brochure can be produced to this end.
- To take all necessary measures in order to ensure that the Imprisonment Code, internal statute of an institution and other legislative acts are available for prisoners;
- To take all necessary measures to ensure that the information about the rights/obligations of prisoners, including, the right to file requests/complaints and procedure of handling request/complaints (in various languages) are displayed in places accessible to the prisoners, including in their cells;
- To enhance the role of the social workers; within the next few days of admitting prisoners to the penitentiary institutions, the social workers must provide the inmates with the detailed explanation

about their rights and duties as well as the information about the right to file requests/complaints and procedure of handling request/complaints; must explain the competence of social workers and hand over all necessary basic documents; must periodically work with prisoners, either individually or in groups, on the topic of their rights and duties, including the right to file requests/complaints and procedure of handling request/complaints;

- To take all necessary measures to ensure that materials (paper, pen, envelopes) are available to all prisoners for free;
- To take all necessary measures to ensure free availability of envelopes for the confidential complaints at a place (for example, in the library) and in a manner whereby the receipt of the envelope does not depend on an employee of the penitentiary institution and a prisoner receiving the envelope cannot be identified. At the same time, allow prisoners to have several envelopes in their cells;
- To take all necessary measures to ensure that the registration number of a request/complaint is communicated to a prisoner in a timely manner; in order to avoid repressions, a social worker should exercise extreme caution to prevent the identification of a prisoner filing a confidential request/complaint and at the same time, to protect confidentiality of the content of the request/complaint;
- To take all necessary measures to ensure that after forwarding confidential complaints, registration numbers are in any case posted near the complaints boxes; the information about this procedure should be periodically communicated to every prisoner in order to make them aware that registration numbers of their requests/complaints shall be posted near complaints boxes;
- To take all necessary measures in order to ensure that prisoners exercise their right to file the requests/complaints; to this end it is recommended to enhance the role of social worker in formulating requests/complaints and determining relevant addressees; prisoners who do not speak Georgian must be provided with a free interpreter service; in addition, brochures should be produced in various languages and supplied to the prisoners, containing practical information on filing and reviewing the requests/complaints;
- To take all necessary measures, including through the establishment of strict control, so that in case of extention of time for reviewing complaints, the complaiant/applicant is appropriately informed in writing regarding necessity to extend time;
- Study each written correspondence in a manner to identify each indicated issued within the correspondence as a request or complaint considered in accordance with articles 95 and 96 of the Imprisonment Code of Georgia, or application considered in accordance with General Administrative Code of Georgia and handle thereof within the term established in accordance with the legislation; In case handling of any of the issues is beyond the competence of the system of the structural units of the Ministry of Corrections, such issue should be forwarded to the institution of appropriate subordination, regarding which the complaiant/applicant should be immediately notified of; In the event of forwarding in accordance with jurisdiction, legal basis should appropriately be exlained to the complainant/applicant;
- Ensure maintaining and analyzing statisical data of requests and compaints considered in accordance with articles 95 and 95 of the Imprisonment Code of Georgia, as well as applications under General Administrative Code of Georgia;
- To take all necessary measures in order to eliminate the practice of the template responses;
- To take all necessary measures so that during the placement of the prisoners in the penitentiary facilities the inmates are fully provided with the information on using the complaints boxes;
- Carry out all necessary measures to locate complaint boxes at easily noticeable and accessible locations

for inmates, with no electronic monitoring for the possibility of using the boxes without identification of the complainant;

- Carry out all necessary measures in order to ensure assistance by social service employee in making a complaint without the presence of the security officer;
- Carry out all necessary measures in order to ensure that penitentiary employees are prohibited to register the number and name of the prisonersthe upon issuing envelopes;
- Carry out all necessary measures in order to change the practice of handing correspondence from Public defender's Office of Georgia to inmates in an open condition;
- To take all necessary measures in order to prohibit the distribution of the responses to the confidential complaints in an open condition;
- Carry out all necessary measures in order to ensure that response provided in closed envelopes are handed confidentially to the prisoners, without the possibility of reading them by the administration personnel;
- To take all necessary measures in order to eradicate the practice of sending the complaints to the individuals whose actions are referred to in the complaint;
- Carry out measures, including the training of the penitentiary establishment personnel in order to prevent repressions towards prisoners due to filing complaints;
- In the event of receiving information regarding such actions, General Inspection should investigate the case as priority and appropriately punish responsible persons;
- Review methodology for investigation of complaints by the General Inspection, develop appropriate guidelines/instructions;
- Ensure training of General Inspection employees in interviewing techniques and carry out strict control over use of professional skills;
- Ensure proper substantiation of decisions made as a result of studying complaints by General Inspection;
- Ensure development and approval of detailed procedure for reviewing medical complaints by medical Regulation Division of the Medical Department;
- To take all necessary measures to notify each prisoner regarding the complete and justified outcome of reviewing requests/complaints/applications in due time prescribed by the law;
- To amend the regulations of the institutions so that the inmates are given the possibility to have responses to requests/complaints/applications or any other material of the proceedings within their cells;
- To take all necessary measures so that upon receipt of request/complaint/application review outcome, the prisoner is informed regarding the right to appeal the decision, indicating the place and the term to appeal the decision;
- The General Inspection should carry out proactive monitoring at every penitentiary establishment at appropriate intervals throughout the year;
- To improve the working methodology of the General Inspection;
- To ensure the professional training of the employees of the General Inspection;
- To inform the prisoners sufficiently on the competences of the General Inspection;

- Ensure communication of the fulfilled work and prepared reports as a result of inspections by general Inspection to the public, including by regularly posting appropriate material on the web page;
- Identify handling medical complaints, proactive inspection of medical service provision process and quality of provided service as major objectives of State Regulation Agency for Medical Activities;
- The State Regulation Agency for Medical Activities should carry out monitoring at all penitentiary establishments at required frequency throughout the year;
- State Regulation Agency for Medical Activities should regularly inspect implementation of the issued recommendations;
- Considering number of functions of State Regulation Agency for Medical Activities, increase the number of the agency employees and at the same time enhance the practice of inviting experts;
- Ensure further elaboration of working methodology of the State Regulation Agency for Medical Activities;
- Ensure professional training of the employees of the State Regulation Agency for Medical Activities;
- Strengthen the cooperation of the Ministry of Labour, Health and Social Affairs of Georgia with the relevant bodies of the system;
- Provide appropriate information to prisoners regarding competencies of State Regulation Agency for Medical Activities;
- Inform the public regarding the activities carried out by the State Regulation Agency for Medical Activities and reports prepared as a result of inspections, including by regularly posting appropriate material on the web page.

Proposal to the Parliament of Georgia:

- Make amendment to Article 98 of the Imprisonment Code so as to enable every prisoner to directly appeal to the Minister of Corrections without going through the lower instances;
- To amend the Imprisonment code in order to determine the obligation of the Ministry of Corrections to conduct analysis of requests/complaints on a regular basis in order to identify reasons of discontent among prisoners;
- Define reasonable timing for handling medical complaints/applications by the Medical Department of the Ministry of Corrections within the Imprisonment Code of Georgia;
- Define Timing for handling complaints by General Inspection of the Ministry of Corrections within the Imprisonment Code of Georgia;
- Introduce amendments into appropriate legislative acts so that in the event to addressing the court regarding the issues related to imprisonment, the prisoner is exempt from paying state fees.

To the Chief Prosecutor's Office of Georgia:

- In case of receiving information regarding committing crime of carrying out repressions towards prisoners due to filing complaints, carry out investigation as a priority and ensure the appropriate punishment of the responsible individuals.

LIBERTY DEPRIVATION ESTABLISHMENT

GENERAL OVERVIEW

In order to achieve the goals set by Article 39 of the Criminal Code of Georgia,[287] the National Probation Agency has a territorial body – establishment for the restriction of libery (hereinafter - the establishment), managed by the head of the establishemnt.[288] The Liberty deprivation Establishment operates under the Law on Procedure of Execution of Non-custodial Penalties and Probation and constitutes the territorial body of the National Probation Agency – a legal entity of public law under the Ministry of Corrections.[289]

On 3 June, 2014 the first Liberty deprivation establishment was opened in Tbilisi which became functional from January 2015. The convicts, whose sentence was substituted with the restriction of liberty by the decision of the Local Parole Council are allocated in the above establishment. Detention was substituted by the restriction of liberty for the above persons. In the liberty deprivation establishment there are also placed those persons who are sentenced to the restriction of liberty by the court. The above establishment is oriented on the full integration of the convicts in the society. They are guaranteed with possibility to leave the establishment during the holidays in order to maintain the contact with the outside world. The maximum number of the convicts to be placed in the establishment is 100.[290]

TORTURE AND INHUMANE OR DEGRADING TREATMENT

According to the UN Human Rights Committee, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. It constitutes a norm of general international law not subject to derogation."[291] The European Court of Human Rights has underlined in a number of judgments that according to Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment,

287 Criminal Code of Georgia, Article 39:
1. The goal of a sentence is to restore justice, prevent repetition of a crime and re-socialise the offender.
2. The goal of a sentence shall be accomplished by exerting influence on the convicted person and other persons in order to ensure that they develop a sense of responsibility before the law and the observance of public order. Such forms and measures of influence on convicted persons are provided for by the corrections legislation of Georgia.
3. The purpose of a sentence shall not be the physical torture or humiliation of a person.

288 The Law of Georgia on the Procedure of Execution of Non-custodial Penalties and Probation, Article 7^1, para 1.

289 Order N373 of the Minister of Corrections on approving the regulation of the facility for the restriction of liberty.

290 Order N373 of the Minister of Corrections on approving the regulation of the facility for the restriction of liberty, Article 11.

291 CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, Article 4, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para 13a.

his health and well-being are adequately secured.[292]

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

During the visit to the establishment, the members of the Special Preventive Group checked the journal of visual examination that indicated only 3 household traumas. In one case the injury of the convict or the circumstance in which it was caused was not described. It should also be noted that the documentation received from the establishment for the detention of freedom[293] revealed that the convicts, besides the injuries described in the above journals, also had other injuries that are reflected in the medical certificates and acts of external examination and general health condition.[294] The injuries laid out in the certificates and acts were not reflected in the journal for the external examination of the body.

SECURITY

Security includes the prevention of violence among the prisoners, prevention of fire and other emergency situations, provision of safe working environment to the prisoners and the personnel of the establishment, as well as prevention of suicide and self-harm.

During the visit, special attention was paid to the conditions in terms of security and the specifics of the activities of the security service were studied.

In order to ensure the security, the establishment is equipped with the surveillance systems. The entrances in the establishment are controlled through the technical means. The special dactyloscopy is registering when the convict is entering or leaving the institution.

It was revealed during the visit that in the establishment for the restriction of libery not a single living cell was equipped with the electronic surveillance system. They are installed only in the solitary confinement cells.

Accordint to the Order N17 of the Minister of Corrections dated 21 February 2014 on approving the rules on issuing and using the special means of the officer for the restriction of freedom,[295] the officer's special means are the handcuffs and the rubber batons, however, according to the received information, the personnel of the establishment did not use special measures during the year.

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

292 European Court of Human Rights, 24 October 2001, *Valašinas v. Lithuania*, para 102.
293 Letter N1557/16 of the Head of the Facility for the Restriction of Liberty received at the Office of the Public Defender of Georgia on 5 February 2016.
294 6 cases.
295 Article 2(2).

CONDITIONS OF IMPRISONEMENT

Physical Environment, Sanitary and Hygienic Conditions

According to the European Prison Rules, the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.[296] In all buildings where prisoners are required to live, work or congregate: the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system; artificial light shall satisfy recognised technical standards; and there shall be an alarm system that enables prisoners to contact the staff without delay.[297]

The establishment has 1 living block with 25 living cells on the second and the third floors. In total, there are 12 rooms for 2 persons and 13 rooms for 3 persons. The convicts living in theestablishment freely move on the territory of the institution during the day.

The space in the double rooms is approximately 12m^2, and in the triple rooms – about 17m^2. The floor of the rooms is made of laminate, the walls and the ceiling are painted, newly renovated. The rooms have one window that ensures their natural lightning and ventilation. The rooms have wooden beds with the matresses, wooden closet, chairs and bedside tables. The TV is installed on the walls of each room. The washstand is in the room. The rooms are heated with central heating.

There are wood stop, pasta and bread factories on the territory of the establishemnt. During the visit, the probationers were employed in the wood stop. In the establishment is possible to master the profession of carpenter, electrician, enamel specialist, plasterboard specialist and a stylist. There is no heating in the building for the vocational learning.

The establishment yard is arranged in a way that the convicts could engage in various activities during the day. The institution has the football and volleyball courts and a gym (77 m^2). The gym has the football and tennis tables and a variety of fitness equipment. During the visit there was no heating system in the gym and it was very cold.

The kitchen and a dining room are located on the first floor of the living block. The dining area is 68 m^2. In the kitchen and the dinning room the central heating is functioning, the floor is made of tiles, the walls are painted; natural and artificial lightning is sufficient. The dining room is equipped with the tables and chairs.

Sanitary knots and showers are arranged on all three floors of the establishment. During the visit, the bathroom and the sanitary knot of the second floor were being renovated.

During the visit the warehouse was examined. Its sanitary conditions are not satisfactory. The walls of the warehouse had the traces of moisture. The mice poison was placed in the corner of the room. The vegetables of the warehouse were not kept in the adequate conditions and therefore, the products had the signs of decay.

The establishment has a shop where the convicts can purchase additional food and other items. The refrigerator stall of the shop does not have a temperature regulator due to which the liquid products freeze. Accordingly, the products are not kept in adequate temperature regime, which has a negative impact on the characteristics and quality of the nutrition products and thus, endangers the health of the convicts.

The establishment has 2 solitary cells. Both cells are under the electronic surveillance. The solitary cells have one window. Both cells have the appropriate equipement. Lightning and ventilation is sufficient and the sanitary-hygienic conditions are satisfactory in the cells.

296 European Prison Rules, Rule 18.1.
297 *Ibid,* Rule 18.2.

AGENDA AND REHABILITATION ACTIVITIES

According to the Law of Georgia on Procedure of Execution of Non-custodial Penalties and Probation, restriction of liberty is executied at the territory of theestablishment based on the individual plan (progressive plan) the conditions of which shall be defined by the head of the establishment.[298] Upon reciept of a legal act on restriction of liberty as a sentence based on his/her needs an obligation of participating in rehabilitation programmes running at the establishment shall be defined for the convict; also with his/her concent and taking into consideration his/her phisical and mental capacity after respective training the convict shall be assigned to a work at a non-profit or profit oriented legal entity of the National Probation Agency.[299] The work of a person restricted of liberty shall be remunerated.[300] It should also be noted that according to the obtained information,[301] during 2015, only 11 convicts were employed in the pasta factory on the territory of the establishment.

Rehabilitation and Educaltional Programmes Unit of the establishment has 10 employees: the head of the service, 7 restriction of freedom officers (including 1 psychologist) and 2 specialists.

See below the table demonstrating the information on the rehabilitation activities implemented in the establishment for the restriction of freedom in 2015.

N	Psycho-Social Rehabilitation Programmes	Length	Number of Participants
1	Personal Empowerment Programme	2 months	12
2	Anger Management Training Module	1 month/1 week	16
3	Public Order and Healthy Relations	1 month	12
4	Cognitive and Social Skills Training Module	3 months	8
5	Identity and Role of a Person in the Society	1,5 months	15
6	Professional Ethics and Etiquette	1 month	9
7	Development of Civic Awareness	3 month	27
8	Employment Skills	1 month	5
9	Literature Club	5 months/ongoing	22
N	**Training/Vocational Courses**	**Length**	**Number of Participants**
1	MS Office Programmes	2,5 months	16
2	PC presentation program	1 months	3
3	Georgian Language	5 months	2
4	English Language	-	15
5	Facing Worker	3 months	3
6	Informational Technologyst	3 months	7
7	Electrician	3 months	6
8	Air Conditioner Technician	3 months	6

In addition to the data provided in the table, religious-educational events in relation to the Orthodox Christian holidays, documentary film screenings and meetings with famous people were held in the establishment.

It should be noted that the Public Defender welcomes the implementation of a wide variety of rehabilitational activities in the establishment, however, it is important to give the convicts the possibility of paid employment in the factories and enterprises of the establishment.

298 Article 44[1], para 1.
299 Article 44[1], para 2.
300 Article 44[1], para 3.
301 Letter N1557/16 of the Head of the Establishment received at the Public Defender's Office, dated 5 Fenruary, 2016.

MEDICAL SERVICE

The state is obliged to take care of the health of prisoners. Prisoners should enjoy the same standard of health care services, which are available to the general public. They should have access to free medical care without discrimination based on legal status.[302]

According to the Law of Georgia on Procedure of Execution of Non-custodial Penalties and Probation,[303] the emergency medical aid spot shall be placed at the establishment. And according to Article 7[1] of the same law, ensuring the functioning of the Establishment, including provision of convicts with relevant insurance, food, work, training, health care and living conditions shall be the responsibility of the National Probation Agency. According to the Order N373 of the Minister of Corrections dated 30 December 2013 on approving the Model Regulation of the establishemnt for the Restriction of Freedom, the convict has the right to be ensured with the emergency medical aid in accordance with the Georgian legislation.[304] The convict, during the stay in the establishment, shall be provided with the service of the establishment's medical unit, which includes the first aid doctoral and drug assistance.[305] The convict is ensured with the proper insurance by the National Probation Agency.[306]

The medical personnel of the establishment of the restriction of freedom includes 1 doctor and 4 nurses. It is also possible to enjoy the on-site consultations of the specialized doctors and in case of need, the convict might be transferred to the public sector hospital. During the visit, 133 types of medicines, syringes and other materials were kept in the medical unit.

See the table below showing the information regarding the consultations provided by the specialized doctors in 2015.

N	Doctor-Specialist	The Number of Visits	Visited Patients
1	Psychiatrist	4	13
2	Cardiologist	2	11
3	Neurologist	1	1
4	Dentist	6	42

During the reporting year, 15 convicts were transferred to the civil hospitals, among them 1 was planned, at the expense of the state, 3 – as a matter of urgency, also at the expense of the state and 11 – also planned, but at their own expense.

It should also be noted that based on the records in the medical files of the convcits, in a number of cases, the convicts are in need of the consultations with the concrete specialist doctors. However, the treatment is prescribed by theestablishment doctor without the above consultation. For instance, one of the convicts is diagnosed with the right sided epididymoorchitis. On 22 September 2015, the doctor of the establishment recommended the consultation of the urologist, and the ultrasound examination. There is no record of the urologist's consultation or the ultrasound examination in the medical card of the patients, however, the convict was prescribed with the antibiotic theraphy, analgesics and compresses.

Another convict has entered the establishment on 3 November 2015 with the following diagnosis: organic personality disorder (F07.0); Traumatic encephalopathy, a history of epilepsy, chronic prostatitis. Before being transferred to the Liberty deprivation Establishment, the above individual was numerously consulted by the psychiatrist, once – on 25 Aprils 2015, by the neurologist. During the monitoring, the patient was treated with

302 Nelson Mandela Rules, Rule 24.1.
303 Article 44[5].
304 Article 21.1(„a")(„b").
305 *Ibid,* Article 19.1.
306 *Ibid,* Article 19.2.

the neurolepsin with the consultation of the psychiatrist or the neurologist. As for the chronic prostatitis, the convict was not consulted on this disease.

In a number of cases the information of the various medical documents is not reflected in the medical card of the convict. For instance, one of the prisoners was consulted by the doctor on 8 September 2015. According to the journal, the patient was diagnosed with the osteochondrosis, unspecified and was prescribed with the "Obugesi" twice a day (5 days) and "Omeprazol" – one pill per day (10 days). This information is not reflected in the medical card. It is noted in the journal that the convict has a history of peptic ulcer disease, which is not reflected in the medical card.

The convict N has addressed the medical unit with the complaints related to the eye itching, tearing, the sense of burning, reddening of the whites. The patient was diagnosed with conjunctivitis preliminarily and was prescribed the treatment with gentamicin drops, 2-2 drops once every three to four hours (a day). On 25 September 2015, the convict addressed the medical unit again and complained of the lower left eyelid swelling purulent, was prescribed with the gentamicin drops – 5 drops per day and was recommended to consult with the ophthalmologist during the temporary layoff. This is the final record of the medical card. It is noted in the registration journal for the consultations that the convict has addressed the establishment doctor again and was diagnosed with cataract and was given the treatment recommendations. Ophthalmologist's consultation was not provided to the convict.

It is crystal clear from the above–mentioned cases of medical service that the consultations of the specialized doctors are not ensured in the establishment, the head doctor of the establishment provides all kinds of consultations and prescribes the treatment. In addition, the medical cards of the convicts, in a number of cases are produced with deficiencies, which hinders the continuity of medical services for the convicts.

REGIME, DISCIPLINARY LIABILITY, INCENTIVES

Disciplinary liability of the convict is based on the disciplinary offense i.e. violation of the rules of the model regulation of the Liberty deprivation Establishment [307] or the agenda or avoiding complying with them without a reasonable ground, also, committing an administrative offense, for which the convict was sentenced to the administrative detention.[308] The Head of the establishment, for the disciplinary offence may use the following measures of dicriplinary liability of the convict:

a) warning;

b) prohibition of leaving the territory of the establishment for not more than 30 days;

c) prohibition of enjoying the internet, television and other means of communication for not more than 10 days;

d) restriction of the right to use the stated short-term visit.[309]

It should also be noted that imposing multiple disciplinary sanctions (3 times or more) upon the convicts might become the ground for addressing the court enshrined under Article 21 paragraph 5[310] of the Law of Georgia

307 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom.

308 *Ibid,* Article 49.1.

309 *Ibid,* Article 49.2.

310 The head of the facility, in case of a reasonable ground addresses the court with one of the following proposals: a) to change the imprisonment sentence with the restriction of freedom; b) in case of substituting the unserved imprisonment sentence with restriction of freedom – to change the unserved part of imprisonment to the restriction of freedom; c) on the early conditional release of the convict from the imprisonment sentence/substituted sentence.

on Procedure of Execution of Non-custodial Penalties and Probation.

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

In case of exemplary behavior and/or successful employment of the prisoner, successful completion of rehabilitational and educational programmes, thorough implementation of the individual (progressive) plan of the sentence, honest attitude towards the imposed obligations and in other special cases, the head of the establishemnt is empowered to use the following incentives towards the convict:

a) Announcement of gratitude;

b) Early release from the disciplinary sanction;

c) Additional short-term visit;

d) Addition short layoff from the institution;

e) Enjoyment of the private TV or radio receiver;

f) Provison of a valuable gift. [311]

During the year, only 3 convicts received incentives in the establishment. All three of them were announced the gratitude for the exemplary behavior, involvement in the rehabilitational and educational programmes and participation in the clean-up work of the institution. According to the assessment of the Special Preventive Group, it is necessary that the director of the establishmentutilizes the forms of incentives more often, since it will contribute to the process of rehabilitation of the prisoners.

CONTACT WITH THE OUTSIDE WORLD

According to the regulations of the establishment,[312] a convict has the right to be ensured with a short-term visit of a parent, adoptive parent, child, adopted child, spouse, sister, brother in accordance with the Georgian legislation. Also, to receive information through the press and mass media, to use fiction and other literature; with the approval of the head of the establishment, to leave the institution temporarily; to meet the lawyer without any obstacles. Additionally, a convict, in accordance to the rules established by the Georgian legislation, enjoys the right to leave the establishment on holidays and non-working days, if the regulations do not provide otherwise.

The special room is allocated in the living block of the establishment where the convicts can use internet, telephone and other means of communication according to the daily schedule. The telephone conversation is carried out at the expense of the convict for not more than 10 minutes a day.[313] A convict, during the free time, once a month, with a prior agreement with the head of the establishment, is allowed to enjoy a short-term visit with a parent, adoptive parent, child, adoptive child, spouse, sister and a brother.[314] A short-term visit can be carried out at a place properly arranged for the meetings and visits at the establishment (a room, an open

311 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom, Article 50.1

312 *Ibid,* Article 21, para 1, („a.c"), („b"), („d"), („l"), para 2, („b")

313 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom, Article o 23.

314 Order N373 of the Minister of Corrections dated 30 December 2013 on Approving the Model Regulation of the Facility for the Restriction of Freedom, Article 24.1.

space) and its lenth should not be more than an hour.[315] A convict has the possibility to get acquinted with the press and use the other means of media. [316] A convict or a group of convicts, with a prior approval from the institution's administration, may have a private radio receiver, if the use of the above equipment does not violate the requirements of the establishment's regulations and the peace of the other convicts. Convicts may buy the above items at their own expense.[317] A convict, at the time specified by the institution's time schedule, may use the TV through the monitor installed on a special place allocated for the sports and cultural block.[318] Convicts may, at their own expenses and in a reasonable amount, subscribe to the scientific, popular scientific, religious and other literature, newspapers and magazines, also, may possess writing items, with the exception of the prohibited items.[319] A convict has the right to send and receive an unlimited number of letters, to submit applications, requests and complaints orally or in writing.[320]

According to the information received from the Liberty deprivation Establishment,[321] in 2015, 19 convicts exercised the right to the visit with the family and 7 convicts – the right to the meeting with a lawyer.

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

RECOMMENDATIONS

To the Ministry of Corrections:

- To study the reasons of the injuries reflected in the external bodily examination journal of the establishment and to take all necessary measures for the proper keeping of the journal;
- To develop and establish a new form of registering the injuries in line with the Istanbul Protocol, in which it will be possible to include a more detailed information about the bodily injuries;
- To study the working practice of the security unit of the establishment for the restriction of freedom and to take all necessary measures to ensure the security in the establishment, including through the sufficient number of the establishment's personnel, their proper trainig and strengthening the skills for identifying the risk factors of violence;
- To take all necessary measures to equip the shop of the establishment for the restriction of freedom with the modern counter-refrigerators so that the nutrition products are kept in the relevant temperature regime;
- To take all necessary measures for the renovation of the warehouse and for keeping the nutrition products in adequate conditions;
- To take all necessary measures for the installation of the central heating system in the vocational learning building and the gym of the establishment for the restriction of freedom;

315 *Ibid,* Article 24.2.
316 *Ibid,* Article 25.1
317 *Ibid,* Article 25.2
318 *Ibid,* Article 25.3.
319 *Ibid,* Article 25.4.
320 *Ibid,* Article 26.1.
321 The written response N1557/16 of the Head of the Facility for the Restriction of Libery received at the Office of the Public Defender on 5 February 2016.

- To take all necessary measures for the continuous employment of the convicts in the enterprises/ factories existing on the territory of the establishment;
- To take all necessary measures for issuing incentives more often to the convicts involved in the rehabilitation activities;
- To take all necessary measures to ensure the convicts of the establishment for the restriction of freedom with the transportation means;
- To take all necessary measures to ensure timely consultation of the convicts with the specialized doctors;
- To take all necessary measures for the proper production of the medical cards of the convicts.

SITUATION IN AGENCIES SUBORDINATED TO THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

INTRODUCTION

The present report contains the results of monitoring conducted by the NPM at police stations and temporary detention isolators (TDI) of the Ministry of Internal Affairs (MOIA) of Georgia. Throughout 2015, monitoring was performed at 59 police stations and 31 temporary detention facilities, and 54 detainees were interviewed.

It should be highlighted as a positive fact that, during monitoring, the members of the Public Defender's Special Preventive Group were provided unhindered access and were able to freely move within the MOIA police stations and TDIs. Throughout the visit, staff at all police stations and TDIs, according to the requirements set forth in the law, fully cooperated with the representatives of the Public Defender and helped them with full-fledged performance of monitoring.

Monitoring team members inspected log books of detainees maintained at police stations as well as registration journals of individuals transferred to detention facilities (temporary detention isolator), visually inspected police station buildings and interviewed staff. At TDIs monitoring team members inspected infrastructure, interviewed TDI staff, detainees, checked case files of detainees. To obtain necessary information contained in case files in a systemized manner, monitoring group used specifically designed questionnaire.

Over the course of drafting the report, data obtained through the visits were processed. Notably, initially qualitative analysis of the data obtained through the pre-designed questionnaire was performed using the Statistical Program (SPSS). A total of 740 questionnaires were processed. Members of the monitoring group reviewed all materials available at the temporary detention isolators in the course of the visit. Group members would complete questionnaires only if the presence of new injuries (other than a scar and minor injuries) would be discovered based on case materials. It should further be noted that the Special Preventive group, in order to assess the practice of documenting bodily injuries by TDI staff, through the random selection method, obtained records about incarceration of accused persons with bodily injuries at the penitentiary institutions, and compared these records with those of TDIs.

In the course of the report preparation, 11 proposals sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2015 have also been used. These proposals relate to the facts of violence by police officers against detainees. The report also provides factual circumstances of those alleged cases of ill-treatment, which the monitoring team members identified over the course of the visits. In the process of the report drafting, the data obtained from the Ministry of Internal Affairs (MOIA) have also been analyzed, as well as the desk research of Georgian legislation and international standards was performed.

The goal of monitoring was to assess the conditions in relation to torture and inhuman or degrading treatment within the MOIA system, as well as to produce recommendations aimed at reducing the risks of torture and inhuman or degrading treatment.

EXECUTIVE SUMMARY

As compared to 2014, the number of individuals committed to TDIs has declined slightly. Furthermore, 916 less cases of bodily injuries have been identified in 2015, as compared to 2014. The cases of filing complaints against police have fallen as well (30 cases less). However, considering alleged cases of torture and other ill-treatment, the Public Defender and Special Preventive group regard that the state of human rights protection within the MOIA system has deteriorated.

In 2015, as compared to 2014, the number of proposals sent by the Public Defender to the Chief Prosecutor's Office of Georgia, concerning investigation of the facts of ill-treatment by police officers has risen. High risks of torture and other ill-treatment is corroborated by a study conducted by the Special Preventive Team.

The Public Defender deems that in 2015, the issue of ill-treatment of individuals detained by the Police is pressing and is concerned about the fact that in the majority of cases, based on the statements of applicants, preliminary, purposeful preparation for physical and psychological violence by police employees and realizing such violence to obtain statement on guilty plea can be observed, which is an element of crime that qualifies as torture. Especially alarming is the location and nature of injuries on the bodies of some of the applicants, as well as the fact that the severity of incurred injuries necessitated the transfer of some of them to civilian inpatient medical institutions. The fact that in some cases prior to commitment to TDIs, detainees had to spend the night at police stations. In studied cases, the duration of holding detainees under police control prior to placing at TDIs ranges from 5 to 23 hours. Moreover, it is worth noting that in some cases, actual time of detention indicated in detention reports does not match with the time listed by applicants to authorized representatives of the Public Defender.

It is alarming that based on 11 proposals sent by the Public Defender of Georgia to the Chief Prosecutor of Georgia in 2015, investigation was launched based on Article 333 of the Criminal Code of Georgia, while the circumstances indicated in Public Defender's proposals contain the indications of torture and inhuman or degrading treatment.

In some cases, such legal safeguards of detainees had been neglected by police officers as is briefing about the rights, putting them in contact with family and a lawyer. Furthermore, it is worthy of particular attention that during the reporting period, as indicated in detention reports, the trend of manifestation of aggression by citizens towards police has been observed, in which cases, given insufficient qualification of officers, the likelihood of the use of force on the part of police, and respectively, that of overstepping the bounds of the force is high.

The practice of the so-called "conversation" conducted by the police without express and free consent of individuals involves high risks of torture and other ill-treatment; such "conversation" is performed in a vehicle or at a division/station, which, effectively, is arbitrary detention, without briefing about procedural rights. The Public Defender deems that it is important to immediately brief all detained individuals about procedural rights. Furthermore, all detainees at TDIs should be briefed in a clear and comprehensible manner not just about procedural rights, but all those rights and duties an individual may enjoy while under detention at the TDI. Inter alia, a copy of the list of rights and duties should be provided to all detainees for review in their cells, or such list should be made otherwise available. Briefing detainees about rights is especially problematic in cases when the time of the entry of individuals at police stations precedes their factual detention time, which raises suspicion that these individuals are actually subjected to the restriction of liberty, and it is highly likely that they are not briefed about their rights.

The Public Defender is concerned about the fact that registries that would enable to find out as to how many individuals demanded the enjoyment of the right of informing a family or ask for a lawyer, and how many have actually exercised these rights, are not maintained either at police stations or at TDIs.

The Public Defender deems that general situation in terms of access to a lawyer and the possibility for holding confidential conversation with a lawyer at detention facilities can be assessed positively. Still, in the opinion of the Public Defender, it is a serious problem that, as discovered over the course of monitoring, in a number of cases, police would allegedly physically and verbally abuse detainees once they asked for access to a lawyer or the enjoyment of other procedural right. As regards access to a lawyer, the problem is that administrative detainees, due to the lack of funds or another reason, almost never use a lawyer's services. At the same time, current legislative framework does not ensure lawyer's services from the very initial stage of legal proceedings to detainees who are using free legal aid. This issue is especially pressing in regions, where, along with the problem with the access to free legal aid, the free legal aid programs provided by NGOs are less available as well.

The Public Defender welcomes the practice of medical examination of detainees by ambulance physicians, and deems that this is the possibility for ensuring institutional independence. Still, at TDIs in regions, in a number of cases, timely arrival of ambulance team, incomplete description and documenting of the health status and injuries of detainees is a problem. Furthermore, conducting medical examination in a confidential setting, without the presence of non-medical staff is an essential challenge.

The Public Defender regards that that the deployment of medical personnel hired by the MOIA at TDIs will, on the one hand, ensure the provision of rapid and timely first medical services, but on the other, the degree of impartiality and independence of these personnel is questionable, and this may interfere in the identification of ill-treatment of detainees in the future.

In 2015, the absence of video surveillance on the inner perimeter in the majority of police stations remained a problem, and it has to be fixed immediately. Furthermore, it is important that not only Patrol Police Department officers, but also detective-investigators and neighborhood inspector-investigators are also equipped with shoulder video cameras and vehicle video registrars. It is also necessary for the NPM to have unimpeded access to video surveillance systems at TDIs and police stations.

It has been established based on a number of monitoring visits made throughout 2015, that the deficiencies are still present in the area of completion of detention and visual inspection reports, as well as journals and medical documentation at police stations. Further, the format of administrative detention report is imperfect.

It has been established during the implemented visits that at the MOIA Police stations and divisions stations special journals for recording entered individuals are not maintained. For example, when an individual comes to the police division/station in the capacity of a witness, the fact of his/her entry into the building is not logged in the unified journal. It is important to keep detailed record of date of entry (by indicating time), purpose of visit and the date and time of leaving the building by individuals at police stations and divisions.

TDI staff brief detainees about their rights, which, also comprises information about the right to file a complaint, although, notably, there is no relevant written procedure that would enable individuals held at TDIs to file confidential complaints.

The procedure of sending a notice by the Administration to an investigation body about bodily injuries of detainees is a significant legal guarantee to protect individuals placed at TDIs against ill-treatment. It should be noted that notification about bodily injuries of detainees is sent to prosecutors at the discretion of TDI heads, and there is no specific rule governing this procedure and it is unclear specifically in which case a notification should be sent to a prosecutor. The failure of the Prosecutor's Office to duly examine complaints of detainees sent from TDIs and conduct investigations is an issue.

The stance of the Public Defender as to the creation of an independent investigative mechanism is unaltered. He deems that it is extremely important to establish a mechanism with a mandate to conduct effective investigation of alleged facts of torture and inhuman treatment of detainees by law enforcement officers.

The Public Defender of Georgia thinks that the practice of examination by the Human Rights and Monitoring Department Monitoring Office cannot ensure relevant examination of the state of human rights protection at TDIs. During inspection, focus is made on administrative and technical aspects of activities of TDIs, versus the quality of documenting alleged ill-treatment of detainees by the Police and in this respect, the status of protection of their rights.

It is important to note that living conditions of individuals held at TDIs should be in conformity with national as well as international standards. At TDIs in the regions of Georgia, the issues with central heating, natural lighting and ventilation, complete isolation and technical serviceability remain outstanding.

The Public Defender welcomes amendment to the Administrative Violations Code according to which administrative detention term was reduced from 90 days to 15 days, which should be assessed positively, although, it should also be mentioned that current situation at TDIs is not adequate for committing administrative detainees.

Although the norms of daily nutrition of individuals held at TDIs are prescribed in a relevant order, food for individuals with special food needs is not considered for the detainees at TDIs in the regions. Detainees are provided canned food only, everyday consumption of which may compromise a person's health. There are cases when TDIs staff are compelled to buy bread for detainees at their own expense. Detainees are primarily consuming food sent in via packages. An administrative detainee may be held at TDI for up to 15 days. For an individual detained for long-term period relevant food and living conditions are especially important.

TORTURE AND OTHER INHUMAN TREATMENT

No one should be subjected to torture,[322] or to inhuman and degrading treatment.[323] Pursuant to Article 10 of International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. According to the UN Human Rights Committee, „respecting human dignity is a norm of international law, and may not be subjected to any derogation. "[324]

According to ECtHR case law, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.[325] Moreover, ECtHR ruled that, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. [326]

322 Pursuant to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

323 European Convention on Human Rights and Fundamental Freedoms, Art. 3.

324 UN Human Rights Committee General Comment N 29, CCPR/C/21/Rev.1/Add.11 (2001), August 31, 2001, Par. 13a, available in UN Official languages, at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en> [Last seen on 29.03.2016]

325 ECtHR April 6, 2000 Judgment on the case Labita v. Italy, N26772/95, Par. 120.

326 ECtHR June 27, 2000 Judgment on the case Salman v. Turkey, N21986/93, Par. 100.

The burden of proof shifts to the state in the cases of individuals who are injured during the detention. In this case, too, the state that has to allege that the use of force during detention was not excessively harsh.[327] Furthermore, at the time of detention of an individual police officers should exert minimum force so as not to inflict physical harm to an individual. Pursuant to national legislation, to perform police functions, a police officer may use fit and proportionate coercive measures only in the case of necessity and to the extent that shall ensure achievement of legitimate objectives.[328] The form and extent of a coercive measure shall be defined based on a given situation, the nature of an offence and individual peculiarities of the offender. In addition, a police officer must try to cause minimal and proportionate damage while carrying out a coercive measure.[329]

With respect of examining alleged ill-treatment, ECtHR case law landmark case against Georgia is noteworthy; ECtHR ruled substantial breach of Article 3 of the European Convention, due to ill-treatment by MOIA Tskaltubo Police officers against the complainant, and ruled procedural violation by the prosecutor's office due to failure to conduct effective investigation.[330]

In 2014, the Public Defender of Georgia sent to the Chief Prosecutor 7 proposals on the commencement of investigation around alleged ill-treatment by police, while in 2015 – 11 proposals. Furthermore, it should be noted that the practice of overstepping the bounds of force by police officers during detention has been a principle trend in 2014, which, among others, is addressed in the Public Defender's 2014 Report to the Parliament. While, in 2015 the trend of ill-treatment by police officers against detainees is prevailing. The above-mentioned and the matters reviewed below demonstrate that, as compared to 2014, in 2015 the situation concerning Ill-treatment of detainees by police has deteriorated.

The Public Defender's Office has solicited statistical information from the MOIA. The number of individuals committed to TDIs, statistics of bodily injuries of individuals at the time of placing at the TDI, and the number of complaints against the police, by years, is provided in the table below.

N	Data by years	2013	2014	2015
1	Number of committed individuals	16553	17087	16416
2	Individuals committed who had injuries	7095	6908	5992
3	Complaint against police	111	198	168

Number of bodily injury cases in 2015	5992
Prior to detention	5635
At the time of detention	243
Following detention	52
Prior to detention – at the time of detention	47
Prior to detention – after detention	10
At the time of detention – following detention	4
Prior to detention – at the time of detention – following detention	1

327 ECtHR Judgment on the case Rehbock v. Slovenia, N29462/95, Par. 72
328 Police Law of Georgia, Article 31(1).
329 Police Law of Georgia, Article 31(4).
330 ECtHR December 18, 2012 Judgment on the Case Dvalishvili v. Georgia N19634/07.

Complaints against police in 2015	Number
Prior to detention	8
At the time of detention	90
Following detention	34
Prior to detention – at the time of detention	23
Prior to detention – following detention	8
At the time of detention – following detention	4
Prior to detention – at the time of detention --following detention	1
	Total: 168

The analysis of the above tables demonstrates that, as compared to 2014, the number of individuals placed at temporary detention facility has fallen slightly. Furthermore, as compared to 2014, in 2015 there have been observed 916 less cases of bodily injuries. The cases of complaints against police have also fallen (30 cases less). Still, considering alleged torture and other ill-treatment cases reviewed below, the Public Defender and the Special Preventive Groupregard that the situation with the protection of human rights within the MOIA system has deteriorated.

The study conducted by Special Preventive Group also corroborates high risks of torture and other ill-treatment. The results of this study will be reviewed below.

In 2015, as compared to 2014, the number of proposals sent by the Public Defender to the Chief Prosecutor's Office of Georgia about the investigation of ill-treatment facts by police employees has risen.[331] Factual circumstances described in these proposals will be reviewed briefly below.

	Alleged actions committed by law enforcement	Injuries	Other significant circumstances
Case N1[332]			
A.J.	1. Was beaten mercilessly at the time of detention. 2. At MOIA Zestaponi Police Main Station, 8 employees were beating during 3 hours for obtaining confession. 3. At Zestaponi hospital, in the x-ray room, a stranger beat and verbally abused him.	1. **At the time of interview with authorized representative**: On the forehead wound covered with eschar, eschar covered excoriation on both elbows, bruises and wounds on the entire area in the lower back, bruises on the left eye. 2. **TDI:** numerous scratch scars and excoriations on the back, forehead, both shoulders, both elbows and wrists, both knees and calves, with bruises, on the face and both eye sockets. 3. **At the National Center of Intervention Medicine** linear fracture of the nasal bone was established.	1. Due to numerous injuries, the TDI refused to admit A.J., following which he was transferred to the Zestaponi hospital. 2. The story of A.J. coincides with the story of other individuals who were detained along with him. He did not have a chance to communicate with these individuals after detention.

331 7 proposals were sent in 2014, while in 2015 – 11 proposals.

332 Pursuant to the Chief Prosecutor's Office of Georgia N13/1869 letter dated January 12, 2016, on October 29, 2015, investigation was launched at the Zestaponi District Prosecutor's Office on Criminal Case N052291015801, on the fact of exceeding official power through violence towards A.J., B.J., S.J., and M.V., by the officers of MOIA Zestaponi District Division for the elements of crimes envisaged under Article 333 (3) (b) of the Criminal Code. Criminal prosecution has not been instituted against specific individuals, investigation is underway.

S.J.	1. Following detention, over twenty police officers knocked him down to the asphalt and beat him mercilessly, following which he felt unwell, but police officers continued to beat him. 2. At the MOIA Zestaponi Police Main Station, where in one of the rooms they would inflict physical violence with open hands and feet for over three hours.	1. **TDI:** bruise on the left cheek, eschar on the left elbow, red patches on the back.	
B.J.	1. Was beaten during about half an hour at the time of detention. 2. Beating and verbal abuse continued at the MOIA Zestaponi Police Main Station.	**TDI:** bruise On the forehead, right temple area, scratch scars on the right shoulder, red patches on both knees.	
M.V.	1. Was forced at the MOIA Zestaponi Police Main Station To provide testimony against A.J., B.J., and S.J. 2. Was beaten and verbally abused for refusing to provide testimony.	**1. According to the health certificate**[333] based on the examinations conducted on October 7, skull brain closed trauma, concussion, intracranial hypertension was determined.	1. M.V. describes the fact of beating A.J., B.J. and S.J at the place of detention, which matches with the story of the latter individuals. 2. Police officers did not draw up relevant documentation for detention of M.V. 3. M.V. was released from the building of Police Main Station in several hours.
Case N2[334]			
B.R.	1. Was forcibly placed in a vehicle, covered his eyes with a hat, and drove him in unclear direction into the forest. 2. Was asked about weapon and was beaten. 3. Tied him to a tree using handcuffs, in order to obtain confession, and beat him while in such state, next, they also hanged him with his feet, using a rope, for about 10-15 minutes. 4. At Bagdati District Police Station, police officers would verbally abuse him during interrogation.	**1. TDI:** Excoriations on the right ear and right side of belly, as well as a small wound on the inner side of the upper lip.	1. B.R. alleges that he was detained at about 12:00 on November 20, 2014, while according to official documents, detention took place on 4:15 on November 21, 2014. 2. The detainee alleged that he had spent about 22 hours and 30 minutes under the police control prior to the commitment to the TDI. 3. It can be ascertained from to the detention related documentation that prior to placement in the TDI, B.R. Was under police officers' control for 6 hours and 15 minutes.

333 Form-100.

334 According to the Chief Prosecutor's Office of Georgia April 6, 2015 Letter N13/20964, on March 26, 2015, in West Georgia District Prosecutor's Office Investigation Unit investigation was launched on the criminal case N088260315801, on the fact of alleged exceeding official power in relation to B.R., for the elements of crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia.

Case N3[335]			
G. Dz.	1. Was not briefed about rights at the time of detention. 2. Was beaten and physically abused during detention. 3. Was beaten in the police vehicle. 4. In one of the MOIA Isani-Samgori units, in about 50 meters from the Department, where there was no video surveillance camera, he was beaten again and was verbally abused in order to gain the confession of the fact of robbery. 5. Once he was taken to the MOIA Imereti, Racha-Lechkhumi and Kvemo Svaneti Regional Police, in order to obtain confession, police officers would kick him, beat him with hands, handle of a gun, handcuffs and a bottle. Several times, they hit his head against a wall. He collapsed several times because of beating. Throughout the night he was tied to a chair, police officers would occasionally beat him.	1. **Medical examination conclusion**: In the mid-third on the back of the nose, a wound with dimensions 0.6*0.2 cm – dark reddish bruises in edges and in sides. On the left wrist joint frontal surface an impression with dimensions 0.5*0.3 cm, on the back surface of chest, in right lower third -- impression with dimensions 3.5*0.2cm. 2. **N 2 Penitentiary Facility**: on frontal surface of both calves, in upper third -- eschar covered contusion wound with uneven edges, bluish bruise on the right ear-lobe, a centimeter long contusion wound, covered with eschar on nose septum, bluish bruises on both eye sockets.	1. In the examined documents there is no indication as to physical resistance of the detainee against police officers. 2. The detention report mentions that the detainee did not have any injury at the time of detention. 3. According to medical examination findings, according to the explanation by the person subject to be examined, police officers had not inflicted injuries to him, although G.Dz. explains to the authorized representative of the Public Defender that at the first stage of legal proceedings he did not have a defense attorney and was vulnerable. 4. G. Dz. Was detained in Tbilisi, at 15:35, at about 21:00 he was taken to the MOIA Imereti, Racha Lechkhumi and Kvemo Svaneti Regional Police Office, where he spent the entire night.
Case N4[336]			
G.G.	1. While in a police vehicle, police officers would beat him in the face and would force him to confess a crime. 2. After bringing him to the MOIA Kobuleti Police Main Station, in order to obtain confession of a crime, he was beaten during about one hour, was forcefully placed on the floor, would take off his pants and threaten to rape (such actions repeated 5-6 times). He was also forced to squat, and was laughed at, spat at.	**1. TDI:** Scratch scars in the back area, small hematomas in the head area, lower limbs slightly swollen, red patches, swelling and contusions on the face.	1. It can be ascertained from the documentation about detention that prior to placing in the temporary detention facility, G.G. was under police control for about 14 hours. 2. Based on the recommendation of the ambulance physician, the detainee was transferred to the Kobuleti Regional Hospital.

335 According to the Chief Prosecutor's Office of Georgia September 7, 2015 Letter N13/56648, on September 7, 2015, at the West Georgia District Prosecutor's Office Investigation Unit, investigation was launched on the criminal case N088070915801, for alleged exceeding official power through violence by MOIA Imereti, Racha-Lechkhumi and Kvemo Svaneti Regional Main Division officers, while detaining G.Dz. in the capacity of an accused, for the elements of crime envisaged under the Article 333(3)(b) of the Criminal Code of Georgia.

336 According to the Chief Prosecutor's Office of Georgia December 4, 2015 Letter N13/75164, on December 3, 2015, investigation was launched at the Chief Prosecutor's Office of Georgia Investigation Unit on the criminal case N 074031215803, on the fact of alleged exceeding official power in relation to G.G., G.K., R.T. and B.M., by the officers of the MOIA Kobuleti District Division, for the elements of crime envisaged under Article 333(3)(b) and (c) of the Criminal Code of Georgia.

G.K.	1. Police officers beat him in the street while handcuffed. 2. Beating continued in a police vehicle, they were demanding that he confess a crime. Over the period of ride from Tbilisi to Kobuleti periodically he would be beaten and verbally abused. 3. In order to gain confession at the MOIA Kobuleti Main Station, for several hours police officers would physically abuse him, would beat with hands, would kick him, beat with plastic bottles filled with water, threatening to implant a drug substance into the possession of his brother. G.K. was forced to confess an action he had not committed.	**1. According to the registration log of the individuals detained at the Police Station,** detainee did not have any injuries on the body. **2. TDI:** Small hematomas in the head area, contusions with slight swelling in both eyes and nose area, both ears swollen, with pale blue patch. **3. Medical document issued at the hospital:** The patient had deformation in the area of head, pain and hematoma deformation and pain in the spine area. Code S 27 was assigned, traumatic injury of head and spine.	1. From the detention until the transfer to TDI, G.K. was under the police control for 20 hours and 40 minutes. 3. Based on the recommendation of ambulance physician, at 13:04 G.K. was transferred to Kobuleti Regional Hospital.
R.T.	1. He was beaten at the MOIA Kobuleti Police Main Station, one of the officers threw him to the floor, was spitting at him and clean his shoes against his face, other officers brought a bottle with ice, and would hit him in the head, on feet. They forcefully took off his pants, and would threaten with rape, as well as implant a drug substance to his family members. They were forcing the detainee for five hours to confess robbery. Officers destroyed a computer in the room, tore off the uniform of one of the officers and threatened the detainee that he would be sent to prison due to the mentioned actions.	1. At the time of bringing at the Police Main Station the detainee did not have any injury on the body. **2. TDI:** On both shoulders, towards the back, small bruises, lump in the right side of the crown on the head.	1. R.T. demanded contact with a defense attorney or family members, in response he would get cynical response and they would kick him while on the floor. 2. It can be ascertained from the documentation about detention that from the detention until the transfer to TDI, R.T was under police control for 5 hours and 40 minutes. 3. According to R.T., his actual detention took place at Sarpi Checkpoint at 20:26 on October 27, 2015, while Sarpi territory is not mentioned at all in case materials. According to October 27 account of the neighborhood inspector-investigator, R.T. was at Sarpi checkpoint and was going to leave Georgia, which is contrary to the statements of officers, According to which R.T. himself came to the police department during night hours. 4. Family and defense attorney found out about whereabouts of R.T. only after several hours.

B.M.	1. In MOIA Kobuleti Police Main Police Station building, with a demand to confess crime, police officers would beat B.M., with hands, would kick him, beat with a bottle filled with frozen water, would wipe their shoes against him while he was knocked down on the floor. They would force the detainee to confess robber during 2-3 hours.	**1. Registration book of detainees:** The detainee had an impression in the forehead area, scratch scars at eye, injury on the head above forehead, impression below both ears, at the neck, small impression on the back. **2. TDI:** multiple contusions in various parts of the body, specifically, on the back and kidney projection area, edema below both eye sockets, contusion on the face, as well as closed trauma in the forehead area, small hematoma in the head area.	1. Public Defender's official representatives interviewed B.M. in the Kobuleti Regional Hospital. 2. Ambulance was called several times at the TDI, the patient was transferred to the Kobuleti Regional Hospital. 3. It can be established from the documentation about detention that B.M., from detention prior to the transfer to TDI, was under police control for 5 hours and 30 minutes.
Case N5[337]			
D.P.	1. In the residential house of his friend, at about 5:00 am, police officers broke in, knocked him down and beat him brutally while he was knocked down in handcuffs. 1. Upon bringing to the Tsalenjikha District Police Station Jvari Police Station, D.P. demanded contacting with family members and a lawyer, and was denied. Next, he was beaten while in handcuffs.	**TDI:** chopped wound and edema was observed on his forehead, red patches on both shoulders, red patches on the right knee and in the area of back, towards the sides. **N2 penitentiary facility:** scratch scar, covered with eschar, as well as bluish bruises in collar-bone area, bluish bruise in right shoulder area, bluish bruise in the groin area on both sides, eschar covered contusion wound in the area of right knee joint.	1. According to the detainee, prior to placement at the TDI, he was under police control for about 12 hours.
Case N6[338]			
D.Kh.	1. One of the police officers hit him in the face, while in the police vehicle. 2. D.Kh., who was under administrative detention, was beaten by police officers at the Tbilisi Police Department Gldani-Nadzaladevi Police Station 8th Station.	**1. TDI:** chopped wound on the lower lip, upper lip swollen, scratch scars in the area of nose and right calf, reddening of the left eye socket and bruises in the area of throat. **2. According to the certificate issued following first medical aid to the detainee,** D.Kh. had complaints about pain in the back, which is related to trauma. Diagnosis: posttraumatic syndrome. **3. Certificate from the Tbilisi Central Hospital, Ltd.:** Operation was administered – laparotomy, splenectomy, abdominal drain procedure. Diagnosis: closed trauma of abdomen, spleen rupture, Hemoperitoneum.	

337 According to the Chief Prosecutor's Office of Georgia April 6, 2015 Letter N13/20965, on March 24, 2015, investigation was launched at the Prosecutor's Office Zugdidi unit on the criminal case N053240315801, on the fact of alleged exceeding of official power in relation to D.P., by the officers of the MOIA Tsalenjikha District Division Police, for the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia.

338 According to the Chief Prosecutor's Office of Georgia December 24, 2015 Letter N13/79977, on December 24, 2015, at the Investigation unit of the Chief Prosecutor's Office of Georgia investigation was launched on the case N074241215802, on the fact of alleged exceeding of official power in relation D.Kh., by the officers of MOIA of Georgia Tbilisi Police Department Gldani-Nadzaledevi Division 8th Station, For the elements of crime envisaged under the Criminal Code of Georgia Article 333(3) (b). The case was transferred for investigation to the Tbilisi Prosecutor's Office Investigation unit.

Case N7[339]			
V.B.	1. At the MOIA Isani-Samgori Main Police Station, head of the unit inflicted verbal and physical abuse. Deputy head of the Police Station also committed physical violence. 2. According to V.B., next he was transferred to one of the units, where one of the officers would verbally abuse him, would perform psychological pressure over him – threating with liquidation, raping of a wife and sister. Other police officers also inflicted verbal and physical abuse.	**1. While interview with official representatives of the Public Defender,** He had small scratch scars and hyperemia on the forehead, excoriations on both lower limbs, reddish excoriation on lower left limb, covered by eschar.	
Case N8[340]			
Z.Kh.	1. According to Z.Kh., he was speaking with two individuals, when a pickup vehicle hit him. MOIA Kutaisi Police 4th Station officers came off the vehicle and started beating him. 2. They continued beating him also when placing in the vehicle.	**1. TDI:** Hematoma on the right eye socket, chopped wound on the upper lip, small excoriation on left knee.	1. Based on medical complaints, Z.Kh. was transferred to the Imereti regional clinical hospital, where relevant examination was performed.
G.G.	1. Kutaisi Police N 4 Station officers beat him during detention and following detention after bringing him to the same Station. They would also verbally abuse him.	**TDI:** hyperemic areas were observed In the area of both flanks, on the right wrist and arm, excoriation on right index finger.	1. The detainee complained about headache and vomiting. At the decision of ambulance physicians, he was transferred to Imereti Regional Clinical Hospital.
G.B.	1. Police officers beat him at the time of detention	**1. TDI:** No injuries were observed.	
Case N9[341]			
L.J.	1. At the time of detention police officer hit with a hand in the face twice, as a result of which his lip split open and nose started bleeding. 2. At MOIA Kobuleti Police Main Police Station, police officers physically and verbally abused him. 3. Failed to provide examination material (urine) at the time of narcological test, following which he was made walk barefoot on cold	**1. TDI:** Small hematoma in forehead area, excoriation in lip area.	1. According to documentation about detention, prior to the placement in the TDI, the detainee was under police control for about 15 hours.

339 According to the Chief Prosecutor's Office of Georgia August 17, 2015 Letter N13/52251, at the Tbilisi Isani-Samgori District Prosecutor's Office investigation was launched on the criminal Case N004060815801, on the fact of alleged fact of exceeding official power by police officers in relation to V.B., for the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia.

340 According to the Chief Prosecutor's Office of Georgia October 16, 2015 Letter N13/64779, on March 30, 2015, Investigation was launched at the Prosecutor's Office Kutaisi District Office on the criminal case N041300315801, for alleged fact of exceeding official power by officers of the MOIA of Georgia Kutaisi Police Division 4th Station, for the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia. Criminal prosecution has not been launched against the specific individuals. The investigation on the case is ongoing.

341 According to the Chief Prosecutor's Office of Georgia October 6, 2015 Letter N13/62690,, on October 6, 2015, investigation was launched at the Adjara AR Prosecutor's Office Investigative Section on the criminal case N170061015801, On the fact of alleged exceeding of official power by law enforcement body at the time of detention of L.J., for the elements of crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia.

	floor-tiles, where they would pour cold water. Next, he was taken to the courtyard, and let him stay in the cold for several minutes, demanded him to do squats. 3. One of police officers hit him in the face with a hand, kicked in the belly, Also verbally abused him and threatened to beat to death, unless he confessed crime and took drug test.		
Case N10[342]			
O.R.	1. Tbilisi Didube-Chughureti District Division N 4 Police Station officers, following detention of O.R., physically abused him in a vehicle.	**1. TDI:** Left eye socket area is slightly swollen, excoriation on the right side on the back and under the flank are.	
Case N11[343]			
Sh.A.	1. Multiple acts of physical and verbal abuse were effected at the MOIA building (Ortachala), as well as in N 8 Penitentiary Facility and at the time of the transfer from court to N 7 facility.	1. **At the time of placing at N 8 facility:** On forehead, small reddish excoriation on the right side, small brownish excoriations on both hands, on phalanges. Various reddish excoriations in the area of both calves. Bluish-yellowish bruises on inner surface of the left eye socket. Reddish impressions in the area of both wrists area. About 2.5 cm diameter yellowish-bluish bruise in mid-third of the left shoulder. **2. At the time of placing at N 7 facility:** reddish contusion in the area of both cheekbones; reddish excoriations in the area of neck and back, along the spine; bruise in spine area of chest; bruise -- in the chest area on the right – laterally; contusion of both knees; injury on left hand ring-fingernail; Chopped wounds on right hand phalanges.	

342 According to the Chief Prosecutor's Office of Georgia November 4, 2015 Letter N13/68604, on October 20, 2015, Investigation was launched at the Tbilisi Didube-Chugureti District Prosecutor's Office on the Criminal Case N002201015801, on alleged exceeding of power towards O.R., involving the elements of crime envisaged under Article 333(1) of the Criminal Code of Georgia. Investigation is underway.

343 According to the Chief Prosecutor's Office of Georgia May 2, 2015 Letter N13/28375, on April 15, 2015, investigation was launched at the Chief Prosecutor's Office of Georgia General Inspectorate on criminal case N074150415801, on the fact of exceeding of authority by officers following the detention of Sh.A., for the crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia. Various investigative activities are underway on a criminal case.

Distinct, notable trends are formed following the analysis of the 11 cases provided above. Specifically, in the majority of cases, according to applicants, physical and verbal abuse occurred at the time of detention as well as at the police station building, and, in a number of cases, in police vehicle. Furthermore, notably, in the cases described above physical and psychological violence went on for several hours.

Especially alarming is the location and the nature of injuries on the bodies of some of the applicants, as well as the fact that due to inflicted injuries, it became necessary to transfer some of them to civilian in-patient treatment facilities. At the same time, it is especially notable that in a number of cases, prior to placing in TDI, detainees had to spend night at police stations. In the cases reviewed above, prior to placing at TDIs, the period of time during which detainees were under police control varies between 5 to 23 hours. Furthermore, notably, in some cases, actual time indicated in the detention report does not match with the time reported by applicant to authorized representatives of the Public Defender.

Several notable cases revealed through the examination of documentation and interviews with police officers, at the time of proactive monitoring by Special Preventive Group, are provided in the table below.

	Alleged offence by law enforcement officers	Injuries	Noteworthy circumstances
G.A.[344]	The use of firearm by Kobuleti Police District Division officer without observing the law-prescribed requirements.	**1. Log book of individuals detained at the Police Station:** Injury on right hand that had been bandaged. **2. TDI:** Gunshot wound is observed in the upper area of right shoulder joint. **3. Record of a physician of the ambulance**: Gunshot wound in the lower third of the right shoulder. Requires a surgeon's consultation,	1. According to visual inspection report, based on Article 19 and 177 of the Criminal Code of Georgia detained G.A. does not have any complaints against police officers. 2. Still, notification about injury was sent to a prosecutor. 3. Detainee was transferred from TDI to a civilian sector hospital and was released without returning to TDI. Ultimately, a plea bargain was concluded between G.A. and the Prosecutor's Office and 3 years of conditional sentence was ruled.
G.G.[345]	Provoking a crime, physical violence	**1. TDI:** Has small excoriations on the right hand and small excoriations on the left hand wrist. **2. Ambulance physician:** bluish bruise in the right eye socket area, excoriations with eschar on the surface of left hand.	1. Kobuleti District Police Station officers detained G.G. based on Articles 187 and 353 of the Criminal Code of Georgia. According to duty officer, administratively detained G.G. was to be transferred from the Police Station to TDI, when G.G. slapped him in the face, tore off his t-shirt and broke glass in the duty office door. Notably, during these actions the detainee was handcuffed. Police officers immobilized

344 According to the Chief Prosecutor's Office of Georgia October 7, 2015 Letter N13/62784, investigation was launched on the fact of the injury to health by exceeding the measure necessary for the capturing an offender by a police officer and investigation was terminated on the case due to the absence of an action envisaged by the Criminal Code.

345 It can be established through the Chief Prosecutor's Office of Georgia October 13, 2015 Letter N13/64151, that investigation has not been launched on the fact of bodily injury of the detainee.

			G.G. and placed him on an iron chair at the by the entrance of the Division. Detainee turned aggressive again, stood up and broke the chair by kicking. He was immobilized again. 2. Just ambulance physician had documented injury in the eye socket area. In addition to calling ambulance at the time of placing in the TDI, ambulance was called two more times. The accused complained about pain in the back and belly area. 3. TDI employees had not notified a prosecutor. They justified this by the fact that, according to the accused, he had incurred injuries prior to detention and he did not have any complaints. 4. According to a defense attorney, G.G. was provoked and next was beaten. He spoke about the above-mentioned before the judge when measure of restraint was ruled. 5. Prior to placing at TDI, G.G. was under police control for over 9 hours.
I.Gh.[346]	Provoking offence, physical violence	1. Detention report: injury in the area of right eye socket 2. Registration journal of detainees: hematopsia can be observed. 3. TDI: bruise in the right eye socket area, bluish patch in the left area of the lower lip	1. The detainee was entered at the Police Station at 03:00, was placed at TDI at 10:20, i.e. was held under police control for 7 hours and 20 minutes. 2. Ozurgeti Regional Main Police Station Administrative building is indicated as actual place of detention, in the detention report, while I.Gh. was actually detained at his uncle's house. The detention report also mentions that I.Gh. posed resistance to MOIA Ozurgeti District Police officers. Upon overcoming physical resistance, the detainee was brought to the MOIA Guria Regional Main Police Station. 3. According to the Deputy Head of Ozurgeti Regional Main Division, in evening

346 According to Chief Prosecutor's Office of Georgia October 6, 2015 Letter N13/62692, investigation had not been launched on the fact of bodily injury of a detainee.

			hours a citizen applied to the Police Station stating that I.Gh. was threatening them over the phone. Since I.Gh. did not enjoy good reputation, police perceived the statement of the citizen as actual threat and launched investigation on the same day. In several hours from the launch of investigation, operative officers were dispatched to have I.Gh. brought as a witness for interrogation. I.Gh. was at his uncle's house. He came out when they called him and verbally and physically abused police officers (Article 353, Criminal Code of Georgia). Next, force was used against him; he was detained and brought to the Police Station. 4. Finally, a plea bargain was concluded with I.Gh., which does not envisage the restriction of liberty.
I.S.[347]	Physical violence at the time of performing investigative action	1. When a detainee was taken out of the TDI for participation in investigative activity he did not have bodily injury, while at return he had bruise injury on left arm (more towards the shoulder-blade area, according to TDI staff member)	1. I.S. told the employees of the TDI, that he got hurt during the investigative activity and that he had complaints towards police officers. 2. Prior to court session the detainee did not have a lawyer. 3. According to the investigator, he interrogated an accused person placed in N 2 penitentiary facility. The accused stated that he had stated about injury while in the state of agitation and that at present he did not have any complaints. 4. Ultimately, plea bargain was concluded in relation to I.S.
M.Kh.[348]	Physical violence	**1. Detention report:** Has a scratch scar on the forehead that he received as a result of resistance against police. **2. TDI:** March 26 – small scratch scar with an eschar is observed on the forehead. March 27 – bruises on both eyes and edema on the right eye. The detainee explained	1. It is indicated in the detention report that M.Kh. posed resistance to police (Article 353, Criminal Code of Georgia). Gun with cartridges was seized as a result of search (Article 236, Criminal Code of Georgia). The report does not refer to the use of force.

347 According to Chief Prosecutor's Office of Georgia October 22, 2015 Letter N13/65936, investigation had not been launched on the fact of bodily injuries of the detainee.

348 According to the Chief Prosecutor's Office of Georgia October 22, 2015 Letter N13/65928, investigation had not been launched on the fact of bodily injury of the detainee.

		that he got hurt at the time of detention and prior to the bringing to the TDI, he was applying a wet cloth on the face.	
V.M.[349]	Physical violence, inhuman and degrading treatment	**1. Detention report:** No injury can be observed. **2. Registration book of detained individuals (Senaki District Police Station):** No injuries were observed at the time of bringing to the Police Station. **3. Detainee Registration Book:** At the time of taking out for drug test, detainee had injury in the area of head.	1. Detainee got injury in the area of head at the Police Station, where he spent almost 2 hours. 2. According to police officers, detainee slammed head against a safe and injured himself. The refrained from specifying the details. 3. Despite a serious chopped wound on the head, administrative detainee was taken out for drug test and was taken to the hospital only after 5 and half hours.
G.J. and G.G.		**1. Detention report:** G.J. has excoriations and red patches in the area of the back. **2. TDI:** G.J has numerous excoriations and red patches on the back, blue patch on the left eye and redness on right wrist. **3. Ambulance physician:** 1st call – G.J. complaints about pain, has edema in the area of left eye, as well as excoriations on the back. 2nd call – complained about pain in back and shoulder-blade area, as well as in the temple area, also complained about nausea, dizziness, had multiple hematomas In the area of shoulder blade, as well as small hematoma in the left eye socket area. Was in need of a counseling of a neurologist and in-patient treatment. **4. Detention report:** G.G. does not have injury. **5. Detainee registration book:** G.G. does not have injury. **6. TDI:** G.G. has redness on both eyes	1. Grounds for detention: Article 353, Criminal Code of Georgia. 2. According to the visual inspection report, G.J. had stated that he had incurred injuries at police station, although he did not have complaints against police officers.

349 According to the Chief Prosecutor's Office of Georgia October 22, 2015 Letter N13/65925, investigation on the criminal case for the fact of bodily injury of a detainee was terminated due to the absence of an action envisaged under the Criminal Code of Georgia.

Based on specific circumstances of the case, several cases are especially notable from the cases provided above in the table; among them, G.A.'s case, in relation of whom, with high likelihood, firearm had been used in violation of legislation prescribed provisions. According to Deputy Chief Prosecutor of Georgia October 7, 2015 Letter N13/62784, on March 13, 2015, at the Adjara Autonomous Republic Prosecutor's Office investigation unit investigation was launched on the criminal case N170130315801, on the fact of the injury to health by exceeding the measure necessary for capturing an offender, for the elements of crime envisaged under Article 123 of the Criminal Code of Georgia. It was established through the investigation on the case that at the time of detention, during physical standoff between police officer and G.A., the accused accidentally hit the hand of the police officer, as a result of which an office gun he held in his hand accidentally went off. It is mentioned in the Letter that since, according to Article 123 of the Criminal Code of Georgia, just serious or less serious injury of health in exceeding of the measure necessary for capturing an offender is punishable, furthermore, in the action of the officer of the MOIA the elements of another crime envisaged under the Criminal Code have not been identified, investigation on the case was discontinued due to the absence of an action envisaged under the Criminal Code. Notably, G.A. who was transferred to hospital was released without returning to the TDI. Moreover, plea bargain was concluded between G.A. and the Prosecutor's Office, based on which he was sentenced to 3 years of deprivation of liberty, which was counted as conditional sentence.

Further, the case of I.Gh. is also notable, where Ozurgeti Regional Main Police Station officers decided to interrogate I.Gh. in the capacity of witness at 3:00 am, which, according to police officers, was followed by resistance by I.Gh. who was at his uncle's house. I.Gh. was detained based on Article 353 of the Criminal Code. According to Deputy Chief Prosecutor of Georgia October 6, 2015 Letter N13/62692, on March 15, 2015, I.Gh. mentioned during interview with a prosecutor from Ozurgeti District Prosecutor's Office that he had no complaints against police officers who had detained him. Therefore, investigation on the injury of I.Gh. was not launched.

In relation to the above-mentioned fact, the Public Defender thinks that, even in the absence of official complaint, Prosecutor's Office has to launch and conduct investigation on a criminal case under separate proceedings.

Administratively detained V.M.'s case is worthy of special mention, where V.M. received a chopped wound in the head at the Police Division building, next he was taken for the drug test and was taken to the hospital for receiving medical assistance only after 5 hours and 30 minutes. According to Deputy Chief Prosecutor of Georgia October 22, 2015 Letter N13/65925, on March 6, 2015, at Senaki District Prosecutor's Office investigation was launched on criminal case N068060315801, for the fact of alleged exceeding of authority in relation to V.M., by MOIA Senaki District Division officers, involving the elements of crime envisaged under Article 333(3) (b) of the Criminal Code of Georgia. On March 19, 2015, investigation on the mentioned criminal case was terminated due to the absence of an action envisaged in the Criminal Code of Georgia.

In relation to the above-mentioned case, it is noteworthy that after V.M. incurred injury, he was transferred for narcological testing, and medical aid was provided after quite long period, 5 hours and 30 minutes. While this fact may indicate negligence on the part of the police towards human rights of the detainee, or in the worst case, failure to provide medical aid may have been the means for exerting pressure over him.

In addition to the above-described cases, as a result of statistical analysis of cases studied during monitoring over the reporting period numerous significant trends have been identified. The cases of injuries studied under the monitoring, broken down by TDIs are provided in the table below.

N	TDI	Detained as of monitoring	Number of questionnaires[350]	Monitoring time
1.	Kakheti Regional TDI (Telavi)	244	36 (14,7 %)	06.2015
2.	Sagarejo TDI	139	22 (15,8 %)	06.2015
3.	Sighnaghi TDI	105	5 (4,8 %)	06.2015
4.	Kvareli TDI	217	21 (9,7 %)	06.2015
5.	Imereti, Racha-Lechkhumi, and Kv. Svaneti Regional TDI (Kutaisi)	553	83 (15 %)	06.2015
6.	Lentekhi TDI	8	–	06.2015
7.	Zestaponi TDI	184	19 (10 %)	06.2015
8.	Bagdati TDI	53	6 (11,3 %)	06.2015
9.	Chiatura TDI	92	21 (22,8 %)	06.2015
10.	Samtredia TDI	166	21 (12,6 %)	06.2015
11.	Ambrolauri TDI	0	–	06.2015
12.	Samegrelo and Zemo Svaneti Regional TDI (Zugdidi)	217	24 (11 %)	07.2015
13.	Zugdidi TDI	359	31 (8,6 %)	07.2015
14.	Senaki TDI	165	11 (6,7 %)	07.2016
15.	Poti TDI	101	10 (9,9 %)	07.2015
16.	Khobi TDI	83	9 (10,8 %)	07.2015
17.	Chkhorotsku TDI	89	8 (9 %)	07.2015
18.	Mestia TDI	8	–	07.2015
19.	Tetritskaro TDI	4	–	06.2015
20.	Tsalka TDI	11	6 (54,5 %)	06.2015
21.	Marneuli TDI	254	68 (26,8 %)	06.2015
22.	Ajara and Guria Regional TDI (Batumi)	1160	121 (10,4 %)	07.2015
23.	Kobuleti TDI	148	25 (16,9 %)	07.2015
24.	Ozurgeti TDI	77	13 (16,9 %)	07.2015
25.	Chokhatauri TDI	19	10 (52,6 %)	07.2015
26.	Lanchkhuti TDI	53	0	07.2015
27.	Shida Kartli and Samtskhe-Javakheti Regional TDI (Gori)	361	67 (18,5 %)	08.2015
28.	Khashuri TDI	242	50 (20,7 %)	08.2015
29.	Borjomi TDI	63	25 (39,7 %)	08.2015
30.	Akhaltsikhe TDI	113	27 (23,9 %)	08.2015
31.	Akhalkalaki TDI	19	1 (5,3 %)	08.2015

It can be seen from the analysis of the Table that out of those TDIs where there were more than 50 detainees from January 1, 2015 as of the time of moniroing, the monitoring group identified the highest number of noteworthy cases at TDIs of Borjomi, Marneuli, Akhaltsikhe, Chiatura and Khasuri. At these TDIs, the ratio of the cases of injury identified in these TDIs to the number of detainees is above 20%. With slight difference in percentage, Shida Kartli and Samtskhe-Javakheti Regional (Gori) TDI, as well as Kobuleti, Ozurgeti, Sagarejo, Imereti, Racha-Lechkhumi and Kv. Svaneti Regional (Kutaisi) and Kakheti regional (Telavi) TDIs come next.

It has been ascertained following processing of collected information that in 419 cases detention reports contain a record about bodily injury, and visual inspection reports – in 716 cases. Respectively, in 297 cases

350 In order to obtain necessary information contained in case materials in a systemized manner, the monitoring team was using a specially designed questionnaire for documenting information.

detention report does not indicate injury while they are indicated in visual inspection reports. This may be due to the deficiencies in visual inspection of body and documenting of injuries, although, at the same time a firm assumption arises that detainees may have incurred injuries under police control. Similarly, the study has shown that in 418 cases in visual inspection reports there are more bodily injuries described than contained in detention reports and detainee registration books.

According to police officers, the lack of adequate lighting and the method of physical inspection has negative bearing on complete description of injury in detention report. Hence, as part of the study the analysis as to the influence of the presence/absence of adequate lighting on describing injury in detention report was performed. It was established that individuals were detained during daylight only in one third of cases. It has also been ascertained that in one third of cases where injuries are mentioned in the visual inspection report only, individuals had been detained during daylight. Notably, the study has identified 50 cases when individuals were detained during daylight, while injuries on the head, face and eye socket areas are indicated only in the visual inspection report drawn up by TDI employees. In these 50 cases, if an individual had injury at the time of detention, detaining police officer was required to document it.

The study shows that out of those 297 cases where injury is not indicated in the detention report, in 236 (79.5%) cases individuals were detained administratively, while in 61 cases (20.5%) – under criminal procedure, which is 52.2% of total number of administrative detention related questionnaires, and 20.8% of criminal detention related questionnaires processed. In all fairness, it should be mentioned that in cases of administrative detention one of the reasons for such high indicator of not stating injuries in detention reports is the absence of a relevant field about bodily injuries in the administrative detention report. In cases where administrative detention protocol has record about bodily injuries, as a rule, such information is included in the notes field.

As part of the study, the location of injuries was studied. The data[351] according to visual inspection reports drawn up at TDIs is provided in the table below:

Location	N	%
Head area	14	1,9
Face area	82	11,4
Eye socket area	39	5,4
In various parts of the body (except for head, face and eye socket areas)	263	36,7
Head and facial area	7	1
Head and eye socket area	4	0,5
Head area and various parts of the body (except for face and eye socket)	20	2,8
in head, face and eye socket area	2	0,3
in head and face area, as well as in various parts of the body	12	1,7
In head and eye socket area, as well as various parts of the body	1	0,1
In face and eye socket area, as well as various parts of the body	51	7,1
In face and eye socket area	31	4,3
In face area and various parts of the body (except for head and eye socket area)	136	19
in eye socket area and various parts of the body (except for head and face)	41	5,7
In head, face and eye socket area, as well as various parts of the body	13	1,8
	Total: 716	

The analysis of data provided in the table shows that in 63.3% of cases, detainees had injuries, separately and in combination, in head, face and eye socket area. Injury in head area (separately and together with other injuries) has been observed in 63 cases. Injury in face area (separately and in combination with other injuries)

351 For the purposes of the study, the location of injuries was generalized and grouped. Since special focus of the study was injuries in head, face and eye socket area, these parts were singled out separately.

is observed in 334 cases. Injury in eye socket area (separately and along with other injuries) is observed in 182 cases. Notably, as reported by detainees, injury in head area (separately and along with other injuries) at the time of detention was incurred in 16 cases, in face area – in 59 cases, in eye socket area – in 31 cases.

It was examined as part of the study whether the time of the emergence of injury is indicated in the visual inspection report. See the table below:

Time of injury	
Prior to detention	581
At the time of detention	116
Following detention	11
No record	32
	Total: 740

It has been examined as part of the study as to out of 740 cases in how many cases the detainee had complaints towards police and in how many cases there was no record as to the presence or absence of complaint. It appeared that complaint towards police was expressed by detainees in 69 cases, detainees did not have complaints in 626 cases, and in 45 cases visual inspection report drawn up at TDIs did not have record as to the complaint towards police.

Time of incurring injury	Complaint towards police			Total
	Has complaint	Does not have	No record	
Prior to detention	9	543	29	581
At the time of detention	50	57	9	116
Following detention	8	3	0	11
No record	2	23	7	32
Total	69	626	45	740

Following cross-tabulation of the data about location of bodily injury, time of injury and complaint towards police it appeared that in 8 cases individuals has injuries in different parts of the body and states that they have complaints towards police, but has received injuries prior to detention.

For cases when injury was incurred at the time of detention, information about location of injury and information about complaint of a detainee (according to visual inspection report) can be seen in the table below:

Injury location	Has complaint	Does not have complaint	Is not indicated	Total
Head area	1	2	0	3
Facial area	4	6	0	10
Eye socket area	3	3	0	6
Other part of the body (except for head, face and eye socket)	15	15	4	34
Head and eye socket area	0	1	0	1
Head area and other parts of the body (except for face and eye socket area)	2	2	1	5
Head and face area, as well as in other parts of the body	1	2	0	3
In Head and eye socket area, as well as other parts of the body	0	1	0	1

In facial and eye socket area, as well as other parts of the body	3	6	1	10
Facial and eye socket area	2	3	0	5
Facial area and other parts of the body	16	10	2	28
in eye socket area and other parts of the body	1	3	1	5
in head, facial and eye socket area, as well as other parts of the body	2	1	0	3
	Total: 50	**Total: 55**	**Total: 9**	**Total:114**

The analysis of the table provided above shoes that in 55 cases individuals had numerous injuries on the body, which, according to their own explanation, they had received during detention, although they did not have any complaints towards police. It can also be established from the table that in 9 cases when injuries were incurred during detention, it is not indicated in visual inspection report whether a detainee has complaints towards police.

Notably, 11 cases were identified during inspection, when detainees would indicate post-detention period as the time of emergence of injury. Of those, 9 detainees had injuries in the area of head, face and eye socket, while 2 detainees – in various parts of the body. Out of the mentioned individuals just 8 detainees stated that they had complaints towards police, and 3 detainees did not say they had complaints towards police.

According to the data provided above, although detainees, according to their own explanation, in 3 cases had incurred injuries following detention, and in 55 cases – at the time of detention, in face and eye socket area, as well as in various parts of the body, they did not have complaints towards police. Such explanation is less convincing. Presumably, in the above-mentioned cases this is self-censorship due to fear, stress and uncertainty, since at the first stage of deprivation of liberty the threat of intimidation, pressure, abuse, and other ill-treatment is highest and an individual is in especially vulnerable situation during such time.

As part of the study, the circumstances of detention were also examined. The goal of such examination was to establish whether in studied cases the detention of individuals was preceded by abuse of citizens by such person, physical stand-off with them, as well as disobedience to legitimate demand of police officers or physical resistance against them, their verbal abuse and whether police used force.

The study, based on detention reports, has identified just 11 cases of physical confrontation with other citizens. 44 cases of verbal abuse by detainees towards citizens, and 171 cases of abusing police have been identified. The analysis of the data shows the trend of exerting aggression by citizens towards police. 209 cases of random swearing have been observed.

Out of examined 179 cases where detention was made based on Article 166 and 173 of the Administrative Violations Code of Georgia, only in 5 cases there is high likelihood that injuries were incurred following physical confrontation with another citizen. In 15 cases too, we may presume that verbal insult of citizens was preceded by physical confrontation, which is not indicated in the report. In 51 cases of abuse towards police, since the detention report does not refer to circumstance that may give rise to the infliction of injury prior to detention, we can presume that injury was incurred following contact with police officers.

Out of 227 cases of disobedience of legitimate demand of police officer and resistance against police officers, according to detention report, detainees verbally abused police officers in 74 cases. In such cases, the likelihood of the use of force by police and respectively, that of exceeding of force, is high. It should also be mentioned here that during monitoring interviewed police officers were very concerned about the fact of verbal abuse by offenders. They stated that it is very difficult for a Georgian man to tolerate swearing at his mother, but they had to endure all this.

As part of the study, it was examined as to what injuries did person had in cases of random swearing, abusing police officers and the use of force by the police. The data according to visual inspection report can be seen in the table below:

Location of injury	Random Swearing	Abusing police officers
In eye socket area	4	1
In face area	0	1
In head and eye socket area	0	1
In head, face and eye socket area	0	1
In various parts of the body (except for head, face and eye socket)	3	5
in the area of head and various parts of the body (except for face and eye socket)	1	1
In the area of head and face, as well as various parts of the body	1	1
In the area of eye socket and face, as well as various parts of the body	5	3
In the area of eye socket and face	2	1
In the area of face and various parts of the body (except for head and eye socket area)	4	2
In the parts of eye socket and various parts of the body (except for head and face area)	1	2
In various parts of the body, including in the area of head, face and eye socket	0	1

As can be seen from the analysis of the above table, in absolute majority of cases of random swearing, abusing police staff and the use of force, detainees have injuries in the area of head, face and eye socket. Furthermore, out of 21 cases of random swearing and the use of force by the police, injury is not indicated in 10 cases in detention reports, while out of 20 cases of abusing police staff – in 9 cases. Based on all of the above-mentioned, there is an assumption that police staff may have exercised ill-treatment.

It was examined under the study, out of processed 740 cases, in how many cases did defiance or resistance to police occurred according to the detention reports. The study has identified 227 cases (30.7%) of defiance/resistance, while 513 examined reports (69.3%) do not contain such indication. Out of these, record as to defiance/resistance is the most often seen in cases when individuals had been detained based on Article 166 and 173 (80 cases – 35.2%) of Administrative Violations Code, and detained based on Article 353 (43 cases – 18.9%) of the Criminal Code. This indicator is high also separately in case of detention based on Article 173 alone (69 cases – 30.4%).

According to the study, in 80 cases (45.2%) out of 177 cases when person were detained based on Articles 166 and 173 of Administrative Violations Code, detention report indicates defiance/resistance. Such indication is present in 69 cases (43.1%) out of 160 cases when individuals were detained under Article 173 alone, while in cases of detention based on Article 353 of the Criminal Code, out of 50 cases – in 43 cases (86%).

It has been established as a result of the study that out of 227 cases when defiance/resistance was indicated in detention reports, in 3 cases (1.3%), there is full description as to defiance/resistance, in 4 cases, reports contain partial description (1.8%), in 96.9% of cases police employees did not make such description.

Out of 740 cases, the fact of the use of force is indicated only in 46 cases (6.2%), in 27 cases (3.6%) it is mentioned that the force had not been used, while in 667 cases (90.2%) detention reports do not have indication about the use of force. Out of 46 cases when the use of force was mentioned, the method for the use of force is indicated in the detention report only in 2 cases (4.3%), in 3 cases (6.5%) reports contain partial description, and in 41 cases (89.2%) report does not mention anything about the method of the use of force.

The number of cases when detention report makes reference to the defiance/resistance and the use of force is 37 (16.3%), while the number of cases when defiance/resistance is mentioned but the fact of the use of

force is unclear from the detention report, is 189 (83.3%). In 1 case police indicates to the fact of defiance/resistance, but states that force had not been used. It is also noteworthy that out of 50 cases when individuals were detained based on Article 353 of the Criminal Code, in 44 cases (88%) the use of force is not indicated in detention reports. In such cases, the probability of the use of force is high, although, it seems that police staff avoids making record about the use of force. Conversely, 9 cases have been observed, when detention report mentions that there had not been any defiance/resistance, yet reports contain indication on the use of force.

Based on all of the above-mentioned, the Public Defender is of the opinion that in 2015, the issue of ill-treatment by police of detainees is pressing and is alarmed by the fact that in the majority of cases it can be observed that police officers prepare for physical and psychological violence in advance, purposefully, and exercise such violence to get confession, which is an element that qualifies as torture crime.

It is also alarming that based on 11 proposals sent by the Public Defender to the Chief Prosecutor of Georgia in 2015, investigation was launched based on Article 333 of the Criminal Code, while the circumstances indicated in the Public Defender's proposals comprise the elements of torture and inhuman or degrading treatment. The Public Defender urges the Prosecutor's Office of Georgia to launch investigation under Articles 144^1 and 144^3 of the Criminal Code.

It is a significant problem that police has neglected such legal safeguards of detainees as briefing about rights, putting them in contact with family and lawyer. Furthermore, it is especially notable in the reporting period, as indicated in detention reports, the trend of aggression of citizens towards police, in which case, given inadequate qualification of police staff, the probability of the use of force and respectively, overstepping the bounds of force by them, is high.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Georgia

- To take all necessary measures to avoid torture, inhuman and degrading treatment, as well as breaching human rights by police officers, among other measures, through relevant training, increasing accountability and strict supervision

Recommendations to the Prosecutor's Office of Georgia

- Ensure effective investigation of alleged facts of torture and inhuman or degrading treatment of detainees by police, which implies comprehensive and complete examination of cases
- In case torture and inhuman and degrading treatment of detainees by police is discovered, launch investigation and conduct it under Articles 144^1 and 144^3 of the Criminal Code.

PRINCIPAL SAFEGUARDS AGAINST ILL-TREATMENTS

Briefing detainees about their rights

According to Article 5(2) of the European Convention on Human Rights, Everyone who is arrested shall be informed promptly, in a language that he understands, of the reasons for his arrest and of any charge against him. Hence, detainees must be provided specific information including accurate details, so that they able to challenge the lawfulness of detention at a relevant body based on Article 5(4) of the Convention. For

the purposes of this Article, detainees should be briefed using simple, non-technical language, so that they understand the grounds for detention and charges against them.

According to the position of the European Committee for the Prevention of Torture (CPT), it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language that they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.[352]

The legislation of Georgia guarantees the right of detainee to receive information about their rights[353], however during the reporting period individuals, without their consent, had been taken from the street for a "conversation" in a police car or police station , during which time they were not provided absolutely any information about own rights. If this was done to have a "questioning", Georgia legislation envisages that in such case information is provided voluntarily and prior to the commencement of "questioning", individual must be briefed about their rights.[354] UN Special Rapporteur on Torture stressed that taking a person for a "conversation" without explicit and freely given consent not only restricts that person's right to liberty and security but also heightens the risk of torture and ill-treatment.[355]

The Public Defender regards that the practice of taking individual for "conversation" into the police vehicle or station creates high risk of arbitrary detention and ill-treatment. In any case of the deprivation of liberty persons have to be briefed without delay and in a language they understand, about their rights.[356]

It has been established following inspections conducted by the Special Preventive Group that the time of the entry of some of the individuals into police stations precedes their factual detention time, which raises suspicion that unlawful deprivation of liberty took place in relation to such persons, since at the time of bringing to the station, they had not been detained officially and most likely, they would not have been briefed about any of their rights.

Staff at the Kakheti Regional Police Station explained that the precedence of the time of the entry into the Station relative to the time of detention is conditioned by the fact that individual was brought to the Police voluntarily, for performing a check according to Article 45[357] of the Code of Administrative Offences of Georgia, and next they were transferred for narcological test only after detention report was drawn up.[358]

UN Working Group on Arbitrary Detention regards that any confinement or retention of an individual accompanied by restriction on his or her freedom of movement, even if of relatively short duration, may amount to de facto deprivation of liberty.[359] Therefore, if an individual is placed under the control of law enforcement officers, who are taking him/her to the police building, this already amounts to the deprivation of liberty and it is necessary that an individual be briefed from the very onset as to their procedural rights.

According to Georgian legislation, following personal inspection, interview, and sanitary treatment of individuals brought to Temporary Detention Isolator TDI, duty officer in charge or another duty officer, at the

352 CPT Standards, Par. 44, available in Georgian at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last accessed on 25.03.2016]
353 Criminal Procedure Code of Georgia, Article 38(1-20); The Code of Administrative Offences of Georgia, Article 245(1)
354 Criminal Procedure Code of Georgia, Article 113(1-2)
355 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, 2015, Par. 43, Available in UN Official languages, at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3 [Last viewed on 26.03.2016].
356 CPT Standards, p. 6, Par. 37, Available in Georgian at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last accessed on 25.03.2016].
357 Article 45, Administrative Violations Code of Georgia: Illegal purchase or storage of small amount of drug substance, without the intention of resale, and/or the consumption of a drug substance without a physician's prescription.
358 On this issue see the Public Defender of Georgia 2015 Report to the Parliament, Chapter Right to Freedom and Security, available at: http://www.ombudsman.ge/uploads/other/3/3512.pdf [Last viewed 06.04.2015].
359 Report of the Working Group on Arbitrary Detention (December 24, 2012) Par. 55, available in English at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf [Last seen on 26.03.2016].

order of the former, briefs detainees about, and, if possible, hands over a copy of internal rules of the isolator TDI, as well as the list of their procedural rights and duties, and afterwards they are confined in cells.[360]

Although the handover of a list of procedural rights and duties to a detainee is not absolute obligation of TDI staff, in conversation with the monitoring group TDI administrations mentioned that prior to placing an individual in a cell they are briefed about their rights and duties in language that they understand, they have them sign and are provided a copy to take into a cell with them.

Group members have observed at several TDIs that the list of rights and duties to be provided to detainees was incomplete and did not contain the rights individuals should enjoy while in custody. In some cases, detainees would say that no one had explained to them the right to walk and shower; therefore they could not enjoy this right.

The Public Defender deems that all individuals brought to the Temporary Detention Isolator TDI should be briefed in a clear and understandable manner not only about procedural rights but also all those rights as well as duties they have during confinement. Since briefing about these rights usually takes place immediately after detainees are brought to TDI, when an individual is agitated and may sign on the sheet without fully perceiving their rights, it is important that they are given this list of rights to take with them into a cell, to be able to review their rights and duties later, in a relatively calm environment.

INFORMING A FAMILY ABOUT DETENTION, ACCESS TO LAWYER AND PHYSICIAN

Informing family

The Committee against Torture emphasizes the importance of the right to inform family.[361] The European Committee for the Prevention of Torture (CPT) also points a detained person's right to have the fact of his/her detention notified to a third party immediately. Of course, the CPT recognizes that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons thereof, and to require the approval of a senior police officer unconnected with the case or a prosecutor).[362] It should be noted that international law does not require to have a detainee notify their family members or third parties in person (if this may delay investigation of the case), but police officer may do this.[363] The purpose of this right is to timely inform a detainee's family (or a third party) about the fact of detention and a detainee's whereabouts.

According to Article 177 (1) of the Criminal Procedure Code of Georgia, a prosecutor or at a prosecutor's instruction -- an investigator -- should notify a detainee's family members or third parties about the detention no later than 3 hours after detention. Article 245(1) (c) of The Code of Administrative Offences of Georgia envisages the right of a detainee, if willing, to have a relative listed thereof notified about the fact of his/her detention and whereabouts.

Usually, police grants detainees right to contact their relatives or lawyer in about 2-3 hours. The practice for notifying family members or lawyers about detention by police is different. In some cases, police officers

360 The Minister of Internal Affairs February 1, 2010 Order N108; Annex N3; Art. 3(4).
361 UN Committee Against Torture (CAT) General Comment N2, Par.13, available in English at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf [Last viewed on 25.03.2016]
362 CPT Standards, Pg. 15, Par. 43, available in Georgian at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last accessed on 25.03.2016].
363 Monitoring Police Custody: A Practical Guide (Association for the Prevention of Torture, 2013) Pg. 127.

allow detainees to call family member using their own telephone (only after verifying that the person detainee is calling is really a family member), or a police officer calls the number provided by detainee and notifies the family him/herself.

Usually, at Temporary Detention Isolators, on duty officer informs an investigator who, in turn, calls family member of the detainee and informs them, a report is drawn up based on this phone notification; however, during monitoring it was identified at Zugdidi regional and Chkhorotsku TDIs that duty officers were not aware of this obligation. According to Zugdidi duty officer, they notify a family only if a person is in custody for 2-3 days, while Chkhorotsku detention isolator employee said that they do not have a family notification obligation at all.

During the reporting period, at MOIA Kobuleti Main Station, alleged suspension of the right of R.T. to contact lawyer and family members had been observed. The Public Defender applied to the Chief Prosecutor's Office of Georgia demanding the investigation of alleged fact of ill-treatment of R.T. Similar case took place at Tsalenjikha District Department Jvari Police Station, where a detainee D.P. was allegedly subjected to ill-treatment, which, *inter alia*, comprised the suspension of the right to contact family members. In this case, too, the Public Defender applied to the Chief Prosecutor's Office with a proposal.

The CPT deems that fundamental guarantees granted to detainees will be reinforced at police stations if a unified and detailed record is maintained for each detainee, to reflect every aspect of their custody and related actions (time of and grounds for the deprivation of liberty, when detainee was briefed about rights, when they contacted family/consulate and lawyer, and when they visited the detainee). Moreover, lawyer should have access to the mentioned records.[364]

It is worth noting that neither police divisions nor TDIs maintain a registry detailing the number of individuals who demanded the enjoyment of the right of informing a family, how many exercised this right, who contacted relatives of detainee, what information was provided, etc. Which leaves the impression that even when a detainee asks that their family members are informed about detention, this will depend on good will of police, since the enjoyment of this right is not documented as some unified, systematized registry, therefore, in cases when a detainee is unable to enjoy the mentioned right, since their family members or friends were unreachable over the phone, it is difficult to establish whether police employees actually made a call and were unable to reach detainee relatives or whether they arbitrarily suspended this right for a person.

The improvement of recording system at Temporary Detention IsolatorsTDIs, penitentiary facilities via the refinement of relevant registries is envisaged under 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment of Persons,[365] hence, the Public Defender deems that the refinement of registries should also involve proper documenting of demanding notification to family or lawyer by detainees.

Access to a lawyer

The CPT has also emphasized that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend - and stay at - a police establishment.[366]

In his report on the mission to Georgia in March, 2015, UN Special Rapporteur on Torture notes that, with regard to access to lawyers, overall, situation is satisfactory and visits by lawyers are granted and are held in

364 CPT Standards, P. 7, Par. 40, available in Georgian at:http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last accessed on 25.03.2016].
365 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment of Persons, Par. 1.2.8.
366 CPT Standards, P. 6, Par. 37, available in Georgian at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last seen on 25.03.2016]. Pg. 13, Par. 41.

confidential settings.[367] Although he mentions that there have been several cases of physical and verbal abuse by law enforcement officers despite the guarantees provided for by the law for arrested and detained persons with regard to legal counsel, medical examination, and notification of relatives about the arrest.[368]

Presence of a lawyer at a police station is one of the effective means for prevention of ill-treatment of a detainee, especially in the first hours of detention, so that in case of detection of ill-treatment, lawyer briefs detainee about the filing of complaint and other safeguard mechanisms.[369] Lawyer should be present during all investigative actions taken in relation to a detainee. This, on the one hand, will significantly lower the risk of ill-treatment of a detainee and, on the other hand, lawyer's presence during interrogation or other investigation activities is important for the police as well in case ungrounded allegation concerning ill-treatment is made against police. It is also important that the meeting of a detainee and a lawyer be held without attendance of law enforcement officers, so as not to enable them to overhear the conversation. According to the order of the Minister of Internal Affairs of Georgia, meeting with the Public Defender is held at the temporary detention isolatorTDI investigation room, according to the wish of a lawyer and a defendant. The meeting may be held in absentia of others, irrespective of the number of meetings and time.[370]

The Public Defender has mentioned earlier[371] that access to a lawyer should be ensured within shortest timeframe from detention, since the threat of intimidation, pressure, abuse and other ill-treatment is highest during the very first stage of restriction of liberty when an individual is especially vulnerable.

Monitoring group, when inspecting MOIA temporary detention isolatorsTDIs has discovered that G.M. detained in Telavi isolatorTDI demanded a lawyer and contacting family members at Signagi District Station, and police officers failed to act upon this demand, while N.A. detained together with him was allegedly subjected to ill-treatment and failed to enjoy the right to a lawyer. Five individuals visited by the group at the Telavi isolatorTDI stated that while in police custody, they were not granted the right to use the services of a physician and a lawyer.

It was established on the case of G.Dz., examined by the Public Defender that upon the instance of detention in Tbilisi the detainee was allegedly subjected to ill-treatment, specifically, beating, afterwards he was transferred to Kutaisi temporary detention isolatorTDI, he was not briefed about rights, at the first stage of legal proceedings he was unable to use a lawyer's assistance and was in the state of vulnerability. Public Defender has suggested to the Chief Prosecutor's Office of Georgia to launch investigation on the above-mentioned case.

Although the right of access to a lawyer is guaranteed under administrative[372] as well as criminal[373] proceedings, during the monitoring the trend has been identified that administrative detainees almost never use lawyer's assistance.

One of key reasons for rejecting lawyer's assistance by a detainee is finance. Detainees think that hiring a lawyer right away will be additional high expenses for their families and often use lawyer's assistance only during the court trial. European Court on Human Rights ruled that the state has obligation not only to ensure access to lawyer for a detainee, but also, in case of a manifest failure by counsel appointed under the legal aid scheme to provide effective representation, intervene to ensure effective enjoyment of the right to a lawyer for a detainee.[374]

367 Report of UN Human Rights Council Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, 2015, Par. 71, available in UN Official languages, at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3 [Last accessed on 26.03.2016].

368 Ibid., Par. 42.

369 CPT Standards, P. 13; Par. 41, available in Georgian at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last accessed on 25.03.2016].

370 Minister of Internal Affairs February 1, 2010 Order N 108, Annex N 3, Article 8(2).

371 Public Defender's 2014 Report to the Parliament; Pg. 208; See link http://www.ombudsman.ge/uploads/other/2/2439.pdf [Last accessed on 26.03.2016].

372 Administrative Violations Code of Georgia; Art. 255.

373 Criminal Procedure Code; Art. 38(5).

374 ECtHR January 20, 2009 Judgment on the case *Güveç v. Turkey*, N70337/01, Par. 130-131.

According to the Law of Georgia on Legal Aid, free legal aid to an individual is provided only in cases explicitly stipulated by law, as well as according to the rule prescribed by this Law, provided an accused person, convicted person and/or acquitted individual is unable to pay.[375] According to the same Law, a maximum two days is prescribed for assigning a legal aid lawyer, provided an individual or their relative refers to the Legal Aid Office with a request to allocate a lawyer. The same two-day period applies in cases when due to inability of an accused person to pay; investigation body refers to legal aid office with a demand to assign a lawyer.

Fast access to legal counsel and aid, especially at the time of detention of an individual, is main guarantee for fair trial and rule of law. The involvement of a lawyer at very early stage ensures protection of these rights and is an important mechanism for the protection against torture and other forms of ill-treatment. Implementation of international standards for timely access to a lawyer is also envisaged under the 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment.[376]

The Public Defender regards that given the existing regulations, specifically, two-day period, the enjoyment of the right to lawyer within short timeframes from the instance of detention by detainee is effectively ruled out, unless they can afford hiring a lawyer.

In addition to lawyers appointed under legal aid mechanism, a number of NGOs provide to detainees pro bono legal aid, but primarily in Tbilisi and in large cities, hence, getting free legal aid from NGOs in regions is a problem.

Additionally, documenting the fact of demanding a lawyer by a detainee is a problem. When a detainee demands contacting with a lawyer, there is no mechanism that would record in a report or via another registered document that a person was truly put in contact with a lawyer, or police officer arbitrarily denied the enjoyment of this right based on some made up motif. Therefore, the Public Defender deems it important to have every demand for the enjoyment of the right to a lawyer documented and have in place some registry where every such demand and relevant actions would be recorded.

Access to a physician

An individual must be provided necessary medical aid upon detention, which implies the service of qualified physician without any delay. The right to receive independent medical service is enshrined by UN CAT[377] and Human Rights Committee.[378] A doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).[379]

According to ECtHR case law, Article 3 of the Convention envisages supporting health and welfare of detainees, *inter alia*, it obliges government to ensure requisite medical assistance to detainees.[380] It is important that a detainee should be able to use medical services from the moment of detention, which also brings down the risk of ill-treatment. In addition, during medical examination, a person's state of health must be described in detail and examination results should be made available to the detainee or their lawyer.

375 The Law of Georgia on Legal Aid, Art. 21(1).
376 2015-2016 Action Plan for the Prevention of Torture, Inhuman, Cruel or Degrading Treatment or Punishment of Persons, Par. 1.2.1.
377 UN Committee Against Torture, General Comment N2, Par.13, Available in English at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf [Last accessed on 25.03.2016].
378 UN Human Rights Committee General Comment N20, Par. 11.
379 CPT Standards, p.15; Paragraph 42, available in Georgian at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Last accessed on 25.03.2016].
380 ECtHR October 26, 2000 Judgment on the case *Kudła v. Poland* N30210/96 (Grand Chamber) Par. 94; ECtHR October 15, 2002 Judgment on the case *Kalashnikov v. Russia*, N47095/99, Par. 95.

Upon bringing a detainee to the temporary detention isolators of MOIA of Georgia, TDIsindividuals' visual examination takes place; this procedure is performed in a separate room by an authorized person of the isolatorTDI, without the presence of anyone else. During the examination detainees are asked about their health, as well as actual external injuries on their body (if any) will be inspected. If a detainee complains about his/her health, or he/she has obvious indications of sickness, ambulance will be called immediately, which will determine whether a person is fit enough to be placed in the lockup. If, according to medical professional's conclusion, the detainee may not be confined in a temporary detention isolatorTDI, such person is immediately sent to a medical treatment facility.[381]

According to the statistical data provided by the MOIA of Georgia, a total of 241 people were transferred to a medical facility after arrest due to health problems during the reporting period. In 2015, there was one case of a suicide attempt by the detainee of Shida Kartli and Samtskhe-Javakheti regional isolatorTDI (Gori), which was timely prevented by the temporary detention isolatorTDI staff, ambulance was called, but there was no need in transferring the detainee to an in-patient facility.

According to the established practice, an ambulance call is made at the same time when a detainee is admitted to a temporary detention isolator.TDI. An ambulance physician conducts medical examination of a detainee. Public Defender welcomes this practice, since he believes that ambulance physician is not subordinated to the MOIA and is independent from it in their work. Despite the afore-mentioned, the following essential problems have been identified as a result of the inspection of temporary detention isolatorsTDIs by the monitoring group:

- In some cases (primarily in regions) ambulance team arrives late, while detainee is not taken into the temporary detention isolator TDIuntil a physician arrives.
- Often, ambulance physicians provide incomplete description of detainee's health. Their records are often non-informative and do not depict real condition.
- Initial medical examination of detainees is usually performed in the presence of isolatorTDI staff, due to the reason that ambulance physician is afraid to remain alone with a detainee. There are cases when during this time officer who had detained the individual and brought to the temporary detention isolatorTDI is nearby, which negatively influences the openness of a detainee during conversation with a physician (listing actual causes of injury, stating complaints against police).
- As for documenting medical inspection of a detainee, there is no unified standardized form for detailing health status of detainees; hence, physicians do not provide complete description of injuries.
- Often, there is a mismatch between records of visual inspection report drawn up at the temporary detention isolatorTDI and those of ambulance physicians.

The Public Defender considers that all medical examinations should be performed in a setting that excludes the possibility for law enforcement officers and other non-medical personnel to hear and observe the examination process, except for individual cases when a physician requests an exception; although this should not become regular practice and in case when a physician is afraid to be alone in a room with a detainee, other alternative means for security should be designed, since the presence of a police officer during the examination of a detainee may become the cause for incomplete documenting of detainee health status, as well as of the origin of injury.

The Public Defender also emphasizes the importance of using comprehensive and unified standard for documenting injuries, which would be in line with The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Commonly known as the Istanbul Protocol).

381 The Minister of Internal Affairs February 1, 2010 Order N108, Annex N3, Article 3(1-3).

According to the CPT, the record drawn up after the medical screening of a person at custody facility should contain:

- an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment)
- a full account of objective medical findings based on a thorough examination
- the health-care professional's observations in the light of the above points, indicating the consistency between any allegations made and the objective medical findings.

The record should also contain the results of additional examinations carried out, detailed conclusions of specialized consultations and a description of treatment given for injuries and of any further procedures performed. Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file.[382]

Out of 740 examined cases in relation to documenting of injuries by ambulance physicians, 264 cases have been identified, where injury is indicated in visual inspection report, while ambulance physician does not indicate injury; 67 cases when injury is indicated in visual inspection report, while physician states that a detainee does not have injuries; in 3 cases physician describes injury, while visual inspection report states that detainee does not have injuries; in 91 cases, there is a mismatch between the location of injury indicated in visual inspection report and that in a physician's record.

The study has shown that out of the cases where physician does not provide an indication about injury, in 21 cases, according to visual inspection report, detainee had injury in the area of head, in 123 cases – in the area of face, and in 59 cases – in the area of eye socket (separately and in combination). Even if a detainee did not take off clothes, which is necessary component for complete inspection, physician in any case should have been able to detect injuries in the area of head, face and eye socket. Out of the cases where physician states that detainee did not have injury, according to visual inspection report, in 5 cases detainee had injury in the area of head, in 25 cases – in the area of face, in 22 cases – in the area of eye socket.

In the table below the cases are provided according to temporary detention isolatorsTDIs, when ambulance physician does not indicate at all as to the presence or absence of injuries (no record), while visual inspection report indicates injury and in another case, when injury is recorded in visual inspection report, although ambulance physician states that detainee does not have injury.

IsolatorTDI	No record	No injury
Sagarejo TDI	4	1
TSalka TDI	2	2
Marneuli TDI	52	0
Kutaisi TDI	22	9
Chiatura TDI	4	1
Zestaponi TDI	6	2
Samtredia TDI	4	0
Batumi TDI	34	9
Kobuleti TDI	7	2

382 CPT 23rd General Report, 2013, Par. 74.

Ozurgeti TDI	3	1
Chokhatauri TDI	9	0
Zugdidi TDI	15	3
Zugdidi Regional TDI	4	4
Senaki TDI	3	1
Khobi TDI	1	1
Poti TDI	0	3
Chkhorotsku TDI	2	2
Gori TDI	45	6
Khashuri TDI	13	9
Borjomi TDI	7	6
Akhalkalaki TDI	1	0
Akhaltsikhe TDI	11	1
Kvareli TDI	7	1
Sighnaghi TDI	2	2
Telavi TDI	6	1
Total	264	67

According to the data provided by the MOIA, in response to the recommendations[383] of the Public Defender provided in 2015, for the improvement of timely and adequate medical services for detainees at temporary detention isolatorsTDIs, in October, 2015, within the MOIA Human Rights and Monitoring Department Medical Services Unit was formed where a total of 27 physicians will be employed, who will serve at the 8 busiest temporary detention isolatorsTDIs of the Department (6 regional and 2 in Tbilisi).

It can be ascertained from the data received from the MOIA of Georgia that several special groups are working towards the improvement of medical services:

- working group in charge of designing a form for examination of individual by medical personnel at the time of admission to the isolator;
- working group in charge of drafting two legal acts: (1) one relates to managing hunger strike at temporary detention isolatorsTDIs and (2) the second one is concerning the obligation to transfer the copies of health related documents about a person confined at temporary detention isolatorTDI to a relevant penitentiary facility, in case of transfer thereof;
- working group which, through the involvement of local experts, is designing operational instructions for temporary detention isolatorTDI medical personnel;

The MOIA also plans to conduct trainings for medical staff employed at temporary detention isolatorsTDIs on the following topics: documenting injuries according to the Istanbul Protocol, creating healthy environment at isolatorsTDIs and prevention of diseases, as well as mental health issues.[384]

It should be noted that the objective of earlier recommendations of the Public Defender was provision of adequate medical services to detainees at temporary detention isolatorsTDIs by independent an impartial physicians that would enable detainees to report to physician openly and without fear about all injuries or

383 Public Defender's 2014 Report to the Parliament; Pg. 218, See the link http://www.ombudsman.ge/uploads/other/2/2439.pdf [Last accessed on 26.03.2016].

384 MOIA Letter 15.01.2016.

complaints they may have during or following detention. Therefore, the presence of physicians employed by the MOIA at temporary detention isolatorsTDIs jeopardizes the achievement of this objective, since, during the rendering of medical services all individuals within the temporary detention isolator (isolatorTDI (TDI staff as well as physician) are subordinated to the MOIA, which may raise in a detainee fear and sense of helplessness, that his/her health condition will not be duly described and that alleged ill-treatment by police will not be acted upon.

The Public Defender deems that posting MOIA medical staff to temporary detention isolatorsTDIs, on the one hand, will ensure the provision of fast and timely medical services, but on the other hand, the degree of impartiality and independence of such staff is questionable, which may in the future hamper the identification of ill-treatment of detainees. Given this situation, the very activities of the MOIA medical staff and determination of the degree of their independence will be the subject of special monitoring by the NPM in the future.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Georgia

- Discontinue the practice of so-called "conversations" with citizens, which actually involves restricting the liberty of an individual by police officers
- Take all necessary measures to ensure that all detainees or persons whose liberty is otherwise restricted are immediately briefed about their procedural rights
- Take all necessary measures to ensure that all individuals brought to the temporary detention isolatorTDI are briefed clearly and in a language he/she understands briefed not only about procedural rights, but all rights and duties they have while in custody
- To ensure that all detainees are provided, or otherwise make available to them, a copy of the list of rights and duties for reviewing while in lockup
- adequately document demands of detainees about notifying family or lawyer, by means of maintaining relevant registers
- ensure timely and adequate medical service to detainees at temporary detention isolatorsTDIs, in all cases
- Ensure complete description and recording of all bodily injuries of detainees during each medical examination, according to Istanbul protocol
- In case medical staff are permanently stationed at temporary detention isolatorsTDIs, ensure independence and impartiality of physicians

Proposal to the Parliament of Georgia

- Refine legislative framework in order to reduce maximum two day period for receiving free legal aid for detainees, so that detainees have lawyer's services available from the very first stage of legal proceedings.

PROCEDURAL SAFEGUARDS

Audio-video recordings

The CPT deems that fundamental safeguards of detainees will be reinforced at police stations if a unified and detailed video recording will be kept for each particular detainee, reflecting all aspects of confinement and any actions taken in relation to them.[385]

According to Article 27(1) of the Law on Police, for the protection of public safety, Police is authorized to attach to an uniform, install on the road and on outer perimeters of buildings, as well as use edited automatic photo and video devices owned by others, according to the rule prescribed by the Georgian legislation, for the purposes of prevention of crime, as well as for the protection of individual's safety and property, public order and the protection of minors from harmful influence.

According to Article 24 of the Law of Georgia on Police, special police control of an individual, article or means of transport is effected in case there is sufficient grounds to estimate that crime or other violation has been committed or will be committed. When performing special police control, police officer should be equipped with switched video recording devices attached to the uniform.

Notably, currently audio-visual recording using shoulder video cameras is performed only by the MOIA Patrol Police officers. The timeframe for storing recordings is governed under the Minister of Internal Affairs January 23, 2015 Order N 53, according to which the duration of storage of recording is dependent on the specifications of technical devices, not to exceed three years.[386] Notably, patrol police employees are authorized but not required to perform video recording.[387]

It is important that not only patrol police department officers, but also detective-investigators and neighborhood inspector-investigators be equipped with shoulder video cameras and vehicle video registrars. In 2015, the Public Defender applied to the Chief Prosecutor's Office of Georgia with 11 proposals concerning commencement of investigation in relation to alleged ill-treatment of detainees by police officers. In the majority of cases, detainees would make allegations about physical and verbal pressure by police officers, as well as physical violence effected in police vehicles. The example of the above-mentioned is the case of G.Dz., where the accused person indicates that he was not briefed about his rights when he was detained, they started physical and verbal abuse against him right away, and these actions continued in police vehicle as well. Accused person O.R. also refers to the fact of physical violence and verbal insult in a police vehicle.

Two experiments in relation to the use of body cameras by police should be mentioned. The experiments were conducted in 2012 in the USA, one was in the State of California Rialto city[388] , and the second one in Arizona State Mesa city.[389] The mentioned experiments have demonstrated that the use of body cameras contributes to the reduction of overstepping the bounds of force by police, as well as resistance from detainees.

The experiment conducted in Rialto Showed the following:

- Extensive research shows that people tend to "adhere to social norms and change their conduct" once they are aware that their behavior is being observed. Under camera scrutiny, they "become more conscious that unacceptable behaviors will be captured on film";

385 See CPT Standards, (CPT/Inf/E (2002) 1 - Rev. 2015), Par. 36, available in English at: http://www.cpt.coe.int/en/docsstandards.htm [Last accessed on 29.03.2016].

386 The Minister of Internal Affairs January 21, 2016 Letter N153298.

387 The mentioned issue is reviewed in the Public Defender of Georgia 2015 Report to the Parliament Free Trial Chapter, available at: http://www.ombudsman.ge/uploads/other/3/3512.pdf [Last accessed on 06.04.2016].

388 Findings of the Study can be viewed at: https://www.policeone.com/use-of force/articles/8218374-7-findings-from-first-ever-study-on-body-cameras/ [Last accessed on 23.03.2016].

389 The findings of the Study can be viewed at: http://journalistsresource.org/studies/government/criminal-justice/body-cameras-police-interact-with-public [Last accessed on 23.03.2016].

- This "self-awareness effect" caused by the camera's "neutral third eye" affects the psyches of officers and suspects alike, prompting suspects to "cool down" aggressive actions and deterring officers "from reacting with excessive or unnecessary force."
- when camera records everything this brings down the risk of improper behavior by police, since police officer knows that any of their interaction with citizens will be recorded and will not be left undetected;
- During the experiment the indicator of the use of force by police, as well as the number of complaints filed by citizens was brought down;
- Video recordings are treated as significant evidence if the case is taken to court.

The experiment conducted in Mesa showed the following:

- police officers who did not wear body cameras were observed to have had more cases of "interviewing in situ" and would perform 6.9% more detentions than police officers equipped with body cameras; Officers who did not wear body cameras conducted more "stop-and-frisks" and made more arrests than officers who wore the video cameras. Officers who did not wear cameras performed 9.8% more stop-and-frisks and made 6.9% more arrests.
- Officers assigned to wear cameras issued 23.1% more citations for ordinance violations than those who did not wear cameras.
- Officers with body cameras initiated 13.5% more interactions with citizens than those who did not wear them.

In 2015, the absence of video surveillance on internal perimeter at the majority of police divisions was still a problem. According to information received from the MOIA[390], video surveillance is not performed on internal perimeter at Gldani-Nadzaladevi # 8 station, Mtskheta district and Tianeti district stations, Vaziani, Teleti and Gombori police stations, Shulaveri, Algeti, Kachagani and Sadakhlo police stations, Tamarisi station, Tsalka District Division Administrative building, Supsa Station and Lanchkhuti Division. Notably, they do not have video surveillance cameras on inner perimeter at any of the stations and divisions of Kakheti and Tetritskaro District Police. Furthermore, except for administrative buildings of Adjara Autonomous Republic Police Department and Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department, video surveillance of inner perimeter is not performed at any of divisions and stations.

Once a detainee is brought into the building, it becomes impossible to establish the place and condition this person is at police station and whether he/she was subjected to physical or psychological violence. Buildings of police stations should be equipped with surveillance cameras and video recording should be stored for reasonable period, which is additional guarantee for the protection of detainees against ill-treatment. It is worth noting that in 2015, out of 11 recommendations of the Public Defender about alleged ill-treatment of detainees by police, 10 were related to the facts of physical violence against detainee, at police stations. It should also be highlighted that in the majority of divisions indicated in the given cases, specifically, in N 8 Gldani-Nadzaladevi station, Zestaponi, Bagdati, Tsalenjikha, Kobuleti district divisions, as well as Kutaisi Police 4th station, video-surveillance is not performed.

Video recording may be an effective guarantee for the protection of rights of defendants, as well as for the police. Usually, video recordings are made in order to observe general situation at police facilities, as well as for interrogating detainees. According to the general comment of the UN Committee against Torture (CAT), new methods of prevention, e.g., such as video recording of all interrogations, are tested and found effective.[391] The case of V.B. is interesting in terms of the importance of audio-video recording.

390 March 4, 2016 Letter N555482 from the MOIA.

391 UN CAT General Comment, N2, Par. 14, available in English at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf [Last accessed on 25.03.2016].

On August 3, 2015, accused V.B. was taken to the MOIA Isani-Samgori District Main Station, for examination. According to the accused, upon bringing to MOIA Isani-Samgori Main Station, he was taken up to the fourth floor in the office of the head of the Station, where he was subjected to verbal and physical abuse. V.B. further relates that following the above-mentioned, he was transferred to police station in Varketili 3rd Massive where one of the officers, whose name he does not know, although, can identify, verbally abused him. Furthermore, he would exert psychological pressure – would threaten by liquidation, raping wife and sister, and next, verbally and physically abused him, along with other police officers. In relation to the afore-mentioned, the Public Defender applied to the Chief Prosecutor's Office of Georgia through August 5, 2015 Recommendation N15-8/6351. According to N 13/52215 response received from the Prosecutor's Office on August 17, 2015, the video material filmed while in police administrative building had been appended to the criminal case of accused V.B., where accused was threatening law enforcement officer that although they had not beaten him, he would certainly sue them and would allege that police officers had beaten him.

In 2014, the Public Defender applied to the Minister of Internal Affairs with a recommendation to equip all police divisions with internal and external perimeter video surveillance systems. According to March 4, 2016 Letter N555482 received from the MOIA, during 2014-2015 video cameras were purchased for structural units of the MOIA, installation of which is planned in 2016.

The Public Defender of Georgia deems that it is necessary that from the detention of an individual and throughout the period while in police custody, to have the entire process videotaped in any case.

According to Article 9[1] of Additional Instructions regulating the activities of temporary detention isolatorTDI approved under the Minister of Internal Affairs of Georgia February 1, 2010 Order N108, video surveillance at temporary detention isolatorsTDIs is allowable in order to ensure security of detainees and temporary detention isolatorTDI staff, prevent ill-treatment of detainees, violations at temporary detention isolatorsTDIs, as well as for effective monitoring of temporary detention isolatorsTDIs operations and over the protection of human rights. Video surveillance is permissible in the halls of temporary detention isolatorsTDIs, as for cells, video recording there is permissible only in exceptional cases, based on security considerations, although in such case the privacy of inmates should be maximally protected.

According to the information received from the MOIA, except for Poti and Mestia temporary detention isolatorsTDIs, video surveillance is performed at all temporary detention isolatorsTDIs. According to provided information, video cameras are placed throughout the entire perimeter and corridors of temporary detention isolatorsTDIs, except for pre-trial detention cells, investigation rooms and WC facilities. No video surveillance is performed at temporary detention isolators'TDI adjacent areas of all isolatorsTDIs.

Video surveillance of temporary detention isolatorsTDIs is handled by the MOIA Human Rights and Monitoring Department Monitoring Office staff, from a specifically designated room, through live broadcasting of the signal mode and video recordings are not stored.[392] To ensure the protection of detainee against ill-treatment, it is important to record temporary detention isolators'TDIs video surveillance and store recordings for reasonable period. If necessary, recordings should be made available for the members of the Special Preventive Group.

RECOMMENDATIONS

To the Ministry of Internal Affairs

- Install surveillance cameras at the buildings of all police divisions and temporary detention isolatorsTDIs

392 Response N153298 dated January 21, 2016, received from the MOIA.

- Ensure uninterrupted video recording in all cases, from the instance of detention of an individual by police until the committing to the temporary detention isolarorTDI, including, detention, briefing about rights, conducting investigation activities, transportation process.
- Prescribe making relevant recording by police officers while communicating with citizen via body cameras, and rules and timeframes for the retention of made recordings.
- Set forth the obligation of making relevant recordings using body camera when making communicating with citizens for detective-investigators and neighborhood inspector-investigators, and the rule and timeframes for retention of recordings.
- Ensure recording of video surveillance performed at temporary detention isolatorsTDIs and storage of recordings during a reasonable period.
- Ensure retention of all video recordings during reasonable timeframe.

Comprehensive handling of documentation

During the visits made throughout 2015, members of the Special Preventive Group examined the cases of individuals confined at temporary detention isolatorsTDIs, as well as journals at police divisions and stations. Following the examination of the mentioned documentation, various violations and deficiencies have been identified, which are necessary to be fixed for comprehensive handling of documentation.

According to the February 1, 2010 Order N108 of the Minister of Internal Affairs of Georgia on the Approval of Typical Statute of temporary detention isolatorsTDIs, Internal Rules of temporary detention isolatorsTDIs and Additional Instructions Governing temporary detention isolatorsTDI Activities,[393] to ensure sound operation of temporary detention isolatorsTDIs, registration and identification and various special journals, electronic systems and documentations are maintained, specifically, a) unified electronic database of individuals detained at the temporary detention isolatorsTDIs; b) registration book of detainees committed at the temporary detention isolatorTDI; c) journal for registration of medical aid to inmates of the temporary detention isolatorsTDIs; d) journals of incoming and outgoing correspondence; e) journal of the receipt and handover of packages; f) detainee visual inspection report; g) list of prisoners subjected to escorting; h) guard record sheet; i) personal inspection report; j) archive memo.

Under the Minister of Internal Affairs of Georgia August 8, 2014 Order N605 Annex N 6, the Form of the Book for Registration of Detainees within the MOIA bodies is approved, while under Annex 7 of the same Order, "the Journal for Registering Individuals transferred to prison (temporary detention isolatorTDI) is approved."

Notably, in the course of inspection of the mentioned journals, staff of police divisions and stations would ask members of Special Preventive Group about completion of specific fields. It appeared that the employees of the MOIA bodies fill out journals in different ways. Based on all of the afore-mentioned, it is important to provide briefing to individuals in charge of filling out journals at MOIA police divisions and stations, to ensure full-fledged keeping of the journals for "registration of detainees" and "registration of individuals transferred to prison (temporary detention isolatorsTDI)".

During monitoring visits conducted throughout the year it was established that mentioned journals, in most cases, were incomplete and filled out incorrectly. Specifically, in some cases it cannot be established when an individual was detained by police officer, the date/time of the entry of detainee at divisions, as well as follow-up information about the detainee is unclear; The numbering in journals is messed up, it is not

393 Annex 3 – Additional instruction governing the activities of TDI, Article 5.

indicated where and in which condition violation happened, and in some cases, fields in journals are not filled out altogether. The deficiencies with filling out journals have been identified in journals maintained at Marneuli, Tsalenjikha, Khobi, Zestaponi, Tkibuli, Kutaisi, Batumi, Borjomi, Adigeni, Akhaltsikhe, Gori, Sagarejo, Tetritskaro, Terjola, Ambrolauri, Lanchkhuti, Oni, Shuakhevi, Keda, Tskaltubo, Khashuri, Aspindza, Telavi, Sighnaghi, Khelvachauri, Kareli, Abasha, Martvili, Chkhorotskhu, Tsalka, Baghdati, Kvareli, Samtredia, Chiatura, Sachkhere, Lentekhi, Vani, Ozurgeti, Kobuleti, Zugdidi, Senaki, Ninotsminda, Poti, Mestia, Khulo, Chokhatauri district divisions and Bakuriani, Baraleti and Vale police stations.

It should also be mentioned that it has been established during the visits that special journals of individuals who entered the MOIA police stations and divisions are not maintained. So, for example, if an individual comes to police division/station in the capacity of a witness the fact of entry of such person into the building is not documented in a unified journal. It is important to keep detailed record comprising date (by indicating time), purpose of arrival and date and time of leaving the police station and division facility.

Georgia legislation stipulates the forms of administrative and criminal detention reports. According to Article 175(2) of the Criminal Procedure Code of Georgia, the following should be included in the detention report: who, where, when, in which circumstances, based on which grounds indicated in this Code, physical state of detainee at the moment of apprehension, crime a detainee is accused of, Exact time of bringing individual to police facility or another law enforcement body, list of rights and duties of an accused persons envisaged under this Code, as well as in relevant case -- objective reason (reasons) due to the presence of which it was impossible to draw up detention report immediately upon detention.

It should be mentioned that, during the visits carried out throughout the year it was examined as to how completely law enforcement officers complete reports and it was established that often detention and personal search report of an accused person are not filled out in a comprehensive manner. Specifically, such information as the condition of detaining an individual, whether they posed resistance, whether proportionate coercive measure was used, and in which form, whether detention took place in calm atmosphere, without posing resistance is not included in a complete manner.

It was established as a result of qualitative analysis of 740 cases studied by members of the Special Preventive Group that there were 227 (30.7%) cases of defiance/resistance on the part of detainees, while 513 (69.3%) reports do not contain indication about such actions. It has also been ascertained that out of 227 cases when detention report referred to defiance/resistance, in 3 cases (1.3%) there is complete description as to the manifestation of defiance/resistance, in 4 cases report contains partial description (1.8%), in 96.9% of cases police officers did not provide such description.

Out of 740 cases, indication about the fact of the use of force is contained in 46 cases only (6.2%), in 27 cases (3.6%) it is mentioned that force had not been applied, and in 667 cases (90.2%), detention reports contain no indication as to the use of force. Out of 46 cases of indication about the use of force, the method of the use of force is described in full in detention report in 2 cases only (4.3%), in 3 cases (6.5%) report comprises partial description, while in 41 cases (89.2%), nothing is said in a report as to the method of the use of force.

According to Article 245(5) of the Code of Administrative Offences of Georgia, administrative detention report is drawn up about administrative detention, and the date and place of drawing up a report; position, first name and last name of a person who has drawn up report; notes about detained individual; Time and grounds for detention is recorded in it. The report is signed by an official drawing up a report, as well as by a detainee. If a detainee refuses to sign report, indication thereof is made in the report.

Once an individual is detained, at the time of his/her physical inspection, any trace of violence that may have been caused by torture or ill-treatment must be described and documented according to relevant rule. ECtHR has ruled that when an individual suffers bodily damage at the time of detention or while being held under the

control of police officers, every such injury gives rise to solid presumption that detainee had been subjected to ill-treatment.[394]

According to established standard by European Court, when an individual is detained, and when such persons did not have injuries prior to detention, while afterwards such person appears to have injuries, it is the obligation of the state to present due explanations as to the causes of such injuries, present evidences as to the origin of the injuries, which will refute a victim's statement. The failure of the state to present the mentioned explanation gives rise to the breach of Article 3 of the Convention.[395]

On November 30, 2015, according to the proposal sent by the Public Defender to the Chief Prosecutor's Office,[396] it is worthy of special attention that, at the time of the entry in the police division, as indicated in relevant documents, G.K., R.T., and G.G. did not have any traces of injuries on body, while at the time of entry to the temporary detention isolatorTDI, accused persons had multiple injuries at visual inspection. The alleged ill-treatment of detainees by police officers becomes more convincing due to the circumstance that none of relevant documents drawn up by law enforcement officers contain indication as to the fact of physical resistance by G.K and G.G., while, both detainees had numerous significant injuries on their bodies.

Information about occurrence of information about injuries in detention reports, in the MOIA Detainee Registration Book and Visual Inspection Report can be seen in the table below.

Injury	Quantity	Share
Is indicated in the detention report, registration book of detainees and visual inspection report	134	18,9%
only in a detention report	11	1,6%
in registration books of individuals detained at MOIA bodies, and detention report	2	0,3%
only in registration books of individuals detained at MOIA bodies	0	0
in the books of registration of individuals detained at MOIA bodies and visual inspection report	22	3,1%
Only in visual inspection report	276	38,9%
In detention report and visual inspection report	33	4,7%
in detention report and visual inspection report, in the books registration of individuals detained at MOIA bodies it could not be checked	231	32,6%
Total	709	

It can be seen from the data provided in the above table that in 298 cases (42%) detention reports do not contain information about injury.[397]

The number of occurrence of injuries can be seen in the table below.

394 ECtHR October 23, 2007 Judgment on the Case *Colibaba v. Moldova*, Case N29089/06.
395 ECtHR February 23, 2010 Judgement on the Case *Gokhan Yildirim v. Turkey*, Case N31950/05.
396 Letter N 11-3/9735, concerning alleged ill-treatment and other possible violations of law enforcement officers in relation to G.G., G.K., R.T., and B.M.
397 Out of these 298 cases, administrative detention – 237 cases (79.5%); criminal detention – 61 cases (20.5%). 52.2% of all cases of administrative detention; 20.8% -- of criminal detention.

Injury	Quantity	Share
Higher number of injuries in detention report	26	3,5 %
Higher number of injuries in detention report and books of registration of individuals detained at MOIA bodies	10	1,3 %
Higher number of injuries in the books of registration of individuals detained at MOIA bodies	4	0,5 %
Higher number of injuries in the books of registration of individuals detained at MOIA bodies and visual inspection reports	7	0,9 %
Higher number of injuries in visual inspection reports	418	56,2 %
Higher number of injuries in detention reports and visual inspection reports	42	5,6 %
Total number of processed questionnaires	740	

Out of 418 cases when higher number of injuries is indicated in the visual inspection report, in 289 cases (69.1%) individual had been administratively detained, and in 129 cases (30.9%) – these were criminal detainees (63.6% of all cases of administrative detention, 44.8% of criminal detention). It is clear that the problem is more pressing in terms of the complete description of injury.

The Special Preventive Group analyzed as part of the study the influence of absence/presence of adequate lighting on the description of injury in the detention report. It has been established that only in case of one third of cases individuals had been detained during daylight. It had also been ascertained that in one third of those cases where indication about injury is contained in visual inspection report only, individuals had been detained during daylight. Notably, the study has identified 50 cases when individual was detained during daylight, while injuries in head, face and eye socket area are indicated only in visual inspection report. In these 50 cases, if at the time of detention individual had injury, detaining officer was required to document it.

It has also been established following the study that from the materials of 740 studied cases, in 45 cases temporary detention isolatorTDI employee did not indicate in a relevant field of the visual inspection report whether detainees had complaints towards police. The highest number of deficiencies in this regard was identified in Marneuli temporary detention isolatorTDI.[398] Moreover, in 32 cases visual inspection reports do not provide indication as to the time of incurring injury.[399]

In the 2014 Report to the Parliament, the Public Defender recommended to the Minister of Internal Affairs to take all necessary measures to ensure comprehensive completion of documentation about detainees. Deficiencies with the completion of detention and visual inspection reports, journals at police divisions and medical documentation are still present, as has been established based on monitoring conducted in 2015. Moreover, the form of administrative detention report is incomplete.

According to the Minister of Internal Affairs of Georgia Order N 625 dated August 15, 2014, on the Approval of the Rule for completing administrative violations report, administrative detention report, personal search and items search report, penalty receipt, temporary permit for driving a transport vehicle, explanation and certificate forms, and on the submission to a body reviewing administrative offences, administrative detention report template was approved.[400] The mentioned report does not have boxes for the time of drawing up report,[401] recording injuries on the body of a detainee and the conditions under which individual was detained

398 18 cases.
399 In 10 cases in visual inspection reports drawn up at Adjara and Guria regional TDFsTDIs.
400 Annex N 9
401 Implies the time of detention.

(whether there was resistance, whether proportional coercive measure was used, in which form, or whether the detention took place in calm atmosphere, without resistance), unlike the criminal detention report.

Based on all of the afore-mentioned, it is necessary to improve the administrative detention report, by means of inclusion of the above-noted information in it and also training and development of temporary detention isolatorTDI, police divisions and stations officers.

RECOMMENDATIONS

To the Ministry of Internal Affairs

- In order to ensure comprehensive handling of documentation, ensure training of the employees of the MOIA of Georgia
- take all necessary measures, including by means of relevant inspection, to ensure comprehensive handling of documentation.
- Amend the Minister of Internal Affairs of Georgia Order N 625 dated August 15, 2014, on the Approval of the Rule for completing administrative violations report, administrative detention report, personal search and items search report, penalty receipt, temporary permit for driving a transport vehicle, explanation and certificate forms, and on the submission to a body reviewing administrative offences, administrative detention report template and insert the fields in the administrative detention report form approved under Annex 9, to enter to following information: time of drawing up report, description of injuries on the body of a detainee, the condition of detention, whether there was resistance, whether proportional coercive measure was used, and in which form
- Develop a unified journal template for all police divisions and stations of the MOIA, for registering the visitors

Proposal to the Parliament of Georgia

- Amend Article 245(5) of the Code of Administrative Offences of Georgia, in order to add the following to the information to be entered in the administrative detention report: time for drawing up report, description of injuries on the body of detainee, setting of detention, whether there was resistance, whether proportional measure of coercion was used and in which form.

Complaints

The right to fast and impartial examination of complaint against representatives of government bodies guaranteed for any person is the most important component of the prevention of torture. The mentioned principles cannot be realized in practice without supporting the procedures for submission of complaints by detainees and examination procedures. States have the obligation to establish such effective system where detainees will be able to file complaints on ill-treatment by police. Effective complaints examination mechanism will ensure respecting the rights of detainees and is a fundamental safeguard against ill-treatment.

According to Article 4(2) (i) of temporary detention isolatorTDI Statute Template, approved under the February 1, 2010 Order 108 of the Minister of Internal Affairs of Georgia, temporary detention isolatorTDI administration is required to ensure the right of detainees […] to file complaints.

Pursuant to Article 5(b) of the same Regulations, it is procedural duty of temporary detention isolatorTDIadministration to send complaints and motions of detainees to investigators, prosecutor's office and judges, and in cases envisaged by law – to the Public Defender, within no later than the day following their submission.

According to Article 4(5) of Internal Rules of temporary detention isolatorsTDIs approved under the same Order, individual admitted in temporary detention isolator in TDIis authorized to appeal actions of temporary detention isolator TDIemployees before a superior body, which will take decision as to relevant response/ action within the law-prescribed timeframe.

Access to the complaints review procedure is related to the presence of simple and clear procedures of filing of complaints and examination. It is important that procedures be clear and accessible for detainees as well as law enforcement bodies. The mentioned procedure combines several important components. This, in the first place, implies awareness of detainees about the availability of complaints examination mechanism, provision of necessary material-technical resources for complaints by detention facility administrations, relevant registration of complaints and timely and adequate response/action to those.

Pursuant to Article 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

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

The CPT attaches very high importance to the awareness of prisoners and establishes that individuals detained by the police should be briefed about their rights immediately.[402] The CPT further notes that "It is axiomatic that rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence."[403]

According to Article 3(4) of the Additional Instructions Governing the work of temporary detention isolatorsTDIs, approved under the Minister of Internal Affairs of Georgia February 1, 2010 Order N108, following inspection, interviewing and sanitary treatment of individuals brought to the temporary detention isolatorTDI, on duty officer or another person, at the instruction of the former, briefs such individuals about, and if possible, hands over to them internal rules of temporary detention isolatorTDI, as well as a list of their procedural rights and duties, following which they are placed in cells.

It can be identified following inspection conducted at temporary detention isolators TDIsover the reporting period that administration of temporary detention isolator TDIbriefs detainees about their rights, which also comprises information about the right to file a complaint, although certain deficiencies have been identified in terms of informing detainees, which is reviewed in detail in sub-chapter on briefing detainees.

Without material technical support for filing a complaint a detainee will be unable to exercise the right of filing a complaint. Material-technical support for filing complaint comprises supplying with requisite means for writing a letter.

According to Article 5(1) of additional rules and Conditions on Serving Administrative Sentence at temporary detention isolatorsTDIs, approved under the Minister of Internal Affairs of Georgia February 1, 2010 Order N 108, individuals sentenced to administrative detention are authorized to appeal any action or decisions of a

402 CPT Standards, [CPT/Inf (92) 3] Para. 37.
403 CPT, Report on Turkey, [CPT/Inf (99) 2] Par. 26.

facility enforcing administrative detention at a superior body or court. An individual sentenced to administrative detention is authorized to apply, without any limitation, to national, regional and international human rights Institutions approved under Georgia legislation, international agreements and treaties. In case of a demand from an individual subjected to administrative detention, temporary detention isolator TDIadministration is required to furnish them with a pen and a paper for drafting applications, complaints and other addresses.

Notably, there is no prescribed procedure that would ensure the right of individuals committed to temporary detention isolatorsTDIs with the right for filing confidential complaints. It has been discovered during monitoring performed at temporary detention isolators TDIsthat detainees had not filed complaints to superior body in relation to the actions of temporary detention isolatorTDI employees. Temporary detention isolator TDIstaff explained that, in case a detainee asks for sending a complaint, it should be sent via electronic program, which involves scanning a complaint and uploading to an electronic program. While the above-mentioned excludes the possibility of using confidential complaint by a detainee.

It should be assessed positively that individuals admitted in temporary detention isolatorin TDI, when they are briefed about rights, are informed that they have the right to contact the General Inspectorate of the MOIA, via the hotline (telephone number 126). Although, it should be mentioned that telephone call to the General Inspectorate can be made only from the telephone of a temporary detention isolatorTDI administration, which, for this purpose, should be temporarily given for use by a temporary detention isolatorTDI employee. Furthermore, temporary detention isolator TDIemployee should control that an inmate really calling the General Inspectorate hotline.

Base on the above-mentioned, the provision of information to the General Inspectorate in a confidential manner, and respectively, safely is not ensured (in the conditions when protection against repressions is ensured).

The procedure of sending a notification to investigative body about injuries on the bodies of detainees by the Administration is a significant legal safeguard for the protection of detainees against ill-treatment. Notably, notification to a prosecutor about injuries on the bodies of detainees is sent at the discretion of head of temporary detention isolatorTDI, and there is no specific rule governing of this procedure, and it is unclear in which case a notification is sent to a prosecutor. The fact that Prosecutor's Office does not duly examine and investigate the complaints of detainees sent from temporary detention isolators remainsTDIs is an issue.

Hence, for having effective legal safeguards in place, relevant normative act should clearly regulate the cases when notice is to be sent to a prosecutor about bodily injury of a detainee.

Detainee is given the possibility to file a complaint about alleged ill-treatment by police at the time of admission to the temporary detention isolator.TDI. In this regard, notably, individuals detained during 2015 brought complaints against police in 168 cases.

The right to file a complaint also implies that the investigation of complaints of detainees about ill-treatment should meet at least the following criteria 1. Independence and impartiality; 2. Thoroughness; 3. Prompt and expeditious nature; 4. Competence; 5. Transparency 6. Participation of a victim. State should ensure effective investigation observing the above-mentioned elements, in order to administer justice.[404]

The results of monitoring have revealed that the Prosecutor's Office does not duly examine and investigate matter in relation to the complaints of detainees from temporary detention isolators.TDIs. The Public Defender of Georgia has solicited information from the Chief Prosecutor's Office of Georgia concerning actions/ response in relation to notifications about bodily injuries of specific individuals committed to temporary detention isolatorsTDIs.

404 CPT 14th General Report, CPT/Inf (2004) 28, 2013. Par. 31-36, available in English at: < http://www.cpt.coe.int/en/annual/rep-14.htm>, [Last accessed on 29.03.2016].

Special Preventive Group, in the course of inspection performed at temporary detention isolatorsTDIs and police stations, following interviews with police staff and examination of documentation, has identified several notable cases where detainees allegedly were subjected to physical violence effected by police and notification about this had been sent to the Prosecutor's Office.[405] In relation to the mentioned cases, the Office of Public Defender has solicited information from Chief Prosecutor's Office, as to the actions taken by the Prosecutor's Office. It can be ascertained from the replies received from Chief Prosecutor's Office of Georgia that out of 7 cases, investigation on an independent criminal case was launched in only 2 cases, which were discontinued on the grounds that the fact of unlawful action by police officers could not be determined. While in the remaining 5 cases, Prosecutor's Office limited itself only by interviewing detainees as part of the charges under criminal case and a separate investigation about alleged ill-treatment towards him had not been launched. Notably, in the majority of the above-listed cases, the Prosecutor's Office justified the discontinuation of investigation by the fact that during interview detainees denied any illegal action towards them and stated that they did not have any complaints against police.

In relation to the above-mentioned, the Public Defender deems that investigation on independent criminal cases had to be launched in any case, including in the absence of official complaint by detainees.

The stance of the Public Defender with regard to creation of independent investigation mechanism is unchanged and he deems that it is extremely important to create such mechanism, which mandate will be effective investigation of alleged facts of torture and ill-treatment of detainees by law enforcement officers.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Georgia

- ensure that detainees are duly briefed about the right to file a complaint
- ensure the introduction of confidential complaints mechanism at temporary detention isolatorsTDIs
- set forth explicit instructions concerning sending a notification to the Chief Prosecutor's Office about injuries identified on the bodies of detainees, at the time of committing to temporary detention isolatorsTDIs, under a relevant sub-legal act

To the Chief Prosecutor's Office of Georgia

- In case of receiving information about alleged ill-treatment of detainees by police, including in the absence of a formal complaint by detainees, ensure that investigation is launched as a separate proceedings and handled by investigation unit of the Prosecutor's Office.

Inspection and monitoring

Conducting various internal and external inspection is one of the efficient means for the protection of the rights of individuals whose liberty has been restricted.

According to Article 11 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form

405 As of monitoring, the mentioned detainees were not at TDI.

of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture".

The inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of persons in custody.[406]

MOIA General Inspectorate is in charge of internal inspection of Georgia police. According to Article 2 of the Statute of the General Inspectorate, approved under the Minister of Internal Affairs of Georgia February 23, 2015 Order N 123, the objectives of the General Inspectorate are to control steady fulfillment of requirements of Georgia legislation within the MOIA system, as well as detect the facts of breaching of norms of ethics, discipline, professional misconduct and specific unlawful acts within the MOIA system, and take relevant response actions.

During 2015, General Inspectorate conducted 22,447 inspections,[407] based on which 3,055 conclusions were produced and 2,630 disciplinary penalties were imposed.

The types and number of disciplinary measures:[408]

N	Types of disciplinary measures	Number
1	Recommendation memos	396
2	Admonition	720
3	Harsh reprimand	639
4	Reprimand	578
5	Dismissal	161
6	Setting up to three extra on duty assignments	112
7	Demotion	13
8	Deprive of the right of next leave of absence	11
	Total	2630

As a result of inspection conducted in relation to the facts of the violation of citizens' rights, in 172 cases the fact of transgression has been confirmed, therefore the following disciplinary measures were imposed: admonition-- 19; reprimand – 44; harsh reprimand – 68; demotion – 5; dismissal -36.

Following the inspection on alleged breach of the rights of detainees or persons whose liberty is restricted otherwise, transgression was established in 2 cases, out of which in 1 case it was official error, and in another case negligent and careless attitude was identified, for both cases disciplinary penalty – reprimand was imposed.

1599 inspections were conducted based on applications/complaints about alleged violation of citizen's rights, out of which 45 facts of disciplinary violations have been confirmed following inspection. Notably, during the reporting period a case of the violation of rule of law and undue fulfillment of law prescribed duties in the course of proceedings by the General Inspectorate have been identified, which is reviewed in detail in the chapter of this report – Labor Rights (sub-chapter – Deficiencies in the work of General Inspectorates).

Following inspection conducted based on operative information about alleged violation of citizens' rights, 31 facts of transgression by MOIA employees have been established following inspection.

406 CPT Standards, available in Georgian at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last accessed on 29.03.2016].
407 MOIA Letter 09.01.2016, MIA 61600048372.
408 MOIA Letter 29.01.2016, 224058.

In addition to inspection, MOIA General Inspectorate is authorized, on criminal cases transferred to them by Chief Prosecutor of Georgia or an individual authorized by Chief Prosecutor, to conduct investigative and procedural actions within the scope of the authority prescribed under the Criminal Procedure Code of Georgia.

Over the reporting period, at General Inspectorate investigation was underway on 42 criminal cases. Out of the mentioned cases 7 cases were related to alleged violation of citizen's rights (exceeding power – 1 case; theft – 2 cases; rape – 1 case; hooliganism – 1 case; fraud – 2 cases). Out of the listed cases, one was discontinued through diversion, and in case of two cases criminal prosecution was launched, out of which on one case guilty sentence has been ruled, and another case is under investigation. Acquittal has not been reached in any of the cases.

Furthermore, based on the cases transferred by the Prosecutor's Office to General Inspectorate for investigation, 23 employees of the MOIA system were brought to criminal liability for the following crimes: theft- 9; fraud – 2; appropriation or embezzlement – 3; illegal production, making, purchase, storage, transportation, dispatching or trading with narcotic substance, its analogue, precursor or a new psychoactive substance – 1; unlawful purchase, storage, keeping, production, transportation, dispatching, or trade with firearm, ammunition, explosive substance or explosive device – 2; taking possession of weapons, ammunition, explosive substance or explosive device unlawfully, with the aim to appropriate or extort – 1; failure to notify about crime – 1 and taking a bribe – 4 facts.

According to information provided by General Inspectorate of MOIA, information obtained about offences committed by MOIA employees are sent to Chief Prosecutor's Office of Georgia. If the mentioned information relate to exceeding power by police officers, including beating and torture of citizens and other facts of gross human rights violations, Prosecutor's Office investigates such cases. General Inspectorate is primarily in charge of such criminal cases that were instituted at the Prosecutor's Office based on information sent about elements of crime identified during work related control, examination and monitoring by General Inspectorate, and were subordinated to the General Inspectorate for investigation.

Notably, given the system of investigation bodies in Georgia, the Public Defender welcomes the fact that the Prosecutor's Office handles the above-mentioned criminal cases, although the stance of the Public Defender with regard to necessity to establish independent investigation mechanism is unaltered. It is designed to ensure high degree of credibility and effective investigation.

As for internal monitoring within temporary detention isolatorsTDIs, the MOIA Human Rights and Monitoring Department is entrusted this function; the TDIs are subordinated to the same Department.

According to Article 6(a) of Statute of Human Rights and Monitoring Department approved under the Minister of Internal Affairs Order N1006 dated December 31, 2015, the objective of the Department is to commit individuals detained for the enforcement of decision of an authorized entity, pursuant to Georgia legislation, and/or administrative detainees to temporary detention isolator TDI, and ensure the protection of their rights. To this end, the Monitoring Office of the Department; oversees the protection of the rights of individuals confined at temporary detention isolators TDIs; monitors the protection of human rights of individuals placed at temporary detention isolators TDIs by the TDI staff; monitors living and hygiene conditions of individuals admitted to temporary detention isolatorsto TDIs; within its competence, takes action in response to alleged breaches identified as a result of received applications, information and/or monitoring.

As has been ascertained following the examination of the issue, according to existing practice, Human Rights Protection and Monitoring Department Monitoring Unit periodically inspects temporary detention isolators TDIs throughout Georgia. While inspecting, the Monitoring Unit focuses on the following issues: situation in terms of discipline, case handling, sanitary-hygiene condition and repair works.

The Public Defender of Georgia deems that the practice of inspection by Monitoring Office cannot ensure appropriate assessment of the state of human rights protection at temporary detention isolators TDIs, since the above-listed issues represent rather administrative and technical side of the work of temporary detention isolators TDIs. Hence, inspection must focus on such issues as the degree and quality of documenting of alleged ill-treatment of detainees by police, and the state of the protection of detainee rights.

As for external monitoring, according to Articles 18 and 19 of the Organic Law of Georgia on the Public Defender of Georgia, Public Defender of Georgia and individual specially entrusted by the Public Defender (including a member of the Special Preventive Group) are authorized to enter temporary detention isolators TDIs and perform inspection at police divisions in order to study the state of the rights of confined individuals.

In this respect, the fact that during monitoring members of the Public Defender's NPM mechanism would be admitted without obstacles and were able move freely at the MOIA district divisions and temporary detention isolators TDIs should be assessed positively. During the visits, staff of all divisions and temporary detention isolators TDIs would fully cooperate with the representatives of the Public Defender and support them in full-fledged monitoring, as prescribed by law.

Public Defender emphasizes the fact that the NPM should have unimpeded access to video surveillance systems of temporary detention isolators TDIs and police divisions.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Georgia

- Improve the methodology of Human Rights and Monitoring Department Monitoring Unit, so that during the inspection of temporary detention isolators TDIs they focus on the quality of documenting of alleged ill-treatment of detainees by police officers and the state of the protection of detainee rights;
- Ensure unimpeded access of the Special Prevention Team to video surveillance systems at temporary detention isolators TDIs and police divisions.

SITUATION AT TEMPORARY DETENTION ISOLATORS

In 2015, throughout Georgia, there were 37 active temporary detention isolators TDIs. From June, 2015 through September, 2015, members of Special Preventive Group performed monitoring at 31 temporary detention isolators TDIs of the MOIA. Monitoring was conducted from June through September, 2015, in the following regions: Shida Kartli, Kvemo Kartli, Kakheti, Imereti, Samtskhe-Javakheti, Guria, Adjara, Samegrelo, Racha-Lechkhumi, Kvemo and Zemo Svaneti. Over the course of monitoring, members of Special Preventive Team observed facilities and environment at temporary detention isolator TDI, interviewed temporary detention isolator TDI employees and inspected documentation contained in case files of individuals detained in 2015. Team members were guided by pre-designed tools and data obtained from penitentiary facilities.

According to the information received from the MOIA, over 2015 16, 416 individuals were committed to the mentioned temporary detention isolators TDIs. Data of individuals placed at each temporary detention isolator TDI is provided in the Table.

N	TDI name	Number of detainees	N	TDI name	Number of detainees
1	Tbilisi N 1 TDI	417	20	Lentekhi TDI	16
2	Tb. And Mtskh. Mtianeti TDI	5556	21	Zestaponi TDI	330
3	Mtskheta TDI	379	22	Baghdati TDI	64
4	Dusheti TDI	29	23	Chiatura TDI	146
5	Telavi TDI	503	24	Samtredia TDI	325
6	Sagarejo TDI	224	25	Ambrolauri TDI	25
7	Sighnaghi TDI	189	26	Zugdidi Reg. TDI	366
8	Kvareli TDI	359	27	Zugdidi TDI	661
9	Gori TDI	581	28	Senaki TDI	288
10	Khashuri TDI	325	29	Khobi TDI	143
11	Borjomi TDI	118	30	Poti TDI	219
12	Akhaltsikhe TDI	214	31	Chkhorotskhu TDI	162
13	Akhalkalaki TDI	36	32	Mestia TDI	16
14	Rustavi TDI	356	33	Batumi TDI	2039
15	Tetritskaro TDI	34	34	Kobuleti TDI	355
16	Tsalka TDI	29	35	Ozurgeti TDI	153
17	Gardabani TDI	0	36	Lanchkhuti TDI	82
18	Marneuli TDI	545	37	Chokhatauri TDI	28
19	Kutaisi TDI	1104	**Total**		**16416**

It should also be mentioned that in 2014, 17,087 individuals were committed to temporary detention isolators TDIs, hence, in 2015, as compared to a prior year, the fall of the number of detainees can be observed.

Living conditions of individuals confined at temporary detention isolators, TDIs should be in conformity with national, as well as international standards.

"All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (E.g., a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets. Persons in custody should be allowed to meet with natural needs when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.[409]

Under the Minister of Internal Affairs of Georgia Order N 108 dated February 1, 2010, on Approving Statute Template for temporary detention isolators TDIs of the MOIA of Georgia, internal rules of temporary detention isolators TDIs and additional instruction governing temporary detention isolator TDI activities, sanitary-hygiene and general conditions at temporary detention isolator TDI should not infringe the right of a person to dignified existence, his/her honor and dignity, privacy and security of a person, interests of respecting privacy.[410]

According to the same order, administration of temporary detention isolators TDIs is obliged to: ensure natural and artificial lighting, heating and ventilation in cells; ensure adequate sanitary conditions in cells; ensure maintaining relevant hygiene in cells.

There are various infrastructure related and other problems at temporary detention isolators TDIs in regions of Georgia, for the illustration of which we are presenting data about several temporary detention isolators TDIs:

409 CPT Standards, Paragraph 42, available at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [Accessed on: 26.03.2016].
410 Annex 1 – Statute Template for the MOIA Human Rights and Monitoring Main Division TDIs, Article 4.

Lentekhi TDI

Lentekhi TDI is housed at the Police Station building and is separated by iron bars and wooden door. There are a total of two cells. Each one is designed for two persons. Area of cells is 4.3m^2 and 4.4 m^2. There are no windows, artificial ventilation, heating system, water, water closets, tables and chairs in cells. Detainees, when necessary, use common use WC designed for police staff. TDI does not have a yard for walking detainees.

Samtredia TDI

At Samtredia TDI detainees are placed in three cells, which area ranges between 10m^2-12.8m^2. The cells are equipped with three-tier iron beds. There is adequate artificial ventilation and lighting in the cells. Natural and artificial lighting is not satisfactory. There is semi-isolated WC in cells. According to TDI staff, for washing hands and face detainees are taken to the common use bathroom outside cells, while drinking water is provided with bottles. During the visit of special preventive group members,[411] the matter of supplying TDI with personal hygiene articles was inspected and it was discovered that there was no soap supply at the TDI. Samtredia TDI has a yard for walking detainees.

Samegrelo-Zemo Svaneti Regional TDI

At Samegrelo-Zemo Svaneti Regional TDI, there are 3 cells, 2 four-person and 1 two-person. The area of cells ranges between 10m^2-11.3m^2. There are iron beds and 1 iron table with 2 chairs in the cells. Windows in cells have bars from both sides, from the inside they are screened via a drilled metal sheet, which prevents the entry of natural lighting and ventilation in the cells. There is moisture in the cells. Strong specific odor can be felt. Sanitary-hygiene condition is unsatisfactory.

Gori (Shida Kartli and Samtkshe-Javakheti Regional) TDI

There are 5 cells in Gori (Shida Kartli and Samtkshe-Javakheti Regional) TDI. The area of cells ranges between 11m^2-12m^2. There is central ventilation and heating in cells. Water regulator for flushing water in the toilet is located in the hall of the TDI; hence, TDI on duty officer regulates the supply and shutting of water. There is a courtyard for walking in the TDI, although it is impossible to walk during rainy weather, since the yard is not sheltered. During the visit,[412] the supply of toiletries and other articles was inspected and has been identified that they did not have the supply of clean towels and single-use plates at the TDI. According to the head of the TDI, when they lack supply of singe use plates, food is served to detainees via large sheets of paper. Expired dry soup was discovered during monitoring the TDI.

Signagi TDI

There are 2 cells at the Signagi TDI for accommodating detainees, with area 6.3 m^2. The cells are equipped with 1 iron table and 2 chairs. There is not WC inside the cells. When needed, detainees use common toilet outside cells. Natural lighting and ventilation is inadequate, since windows are covered by iron windowpanes and iron grids. Artificial lighting and ventilation is unsatisfactory. The yard for walking is not envisaged for detainees of the TDI.

411 July 7, 2015.
412 September 17, 2015.

Sagarejo TDI

There are 4 three-person cells in Sagarejo TDI, their area ranges between 9m^2-9.65m^2. There are 3-tier iron beds with mattresses in cells. There is one table. Tables serve as a chair in the cells. There is moisture in the cells, insufficient natural lighting and ventilation. Drilled metal sheets are installed on the windows, which limits the entry of light into cells and natural ventilation. There is central heating in cells. Detainees use common WC and shower room located outside the cell. TDI does not have a courtyard for walking.

Tetritskaro TDI

Tetritskaro TDI is housed on the first floor of Tetritskaro District Division. There are two 2-person cells in the TDI, with area ranging between 11m^2-11.25m^2. There is 1 iron table and 2 chairs in the cells. Drilled metal sheets are attached to the windows, which limits the penetration of natural lighting and air into cells. Cells are heated via warm air entering from the ventilation system. There is semi-isolated WC in cells. Above 5cm from the floor, there is a water pipe that is used to flush the toilet. Water current is regulated by staff from outside the cell. During the visit, TDI lacked the supply of single-use plates and glasses.

Akhalkalaki TDI

There are 3 cells in Akhalkalaki TDI, area ranges between 7m^2-7.1m^2. Instead of individual beds, there is a dais in the cells. The ventilation in the cells is inadequate. There is no WC in the cells. Detainees use common toilet outside the cell. TDI has 56.47m^2 area courtyard for walking for detainees. Common WC is located by the courtyard. Opposite the WC, there is a surveillance camera directed at the courtyard, which scope also includes inner side of the toilet, since depreciated door does not shield the WC. The door does not have a lock from the inside. Due to the mentioned problem, privacy of individuals using toilet is not ensured. There is no artificial lighting in the toilet. The mentioned TDI does not have a shower facility. The courtyard is not sheltered and therefore it is impossible to walk during rain.

Akhaltsikhe TDI

There are 5 cells in the Akhaltsikhe TDI. The area of cells ranges between 6.7m^2-19.9m^2. The cells are designed to accommodate 2 and 3 persons. There is no natural lighting and ventilation in cells, since windows are sealed. Artificial ventilation is inadequate. Artificial lighting is adequate. Sanitary-hygiene condition in cells is inadequate (requires wet cleaning). There is no WC is cells. There is no separate yard for walking detainees. According to the administration, they are taken for a walk to the inner yard of the police building. TDI requires refurbishment.

Lanchkhuti TDI

There are three two person cells in the Lanchkhuti TDI. Area of cells ranges between 2m^2-3m^2. There are 2 iron beds with mattresses in cells, one table and two chairs. There is moisture in the cells, and ventilation is inadequate. Ceiling in the cells is damaged and damp, due to precipitation. It has been ascertained following the conversation with the head of the TDI that water leaks during precipitation from the roofs. There are semi-isolated WCs in cells. There is no heating in cells. TDI has a courtyard for walking detainees.

Khashuri TDI

There are 4 three-person cells in Khashuri TDI. The area of cells is 11.1m^2. There is central heating in cells. Natural lighting is unsatisfactory. Ventilation system in the cells emits noise, which is disturbing detainees. There are semi-isolated WCs in cells, with Asian type latrine. Within the cells there is regulator of a flushing tube. There is no washstand in cells. Sheltered courtyard for walking is organized at the TDI.

Borjomi TDI

Borjomi TDI is equipped with 4 cells for detainees. Of these, 2 cells are single-person, 2 cells are two-person. The area of cells ranges between 5.4m^2-6.5m^2. Cells do not have windows. There is no natural lighting and ventilation in cells. There is no heating in cells, according to TDI head, heating of the cells is ensured via the heaters installed in the hall. There is dampness in the cells, in some places walls are partially demolished. In general, sanitary-hygiene condition in cells is unsatisfactory. There are no WCs in cells, detainees use common WC located outside cells. There is no dedicated courtyard for walking detainees. According to the administration, detainees are taken for a walk to the inner yard of the police facility.

Batumi (Adjara and Guria regional) TDI

There are 10 two and three person cells in the Batumi (Adjara and Guria regional) TDI. The area of cells ranges between 8.5m^2-14.3m^2. There are iron beds with mattresses in cells. There are 1 table with two chairs installed on the floor. Ventilation in cells is inadequate and dampness can be observed. Due to the lack of air, small windows on doors of cells are always open. Artificial lighting is adequate. Natural lighting and ventilation is inadequate. Central heating is provided in cells. Cells have semi-isolated WCs. In 8 cells water flushing taps are located outside cells and supply of water depends on duty officer of the TDI. In the remaining 2 cells, water tap is within cells and detainees regulate it. Water flushing tube is installed at 1 m. above the latrine. The mentioned is inconvenient and non-hygienic, for flushing the toilet, as well as for washing hands and face.

Marneuli TDI

There are 6 cells for accommodating detainees in Marneuli TDI. The area of cells ranges between 12.00m^2-12.2m^2. Within cells, there is 1 installed table between beds. On small windows in the cells iron bars and grid are installed, therefore natural lighting and ventilation in cells is inadequate. The central ventilation system does not ensure adequate ventilation. WC in cells is not isolated. WC is separated via a small wall with width 1m 5cm. Length 1.96 cm, where Asian type latrine is installed. At 30 cm from the latrine, there is a water pipe, which serves as a flush. Individuals in cells refer to TDI employee for supplying necessary water for flushing, since water supply can be regulated from outside cells only. TDI has inner courtyard, where detainees are taken for a walk. There are no washstands in cells.

Chiatura TDI

There are 4 cells in Chiatura TDI, of these, 3 are two-person and 1 is one-person cell. Area of cells ranges between 8.6m^2-9.5m^2. There are two-tier iron beds with mattresses, one table and two chairs in cells. Cells are heated via central heating. Natural lighting of cells is inadequate, since cells are equipped with small 32x63 windows, covered by metal grid. There are semi-isolated WCs in cells, although there are no washstands. TDI employees supply drinking water to detainees. In addition to the above-discussed problems, in 2015, following

the visits made by the Special Prevention Group members it has been established that in some cases detainees lacked toiletries. Deficiencies with regard to toiletries and bed sheets supply has been identified at the TDI.

During the visit to Samegrelo and Zemo Svaneti regional TDI,[413] detainees lacked toiletries (toilet paper, toothpaste, and toothbrush) and bedsheets.

Detainees at the Telavi TDI[414] lacked bed sheets and toiletries.

There was no supply of single-use plates and cups in Tetritskaro TDI.[415]

Detainees[416] at Gori (Shida Kartli and Samtskhe-Javakheti regional) TDI lacked soap and towel.

It was established during the visit[417] to Zugdidi TDI, that there was no supply of bedsheets and personal toiletries at the TDI.

There is no isolated WC at any of the above-mentioned TDIs. This is especially a problem in cells for two and more persons, where detainees are not alone in cells and have to fulfill their natural needs in the presence of a stranger.

As has been discovered based on visits made in 2015, at MOIA temporary detention isolators TDIs the matters of organizing central heating, natural lighting and ventilation, complete isolation of WC, wash stands and toilet flushing devices remain outstanding.

Having dais instead of individual beds in cells is still problem in Rustavi, Tsalka, Gardabani and Akhalkalaki temporary detention isolators TDIs. It should also be mentioned here that in relation to the given issues, the Public Defender, in 2014 Report to the Parliament applied with relevant recommendations to the Minister of Internal Affairs, although, as conducted monitoring has demonstrated, the above-listed problems at temporary detention isolators TDI sremain unaddressed.

According to amendments to the Code of Administrative Offences of Georgia, administrative detention period was shortened from 90 days to 15 days, which undoubtedly has to be assessed as positive change, although it should also be mentioned here that current situation at temporary detention isolators TDIs is not adequate for accommodating administrative detainees.

Feeding of detainees

At temporary detention isolatorsAt TDIs, detainees are provided standard food, bread, tea, meat paste, canned beef and dry package soup. Notably, bread designed for detainees is not supplied to the majority of temporary detention isolators TDIs in regions. The mentioned temporary detention isolators TDIs do not even have contracts for bread supply. There are cases when temporary detention isolator TDI employees are urged to buy bread for detainees from their own pocket. Detainees are primarily relying on the food products sent to them via packages. It should be taken into account that an individual may not have relatives who would send food and bread via package. An administrative detainee may be held at a temporary detention isolator TDI for up to 15 days. For individuals detained for a long period, relevant feeding and living conditions are even the more important.

As has been mentioned above, some temporary detention isolators TDIs lacked the supply of single-use plates, thus, heated beef would be served using large sheets of paper. In some cases, for this very reason, detainees

413 August 2, 2015.
414 During the June 22, 2015 visit.
415 During June 24, 2015 visit.
416 During September 17, 2015 visit.
417 August 2, 2015.

refused to accept food served in such manner. It is also notable that in some cases they heat beef in a can container, since there is no special vessel dedicated for this at temporary detention isolators, TDIs. It has been revealed during the visit to Chkhorotsku TDI[418] that they were serving canned beef without heating, in cold condition, which is also inadmissible.

RECOMMENDATIONS

To the Ministry of Internal Affairs

- Install central heating in cells of all TDIs, also ensure natural lighting and ventilation of cells
- Fully isolate WCs at all TDIs
- create conditions for maintaining hygiene at all TDIs eliminate dais at all TDIs and ensure individual beds for all detainees
- ensure the supply of bed sheets and toiletries for detainees at all TDIs
- provide proper nutritious food to all TDIs, bread and articles necessary for cooking and serving the meals
- Ensure buttons for contacting duty officer in charge at all TDIs
- ensure 4m^2 per detainee at TDIs
- Install benches, allocate shelters from rain and sunshades; place garbage bins in courtyards of all TDIs

418 August 4, 2015.

CONDITIONS IN TEMPORARY ACCOMODATION CENTER

On December 17, 2015, Special Preventive Group of the Public Defender of Georgia monitored the Temporary Accommodation Center of the Migration Department of the Ministry of Internal Affairs. Documents obtained during the visit, as well as reports of the members of the monitoring group are stored at the Public Defender's Office. The report contains the main findings of the monitoring group and is compiled in such a way that the respondents cannot be identified due to the confidential nature of the interview. The monitoring group members were moving freely around the territory of the center and administration was not interfering to the monitoring process during the visit. Employees of the institution represented all available and necessary documents requested by the group.

It should be noted that during the visit, the Special Preventive Group has not received the information in respect of the use of physical violence or verbal abuse from the prison authorities toward the persons accommodated in the center. The temporary accommodation center accommodates 92 persons. During a visit 18 persons were in the institution. Among them were 16 men and 2 women, one of them was accommodated in - the women's department, and the another in the family unit.

International Human Rights Law emphasizes the importance of the persons' right to liberty and security and determines that person's arrest and imprisonment should be used as an exceptional rule, should be allowed only based on legislative provisions and appropriate justification. [419] Application of these principles is particularly important with regard to migrants, who do not represent persons accuse of committing a crime according to their status.

UN Special Rapporteur on the Human Rights of Migrants stresses that the relevant authorities are obliged to consider the alternatives of the detention (non-custodial measures) until usage of the detention measure. It is necessary to provide detailed instructions and appropriate training for judges and other public servants, such as police, border and immigration officers to ensure the systematic use of non-custodial measures. [420]

Migrant detention should be used only when alternative less restrictive detention measures are ineffective. It is important to assess whether the usage of detention is a last resort and it should not be the result of reflection.[421]

Punishment of torture and inhuman or degrading treatment includes obligation of not to expel or return the person to the country in which there is a reasonable doubt that she or he fears to be threats to be tortured or be subject of other ill-treatment. Accordingly, migrants should have free access to asylum procedures (or

419 International Covenant on Civil and Political Rights, Article 9(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 16(4).

420 Report of the Special Rapporteur on the human rights of migrants, report on right of the migrants, paragraph. 53, 2012, April 2, A/HRC/20/24, Accessible in English language at: <http://ap.ohchr.org/documents/dpage_e.aspx?m=97> [last visited 11.01.2016].

421 Visiting immigration detention centres, a guide for parliamentarians, pp. 28, Council of Europe, (2013). Accessible in English language at: <http://www.apt.ch/content/files_res/guide-for-parliamentarians-visiting-detention-centres-en.pdf> [Last visited 03.16.2016].

other procedures of the residence permit) that protects confidentiality and guarantees studding the human rights situation in other countries in an objective and independent manner. In addition, in cases of person's deportation from country of the origin or from the third country, the risk of ill-treatment should be individually assessed. [422]

DETENTION AND PLACEMENT IN THE TEMPORARY ACCOMMODATION CENTER

According to the rule of detention and placement of aliens in the temporary accommodation center, a person could undergo personal inspection along with his/her owned objects during reception in the center.[423] Examination room is functioning in the establishment, where detained alien is entering for the first time. In the mentioned room the objects are seizure and searched with detector. The detainees are asked about injuries and recording it in the relevant document. The process is attended by an interpreter. Confiscated items are sealed in the presence of the detained migrants. The inspection of a detained alien may be conducted only by a person of the same gender in presence of an individual of the same gender. It should be noted that the persons placed in the center has not complain about the inspection procedures.

The Public Defender's 2014 Annual Parliamentary Report issued recommendations calling for changes to the order №631 of the Minister of Internal Affairs of Georgia "on Approval of the Rule of Detention and Placement of Aliens in the Temporary Accommodation Center". The proposed changes was aiming to specify that a superficial examination of the person only mean inspection of the outer surface of the clothes by the hand, with special device or instrument. [424] It should be noted that mentioned provision has not been yet changed and accordingly, the recommendation has not been fulfilled.

Migrants detained should immediately be clearly explained about their rights and the procedures used toward them in a language they understand. It is important that detained migrants be provided with the document that explains the procedures used toward them and information about their rights. This document should be available in languages that are usually spoken by these individuals. If necessary, additional services of an interpreter shall be used. [425]

During the monitoring, the most of the persons accommodated at the center mentioned that at the moment of placement in the establishment they have been orally informed about their rights. However, at the center they are not provided with the special document, which consist the information about their rights in the relevant language.

LEGAL SAFEGUARDS FOR DETAINEES

Right to access to a lawyer must include the right to talk with him/her personally, as well as receiving the legal advice on the matters of place of residence, detention and deportation. This means that if the migrants do not have the means to hire a lawyer and pay for it, they should have access to the free legal assistance. [426]

422 Standards of the European Committee for the Prevention of Torture, paragraph 30, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

423 Order №631 of the Minister of Internal Affairs of Georgia "on Approval of the Rule of Detention and Placement of Aliens in the Temporary Accommodation Center", article 6.

424 The Public Defender's 2014 Annual Parliamentary Report, pp. 227.

425 Standards of the European Committee for the Prevention of Torture, paragraph 30, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

426 Standards of the European Committee for the Prevention of Torture, paragraph 82, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

According to Article 2, paragraph 4 of the decree N 525 of the Government of Georgia on Approval of the Procedure for Removing Aliens from Georgia in the process of the expulsion of aliens should be provided with the access to the legal advice. During the monitoring, the aliens have not complained about the accessibility to the legal advice. Nevertheless, some of them wanted to take full legal assistance regarding their expulsion process.

It should be noted that the obligation of providing legal advice defined by the law cannot be considered a full-fledged legal aid, as it is important that the person should provide with full legal assistance during the expulsion process, including drafting the legal documents, as well as representation in court or administrative body. It should be noted that the law on "Legal Aid" defines the persons benefiting from the legal aid, which does not include the alien that is in the process of expulsion. Accordingly, the relevant legislative changes are needed to implement abovementioned issue. It is noteworthy that the recommendation has been issued about the mentioned issue in the Ombudsman's parliamentary report in 2014. [427] This recommendation still has not been fulfilled.

The qualified nurse, who reports to the doctor, should examine each newly accommodated detainee immediately. Right to access to a doctor should include the right of migrants to undergo a medical examination by a doctor chosen by him/her, according to their will; however, the detainee may have to cover the costs of such medical examination. [428]

The medical examination occurs during the detention and placement of aliens in the temporary accommodation center. The medical staff consists of two doctors, which implements initial medical examination of the detained aliens according to their symptoms and chronic diseases. It should be noted that the persons placed in the center have not complain about health services.

The most important guarantee for protection from torture and ill-treatment of detained aliens is an indication of the information on detainees' physical condition in the arrest report. Particularly, the description is the person had or not any damage to the body at the moment of the detention, specifically where, how many, what kind, etc. It should be noted that there is no column on body damage in the alien's arrest report, according to the Public Defender this is the major shortcoming and should be improved.

CONDITIONS IN TEMPORARY DETENTION CENTERS

European Committee for the Prevention of Torture notes that the detention centers should not resemble a prison in any way. International guidelines stipulate that the detained migrants should be placed in specially designated centers, and detention conditions should be in consistent with the nature of their deprivation of liberty.[429]

Migrants should have fewer restrictions and a variety of activities provided in the agenda. For example, the detained migrants should have all the resources that promote reasonably maintenance their contact with the outside world (including telephone calls and frequent meetings) and the minimum limit of their freedom of movement in places of detention.[430]

Public Defender welcomes existing good infrastructure and sanitary conditions in the temporary detention facilities. At the same time, the examination of internal and external visual conditions, we can say that the

427 The Public Defender's Annual Parliamentary Report, accessible at: < http://www.ombudsman.ge/uploads/other/2/2439.pdf > [Last visited 17.01.2016].

428 Standards of the European Committee for the Prevention of Torture, paragraph 82, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

429 Standards of the European Committee for the Prevention of Torture, quotation from the torture prevention 7th report, pp 54.

430 Standards of the European Committee for the Prevention of Torture, paragraph 79, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

whole infrastructure is designed to provide enhanced safety, which creates feeling of the prison regime. In particular, the high walls and barbed wire surrounded area, with indoor and outdoor perimeter controlled by the security services. Area is under video surveillance, while there are the iron bars on doors in the entrance of section blocks at the center, which can be locked with a key.

Individuals placed in the center are limited of to move out of the wing, the palace and the dining room, without requesting to the personnel, which has a negative influences condition of the mentioned persons and creates the feeling of being resemble conditions as it is in the prison regime.

There are 3 Sections In the center: men's, women's and families'. On the day of visit there was one woman in the women's section. One family was placed in a section of the family (2 persons). The rest of persons were accommodated in the men's section. It should be noted that the departments of the rooms are provided with adequate lighting and ventilation. Toilets and bathrooms are in good condition, sanitary conditions are protected. There is the sitting room in the departments, which is equipped with the TV and books are available in different languages. It should be noted that the kitchen and dining facilities are in order in the institution, sanitary norms are protected. During the nutrition time persons accommodated at the center are brought to the dining room according to the sections, first of all family's and women's section, and then persons placed in the men's section. The mentioned procedure does not hinder individuals placed in the center to be under the same conditions in terms of providing with food.

We welcome the fact that the center provides a separate room for a disabled person, which is equipped with appropriate lighting and ventilation. The equipment in the room (with a moving wheeled table) gives the opportunity to consider the needs of persons with disabilities. Sanitary norms are protected sanitary facilities. However, there is no fixed railing on the toilet and shower the walls for the disabled persons.

The institution has a yard, which has the basketball / football playing grounds. There also is a covered space in the yard, where the detained persons can walk during the bad weather.

NUTRITION

Detained aliens complained about the food. Some of them are cited food ration among the problems, according to them it do not change. Some of them complained about usage large amount of bread in the food ratio and demanded its replacement with rice. The monitoring revealed that food preparation process does not take into account nutritional characteristics of different religions and vegetarians.

CONTACT WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture noted that according to the will of a relative of a detainee or a detainee himself-herself, the promotion of the right to information for third-party can be guaranteed, if the migrants will have the right to own a cell phone or even have access to it. [431]

International treaties also recognized the right to consular assistance of the detained migrants. However, as far as all of the migrants may be reluctant to communicate with their state, realization of this right depends on the person's choice. [432]

431 Standards of the European Committee for the Prevention of Torture, paragraph 82, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

432 ibid.

At the center of the migrants' detention an important aspect of contact with the family is to have the right to use the telephone and the computer. According to the agenda of the center, the foreigners are allowed to use the phone only on certain days (Monday, Wednesday, and Thursday). Each phone call lasts four minutes. [433] It should be noted that in some cases telephone contact is the only opportunity to have contact with relatives for the detained aliens. During the visit to the center, one of the major problems identified in practice for the foreigners was impossibility to use of the telephone. In particular, during the monitoring the persons detained in the center pointed out that, the administration did not provide the opportunity to use the phone despite the allocated time of the call.

An important aspect of the contact with the outside world is the free time defined in the agenda for unlimited usage the computers. There was a single computer in the center. Center staff explained that it was possible to use the Internet, but the majority of the foreigners interviewed were not informed about the possibility of use of the computers and the Internet.

DAILY SCHEDULE AND ACTIVITIES

Migrant detention conditions should be inconsistent with their deprivation of liberty, in particular, should have fewer restrictions and a variety of activities in the agenda. [434]

The European Committee for the Prevention of Torture stating that the current regime of the migrant centers should include the activities such as walking, resting in the room listening to the radio, read the newspaper and watch TV capability, as well as other activities necessary for the recreation (e.g. : board games, table tennis). The longer a person is placed in the center, the more diverse activities should be provided. [435]

The daily schedule of the persons placed in the center is regulated by the agenda of aliens accommodated in the temporary placement center. According to the mentioned daily schedule, the free time is provided from 10:00 - 13:00 and 14:00 - 17:00 for the individuals placed in the center. Free time includes walking on the fresh air, using the library or the computer.

It is important that to set fewer restrictions on freedom of movement in the area of the center for the inhabitants during the free time. They also should have the opportunity to freely choose the activities and should not limit in time during using a variety of activities prescribed in the agenda. In this regard, it is worth noting the complaint of the persons placed in the men's section, which emphasized that, the use of the football field only for an hour in a day.

Based on the above mentioned, it is important, to offer more diverse activities, additional entertainment and sports activities for the accommodated persons, to develop a short-term training modules, etc.

MONITORING OF THE JOINT OPERATION FOR THE RETURN OF MIGRANTS

Monitoring of the joint operation for the return of migrants was conducted second time by the employees of the Public Defender's Office of the Prevention and Monitoring Department on October 20, 2015.

433 On Approval of the Regulations of Temporary Detention Centers of the Migration Department of the Ministry of Internal Affairs of Georgia.

434 Standards of the European Committee for the Prevention of Torture, paragraph 79, Accessible in Georgian language at: <http://www.cpt.coe.int/lang/geo/geo-standards.pdf> [Last visited 16.01.2016].

435 ibid.

The mentioned monitoring was conducted in the framework of the readmission agreement between the European Union and Georgia.[436] The Public Defender's Office of the Prevention and Monitoring Department monitored the deportation of 35 citizens of Georgia from the European Union the countries. The persons deported from Germany (21 citizen), Switzerland (8 citizen) and Bulgaria (6 citizen). Among the deportees were 25 men, 9 women (1pregnant) and 1 minor.

The border police of German, Swiss and Bulgarian side transferred to the Georgian side (the convoy of the Ministry of Internal Affairs) on board of the aircraft (Dusseldorf and Sofia) the persons deported from the above-mentioned countries. Coordinated of the deportation was implemented by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union " Frontex ". Georgia was participating in the process with involvement of the Migration Department of the Ministry of Internal Affairs of Georgia and the police officers. The employees of the Public Defender's Department of Prevention and Monitoring within the monitoring left Tbilisi International Airport to the following destinations: Tbilisi - Dusseldorf - Sofia - Tbilisi.

It should be noted that during the flight monitoring, employees of the Prevention and Monitoring Department were moving freely and observing the plane and the situation on the outskirts of a ramp. The majority of the deportees boarding to the plane were carried out freely, without using any restraints. With the exception of five deported person who had plastic handcuffs and they were taken to the persons accompanying him on the plane, without using physical force.

It should be noted that after identified the absence of need of handcuffs after the boarding an airplane, the representatives of the Ministry of Internal Affairs removed the handcuffs for four deported persons. During the flight plastic handcuffs have not been removed from only one person, which was drug addict and was distinguished by aggressive acting. This person was mentioning that swallowed a razor with the conversation with the monitoring group members and demanded a thorough medical examination. By notification of the representatives of the Ministry of Internal Affairs the person was allowed on board on the basis of a verbal explanation of the sending country's medical personnel. It is important that in such cases, the migration service of Georgia should allow the person on board only after presenting the appropriate medical certificate. It should be noted that the process of placement and travel of the deportees was conducted without any incidents.

RECOMMENDATIONS

To the Parliament of Georgia :

- To change the law on "Legal Aid", according to which the alien to be expulsion will be given the right to legal assistance.

To the Government of Georgia:

- To change the wording " legal advice" with the term "legal aid" in Article 2, paragraph 4 of the decree N 525 of the Government of Georgia on "Approval of the Procedure for Removing Aliens from Georgia", which entitled the alien to the opportunity to take not only legal advice, but also a representation in court and administrative body

436 Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, accessible at: <https://matsne.gov.ge/ka/document/view/1250250> [Last visited 18.03.2016].

To the Ministry of Internal Affairs:

- To change the Order №631 of the Minister of Internal Affairs of Georgia "on Approval of the Rule of Detention and Placement of Aliens in the Temporary Accommodation Center", which concretizes that a superficial examination of the person only means inspection of the outer surface and objects by the detention eligible person
- To amend special column and indicate the information on body damage of the detainee in the alien's arrest report
- To take all the necessary measures, to give the special document to the detained person in the center on the information about their right in the certain language
- To take all necessary measures to bring the ability of the uninterrupted phone calls to the persons placed in the center
- To take all necessary measures, in order to provide with freedom of movement the individuals placed the centre, including the movement out of blocks, in the yard, in dining room and in the sitting room
- To take all necessary measures to install fixed railing on the toilet and shower the walls for the disabled persons
- To take all necessary measures for to equip the computer room with a sufficient number of computers and ensure the unhampered enjoyment of the computer / Internet for persons placed in the center
- To revised food standards and take into account the cultural and religious characteristics of the persons accommodated in the center
- To take all necessary steps to offer a variety of activities to the detainees of the center
- To take all necessary measures for the escort members of the deported person to accept the deported person on board only after presenting the sending state's health statement

REPORT ON THE MONITORING OF MENTAL HEALTH INSTITUTIONS

INTRODUCTION

The present report encompasses the results of monitoring of the mental health institutions of Georgia, carried out under the auspices and within the mandate of the National Preventive Mechanism, from 9 October 2015 to 6 November 2015, by the Special Prevention Group of the Public Defender of Georgia. The Special Prevention Group together with the Department of Protection of the Rights of Persons with Disabilities of the Public Defender carried out the monitoring of the following mental health institutions:

1. LLC „Unimedi Kakheti"– Tbilisi Referral Hospital;
2. LLC „N5 Clinical Hospital" (Tbilisi);
3. JSC „Acad. O. Ghudushauri National Medical Centre" (Tbilisi);
4. LLC „Rustavi Psychiatric health centre";
5. LLC „ Psychiatric health and drug-addiction prevention centre" (Tbilisi);
6. LLC „A. Kajaia Surami Psychiatric hospital";
7. LLC „Kutaisi Psychiatric Health Centre";
8. LLC „Acad. B. Naneishvili Psychiatric Health Centre " (Khoni, Kutiri);
9. LLC „Senaki Inter-regional Psycho-neurologic Dispensaire" ;
10. LLC „Clinical Psycho-neurologic hostpital of the Republic"(Khelvachauri);
11. LLC „Bediani Psychiatric Hospital";
12. LLC „Tbilisi Psychiatric Health Centre".

The monitoring group was created based on the multi-disciplinary method and consisted of members of the Special Prevention Group members and the employees of and the Department for Rights of Persons with Disabilities of Public Defender's Office. At the preparatory stage the monitoring group had developed the monitoring methodology[437] under the supervision of the invited local[438] and international[439] experts.

437 The said methodology was prepared with the assistance of the joint programme of European Union and Council of Europe "Human Rights in Prisons and Other Closed Institutions".

438 The development of methodology was supervised and the Report was prepared with participation of Nino Makhashvili, Head of Fund "Global Initiative on Psychiatry –Tbilisi" and member of the consulting council of the National Prevention Mechanism.

439 Dr. Clive Mew, expert of the European Committee on the Prevention of Torture (CPT) also participated in the development of the methodology.

The monitoring aimed to assess the current situation regarding ill-treatment in mental health institutions, patients' rights, and the adequacy of psychiatric care in terms of identifying issues and provision of the practical recommendations directed at their resolution.

The technical reports of the members of the monitoring group, together with other materials were used to prepare this report. Documents obtained during the visit, as well as accounts of the members of the monitoring group are stored at the Public Defender's Office. The report contains the main findings of the monitoring group and is compiled in a manner that, the respondent patients, due to the confidential nature of the interview, cannot be identified.

During the monitoring process, group members inspected the hospital's infrastructure, and interviewed patients therein in a confidential environment. Group members also interviewed the administration, medical staff, physicians, social workers. The documents and logs of relevant institutions were also inspected during the monitoring.

During the visit, the monitoring group members were freely moving around the area of mental health institutions and were not interfered by the administration and authorities therein. Mental health institution personnel duly presented the requested information and documents.

GENERAL OVERVIEW

In order to respond to the problems and challenges in a systematic way, the Parliament of Georgia, in December 2013 adopted the "National Concept on Mental Health'. This is the main mental health policy document of the country. The document states that "Georgia recognizes the importance of mental health'. Moreover, "Georgia undertakes to organize delivery of mental health services within the country in the manner that people with mental disorders receive treatment in the least restrictive environment, to the extent possible in their own home or close by, based on their basic needs; to ensure maximum protection of their rights and dignity and their full and effective participation in society on an equal basis with others'. To reach the goals identified in the National Concept, the Ministry of Labour, Health and Social Affairs has launched a national strategy and action plan for the years 2015-2020, which was approved in December 2014. This is definitely a step forward. Despite the declared government policy, the field of mental health is still in severe condition. The monitoring has identified a number of systemic problems.

First of all, the lack of funding for mental health must be pointed out, as the amount of funds allocated is directly related to the quality of psychiatric care. Since 2006, health care spending for mental health in Georgia follows the increasing trend, but the ratio of percentage of the costs of mental health in relation to the overall costs on public health has not changed significantly. A large portion of funds is spent on inpatient psychiatric services and this figure remains high for years. The state's priority is assigned to inpatient care funding, whilst funding for psychosocial rehabilitation stands stagnant and only a small part of available financial resources is allocated to the outpatient care. Along with the lack of funding, the methodology of funding the long-term and acute cases is also a problem. 840 GEL per case is allocated for acute cases and 450 GEL per month for cases of long-term treatment. The scarcity of funding ultimately leads to the problems with insufficiency of qualified personnel at mental health institutions, the absence of adequate therapeutic environment, quality of treatment, care, psycho-social rehabilitation, as well as length of stay at hospitals and the lack of community-based services.

Georgian mental healthcare system is severely understaffed and lacks human resources. The deficit of psychiatrists is twice higher than the average European index. A 2015 study on mental health professionals found that in total, number of psychiatric health care personnel in state-funded institutions is less than 40%

of the total of the employees. The training and professional development of the personnel of mental health institutionsis equally problematic. The lack of qualified staff, in turn, has a negative impact on the quality of psychiatric care, supervision of patients and safe and secure environment in the institutions. This situation increases undue physical restrictions and the risk of use of excessive force when applying such physical restrictions. In addition, extremely hard working conditions result in severe psychological state of the personnel and negative emotions can lead to ill-treatment of the patients.

The monitoring group has received numerous reports about physical and verbal abuse of patients during the visits at the mental health institutions. In addition, according to the monitoring group, patients are subjected to ill-treatment due to extremely bad conditions of stay, facts of physical and chemical restraints, the methods of physical restraints, administering injections in the presence of other patients, lack of access to timely and adequate treatment of somatic diseases, long-term hospitalization due to the neglect and involuntary medical intervention. The monitoring also revealed that there is a problem of due protection of safety in mental health institutions from the violence among the patients.

The monitoring revealed that the legislative requirements as regards the use of physical restraint are systematically breached. According to surveys of patients, it was found that they are often "tied down' for lengthy periods of time and left without adequate oversight. It was obvious that most of the institutions do not carry out the registration of cases of application of physical restrictions and there is no clear system - in most cases the record of the use of physical restraints is made in general logs and not in the patient's medical records or *vice versa*. The requisite 15-minute interval monitoring record of the dynamics of the patient's condition is found nowhere in any records. Sometimes the time is not set at start and end of application of physical restraint. The reasons for the use of physical restraint are formulated in a manner that is not particularly informative. In many cases, it could not be determined why the physical restraint was necessary and whether other alternative measures could be used. It should be noted that neither the Law of Georgia on Psychiatric Care nor the above mentioned instructions specify the maximum term for the use of physical restraint, which is dangerous, because it can lead to repetitive application of physical restrictions for 4 hours. The said normative acts also fail to establish the obligation that the information about the physical restraint be included both in the patient's medical record, as well as a special journal (special register). It is therefore important that the normative acts are brought to order, via including making changes to regulate those two issues.

It is noteworthy that neither the law nor the instructions mention chemical restraint as a measure of restriction. According to the assessment of Public Defender, the chemical restrictions are frequent and are often not documented properly. The institutions routinely apply physical restraint together with chemical restraint. There is no clear legal framework regulating chemical restraint and no justifications are provided for its application. This amounts to a violation of standards of international human rights law. The same guarantees of protection should be provided whenever chemical or mechanical means of restraint are used.

The interviews with patients and the inspection shows that the patients are placed in isolation rooms for more than a few days, and bearing in mind the conditions of the isolation rooms, such practice gives rise to concerns for the Public Defender. In the view of the Public Defender, the isolation rooms in the Republican Clinical Psycho-Neurological Hospital and Mental Health Center, as well as other mental health institutions are not specially and properly equipped and there is high risk of self-harm by patients in such rooms. In addition, the Public Defender considers that the bars on the door and the window are unacceptable, both in terms of safety, and the disruption of the therapeutic environment and its' association with the prison and the punishment cell. Hence, placement of a person in such isolation room may amount to degrading treatment.

The Public Defender is also concerned about the fact that despite the requirements that the usage of the physical fixation and specialized isolation together with the duration of use of these measures, shall be duly reasoned and documented in accordance with Article 16 of the Law of Georgia on Psychiatric Care and similar requirements established by abovementioned instructions, the isolation of the patient is not in reasoned, properly documented and is applied for a long time in violation of applicable laws.

The Public Defender deplores the fact that the physical restrictions are applied equally to formally voluntary and involuntary patients, which is also contrary to the CPT's position, according to which patients treated on a voluntary basis should not be subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) must be immediately initiated.

It is important that patients are provided with the material conditions which will facilitate their recovery and prosperity. It should be noted that some of the existing physical environment and sanitary conditions not only fail to contribute to a favorable therapeutic environment, but also create the situation, which in many cases amounts to inhuman and degrading treatment. In particular, old infrastructure, extremely bad sanitary and hygienic conditions, living space that does not correspond to the standards, poor sanitation and impossibility of privacy, as well as disruptions with regards to central heating and ventilation were between major problems at some institutions.

The monitoring group found that the informed consent is of the formal nature, without the explanation and provision of complete, objective, timely and comprehensive information. Obtaining of informed consent of the patient occurs to prevent the record of involuntary placement and the procedure is formally directed to place the signed consent form in the patient's medical record. Actually every inspected institution, the monitoring group members interviewed the patients formally undergoing voluntary treatment that no longer wanted to stay in the hospital and requested to be discharged.

In light of the spirit of the UN Convention on the Rights of Persons with Disabilities, the Public Defender considers that all measures must be taken that psychiatric care is predominantly applied on informed consent of duly informed patient and the practice of psychiatric care based on the person's involuntary hospitalization is gradually eliminated. The Ombudsman is concerned for vulnerable legal position of individuals who are hospitalised, actually involuntarily, based on formal informed consent. They are outside the control of the court, and thus unable to defend their rights and subjected to medical interventions and physical restriction against their will. Thus, the patients' right to personal liberty and security is violated, and being subject to conditions of arbitrary detention, in many cases, they are victims of inhuman and degrading treatment.

The Public Defender considers that in the short-term perspective, in order to avoid the vulnerable legal status, it is necessary that psychiatric institution immediately applies to the court if the patient undergoing voluntary treatment asks to be discharged from hospital, but the criteria for involuntary inpatient psychiatric care are met. The Public Defender also underlines that since the risk of hospitalization without any grounds and/or the risk of long- term hospitalization exists even under judicial control, until the final elimination of the notion of involuntary psychiatric care, it is important, in the short term perspective to create solid security guarantees in this regard.

The problems related to the involuntary inpatient care practices surfaced during the monitoring. In several instances, the petitions submitted to the court refer to only one criterion, while at least two criteria should be fulfilled. In addition, the reasoning for the motion is blanket and so are judicial orders. In addition, in many cases the past placement carries a negative impact on decision-making process. In particular, certain "presumption of illness" operates in such situations. Monitoring has shown that judges in most cases satisfy motions of mental health institutions. They tend to agree with the doctor's opinion and disregard those of the patients'. Doctor psychiatrists believe that they know patient's needs better and the judge, because of lack of medical education, shall not adopt a decision contrary to the doctor's opinion. In such circumstances, the judicial review process, especially when it refers to assessment of a 6-month extension of involuntary psychiatric care, shall lay the importance on an independent psychiatrist "s opinion, which is not envisaged in the law, representing the essential defect in due protection of the patient's rights.

Public Defender considers that patients should be furnished with the information on their treatment on a regular basis, in the language they understand, and this should be part of the therapeutic process. Mental Health

Institutionsand their medical personnel must respect the patient's refusal of treatment, and they should try to persuade the patient by providing detailed information of the treatment and its anticipated consequences. This will guarantee the respect to the personal autonomy of the patient.

According to the assessment of Public Defender, the mental health facilities have the patients, who can be called "open-ended" or "perpetual" patients. "Perpetual" patients "in this case are the patients who for months and years, stay on inpatient treatment without in fact ever leaving the hospital. They often do not require active treatment, but cannot leave the hospital because "they do not have a place to go to", or because the family avoids taking them home. It should be noted that managements of all of the institutions with the long-term care unit, declare that such "perpetual patients" represent 30-40% of their contingent. The reasons for delayed discharge of such open-ended patients is the lack of patient support systems, economic insecurity, absence of modern housing / long-term care facilities, lack of geographical access to outpatient psychiatric services and deficit of community-based psychiatric services, as well as shortage of the skills for independent life in patients. Longer hospital stays (in deteriorating environment) deprive patients of the skills for life and the limits their abilities to such depth that it leads to serious barriers associated with their reintegration in society and lengthens this process.

The public defender shares accepted norm, those patients whose mental state no longer requires hospitalization in a mental health institution, should not be forced to stay in hospitals due to the lack of adequate living and care conditions. Instead, their conditions should be properly evaluated and they should be deinstitutionalized. Public Defender calls upon the Government to take all necessary measures to gradually move from the large Mental Health Institutionsto the upgraded modern facilities, which requires community-based long-term care and the development of secure services.

Whilst examining standards for the treatment of people with mental disorders, the group found that in most institutions, managers, as well as staff, keep understanding of the treatment as reduced to pharmacological therapy only, which is not in compliance with the modern bio-psycho-social approach and evidence-based health care principles. Intensive pharmacotherapy method is expected to be associated in practice with emergency/high-risk departments, which aim to discharge the patient from the department as quickly as possible. According to the doctors of such emergency/high-risk cases departments, quick discharge of patients from such units is, unfortunately, not based on the medical evidence relating to severe accident management as it should be, but rather on the amount allocated for the treatment of such acute cases, as well as the period, which is optimal for spending the allocated funds. The Special Prevention Group also had the impression that the patient "Pharmacological activity" is actually the only way to control patients. Psychiatric cases are mostly managed without any complex therapeutic structure, and the involvement of the patients in meaningful activities is not ensured.

According to the Public Defender, the short period of management of the acute condition of the patient (10-14 days on average) is not enough to reach comparably solid improvements. Presumably, the improvements achieved as a result of intensive treatment start to deteriorate rapidly, as the remission stage is not achieved and the patient discharged from the hospital does not receive the due out-patient care at all, or due to lack of funding, treatment is limited much lower intensity. Out-patient services are fragmented and under-developed; therefore, none of these services are available to maintain the achieved improvements. Thus, there is a high risk of re-aggravation of the situation and repeated hospitalizations.

Monitoring shows that the purchase of high-quality medicines is prevented both by the scarcity of the resources allocated to the psychiatric care, as well as the legal framework governing public procurement. In particular, mental health institutions are buying medications through a simplified electronic tender. The winner of the tender will be the bidder, which offers the lowest price to the purchaser. Such a rule of purchase had a negative impact on the quality of the medication, because there are different producers offering the medicines with the same active substance, while the market price is directly related to the quality of the end product.

The monitoring demonstrated many shortcomings of the medical documentation. In some of the facilities, psychiatrists failed to regularly inspect the patients and thus the results their observation, are also irregularly reflected in the medical cards. Medical files did not contain data on individual treatment plan. Many entries are practically illegible because of the doctor's handwriting. In most of the institutions the records describing the condition of the patient, the so-called "cursus" are not regularly kept. These records are of mostly blanket nature.

Based on the monitoring results, the Ombudsman concluded that there are severe problems related to the treatment of somatic diseases in mental health institutions. Situation is slightly better in the psychiatric departments / divisions of general hospitals (e.g. Acad. N. Ghudushauri National Medical Center's Department of Psychiatry). Such psychiatric departments / divisions have access to the services available in the various departments of the general hospital. Diagnostics of somatic diseases and treatment of the problem is particularly problematic in limited liability companies established by the state, such as LLC "A. Kajaia mental hospital", LLC „Senaki Dispensaire", LLC "Republican Clinical Psycho-Neurological Hospital", LLC "Bediani psychiatric hospital", LLC "Acad. B. Naneishvili State Mental Health Center". The administrations of the institutions state that they are not duly equipped, neither financially, or on the side of infrastructure to undertake the proper evaluation and treatment of patients with somatic diseases.

High patient mortality is of the issue of particular concern for the Public Defender. As it turns out the study of medical records of patients who died, there were many cases calling for appropriate investigation and treatment of somatic health condition, but conduct of any such examination and treatment is not confirmed by medical documentation.

Despite the efforts of staff of mental health institutions, to help beneficiaries in social issues, psychosocial support, rehabilitation and reintegration services in hospitals are barely developed. In some cases, their existence is only a formality and can be considered as a day-activity.

The monitoring showed prolonged hospitalisation of the children, which according to the Public Defender is the result of the improper performance of the social workers' duties. No multidisciplinary work is conducted in N5 Clinical Hospital. Work towards resolution of psychological and behavioural problems is absent from the children's individual development plans, which sticks solely to the pharmacological treatment of mental disorders. Apart from this, there is no individual service plan for each beneficiary, the fulfilment of which would be monitored by the person responsible for the dynamics to ensure that the patient receives a complete package of services. The Public Defender believes that the therapeutic activities in the children's departments do not meet modern standards and guidelines for international intervention, intervention strategies need to be developed, appropriate competence of the personnel has to be improved etc. The Public Defender is concerned by the cases of placement of children in the hospital units for adults and urges the staff to prevent such practices in the future.

Patients subjected to forcible psychiatric care and those transferred from the penitentiary institutions to undergo involuntary treatment are subject to undifferentiated approach. Patients have limited contact with each other. This includes only pharmacotherapy. Patients are not involved in the rehabilitation and improvement of programs, sports and other activities. The monitoring group was left with the impression that no psycho-social rehabilitation work is being practiced with the patients, and the psychologist help is scarce. Days are not anyhow planned or structured by meaningful activities and they generally run in the drab, mundane manner. Patients often engage in conflicts.

There is no individual approach towards patients in the Forensic Psychiatry Department of the National Center for Mental Health. Their individual needs are not identified and the necessary team is not created to perform the relevant multidisciplinary work. Patients are not involved in the treatment process. Patients are managed through intimidation and aggression between injections. The risk assessment procedure is not in line with

international standards. It is unclear what the evidence of credibility of the instrument is, or how the degree of risk is integrated into the treatment scheme, the treatments are held in uniform, broad blanket structure.

Finally, it should be noted in particular that there is a problem of proper monitoring of psychiatric care in mental health institutions supervised by state and of protection of patients' rights. In this regard, the activities of the National Preventive Mechanism are crucial, but the Public Defender considers that bearing in mind the specific nature of the mandate of the National Preventive Mechanism, it is important to ensure effective operation of other state control mechanisms at the same time.

Mental health institutions formally have the internal complaint and feedback procedure, complaints boxes are installed, but the patients do not actually use this procedure and complaint boxes. Patients do not know their rights, and they do not know to whom to appeal. Public Defender identified the following three important problems which demand resolution: a) inform patients of their rights in a language understandable for them; b) introduction of the appeals procedure which is simple and effective taking into account the special needs of patients; c) introduction of proactive monitoring programme for both in-hospital and outside hospital (under the control of the state sector) patients. NPM also believes that in determination of the deadlines and other procedural issues of the appeals procedure the special needs of patients in mental health institutionsand the practical difficulties that may be encountered by patients with the realization of the right of appeal shall be taken into account.

MENTAL HEALTH IN GEORGIA – REFORMS AND CHALLENGES

Importance of Mental Health

Mental health is an integral part of individual and public health. There is no health without mental health. Therefore, the public mental health care is crucial to improve the mental health of the population.[440]

In recent years a significant intensification of the mental health issues was notable on the global and European policy agenda.[441] This increased attention and awareness on the side of the World Health Organization, international research institutions, governments and professional societies is truly justified.

Approximately 450 million people worldwide are suffering from mental health disorders. At any given moment, about 10% of adults suffer from this mental disorder; 25% will have it developed at some stage of life.[442] Mental health problems are common in every country, equally within women and men, at all stages of life, within rich or poor, in rural as well as urban conditions.

Mental disorders are associated with more than 90% of the million suicides committed annually. In fact, this figure is much higher, due to the fact that in many cases the cause of death is not reported openly.[443]

Mental health problems are responsible of about 20% of total burden of disabilities caused by the illness, but the so-called "treatment gap" between supply and the real needs of the service remains quite broad.[444]

Persons with mental disorders are vulnerable, often marginalized and excluded. The World Health Organization in its report "Mental health and development," notes that

440 Saraceno B, Freeman M. and Funk, M. (2011) Public Mental Health. Oxford University Press.
441 Knapp, M., McDaid, D., Mossialos, E. and Thornicroft, G. (2007) Mental Health Policy and Practice Across Europe. WHO on behalf of *European Observatory on Health Systems and Policies Series*. Open University Press.
442 World Health Report 2001. Mental Health: New Understanding, New Hope. Geneva, World Health Organization, 2001.
443 Suicide prevention (SUPRE). Geneva, World Health Organization, 2007.
444 Kohn R., Saxena S., Levav, I. and Saraceno, B. The treatment gap in mental health care. *Bull. World Health Org.* 2004; 82(11):858-866.

"Mental and psychosocial disorders have varied and far-reaching social and economic impact, lead to homelessness, poor educational and medical solutions and high levels of unemployment, which ultimately culminates in a higher rate of poverty".[445]

In developing countries, considerable share of burden of taking care of the relatives with mental health problems in economic and social aspects lies on families, since there are no comprehensive mental health services in the state-funded network.[446] In XXI century, the stigma is still strong and responsible for many obstacles and resistances on the path of reforms.[447]

Either way, the lack of political support, inadequate management, overwhelming burden on health services and from time to time - resistance from policy makers and health care workers, slowed down consistent, sustainable development of mental health systems in low and middle income countries.

Psychiatric services were characterized by a high level of institutionalization of the former Soviet Union, with a pronounced emphasis on biological treatment. These characteristics are maintained in the post-Soviet states – introduction of modern, customer-focused and community-based services encounter major obstacles.[448] In many cases, psychiatric reform programs stopped and were even reversed.[449] It is against this background that a critical phase of the mental health reform program started a few years ago in Georgia.[450]

MENTAL HEALTH IN GEORGIA: BRIEF OVERVIEW

A drastic reduction in the number of psychiatric beds took place in the years following the independence of the country. It was a general trend in the post-Soviet countries. Since 1995, the psychiatric beds decreased by almost 5 times, which was caused by the lack of financing of health care services.[451] Unfortunately, like in other countries, the decrease of the hospital beds was not compensated by the necessary outpatient and community-based services.

Currently, inpatient mental health services are delivered through several specialised institutions and departments within general hospitals. Noteworthy, that according to the position of the World Health Organisation, in-patient treatment of mental disorders should preferably take place in general hospitals, however, a large number of countries still rely on mental hospitals primarily.[452] The number of beds for psychiatric patients in general hospitals of Georgia amounted to 2.31 on 100 000 citizens in 2014, while in a mental hospital - 32,32 per 100 000 citizens.[453] Psychiatric hospitals beds per 100 000 inhabitants in Georgia exceeds the world average rate (17.5 beds per 100 000 inhabitants)[454], However, this figure is almost 3 times less than, for example, in Latvia (105,09). It is also noteworthy that in Georgia per 100 000 inhabitants, the number of psychiatric beds in general hospitals is twenty times less, than for example, Estonia, (47,05), which moved to rendering inpatient care in general hospitals model and has only 7.71 beds per 100 000 population in mental health hospitals.

445 World Health Organization (2010). Mental health and development: Targeting people with mental health conditions as a vulnerable group. WHO Press, Geneva.

446 Hudson, C.G. (2005). Socioeconomic Status and Mental Illness: Tests of the Social Causation and Selection Hypotheses. American Journal of Orthopsychiatry, 75, 3-18.

447 Petersen I, Bhana A, Flisher A, Swartz L, & Richter L (Eds). (2010). Promoting mental health in scarce resource environments: emerging evidence and practice. Human Sciences Research Council Press, Cape Town.

448 Tomov, T., Puras, D., Keukens, R. and Van Voren, R.: Mental health policy in former Eastern Bloc countries; in: Knapp, M., et.al.: Mental health policy and practice across Europe, McGraw/Hill, New York, 2007.

449 *Mental Health Reforms (MHR*). 1-2011. Special issue on Lithuania. Global Initiative on Psychiatry.

450 Makhashvili, Nino, and van Voren, Robert. "Balancing Community and Hospital Care: A Case Study of Reforming Mental Health Services in Georgia". PLoS Med 10(1): e1001366. doi:10.1371/journal.pmed.1001366.

451 WHO, European health for all database (HFA-DB). Available at: http://data.euro.who.int/hfadb/ [last visited on 24 February 2016]

452 Available at: http://www.who.int/gho/mental_health/care_delivery/beds_hospitals/en/ [last accessed 28.03.2016].

453 Available at: http://apps.who.int/gho/data/node.main.MHBEDS?lang=en [last accessed 28.03.2016].

454 Available at: http://www.who.int/gho/mental_health/care_delivery/beds_hospitals/en/ [last accessed 28.03.2016].

Apart from mental health hospitals and in-patient departments of general hospitals there are 18 psychiatric outpatient clinics (called dispensaries) in the country. However, mental health services are unevenly distributed in the country: in the poor remote areas, access to services and the quality is lower. About half (48%) of the Licensed psychiatrists are registered in the capital, Tbilisi.[455]

According to WHO's Mental Health Atlas (2011), neuropsychiatric disorders amount about to 22.8% of the global burden of disease. In 2006, global health spending amounted to 10.14% of GDP, while the government's health expenditure per capita (PPP International, in US dollars), 73 dollars.

In 2006-2011 years, the costs of mental health care in Georgia was characterized by an increasing trend, but the volume percentage of the costs of mental health in relation overall costs public health have not changed significantly, and remains at approximately 2.5%.[456] Georgia's per capita mental healthcare costs reach 2.8%, which is significantly less than the countries of similar level of development(Curatio, 2014).

Mental health services are mainly financed from the state budget. Corporate and private insurance share in funding mental health services in Georgia, as well as most countries around the world, is very limited.[457]

Acute and chronic inpatient care funding have been changed and re-evaluated in recent past:

- acute inpatient services are paid for by the state, according to the actual costs, but no more than a determined value of GEL 840 per case;
- Long-term hospital services are paid for by the state via monthly vouchers, the value of which is estimated at 450 GEL.

In 1995, Georgia has developed a **Mental Health Program** (as a part of the new general health care program), under which a psychiatric patients registered in the Registry, receive free services in hospitals and outpatient clinics.[458]

Thus, mental health services are delivered with the annual State Mental Health Program, which is administered by the Ministry of Labour, Health and Social Affairs; The program is reviewed annually. The program's budget has been more than doubled from 2006 until 2011, to reach 12 million and continues to grow (15 645 400 GEL in 2015).

Table 1 describes the mental health care services in the state budget and changes from 2006 to 2015 period. The table shows a gradual increase in funding and diversification of services package offered in respect to persons with mental health problems. However, the table also shows that the priority is given to the financing of inpatient care, the psychosocial rehabilitation is in complete stagnation and only a small part of the funds are allocated to outpatient care.

Table 1. Mental Healthcare state budget for the years of 2006-2015 (in GEL)

Components	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Outpatient Care	1200000	2000000	2397442	2597232	2597232	2734000	2855000	2866000	2865300	2865300
Psycho-social rehabilitation		50 000	70100	70100	70100	47000	70000	70000	65700	70100
Children mental health				100688	151032	75000	151000	151000	151000	151000
Crisis intervention						14000	520500	662485	662300	662300
Community based mobile team service										96800

455 Makhashvili, van Voren, 2013.

456 International Fund Curacio 2014, Mental Healthcare in Georgia: Barriers and Ways of Overcoming them, Tbilisi

457 The private sector service shall be noted - for example; Inpatient clinic voluntary treatment of persons with mental disorders - "Mentalvita" - does not fall under the state regulation and supervision.

458 Sharashidze, M., Naneishvili, G., Silagadze, T., Begiashvili, A. and Beria, Z. (2004). Georgia mental health country profile, *International Review of Psychiatry*, 16(1–2), 107–116.

Inpatient care for adults and children	3750000	4900000	5882558	6933780	6933780	7457000 99000	9244400	9280800	10420300	10778700
Urgent inpatient care				45000	45000	45000	97600	3190	0	0
Alcohol related mental inpatient care services				48000	144000	144000	164200	225000	445900	481200
Provision of accommodation for mental patients								466500	536600	540000
total	4950000	6950000	8350100	9794800	9941144	10615500	13102700	13725000	15137100	15645400

Mental health program for children and adults needing psychiatric inpatient services includes the following components:

1. Acute inpatient care;
2. Long-term inpatient care;
3. Treatment and additional services (safety and security) of patients, who, under Article 191 of the Criminal Procedure Code, are subject to forced psychiatric treatment by hospitalization according to a court decision.

Additional services include: meals, personal care items, provision of emergency surgical and dental treatment and rehabilitation services.

Another service funded by the programme is notable – provision of accommodation to persons with mental disorders, including:

1. Service for the people with disabilities over the age of 18 with inherent and acquired mental disease resulting in dementia;
2. Service for the people under the program for persons with mental disorders in institutional patronage as of December 31, 2014.

Georgia spends a large part of the funds in-patient psychiatric services (about 70%) and this figure remains high for years. Developed European countries spend about 9-31% of inpatient psychiatric services and much more on out-patient services.

Typically, acute inpatient mental healthcare services require a major part of the budget allocated[459]. Therefore, reduction in the average length of staying in the hospital can be a significant goal of the system, especially if the resources freed up in this way can be spent on other components of the service.[460] That is the problem NPM monitoring team faced in the acute care units, which will be discussed in the results of the monitoring.

From the perspective of universal financing of the health care,[461] the dominance of the mental health hospitals limits general availability of mental health services.

In order to implement Comprehensive chain of healthcare the country needs development of out-hospital services - yet the program allocates only 28% of the funds to these services; community based services consume only 4.5% of allocated finances(mental health reform in the National Strategy and Action Plan 2015-2020, the Government Decree N762, December 31, 2014).

The mental health care system of the country suffers severe deficiency in human resources. Deficiency of psychiatrists compared to the European average index is twice higher and in absolute numbers it equals to deficit of at least 250 psychiatrists (Curatio, 2014). This applies to other specialists, as shown in the following

459 Knapp M, Chisholm D, Astin J, Lelliott P, Audini B. The cost consequences of changing the hospital-community balance: the mental health residential care study. Psychol Med 1997 May; 27(3): 681-92.

460 Sederer LI. Inpatient psychiatry: why do we need it? Epidemiol Psychiatr Soc 2010 October;19(4):291-5.; Lelliott P, Bleksley S. Improving the quality of acute inpatient care. Epidemiol Psychiatr Soc 2010 October; 19(4):287-90.

461 The world health report: health systems financing: the path to universal coverage. Geneva, WHO, 2010.

Table 2. Mental health personnel per 100 000 inhabitants (2011)[462]

	Georgia	Average European Index
Psychologist	12.8	22.2
Nurse	7.68	45.3
Social worker	2.9	60
Psychiatrist	6.87	11

A research on the experts in the psychiatric field conducted in 2015[463] made it clear that, in the state-funded institutions, the mental health care personnel is less than 40% of the total number of employees. The data shows that in total, in 13 of 19 specialized (mental health) service providers mental health personnel are less than the non-specialized staff (administrative and support staff together). However, the general trend towards three types of personnel groups studied are as follows: the most numerous are the support staff (watchman, a cook, a maid, doctor / nurse assistant), then are the mental health staff, and finally - the administrative staff.

Mental health staff are employed full-time as well as part-time and hourly / consultancy basis (see. Figure 2) in service provider organizations. Overall, the most numerous of the mental health staff is group of nurses (290), while the smallest - social workers (26). In addition, all organizations interviewed had a psychiatrist, only 1 did not have a nurse, 2 did not have a psychologist, 5 did not have other doctors and 10 did not have a social worker.

As for the tax-free monthly payment for mental health staff, psychiatrists are paid significantly (by more than 50%) higher than the rest of the groups in terms of other doctors, nurses, psychologists and social workers, the median remuneration of which is not significantly different from each other. Among them, the social worker is the highest (360 GEL), while the lowest, is the compensation of the "other doctor"(325 GEL).

Exhibit 2. Mental Health Personnel

In conclusion, this report suggests the following: in terms of numbers, the first three regular employment positions are shared by the nurses, psychiatrists and other doctors, and the last two by psychologists and social workers. However, the latter is significantly lower than the former. Workload of the specialist groups vary from one specialist to 31 beneficiaries (other doctor) to 53 beneficiaries per specialist (social worker). In general, the lack of improvement of qualification is notable.

Georgia still has to undergo a fundamental transformation from the old Soviet system of mental health care structure towards humane direction in which basic human rights standards are satisfied (GIF-Tbilisi (2007).

462 Adapted from International Fund Curatio. 2014. *Psychiatric Health Care in Georgia: Barriers and the ways to resolve them.Policy Document*. Tbilisi.
463 Association of Social Workers of Georgia (2015). *The professional of Mental Health: local tendencies, Report.Tbilisi.*

Situation in the Mental Health Sector, Report. Tbilisi). Georgia recently conducted studies showing the extent of the problem and the connection among mental health, social exclusion and poverty (GIP-Tbilisi, 2009).

The violations of the rights of hospital inpatients are described in the Public Defender's reports,[464] as well as in the reports of the European Committee for the Prevention of Torture (CPT), which are based on regular monitoring of the closed psychiatric institutions.

The evidence of human rights violations submitted to policy makers throughout years is a strong incentive to start reform process of the mental health care.

LEGISLATIVE FRAMEWORK

Adoption of the 2007 Law on Psychiatric Care was generally a progressive move which, among other innovations, determined the necessity of a court decision in case of involuntary hospitalization and the need of legal grounds for application of physical restraints[465]. The by-laws determined the practical procedures, such as, for example, physical restraint procedures. In 2009, Georgian experts have analyzed the implementation of the law,[466] based on which several further changes were made to the law. Significant changes were also made in 2014, the most noteworthy of which is the introduction of compulsory psychiatric treatment related provisions. In addition, the Constitutional Court decision on the legal capacity had particular beneficial effect on improvement of the legal framework.[467]

PROGRESS OF THE REFORM

Since 2004, the state budget allocated to psychiatric healthcare more than doubled and increased funding for mental health allowed the Ministry of Labour, Health and Social Affairs to gradually expand available mental health services. These included improving the quality of treatment, rehabilitation of some of the leading psychiatric institutions, improvement of living conditions of inpatients on compulsory treatment and initiation of psychosocial rehabilitation program.

In 2008, a new model of funding for hospital services (global budget) has led to the gradual reduction of the number of inpatients. However, these reforms were not implemented sufficiently.

In 2011, the most important achievement of the newly initiated reform was the beginning of the process of deinstitutionalization. One important step is closing the Asatiani mental hospital, which was designed for 250 beds. The so-called "restructuring" of beds took place. Acute patients (in the form of a 30-bed unit) were redirected to the new mental health units in general hospitals (currently 3 multi-functional hospitals are operating for adults); The new, 10-bed pediatric psychiatric hospital opened in general hospital N5 in Tbilisi; established a new independent Mental Health Center (Kavtaradze Street) was also established in the capital with services, such as acute care unit, long-term care unit and outpatient services, which also included mobile teams for crisis intervention center (the location if the crisis service has changed in 2015). In addition, Rustavi Mental Health Centre for long-term care (40 beds) was opened; Crisis teams started to operate in some other cities, e.g. Batumi, Rustavi and Kutaisi.

464 Reports, available at:: http://www.ombudsman.ge/uploads/other/0/100.pdf and: http://www.ombudsman.ge/uploads/other/1/1726.pdf ,additionally: http://www.ombudsman.ge/uploads/other/2/2253.pdf [last accessed:20.03.2016].

465 The "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs, dated 20 March 2007

466 GIF-Tbilisi(2009). *Analytical Review of the Law of Georgia on Psychiatric Care*. Tbilisi.

467 Citizens of Georgia – Irakli Kemoklidze and David Kharadze v Parliament of Georgia, Judgement of the Constituional Court of Georgia 2/4/532,533, 8 October 2014. Available at:: https://matsne.gov.ge/ka/document/view/2549051# [last accessed:20.03.2016].

Since 2011, a new funding model was introduced for acute and long-term patients (State Mental Health Program in 2011, the Ministry of Labour, Health and Social Affairs).

These changes immediately reflected in the sharp decline in the average length of stay for patients[468], an average of 2-3 months of delay period was reduced to an average of 14-21 days of delay.[469] On the background of these changes, experts, service providers and beneficiaries note the lack of beds for long-term patients, lack of community services and the inadequacy of the funding.

In 2011, with the support of the United Nations Development Program (UNDP) the modules for basic training for mental health staff were created. European experts conducted training sessions for local professionals. The first phase of training began in summer of 2011. Selected mental health professionals were invited to training courses, which were conducted for free. According to the results of the tests, 67% of trained persons acquired the necessary knowledge and skills. By the end of 2012 than 300 mental health care workers were trained; Basic training course included 160 hours, the Advanced - 240 hours (GIP-Tbilisi, Annual Report, 2012). The expert trainers in the process of training conducted irregular supervision / overseeing of the personnel to ensure the correct application of acquired skills in everyday practice. Unfortunately, the program was suspended due to lack of further funding and the regional mental health staff could not take part in the training activities.

In October 2011, a multidisciplinary working group reviewed the Georgian national clinical guidelines for schizophrenia and depression treatment. These revised guidelines were provided to the Ministry of Labour, Health and Social Affairs and the Ministry for approval in 2013 and were subsequently approved. The group of experts has developed guidelines for depression in children and adolescents as well.

In order to implement the desired changes, the Ministry of Labour, Health and Social Affairs, created the Consultative Council of the reform (consisting mainly of psychiatrists). In February 2015, the Ministry renewed the membership in the Council, and appointed a mental health service beneficiary's family member to the Council (the order on amendment of the decree of creation of a consultative body - Mental Health Policy Council, 01 / 53O; of February 25 2015). It should be noted that high-ranking officials of the Ministry take an active part in discussions and consultations.

The structural reform of the National System of Mental Health requires long-term dedication. One of the major challenges of the reform is integration of the fragmented programs and services, filling in the existing gaps in treatment and ensuring effective and continuous support through the development of essential services.

Overcoming this challenge is hampered by two main barriers: deficiency of psychosocial rehabilitation services and the insufficient strenght of the movement of service users - persons with mental disorders. Although the voice of persons with mental disorders is growing and increasingly taken into account in the decision-making process, but beneficiary support programs are still scarce in Georgia.

A very important challenge for mental health improvement process in Georgia, as well as many other countries in the region, is the resistance from the service providers themselves. In general, the **psychiatrists might cause significant obstacles to the filling of the gaps within the** treatment system.[470] This obstacle is widespread in the former Soviet Union, where the general characteristic of the anxiety about the future and **reform is** often automatically perceived as a threat to their own survival.

468 For acute patients, the average length of time encompasses time from hospitalization to discharge, or transfer to the long-term care unit.

469 International Fund Curatio. 2014. *Psychiatric Health Care in Georgia: Barriers and the ways to resolve them.Policy Document*. Tbilisi.

470 Saraceno B, van Ommeren M, Batniji R, Cohen A, Gureje O, Mahoney J, Sridhar D, Underhill C (2007). Barriers to improvement of mental health services in low-income and middle-income countries. Lancet 370, 1164–1174.

STATE CONCEPT, STRATEGY AND ACTION PLAN FOR 2015-2020

In order to respond to the problems and challenges in a systematic way, the Parliament of Georgia, in December 2013 adopted the "National Concept on Mental Health".[471] This is the main mental health policy document of the country. The document provides that "Georgia recognizes the importance of mental health". Moreover, "Georgia undertakes to organize delivery of mental health services within the country in the manner that people with mental disorders receive treatment in the least restrictive environment, to the extent possible in their own home or close by, based on their basic needs; to ensure maximum protection of their rights and dignity and their full and effective participation in society on an equal basis with others". This is an important provision, which defines the strategic priorities of the reform and emphasizes the affordability and access to services, which should be ensured through the principles of balanced care.

The State Concept defines directions of the balanced care: "balanced development model includes in-patient care, community-based services and strikes a balance between drug treatment and non-medicine treatement; personal, family and community interests; as well as prevention, treatment and rehabilitation methods".

It also declared that the effective care must be comprehensive, client-focused and continuous, " supply of a continuous chain of care and integration of mental health in different forms and methods of co-ordinated, consistent and continuous system, which focuses on maximum sustainable results, integration of the service recipients / patients in the health care and social services, as well as their involvement and participation in the community, instead of isolation. "

To reach the goals identified in the Concept the Ministry of Labour, Health and Social Affairs has launched a national strategy and action plan for the years 2015-2020, which was approved in December 2014[472].

This document is based on the action plan of the World Health Organization for the years 2013-2020, which was approved by the World Health Assembly on the 66th session.[473]

The WHO action plan has the following main objectives:

- to strengthen effective leadership and governance for mental health.
- to provide comprehensive, integrated and responsive mental health and social care services in community-based settings.
- to implement strategies for promotion and prevention in mental health.
- to strengthen information systems, evidence and research for mental health.

The introductory part of Georgian national strategy and action plan describes the hospital sector:

The end of 80's marked significant trend of the decrease of the psychiatric beds in Georgia, as well as in former Soviet republics. The World Health Organization data provides that in 2011 the number of beds in specialized mental health hospitals in high-income countries was 3.09 / 10000, and in Georgia - 2.86 / 10000. General hospital beds built in Georgia is 0.22 / 10,000 population (high-income countries - 1.36 / 10,000 inhabitants). Residential housing community of high-income countries 1,015 / 10,000, while in Georgia, there is no such service. Day care centers and other community service beds / seats, being most in EU countries amounts approximately to ≈ 4.3 / 10000, whilst in Georgia, this figure is not more than 0.1 / 10,000.

471 The Ordinance of the parliament of Georgia dated 11 December 2013 on the "National Concept of the Psychiatric Health Care", Available at: https://matsne.gov.ge/ka/document/view/2157098 [last accessed:19.03.2016].

472 The Ordinance N 762 of the Government of Georgia on "Establishment of the Strategic Document of Development of Psyschiatric Health and Action Plan 20a5-2020" dated 31 december 2014, Available at:: https://matsne.gov.ge/ka/document/view/2667876 [last accessed:19.03.2016].

473 WHO Mental Health Action Plan 2013-2020 (2013). WHO Geneva, Available at: http://apps.who.int/ iris/ bitstream/10665/89966/1/9789241506021_eng.pdf [last accessed:20.03.2016].

The Action Plan also notes that according to the Public Defender's report[474] and the Council of Europe study of 2013 [475] violations of human rights still occur in the specialized mental health hospitals in Georgia; These institutions unfortunately, often do not meet quality standards of treatment and care (p.3).

Strategic directions of the state action plan are the following:

- State management in the mental health care sphere;
- Development of human resources;
- Provision of psychiatric health care services;
- Mental health in the penitentiary system;
- Raising the awareness of the public.

Each direction is followed by a list of tasks and activities and performance dates. According to the action plan, by the end of 2015 the state should have offered to its citizens:

- operation of the special unit of coordination and supervision of the state policy of the Mental Health (process and results)
- Identification of Human resources / personnel needed
- to launch preparation of the protocols and guidelines based on the latest scientific evidence and best practices(including primary health care and penitentiary system)
- Evaluation and assessment of needs with regards to the mental health servies of inmates within penitentiary system
- integrated, unified program of mental health care in the penitentiary system
- community mobilization (mental health education and awareness) and long-term strategies
- launch of suicide prevention programs
- launch of the strengthening organizations for the persons with mental disorders and their family members
- raising the mass media awareness on key issues of mental health policy.

Unfortunately the Ministry has not presented the report on the fullfillment of these obligations by the end of 2015.

REFORM OF THE SYSTEM OF LEGAL CAPACITY

Legal Incapacity reform is an important step, encompassing changes in the legislation related to legal incapacity, as regards persons with mental disabilities. The reform was carried out in 4 main areas:

- Review of the legal capacity institute and bringing it in line with the decision of the Constitutional Court and the provisions of the Convention on the Rights of persons with Disabilities. With respect to persons who have deemed legally incapable on the grounds of "mental retardation' or "mental disorder', the

474 Public Defender of Georgia, National Mechanism of Prevention (2012) Report of the Situation int he Psychiatric facilities of Georgia, available at: http://www.ombudsman.ge/uploads/other/0/100.pdf [last accessed:20.03.2016].

475 Council of Europe(2013) Assessment of Mental health care services

introduction of an individual assessment was proposed, which will not only be based on the medical model, but will also take into account social evaluation system.

- Introduction of special provisions for court proceedings on the cases related to legal capacity in order to protect procedural rights of persons with disabilities.
- Strengthening the role, duties and responsibilities of the Social Guardianship and Care Agency of the Ministry of Labour, Health and Social Affairs, as the representative of the state.
- For implementation of the individual assessment reflecting the social model, Introduction of the new individual assessment system within LEPL L.Samkharauli National Forensics Bureau, according to which the assessment / examination report is issued by a multidisciplinary team.

As a result of these amendments the system of a complete neglect was changed towards the system of support and, in exceptional cases, replacement mechanisms. Such large-scale legislative changes were due to the decision by the Constitutional Court on 8 October 2014, in which existing regulations limiting the capacity of persons with disabilities caused by mental disorders was declared unconstitutional.[476]

ILL-TREATMENT

No one shall be subject to torture,[477] or to inhuman or degrading treatment or punishment.[478] According to Article 10 of International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. According to the United Nations Human Rights Council, the protection of inherent dignity represents an international norm which is non-derogable.[479]

According to Article 15 of the United Nations Convention on the Rights of the Persons with disabilities, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. The State Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

During the visits at the mental health institutions the monitoring group has received numerous notices regarding physical violence and verbal abuse of patient. In addition, the Monitoring Group considers that the extremely bad conditions of patients in some mental health institution can also amount to ill-treatment, which in some cases is topped by the facts of application of physical and chemical restraints, the method of application of the restraints in the presence of other patients, inaccessibility to the timely and adequate treatment of the somatic

476 Irakli Kemoklidze and David Kharadze v. the Parliament of Georgia, the decision of the 2nd Collegium of the Georgian Constitutional Court, №2/4/532,533, 8 October 2014, Available at: https://matsne.gov.ge/ka/document/view/2549051# [last visited 19.03.2016].

477 According to Article 1 of the United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

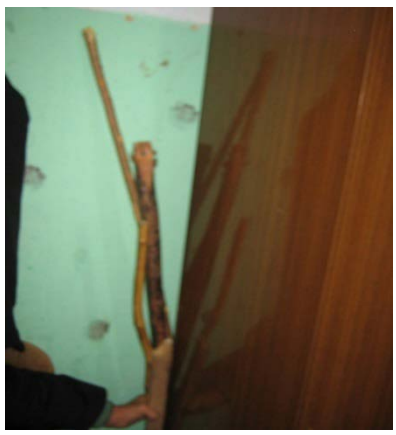
478 The European Convention on Human Rights, Article 3.

479 UN Human Rights Committee General Comment N 29, CCPR/C/21/Rev.1/Add.11 (2001), 31 August 2001 para. 13(a), available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en> [last accessed:29.03.2016].

diseases, negligence of the long hospitalization and involuntary medical intervention.[480]

In **A. Kajaia of Surami Mental Health Hospital,** the Special Prevention Group received information about the cases of violence against patients. In particular, 8 patients indicated that they had been subject to the physical abuse by nurse assistants (orderlies) side. In addition, most of the patients said that physical violence also occurs among patients.[481]

Patients explain that the violence from the orderlies is expressed by beating with the hands and sticks. It is remarkable that three patients had physical injuries, such as bruises on the upper limbs and eye socket.[482] Importantly, these injuries were not mentioned in the patients' medical records. Also noteworthy is the fact that members of the Special Prevention Group discovered the sticks referred by patients in the nurse room between the wall and the wardrobe, in the one-story building of the Women's Department of this facility, which were used to beat patients.[483]



Based on the results of the inspection, the Special Prevention Group concluded that, in A.kajaia Surami Mental Health Hospital patients are at high risk of systematic violence. Inspection revealed that the facility personnel has aggressive attitude towards patients.

On October 28, 2015, the Public Defender submitted the above-mentioned facts, for the effective investigation to the Chief Prosecutor. Office of the Chief of December 25, 2015 replied to the Public Defender on 31 October 2015, that the Ministry of Internal Affairs and the Khashuri district police office launched criminal investigation N038311015001 case, [484] under Article 126 of the Criminal Code. During the investigation, the site was examined. The witnesses were questioned, together with the personnel of mental health hospital. Forensic medical examinations were held to determine the health conditions of the 53 women and 43 men inpatients.[485] The Chief Prosecutor's Office informed Public Defender on 4 February 2016, that the inpatients were not interrogated during the investigation due to their health conditions. At this stage, the investigation has not presented the charges to anyone and the case is still ongoing.

In the view of the Special Prevention Group, the approach of the Office of the Chief Prosecutor that the patients were not to be interrogated lacks substantiation and casts a reasonable doubt on the effectiveness of the investigation. Moreover, the letter shows stereotyped attitude towards patients in psychiatric institutions, as if they could not provide reliable information to the investigative body. In this regard it should be noted that the Criminal Procedure Code, Article 50, paragraph 2 only a person, who has a physical or mental disability

480 These problems are addressed in detail below in the respective sections
481 Since the patients said they did not feel safe at this point, they refrained from application to the investigative body officially. Accordingly, due to the principle of confidentiality we can not provide the information about the identity of these patients.
482 2 of the referred patients were females, and one male.
483 The photos of the sticks were taken by members of the Special Prevention Group. In order to prevent the destruction of evidence, the discovery of the sticks was not disclosed to the personnel of the institution.
484 N13/80119
485 N13/6551

which results in his/her inability to comprehend, remember and recollect the facts relevant to the matter and provide information or to give evidence shall not be interrogated as witness. As is clear from the wording of the provision, the mental disorder cannot be reason for automatic refusal to interrogate the witness. This norm instead lays focus on a person's inability to properly absorb, remember and recall all important circumstances of the case and give evidence.

It is wrong to assume that the mental health hospital patient is devoid of all the above-mentioned ability. If such assumption is to be made, it turns out that neither the monitoring nor the investigation body have to inquire and question the mental hospital patient, which is directly contrary to the rights under Article 13 (Access to Justice) of the UN Convention on the Rights of the Persons with Disabilities, which states that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

In order to help to ensure effective access to justice for persons with disabilities, the said Article 13 of the convention requires that States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff. Thus, it is important to ensure that the prosecutors and investigators of different investigative bodies within Georgia are prepared on the issues of access to justice for the people with disabilities. It is additionally recommended to create special regulations.[486]

One of the interviewed patients of Surami Mental Health Hospital blames the violence on nurses' assistants (orderlies) and the patients which are pushed by them. According to him, the orderlies sometimes instigate violence by setting the patients against him/her and he/she may be beaten by a pot in the head or fists in his throat. The same patient says that patients "are rarely tied", but if the patient is tense, "the orderlies will surround him/her, patients are helping them, and he/she may be beaten; The patient stops and he/she gets injected to calm down; Patients chase each other with sticks and orderlies also have sticks. "

One of the patients had a scratched surface wound on the nose during an interview and a bruise on the left eye. He says that he was often beaten by other patients and blames the orderlies for that. One of the patients of the female department of the mental hospital had bruises in the left eye and forehead area, and excoriations on the right eyebrow area. The patient said that "they beat his head against the wall". In terms of women's hygiene department, the patient clarified on the trend of majority of patients with short hair that if the patient refused to have her hair cut, then the so-called "Uborshchiki" (Female Patients who take up cleaning), would beat her.

At the very entrance in the **Mental Health and Drug Dependency Prevention Centre**, rough, aggressive attitude from the personnel towards patients was observed, which was expressed in referring to the patients in offensive/abusive forms. Patients recalled the cynical attitude from the nurse assistants during the interview process. According to one patient, apart from psychological violence, there is physical violence, which is mainly manifested by spanking the patients on their head. Some patients recalled kicking the patient in head with the key-chain by an orderly. According to the patient, they are often provoked and punished further. According to patients, on any matter of protest they are threatened with chemical (injection) and physical restrictions. Several patients recalled the injections being made by the nurse in the corridor, in front of other patients.

In Clinical Psycho-neurologic hostpital of the Republic (Khelvachauri) – the patients declared that they are threatened with "taking them to the cells with bars on the window and locking them up". One of the patients told the monitoring group that he was once caught by the orderlies in the corridor and injected, during which process his clothes were torn. This fact was asserted by his roommate.

486 UK legislation and practice are interesting in this regard. Legislation is available at: http://www.legislation.gov.uk/ukpga/2003/44/contents detailed information on the topic is available at: http://www.cps.gov.uk/legal/v_to_z/victims_and_witnesses_who_have_mental_health_issues_and_or_learning_disabilities_-_prosecution_guidance/ and: https://www.cps.gov.uk/publications/docs/supporting_victims_and_witnesses_with_mental_health_issues.pdf , additionally, at: https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_Mental_disability_2013+_finalised_.pdf [last accessed:26.02.2016].

One patient of the "Unimed Kakheti" Psychiatric Division said that personnel physically abused him after which he was subjected to physical restraints and injection**.**

In National Center for Mental Health (Qutiri) the conditions of treatment vary from department to department. In some departments patients do not allege any physical or verbal abuses by personnel, and state that the treatment has improved, whilst in other departments there are complaints that the staff treats patients rudely, shouts and threatens them by physical violence. Patients mention "they fixate us in the corridors, where the security guys look at us', "the nurse was doing injection, and the sanitarian covers us with blanket'.

In **Bediani psychiatric hospital** the fact that almost all beneficiaries had the similar very short haircut was striking. The personnel of the institution stated that this practice was adopted to prevent lice. The haircuts are made by the housewife.

Interviews with beneficiaries revealed the practice, when the beneficiaries are not informed in advance about preventive measures for which the haircut is necessary and no consent is sought from them. Sometimes a haircut is imposed involuntarily and forcibly, which is degrading for the beneficiaries and is perceived as violence and ill-treatment. Similar reports were made by several female patients of the National Center for Mental Health (Qutiri).

The European Court of Human Rights, in the judgment on the case *Yankov v. Bulgaria*, declared that shaving the prisoner's hair forcibly, violently without any legal basis and justification may be qualified as degrading treatment considering the particular circumstances of the case.[487] Although personnel states that the haircut is necessary for lice removal, *i.e.* for the protection of hygienic conditions, the Special Prevention Group considers that involuntary and forcible haircuts/shaving constitute unjustified use of force. If it is important to ensure the hygiene and the use of alternative measures is not enough, this should be explained to the patient and his consent shall be obtained.

RECOMMENDATIONS

Recommendations to the Chief Prosecutor's Office of Georgia

- Ensure the investigation of the cases of physical violence both from the personnel and instigated by the personnel
- Ensure the preparation of the prosecutors in the specificities of interrogation of persons with mental disorders
- Create the guidelines for interrogation of persons with mental disorders

Recommendations to the Ministry of the Internal Affairs

- Ensure the adequate addressing of the cases of violence against patients within mental institutions
- Ensure the preparation of the investigators in the specificities of interrogation of persons with mental disorders

Recommendations to the Ministry of Health and Social Affairs

- Provide regular training in mental institutions on the issues of protection of human rights, management of agitated/tense patients, non-violent de-escalation and physical restraint measures

487 Yankov v. Bulgaria, ECtHR Judgement of 11 December 2013, application No 39084/97, para. 114-121.

- Develop and implement the plan of elimination of deplorable and degrading conditions and ill-treatment in the A.Kajaia Surami Psychiatric Hospital, National Center of Mental Health (Qutiri) and Bediani psychiatric hospital and ensure that patients of these facilities are placed in conditions compatible with human dignity compatible and therapeutic environment; At the same time take all necessary measures to facilitate the discharge of the patients, which are staying in the hospital without necessary medical evidence.

Recommendations to the Directors of Mental Health Institutions

- Maintain vigilant surveillance of their own staff, especially on the behaviour nurse assistants, and regularly remind them that any forms of ill-treatment of patients is not acceptable and will be severely punished; In case of such treatment respond adequately, including notifying investigative bodies
- Provide regular training of their staff on the issues of protection of human rights, management of agitated/tense patients, non-violent de-escalation and physical restraint measures
- Improve living conditions in the facility, so that patients live in the conditions compatible with human dignity and therapeutic environment
- Eradicate and prevent any practice abusive to human dignity
- Ensure the discharge of the patients, which are staying in the hospital without necessary medical evidence

VIOLENCE AMONG THE PATIENTS AND THEIR SAFETY

As a matter of principle, hospitals should be safe places for both patients and staff. Psychiatric patients should be treated with respect and dignity, and in a safe, humane manner that respects their choices and self-determination. The absence of violence and abuse, of patients by staff or between patients, constitutes a minimum requirement.[488]

Monitoring has revealed the problem of due protection of security of patients and proper protection from violence in mental health institutions. For example, conflict situations among patients are common in **Mental Health and Drug Dependence Prevention Centre**. Some informal hierarchy is observed among some patients. One patient said that conflicts occur for the usage of the TV as well. One of the young man interviewed by the monitoring team in acute care unit had an eye bruise, which was not documented in the patient's physical condition at hospitalization. Examination of the documents revealed that the patient was physically restrained twice, because of the conflict with other patients.

Patients of **National Centre of Mental Health** complain that medical and security personnel adopt the selective "biased" attitude towards patients; there are "elite patients." Patients also talk about the conflict between the patients and the facts of physical confrontation.

At **A. Kajaia Surami Psychiatric Hospital** the violence among the patients is of systematic nature. During the visit of the Monitoring group, a large portion of patients were in the condition of psycho-motoric agitation in the men's section of the corridor, they shouted at each other and argued loudly. Cries and shouting were heard from the Women's section as well. One patient threatened another patient, whilst the latter begged not to

488 16th General Report of the CPT [CPT/Inf (2006) 35], para. 37, available in English language at: http://www.cpt.coe.int/en/annual/rep-16.htm [last accessed:10.03.2016].

hit her. The monitoring team observed that the staff was not able to timely and adequate respond, which raises concern to the Special Prevention Group.

Some of the men patients interviewed had excoriations and bruises on the face, and they said they were beaten by patients. The interviewed men talk about the violence among patients, and identified the order lies two of the "privileged' male patients as the main source of violence in men's department, and so called "Uborshchiks' (cleaners) in the women's section.

Patients often have conflicts and resort to violence in the dining room. The cause of the conflict between the patients is the extortion of food by others, and there are cases when some patients remain without food. The reason for the quarrel with one another is sometimes the theft of snacks, cigarettes or clothing from the rooms.

According to the Special Prevention Group, the facility is not documenting the cases of conflict and violence, and the measures taken in response to these facts, which raises serious doubts that the staff is trying to cover up the problems and / or has created a conciliatory attitude towards the situation.

Bediani mental health hospital personnel state that there are quite a few cases when patients resort to conflicts and violence. For example, once a patient hit another in the face with a piece of wood. According to personnel, such cases are unexpected and sudden and prevention becomes impossible. The doctors and nurses do not keep official log about such cases, although doctor keeps notes unofficially, on separate pieces of paper. According to him, the medical staff daily, orally reports to him information about what is happening in the department. In the view of Special Prevention Group, the situation is precarious in the facility with regards to the prevention of violence and the conflicts between the patients. It is important that staff have conflict and violence prevention strategy and a pre-determined action plan as far as possible, and the personnel shall be conducting direct supervision and monitoring of patients as much as possible. It is also important that all cases of conflict and violence, together with the measures taken in response are duly documented.

Tbilisi Mental Health Center nurses register the cases of the violence among patients as well as cases of the patient's aggression towards staff in the physical restraints log. Despite the existence of the problem of documentation of the conflicts and violence in the facility, the monitoring group has identified several important cases. In one case, the patient was aggressive towards nurse assistants, and tried to jump out the window, after which the physical restraints were applied. In other cases, one patient jumped from the window, but, fortunately, the case did not end fatally. There were also cases where a physically restrained patient managed to set fire to mattresses and remove restraints. This event was noted in the physical restraints' log and the nurse's diary as the "check of the quality of fixation', *i.e.* the observation was conducted, but nonetheless the patient managed remove binding means and put the mattress on fire. Therefore, the Special Prevention Group concludes that in spite of the record, in fact, physically restrained patient was not under proper supervision, which is unacceptable.

It should also be noted In connection with this incident that the staff of the institution, in order to avoid similar cases, took away the lighters and matches from the patients who are smokers. Special Prevention Group believes that the facility is subject to certain restrictions imposed by the security regulations, but these restrictions, in all cases, should be adequate and proportionate and should not be imposed on the patients for the comfort of the staff of the institution and the failure of the personnel to fulfil their basic function - proper supervision and observation of patients cannot be justified by the mere mention of the impossibility of performance.

Based on the results of the monitoring, the Special Prevention Group concludes that there is no common approach formed within mental health institutions as to the treatment of the conflict among the patients and general security issues. Accordingly, the institutions are not protected from violence, and do not constitute a safe environment. The risk factors of conflicts, violence and other incidents are tight distribution of the patients within the chambers, existing living conditions and social problems, non-existence of the risk assessment scheme related to specific patients on the side of the personnel, insufficient number of qualified

staff, improper monitoring / observation[489] and absence of immediate and adequate response at the initiation of the threat, absence of pre-defined strategy of intervention and de-escalation, as well as the lack of personal accountability and responsibility. Especially noteworthy is an attempt of personnel to establish the order and security within the facility via a certain group of patients, referred to as "privileged" patients by interviewees. This practice is deemed unacceptable by the Special Prevention Group. Based on the foregoing, it is crucial to adopt measures directed at the elimination of the risk factors listed above.

RECOMMENDATIONS

Recommendations to the Ministry of Labour, Health and Social Affairs

- Take all necessary measures to prevent violence among patients in mental hospitals and ensure the security, including the creation of regulatory framework by regulating mechanisms of assessment of risks arising from specific patients by mental institutions and a preliminary evaluation system, multi-disciplinary work, the protection of the patients and security via preventive activities, proper supervision/ surveillance of the patients by the staff, the proper training of the personnel, standard operating procedures and de-escalation strategy, as well as timely and adequate intervention whenever the threat emerges, documentation of abuse cases/incidents and the measures taken in their response, accountability and liability of personnel.
- Create internal mechanism in the healthcare system that will ensure proper supervision of the violence and security situation patients in mental health institutions
- Provide regular training in mental health institutions on the issues of management of agitated/tense patients, non-violent de-escalation and physical restraint measure, mediation, security and other issues

Recommendation to the Directors of Mental Health Institutions

- Ensure prevention of violence among patients and protection of the security including introduction of mechanisms of assessment of risks arising from specific patients by mental health institutions and a preliminary evaluation system, multi-disciplinary work, the protection of the patients and security via preventive activities, proper supervision / surveillance of the patients by the staff, the proper training of the personnel, standard operating procedures and de-escalation strategy, as well as timely and adequate intervention to address the threat, documentation of abuse cases / incidents and the measures taken in their response, accountability and liability of personnel.
- Provide regular training in mental health institutions on the issues of management of agitated/tense patients, non-violent de-escalation and physical restraint measure, mediation, and other issues of protection of the security.

PHYSICAL RESTRAINTS, ISOLATION AND CHEMICAL RESTRAINTS

In any mental health facility, there is a need to apply restraining methods towards agitated and/or aggressive patients.[490] Thus, it is important to have clearly defined policy on the issue of the usage of restraints. Such

489 According to the Report of the European Committee for the Prevention of Torture, based on the visit of 1-11 December 2014 in Georgia, at the psychiatric institution of Kutiri (National Centre for Mental Health), the delegation witnessed episodes of inter-patient aggression, which was hardly surprising considering the low staffing numbers and the chaotic living environment. The Report is accessible in English at: http://www.cpt.coe.int/documents/geo/2015-42-inf-eng.pdf [last visited on 28 February 2016]

490 Notable that the Special Rapporteur of the UN Special Sub-Committee Against Torture calls upon the states to Impose an absolute ban

policies shall be made to ensure that at the initial stage, non-physical methods of limiting aggressive or agitated patient (e.g. verbal instruction) are applied as far as possible, and, if necessary, the use of physical restraint methods is limited to manual binding.[491] The mental health institutions staff should be trained in the techniques of non-physical dealing and of manual binding of the aggressive and agitated patients. Such techniques would allow the staff, a room for choice how to act into a difficult situation, to assess and choose the most matching method for the situation, which will greatly reduce the risk of injury to personnel and patients.[492]

The use of means of physical restraints (belts, strait jackets, etc.) is justified only in extreme cases, only upon the direct order of a physician, or the doctor should be notified immediately after the use of such means. If, as an exception, the use of physical restraint methods is allowed, restraint should be discontinued at the earliest opportunity[493]; the use of methods of restraint or protraction of their use for punishment is prohibited. The restraints shall not be used because of convenience to staff, relatives or other persons.[494]

According to standards established in international human rights law, the isolation or physical binding of the patient should be used in adequate infrastructural conditions, to avoid immediate and imminent threat of harm to the patient or other patients and its application must be sizeable and proportionate to the risk. Isolation[495] and physical binding should be used only under medical supervision and proper documentation of the conditions. The cause and duration of the measures should be included in the patient's medical record and a special register.[496] The record on the patient's physical restraints or isolation should additionally include the circumstances of the use of this measure, the name of the doctor who issued the order or authorization and the information about the patient or staff if they received any trauma. This will greatly simplify the management of such situations, as well as the control of the frequency of usage of these methods.[497]

According to Article 16 of the Law of Georgia on Psychiatric Care, Psychiatrist has the right to apply methods of physical restriction to the hospitalized patient if there is a real danger that the latter inflicts harm to him/her or others and this danger may not be otherwise avoided. Methods of physical restriction are: isolation of the patient in a specialized ward and/or physical restraint. Applying the methods of physical restriction shall be terminated once the danger stipulated above ends. Applying methods of physical restriction or prescribing medicines for the purpose of punishment or intimidation of the patient is inadmissible. Decision on applying methods of physical restriction of patient shall be made by the doctor-in-charge or duty physician that is fixed in medical records. A patient who was subject to the physical restriction, his/her legal representative or in case of the absence of the latter – a relative, may appeal to the court challenging the legalityof the physical restraint.

on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual use of restraint and solitary confinement, for both long- and short-term application. Report of the Special Rapporteur Juan Mendez, A/HRC/22/53, para. 89(b) Available in English language at:: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf [last accessed:27.02.2016].

491 Importance of the training of the personnel is also emphasized in the Recommendation of the Committee of Ministers of the Council of Europe Rec (2004)10 "On the protection of the rights and dignity of the persons with mental disorders"", Art. 11, Available in English language at:: https://wcd.coe.int/ViewDoc.jsp?id=775685 [last accessed:27.02.2016].

492 CPT standards, para. 47. Available in Georgian language at:: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [last accessed:27.02.2016].

493 UN Subcommittee on Prevention of Torture, considers that the physical restriction is a form of restriction of freedom, and therefore it should benefit from the guarantees of legal protection for restrition of freedom. It shall be applied only in extreme cases, and safety considerations should be used. Since these measures are at high risk of violence, it is better not to apply them, but if it has to be used , it should be under strict legal regulations of the relevant criteria, including, the maximum term, supervision, control and right of apeal. (Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the rights of persons institutionalized and medically treated without informed consent, para. 9, Available in English language at: http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx [last accessed:29.02.2016]).

494 ibid.

495 According to the Subcommittee on Prevention of Torture, in case of isolation of the patient, constant supervision shall be carried out and the isolation shall be managed in the manner that the patient has the possibility to interact with other patients. Isolation shall be used for the smallest periods of time possible and it shall be properly documented and controlled, including with the possibility of appeal and review by an independent organ and a court. (Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or DegradingTreatment or Punishment on the rights of persons institutionalized and medically treated without informed consent, para. 10).

496 Recommendation of the Committee of Ministers of the Council of Europe Rec (2004)10, Art. 27.

497 CPT standards, para. 50.

According to the "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs, dated 20 March 2007 the physical restraint is designed to reduce the patient's aggression and expose the patient to the necessary treatment. Isolation wards where the patients are placed have to be specially equipped in order to prevent the patient's self-inflicted harm. The physical restraints are carried out via special means for such restriction. Permit for application of physical restraint is issued for 4 hours.

According to the same instructions, the physical restriction is carried out by the specific personnel designated under the internal rules of the institution, with the necessary qualifications and experience in the use of physical restraint methods. The internal regulations of the institution shall designate the person responsible for supervising the patient who is physically restrained. The person responsible for monitoring the patient's condition shall check every 15 minutes if needed her help. The attention shall be paid to the following factors: whether the patient needs additional medical care; whether the patient has any signs of mechanical-traumatic injury; suffers from a serious inconvenience; are the needs for food, water and other physiological necessities met to the acceptable level. The patient, subjected to physical restraint, should be kept in proper conditions. If after 4 hours the patient's condition is still in need of physical restraint methods psychiatrist shall re-make the record and follow-up continues in the same conditions.

It should be noted that neither the Law of Georgia on Psychiatric Care nor the above mentioned instructions include the upper limit on the maximum period for the use of physical restraint, which is dangerous, because it can formally lead to repetitive physical restrictions formally that continue for 4 hours. The said normative acts also fail to establish the obligation that the information on the physical restriction be included both in the patient's medical record, as well as a special journal (special register). It is therefore important that the normative acts are brought to order, via including making changes in the way to regulate those two issues.

It is noteworthy that neither the law nor the instructions mention chemical restrictions as a measure of restriction. The concept of chemical restriction[498] lies on the distinction whether the patient is taking medication as part of the treatment, or the medications are given to control his/her actions. If drug is part of treatment, assigned after the evaluation of the status and the rational part of the plan of care, there is a conventional treatment process, and, if on the other hand the patient is given the medicine, as the response/reaction to the patient's behaviour, it is a chemical restriction.

Accordingly, the same drug in different cases can be described as a treatment or chemical restriction. The use of the chemical restriction is not allowed to punish the patient or to prevent the discomfort of staff.

According to the assessment of the Special Prevention Group, the use of chemical restraint is widespread in these institutions and is not documented properly. The institutions routinely apply physical restraint together with chemical restraint. There is no clear legal framework regulating chemical restraint and no justifications are provided for its application. This amounts to a violation of standards of international human rights law.[499] The same guarantees of protection should be provided whenever chemical or mechanical means of restraint are used.[500]

Monitoring results reveal that the physical restriction is applied via the wide wrappings made out of the bed linen / sheets and the restriction usually lasts an average of 20 to 60 minutes, which corresponds to the required time of effectiveness of the sedative substance after its introduction / injection. Almost all the institutions have special shiny belts. According to Personnel, these belts are "rough and squirt the skin." The Monitoring Group

498 „Care for Agitated Patient" – Training Module (2011). GIF-Tbilisi.

499 "If recourse is had to chemical restraint such as sedatives, antipsychotics, hypnotics and tranquillizers, they should be subjected to the same safeguards as mechanical restraints. The side-effects that such medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion." (CPT standards, p. 96, para. 41, Available in Georgian language at: http://www.cpt.coe.int/lang/geo/geo-standards.pdf [last visited on 28 February 2016]).

500 CPT Report to Georgian Government on the Visit in Georgia on 1-11 December 2014, para. 152.

has received several reports of physical restraint being applied with the use of excessive force and physical violence.

"Unimedi Kakheti" Mental Health Centre involuntary inpatient patient said he's been subject to the physical violence (slam in the face) from the personnel whilst applying physical restraints. According to the patient, the binding process occurs with excessive use of force and nurse assistants "do not know how to approach a patient". According to him, some of them are "particularly aggressive".

According to patients, the physical restrictions are often used in cases of self-injury. According to information received from patients, each of them had been at least once subject to the physical restriction for more than 4 hours, without due justification. One patient said that he spent the whole night in the tied condition, while he had to satisfy his physiological needs in the bed, because the staff did not pay attention. One patient said he was offered to put on sanitary napkins before physical restriction, what he perceived as humiliation.

Physical restrictions are applied in the three chambers near the procedural ward, mainly in the fifth ward, because according to the personnel nurses' directly watch this chamber. Despite the fact that the patients are placed in the chamber, if necessary they are removed in order to apply restrictions to others with soft bands. Before applying physical restraints sanitary napkins are put on the patients, since, according to the staff "some are lying that they need to go to the toilet to get released of physical restraint."

The Mental Health and Drug Dependence Prevention Center has the Order of the Director General of the September 17, 2015 №01 / 109, which regulates the physical restraints and the allocation of the special room in short and long term psychiatric departments. According to the order of the Director, room has to be allocated in each of the short and long-term departments for psychiatric patients with physical restraints. Nevertheless, the monitoring revealed that no room had been allocated in the acute care unit. In addition, according to the order, the patient's physical restrictions should be implemented in a specially designated room for patient safety and protection of personnel, in the presence of physician / doctor on duty and 3 procedural nurses and nurse assistants (or nurse on duty). Junior staff can be involved in the process, having passed the proper training. According to the named order, authorized persons can register the decision on use of physical restraints on the patient in the patient's medical record with indication of the reasons and timing of the physical restraints. Records must be made after the physical restriction as well. The force shall be applied proportionally whilst binding the patient, so that it does not grow into violence. Supervision of Physical restriction is the responsibility of the heads of the short-term and long-term departments, and the control on the implementation of the order shall be carried out by the clinical director of the Centre.

The monitoring revealed that the systematic character of the breaches of the legislative requirements for the physical restriction in the facility. According to surveys of patients, they are often subject to "fixation' for a long time, during which they are left without adequate oversight. According to the patient, because of the lack

of supervision, they often manage to release themselves. In addition, a long restriction via the sheets results in various types of injuries.

According to one patient, he once demanded release from the physical restraints to go to the toilet, after being restrained for long time, which was rejected by the staff and he had to satisfy the physiological needs in bed. In the view of the Special Prevention Group, this is unacceptable and constitutes degrading treatment.

The monitoring revealed significant shortcomings in the process of keeping the log of physical restraints and filling the patients' medical records, in the view of their compliance with the logs of the doctor on duty. The records are less informative on why it was necessary to apply the physical restraint and whether there was possibility of using alternative measures. For example, a patient's medical record states reasons for his physical restriction in the following way: "he was jumping on the window frames and pulling eyes'. Record does not contain information as to why the alternative measures could not be applied. It should be noted that, in this case physical restraints were used in parallel with the chemical restrictions. In particular, the patient has been injected "tizertsin" and "CARDIAMINE" at 17:30. He was injected again with "tizertsine", "Cordiamine", "Relanium "and" haloperidol" at 18:00. The same patient on February 3, 2015, in the first half has been injected with "Cordiamin", "Relanium", "Aminazin", "haloperidol", and later - "Cordiamin", "Relanium", "tizertsine" and "haloperidol".

According to the medical card of one of the patients the patient was physically bound on October 1, 2015, 04:00 am to 05:40 pm, but there is no record in the relevant physical restrictions log. In addition, the physical restrictions log states that on October 2, physical restraints were applied to the same patient, a fact which is not reflected in the medical card. The same is true of physical restraints on October 3 incident. According to the patient's medical record on October 5, the patients had a fixation strap as a result of injures received after being physically restrained, which is not specified in the physical restraints log.

Another patient, who was placed in a hospital for medical treatment voluntarily, was physically bound from 23:30 am to 00:15 pm, on which the medical record and the doctor on duty in the journal are silent. Accordingly, it is not clear what the cause of applying restraint was, whether the requirements established by law were met and whether it occurred under proper supervision.

In **Rustavi Mental Health Centre**, the monitoring team found the case of the physical injury of the patient, which was not fully documented. There is a log in the physical restriction journal on 1 July 2015 about the use of the restraints on the patient. Physical restraint is also recorded in the patient's medical record and a nurse's dairy. The nurse's diary describes the injury of the patient, which is not specified in the medical card. Nurse's dairyholds the record that in the first half of the day the patient was calm, but in the evening he started aggressive actions, shouting, biting lips and hands, was not oriented in time and setting. When trying to escape he fell on the stairs, which is why his left eye area is injured. On 18:20 pm he was restrained with a physician's consent and underwent "tizertsine" injection of one ampoule. On 18.30, the patient received 1 pill of "Anapriline." The patient shouted, and cursed with abusive language. On 19:30 pm he was given "Relanium." After he turned relatively calm, on 19:55 he was released from restraints. He had difficulty to fall asleep, and on 22:30 he was injected 1 ampoule "tizertsine" and 1 "Cordiamine." it should be noted that there are no requisite 15 minute records in the physical restrictions journal to observe the dynamics of the patient. The Deputy Director noted that this case was considered suspicious by the administration and the incident was therefore, subject to the close study, but they could not identify physical abuse. No materials evidencing such study were submitted to the monitoring group.

In **A.Kajaia Surami Psychiatric Hospital,** the physical restraints log was studied, which encompassed three cases of physical restraints in 2015 without specifying dates. In one case, nurse's diary entry made on September 16, 2015 reads as follows: The patient became ill late at night, requested to be tied, the doctor on duty gave permission and "Aminazin" 4.0 ml, left for the cases of necessity was injected. The accident record is absent

from the patient's medical card, since the last record on the card is dated September 15, 2015. This shows requirements of the law with respect to the physical restrictions are grossly neglected.

Acute Care Unit of Ghudushauri Republic Hospital registered 40 cases of physical restraints in 2015, for the majority of which the medical records are incomplete. It should also be noted that the monitoring group witnessed the fact of physical restriction of one of the patients. Female patient to whom staff referred as the "demential patient" was asking to go out, but the guards refused. The patient, who was hospitalized formally voluntarily, asked staff when she would be released to go home. Monitoring Group felt that the patient got agitated, when the staff asked her to calm down and began her manual binding. The head of psychiatric department immediately gave an indication to apply the physical restraints. Monitoring Group estimates that for that moment there was no legal basis of physical restraint and the decision was taken hastily, which in the end led to the patient's extreme agitation.

Agitated patient was taken to the second floor. When ascending the stairs, the patient resisted and there was a risk of physical injury to the patient. In the second-floor hallway the patient, for a while, sat on the floor near the wall, when due to the closeness to the wall there was a high risk of self-harm. The special concern of the monitoring group was caused by the fact that before reaching the place where she was supposed to be fixated the personnel had to drag the patient on the floor. The patient has been injected after being fixated on the bed and she calmed down after a little while. She was kept under constant surveillance.

The Special Prevention Group is concerned with the above accident. It believes that this case reveals an unjustified practice of applying physical restraint at this institution. The problem of hasty decision-making is apparent, if physical restraint is not urgently needed and there are other means of managing the case. At the same time, the problem of applying physical restraint safely and in a manner that does not undermine human dignity got revealed. The Special Prevention Group urges the staff to do everything in order to avoid such cases. It is essential that the personnel receive appropriate training and strict supervision exercised on the competent performance of their functions.

In the **National Center for Mental Health (Qutiri),** during the interviews with the Monitoring Group the patients were especially cautious when talking about physical and chemical restraints. The Special Prevention Group considered this as self-censorship. Interviews with patients revealed that physical restrictions "are not applied as often as before', but they are still applied. The patients perceive this not as the procedure directed to their own safety and safety of those around, but as a method for securing obedience and/or punishment.

According to patients, there are cases when the physical restrictions and chemical restrictions (as they call "tying', "binding', "injecting') are applied in combination in the degrading form and for long-term, when the bed-ridden patients have to satisfy their physiological demand in the bed with their clothes on.

According to the patients, they receive pills in the crushed form, and they do not know the name of the medications. If patients refuse to take the medication or request the information, complained about the side effects or it is noticed that they try to avoid taking the medication, the staff threatens them with injection. If they still refuse to take it, they are given an injection. Patients say that the staff (guards, nurses, orderlies) manually restricts the patient and the nurse administers an injection. If the patient attempts to resist aggressively, then physical restraint is applied in the corridor in front of other patients, in the ward or very rarely in the isolated ward. The Special Prevention Group finds such practices unacceptable. It is impermissible for security guards that are not adequately trained[501] to participate in applying physical restraint and forced injection process. It is equally unacceptable to apply physical restraint in front of other patients.[502] As regards involuntary medical interventions, it is worth noting that international human rights law standards generally call for avoiding

501 According to the European Committee for the Prevention of Torture, it is desirable to limit the function of security guards to the protection of the outside perimeter, because their presence in the units hinders creation of therapeutic environment. CPT Report to Georgian Government on the Visit in Georgia on 1-11 December 2014, para. 143.

502 *Ibid.* para 152.

involuntary medical intervention[503] in the absence of an informed consent, because it is at odds with the patient's personal autonomy.[504] Only in clearly and strictly exceptional circumstances defined by the law can patients be subject to such intervention.[505]

Patients also claim that complaints on the living environment and conditions of the existing regime, uncomfortable questions to the staff, objection, application to human rights defenders can lead to physical and chemical restraints; If the patient resists to the staff, "the procedure" of physical restriction is long (e.g. Two days) or ends in isolation.

As a result of interviewing different patients on the physical restrains issue, the narratives obtained by the monitoring group are identical, but the requisite records of the cases of physical restriction in the physical restraint registration journal, medical cards and staff blogs are either non-existent or much less time is recorded.

According to the Physical restraint registration journal, one patient was restrained twice in 2015, in one case for 2 hours, and the second time for 2 hours and 15 minutes which does not correspond with the narrative of the patient. According to the patient, because the room was cold and the water was leaking, he entered the nurse room for heating; he expressed affective reactions and verbal aggression, when nurses gave him a warning, which resulted in his physical and chemical restriction (from 14:00 pm to next morning, 19 hours a day) and a month of isolation in the locked room. The staff did not give him access to a toilet and he had to pee in bed during physical restriction. He refused food in protest to the physical restrictions.

One patient describes physical restraint procedures similarly: when expressing discontent to the staff's and he "insists", he is tied with sheets in front of other patients in isolator or bedroom, and there were cases when the isolation with physical restriction lasted for 2 days and the patient had to pee in bed. He refused food in protest to the physical restrictions. Personnel did not change the urine soaked underwear and bed linen to any of the patients during their physical restriction.

Patients of the **Senaki Psycho-Neurological Hospital in-patient department** say that "they're never fixed"; "those who feel bad – get the injections and sleep." The nurse explained to the monitoring group, that the physical restraint log is empty, as they had no cases of physical restraint. The monitoring group has the impression that due to the use of the chemical restraints in the facility, there is no need for physical restraints.

No entries to the physical restraints log were made in 2015 in the **Acute Care Unit of the N5 hospital of Tbilisi.** Administration representatives state that physical restraints are used only with the extreme cases and are not applied almost at all. If application is unavoidable, it will be recorded in the relevant documentation. Instead of physical restraints, if necessary, agitated patients are placed in the 1 person Chamber under the special supervision conditions.

Acute care unit of the **Republican Clinical Psycho-Neurologic Hospital (Khelvachauri)** has 3 isolation rooms, which have metal door grills and can be locked by padlocks. The isolation rooms, according to the personnel, are used to "calm the agitated patients, for therapeutic purposes", but the placement in these rooms is perceived as some form of punishment by patients.

503 The UN Convention on the Rights of Persons with Disabilities, Article 24 (d).

504 Dignity must prevail" – An appeal to do away with non-consensual psychiatric treatment World Mental Health Day – Saturday 10 October 2015, United Nations Special Rapporteurs on the rights of persons with disabilities, Catalina Devandas-Aguilar, and on the right to health, Dainius Pûras, Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16583&LangID=E [last visited on 1 March 2016].

505 According to the European Committee for the Prevention of Torture, "Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.' The European Committee for the Prevention of Torture, p. 84, para. 41.


Transfers to the isolation rooms are not recorded in medical logs. According to the staff, "officially it is the same department, so it's simple transfer from the chamber to chamber". In a few days, the patient is transferred back to his/her ward. One patient said she was "they transfer people from calm to agitated to intimidate them, they do the injections, block the lock, but they do not bind them."

Isolation room ("isolator") is also used at the **National Center for Mental Health**. The interviews with patients and the inspection show that patients are placed in the isolation room for a few days, which bearing in mind the conditions of the rooms causes the concern of the Special Prevention Group.


There is a clear trend in modern psychiatric practice in favor of avoiding seclusion of patients, and the CPT is pleased to note that it is being phased out in many countries. For so long as seclusion remains in use, it should be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive. Isolation should never be used as a punishment. [506] It should be noted that according to CPT, the same obligations of documenting apply to seclusion in the isolation as to the other methods of physical restraint.[507]

According to the "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs dated 20 March 2007 Isolation wards need to be specially equipped to prevent the patient's self-inflicted harm. In the view of the Special Prevention Group, in the National Center for Mental Health and Republican Clinical Psycho-Neurologic Hospital, as well as in other mental health institutions, the isolation rooms are not specially and properly equipped and the

506 The European Committee for the Prevention of Torture, standards, para. 49.
507 *ibid*, para. 50.

patient placed in those room faces with a high risk of self-harm. In addition, the Special Prevention Group believes that the bars on the door and the window are unacceptable, both in terms of safety, and the disruption of the therapeutic environment and its' association with the prison and the punishment cell. Hence, placement of a person in such isolation room may amount to degrading treatment.

The Special Prevention Group is also concerned about the fact that despite the requirements that the use of the physical fixation and specialized isolation together with the duration of use of these measures, shall be duly reasoned and documented in accordance with Article 16 of the Law of Georgia on Psychiatric Care and similar requirements established by abovementioned instructions, the isolation of the patient is not in reasoned, properly documented and is applied for a long time in violation of applicable laws. Special Prevention Group calls on the Ministry of Labour, Health and Social Affairs, as well as the directors of psychiatric institutions, to take all necessary measures to eliminate the vicious practice. They also call not to use the isolation rooms before the proper infrastructure and special equipment to ensure the protection of the patient from self-harm and compliance with the legal requirements is not ensured.

Based on the foregoing, the Special Prevention Group came to the conclusion that the requirements of the rules and procedures of physical restriction are systematically breached. It was obvious that most of the institutions there is no clear system of registration of restrictions applied - in most cases the record of physical restraints on the use of physical restraint is made in the journals and not in the patient's medical record or - on the contrary. The requisite 15-minute interval monitoring record of the dynamics of the patient's condition is nowhere to be found in any record and sometimes the time is not set at start and end of application of physical restraints.

The Special Preventive Group deplores the fact that the physical restrictions are applied equally to formally voluntary and involuntary patients, which is also contrary to the CPT's position, according to which formally voluntary treatment of patients should not be subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) must be immediately initiated.[508]

The Special Preventive Group believes that the instructions on the use of physical restraints should be broadened by adding instruction on the use of the chemical restraints. In addition, regular training should be provided in agitated patient management, tension de-escalation and restriction techniques, which should involve the whole staff (doctors, nurses, nurse's aides); Principles developed should be regularly reviewed / updated. It is very important that both staff and administration officials are involved and support the creation of the guidelines. The hospital's management must exercise regular supervision of the systematic implementation of these principles into practice. In this part, the breaches by the staff shall be followed by an appropriate response.

The Special Preventive Group also believes that patients shall be informed on a regular basis in the language they understand (written as well as oral form) about the appeal structure of physical and chemical restraint procedures applicable in the establishment. Such information will help patients (and their representatives) to understand the justification of physical restraint measures. This is important in so far as the physical restrictions are currently perceived by patients as a form of punishment. Awareness shall be increased to promote the change of this perception. Also, it is important that the staff talk to the patients who were subject the physical restrictions and / or those who have witnessed the use of physical restraint at the end of the procedure. This will help the doctor-nurse-patient relationship and therapeutic action, and also, presumably, will allow the patient to articulate their feelings and emotions which led to the physical restraint, which could lead to a better understanding of the behaviour of the patient by the staff.

508 CPT Report to Georgian Government on the Visit in Georgia on 1-11 December 2014, para. 151.

RECOMMENDATIONS

Recommendations to the Ministry of Labour, Health and Social Affairs

- Amend the "Instruction for application of physical restriction methods on mental patients" established by Order #92/n of the Ministry of Labour, Health and Social Affairs, dated 20 March 2007 to include the following: the maximum length of application of physical restriction; recording obligation regarding physical restraint, injuries suffered by including the patient and / or staff of in the process on a special register (special register); Special Registry (special journal) form; Detailed instructions for the implementation of physical restraint; the specific characteristics of the means to be used for Physical restraints; regulation of the place and who may be present during the process of the physical restrictions; requirements towards the isolation room; the video surveillance system-related issues during the process of physical restriction; the obligation to inform the patient by the hospital's staff on the right to appeal
- take all necessary measures not to use the isolation rooms before the proper infrastructure and special equipment to ensure the protection of the patient from self-harm and compliance with the legal requirements is not ensured
- the creation of system of adequate supervision and response to breaches of the rules of physical restraints, isolation and chemical restrictions
- to define the list of mandatory training, for the personnel involved in physical restriction procedure
- Organize trainings on the issue of physical and chemical restraints and develop instructions on chemical restriction

Proposal to the Parliament of Georgia

- Amend the Law of Georgia on Psychiatric Care and provide the definition chemical restrictions, and the rules and procedures of its use as the, as well as determine that the Ministry of Labour, Health and Social Affairs adopt the detailed instruction on the use of chemical restrictions
- Amend the Article 16 of the Law of Georgia on Psychiatric Care and to determine the maximum duration of physical restraint and the obligation to record the information in a special register and obligation to apply the special requirements for isolation, physical restraint of the video surveillance system-related issues and disabilities after the hospital's staff and patients of the right to appeal, the obligation to inform the interview, the video surveillance system-related issues during the process of physical restriction and the obligation to inform the patient by the hospital's staff on the right to appeal
- Amend the Article 16 of the Law of Georgia on Psychiatric Care and determine that patients formally on voluntary treatment should not be subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) the must be immediately initiated

To the Directors of the Mental Health Institutions

- Take all necessary measures to ensure that the physical restraint, isolation and chemical are used only as a last resort, when all other reasonable means prove ineffective and in any case will not be used to compensate for the lack of qualified personnel and for the comfort of the staff, or as a punishment
- Take all necessary measures not to use the isolation rooms before the proper infrastructure and special

equipment to ensure the protection of the patient from self-harm and compliance with the legal requirements is not ensured; Also ensure that the patient does not occur in isolation for the failure of the staff to perform their duties, or to relieve the staff from performance of their obligations

- Ensure that physical restraint measures are used for as short period of time as possible
- Take all necessary measures to ensure that patients formally on voluntary treatment are not subject to restraint. If physical restraint is necessary, the legal procedure of the review of the patient's status (voluntary / involuntary) the must be immediately initiated
- Ensure that the relevant personnel undergo regular training in physical and chemical restraint procedure and de-escalation techniques and use strict control over the fulfilment of the requirements of the instruction and the practical implementation of the knowledge gained by the staff
- Ensure that the patient's physical restrictions do not occur in the presence of other patients, except in cases when the patient requires the presence of another patient
- Ensure that the patient, who was subject to the physical restriction is under constant supervision of the qualified employees who help them satisfy their physiological needs and control water and food intake
- Take all necessary measures to ensure that physical and chemical restraints and isolation are comprehensively recorded and documented in the patient's medical record and the special register (special register), as well as a doctor and/or nurse blogs by the appropriate personnel
- Ensure provision of the information on the possibility of appeal and interviewing of the patient after physical restraint is applied
- Undertake strict control on the due fulfilment of the duties by the staff in order to prevent inhuman and degrading treatment of the patients; in cases of the breach of the rules applicable to physical restraint procedure and ill-treatment of patients, react accordingly; in case of commission of actions containing a crime by personnel, duly refer to the relevant investigating authorities.

MATERIAL CONDITIONS – SANITARY-HYGIENIC CONDITIONS, THERAPEUTIC AND SAFE ENVIRONMENT

The European Committee for the Prevention of Torture emphasizes the need for securing adequate living conditions for patients and treating them with respect and dignity. Inadequacies in these areas can lead to situations falling within the scope of the term "inhuman and degrading treatment". It is necessary to create material conditions for patients that are conducive to their recovery and well-being, in psychiatric terms, a positive therapeutic environment. This is important not only for patients, but also for the personnel of psychiatric institutions. Besides, adequate treatment and care, both psychiatric and somatic, must be provided to patients, having regard to the principle of the equivalence of care.[509] Living conditions in mental health facilities should be as close as possible to normal living conditions of persons of similar age.[510]

Living conditions and quality of treatment is dependent on available resources. The European Committee for the Prevention of Torture emphasizes that the provision of certain basic necessities must always be guaranteed

509 Standards of the European Committee for the Prevention of Torture, p. 80, para 32, Georgian version available at http://www.cpt.coe.int/lang/geo/geo-standards.pdf [last visited 03 March 2016].

510 Resolution of the UN General Assembly on the Protection of Psychiatric Patients and Improvement of Mental Health, 17 December 1991, available at http://www.un.org/documents/ga/res/46/a46r119.htm [last visited on 3 March 2016].

in institutions where the state has persons under its care and/or custody. This includes adequate food, heating and clothing as well as – in health establishments – appropriate medication.[511]

In order to evaluate the existence of positive therapeutic environment in mental health institutionsof Georgia, members of the Special Prevention Group checked 12 mental health institutionsin Tbilisi, Rustavi, Imereti, Samegrelo, Samtskhe-Javakheti and Adjara.

BEDIANI MENTAL HOSPITAL

As a result of external and internal examination of the building of this institution, it may be concluded the entire infrastructure is old and dysfunctional. Material conditions are not conducive to health and well-building of patients.

The use of wood furnaces and coverage of windows with cellophane to keep the building warm is insufficient. Patients have individual beds, but the space allocated to each patient is less than standard 8 square meters.[512] Multi-patient units are overcrowded, with 4, 5 square meters per patient and sometimes even less.[513] There is limited free space in each unit. The distance between the beds is sometimes even less than a meter.

511 Standards of the European Committee for the Prevention of Torture, p. 80, para 33, Georgian version available at http://www.cpt.coe.int/lang/geo/geo-standards.pdf (last visited 03.03.2016)

512 Decree of the Government of Georgia of 17 December 2010 No. 385 about the Rules an Conditions of Issuing Licenses for Medical Activity and Giving Permissions for Opening Hospitals" Appendix no. 2.

513 For example, the unit for male patients includes 8 rooms (there are 2 patients in a 9,3 sq.m. room, 4 patients in a 15,7 sq. m. room; 11 patients in a 48, 16 sq. m. Room); In the unit for female patients, there are 5 rooms, (with 7 patients in a 24, 2 sq. m. Room; 8 patients in a 24 sq. m. room; 3 patients in a 17,5 sq. m. room, etc).

In the Unit for Male Patients, there are two rooms (No. 4 and 5) that are connected and are not isolated. No separate heating device is secured for these rooms. They are heated indirectly with heating devices installed in other rooms.

The conditions in units for male patients and in units for female patients do not correspond to the standards established by the Decree on Issuing Licenses for Medical Activities and Permissions for Opening Hospitals.[514]

The sanitary facilities in these units need to be repaired. In the unit for male patients, the sanitary-hygienic conditions are inadequate. In the units for female patients, the situation is better in this regard, but some repair and renovation needs to be done. Inviolability of personal space is not secured at sanitary facilities. The needs of the elderly patients and those with mobility restrictions are not properly taken into account.

Sanitary-hygienic conditions are satisfactory in the dining room and living room for male patients. However, it is still advisable to renovate these rooms. The infrastructure of the kitchen area needs to be repaired. The cooking equipment is old and sanitary-hygienic condition is far from being satisfactory.

Sanitary-hygienic conditions are not satisfactory in staff rooms. The room needs to be repaired. Sanitary hygienic conditions are inadequate in all storage rooms of the institution. Food is not properly stored. Laundry rooms are old and need to be renovated.

514 Decree of the Government of Georgia of 17 December 2010 No. 385 about the Rules an Conditions of Issuing Licenses for Medical Activity and Giving Permissions for Opening Hospitals".

Sanitary-hygienic conditions are satisfactory in the room for art therapy. The environment necessary for art therapy is secured.

The hospital has a sufficiently large yard, with green spaces, but the problem lies in the small size of the living room and the absence of necessary equipment.

CLINICAL PSYCHONEUROLOGICAL HOSPITAL (KHELVACHAURI)

The infrastructure and sanitary-hygienic conditions of the first and the second buildings of the Clinical Psychoneurological Hospital considerably differ. The infrastructure of the first building is adequate. All the units are properly lit and ventilated. Sanitary-hygienic conditions are satisfactory. The infrastructure of the second building is in a deplorable state. It is not conducive to the health and well-being of the patients on an equal basis.

The third unit in the first, main building has been repaired. Patients accommodated in private rooms are allocated space in accordance with the standard.[515] The infrastructure of the second building is in a deplorable state. The walls are dirty. The interior is damaged due to moisture and needs to be repaired. Furniture is old and few. There is a bad smell in rooms. There are insects. Overcrowding is a problem.[516] There are extra beds in some of the rooms.

515 9,9 sq. meters per patient. Two-patient rooms are 14.24 sq. meters, three-patient rooms are 18, 75 sq. meters.

516 The unit for male patients has 9 units for acute care and 9 units for long-term stay (3 patients – 19 square meters; 4 patients – 21,59 square meters). In some rooms there are extra beds. For example, in one room (21,24 square meters), there are 2 patients and 3 beds. In another room (41,24 square meters, there are 6 beds and 5 patients).


The sanitary facilities are in a relatively better state in the first building than in the second building. In the second building, walls are damaged and repairs are needed. Walls and floors are damp and damaged in bathrooms.


The laundry room for the second building is in a separate building that is old and needs to be repaired. As regards the laundry room of the first building, washing machines installed there are in good shape. The common kitchen is also in a good shape. The music room is also satisfactory. Patients from the first, second and third units come to this room. They can watch movies and play the piano. There is a table. There are also some chairs and decorative flowers.


After rain, the personnel do not let patients go to the yard, since the holes in the ground are filled with water.


TBILISI CENTRE OF MENTAL HEALTH

As a result of external and internal examination of the building, it can be concluded that the entire infrastructure of the building needs to be repaired. The environment is such that it is not conducive to health and well-being of patients. All the rooms, bathrooms and toilets need to be repaired. The furniture is insufficient and most of it is damaged. There is no ventilation in the rooms. On a positive note, a central heating system works. The units for male[517] and female[518] patients are equipped with individual beds for each patient, but there is less than the required 8 square meters of living space per patient, with the exception of a few rooms.[519]


517 There are two rooms, with four beds each (one is 17,57 square meters and the other one is 23,24 square meters).

518 3 beds – 3 rooms – 17,00 square meters, 4 beds – 2 rooms – 34,00 square meters, 5 beds – 3 rooms – 32,690m^2, 7 beds – 1 room – 41,645 square meters, 6 beds – 2 rooms – 35,885 square meters).

519 The unit for male patients (7 rooms with 3 beds 24,760 square meters), the unit for female patients (2 beds, 4 rooms, 17,87square meters and 4 beds in 2 rooms 34,00square meters).

There is a shortage of sanitary facilities in units for male and female patients. Sanitary-hygienic conditions are not satisfactory. The sanitary facilities need to be repaired. There is a common bathroom for all units. There is a schedule for its use for different units. Toilets in mixed units for male and female patients work properly. The state of the common dining-room and storage rooms is satisfactory.

The institution has a good size yard that can be used for the purpose of recreational activities. The sports room is out of order and is not used.

GHUDUSHAURI NATIONAL MEDICAL CENTRE

The external and internal examination of the building allows concluding that its entire infrastructure needs to be repaired. The central heating is secured only in the corridors. Air conditioning devices are used for heating patient rooms. As water pipes get frequently damaged, the corridors get flooded.

It is to be pointed out that in units for male and female patients a standard 8 square meters per patient is secured. Sanitary-hygienic conditions in patient rooms are satisfactory, but the mattresses of some beds are dirty and damaged. Furniture needs to be repaired. The building needs to be renovated.

In sanitary facilities for men and women, ceiling and walls are damp and moldy. Floors are wet and dirty. There is air pump and natural ventilation in sanitary facilities. Flash toilets have no plastic seats, making it impossible to sit. The condiiton of the kitchen is normal overall, but walls are damp and in need for renovation.

The institution has a yard, with artificial ground cover. A table and chairs are under the roof. Patients can play table tennis in one of the rooms. They can also watch TV in a specially designated area, with couch and armchairs.

KUTAISI MENTAL HEALTH CENTRE

The examination of the building reveals that the environment and sanitary hygienic conditions are satisfactory. The building was repaired//renovated four years ago. The entrance to the building was adapted to meet the needs of persons with disabilities. There is a central heating system in the building. The yard is surrounded by a metal fence and is in good condition.

The overall condition of patient rooms is satisfactory. On a positive note, patients in units for male and female patients have individual beds and a standard living space of 8 square meters.[520] Conditions of shower facility and toilets are generally satisfactory. Shower facility for male patients and toilet of female patients need minor repairs. The kitchen is clean.

The Centre has a yard and a room for various activities to secure recreation.

520 Two-patient rooms are 16, 27 square meters and 17.86 square meters.

CENTRE FOR MENTAL HEALTH AND PREVENTION OF DRUG DEPENDENCE

The external and inernal examination of the building showed that its entire infrastructure is in need for additional reparational works. In rooms for long-term stay, patients have individual beds, but they are not secured with the standard living space of 8 square meters.[521] Mattresses for beds are stained. Air conditioning devices are installed in all rooms, but most of them are out of order.

There is a rehabilitation room in the unit for a long-term stay. Due to a small size of the room, there is a lack of air if the number of patients in the room is large. The requirements related to living space are generally observed in acute care units, except for several three-patient units that are 15 square meters.

The state of sanitary facilities is satisfactory, but repairs are still needed. Corners of the bathroom are covered with mold, due to moisture. Flash toilets have no plastic seats. As shower cabins are only half-isolated and are in the same space as toilets. This undermines inviolability of personal space of patients. The situation in the kitchen (sanitary-hygienic conditions) is satisfactory.

521 Two-patient rooms are 14 square meters, three-patient rooms are 17, 88 square meters or 16,64 square meters.

The conditions are inadequate in the storage room for medications. The refrigerator for storing medications did not work. There was no air conditioning and the temperature regime necessary for storing medications could not be secured.

There are rooms for joint activities. In the yard, there are volleyball net and basketball courts. There are also armchairs. The walls are decorated with paintings. Since the yard is between two buildings, it is not properly ventilated and does not get any sunshine.

N5 CLINICAL HOSPITAL

It may be concluded, based on external and internal examination of the building, that its entire infrastructure is in need for additional repairs. The existing environment is not conducive to the health and well-being of patients. The second unit of the hospital is divided into sub-units for adults and children.

The unit for adults is not properly ventilated. The rooms are properly lit. Heating of rooms is secured through air source heat pumps. In contrast to rooms, central heating is installed in corridors. The smoking room does not get properly ventilated. Not all rooms correspond to the living space standards.[522] The Unit for Children fulfills this standard.[523] It is also satisfactory in terms of securing lights and ventilation. There is a small playground. Food is delivered with plastic containers and vacuum flasks. The dining room is in good shape.

The Adult Unit has sanitary facilities separately for men and women. There is no natural ventilation in the sanitary facilities for female patients. In sanitary facilities for male patients, a few toilet seats are damaged. The walls are covered with mold. The sanitary facilities are in order in the unit for children. Sanitary-hygienic conditions are adequate.

Patients do not have an access to the yard of the institution. There is no special room for joint activities, except for the Unit for Children.

RUSTAVI MENTAL HEALTH CENTRE

522 Rooms are between 12, 5 and 17 square meters. There are two beds in each room.
523 Each room is 17 square meters, with two beds.

The external and internal examination of the building of this institution allows making a conclusion that the entire infrastructure is satisfactory. The entrances to the yard and to the ambulatory care unit are equipped with wheelchair ramps. Central heating system works in the corridors and in the sanitary facilities. Air-conditioning devices are available in all patient rooms. The living space per patient corresponds to the standard.[524] Sanitary-hygienic conditions are generally satisfactory in patient rooms.

Sanitary-hygienic conditions in bathrooms and toilets are satisfactory, but the toilet on the first floor is not properly ventilated. The flush toilet in the sanitary facility for female patients does not have a plastic cover.

The Centre has a common dining room in a good condition.

Recreation room is organized in the corridor of the second floor. The Centre also has internal yard for patients.

"UNIMED KAKHETI" TBILISI REFERRAL HOSPITAL

The entire infrastructure is old and in disrepair. It is not conducive to health and well-being of patients. There is a moisture problem in most rooms in the northern part of the building. The mirrors are missing from the doors of some patient rooms. All door locks are broken. Windows are closed at all times and hence there is no natural ventilation. Artificial ventilation is not secured. There is no sufficient artificial light in patient rooms. Most of the light bulbs do not work. They can be turned on and off only from outside the room.

524 The room that is 10,63 square meters is for 2 patients.

Living space for each patient is 8 square meters as required. Even though mattresses of beds are stained and damaged. Sanitary facilities need to be repaired. In bathrooms, inviolability of personal space is not secured.

The hospital has a yard, with some greenery. However, there are no chairs and other equipment to secure adequate recreational environment.

SENAKI INTER-DISTRICT PSYCHONEUROLOGICAL DISPENSARY

The entire infrastructure of the building is old and in disrepair. This does not facilitate health and well-being of patients. The building was repaired in 2002, but moisture damage can be observed on the walls inside and outside. The sewerage pipe is damaged and leakage causes a contamination of the yard. Medical and other remains are thrown out into the yard.

The walls of patient rooms are damaged. There are holes at the edges of floors. Living space per patient is inadequate,[525] except for a few rooms.[526] Light switchers areoutside patient rooms and are controlled by the personnel.

The main storage room for medications is at the pharmacy on the first floor, but the Monitoring Group found expired medications in the room of the nurse. The walls in the lab for conducting tests (full blood exam, glucose test, syphilis test) are damp. At the time of monitoring, there was no sterilizer in the lab.

There are sanitary facilities on both floors, but hot water is available only on the first floor. Walls are damaged with mold. Only cold water is available for washing hands. Both toilets are ventilated with small windows. Water basin for flushing water is out of order.

The laundry room is next to toilets. Moisture damage can be observed on the walls. There is no hot water in the kitchen and dishes are washed with water warmed up with the gas stove. This does not allow having adequate sanitary-hygienic conditions. The situation in the kitchen and dining room is generally satisfactory.

The hospital has a yard, with inadequate sanitary-hygienic conditions. It is not equipped with armchairs and other furniture. This hinders creating recreational environment.

525 E.g. 3 patients in a 20 sq. m. room, five patients in a 26 sq.m. room, etc.
526 One patient in a 16 sq. m. room, three patients in a 32 sq. m. room, etc.

AL. KAJAIA SURAMI PSYCHIATRIC HOSPITAL

The entire infrastructure of the building is old and in a state of disrepair. This does not help secure health and well-being of patients. The buildings were last repaired approximately twenty years ago. Coal is used for heating. At the time of monitoring, none of the buildings were heated.

Patient rooms are not artificially lit and heated. Due to the absence of thermal insulation, cold gets into the rooms. There is moisture damage on the walls. Furniture is old. Sanitary-hygienic conditions are not satisfactory. Smell in the rooms is unpleasant. The unit for male patients is overcrowded. Living space per patient does not correspond to the standard.[527] Furniture and generally the environment is the same in all rooms.

Sanitary facilities are in bad conditions. The infrastructure is in a state of disrepair. Sanitary-hygienic conditions are inadequate, except for one toilet for male patients that was renovated a year ago but still does not function.

The laundry room is old and in a state of disrepair. Walls and ceiling of the dining room are dampened. The floor is dirty. Sanitary- hygienic conditions are not adequate.

527 For example, eight patients are located in a 35, 74 sq. m. room; 9 patients in a 35, 26 sq. m. room

Taking into account inadequacy of sanitary-hygienic conditions in the buildings, the yard is the only place for rest and recreation.

ACADEMIC B. NANEISHVILI NATIONAL CENTRE FOR MENTAL HEALTH

The infrastructure of most buildings of the Centre is old and in a state of disrepairs. This does not help secure health and well-building of patients. They are kept under conditions violating their dignity.

Living space per patient is insufficient[528] except for a few rooms.[529] (The standard requirement is 8 square meters per person). Rooms for multiple patients are overcrowded. The actual living space per person is 4 square meters or even less.[530] The beds are made of metal and in some instances, patients have no mattresses. One may notice moisture damage on the walls of most rooms and corridors. These need to be repaired.

When it rains, the ceiling leaks. Doors are damaged. Central heating system is installed, but does not work in most units. Centralized ventilation is not also secured. Sanitary-hygienic conditions are not adequate in patient rooms.

528 10 patients in a 25, 27 sq. m. room, 10 patients in a 33.19 sq. m. room.

529 4 patients in a 52, 8 sq. m. room, 4 patients in a 51, 9 sq. m. room.

530 In the Unit for Male Patients, there are 8 rooms (2 patients in a 9,3 sq. m. room, 4 patients in a 15, 7 sq.m. room, 11 patients in a 48,16 sq. meters room). In the Unit for Female Patients, there are 5 rooms (7 patients in a 24,2 sq.m. room, 8 patients in a 24 sq. m. room, 3 patients in a 17,5 sq. m. room).


The interior and equipment is old and needs to be repaired. The walls and ceilings are dirty. Sanitary-hygienic conditions are unsatisfactory. Ceilings leak. Walls are covered with mold. Hold water is available only in bathrooms.


The situation in the kitchen is satisfactory, but it is difficult to keep kitchen clean. Part of cooking equipment is old.


The units for patients undergoing forcible treatment and patients transferred from penitentiary institutions for involuntary psychiatric care are isolated from the rest of the hospital. Such patients have a separate yard surrounded with a metal bar fence and roofed with metal bars.

As regards the rest of the hospital territory, the buildings are located in the yard with the greenery and environment appropriate for the recreational activities. As found out as a result of the visit, only the patients

that clean the yard are allowed in. Other patients spend most of the time the buildings and in the small area surrounded with a metal net.

RECOMMENDATIONS

To the Ministry of Labor, Health and Social Affairs of Georgia

- Take all necessary measures to repair the buildings of Bediani Mental Health Hospital, Adjara Clinical Psychoneurological Hospital (the second building), Senaki Inter-district Psychoneurological Dispensary, "Unimed Kakheti" Tbilisi Referral Hospital, Al. Kajaia Surami Psychiatric Hospital, Naneishvili National Centre for Mental Health; to secure necessary therapeutic environment.
- Take all the necessary measures to ensure that infrastructure is renovated and positive therapeutic environment is created at Gldani Mental Health Centre, Ghudushauri Mental Health Hospital, Centre for Mental Health and Prevention of Drug Dependence, N5 Clinical Hospital, Rustavi Mental Health Centre.
- Take all measures necessary to secure psychiatric care for all patients on an equal basis.
- Take all measures to control compliance of conditions at mental health institutions with the standards established by the Decree about Issuance of Licenses for Medical Activities and Permissions for Opening a Hospital.
- Take all measures to ensure that each patient of a mental health institution is secured with sufficient living space, in accordance with the standards.
- Take all measures to equip all institutions with necessary furniture, including bedside tables and closets to ensure that patients have the possibility to store personal items.
- Take all necessary measures get rid of common rooms with multiple patients.
- Take all measures to secure necessary lighting, heating and ventilation for patients in all mental health institutions.
- Take all measures to secure adequate sanitary-hygienic conditions.
- Secure taking into account needs of the elderly patients and patients with disabilities.
- Take all measures to secure provision of necessary facilities in patient rooms and recreational areas in all mental health institutions in order to stimulate patients.
- Take all measures to guarantee proper sanitary facilities and secure inviolability of personal space.
- Take all necessary measures to provide food to patients in satisfactory sanitary-hygienic conditions.

LEGAL GUARANTEES FOR PROTECTION

Hospitalization and informed consent

The State Parties to the UN Convention on the Rights of Persons with Disabilities undertake to require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis

of free and informed consent, by raising awareness of the human rights, autonomy and needs of persons with disabilities, through training and the promulgation of ethical standards for public and private health care.[531]

The UN Special Rapporteurs on the Rights of Persons with Disabilities and on the Right to Health called on states to eradicate any form of non-consensual psychiatric treatment, to put an end to arbitrary detention, forced institutionalization and forced medication, in order to ensure that persons with developmental and psychosocial disabilities have their human rights respected. According to the Rapporteurs, the concept of "medical necessity' behind non-consensual placement and treatment falls short of scientific evidence and sound criteria. Non-consensual interventions are very often misused and overused, turning exceptions into rule. The legacy of excessive use of force in psychiatry is against the "*do no harm*' principle ("*primum non nocere*') and should not be accepted.[532]

In a system of psychiatric care that is based on personal dignity and inviolability, informed consent of patients must be a precondition for providing treatment. According to the European Committee for the Prevention of Torture, consent to treatment can be regarded as free and informed only if it is based on full, accurate and detailed information about the patient's condition and the treatment proposed.[533]

According to the decicion of the Constitutional Court of Georgia, "modern international law requires taking into account the will of patients with cognitive or other disabilities to a maximum extent possible and establishes a range of mechanisms to minimize interference with their personal autonomy. National legislation of a large number of states shares this approach and envisages an obligation to take into account the views of the person regarding the questions of placement in a medical establishment and even more frequently, medical treatment. Mental disorders may influence ability to give consent to medical treatment. At early stages of treatment of grave forms of diseases, a patient may not be able to give an informed consent, but subsequently it may get that ability back. Whenever an adult is able to give free and informed consent regarding interference with his/her health, such interference should be carried out only with his or her consent. In case of grave form of illness, when an adult is unable to give free and conscious consent, interference may still be carried out, if it is in the best interest of this person.[534]

Under Georgian Law on "Psychiatric Care' (Article 4 (j)), informed consent is consent of a person or his or her legal representative to psychiatric treatment, given on the basis of full, objective and comprehensible information about illness and medical intervention, provided in a timely manner. Under Article 15 (1) of the same law, hospitalization is voluntary, except for cases envisaged by Articles 16 (methods of physical restraint), Article 18 (Involuntary inpatient Psychiatric Help) and Article 22^1 (forcible psychiatric treatment). A patient is placed in an adequately licensed mental health institution, if warranted by his or her medical condition. Under Article 5 (c), a patient has the right to get full, objective and comprehensible information about the illness and planned treatment in a timely manner. If a patient is unable to make a decision, information will be given to his/her legal representative and in the absence of the latter, to his/her relative.

The Monitoring Group found that in practice, patients give consent without first getting adequate explanation, full, objective, comprehensible information in a timely manner. Informed consent[535] is essential to avoid involuntary placement of a patient in a mental health institution. This entire procedure is directed at having a consent form with a signature included in medical files to meet this formal requirement.

531 Article 25 (1) (d), Convention on the Rights of Persons with Disabilities.

532 Dignity must prevail" – An appeal to do away with non-consensual psychiatric treatment World Mental Health Day – Saturday 10 October 2015, United Nations Special Rapporteurs on the rights of persons with disabilities, Catalina Devandas-Aguilar, and on the right to health, Dainius Pûras.

533 Standards of the European Committee for the Prevention of Torture, para 41.

534 *Irakli Kemoklidze and David Kharadze v. Parliament of Georgia*, the Decision of the Constitutional Court, 2nd collegium, №2/4/532,533, 8 October 2014, para. 50.

535 Medical Documentation Approved by the Order No.108/N of 19 March 2009 of the Minister of Labor, Health and Social Protection of Georgia – Form NIV-300-12/a – Informed consent of a patient on medical care.

The survey of patients conducted by the Centre for Mental Health and Prevention of Drug Dependence revealed that informed consent is given on paper, but not in practice. Particularly, patients are not informed about their rights, essence, methods and duration of treatment. No explanation is given about the function of informed consent to treatment and factual/legal consequences of giving consent or refusing treatment. As reported by one patient, at the time of arrival at the institution, he was told that he had to sign papers to agree to a ten-day stay. It was not clear to the patient why he was not allowed to leave the hospital after the indicated term expired.

Another patient indicated that he wanted to be discharged. He had not given consent to voluntary treatment. There was no judicial order imposing involuntary psychiatric treatment. The medical files of the patient were checked to verify this information. The patient was hospitalized on 15 September 2015 by emergency medical personnel and underground patrol police. He was diagnosed with mild mental retardation, with impairment of behavior and psychotic tendencies (F70.1). Informed consent form included in the medical files was not signed. There was no court authorization for hospitalization to undergo involuntary psychiatric treatment. Accordingly, there was no legal basis for keeping this patient in the mental health institution.

Under Article 17 (3) (b) of Georgian Law on Psychiatric Care, a patient placed in a medical establishment for voluntary treatment is to be discharged at his/her request at any stage of treatment. However, the survey revealed that wishes of patients are systematically disregarded and they are kept in mental health institutions forcibly.

In a psychiatric division of the 5th Clinical hospital, one patient, undergoing voluntary psychiatric treatment according to medical records, wanted to leave the hospital due to improvement of conditions. When interviewed, he declared that the doctor neither lets him leave the hospital nor explains how long he will remain hospitalized.

In the **National Centre of Mental Health (Qutiri),** in a civil psychiatric division, absolute majority of patients with severe psychosis and with chronic mental disorder are hospitalized on a voluntary basis (medical files of each includes an informed consent form), but according to the interviews, patients are not allowed to leave the Centre, notwithstanding their demands.

In **Surami Psychiatric Hospital**, most patients either do not know what they signed or assert that they had to sign an informed consent form, because doctors threatened them with a court-imposed six-month medical treatment if they refused. A number of patients could not clearly understand the essence of informed consent to treatment when interviewed, due to their own mental state. Some of them were fully aware of their state, wanted to be discharged to continue treatment on an outpatient basis and did not understand the reasons for the refusal. One patient that has been hospitalized since July 2015 said that he wanted to go home, but did not know why he was not allowed to, did not know "what he was treated for and what medicine he got", did not know his rights.

In the **Clinical Psychoneurological Hospital (Khelvachauri),** all medical cards include an informed consent form, but medical documentation frequently shows that patients are brought by the medical emergency units or patrol police. It is unclear why patrol police or medical emergency unit was needed if the patient gave consent to hospitalization. The doctors explained to the Monitoring Group that they "convince patients to agree to treatment.'

It is worth noting that based on medical records, no patient was hospitalized involuntarily. This was notwithstanding the fact that a few patients requested to be discharged. According to the Special Prevention Group, in such cases, a patient should either be discharged from a hospital immediately or if health state warrants involuntary hospitalization for psychiatric treatment, a court should be requested to authorize such hospitalization.[536]

536 Articles 17 (4) and 18 of Georgian Law on Psychiatric Care

The representatives of the hospital Administration explained to the Monitoring Group that "they could not let the patient leave if there was no one to accompany them' or "the patient had nowhere to go'. According to the Special Prevention Group, a timely and adequate intervention is necessary in such instances in order to avoid keeping a patient hospitalized without any medical necessity[537] and without any legal basis.[538]

The Monitoring Group expresses concern that voluntarily hospitalized patients report about not being allowed to take walks in the yard or leave the territory of the medical establishment temporarily.

According to Article 18 (1) of the Georgian Law on Psychiatric Care, involuntary hospitalization for psychiatric treatment is appropriate when a patient is unable to make a conscious decision because of mental disorder and it is impossible to treat him/her without hospitalization, and also if the delay in providing treatment creates a threat to life and/or health of this patient or other person; the patient must suffer considerable property damage as a result of his/her own action or inflict such damage on others.

The necessity for involuntary hospitalization for psychiatric care is determined by a doctor of emergency medical service or other adequately certified doctor. Law-enforcement authorities are obliged to place the patient in a psychiatric institution if requested. A doctor on duty makes a preliminary decision about involuntary hospitalization. Involuntary hospitalization starts from the moment of placing the patient in a hospital. Within 48 hours from that moment, the Committee of Psychiatrists must examine a mental state of the patient and decide on appropriateness of involuntary hospitalization. For the decision regarding involuntary hospitalization to be reached, majority of members of this Committee should regard it necessary. If the votes are divided, the decision is made by a clinical director of a psychiatric institution. If the latter is not present, the decision should instead be made by a properly authorized person that replaces him. Dissenting views of psychiatrists will be attached to the decision of the Committee.

If the Committee of Psychiatrists concludes that the requirements envisaged by Article 18 (1) are fulfilled and involuntary hospitalization is necessary, management of the mental health institution addresses a court with the request for authorizing such hospitalization within 48 hours from the moment of placing the patient in that institution. The patient, his/her legal representative and in the absence of such, his/her relative will be informed about the Committee's decision. If the patient is a foreign citizen, the respective diplomatic representation will be informed. The court is obliged to examine this request within 24 hours of its receipt, in accordance with the Code of Administrative Procedure and decide on involuntary hospitalization. It is essential to secure participation of the patient in the hearing. The legal representative of the patient or his/her relative and a lawyer represent him/her before the Court. If the patient does not have a lawyer, a public counsel is appointed.

Judicially authorized involuntary hospitalization is warranted as long as the relevant criteria remain fulfilled, but it cannot be extended beyond a six-month term. The Committee of Psychiatrists is obliged to review the appropriateness of continued hospitalization for psychiatric treatment every month.

The results of monitoring reveal that staff of mental health institutions prefer to obtain consent of patients at the early stage of hospitalization and subsequently, neglects their right and wish to leave the hospital. Importantly, consent to hospitalization is obtained by unethical means, specifically, with the "threat' of requesting a court order that authorizing involuntary hospitalization for six months.

537 The UN Committee on the Rights of Persons with Disabilities recommends the state party to review its laws that allow for the deprivation of liberty on the basis of disability, including mental, psychosocial or intellectual disabilities […] to adopt measures to ensure that healthcare services, including mental healthcare services are based on the informed consent of the person concerned. Concluding Observations on Spain (2011), CRPD/C/ESP/CO/1, para. 36, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en [last visited on 5 March 2016].

538 UN Committee against Torture recommends that the State party "take measures to ensure that no one is involuntarily placed in mental health institutionsfor reasons other than medical […] ensuring that hospitalization for medical reasons is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed; UN Committee against Torture, Concluding Observations about Turkmenistan (2011) CAT/C/TKM/CO/1, para. 17, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTKM%2fCO%2f1&Lang=en [last visited on 5 March 2016]

In the spirit of the UN Convention on the Rights of Persons with Disabilities, the Special Prevention Group calls for taking measures to ensure that psychiatric treatment is primarily provided based on informed, conscious consent of patients and the practice of involuntary hospitalization is finally, gradually eradicated. At the same time, the Special Prevention Group is worried about the vulnerable legal position of individuals that are hospitalized voluntarily according to medical records, but in practice, their hospitalization is involuntary. These patients remain beyond judicial control. They cannot protect their own rights and are subjected to medical interventions and physical restraint contrary to their will. The rights of these patients to personal liberty and inviolability are breached and under the conditions of arbitrary restrictions, they are frequently victims of inhuman and degrading treatment.

The Special Prevention Group considers that in a short-term perspective, in order to avoid the above described state of vulnerability of patients, it is necessary for the mental health institutions to address the court immediately if a patient undergoing treatment on a voluntary basis requests to be discharged from the hospital, but at that point, the criteria for involuntary hospitalization for psychiatric care are fulfilled. The Special Prevention Group also underlines that the risk of hospitalization without any grounds and/or the risk of long- term hospitalization exists even under judicial control. Accordingly, in a short-term perspective, until full eradication of the concept of involuntary psychiatric care, solid guarantees of protection must be created in this regard as well.

The Recommendation 2004 (10) of the Committee of Ministers of the Council of Europe to member states concerning the protection of human rights and dignity of persons with mental disorder lists the following conditions for involuntary placement in a mental health institution: a) the person has a mental disorder; b) the person's condition represents a significant risk of serious harm to his or her health or to other persons; c) the placement has a therapeutic purpose; d) no less restrictive means of providing appropriate care are available; e) the opinion of the person concerned has been taken into consideration.[539]

Article 18 of the Georgian Law on Psychiatric Care is reflective of the above listed conditions, but the Special Prevention Group regards the inclusion of the risk of infliction by the patient of substantial property damage to himself/herself or to other person among the criteria impermissible.[540] It is also important to take into account the opinion of the patient in deciding on his or her involuntary hospitalization in a mental health institution.

The monitoring revealed a range of problems related to the practice of involuntary hospitalization for psychiatric care. In a few instances, the requests to courts referred only to one criterion, while at least two criteria need to be fulfilled. Requests substantiating the necessity for involuntary hospitalization as well as court orders authorizing involuntary hospitalization are formulated identically, following the same pattern. Besides, prior hospitalization experience is frequently decisive in authorizing involuntary placement in a psychiatric institution. Some kind of "presumption of illness' applies. The monitoring revealed that judges fulfill requests of mental health institutionsand authorize involuntary hospitalization. They readily accept opinions of doctors and take little interest in opinions of patients. Psychiatrists think that they are in a better position to determine what patients need and judges with no medical education should not rule contrary to their opinions. Under such conditions, especially if court proceedings involve assessment of appropriateness of prolonging involuntary psychiatric care, it is important to hear the views of an independent psychiatrist. According to the standards of European Committee for the Prevention of Torture, judicial decision regarding involuntary hospitalization is to be made taking into consideration a psychiatric opinion independent of the hospital in which the patient is placed.[541] The absence of this requirement in the Georgian legislation constitutes a significant shortcoming from the perspective of protecting the rights of patients and should immediately be corrected.

539 Recommendation 2004 (10) of the Committee of Ministers of the Council of Europe to member states concerning the protection of human rights and dignity of persons with mental disorder, Article 17(1).

540 Article 18 (1) (b) of Georgian Law on Psychiatric Care.

541 The European Committee for the Prevention of Torture, Report on Finland, CPT/Inf (2009) 5, paras. 138-139, available at http://www.cpt.coe.int/documents/fin/2009-05-inf-eng.pdf [last visited on 20 March 2016].

RECOMMENDATIONS

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia

- Examine cases of patients that according to medical files are undergoing psychiatric treatment on a voluntary basis, but in practice, are hospitalized against their will; take all the necessary measures to secure immediate discharge of patients, if a legal basis for involuntary psychiatric care is lacking.
- Take consistent steps to intensively develop services outside hospitals in order to reduce hospitalizations.
- Take all necessary measures to gradually introduce an exclusively consent-based model of psychiatric care.

Recommendations to the High School of Justice of Georgia

- Provide training to judges regarding the issues of mental health and relevant international human rights standards.

Recommendations to the Director of the Service of Legal Aid

- Secure training of public counsels on issues of mental health and relevant international human rights standards.
- Amend Article 18 of Georgian Law on Psychiatric Care to introduce the obligation to obtain an opinion of a psychiatrist independent of the hospital in which the patient is placed when deciding on involuntary hospitalization for psychiatric care or extension of the hospitalization term.

Recommendations to the Directors of Mental Health Institutions

- Take all necessary measures to discharge patients undergoing treatment on a voluntary basis from the hospital at their request immediately, if there is no legal basis for involuntary placement for psychiatric care.
- Take all necessary measures to ensure that patients are given full, precise and detailed information in an understandable form about planned psychiatric care and consequences of refusing such care, at the time of hospitalization as well as subsequently, on a regular basis.
- Reinforce activities of social workers to facilitate discharges of patients from hospitals.
- Revise excessively restrictive conditions and regime of stay of patients undergoing voluntary treatment; Taking into account safety risks, secure their free movement inside the institution and also let them leave the institution for a short period of time.

Proposal to the Parliament of Georgia

- Remove Article 18 (1) (b) of the Georgian Law on Psychiatric Care, listing the likelihood of infliction of significant property damage by a patient upon himself or herself or upon another person as one of the criteria for imposing involuntary care.

THE PROBLEM OF LONG-TERM HOSPITALIZATION

The UN Committee on the Rights of Persons with Disabilities expresses concern about institutionalization of persons with disabilities and lack of community-based support services. It recommends states introduce

support services and implement effective deinstitutionalization strategy, as a result of consultations with organizations of persons with disabilities.[542]

In addition, the Committee asks states to allocate more financial resources to secure community-based support to persons with disabilities.[543] Monitoring revealed significant problems and challenges in terms of fulfilling this request.

According to the Special Prevention Group, there are patients in mental health institutions that do not need intensive treatment, but do not leave because they either "have nowhere to go' or their families are reluctant to take them home. Importantly, administrations of all institutions with units for prolonged stay[544] declare that such patients constitute 30-40 % of overall number of patients in such units.

Discharge is delayed even if according to medical files patients are treated on a voluntary basis and want to leave the hospital. It is clear that delays in discharging patients are not always due to their state of mental health. The problem of prolonged stay is especially acute in Bediani and Surami psychiatric hospitals and National Centre for Mental Health (Qutiri).

The doctors interviewed name a few reasons for prolonged stay: absence of support system for discharged patients, financial insecurity, and absence of institutions for prolonged care, geographic inaccessibility of outpatient care, inadequacy of community-based psychiatric services as well as lack of abilities to live independently.

Importantly, prolonged-stay patients (the ones that do not leave because "they have nowhere to go' or the ones whose families do not want them back) manifest the so called institutional/hospitalism syndrome[545] and learnt helplessness. [546] In some instances, prolonged hospitalization deprives such patients of life skills and causes disabilities that make their rehabilitation into the society a long and difficult process.

542 The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Spain (2011) CRPD/C/ESP/CO/1, paras. 35-36, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fESP%2fCO%2f1&Lang=en [last visited on 12.03.2016]; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on China (2012), para. 26, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/CHN/CO/1&Lang=En [last visited on 12.03.2016]; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Argentina, (2012), para. 24, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ARG/CO/1&Lang=En [last visited on 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Paraguay (2013), para. 36, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/PRY/CO/1&Lang=En [last visited on 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Austria (2013), para. 30, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUT%2fCO%2f1&Lang=en [last visited 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Sweden (2014), para. 34, available http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SWE/CO/1&Lang=En [last visited 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Costa-Rica (2014), para. 30, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/CRI/CO/1&Lang=Sp [last visited 12.03.2016]. The UN Committee on the Rights of Persons wsith Disabilities, Concluding Observations on Azerbaijan (2014), para. 29, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AZE/CO/1&Lang=En [last visited on 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Ecuador (2014), para. 29, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/ECU/CO/1&Lang=En [last visited on 12.03.2016]. The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Mexico (2014), para. 30, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/MEX/CO/1&Lang=En [last visited on 12.03.2016].

543 The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on China (2012), para 26; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Austria (2013), para. 31; The UN Committee on the Rights of Persons with Disabilities, Concluding Observations on Sweden (2014), para 36.

544 The European Committee for the Prevention of Torture voices the view that it is better not to have sections for prolonged stay in psychiatric institutions, since long-term treatment should be associated with psycho-social rehabilitation, to be secured in the institutions for social care. Only patients with acute psychotic conditions should be treated in psychiatric hospitals. Others should benefit from community-based services. ("Institutionalisation Versus Timely Discharge from a Psychiatric Institution (Factors that impede timely discharge)", document prepared by Mr Vladimir Ortakov, 2005, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), available in English at http://www.cpt.coe.int/en/working-documents/cpt-2005-91-eng.pdf [last visited 13.03.2016]).

545 Wright, E. R., Gronfein, W. P., & Owens, T. J.. (2000). Deinstitutionalization, Social Rejection, and the Self-Esteem of Former Mental Patients. *Journal of Health and Social Behavior*, *41*(1), 68–90. Retrieved from http://www.jstor.org/stable/2676361 [last visited on 13 March 2016].

546 Leite, L. C., & Schmid, P. C. (2004). Institutionalization and psychological suffering: notes on the mental health of institutionalized adolescents in Brazil. *Transcultural psychiatry*, *41*(2), 281-293.

Article 19 of the UN Convention on the Rights of Persons with Disabilities establishes the right of these persons to live independently and be integrated in the society. Their prolonged segregation constitutes a human rights violation, depriving them of the right to live independently in a society. The two biggest groups staying in mental health institutionsare individuals with mental disorders and intellectual/cognitive deficits.[547] Institution is not defined only by its size.[548] Institution is any place for isolation, segregation and/or concentration of persons with disabilities. The terms such as "institutionalization' and "institutionalized' are used to characterize persons that are placed in such institutions, often involuntarily and that are deprived of the possibility to make decisions about their own lives. Institutionalization reinforces stigma and prejudice that persons with disabilities cannot or should not participate in social life.[549]

Article 19 of the UN Convention on the Rights of Persons with Disabilities obliges the states to secure the equal rights of persons with disabilities and "prevent their isolation or segregation from the society."[550]

The National Preventive Mechanism envisages the norm according to which patients whose mental state no longer requires hospitalization in a mental health institution, but who remain hospitalized due to absence of conditions of care outside hospitals, should be assessed and de-institutionalized. National Preventive Mechanism calls the state for taking all necessary measures to change large mental health institutions with smaller, modernized institutions gradually, which necessitates developing community-based services of long-term care.[551]

RECOMMENDATIONS

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia

- Take all necessary measures to establish specific, differentiated programs of care and rehabilitation for prolonged-stay patients to gradually restore their life skills.
- Take all necessary measures to start the process of consistent assessment of medical needs and social conditions of prolonged-stay patients, especially the ones neglected by their families and gradually transfer them to protected residences for re-socialization.
- Work out deinstitutionalization strategy, with a special emphasis on securing long-term community-based residential care.
- Secure development of community-based services in order to reduce the need for hospitalization and create the network of services of care focused on patients.

Recommendations to the Directors of Mental Health Institutions

- Take all necessary measures to establish specific, differentiated programs for care and rehabilitation of prolonged-stay patients to gradually restore their life skills.

547 Mansell J *et al*, Deinstitutionalization and Community Living – Results and Costs, Report, 2nd ed. (Canterbury: Tizard Centre, University of Kent, 2007) http://www.kent.ac.uk/tizard/research/DECL_network/documents/ [last visited on 13 March 2016].

548 Parker C. and Clements L, The European Union and the Right to Community Living: Structural Funds and the European Union's Obligations under the Convention on the Rights of Persons with Disabilities (Open Society Foundations 2012), http://www.opensocietyfoundations.org/sites/default/files/,europe-community-living-20120507.pdf; European Coalition for Community Living: Lost time, Lost Money, Lost Life, Lost Possibilities? (2010) 78, http://community-living.info/documents/ECCL; International Organization of Inclusion, campaign about Article 19 of the Convention on Rights of Persons with Disabilities, www.inclusion-international.org/home/inclusion-international-campaign-on-article-19/.

549 United States Supreme Court, *Olmstead v. L.C.,* 527 US 581 (1999).

550 Report of the UN Special Rapporteur on Torture, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/ [last visited on 4 March 2016].

551 Shepherd G, MacPherson R. Residential care. In: Thornicroft G, Szmukler G, Mueser K, Drake RE, editors. *Oxford Textbook of Community Psychiatry*. Oxford: Oxford University Press; 2011. p. 178-187.

COMPLAINTS PROCEDURE AND INSPECTION

The existence of effective procedures for filing complaints and for inspection is particularly important in mental health institutions, because in such institutions the risk of violence and violations of fundamental human rights is high. According to the United Nations Committee Against Torture, each state party is obliged to prohibit and prevent torture and other ill-treatment in all contexts of deprivation/restriction of liberty or control, such as prisons, hospitals, institutions that engage in the care of children, the aged, the mentally ill or the disabled. The obligation also extends to institutions and contexts where the failure of the state to intervene enhances the danger of privately inflicted harm.[552]

The obligation to prevent torture and ill-treatment extends not only to public servants but also medical personnel and social workers. The state must exercise due diligence and prevent human rights violations and if such violations are committed, must secure investigation, prosecution and punishments.[553]

According to Article 15(2) of the UN Convention on the Rights of Persons with Disabilities, the state parties must take effective legislative, administrative, judicial or other measures, to prevent persons with disabilities, on equal basis with others, from being subjected to torture or crucial, inhuman or degrading treatment or punishment. Under Article 16 (2) of the same Convention, the state parties must secure effective monitoring of all programs and arrangements created for persons with disabilities by independent bodies, in order to avoid exploitation, violence and abuse.

The UN Convention on the Rights of Persons with Disabilities recognizes the significance of access to justice. Article 13 of the Convention specifies the obligation of the state parties to ensure effective access to justice for persons with disabilities, through procedural and age-appropriate accommodations, facilitating their effective role as direct or indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. The state parties should secure training for those working in the sphere of administration of justice, including police and prison personnel, to secure effective access to justice for persons with disabilities.

Under Article 5 (1) (g) of the Georgian Law on Psychiatric Care, a patient has the right to file a complaint/ an application to the court and other state institutions. Article 5 (1) (f) envisages the right of a patient to a lawyer. The Administration of the psychiatric institution is obliged to guarantee that the patient meets his/her lawyer without presence of a third party, if mental state of the patient allows. The Law on Psychiatric Care envisages the right of the patient, his/her legal representative or in the absence of latter, a relative to appeal against a judicial order about involuntary hospitalization[554] as well as to challenge the appropriateness of resort to physical restraint before the court.[555]

Importantly, Georgian Law on Psychiatric Care does not regulate the procedure for examining complaints and exercising monitoring.[556] However, the State Agency for Regulating Medical Activities, a legal entity of public law which is a part of the Ministry of Labor, Health and Social Affairs of Georgia, among other activities, controls the quality of medical care provided to patients by natural and legal persons, including care provided within the framework of state healthcare programs[557] and examines complaints filed by citizens. [558] The Agency

552 General Comment no. 2 of the Committee against Torture (2007), para 15.
553 General comment No. 2, paras. 15, 17 and 18; See also Committee against Torture, communication No. 161/2000, *Dzemajl et al. v. Serbia and Montenegro*, para. 9.2; Human Rights Committee, general comment No. 20 (1992), para. 2.
554 Article 18 (14) of Georgian Law on Psychiatric Care.
555 Article 16 (6) of Georgian Law on Psychiatric Care.
556 In contrast, Prison Code of Georgia includes separate chapters on monitoring of execution of prison sentences (Chapter IV) and procedures for examining complaints (Chapter XVI).
557 Under Article 7, Appendix no.11 (Mental Health) of the Decree no. 308 of 30 July 2015 of the Government of Georgia (State Program of Healthcare for 2015) (program code 35 03 03 01), the organ responsible for the implementation of the program is the Agency of Social Services, a legal entity of public law under the state control of the Ministry of Labor, Health and Social Protection.
558 Article 2 (3) (b) (c) of the Statute of the Agency of State Regulation of Medical Activity – a public law entity, approved by the Order of the Minister of Labor, Health and Social Protection of 28 December 2011 No. 01-64/N

of Social Services, a legal entity of public law, controlled by the Ministry of Labor, Health and Social Affairs also examines applications, complaints and proposals of citizens.

The monitoring revealed the problem of state supervision over provision of psychiatric care and protection of the rights of patients. The National Preventive Mechanism has a decisive role in this regard. However, according to the Special Prevention Group, taking into account the specific character of the mandate of the National Preventive Mechanism, it is essential to secure effectiveness of other state mechanisms of control.

The procedure for internal complaint and feedback is available in mental health institutions. There are also boxes for complaints. However, patients do not use this procedure and boxes. Patients interviewed do not know their rights. They also do not know whom to address with their complaints. According to the Special Prevention Group, measures must be taken to a) inform patients about their rights in an understandable language; b) create simple and effective procedure for examining complaints, taking into account special needs of patients; c) secure proactive monitoring over inpatient and outpatient care (within the framework of sectoral state control). The National Preventive Mechanism suggests that in determining the terms and other procedural questions within the framework of the procedure for examining complaints, it is necessary to take into account special needs of patients in mental health institutions and practical difficulties that they may encounter in implementing their right to complain.[559]

RECOMMENDATIONS

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia

- Secure the review of the existing system of state supervision over provision of psychiatric care and monitoring of protection of the rights of patients; to introduce a simple and effective procedure for examining complaints and an effective mechanism of state supervision over provision of psychiatric care and monitoring of protection of the rights of patients.
- Regulate common intra-hospital procedure for the examination of complaints and feedback.

Recommendations to the Directors of Mental Health Institutions

- Inform patients about their rights, including through reinforcement of social services of mental health institutionsand through securing increased accessibility of information about the rights of patients and about services.
- Inform patients about internal and external procedures of complaint and feedback, including about the addressees of complaints, legal aid and also about sectoral monitoring organs outside hospitals.

Proposal to the Parliament of Georgia

- Amend Georgian Law on Psychiatric Care to regulate the procedure for examining complaints in clear terms and the foundations of supervision over provision of psychiatric care, monitoring of protection of the rights of patients, carrying out supervision/monitoring by sectoral bodies outside hospitals.

PSYCHIATRIC CARE

Under Article 4 (c) of the Georgian Law on Psychiatric Care, "psychiatric care' involves a set of measures aimed at the examination of a person with mental disorder, treatment, prevention of aggravation of the illness, facilitation of social adaptation and integration into the society.

559 Problems related to giving effect to the right to complain are examined in the Report of Public Defender of Georgia to the Parliament, pp. 188-190, available at http://www.ombudsman.ge/uploads/other/0/86.pdf [last visited on 13 March 2016].

Under the State Program of Mental Health[560] (program code 35 03 03 01), hospitalization in mental health institutions for minors and adults covers hospitalization of patients with mental disorders, particularly when conditions are acute. This includes treating acute psychotic conditions or behavioral or affective symptoms that threaten life and health of patients or others; long-term treatment of patients with chronic mental disorders that suffer from serious impairments of psychosocial functioning and/or prolonged psychotic symptoms (including continued treatment of patients that were previously hospitalized due to acute conditions); securing medical treatment and additional services (protection and safety) for patients with respect to which a judicial decision about hospitalization for provision of forcible psychiatric care was made, in accordance with Article 191 of the Code of Criminal Procedure of Georgia. Additional services include supply of food, products of personal hygiene and urgent surgical and therapeutic dental services as well as psychosocial rehabilitation in cases of long-term hospitalization.

The mentioned program also envisages shelters for persons with mental disorders. This includes three meals a day, one of which is a three-course dinner, introducing and implementing programs of care and individual rehabilitation for beneficiaries, teaching life skills, providing adequate medical aid and psychological services, securing participation of beneficiaries in cultural events, depending on their abilities, including outside specialized institutions.

TREATMENT

Duration of treatment and the Problem of Re-hospitalization

When examining the standards of treatment of persons with mental disorders, the Special Prevention Group established that in most institutions, managers as well as personnel reduce "treatment' to pharmacological therapy. This is inconsistent with the principles of modern healthcare that is based on biopsychosocial approach and on evidence.

The management of mental disorders in mental health institutionsis still based on pharmacotherapy, notwithstanding the recommendations of the National Preventive Mechanism,[561] those of the European Committee for the Prevention of Torture[562] as well as the Guidelines for the Effective Management of Mental Disorders. There is no therapeutic environment in the buildings and care for recovery of patients. The medical model is pathology-oriented.

The intensive method of pharmacotherapy is probably related to the practice established in acute care units to discharge patients as soon as possible. According to a few doctors of such units, prompt discharge of patients is based less on medical conditions and more on financial resources allocated for managing such cases as well as the period of time optimal for spending these resources (value of each case – 840 GEL). The average time for stay in such units is between 10 and 21 days.

In the room of the Head of the Unit at the Centre for Mental Health and Prevention of Drug Dependence, the Monitoring Group found a board with names of patients, indicating the dates of admission and probable dates of discharge, with 10 days between the two dates. It is clear that within this period, in order to stabilize a patient's condition, medical personnel apply intensive medication-based treatment. However, it is questionable whether this "pre-determined' timeframe is sufficient for managing acute phases. It is also unclear whether the treatment will be adequate after discharge from acute care units or transfer to the units for prolonged stay, since

560 Decree no 308 of 30 June 2015 of the Government of Georgia about the Approval of State Programs on Health for 2015.
561 Public Defender's Report for the Parliament (2012) available at http://www.ombudsman.ge/uploads/other/0/86.pdf [last visited on 17 March 2016].
562 Report of the European Committee for the Prevention of Torture, based on the visit of 1-11 December 2014, para 144.

funds allocated for this type of treatment is almost two times less and amounts to 15 GEL a day per patient (450 GEL monthly).

At the **Centre for Mental Health and Prevention of Drug Dependence**, after undergoing a ten-day treatment at the acute care unit, patients are transferred to the unit of prolonged stay. Most patients interviewed at the unit for prolonged stay were still unstable and with acute conditions (rambling, auditory hallucinations, etc.). This allows questioning the appropriateness of limiting the stay of patients at the acute care unit to ten days. At the same time, the use of some psychotropic medications (e.g. Tisercin) does not substantially differ in acute care and prolonged stay units, showing that the scheme of medication-based treatment of patients does not substantially change with the transfer from one unit to the other.

Most patients interviewed at **Rustavi Mental Health Centre** declare that "they will stay for 2 or 3 weeks and then be discharged'. This approach is probably also due to the funding scheme. This affects not only this institution, but also to all other institutions.

Based on the results of monitoring, the Special Prevention Group expresses concern about the practice of keeping patients with acute psychotic conditions in acute care units only for short terms. Quick discharge of patients from acute care units increases risks of re-hospitalization and negatively affects overall adequacy of psychiatric care. The risk of re-hospitalization exists because of low funding for long-term treatment (450 GEL a month) and deficit of adequate support services. According to the information provided by the Ministry of Labor, Health and Social Affairs of Georgia, there were 31 cases of readmission to hospitals in 2014[563] and 25 cases in 2015.[564]

Re-hospitalization is generally recognized as an indicator of quality of services in a hospital sector.[565] For the purposes of mental health program, re-hospitalization can be defined as a placement of a patient in a hospital for the second time within seven days after discharge, with the diagnosis of the illness from the same nosologic category, except for the cases provided by Georgian Law on Psychiatric Care. This indicator of quality of service provided is calculated as follows: The total number of cases of re-hospitalization (during a. 7 days or b. 30 days) should be divided by the number of patients discharged from the hospital within the past 12 months.[566]

Readmission rate is an important indicator for assessing the system of integrated care in general. Research shows that better continuity of care is secured through good planning of discharge (with timely intervention of services outside hospitals), which significantly reduces readmission and improves subjectability to treatment after discharge.[567]

In fact, hospital readmission index shows whether treatment was adequate, whether problematic symptoms were eliminated and whether the state of the patient got stabilized so that he does not need to be hospitalized and also whether the patient is managed effectively after discharge.

According to the Special Prevention Group, time allocated for managing acute conditions of the patient (10-14 days average) is mostly insufficient to secure relatively stable improvement. Probably, conditions improved as a result of intensive treatment will quickly deteriorate, since stable remission is not achieved and after discharge, there is either no supervision at all or only low-intensity treatment, due to the lack of funds. Services outside the hospital setting are fragmented and under-developed and consequently, insufficient to maintain the

563 This is used in a sense defined by the State Program on Mental Health.

564 Letter N01/1222 of 9 January 2016 of the Ministry of Labor, Health and Social Protection of Georgia

565 Is the Readmission Rate a Valid Quality Indicator? A Review of the Evidence, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4224424/

566 Hermann RC, Mattke S, Somekh D, Silfverhielm H, Goldner E, Glover G, Pirkis J, Mainz J, Chan JA. Quality indicators for international benchmarking of mental health care. *Int J Qual Health Care*. 2006;18(Suppl 1):31–38. doi: 10.1093/intqhc/mzl025.

567 Steffen S, Kosters M, Becker T, Puschner B. Discharge planning in mental health care: a systematic review of the recent literature. *Acta Psychiatr Scand*. 2009;120:1–9. doi: 10.1111/j.1600-0447.2009.01373.x.

improvement achieved. Consequently, there is a high risk of aggravation of conditions and of re-hospitalization.

The personnel of acute care units declares that the problem lies in inadequacy of services for persons discharged from hospitals, shortage of beds in units of prolonged stay and limited funds allocated for long-term services.

According to the Special Prevention Group, the funding methodology negatively influences treatment of patients placed in acute care units and prolonged stay units. This has bearing on the duration of treatment and its quality. Accordingly, the Ministry of Labor, Health and Social Affairs of Georgia should study the existing practice; strictly supervise the correlation between the length of stay and the degree of stabilization of acute conditions; increase funding for long-term treatment and revise models of financing, taking into account what kind of treatment is a priority.

Treatment with Medications

Monitoring reveals that in almost all institutions, when prescribing treatment for patients placed in those institutions voluntarily and involuntarily, medical personnel prefers to apply older generation anti-psychotic medications through administering injections (rather than giving pills) in large amounts and over extended periods of time, following the same pattern in all cases, notwithstanding the clinical picture. [568] At the same time, it is worth noting that there is no problem in terms of supplying these institutions with basic psychotropic medications. The only exception is **A. Kajaia Surami Psychiatric Hospital**.

The Special Prevention Group got an impression that "pharmacological overload' of patients constitutes the main means of managing them. Cases are managed without any complex therapeutic structure. Involvement of patients in meaningful activities is not secured.

In the National Centre for Mental Health (Qutiri), the treatment is mostly medication-based, using old-generation neuroleptic medications (Haloperidol, Tisercin, etc). Second or third generation antipsychotic medications and new generation antidepressants are rarely used, especially in cases of long-term treatment.

Absolute majority of newly hospitalized patients get "Tisercin" together "cordiamin" as a rule and sometimes in combination with "dimedrol," through an injection. Medical records do not indicate reasons for administering medication by giving injections rather than by giving pills and for adding "cordiamin" and "dimedrol".

Subsequently (for 10-20 days on average) neuroleptic medications are administered by giving injections. Patients get about 2-7 injections a day. They do not know what medication they get. They are not informed by doctors about basic and side effects of the medications administered. Despite this, they describe the side effects of medications as followed: "Medications were administered for 20 days and I was asleep all the time.' "I could not stand up, sit or lay down, I could not sleep. I was like that.' "You do not walk and you sleep and sleep'. "I was asleep all the time and could not refuse injections, as I was afraid that the personnel would do worse.' "I sleep day and night, I ask that they stop injections, but they do not do that.' The cases of medication overdose are frequent among the interviewed patients.

One of the patients (23 years old, Ds. F21) was given "tisercin" and "cordiamin" injections twice a day (4 injections) in the first two days after being hospitalized. For the following 17 days, all medications were administered as injections in muscles, 6-7 injections a day overall ("Haloperidol" 1 ml twice, then three times, "Aminazin" 2 ml twice and "Cordiamin" 2 ml twice). At the same time, he was not given medication for side effects of "haloperidol" (e.g. "cyclodol")

568 Standards of the European Committee for the Prevention of Torture, para. 40 (Regular reviews of a patient's state of health and of any medication prescribed is another basic requirement. This will inter alia enable informed decisions to be taken as regards a possible dehospitalisation or transfer to a less restrictive environment).

Another patient (29 years old, Ds. F71) was given "Aminazin" injection in the very evening of hospitalization. For the following 20 days, "tisercin" was administered through intramuscular injection (1 ml twice a day). He was simultaneously given average therapeutic dose of neuroleptic medication and corrector.

One of patients (41 years old, Ds. F20.0) was given "tisercin" (2 ml, twice a day) when hospitalized and subsequently, 4 injections were administered a day, for 7 days overall. In addition, "speridol" ("haloperidol") was administered (1ml twice), "tisercin" (1ml) and "cordiamin" (2ml).

One patient (36 years old, F20.0) got "haloperidol" injection (1 ml) three times a day, first together with "tisercin" and "cordyamin" injections and then in combination with "zopin" ("Clozapine") 100 mg pills.

After "tisercin-codyamin" injection, "haloperidol" was administered to a patient (28 years old, F 22.0) - 1 ml three times a day for ten days (together with corrector and 200 mg pills of "Zopin").

One patient (49 years old, F 20.0) was getting two neuroleptic medications, one of which is the first-generation neuroleptic ("psyzin", 30 mg a day) without corrector and 100 mg "clozapine" a day. There were side effects of medication-based treatment (extrapyramidal side effects, excessive sleepiness). The patient declared that these side effects were greatly disturbing, but doctors disregarded requests about changing the medications. No blood tests necessary for monitoring the side effects of "clozapine" (agranulocytosis) were carried out.

There have been isolated instances of combined treatment with 3-4 neuroleptic medications. The following are the examples:

One patient was given the pills of "Trifluoperazine" 30 mg, "Zopin" ("Clozapine") 300 mg, "thioridazine" 100 mg. In combination with these medications, 4, 0 ml "Aminazin" injections were administered for a month.

One patient (37 years old, Ds. F32.3) "tisercin" and "cordiamin" were administered parenterally when hospitalized. In months that followed, four different psychotropic medications were administered a day, also two neuroleptics with different chemical structure ("haloperidol" 20-30 mg, "zopin" 200 mg or "tisercin injection" 1 ml three times), tranquilizer ("diazepam" 20 mg), anticonvulsant ("neurolepsin" 600 mg), antidepressant (Amitriptyline, 50 mg) and antiparkinson medication ("benzhexol" 6 mg a day).

One of the patients (35 years old, F60.3) got the following injections in a muscle - "tisercin" 1,0 ml, "cordiamin" 2,0 ml, "dimetrol" 1,0 ml and "haloperidol" 1,0 ml twice a day - when hospitalized. Subsequently, for 20 days, "haloperidol" 1 ml and "diasepam" 2,0 ml were administered in a muscle twice a day.

Such heavy combinations of medications were applied also at the **Centre for Mental Health and Prevention of Drug Dependence**. The medical personnel prescribed "haloperidol" liquid (twice a day), "haloperidol" pills (at 10 am and 8 pm), "azaleptin" (0,5 mg) and "tisercin" (25 mg at 10 pm). Similar schemes are frequently applied in these institutions.

An acute shortage of medication has been observed at **Surami Psychiatric hospital**. There is a permanent deficit of medication recommended for managing mental disorders. This generates the problem of the lack of continuity of medication-based treatment and adequate management of psychiatric cases. The monitoring group found that majority of patients in an agitated state and revealed the symptoms of acute psychotic condition.

There was no supply of "cyclodol", the medication necessary for managing side effects of old generation neuroleptics. Majority of patients were transferred to minimal therapeutic doses of new generation medications, but the hospital would still run out of supplies in 2-3 days. The same was the situation with anticonvulsants. No new generation antidepressants were available. Old generation antidepressants were prescribed rarely and in

small doses. The medical personnel noted that they had no supply of medications. The director of the hospital explained this deficit with financial problems at the end of the month.

It is also worth noting that shortage of personnel may cause disruptions in the treatment regime. It is difficult for the personnel to control how patients take medications. Some of the interviewed patients admitted that due to the negative influence of the prescribed medications, they do not take these medications, hide them and throw them away later. If this gets revealed, the personnel use manual restraint and administer injections, instead of giving pills.

In **Kutaisi Mental Health Centre**, all services (inpatient and outpatient, crisis intervention) are unified and located in the vicinity of the general hospital. This secures continuity of psychiatric treatment, prevention of aggravation of conditions, intervention of general doctors, where necessary, diagnostics of comorbid somatic problems and multi-profile management of cases.

Beneficiaries of inpatient treatment are also the beneficiaries of ambulatory care unit at the same centre. They are treated by the same psychiatrist. This, in addition to community-based services and positive therapeutic environment, reduces stigma and increases trust towards medical personnel, helps formation of positive therapeutic relationships between doctors and patients.

Some patients are attracted to a comfortable environment and feeling of protection at this Centre, aside from medical conditions that warrant their stay. They themselves address the Centre with requests for hospitalization, wait for vacant beds and get placed repeatedly. This creates risks of dependency on the service and requires undertaking preventive measures by the service providers.

The Special Prevention Group points out that unfortunately, none of the mental health institutions have introduced the so called "case management method" under which doctors with various specializations plan the process of intervention together, adjusting it to the needs of beneficiaries. In the absence of such a method, the treatment is mainly focused on the excessive use of medications, in many instances, contrary to the will of patients.

The Special Prevention Group underlines that voluntary consent of the patient to hospitalization or involuntary placement in a psychiatric institution based on a judicial order should not be understood as precluding the patient to refuse treatment subsequently and also does not mean that there is no need for informed consent of the patient for specific medical interventions.

In this connection, the European Committee for the Prevention of Torture indicates that patients should be placed in a position to give free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.[569]

In its report on the visit to Georgia from 1 to 11 December 2014, the European Committee for the Prevention of Torture pointed out in psychiatric hospitals they visited, consent to treatment was assimilated to consent to placement.[570]

According to Article 5 (1) (e) of Georgian Law on Psychiatric Care, a patient has the right to refuse treatment. This right is limited in cases provided by Articles 16 (methods of physical restraint), 18 (involuntary hospitalization for psychiatric care) and 22[1] (forced psychiatric treatment). If the patient is not yet 16 years

569 Standards of the European Committee for the Prevention of Torture, para 41.
570 Para. 156.

old, the decision about treatment is made by his or her legal representative or if the latter is absent, by his or her relative. It is still essential to allow participation of patients in the process of decision-making, taking into account their age and mental health state.

According to Article 10 of Georgian Law on Psychiatric Care, the treatment is carried out with the informed consent of the patient or if the latter is not yet 16 years old, with the consent of his or her legal representative. The consent form with a signature is to be included in medical files. The refusal to be subjected to treatment is also recorded in medical files. Treatment with biological therapy (shocks, seizures, etc) is only permissible if warranted by medical conditions, with an informed consent of the patient or his or her legal representative, based on the decision of the Committee of Psychiatrists.

The Special Prevention Group believes that patients should regularly be informed about the treatment in an understandable language and this should be an integral part of the therapeutic process. Medical personnel of mental health institutions must respect the patient's refusal and obtain consent by providing detailed information about the function of treatment and results expected. This will allow respecting personal autonomy of patients.

The Special Preventive Group asserts that Article 5 (1) (e) of Georgian Law on Psychiatric Care contradicts the principle of personal autonomy as it allows restriction of the right of a patient to refuse treatment in cases provided by Articles 18 (involuntary hospitalization for psychiatric care) and 22[1] (forcible psychiatric treatment) of the same law. In order to reinforce legislative foundations for the system of mental healthcare that is based on human dignity and personal inviolability, this restriction should be removed from the mentioned provision. At the same time, the term "forcible psychiatric treatment" [571] should be changed with "forcible hospital-based psychiatric care" [572] as it is not limited to treatment and envisages complex set of measures.

At the end of review of the practice of medication-based treatment, the Special Prevention group underlines the importance of quality of medications. It has been established as a result of monitoring that insufficiency of funding as well as legal regulation of public procurement hinder purchase of high quality medications. In particular, mental health institutions purchase medications [573] through simplified electronic tendering. [574] Whoever offers the lowest price wins the tender. This negatively influences quality of medications purchased, since there are medications that contain similar substances, but are produced by different pharmaceutical companies and are of different quality. The price is directly connected with the quality. According to the Special Prevention Group, in order to secure effectiveness of treatment, it is reasonable to prepare the list of basic medications for mental health institutions, including new generation, high quality medications. Accessibility of these medications should be secured for all mental health institutions. At the same time, funding should be increased and a more convenient, favorable regime for purchasing medications should be introduced.

Side Effects of Medications and Lab Research

All antipsychotic medications have side-effects the signs and clinical significance of which are changing and depend on individual characteristics of medications and patients. The side effects may have the following clinical signs:

- Extrapyramidal syndrome (parkinsonism, acute dystonia, akathisia and tardive dyskinesia);

571 Article 4 (n) of Georgian Law on Psychiatric Care defines forcible psychiatric treatment as a special type of psychiatric care that envisages measures directed at reducing risk of damage, threat or violence inflicted by the person with a mental disorder upon himself or herself or upon other persons, securing their resocialization and improvement of mental health.

572 Under Article 4 (c) of Georgian Law on Psychiatric Care, "psychiatric care' envisages a set of measures aimed at the examination of a person with mental disorder, treatment and prevention of acute phases, social adaptation and facilitation of reintegration into the society. It is clear that treatment is only one element of psychiatric care.

573 Article 3 (1) (q) of Georgian Law on Government Procurement.

574 Tender documentation of Rustavi Mental Health Centre Ltd is available at https://tenders.procurement.gov.ge/public/lib/files.php?mode=app&file=1020606&code=1421248491 [last visited on 18 March 2016]

- Autonomous effects (reduced eyesight, increase in intraocular pressure, dry mouth and eyes, constipation and urinary retention);
- Increase in prolactin levels;
- Seizures;
- Sedation;
- Weight gain.

The signs of extrapyramidal complications are easily recognized, but difficult to predict. Since they are bases for troubling prognosis, psychiatrists try to avoid such complications. Tardive dyskinesia (involuntary face and body movements) is a subject of special concern, since it has a slow or belated onset and is resistant to treatment.

"Clozapine" (50-300 mg a day) is one of the elements of combined medication-based treatment in mental health institutions. When using this medication, there is no dynamic assessment of risks of changes in blood (agranulocytosis). The blood is not controlled according to guidelines. Also, when administering second generation neuroleptic medications, no clinical lab tests of metabolical changes and risks of hyperglycemia are carried out.[575]

In **the Centre for Mental Health and Prevention of Drug Dependence**, majority of patients have the so called extrapyramidal syndrome, which is one of the results of medication overdose. There is no control over leucocytes and granulocytes in blood, when "Azaleptin" ("Leponex") is administered, since these tests are not free of charge and not all patients can afford the payment. Prescribing this medication without control of blood is dangerous for patients.

In Surami Psychiatric Hospital, no clinical laboratory and instrumental monitoring of the side effects of psychotropic medications (**agranulocytosis,** hyperglycemia, **arrhythmia)** is carried out. According to the director of the hospital, this is due to the lack of technical and professional resources.

Medical Records

Admission, allocation of beds, discharge, observation and organization of medical records must comply with the relevant legislation and normative acts of the Ministry of Labor, Health and Social Affairs.[576] For the purpose of clinical diagnostics, it is necessary to use the international classification of diseases ICD-10, prepared by the World Health Organization and recommended by the mentioned Ministry.[577]

Deficiencies in medical documents have been revealed as a result of monitoring. In some institutions, psychiatrists visit patients irregularly. The results of these visits are included in medical files irregularly as well. Medical cards did not include information about individual plans of treatment. Most entries were not legible due to doctors' handwriting. In most institutions, entries about the conditions of patients (the so called cursuses) are irregular and mostly based on a template.

575 Treatment and Management of Schizophrenia in Adult Patients (Guidelines), available at http://www.moh.gov.ge/files/01_GEO/jann_sistema/gaidlaini/gaidlain-protokol/125.1.pdf [last visited on 6 March 2016] Treatment and Management of Depression in Adults, National Recommendations (Guidelines) for Clinical Practice, available at http://www.moh.gov.ge/files/01_GEO/jann_sistema/gaidlaini/gaidlain-protokol/126.1.pdf [last visited on 6 March 2016].

576 Order no. 108/N of 19 March 2009 of the Minister of Labor, Health and Social Protection of Georgia about the Rules about Preparing Medical Documents in Medical Institutions

577 International Classification of Diseases of the World Health Organization ICD-10 (1994). http://www.who.int/classifications/icd/en/ [last visited on 18 March 2016]

Treatment of Somatic Diseases

Persons with mental disorders frequently suffer from physical/somatic complications as well. Even though a connection between metabolic problems and antipsychotic medications is not entirely clear, everyone agrees that patients getting antipsychotic medications for a long time must do regular health checkups.[578]

National Guidelines for Managing Schizophrenia[579] emphasize the importance of monitoring the use of antipsychotic medications for the purpose of early detection of somatic problems, assessment of gravity and choice of a correct strategy of antipsychotic treatment. It also contains suggested table for frequency of examination of physical and biochemical parameters of patients.

It has been established through interviews and examination of individual medical cards that **at Surami Psychiatric Hospital**, while psychiatric state is assessed, somatic health state is not evaluated, either at the time of admission or during treatment. If the situation is critical, the nurse checks pressure and pulse and if hypertension and bradycardia[580] are revealed, an injection of "caffeine" or "cordiamin" is administered or the problem is solved with "Valerian" or "Validol" pills. In case of urgency, emergency medical services are engaged. The institution does not have a therapist and a dentist. As regards clinical analyses, only blood and urine tests are done, once a year.

One patient that was diagnosed with lung tuberculosis and underwent anti-tuberculosis treatment while hospitalized at the National Mental Health Centre (Qutiri) has been placed in Surami Psychiatric Hospital since 4 March 2011. His somatic health state has not been assessed and no monitoring has been done to prevent recurrence of tuberculosis.

At the time of admission at **the National Centre of Mental Health (Qutiri),** a list of necessary lab tests and medical consultations is drawn up: blood and urine tests, Wassermann reaction, blood sugar test, electrocardiography (EKG), consultations with a psychologist, therapist and neurologist, and if needed, dermatovenerologist, dentist, gynecologist and phthisiatrist, roentgenologic examination, sputum test. If tuberculosis is diagnosed, the patients undergo treatment.

Despite the above said, the majority of interviewed patients complained about somatic problems and adequacy of medical treatment. A few patients declared that they had Hepatitis C virus and gastrointestinal problems, but no tests were administered. They did not have a possibility to consult a doctor.

For example, a metal implant in the knee of the patient subjected to involuntary treatment (50 years old, Ds. F20.0) restricts his movement. He needs another surgery. His psychiatrist is aware of this condition. The patient did not get consulted by a surgeon or a traumatologist. Additional tests were not administered and the operation was not planned. This patient also displays side effects of treatment with neuroleptic medications (extrapyramidal symptoms, tremor), aggravating his state and further restricting his movement.

Dental care is limited to teeth extractions. Therapeutic treatment is not available. This problem together with orthopedic problems especially affects the beneficiaries of shelters for persons with mental disorders of the National Centre of Mental Health.

Monitoring revealed some problems with accessibility of medications. Particularly, the Monitoring group found expired medications ("paracetamol", "papaverine", "dimedrol", "digoxin") at the **Clinical Psychoneurological Hospital in Khelvachauri.** Expired medications were also found at **Senaki Psychoneurological Dispensary** ("triptazine"[581], "tisercin", "dexdun", "clopheline", B1 and B6 vitamins). There was a shortage of medications at **Surami Psychiatric Hospital**.

578 Barnes et al., 2007; Newcomer, 2007; Suvisaari et al., 2007.
579 Treatment and Management of Schizophrenia in Adult Patients, National Recommendations (Guidelines) for Clinical Practice, Chapter 4.7.
580 Low arterial pressure and slow heart rate.
581 Triptazine was actively used in this establishment.

The personnel of **Bediani Psychiatric Hospital** report insufficiency of funds for examining and treating somatic diseases. They acknowledge that the beneficiaries of the institution have acute somatic needs. The location of the hospital, considerable distance to the nearest medical institution and damaged roads also pose problems. The personnel indicate that there has not been a single transfer of patients to medical institutions for treating somatic diseases in 2015.

The Monitoring Group examined medical cards of patients and came to the conclusion that many patients require somatic health checkup and treatment. There are references to recommendations about consultations and checkups by various doctors, but there is no information about measures taken in response to these recommendations. For example, one patient was complaining about pain in lower back for three months. Medical documentation indicates a preliminary diagnosis: nephritis. There is one more entry according to which the patient has kidney failure and requires a nephrologist. "Ibuprofen" was prescribed. Nothing confirms that this patient was consulted by a nephrologist. The medical card also includes entry by a surgeon that patient had chronic nephritis, "nitroxolin" was prescribed for three days and ultrasound of urinary tract was recommended. There is no document in the medical card confirming that ultrasound was actually done.

By the time of monitoring, throughout 2015 deaths of five patients were registered at Bediani Psychiatric Hospital, 7 at Surami Psychiatric Hospital, 1 at Kutaisi Mental Health Centre, 11 at the National Centre of Mental Health, 4 at Tbilisi Mental Health Centre and 1 at Senaki Inter-District Psychoneurological Dispensary. The Prevention and Monitoring Department of the Public Defender's Office requested the Ministry of Labor, Health and Social Affairs to provide information about deaths of patients in mental health institutions in 2014-2015.[582] Unfortunately, the information was not received in due time to be included in this Report.

Having examined medical cards of the deceased patients, the Special Prevention Group indicates that these cards do not provide information as to whether these patients benefited from medical care. A few examples may be listed:

Case of Ts. A.

This patient was placed in the Naneishvili National Centre of Mental Health on 15 May 2015. According to the medical files, at the time of admission the patient was cachexic. He also had pressure ulcers (bedsores). The entry of 28 May 2015 in medical records made by the doctor on duty indicates that the patient was not responsive. He was in a state of coma. Khoni emergency medical unit transferred that patient to O. Chkhobadze Treatment and Rehabilitation Centre for the Elderly and the Disabled in Kutaisi. The patient died on 29 May 2015 at that Centre.

Medical history of this patient indicates that the cause of death is cardiac arrest (I46); somnolence, stupor and coma (R40), stroke not specified as hemorrhage or infarction (I64), bronchopneumonia (J18.0). Medical card indicates that the patient got cardiography once, blood and urine tests. It does not indicate how pneumonia was treated in this case.

Conducting additional consultations and checkups in connection with somatic diseases is a problem at Surami Mental Health Institution.

The Case of N.Kh.

The patient (born on 18 February 1960) was placed in Surami Psychiatric Hospital on 9 June 2014 with a diagnosis of paranoid schizophrenia (F20.0). The patient suffered from enlarged veins and chronic venous

582 Letter no. 03-1/9906 of the Head of the Department of Prevention and Monitoring of the Public Defender's Office of Georgia dated 4 December 2015.

insufficiency. He was admitted to the hospital, following the left hip endoprosthesis surgery, due to the fracture of the left femur neck (S72.0).

According to medical records, due to the bed rest, the patient had bedsores that were treated with hydrogen peroxide and Turmanidze ointment. According to the entry of 10 March 2015, the patient died at 10 a.m., when doctors were making hospital rounds. Medical records do not indicate cause of death or reanimation measures undertaken, if any. The entries made by medical personnel show that despite the patient's general weakness throughout the week preceding his death, no additional tests were carried out and no treatment was applied. Only blood and urine test results were found in the medical card of the patient.

The Case of A.M.

The patient (born on 12 January 1941) was placed in Surami Psychiatric Hospital on 19 June 2015 with the diagnosis of paranoid schizophrenia (F20.0). He also suffered from heart failure, cerebral hemorrhage and also hypertonia. Notwithstanding hypertonia, it is not entirely clear from the medical card whether arterial hypertension was regularly controlled and whether the patient was treated for somatic diseases. The patient stayed in bed. He was irresponsive the day before death. His face was swollen and heavy breathing was noticeable. On 14 October 2015, the patient died.

The Special Prevention Group reached the conclusion that there are serious problems in mental health institutionsin terms of treating somatic diseases. The situation is better in psychiatric departments/units of general hospitals (e.g. psychiatric department of the Ghudushauri National Medical Centre). Such psychiatric departments have access to services in other departments of the same hospital. The problem of diagnostics and treatment of somatic diseases arises especially acutely in the state-established limited liability companies, such as Surami Psychiatric Hospital, Senaki Psychoneurological Dispensary, Clinical Psychoneurological Hospital, Bediani Psychiatric Hospital, Naneishvili Mental Health Centre.[583] The Special Prevention Group advises taking substantial steps to allocate more beds for psychiatric patients in general hospitals and gradually move to the model of providing psychiatric care within general hospitals.[584]

According to the Special Prevention Group, it is necessary to review funding methodology and increase the amount of funds allocated for psychiatric care, so that every patient in mental health institutionshas access to timely and adequate medical service.

RECOMMENDATIONS

Recommendations to the Government of Georgia

- Review funding methodology and increase funds allocated for psychiatric care, so that each patient has access to timely and adequate checkup and treatment for somatic diseases.
- Review funding models, keeping in mind the priority of the quality of treatment, so as to increase the amount of funds allocated for long-term treatment.

583 On 22 October 2015, 95 % of shares of the State owned Ltd. Naneishvili National Centre of Mental Health was sold to B & N Ltd. No. 2248 Decree of the Government of Georgia of 22 October 2015, available at https://matsne.gov.ge/ka/document/view/3034586 [last visited on 18 March 2016].

584 According to the World Health Organization, it is desirable to provide psychiatric care to patients in general hospitals. Nevertheless, many countries predominantly rely on psychiatric hospitals. In Georgia, in 2014 the number of beds allocated to psychiatric patients in general hospitals was 2, 31 for every 100 000 residents. The number of beds in psychiatric hospitals was 32, 32 for every 100 000 residents. The number of beds in psychiatric hospitals for 100 000 residents is above the world average (which is 17, 5 for 100 000 residents). However, it is three times less than the number in Latvia (105, 09). It is worth noting that the number of beds for psychiatric patients in general hospitals is 20 times less than the number in Estonia (47,05). Estonia moved to the model of providing psychiatric care in general hospitals. Consequently, the number of beds in psychiatric hospitals for 100 000 residents is only 7,71.

- Review funding methodology for psychiatric care to secure purchasing high quality medications.
- Introduce the most convenient, favorable regime for purchasing medications, keeping in mind quality of medications as a priority.

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia

- Take all the necessary measures to gather statistical data accurately, in order to ensure adequate psychiatric care in hospitals, better describe rehospitalization indicator and define standards for treatment outcomes.
- Strictly supervise correspondence of the length of stay with the degree of stabilization of acute conditions; revise models of funding, so as to increase the amount of funds allocated for long-term treatment.
- Take all the necessary measures to introduce a multidisciplinary approach in psychiatric institutions, expand the use of therapeutic methods and means and introduce a method of individual management of cases.
- Prepare additional guidelines and supervise doctors as regards doses of prescribed medications in order to reduce cases of overdose and unreasonable use of chemical restraint.
- Draw up a list of basic medications that will include new generation, high quality medications; secure accessibility of these mediations in all psychiatric institutions.
- Exercise strict supervision in mental health institutionsto ensure that somatic diseases are detected in a timely manner and adequately treated.
- Take measures to allocate more beds to psychiatric patients in general hospitals and gradually move to the model of providing psychiatric care in general hospitals.

Recommendations to the Directors of Mental Health Institutions

- Work out individualized plans for treatment, specifying its goals, therapeutic means used and personnel responsible for treatment; engage patients in planning the treatment and in assessing dynamics of mental health conditions.
- Take all the necessary measures to introduce a multidisciplinary approach, expand a range of therapeutic means and methods and introduce the method of individual management of cases.
- Take all the necessary measures to regularly provide information about treatment to patients in an understandable language and regard this as part of therapeutic process; ensure that medical personnel respect the patient's refusal to be treated and seek to obtain consent to treatment by providing detailed information to the patient about the role of treatment and its consequences.
- In order to manage side effects of medications, ensure conducting tests to assess the risks of agranulocytosis, metabolical changes and especially hyperglycemia and to control leukocytes.
- Include full information in medical records.
- Take all the necessary measures to ensure timely diagnostics and adequate treatment of somatic diseases.
- Secure timely and adequate dental care for patients.

- Ensure constant control of expiration dates of medications, remove expired medications as required and prevent their use.

Proposal to the Parliament of Georgia

- In order to reinforce legislative foundations for the system of mental healthcare that is based on human dignity and personal inviolability, amend Article 5 (1) (e) of the Georgian Law on Psychiatric Care and remove the phrase: "This right can be restricted in cases envisaged by Articles 18 and 22[1] of this law."
- Change the term "forcible psychiatric treatment" with the term "forcible hospital-based psychiatric care" in the Georgian Law on Psychiatric care.

PSYCHOSOCIAL REHABILITATION, PSYCHOLOGICAL AND SOCIAL SERVICES

Under Georgian Law on Psychiatric Care, a set of measures aimed at improving mental health includes medical and psychosocial interventions. The purpose of measures planned as part of psychosocial intervention is to help patients maintain social and work contacts and develop skills for their independent existence in a society.[585]

The Decree of the Government of 2014, adopted based on the mentioned law, introduced standards of psychosocial rehabilitation.[586] According to these standards, psychosocial rehabilitation is to be carried out in special centres for psychosocial rehabilitation as well as multi-profile psychiatric institutions, institutions of long-term psychiatric care (shelters), psychoneurogical dispensaries.

According to the Decree of the Government of Georgia of 2015 Approving State Programs of Healthcare,[587] psychosocial rehabilitation covers teaching of basic skills to patients to make sure that they adapt socially, get integrated into the society and are able to live independently. This includes identifying the needs of patients, drawing up individualized and specific rehabilitation plans, applying methods of psychosocial rehabilitation, in accordance with the established standards.

Monitoring of mental health institutionsshowed that the scope of psychosocial rehabilitation is limited at all these institutions. This is due to the shortage of means, equipment, materials and specially trained personnel. Most institutions have psychologists, but they rarely resort to therapeutic interventions for individuals and groups, as required by regulations. Work therapy is weakly developed. Most patients do cleaning and provide some other services, but this cannot be considered as work therapy.

There is a social rehabilitation unit at **the Centre for Mental Health and Prevention of Drug Dependence.** It employs social workers (including the head of the unit), a psychologist, a peer recovery support specialist and an ergotherapist. There is an art therapy group. The functions of an art therapist are performed by a social worker. Psychologists use methods of individual and group therapy. The groups integrate patients that undergo acute and long-term treatment. Social workers assist patients in sports activities, walking, implementing various rights. Each patient engages in various activities only if permitted by a psychiatrist. The patients are not aware of the criteria used by the psychiatrist in making decisions. The interviews showed that such decisions are often

585 Georgian Law on Psychiatric Care, Article 21, available at https://matsne.gov.ge/ka/document/view/24178 [last visited on 21 March 2016].

586 Decree No. 68 of 15 January 2014 of the Government of Georgia, Technical Regulations – Standards of Psychosocial Rehabilitation, available at https://matsne.gov.ge/ka/document/view/2198173 [last visited 21 March 2016].

587 Decree no. 308 of 30 June 2015 of the Government of Georgia about Approval of State Programs of Healthcare for 2015, available at https://matsne.gov.ge/ka/document/view/2891068 [last visited on 21 March 2016].

biased. The patients point out that there is a basketball court, but engagement in sports activities is selective, based on subjective considerations and not the health state of patients. One patient asserted that he wanted to participate in sports activities, but was not given such a possibility.

Plans of treatment of patients do not include psychosocial rehabilitation. They do not mention what kind of therapeutic activities are necessary for patients. This is due to the lack of engagement of social workers in preparing these plans. Social workers assess each patient individually. Short evaluation forms are filled in for patients from acute care units, but these forms remain with social workers and are not included in medical cards. According to social workers, after consultations, only some patients used to undergo full evaluation. Recently, based on the court request, full evaluation of all patients has been introduced. The forms are included in medical cards of patients only after they are discharged, because according to the personnel, it is a dynamic process and these forms need to be updated periodically. This cannot be viewed as a valid defense, since the concluding part of the evaluation given by the social worker refers to the needs of the patient and the areas in which care and supervision is needed. Such information should be included in medical cards. Otherwise, it will be impossible to find and identify information about the measures taken to address the needs of the patient. Besides, this practice contradicts development of a complex, unified approach and facilitates separation and fragmentation of medical and social spheres.

The monitoring shows that it is difficult for social workers to identify the needs of persons undergoing short-term treatment. They have been able to obtain more exhaustive information about the patients undergoing long-term treatment. The Social Rehabilitation Unit does not have statistical data about the patients that get a social assistance package. The Monitoring Group was unable to obtain this information. One of the social workers told the Monitoring Group that in 2015 October, 10 persons received social assistance at the Centre for Mental Health and Prevention of Drug Dependence.

The information about the measures taken to assist patients is included in the questionnaires. There is no special registry for such information. According to the files, social workers are mainly engaged in solving the questions of social assistance, helping patients to contact their relatives and getting identification cards. They engage patients in rehabilitation programs and provide information about such programs. They also assist patients in withdrawing money with bank cards and buying the items they need.

According to the information provided by social workers, for the period of monitoring, three patients of the unit for long-term care were declared incompetent and had guardians appointed. As for the referrals to competent organs to have persons recognized as recipients of support, seven applications were filed to the court between July and October. One of the patients had been declared incompetent up to 1 April 2015. Judicial decisions were not made in any of these cases by the time of completion of monitoring (October 2015).

There were cases of long-term stay at the institution because of social problems. One of the patients was registered in order to be placed at the shelter. The patient L.A. needed to be recognized as a beneficiary of support and have a supporter designated to assist him in implementing his rights. Social services already addressed the court concerning this patient. The Head of the Social Rehabilitation Unit of this institution expressed willingness to be appointed as a supporter.

The patient A.A needed to have a supporter appointed and the social worker filed the respective request to the court. It was explained that the problem related to residence would be solved afterwards.

In case of the patient D.S. the local organs of self-governance were informed. The social worker of the institution contacted the social worker of the territorial unit of the Agency, but no written application to the Agency or Trafficking Fund was filed.

The monitoring revealed cases of neglect of the patients' rights and interests by their family members. In one case, the Monitoring group found that family members did not spend targeted social assistance allocated to the beneficiary to meet his/her needs.

There was one patient with movement restrictions that did not have a wheelchair. It was established through interviews that wheelchairs are only available at psychoneurological dispensary and social workers did not address the Agency of Social Services to secure the device for the patient.

At Bediani Psychiatric Hospital, most patients undergo long-term treatment. The institution does not have a psychologist, a specialist responsible for rehabilitation, a qualified social worker. There is no multidisciplinary team that works out individualized plans of development of beneficiaries and secures its implementation. Individual consultations with a psychologist and rehabilitative services are not accessible to the beneficiaries.

30 patients undergo rehabilitation at the unit of the art therapy at the institution. The unit is led by the person with musical education. The beneficiaries paint, sculpt, knit and embroider. Their work is on display in the rehabilitation unit.

The unit is not equipped with furniture. There is a library, but availability of books is limited. The institution has facilities for labor/physical activities, but there is no competent staff to facilitate rehabilitation. The hospital does not have a qualified social worker to solve problems for patients, to provide assistance to the elderly patients in obtaining pensions from the state or getting the status of a disabled person, to explain the procedures for getting a social assistance package, to facilitate communications with legal representatives. In many instances, social benefits to which the patients are entitled are used by their family members and/or guardians and the patients themselves have no say in managing their funds. In such cases, they need competent legal advice.

In the course of interviews at Bediani Psychiatric hospital, two patients touched upon the problem of the failure of guardians to discharge their responsibilities adequately. Specifically, these persons cannot use their social assistance packages because their plastic cards expired, but guardians do not help them solve this problem. Besides, as a result of a two-year treatment their health state considerably improved and they should no longer stay at the hospital, as concluded by their doctors. However, the guardians do not want to take them home, do not visit them. They are not interested with conditions of persons under their guardianship.

At **Kutaisi Mental Health Centre**, a psychosocial rehabilitation service is provided. It works as required by the program of psychiatric care, ensures engagement of patients to the maximum extent. The creations of patients are on display in the recreational areas of the unit.

THE ROLE OF PSYCHOLOGISTS IN MENTAL HEALTH INSTITUTIONS

Some deficiencies have been observed in the activities of psychologists at **the Centre for Mental Health and Prevention of Drug Dependence**. Majority of patients point out that despite their willingness, their communication with a psychologist is rare.

The rights and responsibilities of the psychologist in the unit of long-term psychiatric care include choosing a rehabilitation activity for the patient (social therapy, ergotherapy, art therapy, cinema therapy) and engagement of patients in individual or group psychotherapy. At the same time, a psychologist is obliged to enter the information about his/her activities in a special journal and also in medical cards, as required. No such information could be found in the medical documentation of patients.

At the acute care unit of **Tbilisi Referral Hospital ("Unimed Khakheti" Ltd)**, the role of a psychologist is limited to making a diagnosis. He/she does not have to work with beneficiaries and their family members. According to formal instructions for this position, in some instances, a psychologist may make a diagnosis for persons with mental disorders and/or engage patients in psychotherapy and should include the information in the medical documentation, as required by internal regulations of the hospital. These questions were not

covered by the internal regulations provided to the members of the Monitoring Group. The beneficiaries also did not confirm engagement in activities/therapeutic measures. The list of the employees does not include a psychotherapist and an art therapist. Accordingly, patients do not have the possibility to benefit from therapeutic and rehabilitative services. Even though the function of this institution is to provide care in acute cases and not long-term treatment, further interventions need to be planned. This is especially warranted taking into account that in some instances, patients remain at the institution for over a month. According to a psychologist, they are forwarded to various centres afterwards, for the purpose of psychosocial rehabilitation.

It is worth noting that only some patients confirmed participation in rehabilitation programs. None of the medical cards specify rehabilitation as part of the treatment scheme and integrate it in the process of therapy.

Rustavi Mental Health Centre has a few psychologists (including an art-therapist) that provide services to patients three times a week. Unfortunately, plans for treatment of individual patients do not contain information about services provided by psychologists or art therapists. Such services are not integrated in the scheme of care. It is worth noting that results of psychological examination are not included in all medical cards, but the medical personnel asserts that all patients are examined to confirm diagnoses and this information is saved by psychologists.

At **Kajaia Surami Psychiatric Hospital,** medical documentation for all patients includes an entry by the psychologist that is identical in form and substance. However, none of the patients has been able to recall having a conversation with the psychologist. At the time of monitoring, the psychologist was not at the hospital. In general, activities directed at securing psychosocial rehabilitation have not been introduced at Surami Psychiatric Hospital. There is no adequate infrastructure and trained personnel.

Surami Psychiatric Hospital provides no social services to assist patients in solving a range of problems. Many of the patients do not have a status of a disabled person and therefore, cannot benefit from a social assistance package. They do not know whom to address to solve these problems. Some patients are not informed about the reasons for not getting a social assistance package. Family members and legal representatives often neglect the needs of these persons.

Naneishvili National Centre for Mental Health (Qutiri) allocates space for psychosocial rehabilitation, but the administration of the Centre claims that they do not have sufficient funds and personnel to provide adequate services to patients fulfilling the standards of the sub-program of psychiatric care at hospitals. Only a limited number of patients declared about participation in psychosocial activities.

According to the information received through monitoring, patients get a psychological evaluation once a year. When interviewed, a psychologist pointed out that he is actively engaged in the process of psychosocial rehabilitation and carries out psychological interventions. However, medical cards of patients do not contain any reference to such services. According to the psychologist, he saves relevant information, but this information is confidential. It is worth noting that norms of professional ethics require non-disclosure of information obtained through sessions of psychotherapy. However, this should not exclude giving access to the members of the Monitoring Group to some basic, non-sensitive information for the purpose of assessing the process of psychosocial rehabilitation. Social services of the institution are actively involved in solving social problems of patients. They take measures to prepare patients to be discharged and help restore family relations. There is also positive dynamics in terms of initiating medical-social expertise, determining the status of a person with a disability and granting the benefits. Despite these efforts, it was revealed through interviews that these questions remain unresolved and require urgent action.

In the psychosocial rehabilitation unit **at Khelvachauri Clinical Psychoneurological Hospital,** rehabilitation activities are carried out in the first half of the day for the patients from all three units. They have an art therapist and a work therapist. The art instructor is responsible for musical therapy which is carried out in a specially furnished room in the unit for long-term stay for women. The patients have the possibility to watch

movies, listen to the music and dance. A few patients from acute care unit were attending this therapy at the time of monitoring.

Group rehabilitation exercises are carried out by a psychologist twice a week, but there are individual sessions as well. In the rehabilitation unit, the Monitoring Group members reviewed tests and questionnaires filled in by patients as well as assessments of art therapists and others. The psychologist that works with a certain patient looks into these materials and writes a conclusion about the treatment. According to him, these conclusions are included in the patient's history upon his/her discharge, but until then, they remain with the psychologist.

The program of psychosocial rehabilitation envisages taking patients on excursions. Different groups of patients were taken four times to visit the Gonio Fortress, Batumi Boulevard and the Zoo. Patients take walks in the yard of the establishment, but as reported by some of them, this is impossible when it rains since they do not have adequate clothing and shoes.

When visiting mental health institutionsand interviewing personnel and patients, the members of the Monitoring Group paid attention to the legislative changes carried out within the framework of reform related to legal capacity. It has been established that majority of the interviewees is not informed about new legislative regulations. At the time of monitoring (9 October – 6 November 2015), not a single person placed in these institutions was recognized as a recipient of support.

The conversations with patients revealed the need for legal consultation and assistance in resolving legal disputes. Some of them have property disputes with family members or relatives. A few patients placed in Surami Psychiatric Hospital pointed out their property remained without supervision and as a consequence, they suffered damage. One patient of the same institution underlined the problem of communication with her underage son. As she pointed out, her son was with a caretaker, she had not seen him for a few years and did not know whom to address to solve this problem. The same problem was raised by a patient of the National Centre of Mental Health (Qutiri). She asserted that her son was also probably with a caretaker but she did not have exact information.

According to the information provided by the lawyer of Kutaisi Mental Health Centre, a few patients of this institution needed to have disputes related to immovable property solved.

It may be concluded that despite efforts of personnel of mental health institutionsto help beneficiaries in solving social problems, services of psychosocial assistance, rehabilitation and reintegration are weakly developed at hospitals. In some instances, they exist only on paper and can be regarded as merely a daily activity.

RECOMMENDATIONS

Recommendations to the Ministry of Labour, Health and Social Affairs of Georgia

- Review funding methodology in order to secure the implementation of psychosocial rehabilitation programs at psychiatric institutions, taking into account biopsychosocial aspects of recovery; to secure regular monitoring of implementation of various programs for rehabilitation of patients at such institutions.

Recommendations to the Directors of Mental Health Institutions

- Take into account biopsychosocial aspects of recovery and develop psychosocial interventions, secure intervention of specialists in the schemes of treatment.
- Pay special attention to the development of psychosocial rehabilitation services, to secure compliance with existing standards; to secure improvement of abilities of patients and development of skills to live independently.

- Hire qualified personnel to provide psychosocial rehabilitation services, to train personnel.
- Offer a broad range of recreational activities to patients, let them spend considerable time outdoors, to secure accessibility of books, journals and newspapers.
- Inform/train personnel about legislative changes introduced within the framework of the legal reform on legal capacity.
- Secure timely performance of obligations imposed upon them within the framework of the legal reform on legal capacity; to accelerate relevant procedures.
- Secure closer and more coordinated cooperation with the Agency of Social Services, in order to solve social problems of patients.
- Cooperate with relevant services in order to protect parental rights of patients.

PERSONNEL

The existing human resources must be adequate in terms of numbers, categories (psychiatrist, therapist, nurse, psychologist, occupational therapist, social worker, etc) and their professional experience and training.[588] Modern services of mental health unify healthcare managers, psychiatrists, psychologists, psychotherapists, social workers, nurses, occupational therapists and all other specialists that are necessary to provide necessary care effectively (for example, a neurologist or pediatrician, special needs education specialist or speech therapist, etc).[589]

Multidisciplinarity constitutes the basis for modern approach.[590] Unfortunately, in psychiatric institutions, multidisciplinary approach is lacking, in relation to competence of personnel and more importantly, in relation to management of mental disorders. There is a shortage of psychiatrists and other personnel (social workers, psychotherapists, nurses, etc). For example, at **the National Centre of Mental Health,** only one doctor is on duty at night (with over 650 patients). During the daytime, the monitors also communicated with one and the same doctor in the majority of units to verify the information.

Surami Psychiatric Hospital employs only three psychiatrists. They have to be on duty frequently, but have very low salaries. This causes occupational burnouts and development of a nihilistic attitude towards treatment of patients. Only one nurse is on duty in each unit and due to the workload, managing mental disorders and filling in the documentation correctly becomes impossible. The Director General of Surami Psychiatric Hospital told the members of the Monitoring Group that salaries and living conditions are not attractive for specialists.

As regards working schedule and conditions, Article 27 (1) of the Georgian Law on Psychiatric Care envisages the following benefits for those employed in the field of psychiatry, taking into account specificity of their work environment: a) reduced, 30-hour work week; B) increased 42-day holiday time. The monitoring revealed that these benefits are rarely used. The personnel have to work under difficult conditions. This has a negative impact on the quality of psychiatric care, attitude towards patients, supervision, prevention of violence and incidents between patients, etc.

588 Standards of the European Committee for the Prevention of Torture, para. 42.
589 Miller G. Mental, health in developing countries. The unseen: mental illness's global toll. *Science* 2006 January 27;311(5760):458-61.
590 Raine R, Wallace I, Nic a' Bháird C, Xanthopoulou P, Lanceley A, Clarke A, et al. Improving the effectiveness of multidisciplinary team meetings for patients with chronic diseases: a prospective observational study. *Health Serv Deliv Res* 2014;2(37).

According to the Special Prevention Group, the problem lies also in the absence of occupational therapists in mental health institutionsand the fact that the management of such institutions does not understand the function of this specialist and the importance of his/her activities.

It has been established as a result of monitoring that apart from insufficiency of personnel, there is a problem of continuous professional education. The topics covered by the trainings as well as their frequency and actual engagement of personnel are unsatisfactory. Majority of personnel has not been trained for many years.

According to the information provided by the Ministry of Labour, Health and Social Affairs, the Council of Europe will provide funds to conduct 6 cycles of trainings throughout Georgia for doctors, nurses and social workers of institutions of psychiatric care in the area of human rights, ethics and patient care. The initiative to conduct such trainings is worth welcoming, but the Special Prevention Group considers that in-depth training is needed at least in the following areas: management of agitated patients,[591] methods of physical restraint, multidisciplinary focus, prevention of violence and incidents among patients, de-escalation techniques, the Convention on the Rights of Persons with Disabilities and modern psychiatry. The trainings about various important questions of modern psychiatry should regularly be conducted. Special attention needs to be paid to the understanding by the personnel of importance of biopsychosocial model of psychiatric care and development of skills for implementing this model in practice.

According to the Special Prevention Group, it is important to develop a strategy for supplying the system of psychiatric care with competent personnel. It is also necessary to provide adequate salaries and create additional guarantees for social protection.

RECOMMENDATIONS

Recommendations to the Government

- Review the methodology of financing the system of psychiatric care in order to allocate sufficient funds to secure personnel and adequate payment for the work done by the personnel.

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia

- Develop the strategy for supplying the system of psychiatric care with competent personnel.
- Introduce additional guarantees for social protection of personnel of psychiatric institutions.
- Determine minimum number of personnel per a certain number of patients.
- Take all the necessary measures to train the personnel of mental health institutionsin at least the following areas: management of agitated patients, methods of physical restraint, multidisciplinary focus, prevention of violence and incidents among patients, de-escalation techniques, the Convention on the Rights of Persons with Disabilities and modern psychiatry; to regularly conduct trainings about various important questions of modern psychiatry; to pay special attention to the understanding by the personnel of importance of biopsychosocial model of psychiatric care and development of skills for implementing this model in practice.

Recommendations to the Directors of Mental Health Institutions

- Notwithstanding the limited funding, reconsider and try to increase salaries of personnel.
- Secure institutions with sufficient qualified personnel.

591 Trainings on this topic were conducted in 2011.

- Take all the necessary measures to train personnel of mental health institutionsin at least the following areas: management of agitated patients, methods of physical restraint, multidisciplinary focus, prevention of violence and incidents among patients, de-escalation techniques, the Convention on the Rights of Persons with Disabilities and modern psychiatry; to regularly conduct trainings about various important questions of modern psychiatry; to pay special attention to the understanding by the personnel of importance of biopsychosocial model of psychiatric care and development of skills for implementing this model in practice.

The Proposal to the Parliament of Georgia

- Amend the Law on Psychiatric Care to introduce additional guarantees of social protection for the personnel of psychiatric institutions.

SPECIFICITY OF PSYCHIATRIC UNIT FOR CHILDREN

10 patients can be placed in the Children's Unit of Tbilisi 5th Clinical Hospital. At the time of monitoring there were 8 patients, between 1 and 16 years old. They were mainly referred from orphanages of family type. There are four doctors (child psychiatrists), psychologist, psychotherapist, 4 nurses and 4 assistant nurses in the unit.

The monitoring revealed cases of delayed discharge of children from the hospital. The Special Prevention Group suggests that this is due to the failure of social workers to perform their functions effectively. According to the personnel, some patients have to stay at the hospital even for a month and a half because social workers from the Agency of Social Services rarely visit beneficiaries and take them away from the hospital.

It is worth noting that due to their stay at the hospital, the children fail to attend school. The establishment has no invited teachers. As regards communication with parents, the doctor decides when the patients can make phone calls. Children do not have phone conversations with their parents as frequently as they want to.

Treatment of patients is not multidisciplinary. Plans of individual development do not envisage working on psychological and behavioral problems, in addition to pharmacological treatment of mental disorders. There are no individual plans for each beneficiary so that the person responsible for their implementation followed the dynamics and made sure that the patient gets a full package of services.

The examination of documents and the interviews with a 16 year old patient revealed that her views were not taken into account when making decisions about treatment. Particularly, she refused to be hospitalized. Her informed consent form is signed by a social worker. She managed to escape the hospital on the third day of hospitalization. It turned out that she wanted to attend the meeting at which the question of changing her place of residence was discussed and which the social worker did not allow her to attend. After police intervention, she was returned to the hospital and was placed in the unit for adults. The patient said that she did not feel safe with adults. Besides, her communications with outside world were limited. Her mobile phone was taken away when she was hospitalized and was kept in the safe at the reception. She was also not allowed to make calls from the hospital phone. The Monitoring group had the impression that these measures were taken to punish her. This is clearly unacceptable. It constitutes the violation of Article 12 of the Convention on the Right of the Child, according to which state parties shall assure to the child that is capable of forming his or her own views the right to freely express those views in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity. For this purpose, the child is to be given the possibility to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. It is unacceptable to neglect the views of the child in deciding questions and making decisions that influence the life

of the child. Taking into account this right, it is advisable to introduce practice of getting an informed consent from the child. This respect and recognition could help prevent escape of children from the unit (there were 2 cases in 2015).

The unit has a procedure for the temporary discharge of the child from the hospital. The person that accompanies the child files an application to the Head of the Department, indicating the time of taking away the child and the time of bringing the child back. If the Head of the Department agrees, this information is inserted into the medical card of the patient. The time of taking away the child, the reason and the time of bringing the child back is included in the special journal for temporary discharges of patients.

According to the staff of the Unit for Children, there has not been a single case of applying physical restraint. There have not been cases of suicide and self-injury. The doctor inserts information about the conditions of each of the patients in their medical cards every day.

It is a recognized approach in area of psychiatric care that children need stability and continuity of care. Apart from pharmacotherapy, the unit is unable to provide patients with other type of care, even though the absence of psychosocial interventions, correction and habilitation-rehabilitation prolongs and complicates the process of recovery and increases the risks of long-term stay.

The room allocated for rehabilitation (called a play room) does not fulfill the requirements of habilitation-correction-rehabilitation. There are no tables and chairs in the room. There are a plastic slide, a small house, a foldout couch and round poofs, only appropriate for children of pre-school age. There is no library in the unit. There are no conditions for simple physical activities. There is no infrastructure for watching movies. There are no corrective programs and treatment is limited to pharmacotherapy. Examination of medical cards of beneficiaries at the unit for children showed that none of these medical cards included information about consultations with a psychologist.

The Special Prevention Group concludes that therapeutic processes at the Unit for Children do not correspond to modern standards and international guidelines for intervention.[592] The strategies for intervention and competences of the personnel need to be improved. The Special Prevention Group is concerned about placement of a minor in the unit for adults and urges the personnel of the hospital not to allow such practice in the future.

RECOMMENDATIONS

Recommendations to the Director of N5 Clinical Hospital

- Take all the necessary measures to give the child the possibility to freely express views and be carefully listened to about a range of questions, including those related to hospitalization and psychiatric care, at the time of admission and at any stage of psychiatric care, with due regard to the age and maturity of the child.
- Reinforce the strategy of multidisciplinarity, so that the patient benefits from an adequate, full package of services.
- Introduce the practice of evaluating the process of treatment; for example, to guarantee at least two consultations with a psychologist; the first one at the time of admission to check psychical functions and emotional state of beneficiaries and the second one at the time of discharge from hospital to assess the dynamics after pharmacological, psychological and other interventions that will reveal the effectiveness of treatment.

592 See e.g. https://www.nice.org.uk/guidance/cg158 [last visited on 20 March 2016].

- Avoid keeping patients hospitalized beyond what is necessary for treatment and for that purpose reinforce communication with social workers, guardians and educational institutions.
- Secure psychological interventions to facilitate development; to develop programs that teach the child anger management, strategies for correcting antisocial behavior, improve social competences and functioning of children and positively influence their self-esteem.
- Develop infrastructure in order to create therapeutic environment.

To the Ministry of Labor, Healthcare and Social Affairs of Georgia

- Take all the necessary measures to create small units of psychiatric care for adolescents (16-18 year olds) in general hospitals, taking into account geographic accessibility, in order to manage mental disorders of adolescents effectively.
- Take all the necessary measures so that social workers pay more attention to minor patients and communicate with them more frequently, to secure protection of their best interests.

SPECIFICITY OF THE FORENSIC PSYCHIATRIC UNIT OF B. NANEISHVILI NATIONAL CENTRE OF MENTAL HEALTH

Forensic psychiatric care at hospitals includes treatment and management of mental disorders and assessment of risks of committing crimes by the patient. The risk of violence is assessed by a recognized instrument, such as HCR-20 - The Historical Clinical Risk Management-20, Version 3 (Douglas, Hart, Webster, & Belfrage, 2013)[593].

On 26 July 2014, the Parliament of Georgia adopted the amendment[594] to the Georgian Law on Psychiatric Care which differentiated "involuntary psychiatric care' from "forcible psychiatric treatment.'[595]

Forensic Psychiatric Care Unit of the National Centre for Mental Health accommodates patients undergoing forcible psychiatric treatment, based on a court order[596] and also patients transferred from penitentiary institutions for involuntary psychiatric care.[597]

Under Article 22^1 (2) of Georgian Law on Psychiatric Care, the person may be placed in a hospital for forcible psychiatric treatment only if special protection is guaranteed and measures are taken to reduce risks, secure resocialization and improvement of mental health, in accordance with the order of the Minister of Labor, Health and Social Affairs of Georgia.[598]

The results of monitoring showed that conditions at the forensic medical unit are inadequate. Therapeutic environment is not secured. During the day, patients are locked up in the rooms resembling prison cells, without any privacy, with bad sanitary conditions and ventilation. They are taken for a walk in the yard that

593 The Historical Clinical Risk Management-20, Version 3. Available at http://hcr-20.com [last visited on 20 March 2016].
594 Amendments to the Law on Psychiatric Care, 26 July 2014, available at https://matsne.gov.ge/ka/document/view/2434712 [last visited on 20 March 2016].
595 Article 4 (n) of Georgian Law on Psychiatric Care defines forcible psychiatric treatment as a special type of psychiatric care that envisages measures directed at reducing risk of damage, threat or violence inflicted by the person with a mental disorder upon himself or herself or upon other persons, securing their resocialization and improvement of mental health.
596 Based on Article 22^1 of Georgian Law on Psychiatric Care.
597 Based on Article 22^1 of Georgian Law on Psychiatric Care.
598 Order No. 01-70/N of 1 October 2014 of the Minister of Labor, Health and Social Protection of Georgia approving standards for assessing risks for patients undergoing forcible psychiatric treatment and list of measures aimed at reducing risks, securing resocialization and improving mental health, necessary for carrying out forcible psychiatric treatment in a psychiatric institution, available at https://matsne.gov.ge/ka/document/view/2515573#DOCUMENT:1; [last visited on 20 March 2016]

looks like a cage.[599] The Special Prevention Group concluded that the conditions in this unit and the care provided do not correspond to the goals of hospitalization. The unit is in fact merely a facility for isolation of patients with mental disorders.

A patient placed in the unit for forcible psychiatric treatment is visited by a psychologist a day after admission. The psychologist fills in the questionnaire for risk assessment and develops a plan for individual development, which is signed by a psychiatrist, psychotherapist, social worker and psychologist. The plan is initially developed for six months and is later reconsidered. If the patient has been sentenced to forcible psychiatric treatment for less than a year, then a three-month plan is prepared, but these plans are only on paper. None of the interviewed patients undergoing forcible psychiatric treatment knew about the plan or engagement in the process of resocialization. A few patients remembered the conversation with a psychologist. The Monitoring Group had the impression that no psychosocial rehabilitation of patients takes place. The involvement of the psychologist is limited. No meaningful activities are planned and each day is similar. The conflicts among patients are frequent.

The patients undergoing forcible psychiatric treatment, based on a court order and patients transferred from penitentiary institutions for involuntary psychiatric care are under similar, strict conditions. There is no differentiated treatment. Contacts between patients are restricted. In case of both categories of patients, psychiatric care is limited to pharmacotherapy. Patients do not participate in rehabilitation-resocialization programs, sports and other activities.

There is no individualized approach to treatment. Individual needs of patients are not figured out, so that they could be fulfilled through multidisciplinary team work.[600] Patients are not engaged in the process of treatment, do not know terms of treatment and "what to expect in the future'. They are not informed about the complaint procedures established by law. Foreign-language speaking patients are not explained their rights in an understandable language.

Aggression is managed through frightening patients or through injections. The procedure for assessing risks does not correspond to international standards. It is unclear how trustworthy this instrument can be and how the level of risk is integrated in the scheme of treatment, since all the patients are treated following the same standard scheme.

The personnel of the institution told the members of the Monitoring Group that only 15 GEL is allocated for the treatment of patients with acute conditions as well as long-term patients. This does not correspond to the needs of patients and creates a heavy financial burden for the institution. According to the representatives of administration of this institution, another problem lies in the engagement of invited specialists in the activities of the special commission[601] created to assess mental health state of patients undergoing forcible psychiatric treatment. They explained that the institution cannot attract qualified personnel due to geographic inaccessibility and limited funds. Under such conditions, it is impossible to provide full and high quality services to patients.

599 Problems including those related to the conditions of stay, treatment of somatic diseases etc. are examined in chapters above.

600 For example, special needs of patients with cognitive disabilities are not taken into account.

601 Order N01-69/N of the Minister of Labor, Health and Social Protection of Georgia, dated 1 October 2014 about composition and activities of the Special Committee created in mental health institutionsto assess mental health state of patients subjected to forcible psychiatric treatment states that according to Article 22^1 of Georgian Law on Psychiatric Care, administration of an institution responsible for forcible psychiatric treatment creates the Special Commission that is chaired by the clinical manager of that institution and consists of at least 5 members. If necessary, the administration of the institution may be expanded by inviting other specialists. This rule is available at https://matsne.gov.ge/ka/document/view/2515601 [last visited on 20 March 2016].

RECOMMENDATIONS

Recommendations to the Government of Georgia

- Revisit the methodology of financing cases of forcible psychiatric treatment and involuntary psychiatric care under Article 22 of the Georgian Law on Psychiatric Care; study the existing needs in terms of managing such cases; secure allocation of adequate funds.

Recommendations to the Ministry of Labor, Health and Social Affairs of Georgia

- Introduce the system (relevant instruments) for assessing risks that is workable and based on international experience.
- Develop and approve psychosocial rehabilitation standards facilitating resocialization and reintegration.
- Consider appropriateness of introducing differentiated regimes of psychiatric care at the Unit of Forensic Psychiatric Care at the National Centre of Mental Health based on the best international practices.

Recommendations to the National Centre for Mental Health

- Improve conditions of stay at the Forensic Psychiatric Unit, create a therapeutic environment, organize a walking area, ensure that patients spend considerable time outdoors and are engaged in the activities that are interesting and valuable for them.
- Develop the program for psychosocial rehabilitation to facilitate resocialization-reintegration.
- Adjust individual development plans with the real needs of patients and secure actual implementation of these plans.
- Take all the necessary measures to actually engage patients in the process of providing psychiatric care, give them sufficient information about ongoing and planned interventions as well as about the rights of patients, including the right to file complaints.
- Ensure that personnel work in multidisciplinary teams.

THE RIGHTS OF THE CONSCRIPT, MILITARY SERVANTS, AND WAR AND ARMY VETERANS

The report provides an overview of activities undertaken by the Department of Human Rights' Protection in Defence at the Public Defender's Office of Georgia. The Department is a newly created structural unit set up to monitor the protection of rights of conscripts, military servants, and war and army veterans. For this purpose, the Department of Human Rights' Protection in Defence launched a monitoring mission within the reporting period in the 2nd Infantry Brigade of the Georgian Armed Forces, Air Command Protection and Support Battalion, Armament and Equipment Repair Depot, military disciplinary units, and Republican Hospital for Veterans and Invalids. In addition, visits were paid to the 5th Infantry Brigade, Light Infantry Battalion of the 1st Light Infantry Brigade, Norio Training Centre, Krtsanisi NCO School, National Centre for Mental Health and Prevention of Drug Abuse as well as to veterans' residences.

Pursuant to Article 2 of the Law of Georgia on Military Duty and Military Service passed on 17 September 1997, military service is subdivided into compulsory, contractual (professional) services and reserve.

COMPULSORY MILITARY SERVICE

Conditions of the Rights of Conscripts

Compulsory military service became the primary area of examination by the Public Defender's Office due to a series of problems observed within the practices related to the compulsory service.

Paragraph 1 of the Article 1 of the Law of Georgia on Military Duty and Military Service states that "according to the Constitution of Georgia performance of military duty is the obligation of every citizen fit for this purpose'.

One of the types of military services is compulsory military service which is extended to individuals from 18 to 27 years registered for military service, in other words, conscripts. Conscripts perform compulsory military duties in the Ministry of Defence of Georgia, Ministry of Internal Affairs, Ministry of Corrections and the Special State Protection Service of Georgia.[602]

In order to assess the situation with regard to compulsory military servants, the Public Defender's Office monitored Senaki 2nd Infantry Brigade, Air Command Protection and Support Battalion, and Armament and Equipment Repair Depot. In the aforementioned military units compulsory military servants perform their duties in the protection service as guards and orderlies on daily and guard duties. They are also assigned to

602 Law of Georgia on Military Duty and Military Service

perform various physical and administrative tasks. Servicemen do not undergo physical and military trainings and are not obliged to take physical fitness tests. Compulsory military servants are assigned daily duties every third day. There are two types of daily duties: 1) guard duty which means that servicemen act as guards and watchkeepers and 2) internal duty to act on company's duty and orderlies. Every soldier is obliged to serve both on guard and internal duties.

Conscription for compulsory military service, as a rule, takes place twice a year: in spring and autumn.[603]

Conscription falls within the responsibility of Department of Coordination of Military Mobilisation and Draft at the Ministry of Infrastructure and Regional Development.

After receiving a conscription notification, the conscript is obliged to a Military Registration and Draft Service of the local municipality within indicated period of time to undergo primary registration and other procedures stipulated by the Resolution of the Georgian Government of 2 June 2015 on *the Military Registration of Citizens*. Conscripts are supported by coordinators who are responsible for explaining rights and obligations to the former. They are also tasked to coordinate the transfer of conscripts to the Mobilisation and Military Service Unit of the Ministry of Infrastructure and Regional Development. Conscripts are to remain under the supervision of coordinators before their actual conscription.

A standing commission for military and medical examination at the Department of Coordination of Military Mobilisation and Draft ascertains the quality and a category of fitness for military service based on medical checkup (including additional checkups if need be). Therapeutic, preventive and recreational measures, additional medical tests as well as the work of the permanent military-medical commission are funded from allocations by the Ministry of Labour, Health and Social Affairs of Georgia.

The Law of Georgia on Military Duty and Military Service does not specify a length of conscription notice to be given to the conscript for him to summon at an assembly point. Therefore, the conscript may be called to serve any minute since the handover of the notice. Oftentimes conscripts are summoned on the second or third day which is an unreasonable timeframe and often serves as a cause of breach of the conscript's obligation to appear at an assembly point.

After the conscript gets registered at the Military Registration and Draft Service at a council of respective municipality, they are transferred to the Department of Coordination of Military Mobilisation and Draft to go through a military expert commission to ascertain if the conscript is fit for military service. Conscripts assessed as fit for military services are transferred to respective agencies from here. Representatives of the agencies are present at the Department of Coordination of Military Mobilisation and Draft on the conscription day to select and take conscripts to respective units.

Chapter 5 of the Law of Georgia on the Rights of the Patient guarantees the protection of confidentiality and integrity of the patient's privacy. Pursuant to Article 27 of the same law [604] "the medical service provider is legally bound to protect confidentiality of personal information of the patient during his/her lifetime as we all posthumously.

Pursuant to Article 30 of the same law only individuals directly involved in the provision of medical services are authorized to be present at the delivery of such services. Exceptions can be made upon a consent of or requirement made by the patient for other individuals to attend.

A monitoring visit to the Department of Coordination of Mobilisation and Military Draft revealed that the right of the conscript to confidentiality is not often respected and diagnosis and health conditions of the conscript are discussed in view of other individuals and fellow conscripts.

603 Law of Georgia on Military Duty and Military Service, Article 22, Para 1.
604 Law of Georgia on the Rights of the Patienat, Article 27

The conscription commission consists of the following medical personnel: a general practitioner, a dermatologist/andrologist, a trauma surgeon, a surgeon, an otolaryngologist/ENT specialist, a pulmonologist, a neurologist, a dentist, an ophthalmologist, a psychiatrist, and lab specialists.

A dermatologist/andrologist, a trauma surgeon, a surgeon, an ENT specialist, a pulmonologist, a neurologist and a dentists sit in the same room with partitions to separate each of the sections, however, the sections are not completely isolated. There are usually physicians of two or three specializations in each of the sections.

Conscripts enter the room together and there may be up to 15 persons in one flow. A changing room is located opposite to the examination room and conscripts have to walk a tiled floor barefoot in their underwear to get to the examination room where they are checked in a group without any individual approach by a surgeon, a trauma surgeon and a dermatologist. Conscripts undergo examination with other physicians in the same manner. This practice creates a risk of infections (e.g. fungus) through skin contact and may also cause other health issues especially during winter times. Movement of conscripts in such a manner is degrading and disrespectful. Conscripts undergo through checkups with an ophthalmologist, a psychiatrist and a pulmonologist in their clothes. Feet and lungs are also x-rayed.

Checkups conducted by a psychiatrist deserve a particular attention. The duration of an interview with conscripts is ten minutes average. The doctor asks the patient whether he suffers from a mental health problems or is undertaking treatment and inquires about an injury (if such an injury is obvious). A psychiatrist's assessment completely depends on responses provided by the conscript with little attention paid to his behavior. If the conscript states that the injury was self-inflicted or demonstrates suspicious behavior, another psychiatrists steps in.

General examinations also take no longer than few minutes. Monitoring of military bases revealed that military servicemen are often released from their military duty because for health problems that were overlooked by the Conscription Commission.

The Standing Commission for Military and Medical Examination relies on Order N360 of 1996 of the Minister of Defence of Georgia which provides a list of health conditions which serve as grounds for either permanent or temporary release from military duty. Interview with doctors made it clear that the order of the minister does not provide a full list of health conditions determining the fitness of the conscript for military service and therefore, doctors have to act on their discretion to make a decision whether or not the conscript is fit for military service should they come across the particular illness which is not enlisted in the order. According to the legislation, conscripts who suffer from incurable diseases and have not yet been qualified as persons with disabilities, have their military duty called off for three years. Medical personnel argue that instead of permanently releasing conscripts falling under such category, they have to defer from draft for maximum three years as per Order N360 of the Minister of Defence of Georgia and Decree of the President of Georgia of 4 August 1999. This regulation creates discomfort for conscripts as they are forced to appear in an assembly point in spite of the fact that their incurable health condition makes them unfit for military service. This practice is also a cost-ineffective one as material and financial resources are spared to fund repeated procedures for this category of conscripts.

As for military registration and draft services in the regions, a majority of conscripts both from Tbilisi and regions state that[605] representatives of services responsible for military registration and draft do not take much effort to provide detailed information on procedures of deferment and alternative military service and they have to look up for relevant information themselves. Most of interviewed conscripts said they never wanted to perform military duties.

Representatives of the Public Defender had a conversation with a military serviceman J.M. from Dmanisi Municipality. J.M. neither speaks nor understands Georgian. At the time of conscription, he had a pregnant

605 During the monitoring mission representatives of the Public Defender interviewed both conscripts and compulsory servicemen.

wife who had given birth to their child by the time J.M. started to perform military duty. J.M. had not been explained that because of his newborn child he was subject to deferment from his military duty for three years since the day the child was born.[606] J.M. states that he has no desire to continue compulsory military service, however, a person who has already been conscripted who happens to have a newborn child cannot be released from military service as there is no legal basis for such a decision to be made. Article 30 of the Law of Georgia on Military Duty and Military Service clarifies grounds for deferment from the draft while Article 36 of the same law provides a list of grounds for early discharge of servicemen from military service. In this particular case none of grounds is applicable for deferment or discharge from military service.[607]

Acting in purusuant to Article 18 of the Law of Georgia on the Public Defender of Georgia, representatives of the Public Defender's Office addressed in writing to a head of the military registration and draft service of Dmanisi municipality to request information on reasons for which J.M. was not subject to deferment from military service as outlined in Clause O, Paragraph 1 of Artcle 30 of the Law of Georgia on Military Duty and Military Service.[608] A response [609] suggested that J.M. had not revealed the fact that he had a newborn child to respective authorities. The response also stated that for the sake of transparency of the draft, an information stand placed in the premises of the military registration and draft service of the municipality contains information on rights and obligations of conscripts and that the information is provided only in the state language.[610] Respective information was also requested from those municipalities which homes large minority population. As a result of the inquiry it was revealed that information provided only in the state language on stands placed at Bolnisi and Khulo municipal services for military registration and draft, while Tsalka municipality provides information in Georgian and Russian. Information was provided in Georgian and Armenian languages in Akhalkalaki municipality.[611]

CONDITIONS OF COMPULSORY MILITARY SERVICEMEN

Senaki 2nd Infantry Brigade has a guard company consisding of compulsory military servicemen. Barracks are arranged in a two-storey building with a toilet, a showeroom, a storeroom and two residential rooms each of 17m^2 and for eight persons are located on the first floor. There are no heaters installed in either room and only one out of four electric bulbs installed in the rooms works. There are five squat toilets and as flushes do not work, buckets are normally used to flushing toilets. Showerrooms are isolated from sides, but open from the front. Taps are broken and pliers are used to open taps. Electricity system is outdated. Three residential rooms are placed on the second floor. The first 50 m^2 room homes 24 persons. The room has four windows of 1m^2 each and only one out of six installed electrical bulbs functions. The second room of 48 m^2 accomodates for 24 persons. There are three windows of 1 m^2 in the room and only out of nine electric bulbs works. The third room with 66 m^2 is designated for 32 persons. There are four windows of 1 m^2 and none but one electric bulb out of eight installed in the room functions. Daylight coming from the windows is not sufficient. There is no wardrobe or closet in the room so soldiers have to keep their personal items and clothes in backpacks. Hygienic means (washing soap, hand soap, shaving items, toilet papers and toothpaste) are delivered once a month. Because of law quality and scarcity of available hygienic items, compulsory servicemen have to purchase basic items at their own expenses. Shampoo is not given. Servicemen wash their uniforms and clothes in shower

606 Clause O, Paragraph 1 of Artcle 30 of the Law of Georgia on Military Duty and Military Service
607 Law of Georgia on Military Duty and Military Service, Article 36
608 Law of Georgia on Military Duty and Military Service, Article 30, Paragraphe 1. The conscript will deferred from the draft if: Paragraph O – he has one child - for three years since the birth of the child
609 A letter from the head of military registration and draft service at Dmanisi Municipality N61 01/10/2015
610 A letter from the head of military registration and draft service N1 14/01/2016.
611 A letter from Bolnisi Municipality N11/303 20/01/2016
A letter from Khulo Municipality N09/3390 29/01/2016
A letter from Akhalkalaki Municipality N6/12 01/02/2016
A letter from Tsalka Municipality N09/67 02/02/2016.

rooms. Linens are changed once a week, however, during the monitoring visits, pillow cases were dirty and stained. Floors are tiled and walls painted, however, because of moist and mould the paint has been removed from some parts of the walls adjoining showrooms. Electricity is on from 06:00 to 22:00. An information board at the entrance to the rooms provides names and surnames of the residents as well as a timetable for shifts.

Theory classes are held in a corridor close to dormitories with insufficient light and visibility for reading and writing exercises. Only one out of three electric bulbs works. There is no window and no daylight coming from on the side of the corridor. An information board at the entrance to the rooms provides names and surnames of the residents as well as a timetable for shifts.

Medicaments are collected at a hospital ward. If accompanied by a sergeant, servicemen can access the ward 24/7 to receive adequate medical assistance.

Friday is a housekeeping day and everyone takes part in tiding up the barracks and surrounding area. The use of a mobile phone is allowed on a daily bases from 19:00 to 21:00. Phones are kept in a special box with a locker. Mobile phones in use should not have photo and video cameras. Those who have no mobile phones of their own, can use the one available at the control room. Visitations are allowed on the weekends.

Pursuant to the Law of Georgia on *the Status of the Military Servant,* Article 2, Paragraph 2 [612] a military serviceman performing compulsory military duty is eligible to one day off per week. According to Paragraph 6 of the law [613] the military servant on compulsory military duty is eligible to two weeks of leave for the whole duration of service except for the 12th month of the service. Compulsory military servicemen report that their right to leave is not violated and that they can use their two-week holiday following an agreed timetable.

In the Ministry of Internal Affairs, penitentiary institutions and special state protection services compulsory military servicemen perform their guard duty as watches, and as company duties and orderlies on internal duties once in three days.

Supervisors have reportedly changed daily duty timetable in one of the units of the department for protection of strategic objects at the Ministry of Internal Affairs and as a consequence, a serviceman G.L. had to perform his daily duty every other day instead of every other third day three times in a row. The decision makers explained that due to insufficient cadre they had to detail G.L.to daily duty in this timing. We were also notified that G.L.'s assignment to extra duty was based on Article 6, Paragraph 4 of the Order N1009 of 31 December 2013 of the Minister of Internal Affairs.[614] However, G.L. relayed to the representatives of the Public Defender that they found a cell phone on him and therefore punished him for this by detailing him to daily duty several times in a row. This fact raises doubts of the supervisors resorting to punishment methods against G.L. at their own discretion. Because of this decision, G.L. developed health problems: as a result of emotional disorder, he inflicted self-injuries by cutting his hand as he did not want to continue to perform his duty in this unit.

Further to the incident outlined above, the Office of the Public Defender examined the schedule of daily duty at the unit in question of the department of protection of strategic objects of the Ministry of Internal Affairs. The examination revealed that cases of detailing to extra duty occur very often. More specifically, around 36 servicemen have been assigned to extra duty every second day twice or three times.

As explained by the head of the unit, out of 86 military servicemen enlisted in the cadre, the number of those who effectively perform their duties is much lower which is the reason for the frequent occurrence of daily duty every second day.

Pursuant to the Law of Georgia on Military Duty and Military Service, Article 30, Paragraph 1, Cause E[1] the conscript shall have his military duty referred before the examination results are announced if the latter is registered at the unified national exams in the year of the completion of general education and, If the conscript

612 Law of Georgia on the Status of the Militry Servant, Article 11, Paragraph 2.
613 Law of Georgia on the Status of the Militry Servant, Article 11, Paragraph 6.
614 Based on the need at the workplace, fixed term military servicemen may be transferred to daily regimen or daily duty every other day.

is entitled to study in a higher education institution based on the results of the exams, the deferment will be extended until his enrollment in a higher education institution as stipulated by Article 30, Paragraph I, Clause C1)[615]

This regulation has caused protests from military servicemen on a number of occasions.

Yet another case of self-inflicted injuries was identified in the Air Command Protection and Support Battalion. B. Dz. cut the region of the left forearm with a sharp object. The incident was reported to be instigated by family and personal problems. In the second year from the completion of a general education institution B.Dz. got registered for the Unified National Exams. The existing legislation does not recognize this circumstance as a valid justification for the deferment of his military duty. Within the aforementioned period B. Dz. successfully passed the exams and was involved in a higher education institution, however, he was not entitled to the deferment of military duty. B.Dz. did not wish to continue his military service, rather was keen on continuing his studes. With injuries described above, B.Dz. was transferred to Giorgi Abramashvili Military Hospital of the Ministry of Defence of Georgia to undergoe in-patient medical examination and determine if he was fit for military service. The medical military commission diagnosed him with personality emotional instability and concluded that he was not fit for military service. As a result of the conclusion, B.Dz. was discharged from the Georgian Armed Force.

The aforementioned regulation needs to be revisited to ascertain expediency of a decision to conscribe those individuals who are registered and have taken national exams based on the justification that conscription takes place on the second year from the completion of a general education institution.

An annual salary of military servicemen conscribed in the defence system amounts to 77 GEL and 20 Tetri. However, 70 GEL is deducted to cover meal expenses leaving only 7.2 GEL (seven GEL and 20 Tetri) net. Servicemen have debit cards from the Bank of Georgia which they can use with ATMs. For the service provided to the department of strategic objects at the special and emergency operations centre of the Ministry of Internal Affairs, military servicemen receive 25 GEL on a monthly basis and are provided with two meals while on daily duty. As for the Special State Protection Service, contracts are concluded with military servants, according to which a private of the state protection is eligible to 50 GEL gross while 70 GEL is allocated for meal.[616] For compulsory military duty served at the external protection and guard main unit of the Penitentiary Department of the Ministry of Corrections, military servants are eligible to 52 GEL and 80 Tetri.

SITUATION IN DISCIPLINARY UNITS – "HAUPTWAHTS"

Disciplinary units are the places for administrative imprisonment in the Ministries of Defence and Internal Affairs.[617]

The monitoring mission undertaken by representatives of the Public Defender, revealed that military servicemen were placed in disciplinary units because of delinquencies of various kinds and based on a decision made by a judge of the administrative law in the respective court. The maximum period of time for the placement of the serviceman in disciplinary unit was determined 15 days.[618] However, in practice the period ranges from two to five days average. The military serviceman is allowed to appeal for the decision to be overruled within ten days period.[619]

615 The conscript will have his conscription deferred if he is a student at a Georgian higher education institution or a foreign higher education institution accredited by a respective legislation, until he finishes his higher education, at every step of the higher education.

616 Resolution N77 of 28 March 2013 of the Government of Georgia on Social Protection and Material Provision for the Staff of State Protection Special Service

617 Resolution N615 of the Government of Georgia on Approving Military Disciplinary Rules, Article 2.

618 The Administrative Offences Code of Georgia, Article 32, Part I.

619 The Administrative Offences Code of Georgia, Article 273.

There were two disciplinary units functioning in the Ministry of Defence's system. One of the disciplinary units was located in Senaki on the premises of the 2nd Infantry Brigade for armed units deployed in West Georgia, while the other disciplinary unit was in Vaziani borough on the premises of the 4th Mechanised and 1st Artillery Brigades for units deployed in East Georgia. Disciplinary units were designated for compulsory and professional military servicemen.

The prisoner was examined by a general practitioner on duty in view of the staff of disciplinary unit. If physical examination revealed any injury, the physical would make a respective entry to a log of external examination for servicemen placed in disciplinary unit and make a recommendation to a chief of the disciplinary unit if the prisoner required treatment or in-patient care.

Upon the placement in the disciplinary unit, the prisoner must have items of personal hygienic (items for shaving, soap, underwear, slippers, military uniform, shoes and overalls). The prisoner was not eligible to clothes, linen, a pillow, a sleeping bag, blanket and mattress. As servicemen were transferred to disciplinary unites directly from courts, only those who managed to take personal items to court hearing, had an opportunity to have personal items with them while being transferred to the disciplinary units. However, as a rule, servicemen would go to court hearings without any personal items on them.

In Senaki disciplinary unit prisoners slept on a bear wooden rack without a matrass, blanket or a pillow. The rack measured 190X120 cm. Prisoners were allowed to lie on the rack from 23:00 to 06:00. The cells had concrete floors with a window which would open only halfway and from outside. Ventilation system was missing and natural ventilation was only possible by opening the windows halfway. The air was closed in the cell. There were in total nine cells and eight out of them had windows of 27.5X57.5 cm with the exception of one window which measured 27X58 cm. The height of the ceilings differed across the cells from 2.95 cm in one cell and 3.04 cm in eight cells. The average space of the cells was 14 m^2. There were no water closets and toilets in the cells and prisoners had to use toilets in the yard. There was no natural light coming into the cells and small bulbs installed in the walls were used instead.

The situation was different in Vaziani disciplinary unit. There were two iron beds of 63X190 cm in a cell of 6.675m^2. There were mattresses on the beds covered with wool blankets which were quite worn and dirty as a result of extensive use. There was a heater of central heating and a window of 90X144 letting day light to the cell. The window had an iron net from inside and bars from outside. The cell had an iron door with a surveillance hole. A bulb installed in an iron net located on the top fo the door was switched on from a control room. The cells had water closets with a toilet pen next to the window separated with a 2.24 m^2 wall from the rest of the cell. The toilet pen was visible from the window which is the violation of an individual privacy.

Before the placement in the cell, the prisoner is instructed on expected behaviour in disciplinary unit as per the instruction on the operation of the disciplinary unit.

The confinement of the prisoner in disciplinary unit was determined by a timetable of the unit put together by a chief of the disciplinary unit and approved by a chief of the military police department.

It is worth mentioning that it was impossible to follow an approved timetable on the presmises of Senaki disciplinary unit because of ongoing administrative and housekeeping activities, so that the prisoner insetead of performing housekeeping activities, had to spend additional time in the locked cell from 15:00 to 17:00. While in confinement, the prisoner was not allowed to lie down and take off boots till the last call at 22:00. The similar regime was observed in Vaziani disciplinary unit. A military serviceman could be taken out for a walk within this period. There was not enough lighting in the cells at Senaki disciplinary unit and an electric bulb installed in the wall did not suffice to provide light. A small size windows opening only halfway provided little air. There was no ventilation system and central heating.

It is worth noting that a resolution N124 of the Government of Georgia was published on 17 March 2016 to approve a military disciplinary statute for servicemen within the Georgia's defence system. The resolution

revoked administrative imprisonment as a measure of disciplinary punishment. The regulation will take effect within 30 days since it was published which means that disciplinary units at the defence system will shut down which is undoubtedly a positive development.

PROFESSIONAL ARMY

The strongest emphasis within the Georgia's armed force is made on the development of the professional (contractual) army.

A series of training and equipment programmes have been developed and servicemen undergo combat and physical training alongside with theory classes. Following schools function at the David Aghmashenebeli Georgian National Defence Academy:

- Undergraduate school
- Junior Officers School
- Captain Career School
- Command Headquarter School
- School of Advanced Defence Studies
- Language Preparation School

Krtsanisi National Training Centre develops various operational plans and scenarios, organizes trainings with simulation of army management and military operations with consideration of possible responses from a rival; trainings for companies and platoons, international mission preparation courses. The National Centre also runs the Non-Commissioned Officers School.

An agreement is concluded between a professional (contractual) military servant and the Ministry of Defence of Georgia upon the commencement of professional military service by the former. Among other standard terms and conditions, Paragraph 7.3 of the Article 7 of the contract catches attention. The clause reads as follows: "if the "military servant' (except for officers) will be discharged before the due time within the duration of the contract on the grounds stipulated by the Georgian legislation and which implies the initiation of financial liability'.

According to the information requested from the Ministry of Defence of Georgia, pursuant to Order N53 of 2006 of the Minister of Defence of Georgia, the military servant was unconditionally subject to paying a fine in the amount of 28 000 GEL (twenty-eight thousand GEL) to the Ministry within 10 days upon the termination of the contract.. The amount of the fine was changed in contracts concluded in 2008. According to a new contract the following terms and conditions took effect to oblige the serviceman to unconditionally pay the ministry within 10 days upon the termination of the contract 14.000 (fourteen thousand) GEL for the two years' service and 10.000 (ten thousand) GEL for service beyond two years. However, an order NMOD2140001633 or 2014 of the Minister of Defence determined that for military servants to be accepted for a position of an officer were obliged to pay 5.000 (five thousand) GEL as a fine for the termination of the contract, while the amount of the fine for professional (contractual) military servicemen (except for officers) was determined 3.000 (three thousand) GEL.

Experience of various countries suggest that[620] military servicemen are not held financially liable upon the termination of the contract as it has been recognised that the military servants wishing to leave military service

620 Czech Republic, Serbia

but refrains from doing so only to avoid financial liability, will be psychologically disposed to fulfilling his duty to the best performance.

Article 13 of the Order N583 of 21 July 2011 of the Minister of Defence of Georgia on *Rules for Performing Service for the staff/servants of the General Headquarter and the land forces of the Ministry of Defence of Georgia*[621] regulates the procedure of the transfer of the staff/servants of the Ministry of Defence of Georgia to the disposal of human resources department. The staff members and servants are discharged from respective positions and transferred to the human resources in the events of ongoing reorganisation and the layoff within structural units (including the cancellation of the respective position) or the secondment based on a decision of the minister or that of an official authorised by the minister's individual administrative-legal act, until an appropriate position has been selected. The duration of the disposal under the human resources shall not exceed four months. Before the expiration of this period, the servant shall be appointed on a relevant position or dismissed/discharged from the service.

Military servants who are transferred to the human resources and eventually discharged without being offered relevant jobs based on the aforementioned order. In an order issued on the transfer of the military servant to the human resources Article 13 of the Order N583 is usually indicated as the grounds for the transfer without providing any further elaboration on the justification of this action. There are cases of criminal investigation launched on offences allegedly taking place in a military unit. This entails the transfer of military servants to the disposal of human resources and their discharged after four months without any grounds regardless whether or not individuals in question have been found guilty of committing the crime. This practice is unacceptable as it violates the labour rights of military servants.

Disciplinary Conduct of Affairs in the Professional Army

Issues related to determining disciplinary delinquences and dignifying actions of the professional military servicemen are regulated by the Resolution N615 of the Government of Georgia signed on adopted on Noember 3, 2014 on *Approving Military Disciplinary Statute.* In the event of a disciplinary delinquency a military servant may be subject to paying fine either under an order of a commander or under a decision of a mandate commission. The mandate commission is convened in structures within the Ministry of Defence for the purpose of reviewing disciplinary cases. A rule for convening the mandate commission is regulated by the statute mentioned above. Pursuant to Article 269 of Chapter 17 of the statute [622]:

1) Mandate commissions in goverment agencies, General Headquarters of the Georgian armed forces (including those of structural sub-units of the General Headquarters) legal bodies of public law within the Georgia's defence system are set up under an individual-legal act issued by a head of respective govenrmental agency or by a body (an official) authorised by the former to do so.

2) The mandate commission reviews cases of disciplinary delinquency in accordance to their relevance in a part concenring the reduction to the preceding rank, dismissal from the serivce or education institution and submit cases to a head of a respective government agency for a decision.

3) Except for the case stipulated by Paragraph 2 of the same article, the mandate comission may review cases involving other disciplinary discrepancies stipulated by this statute.

4) The head of the government agency is authorised to make a decision without having the case reviewed by the mandate commission.

The serviceman has the right to appeal for the revision of a decision by a commander and the mandate commission imposing disciplinary penalty within a month's time in upper mandate commission.

621 Article 13 of the Order of the Minister of Defence of Georgia, 2011
622 Military disciplinary statute, Article 269

Decisions to discharge a military servant on bad conduct made by mandate commissions draw particular attention. Pursuant to Clause E of Paragraph 2 of Article 21 of the Law of Georgia on the Status of the Military Servant[623], a military serviceman can be discharged from military service on bad conduct. However, it should be noted that the law does not specify which act can be considered as bad conduct. Nor is specifics provided by the Resolution N615 of the Government of Georgia on *Approving Military Disciplinary Statute* adopted on 3 November 2014. Based on information provided by the Ministry of Defence of Gorgia, the following acts or behaviour provide grounds for the discharge on bad conducts from the military forces of Georgia: drug abuse, pety crime, bad conduct demonstrated in anti-ethnical ections or acts aiming to discredit any servant or an agency in general, resistance and disobedience to law enforcement services.

It should also be noted that pursuant to Resolution N124 of the Government of Georgia on *Approving Military Disciplinary Statute for Military Servants of the Ministry of Defence's System* published on March 17, 2016 the mandate commission will be revoked, however, Article 64 of the same resolution suggests that there will be a disciplinary board which will be authorized to make justified decisions to further explore circumstances around a particular case and prepare well grounded recommendation for incentivizing or imposing a disciplinary punishment on the military servant to be submitted to an official authorized for incentivizing or imposing a measure of disciplinary responsibility. The aforementioned resolution, except for its Article 3 shall take effect on 30th day since its publication.

The aforementioned change is significant and the Public Defender plan to carry out monitoring of the new disciplinary board in future.

Living Conditions of Professional Military Servants

According to Article 14 of the Law of Georgia on the Status of the Military Servant[624] the State is responsible for providing a servant with an accomodation as soon as the latter starts military service. Pursuant to established norms and rules, the military servant is eligible to a residence from a pool of housing at the disposal of respective military agency. In addition, both servants and their families are allowed to get registered at the address of a military unit before they are given an accomodation. In the process of receiving housing, military servants and their families are temporarily accomodated in residental buildings and rooms in shared campuses.

In fact, issues related to the provision of professional military servants with accomodation are not settled. A part of active military servants and their families have been living on premises of a former command point *Zvezda*. They are not provided with appropriate housing and may be subject to eviction from their accomodation without having been offered altnerative options. However, from information provided by the Ministry of Defence of Georgia we have learnt that the handover of residential housing under the Ministry of Defence to aforementioned military servants for the use during their service is being reviewed by the commission as recommended by the Chief of the General Heartquarters of Georgia's Armed Forces. However, no timeframe has been specified. The aforementioned military servants have been given verbal promise that they will not be evicted from the territory before they are provided with new accomodation. However, the absence of any official consent puts them in the mode of constant expectation.

Further to an order N441 signed on 4 April 2014 by the Minister of Defence on *Measures for the Heandover of Housing Appartments under the Ministry of Defence of Georgia to Service Ownership/Use* a commission was set up to deal with issues related to handing over accomodations under the Ministry of Defence of Georgia to service ownership/use.

The commission is authorised to make decisions to:

623 Law of Georgia on the Status of the Military Servant, Article 21, Para 2.
624 The Law of Georgia on the Status of the Military Servant, Article 14

A) Hand over residential appartments to the ownership of families of military servants who fell in action while serving in operations for maintaining international peace and security and other peacekeeping operations, during military trainings and while fighting for Georgia's territorial integrity, freedom and independence since the order took effect. Decisions will be made upon nominations made by the Department of J-1 Cadre.

B) Hand over residential appartments to ownership/use of military servants nominated by the Medical Deparmtnet

C) Hand over residential appartment to ownership/use of military servants on contractual basis

D) Hand over residential appartments to ownership/use of civic servants (former militaries) of the Ministry.

E) Hand over residential appartments to ownership/use of military servants recommended by the Chief of the General Headquarters of the Georgian Armed Forces.

In case of the military servant's failure to meet the criteria outlined above, nor is he or she recommended by the Chief of the General Headquarters, the commission will not be able to consider the possibility of handing over residential appartment to the military servant and therefore, the latter will not be able to receive accomodation. Because of these conditions, military servants are forced to rent accomodation.

CASES OF DEATH IN MILITARY SERVICE DURING THE REPORTING PERIOD

Death of six military servants were reported to take place throughout 2015. One servant out of six was on compulsory draft, the other worked on a civilan position in a military unit while remaining four had been enlisted in the professional army. Three cases of death were ruled as suicide and respective investigations were terminated while two cases are being investigated under Article 115 of the Criminal Code of Georgia (leading to a suicide). One case had been investigated under the Article 115 of the Criminal Code of Georgia (leading to a suicide), however, in the course of investigation the case was re-qualified under Article 117, Paragraph E, Part 2 (intential severe injury to health resulting in death). The three cases are still being investigated by the Department of Military Police of the Ministry of Defence under the supervision of the country's chief prosecutor's office.

Deceased military servant R.Sh. had been diagnosed with mental disorder during his military service. Even though he inflicted self injuries during his service and his report points out to the pre-service metnal health issues. Even though his family members agreed to and signed a protocol put together in the military unit, they now delcare that R.Sh. was completely healthy and that he had never been registered at any mental health facility. After being deemed as unfit for military service, R.Sh. committed suicide. An assessment document retrieved from the conscription commission states that R.Sh. is mentally healthy.

Considering insufficient mental health examination of conscripts mentioned earlier in this chapter, similar problems are likely to appear in the defence system on many occasions.

Outpatient forensic-psychiatric examination lasts for few hours after which a respective summary is put together.[625]

Also, it should be noted that investigations on cases of suicide found that social problems caused in particular by financial liabilities imposed by banks and microfinancial account for most of them.

As for mental health problems of the civil cervants, representatives of the Public Defender paid a visit to the Centre for Mental Health and Prevention of Drug Abuse and interviewed few military servants. The latter

625 Letter N5001509717, 22/03/2016 of Levan Samkharauli Natinoal Forensic Bureau, Department of Psychiatric Forensics

reported that they had suffered from emotional anxiety while being a base and therefore they were referred to the Centre for futher examination. Three out of interviewed military servants three were on the draft, while one served in the professional army. They stated that they had bouts of anxiety not indiciating causes for this condition. They also said that if they were deemed as fit for further service they were not willing to return to units where they had been serving.

Based on information retrieved the following breakdown of admission of servicemen to the Centre for Mental Health and Prevention of Drug Abuse in 2013, 2014 and 2015.

	2013	2014	2015
Number of military servants undergoing inpatient psychiatric treatment	13	19	22
Includiing the number of compulsory military servants	11	11	18
Contractual	1	8	3
Conscripts	0	0	1
Attendee of the National Academy	1	0	0
Number of individuals with concrete diagnosis	13	19	22

The data suggest that as to compared to previous years, the reporting period has seen a slight increase in patients with concrete diagnosis made for each case.

The similar type of information was requested from Rustavi Centre of Mental Health, according to which 10 conscripts were given lab tests in 2013-2014 with nine being diagnosed. In 2015 one compulsory military serviceman and a conscript took lab tests with diagnosis made in both cases.

Importantly, there are no psychologists in military units who would provide professional support to conscripts and other military servicemen suffering from anxiety.

SITUATION IN THE HUMAN RIGHTS OF VETERANS

In Georgia participants of World War II as well as of wars waged in Hungary, former Zheckoslovakia, Afganistan, Abkhazia and Samachablo, military servants in former Soviet Union, military servants of Georgian military forces, internal guards, state security armies, border units, military servants of military prosecutor's office and military courts including those on inactive duty (ex-servicemen) as well as former military servants who developed disabilities as a result of wounds, contusion, injuries or disease received in action, are qualified as veterans.

Pursuant to Resolution N102 of the Government of Georgia, on January 10, 2014 Veterans Department was separated from the Ministry of Defence as formed as an independent *State Service for Veterans' Affairs*, a legal body of public law. The service is responsible for dealing with veterans' issues and accountable to the Government of Georgia.[626] The total budget of the State Service for Veterans' Issues amounted 7 450 000 GEL in 2015.[627]

In 2015 the database had 53 784 registered veterans including 1 719 World War II veterans, 3 201 participants of wars in other countries, 47 743 veterans participating in wars waged for the territorial integrity of Georgia and 1 121 military forces veteras.

626 The statute of the State Service for Veterans Issues (legal body of public war), Article 1, Para 3.
627 Law of Georgia on the Budget for 2015

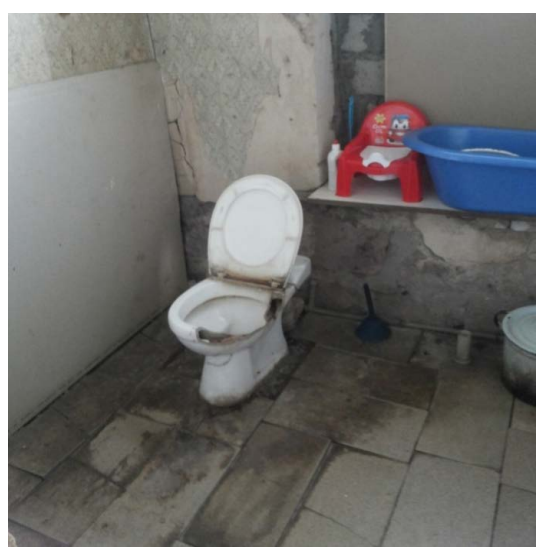
Housing for Veterans in Tbilisi

A former military base now accomodating veterans is located in Tbilisi's Isani-Samgori district. Since 1997 the base has homed veterans of Abkhaz, Samachablo and 2008 Russian-Georgian wars. There are overall 26 families residing on the base including 14 war veteran families, six families with a status of social vulnerability and six other families how have no status of social vulenerability. Since 2008 the territory including all buldings and facilities located on its premises belong to JSC *Real Invest*. The latter purchased the aforementioned territory through bidding from *Sakhelmtsipo Uzrunvelkofa [the State Provision] Ltd* as confirmed by an agreement concluded on May 20, 2008. Paragraph 8.2.2. of the agreement reads as follows: "the Buyer' is aware of the fact that at the time of concluding the agreement the third parties are using a part of the property. More specifically, non-agricultural land with 17 873 m2 space located at N71 Ketevan Tsamebuli Street which homes around 30 families. The Seller shall not be held responsible for addressing this fault'. The buyer has not taken any responsibility to compensate veterans or provide with alternative accommodation.

Buildings that are used as housing for veterans are dilapidating and unfit for living, however, due to the lack of alternative accommodation they are forced to stay in them. Corridor floors in wooden cottages have holes, water leaks from the ceiling and the walls are covered with mould and cracks. There are partitions between the walls. The building is reinforced with wooden planks from outside as there is an actual risk of the building to come down. There is a one-story stone building that a six-member family with three youngsters call a home. The building is not safe for living. The walls have fungus and the plaster have long started falling apart, the bare stone floor has no cover with some stones removed. The concrete ceiling is damaged and the roof leaks when it rains. Pieces of concrete occasionally fall down in children's bedroom.

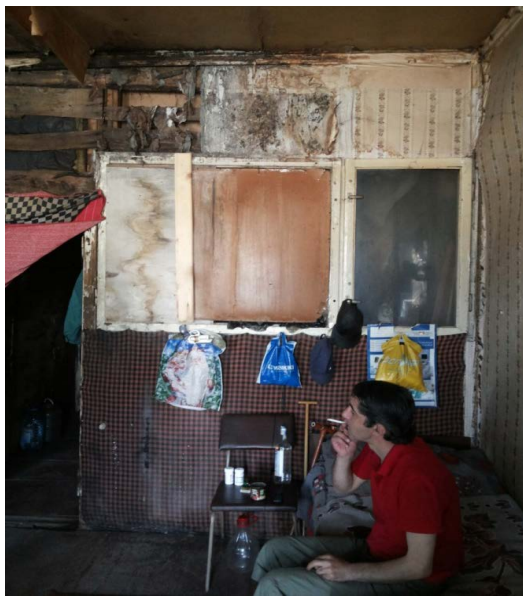
Even though a gas pipe runs through the territory, representatives of JSC *Real Invest* do not allow the residents to install gas pipes. There is no electricity and water supply in the buildings and the residents have extended electric wires and water from the neighbourhood. The bills they have to share with their neighbours are higher than what they are entitled to as socially unprotected households. As stated by veterans and their families, they are not allowed to repair the buildings at their own expenses and as soon as they bring in construction materials and start the repair, representatives of JSC Real Invest call in the city supervision service which then issue warning for fines for ilegal construction. A sewage system runs through the territory of former military base, however, local residents are not allow to use the system. Therefore, insted of sewage closets, they have drilled holes. They have to do this every year and at their own expenses.

We have been notified by the Ministry of Economy and Sustainable Development of Georgia that currently there is no living space available to the Ministry to accomodate households residing on the territory of the former military base.[628]



628 Letter N05/4086 of the Ministry of Economy and Sustainable Development of Georgia






The right to adequate standard of living is one of the fundamental human rights enshrined in the international law and protected by international covenants. Based on the Universal Declaration of Human Rights the member states have aknowledge that everyone has the right to a sandard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical and care and necessary social services, necessary to maintain his and his family's wellbeing and health.[629] In addition, by signing the UN's International Covenant on Social, Economic and Cultural Rights of 1966 Georgia has recognised the right to adequate living standards and housing. Therefore, the State has the responsibility to develop an appropriate strategy and take measures to address problems of the homeless in an effective and timely manner.

It is against the law to evict war and army veterans from living space they occupy without providing alternative accomodation.[630] However, as the aforementioned property is privately owned, veterans residing on this territory fall under the category of the homeless without any special status.

629 1 The Universal declaration of Human Rights, the United Nations, December 10, 1948. Article 24, Paragraph 1
630 Articles 13, 14 and 15 of the Law of Georgia on War and Armed Forces Veterans

Social Protection of Veterans

Pursuant to Article 13 of Law of Georgia on *War and Armed Forces Veterans* the social protection of veterans covers pensions as per Law of Georgia *on the State Compensation* and other social protection guarantees stipulated by the Georgian legislation. In addition, the law provides protection for veterans against evection from service accomodation without remuneration as well as free transportation on urban public transport (except for taxis) as well as rural means of transportation including suburban and inter-city transports. [631].

Purusuant to the Law of Georgia on *the State Duty* those veterans who appealed to general courts as per the Law of Georgia *on War and Armed Forces Veterans* are excempt from paying legal fees.

Pursuant to the Law of Georgia on Consulate Fees participants of World War II and citizens of Georgia who became disabled as a result of their participation in military actions for the protection of Georgia's territorial integrity, freedom and independence, are except from paying consulate fees while veterans of war and armed forces as well as individuals with equal status shall pay only 50 per cent of the fee.

Pursuant to the Rules for Determining Terms, Fees and Payment for Services Provided by the Civil Registry Agency, a Legal Body of Public Law under the Ministry of Justice of Georgia, or a Consulate Official with Delegated Authority, approved by Resolution N508 by the Goverment of Georgia on 29 December 2011, the following categories of citizens are except from fees for obtaining 32-page and biometric issued to Georgian citizens, as well as an identitiy document of a Georgian citizen and Georgian passports issued to citizens of Georgia residing abroad by a consulate official acting within delegated competences:

A) Participants of Warld War II

B) Citizens of Georgia who developed disabilities because of their participation in military actions for the protection of territorial integrity, freedom and independence of Georgia

G) War and armed forces veterans shall pay only 50 per cent of the fee

Participants of Warld War II and citizens of Georgia who became disabled as a result of their participation in military actions for the protection of the territorial integrity are except from paying fees for obtaining electronic identification document, electronic residence permits for foreigners residing permanently in the country and individuals without citizenship.

Pursuant to Article 82, Paragraph 2 of the Georgian Tax Code income up to the amount of 3 000 GEL received by paticipants of World War II and military actions for the protection of Georgia's territorial integrity within a calendar year is excempt from income tax.

Pursuant to the Law of Georgia on Eternal Commemoration of Soldiers Fallen in Action for Protection of Homeland and Deceased Post-war soldiers fallen in action protecting the homeland and those deceased after war are burried at the expenses allocated from respective self-governing entities. The amount for funeral services totals 350 GEL in Tbilisi, 300 GEL in self-governing entities and 250 GEL in municipalities.

According to Resolution N4 of the Government of Georgia adopted on January 11, 2007 on the monetarization of social benefits, invalids of military actions and family members of the deceased are eligible to monthly subsidy amounting to 44 GEL while 22 GEL is allocated to participants of military actions, households left without a breadwinner and veterans of armed forces.

As per the Law of Georgia on the State Compensation and State Academic Stipend family members of citizes fallen in action protecting Georgia's territorial integrity, freedom and indipendence and the deceased as a result of wounds are eligible to compensation of 1 000 GEL on monthly basis. If two or more individuals are deceased from the same family, family members receive compensations for each of the deceased.

631 Articles 14 and 15 of the Law of Georgia on War and Armed Forces Veterans

With a resolution N178 of 15 July 2013 the Government of Georgia set up a mechanism of financial support of veterans without health insurance to ensure the accessibility to medical assistance stipulated by the resolution and lay down terms and conditions of medical service.

Pursuant to rates and sales systems applicable to urban regular transportation of commuters by buses (M3 category) and underground electric transport (metro), as well as airway from Rike to Narikala, which are defined as regulated spheres of economy within the administrative border of the capital city Tbilisi municipality approved by Resolution N20-81 of the Tbilisi municipal council on 30 December 2014, the following categories are eligible to free regular urban transportation:

A) Veterans of World War II and persons with an equal status registered in Tbilisi

B) Veterans of military actions for the protection of Georgia's territorial integrity, freedom and idependence and persons with equal status, including pilots of civic aviation undertaking special flights to zones of military actions, registered in Tbilisi

C) Veterans of military actions on foreign soil and persons with equal status registered in Tbilisi

D) Veterans of military forces registered in Tbilisi

E) Family members of deceased or lost participants of World War II, military actions for the protection of Georgia's territorial integrity, freedom and independence, militry actions on the territory of other states registered in Tbilisi.

Pursuant to Article 22 of the Law of Georgia on War and Military Forces Veterans veterans' public unions shall be set up in Georgia, autonomous republics, cities, municipalities, enterprises, organisations, establishments and based on a place of residence, in order to ensure the protection of veterans' legal rights and interests in a manner stipulated by the Georgian legislation. Unions are to influence decision making processes concerning the improvement of veterans' social and living conditions in legislative and executive bodies within their competences, and represent veterans and their interests in various state agnecies and public unions.

As for veterans' social rights, some categories of them have no access to utility allowance.

Pursuant to Paragraph E, Article 4 of Resolution N4 of the Government of Georgia on the Monetarisation of Social Benefits, signed on January 11, 2007[632] the following categories of citizens are eligible to utility allowance: Monthly 22 GEL for participants of military actions taking places on foreign territories and those protecting Georgia's territorial integrity, freedom and independence.

According to changes of 4 November 2009 to Resolution N4 adopted by the Government of Georgia on 11 January 2007 on monetisation of social benefits, utility allowance is allocated only to those individuals who, at the moment of allocating subsidy, were registered at a competent body as recipients of the state pension, state compensation or state academic stipend. Since 1September 2012 those individuals who were registered within a competent body as recipients of the state pension, are also eligibile to the subsidy.

The Public Defender's Office acting excersing their authoritity granted by Paragraphs B and G of Article 18 of the Law of Georgia on the Public Defender, appealed to the Social Service Agency at the Ministry of Labour, Health and Social Affairs of Georgia and requested information on those individuals who were granted the status of veterans of war for the territorial integrity of Georgia in 2012 and therefore became eligible to benefits, including utility allowance, stipulated by the Georgian legislation, and whether or not they can then apply to a competitive body with respective paperwork with the request to get registered as recipients of the state pension/state compensation as they are not yet registered at a competent body.

The Social Service Agency at the Ministry of Labour, Health and Social Affairs of Georgia notified us that "if an individual with the status of a participant of a war is not registered at a competent body there is no legal

632 Resolution N4 of the Georgian Government, January 11, 2007, Article 4

ground for him or her to recieve utility allowance from 1 September 2012 regardless of him applying to a competent body for the registration or presenting documents required by the existing legislation."[633]

According to an explanatory note for the changes to Resolution N4 signed by the Government of Georgia on January 11, 2007 on the monetisation of social benefits:

As per the Law of Georgia on the State Budget for 2012, social and pension packages will be introduced from 1 September 2012.[634] Therefore, respective changes were made to the Laws of Georgia on the State Pension"[635] and on Social Assistance. More specifically, in accordance to the changes made to the Law of Georgia on Social Protection, artciles concerning the provision with utility allowance were removed from the document on January 1, 2013.[636]

A part of veterans can benefit from utility allowance before they reach the pension age as they have been registered at a competent body as recepient of compensation, while others, who had not been registered before 2012 could no longer get registered as compensation recipients therefore, are not eligible to utility allowance till their reach pension age.

Based on the above said, we believe that uneuqal treatment of individuals with euqal status granted by the Georgian legislation on the basis of the fact that some had the status granted after 2012, or had had the status before 2012 or decided to get registered after 2012, is unacceptible.

The Georgian Public Defender appealed with a recommendation to the Prime Minister of Georgia "to recalculate pensions appointed to military pensioneers and discharged MIA employees under Article 5 of Order N55 of the Minister of Internal Affairs of Georgia signed January 21, 2005 and Article 61 of Decree N493 of the President of Georgia signed on November 5, 2004'.

On January 21, 2005 the Minister of Internal Affairs of Georgia issued order N55 with Article 5 which stated that in accordance to Article 39, Paragrap 11 of the Law of Georgia on the State Budget and in order to sort out issues related to the renumeration of the staff at the Ministry of Internal Affairs, the revision process of pensions of the Ministry's staff in line with the salary rates determined by the same Order should take place on January 1, 2006.

In addition, Artcle 61 of the Decree N493 of the President of Georgia, dated on 5 November 2004 states that "recalculation of pensions allocated to military pesioneers of the armed forces as per monetary remuneration for military servants specified by the present decree'.

Pursuant to Deree N614 of the President of Georgia on *Approving the Statute of the Ministry of Internal Affairs of Georgia* signed on 27 December 2004 and the Law of Georgia on *Structure, Competeces and the Rule of the Operation of the Government of Georgia,* issues related to recalculation and postponment of pensions of the staff of the Ministry of Internal Affairs went beyond the competences of the Minister of Internal Affairs. Nor did the President of Georgia have the authority to suspend the law with his oders. Purusuant to Article 19 of the Law of Georgia on Normative Acts of 29 October 1996 existing at that time, laws of Georgia prevails over a decree by the president of Georgia.

In the given case issues related to pensions of pensioneers of the security structures were regulated by an legislative act, more specifically by the 1996 Law of Georgia on Pension Provision for Ex-servicemen of Military and Internal Affairs Structures and their Families which has direct effect.

The Georgian Ministry of Labour, Health and Social Affairs should have recalculated and deferred pensions not in accordance with Article 5 of Order N55 of the Minister of internal Affairs signed in 2005 and Article

633 N 04/51315 13/07/2015 Letter N 04/51315 of 13 July 2015 of the Social Service Agency at the Georgian Ministry of Labour, Health and Social Affairs

634 Law of Georgia on the State Budget for 2012, Article 39, Paragraph 3, Clause E.

635 As a result of a change, amount of specific pension designated for cirles of pension recipients were removed from Article 22.

636 Law of Georgia on Social Assistance, Article 6 - utility allowance has been removedfrom Article 6 defnining types of social assistance.

61 of Decree N493 of the President of Georgia issued in 2004 but rather pursuant to the Law on Pension Provision for Ex-servicemen of Military and Internal Affairs Structures and their Families which had taken effect on October 16, 1996.

The Public Defender of Georgia believes that Article 5 of Order N55 of the Minister of Internal Affairs of Georgia issued on January 21, 2005 and Article 61 of Decree N493 of the President of Georgia signed on 5 November 2004 were adopted by individuals/bodies without appropriate authorization which, in turn, violated the right of ex-servicemen in reserve force of the Ministry of Internal Affairs and military pensioners as the calculation of their pensions had been suspended and they could no longer receive due pensions stipulated by Article 45, Paragraph I, Clause B of the Law of Georgia on Pension Provision for Ex-servicemen of Military and Internal Affairs Structures and their Families

The Public Defender of Georgia has been approached by L.J. regarding the situation with the appointment of the State compensation. L.J. was enrolled in the Department of Georgian State Border Protection on 7 October 1994. At that time, the Department of Georgian State Border Protection operated under the Georgian Land Forces. From 7 October 1994 to January 30, 2007 L. J. worked at different positiions in the Department wjthout interruption as corroborated by his employment record. As per Article 8, Paragraph 1 of the Law of Georgia on the Defence of Georgia adopted on 31 October 1997 the Department was enlisted under the Georgian military forces. As a result of an amendment of May 25, 2006 to the aforementioned law, Department of Georgian State Border Protection left the Georgian military forces. Respectively, on 1 July 2006 L. J. was released to the reserve of the military forces and appointed a chief of N11 police department with a special rank of border police captain which is corroborated by Order N301 of the Chief of Georgian Border Police, General-Lieutenant B. Bitsadze on Discharging to Reserve, Appointing on a Position and Granting a Special Rank signed on 13 July 2006. On January 30, 2007 L.J. was dismissed from the Georgian Border Police under the Ministry of Internal Affairs for reaching the marginal age.

It should be noted that on February 11, 2004 the Government of Georgia adopted the Law of Georgia on the Structure, Authority and the Rule of Operations of the Government of Georgia which took effect immediately. According to the law's Chapter XII, Article 35, Paragraph 3, Clause D, the Department of the Protection of Georgia's State Border' was assigned to the jurisdiction of the Ministry of Internal Affairs and transformed into a state sub-agency, however, the law does not specify any condition which would revoke Paragraph 1 of Article 8 of the Law of Georgia on the Defence of Georgia according to which the Department of Border Protection of Georgia was assigned to the jurisdiction of the country's military forces.

Pursuant to Paragraph A) of Article 11 of the Law of Georgia on Social Support to Individuals Dismissed to Inactive Dutiy from Military, Interior Structures and the Special Service of the State Protection and Their Family Members, military servants who entered the Georgian military forces from 1991 to 1995 and were dismissed because of pention age, and serving in the armed forces for at least ten calendar years with the overall work record of at least 20 calendar years, are aligible to the state compensation.

In spite of the abovesaid, L.J. was denied from the state compensation on the grounds that only ten calendar years' service in the Georgian armed forces is not enough as entitlement to compensation only extends to only those military servicemen who have been dismissed from Georgian armed forces and not individuals dismissed from the border police of the Georgian Ministry of Internal Affairs.

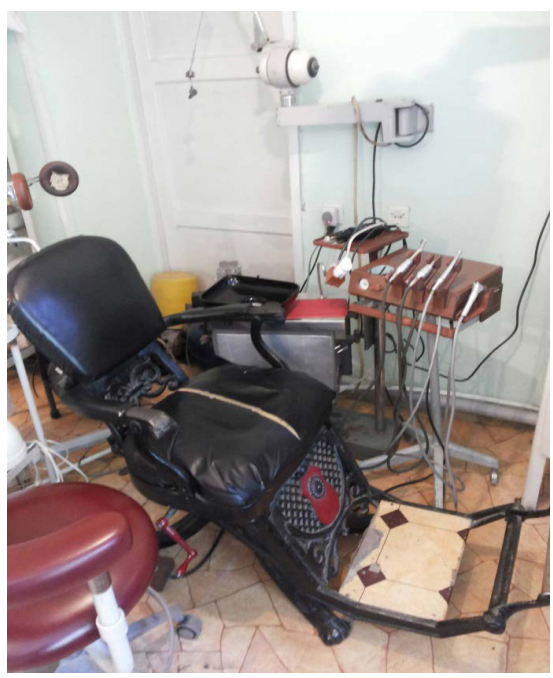
It should be mentioned that L.J. was not transferred to the state sub-agency under the Ministry of Internal Affairs at his own will. If it had not been for the abovementioned strucutural changes, he would have continue to serve in the Department of the State Border Protection and therefore would have been unlisted as a military servant from the armed forces of Georgia after having reached the pension age, rather than the border police under the jurisdiction of the Ministry of Internal Affairs of Georgia.

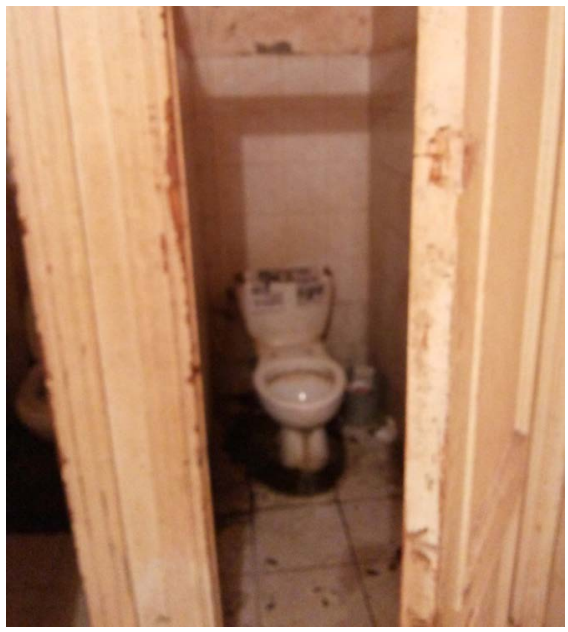
Situation in LTD V. Sanikidze Clinical Hospital for War Veterans

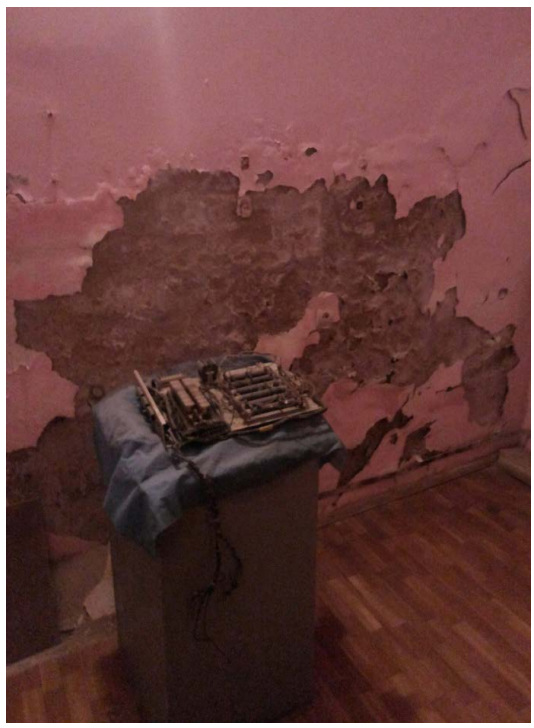
LTD V. Sanikidze Clinical Hospital for War Veterans is located in Tbilisi, at 3 Iamanidze street. The hospital owned by the State (represented by the Agency for Enterprise Management) with 100 per cent of shares was founded in 1978. There was a line in the budget of the State Service for Veterans Issues to cover medical expenses in the amount of 800 000 (eight hundred thousand) GEL within the reporting period. The sum designated for veterans' hospital is thought to cover living and utlity expenses as well as salaries of medical personnel, medicaments and meals. The hospital is a multi-profile establishment and both in- and outpatient treatment are avaliable for beneficiaries. The capacity of the hopital is 80 (eighty) beds. In average 60-70 patients are admitted to the hopital on the monthly bases. According to the data overall 72 000 (seventy-two) beneficiaries registered in 2014-2015 including veterans of World War II as well as participants of Hungarian, Czechosovakian, Afgan, Apkhaz and Samachablo wars and persons with equal statuses. The hospital also serves families left without breadwinners and police officers on inactive duty.

There are 200 staff members wroking in the hospital. However, in fact only 193 of them work as of today including 62 doctors, 61 nurses, 32 orderlies, 16 administrative staff, 17 technical personnel and 5 guest specialists.

The three-storey building homing the hospital is delapidating without functioning air conditioning system and with outdated sewage system which is very unlikely to be repaired should it goes out of order. There is no central heating and electric heaters, often handmade are used to warm offices and wards but to not much avail. The walls in offices and wards are covered with mould and falling apart. Plaster falls from the ceiling and which also leaks. As reported by the service staff, rodents often come out from holes in the floors and walls and they have to spread anti-rodent poison on the walls. Poison is also spread in the kitchen and food storage areas. The most of the hopital's equipment was made in the 70s and 80s and therefore, a large part is out of order while the remaining is rusty and unsuitable for exploitation. Furniture is old and warn. Comparatevly new table and equipment had been a part of international assistance. Water closets and showerrooms with broken sanitary appliances are not clean. It is apparent that in such a building sanitarian and hygienic norms cannot be effectively protected. Cabinets of GPs are small, the walls have cracks on the walls, the floors have holes and are covered with wooden planks. Often times two doctors each from separate fields work in the same room which means that they receive patients simultaneously. These circumstances prevent doctors from examining patients and provide their consultation in an environment which provides more opportunities for effective conversation and consultation.





Purusuant to Article 4, Paragraph 7 of Resolution N385 of the Government of Georgia dated 17 December 2010 on approving the rules and terms for issuing licenses for medical practice and the operation of in-patient care facility, medical equippment shall be produced no earlier than 1998.

In accordance with Chapter 10, Article 70, Paragraph 1 of the Law of Georgia on Healchare[637] the State is responsible for creating a safe and healthy environment.

As reported by the lab doctors there is no impediment in delivery of reactives, testers and other materials necessary for tests. The unit is furbished with old furniture and outdated appliances are kept in drawers without any order. A device for a urine test, donated as a humanitarian assistance, is the only new piece of equipment available in the laboratory.

637 Law of Georgia on Healthcare, Chapter X, Article 70, Paragraph 1.

The lab team mainly uses single-use items. However, there are also multiple use glass measuring flasks and filters which are required to be washed and dried in a special drier. According to the lab doctors they wash these items under running water and as the special drier (thermostat) which dries the glass to certain temperaturehas been out of order, they have to dry them in a natural way. Used syringes are sealed while the rest are thrown into bins. In a cabinet used for testing the ceiling leaks occasionally. Rats would often sneak into the unit and therefore, they had to spread poison. Local medical staff run logs of patients' registration and delivered tests.

Average 1 000 biochemical tests, 340 blood counts, 280 urine general tests and from 200 t0 250 coagulogram are carried out on a monthly basis in the lab.

Small surgical interventions take place in the surgical unit on some occasions. There is an old table for surgical munipulations, a table for strilised instruments and equippment for wet and dry sterilisation. An iron box is used for web sterilisation. The device for dry sterilisation is outdated. Instruments are hardly ever tested bacteriologically to ascertain whether or not sterilisation was effective. As explained by an orderlie, because of deficit of table covers, the cover is occassionally changed and therefore, it is cleaned with a cholorine solution after an operation. There is no bin for the disposal of used syringes and single-use instruments. Syringes are usually taken to another department to place in a special container. After the completion of a working day, a nurse throws bloody tampons and other leftovers to a garbage bin in the street. The surgical unit serves 140 (one hundred and forty) patients average per month.

There is always a radiologist and a nurse on duty in an emergency unit on a daily basis. As explained by the doctor, the equipment is not outdated and still has the capacity to operate. However, there is only one respirator as the other one is out of order and therefore, they cannot help two patients at a time. The same situation is with cardiomonitors with only being fully operational. There is a sufficient supply of first aid medicaments and that of psychotrophic and anestheatic means. There are two defibrilators available in the premises.

In dental unit patients are rendered with therapeutic and surgical services with an average number of dental patients totalling 200 (two hundred) per month. There are four dentits and a nurse who assists all four dental doctors. As there is no specially designated container to dispose of medical waste, the nurse has to throw away the waste in a polyethylene parcel.

Based on the above said we believe that V. Sanikidze Clinical Hospital for War Veterans fails to meet basic standards including sanitary and hygienic norms in an environment which is degrading to human dignity. Physical environment in the facility is far from being safe for both patients and medical staff.

As the hospital is enlisted under the Ministry of Economy and Sustainable Development, we made inquiries to find out whether or not it is possible to move the hospital to another building. Based on the information provided by the Ministry, the Public Defender's Office has learned that currently the Ministry has no adequate building, however, they have already offered Ltd V. Sanikidze Cilnical Hospital for War veterans to seek premises suitable for medical services at their own expense before the State can offer a viable altnerative.[638]

On 25 January 2015 the National Agency for State Property sent a letter N5/38121 to the Georgian Ministry of Labour, Health and Social Affairs, State Service for the Issues of Veterans (legal body of public law) and Tbilisi City Hall to communicate that in spite of negotiations held on 17 February, 2014 Ltd V. Sainkidze Clinical Hospital for Veterans failed to implement a plan for progressive elimination of the service delivery. As suggested by the Agency, the hospital continues to deliver services, however, they fail to meet the fundamental requirement of the Law of Georgia on Enterpreneurs, that is implementing policies to become profitable. Further to an expert opnion prepared by Levan Samkharauli National Forensics Bureau stating that buildings and premises owned by the society suffer from the third degree damage and therefore, its operation is exposed to safety risks, the National Agency for State Property forwarded the opnion to the Social Service Agency for the latter's opinion on the operation matters of the joint stock company.

638 Letter N 5/38375 25/06/2016 of the National Agency for the State Property

With respective correspondence the State Service for Veteran Issues [639] notified the Public Defender's Office that as of today the 2016 budget of the Service does not stipulate the procurement of medical service in a simplified manner from Ltd. V. Sanikidze Clinical Hospital for War Veterans.[640] In addition, a health service programme was launched in the State Service for Veteran Issues aiming to provide those healthcare services to veterans which are not covered by the universal healthcare insurance. The services will be allocated from the social protection budgetline and decisions will be made by a commissioin set up under the respective order of the director of the service. The programme also provides some possibility for the coverage of medicaments

Pursuant to a memorandum of understanding between the State Service for Veterans' Issues and Ltd Lancet on January 28, 2016 the latter will provide services to veterans. Lancet may form a strucutral unit of the veterans' hospital should physicians of respective profile from the Hospital for Veterans appeal to Ltd Lancet. [641]

Only patiets with acute diagnosis can be admitted to Ltd Lancet's inpatient care unit. First five days of the hospital stay are funded by the State Universal Healthcare Programme, more specifically, a package designated for veterans while further stay will have to be covered by respective programmes run by the State Service for the Veterans' issues.

As of today around 170 employees of Ltd V. Sanikidze Clinical Hospital for War Veterans are without funding. Nevertheless, they continue to perform their duties in the aforemoentioned hospital. Inpatient care unit of the hospital still serves chronic patients. For the latter's sake the staff resorts to using reserved medicaments and sometimes patiets have to pay out of their pocket for necessary medicaments.

Pursuant to Paragraph 2, Article 14 of the Law of Geogia on War and Military Forces Veterans, hospitals for war veterans shall be shut down upon the sole decision of the Government of Georgia.

As long as the Government of Georgia has not yet issued an appropriate resolution, Ltd. V. Sanikidze Clinical Hospital for War Veterans cannot be deemed as officially closed.

RECOMMENDATIONS

To the Parliament of Georgia

- Specify terms of notice to be given to the conscript prior to his annoucement to an assembly point as per Article 21 of the Law of Georgia on the Military Duty and Military Service

- Make changes to the Article 30 of the Law of Georgia on Military Duty and Military Service in order to safeguard the protection of the right of the conscript to education. More specifically, if an individual gets registered for the National Unified Exams on the second year from the completion of the general education institution, his deferrment must be extended to him taking due exams. If the conscripts successfully passes exams, his conscription shall be deferred before he finishes his studies.

To the Department for Mobilisation and Coordination of the Draft at the Ministry of Infrastructure and Regional Development

- Introduce and implement individual approaches to conscripts in an assembly point. The conscript shall be introduced to the medical commission or alone with an individual designated by the conscript himself.

- Align dressing room and medical cabinets of assembly points in a way to prevent conscripts from walking through corridors. Floors should be adapted to walking barefoot.

639 Letter N254/02-02-23/03 received on 8 February, 2016
640 Law of Georgia on the State Budget of Georgia for 2016
641 Letter N143/16 01/03/2016 of Ltd Lancet

- Ensure full medical examination of conscripts in order to ascertain whether or not they are fit for military service. Strong emphasis should be made on mental health and conscripts should be given appropriate tests to understand the state of their mental health. Reasonable time should be allocated to examine each of constcripts individually.

To the Ministry of Defence of Georgia, Ministry of Regional Development and Infrastructure's Departmet of Coorination of Military Mobilisation and Draft

- Revise Order N360 of the Ministry of Defence and bring the list of disceases in compliance with the International Disease Classification. Specifiy health conditions to ditermine various status of fitness for individuals.
- Make changes to Order N360 of the Minister of Defence and Ordinance N481 of the President of Georgia to enable the commission to qualify the conscript as unfit for military service if the letter has confirmed uncurable discease or condition but is not registered as a person with disability.

To Municiapal Services of Military Registration and Draft

- Make sure that rights and responsibilities are explained properly to conscripts with particular attention to be paid to ethnic minorities with poor knowledge of the state langauge. In such cases information should be provided in a language comprehensible to them.

To the Ministry of Internal Affairs

- Make sure that the number of military servants under the Department of Protection of Strategic Objects prevents military servants perform daily duties additionally. However, if this proves impossible because of lack of manpower, schedule for additional daily duties should apply to the whole cadre.
- Following the steps of the Ministry of Defence, abolish disciplinary units established under the Ministry of Internal Affairs.

To the Government of Georgia

- Revise remuneration practices for military servants. Remuneration of labour should be as equal as possible in all agencies which conscribes compulsory military servants.
- Allocate altnerative accomodation to war and military forces veterans residing on the territory of Ltd Real Invest at 71, Ketevan Tsamebuli Street in Tbilisi
- Make changes to Resolution N4 of the Government of Georgia dated January 11, 2007 so equalise situation of reciepients of utlity subsidies and every individual with the status of veteran can enjoy the subidies as stipulated by the original resolution before the chane taking effect on September 1, 2012.

To the Ministry of Defence of Georgia

- Revoke the term within contracts of professional military servants on a penalty and instead make stronger emphasis on enhancing motivation of military servants and reinforcing military values so that the commitment to serve is not conditioned by financial sanctions but rather by personal willingness and desire
- Orders for discharging military servants on inactive duties and dismissal should be justified and sufficient arguments provided for the decision

- Allow a position of a psychologist on every military base
- Harmonise Order N441 of the Minister of Defence of Georgia signed on 4 April 2014 with Article 14 of the Law of Georgia on the Status of the Military Servant of Georgia so that accommodation can be handed to any military servants if need be, so that a recommendation issued by the chief of the General Headquarters is not the only grounds for providing the military servant with the accommodation even if the criteria outlined in the above order cannot be met.

To Tbilisi Municipal Council

- Make hnges to Resolution N20-81 of 30 December 2004 so that war and military forces veterans registered in regions can also have access to preferential transportation rates in Tbilisi

To the Ministry of Defence, Ministry of Internal Affairs' Department of Protection of Strategic Objects, Special State Protection Service, Main Unit for External Protection and Guard of the Ministry of Corrections

- Functions and responsibilities of the conscript on compulsory draft should not be limited only to service in the security service. Development and training of compulsory military service should be paid particular attention to, and the major goal of the conscription should be their development into military servants.

To the Govenrment of Georgia and President's Administration

- Undertake appropriate legal changes (on both legislative and subordinated levels) in order to restore the rights of military pensioneers and staff discharged to inactive duty before January 1, 2005 from the Ministry of Internal Affairs through calculating and paying compensations for missed months from January 1, 2005 to January 1, 2006.

To the Government of Georgia and the Georgian Parliament

- Individuals who served in the Department for the Protection of State Border under the jurisdiction of the Georgian armed forces and who were transferred to the border police – a state sub-agency under the Ministry of Internal Affairs, should have years served in the border police of the Ministry of Internal Affairs counted as part of working record together with years served in Georgia's armed forces through implementing respective legal changes.
- Make changes to the Article 8 of the Law of Georgia on the State Compensation and State Academic Stipends so that terms for the eligibility to compensation extend to individuals who used to serve in the Department for the Protection of the State Border under the jurisdiction of the Georgian military forces but were discharged from the Georgian border police – a sub-agency under the Ministry of Internal Affairs, as a result of structural changes.

ON THE IMPLEMENTATION OF THE LAW ON AMNESTY

The Law of Georgia on Amnesty of 28 December 2012 introduced the obligation to terminate criminal proceedings against individuals who had been accused and/or convicted of commission of "less serious" crimes. In addition, pursuant to the Law of Georgia on Amnesty of 28 December 2012, the mentioned law was to be implemented within 2 months following the entry into force of the Law of Georgia on Amnesty.[642]

In the Parliamentary Report on the Situation of Human Rights and Freedoms in Georgia in 2014 the Public Defender of Georgia noted that despite the implementation term established by the Law of Georgia on Amnesty of 28 December 2012, as of 2014 the law had not been implemented in none of the cases.

Citizen S.M. was unable to benefit from the rights and benefits envisaged by the Law of Georgia on Amnesty of 28 December 2012 since his criminal case file was lost after it was sent to the court for the preparatory hearing (pg. 280-282). In addition, considering the authority granted to the Chief Prosecutor's Office by the Criminal Procedure Code, the Public Defender of Georgia addressed the Chief Prosecutor's Office of Georgia with a recommendation to terminate criminal prosecution against the defendant S.M. in compliance with Article 105 (1), subparagraph (f). Chief Prosecutor's Office has not terminated prosecution against the individual concerned, which, based on the circumstances of the case is the obligation of the Prosecutor's Office, not the court.[643]

On 27 February 2016 by its letter N13/1255 the Chief Prosecutor's Office of the Ministry of Justice of Georgia was informed by the Office of the Public Defender of Georgia, that as of today, the decision has not been made regarding the application of the Law of Georgia on Amnesty of 28 December 2012 to S. M. and the termination of criminal prosecution against him. Since according to the information requested from the Archive of the General Courts of the Department of General Courts, the criminal case against S.M. was registered with Didube-Chughureti District Court of Tbilisi from 2001 to 2005; since the mentioned period the progress of the case has not been observed and the case file is not available in the archive either.

642 Pursuant to Article 23, paragraph 4 of the Law of Georgia on Amnesty of 28 December 2012, amnesty envisaged by first 21 articles (except for the Article 11 of the given law) of this law shall be implemented within 2 months after the entry into force of the given law. Amnesty envisaged by the Article 11 of this law shall be implemented within 4 months following the entry into force of the given law.

643 On 28 March 1998 S.M. was brought to criminal liability under criminal case N10097323 in accordance with Article 241 (1) of the Criminal Code of Georgia (1960 edition). On 14 April 1998, the criminal case of S.M. was considered at the preparatory hearing in the Chugureti District Court of Tbilisi. According to the decision made by the judge of the Chugureti District Court of Tbilisi dated 1 July 1999 S.M.'s affidavit to remain in a territory was replaced with arrest and he was declared wanted, which is still ongoing.[643] On 24 November 2014 by its letter N1-01336/29246 Tbilisi City Court informed the Office of the Public Defender of Georgia, that on 24 October 2014 the Prosecutor of the Department of Procedural Guidance of Investigation in the units of the Ministry of Internal Affairs Aleksandre Potskhverashvili requested a motion from Tbilisi City Court for scheduling a hearing of defendant S.M's criminal case for applying the Law of Georgia on Amnesty of 28 December 2012. Prosecutor Alexandre Potskhverashvili was notified that since the case N01097323 on the defendant S.M. was never received by the Criminal Cases Panel of Tbilisi City Court and the verdict was never made against the said individual, the court was unable to consider his right to apply the Law of Georgia on Amnesty.

Therefore, as of today citizen S.M. cannot benefit from advantages granted by the Law of Georgia on Amnesty of 28 December 2012, according to which the criminal prosecution against him needs to be terminated. Under Article 105(1), subparagraph (f) of the Criminal Procedure Code of Georgia "investigation must cease and criminal prosecution must not be commenced or must be ceased, whichever is appropriate, if an act of amnesty has been issued that releases a person from criminal liability and punishment for the conduct he/she committed". Under Article 12 (2) of the Code, "a Chief Prosecutor carries out criminal prosecution according to the rules envisaged by this Code". In addition, under Article 33(6), subparagraph (g) of the Code, "a prosecutor may terminate criminal prosecution"; Article 166 of the Code stipulates, "commencing and carrying out criminal prosecution is part of prosecutorial discretionary power only".

RECOMMENDATION

To the Chief Prosecutor's Office of Georgia

- Chief Prosecutor's Office of Georgia should cease prosecution against defendant S.M.

FAILURE TO COMPLY WITH A LAWFUL DEMAND OF THE PUBLIC DEFENDER

Like the previous year, the Public Defender actively resorted to legal instruments granted by the Georgian legislation for the compliance of lawful demands of the public Defender. More specifically, authority and guarantee for work of the Public Defender is vested by the Constitution of Georgia.

> "The Public Defender shall have the right to reveal facts of violation of human rights and freedoms and inform corresponding bodies and officials thereof. Impediments to the activities of the Public Defender shall be punishable by law'. The powers of the Public Defender shall be determined by the Organic Law'.[644]

The Organic Law of Georgia on the Public Defender determines authorities and powers of the Public Defender, as well as major principles and forms of his/her activities. Pursuant to Article 2 of the aforementioned law, "the Public Defender of Georgia shall monitor the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction'.

At the same time, the organic law of Georgia lays down means of response which the Public Defender of Georgia can use within his or her authority. More specifically, in accordance with Article 18 of the Organic Law of Georgia on the Public Defender of Georgia or his/her representatives and trustees, when conducting an inspection freely enter any state or local self-government body, enterprise, organization, institution, including military unit, prison and confinement facilities and other places of detention and restriction of liberty; request and receive, immediately or not later than 10 days, from state and local self-government authorities or from officials all certificates, documents and materials necessary for conducting an inspection; request and receive written explanations from any official, officer, or equivalent person on the matters to be examined by the Public Defender; conduct expert examinations and/or prepare conclusions by means of state and/or non-state institutions; invite specialists/experts in order to perform expert and/or consultation works, obtain information about criminal, civil and administrative cases, the decisions in which have entered into force.

In order to empower the Public Defender to exercise his/her authority outlined above, the Organic Law of Georgia on the Public Defender of Georgia lays down legal guarantees for Public Defender to exercise his/her powers. More specifically, the law states that all state and local self-government authorities, officials or legal persons shall be obliged to assist the Public Defender of Georgia in every way, immediately submit materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers.[645]

The ability of the Public Defender to implement his/her functions are affected by the extent to which individuals, expected to provide the Public Defender, materials, documents and other necessary items, perform their own duty.

644 The Constitution of Georgia, Article 43, Paragraphs 2 and 3
645 The Organic Law of Georgia on the Public Defender of Georgia, Article 23, Paragrah 1

Therefore, for the Public Defender to perform his/her duties and authorities, the existing legislation sets certain time frames to for bodies of central and local authorities, officials or legal bodies, to comply with lawful demand of the Public Defender.

> "Materials, documents, other information and explanations shall be given to the Public Defender of Georgia, upon request, unless request for the materials, documents and other information is received in writing. In this case, documents and other information shall be delivered to the Public Defender of Georgia within ten days."[646]

Also,

> "State and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days."[647]

Failure to fulfill the obligations defined by this law, as well as any obstruction of the activity of the Public Defender of Georgia shall be punishable by law, shall be entered in the report of the Public Defender of Georgia and become a subject of special discussion by the Parliament of Georgia.[648] In addition, failure to comply with lawful demands of the Public Defender, represents a criminal offense stipulated by Article 173^4 of the Georgian Criminal Code and the responsibility for committing such defence is laid down in the same code.

Based on the aforementioned legislative norms, the Public Defender of Georgia initiated administrative proceedings on 11 cases within the reporting period.[649] Delinquency protocols on two cases were submitted to the courts for their review: One of these cases involved Poti Municipality Mayor[650] and the other one the chief of guard unit of main division of external protection and guard at the Penitentiary Department of the Ministry of Corrections..

Delinquency Case[651] against Poti Municipality Mayor

Poti Municipality Mayor violated the deadline established by Article 24 of the Organic Law of Georgia the Public Defender of Georgia for providing information about the revision of a recommendation issued by the Public Defender.

With its decision of March 13, 2015 Poti City Court plead the city's Mayor guilty in committing felony and sentenced him to paying 800 GEL as a fine.

Delinquency Case[652] against the Chief of Guard unit of Main Devision of External Protection and Guard at the Ministry of Correction's Penitentiary Department

On June 27, 2015 trustees of the Public Defender paid a visit to a multi-profile medical centre Lancet in order to meet a convict G. B.

646 The Organic Law of Georgia on the Public Defender of Georgia, Article 23, Paragrah 1
647 The Organic Law of Georgia on the Public Defender of Georgia, Article 24
648 The Organic Law of Georgia on the Public Defender of Georgia, Article 25, Paragraph 1.
649 Incuding: one case involving the violation of the deadline for feeding back the information around the revision of a Public Defender's recommendation established by Article 24 of the Law of Georgia on the Public Defender of Georgia; one case involving the failure to comply with a lawful demand of the Public Defender's trustee (the violation of the right to a private interview with convicts, Article 19 of the Organic Law of Georgia on the Public Defender of Georgia), nine cases involving the violation of the deadline for providing information essential to cases in question determined by Article 23 of the Organic Law of Georgia on the Public Defender of Georgia
650 Provision of information on the revision of a recommendation of the Public Defender within the timeframe established by the law
651 Case N1463/15 of the Public Defender's Office
652 Case N7797/15 of the Public Defender's Office

There was a temporary watch post with three members of the guard group set up in the ward. The watch post was further reinforced by the presence of two representatives of the special unit of the Penitentiary Department.

The chief of Guard unit of Main Devision of External Protection and Guard at the Ministry of Correction's Penitentiary Department did not allow the Public Defender's trustees to talk to the convict in private.

Article 3[1] of the Organic Law of Georgia on the Public Defender of Georgia states that "the Public Defender of Georgia shall carry out the functions of the National Preventive Mechanism stipulated under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" while pursuant to Article 19, Paragraph 2, Clause A of the same law

> "In order to examine the situation with respect to human rights and freedoms in prisons and confinement facilities, other places of detention and restriction of liberty , as well as psychiatric facilities, old people's homes ad children's homes, the Pubic Defender of Georgia or a member of the Special Preventive Group shall meet and talk personally or with assistance of an interpreter, without witnesses, with detainees, prisoners or persons whose liberty is otherwise restricted, convicted persons, persons in psychiatric facilities, old people's and children's homes, as well as with persons who may provide information about violations of the rights of those persons."

Paragraph 3 of Article 19 of the Organic Law of Georgia on the Public Defender of Georgia vests that:

> "the meetings of the Public Defender of Georgia/a member of the Special Preventive Group with detainees, prisoners or persons whose liberty is otherwise restricted, convicted persons, persons in psychiatric facilities, old people's and children's homes shall be confidential. Any kind of eavesdropping and surveillance shall be prohibited."

An imperative norm of the Organic Law prohibits any kind of eavesdropping and surveillance when the Public Defender/a trustee meets with detainees, inmates or persons whose liberty is otherwise restricted, convicted persons, patients in mental care facilities, beneficiaries of homes for the elderly and child institutions without any exception admissible to this norm.

Paragraph 1 of Article 4 of the Optional Protocol to the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment states that "each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or my be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent oracquiescenceThese visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

Paragraph 2 of the same article lays down that "for the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."

Pursuant to Article 20, Paragraph D of the Optional Protocol to the Convention Against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment, the National Preventive Mechanism is granted "the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the National Preventive Mechanism believes may supply relevant information' with the "liberty to choose the places they want to visit and the persons they want to interview."[653]

653 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 20, Para E.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment provides en extremely broad description of "places of detention' to ensure that no individual is left out from a large circle of detainees and those deprived of their liberty regardless of the exhaustiveness of the list. Therefore, the Optional Protocol guarantees the total protection of any individual at any place of detention including in psychiatric and medical institutions.[654] According to Article 20 of the Optional Protocol, the national preventive mechanism during the implementation of their mandate, should have the opportunity to interview detainees in private without witnesses personally or with a translator. The possibility to interviewing in private is essential to allow people deprived of their liberty to speak more openly with less fear of reprisal or intimidation. [655]

International norms strictly prohibit any eavesdropping or other surveillance should be strictly prohibited. The only exception should be where the visiting team itself makes a specific request to conduct an interview out of hearing but within sight of guards, for safety reasons.[656]

The term "place of detention' is very broadly defined by the Optional Protocol in order to ensure the full protection of all persons deprived of liberty under all circumstances. This means that visits by the national and international expert bodies will not be limited to prisons and Police stations, but will also include places such as: pre-trial detention facilities, centres for juveniles, places of administrative detention, security force stations. Detention centres for migrants, asylum seekers, transit zones in airports and check-points in border zones as well as medical and psychiatric institutions will also be the subject to visits under the Optional Protocol. The scope of the mandate of the visiting mechanisms shall also extend to include "unofficial' and covert places of detention, where people are particularly vulnerable to many kinds of abuse.[657]

The aforementioned clearly demonstrates that within the mandate of the national preventive mechanism the right to confidential interview can only be limited due to security purposes and in such a manner which excludes the possibility of eavesdropping.

Ignoring above mentioned legislative norms, Tbilisi City Court in its decision of 16 October 2015 ruled that the chief of Guard Unit of Main Devision of External Protection and Guard at the Ministry of Correction's Penitentiary Department did not commit felony.

With its order dated 10 December 2015 Tbilisi Court of Appeals ruled that the demand of Public Defender's trustees to interview the convict in private was lawful. In addition, the order indicates that the chief of Guard Unit of Main Devision of External Protection and Guard at the Ministry of Correction's Penitentiary Department "failed to comply with the lawful demand of the Public Defender's trustees'. Such a failure is qualified as a felony which means that it formerly exhibits all necessary elements of a felony stipulated by Article 10 of the Administrative Offences Code of Georgia which represents grounds for administrative responsibility. However, the Court of Appeals ruled that based on circumstances G. Ch. should not be subject to administrative responsibility.[658]

654 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Guiding Principles, 2005. P. 30

655 Establishment and Designation of National Preventive Mechanisms, Association for the Prevention of Torture, Association for the Prevention of Torture, 2006 P.60

656 Establishment and Designation of National Preventive Mechanisms, Association for the Prevention of Torture, Association for the Prevention of Torture, 2006 P.60 Association for the Prevention of Torture, Monitoring Places of Detention: a Practical Guide. 2004 P.80.

657 Optional Protocol to the UN Convention Against Torture: Implementation Manual. Association for the Prevetion of Torture, Inter-American Institute of Human Rights, 2010. Available in English at: http://www.apt.ch/content/files_res/opcat-manual-english-revised2010.pdf [Last accessed 22.10.2015].

658 Pursuant to Article 18 of the Administrative Offences Code of Georgia no administrative penalty shall be imposed on a person who, when committing an act provided by this Code and by other normative acts presciribing administrative liability for administrative offences, was acting in a state of extreme necessity, i.e. to ward off a danger threatening state or public order, property, rights and freedoms of citizens, the established rule of goernance if under the given circumstances the danger could not have been avertd by other means of if the harm done is less serious than the averted danger'.

Tbilisi Court of Appeals in its order dated 10 December 2015 failed to duly assess factual circumstances of the case, however, according to existing legislation,[659] the decision of Court of Appeals on administrative offence is final and not subject to further appeal.

Delinquency case[660] against the staff of Tbilisi Main Unit of Patrol Police Department of the Ministry of Internal Affairs of Georgia

On 12 June 2015 the non-governmental organizations organized a rally in Heydar Aliev Park protesting the arrest of human rights activists and journalists in Azerbaijan. Tatuli Todua, a trustee of the Public Defender of Georgia was also attending the rally in order to monitor the implementation of the right to expression. Patrol Police representatives did not allow the participants of the rally to enter Heydar Aliev Park.

A deputy head of Tbilisi Main Unit of Patrol Police Department of the Ministry of Internal Affairs of Georgia L. J. and a chief of line patrol unit of the same department D. M. failed to present the trustee of the Public Defender with the information on measures taken by the Police during the rally, their legal grounds and as well as on justification for the restriction of organizing the rally at an agreed place.

For the violation outlined above the staff of Tbilisi Main Unit of Patrol Police Department at the Ministry of Internal Affairs of Georgia were imposed with a disciplinary measure - reprisal[661] as a result of which proceedings on the offense by the Public Defender's Office was terminated.

RECOMMENDATIONS:

To government authorities, local self-government bodies, public establishments, official and legal bodies.

- Individuals receiving a lawful demand from the Public Defender of Georgia should comply with this demand in a manner outlined in the Organic Law of Georgia on the Public Defender of Georgia.

To the Supreme Council of Justice of Georgia

- Take measures to retrain judges on functions granted to the national preventive mechanism stipulated by the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

659 The Administrative Offences Code, Article 276, Part 5.
660 Case N8541/1 of the Office of the Public Defender of Georgia
661 Letter N2041202 (15.09.2015) of the Deputy Minister of Internal Affairs of Georgia

PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

Present chapter examines the obligations of a state to combat torture, inhuman and degrading treatment; contents of the right of a citizen to be protected against such prohibited actions. Trends observed during the reporting period in terms of protection of the said right, based on the analysis of circumstances studied by the Office of the Public Defender, are presented in this chapter.[662] The Public Defender of Georgia reminds the state that it is prohibited to use the information furnished by the imprisoned person to the Public Defender against the imprisoned person concerned. The recommendations to the state structures have been developed, with an aim to eliminate the flaws.

Compared to 2014 data, more cases of the alleged maltreatment administered by the police officers were observed[663] in 2015, than by the employees of the penitentiary system.

During the reporting period, Public Defender of Georgia lodged 15 proposals to the Chief Prosecutor of Georgia and requested the commencement of investigation regarding the cases of alleged maltreatment.

- 11 cases concerned the alleged maltreatment administered by the police officers;
- 4 proposals concerned the alleged maltreatment administered by the employees of penitentiary system[664];
- Out of 11 cases of alleged maltreatment administered by police officers, seven were observed by regional law enforcement agencies.

According to the examined facts, maltreatment administered by the police officers was mainly manifested in the physical abuse of the detained citizens. Detainees had signs of injuries on their bodies, which were also observed in various official documents.

Revealed trends are similar across the country. It is noteworthy that the biggest number of alleged maltreatment was observed in Imereti region.

None of the investigations of the cases of alleged maltreatment committed by the law enforcement officers in 2015 was qualified under special articles: Articles 144^1-144^3 of the Criminal Code of Georgia, which is confirmed by the information furnished to the Office of Public Defender of Georgia by the investigation agencies. Mostly investigation was launched under Article 333 of the Criminal Code of Georgia - Exceeding Official Powers.

662 Under circumstances we mean relevant documentation, interviews with the detained or imprisoned individuals, visual traces on their bodies.

663 In addition, refer to the chapter *Situation In The Agencies Under The Control Of The Ministry Of Interior Of Georgia* of the present report.

664 One of the proposals referred to the fact of alleged maltreatment by law enforcement officers as well as employees of penitentiary system against the detainee; accordingly, 11 out of 15 proposals are about the alleged crimes committed by the law enforcement officers and in addition, four proposals highlight the facts of alleged maltreatment committed against the imprisoned persons in the penitentiary facilities.

Situation is different with regard to the facts of alleged maltreatment revealed in the penitentiary system. Several times the facts of alleged torture and maltreatment suggested by the Public Defender of Georgia were qualified under articles 144^{1}-144^{3} instead of Article 333 of the Criminal Code of Georgia. Given fact can be considered a positive trend. Although, the Office of the Public Defender of Georgia is unaware whether this practice is similar with regard to the facts provided by other sources besides the Office of the Public Defender.

None of the proposals submitted by the Office of the Public Defender of Georgia has led to the identification and punishment of the persons alleged. Investigation is still ongoing in all 15 cases. Prosecution against specific individuals has not been launched.

Besides the proposals calling for the commencement of investigation, Public Defender of Georgia appealed for the subsequent response to other specific facts, which were already under investigation. Alleged offenders were not identified in any of these cases. Accordingly, none of the authorities (of police or penitentiary system) mentioned in the cases of the Office of the Public Defender were brought to criminal liability.

Criminal prosecution was started only against the Head of the Division N5 of Vake-Saburtalo Tbilisi Police Department of the Ministry of Internal Affairs of Georgia involving signs of a crime stipulated by Article 333 of the Criminal Code of Georgia.[665]

Over the years, as well as during the reporting period, Public Defender identified the malfunction of video cameras or accidental destruction of records as one of the main obstacles of investigation by the investigation agencies. Accordingly, the video recordings of the facts leading to the unconditional increase in the effectiveness of investigation of a criminal case cannot be obtained. Unfortunately, the mentioned argument is presented by the investigation agencies not only with regard to the video cameras installed in police facilities, but also regarding the facts committed in the penitentiary facilities.

Primary purpose of a video recording is the verification of committed facts in a dynamic mode. It plays one of the most significant, crucial and essential parts during the process of collecting evidence during investigation. Given that the investigation of facts of torture and maltreatment has been impeded in all cases of Public Defender's appeals, the state should express more interest in smooth and efficient operation of video cameras. Practice and legislation related to storing and using video recordings need to be improved.

REVEALED PRACTICE OF MALTREATMENT

Prohibition of torture, inhuman and degrading treatment, as an absolute right, has always been a subject of special attention of the Public Defender of Georgia. The annual report of the Public Defender of Georgia dedicates its significant part to the implementation of positive[666] and negative[667] obligations of a state with regard to combating torture and maltreatment.

As already mentioned above, the Public Defender of Georgia lodged 15 (fifteen) proposals to the Chief Prosecutor's Office of Georgia and in specific cases requested the commencement of investigation against the alleged perpetrators (state officials), fast and effective investigation, implementation of relevant investigative measures, etc.

Given that, due to the lack of materials, in a number of cases it was impossible to draw conclusions on the existence of a crime by the examination conducted by the Office of the Public Defender of Georgia, the materials were sent to the Chief Prosecutor's Office of Georgia for the further response.

665 See the case of Lawyer G.M. studied in the first subparagraph of the present chapter.

666 In case of revealed maltreatment state is obliged to conduct effective investigation, identify the perpetrator(s), bring them to criminal liability and impose a fair sentence.

667 Refrain from torture, inhuman or degrading treatment of a person.

Based on the revealed practice, investigation is not effective, independent, prompt and impartial. This conclusion can be drawn after studying separate facts and tradition of response of the investigation agencies to the mentioned fact.

For a better illustration of this problem, the present chapter discusses several individual cases studied by the Public Defender of Georgia.

Case of Lawyer G. M.

According to the report submitted to the hotline of the Office of the Public Defender of Georgia on 8 November 2015 police officers physically abused the lawyer G.M. at the Division N5 of Vake-Saburtalo branch of Tbilisi Police Department.

According to the minutes of the interview with G.M. conducted by the attorney of the Public Defender of Georgia in Elizabeth Blackwell Hospital on 8 November 2015, on 8 October 2015, at about 02:15 Lawyer G.M. visited the mentioned division with an aim to meet with his underage client. Before the minor's interrogation, Lawyer G.M. told the investigator that the defendant was exercising his right to remain silent; afterwards, police officers took the minor in a separate room to have a private conversation with him. When G.M. attempted to leave the office of the Head of the division together with the defendant, police officers became aggressive; Head of division tried to provoke the lawyer, abused him verbally and waved hands at him. Afterwards he abused G.M. physically. According to G.M. he was taken to the office of the Head of division and beaten. According to the applicant physical violence lasted for 5-10 minutes. 5 individuals participated in the mentioned action. After the mentioned fact the lawyer was placed under administrative arrest and released based on receipt. On the same day, at about 07:00 lawyer G.M. called an emergency medical brigade.

According to the protocol (minutes) of administrative arrest G.M. was arrested for the offense punishable under Article 173 of the General Administrative Code of Georgia.[668] According to the minutes "G.M. expressed his obvious discontent and disrespect towards the police officers. In particular, he abused them verbally; G.M. showed clear disrespect of investigator D.G. and a Head of division L.K. by pulling their ears. He tried to resist the arrest." According to the minutes G.M. showed signs of injuries. During his meeting with the representatives of the Public Defender of Georgia he had visual injuries on his face. According to the information presented by the Chief Prosecutor's Office of Georgia[669] on 8 November 2015 Investigation Unit of the Chief Prosecutor's Office of Tbilisi launched investigation of the fact of exceeding official powers by the police officers involving signs of a crime stipulated by Article 333 (3), subparagraph (b) of the Criminal Code of Georgia.

It is noteworthy, that a series of investigative actions were carried out with regard to this case; in addition, video recordings of the particular period of interest were requested from the operative-technical department of State Security Service for further investigation. The Public Defender was furnished with the records of cameras installed on the outer perimeter, while the records of cameras inside the building could not be obtained due to technical malfunction.

On 9 November 2015 Lawyer G.M. was recognized as a victim and on 14 October 2015 the Head of Division N5 of Vake-Saburtalo branch of Tbilisi Police Department L.K. was charged under Article 333 (3), subparagraph (b) of the Criminal Code of Georgia and sentenced to prison term as a preventive measure. Later, imprisonment was substituted with a more lenient measure – bail.

668 Disobedience of a lawful request or order of a member of law enforcement bodies on his official duty, verbal abuse and/or other offensive actions in his direction.

669 Letter of the Chief Prosecutor's Office of Georgia dated 11 December 2015

The mentioned fact was the only case of maltreatment when the alleged offender was identified. Nevertheless, in totality of circumstances, there are reasonable grounds to suspect that the investigation failed to identify all alleged perpetrators, which indicates that the investigation was not fully effective, comprehensive and impartial.

Case of the citizen M. P.

According to the statement of the Ministry of Internal Affairs of Georgia, on 20 December 2015 police officers arrested M.P. charged with murder of her husband and underage child.[670]

According to the information disseminated by media on 22 December 2015 during the first hearing of the case of a defendant at Tbilisi City Court, M.P. claimed that after her arrest the police officers abused her physically.[671]

Public Defender of Georgia started studying of the mentioned case on his own initiative under Article 12 of the *Organic Law of Georgia on the Public Defender of Georgia*.

During the meeting with the attorneys of the Public Defender of Georgia on 23 December 2015 defendant M.P. claimed that she was arrested by the police officers of 20 December 2015. She did not resist the arrest. After the arrest she was transferred to the administrative building of Tbilisi Police Department, where police officers verbally and physically abused her in order to obtain a confession. Mentioned violence continued for about 9 hours (from 04:00 to 13:00). According to the defendant's claims four police officers, whom she does not know, but can identify, participated in the mentioned criminal action. When she refused to confess, police officers threatened to rape her and forcibly stripped her naked; afterwards, a higher official entered the room and, after receiving his orders, the police officers stopped their criminal activities.

After studying the series of documents[672] collected by the Office of the Public Defender of Georgia it was revealed that that M.P. showed multiple signs of injury on her body. In particular, "small areas of cyanosis on her right shoulder and left thigh, scab-covered excoriations on both hands, bruises on the right side of abdomen around the navel, hyperemic areas of different sizes on both wrist joints and a left knee". In the documentation, she indicates that the injuries were inflicted upon the arrest.

In addition to studying the documents, the attorney of the public defender of Georgia visually examined the defendants M.P.'s body and included the detailed information on existing injuries in the minutes. In addition, on 8 February 2016, during the meeting with the attorneys of the Public Defender of Georgia, M.P. claimed that the violence administered by the police officers upon her arrest caused damage to her health, which led to the termination of pregnancy.[673]

Investigation of the abovementioned facts of torture was launched on the same day when the defendant made a statement in the court. It is noteworthy that the investigation was commenced under incorrect qualification – under the article of exceeding official powers (Article 333 of the Criminal Code of Georgia).

670 Available at: http://police.ge/ge/shss/9167

671 Available at: http://www.tabula.ge/ge/story/103078-qmris-da-shvilis-mkvlelobashi-braldebuls-tsinastsari-patimroba-sheufardes [Last accessed on 15.01.2016]

672 Records of visual examination of accused M.P. upon her placement in isolator; emergency medical assistance card; medical certificate issued by N. Kipshidze Central University Clinic; emergency medical assistance file of a detainee completed at Temporary Detention Isolator N1 of Tbilisi; Protocol prepared by the operational assistant on duty of the Facility N5 of the penitentiary department, Inspector (Controller) of Legal Regime and assistant detective-investigator of the Division N1 of Tbilisi dated 22 December 2015; in addition, medical certificate issued by the doctor of Facility N5 of the penitentiary department dated 22 December 2015.

673 It is noteworthy that according to the letter of the medical department of the *Ministry of Corrections of Georgia dated 25 February 2016, M.P. was transferred from the Facility N5 of the Penitentiary Department on 23 December 2015 to Academician O. Gudushauri National Medical Center for inpatient treatment. She returned to the facility on 26 December 2015. According to the medical certificate issued by Academician O. Gudushauri National Medical Center medical tests and consultation performed on M.P. on 23 December 2015 at 23:30 (time of admission at inpatient facility: 23 December 2015, 21:30; time of discharge: 26 December 2015, 22:30) indicated possible pregnancy and the tests and consultation performed on 26 December 2015 indicated on the termination and inexistence of "possible" pregnancy.*

Certain investigative measures were carried out. Separate pieces of evidence were obtained, although alleged perpetrator was not identified by the agency.[674]

Case of Citizen P.B.

On 18 June 2015, during his stay at Facility N8 of the Penitentiary Department, the attorney of the Public Defender of Georgia met and spoke with accused P.B.

According to the explanation provided by the defendant he was arrested by the members of Old Tbilisi Police on 5 April 2015 together with his friend A.O. Police officers ill-treated them during and after their arrest (in the premises of Old Tbilisi Police Department). Applicant recalled the name of one of the perpetrators and claimed that he was an employee of Old Tbilisi Police – Z.A.

The Office of the Public Defender of Georgia requested forensic examination reports of the abovementioned individuals from LEPL Levan Samkharauli National Forensics Bureau. Furnished reports confirm the presence of multiple injuries on the applicants' bodies.

According to the letters[675] furnished to the Office of the Public Defender of Georgia by Chief Prosecutor's Office of Georgia investigation of the abovementioned fact has been launched involving the signs of a crime stipulated by the Article 333 (3), subparagraph (b) of the Criminal Code of Georgia. No particular individuals have been recognized as victims or perpetrators within the frameworks of the given case.

Case of L.J.

On 29 September 2015, the Public Defender of Georgia lodged a proposal to launch investigation of alleged maltreatment and other possible violations against L.J. to the Chief Prosecutor of Georgia.

According to the explanation provided by L.J, after the arrest, he was transferred to the Main Police Department of Kobuleti of the Ministry of Internal Affairs of Georgia, where the representatives of the police abused him verbally and physically. He was beaten in his face and head with open palms and sworn at. A few hours later, he was taken to the third floor of the building for a drug test, although since the detainee was not able to produce a sample for analysis (urine), he was again taken to the second floor and after a phone conversation with a certain "Davidovich" he was forced to take off his shoes and socks, walk barefoot on a cold floor; then they brought a bottle of water and one of the employees hit it over the detainee's head; then they started pouring cold water on his feet. Several minutes later a person nicknamed "Davidovich" arrived, who slapped L.J. in his face and punched him in the stomach with his foot. He abused him verbally and threatened to beat and murder him unless he confessed the crime and produced necessary samples for analysis. According to L.J., since the detainee was still unable to provide the mentioned samples he was forced to put on his shoes, was taken outdoors where he was forced to stay in cold for several minutes and do squats.

674 According to the information furnished by the Chief Prosecutor's Office of Georgia on 5 February 2016 Investigation Unit of the Chief Prosecutor's Office of Tbilisi launched investigation on 22 December 2015 of the fact of excessive use of official powers by the members of the Ministry of Internal Affairs involving the signs of a crime stipulated by Article 333 (3), subparagraph (b) of the Criminal Code of Georgia. Series of investigative measures were implemented within the frameworks of the given case; in addition, M.P.'s medical documentation, copies of her criminal case file and minutes of court hearing were requested. According to the forensic examination report on the given criminal case M.P. showed signs of injuries qualified as light, not affecting her health. At this stage, victims and accused parties of the case have not been identified. It is also noteworthy, that according to the forensic examination[674] report, during personal examination performed on 24 December 2015 M.P. had injuries in the form of bruises and incisions. Mentioned injuries were inflicted with hard, blunt object and when taken together, as well as separately are qualified as light and did not affect person's health. Age of injuries does not contradict the date indicated in preliminary reports.

675 Letters of the Chief Prosecutor's Office of Georgia dated 22 July 2015 and 19 October 2015.

Injuries on L.J.'s body are confirmed by the documentation available at the Temporary Detention Isolator of Kobuleti.[676]

Documentation also confirms that the maltreatment was administered in February 2015.[677] Investigation (under Article 333 of the Criminal Code of Georgia) was launched only after the Public Defender of Georgia lodged a proposal to commence investigation to the Chief Prosecutor's Office – on 6 October 2015[678] – 7 months after the incident, which is particularly alarming in terms of effective investigation of cases of alleged torture and maltreatment.

Case of Sh.A.

On 16 April 2015, during his stay at the Facility N7 of the Penitentiary Department, the attorneys of the Public Defender of Georgia met and spoke with the defendant Sh.A. During the meeting the accused stated that he was arrested on 10 April 2015 and after the arrest he was subjected to physical and verbal abuse several times in the building of the Ministry of Internal Affairs of Georgia (Ortachala), as well as the Facility N8 of the Penitentiary Department and the prisoner transportation vehicle, during his transfer from the Tbilisi City Court to the Facility N7 of the Penitentiary Department.

According to the explanation of the defendant Sh.A, the employees of the Ministry of Internal Affairs, prison service and the Facility N8 of the Penitentiary Department also participated in the criminal offenses against him.

For a comprehensive examination of the case, the Office of the Public Defender of Georgia requested a report of visual examination of the defendant Sh.A.'s body, performed upon his transfer in the FacilityN 8 of the Penitentiary Department on 10 April 2015, which recorded multiple injuries on defendant's body.

It is also noteworthy, that on the same day, defendant Sh.A. was transferred from the Facility N8 of the Penitentiary Department to the Facility N7 of the Penitentiary Department, where the protocol of his visual examination and an examination sheet were drawn up. Mentioned documents describe significantly bigger number of injuries on the defendant's body.

It is also noteworthy, that on 16 April 2015 the attorneys of the Public Defender of Georgia performed a partial visual examination of the defendant Sh.A. and some injuries were still found on his body.

Based on the abovementioned, on 17 April 2015 the Public Defender of Georgia lodged a proposal to launch an investigation of alleged maltreatment against defendant Sh.A. to the Chief Prosecutor's Office of Georgia.

On 2 May 2015 Chief Prosecutor's Office of Georgia notified the Public Defender of Georgia that the General Inspection of the Chief Prosecutor's Office of Georgia commenced an investigation of the facts of excessive use of official powers by the authorities after Sh.A.'s arrest under Article 333 (3), subparagraph (b) of the Criminal Code of Georgia. Investigation has yet failed to detect alleged perpetrator.

Case of T.M.

On 22 April 2015 the attorneys of the Public Defender of Georgia visited Facility N8 of the Penitentiary Department, where they met and spoke with the convicted prisoner T.M. According to T.M.'s statement, on 17 April 2015 members of Facility N8 of the Penitentiary Department administered maltreatment against him.

676 According to the documentation available at Temporary Detention Isolator of Kobuleti L.J. had the following injuries on his body: small bruise in the area of forehead, excoriation in the area of lips. The fact that the injuries were inflicted as a result of beating by the police officers during the arrest, as well as his stay in the police department was also reflected in the documentation.

677 According to the documentation available at Temporary Detention Isolator of Kobuleti L.J. was arrested on 22 February 2015 at 22:50. Detainee was transferred to the isolator on 23 February at 13:30.

678 According to the response furnished by the Chief Prosecutor's Office investigation was commenced on 6 October 2015 on the basis of Public Defender's proposal involving signs of a crime stipulated by Article 333 (3), subparagraph (b) of the Criminal Code of Georgia.

As per convicted prisoner T.M.'s explanation, on 17 April 2015 at about 03:00, he requested sedative drugs. Employees of the security department brought him psychoactive pills, which he refused to take and requested the administration of a sedative drug by the doctor. T.M. claims that afterwards he was taken out of his cell and was abused physically multiple times in the duty room and so-called "smart".[679] Convicted prisoner stated that he remained handcuffed for three hours, while the employees of the department were beating him; one of them threw a burning cigarette butt at him. As per T.M.'s explanation, due to the administered maltreatment he lost his consciousness twice.

Convicted prisoner claimed that several employees of the facility participated in the criminal actions; among them, he recalls the Head of Legal Regime of the Facility – G.P., Officer of the building – D.K. and an employee of the facility – D.K.

According to T.M.'s claims, the director of Facility N8 of the Penitentiary Department – N.K, with whom he spoke directly, possesses detailed information regarding the abovementioned incident. Deputy director of the facility Z.M. also possesses information about this fact, who, according to the convicted prisoner's explanation personally witnessed the fact of maltreatment administered against him.

According to T.M.'s statement, during following days the employees of the facility did not allow him to contact his family members and a lawyer; they did not allow him to write a complaint or meet with the social worker either.

According to the explanations of the convicted prisoner T.M, the employees of the facility blackmailed him to not disclose the information regarding the incident.

During the visual examination of the convicted prisoner T.M. on 22 April 2015, the attorneys of the Public Defender of Georgia detected multiple injuries and asked one of the doctors of the facility to describe the injuries.

Respectively, on 22 April 2015 the abovementioned doctor performed the visual examination of the convicted prisoner T.M. in the presence of the attorneys of the Public Defender of Georgia and issued a medical certificate reporting on the multiple injuries present on the convicted prisoner's body. Mentioned medical certificate confirms that the injuries are scabbed, which allows us to assume that they were inflicted several days earlier.

It is noteworthy, that the attorneys of the Public Defender of Georgia obtained the medical certificate drawn up by the surgeon Z.K. of the Facility N8 of the Penitentiary Department dated 17 April 2015, according to which certain injuries were found on the body of the convicted prisoner, although he did not require medical assistance.

It should be noted that the data produced by the doctors of the facility dated 17 April 2015 and 22 April 2015 show a different picture.

After studying the obtained materials and detecting the signs of a criminal fact, the Public Defender of Georgia lodged a proposal on commencing investigation to the Chief Prosecutor's Office of Georgia on 23 April 2015.

It is noteworthy, that the investigation involving the signs of a crime stipulated by Article 144^3(1) of the Criminal Code of Georgia is ongoing in the Investigation Unit of the Chief Prosecutor's Office of Georgia. Although, according to the letter furnished by the Chief Prosecutor's Office of Georgia, as of 30 December 2015 perpetrators had not been detected within the frameworks of the given criminal case. In addition, convicted prisoner T.M. has not been recognized as a victim.

679 Department of reasonable admission and placement.

INADEQUATE MEDICAL SERVICES AT THE PENITENTIARY FACILITIES AS A FORM OF MALTREATMENT

Protection of health of persons placed in the penitentiary system is a right protected by Article 3 of the European Convention on Human Rights. In particular, provision of inadequate medical services to the prisoners is considered inhuman treatment; respectively, state is obliged to take care of prisoner's health, in order to eliminate maltreatment administered against him.

Prison healthcare should at least envisage:

- Availability of doctors;
- Equal medical services;
- Confidentiality;
- Preventive healthcare;
- Professional independence;
- Professional competence;
- Regular consultations with general practitioners and doctor-specialists;
- Supervised outpatient treatment;
- Dental treatment;
- Infirmary;
- Provision of full medical services at civil or prison hospitals;
- Interventions for urgent cases.

Prison healthcare envisages the component of treatment, as well as a comprehensive and systematic documentation.

According to the definition of the European Court of Human Rights, state is obliged to ensure the provision of proper medical services to the convicted person, including mental healthcare. Absence of medical services for the convicted persons may become a reason for violation of Article 3 of the European Convention on Human Rights. Strasbourg court often examines cases involving the absence of proper treatment services for the convicted persons in the context of torture and maltreatment.[680]

According to the European Prison Rules, persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose. All necessary medical, surgical and mental health services, including those administered within the frameworks of public healthcare, shall be provided to the convicted prisoners.

Persons detained in the penitentiary institutions benefit from their fundamental right to receive physical and mental healthcare services, which is equal to, at least those medical services available for wider society. Article 12 International Covenant *on Economic, Social and Cultural Rights* recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

It is important for relevant agencies to ensure the provision of accurate diagnosis and treatment and regular and systematic supervision by medical staff, envisaging complete therapeutic and inpatient strategy. Person detained in the penitentiary institution suffering from mental disorder may be more sensitive to the feeling of

680 Case *Jashi v. Georgia*, N10799/06, paragraph 66, 8 January 2013; *Kotalla v. Netherlands,* European Court of Human Rights, 1988; Herzegfalvv v. Austria, European Court of Human Rights, 1992; Vladimir Romanov v. Russia, N41461/02, paragraph 28-70, July 2008; Kudla v. Poland [GC], N30210/96, paragraph 92-94, ECHR 2000-XI.

inferiority and helplessness, which may lead to the increased diligence related to the examination of adequacy of mental healthcare at penitentiary institutions.[681]

In the case of Slawomir Musial v. Poland[682] the European Court of Human Rights held that the state did not fulfill its positive obligation and did not ensure the timely transfer of the convicted prisoner to relevant public psychiatric hospital or a prison hospital, where the convicted person would be placed in a specially-equipped ward and would receive adequate sanitation and psychiatric treatment. Failure to comply with these criteria led to the mental unrest, anxiety and fears of the convicted person, which violated Article 3 of the European Convention on Human Rights and Fundamental Freedoms. Besides, the court also obliges the high contracting parties to abide the recommendations of the European Commission on the mental disorders of prison[683] and according to Article 46 of the European Convention on Human Rights and Fundamental Freedoms, contracting parties oblige the state to place the convicted person in the psychiatric facility and provide necessary treatment.

Case of D.P.

During the reporting period, the Office of the Public Defender of Georgia studied the health status of a convicted prisoner D.P. detained at Facility N7 of the Penitentiary Department. Examination of the issue revealed the urgent necessity of transferring D.P. from Facility N7 of the Penitentiary Department to the inpatient institution in order to provide adequate mental health care.[684] Forensic psychiatric examination report is the precondition of the abovementioned fact, while its provision is a competence of the administration of a penitentiary facility.

According to the factual circumstances of this incident, during the visit of the attorneys of the Public Defender of Georgia to Facility N7 of the penitentiary department, convicted D.P. was being detained at Cell N1 of the regime building of the abovementioned facility. Physical evaluation of the environment observed the cracked plaster on walls and ceiling, humidity, insufficient natural and artificial ventilation, absence of a toilet tank, damaged water tap and constantly running water. In addition, it has been specifically stated that the conditions of Facility N7 of the penitentiary department do not comply with the conditions established by national and international standards.[685]

Besides, convicted prisoner displays inadequate behavior – he occasionally urinates in the cell, spits, and clots of blood and stool can be observed near his bed. All the above-mentioned facts create insanitary conditions and unbearable odor, which reaches the courtyard. Other inmates are forced to use their statutory right to exercise in fresh air for one hour per day under the mentioned conditions. According to the explanation provided by the administration of penitentiary facility N7, convicted prisoner cannot be transferred as he refuses to leave the cell. Although, the interview with the attorney of the Public Defender of Georgia revealed that convicted prisoner D.P. leaves the cell occasionally, e.g. in order to take a shower. During this time the administration of the facility performs the sanitation of the cell.

It is noteworthy that pursuant to Article 22, paragraph 2 of the Law of Georgia on Psychiatric Care:

> "If a convicted person placed in the penitentiary facility, against whom the legal proceedings have been completed, shows signs of mental disorder, the administration of the penitentiary facility shall address the authorized expertise institution for conducting forensic psychiatric expertise."

681 See Slawomir Musial v. Poland), N 28300/06, paragraph 87 and 96, 20 January 2009
682 Slawomir Musial v. Poland), N 28300/06, paragraph 96-97, 20 January 2009
683 Council of Europe Committee of Ministers, Recommendation RR(90)7, To Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison and Recommendation Rec(2006)2 of 11 January 2006 on European Prison Rules.
684 Forensic Examination Report issued by LEPL Levan Samkharauli National Forensics Bureau on 31 August 2015 points out that the mentioned case is clinically complex.
685 National Preventive Mechanism of the Public Defender of Georgia, Report on the visit to Facility N7 of the Penitentiary Department, 19 June 2015. Also, see Recommendation N03/4581, 19 February 2014

After the convicted person is subjected to forensic psychiatric expertise, if the report of the authorized expertise institution confirms the urgent need of providing involuntary inpatient psychiatric care, the administration of the penitentiary facilities is obliged to address the court with regard to involuntary inpatient psychiatric care on the basis of the report issued by the authorized expertise institution (after the abovementioned procedures the administration should address the court for administration of involuntary treatment to the convicted person and comply with the procedures prescribed by law). Respectively, the decision to prescribe involuntary treatment to the patient is made by court based on a conclusion drawn up by the Commission of Forensic Psychiatric Expertise. Besides, national legislation does not establish a rule for making a decision on subjecting a person to involuntary psychiatric expertise by the court. Respectively, court is not an authorized body, which can make a decision on subjecting a person to involuntary (compulsory) forensic psychiatric expertise. Accordingly, in this case, administration of the penitentiary facility becomes an authorized body.

In order to address the issue of involuntary treatment of convicted persons, it is necessary to conduct forensic psychiatric expertise, which is a competence/obligation of a relevant agency under the Ministry of Corrections of Georgia.

In addition, pursuant to Article 24, paragraph 3 of the Law of Georgia on Psychiatric Care the implementation and financing of forensic psychiatric expertise shall be provided by the body (person) appointing the expertise or a state, through implementing state programs financed by the state budget or other targeted sources. Persons being under pretrial investigation shall be escorted to the expertise institution and guarded respectively by the penitentiary department – a state body subordinated to the Ministry of Corrections of Georgia.

According to the Order N55[686], article 2, paragraph 10 on the approval of the rule of transferring defendants/convicted persons to the Treatment Facility for the Defendants and Convicted Persons and the Center for TB treatment and rehabilitation of the General Hospital of the Ministry of Corrections of Georgia dated 10 April 2014, the transfer of a patient from the facility/healthcare facility/center for conducting forensic or forensic-psychiatric expertise is implemented according to the rules prescribed by law, upon orders of the director of penitentiary department.

The Office of Public Defender of Georgia was notified by letter (dated 25 September 2015) of the Department of Healthcare of the Ministry of Corrections of Georgia, that on 11 August 2015 the convicted person was subjected to forensic psychiatric expertise in the Facility N7 of the Penitentiary Department; expertise report indicates that the results of the expert analysis are evaluated as clinically complex, which cannot be addressed within the format of inpatient forensic-psychiatric analysis and the inquiries made by the resolution cannot be resolved either. Respectively, it is necessary to perform the inpatient forensic-psychiatric expert analysis of D.P. at the department of LEPL Levan Samkharauli National Forensics Bureau. It is also noted that Facility N7 of the Penitentiary Department plans to address Tbilisi City Court with a motion to determine the issue of subjecting convicted prisoner D.P. to involuntary psychiatric expertise.

Convicted prisoner D.P. displays the signs of mental disorder, which are recorded in relevant medical documents by the medical staff. Based on the conclusion drawn up by doctor-specialists, the penitentiary facility should abide by the Law of Georgia on Psychiatric Care.

It is noteworthy, that Tbilisi City Court did not accept the motion of the Director of Facility N7 of the Penitentiary Department on subjecting convicted prisoner D.P. to involuntary (compulsory) psychiatric expertise, since there was no basis for commencing legal proceedings. With this regard, the law prescribes imperative measures for placing a person in inpatient facility for involuntary psychiatric care, rules and terms of their examination. According to the established regulation, if the expertise report is the precondition of placement of a convicted prisoner in inpatient facility, then the placement is implemented by the administration of a facility independently from the court.

686 It is noteworthy, that the Imprisonment Code of Georgia does not provide regulations related to the abovementioned procedures.

It is a remarkable circumstance, that in its monitoring report[687] of 1-14 December 2015 the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment notes that the placement of a person in Facility N 7 of the penitentiary department of the Ministry of Corrections of Georgia equals inhuman treatment. Committee also highlights that, given his mental problems, transferring convicted prisoner D.P. to treatment or penitentiary facility is possible without any particular efforts, although it is still unclear why, as of today, he is being detained at Facility N 7 of the Penitentiary Department.

PROHIBITION OF USING THE INFORMATION ON THE ALLEGED MALTREATMENT FURNISHED TO THE PUBLIC DEFENDER OF GEORGIA AGAINST THE IMPRISONED PERSON

Positive obligations of a state with regard to combating maltreatment include the establishment of an effective system of complaint. For this purpose, the state is obliged to protect the convicted persons and provide their security guarantees against possible repression after lodging the complaints. State's increased commitment towards the individuals under this category derives from the specifics of their condition – they are under the direct control of a state, their freedom of will and physical freedom are limited. Considering these legal circumstances, they fall under the vulnerable category. Respectively, physical protection of these individuals is a direct responsibility of a state.

It is a particularly noteworthy, that proper functioning of the Public Defender and the National Preventive Mechanism are given major significance with the purpose of prevention and detection of maltreatment. Respectively, the information on the facts of torture or maltreatment furnished to the Public Defender of Georgia cannot be directed or used against a person/imprisoned individual nor become a basis for launching criminal prosecution against him. Otherwise, proper functioning of the Public Defender and the National Preventive Mechanism, detection and prevention of the facts of maltreatment will become impossible. The abovementioned derives from the absolute prohibition of torture and obligations of international convention and the basis of implementation of the mandate of National Preventive Mechanism.

Absolute nature of the prohibition of torture envisages the protection safeguards for an imprisoned person lodging a complaint. In addition, it is of vital importance to provide a procedure for informal and effective examination of a lodged complaint.

Mentioned provisions represent essential and crucial guarantees for the establishment of justice and the rule of law and derive from the international norms/principals of human rights.

Pursuant to Article 3^1 of the Organic Law of Georgia *on the Public Defender of Georgia* the Public Defender of Georgia shall carry out the functions of the National Preventive Mechanism stipulated under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Respectively, the Public Defender of Georgia shall enjoy all authorities and mandates provided by the international acts for the National Preventive Mechanism.

The absolute prohibition of torture is an imperative (Jus Cogens) norm of customary law recognized by international law not subject to derogation. The most significant components of prohibition are the right to have one's complaint against the government of a state promptly and impartially examined, ensuring that the complainant and witnesses are protected against all maltreatment or intimidation and provision of adequate compensation envisaged by Articles 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[688] The mentioned mechanism implies the establishment of a system,

687 CPT/Inf (2015) 42, paragraph 58, pg. 36.

688 UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Resolution adopted on 10 December 1984, A/RES/39/46.

where the imprisoned persons can lodge complaints freely and without fear and disclose information on their conditions.

Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shares the necessity of full elimination of torture envisaged by convention, recalling that articles 2 and 16 of the convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.[689] For achieving abovementioned aims, it obliges the State Parties to guarantee functional independence of the National Preventive Mechanism.

Protection of the victims of torture from repressions, sanctions and other dangers is the most significant operational foundation of the Public Defender of Georgia and the National Preventive Mechanism and a precondition to justice. The more effective and powerful are the guarantees of victim and witness protection, the more effective is the practical implementation of the absolute prohibition of torture.

Pursuant to UN Standard Minimum Rules for the Treatment of Prisoners safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.[690]

Based on the abovementioned, bringing an imprisoned person to criminal liability due to the information submitted to the attorneys of the Public Defender of Georgia shall be a violation of positive obligations of a state. In addition, the given case will create a substantial likelihood of refraining from lodging a complaint by other imprisoned persons due to the actual risks of facing criminal liability. This, in its turn, will become an unconditional impeding factor against combating maltreatment.

Case of G.O.

Prisoner G.O. submitted a complaint to the Public Defender of Georgia regarding maltreatment administered against him in the penitentiary facility. The Office of the Public Defender of Georgia forwarded the mentioned complaint to the Chief Prosecutor's Office of Georgia for further response, which eventually became a basis for bringing prisoner G.O. to criminal liability. In particular, the Chief Prosecutor's Office of Georgia charged him with perjury and false denouncement.

In more detail, on 19 June 2015 mother of the defendant – A.G. provided the copies of materials of G.O.'s criminal case to the Office of the Public Defender of Georgia.

After a comprehensive examination of the mentioned documents by the Office of the Public Defender of Georgia the following findings were revealed:

On 8 June 2015 G.O. was given an indictment. The indictment reveals that G.O. committed false denouncement accompanied by an allegation of personally motivated serious crime.

Based on the mentioned indictment, on 22 September 2014, pursuant to the order of the Head of Penitentiary Department of the Ministry of Corrections of Georgia, prisoner G.O. placed in Facility N8 of Tbilisi Penitentiary Department was transferred to Facility N3 of Batumi Penitentiary Department.

The indictment also reveals that transfer to the facility in Batumi was unacceptable for G.O. and upon his placement in Facility N3 of Penitentiary Department he threatened the staff of the facility that, unless he was

689 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199.

690 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 57.1

returned to Tbilisi, he would inflict self-injuries and thus, convince the Public Defender of Georgia that he had been subjected to torture by the penitentiary facility.

Pursuant to the indictment of 8 June 2015, after his placement in Facility N3 of the penitentiary department on 22 September 2014 he inflicted self-injuries; afterwards, during the interview with the attorney of the public defender of Georgia, with a personal motivation to return to Facility N8 of the Penitentiary Department, he provided false account of serious crimes – degrading and inhuman treatment committed against him by the employee M.M. of Facility N3 of the penitentiary department and other staff of prison service and Facility N3 of the penitentiary department. Given information became a basis for launching criminal investigation.

According to the indictment of 8 June 2015, while being interrogated as a witness of a criminal case on 2 October 2014, G.O. falsely denounced the employee M.M. and other staff of the Facility N3 of the Penitentiary Department and claimed that they committed a serious crime – degrading treatment and punishment against him.

Respectively, pursuant to the mentioned indictment, G.O. committed an action envisaged by the Article 373 9(3), subparagraph (a) of the Criminal Code of Georgia.

Importantly, the materials of a case unambiguously confirm that the investigation of the alleged maltreatment against the accused G.O. was launched in the Investigation Division of Procedural Guidance of the Ministry of Corrections of Georgia on 25 September 2014; the basis for launching investigation was the proposal of the Public Defender of Georgia dated 23 September 2014.[691]

It is noteworthy that, currently, full hearing of the criminal case of a defendant G.O. is ongoing in Tbilisi City Court involving the actions stipulated by Articles 370 and 373 of the Criminal Code of Georgia.

On 7 August 2015 the Public Defender of Georgia furnished its Amicus Curiae opinion to Tbilisi City Court with regard to prohibition of using the information provided to the attorney of the Public Defender of Georgia against G.O, as a basis for launching criminal prosecution against him.

RECOMMENDATIONS

To the Chief Prosecutor's Office of Georgia, Ministry of Internal Affairs of Georgia and the Ministry of Corrections and of Georgia

- With the purpose of elimination and prevention of torture, inhuman and degrading treatment, provide ongoing training and capacity building for the staff of the Chief Prosecutor's Office of Georgia, the Ministry of Internal Affairs of Georgia and the Ministry of Corrections of Georgia;
- Refrain from using the information furnished to the Public Defender of Georgia regarding the facts of alleged maltreatment against the imprisoned persons for bringing them to criminal liability; such complaints should not become a basis for launching criminal investigation against the imprisoned persons.

To the Ministry of Corrections of Georgia

- Pursuant to the law, ensure the transfer of imprisoned persons, including the convicted prisoner D.P, to the bureau of expertise with the purpose of conducting forensic-psychiatric expertise; in addition, with due consideration of the health status of the convicted prisoner, ensure their protection and transfer to relevant medical facilities for administration of further treatment;

691 According to the proposal of the Public Defender of Georgia dated 23 September 2014, individual employees of the penitentiary facilities administered verbal and physical abuse of the defendant G.O.

- Ministry should provide necessary physical and mental healthcare services to the convicted prisoners, in compliance with the expertise report.

To the Ministry of Internal Affairs of Georgia

- Provide ongoing training of the staff of the Ministry of Internal Affairs of Georgia on the procedures of arrest, principles of proportionate use of force and prevention of excessive use of official powers.

To the Chief Prosecutor's Office of Georgia

- Commence investigation immediately after receiving information on torture, inhuman and/or degrading treatment.

INDEPENDENT, EFFECTIVE AND IMPARTIAL INVESTIGATION

Conducting effective investigation of the facts of deprivation of life, torture, inhuman and degrading treatment is a positive obligation of a state. Investigation is effective if it satisfies the following criteria:

- Independent;
- Impartial;
- Thorough;
- Implemented by a competent body;
- Prompt;
- With due participation of the victim.

When an individual has an arguable claim that there has been a violation of Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for torture or inhuman treatment.[692]

Investigation must allow for the identification and punishment for those responsible. Otherwise, despite its fundamental significance, it would be impossible to practically implement the prohibition of torture, inhuman or degrading treatment or punishment and possibly, based on the above, given the total impunity, would lead to the abuse of powers by the representatives of the state against those under their control.[693]

During the reporting period, as a result of examination of cases by the Office of the Public Defender of Georgia, implementation of effective investigation of facts of alleged maltreatment administered by the law enforcement officials against citizens, as well as convicted/imprisoned persons placed in penitentiary facilities remains a significant problem. Specifically, problem lies in granting the status of a victim to the victims of maltreatment, reasonable promptness of investigation, qualification of action and, particularly, the absence of institutional independence of investigation.

In 2013, 2014 and 2015 the Public Defender of Georgia lodged 58 proposals[694] to the Chief Prosecutor's Office of Georgia and requested the effective investigation of the facts of alleged maltreatment. According to the letters furnished by the Chief Prosecutor's Office of Georgia to the Office of Public Defender of Georgia, investigation was opened on multiple facts. Accordingly, the Office of the Public Defender of Georgia addressed[695] the Chief Prosecutor's Office of Georgia and requested detailed information on the proceedings of investigation of 21 (twenty-one) cases.

692 Judgment of the European Court of Human Rights on Case *Egmez v. Cyprus.*

693 See judgment of the European Court of Human Rights on Case *Gharibashvili v. Georgia*

694 Out of abovementioned 58 cases in 30 the facts of alleged maltreatment were administered by law enforcement officials and in 28 cases by the staff of penitentiary facility.

695 See letters of the Office of the Public Defender of Georgia dated 21 December 2015, 4 February 2016 and 15 January 2016

By its response letters[696] the Chief Prosecutor's Office of Georgia provided information to the Office of Public Defender of Georgia on the proceedings of only 18 (eighteen) criminal cases.

Given letter clarifies only the fact that 9 (nine) cases were qualified under Article 333 of the Criminal Code of Georgia, 2 (two) – under Article 118 of the Criminal Code of Georgia and 2 (two) under Article 144[3] of the Criminal Code of Georgia. Within the frameworks of any of the mentioned cases specific individuals have not been recognized as victims or the accused. According to the information of the Chief Prosecutor's Office of Georgia, investigation was terminated in 5 (five) cases out of 18.

It is noteworthy that the Chief Prosecutor's Office of Georgia failed to furnish the Public Defender of Georgia with information regarding specific investigative measures and dates of their implementation, nor regarding the expertise and conclusions drawn up within the frameworks of any of the abovementioned cases. Moreover, no information was provided whether video recordings were obtained in any of the mentioned cases. Respectively, it is impossible to deliberate on the effectiveness of investigation of these cases.

Present chapter seeks to examine the investigative jurisdiction, as well as the necessity and urgency of creating an independent investigation agency, facts of refusing the commencement of investigation, consideration of the effective implementation of investigation on the criminal cases launched based on proposals of the Public Defender of Georgia. This chapter also analysis the legislative amendments related to the election of the Chief Prosecutor of Georgia and the authority of the Prosecutorial Council – whether the implemented model responds to the aim of the reform.

LEGISLATIVE LACUNAS IN THE PROCESS OF IMPLEMENTATION OF INDEPENDENT AND EFFECTIVE INVESTIGATION

Authority of the Prosecutorial Council of Georgia, rules of appointment and dismissal of the Chief Prosecutor of Georgia

The legislative amendments of 18 September 2015 defined the rules and procedures of appointment and dismissal of the Chief Prosecutor of Georgia. Despite the introduction of the election of the Chief Prosecutor by the Parliament of Georgia, given the participation of the executive branch of government in the process of appointment of the Chief Prosecutor[697] safeguards providing the systemic independence of the Prosecutors office are not ensured. There are no sufficient guarantees for the independence from political influence. In addition, creation of the Prosecutorial Council under chairmanship of the Minister of Justice of Georgia cannot be evaluated as a guarantee of independence of this agency.

It is noteworthy, that an opinion of Venice Commission[698] on the draft law on the appointment of the Chief Prosecutor of Georgia was published on 7 July 2015; it points out that the proposed amendment goes into right direction, although it does not fully achieve the stated goal of depoliticizing the office of the Chief Prosecutor of Georgia. The report also highlights the necessity of supplementary safeguards in order to diminish the risk of politicization and find the balance between the democratic legitimacy and depoliticization of the procedure of such appointment. Executive branch of government and parliamentary majority have a substantial advantage in the process of appointment of the Chief Prosecutor, since the political agencies participate at several levels.[699]

696 Letters of the Chief Prosecutor's Office of Georgia dated 30 December 2015, 9 January 2016 and 4 February 2016.

697 nomination of a candidate by the Minister of Justice of Georgia to the Government of Georgia, and the nomination by the government to the Parliament.

698 Available at: http://www.osce.org/odihr/171416?download=true

699 Minister of Justice is a chairman of the Prosecutorial Council, members of the Parliament of Georgia are the members of this council, the Minister of Justice nominates the candidate to the Government, Government approves or rejects the candidate and presents him/her to the Parliament, candidate is elected by a majority of votes in the Parliament.

Commission put forward recommendations, including the election of the Chief Prosecutor by a qualified majority in Parliament, admissibility of having a chairperson elected by the council instead of having the Minister of Justice automatically hold this position, provision of safeguards of independence of the Prosecutorial Council. It is noteworthy, that the given recommendations were not taken into consideration while adopting the law.

The term of office for the Chief Prosecutor shall be six years. The same person may not be elected for two consecutive terms.[700] The Chief Prosecutor may be a citizen of Georgia with higher legal education and with no record of convictions, who has at least five years' experience of working as a judge reviewing criminal cases, or as a prosecutor or as a criminal lawyer specialized in general or criminal law, or who is a recognized specialist in criminal law from a higher institution or a civil society organization, and has at least 10 years' experience of working in the legal profession. A candidate for the Chief Prosecutor must have high reputation due to his/her moral and professional qualities.[701]

During one month, the Minister of Justice shall start consultations with academic circles, members of civil society and law specialists to select candidates for the position of the Chief Prosecutor and will present at least three candidates[702], who shall be voted for individually at the meeting of the Prosecutorial Council. The voting shall be secret. The candidate who receives more votes but at least two thirds of the full composition of the Prosecutorial Council shall be deemed approved.[703] The Minister of Justice shall immediately present the candidate for the Chief Prosecutor's position approved by the Prosecutorial Council to the Government of Georgia to obtain its consent. The Government of Georgia shall, within two weeks, give or refuse its consent to the candidate for the Chief Prosecutor's position.[704] If the Government of Georgia gives its consent to the candidate for the Chief Prosecutor's position presented by the Minister of Justice, the candidate shall immediately be presented to the Parliament of Georgia. The Parliament of Georgia shall, according to the procedure established under the Rules of Procedure of the Parliament of Georgia, by secret ballot and by majority of its full composition, elect the Chief Prosecutor.[705] If the Parliament of Georgia does not support the candidate for the Chief Prosecutor's position presented by the Government of Georgia, the abovementioned procedure shall be repeated.[706]

Therefore, the authority to nominate the candidate for the position of the Chief Prosecutor of Georgia is granted to the member of government – the Minister of Justice of Georgia. Despite the fact that the Prosecutorial Council approves the candidate nominated by the minister, their participation in the process of selection of a candidate is minimal and has a symbolic nature. If votes are equally divided between two or more candidates, Head of Prosecutorial Council is given a casting vote. If yet neither of the candidates receives support of two thirds of the full composition of the Prosecutorial Council, the Minister of Justice shall nominate, within one week, different candidates under the procedure established by paragraph 1 of this article.[707] Executive branch of government plays crucial role in the election of the Chief Prosecutor of Georgia. If the Government of Georgia does not give its consent to the candidate for the Chief Prosecutor's position, the Minister of Justice shall present to the Government of Georgia another candidate approved by the Prosecutorial Council.[708]

Even though the parliament of Georgia participates in the process of appointment of the Chief Prosecutor, selection and nomination of the candidate remains the authority of government (Minister of Justice, government): the legislative body, in the end, votes for the candidate selected by the Minister of Justice and

700 Law of Georgia on the Prosecutor's Office, Article 9, paragraph 1
701 Law of Georgia on the Prosecutor's Office, Article 9, paragraph 1[1]
702 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 1
703 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 2
704 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 3
705 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 4
706 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 5
707 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 2
708 Law of Georgia on the Prosecutor's Office, Article 9[1], paragraph 3

nominated by government. Therefore, the selection of candidates by the Minister of Justice of Georgia, nomination of candidates to the Prosecutorial Council and the government of Georgia and the eventual nomination of a candidate to the parliament by the government of Georgia indicates the significant and crucial role of the executive branch of government in the selection of a head of agency implementing criminal prosecution. It is recommended to eliminate the participation of the executive branch of government in the process of selection of a Chief Prosecutor, in order to ensure the independence and political impartiality of the Prosecutor's Office.

In order to ensure independence and transparency of the Prosecutor's Office and to fulfill its functions efficiently, an independent collegial body – the Prosecutorial Council – shall be established with the Ministry of Justice of Georgia.[709] The Prosecutorial Council shall consist of 15 members.[710] The Minister of Justice of Georgia is a chairperson of the council and the members are as follows: eight members elected by the Conference of Prosecutors of Georgia[711], two members elected by the parliamentary majority of the Parliament of Georgia and two members of the Prosecutorial Councilelected by the High Council of Justice of Georgia from among the judges of common courts. The term of office for members of the Prosecutorial Council shall be four years[712], besides; the same person may not be elected as member of the Prosecutorial Council for two consecutive terms.[713]

As for launching criminal prosecution against the Chief Prosecutor of Georgia, if there is a sufficient ground to assume that the Chief Prosecutor has committed a crime, the Prosecutorial Council shall, at the initiative of one or more members of the Prosecutorial Council or upon the petition of at least one third of the full composition of the Parliament of Georgia[714] discuss the appropriateness of appointing a special (ad hoc) prosecutor.

A candidate for a special (ad hoc) prosecutor may be nominated by any member of the Prosecutorial Council. The Prosecutorial Council shall make a decision to appoint a person as a special (ad hoc) prosecutor[715] through secret ballot by majority of the full composition of the Prosecutorial Council. If the majority of the full composition of the Prosecutorial Council considers that there is no sufficient ground to assume that the Chief prosecutor has committed a crime, it shall refuse to appoint a special (ad hoc) prosecutor.[716]

Information concerning the alleged commission of a crime by the Chief Prosecutor must be reliable and convincing. The Prosecutorial Council shall, before resolving the issue of appointing a special (ad hoc) prosecutor, invite the author of the information to its meeting and take explanations from him/her, and from any person that can confirm or reject the information about the alleged crime. The Prosecutorial Council is authorized to require that these persons provide the documentation, if any, confirming their position.[717] The Prosecutorial Council shall, before appointing a special (ad hoc) prosecutor, and before approving the report of the special (ad hoc) prosecutor, hear the explanations of the Chief Prosecutor. The Chief Prosecutor is

709 Law of Georgia on the Prosecutor's Office, Article 8^1, paragraph 1

710 Law of Georgia on the Prosecutor's Office, Article 8^1, paragraph 2

711 According to Article 8^2 of the Law of Georgia on the Prosecutor's Office 1. The Conference of Prosecutors of Georgia is a meeting of prosecutors and investigators of the Prosecutor's Office, which is authorized to elect members to the Prosecutorial Council. A candidate for membership of the Prosecutorial Council may not be the Chief Prosecutor, the first Deputy Chief Prosecutor, and a Deputy Chief Prosecutor, a head of a department of the Chief Prosecutor's Office, a prosecutor of the Autonomous Republic of Abkhazia, and a prosecutor of the Autonomous Republic of Adjara, a prosecutor of Tbilisi city or a Regional Prosecutor.

712 Law of Georgia on the Prosecutor's Office, Article 8^1, paragraph 3

713 Law of Georgia on the Prosecutor's Office, Article 8^1, paragraph 3^1

714 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 1

715 According to Article 8^3, paragraph 5 of the Law of Georgia on the Prosecutors Office "A special (ad hoc) prosecutor may be a citizen of Georgia with higher legal education and with no record of convictions, who is a former judge reviewing criminal cases, or a former prosecutor or a lawyer specialized in general or criminal law, who has at least five years' experience of working respectively as a judge, or as a prosecutor, or as a recognized specialist in criminal law from a higher institution or a civil society organization, and who has at least 10 years' experience of working in the legal profession. A candidate for a special (ad hoc) prosecutor must have high reputation due to his/her moral and professional qualities."

716 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 2

717 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 3

authorized to present to the Prosecutorial Council the information supporting his/her position, and enjoys the right to defense and the right to be represented in the review of the issue.[718]

A special (ad hoc) prosecutor shall prepare and, within two months of his/her appointment, submit a report to the Prosecutorial Council on whether there is a probable cause that the Chief Prosecutor has committed a crime. Upon request of the special (ad hoc) prosecutor, and with the consent of the majority of the members of the Prosecutorial Council, this time limit may be extended for a maximum of two months.[719]

A special (ad hoc) prosecutor shall be accountable only to the Prosecutorial Council.[720] A special (ad hoc) prosecutor shall exercise all powers when performing his/her duties, and shall have all the obligations that a prosecutor has and are imposed on him/her at the investigation stage based on the Criminal Procedure Code of Georgia, this Law and other applicable legislative and subordinate normative acts of Georgia.[721] The Chief prosecutor may be subjected to such an investigative action, which, according to the Criminal Procedure Code of Georgia, is carried out by a court ruling. In this case, the special (ad hoc) prosecutor shall file a motion with the Chamber of Criminal Cases of the Supreme Court of Georgia. The Chamber shall consider the motion under the procedure established by the Criminal Procedure Code of Georgia and issue a ruling on granting or dismissing the motion.[722] A special (ad hoc) prosecutor shall provide the Chief Prosecutor with his/her report and copies of the accompanying material not later than ten days before submitting them to the Prosecutorial Council. The Chief Prosecutor may submit to the Prosecutorial Council explanations and information confirming his/her position.[723]

If, according to the report of the special (ad hoc) prosecutor, there is a probable cause that the Chief Prosecutor has committed a crime, the Prosecutorial Council shall, through secret ballot and by at least two thirds of its full composition, approve the report of the special (ad hoc) prosecutor, and shall apply to the Parliament of Georgia for the premature removal of the Chief Prosecutor from office. If the Prosecutorial Council does not approve the report of the special (ad hoc) prosecutor on the availability of a probable cause of committing a crime by the Chief Prosecutor by majority of at least two thirds of its full composition, the matter shall be deemed to be removed from the Prosecutorial Council's agenda.[724] Upon approval of the special (ad hoc) prosecutor's report by the Prosecutorial Council, or if the Prosecutorial Council believes that there is a probable cause that the Chief Prosecutor has committed a crime, and it rejects the report of the special (ad hoc) prosecutor by majority of at least two thirds of its full composition, powers of the Chief Prosecutor shall be suspended until the Parliament of Georgia adopts a decision on the issue of his/her premature removal from office.[725] The Parliament of Georgia shall discuss and put to vote the recommendation of the Prosecutorial Council for the premature removal of the Chief Prosecutor from office. The appropriate decision shall be deemed adopted if it is voted for by majority of the full composition of the Parliament of Georgia. If the Parliament of Georgia fails to adopt the decision to prematurely remove the Chief Prosecutor from office, the matter shall be deemed to be removed from the Parliament's agenda.[726]

The law contains a problematic norm: If the probable cause that the Chief Prosecutor has committed a crime is not confirmed in the report of the special (ad hoc) prosecutor, the Prosecutorial Council may still reject such a report of the special (ad hoc) prosecutor by majority of at least two thirds of its full composition. In this case, it shall be deemed that there is a probable cause that the Chief Prosecutor has committed a crime, and the Prosecutorial Council shall apply to the Parliament of Georgia for the premature removal of the

718 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 4
719 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 5
720 Law of Georgia on the Prosecutor's Office, Article 8^3, paragraph 3
721 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 6
722 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 7
723 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 8
724 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 9
725 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 10
726 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 11

Chief Prosecutor from office.[727] Such case, when, despite the fact that the probable cause is not confirmed in the report of the special (ad hoc) prosecutor, the council may still apply to the parliament of Georgia for the removal of the Chief Prosecutor from Office, is inadmissible.

Besides, making the decision (approval of the report of the special prosecutor) on the removal of the Chief Prosecutor of Georgia based on a probable cause confirmed by the report of the special (ad hoc) prosecutor, is within the competence of Prosecutorial Council. Although, members of the Prosecutorial Council act under their personal responsibility and are not accountable to the body that elected them. Exercising any influence on them shall be prohibited.[728]

Council consists of 8 subordinate prosecutors of the Chief Prosecutor (according to the law the power of Chief Prosecutor may be suspended only after the approval of the report), while one of the principles[729] of activity of the Prosecutor's Office is subordination of all subordinate prosecutors and other officers of the Prosecutor's Office to the Chief Prosecutor.[730] Therefore, a problem of objectivity and impartiality may arise while implementing the given authority of the Prosecutorial Council, due to the fact that decisions are made by subordinate prosecutors.

Despite the creation of the Prosecutorial Council, considering the level of participation of the Minster of Justice of Georgia in the process of appointment of the Chief Prosecutor and the authority of the Parliament of Georgia to nominate a candidate, the approval of the report of the special (ad hoc) prosecutor by the Prosecutorial Council cannot be considered a complete safeguard of independence of the Prosecutor's Office from the system of executive government.

Investigative Jurisdiction

Investigative jurisdiction of the facts of alleged crimes committed by the staff of agencies of Prosecutor's Office, Police and Penitentiary system contain multiple legislative lacunas, which were emphasized in the previous reports of the Public Defender of Georgia. Rule of Investigative Jurisdiction of the Division of the State Security Service developed in 2015 contains similar lacunas. Major lacuna, emphasized by the Public Defender of Georgia in its previous reports is the problem of institutional and practical independence of investigation.

Despite the fact that the investigative jurisdiction is divided among the investigation bodies of different agencies, according to the law[731]: The Chief Prosecutor of Georgia or a person authorized thereby may, regardless of the investigative jurisdiction, withdraw a case from one investigative authority and transfer it to another investigative authority or under his own subordination. Although the Ministry of Internal Affairs of Georgia, as well as the Ministry of Corrections of Georgia and State Security Service are still legally authorized to investigate crimes committed within their own system, which is a direct violation of institutional independence.

Current legal and institutional environment of Georgia cannot safeguard the independence of investigation of crimes (committed within the Prosecutor's Office, Police, Penitentiary and Security systems), which has been practically proven over the years.

727 Law of Georgia on the Prosecutor's Office, Article 9^2, paragraph 9

728 Law of Georgia on the Prosecutor's Office, Article 8^1, paragraph 3

729 Law of Georgia on the Prosecutor's Office, Article 4, subparagraph (e)

730 Article 13 of the Law of Georgia on the Prosecutor's Office envisages: a) the instructions given by a superior prosecutor to a subordinate prosecutor on the organization and activities of the Prosecutor's Office shall be binding; b) a subordinate prosecutor shall report to a superior prosecutor when discharging his/her official duties; c) a superior prosecutor may, if necessary, exercise the powers of a subordinate prosecutor or assign his/her own certain powers to a subordinate prosecutor; d) a superior prosecutor may repeal and amend a subordinate prosecutor's decisions and acts or replace them with other decisions and acts; e) a superior prosecutor shall review complaints against a subordinate prosecutor's decisions and acts; f) a subordinate prosecutor shall submit reports of his/her activity, information, cases and materials to a superior prosecutor.

731 Criminal Procedure Code of Georga (6), subparagraph (a)

Necessity of creation of independent investigation mechanism

As already mentioned above, Georgian legislation does not provide standards of independent and impartial investigation of facts of deprivation of life and maltreatment administered by the staff of law-enforcement agencies and within the penitentiary facilities. The graveness of this issue was emphasized by the special reports of 2013 and 2014[732] of the Public Defender of Georgia. The reports examined the facts of alleged deprivation of life and maltreatment administered by the staff of law-enforcement agencies against citizens, as well as, within the penitentiary facilities against the defendants/convicted prisoners and the urgent necessity of creating an independent investigation mechanism of the facts of alleged maltreatment.

It is noteworthy, that according to the resolution[733] adopted by the parliament of Georgia on 2014, the Parliament of Georgia recognizes the significance of the initiative of the Public Defender of Georgia to continue working with the Government of Georgia on the establishment of independent investigation agency within the frameworks of criminal justice reform. in particular the State Constitutional Commission must be created, in order to protect institutional independence, eliminate the conflict of interests among the agencies and ensure the effective functioning of investigation system. According to the Action Plan of the Government of Georgia on the Protection of Human Rights (2014-2015)[734] one of the actions for timely, comprehensive, effective and impartial investigation of torture and other forms of maltreatment is the establishment of an effective mechanism to deal with cases of offences committed by public prosecutors and police officers, considering the creation of mechanism for dealing with such cases. In addition, "according to the interim-report of the implementation of Action Plan of the Government of Georgia on the Protection of Human Rights, the actions of the group revealed […] the necessity to create new independent investigation body and a possible model of this body.[735]

It is noteworthy that the draft law on establishment of independent investigation mechanism was developed by non-governmental organizations and was reviewed at several different meetings, within the frameworks of Inter-agency Commission. Nevertheless, the Government of Georgia did not take any effective measures for the creation of independent investigation mechanism. Respectively, the recommendation of the Public Defender of Georgia remains unfulfilled.

As for the reporting period, a department of the Chief Prosecutor's Office of Georgia was established for investigating crimes committed during criminal proceedings, responsible to: implement full-fledged investigation and criminal prosecution[736] of alleged crimes committed during the legal proceedings, including the facts of torture, inhuman and degrading treatment, involuntary property concessions and other forms of coercion. Given that the mentioned department is a structural division of the Chief Prosecutor's Office, it cannot be regarded an independent body for investigation.

Investigation conducted by General Inspection of the Chief Prosecutor's Office of Georgia, General Inspection of the Ministry of Internal Affairs of Georgia, General Inspection of the State Security Service of Georgia and Investigation Division of the Ministry of Corrections of Georgia of the alleged crimes committed by the staff of same agencies does not comply with a significant criterion of effective investigation: independence and impartiality. "The effective investigation […] serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their

732 See Annual Report of the Public Defender of Georgia, 2013, pg. 189-220; available at: http://www.ombudsman.ge/uploads/other/1/1563.pdf, Annual Reporta of the Public Defender of Georgia, 2014, pg. 328-342 Available at: http://www.ombudsman.ge/uploads/other/2/2439.pdf

733 Resolution N2652-rs of the Parliament of Georgia *on the Situation of Human Rights and Freedoms in Georgia* dated 1 August 2014

734 Resolution N445 of the Government of Georgia dated 9 July 2014, annex 1

735 Ordinance N1134 of the Government of Georgia on the approval of the Interim Report of the Action Plan of the Government of Georgia on the Protection of Human Rights prepared by the Inter-Agency Coordination Council of the Action Plan of the Government of Georgia on the Protection of Human Rights (2014-2015) dated 2 June 2015.

736 Order N62 of the Ministry of Justice of Georgia dated 13 February 2015, annex, article 2, subparagraph (a)

responsibility."[737] "In order to implement effective investigation, independence of investigative bodies from the individuals involved in the events concerned may be considered a general necessity; this includes not only the absence of hierarchic or institutional connections, but practical independence as well."[738]

Therefore, a recommendation of the previous reports of the Public Defender of Georgia on the establishment of an independent investigation body for ensuring the institutional independence of investigation of crimes committed by law-enforcement officials against the imprisoned persons in the penitentiary facilities, remains in force.

One of the cases examined by the Office of the Public Defender of Georgia during the reporting period clearly demonstrates the flaw in the investigation of facts of alleged maltreatment against the imprisoned persons in the penitentiary facilities.

Case of Citizen L. K.

According to information disseminated by media[739] on 7 July 2015, in the provided video footage citizen L.K. explained that the staff of the Ministry of Internal Affairs administered physical abuse against her near Turtle Lake (Kus Tba). According to L.K. they abused her verbally, then started beating her and took her phone away when she tried to make a call. According to citizen L.K.'s claims, one of the police officers grabbed her by the throat and kicked her with a foot. Then she was forced into car and taken to Police Department (near Mziuri) where she was detained during two or more hours.

On 8 July 2015, according to the information disseminated by the Ministry of Internal Affairs of Georgia[740] "the General Inspection of the Ministry of Internal Affairs of Georgia completed the examination of the incident that happened in the vicinities of the Turtle Lake promptly." According to the mentioned statement, the General Inspection of the Ministry of Internal Affairs of Georgia conducted an inquiry, obtained video materials and questioned all individuals involved in the case. The next day, obtained materials were sent to the Prosecutor's Office for investigation.[741]

The Public Defender of Georgia believes[742] that the implementation of internal inspection by the General Inspection of the Ministry of Internal Affairs of Georgia after the public statement of citizen L.K. cannot be regarded an adequate response to the fact of alleged crime committed by the law-enforcement authorities against a citizen.

According to the position of the Public Defender of Georgia, conducting internal inspection instead of investigation, by the same agency neglects the requirements established by Georgian legislation and international acts. Statement on the fact of alleged violence administered by the police officers against citizens compels the Prosecutor's Office to open investigation.[743] In the given case, the Chief Prosecutor's Office of Georgia was obliged to open and effectively implement investigation of the fact of alleged crime committed by police officers against citizen L.K. Investigation should not have been initiated by the same agency – Ministry of Internal Affairs of Georgia, employing the alleged perpetrators – police officers.

737 Enukidze and Girgvliani v. Georgia, paragraph 243

738 See. Judgement of the European Court of Human Rights on the case *Gharibashvili v. Georgia*

739 Available at: http://www.tabula.ge/ge/story/97928-klub-vitaminis-menejeris-mtkicebit-mas-ocamde-policielma-scema

740 Available at: http://police.ge/ge/kus-tbaze-momkhdari-shemtkhvevis-shestsavla-shss-s-generalurma-inspeqtsiam-umokles-droshi-daasrula/8462

741 By its letter of 28 July 2015 the Ministry of Internal Affairs of Georgia informed the Public Defender of Georgia that the materials of internal inspection related to the case of citizen L.K. were sent to the Chief Prosecutor's Office of Tbilisi.

742 See The statement of the Public Defender of Georgia dated 9 July 2015 Available at: http://www.ombudsman.ge/ge/news/saxalxo-damcveli-lika-kikianis-gancxadebis-safudzvelze-prokuraturis-mier-gamodziebis-dawyebas-itxovs.page

743 Article 100 of the Criminal Procedure Code of Georgia; Order N34, paragraph 2 of the Minister of Justice of Georgia *on the Definition of Investigative and Territorial Jurisdiction of Criminal Cases* dated 7 July 2013

State failed to conduct effective, impartial and prompt investigation of the case of citizen L.K, as the case was given an incorrect legal qualification – investigation did not consider the mentioned fact as maltreatment; at this stage, the investigation failed to reveal alleged perpetrators and bring them to adequate criminal liability.[744]

Cases of M.P. and M.U.

The Parliamentary Report of the Public Defender of Georgia mentioned the fact of maltreatment administered by the staff of Facility N8 of the Penitentiary Department against prisoners M.P. and M.U. upon their admission to the department of reasonable admission and placement, aka "smart" on 12 November 2014.[745]

With regard to the given issues, on 17 November 2014 the Public Defender of Georgia lodged a proposal to the Chief Prosecutor's Office of Georgia and requested the commencement of investigation of the fact of alleged maltreatment administered by the staff of Facility N8 of the Penitentiary Department against the abovementioned imprisoned persons. For the purpose of independence of investigation, the Public Defender of Georgia requested:

- Not only the formal commencement of investigation, but also its implementation with the purpose of bringing perpetrators to criminal liability;
- Timely implementation of all necessary investigative measures, including the forensic expertise of the quality, nature, age, origin and development of injuries on the defendants' bodies; obtaining the video-materials of the mentioned fact by the investigative agency.

Despite the abovementioned, initially investigation was launched by the Investigation Department of the Ministry of Corrections of Georgia. Later, the case was transferred for investigation to the Chief Prosecutor's Office.[746]

On the same day, when the case was transferred to the Prosecutor's Office, qualification of the given case was changed and investigation continued under Article 333 (3), subparagraphs (b) and (c) and Article^2(1) of the Criminal Code of Georgia.

It is noteworthy, that, in his public statements, the Public Defender of Georgia called on the investigation bodies to implement investigation under special article – article 144^3 instead of article 333 of the Criminal Code of Georgia, but to no avail.

It is noteworthy, that on 4 December 2014 an individual case was separated from the criminal case, involving signs of a crime and jurisdiction stipulated by Article 378^2 of the Criminal Code of Georgia. It was sent to the Investigation Department of the Ministry of Corrections of Georgia for further investigation. Investigation on the fact of alleged maltreatment was terminated on 15 January 2015.

Given that the effective investigation of the facts of maltreatment is a particular area of interest of the Public Defender of Georgia, the Office of the Public Defender of Georgia studied the abovementioned criminal

744 By its letter of 22 June 2015 the Chief Prosecutor's Office of Georgia informed the Public Defender of Georgia that on 9 July 2015 investigation was opened in the Investigation Division of the Chief Prosecutor's Office of Tbilisi on the bases of citizen L.K.'s statement, on the fact of exceeding official powers, involving signs of a crime stipulated by Article 25,333 (3), subparagraphs (b) and (c) of the Criminal Code of Georgia. Upon commencement of investigation, the individuals mentioned in the statement of L.K. were questioned. On 15 July 2015 a resolution was adopted on recognizing L.K. as a victim, which was furnished to L.K. on 16 July 2015. Expertise was scheduled on the mentioned case. At this stage, criminal prosecution has not been launched against particular individuals, investigation is ongoing.

745 Available at: http://www.ombudsman.ge/uploads/other/2/2439.pdf, page 314

746 By its letter of 24 November 2014 the Chief Prosecutor's Office of Georgia informed the Public Defender of Georgia that investigation was launched by the Investigation Department of the Ministry of Corrections of Georgia. Only on 20 November 2014, upon the decision of the Chief Prosecutor's Office of Georgia, the criminal case was withdrawn from the Investigation Department of the Ministry of Corrections and on 21 November 2014 it was transferred to the Investigation Division of the Prosecutor's Office of Tbilisi.

case[747], with the purpose of evaluating the effectiveness of investigation.

After the examination of the case materials, it was revealed that the investigation of the given case does not safeguard the principles of institutional independence and impartiality of investigation. Several important issues were revealed, which are reviewed briefly below and the presence of which question the effectiveness of investigation:

- 12.11.2014 – investigation was opened in Investigation Department of the Ministry of Corrections of Georgia involving signs of a crime stipulated by Article 378[2] (1) of the Criminal Code of Georgia. (Storing, carrying and using prohibited items by a person placed in a liberty restriction facility or temporary detention isolator and a guardhouse);

- 12.11.14 – Deputy Director of Facility N8 sent a notification to the penitentiary department[748] and informed them regarding the use of prohibited item by a prisoner and self-damage inflicted by M.U. Respectively, he called for further response.

- From 12 to 20 November 2014 the investigation of given case was implemented by Investigation Department of the Ministry of Corrections of Georgia. Respectively, this particular investigation agency conducted major investigative measures.[749] In addition, despite the fact that the mentioned investigation agency had information on the injuries present on the imprisoned persons' bodies, it did not take any effective investigative measures in order to determine the mechanism of infliction and age of injuries.

- On 21 November 2014 – on the 9th day from the incident the given case was transferred to the Investigation Division of the Prosecutor's Office of Tbilisi for further investigation.

- Despite the fact that the Investigation Division of the Prosecutor's Office of Tbilisi implemented multiple investigative measures and procedures, in terms of effectiveness, the process did not come to any result.[750]

Due to urgent necessity, the Investigation Division of the Prosecutor's Office of Tbilisi conducted search in the duty room and storage area of the Facility N8, with the purpose to find handcuffs, although handcuffs could not be located. The Public Defender of Georgia did not refer to a specific tool – aka handcuff. The Public Defender noted that his attorneys found M.U. with his hands and feet tied, in particular his hands and feet were tied with a chain (handcuff is a uniform structure, due to links). In addition, it is also noteworthy that the fact that a specific prohibited item could not be located solely in the storage and duty rooms of the facility does not eliminate its existence within Facility N8.

It is noteworthy that a forensic expertise report of M.U. was issued on 19 December 2014, which confirms the presence of injuries on his body. It is worth mentioning, that according to the report the injuries were inflicted with a thick, blunt object and their age does not contradict with the date indicated in the case circumstances (12 November 2014).

On 22 November 2014 the investigators of the Investigation Division of the Prosecutor's Office of Georgia questioned the attorneys of the Public Defender of Georgia. Unfortunately, investigative structure mainly

747 On 2 June 2015 Attorneys of the Public Defender of Georgia studied the materials of the case of alleged maltreatment against imprisoned persons in the Investigation Department of the Prosecutor's Office of Tbilisi. They also studied the materials of a case qualified under Article 378[2] of the Criminal Code of Georgia furnished by Tbilisi City Court on 3 February 2016.

748 Current Penitentiary Department

749 On 13-14 November 2014 the staff of Facility N8 were interrogated (Inspectors of Security Department and Inspector of Legal Regime). Mentioned witnesses spoke about the violation of the regime of the cell by the imprisoned persons and the facts of alcohol consumption by prisoners. It is noteworthy, that the staff confirmed the injuries present on M.U.'s body and stated that they were self-inflicted, which led to cuffing the prisoner.

750 22.11.14 – Due to urgent necessity, Investigation Division of the Prosecutor's Office of Tbilisi conducted the search in Facility N8. They examined computers (in so-called room of remotes), although necessary video-materials could not be obtained. On 21.11.14 and 09.12.14 cellmates of M.U. and M.P. were questioned, who confirmed that, during his stay in the cell, M.U. did not have any injuries; the injuries were observed in the prisoner transfer vehicle (during their transfer for expertise on 12.11.14, in the evening).

focused on the structural arrangement and the content of internal regulations/instructions of the Office of the Public Defender of Georgia, rather than the factual circumstances on the fact of alleged maltreatment in their possession.

It is also noteworthy that all six prisoners were interrogated multiple times, although their initial interrogation and all major investigative measures were implemented by the Investigation Department of the Ministry of Corrections of Georgia, instead of the Chief Prosecutor's Office of Georgia, which is also an actual example of the conflict of interests and biased investigation. During the investigation of the fact of alleged maltreatment, none of the prisoners, including M.U. and M.P. were not defended by a lawyer.

The resolution of termination of investigation of the fact of alleged maltreatment dated 15 January 2015 states, that "despite the fact that, on 12 November 2014 the Public Defender of Georgia possessed information regarding the circumstances provided in his proposal, law-enforcement agencies were not informed about this fact until 19 November, which made it impossible to collect alleged pieces of evidence".

With regard to the mentioned circumstances, it should be mentioned that, first of all, after collecting information and evidence of the fact of alleged maltreatment, the Public Defender of Georgia addressed the Chief Prosecutor's Office of Georgia on 17 November 2014 and not 19 November, as stated in the resolution on termination of investigation. Second, it is also important to emphasize that the staff of Facility N8 (Inspectors of Security Department and Inspector of Legal Regime) were questioned only next month – 13-14 December 2014 and they confirmed the presence of injuries on the body of the imprisoned person.

Respectively, being a supervisory agency of investigative measures, the Prosecutor's Office of Georgia was aware of the injuries on the bodies of the prisonersand the information on the alleged maltreatment against prisoners on the second day after the incident. Despite this, they did not take necessary measures for ensuring institutional independence of investigation, did not obtain the case from the Investigative Department of the Ministry of Corrections Assistance of Georgia and did not subject it to the Prosecutor's Office. No measures were taken to ensure institutional independence by the Investigation Department of the Ministry of Corrections of Georgia either.

Besides, it is important to note, that the obligation to conduct effective investigation on the basis of information regarding alleged maltreatment derives from Article 3 of the European Convention on Human Rights and all state parties bear a responsibility of its unconditional protection. In this case, a proposal of the Public Defender of Georgia, as well as the existence of a formal appeal automatically create a relevant obligation of a state, which, in this case, was not implemented by any of the responsible agencies.

As already mentioned above, on 4 December 2014, an individual case was separated from the criminal case, involving signs of a crime and jurisdiction stipulated by Article 378^2 of the Criminal Code of Georgia; it was forwarded to the Investigation Department of the Ministry of Corrections of Georgia for further investigation. It is noteworthy, that on 9 January 2016 the Office Public Defender of Georgia was furnished with a letter from the Investigation Department of the Ministry of Corrections of Georgia, which stated that four out of six abovementioned prisoners, including M.U. have been already convicted of actions stipulated by Article 378^2 of the Criminal Code of Georgia, and the proceedings are still ongoing against remaining two prisoners, including M.P.

Same information was confirmed by the letters of 3 February 2016 and 5 February 2016 of Tbilisi City Court. The Public Defender of Georgia was also furnished with full copies of materials of closed cases.

According to case materials, all four guilty verdicts were delivered by Tbilisi City Court in November-December 2015 without full hearing of a case, on the basis of plea bargain.

It is also worth mentioning, that the expertise reports on discovery of drugs, psychoactive drugs and alcohol issued on 12-13 November 2014 revealed that five out of six prisoners were under mild influence of alcohol.

The Sixth prisoner had also administered small amounts of alcohol, although he was not deemed to be under influence of alcohol; later, during the interview the expert explained that the delayed administration of analysis stipulated such results – decrease in the level of drunkenness. It is noteworthy, that before the termination of investigation of the fact of alleged ill treatment (15.01.2015) all six prisoners were questioned fifteen times. Only two of them confessed the fact of preparation-consumption of alcoholic beverage aka "braga". Although, they eliminated participation of their cellmates in a criminal action.

Crime evidence directly stipulated by Article 378[2] of the Criminal Code of Georgia were not added to the case after its separation (4 December 2014) as an individual proceeding. Besides, although multiple verdicts and rulings were delivered against the abovementioned imprisoned individuals at different times within the frameworks of a particular criminal case, none of them was directly connected with the fact of alcohol consumption by the prisoners.

Nevertheless, about a year after the alleged incident, on 4 November 2015 the Investigation Department of the Ministry of Corrections brought in one of the prisoners for witness interrogation, who gave a different testimony, confessed the fact of alcohol consumption and exposed remaining five cellmates. On the same day, the mentioned prisoner was found guilty and the next day, on 5 November 2015 resolutions on criminal charges against remaining five prisoners were issued as well. Afterwards, all prisoners were brought to interrogation and all of them confessed the committed crimes. Later (by the end of November and in December 2015), the prisoners were offered plea bargains by the prosecutor, which all of them agreed to take.

The abovementioned timeline of events, due to its legal consequences, raises a reasonable doubt:

- Imprisoned persons faced criminal charges after one year from the beginning of investigation against them;
- No new evidence essentially changing the outcome achieved by the totality of existing pieces of evidence had been obtained while pressing criminal charges against the imprisoned persons, except for one prisoner's confession statement;
- Confession statement of one of the prisoners was not enough for bringing imprisoned persons to criminal liability, while investigation of the fact of alleged maltreatment against those prisoners was still ongoing. Confession statement became sufficient for bringing them to criminal liability only after the termination of investigation of the fact of maltreatment against the imprisoned persons.
- Criminal charges were pressed against the prisoners only after investigation of the fact of maltreatment against them was terminated;
- While the investigation of the fact of maltreatment against prisoners was still ongoing, they were not brought to criminal liability, despite the fact that the pieces of evidence, which were used by prosecution a year later, were already available under the case.

REFUSING TO LAUNCH INVESTIGATION

Previous reports of the Public Defender of Georgia observed several cases, when despite the existence of the signs of a crime (including the statements on alleged maltreatment administered by the staff of law-enforcement agencies and penitentiary facilities), investigation was not opened. In all similar cases, the Public Defender of Georgia lodged a recommendation to, first of all, launch investigation, and afterwards, to conduct effective investigation. In spite of this, during the reporting period, despite the indications of facts of alleged maltreatment in several cases studied by the Office of the Public Defender of Georgia, investigation was not opened.

Article of the Convention on Human Rights and Fundamental Freedoms envisages a positive obligation to conduct official investigation. Thus, the state is obliged to start its actions as soon as the complaint is filed. Even if the complaint has not been filed, if sufficiently accurate data, giving grounds for suspecting torture or maltreatment, are available, it is of crucial importance to open investigation. In this context, the requirement of promptness and reasonable diligence is obvious.[751]

According to Georgia legislation, when notified of the commission of an offence, an investigator, prosecutor shall be obliged to initiate an investigation. An investigator shall immediately notify a prosecutor of the commencement of investigation.[752] In addition, the ground for initiating an investigation shall be the information provided to an investigator or a prosecutor, or information revealed during criminal proceedings, or information published in the mass media.[753]

Any information, indicating the alleged crime, is not sufficient for opening the investigation. After the commencement of investigation, if the obtained evidence reveals the grounds for terminating investigation, including the absence of the elements of a crime, a resolution on the termination of investigation will be adopted. Therefore, it is of crucial importance to launch investigation upon receiving information on the alleged offense. Implementation of interim measures before the investigation is not envisaged by the Criminal Procedure Code of Georgia.

During the reporting period, the Office of the Public Defender of Georgia observed the cases in which, despite the statements containing information on the crime, investigation was not commenced. The statements of citizens regarding the facts of alleged maltreatment administered by the police officers and the statements of defendants/convicted prisoners placed in penitentiary facilities regarding the facts of alleged maltreatment administered by the staff of the facility are of crucial significance. Based on the absolute nature of Article 17 of the Constitution of Georgia and Article 3 of the Convention on Human Rights and Fundamental Freedoms, the statement on maltreatment obliges the state to, first of all, commence and conduct effective investigation, with the purpose of fulfillment of justice.

The prosecutor is authorized: to conduct inspections, to fulfill the requirements of the law, in places of detention and penitentiary institutions and other facilities executing penitentiary functions or other enforcement measures administered by the court. He/she is also authorized to enter relevant facilities at any time to exercise given powers; question detainees, prisoners, convicts and persons upon whom coercive measures have been imposed; view documents based on which persons have been detained, imprisoned, are serving sentences or have been imposed coercive measures.[754] Launching necessary and compulsory investigation when notified of the commission of an offence and exercising abovementioned authority defined by law – questioning of detainees and convicts do not represent a preliminary stage/action of investigation.

It is noteworthy, that within the frameworks of several cases examined by the Office of the Public Defender of Georgia, despite the notifications from the temporary detention isolators of the Ministry of Internal Affairs to the Prosecutor's Office of Georgia, according to which injuries were found on the detainees' bodies, and investigation was not opened. Besides, existence of an application/complaint of a person is not necessary for opening investigation; investigation must be launched after receiving information in any form (including the document confirming the presence of injuries on the body of a detainee). In several cases examined by the Office, investigation was not launched based on the fact that the individual did not press charges.

During the reporting period, the cases studied by the Office of the Public Defender of Georgia confirm the failure of investigative agencies to meet obligations envisaged by legislation and their negligence of the request to open investigation. For better illustration, we are hereby presenting several cases:

751 Judgement of the European Court of Human Rights on the case *Aliyev v. Georgia*
752 Article 100(1) of the Criminal Procedure Code of Georgia
753 Article 101(1) of the Criminal Procedure Code of Georgia
754 Law of Georgia on the Prosecutor's Office, Article 17, paragraph 1

Fact of alleged pressure administered against the judges of the Constitutional Court of Georgia

On 18 September 2015 a statement of the Constitutional Court of Georgia was published on the website of the Constitutional Court of Georgia, which claims that "the events occurring following the announcement of a decision N3/2/646[755] on 16 September 2015, indicate that there have been deliberate attempts made by groups of people to exert pressure on the Constitutional Court and individual judges. Various groups continue to gather in front of private residences of judges and voice intimidating statements and appeals for physical violence toward judges and their family members. Such acts endanger the safety of judges of the Constitutional court and their family members.[756] According to the same statement, the Constitution Court of Georgia requests from the law enforcement agencies to act as prescribed by the law and to take all necessary measures in order to ensure the safety of judges of the Constitutional Court and their family members.

According to the information lodged by the Chief Prosecutor's Office of Georgia[757], despite numerous attempts of the Prosecutor's Office of the A/R of Adjara to communicate with the representatives of the Constitutional Court, they failed to obtain contact details of the judges. with an aim to implement relevant legal measures with regard to information disseminated by mass media in September-October 2015 regarding the facts of alleged pressure against the Judges of the Constitutional Court of Georgia and their family members. Based on the abovementioned, on 29 October 2015 an official letter was addressed to the Chairman of the Constitutional Court of Georgia, with a request to provide the contact information of the judges, with the purpose to implement relevant legal measures; although, the Prosecutor's Office of A/R of Adjara did not receive the response to the mentioned letter. As for the demonstrations organized near the private residences of the members and a chairperson of the Constitutional Court of Georgia in Tbilisi, according to the abovementioned letter of the Chief Prosecutor's Office of Georgia, several individuals were questioned in this regard. Investigation of the mentioned facts was not opened.

Case of N. Kh.

According to the explanations of citizen N.Kh, the staff of the Ministry of Internal Affairs of Georgia called him on a regular basis to the first division of Didube-Chughureti Police Department, where they abuse him verbally and physically. In the morning of 14 February 2015, the police officers took N.Kh. to the abovementioned division and attempted to obtain his confession. When N.Kh. requested to meet his lawyer, police officers beat him (hit him in the head) and forced him to sign a confession.

The Office of the Public Defender of Georgia was notified[758], that on 14 February 2015 N.Kh. was brought in for a witness interrogation under the criminal case N002060215001 of the first division of Didube-Chughureti Police Department.On 6 April 2015 N.Kh. lodged a statement to Didube-Chughureti District Prosecutor's Office, where he indicated that while being interrogated as a witness, he was abused by the police officers. With the purpose to examine factual circumstances of the case, the prosecutor of Didube-Chughureti District Prosecutor's Office met and spoke with N.Kh. as well as the investigator of the first division of Didube-Chughureti Police Department. After examining factual circumstances, the fact of committing an act envisaged by the Criminal Code of Georgia was not revealed and the investigation was not launched based on the statement of N.Kh.

755 Citizen of Georgia – Giorgi Ugulava vs. Parliament of Georgia
756 Available at: http://www.constcourt.ge/ge/news/saqartvelos-sakonstitucio-sasamartlos-gancxadeba1.page
757 Letter N13/72571 of the Chief Prosecutor's Office of Georgia dated 24 November 2015
758 Letter N13/32407 of the Chief Prosecutor's Office of Georgia dated 20 May 2015

Case of G.G.

According to the documentation obtained and studied by the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia, according to the Administrative Detention Protocol[759] of Citizen G.G. dated 3 March 2015 and the Detention Protocol[760] of the Accused G.G. dated 6 May 2015, the accused had various injuries found on his body.

According to the information lodged to the Office of the Public Defender of Georgia[761], on 4 March 2015 a notification was received by the Investigation Department of the Prosecutor's Office of the A/R of Adjara from the Regional Temporary Detention Isolator of Adjara and Guria of the Ministry of Internal Affairs of Georgia. The notification implied that on 4 March 2015 administrative detainee G.G. was placed in Kobuleti isolator by the staff of the Kobuleti District Department of the Ministry of Internal Affairs of Georgia; he was subjected to medical examination in the same isolator, which was reflected in the injury report. According to the case materials, on 5 March 2015 the investigator had a phone conversation with G.G. and called him in for questioning in the Investigation Department of the Prosecutor's Office of the A/R of Adjara. During the conversation, G.G. considered it unnecessary to be questioned in the Prosecutor's Office, as the police officers had not administered any unlawful acts against him. G.G. stated that he did not have any complaints or claims, which was recorded in the phone conversation of the investigator.

Case of I.S.

During the monitoring conducted by the Department of Prevention and Monitoring of the Office of the Public Defender of Georgia in July 2015, a case of alleged physical abuse of a person during his arrest was observed in the temporary detention isolator of the Ministry of Internal Affairs of Georgia:

In Zugdidi, the police officer placed the detainee in the temporary detention isolator of the Ministry of Internal Affairs of Georgia; by that time no injuries were observed on his body.[762] With the purpose to conduct investigative measures, detainee I.S. was transferred from the temporary detention isolator and after his return an injury – bruise on his left arm was found on his body. According to the explanation of the detainee, the mentioned injury was inflicted by the police officers while applying investigative measures; he also stated that he had complaints against the police officers.[763]

On 27 May 2015, at 19:30 the employee of the temporary detention isolator made a phone call to Zugdidi District Prosecutor to inform him about the abovementioned fact.

According to information furnished to the Office of the Public Defender of Georgia[764], I.S. was brought in for witness interrogation, where he claimed that he had made an emotional statement regarding the injuries and currently he does not have complaints against anyone. He did not make the same claim during the court hearing of a case. Investigation of the mentioned fact was not opened.

759 According to the Administration Detention Protocol (completed in Kobuleti District Department), on 3 March 2015, at 23:50, during the visual examination of administrative detainee G.G "the following injuries were found: bruises found the head, redness on the forehead and left check, scratches in the neck area, red spots on the right hand and redness and scratches on the nose."

760 According to the Arrest Protocol of the Accused, on 6 May 2015, 00:30, during the visual examination of the accused G.G. revealed injury on his right hand.

761 Letter N13/64151 of the Chief Prosecutor's Office of Georgia dated 13 October 2015

762 Visual Examination Report completed on 27 May 2015 in Zugdidi temporary detention isolator of the Ministry of Internal Affairs of Georgia.

763 Visual Examination Report completed in Zugdidi Temporary Detention Isolator.

764 Letter N13/65936 sent to the Chief Prosecutor's Office of Georgia on 22 October 2015.

Case of I.A.

On 12 November 2014 the Attorneys of the Public Defender of Georgia visited convicted prisoner I.A. placed in Facility N6 of the Penitentiary Department. According to the convicted prisoner's statement, on 28 September 2014 he was deceitfully transferred from Facility N8 to Facility N6 of the Penitentiary Department. I.A. claims that the staff of Facility N6 of the Penitentiary Department failed to provide personal hygiene items and he was placed in a solitary confinement. I.A. also states that during his detainment in Facility N6 of the penitentiary department the staff treated him in a humiliating manner and abused him verbally and physically. He also states, that maltreatment was administered against other inmates as well and occasionally he could hear the sounds of verbal abuse and physical violence.

The Office of the Public Defender of Georgia addressed the Chief Prosecutor's Office of Georgia for the implementation of further response to the facts of alleged maltreatment against the convicted prisoner I.A.[765]. Prosecutor's Office forwarded the mentioned statement to the penitentiary department.[766]

Only internal inspection was commenced with regard to the fact of alleged maltreatment against the convicted prisoner, which failed to reveal signs of a crime; investigation was launched on the fact of self-injury, which he self-inflicted during solitary confinement.[767]

Case of V.B.

According to the explanation of the convicted prisoner V.B., he was arrested in January 2014, when the police officers administered physical violence against him. In addition, convicted prisoner stated that the police officer G.D. threatened him and Prosecutor B.B. coerced him psychologically. According to the information presented by the Chief Prosecutor's Office of Georgia[768], on 26 January 2014 during the arrest V.B. had old injuries on his body, which was recorded in the arrest protocol. According to the report V.B.'s injuries were inflicted during a fight with an unknown individual before the arrest. V.B. was interrogated twice: on 27 and 28 January 2014; one of the interrogations was conducted in the presence of a prosecutor. During interrogation and an initial hearing in the court V.B. did not make a statement about the fact of his physical abuse to the judge. On 4 February 2014, according to the report completed after V.B.'s placement in Facility N8 of the Penitentiary Department, V.B. claimed that the injuries on his body were inflicted before the arrest and he does not have a complaint against anyone. The report is signed by V.B. Investigative measures taken within the frameworks of his prosecution case did not confirm the fact of unlawful act committed by police officers during V.B.'s arrest. Besides, the fact of his physical abuse was not confirmed during a full hearing of V.B.'s prosecution case in the court.

According to the additional information furnished by the Chief Prosecutor's Office of Georgia,[769] the abovementioned issues were examined in the criminal prosecution case of V.B. According to the documentation requested from Facility N8 of the Penitentiary Department by the Office of the Public Defender of Georgia and Tbilisi City Court, visual examination report of V.B. completed on 29 January 2014 during the placement in Facility N8 of the Penitentiary Facility observed bruises in both eye sockets, excoriation in the chest. The defendant claimed that the mentioned injuries were inflicted during his arrest. Report is signed by V.B.; outpatient medical certificate of 29 January 2014 reveals that bruises in both eye sockets and excoriation in the chest, as well as scars on the face, throat, chest, abdomen, and both the upper and lower extremities were observed on V.B.'s body. According to the defendant the injuries were inflicted during his arrest.

765 Letter N04-18/13738 of 24 November 2014
766 Letter N13/7317 of the Chief Prosecutor's Office of Georgia dated 9 December 2014
767 Letter of 24 December 2014
768 Letter of 21 July 2015
769 Letter of 19 August 2015

After forwarding the abovementioned documentation to the Chief Prosecutor's Office of Georgia, the Chief Prosecutor's Office of Georgia notified the Office with a letter, that criminal investigation was commenced in Didube-Chughureti District Prosecutor's Office on 23 October 2015. The investigation was commenced on the alleged fact of exceeding official powers by the police officers against V.B, involving signs of a crime stipulated by Article 333(1) of the Criminal Code of Georgia.

Case of G.D.

According to citizen G.D.'s explanation on 3 March 2015, the staff of the Ministry of Internal Affairs beat him after his arrest in the car, as well as the eighth division of Gldani-Nadzaladevi District Police Department in Tbilisi. Violence caused damage to his health, which is why the police department summoned emergency medical brigade, which provided medical services to G.D.[770] G.D. was charged under Article 353(2)[771] of the Criminal Code of Georgia

Injuries on G.D.'s body are recorded in the arrest and search protocols[772] completed in the police department, as well as the visual examination report[773] prepared in Mtkheta-Mtianeti Temporary Detention Isolator. According the forensic expertise report[774], G.D. had injuries[775] inflicted by a thick-blunt object, both separately, as well as in totality are qualified as light, not damaging person's health and not contradicting the date of injury indicated in the case circumstance.

On 9 March 2015 G.D. lodged a statement to the General Inspection of the Ministry of Internal Affairs of Georgia on the fact of physical violence administered by police officers against him; he also indicated that he did not file physical assault charges out of fear. The mentioned statement was forwarded by the General Inspection of the Ministry of Internal Affairs of Georgia to the Prosecutor's Office of Tbilisi.

According to the interview protocol completed by the prosecutor of Gldani-Nadzaladevi District Prosecutor's Office on 7 April 2015, in the presence of a lawyer, G.D. stated that the police officers beat him in the street as well as in the Division N8 of Gldani-Nadzaladevi Police Department, which was witnessed by 10 persons. The defendant also explained that four police officers in uniforms beat him in the street and a vehicle, two police officers out of the mentioned four detained him in the police department and two others beat him in the fact and head. He claims that he remembers their appearance.

It is noteworthy, that within the frameworks of a criminal case against G.D, witness B.A. stated that he saw a police officer push G.D.; then he was handcuffed and put into the vehicle. Later, another police vehicle arrived where G.D. was transferred; the car stopped approximately 5-10 meters away. According to the witness G.D, seated in the rear seat between two police officers, was beaten by the police officers both inside and outside of a car. According to the explanation of the employee of the Ministry of Internal Affairs of Georgia G.G, physical power was administered during the arrest of G.D. Similarly, the employees of the Ministry of Internal Affairs of Georgia D.B, I.A. and G.K. explained that physical power was administered during G.D.'s arrest.

770 According to the Medical Service Report, on 3 March 2015, in the 8th division of Gldani-Nadzaladevi District Police Department of Chief Police Department of Tbilisi, G.D. was offered medical services, emergency medical brigade was summoned and G.D. received medical assistance.

771 Resistance, threat or violence against a protector of public order or other representative of the, which aims to interfere with the protection of public order, terminate or modify the activities of the above person, or coercing him/her into committing a clearly unlawful act using violence or threat of violence.

772 Red bruises on the left ear and in the surrounding area, red bruises near right and left temples, red bruise on the chin and small bruise on the ring finger of his right hand.

773 Excoriations on the right temple and year, hyperemia on the chin. According to the protocol, the injuries were inflicted before the arrest.

774 Report N001617615 of LEPL Levan Samkharauli National Forensics Bureau

775 Bruises in different areas of the body; incisions on the lower lip and bruises on both lip mucosa. According to the medical records of LTD High Technology Medical Center, University Clinic, G.D. addressed the clinic on 6 March 2015, 20:57, he was discharged on 9 March 2015. The diagnosis is as follows: "brain trauma, brain concussion, facial and scalp (superficial) injuries, Hepatitis C, pulmonary tuberculosis."

According to the information of the Chief Prosecutor's Office of Georgia[776], Gldani-Nadzaladevi District Prosecutor's Office of Tbilisi considered defendant G.D.'s statement, where he mentioned the facts of physical violence administered by the police officers against him. The circumstances indicated by the defendant were not confirmed by the evidence compiled within the frameworks of his criminal case. Respectively, no investigation was launched on the fact of alleged maltreatment administered by the police officers against G.D.

Case of L.K. and S.G.

When making a decision on launching criminal prosecution, the prosecutor enjoys wide discretion, although there are established circumstances guiding a prosecutor while making a decision. It is of crucial importance, that a prosecutor is objective and impartial while making a decision. Essential part of implementation of a discretionary power of a prosecutor is the assessment of primary public interests while launching prosecution.[777]

The Office of the Public Defender of Georgia considered the case of underage L.K. on 15 May 2015, 10th grade students of N55 Public School of Tbilisi L.K. and S.G. were stopped by undercover (in civilian clothes) police officers, after leaving school premises, and despite their refusal, were transferred to the first division of Vake-Saburtalo Police Department. According to the statements of persons protecting minors' interests, transfer of minors to the police department and their further interrogation was conducted with obvious and serious violations of constitutionally recognized procedural rights, in particular:

- Undercover (in civilian clothes) police officers took the mobile phones from the minors and did not let them contact their parents;
- Law enforcement authorities failed to notify the minors' parents of their transfer to the police department. According to the statement of one of the minors' parents, she was looking for her child during the day and eventually, found him in the police department;
- During the time spent in the police department (until 21:35) the law enforcement officials failed to offer the minors food or water;
- Despite the insistence of minors and their parents, the abovementioned information was not recorded in the interrogation protocol by the investigator.

It is noteworthy, that according to the applicant, during the transfer of minors to the police department by the law enforcement authorities, physical violence or threats of such violence were not administered. Minors were not subjected to physical violence or threats in the police department either. Despite this, the combination of facts lodged by the applicant may have cumulatively become the grounds for the infliction of damages relevant to the maltreatment of minors.

According to the definition of the European Court of Human Rights, degrading treatment envisages treatment leading to humiliation of a person due to the disrespectful attitude towards his/her dignity, which may cause fear, distress and an impression of moral and physical intimidation by the person subjected to such treatment.[778] Psychological and subjective elements are the factors of major significance among the abovementioned ones.[779]

In the given case, the degrading treatment against minors may be observed through the comprehensive analysis of actions of law enforcement authorities. Taking away minors' mobile phones, restricting contact with their parents, detainment in the police department without their legal representative, failure to provide water and food, may cumulatively contain the signs of maltreatment, alleged excessive use of official powers and other illegal acts.

776 Letter N13/16219 of 15 March 2016

777 Order N181 of the Minister of Justice of Georgia *on the approval of a general part of criminal policy guidelines* dated 8 October 2010a

778 *Price vs United Kingdom, paragraphs 24-30, also Valasinas vs Lithuania,* paragraph 117 *and Pretty vs United Kingdom,* paragraph 52.

779 *Tyrer vs United Kingdom,* paragraph 32.

On 26 October 2015, during the full hearing of a criminal case in Tbilisi City Court, L.K. and S.G. and their legal representatives (called in for witness interrogation) made a public statement about the facts of 15 May 2015. In spite of the abovementioned, Didube-Chughureti District Prosecutor's Office of Tbilisi commenced investigation of actions administered against the minors envisaged by Article 333 of the Criminal Code of Georgia only on 11 December 2015.

It is noteworthy, that on 26 October 2015, the facts described by the minors in their statement made in Tbilisi City Court contradicted with the position observed in their testimony of 15 May 2015. During the hearing, the minors and their legal representatives stated that the testimony made and signed on 15 May 2015 provided the account of same facts described during the court hearing. Respectively, they expressed their doubts of the alleged fraud of testimony by the law enforcement agencies. Resolution on the charges against a minor L.K. was adopted on 30 October 2015, with regard to giving an essentially conflicting testimony.

All the abovementioned reveal that Vake-Saburtalo District Prosecutor's Office of Tbilisi launched criminal prosecution against a minor L.K. within 4 days after the court hearing on 26 October 2015, with regard to giving essentially conflicting testimony. As for the information regarding more serious crimes – administration of alleged maltreatment of minors, exceeding official powers or other unlawful acts – it was neglected until 4 December 2015, when the lawyer protecting interests of the minor L.K, lodged an application to the Chief Prosecutor's Office of Georgia. It is also worth mentioning that the letter of 15 March 2016 of the Chief Prosecutor's Office of Georgia reveals that the abovementioned application of the lawyer protecting interests of the minor L.K. was forwarded to Didube-Chughureti District Prosecutor's Office only after 6 days. One of the legal grounds for initiating an investigation shall be the information provided to an investigator or a prosecutor, or information revealed during criminal proceedings.[780] Implementation of a timely response to information on a crime is of particular importance for the investigation of alleged offenses committed by police agencies.[781]

In the given case, the Chief Prosecutor's Office of Georgia possessed sufficient information on the alleged offenses committed by the staff of the Ministry of Internal Affairs of Georgia. Although, the abovementioned information was neglected, in order to charge the underage defendants will much minor offences and thus, obtain their testimony related to another criminal case.

50-day long inactivity of the Prosecutor's Office of Georgia after receiving information on the alleged crime, question the effectiveness of investigation of the fact of alleged offenses committed by the staff of the Ministry of Internal Affairs of Georgia. The mentioned fact, once again, indicates the necessity of fundamental changes in terms of establishment of an independent investigation mechanism, which will ensure prompt and effective response to similar offenses.

RECOMMENDATIONS

To the Chief Prosecutor's Office of Georgia

- Ensure the immediate commencement of investigation upon receiving information on a crime;
- Launch investigation of cases of ill treatment under Articles 144^1, 144^2 and 144^3 instead of Article 333 of the Criminal Code of Georgia

780 Article 101 (1) of the Criminal Procedure Code of Georgia
781 *Borbála Kiss v. Hungary; Kokay and others v Slovakia.*

To the Parliament of Georgia/Government of Georgia

- Develop and implement the amendments to the Georgian legislation, envisaging the creation of independent investigation body of the facts of deprivation of life, torture, inhuman and degrading treatment administered by law enforcement authorities and on the territory of penitentiary facilities;
- Develop and implement the amendments to the Georgian legislation, which will eliminate the participation of the executive branch of government in the process of appointment of the Chief Prosecutor of Georgia;
- Develop and implement the amendments to the Georgian legislation, which will abolish the authority of the Prosecutorial Council to apply to the parliament of Georgia for the premature removal of the Chief Prosecutor, even if the probable cause that the Chief Prosecutor has committed a crime is not confirmed in the report of the special (ad hoc) prosecutor.

RIGHT TO LIBERTY AND SECURITY

The right to liberty and security of person is recognized by both the European Convention on Human Rights[782] and the UN International Covenant on Civil and Political Rights.[783] According to Article 18 of the Constitution of Georgia, liberty of an individual is inviolable. Deprivation of liberty or other kind of restriction of personal liberty without a court order is impermissible. Consequently, the state can interfere in the right to liberty and security only in the cases determined by law, in accordance with a procedure prescribed by law and in the light of principles of necessity and proportionality.

In his annual reports to the Parliament, the Public Defender of Georgia has constantly emphasized violations of the right to liberty and security of person occurring in Georgia, including the problem of unjustified application of imprisonment as an interim measure to accused persons by common courts. It is worth noting that the repeated emphasis on this problem in Public Defender's annual reports has led to a number of positive developments, including the decrease in the application of imprisonment to accused persons by common courts and the increase in the quality of reasoning of decisions on the imprisonment of accused persons.

During the first 11 months in 2015, courts applied interim measures in 11 243 cases including imprisonment in 3 387 cases, bail in 6 813 cases and other non-custodial measures in 1 045, according to the data published on the webpage of the Supreme Court of Georgia. It should be noted that over the mentioned period, as compared to a corresponding period of 2014, a slight decrease was seen in the number and percentage of applying imprisonment to accused persons and a proportional increase in applying non-custodial measures.

As regards the standard of reasoning of decisions on the application of imprisonment, on 15 September 2015, the Constitutional Court of Georgia delivered an important judgment on the case *Citizen of Georgia Giorgi Ugulava v. Parliament of Georgia*. It concerned the length of pretrial detention of accused person while several separate criminal proceedings are simultaneously underway against him/her. The judgment of the Constitutional Court establishes concrete preconditions which strengthen the obligation of the state to exercise a higher standard of reasoning in deciding on the extreme necessity of restricting a person's liberty. Nevertheless, the cases considered during the reporting period show that common courts have failed to establish, on the basis of the mentioned decision, a uniform approach towards individual cases.

2015 saw significant amendments to the Criminal Procedure Code of Georgia, affecting the rule of application and change of interim measures.[784] With these amendments, lawmakers have put an end to artificial procrastination of criminal proceedings until the hearing on merits and improved the procedures provided in Articles 206 and 207 of the Criminal Procedure Code, namely, the rules of applying, changing or annulling interim measures and appealing a ruling on the application, change or annulment of these measures. Yet

782 Article 5 of the European Convention on Human Rights.
783 Article 9 of the UN International Covenant on Civil and Political Rights.
784 Law #3976-RS, dated 8 July 2015, on the Amendment to the Criminal Procedures Code of Georgia.

another positive development was the establishment of the rule which requires from judges that on the stage of pretrial hearing as well as the hearing on merits, they review, upon their own initiative and at least bimonthly, the necessity of remanding the accused in custody.[785]

This chapter will discuss the practice of applying interim measures, the issues concerning the reasoning of such decisions by common courts of Georgia in the 2015 reporting period, moreover, violations of law and other forms of restriction of liberty when detaining persons and the interpretation of the abovementioned judgment of the Constitutional Court of Georgia. It will also review main challenges faced by the common courts in proper fulfilling legal procedures and taking reasoned decisions when imposing interim measures on individuals.

THE PRACTICE OF APPLYING INTERIM MEASURES AND INVIOLABILITY OF LIBERTY OF PERSON

Reasoning of grounds of application of imprisonment

To analyze the situation in the 2015 reporting period, the Office of the Public Defender studied decisions on the application of imprisonment to accused persons by the city courts of Tbilisi, Kutaisi, Rustavi, Poti; the district courts of Bolnisi, Gori, Akhaltsikhe, Gurjaani and Zugdidi and magistrate judges operating within the jurisdictional territories of the above-mentioned courts.

Compared to previous years, positive changes were observed in reasoning of decisions in almost every city and district court that the Public Defender studied in the reporting period. One should especially mention a significant improvement of the reasoning by the Poti City Court – the court which was singled out in the 2013 and 2014 annual reports of the Public Defender for its unjustified application of imprisonment and abstract reasoning of judges. Decisions of the Poti City Court in the 2015 reporting period were, overall, in line with general standards of reasoning specified in the procedures legislation.

Common courts maintained the tendency, noted by the Public Defender in his 2014 report to the Parliament,[786] of reasoning their decisions by applying the case law of the European Court of Human Rights as well as referring to those cases in which the European Court of Human Rights deliberated on similar circumstances to be considered by national courts. Additionally, when hearing the case of an accused juvenile, the Rustavi City Court deliberated on the issue of the protection of best interest of child specified in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the so called Beijing Rules); this must be noted as a welcoming development.

It must be underlined that the Gurjaani district court showed no improvement in the proper application of the standard of proof. The judgments studied by the Public Defender of Georgia in the reporting period do not contain any reasoning about the application of an interim measure and determining the length or size of these measures. Judges merely quote provisions of the law and without any reasoning establish that preconditions specified in Article 198 of the Criminal Procedure Code exist and a person needs to be imprisoned. None of the decisions of the Gurjaani district court contains a reference to the case law of the European Court of Human Rights; moreover, the decisions are banal whilst information provided in them is scarce.

Despite a general positive tendency, one may still find decisions in every court, in which merely general grounds specified in Article 198 of the Criminal Procedures Code are indicated as the justification of the use of detention,

785 Subparagraph B of Paragraph 4 of Article 219 of the Criminal Procedures Code of Georgia, also Paragraph 1 of Article 230[1] of the same Code.

786 Annual Report of the Public Defender of Georgia, 2014, pg. 357.

let alone references to requirements of international treaties. On certain occasions courts merely quote the law without subsumption of facts of the case and assessment of personal traits of an accused person. The quality of reasoning often differs in the rulings of the same judge.

The 2014 annual report of the Public Defender noted that the guidelines on the form, reasoning and stylistic accuracy of judgments in criminal cases, which were drafted by a special commission, did not contain recommendations about reasoning standards of the judicial decisions on imposing different interim measures on accused persons. The situation has remained the same in the reporting period.

Article 198 of the Criminal Procedure Code clearly specifies the purpose of imposing imprisonment on accused persons and prohibits the application of this measure if this purpose may be achieved without the imprisonment. The ground for applying imprisonment is a reasonable doubt that the accused will flee, will not appear in a court, will destroy the information that is important for the case, or will commit a new crime.

With regard to a threat of an accused person fleeing, a judge must consider what circumstances reinforce the doubt that the accused may flee and justice may not be delivered. The courts which the Public Defender's Office studied (with the exception of the Gurjaani district court) apply the practice of the European Court of Human Rights[787] to this criterion correctly and do not regard the size of expected punishment as a sufficient proof of the threat that an accused will flee.

In assessing this threat, courts consider accused persons' contacts abroad, the data on their border crossings and their past lives. In Akhaltsikhe and Zugdidi, courts almost always impose imprisonment on an accused person if he/she lives near the so called administrative border.

However, a high number of border crossings alone cannot be a proof of the risk that an accused will flee if the border crossings were legal. Courts, as a rule, apply imprisonment towards persons with the record of numerous border crossings and do not deliberate on whether the risk of fleeing could be neutralized by applying a measure provided in Paragraph 2 of Article 199 – seizure of identity document or passport of accused persons.

As for the doubt that an accused person may destroy important information for the case, courts look into the following issues: what investigative actions are to be conducted within the scope of investigation; whether the accused has contacts with those persons who might hold important information for the case; also, when it concerns the organized crime, whether the identities of other persons involved in the crime are established.

The Rustavi City Court extensively uses an excerpt[788] from the ruling of the European Court of Human Rights on the case *Mikiashvili v Georgia* to justify the imprisonment of an accused person having kinship or friendly ties with the key witnesses in the case. While such practice is commendable neither Rustavi court nor any other city court takes this circumstance into account when it comes to persons accused of the crime established by Article 126[1] of the Criminal Code of Georgia (domestic violence). A decision on imprisoning a person accused of domestic violence was justified by the Zugdidi District Court not by referring to the ruling of the European Court of Human Rights but to the moral aspect of the crime.

Extending the term of detention because the investigative actions are yet to be taken remains a problem. A dire need for the conduct of investigative actions is not examined. For example, the city courts of Rustavi, Gurjaani and Zugdidi agreed to postpone pretrial hearings and extend the term of imprisonment on the basis of the motions which contain only the outline of the cases and do not specify reasons impeding the timely conduct of investigative actions. It is worth noting that even in the exceptional case when the Zugdidi District Court

787 For example, the case *Mansur Yalçın and Others v. Turkey* [2014].

788 "The applicant's friends were among the key witnesses in the criminal case against him. In such circumstances, the applicant's ability to influence them could not be excluded and consequently, the Court cannot but consider the existence of such a risk real." *Mikiashvili v. Georgia* [2012].

rejected the motion to extend the detention, the court failed to substantiate this decision and only superficially referred to unreasonableness of extension of the detention term.

The tendency of upholding motions to postpone pretrial hearings poses a problem to those accused too who have been applied non-custodial measures as there is a threat that the criminal prosecution will be unduly procrastinated.

To evaluate the risk of an accused person committing a new crime, common courts consider the criminal record of the person and the nature of the crime the person is accused for. It should be noted that in contrast to previous years, common courts refuse to take into account convictions that were expunged or cancelled when assessing this risk.

Practice of applying various forms of interim measures

According to the case law of the European Court of Human Rights, any form of restriction of liberty of person shall be a measure which is absolutely necessary.[789] On the case *Public Defender of Georgia v. Parliament of Georgia*, the Constitutional Court of Georgia noted that "the interference of the state in the liberty of person must be regarded as ultima ratio."[790]

Grounds for the application of imprisonment as an interim measure are provided in the Criminal Procedure Code of Georgia.[791] When applying imprisonment, a court must become additionally convinced that the application of less restrictive measure will not be sufficient to achieve a legal purpose. A positive trend in this regard is that common courts, when deliberating on a motion to impose imprisonment, consider the reasoning for the application of interim measure separately from the matter of the application of imprisonment.

In previous annual reports to the Parliament, the Public Defender of Georgia stressed the problem of reasoning decisions on the application of imprisonment as an interim measure. It should be noted that the quality of reasoning of decision on imprisonment has sharply improved. When deliberating, judges consider the case law of the European Court[792] and recommendations of the Committee of Ministers of the Council of Europe.

A common trend of 2015 was the refusal of courts to uphold motions of the prosecution to apply imprisonment after they scrutinized the grounds for imprisonment, the personality and behavior of accused persons as well as other circumstances and the application of bail as an interim measure. Along with the bail, common courts also actively impose on accused persons an additional obligation to surrender their passports and identity documents.

In case of juvenile delinquents, courts largely apply the measure of placement under parent's supervision instead of detention. One should keep in mind that a uniform approach to juvenile delinquents must be practiced when they are accused of committing similar crimes. In one of its decisions, the Rustavi City Court placed a juvenile delinquent under parent's supervision but refused to release the juvenile's reportedly adult accomplice on bail and sent him to custody. This decision does not show any difference between personal traits of the two accused persons save the difference of three months in age; this, however, should not have become a reason for the court to impose such different interim measures on the accused persons.

A uniform approach was also a problem with regard to drug crimes in the reporting period. It is impossible to

789 *Winterwerp v. the Netherlands* [1979].

790 The judgment #2/1/415, dated 6 April 2009, of the Constitutional Court of Georgia on the case of *Public Defender of Georgia v. Parliament of Georgia*.

791 a) the accused will flee or will not appear in court;
b) will destroy the information that is importance to the case;
c) will commit a new crime.

792 For example, *Mikiashvili v. Georgia* [2012], *Galuashvili v. Georgia* [2008], *Ilikov v. Bulgaria* [2001], *Arutiunian v. Russia* [2012], et cetera.

figure out why courts applied imprisonment in some cases whilst bail in others for similar crimes. The ruling of the Constitutional Court of Georgia of 24 October 2015 on the case of *Citizen of Georgia Beka Tsikarishvili v. Parliament of Georgia* put an end to this inconsistent approach, replacing it with the court practice of applying bail to accused persons. After the abovementioned decision, courts also refuse to apply imprisonment to persons accused of crimes established by Article 273 of the Criminal Code of Georgia,[793] as well as to persons accused of crimes which envisage non-custodial measures as a punishment.

Yet another problem is the failure of courts to study the financial state of an accused person when applying bail towards him/her as an interim measure. When deliberating, the courts, in most cases, limit themselves to reasoning about the application of bail as an interim measure and leave the size of the bail beyond it. Although judges of the Zugdidi and Bolnisi district courts made a reference to the ruling of the European Court of Human Rights on the case of *Neumeister v Austria* in relation to determining the amount of bail, but their decisions do not show any type of relation between the European Court ruling and the decisions or the justification of the amount of bail.

Courts do not investigate the identities of those persons who are to pay the bail either. Court decisions hardly provide reasoning as to why a court believes that a concrete amount of bail will ensure the fulfillment of interim measure by an accused person. The Bolnisi district court repeatedly applied bail towards economically disadvantaged persons, including in the amount of up to 6,000 GEL in one case. Disregard of economic state and personal traits of an accused person (including, the existence of dependents of accused person) by courts might lead to increase in the application of imprisonment as an interim measure.

Pursuant to Paragraph 5 of Article 200 of the Criminal Procedures Code of Georgia, if an accused fails to pay the bail, he/she may be sent to custody. It is commendable that in several decisions presented to the Public Defender of Georgia, the Zugdidi District Court did not uphold the motions of prosecution to replace the bail with imprisonment as no violation of any other obligations on the part of the accused was observed while all evidence on the case was already collected by the prosecution. A positive trend observed is that courts always take into account motions from economically disadvantaged persons to apply a minimal amount of bail or extend the term of payment.

A negative trend is the disregard by courts of additional measures prescribed in Paragraph 2 of Article 199 of the Criminal Procedures Code. The Akhaltsikhe and Zugdidi district courts never imposed an obligation to appear in a specified agency at a specified time on an accused person. None of city or district courts, reviewed by the Public Defender, imposed electronic monitoring or an obligation on accused persons to be at a certain place during certain hours. Nor is the indicator of personal surety high, which is mainly practiced in relation to drug crimes or domestic violence. The Gurjaani District Court replaced the imprisonment with the surety to an accused person suffering from a grave kidney disease.

Repeated use of imprisonment as an interim measure

The Criminal Procedure Code does not explicitly specify the maximum length of imprisonment as an interim measure when several criminal proceedings are simultaneously underway against an accused person; hence, the practice of criminal proceedings has essential shortcomings in such cases when the detention of an accused person exceeds nine months.

In its ruling of 15 September 2015 on the case of *Citizen of Georgia Giorgi Ugulava vs Parliament of Georgia*, the Constitutional Court of Georgia established that when a person is in a pretrial detention, Paragraph 6 of Article 18 of the Constitution of Georgia equally requires from the state to ensure a fast administration of

793 Illegal manufacturing, purchase, storage or illegal consumption without medical prescription of drugs, their analogues or precursors in small quantity for personal consumption.

justice. "Aims of setting a maximum term of pretrial detention to ensure the interests of justice equally apply to criminal prosecution on each case regardless of which crime an accused person is imprisoned for."[794]

According to the Constitutional Court of Georgia "it is impermissible to apply imprisonment, as an interim measure, to a person on a concrete case from the moment when after filing the charge against that person on that case the term spent by that person in pretrial detention (on any criminal case) totals nine months."[795] Consequently, imprisonment, as the most severe interim measure, has a legal and practical effect in relation to every accusation/case against an accused person.

With regard to the above cited general principle of prohibiting a repeated application of imprisonment, the Constitutional Court established several exceptions when a person committed a new crime while being in custody or the ground for filing a new charge against a person for a crime committed before the imprisonment has been revealed after he/she was imposed imprisonment. Moreover, the Constitutional Court of Georgia clearly explained that the provision prohibiting intentional procrastination of the commencement of criminal prosecution[796] affects the repeated application of detention:

> "Pretrial detention shall conflict with the requirements of Constitution if filing a charge or/and demanding imprisonment is intentionally procrastinated and used to artificially prolong the term of pretrial detention, for example, in cases when the investigation was aware of those facts or/and information that became the ground of new criminal prosecution and provided sufficient ground to file a charge, though that charge was not filed against a person."[797]

During the reporting period, the Office of the Public Defender studied criminal proceedings against the accused persons G. O. and G. U..

The analysis of those criminal cases reveals that the actual grounds applied for the pretrial detention of G. O. and G. U. starkly differ from each other. In case of G. O. it concerned a crime which G. O. allegedly committed during the term of detention for another criminal case whereas in case of G. U. a crime was allegedly committed before the start of the term of detention for another criminal case.

When deliberating on the annulment of detention applied to the above accused persons, the court did not assess the following essential circumstances:

- Whether the charge was artificially broken up for the aim of leaving G. U. in pretrial detention;
- Whether the prosecution had obtained any essential evidence in the case of G. U., which could not have been obtained before the term of pretrial detention for the second criminal case had almost expired;
- Whether the prosecution abused the powers granted to it under the law and intentionally procrastinated the filing of charge.

The analysis of abovementioned criminal cases reveals a shortcoming in the reasoning of common court decisions, which may violate the right to liberty and to a fair trial of persons. An uneven application of the interpretation of Constitutional Court's ruling of 15 September 2015 is not conducive to a comprehensive implementation of the mentioned ruling.

794 The ruling #3/2/646, dated 15 September 2015, of the Constitutional Court of Georgia on the case *Citizen of Georgia Giorgi Ugulava vs Parliament of Georgia* (II-33).

795 Ibid., (II-34).

796 According to Paragraph 9 of Article 169 of the Criminal Procedures Code of Georgia, proving that prosecution was procrastinated serves as a ground for recognizing certain evidence inadmissible.

797 The ruling #3/2/646, dated 15 September 2015, of the Constitutional Court of Georgia on the case of *Citizen of Georgia Giorgi Ugulava v. Parliament of Georgia* (II-34).

Statistics on appeal of decisions on interim measures

According to Paragraph 1 of Article 207 of the Criminal Procedure Code of Georgia, a decision on the application, change or annulment of an interim measure may be appealed only once to the investigative board of the court of appeals. According to the same provision, the appeal shall specify the requirements that were breached when delivering the appealed decision, and demonstrate the wrongfulness of the provisions of the appealed decision. It must be noted that both Tbilisi and Kutaisi courts of appeals do not uphold appeals even when a party clearly states the issues which the magistrate judge failed to consider when imposing imprisonment (for example, an accused person's contacts abroad, his/her financial state). The courts of appeals, actually, examine the content of appeal on the stage of admissibility and accept the appeal for consideration only when they think it is necessary to change the type or size of interim measure imposed on the accused by the court of first instance.

According to the information provided by the courts of appeals to the Office of Public Defender, as of 25 December 2015, some 2 157 decisions of magistrate and district (city) courts on the imprisonment of accused persons were appealed to the investigative board of Tbilisi Court of Appeals. The Tbilisi Court of Appeals deemed inadmissible 2 049 appeals, amounting to 95 percent of total appeals, and considered only 108 appeals, i.e. 5 percent.

As of 25 December 2015, some 28 decisions of magistrate and district (city) courts on the change/refusal to change an interim measure applied to accused persons were appealed to the investigative board of Tbilisi Court of Appeals. The Tbilisi Court of Appeals deemed inadmissible 18 appeals, amounting to 64.3 percent of total appeals, and considered only 10 appeals, i.e. 35.7 percent. Five decisions of magistrate and district (city) courts on the annulment/refusal to annul an interim measure applied to accused persons were appealed to the investigative board of Tbilisi Court of Appeals. The Tbilisi Court of Appeals deemed inadmissible 4 appeals, amounting to 80 percent of total appeals, and considered only 1 appeal, i.e. 20 percent.

The Office of Public Defender also received information about appeals concerning interim measures applied to accused persons, which were considered by the investigative board of Kutaisi Court of Appeals in the reporting period. During the reporting period, 894 decisions on the use of interim measures were appealed to the investigative board of Kutaisi Court of Appeals , of which 779 appeals concerned the change of applied interim measure whilst 15 appeals were about the cancellation of the measure. The investigative board of Kutaisi Court of Appeals deemed 860 appeals inadmissible and considered 30 appeals at oral hearings.

VIOLATIONS OF PROCEDURE LEGISLATION AND OTHER FORMS OF RESTRICTION OF LIBERTY WHEN DETAINING PERSONS

According to Article 18 of the Constitution of Georgia, an arrest of an individual shall be permissible by a specially authorized official in the cases prescribed by law. According to Article 170 of the Criminal Procedure Code, arrest is a short-term restriction of a person's liberty while a person shall be considered arrested from the moment when his/her liberty of movement is restricted.

According to the ruling of the Constitutional Court of Georgia, a person may be considered arrested from the moment when a specially authorized official restricts a person's constitutionally guaranteed liberty in the cases and on the grounds as prescribed by law.[798] The 2014 annual report of the Public Defender of Georgia reflects a number of facts of law enforcement authorities in which the terms of arrest were incorrectly counted, by neglecting requirements of Georgian legislation.[799]

798 The ruling of the Constitutional Court of Georgia on the case of *Citizens Piruz Beriashvili, Revaz Jimsheraishvili and Public Defender of Georgia v. Parliament of Georgia*, dated 29 January 2003.

799 Annual Report of the Public Defender of Georgia, 2014, pg. 362.

Among materials studied in the reporting period one should single out a correct interpretation by the Zugdidi District Court of the moment of restriction of a person's liberty: a personal search by law enforcement officer and not an official registration of the act of arrest, something that represented a problem in 2014. Also, judges of the Tbilisi City Court and the Akhaltsikhe District Court provided a correct reasoning of refusal to apply imprisonment to a person who was arrested without a court order while the case did not prove any immediate necessity of arresting that person.

Despite the abovecited examples of correct application of procedural norms, the 2015 reporting period still saw violation of Georgian legislation and illegal restriction of person's liberty by police officers.

Arrest under administrative law

"Arrest is envisaged not only by the Criminal Procedure Code."[800] "Article 18 of the Constitution envisages a possibility of restricting liberty of person on various grounds, conditions and for various time spans. The terms "deprivation of liberty," "other restriction of personal liberty," "detained person," "arrested person' used in the mentioned article relate to different instances of restriction of physical liberty and hence determine limits of the scope of the mentioned article. We deal with the detention when a person is suspected of committing a concrete crime or wrongdoing and when for the aim of administering justice, it is necessary to temporarily isolate that person from society or for the aim of administrative proceeding on a wrongdoing it is necessary to transfer (place) him/her to (in) a closed facility."[801]

According to Georgian legislation the functions of police include: detecting and lawfully responding to crime and other offences on the basis of the authority granted by the Criminal Procedures Code of Georgia, the Administrative Offences Code of Georgia, and other normative acts.[802] The police shall carry out responsive measures to offences according to this Law and the legislation of Georgia on administrative offences, criminal law, and other normative acts.[803]

Thus, police may detain a person on the grounds and according to procedure prescribed by the Administrative Offences Code of Georgia and for the term set in the Code. An administrative offender may be detained on the ground specified in Paragraph 1 of Article 244 of the Administrative Offences Code[804] only by agencies (officials) authorized by the Georgian legislation, including agencies of internal affairs for illegal purchase or storing of a small quantity of a narcotic drug, without the intention of selling it, and/or the use of narcotic drugs without a doctor's prescription.[805]

As regards terms of administrative detention, an administrative offender may not be kept under administrative arrest for more than 12 hours. In exceptional cases, due to special necessity, other time limits for an administrative arrest may be determined by the legislative acts of Georgia.[806] It is worth noting that legislative acts of Georgia do not establish any other time limit for the administrative arrest of a person for the use of narcotic drugs without a doctor's prescription. Moreover, pursuant to the law, a person who is detained during a non-working time may be detained and placed in a preliminary arrest cell of the Ministry of Internal Affairs of Georgia until the body hearing the case delivers a final decision on the case.[807]

800 The ruling #2/1/415, dated 6 April 2009, of the Constitutional Court of Georgia on the case of *Public Defender of Georgia v. Parliament of Georgia.*

801 The ruling of the Constitutional Court of Georgia on the case of *Citizens of Georgia Levan Izoria and Davit-Mikheil Shubladze v. Parliament of Georgia.* dated 11 April 2013.

802 Subparagraph D of Paragraph 2 of Article 16 of the Law of Georgia on Police.

803 Paragraph 2 of Article 18 of the Law of Georgia on Police.

804 "To prevent administrative offences where so expressly provided by the legislative acts of Georgia, when other sanctions have been exhausted, to identify a person, to prepare an administrative offence report, if its preparation is necessary but impossible at the scene, to ensure a timely and correct hearing of administrative offence and the implementation of decision on the administrative offence."

805 Subparagraph A of Paragraph 1 of Article 246 of the Administrative Offences Code of Georgia.

806 Paragraph 1 of Article 247 of the Administrative Offences Code of Georgia.

807 Paragraph 3 of Article 247 of the Administrative Offences Code of Georgia.

A case on an administrative offence envisaged by Article 45 of the Administrative Offences Code[808] shall be heard within three days. A district (city) court hearing an administrative offence commences an oral hearing immediately upon the receipt of an act on administrative offence and other materials of administrative proceeding provided that an administrative arrest has been applied to a person and the term of administrative arrest has not expired.[809] The given norm also clearly indicates that a court starts hearing immediately if an administrative arrest is applied and the term of administrative arrest has not expired. Thus, a person can be detained for a maximum of 12 hours which includes the time of court hearing too. A detainee shall be immediately released upon the expiry of term of administrative arrest. Before a court takes a decision, a person may be detained and placed in a temporary detention isolator only for the term of administrative arrest.

One of the functions of police is to place persons detained and arrested for administrative offence in a temporary detention isolator.[810] The law provides for a possibility to place administrative offenders, arrested during non-working hours, in a temporary detention isolator, however, with the observance of 12-hour detention term imperatively set by the law. Thus, police is required to release an administrative offender upon the expiry of the 12-hour term immediately.

As regards the placement of a person arrested under administrative law in a temporary detention isolator, the ground for admitting such a person may be an act on the administrative arrest of the person.[811] The head of temporary detention isolator is responsible to control the terms of detainees,[812] consequently, a procedural task of administration of temporary detention isolator is to release detainees immediately upon the expiry of detention term by an ordinance of the head of isolator.[813]

It is worth noting that according to internal statute of the temporary detention isolator, cells may be opened between 10 p.m. and 6 a.m. in very exceptional cases such as, for example, the release of a detainee from the isolator.[814] Thus, upon the expiration of 12-hour administrative arrest term, the responsibility for releasing a person (if he/she is in a detention cell) lies with the administration of temporary detention isolator.

The case of citizen G. G.

The Office of the Public Defender of Georgia studied the case of the administrative arrest of citizen G. G. in violation of 12-hour detention term. Citizen G. G. was detained for more than 19 hours. Although the detention term expired, G. G. was not released by either the administration of the isolator or a police officer until after the court took a decision. Thus, G. G. was illegally detained for seven hours and 17 minutes.[815]

808 Illegal purchase or storage of a small quantity of narcotic drugs without intent to sell and/or use of narcotic drugs without a doctor's prescription.

809 Paragraph 1^1 of Article 262 of the Administrative Offences Code of Georgia.

810 Subparagraph O of Paragraph 2 of Article 16 of the Law of Georgia on Police.

811 Subparagraph A of Paragraph 2 of Article 1 of Annex 3 of the Ordinance #108, dated 1 February 2010, of the Minister of Internal Affairs of Georgia on the Approval of Typical Regulation of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.

812 Subparagraph I of Article 9 of Annex 1 of the Ordinance #108, dated 1 February 2010, of the Minister of Internal Affairs of Georgia on the Approval of Typical Regulation of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.

813 Subparagraph H of Article 5 of Annex 1 of the Ordinance #108, dated 1 February 2010, of the Minister of Internal Affairs of Georgia on the Approval of Typical Regulation of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.

814 Ibid., Paragraph 2 of Article 10 of Annex 2.

815 Following the operative information, based on Article 45 of the Administrative Offences Code of Georgia, citizen G. G. was arrested in the territory adjacent to Irakli Abashidze Street #39 in Tbilisi at 20:50 o'clock, on 2 October 2015. The detained citizen G. G. was placed in temporary detention isolator of Tbilisi and Mtskheta-Mtianeti Department of the Ministry of Internal Affairs at 02:10 o'clock on 3 October 2015. At 10:00 o'clock on 3 October 2015, the detainee was taken out of the isolator on the basis of a letter of inspector-investigator of first Vake-Tbilisi department of the Ministry of Internal Affairs. At 15:54 o'clock on 3 October 2015, a hearing of the case of G. G. commenced in the panel of administrative cases of the Tbilisi city court and it ended at 16:07 o'clock on the same day. GG was found guilty of administrative offence under Article 45 of the Administrative Offences Code of Georgia, was imposed a penalty of 500 GEL as an administrative sanction and released from the court hall. That the citizen G. G. was detained during the court hearing is proved by the record of court hearing which was scrutinized, along with the entire case, by the Office of the Public Defender.

The case of juveniles T. G. and L. G.

The Office of the Public Defender studied the case of minors T. G. and L.G.. According to the recount of T. G., on 15 December 2015, he was at a bus station of Terjola along with L. G. and Z. M. when police officers approached them and transferred them to the main division of Terjola police of the Ministry of the Internal Affairs.[816] Their liberty was illegally restricted which manifested in the violation of procedures and guarantees provided in law.

According to L. G., he entered the police station at about 10 p.m. on 15 December and was released at 6 a.m. on 26 December. During this time they were not allowed to contact their families.

According to information provided to the Office of the Public Defender by the Terjola district department of the Ministry of the Internal AffairsMinistry of the Internal Affairs, on 15 December 2015, in accordance with a measure established by Subparagraph B of Paragraph 1 of Article 18 of the Law on Police of Georgia,[817] the juveniles were taken to the yard of the Terjola district department where they were identified and then instantly released as they did not commit any offence.

It is noteworthy that according to the Law on Police, a police officer has a right to identify a person; however, he is required to draw up a report about that.[818] Moreover, the identification of a person does not give a police officer the right to transfer a person to a police building and before applying the measure of identification, a person shall be given an opportunity to prove his/her identity voluntarily within a reasonable period of time.

According to the response of the Terjola district police department of the Ministry of the Internal Affairs, police officers did not draw up any report, which proves a high likelihood of total neglect by police officers of legal requirements when detaining juveniles. This is considered an illegal restriction of liberty both by national legislation and international law on human rights.

On 10 February 2016, the Public Defender of Georgia addressed the Chief Prosecutor of Georgia with a proposal to start investigation into alleged mistreatment of juveniles T. G. and L. G. by law enforcement officers and other possible violations of law.

RECOMMENDATIONS

To common courts of Georgia:

- When applying imprisonment as an interim measure to an accused person, courts should scrutinize the legality of the ground of detention and apply imprisonment only in cases prescribed by law; to neutralize a risk of detainee's fleeing, courts should deliberate on the imposition of an additional obligation of surrendering passport and identity document as an alternative to detention;
- When using bail as an interim measure, courts should study, based on relevant evidence, the financial state of an accused person or that person who is to pay the bail;
- Courts should apply measures specified in Paragraph 2 of Article 199 of the Criminal Procedure Code more frequently.

816 According to the juvenile, they repeatedly came under psychological and physical pressure both before reaching the division and in the police building. Juveniles were asked what crimes had they committed, were verbally abused. A police officer hit T. G. on the head first with his hand and then with his cap and forced T. G. to admit to various crimes. Having received negative answers from juveniles, they were threatened with incarceration where they would be raped and forced to sweep cells. According to GL, he was taken into one of offices and verbally abused there, forced to take off his clothes and hurl the clothes to the floor; GL was also abused physically – a police officer threw a pen at him.

817 Identifying a person.

818 Paragraph 4 of Article 20 of the Law of Georgia on Police.

To the Supreme Court of Georgia:

- Develop standards for the improvement of the form and quality of reasoning of judgments on the application of this or that interim measure towards accused persons by the common courts of Georgia.
- Develop guidelines for common courts of Georgia, aimed at ensuring a uniform implementation of the ruling of the Constitutional Court of Georgia of 15 September 2015.

To the Prosecutor's Office and the Ministry of the Internal Affairs of Georgia:

- In case of restricting a person's liberty when conducting investigative actions, the report on the arrest should indicate exact time and place of detention;
- The Prosecutor's Office and the Ministry of the Internal Affairs of Georgia should conduct a strict monitoring on the legality of detentions while in case of disciplinary violation or crime, should apply sanctions provided by law.

To the Ministry of the Internal Affairs of Georgia:

- Relevant officials should ensure an immediate release of persons detained under administrative law upon the expiration of 12 hour term established by law.

RIGHT TO A FAIR TRIAL

The right to a fair trial is enshrined in Article 42 of the Constitution of Georgia.[819] "This right encompasses not only right to apply to a court (bring a complaint), but it also ensures a comprehensive legal protection of a person. In the first place, right to a fair trial means that all the decisions (acts) of the state officials, which violate human rights, may be challenged in the court and legally assessed. Moreover, in order to achieve a fair hearing of a specific case and adopt an objective decision, this right includes the following minimum possibilities: the rights of a person to apply to a court, to demand a fair public hearing of his/her case, express his/her opinions and defend him/herself in person or through legal assistance, have one's case heard in a reasonable time period and considered by an independent and impartial tribunal."[820]

"The mentioned provision is fundamental to the functioning of a democratic state respecting the rule of law. It is one of crucial constitutional guarantees of human rights."[821] "The right to fair trial is related to the principle of "rule of law state' and largely determines its essence."[822] "The right of access to the court is the constitutional guarantee of the utmost importance, which protects individual rights and freedoms and secures principles of rule of law state and separation of powers. This is the instrumental right which represents, on the one hand, a means of protecting other rights and interests and on the other hand, a crucial part of the architecture of checks and balances between the branches of power. […] It would be unrealistic to ensure the exercise of state power on the basis and in accordance with the law in adherence to the principle of the supremacy of law without the access to impartial and independent court. Binding the government with legal rules is meaningless, if apart from the powers which adopt and execute these rules, there is no third instance, impartial and independent from the first two, which would ascertain compliance of their activities with these rules. […] Availability of legal remedy is crucial for having and effectively exercising the rights and freedoms. […] "Right' cannot serve as the genuine guarantee of the legitimate interests of a person; it will be merely theoretical and illusory, if it is

819 "1. Everyone has the right to apply to a court for the protection of his/her rights and freedoms.
2. Everyone shall be tried only by a court under jurisdiction of which his/her case is.
3. The right to defence shall be guaranteed.
4. No one shall be convicted twice for the same crime.
5. No one shall be held responsible on account of an action, which did not constitute a criminal offence at the time it was committed. The law that neither mitigate nor abrogate responsibility shall have no retroactive force.
6. The accused shall have the right to request summonsing and interrogation of his/her witnesses under the same conditions as witnesses of the prosecution.
7. Evidence obtained in contravention of law shall have no legal force.
8. No one shall be obliged to testify against himself/herself or those relatives whose circle shall be determined by law.
9. Everyone having sustained illegally a damage by the state, self-government bodies and officials shall be guaranteed to receive complete compensation from state funds through the court proceedings."

820 The judgment of the Constitutional Court of Georgia on the case *Citizens of Georgia – Vakhtang Masurashvili and Onise Mebonia v. The Parliament of Georgia*.

821 Judgment of the Constitutional Court of Georgia on the case of *Public Defender of Georgia v. Parliament of Georgia*, 28 June 2010.

822 Judgment of the Constitutional Court of Georgia on the case of *Public Defender of Georgia v. Parliament of Georgia*, 28 June 2010; Judgment of the Constitutional Court of Georgia on the case of *Citizens of Georgia Onise Mebonia and Vakhtang Masurashvili v. Parliament of Georgia*, 15 December 2006.

not accompanied with the possibility to protect it in a court."[823]

Article 6 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms[824] provides for the right to a fair trial ensuring it with specific minimum guarantees. "In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 would not correspond to the aim and the purpose of that provision."[825]

This chapter discusses violations of the right to a fair trial, which were observed during the reporting period, namely: illegal restriction of public hearing of a case, failure to hand over a reasoned decision to a party within the term prescribed by law and to consider a case within a reasonable time, violation of the presumption of innocence, violation of the right to defence as well as the right to interrogate witnesses under equal conditions. The chapter also discusses problematic issues related to court decisions on the review of rulings because of newly emerged circumstances after the legislative amendments of July 2015 with regard to the drug crimes; also, analyses the approach practiced by common courts towards cases involving consumption, purchase of drugs for personal consumption, storage and cultivation of drugs, as well as problematic issues observed in considering the cases on administrative offences.

RIGHT TO DEFENCE

The right to defence is guaranteed by the Georgian legislation.[826] The Criminal Procedure Code of Georgia grants an accused person the right to have a reasonable time and means for the preparation of the defence.[827]

The Criminal Procedure Code of Georgia, which is a member state to the European Convention on Human Rights, provides for an effective exercise of the right to defence, not a merely formal appointment of defence lawyer to an accused person.[828]

823 Judgment of the Constitutional Court of Georgia on the case of *Citizens of Georgia – Giorgi Kipiani and Avtandil Ungiadze v. the Parliament of Georgia*, 10 November 2009.

824 "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

825 See the judgment on the case of *Delcourt v. Belgium*.

826 According to Paragraph 3 of Article 42 of the Constitution of Georgia "The right to defence shall be guaranteed." Pursuant to Subparagraph (c) of Paragraph 3 of Article 6 of European Convention on Human Rights, everyone charged with a criminal offence has the right "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

827 Paragraph 5 of Article 38 of the Criminal Procedures Code of Georgia.

828 The European Court of Human Rights has repeatedly established the violation of Subparagraph (c) of Paragraph 3 of Article 6 of European Convention on Human Rights. In the case of *Artico v. Italy*, the Court ruled and observed that this provision speaks of "assistance" and not of "nomination" (para. 33). More generally, the Court noted that "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective." In the case of *Czekalla v. Portugal*, the European Court of Human Rights considered that "in certain circumstances negligent failure to comply with a purely formal condition cannot be equated with an injudicious line of defence or a mere defect of argumentation. That is so when as a result of such negligence a defendant is deprived of a remedy without the situation being put right by a higher court." Stefan Trechsel. "Human Rights in Criminal Proceedings."

Pursuant to the criminal Procedure legislation of Georgia, evidence shall be submitted five days before a pretrial hearing, at the stage of investigation. If for various reasons, the defence fails to submit the evidence, it deems necessary to be examined during the hearing of a criminal case on the merits, to the prosecution and the court five days prior to the pretrial hearing, the accused will be deprived of a possibility to submit the same evidence to the hearing on the merits. Consequently, he/she will not be able to influence the decision making by a court.

According to Georgian legislation, an accused person and his/her defence lawyer decide themselves on how to conduct the defence. in case of mandatory defence, if the state appoints a defence lawyer to an accused person, a certain degree of responsibility for an effective exercise of the right to defence lies with the state; consequently, the state is obliged to ensure the effective involvement of the defence in all stages of criminal proceedings, not to a mere appointment of the defence lawyer and his/her formal participation in investigative activities and a court hearing.

During the 2015 reporting period, the Office of Public Defender of Georgia detected one case in which the accused person's right to defence was violated. The study of the case of citizen M. I. revealed that a state appointed defence lawyer failed to defend the interests of the accused at the investigation stage, thereby losing an opportunity to submit, at a trial stage, the evidence which could mitigate the charge or acquit the accused.[829]

INDEPENDENCE AND IMPARTIALITY OF COURT AS ONE OF GUARANTORS OF FAIR TRIAL

A guarantee for the independence and impartiality of the court system is the selection of such staff that fully meets the high status of judge. The main pillar of unimpeded administering of justice is a judge him/herself.

The Public Defender highlights several shortcomings in relation to the status of judge, which, despite a number of court reforms implemented in Georgia over years, remain of such a scale that jeopardize the independence and impartiality of the entire court system:

The legislation does not provide for accurate and clear criteria, preconditions and procedures for the appointment and promotion of judges, thereby making it impossible to have a transparent process. Appointment and promotion of judges significantly affect the democratic order, rule of law and protection of human rights in the state. The existing legislative environment fails to convince society that a person was appointed in an impartial way as he/she really meets the high status of judge or the promotion of a person was done in an impartial way as he/she was the best among the applicants.

The abovementioned shortcomings of the law became apparent in 2015 as a result of appointment-promotion of judges and the selection competition. These gave rise to a number of critical questions among professional circles and wider public about the selected and appointed individual judges. The legislation, however, with its ambiguous provisions allowing for multiple interpretation, failed to avoid these questions or/and provide convincing answers.

829 As the information provided to the Office of the Public Defender by #8 Facility of the Penitentiary Department of Ministry of Corrections of Georgia showed, since his placement in the #8 Penitentiary Facility (in early December 2014) till 26 February 2015, the accused person M. I. had not met with his defence lawyer.
It is important to note that before 1 January 2016, accused persons in pretrial detention, did not have a possibility to use the right to make a phone call and consequently, the citizen M. I. was not able to contact his relative or/and other persons to hire a defence lawyer for him. Therefore, the accused M. I. was authorized to provide information and evidence concerning his criminal case during the investigative actions conducted only with his participation and at a court hearing of the case on the merits; however, pursuant to the requirements of the Criminal Procedure Code of Georgia, when submitting new evidence to a court hearing on the merits, the relevant party shall provide objective reasons of the failure to submit the given evidence five days before the pretrial hearing. When a defence lawyer defends the interests of an accused person, the burden of proving the objective circumstances that made it difficult to secure evidence prior to the pretrial hearing, lies more with the defence. Otherwise, the prosecution will find itself in an unequal condition and the equality of parties and adversarial principles will be breached.

Taking into account that the results of monitoring by the Public Defender of cases heard by common court judges are important in appointing and promoting judges, the Public Defender of Georgia presented the High Council of Justice of Georgia with the information about the proposals, submitted by the Public Defender over the years, to launch disciplinary proceedings against concrete judges and the facts of violation of rights at the stage of court hearing, which were reflected in the reports of Public Defender to Parliament over the period between 2005 and 2015. The submission of this information aimed at assisting the High Council of Justice of Georgia in its decision making process which would have a positive impact on the effective administration of justice in Georgia.

In the majority of cases, the High Council of Justice of Georgia ignored the submitted information concerning the candidates.

Much like in previous years, this time again the Public Defender emphasizes that it is necessary to establish the electronic system of distribution of cases in order to ensure the impartiality of judges and that the legislative regulation and practice of disciplinary liability of judges remain a serious problem. Similarly to 2013 and 2014, during the reporting period, the Disciplinary Panel of Judges did not consider a disciplinary liability of even a single judge. Consequently, norms regulating disciplinary proceedings of judges need to be reviewed as well as a corresponding practice of the High Council of Justice of Georgia.

THE RIGHT TO A PUBLIC HEARING

A public hearing of case is an important element of a fair trial and is guaranteed by the Constitution of Georgia and the European Convention on Human Rights. According to the Constitution of Georgia, "Cases before a court shall be considered at an open sitting. The consideration of a case at a closed sitting shall be permissible only in the circumstances provided for by law. A court judgment shall be delivered publicly."[830]

"Public hearings at courts protect the parties from secret justice." Publicity facilitates the conduct of a fair trial, which is a fundamental principle in any democratic society.[831] Public hearing of a case is not an absolute right. The Constitution of Georgia deems a closed hearing acceptable in cases prescribed by law.

The law allows for fully or semi-closed court sitting. In fully closed court sitting the entire hearing is conducted behind closed doors. In such a case, only a court decision is made public. As regards a semi-closed court sitting, it implies the conduct of only part of the hearing behind closed doors.

Participants in a fully or semi-closed sitting are: judge (judges – in collegial hearing of a case), secretary of a sitting and the parties to the case, also concrete persons (an interpreter, an expert, a witness) who directly participate in a sitting. Moreover, where relevant grounds exist, part of testimony of witness/expert may be heard in a closed sitting.

A court may instruct a person attending a closed sitting to keep confidential the information he/she learns at a closed sitting.[832] A warning against the disclosure of information obtained at a closed sitting applies only to those persons who participate in a semi or fully closed court sitting.

Protecting security is a legitimate aim for restricting the right to public hearing, however, the principle of proportionality must be observed in taking such a decision. A decision of a judge on partial closing of a sitting for security considerations applies to all attending persons and not a segment of them.

830 Paragraph 1 of Article 85 of the Constitution of Georgia.
831 Stefan Trechsel. "Human Rights in Criminal Proceedings," pg. 144-145.
832 Paragraph 7 of Article 182 of the Criminal Procedures Code of Georgia.

The principle of equality is guaranteed under the Constitution of Georgia.[833] The Constitutional Court of Georgia notes that "discrimination will occur where the reasons of differentiation cannot be explained and they lack a reasonable ground."[834]

In the reporting period, in a case of A. B. which the Office of Public Defender studied at his own initiative, a judge violated the right to public hearing.

For security considerations, the judge partially closed a sitting only for residents of the Pankisi Gorge.

It is acceptable to partially or fully close a sitting for security considerations, by observing the principle of proportionality. At the same time, the decision on partial closing of a sitting must apply to all attending persons (except for participants in the court hearing) regardless of their place of residence. Consequently, a judge of the Tbilisi City Court, L. M., should have partially closed the sitting, on security considerations, to all persons attending the sitting. Prohibiting a segment of society from attending the court sitting on the ground of their place of residence (people living in the Pankisi Gorge) runs counter to fundamental principles, guaranteed by the Constitution of Georgia and the European Convention on Human Rights, such as a public hearing of case and the principle of equality which represent integral elements of the right to a fair trial.

THE RIGHT TO A REASONED DECISION AND TO HEARING A CASE WITHIN A REASONABLE TIME

The study of applications of accused persons by the Office of Public Defender of Georgia in the reporting period[835] revealed systemic problems in the Gori District Court: the failure to deliver copies of rulings of court to accused persons within the term prescribed by law and the protraction of the delivery of appeals filed with the Gori District Court and criminal cases to the Tbilisi Court of Appeals.

According to the case law of the European Court, Article 6 of the Convention requires the delivery of reasoned decision on criminal cases. "For the requirements of a fair trial to be satisfied, the accused, and indeed the public, must be able to understand the verdict that has been given; this is a vital safeguard against arbitrariness. As the Court has often noted, the rule of law and the avoidance of arbitrary power are principles underlying the Convention."[836] "In proceedings conducted before professional judges, the understanding of the accused of his conviction stems primarily from the reasons given in judicial decisions. […] Reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence."[837]

833 Pursuant to Article 14 of the Constitution of Georgia, Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.

834 The judgment of the Constitutional Court of Georgia on the case of *Political Associations of Citizens - New Rights and Conservative Party of Georgia vs Parliament of Georgia*. The judgment of the Constitutional Court of Georgia, dated 11 April 2013, on the case of *Citizen of Georgia Besik Adamia vs Parliament of Georgia*.

835 In the cases examined by the Office of Public Defender, the accused persons 1. LI (a copy of the ruling of 17 December 2014 was sent on 11 February 2015 and delivered on 24 February 2015); 2. GK (a copy of the ruling of 8 December 2014 was delivered on 24 February 2015); 3. LJ (a copy of the ruling of 21 October 2013 was delivered on 24 January 2015 whilst the appeal filed by his defence lawyer on 27 February 2014 was sent to the Tbilisi court of appeals on 3 February 2015); 4. JM (a copy of the ruling of 27 June 2014 was delivered on 23 October 2014 whilst his appeal has not been sent to the Tbilisi court of appeals as of 25 November 2014); 5. IO (a copy of the ruling of 4 November 2014 was sent on 25 February 2015); 6. VL (a copy of the ruling of 14 April 2014 was not delivered as of 27 July 2014); 7. MT (a copy of the ruling of 13 April 2014 was not delivered as of 21 July 2015, nor was the appeal sent to the Tbilisi court of appeals); 8. GM (a copy of the ruling of 25 November 2015 was not delivered as of 05 March); 9. VT (a copy of the ruling of 12 November 2014 ruling was not delivered, nor was the appeal sent to Tbilisi court of appeals as of 24 June 2015); 10. ZZ (a copy of ruling of 1 May 2015 was not delivered as of 24 July 2015); 11. ZA (a copy of the ruling of 3 November 2014 was not delivered as of 2 September 2015, also, it was unknown whether his appeal was sent to Tbilisi court of appeals); 12. MG (a copy of ruling of 23 September 2014 was not delivered as of 22 September 2015)) indicate about the facts of failure of Gori district court to deliver the copies of its rulings for months and to procrastinate the forwarding of appeals filed with the Gori district court and criminal cases.

836 See the judgment of the Court on the case of *Taxquet v. Belgium*, 16 November 2010, para 90.

837 See the judgment of the Court on the case of *Taxquet v. Belgium*, 16 November 2010, para 91.

A mandatory rule of taking a reasoned decision by a court is reflected in the legislative act of Georgia: A court decision shall be substantiated.[838] The law sets forth main criteria which decisions must meet: a court decision shall be legitimate, reasoned and fair.[839] A court judgment shall be considered reasoned if it is based on the body of incontrovertible evidence that has been examined during the court hearing. All findings and decisions provided in a judgment shall be reasoned.[840]

Thus, a court shall reason its judgment and of course, ensure that it is made known/sent to the parties. "A copy of the judgment and of a dissenting opinion shall be served on the convicted person or on an acquitted person and on the prosecutor not later than 5 days after the judgment is announced, or not later than 14 days, in the case of a complex or multi-volume or multi-defendant cases. A copy of the judgment shall be handed over to other trial participants, at their request, within the same periods."[841] An obligation of a court prescribed by law to deliver a copy of the judgment to a party regardless of whether the latter requested it or not is of imperative nature and does not allow for any exception. If a convict remains ignorant of the reasoning of a court, the ground of being found guilty, the evidence having served as the basis for delivering the judgment and justifying the imposed concrete type of punishment because of the failure to be delivered a copy of judgment within the timeframe specified by law, even if this failure was caused by a technical problem, the realization of the right to a fair trial becomes compromised.

Ensuring the handover of a copy of judgment to an accused within the timeframe specified by law is important for the efficient exercise of the right to appeal a judgment of the lower court with a higher court. "The national courts must, however, indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him."[842]

An appeal shall be filed with the court that has rendered a judgment, within a month after the judgment has been announced.[843] The term of appeal is counted not from the moment of delivering a copy of judgment to the party but from the moment of announcing the decision. Therefore, the law defines a short timeframe for the delivery of a copy of decision so as to enable the party to prepare a well-founded appeal to challenge the reasoning provided in the decision; moreover, an appellant is required to substantiate the appeal,[844] something which is rendered impossible if a copy of the judgment is not delivered.

As regards unreasonable procrastination by the Gori District Court to forward appeals and criminal cases to the Tbilisi Court of Appeals, "Paragraph 1 of Article 42 of the Constitution of Georgia provides not only for the right to have a case heard by a lower court but also the right of appeal to higher courts. This article is the guarantee of access to justice."[845]

"Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal."[846] The Georgian legislation provides for the right to appeal a judgment of a lower court: a judgment of a court of first instance may be appealed if the appellant considers it to be unlawful and/or unreasonable.[847] An appeal shall be filed with the court that has rendered a judgment, within a month after the judgment has been announced.[848] Within five days, the court shall send a copy of the appeal to the

838 Paragraph 2 of Article 194 of Criminal Procedures Code of Georgia.
839 Paragraph 1 of Article 259 of Criminal Procedures Code of Georgia.
840 Paragraph 3 of Article 259 of Criminal Procedures Code of Georgia.
841 Article 278 of Criminal Procedures Code of Georgia.
842 The judgment of the European Court of Human Rights on the case of *Hadjianastassiou v. Greece*. Stefan Trechsel. "Human Rights in Criminal Proceedings," Tbilisi, 2009, pg. 126-127.
843 Paragraph 1 of Article 293 of Criminal Procedures Code of Georgia.
844 Paragraph 2 of Article 293 of Criminal Procedures Code of Georgia: "2. An appeal shall include: d) the appealed provisions of the judgment; e) the essence of the unlawfulness and/or unreasonableness of the appealed provisions; f) the evidence confirming the appellant's position; g) the evidence, including a new evidence, that is to be examined by the court of appeal; h) materials submitted additionally (if any)."
845 The Judgment of the Constitutional Court of Georgia on the case of *Citizen Oleg Svintradze vs Parliament of Georgia*, 17 March 2005.
846 Paragraph 1 of Article 2 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms.
847 Paragraph 2 of Article 2923 of Criminal Procedures Code of Georgia.
848 Paragraph 1 of Article 293 of Criminal Procedures Code of Georgia.

other party so that the latter can file a response to the appeal. The other party shall file a response with the court within not later than five days after the receipt of a copy of the appeal.[849] The appellant has the right to receive a copy of the response to the appeal from the court.[850] The case, the appeal and the response to the appeal shall be sent to the court of appeal by the lower court.[851] Thus, a lower court with which an appeal is filed shall forward the appeal, the response to the appeal and the criminal case to the court of appeals.

Even though the Criminal Procedure Code of Georgia does not set a concrete term for forwarding an appeal and a criminal case by a lower court to a court of appeals, this must not serve as a ground for a lower court to delay sending a case to a court of appeals for several months and therewith, procrastinate the consideration of a case for an unreasonable period of time because the right to a fair trial guaranteed by Article 42 of the Constitution of Georgia and Article 6 of the European Convention on Human Rights establish an obligation to hear a case within a reasonable time.

"Everyone is entitled to have his/her case heard within a reasonable time. The right to speed up the hearing has dual meaning: on the one hand, it serves the aim of rapid achievement of "legal peace,' also ensuring reliability and efficiency of court hearing. […] The right to have a case heard within a reasonable time is specified in the first paragraph of article 6 of the European Convention on Human Rights and implied in articles 18 and 42 of the Constitution of Georgia."[852]

"A criminal proceedings form an entity and the protection guaranteed under Article 6 does not cease with the decision taken by a lower court."[853] "The completion of criminal proceeding […] is the handover of decision of the court of last instance."[854]

According to a letter from a Gori District Court judge Sh. K.,[855] the Gori District Court is overloaded with a large amount of criminal cases. The failure to deliver the copies of judgments to the accused within a specified time and to send appeals and criminal cases to the Tbilisi Court of Appeals within a reasonable time on the abovementioned ground[856] comes in conflict with the right to a fair trial.

According to the European Court of Human Rights,[857] states have a duty to organize their legal systems so as to allow the courts to comply with the requirements of Paragraph 1 of Article 6 including that of trial within a "reasonable time". In this particular case, the procrastination of proceeding was caused by a backlog of cases to be heard. However, as the Court noted, contracting states must take, with the requisite promptness, adequate measures and remedial action to deal with a situation of this kind and have the court system effective. These measures may include appointment of additional judges or administrative personnel.

On 19 October 2015, the Public Defender of Georgia addressed the Secretary of the High Council of Justice and the Chairman of the Gori District Court with the recommendation[858] to ensure that copies of judgments

849 Paragraph 2 of Article 294 of Criminal Procedures Code of Georgia.
850 Paragraph 3 of Article 294 of Criminal Procedures Code of Georgia.
851 Paragraph 1 of Article 295 of Criminal Procedures Code of Georgia.
852 Commentary of Constitution, The Regional Center for Research and Promotion of Constitutionalism, Tbilisi, 2013, pg. 537.
853 The judgment of the European Court of Human Rights on the case of *Assanidze v. Georgia*, 8 April 2004.
854 Commentary of Constitution, The Regional Center for Research and Promotion of Constitutionalism, Tbilisi, 2013, pg. 537.
855 According of the letter #6081 of 24 June 2015, the materials of criminal case of the convict VT were not found within the term specified in Paragraph 3 of Article 23 of the Organic Law of Georgia on Public Defender because of a high number of cases in proceeding and the court was unable to send the information requested in the letter #04-7/4378 within the timeframe prescribed by law.
856 It is worth noting that in accordance with Paragraph 4 of Article 13 of the resolution #1/150-2007 of the Supreme Council of Justice of Georgia, on the "Creation, Determination of Jurisdiction and Number of Judges of District (City) Court, Courts of Appeals of Tbilisi and Kutaisi," the composition of Gori district court was set at eight judges. Pursuant to Subparagraph B of Paragraph 5 of the same article, the number of judges in the panel of criminal cases for the Gori district court was set at four judges.
857 See the judgment on the case of *Zimmermann and Steiner v. Switzerland.*
858 1. To implement effective measures in a short time possible to ensure the hearing of criminal cases within a reasonable time, including in terms of determining and appointing a sufficient number of judges and other civil servants in the Gori District Court; 2. To undertake relevant measures that would ensure, after judgments delivered by the Gori District Court on all criminal cases, the handover of copies of judgments to the accused persons within the term prescribed by law; 3. To undertake relevant measures that would ensure the forward of appeals of judgments of the Gori District Court lodged with the lower court and criminal cases to the Tbilisi Court of Appeals within a reasonable time (without procrastination); 4. To develop corresponding recommendations/proposals concerning regulations established

are delivered to accused persons within the term prescribed by law and appeals and criminal cases are forwarded to the court of appeals without procrastination.

By the letter of the Supreme Court of Georgia,[859] the Public Defender was informed that recommendations concerning the delivery of copies of judgments to the accused persons by the Gori District Court and sending of appeals to court of appeals without procrastination were forwarded to the High Council of Justice. On 26 October 2015, the recommendations were discussed at a sitting of the High Council of Justice.

By the letter of the Chairmen of Gori District Court,[860] the Public Defender was informed that in the light of existing human resources of the court, a backlog of cases and hence, physical capacities, they will take all possible measures to ensure that copies of judgments are delivered to the accused, and when judgments are appealed, the criminal cases are sent to a court of appeals within the shortest possible time. Moreover, all appeals of criminal cases reviewed in the recommendation had been forwarded to the Tbilisi Court of Appeals.

Term for hearing non-custodial cases

As noted already, Article 6 of the European Convention on Human Rights guarantees the right to have a case heard within a reasonable time. According to the case law of European Court of Human Rights, the Court does not establish a reasonable time, but evaluates the reasonability of the length of hearing of each concrete case by taking into account the factual circumstances of the case, its legal complexity, conduct of a complainant and actions of state authorities.

In the case of *Kudla v. Poland*, the Court even established that national legislation must ensure a possibility of conducting a separate court hearing which would be an effective remedy with regard to protraction of the hearing and the absence of such remedy would itself cause the breach of Article 13.[861]

On the case of *Panek v. Poland*, the European Court of Human Rights noted that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation.

According to Georgian legislation,[862] the accused has the right to the expediency of justice. At the same time, he/she may relinquish this right if so is required for the appropriate preparation of the defence. A court shall treat the criminal cases in which the accused were applied imprisonment as an interim measure as a priority.[863]

Until the amendment of 8 July 2015, the Georgian legislation provided for a concrete term of court hearing for those accused alone who were imposed imprisonment as an interim measure: the total length of pretrial imprisonment may not exceed nine months. After this term expires the accused shall be released from detention. The period of imprisonment shall be calculated from the moment of the detention of an accused or, if the detention did not take place – from the moment of enforcement of a court ruling on the imposition of this interim measures till the judgment is delivered by a lower court which hears the case on the merits.[864] This follows from the right to liberty guaranteed under Article 18 of the Constitution of Georgia.

by the rule of organizational work of common courts, in particular, to specify concrete timeframes for forwarding criminal cases to the courts of appeals.

859 Letter #53-zk, 22 October 2015.

860 Letter #12358, 3 November 2015.

861 The Right to a Fair Trial According to European Convention on Human Rights (Article 6), chief editors/authors: Ionko Grozev, Dovidas Vitkautas, Sian Levin-Enton. Tbilisi, 2008, pg. 123-124.

862 Paragraph 2 of Article 8 of Criminal Procedures Code of Georgia.

863 Paragraph 3 of Article 8 of Criminal Procedures Code of Georgia.

864 Paragraph 2 of Article 205 of Criminal Procedures Code of Georgia (in relation to Paragraphs 1 and 6 of Article 18 of the Constitution of Georgia, the normative content of paragraph 2 of this article that permits a remand detention of the accused on a specific criminal case shall be deemed invalid if after bringing the charges on this case or after revealing sufficient grounds for bringing charges, the total period of time spent by the accused in custody is 9 months within the scope of any criminal proceedings instituted against him/her) - Decision of the Constitutional Court of Georgia of 15 September 2015 No 3/2/646)

Even though the Criminal Procedure Code of Georgia did not determine a concrete term of court hearing only for those accused who were not imposed imprisonment as an interim measure, the general right to have a case heard within a reasonable time applied to such cases too.

With the legislative amendments to the Criminal Procedure Code of Georgia on 8th of July, 2015,[865] a concrete term for hearing a case was specified: a lower court shall render a judgment not later than 24 months after the judge in the pretrial proceedings makes a decision to refer the case for hearing on its merits.[866] At the same time, the above term shall not apply to criminal cases in which the accused avoid appearing before the court, and/or when the accused is wanted.[867] This rule entered into force on 1 January 2016.[868] A court of the first instance shall deliver a judgment on the criminal cases pending in the court at the time of entry into force of Paragraph 6 of Article 185 of the Code (1 January 2016) not later than 36 months after the entry into force of that article.[869]

According to the explanatory note,[870] "in the absence of specified term for hearing, there is no guarantee that an accused will timely acquire a status of an acquitted or convicted person which, for its part, will enable him/her to timely exercise his/her other rights. Awaiting a verdict for months (even years) especially in a case in which an accused person faces imprisonment significantly harms the rights of the accused. Moreover, the passage of larrge amount of time minimizes a possibility of the parties to present the court evidence in its initial form, which, in turn, compromises the effective realization of the principle of fair trial."

The reports of the Public Defender of Georgia reflected instances of protraction of hearing of non-custodial cases. According to the data received by the Office of Public Defender from lower courts (the city courts of Tbilisi,[871] Kutaisi,[872] Batumi,[873] Rustavi[874] and the District Courts of Zugdidi,[875] Poti,[876] Gori[877] and Telavi[878]), over the period from 1 January 2013 to 1 December 2015, courts received 15 207 cases to hear on the merits, in which the accused were imposed non-custodial measures; of these cases the hearing of 12 909 were completed whereas the hearing of 2 298 cases was underway. The procrastination of hearing of those cases with the accused imposed non-custodial measures represents a problem.

Specifying a concrete term in legislation is important for the avoidance of procrastination of hearings. One should bear in mind that the case law of the European Court of Human Rights does not determine a concrete term which would meet a standard of reasonable time for the hearing of all cases, but the reasonableness of length of hearing is a subject of individual assessment case by case and should be assessed on the basis of abovementioned criteria. It must be noted that in the light of concrete circumstances of a case (for example, a single charge, questioning a small number of witnesses, examination of only few documents, et cetera) even the 24-month term may be unreasonably long if there is (or will be) unjustified procrastination or inactivity on

865 Law of Georgia #3976.
866 Paragraph 6 of Article 185 of Criminal Procedures Code of Georgia.
867 Paragraph 7 of Article 185 of Criminal Procedures Code of Georgia.
868 Paragraph 9 of Article 333 of Criminal Procedures Code of Georgia.
869 Paragraph 8 of Article 333 of Criminal Procedures Code of Georgia
870 See http://www.parliament.ge/ge/law/8932/19822
871 According to the letter #31428 of Tbilisi city court, dated 31 December 2015, out of 6649 criminal cases received by the court against 8034 persons (308 cases against 318 persons were merged) 5442 cases against 6427 persons were completed as of 29 December 2015.
872 According to the letter #108 of Kutaisi city court, dated 4 January 2016, out of 1998 criminal cases received by the court 1609 cases were completed as of 4 January 2016.
873 According to the letter #31299/15–818 g/k of Batumi city court, dated 28 December 2015, out of 2434 criminal cases received by the court 2176 cases were completed as of 22 December 2015.
874 According to the letter #594 /b of Batumi city court, dated 30 December 2015, out of 1485 criminal cases received by the court 1369 cases were completed as of 24 December 2015.
875 According to the letter #11 of Zugdidi district court, dated 4 January 2016, out of 718 criminal cases received by the court 608 cases were completed as of 4 January 2016.
876 According to the letter #7263 of Poti district court, dated 28 December 2015, out of 339 criminal cases received by the court 328 cases were completed as of 28 December 2015.
877 According to the letter #278 g/p of Gori district court, dated 4 January 2016, out of 838 criminal cases against 975 persons, received by the court 716 cases against 823 persons were completed as of 31 December 2016.
878 According to the letter #688 of Telavi district court, dated 28 December 2015, out of 746 criminal cases received by the court 661 cases were completed as of 1 December 2015.

the part of a court when concrete actions (for example, conduct of a sitting) may be and must be taken. It is therefore important for common courts to establish such a practice where the 24-month term is interpreted in accordance with the Convention and the law as the maximum term for hearing a case and to not postpone the hearing of all non-custodial cases for the end of the two-year term.

VIOLATION OF PRINCIPLE OF PROHIBITING RETROACTIVE FORCE OF LAW

According to the Constitution of Georgia, "No one shall be held responsible on account of an action, which did not constitute a criminal offence at the time it was committed. The law that neither mitigates nor abrogates responsibility shall have no retroactive force."[879] According to the Constitutional Court of Georgia,[880] "Such fundamental principle of law as the principle of legitimacy (nullum crimen sine lege) is enshrined in the given paragraph of the Constitution. The expression of this principle is the prohibition of retroactive force, which is one of the circumstances defining application of laws in time. […] In the event of disrespect of this principle, not only the constitutional rights of an individual person will be endangered, but also the order of values, legal security. […] The Constitution of Georgia establishes the broad scope for prohibition of retroactive force and, in general, connects it with the legal responsibility. […] Consequently, the given sentences of paragraph 5 of Article 42 of the Constitution … ensure that the criminal offence ... and responsibility for this offence …. will be such, as it was determined by the law that was applicable at the time the offence was committed. There is only one exception from this absolute constitutional requirement – within the scope of protection of paragraph 5 of Article 43, the legislator may award the law a retroactive force, if it abrogates or mitigates the responsibility provided by the law that was applicable at the time the criminal offence was committed. […] the point of departure for establishing the applicable law is the time when the action occurred. […] the law that is in force at the time when the action was committed shall be deemed as applicable law. Application of any other law adopted (promulgated) later for determining the criminal offences and responsibility shall be deemed as granting it the retroactive force and by this a violation of the constitution, unless we deal with the law mitigating or abrogating responsibility."

According to Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.[881]

The principle of legality is also reflected in a legislative act of Georgia: "The criminality and punishability of an act shall be determined by the criminal law applicable at the time of its commitment."[882] A criminal law that decriminalizes an act or reduces penalty for it shall have retroactive force. A criminal law that criminalizes an act or increases punishment for it shall not have retroactive force.[883] The supreme law of Georgia and other legislative acts as well as international acts are clear and explicit about the imperative nature of prohibition of retroactive force of law.

In the reporting period, the Office of the Public Defender of Georgia studied the case of G. G. who was sentenced to life imprisonment in Azerbaijan. The convict was handed over to Georgia.

879 Paragraph 5 of Article 42 of the Constitution of Georgia.

880 The Judgment of Constitutional Court of Georgia of 13 May 2009 on the case of *The Public Defender of Georgia, citizen of Georgia Elguja Sabauri and citizen of the Russian Federation versus the Parliament of Georgia.*

881 Paragraph 1 of Article 7 of European Convention on Human Rights.

882 Paragraph 1 of Article 2 of Criminal Code of Georgia.

883 Paragraph 1 of Article 3 of Criminal Code of Georgia. It is worth noting that at the time of action committed by GG, which was declared as a crime, Article 7 of the Criminal Code of Georgia (adopted in 1960) provided for the prohibition of retroactive force: "The criminality and punishability of an act shall be determined by the law applicable at the time of its commitment. A law that abrogates punishability of an act or mitigates the punishment has the retroactive force i.e. it shall apply to those acts that were committed before its adoption. A law that criminalizes an act or increases punishment for it shall not have retroactive force."

With the ruling of the Tbilisi City Court, the judgment delivered by the Baku City Court of 7 July 1998 was brought in line with the articles of the Criminal Code of Georgia.

When delivering a judgment, the judge of the Tbilisi City Court did not deliberate on the punishment which the law envisaged at the time G. G. committed the crime and by violating the principle of prohibiting retroactive force of law, sentenced GG to life imprisonment though such a type of punishment was not envisaged by the Georgian legislation at the time the crime was committed.

On 26 October 2015, the Public Defender of Georgia addressed the Chairman of the Supreme Court of Georgia, the Secretary of the Supreme Council of Justice with the proposal to launch a disciplinary proceeding against the judge of the Tbilisi City Court N. KH. for the violation of the principle of prohibition of retroactive force of the law.

THE RIGHT TO HAVE WITNESSES INTERROGATED IN SAME CONDITIONS

Equality of the parties and adversariality represent an important element of the right to a fair trial, with one of its aspects being to ensure witnesses are questioned in same conditions. According to the Constitution of Georgia,[884] the accused has the right to request summoning and interrogation of his/her witnesses in the same conditions as witnesses of the prosecution. The European Convention on Human Rights states[885] that every person charged with a criminal offence has the right to have his/her witnesses questioned under the same conditions as witnesses against him. The Criminal Procedure Code of Georgia also speaks about the necessity to ensure the parties with equal opportunity to examine evidence directly and orally.[886]

In the reporting period, the Office of the Public Defender of Georgia studied the case of employees of the Ministry of Defence of Georgia. On 16 November 2015, at a court sitting hearing the case of the accused persons G. Gh., A.A., D. Ts. and N. K. on the merits, the witness M. B. declared that days earlier to that sitting he met with the prosecutors of the case to "rehearse" his testimony.[887] Reviewing circumstances of the case with a witness before he/she has been interrogated at a court runs counter to the rule stipulated in the Georgian legislation in a clear and comprehensive manner. Evidence must be examined at court with the participation of the parties.

LEGISLATIVE AMENDMENTS TO THE RULE OF INTERROGATION OF WITNESSES

For the equality and adversariality to be realized, the parties must obtain equal opportunities in interviewing persons/interrogating witnesses both in a court and on the stage of investigation of a criminal case.

884 Paragraph 6 of Article 42 of the Constitution of Georgia

885 Subparagraph D of Paragraph 3 of Article 6 of European Convention on Human Rights.

886 Article 14 of the Criminal procedures Code of Georgia. "1. Evidence shall not be presented to a court (jury), unless the parties had the equal opportunity to examine it directly and orally, except as provided for by this Code.
2. A party may request to personally interrogate a witness and present him/her own evidence at the hearing."

887 When being interrogated as a witness MB (audio protocols of the sitting 096, 097, 098, 099. From 00:23:07 to 00:23:58) answered the question of the prosecutor: "You have this email; you showed it to me two days ago when I visited you." To a question of the prosecution: "you said you visited me and talked with me, I wonder what we talked about and whom you met with?" MB replied: "all you three." It is noteworthy that according to the report of the secretary of the sitting (audio protocol of the sitting 084, from 00:00:01 to 00:00:30) "prosecutors ZG, LB and NA arrived for the sitting." To a question of the prosecutor what they discussed, the witness replied "we had a rehearsal." Although to the next question of the prosecutor "did I ask you anything not related to the case, or forced, threatened you?" he said "no."

The 2009 wording of the Criminal Procedure Code of Georgia provided for equal opportunities for interrogating witnesses on the stages of investigation and court hearing. A common rule applied to both parties: interviewing a witness was voluntary on the investigation stage while interrogating him/her was compulsory at a court. The enactment of this rule was postponed several times: until 1 September 2013,[888] until 1 December 2013,[889] until 31 December 2013,[890] until 31 December 2015.[891]

On 16 December 2015, yet another legislative change was made the rule of interrogating witnesses, but the problem remains as the parties do not have equal possibilities to interrogate witnesses.

The enactment of the new rule of interrogating witnesses was postponed again for certain types of crimes until 2017 and 1 January 2018, which is inquisitional and rules out equal possibilities of the parties.[892]

It is worth noting that the state had reasonably sufficient time to implement the new rule of interrogating witnesses. A number of additional measures could have been undertaken to this end, including: retraining of employees; development of tactics and methods of conducting investigative actions to bring them in line with the new rule of interrogating witnesses. All this could have been done without interfering with the fight against crime. Ensuring equality of the parties and adversarial principle in the interrogation of witnesses cannot interfere with the course of investigation. Given the voluntary nature of interviewing, investigative authorities may undertake various measures to raise awareness of citizens, in particular, to highlight the importance of cooperating with investigative authorities for the aim of investigating crimes.

On 20 February 2016, the new rule of interrogating witnesses entered into force for all other crimes to which, according to the amendments, the old rule of interrogating witnesses no longer apply. However, the new rule has shortcomings as it does not fully ensure the adversarial principle.

According to the newly enacted rule of interrogating witnesses, any person who may hold information that is essential to the case may be interviewed by the parties only voluntarily.[893] An interviewee shall be notified in advance about the use of information provided by him/her.[894]

The new rule of interrogating witnesses does not apply to an accused person. An accused person retains all those guarantees which are excluded by the rules of interrogating witnesses.

If an interviewee refuses to be interviewed, the prosecution enjoys an advantage and levers against him/her – something which the defence lacks: the prosecution may file a motion to a court to oblige the interviewee to appear to the court for questioning; the failure to do so will result in the criminal liability of the interviewee.[895] The defence does not have such an opportunity.

More specifically, where a person refuses to give his/her consent on being interviewed, the prosecution is entitled to demand the interrogation of that person in court if there is even a single fact or a piece of information proving that the person holds the information that is needed to ascertain the circumstances of case. The standard of proof established for the interrogation of a person in a court is lower than the standard of reasonable doubt. Moreover, neither the importance not the necessity of information, held by that person, to the investigation is specified whilst any information might be regarded as needed to ascertain the circumstances of case.

888 Law of Georgia #205-RS, 18 January 2014.
889 Law of Georgia #6253-IS, 22 May 2012.
890 Law of Georgia #848-RS, 24 July 2013.
891 Law of Georgia #1872-RS, 26 December 2013.
892 When investigating crimes envisaged in articles 315, 324, 324^1, 329^1–330^2, 331 and 331^1 of the Criminal Code of Georgia; until 1 January 2008 - when investigating crimes envisaged in articles 108, 109, 115, 117, 126^1, 178, 179, 276, 323-323^2, 325–329 and 378^2 of the Criminal Code of Georgia.
893 Paragraph 1 of Article 113 of the Criminal Procedures Code of Georgia.
894 Paragraph 9 of Article 113 of the Criminal Procedures Code of Georgia.
895 Paragraph 8 of Article 113 of the Criminal Procedures Code of Georgia.

Yet another problematic issue is that in the abovementioned case, the defence (when an accused person is involved the case) does not attend the interrogation of a witness at court.[896] The parties must enjoy equal possibilities to directly and orally examine the evidence. Without such a possibility the equality of the parties cannot be ensured. Evidence – the testimony of a witness - examined at a court hearing with the involvement of the parties has a higher degree of reliability than the testimony obtained from interrogation involving only one party. When interrogating a witness at a court, even when it is conducted on the investigation stage at a magistrate judge, it is necessary (when a criminal proceeding has already been launched) to ensure that the defence attends it and participates in it.

It is worth noting that on 18 December 2015, with the amendment to the Criminal Code of Georgia[897] which annulled Article 371[1], the provision of conflicting testimonies by a witness or a victim was decriminalized. However, if it is established that if a person gives incorrect/false information when providing testimony/ being interviewed, a criminal liability may be imposed on that person. Thus, regardless of a voluntary nature of interviewing, the rule of imposing a criminal liability on a party for the provision of false information on the investigation stage is actually maintained: a liability for perverting the course of justice which manifests in providing false information by an interviewee.[898]

A problematic issue is the right of a party initiating the interrogation to have a person summoned to a court for interrogation.[899] Although the law requires a written consent of a person to be interrogated, this provision creates a threat of restricting freedom of that person by law enforcement authorities. One should take into account that the parties themselves ensure the appearance of their witnesses before a court; a witness may be summoned only by a court order and therefore, the law should not contain a provision which, by a party's referring to bringing a witness to a court, may shape a practice of summoning a witness to a court without a court order.

COURT PRACTICE CONCERNING DRUG RELATED CRIMES FOLLOWING THE DECISION OF THE CONSTITUTIONAL COURT OF GEORGIA

On 24 October 2015, the Constitutional Court of Georgia delivered a ruling declaring the phrase "shall be punished by imprisonment from seven to fourteen years" in Paragraph 2 of Article 260 of the Criminal Code of Georgia (the wording effective before 31 July 2015) unconstitutional in conjunction with Paragraph 2 of Article 17 of the Constitution of Georgia; namely, it declared unconstitutional the normative meaning of that phrase, which allows a possibility of applying imprisonment as a criminal punishment for the purchase and storage for personal use of that amount of dried marijuana (up to 70 grams) which is specified in the row #92 of Annex 2 to the Law of Georgia on Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance, and was disputed by the complainant.

The Office of the Public Defender of Georgia requested the judgments of lower courts and appeals courts on criminal charges under Articles 260, 261, 262, 263, 265, 266 or/and 273 of the Criminal Code of Georgia, which were delivered after the above cited ruling of the Constitutional Court of Georgia on 24 October 2015.

The study of the provided judgments shows that when considering criminal cases under Articles 260, 262, 265 or/and 273 of the Criminal Code of Georgia, common courts and prosecution authorities do not adequately observe the ruling of the Constitutional Court of Georgia of 24 October 2015.

896 Paragraph 10 of Article 114 of the Criminal Procedures Code of Georgia
897 Law of Georgia 34678-RS.
898 Paragraph 1 of Article 370 of the Criminal Procedures Code of Georgia (18 December 2015 wording).
899 Paragraph 8 of Article 114 of the Criminal Procedures Code of Georgia.

The provided judgments also show courts often approving plea agreements between the prosecution and defendants on criminal charges under Articles 260, 262, 265 or/and 273 of the Criminal Code of Georgia; according to these plea agreements defendants agree to be imposed an imprisonment term as a punishment, which, in some cases, is fully served as conditional sentence whilst in other cases is partly served in a penitentiary facility and partly as a conditional sentence. There are also instances among the provided judgments when as a result of plea agreements a convict is imposed a penalty as the main punishment (by applying Article 55 of the Criminal Code of Georgia).

Moreover, in several judgments provided by the Batumi City Court to the Office of Public Defender, the accused persons were sentenced to imprisonment in a penitentiary facility for a crime established by Article 273 of the Criminal Code for Georgia, including for the use of marijuana.

The Office of Public Defender was also provided with the judgments and copies of the judgments delivered by Tbilisi and Kutaisi courts of appeals in November and December 2015 on the motions lodged by inmates for the review of their rulings due to newly emerged circumstances. The provided judgments prove that the Chamber of Criminal Cases of Tbilisi and Kutaisi courts of appeals took into account the ruling of the Constitutional Court of 24 October 2015 and in almost every case released those inmates from applied punishment, who were found guilty under Paragraphs 1 or 2 of Article 260 of the Criminal Code of Georgia and according to the reviewed judgments were convicted for storing up to 70 grams of dried marijuana. At the same time, convicts who, according to rulings of courts of appeals, were found guilty of a crime established by Article 273[900] of the Criminal Code for Georgia, including the consumption of marijuana, were not released from imprisonment. The rulings of the court of appeals state that "the judgment of the Constitutional Court of Georgia of 24 October 2015 cannot affect the punishment imposed under Article 273 of the Criminal Code of Georgia because the mentioned judgment does not establish the release from the imprisonment applied to persons for the consumption of drugs."

The Chamber of Criminal Cases of Tbilisi Court of Appeals considered one of the motions filed for reviewing the verdict due to newly emerged circumstances inadmissible. According to the reasoning of the decision "the judgment of the Constitutional Court of Georgia of 24 October 2015 does not apply to the cases of illegal purchase and storage of up to 70 grams of raw marijuana for personal consumption. In the given case, however, a lower court found a convict guilty of illegal purchase and storage of 27,40 grams of raw marijuana. The Constitutional Court did not rule on Article 273 of the Criminal Code of Georgia."

One of rulings of the Kutaisi Court of Appeals, submitted to the Office of Public Defender, show that the Chamber of Criminal Cases of the Kutaisi Court of Appeals considered one of the motions filed for the review of verdict due to newly emerged circumstances inadmissible. According to the said ruling, the person was convicted of illegal purchase and storage of 71,76 grams of dried marijuana and was serving the sentence in a penitentiary facility. It is worth noting that in the row #92 of Annex 2 to the Law of Georgia on Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance dried marijuana is specified in a large amount – from 50 grams to 500 grams.

Studying the practice of common courts one may draw to a conclusion that they take into account only the decision part of judgment of the Constitutional Court of Georgia of 24 October 2015. However, experts of law believe that when considering similar cases, the common courts should be guided by the spirit and arguments which the Constitutional Court used in its reasoning of the judgment. Bearing this in mind, it should be noted that the ruling of the Constitutional Court of 24 October 2015, on certain occasions, created some ambiguity for common courts when hearing criminal cases under Paragraph 1 of Article 260 of the Criminal Code of Georgia, including charges of purchase and storage of dried marijuana. A proof of it is also the fact that on 4 and 5 January 2016, the Supreme Court of Georgia applied to the Constitutional Court with the constitutional submissions #708, #709 and #710.

900 Article 273 of the Criminal Code of Georgia also envisages imprisonment for up to a year for illegal manufacturing, purchase, storage or illegal consumption without medical prescription of drugs, their analogues or precursors in small quantity for personal consumption..

By the ruling of 26 February 2016, the Constitutional Court of Georgia, in accordance with Paragraph 41 of Article 25 of the Organic Law of Georgia on the Constitutional Court,[901] did not admit the constitutional submissions #708, #709 and #710 of the Supreme Court for consideration on the merits. In the same ruling it once again underlined the essence of its judgment and explained that in conjunction with Paragraph 2 of Article 17 of the Constitution of Georgia,[902] the Constitutional Court abrogated the normative meaning of Paragraph 1 of Article 260 of the Criminal Code of Georgia, which establishes a possibility of applying imprisonment as a criminal punishment for the illegal purchase and storage of dried marijuana for personal consumption. The Constitutional Court of Georgia also explained that the provision, considered disputable in the constitutional submissions, causes the restriction of the same constitutional right with a similar legal measure (application of imprisonment as a punishment) and results in the legal consequence identical to that of the provision which was declared unconstitutional. The Constitutional Court went on to explain that "the Constitutional Court does not declare words, phrases, sentences unconstitutional but assesses the problem, the issue reflected in the provision, which is expressed in those words, phrase or a sentence. In this process the Court examines whether the interference in the right in this or that form, content or intensity leads to the violation of right."

To ensure effective enforcement of the ruling of the Constitutional Court of 24 October 2015, development of a uniform practice and establishment of high standard of protection of human rights, it is necessary to introduce amendments to the criminal legislation of Georgian in the shortest possible time.

PRESUMPTION OF INNOCENCE

Public Defender's reports to the Parliament of previous years contained the information about violations of presumption of innocence as well as recommendations to the Chief Prosecutor's Office and the Ministry of Internal Affairs to respect the presumption of innocence of concrete person/persons by making public statements about their guilt without conclusions of affirmative nature. Nonetheless, a number of violations of presumption of innocence were observed in the reporting period. Consequently, the said recommendation of the Public Defender remains in force.

According to the Constitution of Georgia,[903] "An individual shall be presumed innocent until the commission of an offence by him/her is proved in accordance with the procedure prescribed by law and under a final judgment of conviction." Presumption of innocence is one of main elements of the right to a fair trial, guaranteed under the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.[904] Presumption of innocence is guaranteed by the Georgian legislative act.[905]

According to the interpretation of the Constitutional Court of Georgia "presumption of innocence is the guiding principle of criminal law, which, inter alia, implies that everyone shall be treated on the bases of presumption that they are innocent until the due process is conducted and the judgment of conviction is adopted by the

901 According to Paragraph 4^1 of Article 25 of the Organic Law of Georgia on the Constitutional Court, "If the Constitutional Court determines at its executive session that a disputed normative act or its part contains the same standards that have already been declared unconstitutional by the Constitutional Court … it shall delivery a ruling on the inadmissibility of the case for consideration on the merits and on the recognition as void of disputed act or its part."

902 According to Paragraph 2 of Article 17 of the Constitution of Georgia, "Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible."

903 Paragraph 1 of Article 40 of the Constitution of Georgia.

904 Paragraph 2 of Article 6 of the European Convention on Human Rights: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

905 Paragraph 1 of Article 5 of the Criminal Procedures Code of Georgia: " A person shall be considered innocent unless his/her culpability has been established by final judgment of conviction."

court which confirms his/her guilt. Therefore, it is impermissible to declare a person an offender without due process."[906]

Court is the only authority which is entitled to deliver a judgment and consequently, declare a person either guilty or innocent. Moreover, "Before passing a judgment or any other final court decision, a judge may not express his/her opinion as to the guilt or innocence of the accused (convicted person)."[907]

In the reporting period, the Office of the Public Defender studied public statements made by the Prosecutor's Office, the Ministry of Internal Affairs and the State Security Service of Georgia, which revealed a number of violations of presumption of innocence of accused persons.

It is worth to note the statements made by representatives of the executive authority regarding the guilt of an accused person after the jury trial failed to deliver a verdict and a sitting for the selection of a new composition of jury was appointed.[908] One should also note a statement of the Deputy Minister of Internal Affairs regarding the guilt of the accused person,[909] which was made in the absence of a court ruling, at an initial stage of investigation, and his explanation that the prosecution does not have an obligation to respect presumption of innocence.[910]

Society has the right to have information about the progress of investigation into criminal cases and law enforcement authorities must ensure the communication of such information to public, but presumption of innocence must be respected in all cases. However, presumption of innocence, which is protected by the Constitution of Georgia, is obligatory in public statements for the prosecution as well as any representative of legislative, executive and judicial authorities. One should especially bear in mind that statements of high officials about the guilt of accused persons may influence the verdicts of juries.

"The European Court of Human Rights underscored that the European Convention is aimed at preventing "the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The Court also underscored that presumption of innocence covers not only statements by the tribunal or persons involved in the trial, but also statements made by other public officials, which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority. The Court stresses that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see Allenet de Ribemont, cited above, § 38).

"The ECtHR has underlined that the ECHR aims to prevent "the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings.' The European Court has further noted that the presumption of innocence covers not only statements made by the court or the participants

906 The Judgment of the Constitutional Court of Georgia on the case of *Public Defender of Georgia vs Parliament of Georgia*, 11 July 2011.

907 Paragraph 3 of Article 25 of the Criminal Procedures Code of Georgia.

908 On 5 June 2015, the jury trial failed to deliver a verdict on the accused G. O.. The court dismissed this composition of jury and scheduled a sitting for the selection of a new composition of jury at 12:00 on 10 June 2015. (see http://tcc.gov.ge/index.php?m=443&newsid=694). On the same day, i.e. 5 June 2015, media released a statement of the Justice Minister Tea Tsulukiani: "I was surprised about the verdict and had I been among the jury today I would have been one of those seven jurors who found G. O. guilty." (see http://1tv.ge/ge/videos/view/147295/30.html (between 00:15:18 and 00:18:39); http://rustavi2.com/ka/news/17970 (between 00:03:12 and 00:03:26)). On 8 June 2015, media carried a statement of then prime minister Irakli Gharibashvili saying: "I am outraged about the failure to administer justice to the person accused of murder. This is an absolutely outrageous fact. We witnessed entire collapse and fiasco of this institution, the institution of jury trial. We shall review this and rectify the flaws it has. The family of victim, the family of L. M., of course has absolutely fair demand that the culprit be punished. This must be ensured by the state. Relevant bodies will ensure how and by what methods this will be done. It is absolutely unacceptable for me that this institution fell through in reality and experience the full collapse." (see http://1tv.ge/ge/videos/view/147379/30.html (from 00:04:25 to 00:06:20); http://rustavi2.com/ka/news/18131 (from 00:00:40 to 00:00:52); http://rustavi2.com/ka/news/18092 (from 00:00:11 to 00:00:50)).

909 On 18 January 2016, he said: "The investigation has actually established that B. K. is the murderer of the prosecutor V. K.." See http://pirveliradio.ge/?newsid=60747 (from 00:00:12 to 00:00:21); https://www.youtube.com/watch?v=tq1ZLnLhnfA (from 00:00:12 to 00:00:21).

910 On 20 January 2016, he said: "When one of defence lawyers referred to presumption of innocence, let me say that the prosecution has not an obligation to observe presumption of innocence. On the contrary, the prosecution has the obligation to establish and prove the guilt." See https://www.youtube.com/watch?v=Cy-zj0xWXkk (from 00:18:29 to 00:18:42)

themselves, but also other public officials if they may contribute to the public believing that the suspect is guilty, and hence lead to a prejudgment of the assessment of the facts which is to be done by the competent judicial authority. If a public official's statement suggests that a defendant is guilty before a court has made such a determination, this constitutes a violation of the presumption of innocence. This being said, authorities are not prevented from informing the public about on-going criminal investigations and proceedings, but are required to do so with "all the discretion and circumspection necessary' if the presumption of innocence is to be respected. The European Court also specified that "whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made'."[911]

"Violation occurs when high officials make statements about the guilt of suspect, which are broadly covered by media, […] representatives of government make public statements about the guilt of suspect before a verdict is delivered, […] indirect calls are made for the delivery of guilty verdict."[912]

A statement[913] published by the Chief Prosecutor's Office (where a suspect is repeatedly referred to as a person having committed a crime) contains, along with the information obtained by the prosecution through investigation, conclusions of affirmative nature about the guilt of a suspect. This happened before a verdict on the criminal case had been delivered and the hearing of the case on the merits launched; even more, by the time of publication of that statement neither a pretrial hearing had been conducted, nor the judge considered the issue of forwarding the case for hearing on the merits. Moreover, the published statement contained information which the prosecution intended to present as evidence at the court and the admissibility of which had not been considered by the court. This is especially dangerous in terms of influencing the verdict of the jury given that the charge levelled against the suspect envisages the right of the accused to have the case heard by the jury trial.

It is noteworthy that several statements about the criminal cases, handled by the Department of Investigation of the Offenses Committed in the Course of Legal Proceedings of the Chief Prosecutor's Office, which involved the return of seized property to victims, violated presumption of innocence:[914] persons (the accused persons or persons against whom the prosecution, using its discretionary authority, did not institute criminal proceedings) are referred to as persons having committed crime although, according to the same statements, no guilty verdicts were delivered on those persons in the given criminal cases.

According to the Georgian legislation[915] the prosecutor's office is a prosecuting authority. To perform this function, the Prosecutor's Office provides procedural guidance to investigation. A position expressed by a prosecutor in support of accusation during a hearing, public statements, comments or media interviews of prosecutor/prosecutor's office are a subject of different assessment: when making public statements, it is necessary and obligatory to respect presumption of innocence of the accused as well as those persons against whom the prosecution, using its discretionary authority, did not institute or terminated criminal proceedings.

In the case of *Daktaras v. Lithuania*, the European Court of Human Rights shared an opinion that presumption of innocence may be infringed by the prosecutors particularly "where a prosecutor performs a quasi-judicial function when ruling on the applicant's request to dismiss the charges. Nevertheless, whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context

911 The judgment of the European Court of Human Rights on the case of *Fatullayev v. Azerbaijan*. Trial Monitoring Report Georgia, OSCE Office for Democratic Institutions and Human Rights, 2014.

912 Commentary of the Criminal Procedures Code of Georgia, collegium of authors, Meriidiani publisher, 2015, pg. 51-52.

913 According to a statement released by the Chief Prosecutor's Office on 19 February 2016, "MP murdered her husband OK by hitting him in the area of the head with blunt object –hammer and suffocated her under aged son... This proves that MP was the person who hit her husband, who was lying in the bed, with hammer on the head […] After murdering husband and son, MP tried to cover up traces of the crime […] MP had premeditated to murder her husband and son." (see http://pog.gov.ge/geo/news?info_id=871).

914 See http://pog.gov.ge/geo/news?info_id=704 ; http://pog.gov.ge/geo/news?info_id=734 ; http://pog.gov.ge/geo/news?info_id=766; http://pog.gov.ge/geo/news?info_id=770 ; http://pog.gov.ge/geo/news?info_id=833

915 Article 32 of the Criminal Procedures Code of Georgia.

of the particular circumstances in which the impugned statement was made;" in this case the statement was made "within" the criminal proceedings themselves and not in a press conference.[916]

The accused is a person against whom there is a probable cause suggesting that he/she has committed an offence provided for by the Criminal Code of Georgia.[917] Only court may find a person guilty. Consequently, the principle of presumption of innocence shall be respected in the statements made by representatives of executive branch of Georgia, the information on criminal cases released by the Prosecutor's Office, Ministry of Internal Affairs, State Security Service of Georgia – by noting the existence of reasonable doubt alone, without mentioning the guilt of the accused.

With regard to public statements posted on the official website of the Ministry of Internal Affairs, it should be noted that the information about establishing people having committed crimes, suspects been arrested is, in the majority of cases, provided in such a manner as to exclude a possibility of identifying a person (indicating first name in full and only the first letter of the surname); also, videos of detention do not often allow for identifying persons featured in them (faces of arrested persons are blurred). However, a number of statements by the Ministry of the Internal Affairs contain conclusions of affirmative nature about the guilt of the accused persons (with their identities fully disclosed). Moreover, in several cases, while the name and surname of an accused is not fully disclosed the video attached to the statement allows for the detainee to be identified (faces of arrested persons are not pixilated).[918]

The State Security Service of Georgia neglected presumption of innocence in its several public statements made via social networks by speaking about the guilt of suspects in an affirmative manner and fully disclosing their identities. An example of this is the case of R. F,: the information[919] released by the State Security Service on 6 November 2015 said that "the investigation established that R, F, asked a citizen of Georgia for a bribe of 10 000 USD in return for handing over 2 ha of state owned land in Shuakhevi district bypassing formal procedures and providing protection. RF was arrested when receiving the bribe from the citizen.

CASES OF ADMINISTRATIVE OFFENCES

In his 2013 and 2014 annual reports,[920] the Public Defender of Georgia emphasized the need to amend and draft a new Administrative Offences Code. According to the Public Defender of Georgia, the effective Administrative Offences Code which was adopted during the Soviet rule, in 1984, is well short of criteria a normative act must meet. The Code contains ambiguous provisions and requires systematization; these shortcomings adversely affect court hearings of cases on administrative offences.

In his 2014 annual report, the Public Defender of Georgia underlined the establishment of a government commission (within the frame of government action plan for the protection of human rights for 2014 and 2015) to facilitate the reformation of the system of administrative offences as a positive development. This commission was tasked with a mission to coordinate the drafting of systemically new administrative offences

916 Stefan Trechsel, "Human Rights in Criminal Proceedings;" pg. 200-201.
917 Paragraph 3 of Article 19 of the Criminal Procedures Code of Georgia.
918 On 12 February 2016, the Ministry of Internal Affairs released a video along with the statement: "A group of drug dealers detained by the Ministry of Internal Affairs. […] individuals with previous drug-related convictions, in particular: Geronti K. (DoB 1981) Besik T. (DoB 1973) Niaz U. (DoB 1981) and Davit K. (DoB 1973) for illegal purchase, keeping and selling of drugs in group. During the personal and search activities held in detainee's vehicle law enforcers seized heroin and buprenorphine drugs in large quantities. Investigation established that detainees sold drugs on the regular basis." True, this statement does not fully disclose the identities of suspects, but it refers to them as persons having committed crime and the video attached to the statement allows for their identification (faces not blurred). See http://police.ge/ge/shss-m-narkorealizatorebis-djgufi-daakava/7768
919 See https://www.facebook.com/ssgeo/videos/930336323687168/
920 Annual Report of the Public Defender of Georgia, 2014, pg. 399; Annual Report of the Public Defender of Georgia, 2013, pg. 273.

code. Under the government ordinance N2364,[921] the Public Defender of Georgia was invited to participate in the work of the government commission for facilitating the reform of the system of administrative offences.

On December 13-14, 2014, a working group on the reformation of administrative offences system presented basic principles for drafting the new administrative offences code while some time later, the new draft code of administrative offences was submitted to the Public Defender of Georgia for his comments and opinions.

The abovementioned draft allows the creation of a systemically new code regulating administrative offences, with its structure coming close to the structure of the Criminal Code. According to the draft, administrative offences which establish administrative detention as a punishment are removed from the effective Administrative Offences Code to the Criminal Code as misdemeanors. It is worth noting that the proposed draft provides for the imprisonment for up to three months for misdemeanors, which is an unjustified extension of the 15-day term of administrative imprisonment stipulated by effective law and runs counter to a number of recommendations issued by the Public Defender. Despite the above said and other shortcomings,[922] the proposed draft code ensures the protection of human rights and administration of effective justice much better than the current code.

The Office of the Public Defender presented the government commission on facilitating the reformation of administrative offences system with its opinions about the proposed draft. Although the new administrative offences code has been drafted, it has yet to be finalized and it is not known when it will be submitted to the Parliament of Georgia. Consequently, the issues noted in 2013 and 2014 annual reports of the Public Defender with regard to outdatedness and inefficiency of the Administrative Offences Code remain problematic.

In the 2015 reporting period, the Public Defender of Georgia studied rulings on administrative offences by the city courts of Tbilisi (970 cases), Kutaisi (130 cases) and Batumi (230) (the total of 1330 cases). The analysis and examination of these cases revealed several positive trends though the situation with reasoning of judgments has shown no improvements. Significant flaws in administrative proceedings and decisions of judges are apparent.

The main shortcoming of decisions made by judges on cases of administrative offences is the lack of reasoning of judgments. Decisions of Tbilisi, Kutaisi and Batumi courts largely contain the information provided by a person who drew up a report on the offence whereas the reasoning of a judge about examining a fact of alleged offence reflected in the report is virtually missing. The majority of court decisions repeats the provision of the law and do not provide subsumption of a committed act with the offence specified in the provision. Arguments given in the decisions are relatively satisfactory when a court releases a person from liability or applies a punishment that is lenient as compared to the required one.

Reliance of courts on the reports on offences represents a problem especially considering that, in the majority of cases, the entirety of evidence exists as a formality whereas all evidence is, in reality, obtained by the same law enforcement officers who drew up the reports. Reliance of judges on reports on offence drawn up by law enforcement officers is of such large scale that one can easily sense prejudgment of judges towards citizens.

On 24 November 2015, the Kutaisi City Court examined materials of the case concerning alleged offences by NCH, established by the Articles 166 and 173 of the Administrative Offences Code. As the decision shows, the accused denied the accuracy of circumstances described in the report on the offence. The court shared the report of district inspector-investigator and regarded the administrative offence by NCH as established. With regard to explanation provided by NCH, the judge noted that:

> "The explanation of the person against whom an administrative proceeding is initiated is not trustworthy. The information which he, as a person directly interested in the outcome of the case, provided may be prompted by his vice and other intentions to conceal the offence, avoid possible liability."

921 https://matsne.gov.ge/ka/document/view/3050914
922 For example, the term of limitation is increased from two to six months.

Such an approach conflicts with the principle of a fair trial. In each separate case, evidence existing in the case must be examined in the context of factual circumstances and not prejudicial mistrust and bias towards the accused. It is unacceptable to interpret the scope of presumption of good governance so broadly as to give the evidence of any type or from any source advantage over other evidence. In some cases prejudicial attitude of judges towards citizens takes on such a scale that they not only poorly examine evidence in the case and establish adverse facts for the accused without arguments, but also even shift the burden of proof. The rulings of Kutaisi court on the cases of D. SH. and L. G. illustrate the above said.

On 24 March 2015, the Kutaisi City Court examined the materials concerning the offence under Article 45 of the Administrative Offences Code, committed by D. SH.. The citizen returned to Georgia on 1 March 2015 while on 7 March 2015 he proved positive on drug consumption in a lab test. During the hearing of the case, D. SH. said that he consumed drug while being in Israel. According to an expert of forensic service, the influence of drugs can be detected during 40 days after their consumption.

Although during the hearing of the case the law enforcement officers did not present any evidence that could prove the consumption of drugs on the territory of Georgia, the court did not share the explanation of the accused about having consumed the drug in Israel. The judge imposed an administrative sanction on D. SH., noting that D. SH. could have consumed drugs after arriving in Georgia and the evidence proving the opposite was not presented.

A similar decision was taken on administrative offence against the citizen L. G. on 4 November 2015. The decision reveals that the citizen crossed the Georgian border at 13:05 on 14 September 2015 and was searched at 16:45 on the same day. The court considered that the mentioned interval of time was sufficient for consuming drug and imposed administrative sanction on the citizen.

According to Article 9 of the Administrative Offences Code, an administrative offender shall be held liable based on the legislation that is in force at the time and at the place where the offence is committed. Compared to a crime, an administrative offence is a wrongdoing of lesser degree and therefore, a citizens may not be imposed an administrative liability for an administrative misdemeanor committed abroad. Consequently, an act established by Article 45 of the Administrative Offences Code must be committed in the territory of Georgia. Since committing an act in the territory of Georgia is one of components of offence, the burden of proof lies with the administrative body. Proving the consumption of drug through expertise cannot simultaneously prove the place of consumption; to prove the place of consumption, the administrative body shall present additional evidence.

According to the Constitution of Georgia, no one is obliged to prove his/her innocence[923] and therefore, any doubt must be resolved in favor of a person. Although the given constitutional provision regulates criminal cases, the implementation of its content should be reflected in decisions on administrative offences. Therefore, judges should have imposed a burden of proving that drugs were consumed abroad on the administrative body involved in the case as a party and not on the citizens. In the absence of evidence proving the consumption of drugs in the territory of Georgia, the judges, in these cases, should have adhered to Article 232 of the Administrative Offences Code and terminate the case.

One should note the absence of a similar problem in the Tbilisi City Court which, hearing the case with analogous factual circumstances, correctly stated that the conclusion drawn up by the forensic service "cannot be regarded as an undeniable evidence that the person consumed drug on the territory of Georgia without a prescription from a doctor" and terminated the hearing of the case.

The above described decisions of the Kutaisi City Court clearly show the main shortcoming of the effective Administrative Offences Code, namely, the absence of the rule of distributing burden of proof and the standards of proof. In contrast to the criminal Procedure legislation, the effective administrative legislation

923 Paragraph 2 of Article 40 of Constitution of Georgia.

does not establish any standard of proof to prove that an action of a person is a crime, thereby enabling law enforcement officer not to present a sufficient amount of evidence. Examination of case materials by a court is reduced to examination of formal lawfulness of the report drawn up by a police officer.

It should be noted that in the majority of cases on administrative offences provided to the Public defender, the accused admit to the offence, however, this should not provide the court with the ground to conduct examination poorly. Courts often do not examine evidence even in the cases when the accused do not agree with the reports drawn up by police officers. Some decisions do not indicate which part of the report on administrative offence the accused disapproved of.

On 19 March 2015, the Kutaisi City Court examined materials on the imposition of administrative sanction on VJ for committing an act established by established by Article 173 of the Administrative Offences Code. VJ did not admit to the offence and denied the circumstances indicated in the report on the offence drawn up by an inspector-investigator. The decision of the court does not show what factual circumstances the accused disapproved of in the report on the offence; nor does it show whether the judge examined the circumstances. Without any reference to the factual circumstances, the court resolved:

> "According to factual circumstances of the case it has been established that VJ did not obey a legal order from law enforcement officers performing their duty and therefore, objective and subjective signs established by the disposition of Article 173 of the Administrative Offences Code are fully proved."

It is worth noting that the report on V. J.'s offence indicated about a possible drug consumption by him, which was not proved by the expertise. Judges must not consider reports on offences drawn up by law enforcement officers as something unquestionable or preferable evidence; in establishing factual circumstances they must fully examine presented information and in their decisions substantiate the motives of taking concrete decisions.

It is noteworthy that such an attitude of judges represents a general trend though there are exceptions too. In one of the cases heard by the Kutaisi City Court, the judge correctly terminated the administrative proceeding and noted that the video recorded by a body worn camera of the patrol-inspector did not prove that the citizen offended the police officer as indicated in the report on the offence drawn up by the law enforcement officers. This case illustrates that courts should not rely on reports on offences drawn up by law enforcement officers alone and at a court hearing must fully examine, within their scope of authority, the information submitted to them.

There are significant shortcomings concerning the use of body-worn cameras in the context of persons accused of offences established by Articles 166 and 173 of the Administrative Offences Code. Under the effective legislation,[924] patrol police officers have the right, not the obligation, to carry out audio and video recording by using technical means in accordance with the rule prescribed by law. Consequently, the recording of citizens by a body-worn camera is the discretion of police officers.

The term of storing video footage recorded by body-worn cameras is yet another problem. According to the information requested by the Office of Public Defender from the Ministry of Internal Affairs, patrol police use body-worn cameras with 32 gigabyte memory which, having been used up, automatically deletes recorded videos to start recording new information over again. Thus, the storage term of video recordings directly depends on the size of memory of cameras.[925]

A video recording of communication with a citizen is a significant evidence to prove the fact described in the report on offence and to establish possible abuse of official powers by patrol-inspectors. A video footage allows reconstructing a real fact, which is important for the protection of rights of both a citizen and a police officer.

924 Paragraph1 of Article 14 of the Decree #1310 of the Minister of Internal Affairs on the approval of instruction on Rules of Conducting Patrolling by the Patrol Police Service of Ministry of Internal Affairs of Georgia, 15 December 2005.

925 Letter N20/12-2926557 of the Patrol Police department of Ministry of Internal Affairs of Georgia, 30 December 2015.

Body-worn cameras are used inefficiently within the frame of effective legislation; this is caused, on the one hand, by unjustifiably broad discretion of patrol-inspectors and, on the other hand, insufficient mechanisms for storing recordings.

Entirety of evidence against persons accused of offences established by Article 45 of the Administrative Offences Code is presented in the form of conclusion of narcological expertise. On October 10, 2015, the ordinance of the Minister of Internal Affairs on the approval of the instruction for the referral of a person for testing on the consumption of narcotic drugs or/and psychotropic substances. Article 3 of the ordinance provides for three grounds for the referral of a person for testing.[926] Courts do not inquire based on which ground was a person transferred to the narcological expertise and on which ground a law enforcement officer became suspicious of the person being under the influence of drugs. The transfer of a person for narcological testing voluntarily, without such a ground is illegal whilst evidence obtained in contravention of law has no legal force.[927] The legality of evidence obtained through neglecting obligatory preconditions set forth in the abovementioned ordinance is left beyond the examination of courts.

A problem, which the Public Defender mentioned in his previous report,[928] is still observed in hearing of cases of people suspected in committing an offence specified in Article 45 of the Administrative Offences Code. Court decisions on the administrative offence do not usually reflect either the number or the date of narcological expertise conclusion. Decisions are not often enclosed with a list of evidence in the case, but merely make a general reference to it.

Yet another problem is the qualification of a person's action when he/she disobeys a lawful order of a police officer and continues his/her unlawful conduct. Article 35 of the Administrative Offences Code specifies continuation of unlawful conduct in spite of the demand of an authorized person to stop it as an aggravating circumstance whilst Article 173 of the Code specifies that a disobedience to a lawful order or demand from a law enforcement officer is a separate offence. The disposition of a special provision and an aggravating circumstance is actually similar, thereby begging for explanation.

The examined decisions make it clear that judges apply Article 173 of the Administrative Offences Code without explanation instead of making the liability stricter for a concrete offence. Qualifying an action under two articles worsens the outcome for a person especially in cases when a sanction for the initial offence does not envisage imprisonment. An additional qualification under Article 173 of the Code provides a possibility to apply imprisonment to a person and therefore, common courts must develop a uniform practice toward such cases. The attitude of a judge in one of decisions of the Tbilisi City Court, in which the judge cumulatively applied Articles 35 and 173 of the Administrative Offences Code to a single action committed by a person, is unacceptable.[929]

The 2015 reporting period saw a positive trend in selecting administrative sanctions in Tbilisi, Kutaisi and Batumi city courts. Judges, virtually, do not impose administrative imprisonment in relation to Articles 45, 166 and 173 of the Administrative Offences Code. It is worth noting that Tbilisi City Court actively applies Article 22 of the Administrative Offences Code which envisages the release of an offender from administrative liability with only a verbal warning in case of a petty administrative offence. Verbal warning is frequently applied by the Batumi City Court too.

926 a) Employee directly witnessed a fact of committing unlawful act envisaged in the Administrative Procedures Code;
b) When undertaking measures envisaged in Paragraphs B, D, E, F and G of Article 18 of the Law on Police by an employee, a person tries to flee or disobeys a lawful order and there is a sufficient ground to suspect that a person consumed or is under the influence of narcotic or/and psychotropic substance;
c) There is information obtained in according to the rule prescribed by law as a result of operative investigative activity or secret investigative action, a report received by LELP 112 of the Ministry, or information directly supplied to police by an identified source about illegal consumption of narcotic or/and psychotropic substance by a person.

927 Paragraph 7 of Article 42 of Constitution of Georgia.

928 Annual Report of the Public Defender of Georgia, 2014, pg. 403.

929 Decision on the case N4/7314–15.

Arguments used by judges in their rulings reveal a problem in the application of administrative sanctions. It is impossible to figure out from examined decisions in what circumstances judges apply a possibility provided by Article 22 of the Administrative Offences Code. This problem of predictability is characteristic for all courts which were studied by the Office of Public Defender of Georgia.

General rules of imposition of administrative penalties are provided in Chapter 4 of the Administrative Offences Code. Generally, court decisions note that a court deliberated on circumstances specified in the second sentence of Article 33 of the Code,[930] however the note is of formal nature and does not contain a reference to concrete circumstances.

Out of legal circumstances mitigating the liability, courts largely apply sincere repentance by the offender. Decision of the Kutaisi City Court also indicates "a moderately critical attitude expressed during a court hearing by the offender towards his/her action" as a mitigating circumstance taken into account by the court. Courts rarely discuss one of the circumstances established by Article 34 of the Administrative Offences Code, namely the commission of an offence due to the concurrence of grave personal or family circumstances.

Following from the all above said it is apparent that most of decisions taken on cases of administrative offences are clichéd, lack reasoning and meet only formal standard of lawfulness. The main reason of that is the lack of proper legislative framework, allowing law enforcement officers not to obtain adequate entirety of evidence and courts not to examine evidence properly, make correct interpretation and actually realize the principle of a fair trial.

RECOMMENDATIONS

To the Parliament of Georgia:

- To ensure, in the shortest possible time, that the amendments and addenda are made to the Criminal Code of Georgia so that the penalties established by articles (260-274) in Chapter XXIII of the Criminal Code (Drug-related Crime) are brought in line with the judgment of the Constitutional Court of Georgia of October 24, 2015 and hence, with the Constitution of Georgia;
- To ensure that the amendments and addenda are made to the Criminal Procedure Code of Georgia that will effectively provide equal conditions to the parties in interrogating witnesses, namely, will establish the obligation of direct and oral examination of witness' testimony at a court hearing with the involvement of the parties; will exclude the possibility to interrogate only a witness of the prosecution without the attendance and involvement of the defence on the investigation stage, in all instances of refusal of a person to be voluntarily interviewed;
- To ensure that the rule/procedure of appointing/promoting judges are regulated by the law;
- To ensure that the electronic rule of distribution of cases among common courts are provided by the law.

To the government/Parliament of Georgia:

- To draft and adopt a new Administrative Offences Code which will guarantee the protection of human rights and administration of effective justice.

930 The nature of the offence, the person of the offender, the gravity of his/her fault, his/her material status, and extenuating and aggravating circumstances.

To common courts:

- To ensure that court hearings are closed only in cases, and according to the rule, prescribed by law and with the observance of principle of proportionality;
- To ensure the delivery of reasoned court judgments to convicts within the term specified by the law;
- To ensure that appeals of decisions of lower courts filed by convicts with lower courts, and criminal cases, are forwarded to courts of appeals within a reasonable timeframe (without procrastination);
- To ensure that cases on administrative offences are heard by observing the principles of equality of parties and impartiality;
- To ensure a proper distribution of burden of proof in the hearing of cases on administrative offences; to not treat evidence presented to a court by one party as preferential if it is not supported by other evidence; to fully examine evidence presented by the parties and the lawfulness of ways of obtaining them;
- To ensure the improvement of the quality of reasoning of decisions made by judges on cases of administrative offences.

To the High Council of Justice:

- To develop relevant recommendations/proposals regarding the regulations provided in the rule for organizational activity of common courts, namely, to determine concrete terms for forwarding criminal cases to courts of appeals;
- To undertake effective measures for ensuring the hearing of criminal cases within a reasonable time, including in terms of determining a sufficient number of judges and other public servants in courts and appointing them to relevant positions;
- To ensure a timely, impartial and comprehensive examination of, as well as a response to, those applications and complaints that relate to disciplinary wrongdoings of judges.

To members of government of Georgia:

- To ensure presumption of innocence is respected in public statements, without expressing opinions about the guilt of suspects.

To the Prosecutor's Office/Ministry of Internal Affairs/State Security Service:

- To ensure that in public statements about the investigation into a criminal case, institution of criminal proceedings, arrests of suspects, refusals to initiate criminal proceedings or termination of criminal persecution through using discretionary power, presumption of innocence is respected without making conclusions about the guilt of a person/persons in an affirmative manner.

To the Ministry of Internal Affairs

- To define an obligation of a patrol police officer to record communicating with a physical person by means of body-worn camera, as well as the rule and timeframe of storing the recordings.

THE RIGHT TO INVIOLABILITY OF PERSONAL AND FAMILY LIFE

Private life of an individual is inviolable and this right is enshrined in the Constitution of Georgia as a fundamental legal good.[931]

Private life implies an individual's private life and personal sphere of development. The right to private life means, on the one hand, a possibility of an individual to create and develop his/her personal life privately, at his/her personal view, independently and, on the other hand, to be protected from interference of the state and any other person into his/her private sphere. As the European Court of Human Rights interpreted, private life is a broad notion which is not a subject to exhaustive definition. However, it necessarily includes the right of an individual to have the personal life he/she chooses and the possibility to establish relations and communication with other people without illegitimate control.[932]

The European Court of Human Rights interpreted that Article 8 of the European Convention on Human Rights "not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life."[933]

Both oral and written forms of communication are protected by the right to inviolability of communication by telephone, correspondence or other technical means. However, as many other rights, the right to privacy is not absolute and its restriction is envisaged by the Constitution itself. The scope of interference on the part of the state is also specifically defined. "Protection of constitutional order, state and national interests and public order, prevention of crime, ultimately contributing to effective protection of human rights, is an obligation of a democratic state under the rule of law."[934] It is precisely these public interests that the restriction of the right to private life may serve and be justified, in accordance with the established rule, as expedient and legal for achieving the legitimate aim.

Interference in private life is lawful only when there is a combination of three elements:

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931 Article 20 of the Constitution of Georgia: "1. Everyone's private life, place of personal activity, personal records, correspondence, communication by telephone or other technical means, as well as messages received through technical means shall be inviolable. Restriction of the aforementioned rights shall be permissible by a court decision or also without such decision in the case of the urgent necessity provided for by law. 2. No one shall have the right to enter the house and other possessions against the will of possessors, or conduct search unless there is a court decision or the urgent necessity provided for by law."

932 See the cases of the European Court of Human Rights: *Costello-Roberts v. the United Kingdom* [1993], *Niemietz v Germany* [1992].
On 26 December 2007, in its judgment N1/3/407 on the case of *Georgian Young Lawyers Association and Citizen of Georgia Ekaterine Lomtatidze v Parliament of Georgia*, the Constitutional Court of Georgia said that "Protection of the right to privacy is guaranteed by obligations of the state stemming from the Constitution. On the one hand there is a positive obligation of the state to ensure respect for private life and effective enjoyment of this right which, first of all means elimination of obstacles hindering personal freedom of an individual. On the other hand, the state has a negative obligation not to interfere in the rights protected under Article 20 of the Constitution and consequently, ensure protection of an individual against arbitrary interference from state authorities or state officials."

933 See the case of *X and Y v. the Netherlands*, the European Court of Human Rights [1985].

934 See in the judgment N1/3/407 of the Constitutional Court of Georgia of 26 December 2007 on the case of *Georgian Young Lawyers Association and Citizen of Georgia Ekaterine Lomtatidze v Parliament of Georgia.*

- Legal ground
- Legitimate aim
- Necessity in the democratic society/ proportionality to the legitimate aim

THE OBLIGATION TO PROTECT PERSONAL CORRESPONDENCE OF INMATES

The European Court of Human Rights requires an especially cautious attitude towards Article 8 of the European Convention when it comes to inmates. The Strasbourg Court evaluates risks of inmate's unrestricted communication with the outer world rationally. However, it clearly prohibits such a control and inspection of inmate's communication, which is illegitimate and violates the principle of necessity and proportionality.

There is a widespread practice in various European countries of deleting some sections of specific content of a letter.[935] In one of cases, the investigative judge deleted the section of information in which prison employees were mocked and offended. First of all, the European Court of Human Rights noted that undertaking certain measures against the correspondence of inmates was permissible and did not conflict with the Convention. However, right away, the reference was made to the case of Silver in which the Court ruled that by not sending the letter containing offending words towards a prison employee violated the Convention.[936]

According to the approach to the European Court of Human Rights, the correspondence between a defense lawyer and an accused person may be subject to monitoring, but certain standards shall be satisfied. According to the Court, such communication is a privileged guarantee protected under Article 8 of the Convention and therefore, the interference in the right requires solid justification. According to the standard of the European Court, the state is authorized to open correspondence if it contains an illegal item which cannot be detected by ordinary methods. In such a case, a relevant correspondence should be opened, but not read. To ensure the latter, certain guarantees, for example, performing the mentioned procedure in the presence of an inmate must exist. As regards the content of correspondence, it may be read only in exceptional cases when there is a reasonable doubt that the defense lawyer and the inmate abuse the guarantee prescribed by law and the security of prison, or the correspondence endangers other persons or in general, represents a criminal action. In this case, the standard of reasonable doubt ensures the prevention of abuse of official powers. The European Court emphasized the impermissibility of automatic monitoring of correspondence between a defense lawyer and an inmate,[937] especially when such correspondence mainly serves the aim of realizing the right to effective defense and ensuring the given guarantee (the right to defense as an integral element of a fair trial).

Thus, reading any type of inmate's correspondence falls within the scope of protection of the right to private life and doing so without a relevant legitimate aim and according to the principle of proportionality shall be the violation of the given guarantee.

The right of accused/convict to inviolability of private life and one of its above mentioned components - personal correspondence - is guaranteed under domestic legislation of Georgia too. The Imprisonment Code of Georgia prohibits reading correspondence of inmates. It allows doing so only in exceptional cases as an extreme necessity to avoid a threat or to protect rights of people.[938]

935 See the case of *Pfeifer and Plankl v Austria*, the European Court of Human Rights [1988].

936 See the case of *Silver and Others v United Kingdom*, the European Court of Human Rights [1983].

937 See the case of *Campbell v United Kingdom*, the European Court of Human Rights [1992].

938 Paragraphs 4 and 5 of Article 16 of the Law of Georgia on Imprisonment Code: "4. correspondence of an accused/convicted person is subject to inspection, which includes visual inspection, without reading its content. In cases of extreme necessity, when there is a well-grounded belief that the dissemination of information will pose a threat to public order, public security or rights and freedoms of other persons, the administration may read the correspondence and, if necessary, not send it to the addressee. The sender shall be immediately notified of this action. 5. Correspondence received in a sealed envelope shall be opened in the presence of the accused/convicted person. Such correspondence is subject to visual inspection, without reading its content."

Especially noteworthy is Paragraph 6 of Article 16 of the Imprisonment Code, which prohibits a penitentiary facility from stopping and/or inspecting the correspondence of an accused/convicted person if the addressee of the correspondence is the President of Georgia, the Chairperson of the Parliament, the Prime Minister of Georgia, a Member of Parliament, a court, the European Court of Human Rights, an international organization established under an international human rights agreement ratified by the Parliament of Georgia, a ministry of Georgia, the Department, the Public Defender of Georgia, a defense lawyer, or a prosecutor.

Thus, the analysis of provisions in the Imprisonment Code clearly proves that the national legislation complies with international standards and prohibits the administration of a penitentiary facility from unjustified inspection of correspondence of an accused/convicted person. Even more, the legislation imperatively prohibits stopping and/or inspecting the correspondence that is addressed to a court. One should also emphasize that a special importance in the inviolability of inmates' private lives and the protection of their rights to correspondence is assigned to employees of the social service of a penitentiary facility.

At the same time, although the communication and correspondence between a defense lawyer and an inmate falls under the scope of protection of Article 8 of the Convention, according to the European Court of Human Rights, the monitoring/restriction of correspondence may cause the violation of the right to effective defense if a person or his/her defense lawyer are not allowed to provide a court, from the prison, with full information favorable for the accused/convicted person. If inmates or their defense lawyers are imposed such restrictions which are not be prompted by extreme necessity and do not represent a proportional measure of restriction applied by the prison administration, it will be impossible to effectively defend the interests of accused/convicted persons.

Thus, the state is obliged to create appropriate conditions to the inmates or the accused/convicts, enabling to enjoy relevant means of effective defense and consequently, the right to a fair trial.

The case of G.O.

The Office of the Public Defender studied the case of the accused person G.O., in which the inviolability of his personal correspondence was breached. The head of penitentiary facility not only read the correspondence but also made changes to it – removed several pages from the document.

More specifically, on 17 September 2015, representatives of the Public Defender of Georgia were in the penitentiary facility #6 where they met with the accused G.O. in the presence of the latter's defense lawyer M.KH..

From the protocol drawn up by representatives of the Public Defender of Georgia on 17 September 2015, the explanations provided by the defense lawyer M.KH. on 24 September 2015 and by the accused G.O. on 1 October 2015, it becomes clear that on 17 September 2015 G.O. and M.KH. wanted to file a motion with the Tbilisi City Court to reverse imprisonment as an interim measure.

The comprehensive study of the case revealed that the content of the motion drawn up by the accused and his defense lawyer became known to the director of #6 penitentiary facility by means of an employee of the facility's social service (who took the motion to prove the authenticity of the accused person's signature). Moreover, the director demanded from the defense lawyer that he delete from the motion that section (several pages) which concerned facts of alleged ill-treatment of the accused person in the penitentiary facility and which the director denied.

It is worth noting that when speaking to the representatives of the Public Defender, the director of the penitentiary facility not only confirmed the above mentioned fact but also explained additionally that it was a normal practice in the penitentiary facility #6 for the administration to read any type of correspondence with

the exception of applications/complaints placed in sealed envelopes. No other correspondence was considered confidential by the director of the facility.

On 27 October 2015, once the Public Defender of Georgia established that the private life of G.O. was violated, he addressed the Minister of Corrections of Georgia with the proposal to launch a disciplinary proceeding against the director of the penitentiary facility #6 and the employee of the facility's social service.

On 9 February 2015, with a letter from the Ministry of Corrections the Public Defender was informed that the above mentioned proposal was satisfied and under the ordinance of the Minister of Corrections, dated 2 February 2016, which was based on the conclusion of the general inspection of the Ministry, the director of the penitentiary facility #6 KG was imposed a "caution" for improper performance of official duties whilst the social worker, who had already been imposed a disciplinary sanction for another violation, was imposed with a "warning."

CASES OF UNLAWFUL DISCLOSURE OF PERSONAL INFORMATION

Article 157 of the Criminal Code of Georgia makes the obtaining, storing, using, disseminating or otherwise publicizing personal or family secrets or information on private life or personal data a punishable action. This provision ensures the protection of private life of all persons – something that is necessary for ensuring a normal development of society.

In the 2015 reporting period and beginning of 2016, a number of instances were observed of releasing audio and video records of private nature, including materials that are part of investigation into criminal cases. Unlawful release of confidential information caused indignation among society, however, the reaction of the Prosecutor's Office of Georgia to these facts, in certain cases, remain unknown.

Illegal acquisition and release of secret audio recordings

On 24 and 29 October and 2 November 2015, Ukrainian media released secret recordings containing private telephone conversations of the former President of Georgia with various persons: the director of one of private TV companies, the foreign affairs secretary of the political party United National Movement and later, a Georgian singer.

On 31 October 2015, the Deputy Head of State Security Service made a statement that as a result of publication of transcripts of the above mentioned conversations, it initiated investigation into conspiracy to change the constitutional order of Georgia through violence (Article 315 of the Criminal Code of Georgia).

As it is known, arbitrary disclosure of materials obtained through undercover investigative activities is a criminal offence.[939] The state interference into the private life of a person must be fully contained within the limits established by law. One of the mechanisms to control the interference in private life, prescribed by law, is the judiciary control.

In the Public Defender's view, regardless of the fact that the above mentioned audio recordings were uploaded on the Internet from Ukrainian blogs, one cannot ignore the heightened public interest whether audio records were acquired legally and released by law enforcement entities.

According to the State Security Service, the origin and authenticity of records released by media has been

939 See https://matsne.gov.ge/ka/document/view/29572 [retrieved on 27.01.2016].

examined within the scope of investigation launched on 24 October.[940] The mentioned approach, in reality, implies the examination of a wrongdoing by the same entity which allegedly violated the law – something that is institutionally impermissible. In order to ensure that the investigation into the legality of acquiring the mentioned audio recordings and the dissemination thereof is trustworthy, the investigation must be conducted the Prosecutor's Office of Georgia, not by the State Security Service.

On 3 November 2015, the Public Defender of Georgia called on the Chief Prosecutor's Office of Georgia to study, under an independent investigation, the legality of obtaining the mentioned audio recordings and the dissemination thereof.[941] Nonetheless, the Prosecutor's Office did not initiate the investigation.[942]

Disclosure of footage featuring sexual violence

On 17 October 2015, the Ukrainian web portal tube.ua released video footage featuring sexual violence allegedly committed by representatives of law enforcement bodies in Georgia, namely, Samegrelo region (a so-called "case of barrels"). Various persons and organizations organized public screenings of this footage in Zugdidi and Tbilisi.

The abovementioned videos are materials of investigation and allow for identifying victims of torture; therefore, both the release and public screening of those videos bear signs of crime envisaged in Article 157 or Article 374 of the Criminal Code of Georgia.

Bearing in mind the gravity of the offence, the Public Defender of Georgia repeatedly commented about the public release of videos featuring sexual abuse and expressed the hope that that fact would be investigated in a quick and effective manner. The Public Defender of Georgia called on the Chief Prosecutor's Office to release information about the progress of the investigation into the so-called case of barrels[943] and to conduct the investigation in the shortest possible time.[944]

On 17 October 2015, under Article 157 of the Criminal Code of Georgia, the Ministry of Internal Affairs launched an investigation into the release by media outlets of video featuring private life. However, a letter from the Chief Prosecutor's Office, dated 10 February 2016, reveals that the investigation is in progress whilst a suspect (suspects) has not been identified yet.

Release of videos featuring private life

On 11 March 2016, video footage was released via social network, featuring the private life of a politician from an opposition party. Yet another video was released also via social network on 14 March 2015, which allegedly contained scenes from the private life of a popular political figure and the warning about the release of similar materials in future.

With regard to recently released materials of private life, a special investigative group was formed within the scope of investigation launched by the Prosecution of Georgia; various investigative actions were undertaken

940 http://epn.ge/?id=13405 [retrieved on 27.01.2016].

941 http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-saqartvelos-mtavar-prokuraturas-gamodziebis-dawyebis-motxovnit-mimartavs.page

942 On 29 December 2015, the Office of Public defender sent a letter to the Chief Prosecutor's Office of Georgia to find out whether the prosecution started an independent investigation and obtain information about the investigation conducted by the State Security Service into the legality of acquisition and release of recordings. The letter from the Chief Prosecutor's Office, dated 18 January 2016, shows that the prosecution did not take into account the Public Defender's call and did not launch the independent investigation into the legality of acquisition and release of recordings.

943 See http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-seqsualuri-dzaladobis-amsaxveli-kadrebis-sadjarod-gantavsebasa-da-chvenebas-exmaureba.page

944 See http://www.ombudsman.ge/ge/news/wamebis-da-seqsualuri-dzaladobis-amsaxveli-kadrebis-gavrcelebashi-damnashave-pirebi-umokles-droshi-unda-daisadjon1.page

and a criminal proceeding was instituted against five persons on charges of committing the crime envisaged by Article 157 of the Criminal Code of Georgia. However, according to the prosecution, these persons have not been charged with obtaining/creating or disseminating footage of private life released o 11 and 14 March 2016. It is therefore critically important for the Chief Prosecutor's Office of Georgia to undertake every possible measure to identify the persons who committed the crime on 11 and 14 March 2016.

These recent crimes must not be perceived as a qualitatively new problem in the country. Illegal acquisition and release of various confidential recordings has been an unfortunate and, at the same time, persistent trend of late.

To counter an increasing illegal release of confidential information of various types, the conduct of investigation alone by the prosecution, without taking a summarizing decision, is not effective.

In order to restore the sense of protection of private life among society and eradicate the impunity syndrome among culprits, it is necessary to not only take formal steps but also to effectively investigate each and every such crime and to fully inform society about the actions undertaken towards this end.

PROTECTION OF PERSONAL DATA

Given its broad and versatile meaning, an accurate and exhaustive definition of private life, protected under Article 20 of the Constitution of Georgia,[945] has not been provided by the European Court of Human Rights or our Constitutional Court, but no one argues that the protection of personal data of individuals serves the realization of the right to private life. To create strong guarantees for the protection of personal data, the Law of Georgia on Personal Data Protection was adopted on 28 December 2011. This legislative act defines principles and foundations of personal data processing, determines functions of a supervisory body for the protection of personal data and specifies measures of administrative liability for the violations of the Law on Personal Data Protection.

It must be noted that the regulation of the issue on a legislative level, does not automatically mean that the state fulfills its obligation assumed under the Constitution of Georgia and international treaties.[946] For individuals to feel maximum protection of their isolated sphere, the state authorities must ensure proper and effective implementation of established regulations. Although the control of the implementation of regulations established under the Law of Georgia on Personal Data Protection is carried out by the Office of the Personal Data Protection Inspector – a supervisory institution created to this end, one can see with the naked eye and without any special monitoring that state authorities often fail to understand the meaning of the right of an individual to private life and in some cases deliberately, while in other cases, accidentally, disclose that amount of information that is inadequate and disproportionate for achieving a legal aim.

Last year, the Office of the Public Defender revealed the following violation of the principle of proportionality of data processing by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia:

In accordance with the Rule of Providing Housing to Refugees, approved under the ordinance #320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, dated

945 Article 20 of the Constitution of Georgia: "1. Everyone's private life, place of personal activity, personal records, correspondence, communication by telephone or other technical means, as well as messages received through technical means shall be inviolable. Restriction of the aforementioned rights shall be permissible by a court decision or also without such decision in the case of the urgent necessity provided for by law. 2. No one shall have the right to enter the house and other possessions against the will of possessors, or conduct search unless there is a court decision or the urgent necessity provided for by law."

946 Article 8 of the European Convention on Human Rights; the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

9 August 2013, the families who require living space fill in the questionnaires established under the mentioned Rule and the authorized commission awards corresponding scores to families of internally displaced persons. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees publishes the list of scores awarded to the families on its official website, thus communicating the information about awarded scored to interested persons.

The published lists contain the following data: names and surnames of internally displaced persons, awarded scores, the number of members in a family, an address a family would like to live and number of rooms a family claims to need. Some lists published by the Ministry of Internally Displaced Persons display the final score of internally displaced families, broken down not only by criteria but also by scores defined for these criteria; for example, a score awarded for having a person with disability in a family totals three, the score awarded by the poverty indicator stands at two as well as the score awarded for a family member with mental disorder, et cetera. The information published by the Ministry indicates names, surnames and personal identity numbers of those family members who are not internally displaced persons. There was even the information published on the Ministry's official webpage, which contained additional data about the internally displaced families (those who filled in applications for a living space) obtained by a monitoring group, such as source of income of family, whereabouts of a family member, kinship, et cetera.

Communication of information by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees to internally displaced families in this manner is an unjustified interference in private lives of individuals. Although society has a legitimate interest towards transparency of the Ministry, but in the given case such an interest does not justify the action of the Ministry which makes it possible to identify even special category of individuals.

Article 4 of the Law of Georgia on Personal Data Protection specifies guiding principles for data processing. According to Paragraph C of the same article "data may be processed only to the extent necessary to achieve the respective legitimate purpose. The data must be adequate and proportionate to the purpose for which they are processed." In the above described case the aim of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees is to inform families about awarded scores; This, however, may be done without publishing any personal data if each internally displaced family is assigned a unique code; in such a case the information will be published according to these codes, the legitimate interest of society will be satisfied and the personal data of the families protected.

THE INSTITUTION OF SO-CALLED ODR - OFFICERS OF ACTIVE RESERVE

During the term of validity of the President of Georgia's Ordinance #614 on the Approval of Regulation of the Ministry of Internal Affairs, dated 27 December 2004, the Minister of Internal Affairs was authorized to appoint officers in security issues to state entities and institution of special importance. According to the same Regulation, the responsibility for coordinating and controlling the activity of officers in security issues lied with the counterintelligence department of the Ministry. With the regulation of the Ministry of Internal Affairs, approved by the governmental ordinance #337 on 13 December 2013, the mandate of the Minister in this area remained virtually unchanged, with only minor technical changes envisaging renaming officers in security issues as officers in safety issues. Since the above cited normative acts did not provide for a list of state entities and institutions of special importance, it was actually impossible to identify the circle of those institutions where the Minister of Internal Affairs could appoint officers of safety issues.

Pursuant to amendments made to the regulation of the Ministry of Internal Affairs on 31 July 2015, the appointment of officers in safety issues no longer falls within the scope of competence of the Minister of

Internal Affairs. This change followed from the Law of Georgia on State Security Service adopted on 8 July 2015, which provides for the creation of the State Security Service. During the consideration of the draft of above mentioned law in the Parliament, the Public Defender of Georgia questioned the rationale of having the institution of security officers in various entities. It was necessary also to study the practice and challenges existing in this regard, to identify needs and problems and to set future prospects in this direction in order to eliminate vice practice associated with this institution.

According to the Law of Georgia on State Security Service, the State Security Service installs the regime of security protection in high risk subjects. With the governmental ordinance #584 of 18 November 2015, a list of subjects with high risk for the state security was approved and it includes 25 institutions.[947] The governmental ordinance[948] defined the rule of information exchange in the sphere of state security as well as types of information, within which the information will be exchanged between the subjects bearing high risk for the state security and the State Security Service. According to the Law of Georgia on State Security Service, the subjects with high risk for the state security are obliged themselves to implement the regime of security protection. In case of need they may apply in writing to the State Security Service and enter into an agreement on cooperation.

The introduction of such legislative regulations in the state security field must be viewed as a step forward as it puts an end to unlimited circle of institutions wherefrom the state security service may receive information of indefinite type and in indefinite amounts. Today, the effective legislation provides for a list of concrete entities with high risk for state security as well as concrete categories of information which may be exchanged.

Despite the above mentioned legislative change, in March 2016, students of Ivane Javakhishvili State University released information that the so-called ODR institution still operated in the university; this information triggered a large-scale protest among students.

It is important for the abovementioned legislative regulations to be properly implemented in practice and to put an end to distorted practice of illegal gathering of information from various public or private institutions, bypassing the legislative regulations. To avoid such risks there should not be any such information left without response, which suggests the existence of so-called ODR institution in an entity that is not on the list of specified institutions. Moreover, relevant entities, including the "trust group" established within the parliament, must periodically inquire about the legality of the activity of State Security Service and timely react to information about abuses of official powers and impartially investigate such facts.

RECOMMENDATIONS

To Ministry of Corrections and Probation:

- To ensure the protection of confidentiality of correspondence of inmates in accordance with the established rule.

To Chief Prosecutor's Office:

- To remove the criminal proceeding which is underway on the origin and dissemination of above described secret recordings, released on 24 and 29 October and 2 November 2015, from the State Security Service to the Chief Prosecutor's Office of Georgia;
- Considering heightened public interest, in case of committing the crime envisaged in Article 157 of

947 Ministry of Finances; Ministry of Labor, Health and Social Affairs; Ministry of Economy and Sustainable Development; Ministry of Corrections and Probation; Mayor's Office of Tbilisi Municipality; JSC Georgian Railways, et cetera.

948 Ordinance #667 of the government of Georgia, 30 December 2015.

the Criminal Code of Georgia, to provide public with as much information as possible about activities undertaken by the Prosecutor's Office, investigation and obtained results;

- To conduct investigation into the release of video footage on 11 and 4 March, featuring private life, in an effective manner, to establish culprits within the shortest possible time and to inform public about the results of investigation.
- To launch investigation into information about illegal activities of so called ODR institution in various entities and to conduct it in a timely, effective and impartial manner.

To Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees

- To award a unique code to every internally displaced family who have applied for a living space and then, publish information about scores awarded to internally displaced families on the webpage of the Ministry according to these unique codes.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

INTRODUCTION

The freedom of religion is protected by the Constitution of Georgia and international legal acts. The right to freedom of thought, conscience and religion includes freedom of a person to have or not to have religious faith and to practice or not to practice this or that religion. Any individual can enjoy this right either individually or collectively.

Freedom of religion and belief imposes both negative and positive obligations on the state. The state is obliged to not interfere with the enjoyment of this freedom, but to facilitate effective exercise of this right. Article 19 of the Constitution of Georgia deems it acceptable to restrict the freedoms protected under this article if their manifestation infringes upon the rights of others. In particular, the freedom of religion and belief may be restricted only and if their manifestation violates the rights of others.

Although the government of Georgia developed a two-year action plan for the protection of human rights which sets out concrete aims, objectives and responsibilities in the area of freedom of religion, the analysis of the implementation of the action plan as well as the problem of religious intolerance in the country does not allow to say that the situation with the protection of religious freedom has improved in the 2015 reporting period as compared to previous years. The state has not taken any effective steps to tackle the problems existing in terms of tolerance, equality in exercising religious freedom.

One of the main problems is the lack of timely, adequate and effective response to hate crimes committed on the ground of religious intolerance, which is the key factor in eliminating and preventing such type of crimes. In 2015, the Public Defender of Georgia learned about 40 alleged violations of freedom of religion and equality.

Facts of religious discrimination and violence were largely associated with the aggression against Jehovah's Witnesses, manifesting in persecutions, beatings, verbal abuses, psychological violence, damage to property and blocking the construction of cult buildings. At the same time, actions undertaken against Muslim community in previous years (incidents in Nigvziani, Tsitskaro, Samtatskaro, Chela, Mokhe and Kobuleti) remain unreacted. Unreacted crimes, for their part, encourage the creation of new hotspots of religious violence.

Persisting problem in public schools is the failure to fulfill the requirements of the law on general education, which prohibit religious indoctrination and proselytism at schools. The Ministry of Education has been trying for years to avoid the recognition of the scale and systemic nature of this problem, citing the lack of relevant complaints as the ground. In reality, however, the reason of this is the fear of parents and schoolchildren and caution that the protection of rights at school may further exacerbate the intolerance and discrimination towards minorities.

Yet another problem is the failure of public servants to defend the principles of religious neutrality and constitutional secularism. The problem of religious bias is, inter alia, manifested in refusals of municipalities

to issue construction permits for cult buildings of non-dominant religious associations and artificial barriers created by them.

Unfair rule of funding religious associations remained in force in the reporting period.[949] Despite the promise from the government, it did not take into account a request of a segment of religious associations, save four religious associations, to recognize religious associations operating during the Soviet period as victims of communist totalitarianism in Georgia. No steps were taken to start the process of restitution of the property seized from religious minorities by Soviet authorities.[950] Nor was the discriminatory tax regime changed, which places other religious associations in a discriminatory position as compared to the Georgian Patriarchate.[951]

The use of hate speech in media and social networks continue to be a very serious problem.

In 2014, the government of Georgia set up the State Agency for Religious Issues. The role of this Agency was treated with skepticism from the very beginning by the majority of members of the Council of Religions at the Public Defender's Office and nongovernmental organizations working on religious issues. During the reporting period one could also hear scathing criticism - and for good reason – about the content and methods of the Agency's activity as well as functional and legal aspects thereof.

It should also be noted that the reporting period did not see any improvement in the area of freedom of religion and tolerance, the fulfillment of any of the recommendations of the Public Defender included in his 2014 report to Parliament, which would, at least, prepare a solid ground for tackling the above mentioned systemic or concrete problems.

For the time being, the state largely fails to ensure the full exercise by religious minorities of freedom of religion and the creation of really tolerant social environment for them as the state fails to develop a result-oriented strategy against hate crime and systemic discrimination, to fulfill a positive obligation of ensuring freedom of religion, to adhere to principles of religious neutrality and secularism.

PROBLEMS CONCERNING THE EXERCISE OF RELIGIOUS FREEDOM

In 2015, the Christian Organization of Jehovah's Witnesses notified the Public Defender about 37 acts of verbal and physical abuse and violence motivated by religious hate and intolerance.

Among the total 37 incidents, which Jehovah's Witnesses complained about to the Public Defender, there were 28 cases of verbal abuse, 11 cases of physical offence, four cases of damage of literature and a stall, robbery of the kingdom hall four times and damage to the kingdom hall five times.

The complaints submitted to the Public Defender show that manifestations of violence, verbal and psychological abuse against Jehovah's Witnesses involve private, religious and public persons. Jehovah's Witnesses often become victims of physical and verbal aggression, intimidation, discriminatory treatment. Their property is also assaulted: cult buildings, published literature, cars, stalls.

Ineffective and inadequate response of law enforcement authorities to hate crimes committed on religious grounds has long become an unresolved systemic problem, encouraging the increase in the number and scale of similar facts and in some cases, repeat of crimes by the same persons. According to Jehovah's Witnesses, law enforcement officers often show indifference or bias toward such facts or often apply discriminatory treatment and hate speech themselves. The problem is also further aggravated by the fact that the General Inspection of

949 See Annual Report of the Public Defender of Georgia, 2014.
950 See Annual Reports of the Public Defender of Georgia of previous years.
951 See Annual Report of the Public Defender of Georgia, 2010.

the Interior Ministry virtually fails to react adequately, citing the absence of evidence as the ground.

Even towards persons charged with criminal offence, the prosecution largely displays a loyal attitude although the national and international experience in preventing and eliminating intolerance shows that the use of punishment envisaged in the law is the most effective way to minimize and prevent such type of crimes.

Appropriate qualification of crimes by law enforcement authorities remains a problem.

One should also mention a problem related to the application of Article 187 of the Criminal Code (damage or destruction of property) by law enforcement bodies in cases of hate crime committed on the ground of religion. This concerns the facts involving, for example, damage of literature and stalls of Jehovah's Witnesses when they are conducting a religious service at the kingdom hall. Article 187 is under that chapter of that Criminal Code which deals with crimes against property. According to this chapter, a considerable damage is the value of a property worth more than GEL 150.[952] It is precisely such a damage or destruction of property that is deemed punishable under Article 187 of the Criminal Code. Consequently, it is the value of property that is primarily important for a crime to be qualified as such and where the value does not exceed GEL 150 the investigation is stopped despite an existing motive of hate and the unlawful act goes unreacted from the state. Should other articles[953] of the Criminal Code be applied to same actions, no possibility for investigations to be stopped would virtually remain and culprits would face legal consequences for their wrongdoings. This shows that there is a need for relevant changes to the practice of law enforcement authorities or the Criminal Code of Georgia. Namely, in case of hate crimes the value of damage should not be a determining factor for an action to be qualified as a crime.

However, 2015 saw some progress in the application of Article 156 of the Criminal Code (Persecution of persons because of their speech, opinion, conscience, religion, faith or creed). Among complaints examined by the Public Defender in the reporting period, the criminal prosecution was carried out under Article 156 of the Criminal Code in four cases.

Several facts of intolerance against Jehovah's Witnesses, which the Public Defender's Office examined in the reporting period, are described below.

DAMAGE OF KINGDOM HALL WITH FIREARMS

The Public Defender of Georgia, at his own initiative, started to investigate incidents in which the Kingdom Hall of Jehovah's Witnesses, located in the Vazisubani settlement, Tbilisi, was damaged by firearms on 23 and 30 November 2015. According to media reports, at about 23:00 on 23 November 2015, unknown persons fired 15 bullets at the building. No one was harmed but the walls of the building were damaged and window glasses smashed. In another incident, at about 05:00 on 30 November 2015, the same building came under fire again, damaging the façade of the building and smashing window glasses.

To study the incidents and react to them accordingly, a representative of the Public Defender visited the Kingdom Hall of Jehovah's Witnesses on 1 December 2015 to meet and talk with representatives of the local council. On the same day, the representative of Public Defender talked with the investigator of the given criminal case[954] to obtain explanations about the investigation. On 29 December 2015, the Public Defender's Office sent a letter to the Ministry of Internal Affairs and requested the information about the progress of investigation. With the response dated 20 January 2016, the Public Defender was informed that on 24

952 Paragraph 3 of the Note to Article 177 of the Criminal Code.
953 For example, Article 156 of the Criminal Code (Persecution).
954 Protocol of interview with the investigator VG of the Second Unit of Isani-Samgori Division of Tbilisi Police Department of Interior Ministry of Georgia.

and 30 November, the Second Unit of Isani-Samgori Division of Tbilisi Police Department launched the investigations, under Paragraph 1 of Article 187 of the Criminal Code, into the damage of windows and façade of the Kingdom Hall of Jehovah's Witnesses with firearms. Witnesses have been questioned, ballistic and genetic expertise arranged, and surveillance camera records impounded. The investigation was not completed in the reporting period.

DAMAGE TO PROPERTY AND PHYSICAL ABUSE

Manuchar Tsementia, a defense lawyer of the association Law and Justice in Caucasus, applied in writing to the Public Defender of Georgia. According to the application, KH.CH., J.CH. and AM, who are members of Jehovah's Witnesses, were conducting a religious service with portable stall in the square in Sukhishvili Street, Tbilisi, on 4 August 2015, when two strangers offended them verbally, damaged the stall and physically abused A.M. The patrol police was called in. The Jehovah's Witnesses were taken to the building of VIII Unit of Isani-Samgori Division of Tbilisi Police Department for interrogation. The witnesses were interrogated by Durmishkhan Kuparadze, a detective-investigator of the same unit. According to the applicant, the investigator was biased in his interrogation of witnesses. Identifying himself as a member of Christian Orthodox congregation, he openly expressed his negative attitude towards the Jehovah's Witnesses. According to the applicant, the investigation into the case was terminated.

To study the issue, on 29 October 2015, the Public Defender's Office sent a letter to the Ministry of Internal Affairs, requesting the information about the investigation, namely, about the articles applied to start investigation and the factual and legal circumstances to terminate it. With the letter of 10 November 2015 from the Interior Ministry, the Public Defender's Office was informed that the investigation was launched under Article 187 of the Criminal Code (damage or destruction of property, which caused a considerable damage) but on the case of 16 August 2015, the investigation was stopped because of absence of an action envisaged under the Criminal Code. If the case was properly qualified,[955] the investigation would not been stopped.

DAMAGE TO PROPERTY AND VERBAL ABUSE

Manuchar Tsementia, a defense lawyer of the association "Law and Justice in the Caucasus", applied to the Public Defender of Georgia. According to the application, members of Jehovah's Witnesses M.B. and R.J., were conducting religious service with portable stall at 57 Gorgasali Street, Tbilisi, when strangers damaged the stall and verbally offended them. The application also noted that the rights of Jehovah's Witnesses had been repeatedly violated at that location. According to the applicant, Jehovah's Witnesses reported the incident to the law enforcement bodies. The response from the Chief Prosecutor's Office of Georgia on 10 August 2015, informed that an investigation on this incident was not launched as no signs of crime were revealed. According to the same letter, an administrative proceeding into alleged administrative offence was underway in the third unit of Isani-Samgori Division. According to the Interior Ministry, the identity of the person who allegedly offended R.J., was not established. Therefore, no administrative sanction was imposed on the offender.

955 For example, Article 156 of the Criminal Code (Persecution).

MOSQUE IN MOKHE AND COMMISSION

Since 2014, the Public Defender of Georgia has been studying the issue of so-called disputed buildings in the village of Mokhe in Adigeni municipality and the facts of intolerance.[956]

It has been years since the Muslim community of Mokhe village has been asking the handover of a building (a historic mosque, as the community claims) in the village. At present, the building belongs to the Adigeni municipality and is registered on its balance sheet as a club. In September 2014, a tender was announced on the rehabilitation-reconstruction works to the building to transform it into a library. The launch of works was followed by a peaceful protest from the local Muslim community. At the same time, the Orthodox Church put forward its claim for the building, founding the claim on the fact that stones of an Orthodox church which existed there earlier were used in the construction of the mosque. The process of construction was temporarily terminated, but on 22 October 2015, the decision was enforced with the involvement of the police. The police detained 14 participants in the protest rally. The detainees claimed that law enforcement officers verbally and physically abused them, calling them Tatars. On the same day, i.e. 22 October, representatives of the Public Defender studied the protocols on a visual inspection of detainees, which evidenced that they sustained physical injuries.

In December 2014, the Agency for Religious Issues, led by its chairman, set up a "commission to study circumstances existing in relation to the building located in the village of Mokhe in Adigeni Municipality, which is registered as a club" to establish historic and confessional origins of the disputed building. In the reporting period, the local Muslim community complained about the composition and activity of the commission. It should also be noted that the commission appeared closed not only for experts, nongovernmental and religious organizations interested in the issue but also for the Public Defender and his representatives.

Given his mandate, the Public Defender of Georgia applied to the State Agency for Religious Issues for becoming involved as an observer in the activity of the "commission to study circumstances existing in relation to the building located in the village of Mokhe in Adigeni Municipality, which is registered as a club." However, the commission failed to either take a decision or to ensure the involvement of the Public Defender in the sittings of the commission. Even more, in its letter sent to the Public Defender on 6 February 2015, the State Agency says: "the subject of discussion of the "commission to study circumstances existing in relation to the building located in the village of Mokhe in Adigeni Municipality, which is registered as a club' is to study the circumstances related to the building located in the village of Mokhe in Adigeni Municipality, which is on the balance sheet of the municipality as a non-privatized fixed asset and has the status of a club, in terms of its historic and confessional origin and not in terms of the right to private property or/and freedom of faith or any other universally recognized human rights and freedoms. Thus, the activity of the commission does not fall within the scope of regulation in Article 2 of the Organic Law of Georgia on Public Defender of Georgia." According to the same letter, the commission is a consultative body set up on the basis of mutual agreement of the parties, which does not have power to adopt administrative legal acts. Moreover, the majority of commission members are not civil servants and given its format, it does not represent a public organization. Therefore, Paragraph 1 of Article 3 of the Organic Law of Georgia on Public Defender of Georgia does not apply to it. Nevertheless, LEPL State Agency for Religious Issues, as a party to the commission, is not against the involvement of the Public Defender in the activity of the commission as an observer.

According to Article 2 of the Organic Law of Georgia on Public Defender of Georgia, "The Public Defender of Georgia shall monitor the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction." This provision grants the Public Defender the power to monitor the situation of human rights in the country. Given that the purpose and ownership of disputed building in the village of Mokhe in Adigeni Municipality has caused dissatisfaction among population and that such a fundamental human right as the freedom of religion may be infringed and a peaceful coexistence of Orthodox Christian and Muslim

956 See Annual Report of the Public Defender of Georgia, 2014. http://www.ombudsman.ge/uploads/other/2/2439.pdf

communities jeopardized, the Public Defender deems it necessary to participate in the activity of commission as an observer and to monitor this process. The subject of discussion of the commission might be the study of circumstances related to the building in the village of Mokhe in Adigeni Municipality, which is on the balance sheet of the municipality as a non-privatized fixed asset and has the status of a club, in terms of its historic and confessional origin, but taking into account that local Muslim and Orthodox communities speak about religious purpose of the building in the past, it is unjustified and inexpedient on the part of the commission to exclude the issue of the rights of local community or interested persons from the scope of its activity and to discuss this topic outside the realm of freedom of religion, thereby eprforming its activity in a negative context.

It should also be noted that the monitoring of the Office of Public Defender is not limited only to supervising the activity of state and local governments in the area of protection of human rights and freedoms. In accordance with the Organic Law of Georgia on Public Defender of Georgia and the rule provided in the Law of Georgia on Elimination of All Forms of Discrimination, in order to eliminate all forms of discrimination and ensure equality, it monitors the activity of administrative, state and local government bodies, public entities and public officials as well as physical and legal persons; exposes facts of direct and indirect discrimination and undertakes measures to eliminate results of discrimination. Thus, the claims of the Agency for Religious Issues that the activity of the commission exceeds the mandate of the Public Defender of Georgia is unfounded.

On 19 November 2015, the Muslim community of Mokhe applied to the Public Defender (the application was signed by 92 persons) in which they say that they asked support in timely handover of the mosque in the village of Mokhe from the Prime Minister, President and Parliament Speaker of Georgia; moreover, the signatories express their non-confidence to the commission set up by the State Agency for Religious Issues. On 2 December 2015, the Office of the Public Defender applied in writing to the Agency, requesting the information about the activity and sittings of the commission. With the response on 22 December 2015, the Agency informed the Office of Public Defender that since its establishment, the commission conducted six sittings though the State Agency for Religious Issues "does not keep, process, draw up or send" the minutes of these sittings.

BATUMI MOSQUE

The Muslim community of Batumi has been talking about the need of the construction of a new mosque for many years now. The city has only one operational mosque "Orta Jame" (Jamia in the middle) which is already too small to accommodate believers. During a weekly Friday Prayer thousands of believers have to pray outdoors and therefore, Muslim women are actually deprived of a possibility to attend Friday Prayer.

In January 2015, the State Agency for Religious Issues and the Muslim Administration took a decision on the extension of the mosque and the construction of religious educational institution and Mufti residence whilst on 5 October 2015, the Agency and the Muslim Administration inaugurated the Mufti residence.

It is important that the state, taking into account interests of the Muslim community, make effective and timely steps to take the decisions in the shortest possible time, which will enable Muslims living in Batumi to enjoy the principle of religious freedom, that is recognized and guaranteed by the Constitution, without impediment.

BREACH OF RELIGIOUS NEUTRALITY AT PUBLIC SCHOOLS

Issues related to observing requirements of the law on general education, religious neutrality and discriminative and intolerant environment remained a grave and systemic problem in the reporting period.

The Convention on the Rights of the Child protects the freedom of thought, conscience and religion of children. Freedom of thought, conscience and religion is protected under the Constitution of Georgia and the European Convention on Human Rights and Fundamental Freedoms. According to the Law of Georgia on General Education, the independence of public schools from religious associations is one of the main aims of the state in the field of general education. The law prohibits the use of educational process for religious indoctrination, proselytism or forced assimilation and specifies the obligation of schools to observe and encourage tolerance and mutual respect among pupils, parents and teachers irrespective of their social, ethnic, religious, linguistic and world-view affiliations. The Law on General Education prohibits the imposition of such obligations on pupils, parents or teachers, which conflict with their faith, religion or conscience.

In their meetings with representative of the Public Defender, religious minorities declare that despite explicit requirements of the law, pupils systematically become victims of intolerance and discrimination at public schools and their freedom of religion is infringed: pupils are taken to Orthodox Christian churches in an organized manner; religious servants are often invited to schools; pupils get blessings; candles are lit; lessons start with prayers; teachers emphasize the advantage of the dominant religion, belittling minority denominations and are engaged in proselytism; there are instances of indoctrination, et cetera. Pupils representing religious minorities, whose faith prohibits them to participate in rituals of another religion, are often left with no other choice but to conceal their religious faith and, against their will, engage in such events in order to avoid further marginalization and discrimination from the majority. Although the law also prohibits the placement of religious symbols for non-academic purposes on the territory of public schools, this legal requirement is not always observed in classrooms and in general, in schools.

The problem is further aggravated by reality that religious minorities largely avoid to speak openly and specifically about discriminatory treatment of pupils representing religious minorities at schools and infringement on their right. Religious minorities, as a rule, refrain from taking any steps to protect their rights in this sphere. They believe that if they show activity in this area they will become victims of greater discrimination.

Nor is the state policy in this sphere consistent or strategically and tactically well-thought-through. Except for separate cases, one cannot see the political will to take concrete steps and to respond to violations.

In the reporting period, the Human Rights Education and Monitoring Center (EMC) submitted a complaint to the Public Defender about the breach of religious neutrality and alleged discriminatory treatment of Muslim pupils at the Tbilisi public school #158. Children of various ethnic and religious backgrounds, including a large number of Muslim pupils, study at this school. According to EMC, the school violates requirements of the Law on General Education; in particular, it lacks a tolerant environment, often uses religious paraphernalia for non-academic purposes, pupils, including Muslim pupils, are engaged in religious rituals, teachers treat Muslim pupils differently.

The Public Defender requested the full list of pupils from the public school #158, as well as information about the events carried out at the school in 2014-2015. According to the information provided by the school, first-grade students received blessing twice in the Church of Dormition of the Virgin Mary in Vashlijvari in 2014.

Based on the application of the EMC, the internal audit department of the Ministry of Education and Science of Georgia requested information and explanation from the public school #158. According of the report prepared by the department, a religious corner is arranged in the teachers' office and religious symbols are placed in 13 classrooms. Consequently, Paragraph 3 of Article 18 of the Law on General Education is breached, which prohibits the placement of religious symbols on school grounds for non-academic purposes.

In its application, EMC says that teachers begin lessons with burning incense while at music lessons all pupils are taught Orthodox Christian chants. The report of the internal audit department cites the acting director of the school as saying that there was an instance observed once or twice a year, when before starting lessons, upon the desire and consent of teachers, the teacher of music burned incense before icons in the teachers'

office, but neither pupils nor parents attended it. According to the acting director, teacher of music teach those religious hymns which are envisaged by approved textbooks alone. With regard to taking first-grade pupils for giving them general blessing, the report of audit department provides the explanation of the director that children were taken to the church for receiving blessing upon the request of parents, that Muslim pupils did not stay outside the church but entered it, lit candles and received sacramental bread but refrained from kissing the cross. According to the acting director, Muslim pupils did it upon their free will. Moreover, according to the explanation of the acting director, on 17 December 2015, on Saint Barbara's Day, at the desire of all employees of the school, after the end of classes, an Orthodox priest arrived at school to give blessings to the school and teachers and all employees took part in this ritual.

The report of the internal audit department of the Ministry of Education on the audit of the public school #158 says that the school was given an instruction to react to all violations provided in the report and within one month, submit an account of measures undertaken to rectify them. Moreover, the audit report says that the report and materials of the case should be sent to a law enforcement institution.

The Office of the Public Defender sent an official letter to the Ministry of Education and Science, requesting the information about the response to the instruction of the internal audit department. With the letter of 25 January 2016, we were informed that according to the report sent by the public school #158 to the internal audit department, the school will take into account and ensure the fulfillment of all requirements of the law. The school report also says that to avoid such facts in future, school employees were instructed and explained that the school must be free from religious influence.

In May 2015, the EMC applied to the Ministry of Education and Science again and demanded that it react to violations revealed through a survey conducted by the EMC at public schools. In particular, using a targeted questionnaire, the EMC tried to reveal the facts of discrimination on religious ground, proselytism, indoctrination and the breach of religious neutrality in several public schools of Tbilisi, Gori and Batumi.

Based on the information received from respondents (persons with direct kinship or otherwise related to pupils), the EMC, in the results of the survey, speaks about proselytism, intolerant attitude of teachers towards pupils belonging to non-dominant religious groups, the use of religious paraphernalia for non-academic purposes and other problems in concrete schools.

The Office of the Public Defender of Georgia requested from the Ministry of Education and Science the information about the reaction to the data provided by the EMC. With the letter of 13 October 2015 from the Education Ministry, the Public Defender was informed that employees of Monitoring and Coordination Division of the General Education Management and Development Department conducted the monitoring in five public schools of Tbilisi and two public schools of Gori on 3 and 5 June 2015, but did not observe facts of breach of the law on education.

OBSTACLES TO THE CONSTRUCTION AND OPERATION OF CULT BUILDINGS

Obstacles to the construction and operation of cult or other type of buildings of religious minorities, which they encounter from local self-government bodies responsible for the issuance of construction permits, remain to be a problem. In certain cases, municipalities refuse to issue construction permits without any reasoning or procrastinate the process of issuance in various forms and pose obstacles. Such practice, assumedly, has a religious motive as it is often preceded by protests from Orthodox clergy and congregation who actively oppose the construction of a cult building of this or that religious association. Also, it has become an established practice of self-government bodies offering alternative locations to religious minorities for the construction or continuation of construction of such buildings.

In the reporting period, the Public Defender studied three cases of obstruction of construction of cult/religious buildings of religious associations.

Terjola – Christian Organization of Jehovah's Witnesses

Since 2014 the Christian Organization of Jehovah's Witnesses has not been able to begin the construction works in the Terjola Municipality. On 3 June 2014, the city council of Terjola municipality suspended, by violating requirements of law, the construction permit issued under the ordinance of 19 February of the same year to the unregistered union "Terjola" which comprises representatives of religious association Jehovah's Witnesses. The ordinance on the suspension of the construction cited the application of the neighbor as a ground of the suspension; the neighbor claimed that the construction endangered the land plot owned by him. Despite presented two engineering-geological conclusions, according to which the construction did not affect and endanger the sustainability of the house of the neighbor, the municipality violated the administrative legislation and did not issue the construction permit.[957]

It is worth noting that the ordinance of the city council of Terjola municipality on the suspension of the construction permit, dated 3 June 2014, was preceded by protests from local Othodox clergy and congregation which, assumedly, affected the decision of the City Council.

The decision of the Zestaponi district court on 19 March 2015, partially satisfied the complaint of the unregistered union "Terjola" and the city council of Terjola municipality was instructed to issue an administrative legal act on the extension of the term of construction permit issued on 19 February 2014; however, the court did not satisfy the claim for the compensation of material and moral damages. The decision of the District Court was appealed to the Court of Appeals. The Kutaisi Court of Appeals, with its decision of 16 July 2015, imposed on the executive body of Terjola municipality the compensation of material damage in the amount of GEL 1420 in favor of the unregistered union "Terjola." In the reporting period, the case continued to be disputed at the Supreme Court of Georgia. In particular, the above mentioned decision was appealed by both parties under the cassation rule. The Religious Union of Jehovah's Witnesses demand the establishment of the fact of discrimination in relation with the events in Terjola and the compensation of moral damage from the Terjola municipality.

According to the documents presented in the case, the Supreme Court of Georgia[958] deemed the cassation complaint of the executive body of Terjola municipality inadmissible. Consequently, the decision of Zestaponi district court[959] on the extension of the term of construction permit as well as the decision of the Kutaisi court of appeals[960] on the compensation of material damage entered into force. As regards the establishment of the fact of discrimination, the court has not delivered a judgment on this issue in the reporting period.

Rustavi – Catholic Church

On 16 April 2013, the Apostolic Administration of the Caucasus of Catholics of the Latin Rite applied to the Mayor's Office of Rustavi municipality for the construction permit for a cult building on the plot of land[961] registered as its property. Based on the application, under the ordinance #4992 of the chairman of Rustavi municipality's city council, dated 21 May 2013, the terms of using the land for construction purposes was defined for the construction of cult building on the specified land plot. After the issuance of the act,

957 See Annual Report of the Public Defender of Georgia, 2014. http://www.ombudsman.ge/uploads/other/2/2439.pdf.
958 The judgment of Supreme Court of Georgia, 10 February 2016.
959 Decision of Zestaponi district court, 19 March 2015.
960 Decision of Kutaisi court of appeals, 16 July 2015.
961 Located in the territory adjacent to Alley 2 Todria Street, 9th micro settlement, Rustavi: i/c 02.04.02.179.

envisaged under the first stage of construction permit as prescribed by law, the Apostolic Administration of the Caucasus of Catholics of the Latin Rite applied to the Mayor's Office of Rustavi municipality for the issuance of construction permit under a simplified procedure on 26 July 2013. The administrative body did not issue an individual administrative legal act on the approval or refusal to issue a construction act within the timeframe specified by the law. Therefore, the LEPL Apostolic Administration of the Caucasus of Catholics of the Latin Rite applied to the Rustavi city court with the request to instruct the administrative body to issue an individual administrative legal act. With its decision of 7 July 2014, the Rustavi city court refused to rule in favor of the claimant on the only ground that the construction permit seeker, after the expiry of the term pf issuance, did not demand the issuance of a certificate of construction permit. However, according to the same court ruling, the construction permit was deemed issued pursuant to Paragraph 7 of Article 54 of the Ordinance #57 of the government of Georgia on the Rule of Issuance and Terms of Construction Permit, dated 24 March 2009. Taking into account the above said, the LEPL Apostolic Administration of the Caucasus of Catholics of the Latin Rite applied to the Mayor's Office of Rustavi municipality for the issuance of a certificate of construction permit. However, the Rustavi Mayor's Office did not issue the certificate.

To study the issue, on 29 December 2015, the Office of Public Defender sent a letter to the Mayor's Office of Rustavi municipality and requested the information about the factual and legal circumstances based on which the permit certificate was not issued. With the response of Rustavi Mayor, dated 11 January 2016, we were informed that according to the resolution #70 on the Approval of Rules of Use and Development of Territory of Self-Governing City of Rustavi, adopted by the city council of Rustavi on 11 March 2011, the land plot of Apostolic Administration of the Caucasus of Catholics of the Latin Rite is located within the residential zone #5. According to the same resolution, residential houses represent the dominant type of development in the residential zone #5, though under a special zonal agreement it was possible to build other facilities too, including a cult building. Nevertheless, the ordinance #4992 of Rustavi municipality's city council, dated 21 May 2013, defined the conditions for the use of the land as a construction ground by the Apostolic Administration of the Caucasus of Catholics of the Latin Rite, which is the first stage of the construction permits issuance procedure. In this regard, the Rustavi Mayor's letter says that since no special zonal agreement was entered into with the Catholic Church on the issuance of permit for the construction of a cult building within the residential zone #5, they violated the rule of issuance and there was no ground for issuing an ordinance on the first phase construction permit. It should be additionally said that Article 20 of the resolution #226 adopted by the city council of Rustavi on 25 June 2014, deems impermissible, for the time being, the construction of religious building in the residential zone #5.

According to the documentation in the case, the construction of a Catholic church in Rustavi was opposed by local Orthodox clergy and congregation.

On 12 December 2014, a written application from the population[962] was discussed at the Rustavi Mayor's office; the discussion was attended by dozens of representatives of the Orthodox Church. According to the information of representatives of the Catholic Church, who also attended the meeting, representatives of the Orthodox Church and several members of city council displayed intolerance towards them. It is also worth mentioning that in July 2015, the Kvemo Kartli governor met with representatives of the Catholic Church. The meeting was LAO attended by the Mayor of Rustavi who offered an alternative plot of land, owned by the municipality, for the construction of a Catholic church. According to representatives of the Catholic Church, the offered territory was in a remote area and they rejected the offer.

On 13 November 2015, to defend the interests of the Apostolic Administration of the Caucasus of Catholics of the Latin Rite, the EMC filed a complaint against the Rustavi municipality with the Rustavi city court. The complainant challenges an unjustified refusal of the Mayor's Office to issue a construction permit certificate on

962 With the demand the construction of Catholic Church be prevented, the local population addressed Rustavi Mayor's Office on 26 November 2014.

the construction of a Catholic church in Rustavi and indicates that this refusal is based on the discrimination on a religious ground.

In February 2016, in relation to this case, the Public Defender presented the Friend of the Court proposal to the Rustavi city court.

Tbilisi – the Branch of the Watch Tower Bible and Tract Society of Pennsylvania in Georgia

JSH, a representative of the Branch of the Watch Tower Bible and Tract Society of Pennsylvania in Georgia, submitted an application to the Public Defender of Georgia. According to the application, the Branch of the Watch Tower Bible and Tract Society of Pennsylvania in Georgia owns a plot of land on which a building and fence were built and commissioned in accordance with the engineering drawing agreed under the ordinance of 22 March 2011.

According to the application, a section of fence did not meet the requirements of the drawing. Therefore, the representatives of the Branch of the Watch Tower Bible and Tract Society of Pennsylvania in Georgia decided to bring the fence in line with the drawing; they notified the Tbilisi Mayor's Office about it in writing on 9 September 2015 and started construction works on 11 September of the same year. The documentation of the case reveals that on 15 September 2015, the Tbilisi City Supervision Service issued a reproval to the organization about the implementation of illegal construction.

The Mayor's Office of Tbilisi municipality issued another reproval to the Branch of the Watch Tower Bible and Tract Society of Pennsylvania in Georgia on the same ground on 22 September 2015. The proceeding on the reproval of the Tbilisi City Supervision Service was stopped on the basis of eradication of the violation whilst that on the case #000497, the Tbilisi City Supervision Service took a decision on recognizing the Branch of the Watch Tower Bible and Tract Society of Pennsylvania (USA) in Georgia an administrative offender and imposing a penalty in the amount of GEL 8000 (eight thousand). The interested party appealed this decision in accordance with the administrative rule.

RECOMMENDATIONS

To the Chief Prosecutor's Office of Georgia:

- To investigate violations of the rights of Muslims in villages of Chela and Mokhe in Adigeni municipality and in Kobuleti municipality, which, in separate cases, manifested in the use of force, and/or the failure to properly perform duties by representatives of law enforcement bodies.

To the Ministry of Internal Affairs and the Chief Prosecutor's Office of Georgia

- To conduct effective investigation into actions committed in 2012-2014 against the Muslim population in the villages of Nigvziani, Samtatskaro and Kobuleti, which bear signs of crime envisaged in the Criminal Code and to timely take a summarizing decision;
- To conduct, with the involvement of international organizations and the Public Defender's Office, trainings for employees of the Interior Ministry and the Chief Prosecutor's Office on issues of the protection of religious freedom, secularism and equality.

To the government of Georgia:

- To undertake effective measures to raise the level of religious tolerance in the country, especially to raise awareness of civil servants and decision makers;

- To set up the so-called commission for restitution which would involve the Public Defender, religious and nongovernmental organizations.

To the parliament and government of Georgia:

- To solve the problem of compensation of damages, incurred by religious organizations during the Soviet period, to other religious associations too in a fair and non-discriminatory way;
- To eliminate unequal tax regime levying other religious organizations in a discriminatory way as compared to Christian Orthodox Church.

To the parliament and the Chief Prosecutor's Office of Georgia:

- The application of Article 187 of the Criminal Code of Georgia (Damage or destruction of property) to hate crimes committed on the ground of religion reveals the need for changing the practice of investigative bodies or amending the Criminal Code. In particular, where hate motive exists, the value of damage shall not be a factor for qualifying an action as a crime.

To the Ministry of Education and Science:

- To set up a special monitoring and response group which will monitor the fulfillment of requirements of the Law on General Education at schools and will react to detected violations accordingly;
- To develop a special action plan, with the involvement of the Public Defender, the council of religions at the Public Defender's Office and nongovernmental organizations, for the protection of religious neutrality and establishment of culture of tolerance in schools.

PROTECTION OF RIGHTS OF ETHNIC MINORITIES AND CIVIC INTEGRATION

The efficiency of programs implemented in the area of civil integration and the protection of rights of ethnic minorities remains a significant challenge. Problems in this area are deep and diverse and have accumulated throughout decades. To help solve these problems, the state has implemented various programs: throughout the period of 2009 to 2014, the activities envisaged in the national concept and action plan on tolerance and civic integration were carried out. After the expiry of the term of this concept, the government of Georgia, on 17 August 2015, adopted a new document – the State Strategy for Civic Equality and Integration and its Action plan for 2015-2020.

In 2015, to facilitate civic integration, various programs were implemented in the areas of education, culture and media, for informing population, supporting the teaching of the state language, protecting identities of small national minorities, et cetera. Nevertheless, challenges remain in terms of civic integration, involvement of minorities in decision making process as well as other areas; to tackle these challenges a higher degree of attention and thorough approach are required. These challenges were repeatedly highlighted in the Public Defender's parliamentary reports for 2012-2015 and earlier ones as well as in the results of monitoring of the action plan of the national concept on tolerance and civic integration.

In 2015, the European Commission against Racism and Intolerance (ECRI) published a country report concerning the situation with ethnic minorities in Georgia.[963]

It is important that the recommendation part of the 2015 report on Georgia by ECRI contains those issues which have been repeatedly underlined by the Public Defender in his annual reports to the parliament since 2012.

The ECRI 2015 report on Georgia highlights the following issues: the 2009-2014 National Concept for Tolerance and Civic Integration and its associated Action Plan; the need to improve the knowledge of Georgian language among ethnic minorities; inadequate scale of state language education programs and a low level of teaching; translation of textbooks for schools of ethnic minorities and the efficiency of bilingual textbooks. ECRI singles out media as a problematic area, namely, lack of information about developments in the country among residents of the regions densely populated by ethnic minorities, and views the fact that the population of these regions mainly receive information from neighboring countries as a problem.

In the recommendations part of the report, ECRI recommends the government of Georgia to strengthen integration process by: 1. raising the levels of minority education, particularly through improving textbooks; scaling up the teaching of Georgian as a second language; and expanding vocational training programs; scaling

963 The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, which monitors manifestations of racism and intolerance in each of the Council of Europe member states, examines the situation and issues recommendations to overcome difficulties. ECRI conducts periodic monitoring in Georgia too.

up outreach activities to convey information about social services to minorities; increasing the quantity and improving the quality of Public Broadcaster's minority language programs.

The issues reflected in the ECRI report were regularly discussed in the reports of the Public Defender and the Council of Religious Minorities at the Public Defender's Office, though adequate attention has not been paid to them so far. Especially problematic in this regard is the system of communicating information about the developments in the country to ethnic minorities, which did not show any improvements in the past few years.

It is important that in its report, ECRI reflected issues of such significance for our country. To support civil integration and increase efficiency, relevant state authorities should pay a greater deal of attention to recommendations and opinions of international and local nongovernmental organizations concerning ethnic minorities.

PRESERVATION AND DEVELOPMENT OF CULTURAL HERITAGE OF ETHNIC MINORITIES

The protection and full realization of cultural rights is important to protect the rights of ethnic minorities and facilitate their civic integration. The Constitution of Georgia and international legal acts recognized by Georgia grant significant rights to ethnic minorities (as well as to any citizen of Georgia) in terms of preservation of their culture, freedom of expression, development, participation in cultural life and popularization of culture (Articles 35 and 38 of the Constitution of Georgia; Article 5 and 15 of the European Convention on Human Rights; Article 27 of the International Covenant on Civil and Political Rights), et cetera.

Numerous activities are implemented by the Ministry of Culture and Monument Protection as well as by local self-governments of the regions densely populated by ethnic minorities to preserve cultural heritage of ethnic minorities and support their civil integration. A number of dance and song ensembles and groups of ethnic minorities have been established and operating in the country with the support of relevant state entities.

Despite numerous programs implemented in this sphere, however, a number of challenges remain. Among them one should mention the problems related to the rehabilitation and full operation of Armenian and Azerbaijani theatres; operation and development of houses of culture in villages and municipalities; protection of tangible and intangible cultural heritage of national minorities. Overall, an effective use of the field of culture, which is a crucial direction in civic integration, continues to be a challenge.

The issue of rehabilitation of Armenian and Azerbaijani theatres and support to their personnel is discussed in the Public Defender's parliamentary report for 2014. Regarding this issue, the Ministry of Culture and Monument Protection informed the Public Defender that the works for developing an engineering project for the rehabilitation of Petros Adamian Tbilisi State Armenian Drama Theatre will be completed by April 2016 and the rehabilitation works will start during 2016. The issue of rehabilitation of Heydar Aliev State Azerbaijani Drama Theatre has not been resolved yet and it is impeded, according to the Ministry of Culture and Monument Protection, the poor state of the building makes it impossible to conduct reinforcement works as well as other reasons.

It must be noted that the sphere of culture has an important role in promoting civic integration, interethnic relations and protecting rights of ethnic minorities. Unfortunately, despite this huge opportunity, the sphere of culture is not involved adequately and its resources are not exploited properly. The sphere of culture, including the creative resources of Armenian and Azerbaijani theatres, must be intensively used for the promotion of civic integration and interethnic relations.

Monuments of cultural heritage in Shaumiani village of Marneuli municipality

Georgia is rich with monuments of cultural heritage, including the monuments in the regions populated by ethnic minorities and the monuments connected with our citizens of different ethnic origins. In previous years, the Public Defender and the Council of Religionsat the Public Defender's Office submitted a number of recommendations about the inclusion of mosques and other monuments of cultural heritage into the list of cultural heritage of Georgia, their protection and rehabilitation; part of these recommendations were taken into account by the Ministry, but numerous issues still remain to await proper attention.

The village of Shaumiani in Marneuli municipality was a significant administrative and cultural center of Kvemo Kartli in the 19th and 20th centuries. This village has many buildings (including a section of Armenian school, the former house of culture, library and the museum of famous artist Alexander Melik-Pashayev, a centuries old wine cellar, et cetera) which attract attention for their antiquity and architecture and should be assumedly included in the list of cultural heritage of Georgia.

EDUCATION AND STATE LANGUAGE

The education sphere is of great significance for the protection of minority rights and civic integration.

The right of ethnic minorities to education is regulated by the Georgian legislation and international legal acts, namely, the Framework Convention for the Protection of National Minorities (Article 12 and 14), the International Covenant on Economic, Social and Cultural Rights (Article 13), the Convention on the Rights of the Child (Articles 2 and 30); the laws of Georgia on General Education, Higher Education (Paragraphs H and J of Article 3 and Paragraph D of Article 16) and Vocational Education. In addition, relevant documents adopted by the Ministry of Education of Georgia determine the obligation of the state to take care of the education of ethnic minorities.

The rights prescribed by legislation are realized through the State Strategy for Civic Equality and Integration and its Action Plan, adopted by the government of Georgia on 17 August 2015. Many important programs have been implemented in recent years in terms of promotion of teaching of the state language to ethnic minorities and consequently, a significant progress has been observed in this direction; however, challenges remain and require timely and effective response.

Schools providing education in the languages of ethnic minorities

Georgia has many schools in the regions densely populated with ethnic minorities, in which education is conducted in the languages of ethnic minorities. Over the period from 2012 to 2016, there were 120 Azerbaijani, 130 Armenian and 57 Russian school and sectors. According to the information provided by the Education Ministry, several thousands of children are enrolled and teachers employed in these schools. As many as 631 635 translated and published textbooks were distributed in schools conducting education in minority languages. A large number of textbooks have already been translated with only several textbooks left to be translated.

Textbooks

Part of textbooks for schools conducting education in minority languages is bilingual – 30 percent in Georgian and 70 percent in ethnic minority languages. One of the aims of introducing bilingual textbooks was the improvement of the level of teaching of the state language both among pupils, as well as with teachers. The

monitoring group of the Office of Public Defender had numerous meetings with teachers and parents of pupils from schools providing education in minority languages. These meetings revealed that in those schools where teachers are bilingual (know Georgian and a relevant minority language), bilingual textbooks receive positive assessment since bilingual teachers do not find it difficult to understand and explain the content of subjects to pupils; but in schools where teachers are not bilingual, 30 percent of the textbook, i.e. the Georgian text, is mainly incomprehensible both for teachers and pupils.

This, in most cases, results in the failure to achieve the aim of intensive teaching of Georgian language as well as learning academic subjects, in general, because teachers and pupils merely do not understand 30 percent of textbooks and this lowers the level of education. It should also be mentioned here that teachers of Georgian language or teachers who speak Georgian, time and again, help teachers and pupils who teach and study with bilingual textbooks, but such assistance is not enough to overcome the problem in a systemic manner. Consequently, bilingual textbooks are effective only in rare cases – when schools have bilingual teachers; in other cases, they prove ineffective as pupils fail to study either Georgian or any other academic subject. It is therefore important to review the approach towards bilingual textbooks. One of the solutions during a transitional period could be the translation of Georgian texts in the textbook into relevant minority languages, which will make it easier for pupils and teachers to understand the text.

Teaching of corresponding native languages to small ethnic minorities

A segment of small minority groups living in Georgia face a problem of preserving their native languages. One of effective means to overcome the problem is to provide an opportunity of learning a native language to those who are willing to do so within the scope of school education. This issues has been repeatedly raised in the previous reports of the Public Defender and in 2015, the Ministry of Education took into account the recommendation of the Public Defender, established a working group and after conducting a certain amount of works, the Ministry of Education and Science approved the standard of teaching native languages for small ethnic minority groups. The issue passed relevant legal procedures in the Ministry and starting from 2015-2016 academic year, it has become possible to teach languages of small ethnic minority groups (Kurdish (Kurmanji), Assyrian, Udi, Avar (Khunz), Kist (Chechen) and Ossetian languages). With this decision, the Ministry of Education made a very important contribution to retaining native languages and identities of small ethnic minorities.

Zurab Zhvania School of Public Administration in Kutaisi

Apart from school education, the operation of regional centers of Zurab Zhvania School of Public Administration is important in terms of teaching the state language. These centers operate in Akhalkalaki, Ninotsminda, Bolnisi, Dmanisi, Marneuli, Tsalka, Gardabani and Lambalo. They facilitate the advancement of qualifications of civil servants, persons working in various institutions of local self-governments by enabling them to learn the state language. In 2015 and the beginning of 2016, more than 1400 persons obtained education, according to the data of the Education Ministry. Within the scope of this program, mobile groups operate at the regional centers, which periodically visit villages and deliver lessons there. By doing so they promote the state language education system not only in municipal centers but also villages, which is very important because in previous years, the education programs were mainly implemented in regional centers and villagers who were willing to learn the language lacked this opportunity.

In the previous years, the School was mainly focused on civil servants, depriving many of those interested, the opportunity to engage in the education program. The need to eliminate this obstacle and enable ethnic minorities living in villages to learn Georgian was repeatedly recommended by the Council of Ethnic Minorities at the Public Defender's Office.

By the end of 2015, the charter of Zurab Zhvania School of Public Administration was amended, enabling not only civil servants but any person, legally residing in the country, to learn the state language. Enabling broader population to study in this School is very important as it gives an opportunity to adults to learn the state language.

It is an important thing that infrastructure and material technical basis were developed for those willing to learn the state language and the personnel was selected, but this is not sufficient for a notable improvement of the situation in terms of the state language teaching, that established throughout the decades. Considering the gravity and depth of difficulties, large scale steps need to be taken. The programs of state language teaching must be continued and enhanced in the regions densely populated by ethnic minorities (both in municipal centers and villages).

Armenian-Azerbaijani school in the village of Tsopi, Marneuli municipality

A nine-grade school operates in in the village of Tsopi, Marneuli municipality, where education is conducted in Armenian and Azerbaijani languages. Against the backdrop of conflicts of recent years, the existence of Armenian-Azerbaijani school in one building might be considered a somewhat unique phenomenon. The school building requires repair and renewal of material-technical basis.

System of enrollment of Ossetian-speaking school graduates in higher educational institutions of Georgia

With the amendments to the Law of Georgia on General Education (17 November 2009) certain benefits were established for ethnic minorities. According to those amendments, minority school graduates are admitted to universities on the basis of passing only general ability tests in Azerbaijani, Armenian, Abkhazian and Ossetian languages. The above mentioned provision has proved successful for Azerbaijani and Armenian speaking students and partially, for Abkhaz speaking students, but not for Ossetian speaking students.

The Public Defender, representatives of the Council of Ethnic Minorities and the Ossetian Forum at the Public Defender's Office repeatedly raised the issue of extending the application of the so-called 4+1 system to Ossetian school graduates in accordance with the Law on Higher Education. To resolve the issue a number of meetings were held with the Education Ministry and the National Examination Center. Under the decision of the Education Ministry and the National Examination Center, the enrollment of Ossetian speaking students in universities under a preferential system will become possible from 2016; this is expected to serve as an additional stimulus and opportunity for Ossetian speaking school graduates to enter universities of Georgia.

However, after the adoption of this important and favorable change, a relevant information campaign was not conducted among the Ossetian speaking population and one may assume that very few school graduates will express their desire to enter Georgian universities. It is desirable to conduct, in the future, a more intensive campaign among Ossetian speaking population about the new program and opportunity to enter Georgian universities.

INVOLVEMENT OF ETHNIC MINORITIES IN DECISION MAKING PROCESS

Full involvement and participation of ethnic minorities in civil and political life remains a challenge. Despite oral statements of high level officials and political party leaders in favor of this issue, only a small segment of ethnic minorities are represented in the central government.

The situation is different in the regions densely populated with ethnic minorities, where ethnic minorities are represented at various positions in local legislative and executive bodies and participate in the decision making process in the regions.

To ensure the representation of ethnic minorities in the governance of the capital and facilitate their civic integration, the coordination council of ethnic minorities is set up at the Tbilisi city council, comprising representatives of various ethnic minorities. Owing to cooperation between the coordination council and the Mayor's office and city council, numerous interesting events were implemented. The mentioned working group facilitates the effective communication between ethnic minorities and the city government, the settlement of existing problems and the conduct of various concrete events in this sphere. An important development is a decision to establish the house of nationalities in Tbilisi (this had been advocated for many years by various ethnic minorities). The Tbilisi city council and mayor's office pay a certain amount of attention to the issues of ethnic minorities and civic integration, but this does not ensure the representation of ethnic minorities in the city governance.

Despite implemented activities, the issue of adequate involvement of ethnic minorities in Tbilisi governance remains a problem. The state entities, the Tbilisi city council and mayor's office and political parties should pay more attention to the issue of ensuring fully-fledged representation of ethnic minorities in the governance of the capital.

New boundaries of electoral districts were set for the 2016 parliamentary elections, uniting Akhalkalaki and Ninotsminda single seat districts and consequently, changing the number of single-seat MPs to be elected from the regions populated with ethnic minorities, in particular the Samtskhe-Javakheti region. In order to prevent a negative effect of this change on the representation of ethnic minorities in the parliament of Georgia, political parties should consider the importance of fully-fledged representation of ethnic minorities and undertake relevant steps to ensure the representation of ethnic minorities in the legislature.

MEDIA AND ACCESS TO INFORMATION

Georgian legislative provisions regulate the issue of receiving and releasing information. The Law of Georgia on Broadcasting requires from the Georgian Public Broadcaster to reflect ethnic, cultural, linguistic, religious, age and gender diversity of the society in programs; broadcast a number of programs in certain proportions prepared in the languages of minorities, about minority groups and programs prepared by minorities (Article 16). According to the same law (Article 33.1[1]), the Public Broadcaster shall create one or more regular program products in at least 4 languages annually, including in the Abkhazian and Ossetian languages.

The National Communications Commission adopted the Code of Conduct for Broadcasters (in accordance with Article 50 of the Law of Georgia on Broadcasting). Chapter 9 of the Code of Conduct requires from broadcasters to refrain from publishing any material likely to incite hatred or intolerance on the grounds of race, language, gender, religious convictions, political opinions, ethnic origin, geographic location, or social background. Pursuant to this Code, broadcasters shall respect the fundamental rights of freedom of opinion, conscience, belief and religion and avoid offending any ethnic, religious, cultural, or social groups (Article 32).

According to the Code of Conduct for Broadcasters, broadcasters should avoid drawing unjustified parallels between ethnic or religious origin and negative events, including associating activities of specific individuals with the entire group (Article 33).

Regardless of the above mentioned legislative norms, 2015 did not see any improvement in the system of releasing information about ethnic minorities and providing information to ethnic minorities (in their native languages).

The Public Broadcaster and regional TV stations operating in Kvemo Kartli and Samtskhe-Javakheti provide information about developments in Georgia to the regions densely populated with ethnic minorities. The second channel of Public Broadcaster daily produces 10-15 minute long information program – "Moambe" in the languages of ethnic minorities which is broadcasted by regional TV stations of Kvemo Kartli and Samtskhe-Javakheti as well. Domestic and international developments as well as processes in the regions populated with ethnic minorities are quite dynamic and a 10-15-minute long information program cannot ensure the coverage of all processes and developments that are interesting and important for the population. Thus, the above mentioned programs fail to provide comprehensive information about the developments in the country to ethnic minorities.

The situation is also further aggravated by the fact that these programs are watched by a very small segment of population of the regions populated with ethnic minorities. These programs have a certain positive effect, but this effect is very insignificant for overcoming the existing challenge.

Over the years, the population of the regions populated with ethnic minorities have experienced a certain degree of informational isolation – they receive information about the events in Georgia, mainly, from information channels of foreign countries although the obligation to inform its own citizens, first and foremost, lies with the state.

There has been much discussion during year - and all agree - that an effective and comprehensive system of informing ethnic minorities must be created; nevertheless, the situation remains unchanged. Population of the regions populated with ethnic minorities still do not receive comprehensive information about the developments in the country and this adversely affects the civil integration process.

The effective conduct of the process of civil integration is impossible without the involvement of media and establishment of effective system of informing population about the developments in the country. Thus, there is a need to facilitate the establishment of comprehensive system of informing ethnic minorities about the developments in Georgia.

To protect the rights of ethnic minorities, promote the civil integration process and eliminate negative perceptions on ethnic ground about our citizens, it is important to provide correct and comprehensive information to ethnic minorities as well as ethnic majority. It was this aim that the TV program "Our Yard" and radio program "Our Georgia" served over the years. They were broadcasted several years ago. These programs enabled ethnic minorities to regularly communicate their opinions, problems and achievements to Georgian-speaking population. Moreover, these programs regularly discussed the issues important for the civil integration, thereby making a positive contribution to the integration and the discussion, realization and resolution of needs faced by ethnic minorities. From the second half of 2015, "Our Yard" has been taken off the air whilst the radio of Public Broadcaster was totally unused in the area of civic integration in 2015.

The Public Defender does not discuss the means and programs by which the Public Broadcaster should inform ethnic minorities about the developments in the country and forms and means that it should apply to provide the information about ethnic minorities to Georgian speaking audience. However, problems in this regard are apparent and require adequate response.

The Armenian newspaper "Vrastan" and the Azerbaijani newspaper "Gurjistan" contribute to informing ethnic minorities to some extent. These newspapers provide Armenian and Azerbaijani speaking population with the information about developments in the country, but the print run and material resources of these newspapers are not sufficient to perform this function properly. To support the provision of comprehensive information to ethnic minorities, the support of "Gurjistan", "Vrastan" and other newspapers should be carried on as an interim measure.

RECOMMENDATIONS AND PROPOSALS

To the Ministry of Culture and Monument protection:

- To use possibilities of the field of culture more efficiently in promoting civic integration, inter-ethnic relations and protecting the rights of ethnic minorities;
- To continue and complete in the shortest possible time the rehabilitation of Petros Adamian Tbilisi State Armenian Drama Theatre and Heydar Aliev State Azerbaijani Drama Theatre;
- To study the issue of inclusion of relevant buildings (a section of Armenian school #1; the former house of culture; library, et cetera) located in Shaumiani village of Marneuli municipality into the list of cultural heritage of Georgia.

To the Ministry of Education and Science

- To study the efficiency of teaching Georgian language and other subjects by using bilingual textbooks, to draw out corresponding conclusions and then decide the issue of continuation or termination of these textbooks or the introduction of a new methodology;
- To develop a long term and effective educational programs for training bilingual teachers of schools providing education in minority languages;
- To continue and enhance the implementation of state language teaching programs in the regions densely populated with ethnic minorities – both in municipal centers and villages;
- To undertake appropriate measures for the rehabilitation of the school in the village of Tsopi, Marneuli municipality.

To the government of Georgia:

- For the aim of promoting civil integration, interethnic relations and informing ethnic minorities about developments in the country, to establish an effective mechanism of informing ethnic minorities in their native languages and also, to improve the access to such media products;
- To improve and increase the system of informing Georgian speaking audience about ethnic minorities in order to ensure regular supply of information about ethnic minorities to Georgian speaking population by using both TV and radio resources;
- Until the language barrier and hence, the difficulty to understand Georgian information exists in the regions densely populated with ethnic minorities, to continue the support of publication of "Gurjistan", "Vrastan" and other newspapers and media outlets;
- To plan and implement, with the state support, such projects/programs that promote civic integration, interethnic relations and protect the rights of ethnic minorities;
- To support the representation of ethnic minorities in various units of authority and to this end, conduct information and education campaign;
- To conduct preliminary consultations with ethnic minorities about the activities directly related to them as well as ongoing and planned activities in the regions densely populated with ethnic minorities;
- To facilitate the implementation of recommendations in the 2015 report of the European Commission against Racism and Intolerance (ECRI) about improving quality of education of ethnic minorities, better informing them about developments in the country, promoting civil integration and other issues.

To the Government of Georgia, Ministry of Education and Science, State Minister for Reconciliation and Civic Equality, the Public Broadcaster:

- To facilitate the communication of information to the target groups about a new (preferential) system of enrollment of Ossetian-speaking school graduates in higher educational institutions.

FREEDOM OF EXPRESSION

Freedom of expression constitutes one of the essential foundations of a democratic society and is protected by domestic and international legislation.

As noted in the 2014 Parliamentary Report of the Public Defender of Georgia, on 14 January 2015, the Government of Georgia initiated the draft law amending the Criminal Code of Georgia. According to the above initiative, a call aiming at fueling strife would be declared a criminal offense. As a result of studying the issue thoroughly, the Public Defender of Georgia has addressed the Parliament of Georgia with the recommendation to take into consideration the Public Defender's remarks while adopting the draft law on criminalization of the call fueling strife. It is noteworthy that Article 239^1 of the acting Criminal Code of Georgia shares the part of the Public Defender's remarks, however, it is important to make additional changes to the Article and fully reflect those remarks.[964]

It was noted in the 2014 Parliamentary Report of the Public Defender of Georgia that the investigation authorities, in the special statistical data of the registered crimes of interference in the professional work of the journalists, should reflect not only the crimes of interfering in the professional work of the journalists, but also all the illegal acts committed against the journalists that are related to their professional activities. The Ministry of Internal Affairs has informed us[965] that the statistical data is still not processed according to the professional activities of the victim. The Public Defender of Georgia underlines once more that the systematization of the statistical data will make it possible to receive full information on all crimes committed against the journalists due to their professional work and to assess the effectiveness of protecting the freedom of media environment through the criminal proceedings.

2015 was particularly active and overloaded in terms of freedom of expression. This concerns the legislative changes related to the introduction of the digital broadcasting, as well as the important events occurred in the media and alleged rights abuses of individual journalists, neglecting public and political responsibility by the public officials.

Introduction of the Digital Broadcasting

During the reporting period, substitution of the terrestrial broadcasting with the digital broadcasting constituted a significant innovation. Introduction of the digital broadcasting started in 2014 with the approval of the relevant

964 In Article 239^1 of the Criminal Code of Georgia, the word "between" should be substituted with the word "against/towards," which is a prerequisite for the establishment of high standards of protection and reduces the possibility of the wide interpretation and the risks of the misuse. To the list of the possible target groups of the illegal acts foreseen by the above article should be added the sexual orientation and gender identity. It will grant these groups more solid guarantees of the rights and freedoms than it is provided by the existing norm. The above is discussed in detail in the 2014 Parliamentary Report of the Public Defender of Georgia, pp: 464-465.

965 Letter N281755 of the Ministry of Internal Affairs of Georgia, dated 5 February 2016.

strategy by the Government. Amendments were made to the laws of Georgia on Broadcasting, Electronic Communications and Licenses and Permits and were successfully completed during the reporting period. The above should be assessed as a step forward for the country, since the digital broadcasting will contribute to the effective utilization of the frequencies, improvement of the quality of broadcasting and establishment of the competitive media environment.

The above-mentioned technological change constituted the international obligation of the member states of the International Telecommunications Union (ITU) in the framework of the Geneva agreement (GE-06) of 2006. Georgia, together with the other States had to comply with the above obligation till 17 June 2015.

In the framework of the legislative changes the obligation of licensing was abolished for the broadcasting and according to the existing regulations, only authorization is sufficient. Unlike the issuance of the license, which is carried out based on the public administrative proceedings, simple administrative proceedings are enough for the authorization according to the legislation. The Commission, in 10 working days from receiving the application, conducts the authorization of the broadcaster through registering the authorized individuals in the departmental registry. This liberal procedure established for the broadcasting should be assessed positively and can be deemed as one of the supporting circumstances for the development of the pluralistic media.

MEDIA ENVIRONMENT

The existence of a healthy media environment has a vital importance for the formation and development of a pluralistic and democratic society.

In its turn, 2015 was marked by significant events in media and the issue of maintaining healthy media environment was at stake. Current topics were: court proceedings related to the TV "Rustavi 2", statement of the director of the TV "Rustavi 2" – Mr. Nika Gvaramia regarding the alleged threats against him, the facts of closure of several programmes on TV "Imedi", the statement of the journalist – Ms. Eka Mishveladze on the alleged violation of her private life.[966]

The Public Defender of Georgia once again underlines the necessity of investigating the cases reflected in the reports of the previous years in order to achieve the strengthening of the rule of law principle and prevention of the similar cases. 2015 was not exceptional in terms of alleged criminal acts committed by the representatives of the media sources, however, several cases did take place.

According to the information spread by the media[967] on 1 September 2015, the incident occurred between the camera crew of the "News" of the Adjara Public Broadcaster Television and Radio and the employees of the Ministry of Agriculture of Adjara. According to the source, in the wine factory yard of the Qedi municipality, the correspondent Lasha Veliadze was verbally and physically abused by the employee of the Ministry of Agriculture of Adjara – Mirza Suqnishvili.[968]

On 8 September 2015, in Giorgi Gabunia's programme "Archevani", the journalist Eka Mishveladze mentioned[969] the facts of surveillance and interference with the private life by the special services.[970] According to the statement[971] of the General Director of TV "Rustavi 2" - Nika Gvaramia made on 21 October 2015

966 The representative of the Public Defender of Georgia has contacted the journalist Eka Mishveladze in relation to her statement, however, the journalist refused to provide the detailed information on this matter.

967 Information is available at: <http://www.batumelebi.ge/GE/batumelebi/news/49476/> Last visited on 28.03.16].

968 The journalists did not provide the Public Defender's Office with the additional information.

969 Giorgi Gabunia's talk show "Archevani", 8 September 2015, available at: <http://rustavi2.com/ka/video/8794?v=2> [Last Visited on 28.03.2016].

970 Eka Mishveladze refused to provide the Public Defender's Office with the additional information.

971 The information is available at: http://rustavi2.com/ka/news/29585, 21.10.2015 [Last Visited on:2016].

on live of the same TV, couple of hours before, during the meeting with a certain person in the building of "Rustavi 2", he received a Governmental message noting that the legal dispute regarding the TV company was settled in advance. In accordance with Nika Gvaramia's information, the same person has called upon him not to be active during the development of the events and reminded him that his family members were located in Georgia, also there existed certain video and audio tapes about him, which would be spread if unwanted behavior was observed. On the same day, the Public Defender commented on the above fact and called on the law enforcement bodies to conduct impartial, thorough, prompt and effective investigation, also, to provide the public with the sufficient information regarding the progress of investigation periodically. The Chief Prosecutor's Office is conducting the investigation with respect to the fact of coercion towards Nika Gvaramia, based on Article 150[972] para 1 of the Criminal Code of Georgia.[973]

Case of the Broadcasting Company "Rustavi 2"

Taking into consideration the high public interest, the Public Defender was actively observing the processes developed around the TV company "Rustavi 2", was regularly monitoring the court proceedings and was studying the relevant documentation.

The Public Defender of Georgia has studied[974] the court's ruling of August 5, 2015 on interim measure that was issued based on the lawsuit against the broadcasting company "Rustavi 2" and its partners.[975] As a result of studying the above ruling, the Public Defender of Georgia considered that the decision of the Tbilisi City Court did not sufficiently comply with the standards established for ensuring the fair trial, as far as the necessity to use simultaneously several types of ancillary attachments was not adequately justified. At the same time, according to the Public Defender's assessment, the Court has restricted the right to property to the extent, which might cause harm to the activity of the broadcasting company, prevent the remuneration, employment of the journalists, broadcasting of the new programmes, acquisition or substitution of the technical inventory, payment of the persons responsible before the company and etc. Additionally, the court did not explain how the limitation of the right to this extent served the protection of the legitimate interests of the applicants and why the same could not be achieved by the less restriction of the respondent's property right. According to the abovementioned, the Public Defender considered that the court ruling on the interim measure violated the principle of proportionality for the restriction of the rights.

Besides, the Public Defender commented[976] on the ruling of the Tbilisi City Court dated 5 November 2015 on appointing a temporary management. The relevant changes in the registry were reflected on 6 November in the morning. According to the ruling, its aim was to ensure the enforcement of the decision pronounced by the same judge on 3 November.[977]

According to the Public Defender's assessment, the court ruling of 5 November 2015 violates the freedom of speech and expression of "Rustavi 2". The decision of appointing a temporary management in parallel with

972 Coercion.

973 The letter of the Chief Prosecutor's Office of Georgia, N13/18590; 24.03.2016.

974 The information is available at: http://www.ombudsman.ge/ge/news/saxalxo-damcvelis- gancxadeba-telekompania-rustavi-2-is-qonebis-dayadagebastan-dakavshirebit.page [Last Visited on 28.03.2016].

975 According to the ruling of the Tbilisi City Court, dated 5 August 2015, the Court has seized the Broadcasting Company Rustavi 2's partners' shares; Seized the space and lands in Tbilisi together with its buildings owned by the TV company; The company was banned from selling/ renting or otherwise legally load the movable property, including the radio frequency transmission equipment, generators, vehicles, etc.; The TV company and its partners were banned from undertaking responsibilities on behalf of the company, from issueing the general commercial power of attorney, from approving the annual results, from reorganizing or liquidating the organization, from amending the organization charter, including the management and operation by the partners and the directors, selling of the licenses and legally loading the property otherwise; disposal of the property by the directors of the company.

976 Available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis- sagangebo-gancxadeba-telekompania-rustavi-2shi-droebiti-mmartvelebis-danishvnastan-dakavshirebit.page> [Last Visited on 28.03.2016].

977 With the above court decision, the claim of the plaintiff – Qibar Khalvashi was partially satisfied: the disputed purchase agreements were annulled and the Applicant was granted the shares of the TV company "Rustavi 2", however, the copyright claims were rejected.

the use of seizure as an interim measure based only on the American experience is unjustified and contradicts the foreseeability of the law. At the same time, to rate the broadcaster's editorial policy by the court is an infringement of the rights of freedom of speech and expression.

The proceedings related to the TV Company "Rustavi 2" have made the deficiencies of the judicial system clear. The above approach restricting the rights to property and freedom of expression by the Court should not become a tendency and should not become a systemic approach. The above, on one hand, will cause the discreditation of the judiciary and the reduction of trust and on the other hand, unjustified interference with the freedom of expression hinders the democratic processes in the country.

The ruling of the Tbilisi Appellate Court completely abolishing the decision of the Tbilisi City Court on appointing the temporary management in the TV Company "Rustavi 2" dated 5 November 2015 should be assessed as a decision ensuring the freedom of expression.[978]

Legal proceedings related to the TV Company "Rustavi 2" are still ongoing and the present issue continues to be of special interest for the Public Defender of Georgia.

Closure of the Political Talk-Shows

According to the information spread by the TV Company "Imedi" on 29 August 2015,[979] during the Autumn TV season the TV Company temporarily suspended public-political talk-shows. As noted by the journalists, the decision of the management of the TV Company and its basis was unexpected and unknown to them.

Based on the decision №43/2 of the Georgian National Communications Commission dated 3 February 2006, the TV Company "Imedi" was granted the private general broadcasting license №B16, which included the streaming broadcasting. As a result of the legislative changes of 2015, the ground for the work of "TV Imedi" is its authorization by the Commission.[980] According to Article 45^1 para 7 of the Law of Georgia on Broadcasting, if an authorised person ceases broadcasting or if he/she/it intends to modify the authorised activity, including the type of broadcasting, he/she/it shall give a seven days prior notice thereof to the Commission. Since "TV Imedi" carries out private general broadcasting, according to Article 2 para z^6 of the Law of Georgia on Broadcasting, general broadcasting means broadcasting of programmes involving at least two topics, including news and social and political topics.

According to Article 45^1 para 11 of the Law of Georgia on Broadcasting, authorization can be suspended if the authorized person has not carried out the authorized activity. Regarding the above case, the Georgian National Communications Commission[981] informed the Office of the Public Defender of Georgia that the law does not define the frequency and time limits for the general broadcasters to broadcast social and political programmes, however, the Commission has reminded the TV Company "Imedi" on 4 September 2015 of the necessity to comply with the above-mentioned obligation.

Later, according to the statement made by the same TV company on 4 September,[982] the broadcaster expressed the hope that in October-November it would be possible to broadcast the political talk show. The Georgian National Communications Commission has considered the above time-frame reasonable. Since 6 November 2015, the TV Company "Imedi" has indeed placed in its broadcasting network the political programme "Politika."

978 In addition, according to the ruling of the Tbilisi Court of Appeal, dated 30 November 2015, the decision of the Tbilisi City Court of 5 August was partially reversed and the TV Company "Rustavi 2" was allowed to rent the equipment. The court allowed Rustavi 2 to rent certain studios, to sing tenancy agreements, the management of the TV Company returned the possibility to approve the annual report.

979 Available at: <http://imedi.ge/index.php?pg=nws&id=54604> [Last Visited on 28.03.2016].

980 According to the transitional provisions and explanatory note of the amendments, those broadcaster who possess the license for broadcasting are automatically granted the authorization .

981 Letter №04/2057–15 of the Georgian National Communications Commission date 24 September 2015.

982 Available at: <http://imedi.ge/index.php?pg=nws&id=54890&ct=6> [Last Visited on 28.03.2016].

It should be noted that the sudden closure of the political programmes by one of the most high rating TV Companies of the country has a negative impact on the formation process of the healthy media environment and in the conditions of lack of sufficient information, it causes many question marks in the public. It is important that for its part, the media sources recognize their responsibility before the public stemming from their special role and try to avoid circumstances hindering the competitive media environment. In addition, provision of information about this kind of significant decisions, both to the journalists and the public timely and sufficiently, constitutes the part of the high social responsibility.

In early October 2015 the public was informed that the talk show "Pirveli Studia" was closed on the Public Broadcaster.[983] In the present case problematic was the sufficiency of the information provided to the journalists, as well as to the public on the grounds and justification of the closure of one of the central political shows. The circumstance that the case concerned the Public Broadcaster should be taken into consideration. According to the Law of Georgia on Public Broadcaster, the Public Broadcaster constitutes a legal entity of public law acting under the public funding, independent from the Government and accountable before the public. Therefore, taking into account the legal status and the special functions of the Public Broadcaster, its responsibility is higher than that of the private companies.

Interference in the Professional Activity of the Journalist – Irakli Gedenidze

While broadcasting the demonstration of 4 March 2015 on the "Rose Square" the photo correspondent of the informational agency "Interpressnews" - Irakli Gedenidze was physically abused and interfered in his professional journalistic activity. The Public Defender of Georgia has released a special statement[984] on the matter and called on the law enforcement bodies to take relevant measures in order to identify every individual involved in the incident and to subject them to the adequate sanctions foreseen by the law. Additionally, the Public Defender underlined the importance of preventing the similar incidents and the necessity to take relevant lawful measures by the law enforcement bodies in order to ensure the unhindered professional activities of the journalists during the demonstrations.

According to the information provided by the Ministry of Internal Affairs of Georgia,[985] on 7 May 2015, G.B. was charged under Article 120 and Article 154 part 2 of the Criminal Code of Georgia. The above individual was sentence to imprisonment for the duration of one year by the court.

The Public Defender of Georgia emphasizes the role of the political parties organizing the demonstrations. Stemming from their political responsibility, those parties should explaing to their activists the professional guarantees of the media activities, the legal consequences for its infringement and should, to the possible extent, ensure the prevention of the violent acts and in case of the similar incidents, should make an adequate assessment.

Unjustified Interference in the Freedom of Expression by the Law Enforcement Authorities

Freedom of expression is protected no matter what are the issues it is related to. Freedom of expression can be subject to limitations only when absolutely necessary and if a loyal attitude towards it might jeopardize the fundamental constitutional values.[986]

983 At that moment the TV programme "Realuri Sivrtse" was being broadcasted on the Public Broadcaster. The above show has a social and political context and content.

984 Availablet at: <http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/gancxadeba-jurnalist-irakli-gedenidzisatvis-profesiul-saqmianobashi-xelsheshlis-faqttan-dakavshirebit.page> [Last Visited on 28.03.2016].

985 Letter N281755 of the Ministry of Internal Affairs of Georgia dated 5 February 2016.

986 Besarion Zoidze, Commentaries to the Constitution of Georgia, Chapter II. Citizenship of Georgia. Basic Human Rights and Freedoms, 2013, pp: 255-256.

During the reporting period, unjustified restriction of the freedom was expression by the law enforcemenet authorities was revealed. Namely, on 16 October 2015, in Tbilisi, for putting the posters on the construction fence in front of the Opera house, the police officers arrested the editor-in-chief of the TV Company "Tabula" – Tamar Chergoleishvili, the general producer of the channel – Lekso Machavariani and a student – Salome Khvadagiani and drafted the protocols of administrative offences. The posters depicted Bidzina Ivanishvili's and "Gazprom's" caricatures. The administrative protocol was drawn up based on Article 150 para of the Administrative Offences Code. According to the above article, defacing the appearance of a self-governing unit constitutes an administrative offence. In the present case the above article was not applicable, since the construction fence and the street light poles are not indicated in the list foreseen by the article and in addition, even if the offence existed, the law enforcement bodies did not possess the authority to arrest the offenders.[987] Besides, taking into consideration the fact that the administrative offence protocol could have been drawn up on the place, administrative detention constituted a disproportionate measure.

The Public Defender of Georgia has issued a relevant statement[988] on the matter and called on the law enforcement authorities to recognize that the detention of an individual, even an administrative detention, constitutes an extremely restrictive measure and it can only be used in cases strictly foreseen by the law.

According to Article 150 part I of the Administrative Offences Code of Georgia, "putting up placards, slogans, banners at places not allocated for this purpose" constitutes an administrative offence. This record is very broad and might cause certain problems in practice. Legitimate aim of the administrative offence established by Article 150 para 1 of the Code of Administrative Offences – preservation of the appearance of a self-governing unit - can be challenged by the freedom of expression. The existing broad understanding of the norm makes the freedom of expression dependant on the broad discretive will of the self-governing units. This creates a risk that the use of the freedom of expression in a form such as: posters, banners – will in practice be impossible. The above is unacceptable, since regardless of its content, the freedom of expression applies to expressing any opinion in any manner or form. Forms of expression are constantly evolving and expanding in a modern world. The existence of the will of the self-governing units is unjustified in all the above cases. Taking into consideration all the above-mentioned, it is necessary to formulate the disposition of Article 150 of the Administrative Offences Code of Georgia with a more narrow formulation, highlighting the superior importance of the freedom of expression, in order to avoid its extensive use damaging the freedom of expression in practice.

Ethical Behavior of the Politicians

During the reporting period, the Office of the Public Defender of Georgia has studied the application of the citizen N.M.,[989] according to which, the member of the Lanchkhuti Municipality City Council, chairperson of the faction "Free Democrats" – Elguja Chkhaidze was making offensive and defamatory statements on social network.[990]

Part of the disputed statements constituted Elguja Chkhaidze's subjective perception and his assessment and the other part might also have the defamatory character. In the present case it should be taken into account that Elguja Chkhaidze is the member of the Lanchkhuti Municipality City Council (Sakrebulo) and the chairperson

987 Artcile 246 para "a" of the Administrative Offences Code of Georgia indicates the particular offences in case of which the authority to arrest can be excercised, stemming from the other circumstances. Article 150 (1) foresees the fine of GEL50 and not the administrative arrest.

988 Available at: <http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saxalxo-damcveli-plakatebis-gakvris-gamo-sami-piris-dakavebas-exmianeba.page> [Last Visited on 28.03.2016].

989 Applications №420/15, №955/15 and №1033/15 dated 13, 27 and 28 January, 2015.

990 Namely, used the words as: "fool", "mentally ill", "seller of the information", "informant against the colleagues", "stupid", "mind your honey moon", "crazy", "scabby" and etc.

of one of the factions. Therefore, according to Article 32 para "d" of the Organic Law of Georgia on Local Self-Government, the chairpersons of the municipality city council faction constitutes the political official of Sakrebulo. In addition, according to Article 1 para "i" of the Law of Georgia on the Freedom of Speech and Expression and Article 2 (1) (u) of the Law of Georgia on the Conflict of Interests and Corruption in Public Service, Elguja Chkhaidze is an official who is covered by the definition of the public official.

Taking into consideration all the above-mentioned, the public interest towards Elguja Chkhaidze, as an official of Sakrebulo and a public figure is high, he is the representative of the local self-government and therefore, of the population. Hence, it is important that the council member and the local authority official, stemming from his special status, have a due regard to his high public responsibility and act accordingly. As far as in accordance with Article 11 para 1 of the Law of Georgia on Public Service, the law does not cover the members of the Municipality City Councils, and in addition, the Local Self-Government Code does not contain any additional regulations on the general code of conduct, it is impossible to respond to the violations of the ethical norms by the representatives of the local self-governing bodies. These circumstances and the present case illustrate that in line with the high public responsibility, it is necessary to develop certain regulations and the enforcement mechanisms of the code of conduct for the politicians, as well as the officials of the local self-government.

Use of Hate Speech by the Public Officials and Civil Servants

The Public Defender of Georgia has dedicated a separate chapter in the previous parliamentary report to the use of the hate speech by the public officials and civil servants and issued a relevant recommendation.

The Public Defender of Georgia once more underlines the recommendation[991] of the Council of Europe Committee of Ministers according to which "public authorities and public institutions as well as officials have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech."

It should be stressed out once more that there is no universal definition of "hate speech" but, according to a recommendation adopted by the Council of Europe Committee of Ministers in 1997, it covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including nationalism, ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.[992]

During the reporting period the Public Defender has studied the application of the Civil Involvement Centre regarding the use of hate speech by member of the political council of the political party "Georgian Patriots Alliance" – Vazha Otarashvili against the Azerbaijanian community. In particular, the above individual uses the following statements against the Azeri Georgian citizens on one of the TV Shows of the TV Company "Obiektivi" during the phone interview:[993] "flock of sheep spread on the bank", "the Government uses them as the veal and they do not understand how to act", "condition of herd", "come to your senses and don't let them speed you up to the voting ballots like herd", do not deepen the abyss so that it returns to you like a boomerang." The author underlines the differences between the election results in the Georgian villages and Iormughalo and perverses as if it is preconditioned by the non-existence of their own opinion of the Azeri fellow citizens and that they are governed by the Government. The author of the above statements perceives the Azeri citizens of Georgia residing in Iormughalo as a society that is used by the Government for its own interests and they are identified with the herd. Vazha Otarashvili's above opinion does not constitute simply a critical opinion, the statements are the deprecating remarks against the Azeri community and the expression of the stereotypically unequal attitude, which contributes to and stirs the distrust due to their ethnicity. Besides, it can be deemed as the encouragement of ethnic unacceptability.

991 Recommendation 97 (20) of 30 October 1997.
992 Council of Europe, Recommendation of the Council of Europe Committee of Minister on Hate Speech No. R(97)
993 31 October 2015, from 22:57, telephone interview in live stream of the TV Company "Obiektivi".

Use of the hate speech by the politicians has a negative impact on the development of democratic processes in the country. It is necessary that the public figures recognize their responsibility and the media sources have an adequate reaction regarding the statements containing hate speech.

Freedom of Information

Formation of free opinion is impossible without the freedom of information.[994] First and foremost, the freedom of information implies the Government's accountability before the society and ensuring the accessibility of public information. All the above-mentioned is directed towards the formation of the rule of and civil society in the country. Article 41 of the Constitution of Georgia guarantees every individual's right to become acquainted with the information about him/her.[995] As well as the official documents existing there unless they contain state, professional or commercial secret.

For the creation of more guarantees of the freedom of information in the country, it is necessary to improve the existing legislation and its harmonization with international standards. During the reporting period, still problematic was the Public Defender's recommendation issued during the previous uears regarding the ratification of the Council of Europe "Convention on Access to Official Documents" of 18 June 2009. It is also important to timely adopt a new act on freedom of information, which will eliminate all major problems such as the lack of the mechanism for ensuring and monitoring the freedom of information, the non-existence of sanctions for the refusal of releasing public information and etc. According to the "Open Government Partnership Action Plan Georgia for 2014-2015,"[996] the draft law was supposed to be submitted to the Government and the Parliament of Georgia in Spring 2015, however, it has not yet been done. It is important start the process timely and also, to ensure its public discussion and the proper involvement of the stakeholders.

The analysis of the cases studied during the reporting period revealed that while deciding upon the provision of public information, the public institutions are not guided by the principle of proportionality. Public institutions' attitude towards this kind of important issue is provoked by the fact that despite repeated recommendations of the Public Defender of Georgia, the Georgian legislation still does not foresee the sanctions for the unlawful refusal on providing public information and the Law of Georgia on Personal Data Protection establishes the sanctions for the violation of the above law.[997] Therefore, there is a trend according to which the civil servants, who are responsible to decide on the release of information, and are obliged during the decision-making process to protect the balance between the inviolability of private life and the freedom of information, are guided not by the principle of proportionality, but are trying to avoid the sanctions foreseen by the Law of Georgia on Personal Data Protection.

Of a separate concern is the issue that the state and local self-government institutions cannot fully analyze the legislation and give different interpretation to the established norms. State institutions, even in case of the grounds for the data processing foreseen by the Law of Georgia on Personal Data Protection, refuse to process the data solely due to the reason that there is no consent of the subject of data on the release of information. No attention is paid to the circumstance that the legislation foresees other grounds for the release of this kind of information that is not related to the consent of the of the data subject.[998]

994 The decision of the Constitutional Court of Georgia dated 26 October 2007 on the case "Georgian citizen Maia Natadze and Others vs. The Parliament of Georgia and the President of Georgia."

995 The Constitutional Court of Georgia of 14 July 2006 on the case "Georgian Young Lawyer's Association and the Citizen Rusudan Tabatadze vs. The Parliament of Georgia" has explained that "[…] the present article considers the official information protected in the state institutions open and gives all physical and legal persons the possibility to get acquinted with it […].

996 Approved by the Decree N557 of the Georgian Government dated 18 September 2014.

997 The Law of Georgia on Personal Data Protection, Chapter VII.

998 The Law of Georgia on Personal Data Protection, Article 5.

Despite the fact that the clear-cut grounds for the data processing existing in accordance with the Law of Georgia on Personal Data Protection, the Akhmeta Municipality Gamgeoba, exactly due to the absence of the data subject, refused the Kakheti Information Centre Editor to release the identity and professional contact information of the representative of Gamgebeli (Governor). With the above action the Kakheti Municipality Gamgeoba has ignored the principle of the rule of law determined by the General Administrative Code of Gerogia, which, in its turn caused the violation of rights and freedoms of the Kakheti Information Centre foreseen by the legislation, such as the right to receive information protected by Article 10 of the European Convention on Human Rights and Article 41 of the Constitution of Georgia.

In some of the cases, the public institutions cannot fail to realize the demands of transparency, democracy and their own responsibility – to release or not obstruct individuals to receive the public information of their interest. At the same time, it is important to create more guarantees for the unhindered exercise of the right to receive public information. Taking this into consideration, there is the need of improving the existing legislation. It is clearly demonstrated by the problems revealed during studying the application submitted by the "Institute for Development of Freedom of Information" (IDFI).

The Case of the Institute for Development of Freedom of Information

On 25 November 2015, the NGO "Institute for Development of Freedom of Information" requested the Tbilisi City Court the decisions against the former officials, and if there was no final decision on the case, the copies of the rulings on interim measures against the accused individuals.

The Tbilisi City Court did not satisfy the request of the Institute for Development of Freedom of Information on the ground that the requested information contained data of special category on the former officials,[999] which, according to Article 41 of the Constitution of Georgia, automatically constituted classified information and its disclosure would cause unjustified interference in the private life of the former officials protected by the Constitution. While decision upon the case, the Tbilisi City Court also took into consideration the regulations of Article 6 of the Law of Georgia on Personal Data Protection, which gives a list of the grounds for processing the information of the special category and without the written consent of the data subject, it is forbidden to publicize the special category information and to disclose it to the third persons in all cases.

The IDFI did not agree with the decision of the Tbilisi City Court, since the information requested by them concerned the former officials who have committed criminal offences in the period, when they held high positions and there was a high public interest regarding that information. At the same time, the organization called on the principle of the publicity of the hearings guaranteed by the Constitution of Georgia and the international standards and stated that the public hearings meant not only the transparency of the legal proceedings, but also the public availability of the decisions.

The present case has made the need for further improvement of the regulations under the existing legislation more clear. It was revealed that Article 6 of the Law of Georgia on Personal Data Protection, which establishes the standard for processing the special category data, including the standard for revealing this information to third persons, does not leave room to the data processor to assess the issue in each individual case and make a decision based on the legislation, while keeping the balance between the access to information and the inviolability of private life. The present norm, without the consent of the data subject, absolutely eliminates the possibility of disclosing the special category information of the high public interest to the third persons, which contradicts the freedom of information protected by Article 41 of the Constitution of Georgia.

The Law of Georgia on the Personal Data Protection, in case of high public interest, should foresee the possibility of releasing the special category data existing in the public institutions on the former officials and the introduced candidates, which is related to their official duties. Consequently, the need of amendments to the Law of Georgia on Personal Data Protection is clear in this direction.

999 The Law of Georgia on Personal Data Protection, Article 2 para b.

RECOMMENDATIONS

To the Parliament of Georgia:

- To make changes to the Law of Georgia on Personal Data Protection, which will provide for a fair balance between freedom of information and personal data, in particular, to make accessible the special category data of high public interest on the former and acting officials and the introduced candidates, protected in the public institutions, related to the official duties of the above individuals;
- To amend Article 239^1 of the Criminal Code of Georgia (Public incitement to acts of violence) in order to fully reflect the recommendations of the Public Defender of Georgia;
- To establish the ethical norms and the enforcement mechanism so that the official activities of the members of the Parliament and the officials of the local-self government are in the framework of the official ethics;
- To form the disposition of Aritlce 150 of the Administrative Offences Code of Georgia in a more narrow language, while taking into consideration the superior importance of the freedom of expression, in oder avoid its wide and damaging use in practice.

To the Common Courts:

- To be guided by the high standards for ensuring the fair trial, right to property and the freedom of expression while deciding upon the cases related to the media sources. In addition, to avoid in the decisions discussing the topics that are not within their lawful competences.

To the Government of Georgia:

- To initiate timely the new draft law on the freedom of information, which will establish the mechanism for ensuring the access to information and monitoring of the freedom of information, will introduce the sanction for the unlawful refusal on the disclosure of information and etc.

To the Chief Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia:

- To conduct a timely and effective investigation based on Nika Gvaramia's statement and to inform the public about the investigation results;
- To start and conduct a timely and effective investigation based on Eka Mishveladze's statement and to inform the public about the results of investigation;
- To the investigation authorities, to produce statistics on the criminal offences conducted agaist the journalists due to their professional activities;
- To conduct trainings for the law enforcers on the freedom of expression and detention, in order to educate them about the domestic and international standards.

To the Ministry of Foreign Affairs of Georgia:

- To take measures for starting the procedures of ratifying the Council of Europe Convention on Access to Official Documents of 18 June 2009.

FREEDOM OF ASSEMBLY AND MANIFESTATION

Protection of freedom of assembly and manifestation and improvement of its legislative framework constitutes one of the primary issues for the civilized states. To be able to freely express protest in any civilized manner is one of the fundamental human rights. The right to assembly and manifestation is enshrined in both national and international legislation.

When it comes to the freedom of assembly and manifestation, the following criteria come to the fore: transparency, peaceful nature and the access to assembly upon prior permission.

The right includes such components as the right to initiate, organize and participate in an assembly/ manifestation. In addition, with regards to the right to assembly and manifestation the State has both negative and positive obligations.

These very responsibilities are highlighted in the National Strategy for Human Rights of Georgia and the Action Plan for the Protection of Human Rights of the Government of Georgia. As outlined in the strategy, one of the goals of the State is to create an enabling environment for effective protection of the right to assembly and manifestation, as well as the protection of participants of the assembly and manifestations in order to comply with the State's positive and negative obligations, undertake legal actions against violators and prevent violations, provide constant trainings of the law enforcement staff for the effective fulfilment of the State's positive obligations for the protection of the right to assembly and manifestation.

Based on the intermediate report of the Action Plan for the Protection of Human Rights of the Government of Georgia (2014-2015), for the establishment of high standard protection guarantees of the freedom of assembly and manifestation, for the legal responses and prevention of the violation of the right to assembly and manifestation, for the timely and effective investigation of the above facts, in order to improve the preparation of the Units of the Ministry of Internal Affairs, trainings were held in the field of crowd management/control. Standard operational procedures are being developed for the units of the Ministry of Internal Affairs. In the framework of various projects, experience of the leading European States is studied/shared on the topic of the freedom of assembly and manifestations. The relevant trainings were reflected in the curriculum of the Academy of the Ministry of Internal Affairs, trainings in the field of the freedom of assembly and manifestation are reflected in the educational programmes of the above Academy. However, it is also noteworthy that alongside the theoretical work, it is important to assess whether the knowledge by the law enforcement staff is used in practice completely. Besides, it is necessary to give this kind of trainings a permanent nature. The employees of the Ministry of Internal Affairs should be constantly trained in order to establish a high standard of protection to ensure the freedom of assembly and manifestation.

The full realization of freedom of assembly is the functional element in a democratic state. Although the large-scale restrictions of this right were not revealed during the reporting period, in several high-profile

cases discussed below the unlawful intervention in the enjoyment of the freedom of assembly did take place. Additionally, it is noteworthy that unlike 2014, in the 2015 reporting period, the number of similar incidents is higher. The cases presented below once more demonstrated the tight connection of the freedom of assembly, as an instrumental right, with the freedom of expression.

The results of the monitoring conducted by the representatives of the Office of the Public Defender of Georgia have revealed that a large-scale demonstration organized by the political faction "United National Movement" on 21 March 2015 was held without any excesses. The same can be noted regarding 3 demonstrations held on 17 May of the reporting period in Tbilisi on the international day against homophobia and transphobia.[1000]

In 2015, an important event was the judgment of the European Court of Human Rights of 12 May on the case "Identoba and Others vs. Georgia."[1001] In the present case the Court has ruled that on 17 May 2012 the State has violated Articles 3 (Prohibition of torture) and 11 (Freedom of assembly and association) taken in conjunction with Article 14 (Prohibition of Discrimination) of the Convention. According to the judgment, the Government failed to comply with its positive obligation and to ensure the high standard of protection from the private individuals for the peaceful demonstrators. Involvement of police was delayed and was not directed towards the protection of the demonstrators. Besides, no effective criminal investigation was conducted on the above facts. The investigation was not carried out based on the adequate legal grounds and the Government did not direct its effort towards revealing the homophobic motive. Conducting thorough investigation on the discriminatory ground is deemed as a necessary measure by the European Court. According to the Court, the lack of the strict approach towards the justice enforcement equals to the official or tacit approval of the hate-crimes by the State.

The Public Defender of Georgia hopes that the above judgement of the European Court will have a positive impact on the formation process of tolerant and pluralistic environment in the country. It is unacceptable that in future, any group will refrain from expressing the opinion openly and from the freedom of assembly die to the fear of physical abuse. Exactly the State is responsible for being a security guarantor for every citizen. It includes the obligation of the State to take effective measures for ensuring the awareness raising and the healthy environment.

Despite the Public Defender's repeated demand for legislative changes, it still has not been implemented.[1002] Besides, it is worthwhile noting that according to the National Action Plan for the Protection of Human Rights, one of the objectives of 2014-2015 was the harmonization of the legislation related to the freedom of assembly and manifestation with international standards.

The Public Defender of Georgia, like in the previous year, underlines the importance of investigating the facts of violating the freedom of assembly in previous years. According to the report presented by the Chief Prosecutor's Office of Georgia,[1003] on the case of the demonstration of 15 June 2009, the interrogation of the individuals who participated in the demonstration is still ongoing and the necessary investigation measures to identify the law enforcers who disperse the manifestants. The investigation is ongoing also on the dispersal of the demonstration of 3 January 2011. In order to ensure the rule of law, it is of utmost importance to timely investigate the above cases. The state has to effectively take all lawful measures.

1000 All three demonstrations organized by various NGOs and initiative groups were held in Tbilisi: on Vachnadze Street, in front of the Ministry of Justice of Georgia and in"Mrgvali Baghi."

1001 *Identoba and Others vs. Georgia,* European Court of Human Rights, №73235/12, available at: <https://matsne.gov.ge/ka/document/view/3032951> [Last Visited on 28.03.2016].

1002 Annual report of 2013-2014 of the Public Defender underlines the importance of implementation of the recommendation covered in 2012-2013 parliamentary reports.

1003 The measures taken to fulfill the recommendations issued by the Decree N3918-RS of the Parliament of Georgia dated July 2015 to the Chief Prosecutor's Office of Georgia on the Report of the Public Defender of Gerogia on the Situation of Human Rights and Freedoms in Georgia (2014) The Chief Prosecutor's Office of Georgia, 15 February 2016.

UNJUSTIFIED INTERFERENCE WITH THE RIGHT TO THE FREEDOM OF ASSEMBLY

Manifestation in the Heydar Aliyev Square

Right to freedom of assembly was violated on June 12, 2015, when the police did not allow peaceful manifestation in the Heydar Aliyev square. The Public Defender issued the public statement about the case after the fact. [1004] The law enforcement officials directed the actions to obstruct the process of the planned rally, not to hold the demonstration on the territory of Heydar Aliyev Park. When the protesters reached the spot, the Heydar Aliyev square was surrounded by the mobilized police cordon. According to the policemen, they were carrying out the police event and could not let the manifestants enter the park. Despite the request, they did not inform the demonstrators of the legal grounds for the restriction. Also, they have not explained what kind of police event was taking place. Demonstrators were forced to hold a rally in a remote location.

The law enforcement authorities, despite the lawful request, did not inform the trustee of the Public Defender of Georgia on the nature or grounds of the police event and therefore, violated the requirements of the Organic Law of Georgia on the Public Defender of Georgia. Later we were informed[1005] that due to the above-mentioned, two employees of the Ministry of Internal Affairs were subjected to the disciplinary sanction – reprimand.

The freedom of assembly is not an absolute right and restrictions that are prescribed by law can be placed on the exercise of this right.[1006] In the present case the demonstration was not held in a place with the traffic and traffic inconveniences were not caused. Therefore, the organizers of the demonstration were not obliged to inform the local self-government authorities.[1007] Additionally, the grounds for the restriction of the place of assembly prescribed by law were not at hand: no other demonstration was held on that place and the individuals who lived, worked or conducted entrepreneurial work in these area were not prevented from carrying out their activities for a long period of time.[1008] Therefore, since there were no lawful grounds for the restriction, the demontrators had a constitutional right to choose the area of gathering.[1009] The Government, while restricting the right of the citizens to choose the place of the assembly, has ignored its negative obligation and unjustifiably intervened in the process of realization of the right to assembly by the citizens.

On this occasion, the Public Defender of Georgia has addressed the Chief Proesecutor's Office of Georgia with a public statement[1010] and requested the investigation of the above facts, also to identify the decision-making official/officials. Effective and timely investigation by the State will be an indicator of complying with the positive obligation in terms of freedom of assembly.

Demonstration „Stop Russia"

On 18 July 2015, before starting the organized demonstration "Stop Russia" in front of the Administration of the Government of Georgia, the police has arrested one of its organizers, producer of "Tabula" – Aleksi Machavariani. As a reason of the detention was indicated that Aleksi Machavariani has insulted the police and did not obey its lawful request to take the truck out of territory surrounding the Government Administration.

1004 Available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-shekrebis-tavisuflebis-dargvevastan-dakavshirebit.page> [Last Visited on 28.03.2016].
1005 Letter #204/202 of the Ministry of Internal Affairs of Georgia; 15.09.2015.
1006 Article 25 para 3 of the Constitution of Georgia, the relevant articles of the Georgian Law on Assembly and Manifestations.
1007 The Georgian Law on Assembly and Manifestations, Article 5 para 1.
1008 The Georgian Law on Assembly and Manifestations, Article 10 para 1.
1009 The right to assembly in itself contains the right to choose the place for gathering, the above also noted in the decision №2/482,483,487,502 of the Constitutional Court of Georgia dated 18 April 2011, II.paras 34,55.
1010 Available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-shekrebis-tavisuflebis-dargvevastan-dakavshirebit.page> [Last Visited on 28.03.2016].

The representative of the Public Defender of Georgia attended the hearing of the case at the Tbilisi City Court on which the Public Defender of Georgia has issued a special monitoring report.[1011] The representatives of the law enforcement authorities could not provide the evidence to prove that the truck was obstructing the pedestrian movement or that there was any violation of the traffic rules. The law enforcement staff was indicating during the court hearing that Aleksi Machavariani's phrase "shameful police" constituted a small-scale hooliganism.

We welcome the decision of the Tbilisi City Court according to which the administrative proceedings against Aleksi Machavariani were terminated. The freedom of expression protects critical and those statements that might offend or disturb some part of the society or the State.[1012] Criticism of the Government cannot become the legal ground for the restriction of freedom of expression and assembly.[1013] Similar approach directly contradicts the main objective of the freedom of expression.

Demonstration against the project "Panorama Tbilisi"

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

It is unfortunate that the court made decision by neglecting the national and international standards of freedom of expression and assessed the protest sign used during the action as a small-scale hooliganism. The administrative proceedings were terminated towards three protesters and the other seven individuals were subjected to the administrative sanction – the fine.

The law of Georgia on "Freedom of expression" [1014] regulates sanctioning only in the cases of the *direct insult or obscenity*. The phraseology used by the protesters was not insulting someone directly, the protest was directed to one of the projects, and not to any specific individual. As for obscenity, the disputed part of the phrase may be unacceptable for part of the public, however, as noted above, freedom of expression is protecting the "unacceptable" opinions as well and choosing to the form of expression is person's constitutional right. In addition, in process of assessing the statement as an obscenity it is important to taking into consideration the context. According to the Law of Georgia on the Freedom of Speech and Expression,[1015] obscenity is a statement, which does not have any political cultural, educational or scientific value and which rudely violates the universally recognised ethical norms. The used phrase was directed towards the governmental institutions regarding the project of the high public interest. Therefore, we should consider it is an opinion expressed in the framework of the public protest, which had a political value. Hence, according to the assessment of the Public Defender of Georgia, opinion expressed by the protesters did not constitute obscenity.

Active involvement of the citizens in public life is a necessary prerequisite for the formation of a democratic State. Therefore, the Government should contribute to the implementation of the above objective.

It is unfortunate that the Tbilisi City Court did not properly assess the political context of the above-mentioned freedom of expression. The Court simply considered the statements as obscenity and without any justification, decided that they were without any meaning, without any value and grossly violate the universally recognized ethical norms.[1016] It should be noted that accoring to the Court, in the present case, there was a conflict

1011 Available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-shekrebis-tavisuflebis-shezgudvis-faqtebs-exmaureba.page> [Last Visited on28.03.2016].

1012 Decision №1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, II.p.7;

1013 Decision №1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, II.p.106.

1014 The Law of Georgia on the Freedom of Speech and Expression, Article 9 para 1 (b).

1015 The Law of Georgia on the Freedom of Speech and Expression, Article 1 para f.

1016 Ruling #4/4710–15 of the Tbilisi City Court Administrative Board dated 23 July 2015. The Tbilisi Court of Appeal, with its decision #4/a–600–15 date 7 September 2015 upheld the above ruling.

between the freedom of expression and the human dignity and honour. However the Court did not mention a specific addressee, whose honor and dignity might have been infringed with the above form of the freedom of expression. Besides, the decision of the Court to give an unconstrained preference to the protection of human dignity and honor does not meet the standard of validity. The unsubstantiated reasoning of the Court that contradicted the national and international standards of the freedom of expression became the basis for the decision unjustifiably restricting the freedom of expression.

The Case of S.Sh.

The Public Defender of Georgia has studied the application of the citizen S.Sh.[1017] According to the application, on 13 May 2015, in Tbilisi,while two cars were moving towards the Rustaveli Avenue in order to hold a peaceful demonstration, the police stopped them. The relevant inventory to hold a demonstration (sound amplifiers, banners) was placed in the vehicles. According to the information provided by the Ministry of Internal Affairs of Georgia, based on the anonymous notice, the above vehicles have violated the traffic regulations, namely, have created an emergency situation.[1018] Since the patrol police representatives were not able to objectively investigate the offence on site, the cars were transported to the special protected impound lot.[1019] As explained by the applicant, transferring the vehicles to the special protected (penal) parking lot has obstructed the planned demonstration.

The Code of Georgia on Administrative Offences, in case of a number of administrative offences, foresees towing the vehicles to the special protected impound lot. The analysis demonstrates that the legislator indicates in the article listing the offences in cases of which transferring the vehicles to the special protected impound lot is allowed.[1020] Besides, Article 119 note 1 of the Code of Georgia on Administrative Offences enlist specific offences when there is a necessity to deprive the offender of the vehicle pending a hearing and the vehicle shall be carried to a special impound lot.[1021] Specific issues related to the obligation to carry the vehicle to the special impound lot are also regulated in Article 259 of the Code of Georgia on Administrative Offences.

According to the data of the Office of the Public Defender of Georgia, the police had the information that the offence foreseen by Article 125 of the Administrative Offences Code of Georgia might have been at hand Violation of traffic regulations by the driver of a vehicle, namely, creation of the emergency situation. The present article[1022] in case of the above offence does not foresee the possibility to carry the vehicle to a special impound lot. The present incident does not meet the requirements of Article 119 note of the Code of Georgia on Administrative Offences. Namely, during the offence, the offender should not have in immediate possession a driving license or the transport vehicle registration document. Besides, requirements of Article 250 of the Georgian Code on Administrative Offences are also not satisfied. The above article sets as a precondition of carrying a vehicle to a special impound lot the suspension of a driving license as an administrative sanction. The above form of sanction is not provided in Article 125 of the Administrative Offences Code of Georgia.

Based on the all above-mentioned, even in case of finding the offence foreseen by Article 125 para 4 of the Code of Georgia on Administrative Offences, the legislation does not enshrine carrying the transport vehicle to a special impound lot. Therefore, the above measure taken by the law enforcement authorities did not have a legal ground. In addition, on the second day of the incident, on 14 May 2015, administrative proceedings were terminated due to the non-existence of the offence. Unlawful and arbitrary actions of the law enforcement

1017 Application №5336/15 of the citizen S.SH. dated 13 May 2015.
1018 Letter №20/12–2587647 of the Ministry of Internal Affairs of Georgia dated 20 November 2015.
1019 The acts of delivery and receipt №12691 and №12692 on the temporary seizure of vehicles were drafted.
1020 For instance, Article 125 of the Code of Georgia on Administrative Offences.
1021 If the offender does not have in his/her immediate possession a driving license or the transport vehicle registration documents in the case of the offences provided in Articles 116, 117, 118, 118^1, 118^2, 119, 120, 121, 121^1, 123, 125 and 127^1 of this Code, he/she shall be deprived of the vehicle pending a hearing and the vehicle shall be carried to a special impound lot
1022 The Code of Georgia on Administrative Offences, Article 125 para 4.

authorities caused the unjustified restriction of the freedom of assembly and financial damage to the owner of the transport vehicle.[1023]

According to the information provided by the Ministry of Internal Affairs of Georgia,[1024] the inquest on the possible misconduct of the patrol police inspectors in the above case was submitted to the General Inspection of the Ministry of Internal Affairs. It is important to give these facts the adequate legal assessment and hold the employees of the Ministry of Internal Affairs who committed violations adequately responsible. The Public Defender of Georgia will keep an eye on the response of the Ministry of Internal Affairs General Inspection on the present case.

Hunger Strike of the Political Party "Patriotic Alliance of Georgia"

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

The political party "Patriotic Alliance of Georgia" has protested the results of the mid-term Parliamentary report with the hunger strike in front of the State Chancellery of Georgia. Demonstration was held peacefully and was terminated on 24 November 2015 after the meeting with the representatives of the legislative authorities. During the strike, discontent of demonstrators was caused by the fact that they were not allowed by the law enforcement authorities to set up the tents.

Article 11 para 2 and Article 11^1 of the Law of Georgia on Assemblies and Manifestations constitute a prohibitive rule for the participants of the assembly. The above article only refers to impermissibility of the deliberate disruption of the transport movement and a partial or complete blocking of the transport carriageway, including with the cars, various constructions and/or with the objects. In addition, the executive authority of the local self-government or the Government of Georgia decides to open the carriageway and/or to restore the traffic in accordance with the requirements of the Constitution of Georgia for the restriction of freedom of assembly in each particular case. Besides, the law indicates that the above decision cannot be made if the assembly cannot be held otherwise due to the number of the participants and all legal requirements are met.

Accordingly, the legislator does not establish the absolute rule applicable in all cases and prefers an individual approach to every case. In addition, the legislation indicates those circumstances, which should taken into consideration during the decision-making, namely: intent, the number of participants of the assembly and impossibility to enjoy the right to assembly otherwise, and the public interest.

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

The Office of the Public Defender learned that on 12 November 2015, in Gori, the peaceful demonstration of the members of the "Patriotic Alliance" that was held in front of the theatre, was disperced by the police by force, which should be assessed as a restriction to the enjoyment of the right to assembly and manifestations. According to Article 25 para 3 of the Constitution of Georgia, only the authorities shall have the right to break up a public assembly or manifestation in case it assumes an illegal character.

1023 The owners of the vehicles have covered the maintenance expenses of the cars carried to a special impound lot according to the requirements of the Georgian Code on Administrative Offences.

1024 Letter #20/12–2587647 of the Ministry of Internal Affairs of Georgia dated 20 November 2015.

Unfortunately, the Government still does not express its readiness to establish international standards of freedom of assembly and manifestation, or to comply with the positive and negative obligations that are established by numerous decisions of the European Court against various States.

The Case of K.G., N.N., and M.D.

The activists of the "Free Zone" ("Tavisupali Zona") **K**.G., N.N., and M.D. were arrested on 2 October 2015, in Kutaisi, during the demonstration supporting the TV Company "Rustavi 2" held in front of the Parliament of Georgia.

The activities of the "Free Zone" were charged with Article 239 (2) (a) and (b) of the Criminal Code of Georgia (the action which grossly violates public order or demonstrates open contempt toward the public, committed with violence or threat of violence) on the fact of physically abusing the member of the Georgian Parliament – Davit Lortkipanidze. According to the prosecution, they have verbally insulted the member of the Georgian Parliament and tried to physically abuse him with the threat of violence. Later, with its decision of 5 October 2015, the Kutaisi City Court has imposed the imprisonment as a measure of restraint against the above-mentioned individuals.

The positive obligation of the State entails the protection from the violence the participants of the demonstration as well as the addressees of the protest. At the same time, it is impossible to justify any form of violence with the protection of the right to freedom of assembly and manifestations. However, in the present case, subjecting the detained individuals to the imprisonment as a measure of restraint caused threat to the right to freedom of assembly and manifestations and to the right to fair trial.

Imposing imprisonment as a preventive measure was unjustified and raised doubts about the selective justice since during the identical cases of the recent years, including on the facts of violence against the members of the Georgian Parliament (Parliamentary reports of the Public Defender of 2012, 2013 and 2014), imprisonment as a measure of restraint, as a rule was not used against the demonstrators.

In the process of displaying any form of violence during the demonstration it is necessary for the State to take adequate measures that will not be selective. Besides, the actions and responsibilities of the investigative authorities in the similar cases should be uniform. Together with the investigative authorities, and first and foremost the Chief Prosecutor's Office of Georgia, responsibility lies upon the common courts, who make a final decision on each fact, draws a line between the freedom of expression and violence. Determination of responsibilities for each particular incident should be based on the standards of human rights protection, which cannot be attained without the comprehensive and convincing justification of the decision. The lack of substantiation casts a doubt on the fairness of the court.

In the decision on the preventive measure, the court (the judge) did not specifically indicate why was it necessary ot use imprisonment as a measure of restraint against the accused. In particular, it was not noted whether the legal grounds for using imprisonment as a preventive measure were met, or whether the necessary and procedural grounds for using imprisonment as the most severe measure of restraint existed. The judge only gave general indications that the above was reinforced with the materials and arguments and that the accused individuals were correctly subjected to imprisonment as a measure of restraint and that imprisonment against these individuals in the present case was "necessary" and consistent with the public need.

The court's unsubstantiated decision equals to the refusal to the protection of human rights. The Kutaisi City Court's decision of 5 October 2015, according to which the participants of the demonstration near the Parliament of Georgia – M.D. K.G. and N.N. were subjected to the imprisonment as a measure of restraint,

cannot meet the standard of the substantiated decision.[1025]

It should also be noted that imprisonment as a measure of restraint against the above individuals was substituted with bail by the court decision of 25 December 2015. Each individual was imposed a bail of 3,000 (three thousand) GEL. During the preparation period of the report, the court has completed the phase of studying the evidence, however, the decision was not taken.

FREEDOM OF ASSOCIATION

Freedom of association is protected by Article 26 of the Constitution of Georgia. Freedom of association is crucial not only for guaranteeing basic human rights, but in the formation of democratic and free state as well.[1026] Freedom of association is one of the most important pillars for self-determination of the society as it is in case of freedom of assembly and manifestations.

Article 26 of the Constitution ensures an individual's right to form an association and to enjoy the fundamental rights guaranteed by the Constitution together with the others, also, protects the right to create these associations and their existence.[1027] The above article also guarantees the right to conduct the activities of the association, which, of course, does not mean the activities to overturn the constitutional order, infringe the independence of the state or any other activities prohibited by law. Article 26 para 2 of the Constitution of Georgia guarantees the right to form a political party or other political association.

The importance of the realization of the freedom of association in a democratic society was once more underlined by the actions taken against the political party "United National Movement" last year.

In late April 2015, in Gurjaani, the violence occurred against some members of Parliament and other supporters of the "United National Movement". In particular, according to the spread information, [1028] on 20 April, in Gurjaani district Gemgeoba and Sakrebulo, with the activists of the coalition "Georgian Dream", invaded into the working room of the majoritarian parliament member of Giorgi Gviniashvili and made him leave the building with other supporters of the "United National Movement". The confrontation of the "Georgian Dream" supporters and the "United National Movement" supporters also took place on 21 April, on the territory of the Gurjaani sports complex. [1029] According to the disseminated materials, [1030] on the second day, namely on 22 April, the activists of the "Georgian Dream" gathered in the local government building, including employees of local self-government established (non-commercial) legal entity and threw eggs to the majoritarian parliament member of Gurjaani Giorgi Gviniashvili, MP Irma Nadirashvili and other persons being with them in the moment.

The Public Defender of Georgia condemned the above facts of violence and called on the relevant authorities to take all measures in order to adequately assess the above-mentioned facts, identify all responsible individuals

1025 Article 198 of the Criminal Procedure Code of Georgia. Purpose and grounds for applying a measure of restraint
1. A measure of restraint shall be applied to ensure that the accused appears in court, to prevent his/her further criminal activities, and to ensure execution of the judgement. Remand detention or any other measure of restraint may not be applied against the accused if the purpose stipulated by this paragraph can be achieved through another less severe measure of restraint. 2. The grounds for applying a measure of restraint shall be a reasonable assumption that the accused will flee or will not appear in court, will destroy the information that is importance to the case, or will commit a new crime

1026 Decision #2/2/439 of the Constitutional Court of Georgia dated 15 September 2009 on the case of "The Citizen of Georgia Omar Alapishvili vs. The Parliament of Georgia."

1027 Konstantine Kublashvili, "Fundamental Rights," (edit. T. Beridze, Tbilisi, 2003), pp. 308-315.

1028 Available at: <https://www.youtube.com/watch?v=-rd92FZ2ADU> [Last Visited on 28.03.2016].

1029 Available at: <https://www.youtube.com/watch?v=1QPQURxrplI> [Last Visited on 28.03.2016].

1030 Available at: <https://www.youtube.com/watch?v=b5n0IhWSdEM> [Last Visited on 28.03.2016].

and subject them to the appropriate legal consequences.[1031] While studying the incidents that occurred on 20 and 22 April in Gurjaani, it is important to pay special attention to the role of the law enforcement authorities – how effectively have they carried out their activities and what prevented them from preventing the violent actions.

This was not a first occasion,[1032] when the employees of the local self-government or other (non-commercial) legal entities based by them, were actively involved in the confrontation with the opposition party. The Ombudsman has repeatedly referred to the negative aspects of participation in these incidents by the local government employees, including the danger of raising doubts about self-government' politically neutrality and impartiality. The issue needs to be addressed immediately. If there are no signs of crimes in the acts of the certain individuals, it is necessary to assess the circumstances in the framework of the administrative offences. Also, if the acts committed by civil servants do not constitute criminal or administrative offences, it should be assessed that no disciplinary offences took place.

Besides the above-mentioned incident, the following actions were taken against the "United National Movement" during the reporting period:

- In September 2015, the executive secretary of the political party noted that in Tbilisi, since April 2015, through the surveillance camera installed on the lightning pole on 45a Kakheti highway, the Ministry of Internal Affairs of Georgia, waithout any legal ground was conducting video surveillance on the high ranking officials of the political party "United National Movement," its employees, official guests, activists, their movement, video surveillance of their transport vehicles, unlawful gathering and processing of their personal data;

- According to the information provided by the „United National Movement," on 18 October 2015, in Tbilisi, the activists of the "Georgian Dream" and the "Youth Movement – Free Zone" forcibly broke into the territory of central administration of the "United National Movement," damaged the property and threw burning object into the building. The executive secretary of the party noted that the patrol police on spot was ineffective responding to the above illegal actions. Afterwards, during a couple of days, all over the country, the regional organizations of the party were subject to the unlawful actions, such as nailing the office door, throwing the objects, splashing the paints and etc.

- The most severe incident took place in December of the last year, when the office of the political party "United National Movement" in Dedoplistskaro was damaged by the firearm.

The facts/actions named by the political party "United National Movement" last year migh serve the purpose of threatening and/or pressuring the members of the party and/or the individuals who want to cooperate with the party.

Accordingly, in order to avoid interference in the activity of the political party or unjustified interference in the freedom of association, on one hand, the Governmental institutions should not undermine with their actions the realization of the freedom of political association and on the other hand, when there are signs of attacks or any forms of violence, pressuring of threats against the political association or its members from the private individuals, the law enforcement authorities should respond promptly and all the offenders should be punished. These are the exact actions by which the State ensures to comply with the negative and positive obligations in terms of exercising the freedom of association.

1031 Availablet at: <http://www.ombudsman.ge/ge/about-us/struqtura/departamentebi/samoqalaqo-politikuri-ekonomikuri-socialuri-da-kulturuli-uflebebis-dacvis-departamenti/siaxleebi-jus/saqartvelos-saxalxo-damcvelis-gancxadeba-gurdjaanshi-ganvitarebul-movlenebtan-dakavshirebit.page> [Last Visited on 28.03.2016].

1032 The similar case happened in March 15, 2015 in Zugdidi. The report of the Public Defender on the Situation of Protection of Human Right and Freedoms in Georgia, 2014, pp 490–491.

The Ministry of Internal Affairs of Georgia has provide the Office of the Public Defender of Georgia with the information[1033] on the above incident, according to which effective measures are taken in order to identify and subject to the administrative responsibility individuals who have committed offence of defacing the façade of the offices of the "United National Movement." It is noteworthy that according to the Georgian legislation, responses to the offences should be made in a short period of time, otherwise, there will be no possibility to entail responsibility of the offenders. Therefore, since the timeline for imposing administrative sanctions on the similar offences is 4 months, which has already been exhausted, actions of the Ministry of Internal Affairs of Georgia in relation to the incidents which still have not been found as the offences, should be assessed as ineffective.

According to the information provided by the Ministry of Internal Affairs of Georgia,[1034] investigation on the facts of damaging the door and the glass of the "United National Movement's office was going in the Lanchkhuti and Gori regionals units of the Ministry of Internal Affairs. The crime is foreseen by Article 187 (e) (1) of the Criminal Code of Georgia. On the case of damaging the door of the political party's office in Akhaltsikhe on 19 October 2015, the criminal case #016191015001 is ongoing. The investigation is conducted under Article 226 of the Criminal Code. According to the administrative authority, in relation to the fact that took place on 19 October 2015, on St. Nino's Street in Kutaisi, one person was arrested for committing the act foreseen by Article 150 para 1 of the Georgian Code on Administrative Offences. The above individual was subjected to pay the fine of the amount of 50 GEL by the Kutaisi City Court. For violating the public order, the action enshrined in Article 166 of the Code of Georgia on Administrative Offences, on the same day in front of the "United National Movement's Adjara office, one individual was fined by 100 GEL and one individual was arrested, who was released the same day under a written consent.

According to the Ministry of Internal Affairs of Georgia, the official examination is conducted in the General Inspection of the Ministry in relation to the incident that occurred on 18 October 2015, at the central administrative building of the "United National Movement" in Tbilisi.

As for the fact of attack on the office of the "United National Movement" in Dedoplistskaro, the Public Defender of Georgia has issued a statement on this matter and called on the law enforcement authorities to conduct a prompt and effective investigation.[1035] Investigation on the above fact was initiated under Article 187 of the Criminal Code of Georgia, which entails damage or destruction of property tht caused substantial damage. The Public Defender of Georgia will monitor the progress of investigation. **We believe that effective investigation of the above facts should constitute a priority for the State. Special attention should be paid to the circumstance whether those actions were hate-motivated. The investigation authority should identify each individual who participated in the above actions as soon as possible, in order to impose the relevant responsibility on them.**

As for the issue of legitimacy of the surveillance camera installed near the central office of the political party, the representatives of the Public Defender of Georgia have studied the video recordings of one month of the above camera, as well as the current mode of the image in the building of LEPL "112" (where the server of the above-mentioned video surveillance camera is installed). The representative of the Ministry of Internal Affairs of Georgia confirmed that the above camera can move in different directions and explained that the surveillance camera installed on the Kakheti Highway 45a in Tbilisi helps to identify the moving cars committing various offences and stemming from the interests of investigation, the direction of the cars. **I believe that the legitimate aim of the Ministry of Internal Affairs of Georgia can be achieved if the moving surveillance camera installed on the Kakheti Highway 45a in Tbilisi is substituted with the fixed video surveillance camera having characteristics that will give the possibility to place under its coverage area only the**

1033 Letter #553784 of the Ministry of Internal Affairs of Georgia dated 4 March 2016.
1034 Letter #553784 of the Ministry of Internal Affairs of Georgia dated 4 March 2016.
1035 Public statement of 11 December 2015 is available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-dedofliswyaroshi-momxdar-incidents-exmaureba.page> [Last Visited on 28.03.2016].

Kakheti Highway and the transport vehicles moving on it. I consider that the above measure will be proportionate to the aim and besides, will create more guarantees for the political party to manage its activities in a free environment.

RECOMMENDATIONS

To the Parliament of Georgia/the Government of Georgia:

- To make legislative changes in order to harmonize the national legislation on freedom of assembly and manifestation with international standards, in accordance to the recommendations of the Public Defender and the Venice Commission of the Council of Europe. The amendments should foresee the possibility of holding spontaneous demonstrations and the blanket prohibitions of assemblies and manifestations should be substituted with the individual approach in each case.

To the Chief Prosecutor's Office of Georgia:

- To investigate in a reasonable time the facts occurred on 15 June 2009 and 3 January 2011 in order to identify the guilty individuals and subject them to the adequate legal sanctions.
- To investigate timely and effectively the facts of damaging the offices of the "United National Movement" and the facts of violence against the members of the party, including the members of the Parliament in different regions.

To the Ministry of Internal Affairs of Georgia

- To conduct trainings to all the relevant employees of the Ministry of Internal Affairs of Georgia to study the idea of the freedom of expression and assembly/manifestations, in order to avoid in future the cases of arbitrary restriction of freedom of assembly/manifestations and the freedom of expression.
- To substitute the moving surveillance camera installed on the Kakheti Highway 45a in Tbilisi with the fixed video surveillance camera having characteristics that will give the possibility to place under its coverage area only the Kakheti Highway and the transport vehicles moving on it.

PROHIBITION OF DISCRIMINATION

By adopting the Law on "Elimination of All Forms of Discrimination" (hereinafter the "Anti-discrimination law) in May 2014, the Parliament of Georgia recognized the elimination of discrimination as one of the most important priorities of the country since supporting the development of the discrimination-free environment is critical for normal functioning of democratic society based on pluralism and for the formation of society tolerant to diverse groups.

One of the main achievements of the anti-discrimination law is that its scope covers administrative bodies as well as the private individuals and legal entities. The law defines the concept of direct and indirect discrimination and prohibits acts involving coercion, encouragement of and support to discrimination. The law contains a broad and open-ended list of the prohibited signs of discrimination, which gives the possibility not to leave discrimination, regardless of any sign, outside the scope of the law.

The abovementioned law assigns the function of supervision on the elimination of discrimination and guaranteeing equality to the Public Defender. The Public Defender pursues four directions in order to ensure the implementation of his functions:

1. Examining cases of discrimination;
2. Developing legislative proposals;
3. Implementing public awareness raising campaigns;
4. Maintaining database of discrimination cases and preparing annual special reports.

The present chapter reviews the necessity to amend the Anti-discrimination law, the proceedings in the Public Defender's Office and the revealed trends.

THE NEED FOR AMENDMENTS TO THE ANTI-DISCRIMINATION LAW

Based on the necessity of the agency that monitors the discrimination, the law assigns the function of supervision on the elimination of discrimination and guaranteeing equality to the Public Defender. Besides, the law also took into consideration an effective mechanism that will assist the Public Defender in ensuring equality. Namely, examination of the cases of discrimination, procedures of collusion, development of the recommendations and general proposals addressing both public and private sector. Despite the above-mentioned, various legal norms and shortcomings prevent the effective implementation of elimination of discrimination and ensuring the equality placed upon the Public Defender and prevent the victims of discrimination from restoring their rights that have been violated.

Article 38 para 6 of the Organic Law of Georgia the "Labour Code", Article 127 para 1 of the Law of Georgia on Civil Service and Article 363[2] of the Civil Procedure Code of Georgia foresee the period of one month for appealing in court in case of dismissal from work and 3 months – in the discrimination related cases.

Article 9 para 1 of the law on "Elimination of All Forms of Discrimination" states that the Public Defender of Georgia shall suspend proceedings if due to the same alleged discrimination the dispute is pending in court.

In the conditions when the employees are given essentially short period of time for appealing the decision and in the process of proceedings at the Public Defender's Office the lost wages will not be compensated, in most of the cases, in parallel to the Public Defender the applicant also addresses the court with the lawsuit, which causes the termination of the proceedings by the Public Defender.

The same can be noted about the other disputes, where the term for addressing the court is 3 months and the application is filing a complaint in the court in order to request the compensation for the damage. As a result, numerous disputes and the possibility of their timely resolution remains outside the competence of the Public Defender.

Addressing the Public Defender and the Court with the complaint are the main means for the effective implementation of the State policy, which is fighting against discrimination. The legal framework should prevent an overlap pertaining to the functions of the Public Defender and those of court. Their coexistence must be complimentary and oriented on effective protection against discrimination.

According to Article 9 para 1 (b) of the Law of Georgia on "Elimination of All Forms of Discrimination", The Public Defender of Georgia shall suspend proceedings if due to the same alleged discrimination "administrative proceedings are under way."

Administrative proceedings constitute the part of activities of the executive government, which enjoys wide discretion and appropriateness. Taking into consideration the nature of its work, it might "easily" come into conflict with human rights. If inferior administrative body already conducted discrimination, the superior administrative body is not eligible to react on the cases and effectively restore the violated rights (determine the fact of discrimination, compensation for damages), accordingly it cannot be considered as an alternative dispute resolution mechanism along with the Public Defender's office. Particularly, administrative bodies often delay the proceedings, accordingly, waiting for the finalization of administrative proceeding will hinder the effective reaction to the violated rights.

Due to the above-mentioned facts, it would be expedient to delete sub-paragraph (b) from Article 9 paragraph 1.

Despite the fact that the public institutions have the obligation to provide the Public Defender with the information under the Anti-discrimination law, the law does not provide the same leverage for the acquisition of materials, documents, explanations, and other information from private legal or physical persons that is available in the case of public agencies, and the process is fully dependent on the good will of the parties. Mentioned fact creates important issues in practice, as far as it makes difficult and sometime makes it even impossible the to examine all the circumstances and proper solution of the case.

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

The Public Defender has a real leverage to ensure the enforcement of his decisions taken against the administrative authorities. The same mechanism is not foreseen against the physical and legal persons. If the fact of alleged discrimination against the physical or legal person is confirmed, the Public Defender will only

issue a recommendation or a general proposal. Afterwards, there is no leverage that will ensure the compliance with the recommendation by the private persons or monitoring of fulfilling them.

In this circumstances it is necessary to extent the application of the above obligation to some extent to the private and legal persons since the supervision function foreseen by Article 3 paragraph 1^1 of the Ogranic Law on "Public Defender of Georgia" actually has a declarative character and makes the fight against discrimination ineffective.

Therefore, it would be expedient to add to Article 24 of the organic law on "Public Defender of Georgia" the obligation of the private physical and legal persons to consider the recommendations related to the elimination of discrimination and inform the Public Defender about the results of consideration.

The Civil Code of Georgia defines various terms in relation to certain violations, for instance, the term of the contractual disputes is 3 years, of the real estate-related contractual disputes - 6 years, 3 years for the tort obligations related disputes, and the general limitation period is 10 years.

Article 363^2 of the Civil Procedural Code of Georgia allows the victims of discrimination to apply to the court based on the facts he/she considers discriminatory. A claim may be filed with a court within three months after a person becomes aware or ought to have become aware of the circumstance that he/she assumes to be discriminating, in order to restore his/her rights and request the compensation for the material and moral damages.

It should be noted that the prescribed period of three months is too short compared to the other limitation periods and besides, is not sufficient for filing a lawsuit and preparing the case materials. The Public Defender considers it appropriate that the period be increased to one year.

On 11 February 2015, in order to improve the Anti-discrimination Law, the Public Defender addressed the Parliament of Georgia with the legislative proposal to amend the Law of Georgia on "Elimination of All Forms of Discrimination," the Organic Law on "Public Defender of Georgia," the "Civil Procedure Code of Georgia" and the "Law on Civil Service." The Committee on Human Rights and Civil Integration and the Legal Issues Committee approved a legislative proposal with certain remarks. It is unfortunate that the Committee hearings to adopt the amendments have not yet started in the Parliament of Georgia. It should be underlined that one of the most important indicators for fulfilling the action plan for the viza liberalization with the European Union is the effective implementation of the anti-discrimination mechanism. The Parliamentary Commission of the European Union, in its fourth report on the implementation of the action has underlined the Public Defender's legislative proposal submitted before the Parliament of Georgia, thereby creating expectations that the legislative body will consider and adopt the proposed changes.

It will be important that the Human Rights and Civil Integration and Legal Issues Committees timely start the committee hearings on the initiative, since the effective implementation of the Anti-discrimination law in fact depends on the timely adoption of the legislative changes.

THE CASES BEFORE THE PUBLIC DEFENDER OF GEORGIA

From the day the Anti-discrimination Law was adopted to 31 December 2015, the Equality Department of the Public Defender's Office has considered 130 cases; out of these cases recommendations were issued on 5 cases, general proposals – on 3 cases, decision on terminating the proceedings – on 29 cases, since the fact of discrimination was not confirmed as a result of sufficiently studying the case materials; 34 applications/ claims were deemed inadmissible because of apparent lack of evidence, 8 case proceedings were suspended as

applicant had decided to refer to the court, 13 cases were referred to the other departments as the examination of case materials revealed the violation of other rights rather than discrimination.

In addition, 10 applications were submitted to the Public Defender's Office on request of the Amicus Curiae. Four opinions of the Amicus Curiae were prepared and submitted to courts in Batumi, Zestafoni and Tbilisi.

40% of the cases addressed the private sector and 60% - the public sector. Oral hearing with the participation of the parties was held on 7 cases, however, despite the effort, the friendly settlement between the parties was impossible.

Out of the proceedings before the Public Defender 16% of the applications/complaints refers to the discrimination fact based on political and other views, 14% - to the gender identity and sexual orientation, 13% - to the affiliation with the trade union, 11-11% - to the disability, religion and sex, 10% - to the national and social origin.

Those applications and complaints that address the discriminatory treatment based on political and other views are mainly related to the employment through competition. Despite the fact that there are many similar complaints, the Public Defender has not found discrimination in any of them, mostly due to the lack of evidence. 13% of the applicants refers to the alleged discriminatory treatment based on the membership of the trade union and appeals against the dismissal on this ground, distribution of bonuses, imposition of disciplinary sanctions and etc. The Public Defender has not yet found discrimination in any of the above cases. The problems are encountered in relation to the acquisition of the documents from the large organizations. They refuse to cooperate, which is related to the part of the gap of the Law according to which, the private companies will provide information to the Public Defender only on a voluntary basis. There are cases when the employees of the company refuse to give explanations, since they are afraid of being subjected to discrimination by the company and/or dismissed from work.

Discrimination Based on Citizenship

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

The Public Defender has noted that the law imposes equal rights and responsibilities for the Georgian citizens, foreign citizens and the stateless persons in terms of making use of the natural and cultural environment and does not allowe any exceptions. Therefore, regarding the right to the utilization of the botanical garden, the Georgian citizens, foreign citizens and stateless persons are put in unequal conditions.

The Public Defender considered that the necessity of awarnees and popularization of the science education in the local population cannot be regarded as an objective and reasonable justification of unequal treatment, since the above objective can be reached even in case of the common tariff and not at the expense of the increased tariff for the foreign nationals, especially taking into consideration the fact that the Botanical Garden itself notes that despite the imposition of a different tariff, the number of the local visitors is not increasing. Therefore, the set objective is not being achieved by the used means.

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

Accordingly, the Public Defender concluded that introduction of a different tariff rule for the foreign nationals constituted direct discrimination and addressed the Batumi City Council with the recommendtation on 7 September 2015.

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

Discrimination Based on Sex

Discriminatory Job Announcements

Women's economic activity is directly linked to their employment rate. Despite numerous positive steps taken for the improvement of legislation, still problematic are the issues of advancement of women, equal participation in economic development and equal pay.

The main goal of fighting off discrimination in labour relations is to create equal opportunities for work and development so that they can realize their potential to the maximum extent. Healthy environment on a labour market contributes to the growth of competition, which in turn has an evident positive effect on the economic wellbeing of the state.

Considering the economic and social environment in Georgia, the labour market is more sensitive and strives towards the promotion of discriminatory environment. The most alarming are the stereotypes existent in the society, which are based on the deep cultural and mental roots. In Georgian reality there is a clear vision on what kind of jobs should be done by "women", "men", "youth", "good-looking individuals." Hence, the majority of the employers often recklessly, inadvertently gets involved in the existing flow and disseminates their vacancy announcements full of discriminatory statemenns in the public.

Public Defender studied the online job announcements posted on www.jobs.ge. 10.01% of the announcement used terms related to the female gender and 24.02% referred to male candidates.

The Public Defender considered that since the web page www.jobs.ge was not filtering the job announcements based on discriminatory wordings, on the one hand, it was giving the possibility to the employers to spread the discriminatory job announcements and through this – to discriminate in the pre-contractual stage, and on the other hand, was replicating this discriminatory practice. This was considered as a promotion of the discrimination practices.

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

The Anti-discrimination law prohibits discrimination in all areas, including the labour relations. The Labour Code also prohibits discrimination in pre-contractual relations. Pre-contractual relations include employment period from the publication of the job announcement.

Georgian legislation prohibits discrimination in pre-contractual relations, however, unlike the other countries, does not define what can be considered a discriminatory vacancy announcement.

Before certain legislative amendments, it will be of utmost importance that the Ministry of Labour, Health and Social Affairs developes a guidline, which will determine specifically how the company should draft a vacancy announcement, what words should be used, how the interview should be held and etc. The above guidelines will be important for the companies announcing the vacancies, as well as the companies administering the web pages where the vacancies are posted.

Discriminatory Treatment Based on Sex in the Children's Infectious Clinical Hospital

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

The Public Defender considered that the refusal to the applicant to stay with his child as a caregiver was based not on threat posed by the individual behavior of the applicant in terms of protection of order and the patients' security, but on the existing practice of the hospital according to which, the men are not allowed to stay in the room with their children. Elimination of men from the list of the caregivers allowed to stay due to the existence of the possible risk, represented a stereotypical attitude towards the lifestyle of men and their participation in the family life.

The Public Defender noted that the similar stereotypes restrict men's possibility to play an important role in various spheres of their children and share with their wives the burden of parenthood. It is of vital importance that the father's role is not underestimated in child-care and they are given the possibility to enjoy the rights and responsibilities of a parent equally as women in an environment free of stigmas.

Accordingly, the Public Defender has found that the hospital has committed direct discrimination based on sex and addressed it with recommendation.

Discrimination Based on Sexual Orientation and Gender Identity

Service

The Public Defender's Office of Georgia has received several applications concerning the lack of service or improper service due to the sexual orientation. In one case, based on the obtained information, the Public Defender has found that there was no discrimination at hand. In other cases, it was impossible to find discrimination due to the lack of evidence. In these cases as well, one of the main factors for not obtaining the evidence was the fact that the private companies are not obliged to provide the Public Defender with the information.

Blood Transfusion

Provisions of the order of the Minister of Labour, Health and Social Affairs of Georgia #241/n No1 and #282/n , consider "man's sexual contact with man" (MSM) as the indicator against donation of blood and its component.

The public defender noted that with the above-mentioned order the MSM group is placed in a disadvantaged situation compared to heterosexual men and women, bisexual women. Ministry poses absolute restriction for MSM, while in cases of heterosexuality, more attention is paid to the character of the relation. The above approach creates the presumption that the MSM relationship necessarily and sistematically puts an individual under the risk of infection. Such stereotypical approach contributes to the stigmatization of the vulnerable group.

The Public Defender considered that the absolute prohibition of being a donor to the MSM group is not proportionate to the legitimate aim in the conditions when through the technoligies existent in Georgia it is possible to identify the virus after a certain period of time. Therefore, it is possible to achieve a legitimate aim without an absolute prohibition, using the less restrictive means. Namely, to establish the relative (temporary) indication of donation for the MSM group for term of the "window period."

On 29 September 2015, the Public Defender has addressed the Ministry of Labour, Health and Social Affairs of Georgia with the recommendation to change the order in a way that these individuals are allowed to be the donors after the expiration of the "window period."

Discrimination Based on Religion and Belief

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

Teaching Religion

The applicants noted that they have taken the building on lease, where they were planning to open the boarding school for the muslim pupils. Qobuleti population, who belongs to the Orthodox congregation, in order to prevent the opening and functioning of the boarding school for the muslim pupils, slaughtered the pig in front of the boarding school and nailed the animal's head on the door of the building.

According to the applicants, the demonstrators were controlling the process of movement in the building of the boarding school. Additionally, on 15 September 2014, they have erected artificial barricades at the entrance of the boarding school, were constantly patrolling on spot and systematically restricted the freedom of movement of those who wanted to enter the boarding school. They were implementing the above with force, threats and verbal abuses.

The applicants also noted that the law enforcement authorities in familiar relations with the demonstrators, they did not take down the artificial barriers and left the other offences without response. Therefore, as mentioned by the applicants, it became impossible to open the boarding school due to the protest rallies held by the respondent individuals, prevention and non-compliance by the State with its positive obligations.

Amicus Curiae prepared by the public defender of Georgia focused on two main legal issues – the standards defined by the European Court of Human Rights for evaluating the possible discriminatory treatment on religious grounds on the one hand, perpetrated by private individuals and on the other hand, perpetrated by the state.

Based on the analysis of international agreements in the field of human rights and the precedents of the European Court of Human Rights, Amicus Curiae expressed an opinion that the presumable rights of the applicants, which were possibly hindered in the discussed case, were allegedly related to the right to the uninterrupted use of property and the right to religious teaching.

The written opinion also elaborated the issues of distributing the burden of proof. In compliance with the Law of Georgia *on the Elimination of All Forms of Discrimination* and the European Convention on Human Rights, the defendants were obliged to prove that their actions were not provoked by the applicants' religion. In order to reveal the possible religious motivation of their actions, it was necessary to evaluate the public statements made by the defendants, religious rituals accompanying the demonstrations, the fact of slaughtering a swine, an impure animal for the Muslim population, and nailing its head to the door of the boarding school. If the defendants pointed out that the boarding school was paralyzed in order to defend the public order, morality or other rights and freedoms, then they would have to prove how the operation of the boarding school violated public order and abused morality.

As for the positive obligations of a state, amicus curiae stated that the Ministry of Internal Affairs was responsible to prove that they had applied all measures to ensure the proper enjoyment of the right to property and freedom of religion without discrimination.

The mentioned case is on a trial stage and the final decision has not been made yet.

Construction of Religious Buildings

On January 16, 2015 M. TS, the representative of the Partnership of "Lawfulness and Justice in Caucasus", appealed to the Public Defender of Georgia and asked submission of the Amicus Curiae to the Court with regard to the administrative lawsuit of the claimants A.V, T.TS. and N.B.

The materials presented by the applicant revealed that a non-registered union "T" which was represented by the members of the religious organization "Jehovah's Witnesses", was granted an authorization to implement construction works in the city of Terjola.

According to the order of the Chairman of the Assembly of Terjola Municipality, dated June 3, 2014, the construction permition was revoked on the basis of the appeal of K.M, resident of Terjola, according to which the given construction endangered the integrity of his land plot and the nearby highway; the construction also put the sustainability of the highway under the risk.

According to the expert opinion submitted by the claimants and the conclusion provided by the *Levan Samkharauli National Forensics Bureau,* construction works on the mentioned street would not have a negative impact on the residential houses of I.Ts. and K.M, nor affect their sustainability.

The construction permit was not extended even after the submission of the above conclusion.

Public Defender's Amicus Curiae was fully based on the practice of the European Court of Human Rights and offered the judge to evaluate the case in compliance with the guiding preconditions applied by the European Court of Human Rights in the process of resolving similar disputes.

With regards to the enjoyment of the rights provided for by the legislation, it was noted that religious freedom is protected by Article 19 paragraph 1 of the Constitution of Georgia and Article 9 paragraph of the Convention for the Protection of Human Rights and Fundamental Freedoms. This right also protects the rights to religious expression and construction of buildings for religious rituals.

Amicus Curiae also evaluated the issue of persons in inherently equal conditions and the specifics of distribution of the burden of proof.

It was mentioned that in the present case, the administrative body should have proved that it was acting to achieve a legitimate aim. They must be evaluated what was the real for the revoking the construction permition and whether the limitation of the right of religion was proportional to the pursued aim.

The judge accepted the Amicus Curiae and attached it to the case. Zestaphoni District Court made a decision on the present case on March 19, 2015.

The judge considered that there was no fact of discrimination. The court has explained that the fact that the claimants were not able to exercise the right enshrined in the Georgian legislation had not been proved, as initially they were able to obtain a construction permit and the later revocation was based on legal grounds.

The court further discussed that unequal treatment was not present either, as the comparator did not exist; namely, defendants claimed that the similar claim had never been filed to them and respectively, the comparator did not exist.

The court ruled that the respondent acted within the framework of a legitimate aim, as the aim of revoking the construction permit was to assess the compliance of the issued administrative-legal acts with the current legislation.

Currently, the case is heared by the Supreme Court of Georgia.

Discrimination Based on Disability

Dismantling of the Ramps by the Private Company during the Cultural Event

On 12 February 2015, the Sports Palace hosted Paata Burchuladze's jubilee concert. Tickets to the concert were also purchased by the persons with disabilities, who could not enter the building due to the insufficient adaptation.

As a result of the examination of the case, the Public Defender determined that the building was not fully in compliance with the standards of adaptation, however, reaching the territory of the stage was possible for disabled persons. The Sports Palace became inaccessible for the disabled persons only after undertaking the reconstructions by the organizers, and accordingly, the LTD "Artpalace" was held in charge of discrimination.

"Artpalace LTD" failed to provide a legitimate aim which would have justified the above reconstruction. The Public Defender considered that the LTD Artpalace committed discrimination by removing ramps. In his recommendation issued on 17 July 2015, the Public Defender called on the LTD Artpalace to develop an internal document (a statute/rules/principles) to consider the interest of persons with disabilities while organizing various events and provide opportunity for them to take part in such events in a manner which is compatible with their dignity.

Termination of Rental Contract by the Physical Person Due to the Autism Spectrum of the Child

On 30 September 2015, the rental contract was concluded between L.B. and L.G., according to which, the owner has rented the space of 23 square metres to the applicant for 300 GEL. When signing the rental agreement, L.B. has informed the owner that had 3 children, among which one was with disability. The owner agreed to sign the rental contract, as a result of which L.B., with the spouse and children, moved to the rented house. The owner, soon after noticing that the child had autistic spectrum, requested L.B. to leave the apartment.

As a result of obsejtively assessing the evidences at his hand, the Public Defender concluded that the real reason behind the termination of rental agreement was the disability of the child.

The Public Defender considered that termination of rental contract before the due date by L.G. due to the disability of the child, addressing the child with autism spectrum with the degrading words, forcing the family of the applicant to leave the apartment at night, was related to the enjoyment by the applicant and his family with the rights guaranteed by Article 8 of the European Convention on Human Rights, Article 16 of the Constitution of Georgia, Article 17 of the Consitution of Georgia and Article 531 of the Civil Code of Georgia.

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

The Public Defender held that L.G. committed direct discrimination against L.B. and his family members based on disability.

Obstacles While Using the Public Transport

As a result of examination, the Public Defender revealed that the employees of the Tbilisi Transport Company do not possess sufficient information on the needs of the children with disabilities. The majority of the interviewed individuals noted that the drivers are not aware that children with autism spectrum need more time than usual to enter/leave the bus, which is regarded by the drivers as a deliberate delay and becomes the reason for irritation. In addition, children with autism spectrum are not able to control their movement, which is difficult to understand for the people around. All the above-mentioned is followed with the poor service, conflict situations and violation of the right to the availability of the public transport. For instance, one of the bus drivers did not give the child with autism spectrum enough time to get off the bus and insulted the child.

The Public Defender noted that currently, the attitude towards the children with disabilitys and their parents in Georgia is not satisfactory. The society does not treat them as equal subjects, since they do not possess sufficient and objective knowledge on the individuals with various disabilities or their and their family members' needs. The stereotypical views formed over the years marginalize the children with disabilities and they are percepted as children with less potential.

Public Defender stressed the special role of parents in the upbringing and development of children and conserved that the stable emotional condition and the positive attitude of a parent is of vital importance for the proper formation of the disabled child, in order to support his/her integration into the society. When the parent encounters obstacles and insults in every aspect of public life, he/she tries to avoid the child from the similar environment for the prevention, in order to protect the child from the psychological pressures of the society and abuse. As a result, the child becomes isolated from the outside world.

The Public Defender considered that the lack of access to public transportation is one of the main factors of exclusion of children with disabilities, which casts doubt on enjoyment of their rights to service, education, health care and access to the other fundamental rights.

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

RECOMMENDATIONS

To the Parliament of Georgia

- To make amendments to the relevant legislative acts in order to eliminate discrimination and ensure equality.

To the Ministry of Labour, Health and Social Affairs of Georgia:

- To develop the guidelines for the equal treatment in the hiring process.
- To amend the order #241/N Annex 1 of the Minister of Labour, Health and Social Affairs of Georgia dated 5 December 2000 so that it becomes possible for the MSM group to be the blood donor besides the window period.

To the Government of Georgia, to the Authorities of Local Government and Self-Government

- To carry out awareness raising campaigns to eliminate discrimination in the country.

FREEDOM OF MOVEMENT

According to the Constitution of Georgia,[1036] everyone legally within the territory of Georgia shall be free to leave Georgia. These rights may be restricted only in accordance with law, in the interests of securing national security or public safety, protection of health, prevention of crime or administration of justice that is necessary for maintaining a democratic society. A citizen of Georgia may freely enter Georgia.

According to the Additional Protocol 4 of the Council of Europe "European Convention on Human Rights,"[1037] "everyone shall be free to leave any country, including his own. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

„The right to freely leave Georgia means the possibility of the individual lawfully within Georgia to lawfully leave the country anytime."[1038] Article 22 paragraph 2 of the Constitution ensures to every individual lawfully within Georgia the right to leave the country. This right covers both the citizens of Georgia and any individual under the protection of the other states."[1039]

The right protected by Article 22 of the Constitution of Georgia is not an absolute right: itis possible to restrict the abovementioned rights, however, only on the grounds, for the aims and in accordance with the rules foreseen by the law. Restriction of the right to the freedom of movement […] should satisfy three requirements, in order to be considered legitimate. According to this provision, the restriction should be in accordance with the law; should serve a legitimate aim (for instance, the interests of national security or public safety, protection of health, prevention of crime or administration of justice); should be necessary in a democratic society.[1040] Restriction of the right of a Georgian citizen or someone lawfully within the territory of Georgia is unlawful when it is not carried out on the grounds listed in Article 22 paragraph 3 of the Constitution of Georgia, but when conducted for any other purpose."[1041]

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

1036 Constitution of Georgia, Article 22, paras 2-3-4.
1037 Council of Europe, European Convention on Human Rights, Addition Protocol 4, Article 2 paras 2-3.
1038 "Criminal Law General Part," Book I, 4th Edition, Tbilisi, 2011, Publisher "Meridiani," p.287.
1039 "Commentaries to the Constitution of Georgia," Board of Authors, Tbilisi, 2005, Publisher "Meridiani," p. 175.
1040 "Commentaries to the Constitution of Georgia," Board of Authors, Tbilisi, 2005, Publisher "Meridiani," pp. 177-178.
1041 "Criminal Law General Part," Book I, 4th Edition, Tbilisi, 2011, Publisher "Meridiani," p. 287.

Restriction of the Right to Enter Georgia

According to Article 2 of Addition Protocol 4 of the European Convention of Human Rights, everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. In according with Article 22 of the Constitution of Georgia, a citizen of Georgia may freely enter Georgia. Also, everyone legally within the territory of Georgia shall, within throughout the territory of the country, have the right to liberty of movement and freedom to choose his/her residence.

Accordingly, right to free movement throughout the territory of the country constitutes one of the important components of human freedom. During the reporting period of 2015, restriction of the citizen D.B.'s freedom of movement was revealed.

On 21 November 2015, the Georgian citizen D.B., after passing the passport control in Tbilisi International Airport, was taken to the separate room by three unknown individuals, who were the employees of the State Security Service. D.B. was told that if he did not leave the territory of Georgia, criminal proceedings would have been initiated. According to the citizen, the same individuals handed over 300 USD and placed D.B. on the plane flying from Tbilisi to Istanbul. It is noteworthy that the fact that D.B. crossed the Georgian border three times on 21-22 November 2015 was recorded by the Ministry of Internal Affairs of Georgia.

The above actions of the law enforcement authorities are not foreseen by the Criminal Procedure Code of Georgia and therefore, are unlawful. Article 152 of the Criminal Code of Georgia prohibits infringement of the right of a person legally residing in Georgia to freely move across the entire territory of the country, to freely choose the place of residence of to freely leave Georgia, or the right of Georgian nationals to freely enter Georgia.

In order to start investigation on the above matter, the Public Defender of Georgia has addressed the Chief Prosecutor's Office of Georgia with a letter, however, the Chief Prosecutor's Office has not started investigation and the sent the citizen's explanatory note to the General Inspection of the State Security Service. It is stated in the letter of the State Security Service dated March 21, 2016 that as a result of the inquest it was not possible to reveal the sings of the crime or disciplinary offence, since the video tapes of the airport's video surveillance cameras are deleted and the L.T.D. "United Airports of Georgia" had not provided information on the entrance of the above three individuals to the restricted area.

Restriction of the Right to Leave Georgia

The Office of the Public Defender of Georgia examined the application of the accused T.J.'s lawyer B.B. and the relevant materials. On 23 August 2014, with the ruling of the Tbilsi City Court,[1042] fine was used as a measure of restraing against the accused T.J. Also, the accused was imposed to appearing at the investigation organs once every 10 days before the completion of investigation in order to implement accountability; T.J. was also imposed the obligation to submit all active passports to the investigation authorities and was forbidden to leave the territory of Georgia before the completion of investigation. According the same ruling, the investigative authority on the criminal case against T.J. was the investigation unit of the Chief Prosecutor's Office of Georgia. Therefore, promptly after the exhaustion of the time determined by the Court – as soon as the investigation was completed, the investigation unit of the Chief Prosecutor's Office of Georgia was obliged to return the passport to T.J. Nevertheless, it was revealed from the court hearing protocol provided by the lawyer B.B. to the Office of the Public Defender of Georgia that T.J. was not return the Georgian citizen's passport promptly after the completion of investigation.

1042 With the decision of the Tbilisi Court of Appeal dated 29 August 2014, the complaint of the defendant T.J.'s lawyer G.G. regarding selected measure of restrained was held inadmissible. The ruling is final and not subject to the appeal.

The defendant's motion to return the passport to the accused was not satisfied by the Court technically, since the court considered, that the investigation authority itself was obliged to return the passport to the accused. The judged explained that at that stage, the investigation was completed and hence, the passport of a Georgian citizen should have been returned to the accused.

A Georgian citizen has the right to emigrate from Georgia, i.e. the right to permanently move to another State (hereinafter – emigration), also the right to temporarily leave and enter Georgia.[1043] Ensuring the administration of justice. The Law differentiates the grounds for restricting the Georgian citizen's right to temporarily leave Georgia and to emigration (to permanently move to another state).[1044] A Georgian citizen may be denied the issuance of a passport or extension of the vailidy of the passport to temporarily leave Georgia, or denied to cross the border: if he/she is wanted by the law enforcement authorities; if he/she hands in false or invalid documents.[1045] The accused T.J. had not been wanted, also, the Georgian citizen's passport or a neutral travel document had not been suspended.[1046]

A citizen of Georgia temporarily leaves and enters Georgia with the Georgian citizen's passport issued in accordance with law, the document to enter Georgia and other travel documents substituting the passport.[1047] Hence, T.J.'s freedom of movement (to temporarily leave Georgia) was restrected by the investigation authority by not returning the passport of a Georgian citizen ever since after the investigation was completed - the term established by the Court.

RECOMMENDATIONS

To the Chief Prosecutor's Office of Georgia:

- To start and conduct effective investigation on all fact of restriction of the freedom of a Georgian citizen to enter Georgia.
- To not exceed the specific conditions while enforcing the court decisions – to restrict an individual's right to temporarily leave Georgia only during the period determined by the court.

1043 The Law of Georgia on the Procedures for the Citizens of Georgia to Leave and Enter Georgia, Article 3 paragraph 1.

1044 The Law of Georgia on the Procedures for the Citizens of Georgia to Leave and Enter Georgia, Article 22 paragraph 1: An interested individual may be denied the permission to amigrate, also to cross the state border of Georgia if: a) a criminal prosecution against him/her is ongoing; b) he/she has not completed the court sentence; c) he is of a military age and has not yet completed the compulsory military service, if he is not released from the military obligation in accordance with law; d) due to the nature of the work he/she is aware of the State or military secrets and the period established by law has not passed since he/she is not related to that work. Besides, the term should not exceed 5 years; e) in the application to receive the emigration permission he/she submits false documentation."

1045 The Law of Georgia on the Procedures for the Citizens of Georgia to Leave and Enter Georgia, Article 10, paras a and b.

1046 Article 163 of the Criminal Procedure Code of Georgia: „The validity of a passport of a citizen of Georgia, or of a neutral travel document may be suspended if a person holding it is accused (convicted) under this Code, and there is a probable cause that this person may use the passport/travel document to leave Georgia or change locations abroad."

1047 The Law of Georgia on the Procedures for the Citizens of Georgia to Leave and Enter Georgia, Article 5 paragraph 1.

RIGHT TO PROPERTY

Right to property is protected by Article 21 of the Constitution of Georgia according to which "the property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible."

Protection of the right to property is one of the priority directions of the Public Defender's Office of Georgia. Like the previous years, during 2015 reporting period, the Public Defender's Office has studied a number of applications and issued recommendations regarding the violation of the citizens' property rights.

The present chapter will discuss several issues on which the Public Defender of Georgia is drawing attention in his Parliamentary Reports through the years and remain to be problematic during the reporting period in terms of unlimited enjoyment of property rights. Of course, these issues include: legislative and practical shortcomings of registering ownership on real estate, investigation on the private property ceded in the alleged illegal way, the issue of compensating the population who incurred losses by the cooperative house-building recognized as internal debt and those legislative changes that were carried out or is planned to be implemented and are of essential importance in terms of realization of the right to property.

LEGISLATIVE AND PRACTICAL SHORTCOMINGS RELATED TO THE REGISTRATION OF THE REAL ESTATE PROPERTY

Issues Related to the Legislation

We encounter a number of problems related to the unlimited enjoyment of the property rights in practice. Legislative changes are necessary in order to solve the above problems. In particular, everyone who possesses the document certifying the ownership/lawful possession of a certain real estate property, has not yet registered the property right in the public registry. The above mainly is due to the deficiencies of the issued ownership documents (not indicating the exact location and size of the land and etc.), as well as a severe lack of necessary funds matter of the social background for the registration (cadastral drawing-costs and so on). It should be noted that the legislation does not provide aid/ support even for this kind of vulnerable persons, which should be assessed negatively. Besides, big part of the population, for decades own agricultural lands, which were transferred to their factual possession by their ancestors. In most of the cases, the above lands constitute the main source of their existence. The existing legislation does not provide the possibility of recognizing the ownership of the property of similar category (in the traditional ownership), therefore, legislative regulation of this issue is necessary.

Positively should be assessed the Strategy N106 on Land Registration and Refinement of Cadastral Data in the Pilot Areas approved by the Minister of Justice on October 29, 2015, which recognizes the problems related

to registration and the need to solve them. It is stated in the above strategy that in the pilot areas (11 areas are selected) systemic, mandatory registration should be conducted, in the framework of which free registration and measurement works for all types of land will be carried out. The strategy, aiming at finding the ownership documents, eliminating the shortcomings and using them as the grounds for registration, in order to establish simple procedures, also foresees a legal reform.

Systematic registration of the land is necessary throughout the country, also, for elimination of shortcomings in the ownership documents, relevant amendments should be made to the legislation, so that the rights of the land owners are violated.

It should be noted that during the reporting period, new draft law amendments to the Law of Georgia on "Public Registry" was proposed. The initiator of the draft law is the Government of Georgia and the author is the Ministry of Justice of Georgia. According to the Public Defender's opinion, the draft law will negatively affect the realization of the right to property in Georgia. The country has not yet completed the process of initial registration of the land/real estate. This is mainly due to the faults of finding documents (land area and indicate their exact location, etc.), as well as a severe lack of necessary funds matter of the social background for the registration (cadastral drawing-costs and more.) The state's every action and effort should be driven for to solve this ongoing issue. In addition, request from the interested persons to the National Agency of Public Registry to cancel the full or partial registration of state ownership is not a solid guarantee, as its realization depends on the discretion of the National Agency of Public Registry. According to the draft law, on the real estate property on which no ownership/lawful possession of another individual is proved in the public registry, the State ownership is registered based on the request from the National Agency of State Property. The National Agency of State Property, together with the registration, is authorized to request the prohibition of disposal and possession of the property, which is in force for at least 1 year (the longer duration of prohibition depends on the will of the Agency). Despite the prohibition, the National Agency of Public Registry, based on the application and registration document submitted by the interested individual, is authorized to fully or partially cancel the state's property rights. According to the explanatory note of the draft law, adoption of the above amendments will be an incentive to finalize the process of initial registration of the real estate property rights.

The Public Defender of Georgia considers that the adoption of the above draft law, serious damaged will be caused to the realization of the right to property in Georgia. The process of initial registration of the real estate property is still not completed in our country. Every individual, who has a document certifying the ownership/ lawful possession of real estate property, has not yet registered the ownership right at the Public Registry. This is mainly due to the faults of finding documents (non-indication of the land size and exact location, etc.), as well as a severe lack of necessary funds matter of the social background for the registration (registration fee, cadastral drawing-costs and so on). It is noteworthy that the legislation does not provide aid/ support even for this kind of vulnerable persons, which should be appraised negatively. Every step and effort of the State should be directed towards solving this real problem, instead of creating the new obstacles.

In case the initiated draft law is adopted, those individuals, who have the documentation certifying the ownership right/lawful possession and have not yet registered the ownership right, will face a serious risk of violation of their property right. Even in case of existence of the ownership certificate or the documents certifying lawful possession there are risks that the right, due to the prohibition, cannot be registered in the Public Registry. The possibility of addressing the National Agency of Public Registry by an interested individual or partially cancelling the State ownership is solid and guaranteed, since its enjoyment depends on the discretion of National Agency of Public Registry. The request of the state-owned property management and prohibition of transferring in possession by the National Agency of State Property also depends on the complete discretion of the Agency and the draft law does not establish any criteria or preconditions. According to the all above-mentioned, the Public Defender of Georgia considers that the Parliament of Georgia should no share the draft law initiated by the Government of Georgia, since this draft law will not solve the problems related to the

initial registration of the real estate property, but on the contrary, will seriously harm the realization of property rights in Georgia. The Public Defender has also issued a public statement in this regards.[1048] The relevant Parliamentary committees have not yet started the discussion of the draft law.

Merged/Duplicate Registration

It was repeatedly noted in the reports and recommendations of the Public Defender of Georgia that the territorial units of the National Agency of Public Registry, while considering the issue of registering the ownership right of the real estate property/land and/or the changes in the registered data are obliged to study all important circumstances of the case, compare the documents for registration to the archived data, examine the paper performed cadastral data, accounting and other protected documents, and only then to decide on the registration of the right.[1049] According to the current legislation, if the cadastral drawing is not submitted to the State system of geodesic coordinates and in the UTM projection, the data of the real estate/land is considered unspecified. "Instruction on Public Registry" provides the possibility of registering the real estate ownership right in an unspecified way ,[1050] and the property registered this way should protected not only on paper, but in practice sa well. Therefore, the Registry, in order to protect the property registered in an unspecified way, should not allow registration of other persons' property right on the same real estate and to this end, should ensure the complete verification of the protected data in each case.

The so called merged/duplicate registrations remain to be significant problems despite the fact that certain steps were taken in the framework of the "National Strategy on Human Rights of Georgia (2014-2020)"[1051] in order to specify and eliminate the deficiencies of the data of the LEPL Public Registry.

According to the information of the LEPL National Agency of Public Registry,[1052] the cadastral data of the 13605 lands registered based on the paper performed cadastral drawings, also, the cadastral data of 11221 lands registered based on the paper performed cadastral drawings in a systematic manner in 1998-2001 in the mountainous municipalities, has been transferred to the electronic database. Consequently, in total, cadastral data of 24826 lands were shifted in an electronic format. Since the process of shifting the registered real estate data paper performed cadastral drawings to the electronic format is not yet completed, the exact scale of the merging problem is unknown to the LEPL National Agency of Public Registry. It is important that the above process is carried out promptly and completed timely. In every case of merging should be considered the issue of canceling illegal decisions or, in case of the bona fide purchases, the question of compensating the private owner for the damage caused by the State.

The Wrongful Practices of the Public Registry in the Process of Registering the Property Right Based on Recognition

During reporting period of 2015, the Public Defender identified the wrongful practices of the National Agency of Public Registry in the process of considering the case of the applicant for registration of the issue

1048 The public statement was published on the web-page of the Public Defender of Georgia, available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-sadjaro-reestris-shesaxeb-kanonis-cvlilebis-proeqttan-dakavshirebit.page>

1049 According to Article 3 paragraph 6 of the Law of Georgia on Public Registry, A registration body and its employees shall not be responsible for the authenticity of submitted registration documents. They shall be responsible only for the compliance of registered data with registration or other documents kept by them and for their safety. Article 23 paragraph "b" of the same Law states that a registration body shall make a decision on the refusal of registration if a right, or an obligation related to an immovable property ownership right, or changes to and the termination of such right or obligation, or a public law restriction or a tax lien/mortgage, which have been already registered, exclude the registration of a right, a public-law restriction or a tax lien/mortgage, which have been submitted for registration, to the same immovable thing.

1050 "Instruction on Public Registry" approved by the Order N4 of the Minister of Justice on 15 January 2010, Article 14 paragraph 1 and Article 8 paragraph 7.

1051 adopted by the Parliament of Georgia on 30 April 2014.

1052 Letter N19587 of the National Agency of Public Registry dated 1 February 2016.

of the property rights. According to the existing legislation, the ownership certificate on the lands that are in the ownership (possession) of the physical and legal persons of the Tbilisi City Assembly (Sakrebulo) issued by the Standing Committee for Recognition of Ownership constitute the documents certifying the ownership and on its bases, the National Agency of Public Registry is obliged to register the right to the relevant real estate property. It was revealed as a result of studying one of the applications submitted to the Public Defender that instead of registering the right to property, the Tbilisi Registration Unit of the National Agency of Public Registry requested the applicant to submit the State's consent for registering the recognized right.

It is noteworthy the according to the Law of Georgia on "Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law,"[1053] the purpose of the law is by recognizing the property rights ("recognition of property rights'), to use state-owned land resources in lawful possession (use), as well as state-owned land squatted by natural persons, legal entities under private law, or any other organizational structures provided for by law, and to facilitate land market development. A relevant representative body of a local self-government, which shall exercise its powers through a commission, shall be authorized to recognize the property right to squatted land. The above commission has a delegated right from the State to dispose the State owned land through the decision on the recognition of property right, hence, while making the above decision the Commission represents the State.

It should also be noted that based on the decision, the Standing Committee for the Recognition of Ownership issues the ownership certificate and a certified cadastral drawing, based on which, the Registration Units of the National Agency of Public Registry are obliged to register to ownership rights on the immovable property, since the ownership certificate constitutes the document confirming the ownership of the immovable property. The registration authority, instead of registering the ownership right, requests the applicant to submit addition State consent on the already recognized right to property.

Establishment of such practice, when the relevant State/local self-government authorities request submission of the additional consent while considering the issue of registration of the already recognized land, contradicts the Law of Georgia on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law, since in such cases, the registry intersects with the competences of the Committee for the Recognition of Ownership and in fact puts an individual whose property rights are recognized to the squatted land in the condition of a lawful possessor and not of an owner, and in case of not receiving additional State consent, restricts individual's possibility to enjoy the right already granted by the Committee.

The Problems Related to the Registration/Recognition of Ownership on the Territory of Bakuriani and Didi Mitarbi

The Public Defender's Office studied the problems related to the registration of ownership of the movable and arable agricultural lands transferred in ownership through the land reform, land reform, and legalization of agricultural land plots under lawful possession in the settlement Bakuriani and large village Didi Mitarbi.

The problem is created by the fact that during the land reform in the years of 1992-1999, the free privatization in Bakuriani was held not according to the families, but the numbers of the family members, which caused damage to a big part of the settlement Bakuriani's population. Although the legislative acts indicated that the land should have been transferred to each family and not each member of the family, in some cases, the agricultural land plots were granted to the several members of one family. Hence, a huge amount of land plots were given to the members of certain families/households and some families/households were left without the mowing and arable land plots.

1053 Law of Georgia on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law, 11 July 2007.

It is noted in the Resolution N39 of the Cabinet of Ministers of the Republic of Georgia dated 16 January 1993 that the activities of the land reform were accompanied by serious shortcomings. For instance, in a number of regions, including Borjomi, the reforms were not carried out with due responsibility and the established commissions have determined the areas for the land reform according to the number of the households' members.

Problem is also caused by the fact that according to the Decree of the President of Georgia on Approving the Rules on Recognition of Title to the Plots of Land in the Ownership (Possession) of the Natural and Legal Persons and Approving the Ownership Certificate Form:[1054] one of the documents certifying the lawful possession (use) of the land is the tax list acting in the registration period approved by the local-self-government (government) authorities for using the land. For registering the ownership right, the records of the last period of land reform are necessary, however, the Bakuriani Sakrebulo has produced the list of the land taxpayers in a period after the end of the land reform, from 1999 to 2004.

It should be noted that considering the applications regarding the registration of the ownership rights of the inhabitants of Daba Bakuriani and Village Mitarbi is also delayed by the circumstance that the lists of distribution of lands set up by the Land Reform Commission, as well as the tax lists for using the agricultural lands and administrative legal acts issued for approving the above lists, are seized by the investigation unit of the Samtskhe-Javakheti Regional Prosecutor's Office on 19 October 2006 and 13 August 2007. Investigation is launched on the criminal case N01606907, on the alleged fact of abuse of official powers by the employees of Borjomi Gamgeoba, the crime foreseen by Article 332 paragraph 1 of the Criminal Code of Georgia.

Majority of the population of Daba Bakuriani and village Mitarbi, who have possessed the agricultural lands over the years and have not registered their ownership rights, face a real threat from the Government that the above lands will be confiscated without compensation. The present issue is of utmost importance and relevant measures should be taken.

THE MECHANISM FOR INVESTIGATING THE COMPLAINTS ON CONCESSION/CONFISCATION OF THE PROPERTY IN AN ALLEGEDLY UNLAWFUL WAY

The Public Defender of Georgia monitors the issues of identifying and compensating the victims of abandoning the real estate property, confessing to the State freely to the State as a result of coercion/pressuring in 2004-2012. In early 2015, Department was created in the Chief Prosecutor's Office, which investigates the crimes committed in the course of the legal proceedings.

According to the information provided by the Chief Prosecutor's Office of Georgia, in the department of the Chief Prosecutor's Office of Georgia investigating the crimes committed in the course of the legal proceedings 4710 applications/complaints are submitted, out which 604 applications/complaints are related to the facts of concession/confiscation of property by force.

The above department is investigating 307 criminal cases, which address the facts of forcible concession/confiscation of property and ill-treatment. The department has completed investigation on 29 offences, criminal prosecution has started against 5 individuals on the facts of forcible concession/confiscation of the property and extortion. As a result of the criminal offences of forcible confiscation of property detected by the Department, 40 individuals were found victims. Based on the final decision of the Prosecutor's Office, the above individuals returned 39 cars, 2 lands, 3 apartments, 1 office space and 48 type golden items by the

1054 Decree N525 of the President of Georgia dated 15 September 2007, Article 2 paragraph 1 (c).

Ministry of Economy and Sustainable Development of Georgia. One wine factory the total amount of which is approximately 13 million GEL is in the process of return.[1055]

Despite the above-mentioned facts, the Public Defender of Georgia considers that the work of the Department of the Chief Prosecutor's Office of Georgia of investigating the crimes in the course of legal proceedings cannot be deemed effective, since, taking into account the number of applications/complaints submitted to the above Department throughout 2015, investigation is completed only in rare cases. Therefore, in all other cases the issue of prompt and effective investigation is on the agenda.

CANCELLING THE INSTITUTION OF POLICE EVICTION FROM THE IMMOVABLE PROPERTY

During the reporting period, one of the main events was adoption of legislative package that abolished the police eviction institution on 11 December 2015.

On 19 May 2015, the Legal Issues Committee submitted the legislative package to the Parliament of Georgia, the purpose of which was abolition of the police eviction institute. The draft law has foreseen to declare Article 172 paragraph 3 of the Civil Code of Georgia void, [1056] which left the owner without the possibility to evict through the police an individual, who has illegally took the possession of the immovable property, therefore, in order to ensure the above request, the owner would have to address the court in any case. The amendments to be made to the Civil Code of Georgia created the necessity to make changes to the "Criminal Procedure Code of Georgia," the Law of Georgia on Police and the Law of Georgia on Enforcement Proceedings.

The initial version of the draft law contained many regressive records. The explanatory note mainly focused on the theoretical aspects of law. It was not presented how the changes would reflect on various groups of people and what impact would it have on their legal status.

The Public Defender of Georgia considered that the regulations proposed by the draft law, if adopted, will have a negative impact on the protection of the property rights guaranteed by the Constitution of Georgia, therefore, he addressed the Parliament of Georgia not to adopt the draft laws on cancelation of the police eviction institute submitted by Legal Issues Committee.[1057] The Public Defender's above provision was based on the past experience, when the court proceedings on the similar cases were much delayed and were ineffective in case of changing the intruder. The above circumstances created the pre-conditions for violating the property rights.

In the course of the Parliamentary hearings, the draft law was amended. As a result, the initial version was significantly improved. According to the changes made to the Civil Procedure Code of Georgia on 11 December 2015, on the case of requesting the immovable property from the unlawful possession, they non-payment of the court cases no longer constituted the obstacle for the court proceedings neither for the applicant, not for the respondent (who submits a counter-claim on the case).[1058] The terms of court proceedings on the similar

1055 Letter N13/16169 of the Chief Prosecutor's Office of Georgia dated 15 March 2016.

1056 The edition of the Civil Code of Georgia before 11.12.2015 enshrined: "If the ownership on immovable property is violated or otherwise restricted, the owner may request from the offender to put an end to such action. If such interference continues, the owner may request the suppression of these actions without the court decision, while submitting the ownership document established by the relevant law enforcement authority in accordance with law, except for the cases of submitting the written documents certifying the ownership, lawful possession and/or use by the alleged intruder."

1057 Proposal N04/5871 of the Public Defender of Georgia dated 21 July 2015.

1058 According to the current edition of Article 48 paragraph 2 of the Civil Code of Georgia, if there are no grounds for the state tax exemption, the applicant's payment will be delayed till the end of the proceedings on the cases related to the withdrawal of immovable property from the unlawful possession. This rule applies to the respondent as well, if he/she submits a counter-claim.

disputes were also reduced.[1059] From the day of receiving the application, the term of the court proceedings should not exceed 1 month, and the overall period for receiving the appeals complaint and issuing the decision on the request on withdrawal of the immovable property from the unlawful possession were determined 2 months. Also, the immediate execution of judgement on the above cases became possible.[1060]

The legal changes related to the abolition of the police eviction institute are of significant importance. Therefore, the Public Defender will closely monitor the implementation practices of the mentioned changes, including monitoring of the court cases in terms of eviction from the property in the tight time frames provided by the law and of the timely restoration of the violated rights.

THE PROPERTY RIGHTS OF THE INDIVIDUALS AFFECTED BY THE COOPERATIVE HOUSE-BUILDING

During the current year the issue of fulfilling the obligations and paying the promised debt toward the population affected by the cooperative housing is still relevant. According to the Law of Georgia on State Debt,[1061] the responsibility of the State in terms of cooperative house-building was recognized as an internal debt of Georgia. Since 2004, the State Commission for Internal Debt Problem Studying is created.[1062] The function of the above Commission is to develop recommendations on the reparation mechanism of the State's internal debt recognized by Article 48 paragraph 1 of the Law of Georgia on State Debt and to submit them to the Government of Georgia and the Parliament of Georgia for the decision-making. Despite the fact that more than 10 years have passed after the creation of the Commission, the problems remains to be problematic and the above-mentioned debt reparation mechanism is not yet developed. Due to this reason, trespassed populations by the unfinished constructions cannot get reparation and their property rights are infringed. It is necessary to develop an effective and the timely mannered compensation mechanism of the recognized domestic debt for reparation of population affected by the cooperative housing.

RECOMMENDATIONS

To the Parliament of Georgia/the Government of Georgia:

- To regulate by the legislation the possibility of recognizing the property rights of the traditional owners on the agricultural land plots and to develop the rules and procedures of recognition;
- To regulate by the legislation the rules and procedures for eliminating the existing shortcomings in the documents certifying the ownership/lawful possession;
- To develop timely an effective reparation mechanism of the recognized internal debt related to the cooperative house-building and to fulfil the obligations before the affected population.

To the Government of Georgia, to the Ministry of Economy and Sustainable Development of Georgia and the Borjomi Municipality:

- To not alienate the agricultural land plots on the territory of Daba Bakuriani and village Didi Mitarbi before the completion of the criminal case investigation.

1059 "Civil Code of Georgia," Article 59, paragraph 3.
1060 "Civil Code of Georgia," Article 268, paragraph e[1].
1061 The Law of Georgia on State Debt, Article 48 paragraph 1 (g).
1062 Decree N108 of the Government of Georgia dated 15 November 2004, On Creating the State Commission for Internal Debt Problem Studying.

To the LEPL National Agency of Public Registry:

- To ensure the examination and scrutiny of documents and materials under its possession as required by the legislation before making any decision on the registration of any real estate to prevent an overlap affecting already registered property
- While considering the issue of registering the ownership right based on the ownership certificate, not to request additional consent from the relevant State/local self-government authorities.

To the Chief Prosecutor's Office of Georgia:

- To timely complete investigation on the case related to the distribution of agricultural land plots on the territory of Daba Bakuriani and village Didi Mitarbi.

RIGHT TO ELECTIONS

Existence of democratic order is directly related to the realization of the right to elections. Elections issues are regulated by the Constitution of Georgia and the organic law of Georgia Election Code of Georgia. On 31 October 31 2015, the parliamentary by-elections were held, herewith, the Constitutional Court made an important decision on the right to elections that resulted in inevitable necessity to put the improvement of the election system on the agenda.

In his Parliamentary Report of 2014, the Public Defender of Georgia positively assessed the reform of the elections legislation, however, noted that it is necessary to improve the elections legislation, also in terms of ensuring proportionate reflection of the votes. This is echoed in the decision of 28 May 2015 of the Constitutional Court of Georgia on the case "The Citizens of Georgia Ucha Nanuashvili and Mikheil Sharashidze vs. The Parliament of Georgia." The above decision declared as unconstitutional those norms of the Election Code of Georgia, which provided the rules for the determination of 73 single-mandated majoritarian electoral district.

According to the norms appealed in the Constitutional Court, each municipality has the single-mandate districts, except Tbilisi, which was presented as a 10-seat electoral district. As a result, during the majoritarian parliamentary elections, the votes were not equally binding. In some cases, the disproportion was so high that in some electoral districts the number of registered voters was 22 times higher, respectively, some votes were 22 times more binding than the other district vote, which clearly indicated that the system was discriminatory. Accordingly, the Constitutional Court considered the appealed norm of the "Election Code of Georgia" as unconstitutional, as it was violating Article 14 (equality before the law) and the first paragraph of Article 28 (right to elections) of the Constitution of Georgia.

The Constitutional Court explained that the universal suffrage is a free and equitable reflection of the people's will in the process of forming the government, while mechanically connection of the municipalities and electoral districts can cause ignoring the equality of votes. The elections system established by the disputed provisions violated the elections rights of the citizens in certain electoral districts since it unjustifiably increased the weight of the other voters and therefore, differentiated the certain category of voters from the rest electorate. Hence, the similar system contradicted the constitutional requirements of equality.

The above decision of the Constitutional Court, which is directed towards the improvement of the elections system, can be considered as a precondition of fair and smooth election process.

In order to enforce the above decision of the Constitutional Court of Georgia, the Parliament of Georgia adopted two legislative amendments[1063] and as a result of the amendments made to the Organic Law of

1063 Legislative initiatives №07-3/529/8 dated 17 December 2015 and №07-3/520/8 dated 26 November 2015 of the fractions of the parliamentary majority on amending the Organic Law of Georgia "Election Code of Georgia." Available at: http://parliament.ge/ge/law/11118/28118; http://parliament.ge/ge/law/11031/28320

Georgia the Election Code of Georgia in 2016 the mixed system for parliamentary elections was maintained.[1064] However, unlike the current regulation, 50% barrier was established for electing a majoritarian deputy[1065] and in addition, the new rule for distributing the majoritarian districts was introduced. Article 110[1] the Election Code of Georgia lists majoritarian electoral districts for parliamentary elections of Georgia including the villages, and indicates numbers of majoritarian electoral districts for each of them. For instance, 3 majoritarian electoral districts are created in the local majoritarian districts of Kvakhchiri, Chognari and Godoni in the Kutaisi and Terjola Municipalities and 1 majoritarian electoral district is formed in Tkibuli and Terjola Municipalities (except the majoritarian districts of Kvakhchiri, Chognari and Godoni). The Public Defender considers the existing rule of formation the majoritarian election districts artificial, as it does not considers the interests of the local population and geographic areas created naturally and it somewhat loses the main sense of the majoritarian system.

The above decision of the Constitutional Court does not create the necessity to abolish the majoritarian component of the electoral system. The Constitution Court also explained the above-mentioned and noted[1066] that the Parliament of Georgia is authorized to determine the models and features for both the proportionate and majoritarian elections systems. However, in any case, the Constitutional rights and freedoms of the citizens of Georgia should be protected. The Constitutional Court's decision does not give preference to any of the systems, it underlines, that it is necessary to comply with the principle of equality of the votes in the electoral system. However, the Public Defender considers that the equality of votes meant by the Constitutional Court should not be achieved by artificial means, by ignoring the interests of the population and giving the majoritarian system a formal character.

It should be noted that according to the initiated draft law on the amendments to the Constitution of Georgia, the Parliament, with the majority of votes, has chosen a proportionate elections system as a model for ensuring the fair elections oriented on equality. This system, if the constitutional amendments are adopted,[1067] will only enter into force by the 2020 Parliamentary elections.

PARLIAMENTARY BY-ELECTIONS

The Issue of Constitutionality

On 31 August 2015, the parliamentary majoritarian system by-elections of October 1, 2012 in the majoritarian constituencies of Martvili and Sagarejo were scheduled.

As noted above, the Constitutional Court of Georgia found unconstitutional and void the relevant record of the Election Code of Georgia regarding the formation of the one mandate majoritarian election districts for the Parliamentary elections. As a result, the society acquired a legitimate question, whether the elections of August 31 in the electoral districts of Sagarejo and Martvili were in accordance with the decision announced by the Constitutional Court.

1064 During the reporting period, legislative initiated was submitted before the Parliament on the amendments to the Constitution of Georgia, which foresees the abolition of majoritarian system after the 2016 Parliamentary elections and introduces the new rule of electing the Parliament by the proportionate elections system, according to the multi-mandated electoral districts. According to the explanatory note of the draft law, the results of abolition the majoritarian elections system will be balanced by maintaining the territorial representation principle in the multi-mandated districts. If the Parliament adopts the above draft law, the new elections system will enter into force during the 2020 Parliamentary elections. The legislative initiative №07-3/475/8 of 81 MPs dated 3 September 2015 is available at: http://parliament.ge/ge/law/10408/24824

1065 According to the existing rule, for the majoritarian candidate to win it is necessary to receive more votes than others, but not less than 30%.

1066 Available at: http://constcourt.ge/ge/news/saqartvelos-sakonstitucio-sasamartlos-gadawyvetileba-saqmeze-saqartvelos-moqalaqeebi-ucha-nanuashvili-da-mixeil-sharashidze-saqartvelos-parlamentis-winaagmdeg.page , [Last Visited on 28.05.2015].

1067 Legislative initiative №07-3/475/8 of 81 MPs of the Parliament of Georgia dated 3 September 2015 on the Amendments to the Constitution of Georgia, Available at: http://parliament.ge/ge/law/10408/24824

In the present case, the issues related to the enjoyment of their constitutional rights by the electorate of the above two districts considering the principle of universal suffrage and to the enforcement of the above decision of the Constitutional Court of Georgia.

The Public Defender of Georgia considered that taking into consideration the best interests of the Constitutional rights of the voters, approximately 80 000 voters of Sagarejo and Martvili should have been given the possibility to participate in the elections carried out by the majoritarian system.

Legislative Regulations Related to the Special Polling Stations

The problem related to the special polling stations that existed over the years became urgent again during the by-elections of 31 October 2015. Article 23 paragraph 4 of the Election Code of Georgia[1068] gives the possibility, in exceptional cases (a military unit with more than 50 voters (military servicemen, officers, persons with a special rank of the Georgian Ministry for Defence), hospital, and other inpatient facility with more than 50 voters, etc.), to set up an electoral precinct. The above norm does not provide an exhaustive list of exceptions, in case of which it is possible to create the so called special electoral precinct. Besides, the present exceptional rule also has its exception, in particular, at the well-founded written request of the commander of a respective military unit and by DEC decree, an electoral precinct may be set up within the military unit, in which the number of voters does not exceed 50 military servicemen. The above-mentioned records make the issues related to the creation of the special electoral precincts vague and gives the possibility of broad interpretation and discretion.

According to the recommendation of the OSCE Office for Democratic Institutions and Human Rights, it is possible to still consider the possibility of voting at the regular polling stations on their place of registration by all military servicemen in Georgia.[1069]

The Public Defender of Georgia considers that in the Parliamentary elections, the military servicemen should vote exactly according their place of registration or only through the proportionate election system, at the precinct near the dislocation place.

The Voting Day of the Parliamentary By-elections

On 31 October 2015, Parliamentary by-elections were held in the precincts N11 of Sagarejo and N65 of Martvili. The representatives of the political party - "Patriotic Alliance of Georgia" submitted complaints to the Sagarejo District Elections Commission on the alleged offences in the precincts N13, N29, N39, N41, N45, N47 and N48 of the Sagarejo electoral district.

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

1068 Article 23 paragraph 4 of the Election Code of Georgia: "In exceptional cases (a military unit with more than 50 voters (military servicemen, officers, persons with a special rank of the Georgian Ministry for Defense), hospital, and other inpatient facility with more than 50 voters, etc.), an electoral precinct may be set up not later than the 15th day before the polling day. A hospital (inpatient facility) or a military unit with not more than 50 voters (patients, military servicemen) shall be assigned by DEC decree to the nearest electoral precinct. At the well-founded written request of the commander of a respective military unit and by DEC decree, an electoral precinct may be set up within the military unit, in which the number of voters does not exceed 50 military servicemen."

1069 The OSCE Office for Democratic Institutions and Human Rights, Final Report of the Elections Mission, Parliamentary Elections of 1 October 2012, 21 December 2012, p. 16.

Elections Commission has reviewed and examined each fact of the alleged violation, which is confirmed by the relevant decrees.

As a result of studying the complaints it is revealed that various technical errors are committed by the members of the district elections Commission, big part of which stems from the lack of appropriate qualification of the different levels of the election administration.

According to the information spread by the mass media, on the polling day, in the Sagarejo Municipality, confrontations took place between the supporters of the ruling party and the "Patriotic Alliance." The members of the "Patriotic Alliance" also mentioned the facts of abuse of power and in a number of cases, improper performance of their duties by the police. The Chief Prosecutor's Office of Georgia has launched an investigation on the facts indicated in the applications. However, according to the Chief Prosecutor's Office, the investigation was terminated due to the non-existence of the crime.

RECOMMENDATIONS

To the Parliament of Georgia:

- To implement the elections reform with the involvement of all stakeholders and ensuring that sufficient information is provided to the public;
- To make legislative amendments regarding the special polling stations and to determine that the military servicemen will vote according to the place of registration or only through the proportionate election system, in the electoral district near the place of dislocation.

THE RIGHT TO THE PROTECTION OF CULTURAL HERITAGE

Cultural heritage, as a historically formed environment, constitutes the State's cultural value and it has a fundamental importance for the spiritual, cultural and social development of an individual. Besides, the country's cultural heritage has powerful resources for attaining sustainable progress in the general social and economic conditions of the State. Identification, protection, interpretation and utilization of these resources is a necessary precondition of achieving the above purpose. Cultural heritage is an integral part of environmental policy, without which a viable development of the country oriented on the future generations is impossible.

The main criteria for the treatment and protection of the cultural heritage is maintaining is authenticity. In this process, the national mechanisms, principles and quality of the protection of heritage has vital importance. For the effective protection of cultural heritage, the national policy should take into consideration the distribution of the care on cultural heritage on every level of state government, including: the central, local government and most importantly, civil society and general public. This approach should be reflected in the legislation, in the system of management and administration, in clear division of power of public services. The State's task is to inform everyone on the importance and value of the cultural heritage, involve the citizens to the maximum extent in the process of its maintenance and development, which is directly related to the strengthening of identity and awareness raising, as well as to the cultural deepening of the protection of heritage. The society constitutes the successor of those cultural values that have reached us and belongs to each and every one of us.

The primary guarantor for the protection of cultural heritage in Georgia constitutes Article 34 paragraph 2 of the Constitution. The fact that Article 34 of the Constitution of Georgia is placed in the group of social rights indicates the somewhat active role of the State in the field of protection of cultural heritage. The principle of social state obligates the Government to create the conditions for the development of cultural heritage in the country through the legislative regulations. While discussing the national legal guarantees around the above topic, we should necessarily mention the Law of Georgia on the Protection of Cultural Heritage, which regulates the legal relations in this field. In addition, protection of cultural heritage is set out as one of the main directions in the "National Security Concept of Georgia," which once again specifically points to the high state importance of the issue.[1070]

For the full-scare legal and institutional development of this field has significant importance for deepening cooperation with international organizations and complying with the obligations stemming from the international treaties. It is noteworthy that Georgia is a party to a number of international conventions in the cultural field.[1071] Besides, the Association Agreement also foresees cooperation of Georgia with the European

1070 Decree #5589 of the Parliament of Georgia dated 23 December 2011.

1071 For instance: 1) Council of Europe Framework Convention on the Value of Cultural Heritage for Society (2005); 2) European Convention on the Protection of the Archaeological Heritage (Revised in 1992); 3) Council of Europe Convention for the Protection of the Architectural Heritage of Europe (1985); 4) UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005); 5) UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003); 6) UNESCO Convention for the Protection of the World Cultural and Natural Heritage (1972) and etc.

Union in this sphere.[1072] Consequently, for harmonization with international standards the State should gradually take the relevant steps, since the transparency of managing the protection of cultural heritage constitutes an integral part of democratization and successful Euro-integration of the State.

THE OBLIGATION OF INVOLVEMENT OF THE MINISTRY OF CULTURE AND MONUMENT PROTECTION OF GEORGIA IN THE DECISION-MAKING PROCESS

The Ministry of Culture and Monument Protection of Georgia is the first guarantor of the safety of the cultural heritage. Therefore, Ministry's participation in the decision-making process on the topics that might be related to the need of protecting the cultural heritage, fulfilment of the constitution and international obligations of the State has a vital role. Realization of the mentioned function is guaranteed by the Law of Georgia on the Protection of Cultural Heritage, Article 14 paragraph first, according to it the decision of open case mining and mining operations, as well as construction of objects of special importance can be implemented only after the fulfilling the precondition of positive opinion of the Ministry of Culture and Monument Protection of Georgia. In addition, the analysis of the above article demonstrates that the legislator considers sand-pit tilling and extraction of minerals, as wells as the construction of the object of special importance[1073] as this kind of large-scale earthwork.

In order to monitor the implementation of this legal provision the Public Defender's Office requested the information from the relevant authorities.[1074] LEPL National Environmental Agency has provided the list of active licenses on the extraction of minerals issued from 2013 till 26 October 2015, the total amount of which was 1588. In addition, the above administrative authority has explained in a written form that the positive opinion foreseen by Article 14 of the Law of Georgia on Cultural Heritage was not provided, since for obtaining the license according to the Law of Georgia on the Entrails of the Earth, the Law of Georgia on Licences and Permits and Decree N136 of the Government of Georgia On Approval of the Regulation on the Procedure and Terms and Conditions for Issuance of License for Mineral Resources Extraction, the list of the necessary documents does not contain the need for submitting the above opinion. We consider that the violations revealed by the Office of the Public Defender demonstrate systemic problems. It is inadmissible to justify the non-compliance with the obligations provided by law by the fact that the other laws or by-laws do not foresee the above obligation. Preference should be given to the Law of Georgia on Cultural Heritage to the by-law – the above Governmental Decree.[1075] As for the existing interrelations among the Law of Georgia on the Entrails of the Earth, the Law of Georgia on Licences and Permits and the Law of Georgia on Cultural Heritage, the guarantees for the protection of cultural heritage are first and foremost provided by the latter legislative act and the special regulation is foreseen by this very law. In addition, for the better understanding of the legislator's will, the time of issuance of the above legislative acts should be taken into consideration. Namely, among them, the Law of Georgia on Cultural Heritage was the last one adopted, on 8 May 2007.[1076] This again points to the importance of its predominant utilization.

Taking into account all the above-mentioned, the practice of the LEPL National Environmental Agency constitutes a continues violation of the legislation. The Public Defender of Georgia considers that the relevant State authorities, while deciding on the large-scale earthworks should take into consideration the legal obligation to protect the cultural heritage and should be guided by the regulation foreseen by Article 14 of the Law of Georgia on Cultural Heritage.

1072 EU-Georgia Association Agreement, Chapter 17, Articles 362 and 363.

1073 Decree of the Government of Georgia N57 "On Rules of issuing Constriction permits and permits Conditions" dated 24 March 2009, Article 19 paragraph 1 (e) and Article 79 provide the definition and types of buildings of special importance.

1074 Letter N04-11/8192 of the Office of the Public Defender of Georgia sent to the LEPL National Environmental Agency, 8 October 2015.

1075 According to Article 7 paragraph 7 of the Law of Georgia on Normative Acts, legislative acts of Georgia shall take precedence over subordinate normative acts of Georgia.

1076 The Law of Georgia on the Entrails of the Earth was adopted on 17 May 1996; The Law of Georgia on Licences and Permits was adopted on 24 June 2005.

The Fact of Destruction of Archaeological Objects in the Construction Process of the Ruisi-Rikoti Road

Based on the application of the group of archaeologists,[1077] the Office of the Public Defender of Georgia has studied the issue of destruction of archaeological object in the construction process of the Ruisi-Rikoti road. In particular, on 26 June 2014, in a couple of metres from the Tbilisi-Senaki-Leselidze highway, where the quarry was processed, during the work of the construction equipment, human bones were thrown out of the ground. The fact of damaging and destruction of the archaeological objects were also revealed on the territories of Dogholauri and Beri Kldeebi on 18 December 2014. As a result of thoroughly studying the above issue, significant systemic violations were demonstrated.

Illegally Issued Mining License

The LEPL National Environmental Agency has issued the mining licenses on 22 May 2014 and 16 October 2014. In both cases, the mining works were carried out in an open above ground way.[1078] According to the information provided by the Ministry of Culture and Monument Protection of Georgia,[1079] nobody has addressed the Ministry with the request to issue the opinion. Therefore, it can be concluded that the licenses on the extraction of minerals, without the conclusion of the Ministry, where issued by the National Environmental Agency in flagrant violation of the requirements of legislation.

Legal Basis of the Unlawfully Issued Construction

Ruisi-Rikoti highway constitutes the road of international importance and therefore, belongs to the list of the buildings of special importance.[1080] Hence, like during the issuance of the mining license, in process of deciding upon the construction, the positive conclusion of the Ministry of Culture and Monument Protection of Georgia was necessary. However, the technical and construction inspection has made a decision on construction despite the lack of the above conclusion.[1081] The above once again demonstrates the neglecting of the requirements of legislation by an administrative authority.

The Responsibilities of the LEPL Roads Department of Georgia and the National Agency for the Protection of Cultural Heritage

The basis for the conclusion of the Ministry of Culture and Monument Protection of Georgia is the archaeological research of the relevant territory, which should be ensured by the individual interested in the land works. In the present case, the State was an interested party – LEPL Roads Department of Georgia.[1082] Based on the appeal of the above Department, the LEPL Technical and Construction Inspection issued the order on the construction of the Ruisi-Agara road.[1083] Afterwards, the LEPL Roads Department of Georgia has signed a contract with the private company. Therefore, it was the responsibility of the Roads Department, as of the interested party, to conduct an archaeological research in order to receive the needed conclusion.

1077 Applciation №16313/1 dated 29 September 2014.
1078 Geoinformational license packages, para 10.2.
1079 Letter #05/08–6186 of the Ministry of Culture and Monument Protection of Georgia dated 22 December 2014.
1080 Decree N57 of the Government of Georgia dated 24 March 2009, Article 15, paragraph 5 (a) and Article 79 paragraph "d".
1081 Order №71/01–06 of the Technical and Construction Inspection of the State Sub Authority dated 23 August 2012. Currently, the legal successor of the above authority is the LEPL Technical and Construction Supervision Agency. The materials provided by the LEPL Technical and Construction Supervision Agency on 14 September 2015 with the letter #09/1160 do not contain the conclusion issued by the Ministry of Culture and Monument Protection of Georgia.
1082 According to Article 2 of the Order N8/n of the Ministry of Regional Development and Infrastructure of Georgia on the Approval of the Regulations of the State Sub-Institution of the Ministry of Regional Development – Roads Department of Georgia, the above activity constitutes the sphere of activity and responsibility of the Department.
1083 Application №03–04/3052 of the LEPL Roads Department of Georgia dated 6 August 2012.

In order to receive the conclusion necessary for the construction, the Roads Department was obliged to obtain the conclusion of the Ministry of Culture and Monument Protection of Georgia. The decision on the construction should be preceded by the positive conclusion of the Ministry foreseen by Article 14 paragraph 1 of the Law of Georgia on Cultural Heritage.

In the present case, the LEPL Roads Department of Georgia, instead of complying with its obligation, requested from the private company to carry out archaeological research. This request of the institution did not correspond with the legal definition of the interested party foreseen by Article 14 paragraph 2 of the Law of Georgia on Cultural Heritage. It is noteworthy that the role of the LEPL National Agency for the Protection of Cultural Heritage, which is obliged, in the framework of its responsibilities, in relation to the flagrant violations of law, including by the State institutions, to make a timely and effective legal response. In the present case, the actions of the Agency have not been consistent. In particular, on the suspension of the construction due to the discovered cultural layers and archaeological objects and on the obligation to carry out archaeological work the Agency has initially addressed the private company.[1084] Later, the Institution has requested from the LEPL Roads Department of Georgia to implement the "relevant response in the framework of its competences" and afterwards, the archaeological examination of the territory.[1085] Due to damaging and destructing the archaeological objects in July 2014, while the archaeological research was not carried out by the interested party, the Agency on Cultural Heritage has addressed the Ministry of Internal Affairs of Georgia only after the information on the topic was spread by the media sources.[1086]

Since the LEPL Roads Department did not comply with the legal obligation to carry out the archaeological research, the LEPL National Agency for Cultural Heritage Preservation was forced to issue the order on conducting archaeological works.[1087] According to the report of the above archaeological excavation, it caused destruction of the Settlement of the Kalkolit era, Bronze Age tombs.

VIOLATION OF THE RULES OF CONDUCTING WORK ON THE MONUMENT AND ITS MAINTENANCE

One of the case study conducted on the Public Defender's own initiative[1088] revealed the legislative loophole of article 30 paragraph 8 of the law on the Protection of Cultural Heritage. Article 30 of the above law sets the general responsibility of the listed property owner (legal user) of the cultural heritage. However, paragraph 8 of the same Article foresees the exception to the rule and clarifies that the responsibility for the maintenance[1089] of the monument does not apply to the Autocephalous Orthodox Church and ownership of other religious denominations' (legal user) objects.

The Public Defender considers the above mentioned provision unreasonable as there should not be any exemptions when it comes to the maintenance of the cultural heritage. According to Article 7 of the "Constitutional Agreement between State of Georgia and Georgian Apostolic Autocephaly Orthodox Church", the State shall recognize ecclesiastic treasure protected by State security (kept at museums and treasury, those except owned privately) to be in possession of Church. Considering the above regulation, the State no longer bares the responsibility for the protection of the monuments in the ownership of the Orthodox Church

1084 Letter №10/09/946 of the National Agency for the Protection of Cultural Property of Georgia to the L.T.D. "China Nuclear Industry 23 Construction Co" dated 11 July 2014.

1085 Letters №08/09/1061 and №08/09/1297 of the National Agency for the Protection of the Cultural Heritage of Georgia dated 30 July 2014 and 15 September 2014 to the LEPL Roads Department of Georgia.

1086 TV Company "Rustavi 2" has prepared a story regarding the archaeological objects on 21 December 2014; The Agency has addressed the Ministry of Internal Affairs on 22 December 2014 and 9 January 2015 with the letters №12/09/1899 and №12/09/21 respectively.

1087 Order of 29 January 2015 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia regarding the permit on the urgent archaeological work, which was conducted by Iulon Gagoshidze with the financial support from the Agency.

1088 №7092/15 case on heritage building, result of illegal occupation to the Ananuri church.

1089 Except for the criminal responsibility.

and other confessions, while in case of violation of the rules of conducting work on the monument and its maintenance by every other owner, the State refers to the measures established by law. The State is equally responsible for the protection of all monuments and any kind of differentiation based on the owner or any other criterion does not have a legitimate aim, since the monument of cultural heritage, despite its owner, consists a national treasure. The special historical value of the cultural heritage of Georgia is reflected exactly in its diversity. Each cultural monument is part of not only the national heritage, but of the civilization of the humankind.

In addition, it is inadmissible to establish a restrictive norm[1090] for the subject without the enforcement mechanism. The similar approach prevents the realization of restrictive regulatory practices.

The inadvisability of the above exception is demonstrated by the information provided by the National Agency for Cultural Heritage Preservation of Georgia to the Office of the Public Defender of Georgia, which certifies that the rules of conducting work on the monument and its maintenance in relation to 16 monuments in the ownership of the Orthodox Church and other confessions were violated. The Agency's response to the above cases should be assessed positively, [1091] however, this should not depend only on the approach of the administrative authority. Taking adequate measures by the Agency and obligatory character of fulfilling them should be reinforced by the relevant legislation.

PROJECT "PANORAMA TBILISI"

The State's role in terms of cultural heritage is directly related to the maintenance of historical and cultural heritage. Active position of the public in the vital issues of urban-cultural policy is the basis for the cultural decentralization and hence, for the cultural democracy.

During the year, the target of the public attention was directed to the "Panorma Tbilisi" project planned by the "Investment Fund," which foresees the construction of several complex objects and a funicular railway.[1092] Up to today, the LEPL Technical and Construction Supervision Agency has issued the construction permits regarding three objects: "Sololaki Gardens", "Sololaki Height" and "Tbilisi City (Freedom Square).[1093]

Despite the request on adjouring the examination of the case, on 30 December 2014, the Tbilisi City Assembly (Sakrebulo), with the amendments made to the general plan of the capital's land-tenure, has changed the protection zone status of the Sololaki ringe. Currently, the **"Sololaki Gardens"** land plot is situated in the living zone -2. Earthworks should be conducted on the historical, so called "Ganja Road", "the Great Silk Road" passing through the Tsavkisi water ravine. The **"Sololaki Height"** land plot is situated recreational zones – 2 and 3. **"Tbilisi City"** project includes the construction of the multi-functional hotel on the Freedom Square, on the territory of the former so called "Central Commission" building. The above territory belongs to the State protection

1090 According to Article 24 of the Law of Georgia on Cultural Heritage, any kind of work is prohibited by the Georgian legislation, also, without the permit foreseen by the present law.

1091 We were informed by the letter #08/19/2198 of the National Agency for Cultural Heritage Preservation of Georgia dated 23 October 2015 about the responses of the Agency to each case, in particular, the violators of the rules on maintaining cultural heritage monuments were issued the relevant warnings and as a result, unauthorized activities were terminated. In some cases, the law enforcement authorities were informed on the damages caused to the cultural heritage monuments and criminal proceedings are launched in relation to 4 incidents; Negotiations are underway on two cases.

1092 "Sololaki Gardens", "Sololaki Height" and "Tbilisi City, Erekle II Square.

1093 Orders of the LEPL Technical and Construction Supervision Agency dated 20 April, 18 May and 8 June 2015. On "Sololaki Gardens", the Applicant – LTD "Sololaki Hills" (the permit is in force till 31 May 2018); "Sololaki Height", the Applicant – LTD "Sololaki Rise" (the permit is in force till 30 June 2018); "Freedom Square", the Applicant – LTD "Tbilisi City" (the permit is in force till 31 July 2017). Since the project covers the construction of the funicular railway, it belongs to the V class building. Article 79 paragraph 2 (d) of the Decree N57 of the Government of Georgia on Rules of issuing Constriction permits and permits Conditions dated 24 March 2009.

zone of the historical part. The project object is situated next to the cultural monuments – the arts museum and the living house on Rustaveli №1.

With the №8 meeting protocol of 26 February 2015, the Assembly of Regulation for the Usage and Development of Tbilisi City Territories has issued the permit on the increase of the urban settings and special zone for the construction of "Sololaki Height'. For the construction of "Sololaki Gardens" the local planning parameters were increased in the living zone 2. According to the protocol, there was a disagreement on the advisability of the changes in the above parameters. However, on 9 March 2015, with the order of the Tbilisi City Mayor, the special zone agreement was issued for the recreational zone 2 and recreational zone 3.

According to the resolution of the Government of Georgia of March 24, 2009 №57[1094] on "The Procedure of Issuing a Construction Permit and Defining the Conditions," approval decisions of use of the land for construction, as well as building permits, can be issued by the provisions of simple administrative proceeding established according the Chapter VI of General Administrative Code. This type of proceeding does not obligate involvement of the interested parties. According to the General Administrative Code of Georgia,[1095] the individual administrative act of an administrative authority may be issued through public administrative proceeding in the cases, if it refers to the broad interests of the general public. In the present case, despite the civil society's requests to the authorities and the public's interest, the administrative body, the Technical and Construction Supervision Agency, did not use above mentioned authority granted according the legislation.

The Public Defender of Georgia considers that the decisions on the city special planning of this scare and therefore, on the project of high public interest, as "Panorama Tbilisi" in the present case, should be taken with the active public involvement and with strict adherence to the principle of publicity. It should be taken into consideration that in the current case, the issue concerns the territories of historical and cultural value and the narrow consideration of the issue, only in terms of compliance with the procedural norms is inadmissible. The State is obliged to be guided by the international standards while deciding upon the issues of cultural heritage in the city planning process.

In the present case, the requirements of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro, 2005) were violated. The above Convention has established the new definition of cultural heritage, having a social context and underlined the importance of the inherent nature of the right to cultural heritage, of the interaction of an individual and the environment in the process of its formation. Besides, considered the realization of the principle of participation in democratic governance in relation to the cultural heritage unconditional. Those norms of the Faro Convention that establish the obligation to foresee the significance of the cultural heritage and maintenance of its characteristic values stemming from the close connection of cultural heritage and economic activity, serve the purpose of establishing the above basic standard.[1096] In addition, the State is obliged to hold the public discussions and debates on the problems related to the cultural heritage.[1097] The State should seek to engage the active and interested civil sector in the formation of the policy on cultural heritage. For directed the similar viable process, the State is obliged to create the necessary political and legislative environment.

In relation to the "Panorama Tbilisi" project, on the level of both the local self-government authorities and the central government, the problems of sufficient public awareness and effective involvement of the interested stakeholders were acute in the decision-making process. Since the legislation does not foresee the obligatory nature of the project's environmental impact assessment,[1098] participation of the public could not ensure even

1094 Resolution of the Government of Georgia of March 24, 2009 №57 on "The Procedure of Issuing a Construction Permit and Defining the Conditions," Article 45 paragraph 1; Article 54 paragraph 1.

1095 The General Administrative Code of Georgia, Article 115 paragraph 3.

1096 The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro, 2005), Article 10, paragraphs "a" and "c".

1097 The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro, 2005), Article 12 paragraph "a". The Law of Georgia on Cultural Heritage, Article 35.

1098 See the detailed information on the present topic in the chapter of "Right to Live in a Healthy Environment" of the Parliamentary Report.

in case of EIA need. Due to the all above-mentioned, the majority of the legitimate questions raised around the project in public were left unanswered.

While deciding on the implementation of the large-scale projects, as a result of which the urban planning and therefore, the forms of community life change drastically, citizens' participation should not depend on the discretionary powers of the administrative authority, it should constitute the legislative obligation of the Government. Consequently, Resolution №57 of the Government of Georgia dated 24 March 2009 on "The Procedure of Issuing a Construction Permit and Defining the Conditions" should foresee the exception from the general rule of issuing the construction permits through the simple administrative proceedings. The law should define the criteria of appraising the circumstances of the cases, if they should be issued according to the provisions on the public administrative proceedings. This should serve the purpose of the protection of cultural heritage alongside the other possible factors. The State, in accordance with its international obligation, should make the system of the protection of cultural heritage open and accessible.

According to the general rule, construction in the state protection zone of the cultural heritage contradicts the principles established by the Law of Georgia on Cultural Heritage. The legislation determines the exceptional cases of construction in the specific regime of the protection of heritage. Taking the above into consideration, the Public Defender of Georgia continues to study the question of legality of the construction of the "Panorama Tbilisi" project.

In relation to the project "Panorama Tbilisi", the highly significant and considerable circumstance is the international response, [1099] according to which, the present project creates the threat of destruction of the historical cityscape. Due to the fact that Tbilisi's historical part is in the UNESCO World Heritage preliminary list, the State has the obligation to protect its uniqueness before making a decision.

Maintenance and proper development of the historical and cultural heritage by the State is an indispensable prerequisite for the economic development of the country and its implementation constitutes the responsibility of the Government. City planning constitutes the spatial ground for the community development and can be considered as a "social art". Increasing the effectiveness of Tbilisi's prospects of the urban planning largely depends on the maintenance of specific society's individualism and identity and on the proper management of the urban strategy in the city planning process. Consequently, before implementing the above, the State is obliged to create the proper legal and economic environment.

RECOMMENDATIONS

To the Parliament of Georgia:

- To implement changes in order to ensure the involvement of the stakeholders in the decision-making process related to the cultural heritage;
- To make legislative changes on violating the rules of conducting work on the monument and its maintenance in order to ensure the equal treatment of all the owners and to extend the responsibility of the monument's owner provided by Article 30 of the Law of Georgia on Cultural Heritage to all objects, including the ones in the ownership of all religious confessions.

To the Government of Georgia:

- To amend the Resolution №57 of the Government of Georgia dated 24 March 2009 on "The Procedure of Issuing a Construction Permit and Defining the Conditions" in order to ensure the

1099 Statement of the organizations protecting historic monuments in the world, London, 18.09.2015.

involvement of the interested parties and creation of the additional leverage in the decision-making process related to the cultural heritage.

To the LEPL National Environmental Agency, LEPL Technical and Construction Supervision Agency, LEPL Roads Department of Georgia

- To be guided by the regulation provided by Article 14 of the Law of Georgia on Cultural Heritage, when deciding on the implementation of the large-scale earthwork.

LEPL National Agency for the Cultural Heritage Preservation

- To take measures established by the Law of Georgia on Cultural Heritage in each case of infringement of the cultural heritage and in case of the signs of crime directed towards the cultural heritage, to address the law enforcement authorities promptly.

To the Chief Prosecutor's Office of Georgia:

- To investigate timely and effectively the issue of destruction of archaeological objects in the construction process of the Ruisi-Rikoti highway, in order to identify the responsible individuals and take lawful measures against them;
- To start investigating those systemic violations that are related to the large-scale neglecting of Article 14 of the Law of Georgia on Cultural Heritage by the National Environmental Agency and other institutions.

LABOUR RIGHTS

During the reporting period, the lack of the State institution responsible for the monitoring of the labour rights and the safe working environment remains to be problematic. Although in early 2015, the State Programme for Monitoring the Labour Conditions was approved by the Governmental decree, this cannot be considered as an effective monitoring mechanism. In particular, in the framework of the programme, only those enterprises are monitored, which express their consent beforehand in case of finding the violations, the monitors have the right to issue the non-binding recommendations.

The amendments made to the Law of Georgia on Combating Human Trafficking on 22 July 2015 determined that the Labour Inspection Department of the Ministry of Labour, Health and Social Affairs of Georgia, in order to prevent the labour exploitation and make responses to it, monitors the labour conditions and in case of identifying the signs of human trafficking, addresses the investigation authorities.[1100] The Law also envisages that the Government of Georgia should have approved the rules for the prevention of forced labour and labour exploitation and for the implementation of State supervision till 1 January 2016. The above rule was approved by the Decree N112 of the Government of Georgia on 7 March 2016, which determined that in order to identify the forced labour and labour exploitation cases, the employee of the Inspection Department is authorized to examine the building without the prior consent and/or notification and if the signs of forced labour and labour exploitation are found, to provide the information to the competent authorities promptly.

Due to the all above-mentioned, problematic is the circumstance that in case of the lack of consent of the employer, except for implementing inspection for identifying the forced labour and labour exploitation, no mechanism exists for identifying the violations and responding to them.

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

During the reporting period, a number of applicants have addressed us, who noted that the competitions to be employed in the civil service have a formal character and the pre-selected candidates are appointed on the

1100 The Law of Georgia on Combating Human Trafficking, Article 7 paragraph 7.

positions. The process of studying the applications revealed the cases when the protocols of the job interviews have not been properly drawn up. In addition, it was not possible to established what were the exact criteria based on which another candidate was given the preference, which gives the reasonable assumption that the competitions were not conducted fairly.

EXISTING SHORTCOMINGS OF THE LABOUR CODE OF GEORGIA

Despite the adopted significant changes in the Labour Code of Georgia in 2013 challenging series of questions still remain that are not covered by the law. This part of the report will pay special attention to the main deficiencies of the labour legislation improvement of which is necessary for the harmonization of the Georgian labour legislation with international standards and for the protections of the rights of the employees.

The Organic Law of Georgia the Labour Code does not determine the maximum number of daily working hours and the number of working days per week. Herewith, the legislation does not define the maximum allowable limit of the overtime working hours. According to Article 14 of the Labour Code of Georgia, the duration of working time should not to exceed 40 hours a week and in enterprises with specific operating conditions – 48 hours a week. Unlike the Law of Georgia on Civil Service, [1101] the Labour Code does not specify how many days a week should the above hours be distributed, the legislator makes a reservation only regarding the 12 hours of rest between the shifts.[1102]

It should also be noted that the lawsuit[1103] was submitted before the Constitutional Court of Georgia on the question of constitutionality of Article 14 of the Labour Code of Georgia in terms of determining the duration of working time as 48 hours in the enterprises with specific operating conditions. The above application was found admissible on merits.[1104] On the above case, the Public Defender of has submitted an Amicus Curiae before the Constitutional Court, which holds that there is a differentiated approach towards the employees and there are put in essentially unequal conditions. Achieving the normal functioning of the enterprise is possible without the alleged unequal attitude, for instance, by using the shift works of the employees or by some other way. It was also noted in the Amicus Curiae that despite the place of employment or the working regime of the enterprise, establishment of different working hours for the employers is not cause by the absolute necessity and differentiated approach established by the disputed norm is not proportionate to the purpose. Consequently, there is a violation of Article 14 of the Constitution of Georgia.[1105]

In addition, it should be emphasized that the list of sectors activities of which are placed under the specific working regime, is determined by the special Governmental decree[1106] and is very broad. If 48 hours of working time stays unchanged, concretization of the list of sectors in the Governmental decree will become necessary, so that 48 hours working time is used only as an exception.

According to the ILO conventions on workings hours,[1107] the working time should not exceed 8 hours per day and 40 hours per week.[1108] It is recognized by the same conventions that the employee should take advantage of the weekly uninterrupted rest, not less than 24 hours each 7 days.[1109]

1101 Law of Georgia on Public Service, Article 40 paragraph 2.
1102 Labour Code of Georgia, Article 14 paragraph 2.
1103 The Citizens of Georgia Ilia Lezhava and Levan Rostomashvili vs. The Parliament of Georgia.
1104 Record of ruling N2/1/565 of the Constitutional Court of Georgia dated 3 April 2014.
1105 Amicus Curiae N12/8822 submitted by the Public Defender of Georgia to the Constitutional Court of Georgia on 3 July 2014.
1106 Decree N329 of the Government of Georgia on "Approving the List of Sections with Specific Operating Conditions" dated 11 December 2013.
1107 Hours of Work (Industry) Convention N1, 1919, Article 2 and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Article 3.
1108 N47 Forty-Hour Week Convention, 1935.
1109 The Weekly Rest (Industry) Convention N14, 1921, Article 2 paragraph 1 and Convention N106 - Weekly Rest (Commerce and Offices), Article 6 paragraph 1.

The Committee on Economic, Social and Cultural Rights has explained that the working days spent in all activities, including unpaid work, should be limited to a specified number of hours. According to the recommendation of the Committee, Legislation should establish the maximum number of daily hours of work, which could vary in the light of the exigencies of different employment activities but should not go beyond what is considered a reasonable maximum work day.[1110]

International Labour Organization Recommendation N116 concerning Reduction of Hours of Work (1962) refers to the overtime work and enshrines that the maximum time of overtime work should be established. The Expert Committee of the ILO states that the similar limits should be reasonable, should serve the purpose of avoiding the workers' exhaustion and ensuring the possibility for the employees to spend sufficient time outside work.[1111] ILO Conventions N1 and N30 foresee exceptions from the normal working time, which in total should not exceed 10 hours per day and 56 hours per week.

The labour legislation does not define the minimum amount of wage. The only Act, which refers to the minimum wage is the Decree N351 of the President of Georgia dated 4 June 1999, which approved 20 GEL as a minimum wage. However, it is crystal clear that his amount, which is 8 times less than the living-wage, can in no way be considered adequate. It is necessary for the legislator to regulate the above issue, so that the State ensures the protection of the employees from receiving the scanty wages. For instance, we can consider the employee of the LTD "Georgian Post", who have addressed us regarding the enforcement of the Court decision on restoration on the previous position. As a result of studying the documentation it was revealed that the salary of the accountant's assistance was 125 GEL. According to the Committee on Economic, Social and Cultural Rights General comment No. 23 (2016) on the right to just and favourable conditions of work, the wages should give the possibility to the workers and their facilities to enjoy the rights guaranteed by the convention, such as the social security contributions, healthcare, education and living costs, including the access to the necessary nutrition, water and sanitation, housing and clothing.[1112]

It is enshrined in the Community Charter of the Fundamental Social Rights of workers adopted in 1989 that all employment in each country should be fairly remunerated, which includes wages, which will give the employee an opportunity to have a normal living conditions.[1113] Besides, the European Social Charter (Revised) guarantees the right to a fair remuneration sufficient for a decent standard of living.[1114] According to the Committee of the European Social Rights, for the objectives of the Charter, so that the remuneration is considered fair, it should exceed the poverty line in each country, which is 50% of the average national salary.

The Labour Code of Georgia does not provide the exhaustive list of the grounds for terminating the labour agreements, in particular, according to Article 37 paragraph 1 (o): Grounds for terminating labour agreements shall be "other objective circumstance justifying termination of a labour agreement." Existence of this general report leaves the employer a wide possibility of assessment and action and it is not predictable and clear for the employee what can become the ground for the termination of the labour relations. The ILO Convention on "Termination of Employment" envisages that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.[1115]

The possibility of concluding a contract for a specified period, when there is no objective need for it. According to the existing Labour Code, the employer has the obligation to justify the need for a fixed-term contract, if labour relations last for one year or more. When signing the contract for less than 1 year, the employer

1110 Committee on Economic, Social and Cultural Rights General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 8 March 2016, paragraphs 35-36, pp. 8-9.

1111 Sangheon Lee, Deirdre McCann, John C. Messenger, "Working Time Around the World", 2007, pg. 18

1112 Committee on Economic, Social and Cultural Rights General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 8 March 2016, paragraphs 20-21, pp. 5-6.

1113 Community Charter of the Fundamental Social Rights of Workers, Article 5, Available at: http://www.aedh.eu/plugins/fckeditor/userfiles/file/Conventions%20internationales/Community_Charter_of_the_Fundamental_Social_Rights_of_Workers.pdf

1114 The European Social Charter (Revised), Part I, Article 4.

1115 N158 Convention on Termination of Employment, 1982, Article 4.

is not limited.[1116] In case of a fixed-term labour contract, the law gives the employer the possibility to dismiss the employer from the position based only on the expiration of the contract, without any justification. It is noted in the ILO Convention N158, as well as in the Recommendation N166 that adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention and this Recommendation. To this end, provision may be made for limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration.[1117] It is also noted in the EU 1999/70/EC Directive that the fixed-term contracts can be concluded only in case of the objective reasons.[1118]

There is no rule for compensating the damage caused to the health or as a result of death while fulfilling the labour duties. The standard for the compensation of damages to the workers is enshrined in N121 Convention concerning Benefits in the Case of Employment Injury (1964). According to the above Convention, the national legislation, national legislation concerning employment injury benefits shall protect all employees, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.[1119] In Georgia, an employee, for the compensation of the employment injuries, has to address the court based on the norms of the Civil Code of Georgia. The court proceedings are conducted based on the adversariality principle and the burden of proof completely upon the applicant. However, in a number of cases the respondent has the evidences, which we also consider problematic.

SAFETY IN EMPLOYMENT

Protection of labour is system of the legally ensured, organizational-technical and social measures, which is directed towards the creation of the safe and healthy working conditions.[1120] Article 30 paragraph 4 of the Constitution of Georgia protects individual's labour related rights and freedoms that are stemming from the employment, as a natural result of the labour relations. The labour related right is the right of an individual to work in a safe and healthy environment.

According to the Constitution of Georgia, protection of labour rights, fair remuneration and safe, healthy working conditions are determined by the organic law. Article 35 of the Labour Code of Georgia sets the standards of the labour conditions and obliges the employers to provide a working environment that is maximally safe for the life and health of the employees, to introduce a preventive system ensuring labour safety and to provide timely the employees with relevant information about labour safety-related risks and measures for preventing the risks.

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

According the information provided by the Ministry Internal Affairs of Georgia, during 2015 there were 82 work injuries at workplace, the number of deaths in 42 cases.[1121] Based on the information provided by the

1116 Labour Code of Georgia, Article 6 paragraph 1².
1117 Recommendation N166 on the Termination of Employment, 1982, Section 3(a).
1118 1999/70/EC Directive, Part 7.
1119 N121 Convention concerning Benefits in the Case of Employment Injury (1964), Article 4 paragraph 1, available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312266>
1120 Labour Law, Text-Book, Author – D. Dzamukashvili, Tbilisi, 2009, p. 155.
1121 Letter N255708 of the Ministry of Internal Affairs of Georgia dated 2 February 2016.

same Ministry,[1122] which was studied by the Office of the Public Defender, in 2015, 123 individuals were injured and died on the working place.[1123] Out of them – 5 are women. Criminal investigation started in 108 cases (for the crimes foreseen under Article 240[1124] paragraphs 1 and 2 of the Criminal Code, Article 240[1] paragraphs 1 and 2,[1125] Article 170[1126] paragraphs 1 and 2, Article 276[1127] paragraph 1 and Article 115[1128]). Out of the above cases, criminal investigations was terminated in 42 cases, criminal proceedings were initiated in 16 cases, out which, court proceedings were conducted in 10 cases.

According to the standards established by the International Labour Organization, the State has a positive obligation to create an effective mechanism that will be directed towards the prevention of fatal accidents at the work place. Unfortunately, currently, the only mechanism for responding on the similar cases is the criminal investigation. Of course, launching an investigation does not constitute a strict warning for the employers – to protect the safety rules to the maximum extent possible. In this regards, it is necessary to create a body responsible for the supervision of protection of the labour safety rules – the Labour Inspection and to determine the relevant sanctions for the violation of the above rules.

Also noteworthy is the obligation stemming from the 2014-2015 Action Plan of the Government of Georgia on the Protection of Human Rights, according to which, the Ministry of Labour, Health and Social Affairs of Georgia should have initiated the draft law on "Labour Safety and Hygiene." It is unfortunate that the above draft law is still not initiated and as noted by the Ministry, they are working on it.[1129] Despite the numerous tragic events of 2015, which might be caused exactly by violating the rules of the labour safety, the State's inner attitude towards the issue (it was known to the Office of the Public Defender of Georgia in 2013[1130] that the Ministry of Labour, Health and Social Affairs of Georgia was working on the draft law on "Labour Safety and Hygiene") demonstrates that the Government, so far, has no proper understanding of the vital importance of complying with the positive obligation undertaken under the Constitution of Georgia in terms of protection of labour safety.

VIOLATION OF THE TKIBULI MINERS' LABOUR RIGHTS

On 15 February 2016, the miners working on the stations named after Mindeli and Dzidziguri went on strike. The employees were demanding the decent pay, along with demanding adequate labour conditions. Sometime before the strike, the employees submitted a written request to the administration of the "Saqnakhshiri (G-I-G Group)". No response from the employer followed the request, not event an attempt to resolve the above issues through the mutual understanding or negotiations, which was followed by the strike from the part of the employees and later, the full strike.

The main demand of the employees – to increase the salary for 40% was due to entry into force of the Law on Mountainous Regions of Georgia from 1 January. With the above law, the Tkibuli Municipality no longer holds the status of a mountainous zone and it caused the cancellation of the tax privileges of the miners. As a result, the income of the employees was decreased and their heavy social and economic conditions deteriorated.

The employees were demanding the decent pay, along with demanding adequate labour conditions, because their work environment included increased threat for life and health. Their labour rights are completely

1122 Letter #617142 of the Ministry of Internal Affairs of Georgia, 11.03.16.
1123 In the provided table, on person is recorded both as injured and deceased.
1124 Violating the safety rules during mining, construction or other works.
1125 Violating the safety rules on the electrical or thermal energy, gas, oil or oil product objects.
1126 Violation of the labour safety rule.
1127 Violating the rules on transport safety or exploitation.
1128 Incitement to suicide.
1129 Letter #01/5292 of the Ministry of Labour, Health and Social Affairs of Georgia, dated 25.01.2016.
1130 Ministry of Labour, Health and Social Affairs of Georgia, Letters: #01/73357 (09.08.2013), 01/83107 (16.09.2013), #01/96050 (25.10.2013).

ignored by the employer, which is expressed in the forms of: in the meagre compensation work overtime and shift; inadequate work uniforms; Faulty and outdated equipment, or in some cases, did not existence of the equipment at all, and therefore the employees have to work by bear hand instead of the special machines; the rule of using paid vacations' and violation of the rules of the workplace accidents compensation, etc.

Noteworthy is the fact that a number of high ranking officials considered the problem of resolving the issues as a dispute only in labour relations, between two private subjects. This is why the workers on strike, employed in the Tkibuli stations named after Mindeli and Dzidziguri were left completely alone to face the employers.

Despite the demands, the relevant responsible individuals of the enterprise were not meeting with their employees in order to discuss their demands, which transformed the miners' protest into the crisis. The state was not effectively responding to the ongoing processes. As well as the enterprise, the state has neglected the social importance of the process. The ongoing dispute between the employer and the employee cannot be considered only as a local issue. The case of the miners protest demands revision of the social policy and the specific steps taken by the state for the improvement of the labour safety. Improvement of the labour conditions and establishment of high standards of labour safety constitutes the obligation of the State.

It should be noted once again that existence of only one Article (Article 35) in the current legislation, namely, in the Labour Code, cannot ensure the effective measures in terms of improving the labour safety and other regulation does not exist in the legislation. Consequently, it is important to establish the supervision mechanism of the conditions of the employees – the labour inspection, which will give the possibility to eliminate similar incidents.

THE WORK OF THE STATE'S LABOUR CONDITIONS MONITORING PROGRAM

Improvement of the labour conditions of the employees and protection of the labour rights is one of the priority directions for the Public Defender of Georgia.

It is noteworthy that with the Decree N38 of the Government of Georgia dated 5 February 2015, the working conditions' monitoring program was approved. The objectives of the program are: to help the employers to create a safe and healthy environment and to determine the safety need for institutional reform. With the order N01-164/o of 18 May 2015, the Minister of Labour, Health and Social Affairs of Georgia approved the "Qualification Requirements and Selection Rules of the Monitors" and the "Rules for Conducting the Monitoring and a Questionnaire to be Used in the Monitoring Process."

According to the information of the Public Defender of Georgia, in 2015, 77 employers participated in the State Programme on Monitoring the Labour Conditions. Based on the information provided by the Ministry of Labour, Health and Social Affairs of Georgia, it was revealed during the monitoring process that the electrical safety rules were not observed in about 66% of the enterprises, fire safety rules – in 61%, failure of the collective protection systems was observed in 33% of the enterprises. In addition, it is noteworthy that the violations of the rules for the individual protection means was revealed in 34% of the companies.

In relation to the above-mentioned, the individuals conducting the monitoring of the labour conditions (the monitors) have developed and issue the recommendations. According to the information provided by the Ministry,[1131] "currently, with the consent of the employers, the repeated monitoring, in order to check the fulfilment of the issued recommendations, is conducted in 59 companies. It was revealed as a result of the monitoring that the recommendations were fully taken into consideration in 16 cases, partially – in 28 cases and 15 companies did not consider the above recommendations."

1131 Letter #01/16417 of the Ministry of Labour, Health and Social Affairs of Georgia dated 01.03.2016.

It should be noted that for the implementation of the State Programme on Monitoring the Labour Conditions, the employer's written consent on the involvement in this programme is necessary, which is, at one hand ineffective, since, if the employer does not express the will to participate in the State Programme on Monitoring the Labour Conditions, the authority implementing the monitoring does not have any legal leverage to conduct the monitoring and examine the conditions existing in the enterprise/institution – for the prevention of violating the conditions of employment, the labour safety norms and the forced labour.

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

Together with the other enterprises/institutions, the monitoring group has monitored:

1. **Metro Stations "Medical University",** where the violations related to the protection of labour safety and health were revealed. In particular: fire safety rules do not comply with the standards specified by the Georgian legislation; Unprotected electrical safety rules; the employees are partially equipped with the individual protection means stemming from the specific work; sanitary knots and the water supply system needs renovation, toilets do not meet the hygiene standards.

2. **The Stalin Mine of the Chiatura Factory of the Georgian Manganese Ltd,** where the following technical shortcomings and the risk-factor causing professional **diseases** were revealed: the workers do not have the gloves, respirators and use the damaged (torn) equipment. The above violates the requirement of Article 35 of the Organic Law of Georgia the Labour Code of Georgia; there are not first-aid medical boxes; the working spaces are not lit due to the lack of the light bulbs; the materials used for insulating the lightning line are of the low quality. **The risk factors causing professional diseases in the factory are:** severe and unexpected situations, tense working mode; Stress, fatigue, effects of the manganese compounds on the body; dust in the air of the working zone, which results in the coexistence of the variety of occupational diseases.

3. **LTD Georgian Manganese Ferroalloy Plant",** where the following risk-factors were found: the lack of ventilation means of collective protection, which causes industrial dust in the working zone; physiological sensation of increased noise level in the factory; falling from the height – occupational injury, accident; damaged wiring; violation of the fire safety rules; violation of the construction safety rules; violation of the rules for storing the tanks containing explosive/combustible/flammable materials; improper treatment of the crane equipment; violating the rules of food safety; the absence of the system against the train composition roll down; Poor ergonomics and work space.

It is important to mention that while implementing the State Programme for Monitoring the Labour Conditions, the monitoring ground had a written consent from the employer for conducting the monitoring. However, despite the awareness of the employer, during the monitoring, significant and substantial violations were revealed related to the labour safety of the employees, as well as to the protection of their health.

Attention should be also paid to the information of the Ministry of Internal Affairs of Georgia on the cases, which resulted in injuries and deaths of the employees on the work place. As it is also noted above, according to the information provided by the Ministry of Internal Affairs of Georgia, in 2015, the total number of injuries at workplace is 82 and the number of deaths – 42.[1132]

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

1132 Letter N255708 of the Ministry of Internal Affairs of Georgia dated 2 February 2016.

PROTECTION OF LABOUR RIGHTS IN CIVIL SERVICE

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

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

Positively should be assessed the amendments made in October 2015 to the Organic Law of Georgia the Code on Local Self-Government, which determined that a Gamgebeli/Mayor shall appoint or remove from office the head of a structural unit of the Gamgeoba according to the rule established by the Law of Georgia on Civil Service. However, since the above amendments will enter into force from 1 January 2017, the above issue remains to be problematic in 2016.

Dismissal of the Public Servants and Formal Character of the Recruitment

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

For example, we could mention the M.B's dismissal case from the Khashuri local municipalities based on the certification, the study revealed that the public servant successfully passed the first official certification stage of recruitment, but afterwards interviewing commission unanimously considered his/her positions inconsistent. It should be noted that the Commission's decision and its certification sheet does not include any justification of the reasoning of the criteria which happen to be inappropriate for a candidature of the civil servant position. Also, despite our request for an interview protocols were not provided, which reflected the development of the interview, the content of the questions and answers, and as the interview process analysis was excluded, there was a reasonable doubt of the formal certification.

During the 2015 revealed the case of dismissal from the Ministry of Internal Affairs on the basis of a disciplinary offense, as well as dismissal from the Rustavi City Hall of based on non-compliance skills of the position of civil servants. After the analysis of the facts revealed that the decision on dismissal of the public servants by the authorized officials were made without analysing essential circumstances and the actual conduct of the investigation and documentation, which had violated the civil servants legally protected rights.

During the reporting period there was a public service competitions related deficiencies. In particular, this year, the Public Defender's Office received a number of statements concerning the legality of the competition for a position at the Rustavi City Hall local government. The applicants argued that they passes first stage of the competition - resulted the high points in the test, however after they were not recruited after the interview. After receiving the requested documents from the Rustavi City Hall, the study revealed that interviewing protocols were incomplete that do not reflect the full interview, the content of the asked questions and their answers. It

should be noted that the Rustavi Municipality N43 resolution[1133] imperatively established that "members of the Commission are required to use Annex N1- in the evaluation scheme during assessing the interviews ", but despite our demands mentioned documents were not delivered, moreover, Rustavi Municipality responded the explanation letter that "the assessment forms are the working documents of the commission members and commission members are filling it separately about each candidate and it is important only by the time of the decision- making for a specific member of the Commission and since the competition Commission is a collegial body, the final decision is made by the overall protocol."[1134] It should be noted that the Commission approved the pre-designed interview general questions for all candidates,[1135] but after studying the circumstances of the use of the questionnaire during the interview stage was not confirmed. Such an approach is at odds with the principles of competition and legislation. According to the Public Service Act „ candidate's appraisal should be based on the candidate's work experience, the quality of work and his/her professional experience of the job description for the vacant position, the special and additional requirements and qualification compliance ", while competition protocol should reflect " reasoned assessment of the Competition Commission about the candidate's result ". [1136] While during the interview process, the Commission checks the person's professional qualifications and the level of qualification to the job-related issues and issues certain individual administrative act, it is necessary to substantiate and on what basis and what criteria was this decision made. Similar decisions made by the Commission give a reasonable assumption that the competitions have formal nature.

An administrative authority is obligated to indicate in the written justification of the individual administrative act all the essential factual circumstances of issuing an administrative act. [1137] The cases demonstrate above reveals that both state and local authorities do not fulfil their responsibilities, and the unreasonable decision they have taken interferences the rights of citizens.

Issues Regarding the Compensation of the Overtime Work

Public Service Law states that the law according the peculiarities of this law covers the officials and support staff. [1138] The Labour Code regulates overtime pay issue: "Prolonged working hours should be reimbursed by raising the remuneration", the parties may agree for additional time off for an employee. [1139] After the reviewing the application received by PDO it revealed problems in the public sector's compensation practice for overtime work. In particular, N8 penitentiary officer (Medical doctor paragraph) S.K. addressed to the Public Defender's office who pointed out that he/she had to work in shifts, however, his/her overtime hours of work, including holidays was remunerated. We requested the information about the applicant's duration of the overtime work and about the compensation of the work. According to the reposing letter of the ministry "the Ministry of Corrections and Legal Assistance does not record work schedule of S.K.". [1140] The after getting the response from the ministry, we repeatedly requested the information on shifts of employees in system of the Ministry, the overtime working hours reimbursement, as well as their weekend work duration recording and about the pay for the time worked or for additional time off. The letter issued as a response, stated that " taking into consideration of the Ministry of Corrections' working system of overtime and is especially important workload, the annual remuneration of the fund within the limits of the established procedure, during the fiscal year may be additive." [1141] According to the answer it is clear, that the duration of the overtime work is

1133 Order of the Rustavi City Council on November 7, 2014, on "confirming the rules of recruitment and certification competition commission of the local self-government servant positions." Article 17, paragraph 4.
1134 Letter N02/5735 from the Rustavi City Hall, August 14, 2015.
1135 Protocol N1of the commission of November 4, 2014, of the Rustavi municipality City Hall on recruitment competition of the local self-government servants.
1136 See: Georgian Law on „Public Service Act" article 41, paragraph 2 and 5
1137 General Administrative Code of Georgia, Article 53, paragraph 4.
1138 Georgian Law on "Public Service" , Article 14, paragraph 1.
1139 Labour Code of Georgia, Article 17 paragraph 4 and 5.
1140 Letter #MCLA 61500646955 of the Ministry of Corrections, issued on August 7, 2015.
1141 Letter #MOC 51501031236 of the Ministry of Corrections, issued on November 24, 2015.

not recorded, the remuneration is not in accordance with the number of hours worked, only in some cases, according to the will and discretion of the ministry a person is getting overtime remuneration for his/her work. The case reveals the systemic problem in the Ministry of Corrections and Legal Assistance, namely the failure of fulfilling the norms of the imperatively established by legislation on overtime pay, which severely violates the human rights of number of employee at the system of the ministry.

APPOINTMENT OF THE PUBLIC SERVANTS WITHOUT THE COMPETITION

Article 30 of the Georgian Law on "Public Service"[1142] defines the list of authorities that could be appointed at the position without the recruitment process that includes appointed and elected officials by the President, the chairperson of the Parliament, the Prime Minister. The list of the officials to be appointed by listed authorities is prescribed in the various regulations. In particular: "Administration of the President", the President's Decree N 963 of 19 December 2013, "The President shall appoint and dismiss of the heads of the administration of the structural units and their deputies, as well as administration employees provided by the staff list." [1143]

Also, According to the resolution N626 of the Government on "Approving the Statute of the Administration of the Government" – issued on November 19, 2014, [1144] "the Prime Minister shall appoint and dismiss of the heads of the administration of the structural units and their deputies, as well as administration employees provided by the staff list ".

According to the article 107 of the "Rules of Procedure of the Parliament of Georgia", "parliamentary chairperson appoints and dismisses the Chief of Parliamentary Staff, the Deputy Chief of Parliamentary Staff (in the presence of such), the heads of the departments and services comprising Parliamentary Staff as provided in these Rules of Procedure".

Therefore, one can say that the President and the administrations of the Government and the Parliament of Georgia can appoint a number of officials without competition by the Public Service Law of Georgia, by the bypassing transparent procedures.

The new edition of the law on "Public Service", [1145] which will come into force from January 1, 2017, defines the rule of recruiting the public servant without the competition by the way of administrative agreement. In particular, without the competition by the administrative agreement can be recruited the public servant that are the state-political official assistant, advisor and directly the Office / Secretariat / Bureau employee. Accordingly, it can be said that the new law narrows down circle of authorities that can recruit the public servants without a competition, which reduces the risk of arbitrary decision-making at public institutions during the employment process. However, since the changes will take effect from January 1, 2017, this issue remains in 2016.

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

The Law on "Public Service" does not regulate recruitment of the staff of the Non-profit legal entities established by the local self-government bodies. Due to the fact that the local self-governing bodies established the (non-commercial) legal entities under the local self-government budget, and they are receiving the funding

1142 Law of October 31, 1997 was stating the similar provision on appointing or electing part of the public servants by the President and Parliament of Georgia, the list has been enlarged according 14.04.2006. N2884 amendments.

1143 "Administration of the President", the President's Decree N963 of 19 December 2013, article 3, paragraph 3.c.

1144 the resolution N626 of the Government on "Approving the Statute of the Administration of the Government" – issued on November 19, 2014, article 4, paragraph 3.d.

1145 Georgian Law on "Public Servant" , October 27, 2015, N4346-I, Article 78.

from the budget, they are the budgetary organizations. Therefore, it is important to the process of the recruitment to be transparent and regulated by the rules of the competition.

The Public Defender's Office requested the information from various local governments - from the municipal districts of Tbilisi, Kutaisi and Batumi, [1146] on (non-commercial) legal entities established by the local self-government about nominative and quantitative lists that are now carrying out their activities. Also, requested the information from such private entities about the number of employees and staff selection procedures.

Tbilisi City Hall obtained public information [1147] states that under the control of the department of Education, Sports and Youth Affairs are : NLEP "Legal Aid and Public Participation in Municipal Center", [1148] " Youth European Center" - 15 (fifteen) employees, NLEP of Nursery Management Agency of Tbilisi - 42 (forty two) staff members, NLEP "National Youth Palace" 225 (two hundred and twenty-five) staff members. Municipal Department of Culture controls 55 (fifty five) (non-commercial) legal entities, where according to the information received, there is no established rules of selecting employees. [1149] The NLEPs includes about 2 300 (two thousand three hundred) employees. Municipal Department of Healthcare and Social Services of Tbilisi City Hall, according to the Tbilisi City Hall Municipal Department[1150] there are two non-commercial legal entities under their supervision – with 143 (one hundred and forty-three) staff members.

According the information received from the City Hall of Kutaisi, [1151] it appears that the government is based the 15 (fifteen) (non-commercial) legal entity with 2 440 (two thousand four hundred and forty) employed staff.

According to the data from the City Hall of Batumi, [1152] Batumi City Hall founded fourteen (14) (non-commercial) legal entity, the total number of employees - 2 130 (two thousand one hundred and thirty).

Based on the information received, we can say that the local authorities have not developed regulations of the selection procedure of employee in the non-profit (commercial) legal entities based by municipalities, which raises the reasonable doubts toward the credibility of the process and its transparency.

According to the new law on "Public Service",[1153] the institution established from the local self-government budget and funded by the local budget, as well as its subsidiary accountable / controlled entity is defined as a public institution. The mentioned change is a novelty, because in the current law on "Public Service" does not covers the topic of local self-government established the (non-commercial) legal entities. However, the recruitment competition regulations of the new law do not covers the appointing the staff at any position of the public institution. The rules regulating the recruitment cover only an appointment of the public servants at vacant positions in the public institutions. According the concept of public servant, [1154] an employees working at the local government established (non-commercial) legal entities cannot be considered as public servants. Consequently, competition rules of taking vacant positions established in the new law of "Public Service" (to be launched on January 1, 2017) does not apply to local governments established (non-commercial) legal entities.

On this basis, in the local self-governing bodies established (non-commercial) legal entities, according to they are financed by the municipal budget, the employment process should be competitive, fair and transparent.

1146 Letter to the Mayor of Kutaisi N04–10/5884 22/07/2015; Letter to the Mayor of Tbilisi N04–10/5926 22/07/2015; Letter to the Mayor of Batumi N04–10/5885 22/07/2015.

1147 Letter N3092235 06/15205261-1 04.08.2015.

1148 According to the received information, the mentioned organization is currently working on the changing the projects, programs and introducing novelties; accordingly, PDO could not receive the information about the number of employed staff and their recruitment regulations.

1149 Letter from the City Hall of Tbilisi N3077495, 06/15205261-1 27.07.2015.

1150 Letter N3083199 06/15205261-1 29.07.2015.

1151 Letter from the City Hall of Kutaisi N01/5126 18/08/2015.

1152 Letter from the City Hall of Batumi N25/14983 31/07/2015.

1153 Georgian Law on "Public Servant" , October 27, 2015, N4346-I, to be launched on January 1, 2017, Article 3.j.

1154 The public servant is persons which is appointed for the lifetime on the position of state authority, autonomous republic, municipality, public legal entity that performs public-legal authority functions, as its main professional occupation, which ensures protection of the public interest, and which in return receives appropriate compensation for it, and social and legal protection, Georgian law on "Public Service" 2015 October 27, Art. 3.E.

Accordingly, it is necessary for local government established NLEP staff to be employed according the recruitment regulations stated in the new law on "Public Service", to avoid the risk of cronyism in the similar institutions as much as it is possible.

THE EXISTING GAPS OF THE GENERAL INSPECTION

In 2015, the Public Defender's Office of Georgia studied the issues of dismissal of employees from the municipal bodies that revealed there still is an issue of termination of the employment based on the personal statement, which was forced, by the municipal body. It is especially worrisome when these harassment cases fail to achieve the goal, the authorities threaten the public servants that their disciplinary behaviour will be investigated by the general inspection and they will be dismissed anyways.

There is a tendency that the inspection organs, which are obliged to protect supremacy and principle of legality according to the law on "Public Service" and study misleading the discipline, are used as an instrument of harassment / pressure to the civil servants. That was an exact topic of the application of B.D. that was received in the Public Defender's Office. B.D. Pointed out that in March 2015 he/she wrote the statement of dismissal by the pressuring of the director of the penitentiary department N17, against his will. Citizen, he was clearly referring to the authority that stated that if the applicant would refuse to write the statement of dismissal he/she would be dismissed based on the general inspection conclusion of the same ministry. It should be noted that on July 6, 2015, the Public Defender's Office of transferred the application and relevant enclosed documents of B.D's case to the Prosecutor's Office. Unfortunately, the Prosecutor's Office instead of studding the circumstances of the B.D's statement, the case in which the applicant reported intimidated speaking and the pressure about the negative conclusion by the General Inspection of the Ministry of Corrections and Legal Assistance of Georgia, the Prosecutor's Office transferred to the same structural .

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

- There is no comprehensive and impartial examination of the disciplinary misconduct facts, appropriate evidence gathering and the investigation regarding them;
- There is not enough justification on the imposing the punishment for the disciplinary misconduct for a specific recommendation, how to properly substantiate and commensurate it is with the misconduct committed by a public servant.

We hope that the public institutions will realize the importance of work of the inspection units, and their activities' role and their occupation will be based on the principles of human rights and freedoms, honour and dignity, the rule of law, impartiality and publicity.

RECOMMENDATIONS

To the Parliament of Georgia:

- To amend Labour Code of Georgia with the norm on creation labour inspection to monitor labour relations which's decisions will be obligatory to fulfil
- To define adequate sanctions for violating the labour conditions for the employers
- To define regulations of taking vacant positions and its transparent recruitment procedures for the self-government established non-commercial entities by the law on "Public Service"

To define in the Labour Code of Georgia:

- Maximum number of daily working hours and minimum durations of weekly non-stop time off
- Maximum barrier of allowed overtime working hours
- Minimum wage
- Basis of termination of working contract should be concrete and predictable, it should not be allowing subjective appraisal and wide definition
- To allow term contract only in cases of objective circumstances that should be defined beforehand.
- To change the legislation, as for the burden of proof will be on the employer in cases of definition of the compensation if health damage or fatalities happens during the working process

To the Government of Georgia:

- The Government decree N329 issued on December 11, 2013, on "Approving the List of Specific Operating Sectors Conditions ", the specified list of the fields with the specific operating mode should be defined.
- To initiate the bill on "Labour Safety and Hygiene"

To the Foreghn Affairs Ministry of Georgia:

- To implement appropriate actions for ratification of Article 3 of the European Social Charter (on right to safe working and hygienic environment).

To the Governemntal and Local Self-government Bodies/entities of Georgia:

- During the decision-making on a dismissal of a public official, including the cases when an application of public servant is on the basis his/her decision requests dismissal from the position, studying the case in detailed manner is important, including the reasons for dismissal base on the personal statement and its reflection in the legal act, to indicate the factual and legal prerequisites, which are the basis for the decision
- During the competitions / attestation on the interview stage should be drafted the minutes of the interview, which will fully reflect the questions asked to the candidates and the received answered. Also, when evaluating candidates to determine the evaluation criteria for Commission members in advance and to fill out the relevant forms compatibility assessment criteria of the candidate , and a decision should be based on the assessment
- Competition-attestation Commission should justify the decision with indication of appropriate factual and legal bases, which are the reasons of making the decision

To the Ministry of Corrections of Georgia:

- To record overtime working hours of the employees and its remunerations according to the legislation

To the Adminsitrative Bodeis/authorities:

- To appraise in detailed manned the appropriateness of the bases of the decision of the General Inspection conclusion on the disciplinary sanctioning for the public servant, if the decision is made under the principles of supremacy of law and legality
- To study in-depth the applications and statements that concerns the working flaws of the inspection bodies of their structural units.

RIGHT TO HEALTHY ENVIRONMENT

LEGISLATIVE GUARANTEES

Direct functional connection between environmental protection and human rights is widely recognized today. Human activities affect the environment and vice versa, the environment continuously effects on people's lives. The right to healthy environment can be attributed to the rights, which are focused to protect not only as an individual, but is societal as a human rights and have universal meaning for existence of human being and future generations. This is due to the existence of a number of procedural guarantees, which serves the crucial aim of protection and preservation of the environment.

Modern consciousness regarding environmental protection developed in the first half of the 20th century for the first time, while the people have realized the negative consequences of the environmental impact of the industrial industry. Although the Universal Declaration of Human Rights[1155] (1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) [1156] (1966) underlines the importance of improvement of the living standards and ecological aspects, however the documents do not contain provisions on the right to a healthy environment. However, internationally-established vison, a healthy environment and respect for human rights are interdependent and closely intertwined with each other. For example, the right to adequate housing, the right to mental and physical health may be impaired as a result of damage to the environment. The practice of the European Court of Human Rights indicates the same as well. Despite the fact that the right to a healthy environment is not a separate provision in the ECHR, the Court explained that the impact on the environment can cause the violation of the rights protected by the Convention. [1157] In addition, the Convention allows limiting the environmental protected rights for the interests of the state contract, for example, limitation of the property rights. [1158]

The right to a healthy environment is one of the guaranteed rights of the first principle in the Stockholm Declaration on the Human Environment of 1972. [1159] This issue was also discussed at the United Nations Conference on Environment and Development in 1992 on the third group Preparatory Committee, and as a result of the proposal, the Rio de Janeiro Declaration enshrined the right to a healthy environment as the first principle.[1160]

In the process of defining the relationship between the environment and human rights the international approach should be taken into account. In 1979, during the first European Conference (Strasbourg) on the

1155 the Universal Declaration of Human Rights, article 25.1.
1156 the International Covenant on Economic, Social and Cultural Rights, article12. 2.b.
1157 López-Ostra vs. Spain, application №16798/90.
1158 Pine Valley Developments Ltd. u.a. vs. Ireland , application № 12742/87.
1159 The human has basic right to have adequate living condition in the environment that gives possibility to live in dignity and welfare. "
1160 It should be noted that at the regional level two separate documents on human rights includes the right to a healthy environment, such as the African Human and Peoples' Rights (Banjul) Charter, Art. 24, San Salvador American convention, Art.11.

environment and human rights, clear states that the recognition of the right to life also includes a recognition of the right to a healthy environment, as a harmonious and balanced environment is a prerequisite for the spiritual and physical health. A year later, the second Conference on Human Rights (Vienna) underlined the need for environmentally sustainable development policy. This includes the environment for future generations in order to maintain the harmonious cooperation in the fields of economic, social and political spheres of continuous and systematic vision about these matters. In 1999, during the environmental protection International Seminar of UNESCO and the United Nations High Commissioner for Human Rights (Bilbao) was discussed the protection of the environment as a basic human right.

One of the latest legal documents in terms of the right to a healthy environment is the UN Human Rights Council Resolution 2012 on the protection of human rights and the environment, with the goal of the expiration of the open-ended questions in the context of environmental issues related rights.[1161] This resolution is innovative, because the states have expressed their readiness to establish the agenda of the international conventions in the field of environmental protection of the rights and obligations of the individuals. On the basis of the resolution an independent expert were appointed by the mission to the study safe, clean, healthy and sustainable environment for the provision of accessibility, along with other issues of human rights commitments. In addition, its mandate is to identify best practices and to encourage its use in terms of the human rights obligations in this field, as well as the awareness raising of the states, and support for strengthening of the environmental policy formation.[1162]

These processes have led to the countries to reflect environmental issues into their main legal documents. Article 37 of the Constitution of Georgia State of creates legal guarantees for informing of the individuals for healthy living environment and sustainable environmental approach in the field. However, as discussed below, there are legislative and practical challenges in the field of environment that are confirms the demand of the special efforts of the government to this end.

GAPS OF THE ENVIRONMENTAL LEGISLATION

This chapter will discuss the fundamental defects of the current environmental legislation. According to the information of the Public Defender's Office, the Ministry of Environment and Natural Resources of Georgia is working on the bill of environmental code of assessment. The Public Defender considers principally important to amend environmental legislative for the government's system, the maximum involvement of field experts and working on the draft-law while taking into consideration their recommendations, its timely initiation / approval.

Activities Subject to Environmental Impact Assessment

During the reporting period, the Public Defender was paying the special attention to implementation of the law on "Environmental Impact Assessment". The Public Defender's Office has distinguished particularly important issue within the framework of the proceedings held by its office.

The Public Defender considers that the list of subject activities of the law on the environmental impact assessment is not exhaustive and does not coincide with the international standards. Comprehensive list of activities, which was subject to EIA, was regulated by the law on "Environmental Impact Assessment" in 1996. From January 2008, with the enforcement of the law on "Environmental Impact Assessment ", EIA related

1161 For instance, what role is assigned to the private sector, among them the entrepreneurial developer, in terms of the protection of the right to a healthy environmental; As well as the exercise of specific guarantees determine the essence right to live in a healthy environment.

1162 A/HRC/19/L.8/ Rev.1, „Human Right and the Environment", Human Environment Right's Council session 19, March 20, 2012.

decision-making procedures and the list of activities subject to EIA has changed. It should be noted that in this regard, the old regulation was more complete. Article 4 of the law on " Environmental Impact Assessment " contained a list of a number of activities which can no longer be found in the article 4 paragraph first of the Georgian law on "Environmental Impact". For example, on the construction of the nuclear reactors and nuclear power plants, certain types of infrastructure projects (eg: local roads, hotels). The list of activities subject to EIA is to be found only in terms of the processing of minerals and the extraction of minerals is not subject of such kind of regulation.

The convention on "Public Participation in Decision Making and Access to Justice in Environmental Matters" is an important international document. [1163] Georgia ratified the Convention in 2000, [1164] thus committed to protect the rights defined in an international treaty. Regulations established by the Convention should be considered as a minimum standard, which shall be met by the states. The first annex of the Aarhus Convention defines the activities[1165] in respect of the Convention Article 6 on the environmental impact commitment to make in the decision making process accessible for public participation.

The Georgian law on "Environmental Impact" does not include a list of the large part of the activities specified in the first Annex of the Aarhus Convention. Such activities include, for example, wood processing; Paper and cardboard production; Groundwater abstraction or artificial groundwater recharge schemes; constructions for the intensive rearing of poultry or pigs; There is also an open-pit and underground mining of minerals and others.

According to the Article 6 the first paragraph subparagraph "b" of Aarhus Convention of the provisions of this chapter shall be applied to the proposed activities, which are not listed in Annex I, however may have a significant effect on the environment. For this purpose, parties shall determine whether such a proposed activity is subject to these provisions, which includes discussion of specific cases individually. It should be noted that the Georgian legislation does not provide mechanism decision-making of revision of the individual activities and environmental assessment. However, state does not deny the fact that according to the list of activities subject to mandatory EIA is "rigid and less detailed" than the Aarhus Convention and the annexed list does not include activities in a number of areas. [1166]

Public Participation in Decision-making Process

Another important issue is how the current regulation is ensuring the full involvement of the public in decision-making process.

According the Article 9 paragraph first of the law on "Environmental Impact Assessment" the environmental permit issued under the General Administrative Code, Chapter VI of the simple administrative procedure and according to the law of Georgia on "Licenses and Permits", within 20 days after the registration of the permit application.

Simple administrative decision making procedure defined in the Administrative legislation does not include the bounding provision for the administrative body in terms of the community engagement. There are no different regulations defined in the laws on "Environmental Impact" and "Licenses and Permits". The only possibility to get involved in the process by the public is the environmental impact assessment procedure of public discussion hearing.

1163 Received on the fourth conference of the minister "the Environment for the Europe" June 23- 25, Aarhus , Denmark ,1998, Active after October 30, 2001.

1164 Resolution №135 of the Parliament of Georgia issued on September 11, 2000.

1165 According to the article 6 paragraph 1 subparagraph "a" the listed occupation in the annex I is using the following article during the decision-making process or makes sure to involve the society in the decision making process in these particular topics.

1166 The national report on implementation of Aarhus Convention, 2013, page 30.

The Aarhus Convention requires public participation in the decision-making process and sets minimum standards[1167] and defined the basic principles for public participation, namely: the decision-making process should involve all the interested public. Public involvement in decision-making also should be ensured at an early stage, when significant changes can be made in the planning process of the project and public participation should have reasonable timeframe for initiating the involvement. Information about the public participation opportunities must be provided for the public to provide the inclusion and informing all the interested of the decision making process. The public should have access to basic information about the planned activities and decision-making procedures, as well as the full documentation discussed by the decision-maker. The decision maker body should ensure proper consideration of the comments submitted by interested parties and spreading the information about the outcomes of the project for the general public. The decisions about the work permit / license granting should be immediately accessible to the public.

According to the Georgian legislation, the obligations tied to EIA are connected to the period when the administrative decision-making procedure for permit granting is not started. Public participation in the process of EIA is necessary; however it cannot be regarded as the counter-argument to the neglect public involvement in administrative procedure and fulfilment of the Aarhus Convention established standards.

It should be noted that a number of obligations, which are connected to the public discussion and community involvement, the state has completely transferred to the developer. The obligation of the Ministry of the Environment and Natural Resources of Georgia is only informing the public about the decision within 10 days limit., specialist are mentioning about the effectiveness this mechanism in practice based on the results of the monitoring carried out and indicating that the problem of actually using of the above guarantees are acute. [1168]

It should be noted that according to the position of the state,

> "Public participation is EIA discussion is low. The public interest mostly is connected to the large projects. According to the observations of the Aarhus center, low quality of public participation can be explained by the fact that in the number of cases, the proponent could not provide the proper information providing campaign for the public or their involvement in the decision process. The practice shows that the projects that have proper information campaigns and participation proceedings and, also, the current public interest projects, community participation was quite high. "[1169]

Environmental Impact Assessment in the Process of the Construction of Hydroelectric Power Plants

The construction of hydroelectric power stations became particularly acute for the energy sector of Georgia in recent years. In terms of environmental issues, the Public Defender's it is one of the main directions of the field activity. The Public Defender's Office is studding the legality of the construction of several hydropower plants. At this point we can say that is it problematic issue is the Government's decree№214 issued in August 21, 2013 on "On Approval of the Rule of Expression of Interest for Construction Technical and Economic Feasibility Study, Construction, Ownership and Operation of Power Plants in Georgia". The resolution set out the procedure that the investor is required to prepare an environmental impact report after signing the memorandum between the state and their representatives. [1170] The Memorandum of Understanding is made

1167 The directive is important in terms of public awareness and involvement, as well as the directive on access to environmental information (Directive of the European Parliament and of the Council issued on January 28,2003, 2003/4 / EC); The directive on public participate in the process of Environmental Impact Assessment (Directive of the European Parliament and of the Council issued on May 26, 2003, 2003/35 / EC).

1168 Public participation opportunities on environmental permit issuance in decision-making process in Georgia, Policy Brief, 2014, "Green Alternative", pp: 5-6.

1169 The national report on implementation of Aarhus Convention, 2013, page 30

1170 Government's decree№214 issued in August 21, 2013 on "On Approval of the Rule of Expression of Interest for Construction Technical and Economic Feasibility Study, Construction, Ownership and Operation of Power Plants in Georgia" article 1.6.

up of pre-phase and construction phase of the construction process. During the pre-construction phase the winning party expressing the interest in the project is obligated to prepare the environmental impact assessment report. [1171] The resolution set out in the above procedure shows that after signing the memorandum between them and the state, the investor is required to prepare an environmental impact report. EIA is the basis for the positive conclusion of ecological examining and for building permit is a prerequisite. The Public Defender considers that the memorandum of cooperation signed only after the construction with the investor's and fulfilling the legal requirements afterwards, is in contrary to the law on "Environmental Impact Assessment". According to the law, the environmental permit is issued for carrying out activities and *for to start the activities* on the legal basis. [1172] Accordingly, none of the activities, which require an environmental impact permit, shall start without an EIA and the issue should be considered in the process of formation of state policy on renewable energy sources. [1173]

A FEW EXAMPLES OF ABSENCE OF AN ENVIRONMENTAL IMPACT ASSESSMENT

The legislative gaps mentioned above have severely negative affect for the practice. The example of the mentioned is the cases under the consideration of Public Defender's office, the cases of Vake-Saburtalo districts' connecting so-called a new road and the construction of the project "Panorama Tbilisi".

Construction of the Vake-Saburtalo districts' connecting so-called a new road

Vake-Saburtalo districts' connecting so-called a new road at first was opened in 2010. In particular, June 13-14, 2015, as a result of a natural disaster Vake-Saburtalo districts' connecting so-called a new road was damaged severely. There is no environmental impact assessment carried out after neither the first[1174] nor the followed works. For the moment of the construction of Vake-Saburtalo connecting road is was not the International and national road of importance according to the decree N554 on " Approval of the List of the International and National Roads " issued on September 15, 2006, [1175] as well as the decree №407 of the current government issued on June 18, 2014 defining the of environmental expertise list of the roads which does not have international importance. According to the law on "Environmental impact"[1176] ecological expertise including the environmental impact assessment shall only be conducted for the roads that have international and national roads importance, as well as railways and bridges located on them, tunnels, also construction of the road, railway and areas of engineering protection buildings. However, events the current event once more confirmed the troublesome severity of the listed down objects of environmental impact assessment list.

"Panorama Tbilisi" project

Another important cases discussed by the Public Defender's Office is planned by the "investment fund" called "Panorama Tbilisi" project. The project is covering the constructions of multi-hotel complexes and the construction of a cableway. The construction of the project is located in the historical part of Tbilisi. It

1171 Government's decree№214 issued in August 21, 2013 on "On Approval of the Rule of Expression of Interest for Construction Technical and Economic Feasibility Study, Construction, Ownership and Operation of Power Plants in Georgia" article 7.

1172 Georgian law on "Environmental Impact", Article 3 subparagraph "a".

1173 The Public Defender also discussed the agreement between the state and the investor problems in the framework of the Khudonhesi hydropower plant. See. The annual report of the human rights and freedoms in Georgia, 2013, p 436.

1174 Mentioned road construction has finished in 2010, in the framework of the project several tunnels in the Vere river valley and three overpasses on the Heroes' Square were built.

1175 Annulled by the order N287 issued on 05/27/2011 by the President of Georgia.

1176 The Georgian law on "Environmental Impact Assessment" Article 4, paragraph 1, section "j".

is true that it is a construction of a "multi-hotel complex", however Current legislation is not obligating for the implementation of the Environmental Impact Assessment. There is no such indication according to the Article 4 part one of the law on "Environmental impact" for the similar infrastructure projects.

Herewith, In addition, the construction of the project "Panorama Tbilisi" also does not require an EIA under the laws, as its permit was issued under a simple administrative procedure. Accordingly, public involvement in decision-making almost does not exist, which according to the Public Defender is not justifiable and ignores the basic international requirements.

PROTECTION OF THE ENVIRONMENT IN THE PROCESS OF SPATIAL PLANNING AND URBAN CONSTRUCTION

The Public Defender's Office conducted the proceedings[1177] regarding the multi-apartment building in Tbilisi, in the square between the Gamsakhurdia Avenue and Iosebidze streets. [1178] The applicants claim that the construction caused impairment of the residents' rights and exacerbate existing problems, in particular, the deterioration of the houses in the vicinity, cutting of trees and disruption of the kindergarten located in the square. [1179]

The case once again placed the issue of the studding the construction caused environmental damage risk assessment on the agenda during the decision-making process of the administrative agency. It should be noted that the process of spatial planning and urban construction process is specially regulated by the law on "the Basis of Spatial Planning and Urban Construction ". The Law on Spatial Planning and Urban Construction indicated a healthy and safe environment for living and socially activities as the most important aspect, and set one of the main aims as the development of settlements and other economic activities to minimize adverse environmental impacts. According to the law the principle of spatial planning and urban construction should be an important guide to minimalize industrial influence on the environment and positive impact of the infrastructure for the deployment areas.[1180]

It should be noted that this provision of the law responds to the international standards, [1181] according to which legislation the specific list of subject to EIA, should consider the need for EIA in cases where the activities could have a significant impact on the environment. Unfortunately, the law on "Environmental Impact" does not include the so-called "Open" provision for this type of activities. Consequently, it is true that the law on " the Basis of Spatial Planning and Urban Construction " is trying to consider the above-mentioned principle of an international approach to study the environmental impact, however, the realization the mentioned legal procedural guarantees are inappropriate and ineffective, which makes it hardly even possible to be discussed subjects, as well as other similar cases with regard the full study of the environmental impact.

As mentioned above, discussing the problem of human rights separately from the environmental protection issued is not acceptable and it represents the interdependent categories. This is confirmed by the European Court practice discussed in the introduction. The mentioned issue is significant in the process discussing of the human economic activity, which could cause the violation of the right to a healthy environment and consequence - infringement of other basic human rights. In this regard it is worth noting the United Nations

1177 Statement №8660/15 issued on July 24, 2015.

1178 Tbilisi Architecture Service order №2172394 issued on September 3, 2015 on architectural project agreement and issuance to build a multi-functional building permit.

1179 According to the letter №01-8 / 1503 of the National Property Management Agency issued on March 10, 2016, between the Agency and the LTD "Elzuros" on November 30, 2015 signed a contract on the privatization of real estate in the form of exchange, as a result, the land on Tbilisi, Gamsakhurdia Avenue. 23 and the buildings on it was handed over to the municipality, and the issue of construction site abolished.

1180 The law on " the Basis of Spatial Planning and Urban Construction ", article 5, paragraph first, subparagraph "l".

1181 Aarhus Convention, article 6, paragraph 1, subparagraph "b".

Economic, Social and Cultural Rights Committee definitions, [1182] which emphasizes the significant impact of business activities on the environment. According to the mentioned report, the state has an obligation to protect the individual from the possible attacks on their economic, cultural and social rights by the enterprises. To achieve this goal, the Government should set binding legal regulations and standards for the enterprises, as well as monitoring, investigation, enforcement and accountability procedures. [1183]

The Public Defender is aware of aim of the government to create attractive / liberal investment environment of economic development, however, it is extremely important to consider environmental standards harmonization in this process. State investment policy should have environment friendly nature, concrete investment projects should contribute to the preservation of the environment and its positive development. The constitutional obligation to ensure the sustainable development of the environment, the government should exert all efforts for establishing the more sustainable production model, during which will be considered in the environmental needs.

ENVIRONMENTAL NOISE POLLUTION

According to the International Covenant on the Economic, Social and Cultural Rights adopted on December 16, 1966, the General Assembly states that "the present Covenant recognizes the right of everyone to the highest attainable standard of physical and mental health." The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.."[1184]

The United Nations Economic, Social and Cultural Rights Committee, General Comment No. 14 states that "the right to health includes a series of social and economic factors that contribute to the conditions in which people can live a healthy life, and extends to the underlying conditions." One of the basic conditions of health is existence of a healthy environment is to be. Noise pollution can prevent the formation of such an environment perfectly. Environmental noise pollution is a threat to public health, it has the negative impact on each human health and well-being. Regional Office of the World Health Organization of Europe in 2014, presented the revised version of the " the Textbook on Night Noise Related Issues ".[1185] It is about the harmful effects of noise on the human body. It generalizes the experience in this field and elaborates grounded recommendations for regulating development for legislative acts.

The Public Defender studied the collective statement of Agladze Street residents about the noise from industrial and other facilities that was resulting the difficult situation for the population. The applicants note that their living conditions are heavy; children and old people cannot rest properly, the constant noise damaged their psychics.[1186]

In order to limit the noise level, the Healthcare and Social Issues Committee of the Parliament of Georgia presented the legislative initiative of the draft law on "Amendments to the Administrative Code of Georgia" and it was one of the topic in the parliamentary session's agenda of 2015. According to the first edition of the bill, the Code had to be amended with Article 77^1, which included responsibility for noise during daytime as well as during night-time. The next version of the bill included responsibility only for the night-time noise.

Later, as response to the letter of the Public Defender's Office,[1187] by the letter of the Healthcare and Social Issues Committee of the Parliament of Georgia informed us[1188] that at this stage the bill returned back due

1182 Statement №E/C/12/2011/1 of the United Nations Economic, Social and Cultural Rights Committee, issued on May20, 2011.
1183 Statement №E/C/12/2011/1 of the United Nations Economic, Social and Cultural Rights Committee, issued on May20, 2011, paragraph 5.
1184 The information is available at:< https://matsne.gov.ge/ka/document/view/1483577> [Last visited 28.03.2016].
1185 The information is available at: <http://www.eea.europa.eu/publications/noise-in-europe-2014> [Last visited 28.03.2016].
1186 Statement #4997/15, 04.05.2015.
1187 Letter of the Public Defender's Office #04-14/7753; 24.09.2015.
1188 Letter of the Healthcare and Social Issues Committee of the Parliament of Georgia #9354/4-13; 09.10.2015.

to the different positions on issues such as "noise" definition, its continuity nature, as well as administrative responsibilities.

The European Court of Human Rights has an important case law on environmental issued. Housing interests include the peaceful enjoyment of the right to housing, protection from the noise and disturbing public order and of freedom of protection the environment from the pollution. In one case[1189] the European Court rejected the complaint concerning the state inactivity to prevent or to protect the applicant from pollution (odour, noise and smoke, air pollution), which was infringement of the rights to a private and respect to the family life (ECHR Article 8).

The Constitution of Georgia recognizes the right of everyone to live in a healthy environment. State taking into account the interests of present and future generations provides protection of the environmental, ensuring the sustainable development of the country according to the economic and ecological interests for to provide a safe environment for human health. [1190] "Healthy Environment" is also defined in the Georgian law on "Health Protection". In particular, it is labour, everyday life, leisure, food, education, training, radiation and chemical safety defining sanitary regulations and norms, as well as sanitary-epidemiological rules of supervision.[1191]

Article 22 of the law on "Public Health" states that the Ministry of Labour, Health and Social Affairs sets the environmental quality standards (air, water, soil, noise, vibration, electromagnetic radiation), which includes permissible concentrations and exposure standards. According to the paragraph 3 of the same article the sanctions for the offenders of Environmental Quality Standards are defined in the legislation. The absence of the regulating norms causes the neglecting of the conditions of societal and human environmental health.

The Constitutional Court of Georgia in one of its decision[1192] explained:

> "According to the content of the Article 37 , paragraphs 3 and 4 of Constitution of Georgia, considering its content, purpose and spirit there is no doubt that the Constitution seeks to establish high standard for the healthy environment and considers it as basic human right. Discussing ecological rights in to framework of constitutional and legal rights is particularly important in the field of state's environmental accountability, access to environmental information, public participation and other environmental mechanisms' proper, efficient and coordinated functioning. Right to live in the Healthy environment setting on the Constitution of Georgia, it confirms and reinforces values that have utmost importance in the sustainable environmental development of the constitutional order. "

Based on the foregoing, it is clear that the state does not fulfil its obligations only by regulating the noise on the legislative level, for which right to protection of health, life and healthy environment are violated, also the rights to private and family life. The situation needs to immediate restoration.

January 15, 2016, the Public Defender of Georgia addressed with the legislative sentence to the Parliament of Georgia, [1193] to apply to all existing measures noise regulation at the legislative level, according to international standards and the appropriate sanctioning measures in the Administrative Procedural Code. On January 25, 2016 chairperson of the Tbilisi City Assembly of the judicial committee once more addressed to the Parliament of Georgia with the legislative sentence to regulate noise pollution. [1194] According to the information received from the Parliament [1195] during the committee hearings regarding the mentioned legislative sentence it will be studied the positions about it of the various public bodies. Ombudsman monitors the process and hopes that the issue will be resolved in a timely manner.

1189 LÓPEZ OSTRA v. SPAIN (§58); the information is available on the web page: <http://hudoc.echr.coe.int/eng?i=001-57905> [Last visited 28.03.2016].

1190 The Constitution of Georgia, article37, paragraph 3-4.

1191 The law of Georgia on „Health Protection", Article 3.

1192 „Citizen of Georgia Giorgi Gachechiladze against the Parliament of Georgia" (decision #2/1/524 ; 10.04.2013. Paragraph 2).

1193 Sentence №04-14/527 of the Public Defender of Georgia issued on 15.01.2016.

1194 Letter № 06-3/196 of the City Council of Tbilisi , issued on 08.02.2016.

1195 Letter #1059/4–13 of the Healthcare and Social Issues Committee of the Parliament of Georgia, issued on February 9, 2016.

RECOMMENDATIONS

To the Parliament of Georgia

- To regulate the noise pollution and make changes to the Administrative Code of Georgia, define relevant measures of the responsibility

To The Parliament Of Georgia, Governemnt Of Georgia And The Ministry Of Environment And Natural Resources Of Gergia

- To change environmental legislation in such a way that current environmental impact assessment system, including the activities subject to EIA and the decision-making process provisions of public involvement should be in line with international standards

To Governmetn of Georgia

- in order to bring in compliance with the law, change the Decree №214 on August 21, 2013 by the Government of Georgia and potential of the state memorandum signing regarding the the hydroelectric for the investor to occur only after the completion of the EIA.

RIGHT TO HEALTH

The most widely used and comprehensive definition of the right to health is stated in International Covenant on Economic, Social and Cultural Rights. According to the article 12 of the covenant "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

Many human rights - civil and political as well as economic, social and cultural - are health-related, thus emphasizing the interdependence and indivisibility of all human rights.[1196]

Article I of the Constitution of the World Health Organization defines the organization's objectives: "to achieve the highest possible level of health for all people." [1197] Constitution of the World Health Organization Health is defined as a state of complete physical, mental and social well-being and not merely the absence of disease.

The right to health is closely related to and dependent on the rights listed in the international acts of other human rights, including - adequate nutrition, housing, labour, education, dignity, life, non-discrimination, equality, the prohibition of torture, privacy, rights of access to information, right to association, peaceful assembly and freedom of movement rights.[1198]

According to the Constitution of the World Health Organization, reaching the highest attainable standard of health and living the productive life is recognized as a fundamental human right. Consequently, population's health care, morbidity and mortality reduction, providing accessibility to the high quality and safe medical services and financial risk protection, is each country's national health system priority and responsibility.

The main priority for the Government of Georgia is to increase access to health care services for the population and to improve its quality. The law on "State Budget of 2016" assigned the funds to the Labour, Health and Social Affairs Ministry of amount of GEL 3,162,000, compared to previous year it is increased with GEL 281.000. [1199] One of the top priorities of 2016 state budget is affordable, quality health care. Priority is focused on patient-oriented health care system, which requires medical care affordability and access to health services and its high quality. To achieve this goal, the state will implement programs to maintain the entire population accessed to the health services, improve the quality of health care services and to provide needs-based social guarantees for the beneficiaries. [1200]

1196 The UN World Conference on Human Rights, the Vienna Declaration and Plan of Action, UN doc. A / CONF.157 / 23, 1993 On July 12, Part I, paragraph 5.

1197 The information is available on the web page: <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1> Last visited 28.03.2016].

1198 UN Economic, Social and Cultural Rights Committee General Comment №14 (22-th session, 2000).

1199 Law of Georgia on "State budget of 2016", chapter VI, article 15.

1200 Law of Georgia on "State budget of 2016", chapter VI, article 14, paragraph 1.

The goal of state is reform the health care, provide the universal health care program for all citizens and to ensure their accessibility to health care.

In 2013, after the government's decision 100% - state owned limited company "Regional Health Center" was established, which's main task is to regional hospitals' rehabilitation, development and management. Lentekhi, Mestia, Oni, Tianeti, Tsalka and Tetritskaro medical institutions were gradually transferred to the enterprise. "Regional Health Center" (hereinafter - Center) function is to rate the existing infrastructure and to put permits / licenses in compliance with the conditions. After the Infrastructure Assessment, Center studied the services compatibility with the requirements implemented by the clinics, medical personnel staffing and qualifications of the clinic staff. For the purpose of elimination of the identified issued of medical staff's professional skills improvement measures were implemented. Appropriate medical laboratories were added or upgraded equipment in the mountainous regions' medical ambulatories. [1201] The study revealed a lack of personnel in emergency medicine specialty license, which requires quick and effective measures. For this purpose "Graduate Medical Education Program"[1202] was approved, which aims to improve constant access to the medical services for the population in mountainous and border municipalities and its geographic accessibility improvement, with training of human resources in the deficit and priority specialties in these municipalities. It is important to broaden the activities of the center, to cover even more geographic area and strengthen the work for debugging the medical infrastructure purposes.

STATE PROGRAM OF THE TUBERCULOSIS CONTROL

Perceiving the tuberculosis as a global public health threat, the World Health Organization (WHO) is actively fighting to overcome this disease. In May 2014 the World Health Organization adopted a new strategy to fight tuberculosis, [1203] which should decree the tuberculosis-related mortality with 95% 2035 and as well reduces revealing the new cases with 90%.

TB related stigma strong in society as well as – among medical staff. In 2012, TB-related knowledge, attitudes and practices evaluation study has revealed that 50% of respondents would either completely hide that he/she is ill (11%), or only discloses the story to the family members (38%). In the same study, the one third of TB patients mentioned that right after revealing the disease status they openly felt negative attitude from friends and the general public. High levels of stigma prevents seek of medical care on time and further increases the risk of spreading infection. [1204]

The government of Georgia has developed a TB control program,[1205] which aims to reduce morbidity, mortality and spread of tuberculosis infection in the community. Citizens of Georgia are benefiting from the program, also persons permanently residing in Georgia stateless persons and infected people (MGB +), and persons in penitentiary establishments despite the existence of a document confirming their identity. The service received benefits the program in the form of state aid. The program budget is 11,629.1 thousand GEL.

In 2015, the Parliament adopted a law on "Tuberculosis Control". The legal act is directed towards the maximum prevention of the spread of TB in the public, however at the same time, to fully protect the rights of the individual to make decision about involvement in the treatment autonomously. The aim of the law is through effectively controlling TB to protect individual health and public health, to avoid the spread of tuberculosis in Georgia, TB case management and legal basis for the establishment of appropriate assistance to persons with tuberculosis. According to the law TB prevention means tuberculosis control, diagnosis (examination) and TB case management (which also includes diagnostics on the treatment stage) related measures. [1206]

1201 Letter №13/91 of the director of LTD "Regional Health Center" issued on 01.02.2016.
1202 Decree №624 of Government of Georgia, issued on November11, 2014.
1203 The information is available on the web page: <http://www.who.int/tb/post2015_tbstrategy.pdf> [Last visited 28.03.2016].
1204 The information is available on the web page: <http://tpp.ge/uploads/pp/KAPBrief_geo.pdf> [Last visited 28.03.2016].
1205 Decree №308 of Georgian government issued on June 30, 2015.
1206 Georgian law on "Tuberculosis Control" , Article 5 paragraph 1.

An important component of this law is an involuntary isolation of the patient, which aims at the spreading the tuberculosis and the threat prevention for public health. It is an extreme measure, which is used when the patient is suffering from a contagious form of tuberculosis has exhausted mandatory TB examination and treatment process involving all the means voluntarily and is not possible without the use of involuntary isolation measures to avoid the spread of infection. [1207] A health care provider will determine the need to use non-voluntary isolation, and the court decides on the basis of statement of the local public health unit. [1208]

The European Court of Human Rights has an important case law on compulsory isolation of patients with infectious diseases to provide a basis for determining issue. According to the mentioned Court's explanation, the detention of an individual is very serious form and can be used only as a measure in case, if less severe measures will be discussed and is not sufficient to protect the interests of the individual or the public, and for this reason it will be necessary to detain the individual. This means that the deprivation of liberty must be in accordance with the principle of proportionality [...].[1209]

The mentioned case is important because it sets out clear criteria for how the isolation of the individual for infectious disease can be justified under the European Convention of the Human Rights. During the decision making factor to limit the rights the protection principles of all the five criteria of Syracuse is important; In addition, the restriction should be short-term and subject to revision and appeal.

Syracuse principles are as follows:

- Statute of limitations is set in accordance with the law;
- Restrictions serve a legitimate common interests;
- Restrictions are necessary in a democratic society to achieve the objective goal;
- There is no less restrictive means for to fulfil the mission;
- Limits are based on scientific evidence and are not defined arbitrarily, without reasonable grounds, i.e. and unreasonably discriminatory.[1210]

2015 was the year of the people actively applying to the Public Defender, [1211] complaining about the situation in "National Center for Tuberculosis and Lung Diseases". Patients complained about the poor living conditions in the center, often shut off the heat, lack of additional necessary medicine. They also noted the lack of an acceptable calorie foods and quantitative. Based on the appeal of the Public Defender's Office, the State Regulation Agency conducted a study that revealed the violations and the administrative violations protocol of submitted. [1212] Afterward the "National Center for Tuberculosis and Lung Diseases" eliminated some of the violations found. In particular, patients' stationary treatment and nutrition conditions have been improved, developed a new standard for food treatment, carried out repairing the ventilation systems of the chambers, new sterilization processing apparatus has been installed. Also the construction of the new children's section is ongoing for 22 beds.[1213]

Public Defender believes that it is important for the prevention and treatment of communicable diseases in to develop more complete systemic measures for the early stage detection of suspected cases of tuberculosis, network expansion of the laboratory diagnosis, the Strengthening of the patient's adherence.

1207 Georgian law on "Tuberculosis Control" , Article 14, paragraph 1 and 2.
1208 Georgian law on "Tuberculosis Control" , Article 15, paragraph 7 .
1209 Enhorn v. Sweden, §36. The information is available on the web page: <http://hudoc.echr.coe.int/eng?i=001-68077> [Last visited on 28.03.2016].
1210 The information is available on the web page: <http://www.refworld.org/docid/4672bc122.html> [Last visited on 28.03.2016].
1211 statements №19058/1, №591/15, №2407/1.5
1212 Letter №02/31942 of the State Regulation Agency issued on 06.05.2015.
1213 Letter №3287/01-17 of the direct of "National Center for Tuberculosis and Lung Diseases" , 26.11.2015.

HEPATITIS C TREATMENT STATE PROGRAM

Viral hepatitis has one of the significant places illnesses among the Global health issues. The World Health Organization (WHO) estimates that Georgia belongs to the high-risk countries for hepatitis C. According to the data of the survey conducted in 2002, hepatitis C prevalence in the adult population is 6.7% of the total. [1214]

1 324 cases of Hepatitis B were registered in Georgia in 2013, the incidence of 29.5 per 100,000 population (in 2012. 1018 case, the incidence - 23.4), including 217 severe cases, or 16.4%, the incidence 4.84 (in 2012. 162 in the case of 16%, the incidence of 3.7) and a chronic case of 1107, or 83.6%, the incidence of 24.7 (in 2012. 856 cases, or 84%, the incidence of 19.5). The recorded incidence of hepatitis B in 2013 (acute and chronic), was 20.7% - higher compared to 2012. The disease increase is due of expense of both acute and chronic forms. The incidence of acute hepatitis B compared to the previous year increased by 25.3%, while chronic hepatitis B - 22.7%. [1215]

Hepatitis C treatment-related issues are subject of particular interest of the Public Defender. In 2013 the recommends[1216] regarding hepatitis C diagnosis and access to treatment were formulated.

Considering the Importance of the issue, the Ministry of Labour, Health and Social Affairs of Georgia, by the end of 2014 was developed a short-term program on elimination of hepatitis C, the emergency measures state program plan. 2015 was announces as a year of fighting against Hepatitis C in our country - C hepatitis elimination is defined as one of the target strategy. The plan was developed based the Government Decree N169 issued on April 20, 2015 on "adoption of Program ensuring the first phase of measures for the hepatitis C management." The government has set a goal of elimination of hepatitis C causes by deliberate reduction of number of morbidity and mortality, and eventually its abolishment. Hepatitis C elimination program was launched in May 2015. It included the prevention, diagnosis and treatment components and was taking into consideration "reducing infecting, mortality and the spread of infection of hepatitis C in Georgia, its prevention, diagnosis and treatment by providing gradual access for the population ". [1217]

In the framework of the program was planned a disease prevention as well as providing new generation of medicines for treatment of the hepatitis C patients for free of charge or co-financing of the necessary diagnostic studies. [1218]

it is very important to ensure universal access to the medicines for the further development of Hepatitis C management program. Attention should be paid to the reduction of the share of co-financing by the patient.

THE UNIVERSAL HEALTH CARE PROGRAM

The Public Defender in 2014 Annual Report mentioned that "in terms of access to health care the most important achievement in 2013 was the introduction of a universal health care program, which has provided the basic package of the medical services to all Georgian citizens."[1219]

1214 The information is available on the web page : <http://www.who.int/docstore/wer/pdf/2002/wer7747.pdf?ua=1> [Last visited on 28.03.2016].

1215 The information is available on the web page : <http://www.ncdc.ge/AttachedFiles/Sopo%20ეპიდბიულე%20ტე%20ნი%20 2015_5b028d49-70e3-4905-8b07-ab3febb3acc9.pdf> [Last visited on 28.03.2016].

1216 Recommendation №3366/04-13/1588-13 of the Public Defender of Georgia issued on June 19, 2013.

1217 The Government of Georgia Decree N169 issued on April 20, 2015, article 1.

1218 HIV / AIDS, Tuberculosis and Malaria financed by the Global Fund "Sustaining and scaling up the existing national responses for implementation of effective HIV / AIDS prevention activities, improving survival rates of people with advanced HIV infection by strengthening treatment and care interventions in Georgia " in the framework of the GEO-H-NCDC grant was purchased medicines (pegylated interferon and ribavirin). At the end of 2015 the list was added by the medicine "harvoni", the use of it made treatment more efficient. The program budget was set at 22,000.0 (thousand) GEL (Government Resolution №677, December 30, 2015).

1219 Annual Report of the Public Defender of Georgia 2014, pp 568.

Until 2013, the state financed medical care for certain groups of the population, whose number was growing from year to year. In 2007, only 4.1% of the population were provided with health insurance programs, and in 2012 it increased to 37.9%. If we add to it the individual and corporate health insurance provided individuals, in overall in1981123 people (50.8%) was provided with medical insurance the country. [1220]Consequently, more than half of the country's population, about 2 million people had no health insurance. They had to cover the full cost of treatment by their own expense, which often was causing catastrophic amount of expenses.

After introducing the State program of universal health care financial access to health services of the population has significantly improved. Despite the fact of providing them with the minimal package, the program is not financing a number of medical cares, and in many cases the financial limit set by the program is not enough. All this has a negative impact on the financial availability of health care. Public Defender believes that to solve the issue it needs urgent expansion of the list of nosology diseases for the health care program, as well as providing financial limit increase.

In 2015 September-December period "WF" (WELFARE FOUNDATION) conducted the research on the universal health care program for to evaluate the efficiency of budget spending. In the framework of the study information provided by the Ministry of Labour, Health and Social Affairs of Georgia was analysed, as well as the material existed on various web-pages. Also health service providers and beneficiaries of the universal health care program were interviewed. The research has shown that the universal health care program has low efficiency. Universal health care program is less oriented on development of the primary health care and on the low cost ambulatory service improvement, which is contrary to the objectives of the program. The investment is mainly carried out in the most expensive services, while preventive measures and public health care / health promotion issues are almost ignored. This approach would create serious problems for the implementation of the program, because emergency services related costs will increase annually, the case review in the expenditure part of the program for socially vulnerable population medicine providing is necessary, since large part of this category of the population cannot afford the medicines. In such cases, invested funds for a doctor's consultation and diagnosis actually are ineffective, since there is no cure. Herewith, there is a need for the revision of the list of the medicines that are provided by the program, in a manner that would timely allow beneficiaries to buy the medicine.

The Public Defender's Office proceeded the case of G.N that revealed significant problems: in particular, under the current regulations[1221] the universal healthcare program is not fully accessible to persons who were involved in a private insurance schemes by the July 1, 2013. Their involvement in the program is provided only with a minimal package, which contains a list of limited services and is not a financial support for the mentioned individuals. Although the fact that G.N. was no using private insurance since April 2015, only because the fact that she/he was the recipient was a private insurance by the July 1, 2013, was beyond universal health care program complete package framework. The regulations mentioned are rather problematic and needs to be modified in such a way that those private insured individuals have to have a complete access to the universal healthcare program.

TOBACCO-FREE ENVIRONMENT

Using tobacco is one of the most problematic societal health issues in the world. Tobacco usage is one of the causes of death.

1220 The information is available on the web page:: <://www.academia.edu/12384838/თენგიზ_ვერულავა_მაკა_გაბულდანი_გადაუდებელი_დაავადებების_ფინანსური_ხელმისაწვდომობა_საქართველოში_> [Last visited 28.03.2016].

1221 Decree #36 of the Government of Georgia issued on February 21, 2013 approving the „the Universal Health Care State Program" Article 2, paragraph 1st, subparagraph „c" .

The World Health Organization's European region, which covers only 15% of the world's population, almost one-third diseases are caused by tobacco. Since the end of the 1990s, for the consumption of tobacco products 200 million people were dying annually (14% of total deaths number) and without introduction more effective measures, it is more likely that it will cause 2 million deaths per year by 2020 (20% of total deaths). During the past 30 years the prevalence of smoking in the European region decreased from 45% to 30% and is steadily maintaining this level, but even at this level, it has a devastating impact on public health and future generations. Tobacco use is particularly alarming negative trends among young people, women and the representatives of the lower socio-economic strata, as well as the difference between the Member States of the World Health Organization's tobacco control policies.[1222]

By 2002, tobacco usage remains on an unacceptable level of public health development; in the most countries tobacco control policies have not an important role, they are unstable and incomplete.

In Georgia, in 2010, any tobacco product (smoking and smokeless) consumed 30.3% of the respondents (55.5% of men and 4.8% of women). 27.7% of interviewed respondents are smoking on daily basis, which is 91.2% of the smokers. The highest Tobacco consumption is in Tbilisi (36.5%). [1223]

Result for the 18-24 years old adults	Both Sexes	Man	Woman
Tobacco use			
Current smokers (percent)	**30.3%** (28.4-32.2)	**55.5%** (52.7-58.4)	**4.8%** (3.7-5.8)
Currently smokers on daily basis (percent)	**27.7%** (25.8-29.5)	**51.1%** (48.1-54.0)	**4.0%** (2.9-5.0)
Smokers on daily basis			
Average age of starting smoking on daily basis (years)	**18.6** (18.3-19.0)	**18.3** (18.0-18.6)	**23.2** (21.7-24.7)
Percentage of smokers on daily basis , which smoke manufactured tobacco	**98.8%** (97.8-99.9)	**98.8%** (97.7-99.9)	**100.0%** (100.0-100.0)
Average number of cigarette sticks of manufactured tobacco, which are smoked during the day (smokers of manufactured tobacco)	**19.5** (18.7-20.4)	**20.0** (19.0-20.9)	**14.0** (12.8-15.3)

During the World Health Organisation European Ministerial Conference on "Smoke-free Europe",[1224] member states loudly declared their support for tobacco control in the European strategy for the development and preparation of the Framework Convention on Tobacco Control. In addition, the countries agreed to work jointly on the integrated tobacco control measures and international against the tobacco epidemia. According to the Warsaw Declaration, the most important elements of the comprehensive policy, which actually have a measurable influence on, are as follows: tax increases, tobacco advertising, banning sponsorship and promotion in public places and the workplace exposure protection from tobacco smoke, availability of tobacco usage cessation activities, strict control of smuggling.

Framework Convention on Tobacco Control recognizes that the tobacco epidemic is a global problem with has serious consequences for public health that calls for the widest possible international cooperation and

1222 European Strategy of Tobacco Control. The information is available on the web page: <http://www.euro.who.int/__data/assets/pdf_file/0016/68101/E77976.pdf> [last visited on 28.03.2016].

1223 Communicable Disease Risk Factors' research, 2011. The information is available on the web page: <http://www.who.int/chp/steps/2012_GeorgiaSTEPS_Report.pdf?ua=1> last visited on 28.03.2016].

1224 Declaration of Warsaw on Smoke-Free Europe, February 18–19, 2002. The information is available on the web page: http://www.euro.who.int/__data/assets/pdf_file/0009/88614/E76611.pdf?ua=1 Last visited on 28.03.2016].

participation of all countries at the international level for an effective and comprehensive international measures.

In 2008, the World Health Organization has also developed the package of measures "MPOWER",[1225] which brings together the six strategies in terms of the fighting against the tobacco use, such as:

- Monitoring of tobacco use and prevention policies, protecting people from tobacco smoke;
- Offering the assistance at the time of stopping tobacco use;
- Warning people about the dangers of tobacco;
- Banning tobacco advertising, promotion and sponsorship;
- Tobacco tax increase.

For Georgia the World Health Organization' Framework Convention on Tobacco Control entered into force on May 15, 2006. [1226] The ratification of the Framework Convention on Tobacco Control of Georgia has committed to a full-fledged measures. The government stated its position that tobacco control is one of the priorities of the country. The governmental commission has been formulated, which aims to elaborate the measures for to promote and implementation tobacco control activities in Georgia. [1227] The government approved the regulations for the establishment of specific obligations and improving its framework of the tobacco control legislation and it's in accordance with the Framework Convention on Tobacco Control.[1228]

It should be noted that up to date only a very small part of those commitments have been fulfilled. It is important to improve the current legislation and be in compliance the commitments taken in terms of tobacco advertising, sponsorship and promotion banning. In all closed public areas and in public transport should completely be banned smoking in order to ensure maximally smoke-free environment for. It is obvious that the Ministry of Internal Affairs is acting inactively with regard to daily neglect of the tobacco products trade limits. During 2015, in the Tbilisi city court jurisdiction area there is only one resolution valid, which assigned administrative penalty to the person for tobacco product selling to the minor. [1229]

the fact that in 2014 for to reduce the affordability of tobacco products the tax increased 4 times, can be considered as a step forward, though only stricter tax policy cannot be considered as the effective measure for to fulfil state obligations defined in the framework of Tobacco Control Framework Convention.

It is important that the government during the implementing the tobacco control policies define human life and health protection as the main priority; Ensure all persons right to smoke-free air and protection from the harmful effects of passive smoking; Reinforce necessity of annual reduction of tobacco use in all sectors of society.

RECOMMENDATIONS

To Governemnt of Georgia:

- To effectively control fulfilment of the tobacco use regulations, along with the abolition gaps of the existing legislation regarding the tobacco use field

1225 The information is available on the web page:<http://www.who.int/tobacco/mpower/mpower_report_six_policies_2008.pdf> [Last visited on 28.03.2016].

1226 The World Health Organization' Framework Convention on Tobacco Control. რატიფიცირებულია ratified by the Parliament of Georgia by decree №2302–rs issued on 16.12.2005.

1227 Decree №58 of the Government of Georgia issued on March 15, 2013.

1228 Decree №196 of the Government of Georgia (30.07.2013) on „ Approving the Strategy of Tobacco Use in Georgia" and decree №304 (29.11.2013) on „Approving the Action Plan of Tobacco Use Control for 2013 - 2018".

1229 The letter #4/7483-13 of Tbilisi City Court, January 18, 2016.

- To change decree #36 of Government of Georgia issued on February 21, 2013 and abolish article 2 paragraph one subparagraph "c" of the „the Universal Health Care State Program "approved by the same decree. According to the mentioned provision the individuals involved in the private insurance schemes for June 1,2013 does not have right to benefit from the universal health care services.

To Ministry of Labout, Health and Social Affairs of Georgia:

- To undertake effective measures for affordability and access to health care and improve the quality of service
- To elaborate the recommendations for Tuberculosis treatment and for increase funding of the prevention programs
- To implement study for possible increase of the financial, logistical and human resources s in the medical institutions involved in the national Tuberculosis control program
- In the framework of the Universal State Health Care Program conduct the study on the possibility of providing drug for socially vulnerable people and determine the measures to be taken.

SITUATION OF CHILDREN'S RIGHTS

INTRODUCTION

The Public Defender of Georgia has essentially studied the measures taken in 2015 by the State for the protection of the children's rights. Positively were assessed a number of developments, including the following: approval of the Juvenile Justice Code by the Parliament, preparation of the draft law on Early and Preschool Education, initiation of the amendments to the law of Georgia on Adoption and Foster Care and preparation of the standards on foster care, submission of the fourth periodic report on the implementation of the Convention on the Rights of the Child to the UN Committee on the Rights of the Child by the Government of Georgia. It should also be noted that on 16 December 2015, on the third reading the Parliament of Georgia unanimously adopted the draft law that was based on the legislative proposal submitted by the Public Defender of Georgia. According to the amendments, the rule for the registration of marriage of individuals between 17 and 18 years has changed so that only the court can give the permission on marriage. In addition, valid circumstances for the registration of marriage were clarified and the validity of the norm was defined to be one year. The fact that the determination once again expressed in order to promote the prevention of early marriage is highly appreciated.

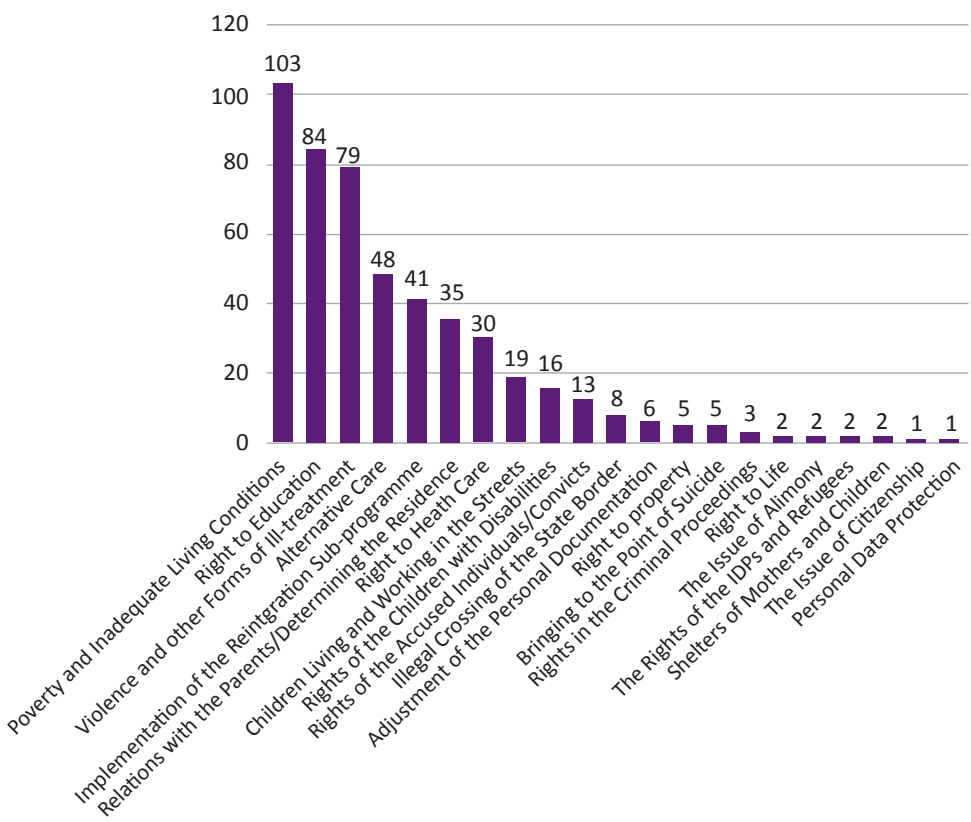
In addition to the above-mentioned, there are a number of challenges in terms of protection of the children's rights in Georgia. The problem of signing and ratifying the third additional protocol to the UN Convention on the Rights of Child is still in question. The adoption of the Governmental Human Rights Action Plan and Strategy in 2014 should have been followed by implementation of the commitments with more consistency. Despite the fact that the rate of violence against children is still high in the country, no changes have been made to the Georgian legislation according to which the Government would take more responsibility for the protection of children from any kind of violence. In this regards, no effective measures were taken for raising the awareness of the public. In most of the cases, the professionals working with children do not possess the skills for the identification of the juvenile victims and for the prevention of violence against children. Also, problematic is the poor coordination among the Governmental bodies responsible for implementing the decree on procedures of referrals for the protection of children from violence. It is noteworthy that the Child's Rights Centre of the Public Defender's Office has revealed the high rate of crimes committed against the sexual freedom and autonomy of minors. The Public Defender of Georgia has addressed the Government of Georgia with the recommendation to develop an action plan in this direction – "On the protection of children from sexual exploitation and sexual abuse" together with the necessary sub-programs for the active implementation of the Council of Europe Convention. However, the Public Defender of has not received the response from the Government during the reporting period. Particularly problematic is the issue of protection of children living and working in the streets from violence. Mostly, no adequate actions and preventive measures are taken by the relevant authorities in cases of violence. The Public Defender has addressed the Minister of Internal Affairs of Georgia with the recommendation to implement necessary activities for the protection of children living and working in the street. Enforcement of the court decisions on determining the place of residence of a child after the divorce of the parents remains to be a problem. Part

of the assistance sub-programs functioning in the framework of the state childcare program cannot fully cover the needs of the minors. The Social Service is not equipped with the sufficient human and technical resources, including the transportation means. Improving the labour environment for the social workers, avoiding the outflow of the qualified staff from the service and systemic qualification raising of the new personnel – this is the incomplete list of the issues, the solution of which will contribute to the improvement of the quality of child care. The state should take all necessary measures to achieve the abovementioned goal.

The problem of poverty and mortality in children is very acute. Despite the reduction statistics, the further reduction of mortality rate of children under the age of 5 still constitutes an urgent task. The Public Defender has addressed the Government of Georgia with the proposal regarding the measures to prevent the mortality among children under 5 years and indicated the necessity to work out the strategy and action plan for the reduction of mortality of infants. The infrastructure of public schools in the mountainous regions studied by the Public Defender is problematic. Important challenge is the qualification of teachers and the need of their systemic training, the introduction of a fully inclusive educational program, continuity and quality assurance of education for the accused and convicted juveniles in the penitentiary facilities. Urgent measures should be taken for the protection of the accused/convicted juveniles from any kind of violence. The rehabilitation and re-socialization process of the former juvenile convicts is also a notable task.

During the reporting period, the Public Defender's Office has conducted a monitoring in the juvenile boarding-houses under the Georgian Orthodox Church and the Muslim Confession of Georgia. The monitoring results revealed that the service provided to the beneficiaries of the boarding-houses under the religious confessions is in need of harmonization with the state standards on childcare and the beneficiaries of the above boarding-houses should be raised in the conditions close to the family environment. It is necessary that in the case of the beneficiaries of the religious boarding-houses the guardianship and -custodianship body be granted with the rights and responsibilities as their lawful representatives.

See statistics of individual violations of the rights of child according to the case management of 2015 of the Child's Rights Centre of the Public Defender's Office.[1230]



1230 The table shows the distribution of child rights violations and not the quantitative distribution of the cases.

The individual case management –carried out during the reporting period revealed that the poverty and inadequate living conditions of children and various forms of violence against a child still constitute a challenge. The visits –carried out by the representatives of the Public Defender's Office to the regions demonstrate that eradication of child poverty and improvement of their grave social and economic conditions should be the priority of the State. Besides, according to the case statistics of the Centre, noteworthy is the variety of violations of the children's right to education and the existing gaps in terms of legal rights of children under the alternative care. There are also challenges in regards with the enjoyment of rights by the accused/convicted juveniles in the penitentiary establishments. Individual Case management is carried out in the direction of defending the rights of children living and working in the streets. A number of cases were found in violation of the child's right to pre-school education which is examined by the Centre. The issue of enforcement of the court decisions is still problematic.

SITUATION OF CHILDREN'S RIGHTS IN THE BOARDING HOUSES OF THE GEORGIAN ORTHODOX CHURCH AND THE MUSLIM CONFESSION

From 23 February 2015 to 15 March 2015, in the framework of the National Prevention Mechanism mandate the Special Preventive Group of the Public Defender of Georgia, together with the Child's Rights Centre, has conducted a monitoring in the boarding-houses run by the Georgian Orthodox Church and the Muslim Confession.[1231]

The legal status of children was examined in the following institutions: 1. Stepantsminda's St. Ilia the Right Gymnasium-Boarding house– non-commercial legal entity of the Georgian Orthodox Church; 2. Non-commercial legal entity of the Patriarchate of the Orthodox Church of Georgia - St. Nino Boardinghouse of Ninotsminda for orphans, waifs and children in need of care ; 3. Non-commercial legal entity of the Patriarchate of the Orthodox Church of Georgia - Boarding house of St. Apostle Mathata's Foundation() in the village of Feria; 4. Girls' Boarding house of the Union of Georgian Muslims in the village of Feria; 5. Boys' Boarding house of the Union of Georgian Muslims in the village of Feria; 6. Boys' Boarding house of the Union of Georgian Muslims in Kobuleti; 7. Bediani Rehabilitation Center for Children and adolescents of the Patriarchate of the Orthodox Church of Georgia.

The above monitoring has been the first attempt within the Public Defender's mandate to examine the state of children's rights and identify challenges in the abovementioned boarding houses as well as to draw up recommendations. It is welcoming that the boarding housesof the Patriarchate of the Georgian Orthodox Church and the Muslim Confession demonstrated the readiness to conduct the monitoring. The mandate of the National Prevention Mechanism covers the power to carry out the monitoring in the public as well as private institutions. Therefore, it is important to give the National Prevention Mechanism the possibility to undertake the above monitoring regularly.

According to Article 2 para. 1 of the Convention on the Rights of the Child, State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without any kind of discrimination. In accordance with Article 3 Para. 1 of the same convention, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

According to Article 20 of the Convention on the Rights of the Child, a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that

1231 See the Special Report of the above monitoring on the official web page of the Public Defender: http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/bavshvta-uflebrivi-mdgomareoba-saqartvelos-martlmadidebeli-eklesiisa-da-muslimuri-konfesiis-daqvemdebarebashi-arsebul-bavshvta-pansionebshi1.page .

environment, shall be entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure alternative care for such a child. Such care could include, inter alia, foster placement, adoption or if necessary placement in suitable institutions for the care of children. It follows from the spirit of the Convention on the Rights of the Child that the use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.[1232] Facilities providing residential care should be small and be organized around the rights and needs of the child, in a setting as close as possible to a family or small group situation.[1233] If large residential care facilities (institutions) remain in the State, alternatives should be developed in the context of an overall deinstitutionalization strategy. To this end, States should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualized and small-group care. States should evaluate existing facilities in conformity with the childcare standards; besides, decisions regarding the establishment of, or permission to establish, new residential care facilities, should take full account of the deinstitutionalization purpose and strategy.[1234]

Taking into consideration all the abovementioned, Georgia has taken certain steps to support the deinstitutionalization process. On 24 April 2012, with the decree N762, the Government of Georgia has approved the Child Welfare and Protection action plan for 2012-2015. The objective of the action plan is to protect every child residing in Georgia from violence and neglect and to ensure them with the possibility of positive psycho-social development in the family or the environment close to family. In the framework of the deinstitutionalization process, small family-type children's homes (orphanages) were established. Nevertheless, in Georgia there still remain large residential facilities for children and the task of individual care in small groups is not performed. It is noteworthy that assessment and optimization of the private orphanages is noted as one of the measures for reaching the objective of completing the deinstitutionalization process and expanding the alternative service in the action plan. Accordingly, it is important to assess the license conditions and implementation of the state care standards and to support the licensing process.

The Public Defender of Georgia would like to underline that taking into consideration the problems related to the economic conditions and alternative childcare in Georgia, in accordance with the best interests of children placed in large residential institutions, based on the objectives of deinstitutionalization and implementation of the Convention on the Rights of Child, the State should ensure the development of the consistent policy.

State's effort directed towards the welfare and harmonious development of children should include legislative and administrative measures, creating - the effective mechanism of legal protection, dialogue with all stakeholders, developing of the comprehensive national strategy, coordinating with the interested parties of measures for the protection of the rights of the child, facilitating the provision of services by private entities in the observance with the requirements of the Convention on the Rights of the Child, creating the monitoring system for the provision of services and training and capacity building of the persons involved in the childcare process.[1235]

According to the all abovementioned, the objective of the conducted monitoring was, at one hand, the assessment of compliance with the state childcare standards at the boarding houses of the Patriarchate of the Georgian Orthodox Church and the Muslim Confession of Georgia and on the other hand, evaluation of the State's effort directed at promoting the fulfillment of these standards. Implementation of the recommendations of the present report depends on the consistent policy of the State.

As a result of assessing the situation of the children's rights by the Public Defender of Georgia in the boarding houses of the Georgian Orthodox Church and the Muslim Confession, several directions were revealed

1232 UN General Assembly resolution – "Guidelines for the Alternative Care of Children," 2010, para. 21.
1233 *Ibid,* para 123.
1234 *Ibid,* para 23.
1235 Commiittee on the Rights of the Child, General Comment N5 (2003), "General Measures," CRC/GC/2003/5.

regulation of which serves the improvement of children's welfare and constitutes the obligation of the State. The quality of providing service differs in the above institutions and is not regulated with the unified system of childcare. The beneficiaries of the boarding-schools are not under the State care. Therefore, the Social Service Agency is not involved in the process of care. This contradicts the best interests of the child and hampers the enjoyment of the fundamental rights and freedoms of the child, such as, the right to healthcare, right to education, protection from violence and etc. The fact that the state care does not cover the beneficiaries of the boarding-schools creates problems for the children with disabilities as well. Without the participation of the State it is impossible to identify their status and implement the relevant medical service. In addition, without the cooperation with the Social Service Agency, it is problematic to regulate the personal documentation of the juveniles and to determine their educational needs. In case of the religious boarding-schools as well, it is necessary to grant the guardianship and custodianship body the rights and responsibilities as their lawful representatives, which is important in the decision-making process related to the juveniles.

Like juveniles residing in the small family-type houses, the majority of the beneficiaris of the boarding-schools of the religious confessions constitute traumatized children, victims of various forms of violence, who are in need of a special approach, consistent phsychological rehabilitation, and in a number of cases, psychiatric intervention. At the same time, beneficiaries are not provided with the proper psychological/psychiatric services. In this context, the issue of the caregivers' qualification is important. In order to preventing violence according to the decree on Approving Child Protection Referral Procedures,[1236], a caregiver should have knowledge and skills to identify the juvenile victim of violence, to expose the fact of violence and to refer the child with the relevant authority. Hence, professionalism of the personnel working in the above institutions has utmost importance. In this regards, as the monitoring results revealed, majority of caregivers need additional training in the area of childcare, since the lack of skills for the treatment of victims and therefore, children of complex behavior constitute an increased risk of child abuse. It should be noted, that the training of caregivers in the boarding schools of the Georgian Orthodox Church is conducted by the NGO "Partnership for Children." In addition, the monitoring has also revealed that all administrations of the above boarding houses have expressed a desire to train the caregivers/teachers of the institutions in the general education as well as childcare sphere.

Besides, it is necessary to introduce an individual approach oriented on the individual needs of the beneficiaries, taking into consideration their opinion and interests, hence, theyhave the possibility of full realization of their abilities.

Consequently, for the improvement of wellfare of children, the full implementation of their rights and freedoms and for taking into consideration the best interests of the juveniles, the services provided to the beneficiares of the boarding houses run bythe religious confessions, need to be harmonized with the state standards for childcare and the beneficiaries should be raised in the conditions close to the family environment. The measures taken by the State in this regard are insatisfactory. Taking into account the state policy on deinstitutionalization, in the condition of close cooperation with the service providers, in order to implement the state standards on childcare, the State should set up all necessary resources for the creation of a proper mechanism in order to monitor the performance of the above standards. The State should also ensure the training and capacity building of all individuals involved in providing service. In the process of taking care of the welfare and harmonious development of children, there should be a dialogue with all interested parties. For the effective implementation of the principles of UN Convention on the Rights of the Child, the State should reinforce international cooperation.

1236 Join Decree N152/n –N496 – N45/N of the Minister of Labour, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Education and Science of Georgia "on Approving Child Protection Referral Procedures."

MONITORING OF IMPLEMENTATION OF THE FOSTER CARE SUB-PROGRAMME[1237]

Since 3 June 2015, the Public Defender's Office, with the support of the United Nations Children's Fund (UNICEF) is implementing the project ""Capacity Building of the Child's Rights Centre." In the framework of this project, the monitoring of the conditions of the rights of 175[1238] beneficiaries of the Foster Care State Sub-programme[1239] was conducted in the following regions: Samegrelo – Zemo Svaneti, Racha-Lechkhumi and Kvemo Svaneti, Guria, Imereti, Adjaria, Samtskhe-Javakheti, Kakheti, Mtskheta-Mtianeti and Tbilisi.

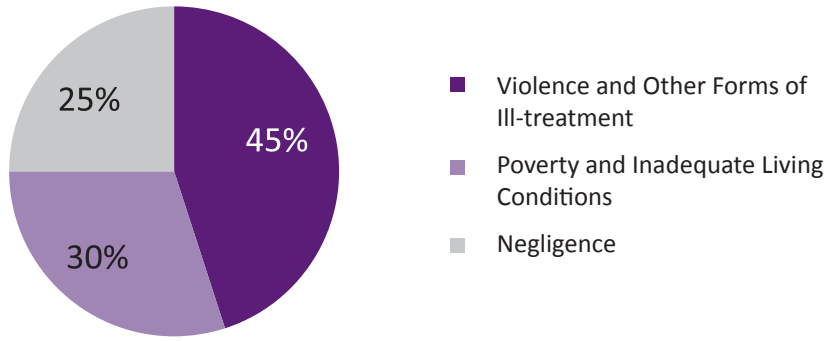
In the framework of the monitoring, the implementation of the service provided by the authorized bodies[1240] to implement the reintegration procedures based on the Convetion on the Rights of the Child (CRC), resolutions of the EU Council of Ministers and recommendations of the Venice Comission was examined in the following directions: protection of children from violence, exploitation and other types of ill-treatment, right to protection from poverty and inadequate living conditions, principles of confidentiality and individual approach, access to the right to the quality and prompt healthcare, equal access to the right to education, principle of non-discrimination and equal treatment.

General Implementation of the Sub-programme – Based on the data of 2015, 1255 beneficiaries were involved in the Foster-Care State Sub-Programme.[1241]According to the statistical information of the LEPL Social Service Agency, the sub-programme is implementedin the majority of self-governing cities, however, it is not implemented in a number of municipalities, including Lentekhi, Mestia, Abasha, Martvili, Poti, Tsalenjikha, Khobi, Akhalkalaki, Tsalka and Shuakhevi. Unlike the regular foster care, emergency foster care sub-programme is of a specific nature. According to Article 4 of the Law of Georgia "on Adoption and Foster Care", while including a beneficiary in the foster caresub-programmethe assessment of compatibility between a foster child and a foster family is not conducted. In urgent cases, the decision on the placing the beneficiary in the foster family is taken by the Chairperson of the Regional Council of Guardianship and Custody based on the social worker's conclusion.[1242]Monitoring revealed the facts of transferring the beneficiary from the foster family on an earlier date than foreseen by the contract due to the incompatibility of the juvenile and the foster family.[1243]

25% of the beneficiaries examined during the monitoring process, were involved in the sub-programme of the small family-type orphanages before the inclusion in the sub-programme and 75% - was transferred from the biological families. As a result of the inspection, the leading factors determining the transfer of the juveniles from the biological families were violence and other forms of ill-treatment (including other grave forms of sexual and physical abuse), poverty, inadequate living conditions and negligence.

1237 The results of monitoring of the foster-care sub-programme will be fully covered by the Public Defender's Special Report.
1238 Monitoring of the legal status of the above beneficiaries was carried out from 1 July to 31 December 2015. According to the project, it is planned to monitor 455 beneficiaries till 3 June 2016.
1239 Approved by the Law of Georgia on Adoption and Foster Care.
1240 LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia, Regional Councils of Guardianship and Custody.
1241 In the reporting period 999 juveniles were involved in the regular foster care, 208 – in the relative foster-care sub-programme and 48 beneficiaries – in the emergency foster-care.
1242 Decree N51/N of the Minister of Labour, Health and Social Affairs of Georgia, 2010.
1243 E.g. in the Adjara region.

Table N1 – Grounds for transferring the juveniles in the foster care sub-programme from the biological families



The term of inclusion in the foster care sub-programme of 26% of the monitored beneficiaries is less than a year, for the 56% of the juveniles – 1-3 years and 18% is involved for more than 3 years.

Relevance of service, inclusiveness, functionality and individual approach – during the reporting period, regulation of the relevant documentation and the level or relations of the beneficiary with the biological family members was examined in accordance to the above standards. As a result of the monitoring, the documentation including the contracts with the LEPL Social Service Agency, decisions of the Regional Councils of Guardianship and Custody and individual development plans were examined. The validity period of each document constitutes about 6 months however, according to the factual circumstances of the case, the agreement can be postponed up to one year. The monitoring results revealed that the documentation related to the foster care sub-programme is regulated in 60% of the cases. Problematic is the principle required by national and international standards – allocation as near as possible with the biological family except the case when this contradicts the best interests of the child. The monitoring has highlighted that in 23% of the cases the beneficiaries are placed in different municipalities and self-governing cities. The problem of allocating the beneficiaries with the siblings was also revealed.

The evaluation of the individual development plan has demonstrated that the document enshrines the dates for drafting and reviewing the plan, also the type of service during the validity of contract and an individual responsible for performing the relevant activities. The monitoring process has underlined that in case of 60% of the foster families the plan is developed/reviewed by the social worker and the juvenile or the foster parents are not involved in the process. Unfortunately, they are less informed about the activities stated by the individual development plan. In addition, foster families do not possess sufficient information on the confidentiality concerning the reasons for taking the child from a biological family, about their health condition, experience of violence or - other kind of treatment.

Safe and appropriate physical environment, organizational rules of nutrition and right to healthcare in the foster care sub-programme – The physical environment of the temporary residence of beneficiaries, also, the organization rules of nutrition and the quality of implementation of the right to healthcare was examined during the reporting period. As the examination results revealed, there are positive trends in this sphere. The exception is the implementation of the kinship foster care sub-programme. In this case, the majority of the checked foster families are registered in the unified data of socially vulnerable families and therefore, their economic conditions are grave. 55% of the examined families involved in the kinship foster care sub-programme are in need of inclusion in the active state/municipal programmes. In some cases, problems related to the sanitary and hygienic conditions (e.g. in terms of bathroom amenities) were revealed. 40% of the monitored kinship foster families are in need of rehabilitation of housing.

As for the right to nutrition and healthcare, the majority of beneficiaries is registered in the primary healthcare centers and is ensured with the relevant medical service. However, certain problems were identified in this

direction as well. For example, despite the actual need, State/Local bodies are less involved in the funding of a number of medical manipulations. On the other hand, the part of beneficiaries, who are not the citizens of Georgia and do not have their personal documentation in order, encounter serious problems in terms of exercising the right to healthcare. As for the nourishment, it should be noted that the daily and weekly menu is balanced and reflects the real needs of the juveniles.

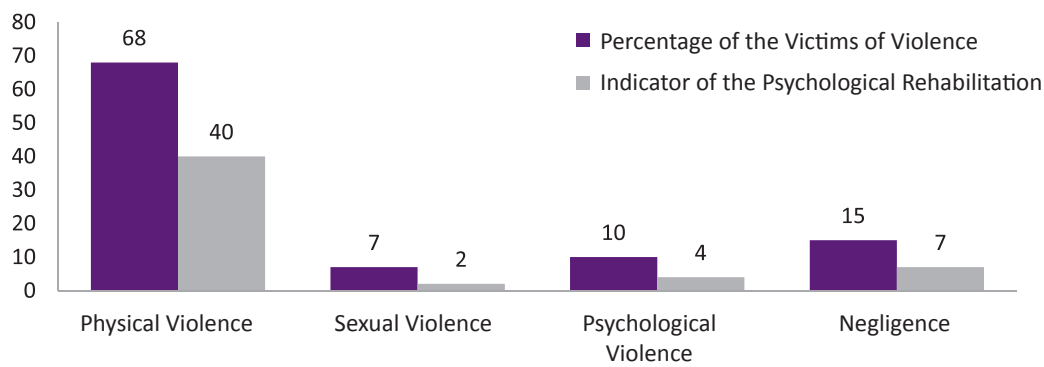
Situation of beneficiaries with disabilities in the framework of the foster care sub-programme – According to the statistical date of the LEPL Social Service Agency, in 2015, 180 children with disabilities were involved in the foster care State sub-programme, which constitutes 14.3% of the total number of beneficiaries.[1244]

As for the rights of children with disabilities in terms of healthcare, it should be noted that 95% of the examined beneficiaries is registered in the primary healthcare centre and holds the relevant insurance policy. In certain cases, the needs of the children were not taken into consideration. For example, in some of the regions children had the need of a wheelchair; however, the above need was not satisfied even after several months from including the child in the state care. The issue of financial inaccessibility of healthcare is also unresolved. 55% of the examined juveniles, in case of need, cannot receive sufficient medical consultation, medical examinations and medication treatment due to the lack of relevant funds and insufficient involvement of the State/Local Self-Governing bodies.

In terms of implementation of the right to education it should be noted that 60% of the monitored beneficiaries with disabilities is involved in the pre-school/general education process. In case of involvement in the inclusive education sub-programme, there are problems related to the quality of education. The need was revealed in certain cases to involve intensively special education teachers in the teaching process and to effectively prepare/implement an individual curriculum.[1245]

The right to protection from violence and other forms of ill-treatment in the framework of the foster care sub-programme – big part of the children involved in the foster care sub-programme were the victims of violence and negligence in the biological families before the inclusion in the state care. In particular, 40% of the beneficiaries constituted the victim of violence while living in the biological families, which caused the damage of health and/or psychological problems. During involvement in the foster care sub-programme, psychological needs assessment of the majority of juveniles and the proper psycho-emotional rehabilitation did not take place (*see* table 2). This constitutes one of the main obstacles for children's socialization. Identification of the victims of violence is the hindering factor for the psycho-emotional rehabilitation of the juveniles. This is caused by the small number of psychologists of the LEPL Social Service Agency.[1246]

Table N2 – Indicators of the juveniles' psycho-emotional rehabilitation



1244 http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=776 .

1245 This trend is also revealed against the pupils having special educational needs, who do not have the status of a person with disabilities.

1246 Regional Centres of Social Service of the LEPL Social Service Agency, unlike the District Units of Social Service have a psychologist in staff. Therefore, one psychologist reacts to all cases in the region which sufficiently hinders the child's psycho-emotional rehabilitation.

The monitoring demonstrated that the light physical punishment was used against 10% of juveniles, coercion and intimidation – against 17%. Negative behavior management techniques – screaming, standing in the corner, prohibition of movement – was used against 40% of the beneficiaries. It is noteworthy that the beneficiaries and caregivers are not sufficiently informed about the child protection (referral) procedures.

Implementation of the right to education in the Foster Care Sub-programme– 85% of the examined juveniles are involved in the pre-school/secondary education process. In certain cases, for example, in the Ninotsminda Municipality and village Sadmeli the problem related to involving a child in the pre-school educational process was revealed. 65% of the beneficiaries located in the self-governing cities and 40% of children involved in the foster care in the municipalities are involved in the informal educational activities.[1247] As for the children having special educational needs, 15% of the monitored juveniles need assessment by the multidisciplinary team and respectively, development of an individual educational plan and involvement of a special teacher.

Issues of proper care and supervision – it was revealed that in certain cases, the foster parent does not take into account individual needs of a juvenile. Especially in cases when 4 and more children should be taken care of. At the same time, there is a need of systemic and systematic retraining of the foster parents in terms of childcare, especially, in taking care of the juveniles with disabilities, also, in the direction of their positive self-identity and self-esteem rising. The monitoring results revealed that some part of the beneficiaries cannot exercise the right to the freedom of expression even when it is consistent with their interests. There are shortcomings related to the communication between the juvenile and the social worker without the permission of a caregiver.

Legal regulation of the foster care sub-programme – State regulation of foster care is implemented by a number of domestic and international acts. Article 11 of the law of Georgia "on Adoption and Foster Care" determines the rights and obligations of the authorities of the local guardianship and custodianship in terms of implementation of the foster care sub-programme. The responsibilities include identification of the persons subject to foster care and persons wishing to take children into foster care, development of the child's individual development plan and monitoring of its execution, supervision over compliance of the conditions of housing, upbringing, development, education and health, as well as over how foster parents perform their duties, assessment of foster parents and beneficiaries and their compatibility. According to article 31 para. 1 of the law, decision on foster care is taken based on the conclusion of the social worker by the regional councils of guardianship and custodianship. Article 35 stipulates the duties and responsibilities of the foster family. As for the rights of the foster child, the law underlines the provision of the freedom of expression and participation (Article 36 para. 2).

Order N51/N of the Minister of Labour, Health and Social Affairs of Georgia dated 26 February 2010 "on Approving the Rules of Procedures of Foster Care", also refers to the obligations of the territorial units of the LEPL Social Service Agency. In addition, according to Article 16 of the order, , not less than once per week, the social worker visits the foster family with or without a prior agreement during a month from involving a child in foster care and after one month – not less than once a month.

The State Sub-Programme on Foster Care is approved by the Decree N138 of the Government of Georgia dated 30 March 2015 on"Approval of State Programs of Social Rehabilitation and Childcare for 2015" (See Annex N1.9). The decree foresees supporting placement of the children without families in an environment close to the family, ensuring the care oriented on the needs and individual development of the child taking into consideration his/her age and abilities, psycho-social support of a child and contributing to his/her preparation for independent life, strengthening the child's contact with the biological family. According to Article 20 para. 1 of the Convention on the Rights of the Child, a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled

1247 Presented data is related to the beneficiaries of the school-age.

to special protection and assistance provided by the State. The UN Committee on the Rights of the Child has noted that the foster care programme should be implemented in the light of Article 25 of the Convention on the Rights of the Child, which recognizes the right of the child in an alternative care to be protected and to assess periodically the conditions of this kind of care.[1248]

The Committee on the Rights of the Child in its Concluding Observations on Georgia dated 23 June 2008, in paragraph 34 has underlined the importance of effective work of the social workers in this field. In addition, committee highlighted the necessity of sufficient work in order to assist individuals provide for follow-up and after-care to young persons leaving care centres.[1249]

The UN General Assembly Resolution[1250] approves the principles such as placing the beneficiaries close to their biological family, protection of the juveniles from violence and other forms of ill-treatment, ensuring the freedom of religion and expression, spending as little time as possible in the alternative care. The resolution specifically highlights the necessity of trainings[1251] and frequent monitoring[1252] of the foster parents.

IMPLEMENTATION MONITORING OF THE STATE SUB-PROGRAMME ON REINTEGRATION[1253]

From 1 June 2015 to January 2016, the monitoring of the State Sub-programme of Reintegration of children in the biological families (hereinafter – Reintegration Sub-programme)[1254] was carried out by the Office of the Public Defender of Georgia in the framework of the project "Capacity Building of the Child's Rights Centre." The state of the rights of 90 beneficiaries was assessed in the framework of the project.

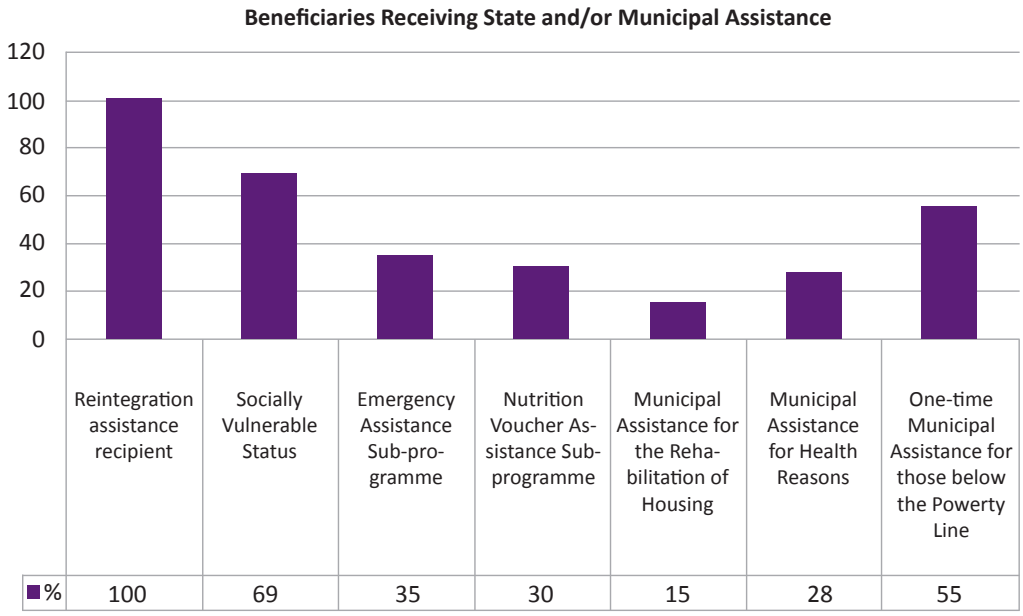
Monitoring of the Reintegration Sub-programme was carried out for establishing the effectiveness of implementation of international standards on the fundamental rights and freedoms of juveniles on national level.[1255] International statutes (e.g. UN Convention of the Rights of the Child, revelant resolutions of the EU Council of Ministers and the recommendations of the Venice Commission) as well as the European and local researches[1256] in this area and methodological principles were considered during the monitoring process. The Office of the Public Defender of Georgia, with the request to respond to the revealed violations, has addressed the responsible authorities in written form on 80% of the examined cases.

Implementation of the right to protection from poverty and inadequate living conditions – The right of the child to be protected from poverty and inadequate living conditions places a positive obligation on the State to establish en effective social protection system in the framework of which all juveniles, based on the principle of equality, will have proper social environment and education conditions for living.[1257]At the same time, it is important for the beneficiary to receive the basic care and supervision in the family, relevant to his/her needs.[1258] The monitoring has demonstrated that a significant number of the reintegrated children lives

1248 Report of the Committee on the Rights of the Child, United Nations General Assembly, Official Records, Session 55, Supplement No. 41, Doc. A/55/41, p. 66.
1249 Committee on the Rights of the Child, Concluding Observations: Georgia, 23 June 2008, Doc.CRC/C/GEO/Co/3, para. 37.
1250 UN General Assembly Resolution, Guidelines for the Alternative Care of Children, 24 February 2010, Doc. A/RES/64/142.
1251 *Ibid,* para. 118.
1252 *Ibid,* para. 128.
1253 The full version of the Reintegration Sub-programme monitoring results will be presented in the special report of the Public Defender.
1254 Order N01-20/N of the Minister of Labour, Health and Social Affairs of Georgia on "Reintegration assistance allowance, suspension, resumption and termination rules and conditions."
1255 Protection from violence, exploitation and other forms of ill-treatment, poverty and inadequate living conditions, access to healthcare, effective implementation of the right to education, principles of non-discrimination and equal treatmentprinciples of confidentiality and individual approach.
1256 Including the reaserch "Needs Assessment of Reintegrated Families" conducted by UNICEF, USAID and the organization "Safe the Children," 2013.
1257 UN Convention on the Rights of the Child.
1258 *Ibid.*

in the conditions of relative poverty – inadequate social and economic conditions are revealed: children do not have adequate housing and educational conditions, educational and home appliances, healthy food; The problem of housing, access to social services and sub-programmes is acute.

The following **Table N3** reflects the involvement of juveniles in sub-programmes on the protection of reintegrated children from poverty and inadequate living conditions:



The effectiveness analyses of the social protection system of reintegrated children demonstrate that a significant part of reintegrated families is involved in the Emergency State Assistance Sub-programme for those below the poverty line. 90% of the interviewed beneficiaries/children's lawful representatives state that the allowance[1259] received through the reintegration sub-programme is not sufficient for creating proper social economic conditions and educational environment for a child. 40% of the respondents consider that together with the social assistance, reintegration allowance generally ensures the creation of appropriate social and educational environment for a child and 60% believes that it is necessary to develop additional sub-programmes for strengthening the reintegrated families.

In several regions, from the period of involving a child in State care, comprehensive need for assessment of the biological family and its strengthening in order to ensure the reintegration process and taking the juvenile out of the State care cannot be conducted. 60% of the examined reintegrated children were in inadequate living/social conditions.

In terms of satisfying basic needs, in 55% of the families the physical environment and infrastructural conditions were not satisfactory, violation of the sanitary and hygienic norms was also revealed. For example, 35% of the beneficiaries did not have individual beds, a separate study space, and satisfactory living conditions.

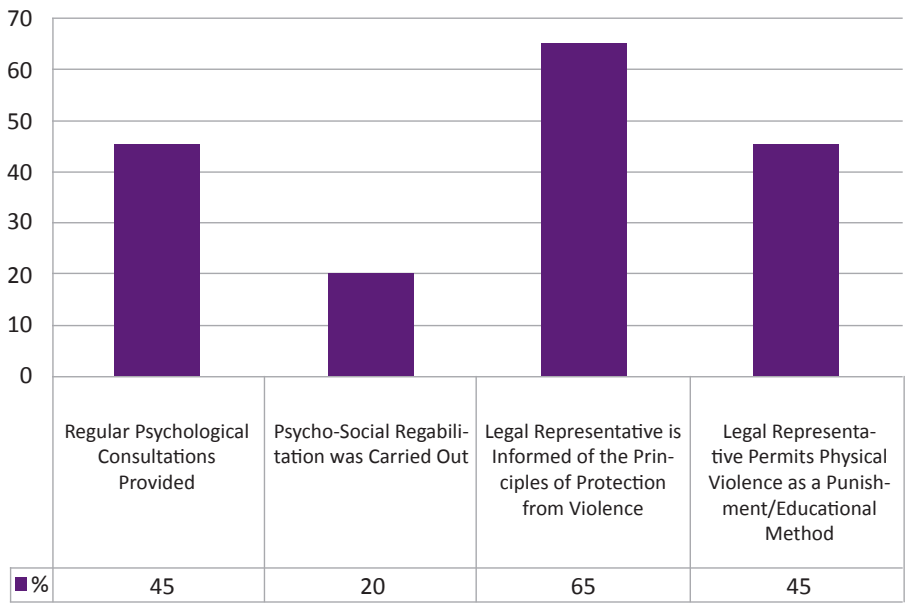
According to Article 2 of the Decree N138 of the Government of Georgia dated 30 March 2015 on "Approving the State Programme on Social Rehabilitation and Childcare" social sub-programmes of child protection were approved. Significant part of reintegrated beneficiaries is involved in the following sub-programmes: "Emergency Assistance of Families with Children in Crisis," "Early Childhood Development," and "Child Rehabilitation/habilitation". According to 45% of the interviewed respondents, the involvement process in the above sub-programmes is delayed.

1259 Reintegration assistance amount for a healthy child is 90 GEL and for a child with disabilities – 120 GEL.

As for the municipal assistance sub-programmes, it is worth noting that the decree of Kutaisi City Council approved the financial assistance sub-programme for ensuring the return of children under the State care to the biological families, prevention and elimination of the risk of abandonment and also, strengthening and supporting the families who left the State care.[1260] In the framework of the above sub-programme, monetary assistance for each beneficiary is 200 GEL. 10 beneficiaries were involved in the sub-programme.

Right to be protected from violence, exploitation and other forms of ill-treatment – According to the examination results, part of the children involved in the reintegration sub-programme were the victims of violence. Several cases revealed the facts of negligence and physical abuse that were used by the parents as method of upbringing. In several cases there were facts of biased and negative attitude from family members. The case of psychological pressuring and violence was detected in 35% of the examined beneficiaries and the forms of physical violence – in 30%. Positive direction of the implementation of the sub-programme should be considered the fact that in the assessed biological families the beneficiaries are protection from labour exploitation and sexual abuse.

Table N4



Based on the major regulations of the order,[1261] the representativesof the Public Defender, have examined the effectiveness/security of responding on the cases of violence in the reintegrated families.In particular, according to the order,[1262] the social worker reacts only in case if it is revealed that the physical, psychological and/or social environment is harmful to the beneficiary and in case of need, relevant measures should be taken for the psycho-social assistance of the beneficiary.[1263]In case of suspected child abuse, the parent contacts the social worker, police or the hotline against violence.[1264]Implementation of the above regulations is delayed since the identification of the cases of violence and negligence, psychological assessment and psycho-social rehabilitation of children is not properly conducted. Therefore, for the implementation of prevention of violence against reintegrated children, it is essential to raise awareness of parents and conduct necessary trainings and informational meetings.

1260 Decree N59 of the Kutaisi Municipality Citi Council, 19/12/2014, on Approving the Budget for 2015.
1261 Order N01-20/N of the Minister of Labour, Health and Social Affairs of Georgia on "Reintegration assistance allowance, suspension, resumption and termination rules and conditions".
1262 *Ibid.*
1263 Order N01-20/N of the Minister of Labour, Health and Social Affairs of Georgia on "Reintegration assistance allowance, suspension, resumption and termination rules and conditions." Article 10 (5-6).
1264 *Ibid.*

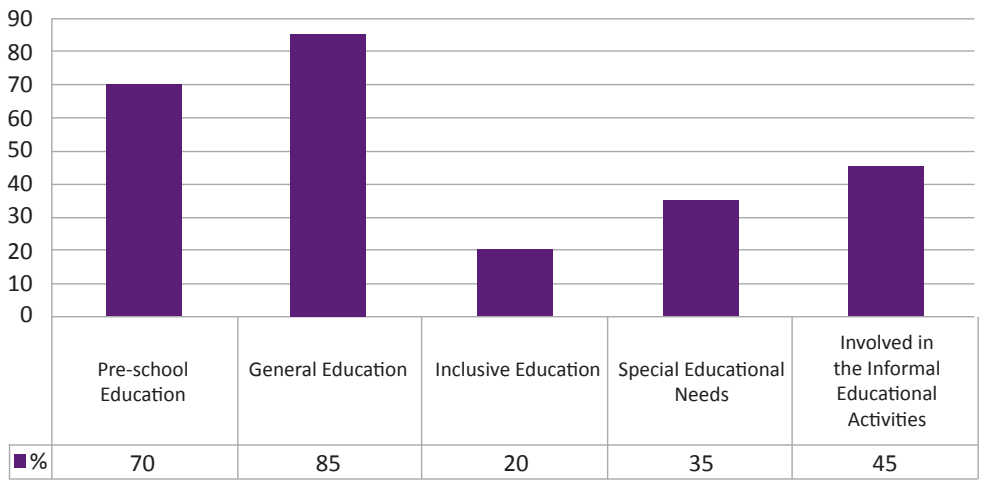
Right to early, pre-school, general and vocational education –Right to education of beneficiaries =of the reintegration State sub-programme was assessed on the level of excercising freely the right to early and pre-school, as well as general and vocational education**.**

The monitoring demonstrated that children with disabilities, who have problems of transportation and according to the individual development plan, need individual curriculum and evaluation of the multidisciplinary team, are restricted with the right to education. Their part, despite the request, is not assessed by the multidisciplinary team. In addition, the cases were revealed when despite the existence of the special education teacher, the level of skills and knowledge of the juvenile could not be improved due to the inadequate curriculum. In a number of cases, the child with special needs was not linked to the relevant educational institution for implementing an individual curriculum. It should be noted as a positive feature of the sub-programme that territorial accessibility of children involved in the above programmes is mainly ensured.

In the field of implementing the right to availability of the general and vocational education, acute problem for the reintegrated children, after receiving general education, is the issue of continuing vocational studies. In particular, as noted by 15% of the examined children and their lawful representatives, due to the geographical and financial problems, they were not able to receive/continue vocational education.

The table below reflects the number of beneficiaries involved in the early, pre-school and general educational system, also the number of beneficiaries involved in the vocational education programme and those having educational backwardness:

Table N5



30% of the examined children were behind the class. In 35% of the cases skills assessment of children with special educational needs and establishment of the individual education needs did not take place. Despite the fact that in order develop educational skills of children with the above needs, the learning conditions and environment should be adapted, it was revealed that 20% of the parents was not informed on the major directions of the individual training plan and 15% was against inclusion of the child in the inclusive education programme (despite the special needs).

Accessibility of the right to health in quality and timely manner in the reintegration sub-programme – timely and proper assessment of the reintegrated children's state of health is carried out insufficiently and relevant needs are not properly revealed. Accessibility and quality of the right to health of reintegrated children of the mountainous regions is problematic. In this regards, special needs were demonstrated in Zugdidi, Akhaltsikhe Municipality, villages Phkhelsha and Ieli of Mestia Municipality. As for utilizing the healthcare policy, majority of the beneficiaries was registered in the primary healthcare centre, 70% of the beneficiaries was enjoying the regular medical service and had taken planned vaccination. Geographical access to medical services in case of need was partially ensured.

The issues related to the involvement and participation of the reintegrated beneficiaries in the Decree N308 of the Government of Georgia dated 30 June 2015 "on Apporving the State Programmes on Healthcare for 2015" was also examined during the monitoring. According to the results of the examination, 15% of the beneficiaries was involved in the State Sub-Programme on Mental Health[1265] and had access to the relevant medication treatment, 65% participated in the Immunization Sub-programme,[1266]and 40% enjoyed the targeted assistance of healthcare field issued local self-government. According to the evaluation results, the right to health of beneficiaries with disabilities is not properly implemented. 45% of the registered beneficiaries who have the status of a person with disability, have not undergone proper medical examinations for the assessment of the health condition and are not regularly provided with the medication necessary for the treatment.

Inclusiveness of the service, individual approach and protection of confidentiality in the reintegration sub-programme – According to the examination results, families involved in the reintegration sub-programme are not sufficiently informed by the social worker on the confidentiality concerning the personal date of children, reintegration contract and the individual development plans. The interviews carried out with the reintegrated families also revealed that the confidential information related to the reasons of taking the child from the biological families, health problems and to the experience of violence or other forms of ill-treatment against the juveniles is not protected. Children, who were asked about the security of the above information and about the services provided by the individual development plans, were not sufficiently provided with the relevantinformation. At the same time, they were not involved in the preparation of individual development plans. According to the existing legal norms, the parent/guardian periodically, at least once in every 6 months participates in the revision process of the individual development plan together with the beneficiary and a social worker.[1267] The individual development plan should clearly describe the dates for drawing up and reviewing the plan, the service (assistance) child will receive, schedule of implementing the service, identity and functions of persons responsible for fulfilling specific objectives statedby the plan.[1268] Implementation of the above regulations is conducted improperly. Particularly, the contentwise (actual) compliance of the individual development plan, in terms of indicators and intensity of the revision, in 40% of the reintegrated children was insufficiently reflected the indicators and measures necessary for the development of reintegrated children. 55% of the interviewed beneficiaries and their lawful representatives were not sufficiently informed on the activities, implementation indicators and mechanisms of the individual development plans.

It should be noted that in terms of managing and monitoring the reintegration cases by the LEPL Social Service Agency,[1269] the regular visits for the implementation of the individual development plan are mainly carried out according to the Order,[1270] as a visit to the reintegrated family once a month. However, visits are hindered by the geographical accessibility, transportation problems and etc. According to the interviews conducted with the examined beneficiaries, 85% of the lawful representatives of the beneficiaries noted that the social workers, within their competences, consult them on the matters related to the care of the beneficiary. Nevertheless, connection with the services supporting children and families is delayed. In 80% of the evaluated cases it was revealed that the parent notifies the Agency about the occurred and expected important changes in life of the beneficiary (change of the place of residence or contact information, change in the family composition). In 60% of the cases, the parent takes into consideration the opinions and desires of a child while deciding the matters related to his/her care, if the latter is reasonable and does not contradict the interests of a child. However, as noted by 40% of the parents, they will take into account the child's opinions only if it does not contract the views of the parents.

1265 Decree N308 of the Government of Georgia dated 30 June 2015 "on Approving the State Programmes on Healthcare for 2015", Software Code 35 03 03 01, Appendix N11.

1266 *Ibid.*

1267 Order N01-20/N of the Minister of Labour, Health and Social Affairs of Georgia on "Reintegration assistance allowance, suspension, resumption and termination rules and conditions."

1268 *Ibid.*

1269 According to Article 10 of the Order N01-20/N of the Minister of Labour, Health and Social Affairs of Georgia on "Reintegration assistance allowance, suspension, resumption and termination rules and conditions," the social worker of the LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia is entrusted with the above authority.

1270 *Ibid.*

Legal regulation of the reintegration State sub-programme – According to Article 36 para 2 of the Constitution of Georgia, the State shall promote the prosperity of the family and according to paragraph 3 - the rights of the mother and the child shall be protected by law. Article 3 paragraph 2 of the Convention on the Rights of the Child enshrines the following:

> "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

According to Article 9 para. 1 of the Convention, States Parties shall ensure that a child shall not be separated from his or her parents against their will. Article 39 of the Convention indicates that the reintegration of a child should take place in a dignified environment. Article 27 para. 3 of the Convention stipulates that States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. According to Article 39, States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child.

According to the UN General Assembly resolution on " Guidelines for the Alternative Care of Children,"[1271] States should develop and implement consistent and mutually reinforcing family-oriented policies designed to promote and strengthen parents' ability to care for their children.[1272] Stemming from the same resolution, social services should be strengthened for parents and children with disabilities. Such services, preferably of an integrated and non-intrusive nature, should be directly accessible to the beneficiaries.[1273] According to the resolution, the following main principles should be implemented – prevention of placing children in alternative care, which means developing the policy oriented on the children deprived of care; prevention of family separation, multiple services for family strengthening, financial assistance, special services for children with disabilities/their parents. From the principles supporting reintegration stated inthe resolution, regular assessment of the needs of biological families is also noteworthy; developemt of timely and accessible services; development of the social assistance system, restoration of regular relationships between a child and a biological family, strengthening the positive psycho-emotional dependence,[1274] Regional Council for Guardianship and Custodianship considers the issue of the child's reintegration based on the social worker's conclusion and makes decision on placing a child in the biological family, on returning/allocating a child with the guardian/ caregiver, while taking into account the child's best interests.

According to the sub-programme "on Emergency State Assistance for the Families in Crisis with Children" approved by the decree of the Government of Georgia "on Approving the State Programme on Social Rehabilitation and Childcare", families who have reintegrated children less than 3 monthsago, are considered as the target groups.

According to the Venice Commission,[1275] it is essential to establish effective legislative guarantees for supporting/assessing the interests of children involved in alternative care and those returned to their biological families. This includes the development of services and programmes supporting biological families which will be resulted in having all the necessary resources for social development, by juveniles, while living in the family environment.[1276]

1271 UN General Assembly resolution, 24 February 2010, A/RES/64/142, available at:http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf.

1272 *Ibid,* Article 33.

1273 *Ibid,* Articles 33-35.

1274 *Ibid.*

1275 European Commission for Democracy Through Law: Report on the Protection of Children's Rights: International Standards and Domestic Constitutions, adopted by the Venice Commission at its 98th Plenary Session, (Venice, 21-22 March, 2014), available at:http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)005-e.

1276 *Ibid.*

THE PROBLEM OF ENFORCEMENT OF THE COURT DECISIONS

According to Article 3 paragraph 1 of the UN Convention on the Rights of the Child, in all actions concerning children, the best interests of the child shall be a primary consideration. According to the Order of the Minister of Labour, Health and Social Affairs of Georgia,[1277] guardianship and custodianship authority is determined as a competent body for implementing the right to transmitting a child and/or the right to have relationship with a parent or other family member.

In the case of G.S. vs. Georgia[1278] the European Court of Human Rights has held that no procedural and positive obligations were exercisedby the domestic courts in the decision-making process, as it is stipulated by Article 8 of the European Convention. The court underlined the importance of protecting and taking into consideration the best interests of the child in the decision-making process and the necessity to study all circumstances, in the manner the decision not to have negative impact on the psychological and social well-being of the juvenile. In the case of N.TS. and others vs. Georgia,[1279] the European Court of Human Rights has explained that the opinion of the child should be taken into account in the decision-making process. The children should be given the opportunity to express their opinions and they should be listened to. The European Court holds, that the child's representative is responsible for providing a child with information and explanation on the existing processes, also, for finding out the child's opinion on the current matters. He/She is obliged to inform the judiciary on the desires and visions of the child.

According to the information received from LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia requested by the Office of the Public Defender of Georgia,[1280] throughout 2015, 559 court cases were reported related to relationship with a child (children). In the territorial units of the LEPL Social Service Agency, 125 applications were filed for the enforcement of the decision, 53 children were ensured with the psychological service in the framework of the enforcement activities. According to the information provided, in the reporting period, enforcement did not carried out in 31 cases due to the psychological abuse against the child, refusal of the child or due to the absence of individuals interested in enforcement.

In its Parliamentary Report of 2010[1281] the Public Defender of Georgia positively assessed the amendmentsmade to the Law of Georgia "on Enforcement Proceedings" according to which, the competent body for to the implementation of the right to transmitting a child or the right to communication with a parent or other family member is regarded guardianship and custodianship body instead of the Enforcement Bureau. Despite the legislative change, the Public Defender of Georgia , regularly notes the shortcomings of the enforcement mechanism and the problems related to the protection of juveniles in this process since 2010, in annual Parliamentary Reports of 2012 and 2013. During 2015, the Child's Rights Centre of the Public Defender, has reviewed 33 applications on the above matter. This indicates that the challenges in this sphere still exist.

The results of the case managementin the Office of the Public Defender of Georgia revealed that in the process of deciding upon the place of residence of the juvenile, the child's opinion is not taken into consideration which constitutes one of the major basisof the problems created in the enforcement process. Consequently, during the court proceedings, the role of the social worker and his/her work in each individual case for determining the best interests of the child has the utmost importance.

The results of the proceedings demonstrate that in a number of cases, after the court deicision, the juvenile is under pressure from the family member (members), which hinders the enforcement process. Psychological and sometimes physical violence takes places against the child. The enforcement process in full compliance

1277 Decree N01-16/N of the Minister of Labour, Health and Social Affairs of Georgia dated 18 April 2011 "on Approving the Rules on Enforcing the Cases Related to the Implementation the Right to Transmitting a Child or the Right to Relations with a Parent or Other Family Member".

1278 G.S v. Georgia, 21.07.2015.

1279 N.Ts. and others v. Georgia, 02.02.2016.

1280 Correspondence N04/15265, 26.02.2016.

1281 Parliamentary Report of 2010 of the Public Defender of Georgia, available at: http://www.ombudsman.ge/uploads/other/0/84.pdf

with the best interests of the child is also prevented by the fact that the juveniles are not always ensured with the service of a qualified psychologist. Specialists working with children are not able to identify the cases of violence against the juveniles, making it difficult to enforce the decision and endangering the protection and implementation of the child's best interests.

MEDIA COVERAGE OF THE CHILD ISSUES – ETHICAL AND LEGAL STANDARDS

During the reporting period, the Public Defender's Office has studied the topic of protecting ethical and legal standards of media coverage of the juvenile issues.[1282] The examination of results revealed that the major problems inimplementing the above standards are related to the following main factors (additionaly, *see* Table N6):

1) Spreading the material giving the possibility of direct and/or indirect identification of children in the broadcasting programmes and printed media:

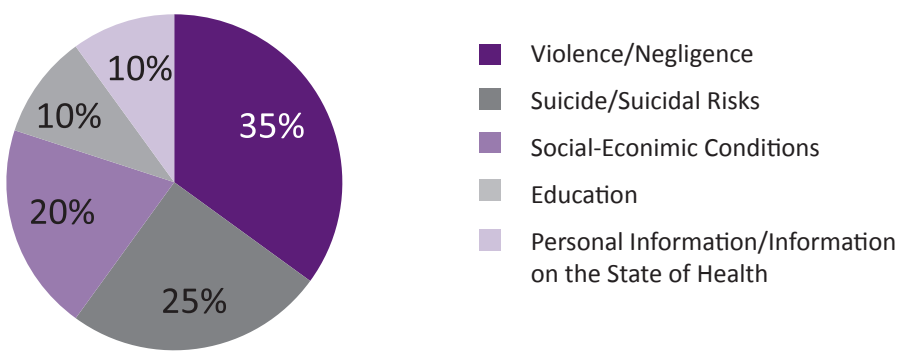
2) Unethical coverage of suicide cases, issues of children with suicidal tendencies or victims of alleged acts against their sexual freedom and autonomy;

3) Inclusion of programmes in the broadcasting space having negative nature and impact on the psycho-emotional conditions of the juveniles;

4) Unethical broadcasting of legal situation of children under State care, living in poverty and inadequate conditions;

5) Limited implementation of the juveniles' participation and the freedom of expression in the materials covered by media.

Table N6– Thematic Problems



Coverage of alleged acts directed against the sexual freedom and autonomy– According to the examination results, during 2015, the media coverage of the acts directed against the sexual freedom and autonomy of juveniles in most of the cases is carried out with the violation of ethical and legal standards[1283] in the TV and printed and electronic media. In this field particularly problematic was the identification of victim children and their legal representatives, place of residence, educational institutions and certain details of the case. Therefore, possible negative psychological impact of the coverage was not taken into consideration.

1282 The methodology of examination was based on the UN Convention on the Rights of the Child and recommendations of the Committee, recommendatory instructions of the European Council of Ministers, domestic legislative standards in the field of media coverage of the child's rights.

1283 UN Convention on the Rights of the Child

In 2015, the Office of the Public Defender of Georgia had proceedings[1284] on disclosure of the witness statements by one of the printed media in the framework of the investigation and criminal proceedings on the case of the child's sexual abuse. The printed media reflected the details of sexual abuse, statements of the victim children and disclosed the crime scene. The Child's Rights Centre of the Public Defender of Georgia has addressed[1285] the Chief Prosecutor's Office of Georgia with the request to take relevant measures. However, no response was provided on the appeal of the Public Defender's Office.[1286]

Coverage of issues related to the juvenile suicides and children under the risk of suicide – As a result of the proceedings, cases were revealed when the identification of the children's inclination towards the suicide and suicide cases was conducted by the media violating the ethical rules, which might have had a negative impact on the psychological conditions of the juveniles. The ways of coverage in several TV programmes created the risk of suicide in children inclined to the suicide. In some cases, was named the method, form and way of committing a suicide (in one of the cases they named the medication which, according to the investigation results, caused the death of the juvenile).

Direct/Indirect identification of the juveniles – in the process of covering the child - related issues in the media, the requirement of prohibiting direct identification is relatively met. However, the prohibition of indirect identification of children is violated. For example, in several cases the place of residence of the child victim (name of the self-governing city, municipality) as well as the educational institution was revealed. This violated the requirements of legal and ethical standards on the child related issues. Despite the fact that according to the Code of Conduct for Broadcasters, the consent of the child's legal representative does not give the media the right to disclose identifying and damaging information for the child,[1287] in several cases, personal information of the juvenile was disclosed with the consent of the legal representative.

As for responding to the violation of ethical standards on child related issues, on 14 October 2015 the agreement of the The Georgian Charter of Journalistic Ethics was signed with the broadcasters.[1288] The signatories of the memorandum have undertaken the responsibility to receive and review complaints in terms and procedures prescribed by the Code the child - related issues in the self-regulatory commissions even in cases when the author of the appeal does not constitute an "interested party"[1289] according to the Code,[1290] however, at the same time is a physical or legal person[1291] working on the topic of children or in the media sphere. According to the research carried out by the Charter of Journalistic Ethics in 2015, in the process of media monitoring, it was revealed that the media is barely trying to protect the inviolability of the child's personal life, especially when it is related to the child's state of health.[1292]

Throughout 2015, the Georgian Charter of Journalistit Ethics, in terms of compliance of child related issues coverage with the ethical principles, has reviewed 2 cases[1293] and established violation of Article 8. Decision N44 addressed the identification of socially vulnerable children and decision N59 – identification of the minor child victim of act directed against the sexual freedom and autonomy. In the first case,[1294] the Charter has

1284 Case N5612/15, 20/05/2015.
1285 Correspondence N10-2/43/05, 01/06/2015.
1286 Correspondence N7040/15, 18/06/2015; Correspondence N6894/15, 11/06/2015.
1287 Code of Conduct for Broadcasters, Article 44 para 1.
1288 The Georgian Charter of Journalistic Ethics, "Ethical Coverage of Child Issues in Media – Final Monitoring Report," Tbilisi, 2015, p. 3.
1289 According to Article 5 para f of the Code of Conduct for Broadcasters, Concerned party is any person who is affected by or mentioned in a programme or in the decision of the broadcaster's self-regulation body.
1290 Decree N2 of the Georgian National Communications Commission dated 12 March 2009 on "Approving the Code of Conduct for Broadcasters" (in the present report – "Code of Conduct for Broadcasters").
1291 *See* footnote 59.
1292 *Ibid,* p. 7.
1293 http://qartia.org.ge/category/8-%E1%83%9E%E1%83%A0%E1%83%98%E1%83%9C%E1%83%AA%E1%83%98%E1%83%9E%E1%83%98/
1294 Decision dated 6 April 2015 of the Charter of Journalistic Ethics on the case of "Georgian Coalition for Children and Youths Welfare vs. Gia Jajanidze and Khatuna Paichadze," available at: http://qartia.org.ge/%E1%83%92%E1%83%90%E1%83%93%E1%83%90%E1%83%AC%E1%83%A7%E1%83%95%E1%83%94%E1%83%A2%E1%83%98%E1%83%9A%E1%83%94%E1%83%91%E1%83%90-%E1%83%A1%E1%83%90%E1%83%A5%E1%83%9B%E1%83%94%E1%83%96%E1%83%94-31/

ruled that the programme identified the children in social distress and moreover, in a number of episodes the host/ess asked the juvenile questions on tragic events, indirectly forcing the child to talk about the facts causing emotional torment, about separation with a mother, forcible change of the environment. Children's rights are gravely violated in the disputed show. Their interests and possible negative future impacts are in fact not taken into consideration. Moreover, there is a high likelihood that this kind of TV shows, interviews and broadcasting already had a negative impact on the emotional state of children.[1295] In the second case[1296] the Charter has noted: "it was possible to identify the juvenile according to the information spread in the programme. The name, place of residence and the mother's identity was disclosed. Responsible journalists did not take into account the possible negative outcome that can follow the identification of the child. The Board agrees with the applicant's position that the identification might "increase the unacceptability in the society." The Board also notes that the consent of the parent does not free the journalist from the positive obligation not to disclose the identity and facts related to the juvenile. The journalist is obliged to **"give priority to the interests of the child during the professional activity.** He/she should assess the negative outcome that might follow the identification of a child."[1297]

Legal regulation of the child issues' media coverage – According to Article 17 of the Convention on the Rights of the Child, States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, in accordance with para. "e" of Article 17, States shall encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

According to Article 37 para. 1 of the Code of Conduct for Broadcasters, broadcasters shall ensure the protection of minors from harmful influence, and according to paragraph 2, television scheduling decisions need to balance the protection of minors with the rights of all viewers to receive a full range of subject matter throughout the day. Article 38 para. 1 holds that broadcasters shall not broadcast programmes or feature material in programmes that might impair the physical, psychological, mental or moral development of people under eighteen, and according to paragraph 2, broadcasters shall use the programme classification criteria set out in this Code to determine programme categories and make scheduling decisions in accordance with the time restrictions outlined herein. Article 38 para 3 point "a" stipulates that when scheduling programmes, broadcasters shall take into consideration whether there is a potential harm to physical, psychological, intellectual or moral development of minors. According to Article 41 paragraph 1, Scenes of violence or its aftermath as well as the description of violence both oral and visual shall be appropriately edited before 23:00, except when it is justified by context. Article 44 paragraph 1 holds that while respecting a child's right to freedom of information and expression, broadcasters shall ensure physical, psychological and emotional welfare of minors involved in programmes irrespective of any consent given by a parent, guardian or carer. According to Article 56 para. 5 of the Law of Georgia on Broadcasting, broadcasting of programmes having harmful influence on the physical, intellectual and moral development of children and adolescents at times when they are most likely to be viewed or listened to, are prohibited.

According to principle 8 of the Charter on Journalistic Ethics, "a journalist, in the professional activity shall protect the rights of the child, prioritize the child's interests, shall not prepare and publish articles or reportage on children that will be harmful for them. A journalist shall not interview or take a photo of a child under 16 without the consent of a parent or a guardian on matters that are related to his/her or other child's well being."

1295 *Ibid.*

1296 Decision N59 of the Charter of Journalistic Ethics dated 1 October 2015 on the case of "Partnership for Human Rights vs. Gia Jajanidze and Maia Stepnadze," available at: http://qartia.org.ge/phr_gia_jajanidze/

1297 *Ibid.*

MORTALITY OF CHILDREN UNDER 5 YEARS OF AGE

Factual Circumstances – Mortality of children under 5 years of age constituted one of the acute problems of 2015 in the field of protecting the rights of the child. As the results of the study conducted by the Office of the Public Defender of Georgia demonstrated, among the risk factors causing infant deaths is the geographical accessibility of medical service, provision of quality and timely services to the population, also, effective work of antenatal services, equipping the intranatal care establishments (maternity homes and units) with adequate medical inventory and infrastructure, including the equipment and supply necessary for managing the state of health of the newborn patients. It should be underlined, that there are shortcomings in terms of qualification of the medical personnel of the relevant profile.

In 2015, compared to the previous year, the mortality rate of children from birth to under the age of 1 has decreased in Georgia. However, it should be stressed that the mortality rate of children under 5 per 1000 newborns still abruptly exceeds the index of the developed states. The mortality rate of the latter is 6 per 1000 newborns, while in case of Georgia this number in 2015 was 12.[1298] In addition, the 2013 study of UNICEF on reasons of child mortality revealed that (a) the likelihood of death of children living outside Tbilisi is 1,4 times more than that of the children residing in Tbilisi; (b) the likelihood of mortality of infants weighting 1,500 kg or less living outside Tbilisi is 1,9 higher in the period before being discharged from the maternity home and 1,5 higher after being discharged.

As the analysis of the above field demonstrates, the infant mortality s in Georgia is caused by the factors such as, system of care for pregnant women, qualification of medical personnel and obstetricians, the quality of prenatal services, extreme poverty, low level of awareness of the parents, which is in its term related to the right to have access to information and etc.

During 2014-2015, the applications of the citizens received in the Office of the Public Defender of Georgia reveal that in the field of child healthcare and mortality, there are facts of negligence from the medical personnel. It was demonstrated that the personnel does not provide with the relevant information on the patient's health condition the legal representatives of children. Consequently, the parent is not sufficiently involved in the child's treatment process. Moreover, in most of the cases, approximately one hour is allocated for the parents to meet their child, which is not enough for the legal representative to have a range of information on the health condition and treatment of the child.

In 2015, the LEPL State Regulation Agency for Medical Activities studied 23 cases of death of children from 0-1 years and 9 cases death of children from 1 under 5.[1299] During the reporting period, the Council for Professional Development has reviewed 15 cases of child mortality for which 33 doctors were held responsible.[1300] The Council has studied 3 cases of death of infants from 1 to 5 years and 12 doctors were held responsible.[1301]

It should be noted that there is a lack of neonatologists and pediatricians in the country. According to the date of 2014, their total number is 2 364, which equals 0,62 doctor per 1000 inhabitants. As for the qualification of the doctors, it should be stressed out that 499 doctors have taken the educational programmes of individual training for the pediatric profile and 139 doctors – pediatric profile programmes of continuous medical education. 138 doctors attended vocational rehabilitation and educational programmes of pediatric profile were overcome by 256 specialization seekers. In addition, it is also noteworthy that the number of trained doctors is significantly lower than the total number of doctors.

1298 Data of the Inter-agency Group for Child Mortality Estimation (IGME), available at:http://www.childmortality.org/files_v20/download/IGME%20Report%202015_9_3%20LR%20Web.pdf.

1299 The Ministry of Labour, Health and Social Affairs of Georgia, Healthcare Department, Correspondence N 01/7571, 01/02/2016.

1300 *Ibid,* written notices was issued to 16 doctors, the validity of State certificate was suspended for 1 months to 6 doctors, for 2 months – to 3 doctors, for 3 months – to 3 doctors, for 4 months – to 1 doctor, for 5 months – to 2 doctors, for 6 months – to 2 doctors.

1301 *Ibid*, written notice was issued to 7 doctors, the validity of State certificate was suspended for 1 month to 3 doctors, for 2 months – to 1 doctor, for 3 months – to 1 doctor, for 4 months – to 1 doctor.

The statistics of maternal mortality in Georgia is extremely high during the pregnancy and in the postpartum period. Together with Uzbekistan Georgia is on the third place from the last within the former Soviet Union. According to the international research, maternal mortality in Georgia is 36 per every 100 000 newborn.[1302]According to the percentage data, 12 cases of maternal deaths were found during 6 months in 2015.

In terms of territorial accessibility of the medical facilities it should be noted, that during winter, in the mountainous regions where roads are closed, medical institutions should maintain stable functionality and should be able to ensure the patient with the transportation to the relevant hospital. It is important to have the possibility of transferring them with the helicopter and there should be existed a sufficient number of ambulances for the infants.

Based on the information requested from the Ministry of Labour, Health and Social Affairs of Georgia, according to the date of 2015, in case of death of an infant from 0 to 1 year of age, frequently, the place of residence and the registration place of death do not coincide, since the mortality of infants, generally, is observed in the high-tech clinics. The clinics near the houses often cannot provide the sufficient service and it becomes necessary to transport the infants. In parallel with the geographical accessibility to the childbirth, apparently, it is important to ensure with the proper quality services. Problematic is the issue of using new technologies and the relevant equipment. The lack of neonatologists is also a problem. It is important to send the doctors from the high-tech hospitals with the relevant qualifications to the regional hospitals, which will significantly contribute to the qualification rising of the local personnel.

In order to prevent the child mortality, attention should be paid to the continuity of the life circle, which means paying due attention and providing proper quality medical service during the following stages: before conception, conception, antenatal period, first days of birth and supervision of the child's growth/development for ensuring the child's health.

The Public Defender of Georgia positively assesses the introduction of the "Electronic Module for Maternal and Newborn Medical Surveillance" and hopes that it will contribute to the improvement of health services provided to mothers and children. It is important to supervise the implementation of the module and to train the relevant medical personnel on the issues related to the use of the electronic system.

It should also be stressed out that the 2008 Concluding Observations on Georgia of the UN Committee on the Rights of the Child underlines that the Committee is gravely concerned by the high rates of neonatal deaths and premature births as well as the overall state of prenatal and post-natal health care. Attention should be paid to the problems related to the transportation of the infants and the high-risk pregnant women. Serious shortcomings are revealed that is caused by the ineffectiveness of the transportation system. It is important to introduce the unified regulation of using private and public medical transportation means. The Committee has urged Georgia to allocate increased resources to address the high rates of neonatal deaths and premature births. The Committee has also encouraged Georgia to consider establishing a governmental body in charge of maternal and child health care and development at the executive and sub-national levels.

Given the importance of the problem, the Public Defender of Georgia has addressed the Government of Georgia with the proposition of measures for the prevention of mortality of children under 5 years of age (N10/1528; 23.02.2016) and urged to effectively fulfill the obligations of the proposal and take necessary measure for the prevention of mortality of infants and children under 5 years of age.

The practice of the European States – in order to study the measures and best practice for eliminating mortality of children under 5 years of age, the Office of the Public Defender of Georgia has addressed

1302 Trends in Maternal Mortality: 1990 -2015, *see* UNICEF, World Health Organization, World Bank, UNFPA, p. 53, available at: http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf?ua=1.

the European Network of Ombudspersons for Children (ENOC). Analysis of legislation and policy of ten European States was conducted.[1303]

These States are implementing a number of important programmes which aims at reducing the child mortality. They include programmes supporting nutrition with natural milk, programmes on integrated management of child diseases and on modernization of pediatric and neonatal therapy.[1304] Noteworthy are the national strategies[1305] on child protection, long-term health programmes which significantly decreased the above problem.[1306] The best practice on reducing child mortality in the above states also implies modernization of the infrastructure of hospitals and ambulances and their adaptation to the needs of the infants. Special attention is drawn to the diagnostic and emergency equipment and reanimation and intensive therapeutic units.[1307] The best practice of states includes the public awareness campaigns, maximum distribution of the healthcare information, systemic and systematic training of the medical personnel for the prevention of the infants' sudden death, introduction of the unified guidelines for the medical personnel according to the recommendations of the World Health Organization, creation of the effective prevention mechanism, contribution to the researches carried out in this field, regular monitoring of the child mortality.[1308]

Legal Regulation – right to life is guaranteed by the Constitution. It should be protected from the intentional and negligent unlawful actions.[1309]According to Article 37 of the Constitution of Georgia, the state shall control all institutions of health protection and the production and trade of medicines.

Article 24 of the UN Convention on the Rights of the Child enshrines the obligations of the States Parties to protect the children's health. According to paragraph 2 of the same article, States Parties shall take appropriate measures to diminish infant and child mortality and to ensure appropriate pre-natal and post-natal health care for mothers. The obligation of the State to introduce the highest healthcare standard and to ensure prevention of mortality of children under 5 years of age, is underlined in a number of international documents, such as the International Covenant on Economic, Social and Cultural Rights (Article 12), the European Social Charter (Article 11), UN General Assembly Resolution on "Technical guidance on the application of a human rights - based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age," also, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly health care. According to thesedocuments, for the reduction of child mortality it is necessary to take into consideration the relevant risk-factors, also, to provide the legal representative of the child with the information on the juvenile's health condition and to involve them in the decision-making process.

Reduction and prevention of child mortality is enshrined in the Law of Georgia on Health Care.[1310] According to Article 4 para. "a" of the document, universal and equal accessibility of health care for the population within the limits of the State obligations provided for by the state health care programmes is among the principles of state health care policy. Decree N308 of the Government of Georgia has approved the State Health Care Programme and its Annex N9 has developed the health care programme for mothers and children.[1311] The objective of the above document is to reduce the maternal and infant mortality, reduction of the preterm births and development of congenital anomalies through increasing geographic and financial accessibility of effective patronage of pregnant women and highly qualified medical assistance. Reduction

1303 Ireland, Great Britain (including Northern Ireland and Wales), Lithuania, Armenia, Norway, the Netherlands, Bulgaria, Serbia and Bosnia-Herzegovina.
1304 The above programmes are intensively implemented in Armenia and Bulgaria.
1305 Bulgaria's National Strategy on Children's Issues, (2008-2018).
1306 Healthcare strategy of Lithuania for 1998-2010 and 2014-2025; National Healthcare Strategy of Bulgaria (2014-2020).
1307 Specific attention is drawn to the above-mentioned in the Lithuanian Health Strategy for 2014-2025 years.
1308 Healthy Child, Healthy Future; Universal Child Healthcare Programme of the Northern Ireland, Annual Report, 2010; Child Death Review Programme Annual Report, Public Health Wales, (2015).
1309 *Ogur v Turkey*, 1999-III; 31 EHRR 912 GC.
1310 Law of Georgia "on Health Care", Articles 133 and 134.
1311 https://matsne.gov.ge/ka/document/view/2891068 .

of Child mortality through the improvement of child protection and assistance is stated in the Decree N2315–IIS of the Parliament of Georgia dated 30 April 2014 "on Approving the Human Rights National Strategy for 2014-2020" (paragraph 13), Decree N445 of the Government of Georgia dated 9 July 2014 "on Approving the Action Plan of the Government of Georgia on the Protection of Human Rights (2014-2015) and on Establishment of the Inter-Agency Coordination Council of the Governmental Action Plan on the Protection of Human Rights" (paragraph 13.3), the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (Article 356), and Decree N724 of the Government of Georgia dated 26 December 2014 "on Approval of the "Universal Health Care and Quality Control for the Protection of Patients' Rights" of the Georgian Healthcare System State Concept for 2014-2020".

ISSUE OF JUVENILE SUICIDES

Juvenile suicide is one of the most difficult and complex phenomenon. Combined approach of various disciplines is necessary for its research. This issue contains legal, social, cultural and psychological elements, studying of which is significant to fight against the suicide. Based on the data of the Informational - Analytical Department of the Ministry of Internal Affairs of Georgia,[1312] 400 cases of suicide were found in the country in 2015, out of which 13 were conducted by the juveniles.[1313] In 2015, the investigation under Article 115 of the Criminal Code (bringing to the point of suicide) has started on 1948 criminal cases in Georgia.[1314] In 2015, no criminal proceedings were found under Article 115 of the Criminal Code. According to the date of the Ministry of Internal Affairs,[1315] Article 115 of the Criminal Code does not foresee as a aggravatingcircumstance, particularly, the crime committed against the juvenile, at the same time, the plot of the crime does not always indicate the circumstances of the crime, which does not give specific direction for data processing. Therefore, based on the data of the Ministry of Internal Affairs, the data is not processed on the crime committed specifically by the juvenile under Article 115 of the Criminal Code.

Given the fact that the State does not have a unified document for the prevention of child mortality, it is not possible to study the causes and risk-factors of the problem and therefore, it is not possible to fight against the phenomenon. The results of the proceedings in the Public Defender's Office revealed that from 5 studied cases,[1316] identification of the accused individual and launching criminal proceedings has not started in any of the cases under Article 115 of the Criminal Code. Considering the fact that there are a number of reasons causing the juvenile suicides, psycho-emotional rehabilitation of children, especially those inclined to suicide and awareness raising about the harmful influence on juveniles and their suicides[1317] is very important, especially in schools. In addition, it is also significant to raise awareness of the children's legal representatives in this area.[1318] It is important, that professionals working with children, including the teachers, social workers, psychologists, representatives of the law enforcement bodies should realize their role and responsibility in terms of protection of the child's rights and prevention of the juvenile suicide. Therefore, the Government should pay special attention to studying the causes of the child suicides, should take preventive measures for its elimination, and consider the best practice of the foreign states; the Ministry of Internal Affairs should conduct a prompt, effective and transparent investigation. The research of the best practice of the foreign

1312 Correspondence of the Minsitry of Internal Affairs of Georgia N 338338.
1313 The above data is studied based on the information received from the territorial units of the Ministry of Internal Affairs and therefore, contains information according to the investigative jurisdiction of the above units.
1314 The above information reflects date on the preliminary stage of investigation. As a result of investigation, in a majority of cases, the criminal cases are resolved under Article 105 para. 1 subparagraph "a" of the Criminal Procedure Code of Georgia (unless the act provided for by the criminal law takes place).
1315 *Ibid.*
1316 Case N 5275/15, N 5274/15, N 5269/15, N 3594/15 and N 2675/15.
1317 Guideliens on Implementation of the Convention on the Rights of the Child, UNICEF, 2002, p. 88.
1318 *Ibid.*

states[1319] has demonstrated that in terms of juvenile suicide prevention, a number of states, for example the USA, Finland, Ireland, the Great Britain, Germany, France, the Netherlands, Australia and New Zealand have developed specific strategies and action plans. The above documents contain the responsibilities of States for the prevention and reduction of the child suicides and the concrete steps in the form of a number of programmes and sub-programmes that should be implemented in concrete terms for achieving the objectives.

According to Article 6 paragraph 2 of the CRC, Georgia has a positive obligation to protect the right to life of the child. Particularly, Georgia should ensure to the maximum extent possible the survival and development of the child. This article not only obliges state to register and investigate the facts of juvenile suicide, but also, enshrines the obligation of effective prevention and reduction of the relevant risk-factors of suicide. The UN Committee on the Rights of the Child is alarmed by the increasing rate of the juvenile suicide in the world and urges the States to take effective measures in order to understand the above phenomenon and to implement a number of support and intervention programmes for its prevention and elimination, in which, experienced experts will actively participate.[1320] The UN Committee on the Rights of the Child has drawn its attention to the diversity of the juvenile suicides and the need of its studying and analyzing. In its General Comment N13 (On the right of the child to freedom from all forms of violence), the Committee defines violence against children as one of the major causes of the juvenile suicide and urges the States to take effective measures to eliminate the above phenomenon.[1321] In addition, the Committee, in the 2008 Concluding Observations on Georgia, as well as in the General Comment N15 (the right of the child to the enjoyment of the highest attainable standard of health) has underlined the necessity of prevention and elimination of the suicidal actions and the need to take respective measures in this direction.[1322]

ILLICIT TRANSFER OF CHILDREN ABROAD

Illicit transfer of children abroad is one of the problematic issues in the field of the child's rights protection. Compared to 2014, on 2015, , the number of complaints submitted to the Public Defender on the above topic has increased.[1323]According to the study, it was revealed that the alleged transportation of juveniles across the border, basically, takes place by one parent without the notification or consent from the other legal representative. In addition, considering that in a number of cases, the border is crossed with the false documentation, the process of finding a child and returning to Georgia is especially complicated.[1324]

According to the information provided by the Ministry of Internal Affairs of Georgia, the Informational Analytical - Department of the Ministry does not register the statistical data on the illegal transportation of juveniles across the State border or its attempt in a form requested by the Office of the Public Defender (illicit transportation of juveniles across the State border).[1325]

The Law of Georgia "on Rules for Georgian Citizens on Leaving and Entering Georgia" defines the regime of transferring the juveniles across the border. According to Article 8 of the document, a child can be temporarily taken from Georgia with the consent of one legal representative and accompaniment by the capable adult.[1326]

1319 International Prevention of Suicide, 100 Best Practices, available at:http://www.gavoorgeluk.be/wp-content/uploads/2014/05/100-BestPractices.pdf.

1320 Guidelines on Implementation of the Convention on the Rights of the Child, UNICEF, 2002, p 102, p. 499.

1321 General Comment N 13 (2011), The right of the child to freedom from all forms of violence, Committee on the Rights of the Child, 2011, para 15, 28.

1322 General Comment N 15 (2013) the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, Committee on the Rights of the Child, 2013, para 34, 38.

1323 According to the data of 2014, only two from the studied cases concerned the illegal transportation of juveniles across the State border, while the same figure increased to 7 in 2015.

1324 Cases N 9326/15 and N 14927/15.

1325 Correspondence of the Ministry of Internal Affairs N 262339.

1326 The requirement of the accompanying capable adult does not apply to the procedure of border crossing by the 16-18 years old juvenile.

The consent of both legal representatives is necessary for getting a passport[1327] and a visa[1328].[1329] However, the situation is more complicated when the juvenile is transferred to the State which does not require a visa. According to Article 11 of the CRC, States Parties shall take measures to combat the illicit transfer and non-return of children abroad. This article implies the responsibility of states to effectively prevent and reduce to the maximum extent possible the above cases. According to this article, one of the most effective ways to achieve the objectives is the conclusion of bilateral or multilateral agreements or accession to existing agreements. Among others, the most important instrument is the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which entered into force for Georgia on 1 October 1997. Georgia undertook the obligation to cooperate with the competent authorities of the Contracting States in areas such as child abduction and the circumstances of the discovery and study of a peaceful solution to the dispute, to ensure the prompt return of children, administrative and judicial procedures and the exchange of relevant information.[1330] The States are responsible for effective implementation of the norms of the abovementioned document in the domestic legislation, however, it has not taken place in the Georgian normative base.

VIOLENCE AGAINST CHILDREN

Article 19 of the Convention on the Rights of the Child guarantees the child's right to be protected from all forms of violence. The same article foresees the obligation of the State to take preventive measures for elimination of all forms of violence and take appropriate measures for the rehabilitation and support of the child victims of violence, also, to identify and respond to the facts of violence.

Among the individual violations of the child's rights examinedby the Child's Rights Centre of the Public Defender in 2015, the righ rate of violence against children in various forms was revealed again (see, statistical table of the proceedings). In this regards, the main challenges are the severity of identifying the fact of violence against children, the necessity to introduce the protection and rehabilitation system of the juvenile victims of violence in practice, the lack of professional psychologists working in the social service sphere and the insufficient cooperation among the relevant institutions.

Bullying– according to the resolution adopted by the UN General Assembly,[1331] bullying can be expressed through a violent or aggressive action, which has a negative impact on the child's wellbeing. Besides, the children victims of bullying are under the risk of emotional problems. It is noted in the General Comment N13 of the Committee on the Rights of the Child on the right of the child to freedom from all forms of violence that violence against a child, both physical and psychological, is often expressed as bullying among children. This harms the physical and psychological wellbeing of a child and has a negative impact on the development of a child, education and integration in the society.

During the proceedings conducted by the Child's Rights Centre of the Public Defender's Office on the alleged facts of bullying in 2015, the problems related to the identification of bullying cases at schools and to the rehabilitation of juveniles allegedly committing bullying were revealed. Mostly, when the case concerns the juvenile allegedly committing bullying, transferring the child from school to the another education institution is named as a solution of the problem. In addition, aggressive attitude is formed against this kind of children, which further exacerbates the problem. The Child's Rights Centre of the Public Defender's Office studied two cases concerning the juvenile who allegedly committed bullying. In one of the cases, the child was dismissed

1327 http://sda.gov.ge/?page_id=5103.

1328 *See* Visa information for the Georgian Citizens: http://www.mfa.gov.ge/MainNav/ConsularInformation/VisaInfoGeorgian.aspx.

1329 When a 16-18 years old juvenile is taking a passport, consent of only one legal representative is needed.

1330 In addition, according to the Decree N319 of the President of Georgia dated 22 June 1997, the Ministry of Justice was determined as a central body.

1331 Resolution adopted by the UN General Assembly on 18 December 2014, on the report of the Third Committee, *(A/69/484)*]69/158. Protecting Children from Bullying.

from school for 10 days and in the other case, based on the teachers' advice, the parents transferred a child to another educational institution. Changing of the school is named as a problem solution in case of the child victim of the bullying as well. There is a tendency that parents complain that they are not sufficiently informed.They note that they are informed only when the problem is escalated. It is also related to the problem of promptly identifying and taking the relevant preventive measures at schools. The teachers do not have sufficient knowledge on how to identify bullying, what measures to take and whom to address to eliminate the problem. If bullying is vividly expressed, the child is sent to the psychological assistance centre of the office of the resource officers. This procedure is voluntary and depends on the will of the child and his/her legal representative. In the process of case studying, several cases were revealed when the children refused to visit a psychologist. Therefore, they have not undergone the rehabilitation process of a bullying victim or of a juvenile committing bullying.

According to the information requested from the Ministry of Education and Science of Georgia,[1332] all candidates of becoming the resource offices, before the appointment, undergo the special training approved by the order N37/N of the Minister of Education and Science of Georgia dated 11/03/2013. 1156 resource officers of 419 schools have the opportunity to take two training courses per year. Nevertheless, it should be taken into consideration that not all public schools of Georgia have the resource officers, which complicates the identification of children victims of violence or the alleged perpetrators and the issue of taking relevant measures. This is especially problematic in the regions.

The Child's Rights Centre of the Public Defender's Office requested the statistical data on the number of fact of bullying revealed during the reporting period from the Ministry of Education and Science of Georgia. The Ministry could not provide the statistical data, which indicates that the cases of bullying are not identified and registered.

Protection of a child from the actions directed against the sexual freedom andautonomy– According to the results of the proceeding conducted at the Public Defender's Office in 2015, in terms of actions directed against the sexual freedom andautonomy, problems were revealed related to the active implementation of response system of the responsible individuals, timely and effective investigation, identification of the responsible persons, launching of the relevan criminal proceedings and problems of protection of the juvenile victims' procedural rights. In addition, psycho-social rehabilitation and educational integration of children victims of sexual abuse and the alleged perpetrator juveniles is not properly carried out. In a number of cases, the investigation process is delayed and there is a problem of identifying the accused/responsible individuals, which is proved by the rate of statistical data on sexual violence for 2014-2015. In particular, according to the information requested by the Office of the Public Defender of Georgia from the Ministry of Internal Affairs of Georgia (Correspondence of the Ministry of Internal Affairs of Georgia N2134/15), in 2014 (11 months), investigation on actions directed against sexual freedom and inviolability of juveniles was launched in 80 cases and criminal proceedings were conducted in only 38 cases. Additionally, according to the statistical data requested from the Chief Prosecutor's Office of Georgia (Correspondence of the Human Rights Protection Unit of the Chief Prosecutor's Office of Georgia N3183/15), in 2014, 48 juveniles were granted the status of victim of crime against the sexual freedom and autonomy. According to the data of January-February 2015, on the alleged actions against the sexual freedom and inviolability, with the qualification of Articles 137-141 of the Criminal Code of Georgia, criminal proceedings started in 7 cases and 6 juveniles were granted the victim status.

It is difficult the identification of the facts of sexual abuse against children, their exposure and timely response. In this process, professionals working with children, especially the teachers having daily contact with the juveniles, have an important role. It was revealed that in public schools and specialized institutions the timely implementation of the procedure of referral of the fact of sexual abuse against a child and its

1332 Correspondence N MES 6 16 00227432.

further supervision is problematic. In the case of need, it is also problematic to allocate a child in the service or services, which will contribute to his/her security and rehabilitation. In addition, exposure of the facts of violence is hindered by the unawareness of the signs of violence, also, by the weak coordination among the responsible State authorities regarding the child protection referral procedures.

The issue of providing adequate psychological service and rehabilitation to children victims of sexual abuse is also complicated. In a number of cases, a thorough analysis of the emotional state of the victim children is not conducted. There are cases when the primary assessment of psychological condition and the need of rehabilitation of the juvenile victim of violence is carried out not by the psychologist, but by the social worker. Such an example is the alleged perverted actions against the minor Q.U. (case N2317/15).[1333] It was also revealed that in a number of cases, the effective performance of duties by the responsible individuals involved in the investigation and sufficient communication with the relevant authorities for the exchange of information is problematic.

Right to be protected from violence in pre-school and secondary education institutions – The results of the proceedings in the Public Defender's Office of Georgia reveal that in 2015, the cases of violence, negligence and other forms of ill-treatment are still acute in the early, pre-school and secondary education institutions and needs timely and effective measures taken by the responsible State institutions and local self-governing bodies.

The mechanisms for the protection of children of early and pre-school education age from violence, exploitation and other forms of ill-treatment are foreseen by the 2015 draft law on Early and Pre-school Education. The document enshrines the definitions in the sphere of protection from violence on one hand and enforceable norms for the protection of children from violence on the other hand. The draft law includes the definition of violence.[1334] In addition, according to Article 6 para. 4, the pre-school educational institution is obliged to ensure the prevention of child abuse (including parental education and awareness), identification, assessment, notification and appropriate response, in accordance with the child protection (referral) procedures. The institution is also obliged to allocate a person responsible for the prevention and protection of children from violence in the institutions. The above regulations of the draft law respond to the Public Defender's recommendations of 2014[1335] in the field of protection of children of early and pre-school education age from violence. However, for their prompt and effective implementation, it is necessary to carry out the universal and timely training of the pre-school teachers in the field of child's behavioral problems, prevention of child abuse and referrals. In the early and pre-school education institutions, the problems of introducing the norms of protection from violence are revealed in the following directions: identification of children victims of violence, assessment, referral to the competent body, assistance of the psychologist. As for the protection of children from violence in the secondary education institutions, the following main factors are mentioned in the statements submitted to the Public Defender of Georgia: identification of cases of violence against pupils and implementation of the referral procedure, rehabilitation of children victims of violence. 30% of the complaints/applications received at the Public Defender's Office related to the protection of children from violence, negligence and other forms of ill-treatment at the pre-school and secondary education institutions revealed the cases of the alleged psychological abuses against the pupils at the public schools, 20% concerns the alleged facts of physical violence; 20% of the applicants point to the facts of neglecting children at the nursery schools and 30% indicate the use of physical abuse and corporal punishment. According to the information provided by the LEPL Office of Resource Officers of Educational Institutions,[1336] 55 children having suicidal

1333 Criminal proceedings on this case started under Article 141 of the Criminal Code of Georgia and responsible persons were revealed, however, the psychological condition of the victim child was assessed by the social worker and not by the psychologist. The social worker has unsuitably considered the further psychological rehabilitation. Correspondence of the LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of GeorgiaN04/18360, 16/03/2015 Internal N 3129/15).

1334 Article 3 para. "p" of the draft law.

1335 Parliamentary report of the Public Defender of Georgia for 2014, Rights of the Child.

1336 Correspondence of the LEPL Office of Resource Officers of Educational Institutions of the Minsitry of Education and Science of Georgia N MES 716 00089086, 03/02/2016.

thoughts/behavior were transferred to the above institutions from the public schools. As for the number of children transferred to the regional centers, in 2015, 722 cases were revealed in the centre of Tbilisi, 140 – in Batumi, 136 – in Kutaisi, 82 – in Poti, 63 – in Gori and 35 – in Telavi.[1337] 1070 resource officers of 400 public schools are trained in the field of child abuse. Nevertheless, the applications submitted to the Public Defender's Office demonstrate that the resource officers of public schools do not sufficiently identify the cases of violence and together with the representatives of the public schools, do not transfer the cases to the LEPL Social Service Agency and LEPL Psychological Centre of the Office of Resource Officers of Educational Institutions.

Legal Regulation – Article 17 of the Constitution of Georgia is in line with the international legal standards on the right of protection of a child from sexual abuse, exploitation and other forms of ill-treatment. It stems from the analyses of paras. 1 and 2 of the above Article that for the protection of human honor and dignity the State should prohibit torture and inhumane and degrading treatment and punishment. In 2014, Georgia joined the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse. This document entered into force for Georgia in 2015. It constitutes a significant instrument for the prevention and elimination of sexual abuse against children, however, for its implementation, all three branches of Government, in the framework of their competences, should ensure compliance with the obligations undertaken by the Convention. More relevant is Article 6 of the Convention, in accordance to which the States Parties should ensure that the children in primary and general education period have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility to protect themselves, in accordance with the level of their development. As an international legal standard, Article 3 of the European Convention on Human Rights declares the prohibition of torture and inhumane and degrading treatment or punishment. It follows from the analysis of the above article by the European Court of Human Rights that crime against the sexual freedom and inviolability, such as rape, should be cosnidered as torture.[1338] Article 3 of the Convention places excessive responsibility upon the State on level of all three branches to prevent and eliminate sexual abuse of children in the framework of positive and negative obligations and urges the States to ensure timely and effective implementation of the measures. Article 19 of the UN Convention on the Rights of the Child, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence, including sexual abuse. In addition, the UN Committee on the Rights of the Child in its Concluding Observations on Georgia dated 23 June 2008[1339] has underlined the obligation of Georgia to take all necessary measures in order to fight the violence against the juveniles, especially the domestic violence. According to the General Comment N13 "on the Right of the Child to Freedom from All Forms of Violence" of the UN Committee on the Rights of the Child,[1340] sexual abuse against a child includes The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity through physical as well as psychological coercion.[1341]According to Article 13 para "b" of the Decree N2315–II of the Parliament of Georgia dated 30 April 2014 "on Approving the National Strategy for Human Rights (2014-2020)", protection of children from any form of violence and timely and effective response to the facts of violence should be prioritized.

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

According to the results of examination carried out by the Office of the Public Defender of Georgia in 2015, children cannot enjoy sufficiently and effectively the right to be protected from poverty and inadequate living

1337 *Ibid.*

1338 *Audin v. Turkey*, 1997-VI, ECtHR.

1339 Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Georgia. http://www.refworld.org/type,CONCOBSERVATIONS,CRC,GEO,4885cfab0,0.html.

1340 General Comment N 13 (2011), The right of the child to freedom from all forms of violence, Committee on the Rights of the Child, 2011.

1341 *Ibid,* para. 25.

conditions. Significant number of juveniles lives in the conditions of relative poverty and inadequate social environment.

The analysis of the applications and complaints received at the Office of the Public Defender of Georgia revealed the issues of timely provision of adequate housing and State and municipal assistances. Several cases demonstrated the problems of ensuring children with relevant nutrition, living conditions and adequate educational inventory.

In the applications submitted to the Public Defender the citizens mainly note that the process of inclusion in the targeted social assistance is delayed. Noteworthy is the sub-programme on Emergency State Assistance to Families with Children in Crisis, where 60% of the population in the proceedings has not received written information on agreement or rejection about the inclusion in the sub-programme.

55% of the cases on child poverty studied by the Child's Rights Centre of the Public Defender's Office revealed the restrictions on enjoying adequate living conditions and 45% - the problems related to the provision of food, medicines and educational inventory. It should also be noted that in 55% of the studied cases the population did not have sufficient information on the acting State and Local Self-Government Social Assistance sub-programmes.

According to the date of the LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia, 34 002 juveniles were the beneficiaries of the social package by December 2015.[1342] In addition, by December 2015, 75 806 beneficiries from 0 to 6 years old and 225 131 beneficiries from 6 to 18 years of age were involved in the targeted social assistance sub-programmes .[1343] By December 2015, 466 juveniles were involved in the early development sub-programme,[1344] 944 juveniles enjoyed the nutrition voucher.[1345]

Legal Regulation – Right to protection of juveniles from poverty and inadequate living conditions is stipulated in Article 36 para. 2 of the Constitution of Georgia, according to which, the State shall promote the prosperity of the family. According to Article 27 para. 1 of the UN Convention on the Rights of the Child, States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. According to the para. 3 of the same Article, States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. Article 17 of the European Social Charter enshrines that with a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures.

According to Article 10 para. 1 of the International Covenant on Economic, Social and Cultural Rights, the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental

1342 http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=883.

1343 In 2015, the rate of involvement of beneficiaries in the targeted social assistance sub-programme was following: January – from 0 to 6 years old 84 206 children and 236 922 from 6 to 18 years; February – from 0 to 6 years old 82 926 children and from 6 to 18 years 236 721 beneficiaries; March – from 0 to 6 years old 82 490 beneficiaries and from 6 to 18 years old 236 617 children; April – 82 249 beneficiaries from 0 to 6 years old and 236 676 children from 6 to 18 years; May – from 0 to 6 years – 82 023 and from 6 to 18 years – 236 902 beneficiaries; June - from 0 to 6 years – 80 400 and from 6 to 18 years – 235 631 beneficiaries; July - from 0 to 6 years – 79 194 and from 6 to 18 years – 234 909 beneficiaries; August - from 0 to 6 years – 78 250 and from 6 to 18 years – 234 577 beneficiaries; September - from 0 to 6 years – 77 210 and from 6 to 18 years – 232 984 beneficiaries; October - from 0 to 6 years – 76 568 and from 6 to 18 years – 231 969 beneficiaries; November - from 0 to 6 years – 75 977 and from 6 to 18 years – 229 009 beneficiaries; December - from 0 to 6 years old 75 806 and from 6 to 18 years 226 131 beneficiaries. http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=767.

1344 In 2015, the rate of involvement of beneficiaries in the early development sub-programme was following: January – 394; February –452; March –448; April - 456; May – 398; June -443; July -465; August -325; September -466; October -471; November -477; December -466.

1345 In 2015, the rate of involvement of beneficiaries in the nutrition voucher sub-programme was following: January – 855; February –975; March –978; April - 986; May – 993; June -979; July -988; August -999; September -996; October - 947; November -937; December - 944.

group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. Article 11 of the same Covenant stipulates that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

CHILDREN LIVING AND WORKING IN THE STREET

Legislative changes improving protection for the children living in the streets should be considered as a positive development during the reporting period. It is particularly important to define the concept of homeless children and documentation settlement issues for them. For the protection of the child from violence, a social worker has been granted the right to make a decision, in cases of any form of violence against children, on the separation of minor from the abuser. Along with the legislative changes it is important to define execution mechanism and upgrade capacity of its enforcement agencies, especially qualification of social workers.

As results of the Public Defender's Office proceedings revealed that there still remain a problem of state protection from abuse and neglecting of the street children. Providing the realization of the right to education and health care is a challenging issue for them, as well as identification and settlement of the personal documentation for the children living and working in the streets.

During the reporting period, the Public Defender addressed with the recommendation to the Ministry of Internal Affairs on the necessary measures of the protection of children living and working in streets. The recommendation states that the Ministry of Internal Affairs, in certain cases, is not cooperating with the mobile groups providing the shelter to the homeless children. The referral procedures are especially problematic that making it difficult work and allocation to the necessary services for children living/ working in the street.

According to information provided by the Social Service Agency,[1346] during 2015, in the framework of the homeless children's shelter sub-program, the Ministry of Interior was referred11 times. It is noteworthy that out of this number - 4 of them was on child abuse fact, of which only 2 cases was responded. From appealed 2 cases of alleged prostitution involvement one of them was responded. On the cases of begging and neglecting was referenced - 4 notifications, of which only one case was responded. According to information provided, there was no reaction to the one notification of the alleged trafficking fact. Considering the scale of the problem, the figure is low, that indicates the lack of coordination between the agencies, the ineffectiveness of the referral procedures and low awareness of the issue from the responsible authorities.

According the information received from the Central Criminal Police Department of Ministry of Internal Affairs,[1347] in 2015, two cases of labor exploitation was revealed and an investigation of one criminal case was launched on the fact of trafficking of minors. The same letter stated that for to fight against trafficking, in trafficking and combating illegal immigration department in Organized Crime Division of the Central Criminal Police Department was created and is functioning four mobile inspection groups, which is composed of law enforcement bodies. Due to the fact that the children living and working in street are vulnerable and there is high risk of addressing organized crime toward them, it is important to strengthen the co-operation between the children's shelter mobile groups and the above-mentioned supervising mobile groups for timely detection and investigation of the alleged crimes.

1346 Correspondence N04/12372.
1347 Correspondence MIA 2 16 00398721.

It is important to constantly improve capacity of the representatives of the bodies responsible for the protection of children living and working in the streets. According to the information provided by the Ministry of Internal Affairs of Georgia, [1348] in 2015, only 20 employees of the Police Department of Ministry of Interior Affairs was trained on the topic of the identification of crimes/ violence committed against homeless children. 12 Investigative Services'representatives of Ministry of Interior Affairs and 8 employees of the Prosecutor's Office have been trained in the techniques of investigation of the crimes committed against homeless children. These data once again underlines the fact that proper awareness and raising of the qualification of responsible agencies, especially police officer's, is much necessary.

According to the information received from the Social Service Agency, 634 children working and living in the streets have been contacted. The majority of the children do not have an identity document.

In 2015, 158 children have used services of the day care center, 60 children were provided with the services of the crisis intervention shelter , while 23 children benefited from the transit service. In 2015, 10 children were placed in foster care, 6 children allocated in reintegration services, 9 children were placed in small family type homes, 32 beneficiaries were involved in formal education. In order to strengthen the family, the program diverted 80 cases. Documentation was settled for 40 beneficiaries and / or a family member, 13 children were redirected in other relevant organizations. In 2015, the notifications concerning 270 homeless children were carried out. The mobile group responded to 210 cases. In 2015, 15 children were taken to the crisis intervention shelter the police crews, 1 child was taken to a transit shelter, 1 – to the shelter of mothers and children, 1 – to the foster family, 1 – to the Children's Home, 1 - in the police department; During this period, the 27 protocols has been drawn up. Approximately 60 posts were revealed throughout the capital by "112" hot line, including one case that was revealed by the agency.

SUBPROGRAM OF PROVISION OF MOTHERS AND CHILDREN WITH SHELTER

Article 36 of the Constitution states that "The State shall promote the welfare of the family, women's and children's rights are protected by law." The stated provision establishes the state's positive obligation to provide minimum conditions for a decent life for the minors that serves their best interests. The child's rights are protected by national legislation, as well as by the international legal acts. According the Article 27, paragraph first of Convention on the Rights of the Child "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." Paragraph 3 of the same article states that "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

State program in 2015 considers the social rehabilitation and child care issues, one of the sub programs is - "Provision of Mothers and Children with Shelter", that aims at the prevention of infant abandonment and the child's biological family strengthening. The program activities include provision of beneficiaries with shelter, food and safe environment for 24 hours, in addition, the promotion of education, medical, psychological services and provision of other practical needs. In the framework of the sub-program operates two shelters all over the country, in Tbilisi and Kutaisi. The shelters are receiving mothers with a minor child younger than 10 years old.

Children's Rights Center of the Public Defender's Office carries out monitoring of the shelters of mothers and children ("Association of SOS Children's Villages ",Tbilisi, Vera, IV m / d, Herman Gmainer str. N1; (

1348 Correspondence N 618946.

"Association of SOS Children's Villages in Georgia ", Kutaisi, Youth turn N3). The monitoring and record keeping results show that the rights of minors in the shelters are not adequately protected.

According the statistical information requested by Children's Rights Centre of the Public Defender's Office from the Social Service Agency of the Ministry of Labour, Health and Social Affairs (correspondence N04 / 19904; 14.03.2016), in 2015, in Kutaisi, 34 beneficiaries benefited from the services of the shelter of mothers and children (16 mothers, including two juvenile mothers and 18 children). 9 mothers and 11 children have left the shelter in the same year. In 2015, 7 mothers have participated in the professional training course, 5 of them have already left the shelter. 3 beneficiaries have been employed. During 2015 different types of training were conducted for beneficiaries. Social Service Agency has been referred in one case of child abuse; as a result the minor is involved in the state care program.

In 2015, in total 121 beneficiaries use services of two mothers and children shelters (53 mothers and 68 children). 31mothers and 45 children have left the shelters. In 2015, 7 beneficiaries were involved in educational courses, 5 of them have already left the shelter. 3 mothers have been employed. During the same year, the social service agency referred 6 cases of child abuse, 3 children were placed in alternative care. The aim of the sub-program on the Provision of mothers and children with shelter is to strengthen the family and to prevent the child abandonment. The abovementioned statistics and the analysis of the current case in the Children's Rights Centre of the Public Defender's Office shows that vocational education is not properly promoted. Vocational trainings are promoting the mothers' employment and it is the prerequisite of creation decent living environment for minors. According to statistics, in 2015, both in Kutaisi and in Tbilisi out of 69 beneficiary mothers 14 were involved in the vocational training and only 6 of them were employed. This shows that even after a year, mothers still are not ready for independent life and still are facing the same problems that they had before living in the shelter. In many cases they do not have possibility to provide housing for themselves and their children.

It should be noted that often conflicts occur between the mother in the shelter, there was a physical confrontation cases as well that threaten the health and safety of minors. One of the beneficiaries of the shelter notified the Children's Rights Centre of the Public Defender's Office about the physical confrontation between the two mothers, as a result, one of them was taken to the hospital and the other was taken to the police department. The case is in the process of studding. If the Conflict situation occurs, the beneficiaries often are calling to the police. This condition hinders the creation of an appropriate environment for the juvenile development and has a negative impact on children's psychological development.

Keeping order and discipline is an issue in the shelter. In Tbilisi and in Kutaisi a psychologist is working with mother in the shelters, however conflict prevention still cannot be provided. The mentioned issue is especially vivid in a Tbilisi shelter. Cases of unknown persons entering the shelter with the mothers have been recorded, that identifies the shortcomings of the protection system.

According to information received from the beneficiaries of the shelter, the several mothers are not following the rules of the hygiene during food preparation process that adversely affects the health of minors.

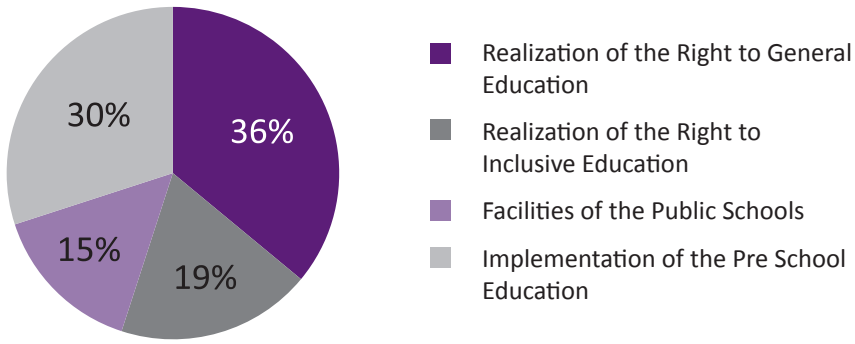
In often cases the mothers living in shelters are lacking of child care skills. Accordingly, they are unable to take proper care of their children. The number of nurses working in shelters is insufficient. Special attention should be paid to the mental health of the mothers. Implemented monitoring results revealed cases of the beneficiary's enrollment in the shelter that has mental problems; the mentioned facts were not prevented by demanding the health report. Thus, the safety of minors living in the shelter was threatened.

It is also important to pay special attention to the enrollment of the mothers under 16 years of age in a shelter. The monitoring revealed that the enrollment cases of the mothers under 16-year-old were not reported to the law enforcement agencies.

REALIZATION OF THE RIGHT TO EDUCATION

Realization of the Right to Education in terms of the implementation of the rights of the child was one of the main challenges during the reporting period. According the the analysis of the proceedings, there are several problematic areas in this field: the right to access to the general education, creation of the safe and adequate physical infrastructure in the educational institutions, environment, the introduction and overall implementation of the inclusive education, the implementation of pre-school education.

Table N7 - the main problematic areas in terms of implementation of the right to education:



Exercising the right togeneral education - During the reporting period, the after conducting the case study the shortcoming of the realization of the right to general education was revealed in several dimensions: inadequate physical - infrastructural environment of the public schools, the implementation of quality general education, introduction and implementation of the inclusive education.

Exercising the inclusive education – According the data provided by the Ministry of Education and Science of Georgia[1349] in January 2016, the numbers of the pupils with special educational needs in Tbilisi and in the regions of Georgia in 2013 were as follows: Tbilisi - 1 347, Imereti – 438, Kakheti- 180, Kvemo Kartli - 280, Samegrelo-Zemo Svaneti - 154, Adjara - 266, Guria - 240, Shida Kartli - 207, Samtskhe-Javakheti - 126, Mtskheta-Mtianeti - 93, Racha - 31, Abkhazia - 3 (in total 3 365 pupils). In 2014: Tbilisi - 1 089, Imereti – 508, Kaheti - 373, Kvemo Kartli - 350, Samegrelo-Zemo Svaneti - 284, Adjara- 365, Guria - 319, Shida Kartli - 285, Samtskhe-Javakheti - 140, Mtskheta-Mtianeti - 131, Racha - 40, Abkhazia - 13 pupils (in total 3 897 pupils). In 2015: Tbilisi - 1 453, Imereti – 643, Kakheti - 581, Kvemo Kartli - 484, Samegrelo-Zemo Svaneti - 438, Adjara- 441, Guria - 390, Shida Kartli - 388, Samtskhe-Javakheti - 210, Mtskheta-Mtianeti - 172, Racha - 50, Abkhazia - 17 (in total 5 267 pupils).

According to the data provided, during the years 2013-2015, the number of pupils with special educational needs are increasing, which obviously indicates a positive trend and indicates success dynamics of the inclusive education program. Nevertheless, according the Public Defender's cases study and monitoring results, the introduction and the implementation process of the inclusive education includes shortcomings in the numbers of regions.

Effective introduction and implementation of the inclusive education is a challenging matter. Among them is the need for teachers' capacity building, including the recruiting the qualified personnel and providing them with continuing professional development. During the reporting period, Children's Rights Center of the Public Defender's Office appraised ongoing proceedings that evaluated the number of the juveniles with special needs, however their involvement in the inclusive education program in a number of villages in the high mountain regions was not possible due to the lack of the specially trained teachers. For instance, in Mestia municipality in village Becho public school the involvement process in the inclusive education program for the pupil with special needs and recruitment of the teacher with special education prolonged for a years and a half.[1350]

1349 Correspondence N MES 4 16 00218692 of the Ministry of Education and Science of Georgia.
1350 Case N 12419/1.

According the data of the Ministry of Education and Science of Georgia,[1351] the numbers of the specially educated teachers in Tbilisi and in the regions of Georgia, in January 2016, were as follows: Tbilisi - 258, Imereti – 233, Kakheti - 155, Kvemo Kartli - 88, Samegrelo-Zemo Svaneti - 151, Adjara - 153, Guria - 100, Shida Kartli - 106, Samtskhe-Javakheti - 73, Mtskheta-Mtianeti - 40, Racha - 24 (in total 1 381 teachers). As it turns out, these numbers of special teachers is not enough for full involvement of the pupils with special needs in inclusive education program.

Physical environment and infrastructure of the educational institutions; Abkhazian Public Schools - the case analysis during the reporting period shows that a number of schools are functioning under the deprived physical infrastructure and hygienic conditions. The situation in the public schools in Abkhazia should be particularly taken into consideration. Number of mentioned educational institutions is fifteen, two of them - N13 and N16 schools, are situated in the occupied territory of Abkhazia. [1352] During the reporting period, studying the physical and infrastructural environment of Abkhazian agency owned N2, N3 (Tbilisi) and N22 (Likani) schools showed that the students of the general education institution are getting education in the improper conditions.[1353] The small space was transferred from the Borjomi municipality Likani settlement kindergarten to the N22 school, while an IDP housing located in the school N2 as well as in public school N3, that significantly interferes with the to the right to the quality education. After the appraising the physical and infrastructural environment of Abkhazian agency's N3 public school revealed that students and IDP families have a common entrance in the building.

Mentioned three general education institution buildings need major rehabilitation work, repairing the restrooms. It is noteworthy that the major part of the funds of the Ministry of Education and Science is allocated for the remunerations, while meager funds are allocated for the repairing and heating (approximately 7-8% of the total budget).[1354]

The main issue of the general educational institutions N3 and N 22 is functioning of the mixed age classes, so-called mixed classes[1355] that hinders the effective implementation of the primary education.

It should be noted that despite the notification made by the Public Defender of Georgia, the rehabilitation of mentioned school buildings have not been included in the 2015 action plan of the Educational and Scientific Infrastructure Development Agency.[1356]

The right to access to the pre-school education - within the reporting period on the basis of the proceedings, shortcomings of the realization of the right to access to the pre-school education at municipal level revealed.

According the data requested from Tbilisi Kindergarten Management Agency, [1357] in December 31 2015, 55 605 children were registered at kindergartens in Tbilisi, meanwhile 6 500 children were not involved in the education process due lack of available places in nursery schools.

In some kindergartens age groups of children almost twice exceed the permissible maximum numbers.[1358] According the data of Tbilisi Kindergarten Management Agency, in order to prevent overcrowding, construction of 4 pre-school educational institution buildings are finalized, in addition, the appropriate age groups were added to the existing kindergartens.[1359]

Case analysis revealed that the right to access to the pre-school education is problematic in Akhalkalaki and Marneuli municipalities. A number of nursery schools are functioning in deprived physical and infrastructural

1351 Correspondence N MES 4 16 00218692of the Ministry of Education and Science of Georgia.
1352 http://meca.gov.ge/itst/index.php?module=Content-House&action=view&id=1393&lang=geo.
1353 Case N 2261/15, N 5404/15 and N 5967/15.
1354 Case N 5404/15.
1355 At N3 public school mixed classes exists I I – III and II – IV forms, and at N 22 school – I-II and III – IV form pupils.
1356 Corespodence N MES 51501114300.
1357 Corespondence N 2266/16.
1358 For example, cases of children's nursery „Khutkunchula", case N 11024/15.
1359 Corespondence N 1/2121.

environment, [1360] and in some villages, kindergartens are not established at all, regardless the number of population and their requests.[1361] According the information requested from the municipality of Akhalkalaki, out from 65 villages of municipality pre-school educational institution is functioning in only eight of them - six of them are pre-school nursery-educational centers, and two - Kindergarten.[1362] It should be noted that the problem of access to the pre-school education is revealed in other municipalities and villages as well.[1363]

Legislative regulation - According to article 35 of the Constitution of Georgia, the state should support the operation of educational institutions and provides pre-school education in accordance with relevant laws. Article 3 of the Law of Georgia "on General Education" maintains that the state should ensure openness and equal accessibility to general education system for all. The same provision, Georgia provides the implementation of the inclusive education throughout the country.

According the Article 28 of the UN Convention on Convention on the Rights of the Child, the Contracting States, within its jurisdiction, make primary and secondary education compulsory and available free to all. According the first paragraph of the article 2 of the same document and Article 4, the Contracting Parties shall ensure full implementation of the rights of children in educational institutions. Universality of the right to education is constituted in Article 13 of the International Covenant on Economic, Social and Cultural Rights as well.

The observations of the Committee on the Rights of the Child (CRC), dated June 23, 2008, emphasizes the obligation of the state to allocate additional funds to ensure that everybody's right to education is realized. [1364] In addition, the state should focus on an overall improvement of the quality of education provided, particularly in rural regions.[1365] Committee pointed out that the quality of education should be improved through bettering material provisions of schools.[1366] As for the implementation of the right to pre-school education, the Committee noted that Georgia should take the necessary measures to improve protection of rights of minors in the pre-school institutions.[1367]

RECOMMENDATIONS

To the Government of Georgia:

- To strengthen state politics in the areas of reintegrated children's biological families' socio-economic needs improvement, prevent allocation of the children in the state care facilities.
- To reflect special strengthening subprograms for reintegrated families in social rehabilitation and child care state program.
- In order to reduce infant mortality, it is recommended:
  - A) To develop a strategy and action plan
  - B) To implement qualification raising actions for the relevant medical personnel and introduce the continuing education system; To develop a capacity building training program for regional medical staff; To facilitate introduction of midwifery care system and its universal implementation;
  - C) To facilitate children's access to medical facilities and its high-quality operation, to equip certain medical profile institutions with the infrastructure and medical equipment;

1360 For example , village Azhavreti.
1361 For example , villages: Varevani, Azizkendi, Tazakendi.
1362 Corespondence N 1440/13.
1363 For example , village Velevi of the Ambrolauri minucipality , village Becho of Mestia municipality, village Didi Aragiali of Ninotsminda municipality, village Kulashi of Samtredia municipality, village Dirbi of Kareli municipality, village Tchiauri of Lagodekhi municipality.
1364 Concluding observations of the Committee on the Rights of the Child (CRC): in 2008, Georgia, paragraph 57(a).
1365 ibid , paragraph.57(b).
1366 ibid , paragraph 57(c).
1367 ibid , paragraph 57(e).

D) To add the appropriately equipped helicopter to an ambulance, in order to timely transport the patients from high mountain regions and remote areas; To establish a universal regulation for the private and public medical transport vehicles in connection with its application;

E) To reduce infant mortality, establish and actively implement electronic universal base that stores and accumulates the patient's medical history.

- To Increase public awareness of the rights of infant health protection mechanisms and maternal and child health services.
- Special attention should be paid to the study of the causes of suicide in children, to take preventive measures to eliminate the mentioned issue, to take into consideration the best practices of foreign countries.
- To take maximally effective measures to eliminate all forms of violence against children, as one of the determining factors of suicide in children.
- To prevention children smuggling, the work with other states on bilateral and multilateral agreements should be strengthened, in order regulation of important issues such as the discovering and studding the circumstances of child abduction, operative return of children, implementation of administrative and court procedures and exchange of the relevant information.
- To fully reflected the principles of the 1980 Hague Convention - "Convention on the Civil Aspects of International Child Abduction" in the Georgian normative base.
- To create an action plan with the involvement of all responsible ministries, to ensure practical implementation of domestic and international law in the field of protection of children from sexual abuse.
- To accumulate Action Plan on the government level, considering the importance and complexity of the case, to define sexual violence elimination / prevention actions and specific tools of the implementation.
- To include sub-programs for the implementation the Council of Europe Convention on "the Protection of Children against Sexual Exploitation and Sexual Abuse" and provide mentioned document's principles systematic enactment; To provide trainings for professionals, to ensure timely and effective investigation / criminal prosecution on child sexual abuse cases.
- To formulate a particular system that will ensure effective implementation of reintegration in educational process and psychological reintegration for the sexual abuse affected beneficiaries within the framework of Action Plan.
- To identify and implement the specific needs of children living in relative poverty, the children's social and economic needs should be reflected in the current state sub-programs, special attention should be paid to the basic needs of children living in rural and high mountain regions.
- To create the appropriate conditions for general educational institutions' special education teachers in the high mountain regions, in order to involve juveniles of special needs in the inclusive education program.

To the Ministry of Labour, Health and Social Affairs:

- To ensure involvement of the care agency during the children's enrolment process in the children's boarding schools under the control of Georgian Orthodox Church and Muslim confessions
- To ensure the introduction of principles of the UN Convention on Child Rights and state child care standards in the children's boarding schools under the control of Georgian Orthodox Church and Muslim confessions

- To add a psychologist position for child victim of violence needs assessment and psycho-emotional rehabilitation in Social Service Agency's regional centres
- To Ensure systematic and regular training of foster families in the field of children's rights and needs
- To conduct active monitoring of foster families in the areas of children's access to health, education and protection from ill-treatment
- To pay special attention to the matter of implementation of sub-program on strengthening of the foster families and children involved in the kinship foster care, the implementation of the special state sub-programs and services should be initiated
- To raise awareness of the families involved in the sub-program of reintegration on children's rights, in particular, in terms of prevention of violence, exploitation and other forms of ill-treatment, as well as in the field of complex behaviour and children's individual needs
- To promote social empowerment of the families living the relative poverty that are involved in the reintegration subprogram; Special attention should paid to families living in the rural areas and the high mountain regions
- To carried out active identification and psycho-social rehabilitation of the children who are victims of violence
- To ensure systematic referral to the agencies which are responsible elimination of child violence to strengthen social services with human and technical resources, including vehicles; to improve the employment environment for the social workers, as far as it is possible, to prevent the brain drain of qualified personnel from the service. To create conditions to increase the number of social workers
- To strengthen Social Service with Human Resources, including with the means of transportation; Improve Social workers' working environment; As far as possible, prevent the outflow of qualified personnel from the service. Create conditions to increase the number of social workers

To the Social Service Agency of the Ministry of Labour, Health and Social Affairs

- To ensure rating of children's living in the boarding schools under the control of Georgian Orthodox Church and Muslim confessions and their families by social workers, which will promote the identification of alternative forms of caregiving.
- To implement multi-disciplinary appraisal of beneficiaries in the children's boarding schools under the control of Georgian Orthodox Church and Muslim confessions and to create the plan according to their individual needs
- To ensure the protection of the child's best interests during the court's decision-making process by the Social Service Agency representatives, including ensuring that the minor states his/her own opinion during the process
- To ensure identification and response required by law of the cases of a physical / psychological abuse of juvenile by the family members during the court proceedings
- To ensure actively participation of the social worker, in case of necessity, delivery of psychological service for the juvenile to maximize the protection of the interests of minors in the process of execution of court decisions
- To raise qualification of social workers and provide information on the matter on the necessary measures for the protection of children living and working in the street
- To strengthen the child protection procedures, work in coordination with the Ministry of Internal Affairs

- To protect the safety of minors, special attention should be paid to the conflict prevention of mothers in the shelter for mothers and children
- To ensure development of mothers' parenting skills in the shelters for mothers and children
- To increase the number of babysitting staff in the shelters for mothers and children
- To ensure mother's participation in professional courses and to enhance their career development in the framework of the sub-program on providing the shelters for mothers and children

To the TV, printed and electronic media outlets in Georgia:

- To ensure covering children's issues in accordance with ethical and legal standards; In this regard, special attention should be paid to the coverage of the issues of violence and suicide-prone of children

To the Ministry of Internal Affairs:

- To carry out a fast, effective and transparent investigation on teenage suicide cases
- To ensure coordinated work on the issues of the children living / working in the streets in accordance child protection procedures stated in the order, [1368] along with the other responsible agencies, including timely identification of the cases of the children living / working in the streets and their involvement in the relevant service in cooperation with the Social Service Agency. To Adopt concrete actions to increase the awareness on necessary measures for the protection of children living and working in the streets for police officers working on the street
- To take adequate preventive measures regarding the persuasion of begging of the children living / working in the streets or on the alleged facts of minor's involvement in a trafficking cases
- To ensure timely and effective investigation / prosecution and revealing the persons responsible in the alleged illegal treatment against the children living / working in the streets
- To ensure timely and adequate investigation of child abuse cases, including sexual abuse

To the Ministry of Education and Science:

- To implement systematic training , not only for the resource officers of educational institutions, but also for all the teachers and school principals of the regional educational institutions on bullying incidents identification, prevention and child protection (referral) procedures
- To formulate and actively implement educational programs on the issue of bullying for to raise an awareness of the juveniles
- To develop a common action plan for teachers and the recourse officers of educational institutions to tackle the bullying issue. Bullying identification, prevention and follow up actions should be clarified in the manual
- To record the cases of bullying identified in educational institutions. Relevant statistical data should be accumulated
- Systematic training of teachers on issues of violence against children should be carried out
- Information on child abuse cases should be actively provided to the Social Service Agency and to the Police of the Ministry of Internal Affairs
- To strengthen the Office of Resource Officers of Educational Institutions psychological services center in Tbilisi and the regions, to identify the needs of children with complex behavioral and for the large-scale implementation of the psychological rehabilitation of children.

1368 Ministry of Labour, Health and Social Affairs, Ministry of Internal Affairs and the Minister of Education and Science of the joint order N152/ნ-N496-N45/N

RIGHT OF THE CHILD IN SMALL FAMILY TYPE HOUSES

INTRODUCTION

During the reporting period, the Special Preventive Group members together with Child's Rights Centre of the Public Defender under the scope of National Preventive Mechanism carried out the monitoring of following 10 children's small family type houses situated in eastern Georgia: 1. Charity Humanitarian Centre "Abkhazia" (Telavi, Village Kurdgelauri), 2. "Telavi Education Development and Employment Center" (Akhmeta,Vazha-Pshavela turn N1), 3. Charity Foundation "Breath Georgia" (Telavi, Gr. Orbeliani. N6), 4. NELP "Divine Child Foundation of Georgia" (Village Gldani), 5. "Association of SOS Children's Villages " House N8 ,(Tbilisi, Vera, IV m / d, Herman Gmainer str. N1), 6." Cheerful Family ", NELP "Child and Environment" (Rustavi, Baratashvili N19), 7. Charity Foundation "Caritas " (Gardabani region, Village Martkopi), 8. NELP "Child and Environment" (Gardabani region, Village Norio), 9. Charity Foundation "Breath Georgia" (Dusheti, Shamanauri st. N94), 10. Society "Biliki" (Khashuri, Shola street N1).

The monitoring studies the situation in small family type houses and its compliance with the requirements enshrined in the national standards. Herewith, assed if the 2014 recommendations issued as a result of monitoring small family type houses were taken into consideration.

Alike the result of the monitoring in small family type houses, in 2014, the problem of juvenile education and the right to health remains, as well as their preparation for independent living. Herewith, child abuse and rehabilitation of child victims of violence is a problematic matter, as well as their provision with psychological / psychiatric services. The psychological and physical cases of bullying among children were distinguished at schools and at small family type homes.

There is a permanent change of the forms of education, which negatively effects on a child's mental health, makes it difficult to adapt to the changed environment and provokes emotional and behavioral disorders.

Information on Services (Standard N1) - Article 1 of the child care standards defines the list of the documents, which should be produced by the service provider and should make them accessible for interested parties. [1369]

During the monitoring implementation all the small family type houses presented detailed information sheet and childcare licenses. As a result of the research, revealed that Khashuri house was also serves disabled children, but this was not mentioned in the information sheet. Educational program has been developed and presented in all the houses. It should be noted that according the Monitoring Group assessment, the mentioned document was very in detailed and only a few of them included all components defined by the

1369 Resolution 66 of the Government of Georgia, January 15, 2014, Technical Regulation – about adopting of the Child Care Standards.

law. [1370] the childcare license and educational program was not presented only by the Dusheti House. [1371] In all houses the schedules are posted in a prominent places, however in some cases it is only formally developed and defined activities are not fulfilled. [1372]

During monitoring process, the service providers presented internal regulations, however it should be noted that in some cases the document did not include all components of the child care standards. [1373] In 2014, the results of the monitoring revealed the cases of providing incomplete internal regulations, including Gldani small family type house.

According to the child care standards all small family type house should maintain records of the person's placement in a special institution or withdrawal from there, which was submitted by all small family type houses, except Telavi house, [1374] where the information was incompletely recorded on the paper. It became clear that in some cases the mentioned recording in this institutions are produced inconsistently to the standards and the information is not fully reflected. In certain cases, information about the person who took of the child is obscure; the data about the beneficiary is incomplete. [1375] Monitoring results showed that a temporary withdrawal of the beneficiary person is not recorded according the standards. Information is not a fully reflection in the recording form, [1376] as well as the case outlining that despite the withdrawal of the child the case was not recorded in the journal. [1377] The duration of child withdrawal is not recorded in the majority of the houses. The record keeping practices' related problems were identified in the 2014 monitoring period by the Special Preventive Group, including in the small family type house of Gldani. This issue still remains in this particular house, regardless the change of the provider organization.

The personal files of the employees, including documents proofing the qualification and employment agreements according to the Georgian legislation, the mentioned filed were provided by all of the small family type houses, except the house in Telavi.

During the monitoring period in 2014, the recording of the measures carried out in response to the expression of opinion was available only in a few houses that were recorded incompletely. This is still a problem. Recording of the measures taken in response of opinion expression has a formal character. The mentioned document is not kept in a number of houses, [1378] and in some cases it is available without any footage in it. [1379] Record keeping of opinion expression is not being kept in the houses of Norio and Rustavi.

Small family type houses are keeping the journal of the facts of the violence and accidents. Violence recording was not kept in Telavi small family type house, however the monitoring group revealed the existence of the violence cases by studding other documentations. All cases were not recorded in Khashuri house, a similar fact occurred in the same house regarding the keeping records of accidents. Herewith, certain information was recorded in the "SOS Children's Village" journal.

Small family type houses are keeping the personal data of each beneficiary, it revealed that in some cases personal files were not complete and it did not include all the required documents, alike the 2014 monitoring results. [1380]

1370 Charity Humanitarian Centre "Abkhazia" (Telavi, Village Kurdgelauri) and "Association of SOS Children's Villages " House N8 ,(Tbilisi, Vera, IV m / d, Herman Gmainer str. N1).
1371 Charity Foundation "Breath Georgia" ,Dusheti, Shamanauri st. N94
1372 NELP "Child and Environment", Rustavi, Baratashvili N19
1373 Charity Foundation "Breath Georgia" , Telavi, Gr. Orbeliani. N6;
1374 Charity Foundation "Breath Georgia" , Telavi, Gr. Orbeliani. N6;
1375 Charity Humanitarian Centre "Abkhazia" , village Kurdgelauri; "Telavi Education Development and Employment Center" (Akhmeta,Vazha-Pshavela turn N1); NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1376 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri. NELP "Divine Child Foundation of Georgia" , Tbilisi, Village Gldani; Society "Biliki" Khashuri, Shola street N1.
1377 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1; Charity Foundation "Caritas " Gardabani, Village Martkopi.
1378 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri; "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1; Charity Foundation "Breath Georgia" , Telavi, Gr. Orbeliani. N6.
1379 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1380 NELP "Divine Child Foundation of Georgia" , Tbilisi, Village Gldani; Charity Humanitarian Centre "Abkhazia" , village Kurdgelauri.

Inclusiveness of the Services (Standard N 2) - Child care standard N 2[1381] defines inclusiveness of the services, according to which the beneficiary enjoys the services that meet their individual needs and is in line with their capabilities. Beneficiaries have an equal opportunity to use the services. They have access to a variety of community services.

The monitoring results revealed that possibility of taking the age and interests of the beneficiaries of the small family-type houses into consideration, their involvement in various activities depends on the capacity and location of the organization.

It should be noted that the beneficiaries of Gldani family type house[1382] were not benefiting from additional activities for the time of the monitoring, according the leader, they are planning to engage the beneficiaries in different activities.

The case of Norio[1383] small family type house beneficiary has been revealed that of one of the children was spending whole days in the house hold. After joining the house, one of the child is not allowed to leave the house, in some occasions can go to the shop nearby, but only with other beneficiary. The child is taken to the districts' or school's cultural and other events only if other beneficiaries and stuff is going too. According to the leader of the house, this is the social worker's decision. The child does not attend school and has not graduated from 9 classes, accordingly cannot take professional education. The child wants to learn hairstyling. One of the beneficiaries of the house, who is taking football training in Tbilisi, the company "Natakhtari" stopped giving money to travel. He has some success in this area and if adoptive mother does not give travel funds, the child cannot go to the practice. The mentioned issue is not reflected in the documentations and nobody strives to solve it.

The Monitoring Group has learned that one of the beneficiaries[1384] left vocational school due the conflict with children. According to the words of the leaders and mentors[1385] there are cases when the children are ashamed that they are beneficiaries of these institutions. House staff said that in general, children have complexes, and therefore it difficult to socialize. Disabled children living in small family type houses are target of double stigmatization. [1386] There is no work done for to prevent / eliminate the issue.

The review of individual development plan of one of the beneficiary of Dusheti [1387] house states that according the characterization from the school the child has difficulty to learn foreign language and technical subjects. According to the House manager, the organization does not have the financial resources to eliminate this problem. The Plans do not reveal exact steps taken to solve the issue, about the results achieved. Municipal caregiver of Dusheti house does not know whether the beneficiary is involved in inclusive teaching and believes that this is "the discretion of the school."

Despite the rare exceptions, [1388] in small family type houses children's contact with the biological family without caveat. Children are visiting to their families, receiving guests, relatives, also communicating with them by phone and social networks. The frequency of contact is individual.

The phone is not available in some houses, [1389] but the teachers encourage beneficiaries to contact with their relatives and give them possibility to call from their own mobile phones.

1381 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66, Article 2 , standard N2.
1382 NELP "Divine Child Foundation of Georgia" , Tbilisi, Village Gldani.
1383 NELP "Child and Environment" Gardabani, Village Norio.
1384 NELP "Child and Environment" Rustavi, Baratashvili N19.
1385 NELP "Child and Environment" Rustavi, Baratashvili N19; NELP "Child and Environment" Gardabani, Village Norio.
1386 NELP "Child and Environment" Rustavi, Baratashvili N19; Charity Foundation "Caritas " Gardabani, Village Martkopi; Society "Biliki" Khashuri, Shola street N1.
1387 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1388 Charity Foundation "Caritas " Gardabani, Village Martkopi
1389 Society "Biliki" Khashuri; Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94; NELP "Child and Environment" Gardabani , Village Norio .

In Khashuri[1390] house the training and activities of the card is being produced, where is marked a variety of community involvement and other activities of the beneficiaries, such as excursions, hiking, planting trees, Santa Claus visit.

In addition, it was revealed that the beneficiaries with psychiatric diseases do not have opportunity to access the proper psycho-social rehabilitation services.

Protection of Confidentiality (Standard N3) - Article 3 of the "child care standards" determines the protection of privacy issues. The expected results are the protection of confidentiality of the personal information of the beneficiary.

The correspondence, conversations and personal meetings of beneficiaries in the small family type houses are more or less protected by confidentiality. According to the caregivers information, individual consultations with children are carried out in private rooms, in cases of small family type house of "SOS Children's Village"[1391] the study room is used as well.

Personal files of the beneficiaries are protected and kept out of reach (mainly, in the staff's room). Before the dissemination of information about the beneficiaries, the service provider shall notify the territorial social service center, which is known for teachers and leaders.

Protection of confidentiality is one of the provisions in the contract of Martkopi service provider, however the caregivers said that they are attending phone calls of the beneficiaries, [1392] and if the visitor has requested a separate meeting with the child, attending the visits in the kitchen or living room, which has no door.

As employees are clarifying, they know that they must abide confidentiality requirements, however found it hard to convey what kind of information is considered confidential and for whom this is available. [1393]

Individual Approach to Service Provision (Standard N4) - Article 4 of the Child Care Standards[1394] focuses on the individual approach of the services, which takes into account the child's individual skills and requirements. Services received by the beneficiary must be made-to-order to their unique needs, for this it is necessary, provided the activities based on the child's strengths, individual needs and resources.

The personal file of all beneficiaries is stored in all small family type houses. Several flaws were revealed after studding the cases. Individual service plans have been presented in Gldani, Telavi small family type houses. A number of houses could not present the new curriculum. [1395] Telavi small family type house presented the draft of the curriculum, according the caregivers' words; they do not have an experience of writing such kind of documents and must settle the issue with the manager. In some cases the individual service plans were presented with shortcomings. In particular: the information was not covering the matters of achieved results, the impeding factors of achieving the goal. The similar cases were reported in the plans presented in the past[1396] and a complete picture of the relationship between the child and child's family is not presented. [1397] Herewith, there is no complete information about the child's education, health and other issues. The individual development plans of the last services were not developed in small family type houses. [1398]

1390 Society "Biliki" Khashuri, Shola street N1.
1391 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1;
1392 All the beneficiaties of the home is disabled person.
1393 NELP "Divine Child Foundation of Georgia" , Tbilisi, Village Gldani; "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1. Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.
1394 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66.
1395 Charity Humanitarian Centre "Abkhazia" , village Kurdgelauri; NELP "Divine Child Foundation of Georgia" , Tbilisi, Village Gldani.
1396 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94. Charity Foundation "Caritas " Gardabani, Village Martkopi; NELP "Child and Environment" Rustavi, Baratashvili N19.
1397 Society "Biliki" Khashuri, Shola street N1.
1398 NELP "Child and Environment" Village Norio; Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.

Social workers have not provided some of the houses with renewed individual development plan / review. [1399]Monitoring results showed that in some cases social workers were sending the individual development plan by the delay, [1400]which would hinder the process of developing an individual care plan by caregivers. In certain cases, the caregivers elaborated the individual service plan before delivery of the delayed individual development plan. [1401] Herewith, revealed the cases when the social worker elaborated the individual development plan without consulting the caregivers and the beneficiary. As a result, the activities desired by the beneficiary, which was agreed with the caregiver, was not in accordance the actions listed in the plan. [1402]

In certain cases, there are no signatures of beneficiaries and caregivers in an individual development plan. [1403] The cases of incomplete filling out of the individual development plans revealed, for example, children's opinion on the activities implemented are not reflected in the plan. [1404] In some houses[1405] the beneficiaries are not familiar with their individual plans. In case of Rustavi house, the individual activities do not correspond to the truth and do not reflect the needs of the child. For example, one of the plan states that the beneficiaries have frequent contact with their parents, which was not confirmed by the caregiver. The mentioned house is providing incomplete individual, as well as service plans

According to the leader and the children, [1406] social workers involvement in the process of child care and supervision is deteriorated. Superficiality of the relationship between the Educators and social workers was pointed out in the monitoring group after they conducted the supervision in the houses in 2014. The reason named is a change of social workers. One of the house's caregiver asked the social worker to help in the facilitation of the child's meeting with the parent according the child's will, but without a result. There is no sufficient and adequate communication between the house and a social worker. Educators and leaders sometimes act arbitrary, while involvement of the legal representative is obligatory.

The monitoring group's observation on the small family type houses in 2014 showed that the individual development and individual service plans were formality and did not reflect the objectives of the planned activities, expected results in a detailed manner. Similar violations were reported as a result of the 2016 monitoring. The needs of the individual development and individual service development plans are not in accordance, the plans do not always provide individual demands and needs of the beneficiary. Educators and social workers do not / could not identify the needs of beneficiaries with disabilities, children with mental and complex behaviour issues.

Emotional and Social Development (Standard N5) - 5th standard determines that the environment of the service should promote beneficiaries' emotional and social development, it should prepare them for independent living and encourage their social integration and strengthen contact with family.

Some part of the beneficiaries, interviewed during the monitoring, is appraising the living conditions positively, mostly caregivers service was estimated as a helpful.

In all the small family type houses has established the so-called duty and sometimes the beneficiaries with a help of caregivers and mainly independently, clean their rooms and common use areas, garden, kitchen and toilets. Beneficiaries also are involved in the process of preparing the dinner.

1399 Charity Humanitarian Centre "Abkhazia" , village Kurdgelauri; "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1400 Society "Biliki" Khashuri, Shola street N1; NELP "Child and Environment" Village Norio.
1401 NELP "Child and Environment" Gardabani , Village Norio; Charity Foundation "Caritas " Gardabani, Village Martkopi.
1402 Society "Biliki" Khashuri, Shola street N1.
1403 NELP "Child and Environment" Gardabani , Village Norio; Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94, Charity Foundation "Caritas " Gardabani, Village Martkopi.
1404 Society "Biliki" Khashuri, Shola street N1..
1405 NELP "Child and Environment" (Rustavi, Baratashvili N19); NELP "Child and Environment" Gardabani , Village Norio.
1406 NELP "Child and Environment" (Rustavi, Baratashvili N19); Society "Biliki" Khashuri, Shola street N1.; Charity Foundation "Caritas " Gardabani, Village Martkopi; NELP "Child and Environment" Gardabani , Village Norio.

The walls of the small family type house mostly is full of posted rules of behaviour, a timetables, applications created by the children, the poster expressing their desires and interests, children's paintings, application signs of appreciation and congratulations dedicated to the caregivers. There is not enough necessary equipment to satisfy the interests of children's cognitive and intellectual development in the Akhmeta small family type house. According to the children, music player and TV that is allocated in informal meeting place is not working already for a long time in Telavi small family type house. The computer in one of the beneficiary's room was damaged long ago. There is no internet connection in the house.

It is noteworthy that situation in The Rustavi[1407] small family type house is in less favourable environment for the development of children's emotionally and intellectually. Wallpapers of the house is torn off; Inventory and furniture that are used by the beneficiaries is dirty and derelict, the number of books is meagre, part of the rooms are heated well, however in some parts there is no heating system at all.

The environment created in Norio[1408] small family type house cannot ensure the children's emotional and social development. An appropriate psychological service is not accessible for children with hard-traumatic stress, as well educational needs and social integration matters - one of the juvenile, who will soon become adult and should take off from state care, is not getting a professional education and is spending the whole days in the house hold.

The monitoring revealed that in the "SOS Children's Village" N8 house[1409] had an unpleasant smell. Household items and furniture, as well as personal items for children, entertainment tools were messy and disordered some of them were damaged. There was only one computer in the house, most of the children's personal tablets were damaged. The children wore according the season and age, but the clothes were jumbled.

During implementation of the monitoring only one beneficiary was allocated in the Dusheti small family type house. [1410] The environment in this house is risky for adolescent's psycho-emotional and social development, limited social relationships, emotionally draining situation (loneliness) in the house, coldness, lack of informal education, the absence of recreation and sport activities is a violation of right to have necessary environment for the physical and emotional development. There is a supposition that the beneficiary is living in the flat of the caretaker, not in the small family type house. An assumption is based on the following facts: there is unnatural coldness in the house and it felt that the heater did not go on for a long time. The furniture is broken, there are no books and personal belongings scattered on the table of the beneficiary' room, there is a water vessel that lies on dining table in the kitchen, which seems was not used for a long time. The caregiver and child is not confirming the above mentioned fact, however, the caregiver notes that she is taking the beneficiary to her flat in the evenings, because there is no heating or internet connection in the house, and to make sure that Nato is not bored. She takes her as a guest with her family while visiting someone or takes had on holidays to her summer-cottage.

Despite the exceptionally difficult contingent of the beneficiaries, compared to the previous years, the emotional and social environment at village Gldani small family type house[1411] is significantly improved. The interior of the house is clean and comfortable, the children are provided with clothing, food, age-appropriate accessories, durables, educational and entertainment items, as well as internet and telephone communications.

The reading literature and entertainment options are meagre at small family type houses and it does not always coincide the age of the beneficiary.

Mostly beneficiaries of the small family type houses are integrated in the community, in the school society. Beneficiaries are participating in a variety of entertaining and educational activities along with the classmates

1407 NELP "Child and Environment" (Rustavi, Baratashvili N19).
1408 NELP "Child and Environment" Gardabani , Village Norio.
1409 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1410 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1411 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).

and neighbours. The exception is the "SOS Children's Village" N8 house[1412] beneficiaries, who do not have classmate friends and sometimes have conflicting relationship with rural children.

Contacting with the biological family is without caveat in small family type houses. Despite the rare exceptions, children are visiting their biological families, receiving the guests, communicating with them by the phone and social network. Despite the fact that some of beneficiaries of the village of Gldani small family type house[1413] does not have determined "withdrawer person", it is distinguished that children insist to be taken independently to their biological family by the educators. Social Service Center worker, who is in charge of the small family type house, gives the verbal recommendations to house leader that in case of the request let children go to their biological families, because in case of banning previously mentioned right, they will still escape.

Nutrition (Standard N6) - Article 6 of the Child care standards[1414] defines obligations of the service providers in the process of providing the food to the beneficiaries. The children under state care must be provided with the nutrition according to their age.

During the monitoring revealed that a house ventilation system did not work in some of the homes[1415] and the kitchen window had no insect-proof net. [1416] Kitchen environment and cooking equipment needs to be renewed in some houses. [1417]

Refrigeration food storage rules were violated in most of the houses. Different types of product were placed together in the refrigerator freezer. [1418] The cutting boards and knives (bread, fish, meat, and dairy products) were not labeled. [1419] The bread products were kept in the open cupboard with the violation of the sanitary norms. [1420] Product standards incompatible storage cases were recorded in Telavi house. In particular, sugar, flour, beans, oil were kept in a damp room, where the water was placed in a plastic tank. Sugar and flour packages were placed on the cement floor.

Monitoring showed that perishable products were kept in the refrigerator, but was either expired or have not had relevant inscriptions. In some houses, there was no indication of a release date and expiry date on the food, which makes it impossible to control the validity. [1421] In the house of "SOS Children's Village" N8 house was kept the expired pork in the refrigerator, while in the village of Gldani small family type house was keeping - expired milky sausage.

In 2015, Special Report, on the monitoring of small family type houses, emphasizes that the nutrition menus were not in accordance the standards. It was monotonous, and the ratio was unbalanced. The mentioned problems were still recoded during the monitoring in 2016. Revealed that the standard nutrition menu is comprised inappropriately and as usual, dinner is prepared based on daily practice. [1422] The diversity of the food is an issue, herewith; the beneficiaries are getting same types of product for dinner and supper in Telavi small

1412 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1413 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1414 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66.
1415 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri; Charity Foundation "Caritas " Gardabani, Village Martkopi; NELP "Child and Environment" (Rustavi, Baratashvili N19).
1416 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri; Charity Foundation "Caritas " Gardabani, Village Martkopi; NELP "Child and Environment" (Rustavi, Baratashvili N19); Charity Foundation "Breath Georgia" Telavi; NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1417 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6; "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1; NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1418 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri; NELP "Child and Environment" Gardabani , Village Norio; Society "Biliki" Khashuri, Shola street N1..
1419 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri; NELP "Child and Environment" Gardabani , Village Norio; Society "Biliki" Khashuri, Shola street N1..
1420 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri.
1421 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1; NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1422 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri; Charity Foundation "Caritas " Gardabani, Village Martkopi; NELP "Child and Environment" Gardabani , Village Norio.

family type house. In certain cases, a meal is not balanced. [1423] The same occurred during the monitoring in 2014 that in some cases the demand of the children is satisfied by eat unhealthy food - sausages, drink carbonated beverages. This is in contrary with the child's body healthy growth and development.

During the monitoring in one of the houses kept previous day prepared dinner. According to information received, in accordance with established practice, the dinners for the second day are prepared during previous evening.

Norio house does not have hot water supply. An insect problem revealed in the Telavi house, but the disinfection actions have not been carried out in order to eliminate the problem.

The caregivers are not provided with training opportunities on children's nutrition matters. Also, they do not talk to the beneficiaries about healthy nutrition issues.

According to the appraisal of the monitoring group, caregivers of the small family type houses need to get more information about the rules of purchasing and storing the food, in order to protect the safety of the food that is delivered to the beneficiaries. It is important to emphasize the necessity of implementation of food safety principle.

Rest and Leisure Capabilities (Standard 7) - Article 31 of the United Nations Convention on the Rights of the Child is protects the rights of the child on rest and leisure. Article 7 of the Child care Standards is dedicated to obligations of the service provider to provide rest and leisure capabilities for children.

The beneficiaries of small family type houses are provided with the vacation leisure time on the resorts for no less than 12 days per year.

The beneficiaries are involved in informal activities. Children are attending different circles. For example: painting, music, dancing, playing on panduri and so on. There are cases when the kids' desired circles are not yet available in the region. Alike the 2014monitoring results, children are getting bored of doing one specific activity and they just quit it.

The involvement level of in desired and interesting activities for the beneficiaries of small family type houses are depending on the service provider organization's financial resources and capabilities. Mostly children have donors or go for free circles. Herewith, in cases of Norio small family type house the dance circle fee is covered by the beneficiary's mother.

TV and personal computer if available in small family type houses. According the caregivers, mostly, the beneficiaries are able to use the Internet for educational purposes.

Varieties of sports equipment are available in the houses: table tennis, rubber bands, backgammon, chess, hantels for exercises, badminton. In most of the houses the children have their own cell phones and personal computers.

The beneficiaries of small family type houses are going to the theatre as a group, as well as participate in school excursions and other events. The monitoring team discovered that the beneficiaries of Martkopi house[1424] were not involved in school activities and the shortcoming was eliminated only after the intervention of the caregiver.

Individual Development Plan in certain cases does not reflect the wishes and interests of the child. There was the case, when the plan reflected the interest and desire of the beneficiary to start going to the chess circle. According to information provided by the teacher to the monitoring group, the beneficiary did not have the desire or have not expressed mentioned wish. [1425]

1423 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.
1424 Charity Foundation "Caritas " Gardabani, Village Martkopi.
1425 Society "Biliki" Khashuri, Shola street N1..

Education (Standard N8) – According to the N8 standard of the technical regulation on approval of child care standards, the service provider is obligated to provide the beneficiary with an opportunity to realize the right to education.

Generally caregivers or other beneficiaries of the house are helping prepare lessons. The general trend has been revealed that a large part of the beneficiaries need additional professional help for to study for school , which are often recorded in their individual development plans and the social worker's reports. The mentioned needs are especially urgent in cases of foreign language and technical subjects, which in many cases are not provided. This issue is reflected in the special monitoring report of 2015 as well. In particular, Beneficiaries of Gldani small family type home[1426] need additional help to study school subjects. The beneficiaries of the mentioned home were not actually going to school and attending the teaching process. The mentioned issue is somewhat regulated, but still in their academic education is not line with their biological age, three beneficiaries are involved in the inclusive education program, one of them refuses to go to school at all. Children do not have the motivation to get education. Caregivers mentioned that due to the lack of funds children are not provided with addition study possibility. The mother of one of the beneficiaries of Norio small family type house covers the fee of additional lessons for the child.

The most part of beneficiaries are not motivated to continue their studies after receiving basic education and mainly are oriented to get professional education. According to the caregiver's information, none of the beneficiaries of Kurdgelauri [1427] small family type house have been entrants since 2011.

We welcome the practice of "The SOS Children's Village", where they have the SOS teachers who organize various circles and are a kind of mediator between the school and the educators. The teachers and volunteers in various fields are hired. "SOS" N8 house[1428] children are involved in sports, art or artistic circles, and they have an opportunity to study the additionally under the supervision of the individual teacher, however the motivation of children is so low that it effects negatively to the outcome.

Meeting the educational needs of juveniles is problematic in the regions, due to the peculiarities or territorial access limits the ability to fulfil the demand. For example, in Akhmeta[1429] small family type house.

The beneficiaries of small family type houses have not attended school, skipped the classes and accordingly have the academic lag. They are involved in the inclusive education program and have the status of a child with special educational needs. The situation in this matter at Martkopi small family type house should be noted. Children with disabilities are enrolled at the institution and they are getting education at Martkopi N1 public school. The beneficiaries are involved in the inclusive education program. The monitoring team learned that the program was not designed to fulfil children's needs and capabilities. One of the beneficiaries of the house that uses wheelchair was involved in at house training program, but at the moment due to the resistance of the director of the school, teachers do not visit beneficiary's houses for teaching.

The issue of communicating with the special teachers has been distinguished. Teacher does not give recommendations to the educators and they are assisting beneficiaries to improve academic performance in the capacity of their own experience. [1430] In many cases the school tasks given to the children does not coincides their knowledge and abilities. It was also distinguished that the individual curriculum does not correspond to the needs and capabilities of children. Due to the mentioned reason, the caregivers had to return the plans to school for to elaborate new plan that reflects the needs of children. There was a case revealed, when caregivers had no information on whether the beneficiaries were involved in the inclusive education program. [1431]

1426 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1427 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri.
1428 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1429 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1.
1430 Charity Foundation "Caritas ", Village Martkopi.
1431 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.

The libraries of the small family type houses do not stand out with its diversity of literature and using the library is not encouraged by the caregivers.

All the small family type houses are provided with internet and computers, except Telavi[1432] small family type house, in case of necessity the beneficiaries of the house are using close friends' or nearby located "Center for Civil Engagement" Internet communications. As usual, the children have possibility to use computers averagely during 1-2 hours in a day, under the supervision of educators.

Due to frequent changes of the beneficiaries residential environment and care forms revealed the cases when minors lost their motivation and interest in getting education, they were studding unstably and had difficult to adapt to a new school and classmates.

Despite the fact that houses have the literature about children's rights, children do not have sufficient information about their rights.

Healthcare (Standard 9) - Article 9, paragraph 1 of child care standards [1433] the beneficiaries should be raised in the environment where healthy lifestyle is encouraged and proper attention is paid to their health conditions.

Alike the 2015 monitoring results conducted in small family type houses, the issue of prophylaxis of viral infections and caregivers' lack of information on prevention measures remained in small family type houses this year as well. Lack of isolation facilities of infected juvenile is still problematic. The protection of hygienic rules and the awareness campaigns on communicable disease prevention measure are not properly conducted for the beneficiaries. The service provider has not listed down the ruled of flu prevention in the documentation at Gldani small family type house, although the mentioned document is not available for the beneficiaries, it is not posted in a distinguished place and the beneficiaries and caregivers does not even been orally informed about its content.

Like last year, the necessity more educational activity on healthy lifestyle for minor beneficiaries is distinguished. The cases of dependency on alcohol, tobacco has been revealed. This problem is particularly evident in the case of village Gldani[1434] small family type house beneficiaries. There is a lack of educational literature on personal hygiene and on HIV / AIDS and other sexually transmitted diseases, as well as about alcohol, drugs, tobacco, and other harmful substances, the expected results of their usage and a healthy way of life.

There still exists the issue of gaining the complete information about the health status of beneficiary during the transferring process to small family type houses. There were cases when beneficiaries' health condition did not comply the health certificate presented during enrolment process. Despite the fact that the beneficiaries receive the necessary consultations from the doctor, it does not show the dynamics of the disease and the results of treatment, due to the records inconsistency. It is still problematic to designated special storage area for medication them not be available for the beneficiaries. For instance, in Kurdgelauri[1435] small family type house the medications are stored in the closet of clothes of the staff, this location lacks conditions of properly storing the medicine and it is readily available to any beneficiary.

Supervision of the organization of the drugs in case of sickness of beneficiaries is an issue. The monitoring revealed that the beneficiaries receive the medication under the prescription of the doctor, which does not provides possibility to find out who gave the medicine to beneficiary. The journals of the drug issue do not have universal form in all small family type houses. In most cases, in cases of the child's illness the records are not kept, there is no journal of medication acquisition and issuance, therefore, the children are not supervised well enough while getting the medicine during the illness.

1432 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.
1433 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66.
1434 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1435 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri.

It is especially noteworthy that in Dusheti[1436] small family type house the right to health of the beneficiaries is not properly protected. During monitoring of expired medications were discovered (Citramonum, Korvalol, valerian tincture), while the box where medicines were kept was dusty and dirty. It is notable that in this particular house, the representatives of the provider organization and caregivers are not monitoring and conducting the necessary medical services for children.

Like the monitoring result of the previous reporting period, the problem of the social worker's role in the health care administration field still remains this year. Despite the fact that in care of medical necessity, the social worker is involved in the decision-making and treatment, the procedures of participation form and duration of the monitoring process of the conditions of child's health by the social worker is still obscure.

The small family type houses often do not keep records of all accidents in a special registry journal. For example, in SOS Children's Village N8 small family type house's[1437] journal only records two cases of the incidents, however, the personal health forms №IV-100 / A files indicates various injuries resulted by the accident that was not mentioned in the journal. The service providers often do not have full information about clear definition of "an accident". Therefore, the accident journal is filled formally and does not reflect the real situation.

Feedback and Complaint Procedures (Standard N10) – According the Article 10 of child care standards, [1438] the supplier of services should shape and quality the service delivery, herewith create a simple and clear feedback and protest procedure for the children and their legal representatives.

During the monitoring revealed that all houses have regulations on the feedback and complaint procedures, which fully reflects the state's child care standards, however the internal regulations of the houses are not fulfilled and the beneficiary/ service recipient is not familiar with feedback and complaint procedures, and in most cases they do not have the opportunity to give feedback anonymously.

During the monitoring period in 2014, the recording of the measures carried out in response to the expression of opinion empty in most cases and had a formal character. The same problem was revealed as a result of the monitoring in 2016. The feedback logging journal of the houses is just a formality, as it actually is empty and does not contain any records. [1439] Basically, it records only a few letter expressing appreciation toward the caretaker or children's apologies for certain behaviour.

After studding the documentation and interviewing the caregivers revealed that there are no procedures in the house, [1440] which is provided to the beneficiary's with right to express protest and submit feedback about services. There are no the questionnaire, or other anonymous means of comments expression, for example the boxes are not placed in the distinguished place, in cases of existence of such box it is not labeled. in certain parts of the house could not present a complaint box. [1441]

According the appraisal of the monitoring group, the importance of feedback receiving and complain procedures are not realized by the leaders and house teachers, because they claim that mentioned procedures does not correspond to the principles family upbringing and even the beneficiaries are objecting it. Alike in the 2014, the results of the monitoring showed the feedback and complaint procedures are not promoted by the service providers and due the lack of information, service users can not enjoy this right.

After interviewing beneficiaries by the monitoring group members showed that they did not know the feedback and complaint standards.

1436 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1437 Association "SOS Children's Village- Georgia" – Tbilisi, G. Gmainer Str., house N8.
1438 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66.
1439 Charity Foundation "Caritas " Gardabani, Village Martkopi; Society "Biliki" Khashuri, Shola street N1.
1440 NELP "Child and Environment" (Rustavi, Baratashvili N19); Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94; NELP "Child and Environment" Gardabani , Village Norio.
1441 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94; NELP "Child and Environment" Gardabani , Village Norio; NELP "Child and Environment" Rustavi, Baratashvili N19.

In some houses teachers and beneficiaries are participants of the meeting that is dedicated to discuss their problems and complaints. Caregivers believe that this kind of event is more efficient to meet the needs of children and get their feedback.[1442]

According the monitoring group, to improve the provided services and take beneficiaries opinion into consideration, it is necessary to implement these standards into practice. This will significantly contribute to the identification of service gaps and gives opportunities to the monitoring body, as well as provider organizations, to consider the child's opinion into while formulating the appropriate recommendations / taking the necessary measures to improve the environment.

Protection from Violence (Standard N11) - This standard is guarantees child's right to be protected from all forms of violence. This right is guaranteed by the Article 19 of the CRC.

The monitoring showed that the foster mother of the "SOS Children's Village"[1443] N 8 house attempts to subdue the children with shouting and creaming, is the isolating them, prohibits the use of a computer or going to the yard, forces them to stand next to the wall. For punishment purposes she is isolating of children in the bedrooms, locked children often are jumping out from the second-floor window and escaping from the house.

The monitoring team learned that former foster parent were using violent methods to punish children in Akhmeta[1444] small family type house. According to the beneficiaries, the former foster father was beating them with the stick over the years, was kicking out naked children from the house, foster mother was beating the children when she was getting angry.

The monitors reported family violence cases against children, when they were temporarily withdrawn to the biological family. Monitors became aware of the fact, when one of the beneficiaries of the small family type house was beaten by the school guard. The same child was beaten by another bully child's grandmother. The first violence case finalized by firing the guard, and the other one completed with children's the reconciliation. It should be noted that according to the existing information, neither school nor the caregivers of the " SOS Children's Village" notified the social agency on child abuse and neglected case and accordingly no legal procedures defined by the Georgia legislation has been executed.

The cases of violence were reported at Rustavi[1445] small family type house. Despite the fact that the educators have undergone training on the prevention of violence and children's rights issues, they do not possess beneficiaries' behavior management ability, experience and skills. The personnel of the small family type houses is not aware of some mental health issues, they are not able, except in emergency and urgent situations, to identify and timely response the cases.

Several beneficiaries of village Gldani[1446] house have important behavioral and emotional disorders, the facts of one beneficiary oppressing, intimidating, pressuring, verbaly abusing other beneficiary has been recorded. The specialized multidisciplinary examinations was not provided for the children and social service do not informed the house leaders and educators about the dynamic supervision and treatment possibilities in the framework of the state funding children's psychiatric care subprogram. [1447]

The fact of escape from the house, self-damage and suicide attempts are often occasion in small family type house of Martkopi, [1448] which is obviously makes existence of the crisis management strategy guidelines very important, however, a document does not exist at this house.

1442 Society "Biliki" Khashuri, Shola street N1; Charity Foundation "Caritas " Gardabani, Village Martkopi.
1443 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1444 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1.
1445 NELP "Child and Environment" Rustavi, Baratashvili N19.
1446 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1447 Resolution of Georgian Government №308, 2015, June 30 Tbilisi , „ Confirmation of Health Care State Program of 2015" annex №11, Psychic Health.
1448 Charity Foundation "Caritas " Gardabani, Village Martkopi.

Disagreement between beneficiaries and between beneficiary and teacher is not-so-rare occasion in village Norio[1449] small family type house. the interviews with caregivers revealed that they do not possess the special knowledge and skills for managing complex behavior of the children, have not got proper training, only limitation of going out from the house and banning using the computers is used from the punishment-awarding system. The educators can not cope with the behavioral that is typical of traumatized children, there is no behavior management strategy at house and there is lack of pedagogic control.

Violence between the peers and self-injury facts were reported in the Khashuri[1450] small family type house. According to our information, the beneficiaries have very open relationship with their tutors. They are talking about their problem, also what they did wrong. According to the leader, the house has a punishment-awarding system - the agreement on the rules of living in the house is placed in a visible place and all beneficiaries are informed about it. The document on the procedures for managing complex behavior is presented in the house, which should be appraised positively.

The obvious symptoms and signs of the child's emotional and behavioral disorders is totally neglected while enrolling in small family type house and presented form N100 during the enrolment process includes the conclusion of child being "healthy" or "almost healthy", so that the evaluation of the mental health problems and its diagnostic that was indicated in social appraisal form has not taken place. The beneficiaries of the small family type houses have suffered trauma, domestic violence, being orphans, being left without care or being neglected, frequent change of care methods and institutional forms. However, children are not identified as victims of violence. The health appraisal during the enrolment process in small family type houses has formal character. There is no child's mental health assessment, according the child under state care do not receives adequate psychological / psychiatric care and as a victim of violence does not get the appropriate psycho-social rehabilitation. The mentioned factors often are reflected to the child's mental health, behavior and have negative impact on the emotions and often provoke violent behavior. Dynamic surveillance of beneficiaries' mental health, multidisciplinary assessment and treatment in a specialized psychiatric institution only occurs during the crisis cases.

Despite the positive dynamics comparing the previous years and the fact that the violence against children is not systematic, according several revealed cases by the monitoring, we can conclude that children's rights under the state care is violated - abuse cases are covered (all violence cases are not registered in the journal), referral procedures are violated.

Bullying – is still common among children, both psychological and physical violence in schools and in small family type houses. It was revealed that sometimes the teachers do not have any information about bullying cases or mostly, they request caregivers of the small family type houses to resolve the conflict.

Many cases of bullying revealed between beneficiaries of the "SOS village" N8 house.[1451] Children often address each other loudly, roughly, with humiliating words, which mostly turns into a physical confrontation. One of the beneficiaries of the house helps foster mother to manage children's behavior in a violent manner in "SOS", it most likely happens as a result certain privileges. By the encouragement of the "SOS" foster mother he can impose restrictions on the children, tell harsh words and shout, threaten or punish a child with locking in the room. There also are psychological bullying cases in the same house. There were two occasions when under the influence of the older beneficiary, the same house's and village's younger beneficiaries escaped and the police with the help of beneficiary's mother become capable to find them only after three days. According to unconfirmed information, teachers assumed that they were begging in the street, were entertaining at the internet cafe and were sleeping on the street during the night. Bullying cases at school was revealed at the same house.

1449 NELP "Child and Environment" Gardabani , Village Norio.
1450 Society "Biliki" Khashuri, Shola street N1.
1451 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.

Systematic bullying is carried out between two beneficiaries of the Alkhmeta[1452] small family type house, which often ends with physical injuries. There was occasion of money extortion at school toward the beneficiary of the house. The problem was resolved without the help of teachers, only by the involvement of foster father and parents.

There was the case when one of the beneficiaries of Telavi[1453] small family type house returned at house with physical injuries after fighting with school peer and surgery became necessary. The fact of violence has become known for the school teachers only after notification of educators of the house.

Martkopi[1454] small family type house caregivers are openly speaking about the facts of bullying among the beneficiaries, which often has a form of the physical confrontation.

Care and Supervision (Standard N12) - Article 12 of child care standards defines the service provider's obligations and is protected the rights of the child, to be provided with the proper care and supervision.

The majority of the small family type house's (Akhmeta, Telavi, Kurdghelauri, "SOS" N8 House) bylaws identifies, the keeping of the journal that records the child care daily progress updates, the child's disappearance and the monitoring of the child's behavior that does not happen, or happens formally, according the caregivers they are overloaded and lacking time for to keep the journal.

According to the results of the interview with the caregivers and beneficiaries, the caregivers rarely use positive management method with the children with complex behavior (promotion, award, praise, etc.) and mostly are using the ways of general discussion, giving instructions, restricting the computer use.

Special Report of 2014 on small family type houses noted that the majority of beneficiaries in the village Gldani small family type house[1455] were distinguished with a complex behavior. Child care and supervision process have significantly improved compared to previous years in the house, however, despite the positive developments, the teachers still have difficulties to change the unhealthy stereotypes created during the previous years and to establish required child care standards.

2015 special report noted that the SOS Children's Village N8 house's[1456] caregiver uses violent methods of child's punishment. The monitoring carried out during this year revealed that the foster mother and one of the beneficiaries encouraged by her were using psychological and physical violence for to manage children with complex behavior in "SOS" N8 house.

Monitoring has revealed that frequent change of the child care forms creates big problems for teachers and beneficiaries in the process of caregiving. As a result, process of creation the positive ties between the child and caregiver is prolonged, often emotional and behavioral problems are revealed and inclusion of the psychologist and psychiatrist is necessary in the process.

Beneficiaries' emotional and educational needs are neglected in Rustavi small family type house. [1457] Only basic needs of the children are satisfied in the educational institutions. In the house, there is no condition is for adults' intellectual, emotional and social development, bullying cases among the beneficiaries are frequent, caregivers are lacking the skills to manage these cases. One of the beneficiaries of the house, who is 16 years old, is isolated from the formal and informal education already for a year. At the moment the child is spending the most of the time in the house hold, she goes out to meet friends and her social connections with environment is limited to this activity. Sometimes she helps the educator with internal affairs and basically does not know how to spend time.

1452 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1.
1453 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.
1454 Charity Foundation "Caritas " Gardabani, Village Martkopi.
1455 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1456 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1457 NELP "Child and Environment" Rustavi, Baratashvili N19.

Norio[1458] small family type house condition is notable. The majority of the interests of the house beneficiaries (especially in terms of education, psycho-social development) are ignored. According to the educators' recordings (so-called handover) in the journals, other than the fact that the beneficiaries are not engaged in formal or informal education, there is the so-called pedagogical spinelessness. Adults can return house late at night in drunk condition, sleep until the late morning. The caregivers cannot handle with the behavioral manifestation, which is typical for traumatized children, there is no behavior management strategy in the house.

During implementation of the monitoring only one beneficiary was allocated in the Dusheti [1459]small family type house. The emotionally draining situation (loneliness) in the house, coldness, lack of informal education, the absence of recreation and sport activities is a violation of right to have necessary environment for the physical and emotional development that can also be considered neglecting the child's necessities, therefore we cannot consider that the child is under proper care and surveillance.

Preparation for Living Independently and Leaving the Facility (Standard 13) – According to the recommendation of the Committee of Ministers of the Council of Europe after leaving the institution, the state should provide adequate support and assistance for the juveniles in order to integrate in the society and with their families, meet their individual needs after leaving the care facility. [1460] In 2008 report, the UN Committee on the Rights of the Child calls on Georgia to introduce measures for to assistance and care of the young people who already left the care.

In 2012 Annual Report The Ombudsman addresses to the Ministry of Labour, Health and Social Affairs with the recommendation, to develop effective program for an independent living support, and in 2015 in the framework of the special report - " Monitoring of the Small Family Type Houses " - called on the government to develop the system, which will contribute to the minor's employment and financial support before their complete independence.

The monitoring in 2016 revealed that the problem of preparation for independent living of the beneficiaries remains. Houses still do not have formulated plan for independent living preparation and there is no consistent approach to this matter.

Existing the individual development plan in the house in most cases record specific date for the beneficiary's preparation for independent living, although the specific activities to achieve this goal is not formulated. The same problem was observed in the case of individual service plans.

The monitoring showed that the beneficiaries, regardless of the wish, cannot be involved professional education programs and in many cases can not engage in any activities because of lack of finances. Like previous years, the provider organizations with their own resources or by the resources of charity organizations are trying to provide vocational education for the beneficiaries, for preparation for independent living. It should be noted that in most cases the resources are not enough. The monitoring group after interviewing the beneficiaries revealed that for that reason, despite of the desire, children cannot to be engaged in learning process of the courses of their interest.

In some cases the beneficiaries have some problems in terms of motivation. The case was recorded when the minor started to study the profession after graduating the basic school education , however some time later stopped and caregivers failed to persuade to get education. It is important to be provided consistent work on motivation of the beneficiaries in the process of independent preparation by the personnel. At this point, the situation at Norio small family type house [1461] is very urgent, where two 17-year-old beneficiaries, who must be actively working for preparation for independent living, by the time of monitoring implementation were not involved in any activity, or receiving education. We were informed that they were spending the most of their time at house.

1458 NELP "Child and Environment" Gardabani , Village Norio.
1459 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1460 Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions.
1461 NELP "Child and Environment" Gardabani , Village Norio.

We welcome "SOS Children's Village" youth houses' practices, where the beneficiaries are still living after they are 18. At the same time, every year a multidisciplinary team assesses the needs of persons living in houses. Besides that, secure lodgings can be made for youngsters. In cases entrants there are preparatory courses, private teachers and cooperating with one of the Training Centers on basis of the contract.

Beneficiary Oriented Environment (Standard N14) - the United Nations, the Convention on the Rights of the Child stipulates that "every child has the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development ".[1462] The State is obliged to provide appropriate conditions for the implementation of these commitments. The environment equal with the normal family atmosphere is required for the full development of the child.

According the child care standard N 14, [1463] the provision of services is carried out in an environment that is appropriate and sufficient to meet needs of the beneficiary. Service should be provided in an equipped, clean and comfortable environment. The physical environment of the service should be similar to the atmosphere of the family.

Martkopi[1464] small family type house is a two-storied capital building. House entrance is adapted for the disabled wheelchair users. An internal staircase and an elevator are used to reach the second floor. The elevator is adapted for disabled persons, however, it is not functioning for technical reasons. Without the elevator for the disabled persons using wheelchair is not possible to reach the second floor of the house.

Due to the mentioned problem, the wheelchair user beneficiary sleeps alone on the living room couch on the first floor. All the other children living at house sleeps in the bedrooms arranged on the second floor.

Because of the issue, one of the beneficiaries of the Martkopi house have to live separately from the other beneficiaries for certain period of the day.

Kurdgelauri[1465] small family type houses' the entrance stairs does not have railings and a roof. Due to this problem, the risk of sliding foot on the stairs during the precipitation increases.

The central heating system is not functioning at Dusheti[1466] small family type house for already four years. Existed electric heaters in the house cannot provide the season appropriate temperature. There is the fireplace in the house, but no firewood. Due mentioned problems, there is an unbearable coldness in the house.

Small group houses in the district heating system will warm the house. The house has an old door and window, which can not provide temperature.

The central heating system of the Akhmeta[1467] small family type house cannot heat the house. The mentioned house has an old doors and windows that cannot hold the temperature.

There is no hot water in kitchens and bathrooms of Norio[1468] small family type house. Beneficiaries are heating the water for bath on the stove.

Bathroom vent systems are not functioning at Tbilisi, [1469] Kurdgelauri, [1470] village Gldani[1471] and Khashuri[1472] small family type houses.

1462 CRC; Artcile 27, first paragraph.
1463 Technical reglament on Confirming Child Care Standards confirmed by the Decreee of Government of Georgian, 2014, January 15 №66.
1464 Charity Foundation "Caritas " Gardabani, Village Martkopi.
1465 Charity Humanitarian Centre "Abkhazia" Telavi, village Kurdgelauri.
1466 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1467 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1.
1468 NELP "Child and Environment" Gardabani , Village Norio.
1469 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1470 Charity Humanitarian Centre "Abkhazia" Telavi village Kurdgelauri.
1471 NELP "Divine Child Foundation of Georgia" (Tbilisi, Village Gldani).
1472 Society "Biliki" Khashuri, Shola street N1.

In Tbilisi, [1473] village Gldani, [1474] Kurdgelauri, [1475] Khashuri[1476] and Norio[1477] small family type houses, faucets, and water and sewage systems need to be changed in the bathrooms.

In village Gldani, [1478] Dusheti[1479] and Khashuri[1480] small family type houses were recoded the problem of artificial lighting.

It should be noted that the artificial lightening problem has been eliminated in Telavi[1481] small family type house bedrooms, which was recorded during the monitoring in 2014.

In Martkopi, [1482] Akhmeta[1483] and village Gldani[1484] houses the vent systems above the oven are not operating.

Safety and Sanitary Conditions (Standard 15) – According this standard, the beneficiaries are taking the service in safe environment, which is protected by sanitary rules. The same standard defines the obligations of the service provider.

As it was mentioned in the special report on small family type houses in 2015, the same was recorded this year about the keeping children's tooth-brushes in common open storage vessel fact, neglecting any hygienic protection means. Tooth-brushes does not have identification marks, accordingly beneficiaries find it difficult to differentiate which one is theirs that creates a risk of using other person's brush. Above mentioned fact is a threat to their health condition. Also, the children's towels are in constant touch with each other in the bathrooms open hanger, which creates the risk of bacterial contamination. There are no clothes hangers in the bathrooms. The beneficiary who is taking a shower happens to have to hang clothes on the open towel hanger.

In Tbilisi[1485] small family type house dirty linen were placed on the bed. The bedrooms were messy and no in order. At the same house, on the second floor out from the two toilets none of them operated properly and was unsanitary conditions. The children mostly were using the toilet situated on the ground floor, which is not sufficient for the 6 beneficiaries.

There is also the so-called Asian common use toilet at Akhmeta [1486] small family type home. There is no flushing tank and sinks installed in the toilet. There also are no necessary items for hygiene. The toilets are crumbling and in unsanitary condition.

There also is 3.7 square meters bathroom space in the building, the shower and toilet is placed there as well. 6 beneficiary and the foster parents are using the mentioned bathroom. The house needs additional sanitary establishment.

Kitchen stove burn marks were marked on the wall in Telavi[1487] small family type house, which was covered by posting the plates on it. The mentioned plates are flammable and could fire from the stove. It is recommended to cover the back wall of the cooker by the refractory material. A large amount of ants were spotted behind these plates. At the house's kitchen has the connecting gate to the warehouse, where food products are stored without following any rules (including cereals). The warehouse is equipped with a water tank. The room is fully

1473 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1474 NELP "Divine Child Foundation of Georgia" Tbilisi, Village Gldani.
1475 Charity Humanitarian Centre "Abkhazia" Telavi village Kurdgelauri.
1476 Society "Biliki" Khashuri, Shola street N1.
1477 NELP "Child and Environment" Gardabani , Village Norio.
1478 NELP "Divine Child Foundation of Georgia" Tbilisi, Village Gldani.
1479 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1480 Society "Biliki" Khashuri, Shola street N1.
1481 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.
1482 Charity Foundation "Caritas " Gardabani, Village Martkopi.
1483 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1.
1484 NELP "Divine Child Foundation of Georgia" Tbilisi, Village Gldani.
1485 "Association of SOS Children's Villages " House N8 ,Tbilisi, Vera, IV m / d, Herman Gmainer str. N1.
1486 "Telavi Education Development and Employment Center" Akhmeta,Vazha-Pshavela turn N1.
1487 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.

musty. Food storage in such circumstances is not appropriate. The same problem was existing during 2014 monitoring and it has not been eliminated.

In Khashuri[1488] and Dusheti[1489] small family type houses water from the well is consumed for drinking. The houses do not have water suitability certificate. Water certifying suitability document was presented only by the Martkopi [1490] small family type house. Small family type houses failed to present water tanks washing confirming documents. Small family type houses also could not present disinfection, deratization, disinsection confirming documents.

Requirements for Personnel (Standard N16) – According to the standard, the services of beneficiaries' care and development should be carried out by sufficient number of staff with appropriate qualifications.

Staff qualifications confirming documents and the contracts signed in accordance the legislation of Georgia is represented in all small family type houses. Telavi[1491] small family type house is an exception, according the information of the educator, the personal files are stored in the administration.

The problem of recruiting the qualified human resources is particularly vivid in the regions. There is a practice that the teachers are appointed to the position and only after are trained. In Norio[1492] and Rustavi[1493] small family type houses two caregivers started working in October-November 2015 and has not undergone any training.

It became clear that sometimes trainings are les productive in terms of the topics. According to the educators' and leaders' opinion, they need other types of training. Such as: management of complex behavior, the specifics of working with disabled children.

There is a need to raise the capacity of the personal to ensure production of the required standards of the relevant documentation.

Frequent ongoing personnel changes are problematic in the houses. There is no reserve for the staff and the training of the personal happens with local resources. After 2016, January 1 out of 5 employees of Kurdgelauri[1494] small family type house the job has left 2 employees. Administration has selected several persons for interview, after the interview and 3 of them were picked up for the probation period. According the leader's information 2 of them will be employed. They are undergoing training at the place.

Personnel changed in Telavi[1495] small family type house as well. Recruiting and selection of the foster parents was not made possible and for the time of the monitoring only the selected foster mother and two caregivers, employed for probation period, were managing the processes. None of the selected candidates has undergone for child care training and there preparation was limited by consultations provided by the old staff.

From December 1, 2015 the management of the village Gldani[1496] small family type houses was transferred to NELP "Divine Child Foundation". Leaders, caregivers were changed. Only one educator remained from the old staff, one employee has not undergone the trainings at all. Three educators He has attended the training of the federation "Save the Children" in 2009 and the Polish Association "Our House" training course "From Child Care Institutions to the Individual Care".

1488 Society "Biliki" Khashuri, Shola street N1.
1489 Charity Foundation "Breath Georgia" Dusheti, Shamanauri st. N94.
1490 Charity Foundation "Caritas " Gardabani, Village Martkopi.
1491 Charity Foundation "Breath Georgia" (Telavi, Gr. Orbeliani. N6).
1492 NELP "Child and Environment" Gardabani , Village Norio.
1493 NELP "Child and Environment" Rustavi, Baratashvili N19.
1494 Charity Humanitarian Centre "Abkhazia" , Telavi, village Kurdgelauri.
1495 Charity Foundation "Breath Georgia" Telavi, Gr. Orbeliani. N6.
1496 NELP "Divine Child Foundation of Georgia" , Tbilisi, Gldani Village.

RECOMMENDATIONS

To the Ministry of Labour, Health and Social Affairs:

- To monitor provision of relevant documentation-keeping of documentation as stipulated in the annex N3, decree N52/n as of February 26, 2010 of the Minister of Labour, Health and Social Affairs of Georgia "On approval of adoption of the regulations and conditions of placement of a child in a specialized institution and his/her removal from this institution" and the first article of Children Care Standards (Standard N1 – information on service).
- To ensure training on the production of documents in an appropriate manner according the first article of child care standards (standard N1 Information on Services) for the persons employed in the child care field by service providers
- To ensure training of the social workers / caregivers for to comprehensively produce the individual development plan and individual service plan purposes
- Territorial social service centers should ensure timely delivery of the beneficiaries' individual development plans to the service providers
- To ensure adequate communication between social workers and leaders/ caregivers of small family type houses and beneficiaries
- To outline beneficiaries' interests and need regarding the informal activities through communication. Based on this, specific activities should be scheduled in individual development plan
- To ensure comprehensive production of submitted medical records according the enrolling regulation, in particular, form N IV-100 / a certificate of health, in the small family type children's houses
- To ensure the usage of feedback receiving and providing the right to oppose for the beneficiaries of the state care system and their biological families, their regular informing , simplifying the rules, using anonymous feedback questionnaires and ensuring the systematic interactive discussions of the raised problems and through the elaborating these procedure
- To ensure the prevention of child abuse and its neglect in education system, including bullying, through strengthening the timely identification and response mechanisms of the facts
- To ensure training and requalification of the employees of the education system on child abuse and violence identification matters
- To ensure inclusion of specific activities and process supervision in the individual development plan of the beneficiaries in order to prepare for independent living
- To ensure preparation and conduct of the training on children's and adults' complete, balanced nutrition issues in small family type houses
- To provide children's small family type house caregivers with detailed information on food safety, food purchasing, storage conditions and control of the expiry dates issues

To the Social Service Agency of the Ministry of Labour, Health and Social Affairs:

- To provide additional resources the beneficiaries of small family type houses, also, they should be involved in the activities concerning the children's interests and abilities
- To provide improved access to the territory of the rehabilitation centers during the enrolment process of children with psychiatric disabilities in small family type houses

- To ensure equally positive environment for children's emotional and social development in small family type houses, through strengthening of the supervision of small family type house beneficiaries and through enhanced cooperation with service providers
- To take Special measures to improve the physical conditions at Dusheti small family type house, to explore the issue of the beneficiaries' draining from the small family type house and carried out the proceeding for one of the beneficiaries case living in the house to the relevant services - in terms of child oriented decision-making
- To ensure the frequent change of care forms for the beneficiaries, that is additional factor fo the stress and have negative impact on their emotional health
- To implement the monitor of health condition of the children living in small family type houses, prevention and rehabilitation of the disease taking their condition of health into consideration, especially with regard to chronic diseases
- To develop and implement unified supervision delivery journal of medicines at small family type houses, which clearly reflects medication prescription dates that ensures transparency and dynamism of the medicine prescribed by the doctor
- To ensure providing proper information and educational literature on healthy lifestyle for small family type house
- To Ensure the implementation training modules and training on promotion of a healthy lifestyle for the children's small family type houses beneficiaries and with joint involvement of the educators
- To ensure the creation of multidisciplinary child abuse case guideline development and implementation. to ensure identification of child abuse and ill-treatment and traumatic event's psycho-physical consequences at all levels of child care, recognition of child as a victims of violence and the provision with psycho-social rehabilitation
- To ensure the prevention of child abuse and child neglecting, strengthening of the timely identification and response mechanisms of the cases, through enhancing knowledge of service providers on child rights and their protection mechanisms
- To Ensure multidisciplinary assessment and management of the victim of violence and inhuman treatment (even in an unspecified cases) and children with complex the behavior, with an active and dynamic involvement of psychologist and psychiatrist
- To extend the preparation and training of the persons involved in child care issues, on child abuse and ill-treatment, acknowledgment of abuse, identification, on the issue of legal, educational and psycho-social rehabilitation
- To ensure the strengthen of child care supervision through strengthening of social services and the monitoring mechanisms
- To ensure the training of service providers of small family type houses on theoretical / retraining of children's rights, child abuse, child's complex behavior management, psychological / psychiatric, problem acknowledgment and management, human trafficking, reproduction, drug abuse and other important issues of the child's upbringing
- To pay special attention individual qualities and stress reduction skills of the caregivers during the recruitment process

- To prevent frequent changes of the child's care forms, (small family type houses, foster care, reintegration, adoption) protection from violence
- To achieve the agreement between the Ministry of Health, the relevant agencies and with the managing organization of the problems and challenges and begin to search for ways to overcome the crisis in the mentioned small family type houses
- To ensure renovation, equipment, inventory replenishment in the mentioned small family type houses that cannot provide proper living conditions for children
- To keep the individual hygiene items of the beneficiaries in the hygienically protected conditions, where the identification of the owner of each item will be possible
- To ensure the regular control of hygienic conditions. disinfection, deratization, disinsection should be implemented in houses
- To implement taking of the samples of drinking water and conduct chemical and microbiological analysis in small family type houses; Regularly check the suitability of the water; Regularly wash water tanks

To the Provider Organizations:

- To inspect the documents existing at house periodically, through internal monitoring, in order to ensure their standards of production
- To ensure a minimum monthly amount for the beneficiaries by the service providers, which increases the self-esteem of adolescent
- To ensure staff training concerning the privacy issues related to the beneficiaries
- To ensure allocation of the beneficiaries' the personal files; to supervise formulation of individual development plans, their implementation and periodic review
- To ensure food storage sanitary norms
- To make sure sanitary and hygienic norms by marking the kitchen inventory
- To incorporate relevant calorific value and product diversity in menus of the house
- To provide systematic involvement in informal activities according the beneficiaries' interests and needs
- To keep medication in secured place according to the rules, which ensures the inapproachability of medicines
- To ensure taking into consideration of the interests of the beneficiaries while identifying the higher / professional education issues and their inclusion in the process of the higher / professional education. in case of resistance from the beneficiary on education, make steps to motivate them
- To specify concrete activities in the service development plan of the beneficiaries, including independent living training goal
- To ensure with relevant educated staff at small family type houses, and periodically raise capacity of the leaders and caregivers on the production of documents, complex child behaviour, sexual education, persons with disabilities issues. In addition, to ensure better communication with the staff in order to improve their quality of service

To the Lepl Social Service Agency and Service Provider Organizations:

- To work with the beneficiaries of the small family type houses in order to raise the self-esteem and motivation;
- To ensure the children of the small family type houses with addition, qualified training in the significant subjects. To take relevant measures in order to increase their motivation. To pay special attention to the small family type houses in the regions, in accordance with their needs;
- To carry out educational activities in order to raise awareness of children of the small family type houses on the rights of the child;
- To introduce a State system that will support the employment and financial assistance of the juvenile who left the care before his/her complete independence; To ensure qualified awareness of the beneficiaries about the future planning and prof-orientation.

WOMEN'S RIGHTS AND GENDER EQUALITY

INTRODUCTION

The protection of women's rights and the achievement of gender equality remains a challenge in Georgia. Despite positive steps taken by the state, the situation in a number of spheres requires special attention. There is a problem of effective implementation of legal regulations and national action plans.

Despite numerous recommendations by the Public Defender of Georgia, efforts of the state to prevent early marriages are insufficient; the scale of domestic violence and violence against women is extremely large; the situation with the protection of LGBT rights has not virtually improved; women's participation in decision-making processes remains low at every level.

An initiative of President of Georgia to declare 2015 as the women's year was a welcoming step. It has further enhanced public interest towards the issues and strengthened its importance. Yet another welcoming development was the appointment of women as the Chairman of Supreme Court of Georgia and the Minister of Defense. This underlines the role and importance of women in the process of democratic development and ensuring peace and security in the country.

Public Defender of Georgia has repeatedly underlined Georgia's signing of the Council of Europe's 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence as a positive step. We firmly believe that the ratification of the Convention will significantly improve the ways of combatting the violence against women and domestic violence; however, the ratification package of the Convention has not been submitted to the parliament yet.

A significant event was the adoption of amendment to the law by the Parliament of Georgia on 16 December 2015, which was drafted on the basis of a legislative proposal submitted by the Public Defender of Georgia. The amendment provides for a new rule of marriage registration of persons aged between 17 and 18, requiring that such marriages be permitted by a court alone.

Information campaigns and retraining of police officers conducted by the Ministry of Internal Affairs of Georgia have resulted in increased exposure of incidents of violence against women and domestic violence. More frequent application of protective measures has shown once again the importance of raising public awareness and efficient provision of services.

GENDER MAINSTREAMING: EXISTING PRACTICE AND CHALLENGES

Integration of gender equality issues in all types of activities is a matter of great importance. International practice has proved that organizations and institutions pursuing gender mainstreaming policies are distinguished for their high level of organizational development.

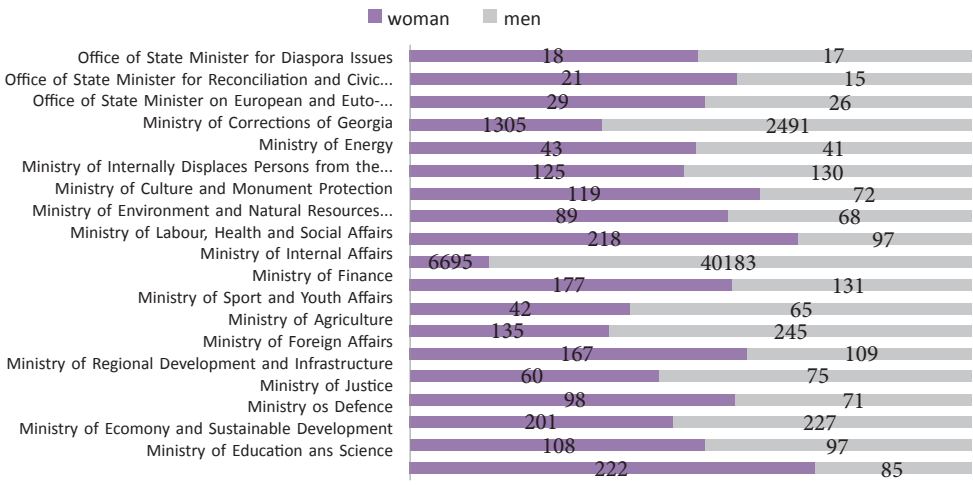
This has been proved by a successful practice of the Office of Public Defender of Georgia too. In addition to the activity of the Department of Gender Equality, the Public Defender's Office pays a great deal of attention to the career advancement of women and the enhancement of internal institutional mechanisms such as gender equality strategy and its action plan as well as the document on preventing sexual harassment for employees of the Public Defender's Office of Georgia.

To study the existing practice and challenges of gender mainstreaming, the Office of Public Defender has analyzed activities of executive power and local self-government bodies, including the gender composition of employees at all levels and the existence and operation of a person or a structural unit in charge of gender equality issues.

Gender mainstreaming also involves the assessment process, attaching a special importance to availability of segregated gender statistics. It is therefore very important to ensure that all state entities collect and analyze such data and scrutinize revealed shortcomings. According to the findings of the study, a number of ministries and local self-government bodies do not collect information about gender composition of their personnel, let alone analyze and publish it.

The study has shown that women represent the majority of employees in the offices of ministries and state ministries, however, their representation at a managerial level is not that strong. This must be attributed to the so-called glass ceiling, an unacknowledged barrier to the career advancement of women or their involvement in decision-making process. The gender composition on the executive power level looks as follows:

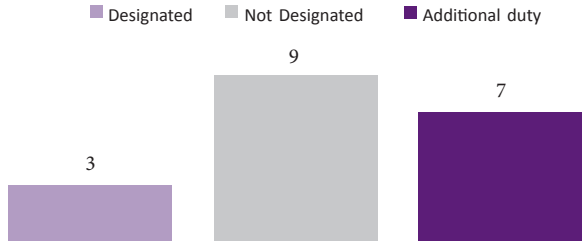
Number of employees in the executive power by gender composition



Most striking in the above presented findings is the data of the Ministry of Internal Affairs and the Ministry of Corrections where the number of male employees significantly exceeds that of female employees, fully reflecting gender stereotypes widespread in the society.

When integrating gender equality issues, it is very important to establish and enhance a structural unit or, in the absence thereof, designate a person responsible for this task. The results of the study has proved that none of the ministries has set up a structural unit (a department, a center) on gender equality; only three ministries have designated persons to do this job whilst the remaining entities either assign this task to a person as an additional duty or when need be, designate a person for this task.

Number of persons in the executive power, responsible for gender equality issues

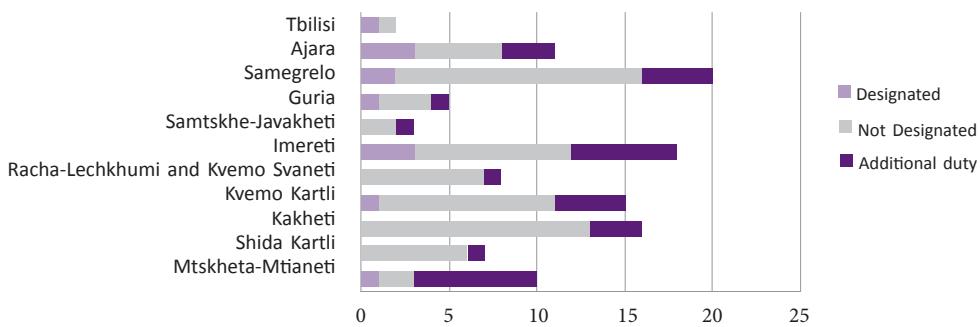


Designating a person for gender equality issues would be a step forward in the activity of each entity. On the one hand, it would enable to collect relevant information and to build an institutional memory and on the other hand, it would have a positive impact on the implementation of state policy in the area of gender equality.

It is also very important for the executive power to have a single interagency mechanism on gender equality issues because the activity of a number of working groups, commissions and councils, having been set up and involving largely the same people, lacks systematization and focus.

On the positive side, the number of those local self-government bodies that designated a person for gender equality issues – an advisor on gender, increased in 2015. It should be noted here that the analysis of information provided by local self-government bodies shows poor representation of women on managerial positions although women comprise the majority of employees of local councils, executive bodies or mayor's offices.

Persons designated for gender equality issues at local self-government lever



WOMEN'S PARTICIPATION IN DECISION MAKING PROCESSES

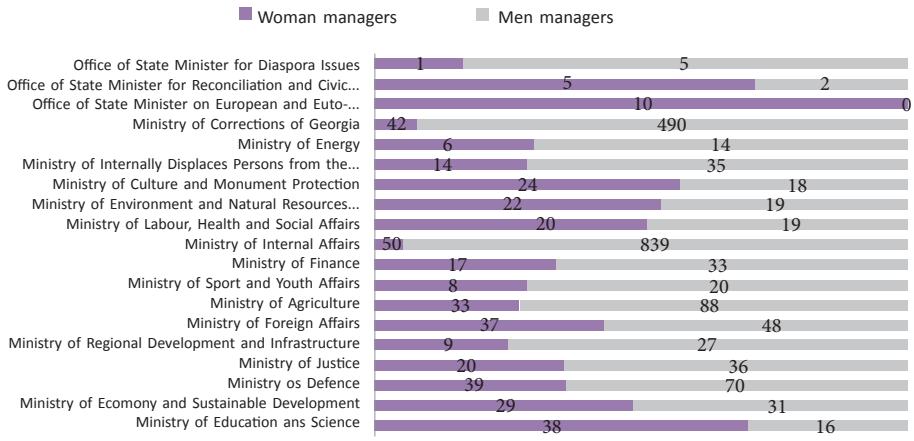
Women continue to suffer from unequal treatment and discrimination in various spheres of life, which becomes highly visible when assessing their involvement in decision making processes. Stereotyped attitudes and faulty opinions existing among society as well as the lack of special measures create barriers to women's participation in political and social life of the country.

The issues of equal participation of women in politics remains one of key challenges in protecting women's rights and achieving gender equality. According to the 2015 Global Gender Gap Report,[1497] Georgia ranks 114th by women's political participation and 117th by women's representation in the parliament among 145 countries. By the data of inter-parliamentary union,[1498] as of 1 December 2015, Georgia is 111th among 150 countries.

1497 The information is available at: http://www3.weforum.org/docs/GGGR2015/cover.pdf [Last accessed on 1 March 2016].
1498 The information is available at: http://www.ipu.org/wmn-e/classif.htm [Last accessed on 1 March 2016].

It is important that by the indicator of women on managerial positions Georgia is 49th among 145 countries.[1499] This is proved by the findings of the study conducted by the Public Defender's Office, showing that the majority of employees of the executive power comprise women though their representation on managerial positions is quite low.

Number of employees at managerial positions in the executive power



During information meetings held by the Public Defender of Georgia in the accounting period, a special attention was paid to mainstreaming gender issues in the rural development programs and the issue of women in general. According to local population, women do not participate in any of the stages of planning and implementation of desirable projects with the amounts allocated within the rural development program. The reason of this is that, on the one hand, women's participation in these processes are perceived negatively by society and, on the other hand, representatives of local self-government body do not invite women to meetings.

The above said has been proved by the information sent by the Ministry of Regional Development and Infrastructure in response to our request to provide gender statistics of participants in the process of planning and implementation (community meetings, et cetera) of rural development programs; unfortunately, the Ministry[1500] does not have the mentioned information and it provided only a list of implemented projects.

The analysis of provided information makes it clear that issues related to infrastructure are considered a priority: the purchase of transportation means, the arrangement of ceremony houses, the improvement of public places, the construction of irrigation systems. These issues are defined as priorities mainly by men because they hold decision-making positions. Little consideration is given to issues that fall within the scope of interest of women. For example, the absence of kindergarten remains a problem for a number of villages as well as the issue of water supply which is not limited to irrigation systems alone but implies the supply of drinking water to residential houses – something that is a very serious problem for rural women.

2015 was marked with the launch of parliamentary debates on the establishment of quota system. This issue was initiated in the parliament of Georgia by MP Nana Keinishvili and Women's Movement. The Public Defender of Georgia supported the 50/50 initiative of Women's Movement, which implies the alternation between male and female candidates on party lists. Unfortunately, at a committee hearing, the parliamentary committee for legal issues did not support any of the quota initiatives. Moreover, the number of parliament members disapproving of the recommendation adopted after the consideration of 4th and 5th combined periodic reports of Georgia by the Committee on Elimination of All Forms of Discrimination against Women,[1501] calling on the

1499 The information is available at: http://www3.weforum.org/docs/GGGR2015/cover.pdf [Last accessed on 1 March 2016].

1500 A letter of the Ministry of Regional Development and Infrastructure #01/181. 25/01/2016.

1501 The information is available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en [Last accessed on 1 March 2016].

state to adopt temporary special measures, including statutory quotas, in accordance with Article 4 (Paragraph 1), Article 7 of the Convention and general recommendations 23 and 25 of the committee, is quite high.

In his opinion submitted to the Parliament of Georgia in this regard, the Public Defender noted that the quota system is a real solution to the existing inequality and a possibility to provide equal opportunity to representatives of both sexes to participate in decision making processes.

WOMEN, PEACE AND SECURITY

World practice combines three directions of women participation in a new model of war and peace: protection of women during armed conflicts, involvement of women in the prevention and avoidance of armed conflicts, and women's participation in decision making process concerning all the above mentioned issues.

On 31 October 2000, the UN Security Council unanimously adopted the resolution #1325 on "Women, Peace and Security" which, together with accompanying resolutions, recognizes a special importance and the needs of girls and women in conflict and post-conflict situations. Despite the adoption of the resolution, peace building negotiations over the period from 1992 to 2011 involved a mere 9 percent of women[1502] - a very low figure showing disregard of women's role.

The steps Georgia have taken in the area of women, peace and security are worth to be mentioned. On 27 December 2011, a national action plan was approved and a national coordination group was set up which, in parallel to the implementation of the action plan, worked under the parliamentary council on gender equality, first, and then, under the secretariat of Prime Minister of Georgia.

The Public Defender's Office was involved in the activity of national coordination group with a consultative voting power. Moreover, in 2015, the Department of Gender Equality conducted the monitoring of the implementation of the national action plan with the aim to review the fulfilled objectives set in the national action plan.

The first stage of the monitoring envisaged the collection of information about carried out activities from relevant entities; the second stage of the monitoring involved the planning of in-depth interviews and the conduct of focus-group meetings whilst the third stage was dedicated to meetings with internally displaced persons (IDPs) living in compact settlements and people living in villages along the occupation line – Perevi, Tirdznisi, Urulu and Octomberi.

The results of the monitoring showed that the action plan had not actually benefitted the population having special needs in this regard. Women living in villages along the occupied territories and in compact settlements of IDPs face numerous problems, however, the lack of targeted protection or rehabilitation measures is apparent.

The majority of state entities responsible for the implementation of national action plan fulfilled only formal obligations. They did not plan and implement any special measure that would contribute to the fulfillment of requirements set forth in the resolution #1325.

The only entity that reflected in its activity the objectives specified in the plan was the Ministry of Defense. In 2014, an institution of gender advisors was established within the framework of gender equality strategy adopted by the Ministry. Moreover, a gender equality monitoring group was set up and tasked to support the implementation of the state action plan. Increase was seen in the involvement of women in peacebuilding

1502 The information is available at: http://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures [Last accessed on 1 March 2016].

missions with 219 women having participated in the missions in Iraq and Afghanistan and the share of women in armed forces comprising 7 percent.[1503]

It has been revealed that women, in most cases, do not have military education which impedes their appointment to managerial positions. Despite the work carried out by the Ministry in terms of gender equality, it is assumed that many men still disapprove of women holding managerial positions and this attitude is also an impediment to women's involvement. Consequently, there is a need to raise awareness and make a stronger focus on civil education.

Meetings held in regions[1504] showed significant problems faced by internally displaced women living in villages bordering the conflict-affected regions. The involvement of women at the local self-government level is quite high in the communities with self-assistance centers[1505]. Members of self-assistance groups in the villages of Perevi and Tirdznisi actively participate in the planning of the budget, assist local populations to get involved and bring their needs to the forefront. Women lobby issues of accessibility to children services and are more active in this area than men. However, the same does not hold true for other bordering villages.

Challenges in the health care sphere need to be mentioned. The information provided by IDPs and conflict-affected population makes it clear that they badly need psychological assistance programs. The national action plan envisaged this activity, but the Ministry of Labor, Health and Social Affairs failed to fulfill this obligation.

A number of important problems were outlined during the meetings in terms of access to health care programs, which impede the use of these programs: the absence of dentist that makes it difficult to get this service especially for children; the absence of family doctor in several villages and the need to walk five or six kilometers in order to reach a family doctor in another settlement; the problem of getting emergency medical service as the villages are located far from the center and it takes quite long for an ambulance to get there. According to local population, screening of women which is delivered to the villages and compact settlements of IDPs is of formal nature as the time allocated for the provision of this service is so short that half of those willing to get this health service fail to receive it.

The monitoring showed the absence of rehabilitation program for victims of sexual violence. Consequently, questions arise about the competence and conformity of the entities that are responsible to implement objectives set in the national action plan.

Access to justice is a serious challenge, especially for displaced and conflict-affected women. Despite the activity carried out by the LEPL Legal Aid Service, the level of awareness of services in the country and personal rights is low among IDPs and conflict-affected population. Women are unaware of the national mechanisms against domestic violence, the types of services they can receive from state entities. Therefore, it is necessary to organize the system in such a way as to make protection measures and justice easily accessible for women and to make this happen, it is especially important to thoroughly study problems, impeding factors and challenges faced by women.

A matter of great dissatisfaction among people living in the territories[1506] bordering occupied regions is the formal nature of classes on civil defense, taught during one semester from grade 6 to grade 12.[1507] Participants in the meeting noted that the course contains very little and only formal information.

The monitoring revealed that when implementing the national action plan, a number of entities, which considered planned activities mismatching their mandates, failed to delegate the obligations thus leaving such activities unfulfilled. It should be noted that all relevant entities were involved in the development of national

1503 A letter of the Ministry of Defense #MOD 0 15 00874317; 22/10/2015.
1504 Villages Perevi, Tirdznisi, Urulu, Octomberi.
1505 Self-assistance groups set up with the assistance of Taso Foundation.
1506 An information meeting in Tirdznisi and Octomberi.
1507 A letter of the Ministry of Education and Science of Georgia # 2 15 00821510; 27/08/2015.

action plan and one may wonder why the conformity of activities was not reviewed and powers were not delegated before the action plan was adopted as such issues could have been discussed within the framework of the national coordination council. The problem that emerged despite the involvement and participation in the processes of delegation of powers provides the ground to assume that responsible entities failed to properly assess the importance of the implementation of UN Security Council resolutions.

Yet another serious challenge was the lack of specific activities. A number of entities reflected some activities defined in the national action plan in their daily activities and the principle of Women, Peace and Security focus has been lost. It is therefore necessary to develop such a national action plan in future that will directly envisage the needs of target groups. Moreover, it is important to plan new directions based on the study of shortcomings in the implementation of the action plan.

WOMEN'S ECONOMIC ACTIVITY AND LABOR RIGHTS

Step up in women's economic activity and protection of women's rights are crucial in achieving gender equality and improving women's rights. Women's economic independence and strength is in direct correlation with women's empowerment and dignified life, especially in case of domestic violence.

Women actively participate in the economic development of the country, their share in the labor market is high, but the issues of equal pay for equal work, prohibition of discrimination and career advancement remain a problem.

According to 2015 Global Gender Gap Report,[1508] Georgia belongs to a lower-middle income group. According to this source, Georgia is 60th among 145 countries by women's economic participation and opportunity and 83rd by the labor force participation where men (79) exceed women (61).

According to the same data, Georgia ranks 25th by the indicator of wage equality for similar work. The ratio of average income indicator differs by sexes with Georgia ranking 100th among 145 countries. An average annual income of man is twice as many as that of a woman, amounting to 10,272 USD as compared to 5,183 USD earned by a woman on average.

The Public Defender of Georgia has repeatedly issued recommendations about the improvement of women's labor rights. Nevertheless, the second wave of legislative reform designed to improve women's labor rights have not resumed yet. Nor were any active steps taken towards the prevention of sexual harassment at workplace and its legislative regulation. The process of ratifying the Maternity Protection Convention №183 of the International Labor Organization has not started yet.

Maternity, childbirth and childcare leave

The rule of using the right to maternity, childbirth and childcare leave, guaranteed under Article 27 of the Labor Code of Georgia, seems to equally apply to parents of both sexes; however, the situation is different in practice. A problem is the attitude of employers towards the use of childcare leave by men, on the one hand, and on the other hand, stereotypes existing in society, according to which childcare is a "woman's job" and a man, undertaking this "job," may even become an object of derision thus discouraging men to use the right guaranteed by the Georgian legislation.

Moreover, the rule determined in the decree of the Minister of Labor, Health and Social Affairs, which allows the reimbursement of a maternity, childbirth and childcare leave to women alone remains a problem. This

1508 The information is available at: http://www3.weforum.org/docs/GGGR2015/cover.pdf [Last accessed on 1 March 2016].

provision conflicts with the right guaranteed to employees under Article 27 of the Organic Law of Georgia the Labor Code and a key principle of gender equality, which implies shared obligations and responsibilities for the upbringing and development of children, also with the rule established by international treaties which Georgia is party to.

According to information provided by the Ministry of Labor, Health and Social Affairs, the work has begun on the amendments and addenda to the above mentioned decree in accordance with the Public Defender's recommendation; however, the issue remains unresolved.

Sexual harassment at workplace

Sexual harassment at workplace represents the most widespread and at the same time, underreported problem negatively affecting the quality of performed work, endangering the wellbeing of women and men and undermining the degree of gender equality. Studies prove that in countries of the European Union some 40%-50% of women experience unwanted sexual treatment, physical contact or other forms of sexual violence at workplaces.[1509]

Article 6 of the Georgian Law on Gender Equality stipulates the issue of gender equality in labor relations and provides a general definition of harassment, but the law does not provide for legal response to sexual harassment at workplace. Article 40 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) sets the obligation to states to take all measures to make any form of sexual harassment punishable under a national law. Unfortunately, a set of legislative changes drafted by the Ministry of Justice of Georgia for the ratification of this Convention does not provide the definition of sexual harassment.

It must be noted that in implementing obligations assumed under international documents, a special importance, in addition to legislative regulations, is attached to the establishment by employers of internal institutional response mechanisms. The practice of successful countries show that the establishment by employers of mechanisms preventing sexual harassment is way more effective and less costly in terms of reinstatement of violated rights. In this regard, one must note the adoption by the Public Defender of a document on the prevention of sexual harassment, which serves the aim of creating sexual harassment-free environment for employees of the Public Defender's Office of Georgia.

It is crucial to define sexual harassment on a legislative level and determine corresponding system of sanctions. Besides, public or private institutions must establish an internal institutional mechanism of preventing sexual harassment and responding to facts that occur.

RIGHTS OF SINGLE AND MULTI-CHILDREN PARENTS

Among challenges faced in the process of achieving gender equality, social and economic situation of single and multi-children mothers is especially grave. Despite the definition of a status of single parent, special measures of protection and assistance are not implemented while a status of multi-children parent remains undefined.

Pursuant to Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, states parties shall take all appropriate measures to ensure that family education includes a proper understanding

1509 The information is available at: http://endviolence.un.org/pdf/pressmaterials/unite_the_situation_en.pdf [Last accessed on 1 March 2016].

of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases. According to the same Convention, the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

Nevertheless, a single motherhood in Georgia is associated not only with the neglect by father of a child and responsibilities towards him/her but also disregard on the part of society and the state. Stereotyped attitudes existing in society, on the one hand, and absence of state assistance programs, on the other hand, contribute to an extremely difficult situation of single mothers in terms of their rights and economic conditions.

On 16 June 2015, a joint decree (#79/#01-18n) of the Ministry of Justice and the Ministry of Labor, Health and Social Affairs determined the Rule of Establishing a Status of Single Parent and Maintaining Data on Corresponding Persons. However, the implementation of relevant programs is no less important than the maintenance of data.

According to the Justice Ministry, the electronic database of the Public Service Development Agency on births in 2015, shows only the data of mothers in the section about parents in 1,393 birth records. Despite the determination of the status of single parent, there are no special programs developed to alleviate the burden of upbringing a child to a single parent. According to effective legislation, single parents are eligible to all state programs and are treated as priority for sub-programs; however, the existing programs are not sufficient to ensure social wellbeing of a single parent.

One should also note a shortcoming in the grounds for the abolition of the status of a single parent: the Civil Code of Georgia stipulates marriage of a person as a ground for abolishing the status of a single parent, though this does not automatically give rise to responsibilities of a step-father or a step-mother towards the child.

On 25 May 2015, within the scope of powers granted by the law, the Public Defender of Georgia submitted a legislative proposal to the parliament of Georgia, on amending the legal grounds of the abolition of a single parent status. According to the proposal, the above mentioned legal ground should be modified so that the status of single parent is abolished on the ground of an entry in a child's records about the emergence of another parent or legal representative and not on the ground of marriage.

Problems are faced by multiple-children parents too. The data provided by the Ministry of Justice shows that in 2015, some 11,787 women became mothers of three and more children. According to the Ministry of Justice, no statistics is maintained about the number of multiple-children parents in Georgia because the law does not provide for the status of multiple-children parent. Consequently, it is important to define the status of multiple-children parent in the Georgian legislation, also, to devise special programs and social allowances facilitating the improvement of social and economic condition of multiple-children families.

ROLE OF MEDIA IN THE ESTABLISHMENT OF GENDER EQUALITY

Gender equality and violence against women remains a serious challenge in Georgia. Stereotyped attitudes and discriminatory practices are deeply rooted in society, often resulting in violation of fundamental rights of women. Especially dangerous are the rules disguised as traditions and cultural customs, which rest on double moral standards (what is pardonable for men is not pardonable for women) and violate rights and freedoms of women. Society does not fight against such discriminatory practices but often even sympathizes with offenders.

Media outlets and their editorial policies play one of main roles in changing public awareness and establishing correct attitudes. They can reach each family and show them the gravity real problems and their consequences, contribute to the establishment of such values that ensure respect of basic human rights and freedoms.

The right to freedom of speech and expression is a fundamental right, but reporting violence against women and domestic violence requires extreme caution so as not to further strengthen existing discriminatory stereotypes and practices. According to Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, states parties shall take all appropriate measures to eliminate practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.[1510]

The Council of Europe has been addressing this issue over the past years. To eliminate negative stereotypes and enhance gender equality, the resolution #1751 of the Parliamentary Assembly of Council of Europe, adopted in 2010, calls on states parties to include provisions in gender equality legislation, aimed at combating sexist stereotypes. The same resolution notes that the impact of sexist stereotypes in the media on the formation of public opinion, especially among young people, is disastrous.

To improve legislation in gender equality, in 2015, the Public Defender of Georgia submitted a legislative proposal to the parliament, regarding sexist advertisements in broadcast media; the proposal offers to specify the definition of sexist advertisement in the Law of Georgia on Advertising and to introduce relevant sanctions in the Law of Georgia on Broadcasting.

At the same time, the Public Broadcaster's activity is especially important in the area of women's rights and gender equality issues. When talking about the increase in women's participation in decision making process, we must not forget about the need to show active, successful, leader women. At the same time, it is necessary to properly highlight existing problems and promote the idea and spirit of equality in shaping a public opinion. The Public Defender of Georgia deems it important for the Public Broadcaster to integrate gender equality issues in its editorial policy.

RIGHTS OF WOMEN HUMAN RIGHTS DEFENDERS

Numerous women human rights defenders throughout the world experience oppression and violence for their activity as it is almost always associated with discussing tabooed topics, breaking the culture of silence and modifying established stereotypes.

It is noteworthy that in 2013, the organization Women's Fund in Georgia established an award for women human rights defenders, naming it after Kato Mikeladze, a Georgian feminist, activist and publicists of the early 20th century.

On 4 November 2013, the UN Security Council adopted a resolution on protecting women human rights defenders.[1511] The resolution emphasizes threats and risks faced by women human rights defenders. It also notes that women human rights defenders are at risk of sexual violence and suffer violations of their fundamental rights to life, to psychological and physical integrity, to privacy and attacks on reputation.

The resolution also describes widespread methods of abuses and violence against women human rights defenders such as information-technology-related violations: online harassment, cyberstalking, violation of privacy, censorship and hacking of e-mail accounts, mobile phones and other electronic devices, with a view to discrediting women human rights defenders.

The resolution calls on states to take concrete steps to prevent threats, harassment and violence against women human rights defenders. To this end, the resolution offers the states to review the implementation of internal legal practice to identify the extent of protection guarantees in the regulations given to women human rights defenders.

1510 The information is available at: http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf [Last accessed on 1 March 2016].
1511 The information is available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.64 [Last accessed on 1 March 2016].

Although the above issue does not seem topical in Georgia, the Public Defender's Office of Georgia has learned about a number of incidents. Moreover, naming a problem is crucial in order to avoid underreporting of facts or confusing them with other types of incidents.

In 2015, the Department of Gender Equality of Public Defender's Office studied several incidents of threatening women human rights defenders for their activity. The study of these incidents revealed that representatives of law enforcement bodies find it difficult to properly evaluate facts of threatening of, and risks faced by, women human rights defenders.

Incident #1: the case of A.A.

A video file containing threats to a woman human rights defender A.A was uploaded on www.youtube.com. The threat and abusive statements against A.A. were made because of A.A.'s statements about the problem of early marriage. The addressee of the threat did not feel secure because she often had to speak and make public statements about tabooed topics and existing vice practices.

We addressed the Unit of Fight against Cybercrime of Central Criminal Police Department of the Interior Ministry of Georgia. According to the response received from it, the unit studied the case but did not launch the investigation as it had not established signs of criminal offence. It should be noted that the Unit did not take any steps to establish the author of the video.

Incident #2: the case of F.B.

Threats of harming the health and destructing the property were made against F.B., her child and the organization she represents. According to the applicant, the threats were made because of her activity in the area of reproductive and sexual health as well as the protection of women's rights and LGBT rights.

We addressed the Interior Ministry of Georgia. It is more than a year that this case has been investigated but no concrete results have been known yet.

It must be noted that representatives of law enforcement bodies do not treat threats against women human rights defenders seriously; however, considering attitudes in Georgia one may say that such threats are often real and the above applicants do feel unsafe. It is therefore especially important to take active steps for the implementation of UN Security Council resolution and review the implementation of the national legislation and improve the practical implementation of responsive measures by relevant entities.

REPRODUCTIVE AND SEXUAL HEALTH AND RIGHTS

Reproductive and sexual health is part of fundamental human rights and requires special attention. According to the Program of Action of the International Conference on Population and Development program (ICPD, 1994),[1512] reproductive health rights are based on the right of couples and individuals to decide without discrimination and coercion the number and spacing of their children and to have the information for making such a decision. According to the program,[1513] the state shall ensure easy accessibility of medical services, including for the protection of reproductive health which implies family planning and sexual health, high-quality services and freedom of choice.

1512 The information is available at: http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf [Last accessed on 1 March 2016].

1513 The information is available at: http://en.calameo.com/read/004110021f6f489646537 [Last accessed on 1 March 2016].

It is important that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) sees a link between discrimination and reproductive capacity of women and points to freedom of choice in terms of the number and spacing of their children. According to Article 12 of the Convention,[1514] states parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

The exercise of the right to reproductive health largely depends on the availability of quality medical services. No less important is the access to information enabling to exercise this right. Unfortunately, these issues remain a problem in Georgia. Information meetings and field trips to the regions organized by the Public Defender's Office of Georgia prove that the level of public awareness and information about reproductive and sexual health and rights as well as services and programs available in the country remains low.

Information vacuum and low awareness give rise to a whole set of problems and require special attention from the state as exercising the right to reproductive health largely affects social, economic or political development of the country. A particular need of access to various services and information was revealed in regions populated by ethnic minorities as along with other problems, the lack of information results from the language barrier. Moreover, a possibility to receive information about reproductive health in formal education programs is very limited.

Meetings with youth organized by the Department of Gender Equality of Public Defender's Office made it clear that youth lack information about access to contraception and abortion, existing regulations, family planning services. It is therefore very important to integrate mentioned issues in a school education program, which will also contribute to the prevention of early marriages and early motherhood.

Educating and informing adults is no less important and in this endeavor, along with the state, civil organizations or media outlets have to play an important role. Taboo and unhealthy attitude towards the issue among society results in stigma. A meeting with teachers showed that due to incorrect information parents often go against the conduct of seminars to their children on the issues of reproductive and sexual health, HIV/AIDS and other similar topics.

It is therefore important that specialists introduce and implement training/seminars for adults and youth on sexual and reproductive health and rights because parents fail to perform this function due to alienation with children and often, ignorance of these issues.

Challenges of family planning

According to data of World Health Organization,[1515] around 225 million women across the world would like to terminate pregnancy however they do not have access to various methods of contraception and family planning. Restricted access to services and lack of information is in direct correlation with the termination of pregnancy and associated risks. Moreover, it is important to provide women with relevant information and consultation about the use of contraception and associated consequences.

The use of contraception in Georgia has increased compared to previous years; nevertheless, many women do not use it and apply less effective methods of family planning which result in unplanned pregnancy and represent a serious problem for women. After the abortion very few women receive consultation and corresponding service. Unequal access to services is especially striking among rural residents who lack education and information.

1514 The information is available at: http://www.supremecourt.ge/files/upload-file/pdf/aqtebi9.pdf [Last accessed on 1 March 2016].
1515 The information is available at: http://www.who.int/mediacentre/factsheets/fs351/en/ [Last accessed on 1 March 2016].

As mentioned above, the use of contraception in Georgia has improved but only up to 53%; the third of these use traditional methods which are mainly ineffective and often end in abortions.[1516] This is proved by the data of National Statistics Office of Georgia, which show an upward trend in the use of hormonal contraception with four-fold increase in 2014 as compared to 2000.[1517]

In recent years Georgia has seen a step up in information campaigns to raise awareness of contraception, but the general picture prompts that this is not sufficient. Information about the use of contraception should be provided by competent and professional personnel and this service should not be limited to the provision by international or local nongovernmental organizations alone.

Mother and children mortality

Mother and child health is a priority for the entire world. One of main causes of deaths of women of reproductive age is antenatal and postnatal complications. The use of relevant services is impeded by such factors as poverty, lack of access to information, cultural factors, et cetera.

According to the World Health Organization data, up to 830 women died in 2015 because of antenatal and postnatal complications. Such cases are 19 times higher in developing countries than in developed ones and the majority of them could have been prevented through early detection of risk and corresponding interventions.[1518]

There is a direct correlation between maternal mortality and infant health and vice versa. The fourth goal of millennium development is the reduction of by two thirds. The highest child mortality rate is observed in underdeveloped countries, due to infectious diseases, malnutrition and problems related to environmental factors.[1519]

At the same time, the under-five mortality rate is eight times higher in developing countries. By the World Health Organization data, the global maternal mortality rate is quite high though it has showed the decrease by 43% over the period from 1990 to 2015.[1520]

According to the data of UN Maternal Mortality Estimation Inter-Agency Group, Georgia belongs to so-called B group countries; it is a country which lacks comprehensive system of registering maternal mortality.[1521] Consequently, huge efforts must be undertaken to tackle challenges existing in this regard and to develop measures supporting mother and child health.

A report on assessing the efficiency of health system of the Ministry of Labor, Health and Social Affairs[1522] reads that the registration of maternal mortality remains a problem. It should be noted that studies on maternal mortality are mainly conducted with the assistance of international organizations and independent experts, which indicates about unpreparedness of the state to timely and efficiently confront the challenges existing in this regard in the country. Besides, relevant guidelines and protocols must be introduced in practice in order to help retrain and equip service personnel with necessary knowledge.

1516 Women's reproductive health in Georgia, John Ross; UNFPA, 2012.
1517 The information is available at: http://www.geostat.ge/cms/site_images/_files/georgian/health/Qali%20da%20kaci_2015.pdf [Last accessed on 1 March 2016].
1518 The information is available at: http://www.who.int/mediacentre/factsheets/fs348/en/ [Last accessed on 1 March 2016].
1519 The information is available at: http://apps.who.int/iris/bitstream/10665/200009/1/9789241565110_eng.pdf?ua=1 [Last accessed on 1 March 2016].
1520 The information is available at: http://apps.who.int/iris/bitstream/10665/200009/1/9789241565110_eng.pdf?ua=1 [Last accessed on 1 March 2016].
1521 The information is available at: http://ncdc.ge/Category/Article/2804 [Last accessed on 1 March 2016].
1522 The information is available at: http://www.healthrights.ge/wp-content/uploads/2013/01/jandacvis-sistemis-efekturobis-angarishi.pdf [Last accessed on 1 March 2016].

Abortions

According to the World Health Organization data, some 40-50 million abortions are registered every year worldwide. This figure means 125,000 abortions per day.[1523] Accurate information about abortions is difficult to obtain and its accuracy depends on the quality of provided service; the reduction in the artificial abortion rate mainly depends on the use of contraception and the level of awareness.

According to preliminary data provided by the National Center for Disease Control and Public Health,[1524] some 29,551 abortions were performed in Georgia in 2015, showing a downward trend compared to previous years. By regional indicators, the highest abortion rate is seen in Tbilisi (11,018), which is followed by Imereti (4,128) and Ajara (3,774). By age indicators, the highest number of abortions is observed among women belonging to the 25-29 age category (8,465). An important piece of information is that 10 abortions were performed in 2015 on girls aged under 15 with four of them from Kvemo Kartli, two from Tbilisi and the rest from Kakheti, Samegrelo, Shida Kartli and Samtskhe-Javakheti.

Sex-selective abortion remains a problem in Georgia. This trend is especially alarming in the South Caucasus region where parents give priority to boys; as a result, increasingly less girls are born annually, the gender imbalance widens and gender inequality increases. Roots of gender-biased sex selection must be sought in the culture where males are regarded as successors of family name whereas women in this culture are considered inferior, someone having no value. This practice, when it becomes of systemic nature, leads to gender inequality, increase in violence against women, imbalance in population and violation of human rights.

The Georgian legislation prohibits termination of pregnancy on the basis of sex selection. However, according to data of 2015 Global Gender Gap index,[1525] Georgia is 138th among 145 countries by the sex ratio indicator.

In 2015, with the assistance of the World Bank, the UN Population Fund conducted a study on gender-biased sex selection in Georgia, which was prompted by a growing concern about potential sex imbalances at birth in several East-European countries. According to the study, sex-selection abortions in Georgia has three reasons: giving priority to a son, decrease in birth rate since 1990s, and access to reproductive technologies. As the study shows, a decrease in sex imbalances at birth has already been observed in Georgia, which creates a favorable ground for the state to review those cultural norms and stereotypes which impede the achievement of gender equality in the country and diminish the role of a women in society.

The 2011 resolution of the Parliamentary Assembly of the Council of Europe[1526] about prenatal sex selection calls on states and international agencies to join forces in the fight against gender-biased sex selection. Moreover, in 2014, when considering the 4th and 5th combined periodic reports of Georgia, the Committee on Elimination of All Forms of Discrimination against Women[1527] expressed its concern in final recommendations about a high number of sex-selection abortions and called on the state to take measures against this practice.

EARLY MARRIAGE

Prevention and case management of early marriages remains a problem in Georgia. Unfortunately, forced marriages as well as forced engagements are practiced. The monitoring of measures implemented by state entities, which was conducted by the Department of Gender Equality of Public Defender's Office, has shown

1523 The information is available at: http://www.worldometers.info/abortions/ [Last accessed on 1 March 2016].
1524 A letter of the Ministry of Labor, Health and Social Affairs of Georgia #06/382,26/01/2016.
1525 The information is available at: http://www3.weforum.org/docs/GGGR2015/cover.pdf [Last accessed on 1 March 2016].
1526 The information is available at: http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=13158&lang=en [Last accessed on 1 March 2016].
1527 The information is available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGEO%2fCO%2f4-5&Lang=en [Last accessed on 1 March 2016].

that effective response to early marriages and fulfillment of the requirements of law remain a challenge. Yet another problem is that early marriage is considered an accepted practice by society.

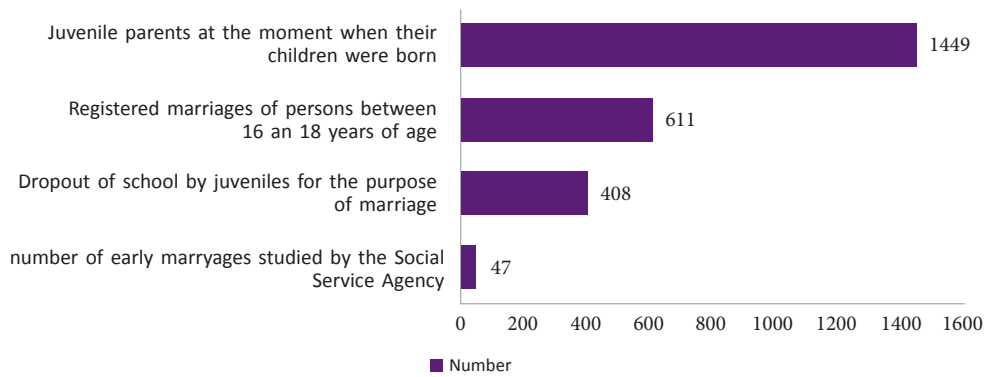
On 16 December 2015, the parliament of Georgia held the third reading and adopted an amendment to that law, which was drafted on the basis of a legislative proposal submitted by the Public Defender of Georgia. With this amendment a new rule of registration of marriage of persons aged between 17 and 18 has been introduced, allowing the court alone to permit such marriages. Justifiable circumstances of registration of a marriage were also specified and the term of validity of the provision was defined for one year.

Yet another positive development was a change initiated by the Ministry of Education and Science, according to which a ground of child's dropping school, must be indicated. This change made it partially possible to see a scale of early marriages.

In 2015, a working group was set up on the issues of early marriage. The group will work within the Interagency Council Implementing Measures to Eliminate Domestic Violence and it includes representatives of relevant public entities, members of gender thematic group (international and donor organizations) and representatives of nongovernmental organizations.

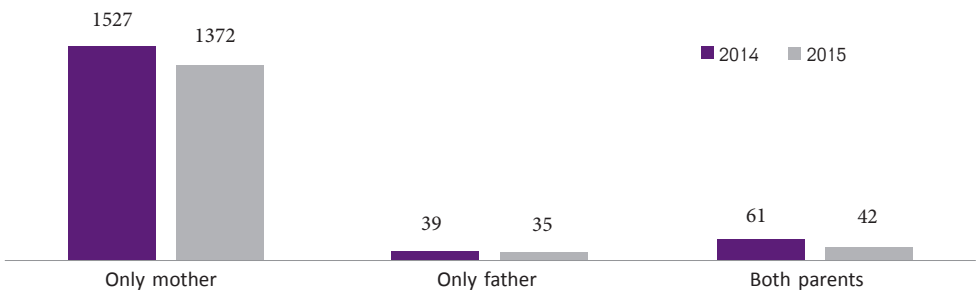
Although an accurate number of early marriages in Georgia is not known, the Department of Gender Equality of Public Defender's Office collected the data which were registered by various entities within the scope of their powers.

Table #1: Data on early marriages (2015)



According to the information provided by the Ministry of Justice,[1528] 2015 saw the registration of 611 marriages of minors whilst the corresponding indicator in 2014 stood at 665. Of this indicator 95% of minors were girls. It is clear that in case of early marriage we speak about girls though there are early marriages among boys too. The data of the Ministry of Justice is three times higher[1529] when it comes to the number of underage parents at the moment of childbirth. 2014-2015 data are almost identical, but well exceed any other indicator available about early marriages.

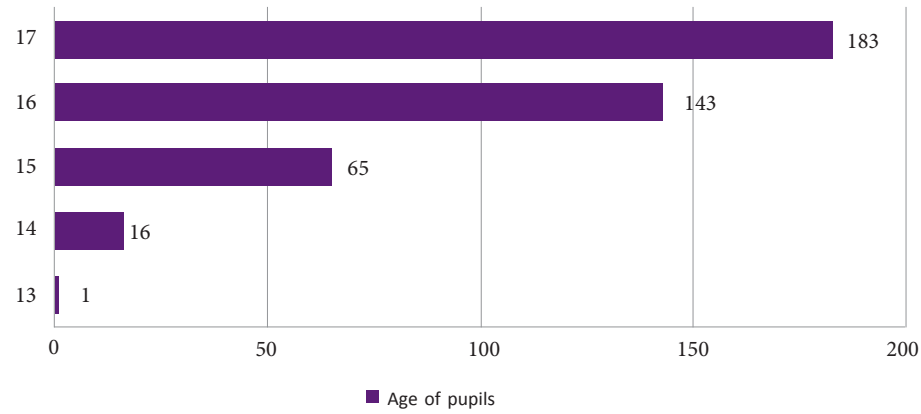
Table #2: Underage parents at childbirth.



1528 Letters of the Ministry of Justice of Georgia: #7264; 23/09/2015; #01/14677; 25/01/2016.
1529 Letters of the Ministry of Justice of Georgia: #7264; 23/09/2015; #01/14677; 25/01/2016.

It is worth noting that underage persons often drop education because of early marriage. A matter of extreme concern is the abandonment of school before the graduation of the basic education level. According to the data provided by the Ministry of Education and Science,[1530] in 2015, because of marriage school was abandoned by 408 schoolchildren aged between 13 and 17 years and 168 schoolchildren having reached 18.

Table #3: Indicator of abandonment of school because of early marriage (2015)



These indicators must not be accurate as meetings held by the Public Defender's Office in settlements of Kvemo Kartli municipality revealed that teachers and school directors were unaware of the obligation to maintain statistics about the reasons of abandonment of school by pupils and to make a corresponding notification.

The decree on Approval of Child Protection Referral Procedures (hereinafter referred to as referral procedures), dated 31 May 2010, details responsibilities and obligations of the Ministries of Labor, Health and Social Affairs; Internal Affairs; and Education and Science in case of violence against children. However, the results of the activity of Public Defender's Office show that issues envisaged in the referral procedures in relation to early marriages are not actually implemented.

The study proves that, in teachers' opinion, identifying children belonging to a risk-group and notifying relevant entities exceed their competence and they cannot interfere in the so-called "family affairs", the issues that go beyond school. Moreover, in case of interference they fear that their confidentiality will not be observed which results in their passivity. By acting in such a way, teachers ignore the referral mechanism and refuse to fulfill obligation imposed by the law.

The Gender Equality Department of the Public Defender's Office studied the quantitative data on the response of law enforcement bodies to facts of early marriage. Under Article 140 of the Criminal Code of Georgia, sexual intercourse with a person under 16 is a punishable act. According to information provided by the Chief Prosecutor's Office of Georgia, the response to the wrongdoing envisaged in this article has notably increased which is a positive development. Compared to 2014, the indicator of 2015 of criminal proceedings instituted under Article 140 of the Criminal Code increased by 74%; in 2014, such criminal proceedings were instituted against 33 persons whilst in 2015 against 129 persons.[1531]

It must be noted, however, that the accounting period showed a loyal treatment towards alleged wrongdoers envisaged in article 140 and the neglect of requirements of the law on the part of law enforcement bodies. The study of cases revealed instances when an investigation into a fact of sexual intercourse with udner-16 person was terminated without any ground or an investigation was conducted in such a way as to clear a wrongdoer of charges.

1530 Letters of the Ministry of Education and Science of Georgia # MES 7 15 00971410; 25/09/2015. MES 8 16 00046633; 21/01/2016.
1531 Letters of the Chief Prosecutor's Office of Georgia #13/60324; 25/09/2015; #13/5363; 23/01/2016.

Article 143 of the Criminal Code of Georgia provides punishment for illegal imprisonment, including illegal imprisonment of a minor which might be a kidnapping for the aim of marriage. It should be noted that the indicator of prosecution of persons for a crime envisaged in Article 43 of the Criminal Code has increased by 82% - 60 cases in 2015 compared to 11 in 2014. Of these cases three criminal proceedings were initiated in the first half of 2015 with all the three criminal cases involving the illegal imprisonment for the aim of marriage,[1532] while the remaining 57 such incidents occurred in the second half of 2015. The latter indicator, however, does not imply the illegal imprisonment of minors alone because according to the Prosecutor's Office of Georgia,[1533] they were not able to identify that.

One must mention the problem of inadequate response to cases of early marriage on the part of the LEPL Social Service Agency. Unless a forced marriage is apparent, the Social Service Agency finds it difficult to identify early marriage as a problem. The Social Service Agency often emphasizes a voluntary nature of early marriage and does not carry out measures envisaged by the law, proceeding from true interests of a child. In 2015, the Social Service Agency studied the total of 47 cases of early marriage, which is a very small number especially compared to cases of early marriage registered by other entities.[1534]

The information meetings held by the Public Defender's Office in the regions[1535] revealed a very low level of awareness about the problem of early marriage, solutions of this problem and existing obligations. Youth lack information about sexual and reproductive health and rights. They do not know how to act in case of pregnancy, are unaware of their rights, the access to abortion, an issue of confidentiality, et cetera.

The results of the study proved that the Social Service Agency as well as schools find it difficult to carry out the activity considered in the law in such regions that are populated by ethnic minorities as the language barrier significantly impedes the working process and results in the lack of services. This most negatively affects such a vulnerable group as child victims of violence.

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN GEORGIA

The problem of violence against women and domestic violence is very grave, especially alarming is femicide. Given the scale and acuteness of the problem more efforts are needed to ensure that each citizen feels safe.

It is very important to involve social workers in the prevention of violence against women and protection against domestic violence, which has not been implemented yet. A recommendation of the Public Defender of Georgia points to the importance of strengthening and supporting social workers since a small amount of such workers coupled with a heavy burden of work make any efficient work in this new direction almost impossible.

The study of this topic by the Gender Equality Department of Public Defender's Office showed the increase in the indicator of identifying instances of domestic violence as compared to the previous year. This is a positive trend in itself but, at the same time, indicates about the need for the monitoring of repeated incidents and the implementation of protective measures.

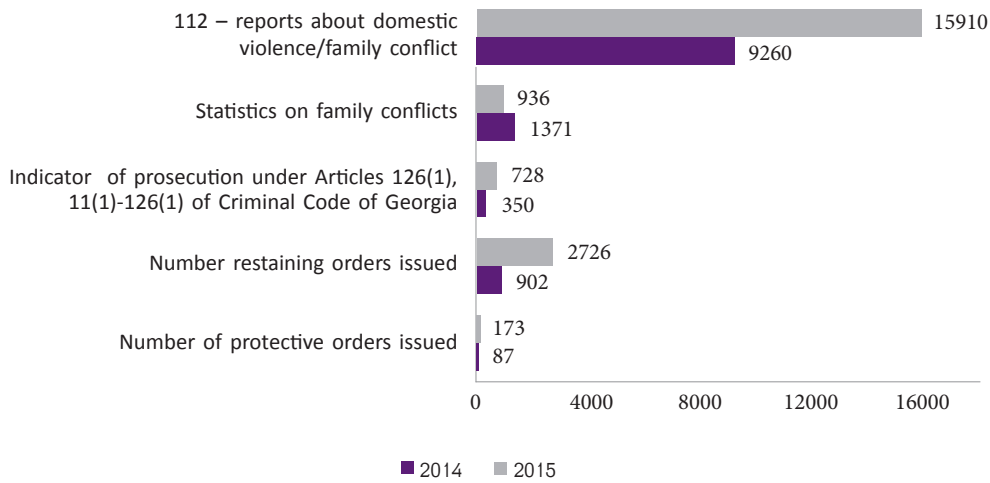
One should especially note the steps taken by the Interior Ministry and the Chief Prosecutor's Office in detecting and preventing domestic violence. The conduct of information campaigns and the improvement of response mechanisms positively affected the identification indicator of incidents.

1532 A letter of the Chief Prosecutor's Office of Georgia #13/60324; 25/09/2015.
1533 A letter of the Chief Prosecutor's Office of Georgia #13/5363; 23/01/2016.
1534 Letters of the Ministry of Labor, Health and Social Affairs of Georgia #04/71601, 22/09/2015; #04/3552; 18/01/16.
1535 Meetings were held in Samtskhe-Javakheti, Kvemo Kartli, Kakheti regions, also mountainous villages of Autonomous Republic of Ajara. The total of 30 meetings were held in 22 cities and villages with the participation of 750 persons.

The parliamentary committee on human rights and civil integration also triggered a significant process by setting up a thematic group on the issues of violence against women. On the basis of special address prepared by the Women's Movement within the framework of the working group, parliamentary hearings of relevant entities were held and a set of recommendations were developed. The Public Defender's Office was involved in the activity of the working group as well as the drawing up of recommendations.

The Gender Equality Department of the Public Defender's Office collected and analyzed statistical data on incidents of domestic violence in 2015.

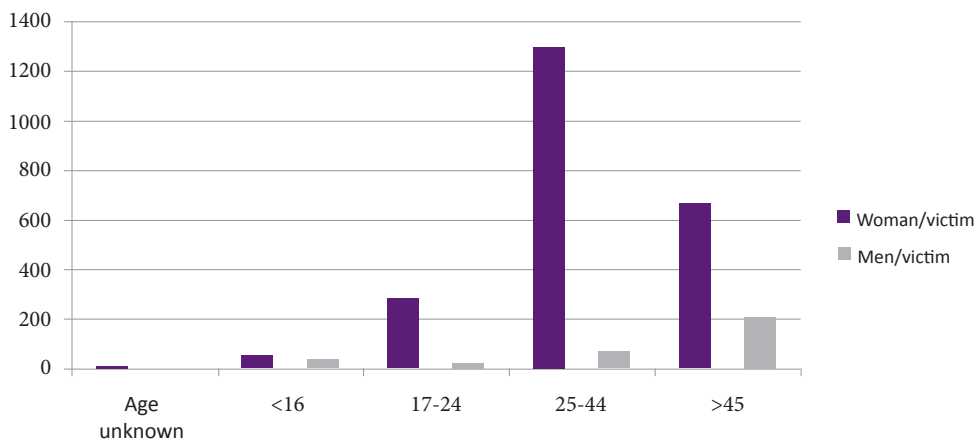
Table #1: Incidents of domestic violence (2014-2015)



It is noteworthy that in 2015, the number of reports to LEPL 112 Emergency and Operative Response Center about possible domestic violence/conflicts made up 15,910, though this data is only primary information which, despite repeated recommendations from the Public Defender of Georgia, has not been analyzed.

As the Interior Ministry data on restraining orders issued in 2015 show, some 2,726 facts of domestic violence were registered with 5,106 persons involved in them. The statistical data on offenders and victims show[1536] that 93% of offenders are men whereas 87% of victims are women. A positive trend of reduction in the indicator of family conflicts, which are not qualified as domestic violence, is seen compared to the previous year (see Table #1). By age groups the highest risk groups are those of women aged between 25 and 44 (56%) and men above the age of 45 (61%).

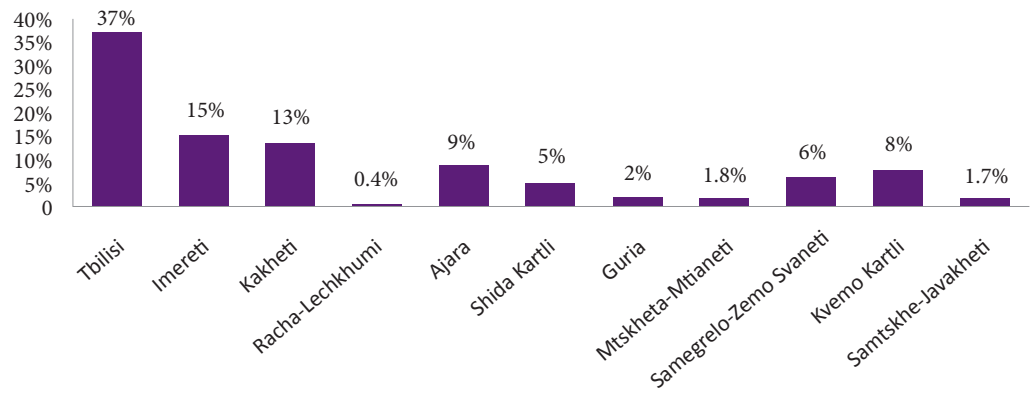
Table #2: Age distribution of victims by restraining orders



1536 A letter of the Ministry of Internal Affairs of Georgia #355030/ 12.02.2016.

The data on the distribution of victims by age groups allows to identify risk categories and to plan preventive measures. Moreover, it is assumed that persons under 24 rarely turn to relevant services for help and there is a need to strengthen work in this direction. The analysis of data shows that reporting domestic violence remains a problem in regions. The indicator is especially low in Racha-Lechkhumi, Mtskheta-Mtianeti, Samtskhe-Javakheti and Guria regions.

Table #3: Distribution of issued restraining orders by regions



As regards the response to domestic violence as to a criminal offence, in 2015 criminal proceedings were instituted against 728 persons under Articles 11[1]-126[1] and 126[1] of the Criminal Code whilst 858 persons were recognized as victims, according to the data of Prosecutor's Office. These indicators also show a positive trend in that they show that in 2015, relevant agencies regarded domestic violence as a criminal offence more times which will eventually improve the situation in terms of protective measures of victims.

According to the data concerning the failure to fulfill the requirements under protective and restraining orders, investigations were launched into 36 cases under Article 381[1] of the Criminal Code and 271 cases of administrative offence, envisaged by Article 175[2] of Administrative Procedures Code, were registered.[1537] However, an effective monitoring of enforcement of protective orders remains a problem. It is important to establish a monitoring mechanism that will enable relevant entities to monitor the families where facts of violence occurred and at the same time, to build a database which will provide very important information for planning preventive measures in future.

In addition to the analysis of statistical data, no less important is the analysis of systemic shortcomings which the Gender Equality Department of Public Defender's Office identified when studying cases of domestic violence in 2015.

A problem is the coordination and exchange of information among bodies authorized to respond to domestic violence. The study of cases revealed shortcomings in the assessment of measures implemented by law enforcement bodies and the Social Service Agency. On certain occasions, the information provided by both entities were contradictory and it was difficult for the Public Defender's Office to establish the truth.

In some cases representatives of law enforcement bodies applied a warning mechanism instead of restraining orders. On the one hand, there is a problem in assessing a concrete case by law enforcement bodies, especially when it does not involve physical violence but only a psychological violence, police officers find it difficult to take decisions on the issuance of restraining orders. On the other hand, representatives of law enforcement bodies justify the drawing up of a warning protocol by a desire of the victim not to issue a restraining order but merely warn the offender.

The mentioned argument cannot be considered justifying as a victim is not informed of the essence of a restraining order and is not explained that a warning mechanism does not imply legal consequence and does

1537 A letter of the Ministry of Internal Affairs of Georgia #646505, 15/03/2016.

not protect a victim from a repeated violence. Moreover, given the emotional or physical state of a victim, a representative of law enforcement body has a special role to help the victim realize the threat so that she does not reject the measure which serves to protect her.

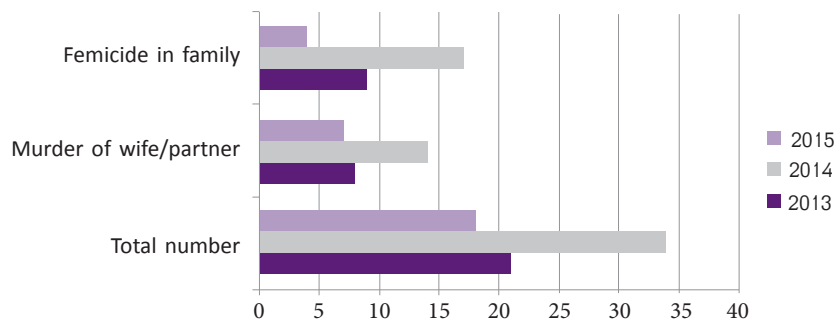
The cases studied by the Gender Equality Department of Public Defender's Office also revealed the instances where law enforcement officers ignore a characteristic feature of domestic violence – regularity and continuity. The history of reporting to law enforcement bodies by a victim often covers several years but each report is viewed as a separate case. Report on a separate case might seem less important but in its entirety, the violence against a victim over the period of several years prevents the victim from living peacefully which results in developing a grave psychological condition.

Femicide

According to the data of Chief Prosecutor's Office of Georgia, in 2015, investigations were launched into 26 criminal cases of femicide and attempts of femicide. Fourteen of these crimes were committed in the condition of domestic violence whilst 12 crimes seem to have other motives. Two incidents of harming the health of family members ended in death. Consequently, 28 cases of femicide or attempted femicide were registered in 2015.[1538]

The data on femicide or attempted femicide showed that the majority of these crimes were committed by partners, former partners or persons who were denied partnership. Some 50% of femicides or attempted femicides were committed by husbands or because of nonreciprocal love; 25% of crimes were committed by other members of family whilst the remaining 25% were committed in other circumstances such as mugging or neighbor conflicts.

Table #4: Data on femicide (2013-2015)



The analysis of femicides is especially important as such analysis would provide a basis for planning further steps. Law enforcement bodies as well as courts should be involved in the collection of detailed information. In this regard, the analysis carried out at the initiative of the Chief Prosecutor's Office of Georgia is worth to be mentioned.

The Public Defender of Georgia fully supports the statement made by Dubravka Šimonović, the United Nations Special Rapporteur on violence against women, its causes and consequences, on 23 November 2015, in which she called on all the States to establish a "Femicide Watch", and to focus on the prevention of gender-related killing of women and to publish data on femicides on each 25 November.

Alongside cases of femicide, special attention must be paid to those women suicides which, according to reports, might be caused by systemic nature of domestic violence. For example, it has been two years now that

1538 A letter of the Chief Prosecutor's Office of Georgia #13/11306; 24/02/2016.

the investigation into a fact of possible incitement to suicide of Kh.J. has been in progress and the status of investigation of the case is still unknown.

A number of cases studied by the Public Defender's Office show that cases cannot be often qualified as the incitement to suicide because law enforcement bodies are not aware of facts of violence before the death.

The above cited suicides as well as similar cases studied by the Public Defender's Office provide the ground to think that the incitement to suicide is yet another gravest consequence of violence against women while difficulties in punishing offenders is the most unfortunate trend.

Assessment of services available for victims of domestic violence

There are three public service institutions – shelters operating for victims of domestic violence in Georgia. Considering the scale and acuteness of the problem of domestic violence, this service is of crucial importance. It should be noted that much more victims of domestic violence used shelter service in 2015 than in 2014. The detailed statistics is the following:

Legal basis for admitting to a shelter	2013	2014	2015
On the basis of restraining order	4	11	37
On the basis of protecting order	1	0	7
By identification group	15	7	9
By patrol police protocol	9	0	0
Based on report of victim	0	0	4
Total	29	18	57

In 2014, the Gender Equality Department of Public Defender's Office carried out the monitoring of shelters for victims of domestic violence. It is worth noting that it was the first such monitoring ever and it was aimed at assessing the existing situation and identifying those needs which would improve the situation of service beneficiaries. In 2015, we assessed the implementation of those recommendations that were drawn up as a result of the monitoring.

The assessment showed that the State Fund for the Protection and Assistance of Victims of Human Trafficking studied the recommendations of Public Defender and implemented some of them. The list of food products was revised and extended to include products necessary for child nutrition. Also, a position of a nurse was introduced in each structural unit of the Fund and duties and responsibilities of a nurse were defined. The mentioned recommendation was issued by the Public Defender for the aim to improve conditions of beneficiaries and to provide opportunities for work and professional retraining as mothers of little children were deprived of such possibility due to inability to leave their children with anyone even for a short period of time.

It should be noted that the Fund was not able to fully consider a number of recommendations. For example, the Fund has no capacity to react to the termination of social allowance to socially vulnerable persons that are admitted to a shelter since the issue of termination and resumption of allowance falls within the competence of the Social Service Agency; however, the Fund expressed its readiness to get involved in the discussion of this issue. It is necessary to step up the activity in this regard and with the involvement of all stakeholders, to draw up a special rule concerning the termination and the resumption of allowance to victims of domestic violence as it is very important for the rehabilitation of victims and improvement of assistance procedures.

Yet another important issue related to the quality of shelter service rendered to victims of domestic violence was a problem of timely supply of medications. The Fund supplies medications to its units in accordance with

the Law of Georgia on Public Procurements. The central office of the Fund take efforts to supply medications immediately or within the shortest possible time span in accordance with the procedures specified in the Law of Georgia on Public Procurements.[1539] However, the monitoring revealed that performance of these procedures may take some time making it impossible to immediate supply medications; it is therefore important to revise the rule of supply of medication and develop new regulations that will enable the administration to instantly supply beneficiaries with needed medications.

Awarding a status of victim of domestic violence

In July 2015, a group for defining a status of victim of domestic violence, existing at the Interagency Council Implementing Measures to Eliminate Domestic Violence, resumed its activity. Since then the total of 27 alleged victims of domestic violence applied to it; 18 of them were awarded the status, six applicants were denied the status whilst the remaining three applications were left unconsidered because they fell short of the criteria for the consideration of case by the group.

The activity of group increases the referral by alleged victims of domestic violence and provides the possibility to help those persons escape violent environment, who, for various reasons, refrain from addressing the police or other relevant state bodies. As a result of obtaining a status, a victim of domestic violence has the right to use existing state services, shelters, psychological or legal assistance and advice.

A representative of the Gender Equality Department of the Public Defender's Office has the right to attend meetings of the group and use its consultative voting power. This is important because it allows improving the activity of the group and revealing shortcomings therein.

Although the operation of the group had a positive impact on the processes of identification of and assistance to victims of domestic violence, a number of factors were reveled in the course of work, which impede effective operation of the group and might even cast doubt on decisions taken by the group.

On certain occasions, nongovernmental organizations carrying out procedures necessary for the establishment of the status of victim of domestic violence submitted incomplete information about victims, thus complicating a decision making process and significantly increasing the probability of error.

Moreover, the need for a procedure of abolishment of the status was outlined. Where it is established that the information submitted by a victim does not reflect the reality and the person obtained the status of victim of domestic violence by fraud, there is no procedure for the abolition of this status.

One of important and very acute problems is the response to violence against children. A special rule needs to be drawn up which, taking into account Article 1198[1] of the Civil Code of Georgia and referral procedures, will enable the group, the Public Defender of Georgia and nongovernmental organizations to protect interests of a child on the basis of obtained information. At present, the information submitted to the group is confidential and can be used only for the procedure of determining the status; in certain instances the information contains facts evidencing direct or indirect violence against minors.

RIGHTS OF WOMEN DRUG USERS

According to the World Drug Report,[1540] a one out of three drug user is a woman. However, women drug users face double barriers in the access to treatment or harm reduction programs. This is further aggravated

1539 A letter of the State Fund for the Protection and Assistance of Victims of Human Trafficking #07/841, 17/08/2015.

1540 The information is available at: http://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf [Last accessed on 1 March 2016].

by a number of systemic, social, cultural or other barriers. Various surveys indicate that women start using drugs mainly under the influence of their partners; at the same time, drug use is often linked to poverty and commercial sex work.[1541]

According to studies, out of 40,000 drug users in Georgia 10% are women.[1542] However, the availability of accurate statistical data is a problem because drug abuse is a social stigma. Child factor is also decisive for women as stripping drug users of parental rights is a punishment which is often applied. This forces women drug users to refrain from receiving various services and joining state programs even in cases when they experience violence from their partners.

An indicator which shows that around 80% of women drug users belong to a group of victims of domestic violence is alarming.[1543] In this light, the admittance of drug user victims of domestic violence to shelters represents a problem as shelters fail to provide services tailored to their needs.

Yet another barrier is double standard of society towards women and men drug users, where the support of a family in case of men drug users is large. Women drug users, however, are absolutely unprotected and stigmatized by their families and society at large.

Against this backdrop the problem is that the state strategy for combatting drug abuse does not consider gender aspects and existing programs do not meet women's needs. It should also be noted here that a methadone substitution treatment program is not implemented in penitentiary institutions for women. If a prisoner was engaged in the mentioned program before incarceration, she is taken out to a treating facility to complete the program. Otherwise, a patient is visited by a doctor who administers treatment on the spot. In case of aggravation, an accused/convict is taken to a treating facility.

In 2014, Georgia submitted 4th and 5th combined periodic reports to the Committee on Elimination of All Forms of Discrimination against Women, which was considered by the Committee at its 58th session. In its final recommendations, the Committee expressed concern about the absence of gender-specific medical services which should be oriented on the reduction of harm and would make services more accessible to women.

It is noteworthy that in the 24th general recommendation, which concerns women's access to high-quality health care and health-related services, the Committee urges the states to conduct a nationwide study to establish the number of women who use drugs, including while pregnant, in order to inform strategic planning. Moreover, the state should provide gender-sensitive treatment services to reduce harmful effects for women who use drugs, including for women in detention.

HUMAN TRAFFICKING

Human trafficking is a modern form of slavery and a gross violation of human rights. Millions of people become victims of trafficking annually across the world. Along with labor trafficking, among other forms of women trafficking is sex trafficking.

Since 2003, in Georgia, trafficking is a crime punishable under the Criminal Code;[1544] Georgia has the law on human trafficking; an action plan of measures to be implemented for combatting trafficking, protecting and assisting victims of trafficking; at the institutional level, the State Fund for the Protection and Assistance of Victims of Human Trafficking which provides various services to victims of trafficking. These services

1541 United Nations Human Rights Council's Universal Periodic Review, coalition report on women's rights Women who Use Drugs.
1542 Estimating the prevalence of injecting drug use in Georgia; consensus-report, 2010.
1543 The Union Step Towards Future, Violence in Families of Women Using Drugs, 2012.
1544 The Criminal Code of Georgia, Articles 143[1] and 143[2].

include: hotline, legal consultation, medical service, shelter. The statistical data of 2015 on victims of human trafficking[1545] is the following:

Investigations launched into crimes envisaged in Articles 143^1 and 143^2 by number of persons	Number
Alleged sexual exploitation	10
Alleged labor exploitation	7
Alleged purchase and sale of minors	1
Total	**18**

Two shelters for victims of human trafficking operate in Georgia – in Tbilisi and Batumi. They are structural units of the State Fund for the Protection and Assistance of Victims of Human Trafficking and are financed from the budget.

The shelters are service institutions established for the protection and assistance of victims of human trafficking, ensuring the protection of rights and interests of beneficiaries; in particular, they provide support in health and social protection, psychological rehabilitation and social integration; also, in creation of environment conducive to the exposure of talent, capacities and potential of beneficiaries.

The statistical data on users of shelters in 2015 are the following:

Data on service to victims of human trafficking	Individual	Dependent
Use of shelter on the basis of permanent group status	3	1
Use of shelter on the basis of recognition as victim	3	1
Number of hotline consultation users	189	
Number of persons having received compensation	18	

In 2015, the Gender Equality Department of Public Defender's Office conducted the monitoring of service institutions (shelters) of victims of human trafficking. The monitoring revealed that the situation in the shelters is reliable. However, a number of problems were also identified, tackling of which would improve the quality of service.

The shelters do not have standards which they would follow in organizing the living space and defining rules of rendering service. There are infrastructural problems too. None of the shelters is adapted to persons with disabilities and in case of need, it will be actually impossible to admit such persons. The admittance to the shelters of people with contagious infectious diseases is problematic too.

The State Fund for the Protection and Assistance of Victims of Human Trafficking agreed to some recommendations and notified us that a wheelchair ramp will be installed in the second shelter by the end of 2015. It should be noted, however, that the wheelchair ramp is not sufficient to ensure full accessibility for disabled persons and that it is important to fully adapt at least one shelter so that in case of need disabled persons will receive comprehensive service.

The problem of rendering service to persons with contagious infectious diseases remains unsolved. The shelters do not have appropriate space to isolate people with such diseases and therefore, it is impossible to admit such persons to the shelters. A special report contained a corresponding recommendation about rendering service to persons with contagious infectious diseases by means of arranging an individual living

1545 The information is available at: http://www.atipfund.gov.ge/images/stories/pdf/statistika/2014/statistika2.pdf [Last accessed on 1 March 2016].

space or a separate shelter, but the recommendation has not been fulfilled yet. Yet another recommendation concerning the arrangement of yards of shelters has not been fulfilled too as the location of the shelters does not allow for that.[1546]

To protect the rights of beneficiaries and improve the service provided to them, the administration of the State Fund for the Protection and Assistance of Victims of Human Trafficking expressed its readiness to assess and consider recommendations of the Public Defender of Georgia. The Gender Equality Department of the Public Defender's Office intends to carry out the monitoring of the service institutions of victims of human trafficking in the future too.

LEGAL STATE OF LGBT PERSONS

According to the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. Freedom of expression, the right to freedom of peaceful assembly and association are those basic values that a democratic development of a country rests upon.

The events that unfolded in Georgia clearly demonstrated a close link between homophobic attitudes and a general level of social and cultural tolerance in society. Violent actions motivated by hate were undertaken against people who gathered to exercise their constitutional right on 17 May of 2012 and 2013. The police failed to protect health and safety of participants in a peaceful rally. On 17 May 2014, LGBT community and LGBT rights defenders decided not to mark the International Day Against Homophobia and Transphobia because based on the experience of previous years they believed that the state would not be able to ensure their security.

Despite a number of calls on state entities to take effective steps to raise public awareness and build a culture of tolerance, no such steps were taken. Timely, effective and responsible investigation of hate crimes remains a problem. Three years have passed and unfortunately, none of the facts of violence has been punished.

One should note the ruling of the European Court for Human Rights of 12 May 2015 on the case *Identoba and Others v Georgia* in which the court established the violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 11 (freedom of assembly and association) in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights. According to the judgment, the state must guarantee the exercise of fundamental rights and freedoms by its citizens and must be responsible for ensuring life and health of citizens in the process of exercising these rights.

The marking of the International Day Against Homophobia and Transphobia on 17 May 2015 in a peaceful environment was a welcoming fact. It should be stressed that interested persons were able to exercise their constitutional right to assemble and express their solidarity with LGBT representatives and to condemn violence. The action was held in the conditions of extraordinary mobilization of law enforcement bodies and special protection measures.

Throughout the day, representatives of the Public Defender's Office monitored the developments in the country. The monitoring of three actions were conducted and the hotline operated throughout the day, but no incident of violence, interference in the actions or violation of human rights was detected.

1546 A letter of the State Fund for the Protection and Assistance of Victims of Human Trafficking #07/831, 12/08/2015.

Possibility to change entry on sex in civil records

A possibility for transgender people to change the entry on sex in civil records remains a problem. This, in turn, is an impending factor in obtaining education, job or any other endeavor. Some 73% of transgender respondents in a survey conducted by the European Union think that simplified procedures of legal recognition of gender will enable them to live in a more comfortable environment.[1547]

Gender identity concerns each individual's deep, internal and personal experience of gender which may not coincide with the biological sex. Legal recognition of gender is an official recognition of gender identity and name of a person in legal documents. The European Court for Human Rights has repeatedly deliberated on the importance of legal recognition of gender identity in conjunction with the protection of rights of transgender people.[1548]

Apart from the above said, a legal recognition of gender is important as much as documents contain the information identifying the name and the sex; consequently, when transgender persons are denied a possibility to change an entry on sex in their civil documents, the use of these documents increases the risk of their discrimination and the probability that they may become victims of improper treatment or violence.

It is worth noting that the Georgian legislation provides for the change of entry about sex; namely, Article 78 of the Law of Georgia on Civil Status Acts envisages the change of sex as one of grounds of making changes to the civil records; however, it does not specify a list of documents a person must submit to make a corresponding change in civil records; nor does it specify what change of sex means for the purposes of this article.

The European Court for Human Rights notes[1549] that the absence of a detailed procedure for the exercise of a right may lead to a breach of a person's right. Although the Georgian legislation recognizes a possibility of legal change of sex, a large segment of transgender persons cannot exercise this right in practice due to the absence of a corresponding procedure.

The Public Defender's Office studied an application of A.Kh. whose request for the change of sex in a document of identity was rejected. In regards with this case, the Public Defender of Georgia, within the scope of his competence granted under Article 21 of the Law of Georgia on Public Defender, submitted a proposal (#08/3703) to the Ministry of Justice on 18 May 2015. The proposal was about the drafting and adoption of a procedural rule of change of sex in civil records. Despite the proposal of the Public Defender, the existing practice has not changed and a legal status of transgender persons has not improved.

The legislation or legal practice of various countries is directed towards enabling transgender persons to quickly and easily change entries on the name and sex in official documents. Moreover, a great deal of attention is paid to eliminating unjustified restrictions which are associated with the procedure for the change of sex.

In its final recommendation after the consideration of 4th and 5th combined periodic reports of Georgia,[1550] the Committee on Elimination of All Forms of Discrimination against Women called on the state "To take measures to address violence against and harassment of lesbian, bisexual and transsexual women and to abolish restrictions for transgender persons with regard to obtaining identity documents."

Recommendation of the Committee of Ministers of Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5) defines requirements for gender reassignment and legal recognition: "Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the

1547 Legal recognition of gender, textbook, December 2013, p.8.
1548 Legal recognition of gender, textbook, December 2013.
1549 CASE OF MALONE v. THE UNITED KINGDOM (Application no. 8691/79), 2 August 1984; Para. 79-80.
1550 4th and 5th combined periodic reports of Georgia at CEDAW Committee.

change of name and gender in official documents in a quick, transparent and accessible way."[1551]

According to the same Recommendation, abusive requirements for legal recognition of a gender reassignment, including changes of a physical nature, should be removed. Besides, states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.[1552]

The Explanatory Memorandum to the Recommendation notes that in some countries access to gender reassignment services is conditional upon procedures such as irreversible sterilization, hormonal treatment, preliminary surgical procedures and sometimes also proof of the person's ability to live for a long period of time in the new gender. The Memorandum notes that for some persons it may not be possible, for health reasons, to complete every hormonal and/or surgical step required. Consequently, disproportionate requirements should be reviewed.[1553]

An interesting opinion was expressed by the Commissioner for Human Rights Thomas Hammarberg[1554] regarding the situation of transgender persons. As Thomas Hammarberg notes, although the number of transgender persons is small, the transgender community is very diverse. It includes pre-operative and post-operative transsexual persons, also persons who do not choose to undergo or do not have access to operations. He also notes that in some cases sex reassignment surgery is not justified for health reasons; moreover, such a procedure may not fit transgender persons' own wishes and personal health needs. The opinion noted that a group of transgender persons is the only one in Europe that are subject to forced sterilization.

RECOMMENDATIONS

GENDER MAINSTREAMING

To Government of Georgia:

- A structural unit should be established at the level of executive power, which will work on the issues of gender equality and fight against violence. The mandate, human and financial resources of the unit should be defined
- Ministries should support the implementation of gender mainstreaming through establishing a special structural unit or designating/approving persons responsible for gender equality issues
- The development and implementation of internal institutional policy documents (strategy, action plan, concept) on gender equality issues should be supported

To local self-government bodies:

- Powers, scope of work and resources of persons responsible for gender equality issues at the level of local executive bodies should be strengthened

1551 Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Para. 21.

1552 Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Para. 20, 35.

1553 Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Para. 20-21.

1554 The information is available at: https://wcd.coe.int/ViewDoc.jsp?id=1476365 [Last accessed on 1 March 2016].

- The establishment and sustainability of a structural unit on gender equality issues should be supported at the level of local legislative councils

WOMEN PARTICIPATION IN DECISION MAKING PROCESS

To Government of Georgia:

- Gender statistics of employees should be maintained and analyzed for the identification and elimination of barriers to career advancement of women

To Parliament of Georgia:

- Recommendation by the Committee of Elimination of All Forms of Discrimination against Women should be considered and a temporary special mechanism – quota system should be adopted

To local self-government bodies:

- Women's engagement and participation should be ensured at every stage of planning, implementation and assessment of rural development programs or community priority projects
- Gender statistics of employees should be maintained and analyzed for the identification and elimination of barriers to career advancement of women

To the Ministry of Regional Development and Infrastructure:

- Women's participation should be supported at every stage of planning and implementation of rural development programs
- Planned programs should be analyzed and in identifying priorities, special attention should be paid to the consideration of gender aspects

WOMEN, PEACE AND SECURITY

To the office of Prime Minister of Georgia:

- The vision and needs of internally displaced persons and conflict-affected population should be studied in the process of the development of national action plan
- Internally displaced persons and conflict-affected population should be informed and involved at every stage of the implementation of national action plan
- The degree of the involvement of persons responsible for the implementation of obligations assumed under the national action plan should be supervised; reporting system should be improved

To Ministry of Education and Science:

- Civil defense studies at general educational institutions should be revised and improved

To the Ministry of Labor, Health and Social Affairs:

- Psychological assistance programs should be planned for internally displaced persons and conflict-affected population
- The planning and implementation of rehabilitation programs for victims of sexual violence should be supported

LEPL Legal Aid Service

- Measures designed to increase access to justice for women should be enhanced; when providing legal aid to internally displaced persons and conflict-affected population, special attention should be paid to informing them about the issues of domestic violence

WOMEN'S ECONOMIC ACTIVITY AND LABOR RIGHTS

To the Ministry of Justice:

- Work on changes towards the improvement of women's labor rights should be resumed
- The definition of sexual harassment at workplace should be determined and the system of adequate sanctions be developed

To the Government of Georgia:

- Relevant procedures for the signing and further ratification of the Maternity Protection Convention №183 of the International Labor Organization should be launched

To the Ministry of Labor, Health and Social Affairs:

- The rule of the use of maternity, childbirth and childcare leave and associated compensation should be revised in the nearest future in order to exclude cases of discrimination on the ground of gender

RIGHTS OF SINGLE AND MULTIPLE-CHILDREN PARENTS

To the Government of Georgia:

- The term multiple-children parent should be defined and corresponding legal amendment be adopted
- Special programs, social allowances should be developed for the improvement of social and economic situation of multiple-children families

To the Ministry of Labor, Health and Social Affairs:

- Measures directed towards assisting single and multiple-children parents should be introduced, including by incorporating them in the existing system of social allowances

To local self-government bodies:

- The implementation of targeted programs for the assistance of single and multiple-children families should be supported

THE ROLE OF MEDIA IN THE ESTABLISHMENT OF GENDER EQUALITY

To the Public Broadcaster:

- Gender equality issues should be integrated into the editorial policy, the production of informative and educational programs on women's rights and gender equality should be supported

RIGHTS OF WOMEN HUMAN RIGHTS DEFENDERS

To the Government of Georgia:

- Measures to protect women human rights defenders should be defined in existing gender equality action plans and strategies, including the issues of implementation of UN General Assembly resolution

To the Ministry of Internal Affairs

- Sensitive attitude towards possible violations of rights of women human rights defenders should be developed; their perception of real threat alongside an increased risk due to their activity should be taken into consideration

REPRODUCTIVE AND SEXUAL HEALTH AND RIGHTS

To the Ministry of Labor, Health and Social Affairs:

- Awareness raising measures on reproductive and sexual health should be planned and implemented
- Awareness raising campaigns on the use of contraceptives and family planning services should be supported, including through active involvement of rural outpatient clinics
- Measures of preventing sex-selection abortions should be planned and implemented, including informational and educational meetings in the regions of Georgia

To the Ministry of Education and Science:

- Course on basic issues of reproductive and sexual health and rights should be introduced for schoolchildren
- In cooperation with local medical institutions, seminars on the issues of reproductive and sexual health should be organized for schoolchildren

EARLY MARRIAGES

To the Ministry of Education and Science:

- The level of awareness of teachers about the obligations concerning the issues of early marriage and compulsory implementation of response procedures should be ensured
- In case of early marriage, coordination with the subjects participating in referral, which is envisaged by the child protection referral procedure, should be implemented
- Monitoring should be conducted on the registration of causes of dropping school by children, especially in regions densely populated by ethnic minorities where shortcomings in such registration are observed

To the Ministry of Labor, Health and Social Affairs:

- Facts of early marriages and neglect of early marriages by parents should be studied in a comprehensive manner and response to early marriages should be implemented as provided in the legislation
- A strategy should be developed for representatives of ethnic minorities in order to implement obligations provided in Georgian and international legal acts, including to render existing services in case of early marriages

To Chief Prosecutor's Office:

- Every instance of crime envisaged under Article 140 of the Criminal Code of Georgia should be handled in accordance with the law
- Preventive measures should be undertaken for the prevention of crime envisaged under Article 140 of the Criminal Code of Georgia, including in the regions populated by ethnic minorities

To the Ministry of Internal Affairs:

- The coordination with the Social Service Agency and the Ministry of Education and Science, as defined in the child protection referral document, should be supported, including the fulfillment of the obligation to notify
- The guidelines for the response to early marriage should be developed and the role of district inspector should be strengthened in order to inform local communities (especially those of ethnic minorities) and offer consultations on issues of early marriage

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

To the Government of Georgia:

- A system of monitoring women's homicide on the ground of gender should be established in accordance with the recommendation of UN Special Rapporteur on violence against women, its causes and consequences and the analysis of statistical data should be published annually

To the Ministry of Internal Affairs:

- Strict adherence to measures envisaged in the law by employees of the Ministry of Internal Affairs in cases of domestic violence should be monitored
- A specialized structural unit responsible for the response to crimes committed on the ground of gender and domestic violence should be created
- The risk assessment and monitoring mechanism of response after a domestic violence should be introduced
- Statistical data on cases of inciting women to suicide should be maintained and all necessary data about such facts should be analyzed
- Reports to LEPL 112 service regarding alleged domestic violence and family conflicts should be analyzed

To the State Fund for the Protection and Assistance of Victims of Human Trafficking:

- Access to hotline service for representatives of ethnic minorities should be ensured
- The rule of providing medications should be revised and such regulations developed which will allow the administration to immediately supply needed medications to beneficiaries

To the Ministry of Labor, Health and Social Affairs:

- In case of admitting a socially vulnerable person into a shelter, the allowance should be terminated so that it is automatically resumed once the person leaves the shelter

- Coordination and cooperation with the Ministry of Internal Affairs should be enhanced for the aim of effective response to cases of domestic violence
- The role and involvement of social workers should be strengthened for the response to violence against women and domestic violence

RIGHTS OF WOMEN DRUG USERS

To the Government of Georgia:

- Gender specific treatment services should be developed and implemented, which will be oriented on harm reduction and will increase access for women
- A national study should be conducted to identify the number of women drug users, including the number of women needing treatment as well as harm reduction, sexual and reproductive health services
- Gender specific aspects and women's needs should be considered in the state strategy combatting drug abuse

To the Ministry of Labor, Health and Social Affairs:

- The need of ensuring shelter to women victims of domestic violence who use drugs should be studied and corresponding changes should be made to ensure a special service at shelters

HUMAN TRADE (TRAFFICKING)

To the State Fund for the Protection and Assistance of Victims of Human Trafficking:

- Access to shelter services should be ensured for persons with disabilities
- A service for people with contagious infectious diseases should be provided through organizing an individual living space or a separate shelter
- Yards of shelters should be arranged, special attention should be paid to full observance of security standards
- Standard of service in service institutions for victims of trafficking should be developed and introduced, which will ensure the improvement of operation of shelters

LEGAL STATE OF LGBT PERSONS

To the Ministry of Internal Affairs:

- Timely, effective and responsible investigation into hate crimes should be carried out

To the Ministry of Justice:

- A fast, transparent and accessible procedure of reflecting gender identity of transgender persons in documents issues by public and non-public institutions should be established.

RIGHTS OF PERSONS WITH DISABILITIES

Implementation of the United Nations Convention on the Rights of Persons with Disabilities of 2006 December 13, is still a major challenge for the State. Harmonization of domestic legislation with the Convention as well as its proper practical implementation in real life has been progressing with impediments. The Parliament has not yet ratified the Optional Protocol to the Convention, to allow the persons with disabilities to submit complaints to the relevant UN committee in defense of their rights.

Although the Coordination Council on Issues of Persons with Disabilities under the Prime Minister of Georgia was defined as a responsible body for the implementation of the Convention, the State has failed to create an effective and working mechanism under Article 33 of the Convention to ensure and coordinate its proper implementation. The Council, which is virtually dysfunctional, given its status, composition and format, is unable to perform essential task of an implementing body – to develop and coordinate enforcement of the consistent domestic implementation policy- even in theory.

Since January 2015, the Public Defender's Office, as the body to monitor implementation, promotion and protection of the Convention, started elaborating a mechanism composed of the Department on the Rights of Persons with Disabilities, the Consultative Council and the Monitoring Group. In order to engage Persons with disabilities in the work of the mechanism, the Consultative Council includes persons with disabilities and their representative organizations. The Council has already held several working meetings to discuss the Public Defender's past and future activities with a view of promoting, protecting and monitoring implementation of the Convention.

We welcome current changes in the legislation aimed at reforming the legal capacity concept and, in particular, replacement of the term "substitution of a person declared legally incapable" with "supported decision-making". However, certain aspects have not been properly addressed and foreseen in the process of drafting the amendment. In particular, the changes leave unregulated how various decisions (such as those related to hospitalization, medical treatment, financial transactions, etc.) should be made when a person's mental health deteriorates significantly and how the threats emerging in such situation should be dealt with. Moreover, the Public Defender has become aware of certain practical problems related to examination of such cases by the courts. The Public Defender will publicize the results of its in-depth study of the reform of the legal capacity concept in the near future.

As we know, the Georgian Government approved Government' Action Plan on Equalization of Opportunities for Persons with Disabilities[1555] and the Governmental Human Rights Action Plan for 2014-2015[1556]. These

1555 See http://government.ge/files/381_40157_501181_76200114.pdf
1556 See http://government.ge/files/382_43290_797918_4452c92c072c14.pdf

strategic documents envisage important activities to help realize the rights of persons with disabilities more efficiently. Even though timeframes for fulfilling the planned actions are on the verge of expiring, responsible government agencies have not completed their obligations under the above mentioned documents – something that certainly affects the exercise of the rights by the persons with disabilities and the quality of their lives.

Access to physical environment, infrastructure, transport and information still remains a challenge for persons with disabilities. In spite of undertaking series of obligations under the Convention and the fact that Georgian Government has approved "Technical Regulations on the Arrangement of the Space Design and Architectural and Planning Elements for Persons with Disabilities", central and local authorities often ignore special needs of Persons with Disabilities and breach the existing norms while implementing infrastructural projects. In the reporting period, the Public Defender has studied the problem of accessibility to the physical environment. As a result, it has issued and submitted relevant recommendations to the responsible State authorities.

Disregarding the special needs of persons with disabilities during sports, cultural and entertainment events has been a regrettable practice in 2015. Paata Burchuladze's jubilee concert and the opening of European Olympic Youth Festival "Tbilisi 2015" at Tbilisi Sports Palace are among those cases when the rights of persons in wheelchairs have been violated.

As for the opportunities to exercise the access to information, the broadcasters fail to provide news, reports, movies, entertainment shows and other TV programs in accessible formats for persons with Disabilities. On this issue, the Public Defender has recommended the Georgian National Communications Commission (GNCC) to ensure, that the persons with disabilities have access to information through various forms, methods, means and technologies used by various media outlets while broadcasting different TV programs and movies.

Social protection, right to adequate housing and employment of persons with disabilities still remains as one of the most important challenges for the State. a major increase in the number of persons with disabilities complaining to the Public Defender about the seriously complicated procedure for receiving living allowance under the new methodology[1557] of evaluation of the socio-economic status of socially vulnerable families (households) have been recorded during the recent months. The beneficiaries have been alleging drastic deterioration of their living standards.

Another matter of concern is the lack of opportunities for exercising their right to work by the persons with disabilities. Even to this date, the State has not developed policies, legal framework and programs to help them lead independent lives and be integrated into the broad society. An interesting fact in this context is that only 112 out of 53,109 employees of the public sector are persons with disabilities.[1558]

The problem is particularly acutely felt by people who have been under State care since their childhood because upon achieving the age of majority they are leaving the State institutions completely unprepared for independent life and remain without shelter in most cases. On this issue, the Public Defender has made a general recommendation to the Georgian Government with certain list of advice on how to help these people become more independent.

Inclusive education is progressing with flaws either. A significant number of children with disabilities, especially those in rural areas, are not involved in general education process. The quality and continuity of education remains a problem as well.

Another challenge is the opportunity for persons with disabilities to exercise their right to health to the full extant. Despite the existence of Universal Healthcare Program, special needs of these persons with Disabilities are not relevantly considered and met. They are not effectively provided with medical supplies as well.

1557 Resolution of the Georgian Government no. 758 dated 31 December 2014 approving the "Methodology of evaluation of the socio-economic status of socially unprotected families (households)", available at https://matsne.gov.ge/ka/document/view/2667586

1558 See Civil Service Bureau's 2015 report, p. 22 available at http://csb.gov.ge/uploads/2015_GEO_web.pdf

Citizens are facing problems with having their disability status determined. Payment for the determination procedure often turns into a matter of dispute. Although the State Healthcare Program envisages State funding for conducting a social test to determine disability (except for high-tech tests), disagreement over who should pay the fees for the test in the medical service providers remains disputable.

In the reporting period, persons with disabilities have come across with demonstrations of stigma and abusive attitude towards them as well as increasing use of hate speech.

The Public Defender made a public statement in response to KFC's photo add, which displayed stigma and insulting attitude towards persons with mental disabilities.

2015 was marked with a trend that public figures, including politicians, kept using hate speech. The Public Defender called on everyone, especially high-ranking public officials, to refrain from statements that may have the effect of stigmatizing or discriminating persons with disabilities. In addition, the Public Defender urged civil servants to protect the rights of persons with disabilities on equal basis with others and to raise public awareness of this issue.

IMPLEMENTING AND MONITORING THE 2006 UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

It has already been several decades that the international community has taken a human rights-based approach to persons with disabilities. But it was only in 2006 that the UN Convention on the Rights of Persons with Disabilities, the most important legally-binding international instrument, was adopted. The Convention constitutes a result of international consensus and supplements other international agreements in the field of human rights. However, legal mechanisms for the beneficiaries to exercise their rights under the Convention are still new to the majority of its member States. Despite the Conventional requirement to designate specific authorities at the national level to take responsibility for the implementation and monitoring of the Convention, the existing practices in this regard are not uniform and rich. The fact that an international instrument such as the Convention has made a very first effort to articulate in detail the issues of implementation and monitoring of the Convention at the national level is one reason of this.

Article 33 of the Convention requires that implementation and monitoring mechanisms were in place at the national level. The States Parties have to designate one or more focal points within the government for matters related to the implementation and coordination. States Parties also have to designate or strengthen one or more independent mechanisms to promote, protect and monitor implementation of the Convention.

Introducing provisions in the domestic law on national implementation and monitoring of the Convention has been considered as a measure to consolidate institutional preconditions necessary to ensure its realization at the domestic level.[1559]

The Convention entered into force for Georgia in April 2014. Since then, Georgian Government is obliged to promote, protect and implement the standards introduced by the Convention.

On 27 October 2014, the Coordination Council on the Persons with Disabilities, at its 6th session, designated the State Coordination Council on the Issues Persons with Disabilities as an implementing body of the Convention, while the Government Administration's Human Rights Secretariat has been determined as a coordination mechanism. The Public Defender has been nominated as a body responsible for the monitoring

1559 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York, Report, 1 April 2014, par. 7; [http://www.un.org/disabilities/documents/COP/COP7/CRPD.CSP.2014.3.E.pdf]

of the promotion, protection and implementation of the Convention.[1560] It has to be mentioned that these decisions are documented only in the Coordination Council meeting protocols, which is signed by the Prime Minister but is not further confirmed in any binding legal act.

CHALLENGES IN THE IMPLEMENTATION OF THE CONVENTION IN GEORGIA

Article 33 of the Convention stipulates that it is an obligation of the Government to implement the Convention at the national level. In order to avoid uncoordinated action or the blurring of that responsibility across government sectors, States are required to designate one or more focal points within government for matters relating to the implementation of the Convention and to consider the establishment of a coordination mechanism.[1561]

The Convention itself does not say anything about the format of an implementing authority or the functions incumbent thereon; however, the States Parties agree that adequate resources will have to be allocated to properly support implementation of the provisions of the Convention and coordination will have to be ensured among various agencies to achieve that effect.

At the UN conference,[1562] the States Parties discussed the format of implementing and coordination bodies. The discussion revealed the need for taking into account the following considerations: the implementing body should be as high-ranking as possible; its mandate should be such as to allow for the development and coordination of a coherent national policy on the Convention; the implementing body should be adequately supported in terms of technical staff and resources.[1563] A coordination mechanism's primary function, on the other hand, should be facilitation of implementation actions and processes in different sectors and at different levels. It ought to play a key role in avoiding duplication of activities of various government agencies and correct allocation the small resources.[1564]

As mentioned above, the State Coordination Council on the Issues of Persons with Disabilities has been designated as the implementing body (focal point) in Georgia. The Council is led by the Prime Minister. The Council membership is as follows: 9 ministries (represented by the respective ministers or deputy ministers), 2 representatives from the Parliament and 10 representatives from the civil sector.[1565] Pursuant to the statute of the Council, its paramount function is to coordinate the implementation of a uniform state policy on people with disabilities.[1566] The Council convenes at least 4 times per year.[1567]

The Council's composition, functions and *modus operandi* are not even formally consistent with the requirements of Article 33 of the Convention with regard to implementation bodies (focal points) and the agreement reached by the States Parties at their seventh conference. More so, in practice, the Council fails to meet its obligation under its own statute and it has only convened once during 2015.

Analysis of the existing situation shows that the focal point for the implementation of the UN Convention on the Rights of Persons with Disabilities is virtually dysfunctional in Georgia. Hence, the process of

1560 Letter from the Human Rights Secretariat of the Government Administration no. 24332 dated 26 March 2015
1561 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York, Report, 1 April 2014, par. 4 [http://www.un.org/disabilities/documents/COP/COP7/CRPD.CSP.2014.3.E.pdf]
1562 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York
1563 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York, Report, 1 April 2014, Roundtable 2, matters related to the implementation of the Convention, par. 11, [http://www.un.org/disabilities/documents/COP/COP7/CRPD.CSP.2014.3.E.pdf]
1564 *Ibid.* paras. 13 and 16
1565 15 December 2009 establishing a State Coordination Council on Disabled People and approving the Council's statute, Art. 1
1566 *Ibid.* Annex 1, Art. 2
1567 *Ibid.* Annex 1, Art. 4, par. 3

implementation of the Convention is going with impediments. The Government has to correctly determine the institutional framework required for the implementation of the Convention, re-allocate tasks between the focal point and the coordination mechanism and make these mechanisms truly operational.

MONITORING OF THE PROMOTION, PROTECTION AND IMPLEMENTATION OF THE CONVENTION AT THE NATIONAL LEVEL

For the purposes of Article 33(2) of the Convention, the Public Defender's Office has been designated as a focal point for the monitoring of the promotion, protection and implementation of the Convention.[1568] In fulfilling its responsibilities as focal point, the Public Defender will be guided with the UN Convention on the Rights of Persons with Disabilities, the Paris Principles, the approach applied by the UN Committee on the Rights of Persons with Disabilities, experience of successful European countries and, last but not least, the views and feelings of persons with disabilities. The monitoring mechanism includes, along with the Department of the Rights of Persons with Disabilities, the Consultative Council for Monitoring of Promotion, Protection and Implementation of the Convention and the Monitoring Group.

The Consultative Council is a consultative body tasked with determining a strategy and priorities for the monitoring of the implementation of the CRPD. The Council consists of representatives of the Office of the Public Defender, persons with disabilities, their representative organizations and international and local organizations working on disability issues. The Council's composition and statute are approved by the Public Defender.[1569] Since July 2015, the Council has held 3 meetings to discuss progress of promotion, protection and monitoring activities and agree on future activities. An action plan for 2016-2017 has been developed.

Members of the Monitoring Group have been selected through an open competition to carry out monitoring and thematic researches. 5 members will conduct monitoring and research in 2016 according to the priorities set by the Consultative Council.

PROBLEM WITH RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION

As you know, the Georgian Parliament ratified the UN Convention on the Rights of Persons with Disabilities without its Optional Protocol. It is for this reason that the individual complaint mechanism cannot be used by interested persons to communicate alleged violations of their rights to the UN Committee on the Rights of Persons with Disabilities.

The authorities have not undertaken any concrete measures to ratify the Optional Protocol yet.

Pursuant to Article 7(b) of the Georgian Parliament's resolution on the Public Defender Report on Human Rights in Georgia in 2013, based on the Public Defender's recommendation, the Georgian Ministry of Labor, Health and Social Affairs of Georgia was tasked with submitting a list of measures required for the ratification of the UN CRPD to the Georgian Parliament in the shortest time possible.

Through its letter no. 09-/8319 dated 12 October 2015, the Public Defender's Office requested the Ministry of Labor, Health and Social Affairs of Georgia to provide update on this issue. As a response, the Ministry sent

1568 The State Coordination Council on Disabled People, Minutes no. 2, 27 October 2014
1569 The Public Defender of Georgia, Order no. 186 dated 21 July 2015

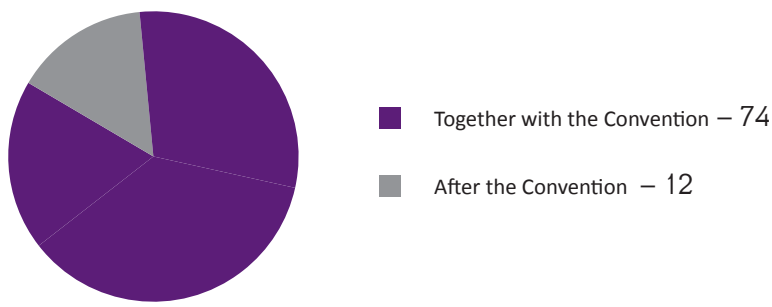
us[1570] a copy of a letter (no. 01/7163– 03.02.2015) to the Parliamentary Human Rights and Civil Integration Committee on the implementation of recommendations approved by Resolution of 1 August 2014. The Ministry indicated that it considered this submission as communication of a list of measures required for ratifying the Optional Protocol to the Parliament. According to the letter, the Ministry considers that "until the Optional Protocol is ratified, a national mechanism responsible for monitoring implementation of the Convention should be established; a first country report should be submitted to and recommendations should be received from the relevant UN Committee; domestic legislation should be harmonized and State agencies should then produce their reports on the appropriateness of ratifying the Optional Protocol."[1571]

The Public Defender's Office has not received information about subsequent processes from the Ministry. It was for this reason that the Office addressed the Parliamentary Committee on Human Rights Protection and Civil Integration several times[1572] with a request to update us on the situation concerning ratification of the Optional Protocol. Through its letter no. 3673 dated 3 February 2015, Assistant to the Prime Minister on Human Rights Protection and Gender Equality responded as follows:

"Full implementation of the UN CRPD and harmonization of the Georgian domestic law requires some time and the measures taken so far are only a part of obligations the State undertook. In addition, we need to consider recommendations issued on the basis of the first country report and actions to be taken to implement these recommendations. For these reasons, procedures for acceding to the Optional Protocol to the Convention have not been commenced at this stage."

We believe the procedures referred to by the Government do not constitute a necessary precondition for ratifying the Optional Protocol. A majority of countries ratified the Optional Protocol simultaneously with the Convention. 86 out of 119 countries wishing to accede to the Optional Protocol have already ratified it, while 74 countries (including France, Germany, United Kingdom, Belgium, Sweden, Estonia, Italy, Hungary, Spain, and Ukraine) **have ratified the Optional Protocol together with the Convention**.[1573]

Ratification of the Optional Protocol



Our conclusion therefore is that the State is evading assuming obligations under the Optional Protocol, including the entry into force of the individual complaints mechanism for Georgia.

The Public Defender has not received credible reasoning or explanation of challenges related to non-ratification of the Optional Protocol from any of the State agencies. All the more so, it remains unclear up to present time which State body the issue of ratification is delayed in and why the prior procedures for ratification are not been implemented. This gives rise to a question as to whether or not the issue of the ratification of the Optional Protocol will be resolved affirmatively in the near future.

1570 Letter from the Ministry of Labor, Health and Social Protection no. 12673/15 dated 23 October 2015
1571 Letter from the Ministry of Labor, Health and Social Protection no. 01/7163 dated 3 February 2015
1572 Letter no. 09-2/8979 dated 2 November 2015; Letter no. 09–2/9814 dated 1 December 2015; Letter no. 09–2/362 dated 13 January 2016
1573 See official webpage of the United Nations [https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html]

ACCESSIBILITY

One of the central issues related to the exercise of the rights of Persons with Disabilities is practical implementation of the principle of accessibility.

The 2006 United Nations Convention on the Rights of Persons with Disabilities recognizes the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication to be ensured for the Persons with Disabilities.

Pursuant to Article 9 of the Convention, States Parties shall take appropriate measures to ensure to persons with disabilities access to communications, information, transportation, facilities and services as well as to buildings, housing and workplaces, both in urban and in rural areas.[1574]

This matter is addressed by such national strategy documents as the "Governmental Action Plan for 2014-2015 on the Protection of Human Rights" (Chapter 20)[1575] and the "Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016.".[1576]

On 6 January 2014 the Georgian Government approved "Technical Regulations on the Arrangement of the Space Design and Architectural and Planning Elements for Persons with Disabilities"[1577] in order to facilitate integration of persons with disabilities into the modern society, their individual development and engagement in public life. However, the Technical Regulations do not address other components prescribed by the Convention (such as physical environment in all forms thereof, services and information). The document has other drawbacks too. The Public Defender has already raised the issue in his 2014 Report on the Situation of Human Rights and Freedoms in Georgia.[1578]

Nevertheless, relevant state authorities have not been taking measures to make social infrastructure (transport, educational and medical institutions, banks, etc.) accessible for persons with Disabilities.

ACCESSIBILITY OF TRANSPORT AND ROAD INFRASTRUCTURE

An important challenge is an issue of accessibility of transportation and road infrastructure for persons with disabilities. Decision making in this regard often does not take into consideration the interests and specific needs of such people. Persons with disabilities are not enjoying, on equal terms with others, either public bus and minibus services or the Tbilisi Metro, one of the most affordable means of transportation, thus finding themselves in a discriminated situation. The State is not making effort to find a comprehensive solution to the issue, for example, by adapting the infrastructure of metro stations to the needs of persons with disabilities.

In July 2015, the Public Defender became aware that since 28 July the same year the Legal Entity of Public Law "Municipal Development Fund" renewed construction works at the University metro station. According to the information posted at the official webpage of the Fund,[1579] there was a plan to construct a new metro station named "University" after the "Vazha Pshavela" station. The works would include repairing the existing tunnels, building underground and on-surface constructions, exits, rail lines, escalators and other objects.

In response to this posting, the Public Defender's Office formally requested on 29 July 2015[1580] information on whether the metro construction project was taking into account the need for accessibility of the object for persons with disability and the principle of "universal design".

1574 https://matsne.gov.ge/ka/document/view/2334289
1575 https://matsne.gov.ge/ka/document/view/2391005
1576 http://gov.ge/files/381_40157_501181_76200114.pdf
1577 https://matsne.gov.ge/ka/document/view/2186893
1578 http://www.ombudsman.ge/uploads/other/2/2439.pdf
1579 http://www.mdf.org.ge/?sitelang=ka&site-path=news/&id=1173]
1580 Letter no. 09 dated 1/6131.

According to the reply we received, the government was not planning to consider special requirements for the PWDs in the process of constructing the new "University" metro station. As a justification, the government was referring to the fact that the tunnels and other related objects had been built during the Soviet times and changing the structure and geometrical properties of the construction would be too difficult. The government's decision in this case not only violates the rights of persons with disabilities in the present time but will most probably lead to additional costs in the future for adapting the infrastructure of the new metro station.

After entry into force of the UN Convention on the Rights of Persons with Disabilities, States must ensure that all, especially new or renovated, buildings, transport or communications are accessible for persons with disabilities through widest application of the "universal design" principle.[1581] Accordingly, non-compliance by the State with this obligation will lead to breach of an international treaty and neglect of fundamental human rights – something that cannot be justified by making a reference to technical and/or financial problems.

With this background in mind, on 28 October 2015, the Public Defender recommended[1582] the LEPL "Municipal Development Fund" to give due consideration to the needs of persons with disabilities and give effect to the "universal design" principle while building the new "University" metro station so that all the components of the metro station (such as on-surface and underground constructions, exits, escalators, etc.) are accessible for people with disabilities.

ENSURING ACCESSIBILITY OF TRANSPORT AND ROAD INFRASTRUCTURE FOR PERSONS WITH DISABILITIES AT MUNICIPAL LEVEL

When it comes to the accessibility, it is important to know how self-governing units are ensuring to people with disabilities accessibility of transport and road infrastructure.

Pursuant to Article 16 of the Organic Law of Georgia "Local Self-government Code",[1583] it is the local authorities' function to care for municipal territory and develop the relevant engineering infrastructure, arrange municipal transport services, manage local motor roads, provide parking lots for automobiles and regulate the relevant rules.

Municipal obligations in this regard are stipulated in the "Government' Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016."[1584] The action plan tasks the municipalities with both adapting the transport infrastructure (bus stops, crosswalks, intersections and traffic lights) and paying consideration to the needs of persons with disabilities. The municipalities are also responsible for arranging special places at parking lots and informing public transport drivers on issues of serving the people with disabilities.

For the purpose of the monitoring of implementation of the requirements under the UN CRPD, domestic legislation and governmental action plans, the Public Defender's Office has been periodically requesting local representation bodies of regional centers and self-governing towns (Ambrolauri, Akhaltsikhe, Gori, Zugdidi, Telavi, Mtskheta, Ozurgeti, Tbilisi, Kutaisi, Batumi, Poti and Rustavi) to provide information for the monitoring such as: funds available in 2015 local budget to finance measures to adapt transport means and infrastructure, purchase transport means adapted to the needs of persons with disabilities, allocation of special places for

1581 The design of products, environments, programmes and services that are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

1582 https://drive.google.com/file/d/0B9BM3M8hbgAUOVA5eFVSM0ZRcGs/view

1583 https://matsne.gov.ge/ka/document/view/2244429

1584 http://gov.ge/files/381_40157_501181_76200114.pdf

PWDs at parking lots, keeping public transport drivers informed about issues of services for PWDs, whether or not the above activities are paid attention in the course of determining priorities for the 2015 budget.

It should be noted that the municipalities were responding with delay. In some cases, they (Telavi City hall, Mtskheta City hall) provided incomplete and irrelevant information.

Typically, municipalities are not the owners of the means of public transport on their own. The license is held by private companies, which serve the population using their own transport.

Priorities and programs according to 2015 budget of the executive body of Akhaltsikhe Municipality[1585] did envisage certain activities aiming to improve road infrastructure. However, our analysis reveals that neither the above program nor the programs related to construction repair and maintenance of road infrastructure really heed the interests and needs of people with disabilities.

A letter received from Akhaltsikhe Municipality City hall[1586] suggests that ramps were arranged at certain places in 2015 (at 6 places in total[1587]). Special places were allocated for persons with disabilities at town parking lots.[1588] Similar measures were undertaken by the City Hall of Gori Municipality[1589] (they improved the road infrastructure and adapted 8 objects in 2015).

According to information received from the City Hall of Mtskheta Municipality,[1590] the 2015 local budget does not take the needs of Persons with Disabilities into consideration. The City Hall has not yet managed to buy public transport and adapt the road infrastructure because villages are not served by municipal transport.[1591]

Like in other self-governing territories, infrastructural activities undertaken by the City Hall of Ozurgeti Municipality are limited primarily to arranging ramps on sidewalks.[1592] The municipality has not fulfilled its obligation under the Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016 to adapt public transport for people with disabilities. According to the City Hall,[1593] bus stops in their territory (in 28 administrative units) have been adapted. Public transport drivers have been made aware of services available to people with disabilities. In administrative units where transportation is provided by private companies, public transport drivers will be trained in 2016. In the territories of Ozurgeti Municipality and Ambrolauri Municipality,[1594] Persons with disabilities have no obstacles in accessibility to the road infrastructure. It is for this reason that the two self-governing territories do not consider it necessary to allocate special places for persons with disabilities.

According to the information provided by the transport service of Tbilisi City Hall in April 2015,[1595] approval of a Japanese non-project grant for launching hybrid buses in Tbilisi was underway. The City Hall urged that the technical features of the buses could meet needs of people with disabilities. However, the hybrid buses have not rolled in the capital city so far. According to a letter from Tbilisi CIty Hall,[1596] currently, the Ministry of Economy and Sustainable Development of Georgia is negotiating with Japanese Government over the issue. Besides, Tbilisi City Hall was planning to bring in modern M3 category buses adapted for people with disabilities. However, according to recent information, the buses have still not been imported. [1597] With regard

1585 https://www.matsne.gov.ge/ka/document/view/2615414
1586 Letter no. 2156/05 dated 29.12.2015.
1587 The central park, Mikutishvili Street, 9 April Street, Kostava Street
1588 9 April Street, Natenadze Street, Kostava Street
1589 Letter no. 788 dated 07.04.2015; no. 12 dated 05.01.2016.
1590 Letter no. 943 dated 08.06.2015.
1591 Letter no. 2290 dated 14.04.2015.
1592 Letter no. 01-47 dated 12.01.2016.
1593 Letter no. 29 dated 08.04.2015.
1594 According to the information supplied, because the local government's territorial jurisdiction encompasses villages and districts surrounding the villages, there is no need for allocating special parking places.
1595 Letters no. 1–03/499 dated 01.04.2015; no. 06/15091438–17 dated 08.04.2015.
1596 Letter no. 12/8367 dated 18.01.2016.
1597 As we were informed, EBRD is helping the government procure new buses; this time, the needs of disabled people will be given due consideration and public transport drivers will be trained in services available to people with disabilities.

to evaluation of the current bus stops and measures taken to improve them, no such measures have been taken yet. The Ecology and Landscaping Service of the City was working on installing a special elevator designed for moving people down to the Vake Park and installing special ramps in the park to eventually make the park accessible for people with disabilities. The elevators were actually installed on the opposite of the Vake Park and in the underground crosswalk in front of the Opera House but they do not function by this time (December). According to the City Hall's letter, procedures are underway to hand the elevators over for proper exploitation and full-fledged functioning.[1598]

According to a reply from Kutaisi City Hall,[1599] the municipality does not have own public bus system and is unable to purchase buses adapted to the needs of persons with disabilities. However, the municipality has developed a concept of how to deal with the issue.[1600] 179 places have been allocated for persons with disabilities on the parking lots in the territory of the municipality. Public transport drivers were trained in services necessary for persons with disabilities on 29 December 2015. The 2016 local budget envisages, along with other activities, installation of audible traffic lights in different districts of the town.[1601]

Batumi City Hall carried out some road infrastructure improvement works[1602] of several streets in 2015.[1603] The City Hall is planning to heed the needs of persons with disabilities in 2016 too.[1604] Analysis of the information they supplied shows that the local self-governance bodies are not taking timely and effective measures to ensure equal accessibility of public transport.

In some municipalities, the 2015 municipal budgets were not envisaging buying adapted public transport; nor has it been planned for the year of 2016 (for example, the budgets of governments of Telavi and Ozurgeti municipalities). Unlike these municipalities, Poti City Hall is intending to consider the issue when determining priorities for its 2016 budget. Batumi City Hall has also come forward with an initiative of bringing in new buses that would be both ecological and adapted to the needs of persons with Disabilities.

Some of the self-governing units are not envisaging either infrastructural works or adaptation/purchase of public transportation in their 2016 budgets (for example, the City Halls of Ambrolauri and Telavi municipalities).

We welcome Rustavi City Hall's readiness[1605] for replenishing their municipal transport fleet with adapted vehicles.

We note with satisfaction that Gori Municipality City Hall allocated special places for persons with disabilities and marked the relevant places at the parking lots. Several municipalities (such as Gori City Hall, executive government of Gori Municipality) are planning to allocate special places for persons with disabilities on parking lots also in 2016. It must be noted, that unfortunately, with the exception of a few cases (such as the Gori Municipality City Hall), municipalities have not started supervising observance of new construction norms.

We are disappointed by the fact that other than some exceptions (Kutaisi City Hall), public transport drivers have not been trained at the municipality level so far.

In conclusion, we think that, despite some positive developments, enjoyment of the right to equal access to public transport and road infrastructure for persons with disabilities still remains a challenge.

1598 Letter no. 18/441 dated 04.01.2016.
1599 Letters no. 01–1790 dated 06.04.2015; no. 01/267 dated 11.01.2015.
1600 In particular, if private companies are not interested in providing bus service, the municipality will then form a municipal enterprise to renew a municipal vehicle fleet.
1601 Including the Paliashvili street located in the downtown
1602 As part of the measures, tactile tiles for the visually impaired were installed on 4 infrastructural sections
1603 Letter no. 25/11066 dated 08.06.2015
1604 Intending to renovate and upgrade 21 streets
1605 Letter no. 02/304 dated 06.04.2015

ENFORCEMENT AND SUPERVISION

Accessibility for persons with disabilities to physical environment cannot be ensured unless proper enforcement and supervision mechanisms are put in place.

Within its competence under law, the Public Defender recommended the Georgian Government as early as in 2013[1606] to revise and update the relevant laws and bylaws with a view to enabling people with disabilities to become more independent in all areas of life by ensuring to them equal access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.[1607]

The Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016"[1608] along with other activities, envisages development and adoption of Technical Regulations on the arrangement of space design and Architectural and Planning Elements for Persons with Disabilities and supervision of application of new construction standards.

As we have already mentioned, the Government of Georgia has already approved the Technical Regulations in 2014, however they fall short of responding to the real challenges and fail to ensure accessible environment and conditions for full-fledged living to persons with disabilities. A major problem with these Regulations is that they do not envisage an enforcement mechanism. Besides, the Regulations do not specify interim deadlines to supervise the adaptation process. Further, it is unclear how breaches of the Regulations should be responded to.

The case of Nadzaladevi

On 13 August 2015, the Public Defender's Office took note of information published on the official webpage of Nadzaladevi District government and in the electronic media. According to the report, ramps for persons with disabilities were installed in several residential buildings in the territory of Nadzaladevi District government. It was clear from the photos published in the media that the structure installed in one of the multi-story residential building was not meeting safety standards and was unfit for independent movement by Persons with disabilities.

In response to these reports, the Public Defender published its official announcement on 13 August[1609] calling on all the relevant authorities to strictly abide by the requirements established by international norms and domestic law, including the Technical Regulations, when carrying out any activity aimed for facilitation of independent living of Persons with Disabilities.

As per Article 16 of the Local Self-Government Code,[1610] the following issues are falling within municipal competences: development of infrastructure for persons with Disabilities at the local level; landscape and territorial planning and determination of rules and standards in the relevant field; issuance of construction permits and construction supervision within the scope determined by the national normative acts.

In connection with the above-described occasion, the Public Defender's Office started examination of the case on its own initiative as determined by Article 12 of the Organic Law on the Public Defender of Georgia.[1611]

1606 Recommendation of the Public Defender no. 452/09 dated 30.04.2013.
1607 One of the suggestions was for the relevant authorities to monitor implementation of rules laid down in various normative acts and to apply appropriate sanctions.
1608 http://gov.ge/files/381_40157_501181_76200114.pdf
1609 http://www.ombudsman.ge/ge/specializirebuli-centrebi/shshm-pirebis-uflebata-dacvis-departamenti/siaxleebi-ssm/saqartvelos-saxalxo-damcvelis-gancxadeba-nadzaladevis-raionshi-pandusebis-damon
1610 https://matsne.gov.ge/ka/document/view/2244429
1611 Case no. 9534/15.

We had formally requested Tbilisi City Hall,[1612] Nadzaladevi District Government[1613] and the nonprofit legal entity Tbilisi Municipal Laboratory[1614] to provide following information:

compatibility of the structures in the residential buildings mentioned above, with the 2014 "Technical Regulations on the Arrangement of Space Design and Architectural and Planning Elements for Persons with Disabilities"; whether any research was undertaken before making a decision on installing the ramps and whether the project has been approved by the relevant service; whether the appropriate authority supervised adherence to the Technical Regulations and any actions it took. We also requested any legal acts issued in relation to the project and a report produced by Tbilisi City Hall Internal Audit and Monitoring Service.

According to the information we received from Tbilisi City Hall,[1615] the requirements set forth in the Technical Regulations approved by Government Ordinance no. 41 should have been taken into consideration when the tender documents were under preparation (when designing the infrastructural part). As we examined the documents, we found out that the decision to install ramps was made on the basis of rules[1616] approved by the municipality legislature.[1617] The decision-making process was initiated, on its turn, on the basis of a request lodged by chairpersons of a home owners' partnership. The partnership's request was forwarded to the non-profit legal entity (NPLE) "Tbilisi Municipal Laboratory", an expert organization. Pursuant to an individual order, Tbilisi Municipality government of 17 December 2014 and paragraph 3 of the statute of Tbilisi Municipal Laboratory,[1618] the lab is authorized to conduct an evaluation of scheduled construction works both technically and cost-wise. In particular, it exercises technical supervision of ongoing works and inspects cost estimate documents, defective acts and project documents. According to the executive body's letter,[1619] the project was not submitted to industry experts for approval because the NPLE Tbilisi Municipal Laboratory is competent to do all types of expert examination.

According to information received from the executive body, the request of chairpersons of home owners' partnership for funding the works was granted after Tbilisi Municipal Laboratory had inspected and approved the submitted documents.

It is worth noting that the information provided in the letters of the executive government and Tbilisi Municipal Laboratory is contradictory to each other. In particular, the Laboratory reports that Technical Regulations requirements could not be heeded because they never received a project. In other words, the Laboratory did not conduct expert examination of the project documents and only looked into the cost estimate documents that were actually submitted to it (the Laboratory corrected the figures denoting salary amount per work and costs of materials).[1620]

On 26 August 2015, the Mayor of Tbilisi stated at a meeting with organizations representing persons with disabilities (attended by a representative from the Public Defender's Office) that their Internal Audit and Monitoring Service would look into the issue and produce a relevant report. In addition, Tbilisi City Hall was planning to produce an internal document within two weeks dividing responsibilities among various government entities in the field of ensuring compliance with the requirements of the Technical Regulations.

Despite this promise, information received from Tbilisi City Hall on 3 December 2015[1621] suggests that Internal Audit and Monitoring Service of Tbilisi City Hall has not completed examination of the issue and no distribution of responsibilities has been managed so far.

1612 Letter no. 09-2/6714 dated 14.08.2015
1613 Letter no. 09-2/8121 dated 06.10.2015
1614 Letter no. 09-2/8120 dated 06.10.2015
1615 Letter no. 10–17/8946 dated 13.10.2015.
1616 Letter no. 20-110 dated 30 December 2014
1617 https://matsne.gov.ge/ka/document/view/2669640, Articles 2, 5, 6, 7
1618 http://tbilisi.gov.ge/public-info-files/files/g_files/20.12.277_142287896798_tbilisi.gov.ge.pdf Individual Order no. 20.12.277.
1619 Letter no. 06/1523087–46 dated 26.08.2015
1620 Letter no. 03/1712 dated 13.10.2015
1621 Letter no. 7/69932 dated 03.12.2015

The above example illustrates lack of working, effective mechanism for enforcement and monitoring of accessibility standards at the local self-governance level.

ACCESS TO INFORMATION

In any country, legal frameworks on freedom of information and accessibility as well as abidance by legally prescribed rules are chief factors indicating the quality of democracy in that country. In Georgia, domestic law governing access of persons with disabilities to information and communications is relatively poor.

People with disabilities are encountering obstacles in exercising their right to equal opportunity. News reports, entertainment and other TV programs and movies are not accessible for them. A majority of broadcasting companies are not using adapted communication terminals, systems and methods.

Pursuant to Article 21 of the UN Convention on the Rights of Persons with Disabilities, States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others. This right should be exercised by using various means,[1622] methods and technologies of communication. It should be emphasized that the Convention particularly focuses on States recognizing and promoting the use of sign languages.[1623]

When it comes to accessibility, it is relevant to mention Article 9 of the Convention that sets a general standard. A normative content of the article suggests that the notion of accessibility is not confined to physical environment and transport but encompasses information and communications, communication technologies and other facilities and services.[1624]

The Public Defender has voiced the problems existing in this area as early as in 2013 when he publicized his study on freedom of information and accessibility. The Public Defender then recommended[1625] TV and radio companies to provide persons with disabilities with access to educational, cognitive, news and entertainment programs. The recommendation encouraged more active use of sign language.

An important document dealing with accessibility of information is the EU-Georgia Association Agreement. [1626] By signing the Agreement, the Georgian Government made a decision about its telecommunications policy as it undertook to gradually make its domestic legislation on electronic communications and broadcasting fully compatible with the relevant EU regulations, including with the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on Audiovisual Media Services.[1627]

According to the "National Action Plan for 2015 on the Implementation of the EU-Georgia Association Agreement and the Association Agenda" approved by the Government of Georgia (individual order no. 59 dated 26 January 2015), [1628] the National Communications Commission and the Ministry of Economy and Sustainable Development have been designated as bodies responsible for making Georgian domestic law consistent with the Euro-directives.

1622 Including by using audio description, Braille, tactile communication, large print, accessible multimedia, and augmentative and alternate means of communication.
1623 UN CRPD, Art. 21(e)
1624 UN CRPD, Art. 9(b)
1625 Freedom of Information and Access for Disabled People, 2013, p. 38
1626 http://www.parliament.ge/ge/ajax/downloadFile/34753/AA
1627 http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0022
1628 https://matsne.gov.ge/ka/document/view/2702520

On 20 January 2014, the Georgian Government approved the Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016,[1629] which describes activities incumbent on different State agencies, including a list measures to be undertaken with regard to ensuring freedom of expression and accessibility of information.

In order to monitor fulfillment of the obligations envisaged by the National Action Plan, in the first half of 2015, the Public Defender's Office requested the authorities to provide relevant information. In particular, we asked the National Communications Commission[1630] to inform us on the following: whether the Commission was looking into the special needs of persons with disabilities for electronic services and into their development perspectives; any activities directed at drafting changes in the legal framework concerning the use of sign language, subtitles, Braille, augmentative and other special communication means; drafting regulatory norms on introduction, production and dissemination of adapted technical devices and systems; the making of TV programs, movies, theater and other cultural activities accessible using the above means and technologies.

The National Communications Commission replied[1631] that, with a view to fulfilling the obligations under the EU-Georgia Association Agreement, the Commission established a working group on audiovisual media services; among other issues, the working group was to look into avenues of providing people with visual and hearing impairment with access to audiovisual services. The relevant bill was scheduled to be drafted by 1 December 2015. However, no effective and results-oriented measures have been taken in this regard. The Commission further informed us that they were part of the process of amending the law; however, it does not suffice that, as now required under the recent changes in the Broadcasting Law,[1632] the public broadcaster will heed the interests of people with visual and hearing impairments in TV programs aired only during election campaigning and related to elections/referenda/plebiscites (by providing translation in sign language). The legislation has to envisage equal access to information on a wide range of issues for all persons with disabilities no matter what their disability is (visual impairment included).

According to the letter from the Commission,[1633]which contains information provided by Georgian broadcasting companies (49 broadcasters, including those in the regions), a majority of the companies does not use augmentative communication. The programs are not broadcasted in a format accessible for all persons.

It should be mentioned that the changes effected in the Universal Service Directive in 2009[1634] determined obligations of service providers and competences of regulators. In particular, the Directive articulates what issues the contracts between consumers and service providers should consider and what competences regulators have.[1635] The approach of the European Parliament is that it may not be sufficient for service providers to provide subscribers with correct information about traffic management, service quality parameters and limitations or for the regulators to monitor the quality of the service provided; in particular, national regulatory authorities should be authorized, if appropriate, to impose minimum quality of service requirements on undertakings providing public communications networks to ensure that services and applications dependent on the network are delivered at a minimum quality standard.

Bearing in mind the above-described background, on 26 August 2015, the Public Defender addressed the National Communications Commission with a proposal[1636] to take measures, in cooperation with relevant authorities, to make information sources, TV programs and movies accessible for persons with disabilities. The Commission was advised, more specifically, to elaborate an action plan detailing specific measures to be implemented, implementation timeframes, responsible authorities, funding sources and outcome indicators.

1629 http://gov.ge/files/381_40157_501181_76200114.pdf
1630 Letters no. 09–2/2587 dated 06.04.2015; no. 09–2/4544 dated 05.06.2015
1631 Letter no.02/1100–15 dated 23.06.2015.
1632 Article 16(j) of the Broadcasting Law
1633 Letter no. 04/1776 dated 15-19.08.2015
1634 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0022
1635 Universal Service Directive, Art. 22
1636 http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/winadadeba-komunikaciebis-erovnul-komisias-shezguduli-shesadzleblobis-mqone-pirtatvis-informaciis-misawvdomobis-taobaze.page

In its response to our letter,[1637] the Commission referred to the role of the State in this process. In particular, pursuant to Article 7 of the Audiovisual Media Services Directive,[1638] Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

According to the Commission, it studied the law and practice of EU member states that are considered leading countries in this respect, including the United Kingdom,[1639] Finland,[1640] France[1641] and Ireland.[1642]

These examples suggest that, in countries where the law provides the use of special communication means by media outlets to broadcast adapted audiovisual programs for people with disabilities, on the one hand monitoring and management of the process is carried out by national regulators and on the other hand the law obliges broadcasters to take specific measures to facilitate understanding of and benefiting from such programs by such people. The law also specifies the means[1643] to be used for adapting the TV and radio programs as well as deadlines for launching adapted programs and their quotas.[1644] In countries where audio described content is available in limited number or is not available at all in the official State language, the law provides for funding such programs.[1645]

Based on the law, an independent regulator adopts a normative act laying down guidelines[1646] on how TV programs should be adapted using sign language, subtitles and audio description (audio commentary).[1647] Notably, such legal provisions are on their turn based on the results of studies and because of the complex nature of the issue, successful implementation cannot be achieved by merely writing up the rules in the law. A series of technical, artistry, logistic and economic issues need to be resolved to get TV programs adapted.

According to the Commission's information, in Georgia, there is a small number of media products adapted for people with hearing impairments. As for the blind and the visually impaired, there is no single media content for them in the TV space.[1648] Hence, the amount of adapted media products in the country is insufficient to fill even a minimum quota of the broadcast programs.[1649] Along with other challenges, technological solution is equally necessary for end users to get adapted audio commentary. The same is true for adapted access of people with various hearing impairments to news sources, since their needs differ from each other.

It follows from the Commission's reply that there is an issue with the broadcasters' awareness. In particular, the Commission's question whether TV companies are airing TV programs in a format accessible for persons with disabilities was answered by five TV companies that some of the movies are shown with subtitles. Judging from this answer, one may say that the broadcasters have a low knowledge of standards on accessibility of TV programs for persons with disabilities.[1650] As for translation in sign language, the personnel presenting or

1637 Letter of the Commission no. 02/2435–15 dated 26.10.2015

1638 http://ec.europa.eu/archives/information_society/avpolicy/reg/tvwf/access/index_en.htm

1639 Communications Act of 2003, Television Services for the Dead and Visually Impaired, Chapter 4, Section 303, available at http://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga 20030021 en.pdf

1640 Available at https://www.viestintavirasto.fl/en/tvradio/programmes/audiosubtitlingandsubtitlingservices.html

1641 Available at http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITREXT000006068930&dateTexte=vig#LEGIARTI000028203342

1642 http://www.irishstatutebook.ie/eli/2009/act/18/section/43/enacted/en/html#sec43

1643 Sign language, teletext, subtitles and audio description

1644 http://www.irishstatutebook.ie/ell/2009/act/18/section/43/enacted/en/html#sec43

1645 http://www.csa.fr/Etudes-et-publications/Les-autres-rapports/Rapport-au-Pariement-relatif-a-l-audiodescription-et-au-sous-titrage-des-programmes-december-2

1646 http://www.bai.ie/index.php/documents/codes-standards/

1647 Such commentary describes actions, location, body language, facial expression and runs in between dialogs

1648 Audio description was first added to a movie in Georgia in December 2014 when the Tree of Life Foundation along with its partner organizations implemented a special project for blind and low-sighted children

1649 The Commission believes that, in order to ensure access to media services, the broadcasters will have to create or buy media content with audio commentary. Doing this would require not only investment but also the setting of a standard for the linguistic part of the commentary, training of qualified personnel and regulation of a copyright to this part.

1650 A standard for subtitles for deaf people and people with hearing impairments differs from that of subtitles for people without hearing problems who need them just because they do not know a foreign language. In particular, apart from conversations, there are other sound effects (the so-called "off-screen sounds") that matter for getting the content of the conversation rightly. The standard sets requirements

translating a program in sign language has to have proper qualifications.[1651]

For the purposes of implementing the above-described action and planning results-oriented measures, it is important to be aware of statistical data such as number of people with disabilities, their needs, geographical allocation, social status and age groups.

Materials we received suggest that audiovisual media services are a complex issue and require problem identification and policy development. It was for this reason that the Public Defender recommended the National Communications Commission to come up with an action plan on ensuring access to information for persons with disabilities.

On 16 December 2015, the working group held a meeting at the Government Administration to consult with the governmental and non-governmental sectors on issues of timely and effective performance by the National Communications Commission of its obligations under the "Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016. At the meeting the Commission presented its findings. The working group identified there was a need for establishing a multi-sector group involving various agencies that would function on a stabile basis; the group found further that it was necessary to develop an action plan in the shortest time possible. However, the Commission did not implement these measures until the end of 2015.

Against this background, we believe the process has stalled and activities undertaken by the relevant authorities this far do not ensure an accessible format of delivering information to persons with disabilities.

PARTICIPATION OF PERSONS WITH DISABILITIES IN THE DECISION-MAKING PROCESS

The right of persons with disabilities can only be protected if they and their representative organizations are duly involved in the process of decision-making on issues concerning them.

Although the domestic legislation in Georgia recognizes this right, the existing regulations are not meeting the requirements of the UN CRPD. People with different impairments are still unable to exercise this right.

One of the objectives envisaged by the "Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016" approved by the Georgian Government on 20 January 2014[1652] is involvement of persons with disabilities in the decision-making process. Setting up/making operational regional and local councils working on disability issues with participation of Persons with Disabilities s and/or their representative organizations is among the actions prescribed by the Action Plan. The Ministry of Regional Development and Infrastructure of Georgia and local self-government bodies are determined as responsible authorities for this activity. The Action Plan refers to donor organizations, the central budget and the local budgets as sources for funding the activity.

The Public Defender's Office monitored implementation of the mentioned activity during 2015. With this purpose in mind, we requested information from local municipalities at two phases. Given the goals and the scope of interest of the monitoring, we requested the local municipalities in writing to inform us whether the councils had been set up, number of council members, number of meetings held by the councils and issues

related to the size of the text, color, background, number of characters and time periods. Failure to meet these requirements can make the subtitles virtually useless for people with hearing impairments.

1651 The law or other regulation should oblige broadcasters to take responsibility for the quality of sign language translation.

1652 The Georgian Government Resolution no. 76 dated 20 January 2014 approving a "Governmental action plan for 2014-2016 on ensuring equal opportunities to disabled people"

discussed during these meetings; whether there are any proposals initiated by the councils; statutes of the councils and information concerning administrative acts founding the councils.

ESTABLISHMENT OF LOCAL COUNCILS ON ISSUES OF PERSONS WITH DISABILITIES

According to what we were informed by self-governing units of the country at the first phase, local councils on issues of persons with disabilities had been set up only in four municipalities (Chokhatauri, Gurjaani, Lanchkhuti and Chkhorotsku) and two City Halls (Tbilisi and Zugdidi).

Quite a large number of letters received (40 of them) did not contain information about fulfillment of the above-mentioned obligation under the Governmental Action Plan at all.

At a subsequent phase of the monitoring, 60 out of 75 municipalities responded to the Public Defender's written requests for information. According to these replies, local councils on issues of persons with disabilities had been set up in 16 more self-governing units: the municipalities of Dmanisi, Tsalenjikha, Bagdati, Shuakhevi, Tsageri, Khulo, Akhalkalaki, Ozurgeti, Tskaltubo, Ninotsminda, Zugdidi, Aspindza, Adigeni and the City Halls of Telavi, Gori and Rustavi.

According to a letter received from Sagarejo, a mobile multitask team was set up there. However, no founding administrative act had been issued; the team was formed simply by the governor's oral instruction.[1653]

Kutaisi City Hall has reported[1654] that a Council for the Protection of the Rights of Persons with Disabilities and their Integration was set up in 2010 but it is not active for the moment. We wish to comment that the mere setting up of a council cannot be regarded as fulfillment of the Governmental Action Plan because the fact is that the Council does not function.

Gori municipality executive body replied[1655] that the local council was established at the base of the non-profit legal entity "Welfare and Development Center". An official from Gori municipality Healthcare and Social Protection Service was nominated to the council membership. The council operates on the basis of a memorandum of understanding concluded between Gori municipality executive body and the Center.

Kareli self-governing community reported[1656] that they entered into a memorandum of understanding with the above-mentioned Center to set up a local council on Persons with Disabilities.

The Center has been contracted also by the executive body of Kaspi municipality,[1657]which reported that their local council on persons with disability was established in 2014.

Information received from the above-mentioned regions (Gori, Kaspi, Kareli) suggests that their councils have been set up within the frameworks of an NGO project.

According to Akhalgori municipality executive body,[1658] no local council has been established there. A letter from the municipality suggests that, following the August 2008 war, the municipality's self-governing body is stationed on the territory of Mtskheta municipality. Legal acts governing various matters are issued by Mtskheta municipality, while Akhalgori municipality is responsible for the execution of the legal acts thus

1653 Letter no. 02/2463 dated 04.12.2015.
1654 Letter no. 01/267 dated 11.01.2016
1655 Letter no. 4228 dated 01.12.2015
1656 Letter no. 05/2238 dated 02.12.2015
1657 Letter no. 2/2661 dated 30.12.2015
1658 Letter no. 2–1149 dated 11.12.2015

issued. As for Mtskheta municipality, no local council on persons with disabilities has been set up there yet.[1659]

Some municipalities informed us that they were working on setting up such councils (the municipalities of Marneuli, Senaki, Abasha, Samtredia, Oni, Akhaltsikhe, Gardabani, Kharagauli, Dedoplistskaro, Kareli, Terjola, Lagodekhi, Tkibuli, Signagi, Akhmeta, Mestia, Kurta, Eredvi, Poti, Ozurgeti City Hall, Telavi executive body).

By February 2016, local councils on the issues of persons with disabilities have been set up in 22 municipalities.

GROUNDS FOR THE ESTABLISHMENT OF THE COUNCILS AND THEIR ACTIVITIES

As for the grounds for setting up councils on disability issues, information from the municipalities suggests that most of them were established on the basis of the local self-governance units' administrative acts (orders).

The councils operate in accordance with the statutes of the respective local self-governance units and their own statutes approved by City Halls and relevant legislatures. According to municipalities' reports, there are no uniform practices of establishing the councils and approving their statutes across the country.

For example, the statute of Zugdidi municipality, council is approved by the local legislature's individual order.[1660] The same practice was followed by Bagdati municipality as it approved a plan of action for the local council on persons with disabilities.[1661]

Gurjaani municipality executive body provided us with only a copy of an order establishing the council. In their letter,[1662] they suggest the council does not need to have a statute because the founding order articulates all the important matters related to the operation of the council.

As we have mentioned earlier, most councils were established on the basis of administrative acts (orders) of local self-governance units. In some municipalities, statutes of the councils have been approved by the same orders.

The councils were created on the basis of orders in Gori City Hall and the executive bodies of the municipalities of Ckhrotsku, Lanchkhuti, Tsalenjikha, Ozurgeti, Khulo, Shuakhevi and Tskaltubo. However, letters from these localities say nothing about approval of councils' statutes.

While establishing councils on disability issues is important, it is equally necessary to look at their actual operations, since formal existence of the councils cannot ensure the achievement of the goals set out in the Governmental Action Plan.

According to the information provided by the municipalities, the councils hold scheduled meetings once in a period ranging from one to four months. The councils in the municipalities of Akhalkalaki, Gurjaani, Khulo and Shuakhevi and Zugdidi meet once every two months. The councils in Chokhatauri and Telavi meet once a quarter; and the council in Rustavi City Hall meets once every four months.

Zugdidi municipality has a good practice in this respect. A Council on Persons with Disabilities was set up in June 2015 and it met four times until January 2016.

1659 Letter no. 2223 dated 30.12.2015
1660 Letter no. 04–5427 dated 09.12.2015.
1661 Letter no. 41/3651 dated 10.12.2015.
1662 Letter no. 6436 dated 25.11.2015.

In Bagdati municipality executive body, the council was established in July 2015. Two meetings have been held since then. A council was set up in Tbilisi City Hall in February 2015 having held two meetings till now.[1663] In their replies, Bagdati municipality executive body and Tbilisi City Hall provided us with lists of issues discussed by their respective councils.

In its letter,[1664] Chokhatauri municipality executive body reports that their council held a meeting on 17 July 2015 but says nothing about the number of meetings the council held in total.

A council meeting in Rustavi City Hall has not held yet.[1665] Ninotsminda municipality executive body also reported no meeting by their council.[1666]

A letter from Tskaltubo municipality executive body[1667] says nothing about the number of council meetings held but reports that it was at the council's recommendation that they identified and registered building that had no ramps.

REPRESENTATION OF THE PERSONS WITH DISABILITIES AND/OR THE ORGANIZATIONS WORKING ON DISABILITY ISSUES IN THE COUNCILS

It is crucial that persons with disabilities partake in the work of the councils on disability issues at regional and local levels.

Some municipalities did not provide us with information on the engagement of persons with disabilities and their representative organizations in the councils. In their letters, the municipalities did mention invited members and civil society representatives but did not specify whether these individuals and entities were representing PWD organizations.

The information we received from Bagdati municipality executive body on this matter was comprehensive. In their letter,[1668] they specify, that 6 out of 11 council members are persons with disabilities. Kaspi municipality executive body also reported[1669] that five members of their local council are PWDs and two members come from an organization of persons with disabilities. A council in Tbilisi City Hall has 11 representatives from non-governmental organizations working on disability issues. In the council at Gurjaani municipality executive body, there is one person with disability and two representatives of organization of disabled people (DPO). In Chokhatauri municipality, four people are representatives of an organization of people with disabilitie but none of the members is an individual with certain disability.

In Chkhorotsku municipality executive body, there is only one person with disability in the council and no representatives of organizations of persons with disabilities. There is one representative of an organization of persons with disabilities in each of the councils of Lanchkhuti and Gori and Tsageri municipalities.

In Rustavi City Hall, council members are heads of local budget-funded not-profit legal organizations.

Persons with Disabilities and their organizations are not represented in the councils of Tsalenjikha[1670] and Telavi[1671] municipalities.

1663 Letter no. 10/73588 dated 08.12.2015.
1664 Letter no. 2027 dated 15.12.2015.
1665 Letter no. 02/10489 dated 30.11.2015.
1666 Letter no. 898/15 dated 04.12.2015.
1667 Letter no. 31/5242 dated 10.12.2015.
1668 Letter no. 41/3651 dated 10.12.2015.
1669 Letter no. 2/2661 dated 30.12.2015.
1670 Letter no. 1565 dated 15.12.2015
1671 Letter no. 1358 dated 28.12.2015

It should be noted that persons with disabilities are not always participating in the work of the advisory bodies at the regional level – something that certainly does not ensure their engagement in the decision-making process, especially on the issues concerning their own needs.

PROBLEMS IDENTIFIED IN THE PROCESS OF CREATION AND OPERATION OF THE COUNCILS

The Public Defender's Office identified a series of flaws while monitoring implementation of an activity under the Governmental Action Plan entitled "Setting up and putting to operation councils on issues of persons with disabilities at the regional and local levels".

First of all, we wish to note that many of the municipalities did not furnish us with the requested information within the legally established timeframe. Besides, information they did provide was incomplete. These factors certainly impeded our ability to objectively evaluate and analyze the situation.

The information we received suggests that, by January 2016, i.e. 2 years after the adoption of the Action Plan, the councils were established only in 22 municipalities throughout the country – a number that is significantly less compared with the total number of municipalities in Georgia (75). This situation has to do with the lack of involvement of persons with disabilities in the decision-making at the regional and local levels directly. Without their participation, issues related to them cannot be resolved properly. Sharing knowledge and experience of persons with disabilities and heeding their advice is truly important and, in fact, mandatory, in this process.

The municipalities did not furnish us with sufficient information to evaluate how the operation of the councils affected the rate of taking into consideration the needs of persons with disabilities in the self-governing territories and the planning of programs and events important to these people.

Monitoring has one more time revealed that local self-government bodies have low awareness of rights of Persons with disabilities. Responsible persons of the municipalities are not honoring their obligation under the Governmental Action Plan to timely give effect to the councils and include persons with disabilities (and their representative organizations) in the councils' activities.

According to information we received from the Ministry of Regional Development and Infrastructure of Georgia[1672] within the frameworks of our monitoring of the Governmental Action Plan, the Ministry confined its efforts to merely handing the Government Individual Order no. 76 approving the Action Plan over to the municipalities. It also requested the local self-governance bodies to fit into the established timeframes when performing their respective obligations.

In the same letter the Ministry states that, because it is the municipalities' direct responsibility to establish and put to operation the councils on the issues of persons with disabilities and the municipalities are not obliged to report to the Ministry in this area, the Ministry has no knowledge of whether the municipalities' have performed their duties or not.

RAISING AWARENESS ON THE ISSUES CONCERNING PERSONS WITH DISABILITIES

Despite abundance of documents and endeavors, reality is that persons with disabilities are still encountering barriers in participating in public life as full-fledged members of the society and their rights still get breached, something that is caused by unhealthy attitude towards them.

1672 Letter 01/335 dated 05.02.2016.

It should be well noted that the media possesses a great deal of ability to influence social change; it can also impede or speed up structural changes. Nevertheless, it often turns into a source of hate speech, discrimination and segregation on various grounds. Neglect of interests of persons with disabilities and their stigmatization are frequent occurrences. Negative trends are often displayed through the formats of TV programs. On its turn, this points to the need for raising awareness of the personnel of broadcasting companies and making self-regulation mechanisms more effective.

The 2006 UN Convention on the Rights of Persons with Disabilities (CRPD),[1673] which has entered into force on 12 April 2014 in Georgia, , along with other important issues, speaks of measures to be taken by States Parties in terms of education and awareness raising.

Pursuant to Article 8 of the Convention, States Parties undertake to adopt immediate measures to raise awareness about persons with disabilities throughout public society, including at the family level, and to foster respect for the rights and dignity of persons with disabilities. They must combat stereotypes, prejudices and harmful practices related to persons with disabilities, including those based on sex and age, in all areas of life. They should also promote awareness of the capabilities and contributions of persons with disabilities.[1674] Measures to achieve these goals should include initiating and maintaining public awareness campaigns designed to nurture receptiveness to the rights of persons with disabilities, promote positive perceptions and greater social awareness towards persons with disabilities, and promote recognition of the skills, merits and abilities of persons with disabilities.

The Council of Europe Recommendation CM/Rec (2007)2 on media pluralism and diversity of media content[1675] stipulates that pluralism and diversity are essential for the functioning of a democratic society and for fostering public debate, political pluralism and awareness of different viewpoints. Media plays a central role in forming public perception, ideas, attitudes and values.

For now, rules and guidelines for broadcasters on producing and airing programs are prescribed by the Broadcasters' Code of Conduct approved by the National Communications Commission through its Resolution no. 2 dated 12 March 2009.[1676] The Code obliges broadcasting companies in Georgia to take the interests of various social groups into consideration. They must refrain from publishing materials that are able to fuel intolerance based on sex, language, religion, political or other beliefs, belonging to a social group, disability, sexual orientation or other reasons. Broadcasters must display an attitude of fairness and respect towards all natural persons and legal entities. Further, creators/producers of TV programs must treat potential participants with respect for the above principles. Under Article 33(6) of the Code, broadcasters shall use non-insulting terms when describing persons with disabilities. They must pay special attention to the right of persons with disabilities to inviolability of private life, their physical and moral wellbeing and obtaining their consent.

Article 55 of the same Code lays down safeguards against airing harmful and offensive material by broadcasters. In particular, transmitting a potentially offensive material by a broadcaster can only be justified by the editorial context and the fact that it serves public interests. Broadcasters must strike a reasonable balance between the freedom of expression and the interests of persons with disabilities. In addition, in order to reduce potential damage, they must adduce preliminary information or warning.[1677]

Media outlets remain a major source of information in Georgia for the moment.[1678] It is therefore indispensable to make sure that essential standards of journalism such as balance, objectivity and respect for fundamental rights are adhered to while making journalistic products.

1673 https://matsne.gov.ge/ka/document/view/2334289
1674 Article 8, par. 1., subparagraphs a, b and c
1675 https://wcd.coe.int/ViewDoc.jsp?id=1089699
1676 https://matsne.gov.ge/ka/document/view/82792
1677 Article 55(1)
1678 In-depth study of the Georgian media: summary of results. August-November 2009, Caucasus Research Resource Center, EU-funded project http://www.epfound.ge/files/geo_media_research_report_ge_4.pdf

According to paragraph 7 of the Charter of Journalistic Ethics,[1679] a journalist must realize the threat posed by encouraging discrimination and must make all efforts to prevent negative process/consequences thereof. In particular, journalists should take measures to avoid discrimination against anyone based on race, sex, sexual orientation, language, religion, political or other beliefs, national or social origin or for any other reason.

In the context of awareness-raising about persons with disabilities, it is relevant to recall activities outlined in the national strategy document.

Under Chapter 2 (awareness-raising) of the "Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016",[1680] the National Communications Commission should, along with the Public Broadcaster and other media outlets, conduct campaigns and produce social ads to support raising public awareness and ensure media coverage of the issues concerning persons with disabilities, including by fulfilling the following (paragraph 1.1): establish correct terminology and inspire positive attitude of the public towards persons with disabilities with a view to eliminating stigma and discrimination against such people and respecting their rights and dignity. The Governmental Action Plan projects measuring the success of these activities through indicators such as increased number of radio and TV programs aired and increased coverage of disability issues by the *printed* and electronic media. Donor support and the State Budget are referred to as sources of funding.

The Action Plan envisages informing journalists and other media personnel, and training them in issues concerning persons with disabilities.[1681] An indicator for this outcome is at least 50 journalists trained. Donor funds are referred to as a funding source for this activity. It should be noted that responsible partners for the activity is "interested bodies", as general as that; this term is obviously too broad and vague and may eventually result in poor fulfillment of the objective.

The Public Defender's Office requested information from both the National Communications Commission[1682] and the Public Broadcaster[1683] concerning fulfillment of these obligations.

The Commission replied[1684] that implementing some of the tasks under the Government Action Plan in the broadcasting media requires creation of an appropriate legal framework and changing the Broadcasting Law, since the current regulations are not sufficient to achieve the goals set. It is for this reason that the Commission is in the process of drafting the changes in the law.

According to Programmatic Priorities for 2015-2016 approved by the Public Broadcaster's board of trustees,[1685] when choosing topics for its programs, the Public Broadcaster should look to important and urgent social issues that matter for the development of the country but not to agendas of individual media outlets.

As the Public Broadcaster replied,[1686] its Channel One and Channel Two are systematically playing social ads concerning the issues of Persons with Disabilities. In addition, the Moambe news program of Channel One[1687] and the Public Radio are constantly covering the problems of, news about and rights of persons with disabilities.[1688]

1679 https://matsne.gov.ge/ka/document/view/82792http://qartia.org.ge/
1680 http://gov.ge/files/381_40157_501181_76200114.pdf
1681 "Governmental action plan for 2014-2016 on ensuring equal opportunities to disabled people", Chapter II, Awareness Raising, par. 1.2
1682 Letter no. 09-2/6434 dated 06.08.2015.
1683 Letter no. 09-2/488.
1684 Letter No. 03/2158 dated 15–05.10.2015.
1685 http://gpb.ge/uploads/documents/propri1516.pdf
1686 Letter no. 202/1 dated 21.01.2016.
1687 Channel One has prepared the following TV blogs: "The Children of the Sun", "I can talk", etc. Programs by the "Real Space" Talk Show: "Social enterprises", "Reforming the notion of civil capacity in Georgia", "Corporate social responsibility", "Adapted driving lessons", "Handicapped environment", "Life of children and adolescents with hearing impairments", etc. Various topics on this matter have been discussed in the following TV programs: Communicator, Our Morning, Channel One Morning, etc.
1688 Programs most that covered the topic of rights most frequently were "Rights and Freedoms", "Open Studio" and "Rush hour", http://radio1.ge/ge/home.html

Despite some of the positive steps taken by the Public Broadcaster, raising public awareness and involvement of other media outlets in this process remains a challenge.

It has to be mentioned that, according to Article 59[1](1) of the Broadcasting Law, violations of the norms under Articles 52, 54, 56 and 59 of this Law and violations of the ethical norms and professional standards envisaged by the Code of Conduct may only be responded to within the self-regulatory mechanism indicated in Article 14(1) of this Law, which mechanism must be such as to ensure timely examination of complaints and reasoned action-taking. It follows that the Commission has not power to react to airing a material that is insulting or discriminatory due to disability, status or features of an individual or a group of individuals or when the material is overly focused on such circumstances.

Further, under the laws now in force, it is beyond the Commission's mandate to supervise the printed media. An exception to this rule is the activity of newspapers funded from the central or local budget related to pre-election ads. Hence, the regulating authority believes it would be more appropriate for the Governmental Action Plan to indicate another agency (not the Commission) as the responsible body in this direction.[1689] The letter says the Commission had raised this concern before the Ministry of Labor, Health and Social Affairs of Georgia earlier in writing when the Governmental Action Plan was still a draft[1690] but their views were not heeded then.

All these background reasons suggest that the matter needs a systemic and holistic approach, which should have been reflected in the Governmental Action Plan too. Incomprehensive regulation impedes the implementation process and indicators to measure the outcomes are lacking as well.

CHILDREN WITH DISABILITIES

Despite a number of positive steps made towards the protection of the right of children with disabilities, various challenges remained unresolved in the reporting period.

Especially acute was the issue of socially vulnerable families with children with disabilities having difficulties in getting State aid. Getting the right to the State-paid social assistance has been made much more difficult for many families after the new "Methodology on the Evaluation of the Socio-economic Status of Socially Unprotected Families (households)"[1691] was introduced. This fact has further aggravated their socio-economic condition.

The Public Defender's Office has had the opportunity to explore the cases related to the above-mentioned problem on the basis of the citizen complaints submitted to the Public Defender and information obtained from other sources.[1692] For further action, we requested the Social Services Agency to furnish us with details. Letters received from the Agency are not referring to any specific reasons for stopping payment of State aid to individual beneficiaries. The letters just keep describing the legal procedure of evaluating families as determined in the relevant normative acts. In none of its letters has the Agency referred to any measures taken to deal with this common problem that disturbs a certain group of citizens. The attitude demonstrated by the Agency does not really help the families suffering from economic hardship – a situation that generates even more citizen dissatisfaction with the Government agencies.

1689 Letter no. 03/2158 dated 15; 05.10.2015.
1690 Letter no. 03/2510–13 dated 19.11.2015 and no. 03/2824–13 dated 25.12.2013.
1691 https://matsne.gov.ge/ka/document/view/2667586
Resolution of the Georgian Government no. 758 dated 31 December 2014 approving the "Methodology of evaluation of the socio-economic status of socially unprotected families (households)"
1692 Cases no. 9838/15; no. 10906/15; no. 12172/15; no. 12642/1.5

Providence of children with disabilities with indispensable services remains a concern. One reason is that, for years, responsible authorities have been designing the services without first assessing the existing needs properly. As a result, some people are not benefiting from various sub-programs under the State Program for Social Rehabilitation and Child Care. It is necessary to change the current practice to make sure that all children with relevant needs are included in the program and no one remains neglected.

Lack of information about the programs and services available is another issue. That is particularly true for rural population. People in regions normally have no understanding of what documents they need to collect and what procedure they should go through to become recipients of various services offered by the State programs (including aiding equipment).[1693]

Another matter of concern is the quality and continuity of inclusive education. Many children with disabilities, especially those from the regions, are not benefiting from such education. The number of teachers and their qualifications are insufficient. There is a limited availability of teaching institutions and materials.

Some people with special learning needs residing in Sachkhere municipality had problems with getting mobility aids and education materials as well as with accessibility of physical environment of educational institution.[1694] In Kakheti, teachers are not receiving special training as required and there is a lack of school inventory such as adapted desks and chairs;[1695] children with disabilities are not benefiting from the education process.[1696]

One problem we identified in the reporting period is that public figures, especially high-ranking officials, demonstrated low acceptance and even stigmatized people with disabilities in their public speeches. These events were followed by harsh protests by parents of the children and representatives of the civil society organizations.

The Public Defender responded to discriminatory statements by calling on everyone in Georgia to refrain from displaying stigma and negative attitude towards people with disabilities; instead, the Public Defender, encouraged protection of rights and showing respect for the dignity of PWDs.

In the reporting period, there was some positive movement towards decentralization of the large children's institutions. On 18 January 2016, a memorandum of understanding signed by the Ministry of Labor, Health and Social Affairs of Georgia, the (LEPL) "Social Services Agency" and the United Nations Children's Fund. The memorandum envisages setting up alternative, smaller, family-like institutions providing services for children in need of care and children with serious and deep disabilities – beneficiaries of large children's institutions. As we know, there is an ongoing process of a multidisciplinary team (composed of pediatricians, psychologists, social workers, and occupational therapists) evaluating the needs of children at the Tbilisi Infants Home.

The Public Defender believes the process must continue to make sure that the children get services tailored to their needs and are able to live in a family-like environment.

SUPPORTING PERSONS WITH DISABILITIES LIVING INDEPENDENTLY

In the reporting period, persons with disabilities have continued to struggle with the problem of retaining the ability to lead an independent living. The issue needs to be well thought through in the light of other factors such as employment opportunities for these individuals. Despite concrete obligations assumed under both international standards and domestic law, the State remains incapable of implementing an effective and results-oriented policy in this regard.

1693 Case no. 2993/15.
1694 Case no. 933/15; Case no. 18509/1.
1695 Case no. 10934/15.
1696 Case no. 896/16.

According to the UN Convention on the Rights of Persons with Disabilities, the purpose of the Convention is to ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Article 19 of Convention obliges States Parties to take all effective measures to promote independent living by the persons with disabilities. Guaranteeing independent living, on its turn, implies equal access so that individual needs of persons with disabilities can be met. According to the Convention, States must create and strengthen services to help beneficiaries lead independent lives. An indispensable precondition to this is to provide the beneficiaries with vocational education and employment opportunities.

RIGHT OF PERSONS WITH DISABILITIES TO WORK

States' obligations related to employment of persons with disabilities are contained mostly in Article 27 of the Convention, which stipulates that the States Parties must enable persons with disabilities to have effective access to general technical and vocational guidance programmes, and vocational and continuing training; promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding employment; employ persons with disabilities in the public sector; promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.

The overall goal of the Convention is to ensure to people with disabilities employment opportunities in the open labor market, on equal terms with others. However, until this overarching objective is reached, the Convention allows for interim measures such as positive discrimination, incentives, and support measures and programs as forms of justified interference.

The applicable law and leading strategic documents at the domestic level are overly general when it comes to regulation of persons with disabilities s' employment and independent living. Existing State programs are insufficient or inadequate.

The right of persons with disabilities to work is governed by the Labor Code as well as provisions of the Law on Civil Service and the Law on Social Protection of Persons with Disabilities. Unlike the established practices in foreign countries where a set of various measures is used to encourage recruitment of persons with disabilities , the Georgian domestic legislation deprives persons with disabilities of the entitlement to receive social assistance in case if they get hired in civil service. The only exception relates to people who have severe disability or profound visual impairment.[1697] Because of such regulation, many people with disabilities are simply forced to waive their right to social assistance in exchange for getting a job. This measure clearly does not encourage employment but can actually serve to the contrary.

As early as in 2008, The Georgian Parliament announced that promotion of hiring of persons with disabilities was a priority under the State policy on persons with disabilities.[1698] Various Governmental action plans[1699] envisage improvement of existing laws and bylaws to promote employment of PWDs, creation of a database of job seekers, creation of a database of potential employers of persons with disabilities, development and implementation of State programs to help such people find jobs including at State agencies and institutions, encouragement of private sector to hire them, etc. However, no significant moves have been made in this regard so far. No active and targeted State policies are being implemented. Importantly, the above listed activities can only be implemented if there is a political will to do so and if the State actually carries out relevant programs.

1697 Resolution of the Georgian Government no. 279 dated 23 July 2012 on the rules of determining social package, Art. 6

1698 Resolution of the Parliament no. 604-II dated 2 December 2008 on social integration of disabled people

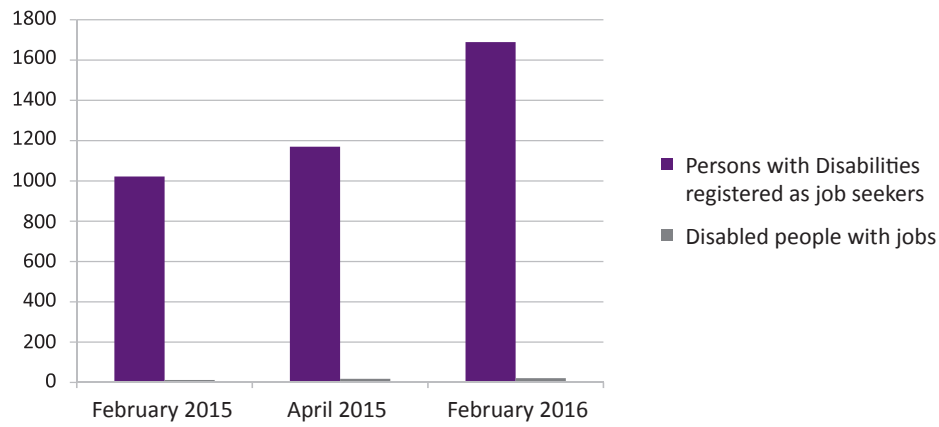
1699 "Governmental action plan for 2014-2016 on ensuring equal opportunities to disabled people" approved by Resolution of the Georgian Government no. 76 dated 20 January 2014; "Governmental action plan for 2014-2015 on the protection of human rights" approved by Resolution of the Georgian Government no. 445 dated 9 July 2014

It is worth noting that, according to the 2015 State Program for Social Rehabilitation and Child Care, and namely its sub-program for the promotion of employment of people with disabilities only one service provider is obliged to employ a certain percentage of persons with disabilities in manufacturing wheelchairs in Georgia (more than 50% of employees should be persons with disabilities)[1700] but this single measure is insufficient even hypothetically to meet the exiting demand.

As the Ministry of Labor, Health and Social Affairs of Georgia reported, they are planning to facilitate hiring of vulnerable groups and to promote equal opportunities for less competitive workforce as part of the State's labor market policy; to this end, an annual budget of GEL 100,000 is allocated each year for the period of 2015-18.[1701] The State Program for Developing Employment Services envisages finding a model to facilitate hiring of vulnerable and less competitive groups.[1702] At this stage, the Ministry, together with the LEPL "Social Services Agency", is working to develop such a model, which will then be approved by the Governmental resolution. The Ministry of Education and Science of Georgia and the LEPL Social Services Agency have entered into a memorandum of cooperation on introducing employment services. A competition was held to select employment support consultants and a coordinator (11 people in total: 1 employment support coordinator and 10 employment support consultants) but not all the staff have been hired yet. The consultants will help persons with disabilities and persons with special learning needs contact potential employers and get hired. The Ministries are intending to send the consultants on a study visit to the United Kingdom in June 2016 for qualification rising and experience sharing. The Ministry of Education and Science of Georgia has also produced a guide for employers explaining what it means to hire a person with disabilities and why the employers may benefit from doing so.[1703]

Despite the Government's declared intent to ensure employment opportunities for persons with disabilities and despite the existence of a number of projects serving the same aim, PWDs are not actually able to exercise their right to work because there are no proper legal mechanisms, practical help and effective enforcement. This statement is supported by employment statistics and results of studies.

According to the data provided by the Ministry of Labor, Health and Social Affairs of Georgia, only a few persons with disabilities who registered themselves as job seekers at worknet.gov.ge, a unified online system run by the LEPL "Social Services Agency", got hired. Namely, by February 2015, out of the 1,022 persons with disabilities registered as job seekers, only 12 people have got their jobs. By April 2015, 18 out of 1,170 registered job seekers were successful to get hired.[1704] By February 2016, 21 out of 1,689 persons with disabilities registered in the labor market management system have been actually hired.[1705]



1700 2015 State Program for Social Rehabilitation and Child Care approved by Resolution of the Georgian Government no. 138 dated 30 March 2015, Annex 1.6.1. Provision with wheel chairs and helping disabled people with finding jobs, Art. 5(a)
1701 Letter from the Ministry of Labor, Health and Social Protection no. 01/9660 dated 12 February 2015
1702 Letter from the Ministry of Labor, Health and Social Protection no. 01/23910 dated 3 April 2015
1703 Official website of the Ministry of Education and Science: [http://mes.gov.ge/content.php?id=6151&lang=geo]
1704 Letters from the Ministry of Labor, Health and Social Protection no. 01/9660 dated 12 February 2015 and no. 01/30293 dated 30 April 2015
1705 Letter from the Public Law Entity "Social Services Agency" no. 04/7381dated 1 February 2015

The State is not properly meeting its obligation under the UN Convention in regard to employing Persons with Disabilities in the public sector either. According to a 2015 report of the Civil Service Bureau, out of the 53,109 individuals employed in the public sector, only 112 are persons with disabilities. Statistics of PWDs working for State institutions are shown on a diagram below:[1706]

Persons with Disabilities employed in the public sector	
Government Administration and Presidential Administration	1
Parliament of Georgia	0
Autonomous republics of Achara and Abkhazia	9
Administrations of Governors (State representatives)	0
Ministries and state ministries	22
Local government	77
Courts	1
Public law entities	2
Total	**112**

A study carried out by the Research Center on Persons with Disabilities at Ivane Javakhishvili Tbilisi State University[1707] has confirmed that it is virtually a mission impossible for a person with disability to get a job, especially through an open competition. In most cases this happens because of their low qualifications and/or lack of education certificates. If they do get employed, it only happens on the initiative of individual organizations (such as the Public Registry or local municipalities) and only as part of campaigning. Public transport and work environment not adapted to the needs of Persons with disabilities are significant obstacles for getting to the workplace, performing the work and socializing with the rest of the staff. Remuneration paid to PWDs is normally much lower compared with others, something that in conjunction with other factors makes their employment economically unfeasible. In addition to all these issues, if an individual with disability starts a job, he/she risks losing his/her social package and his/her family will no longer receive the State-paid allowance.[1708]

A relevant passage from the paper reads:

"The non-adapted physical environment and public transport is a serious obstacle for the persons with disabilities in the sense of both getting and maintaining a job. It significantly limits the ability of persons with disabilities to receive education and develop their vocational skills; they are also prevented from partaking in the public life and staying active. […] Lack of access of persons with disabilities to education is a prerequisite for their low professional competence and low competitiveness on the labor market. […] Due to insufficient professional qualifications, they can hardly keep their jobs. […] Inclusive learning introduced in schools and vocational institutions does not provide for necessary knowledge for the persons with disabilities to get jobs. […] We believe it is necessary to have a consistent State policy that would be based on the essential principles and values enshrined in the 2006 UN Convention. Consistent and effective implementation of these values will help persons with disabilities get hired as part of State policies. The respondents in our study think that the individual measures taken by the State to improve the rate of employment of persons with disabilities and their socio-economic conditions are insufficient, since they are sporadic and unable to change the overall picture.[1709]

The below chart gives an idea of problems faced by persons with disabilities who have managed to find jobs:[1710]

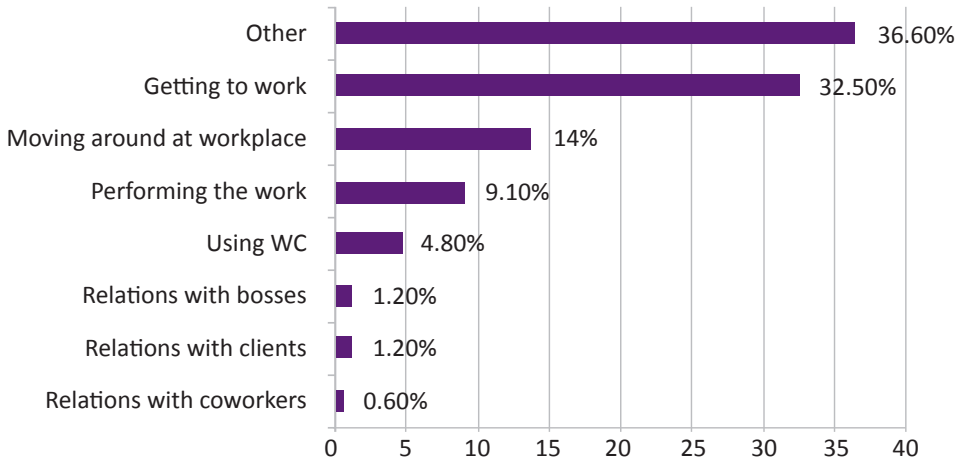
1706 The Civil Service Bureau, 2015 Report, p. 22, available at <http://csb.gov.ge/uploads/2015_GEO_web.pdf>

1707 Special issues related to adaptation of disabled people to the work environment: attitudes of disabled people, employers and industry experts, Results of a quantitative study, Ivane Javakhishvili Tbilisi State University, 2015

1708 *Ibid.* pp. 94–95.

1709 *Ibid.* pp. 96–97.

1710 Micro and macro factors affecting adaptation of disabled people to the work environment and work effectiveness, study report, part 1, Tbilisi State University publishing, 2015, p. 19, chart 4



SUPPORTING PERSONS WITH DISABILITIES LEAVING THE STATE CARE TO LIVE INDEPENDENTLY

An opportunity of living an independent life is particularly limited for persons with Disabilities leaving the State care system because they have, since their childhood, spent their entire lives in State institutions and, having attained the age of majority, are now forced to exit this care system unprepared. The State is not offering them adequate support for which reason, along with other socio-economic problems, they remain without a roof and relevant services.

Applications received by the Office of the Public Defender[1711] show that a major problem faced by people in the process of leaving the State care system is lack of proper home, something that is tightly linked to their ability of exercising the rights to health, social protection, education, employment and other fundamental rights. This interconnection between State care and homelessness is prepositioned by the following: high rate of mobility of individuals under State care (frequently changing the institutions), unplanned and unprepared process of exiting State care, unsuccessful efforts to re-integrate into their families, and lack of essential social skills.[1712] These factors become particularly exacerbated for people with disabilities considering a whole series of other obstacles they encounter in the existing environment.

It would not be reasonable to assume that persons with disabilities, being left without State care and family support, will be able to live their lives independently against the background that they have limited access to home, after-school education, vocational training and employment opportunities.

Having looked into the issue, the Public Defender's Office found that Georgia does not have a strategy and action plan on how to prepare children living in State-run institutions for an independent life; in particular, such strategy and action plan could envisage educating such children, training them in vocational and everyday skills and offering them support after leaving the State care system. Because of lack of such measures, a majority of people leaving the State care system does not manage to re-integrate into the society and get a job; they often become socially unprotected and even homeless. This matter is sporadically regulated by some provisions in the domestic legislation but even these provisions are not working in real life.

In its reply[1713] to our query about any measures taken by the State to help persons with disabilities leaving State care start an independent life, the Ministry of Labor, Health and Social Affairs of Georgia refers to various

1711 Cases no. 1314/15; no. 3820/15; no. 6066/15; no. 9697/15.

1712 Philip Mendes, Young people leaving state out-of-home care (2014), p. 4 available at <http://monash.academia.edu/philipMendes> [last viewed 24.03.2016].

1713 Letter from Head of Social Protection Department, Ministry of Labor, Health and Social Protection, no. 01/42145 dated 12 June 2015

documents such as Youth Policy Document,[1714] Youth Policy Development Action Plan for 2015-2020[1715] and Community Organizations Sub-program stating that the Ministry does not have funds under the State budget to provide housing for Persons with Disabilities.

Only a few paragraphs of the Ministry-referenced Youth Policy Development Action Plan for 2015-2020 mention support measures for Persons with Disabilities; in particular, under the Action Plan, State obligations are confined to merely involving PWDs in teaching courses, informal education, vocational and craftsmanship training, cultural, artistic, sports and recreational events,[1716] development of vocational programs[1717] and provision with student dormitories.[1718] Certainly, the latter task does not imply handing the temporary homes over to persons with disabilities for a long time or permanently.

The State must help persons with disabilities who have left State care integrate into social, economic and public life. To do so, early interference with support programs and measures is necessary. State interference should not occur only after it discovers a crisis when it may be too late to prevent negative results.[1719]

Analysis of statistics received from the Ministry of Labor, Health and Social Affairs of Georgia[1720] (36 persons with disabilities left State care during the last 5 years) shows that it is not going to be an insurmountable obstacle and will not take the State to spend extraordinarily large resources to implement measures to help the State care leavers; this would only require a will of the Government.

With these reasons in mind, on 24 August 2015, Public Defender sent his General Proposal (no. 09-3/6891) to the Georgian Government on measures to help persons with disabilities leaving State care with starting an independent life. However, despite the 20-day response term established by the law,[1721] we have not received a response from the Government about their views concerning our proposal.[1722]

RECOMMENDATIONS

To the Parliament of Georgia:

- Ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities as soon as practicable
- Amend labor and employment legislation in a way to fully incorporate State obligations under the UN Convention on the Rights of Persons with Disabilities
- Legislate on measures to help persons with disabilities live an independent life after leaving the State care in accordance with State obligations under the UN Convention on the Rights of Persons with Disabilities

To the Government of Georgia:

- Correctly determine an institutional framework of implementation of the UN Convention on the Rights of Persons with Disabilities, re-distribute functions among the implementing and coordinating mechanisms and make these mechanisms truly operational

1714 Approved by an individual order of the Georgian Government no. 553 dated 2 April 2014
1715 Approved by an individual order of the Georgian Government no. 349 dated 5 March 2015
1716 Action Plan for 2015-2020 for Development of State Policy on Youth, par. 4.2.3.1. [https://matsne.gov.ge/ka/document/view/2766763]
1717 *Ibid.*, par. 4.2.2.2.
1718 *Ibid.*, par. 4.1.2.1.
1719 Philip Mendes, Young people leaving state out-of-home care (2014), p. 3 available at <http://monash.academia.edu/philipMendes> [last viewed 24.03.2016].
1720 Letter from the Ministry of Labor, Health and Social Protection no. 01/60987 dated 14 August 2015
1721 Law on Public Defender, Art. 24
1722 On 9 December 2015, we sent the Georgian Government another letter no. 09-3/10003 reminding them of their duty to reply to our general proposal.

- Amend the "Technical Regulations on the Arrangement of Space Design and Architectural and Planning Elements for the Persons with Disabilities " with a view to setting up an effective mechanism for the enforcement and monitoring of accessibility standards
- Timely take relevant measures, in cooperation with the National Communications Commission and other agencies, to make mass media, TV programs, movies and other sources of information accessible for the persons with disabilities, including by way of introducing mandatory regulations
- Implement a comprehensive approach to the persons with disabilities by media and an effective policy for awareness raising
- Study the existing needs and requirements until the State Program for Social Rehabilitation and Child Care is approved and plan measures in pursuance with the needs identified as a result of such study
- Develop a consistent State policy and a strategic document on facilitation of hiring of persons with disabilities, in line with the principles prescribed by the UN Convention on the Rights of Persons with Disabilities
- Facilitate, though State policies, opportunities for persons with disabilities to get hired on equal terms with others in the labor market
- Implement measures and programs to encourage and support employment of persons with disabilities in the public and private sectors in the open labor market
- Through legislative regulations, eliminate obstacles impeding recruitment of persons with disabilities such as expected loss of the right to a social package and subsistence allowance
- Supervise and coordinate timely and effective fulfillment of obligations under the Governmental Action Plans concerning employment of persons with disabilities by the relevant executive authorities
- Develop a strategy and an action plan, in cooperation with the responsible State agencies and persons with disabilities, on measures to help persons with disabilities live independently after leaving the State care (the strategy and action plan to include specific programs and clearly formulated tasks indicating responsible agencies, performance indicators, shortest timeframes and specific funding sources)
- Immediately provide people leaving State care with shelter and adequate social protection measures if they have a critical need therefor

To the Ministry of Labor, Health and Social Affairs of Georgia

- Raise public awareness of services envisaged by the State Program for Social Rehabilitation and Child Care, in an accessible form, especially at rural level
- Revise the "Methodology of Evaluation of the Socio-economic Status of Socially Unprotected Families (households)" in a way to pay State assistance to families with children with disabilities in need of such assistance
- Set up alternative, smaller family-like care services for children in need of care and children with serious and deep disabilities – beneficiaries of large children's institutions – in the course of deinstitutionalization process
- Develop proposals to heed the needs of persons with disabilities and incorporate the obligations under the UN Convention on the Rights of Persons with Disabilities into domestic labor legislation

- Develop, in cooperation with Persons with disabilities, an unified strategy document on providing persons with disabilities with jobs
- Maintain statistics of employed persons with disabilities in public and private sectors
- Make sure, that State Programs concerning integration of persons with disabilities duly cover the issue of their employment
- Initiate and implement, within its competence, incentives for the private sector to employ persons with disabilities

To the Ministry of Education and Science of Georgia

- Ensure quality and continuous learning in the process of inclusive education
- Enhance activities aimed for raising special teachers' qualifications, especially at the regional level
- Accelerate measures to make educational institutions accessible
- Facilitate raising the professional qualifications of people with disabilities and their competitiveness

To the Ministry of Regional Development and Infrastructure of Georgia

- Heed the problems and needs of persons with disabilities in draft proposals on the development of continuous learning for public officials employed at local self-governance bodies
- Involve local self-governance bodies in dealing with the problems of persons with disabilities

To the National Communications Commission

- Study the need of persons with disabilities for electronic services and avenues for their development
- In cooperation with the relevant agencies, ensure timely and quality accessibility of mass media, TV programs and movies through sign language, audio description, Braille, tactile communication, large print, multimedia, augmentative and alternative communication and other accessibility forms, methods, means and technologies for Persons with disabilities
- With a view to ensuring access to information for the persons with disabilities, elaborate an action plan detailing specific measures to be implemented, with implementation timeframes, responsible authorities, funding sources and outcome indicators

To the Public Broadcaster and other media outlets:

- Promote production of public awareness raising campaigns and social ads as well as media coverage of issues concerning persons with disabilities from the perspective of eliminating stigma and discrimination and promoting respect for the rights and dignity of persons with disabilities
- While preparing and broadcasting programs and shows, always be guided by the principles of diversity, equality and tolerance; never encourage infringement upon the dignity of persons with disabilities and strictly uphold relevant requirements envisaged by international standards and domestic legislation

To Tbilisi City Hall:

- Develop effective policies for the enforcement and supervision of accessibility standards

- Establish an effective mechanism to supervise the process of setting up -friendly physical environment for persons with disabilities; designate a service that would be equipped with effective mechanisms to monitor and enforce accessibility standards (through sanctioning and preventive measures, including construction permit denial, inspection, fines and other measures)

To the local self-governance bodies:

- Adapt public transport and road infrastructure to the needs of persons with disabilities
- Heed the needs of persons with disabilities in the process of procuring new municipal transport
- Allocate special places for PWDs on parking lots
- Inform public transport drivers about services available to persons with disabilities
- Introduce construction rules that take the needs of persons with disabilities into consideration and supervise their practical enforcement
- Timely fulfill their obligations under the Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016
- Make sure that the persons with disabilities and/or representative organizations take part in the process of setting up and putting to operation regional and local councils on disability issues
- Ensure equal participation by persons with disabilities and their representative organizations in the membership of the local councils

RIGHTS OF OLDER PERSONS

During the reporting period, a number of problems have been identified with regard to the realization of the rights of olderpersons. Based on the analysis of applications received by the Ombudsman we can conclude that the majority of older people do not have access to adequate housing, social services and protection mechanisms, and therefore, they live in poverty, lacking the shelter and are under risk of isolation. Acts of violence against them are quite frequent. In addition, there is no mechanism for the identification and prevention of the violence and victim protection.

The state still does not have an effective policy for older persons and the strategy to protect their rights and social welfare. The existing programs and services are not focused on specific needs of these individuals. Majority of older persons live below the poverty line, the state is only providing minimum subsistence allowance or boarding house services. The balance between actual demands and supply of services offered by specialized residential institutions is another issue of concern. Long lines of older persons, seeking to receive services offered by such institutions, prove it right. . Alternative care services, such as home care, are not provided by state programs.

In October 2015, the Public Defender published the results of the monitoring of specialized daily care institutions for the older persons. The report covers monitoring of Tbilisi and Kutaisi boarding houses of older persons, as well as 5 other service providers providing specialized services within the frameworks of the State Program on "Social Rehabilitation and Children Care". . The monitoring revealed significant violations, which gives reason to assume, that treatment in the State care institutions for older persons can be assessed as degrading.. The Public Defender appealed to the responsible State Agencies with recommendation to properly implement obligations determined by International and National laws and standards in the process of realization of the rights of older persons, as well as ensure elimination of gaps existing in the enforcement of current regulations and supervision mechanism.

The fact, that the Healthcare and Social Issues Committee of the Parliament of Georgia has formed and coordinated an interdisciplinary working group on aging, should be considered as a step forward.The group consists of the officials from responsible ministries, Parliament and civil society representatives. The first workshop was held in November 2015, where it was agreed that the group would develop a three-year action plan on aging within a year. The first draft of the action plan was prepared on December 14-15, 2015.

The Ombudsman considers, that working on the policy documents and development of an action plan needs to be accelerated, and it's too early to talk about the effectiveness of the group's activities.

THE SITUATION OF THE RIGHTS OF OLDER PERSONS' IN RESIDENTIAL INSTITUTIONS

The Public Defender's Office conducted a monitoring within the framework of the National Preventive Mechanism, in order to assess the situation of the rights of older persons in specialized residential institutions, . International and national legal acts on the rights of older persons have been analyzed in the process of the monitoring; relevant information had also been requested from different State Agencies and during April 1-5, 2015 the members of the Special Preventive Group and the representatives of the Department on the Rights of Persons with Disabilities of the Public Defender of Georgia examined the quality of protection of the rights of older persons placed in residential institutions and compliance of such institutions with the standards established by both: international and domestic law. In order to evaluate the level of protection of the rights of older persons in specialized residential institutions, the monitoring group visited two branches subordinated to the State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking,[1723] and five service providers providing special service within the community organizations sub-program of 2014 State Program on Social Rehabilitation and Child Care.[1724]

The monitoring results of daily specialized institutions for the older persons revealed a number of institutional violations, as well as defects in existing regulations and harmful practices. The Ombudsman considers that the rights of the older persons under state care are not properly protected and implemented, their living standards are not adequate, and in some cases they are even the victims of ill-treatment. The state is not fulfilling the obligations determined by international documents, such as the "Madrid International Plan of Action on Ageing" (MIPAA) and the "Political Declaration". National legislation needs to be improved. Meanwhile, the problem of enforcement of existing regulations and shortcomings in current supervision mechanisms, should also be eliminated.

The monitoring revealed a whole set of systemic problems in special residential institutions for older people. The institutions either improperly fulfil or fail to fulfil the requirements set out in international and national regulations, including the minimal standards approved by the Decree №1-54/n of July 23, 2014 of the Minister of Labour, Health and Social Affairs. In their conversations with members of the monitoring group, Heads of several institutions admitted that they had heard about the standards but have never actually read them or they were aware of the standards but considered compliance with them unrealistic, taking into consideration current funding.

Despite existing domestic legislative regulations, the state lacks a well-running, systematized mechanism of supervision of their enforcement. The Ministry of Labour, Health and Social Affairs has not conducted systemic monitoring of the compliance of specialized institutions for older persons with the minimal standards approved by the Minister and consequently, it cannot adequately react to existing violations, which results in a poor service delivery to older persons and often discriminatory and degrading treatment thereof.

The conditions in one, out of seven specialized residential institutions examined during the monitoring, , namely, **Young Teachers' Union**, deserves praise,. Here, despite the dearth of information about the needs of older persons received from the regional social services, a low level of involvement of the guardianship and care body in the process of service delivery and the lack of supervision, the service is delivered to older persons in accordance with international and national standards and with consideration of older persons' rights and interests.

The quality of care concerning the safety of beneficiaries, their emotional, psychological well- being and mental health as well as the level of knowledge of legal regulations against violence and standards of service providers, is extremely low in other residential institutions for older persons. Beneficiaries are not informed about their

1723 Tbilisi Boarding House for older persons; Kutaisi Boarding House for Older persons.

1724 NELP „Diodora", NELP the boarding house for older persons and persons with disabilities „My Family", NELP „Young Teachers' Union", NELP „CarelessOld Age", NELP „Beteli".

rights. Heads of the residential institutions do not regard the mentioned issues as important and according to their explanations, they do not have financial resources to ensure implementation of those standards either.

The monitoring revealed that the scarce funding of institutions for older persons is one of the main factors leading to existing problems. This problem was emphasized by every service provider.

Article 4 of the Ordinance of the Government of Georgia №22 of January 27, 2010, on the "Approval of the Terms and Conditions of Financing (Co-financing) Persons' Placement in a Specialized Institution"[1725] details the rule and terms of financing various target groups. The cost of state funding service provided by the residential institutions for older persons amounts 16 GEL per day.

The monitoring revealed following major problems:

1. Cases of ill-treatment of beneficiaries
2. Absence of the supervision mechanism to examine compliance of the residential institutions with established standards
3. gaps in maintaining documentation
4. Lack and/or low qualification of personnel
5. Poor feedback mechanism and low awareness of beneficiaries
6. Non-adapted physical environment and poor infrastructure
7. Social passivity of beneficiaries and threat of being isolated from the society
8. Problems with access to timely and adequate medical service
9. Problems with access to medications

As it was mentioned above, relevant recommendations to relevant State Agencies were drafted by the Public Defender of Georgia in order to eliminate existing problems.

SOCIAL WELFARE OF OLDER PERSONS AT THE LEVEL OF LOCAL SELF-GOVERNMENT

The older population is one of the most vulnerable groups in Georgia. Therefore, the legal status of older people became one of the most important directions of the monitoring conducted by the Public Defender's Office. The Public Defender's 2015 Annual Report - the" Situation of Human Rights and Freedoms in Georgia",[1726] focused on the poor social-economic conditions of the older persons and the challenges they currently face.

In 2015, the study[1727] was conducted within the framework of ISU master's program on "Health Policy and Management". The aim of the study was to research home care services provided by non-governmental organizations, living conditions of old persons in need of care, their actual needs and expenses paid for getting home care services.

According to experts, 2.1% of Georgian population or 80 000 people is in need of the long-term care. The fact that home care services for older persons are not provided by the state health care program, (except palliative

1725 See: https://matsne.gov.ge/ka/document/view/4780
1726 See: <http://www.ombudsman.ge/uploads/other/2/2439.pdf>
1727 <https://burusi.files.wordpress.com/2015/01/e18397e18394e1839ce18392e18398e18396-e18395e18394e183a0e183a3e1839ae18390e18395e18390-e18398e18390-e18390e18393e18394e18398e183a8.pdf>

care program), and they are rarely considered at the municipal level, remains a problem. Accordingly, they are mostly funded by non-governmental organizations, supported by foreign donors.

Under the current legislation, along with the major State funded programs, the local governments have authority to develop and manage social support system at the local level. This gives the local authorities opportunity to adapt social support system and standards to the local environment and meet requirements characteristic to the particular region. In order to monitor the situation, in May and September of 2015,t, the Public Defender's Office officially requested information from the local self-government bodies, concerning the funds allocated in current year local budget in term of the consideration of the peculiarities of the social welfare issues, as well as planned activities and events for older persons for 2016.

Information was requested from following local self-government bodies: Ambrolauri, Akhaltsikhe, Batumi, Gori, Zugdidi, Tbilisi, Telavi, Mtskheta, Ozurgeti, Rustavi, Poti, Kutaisi. The listed municipalities, have both:the status of the regional centres and the status of self-governing cities.

It should be noted, that local municipalities had provided information with delays. In addition to this, provided information included incorrect, inadequate and in some cases irrelevant facts.. Accordingly, the Public Defender's Office had to appeal to Batumi[1728] and Kutaisi[1729] City Halls for the second time in September 2015.

The Public Defender's Office had not received any reply from Kutaisi City Hall so far.

SHORT REVIEW OF THE SITUATION IN LOCAL SELF-GOVERNMENT BODIES

The information obtained from the municipal level reveals that the benefits for older persons are extremely poor. In most cases, the benefits are limited to single -time financial support and does not have a systematic character. In addition, there are no service oriented approaches. In most cases (Akhaltsikhe Municipality City Hall, Akhaltsikhe City Council, Telavi City Hall, Telavi City Council, Ozurgeti City Council, etc.), beneficiaries of certain state funded programs of medical and social welfare are other persons registered on territory of the municipality, the older persons are only involved in few cases. This indicates that the services are not substantially oriented on the requirements and needs of older persons.

According to the information received from Telavi City Hall, [1730]the NLEP "Service for Vulnerable and Poor Persons" was functioning under the local self-government funded from 2015 local budget, under which beneficiaries were provided with food for free. The program was especially highly demanded among older persons, which clearly identifies their poor social-economic conditions.

Gori City Hall has signed a memorandum of understanding and co-sponsored projects under 2015 local budget[1731] providing home care for older persons Similar programs providing home care services were implemented, [1732] and co-funded by Gory municipality and Tbilisi City Hall local budget during 2015.

It must be noted, that it would be better if such services were provided not only through particular projects, but became a part of the local budget as its targeted program, in order to fully meet the needs of older persons.

1728 Correspondence N 09-2/3466-07.05.2015; N 09-2/7162-04.09.(2015).
1729 Correspondences N 09-2/3524-11.05.2015; N 09-2/7164-04.09.(2015).
1730 Correspondence N 786-18.05.(2015).
1731 „Georgian Samaritan Union" Project „Mobile Care", „Georgian Caritas" Project, Coalition „Home Care in Georgia".
1732 Nongovernmental organization "karitas's" project.

In Gori City Hall, unlike other self-governing units, the rules on the assurance of social support, [1733] determined by 2015 local budget, can be regarded as qualitative measure taken by municipality. The mentioned rule was approved by the City Council, and envisaged " Assistance for Lonely Pensioners in Crisis Situation". This program provides assistance to satisfy primary needs. However, it must be assessed negatively that providence of the services are linked to the social status (being below the poverty line). Certain preconditions were set for beneficiaries, including older persons, by the program providing medical assistance for indigent population living on the territory of Ozurgeti municipality, funded within 2015 local budget, [1734] (the program provided single-time financial aid and medical treatment). Namely, the service was available only if the family was registered in the unified database of socially vulnerable population, from 57001 to 150001 rating points, which does not meet current requirements of most of the population. To this end, health and social programs of Batumi City Hall also are not exceptions, since, here as well, the possibility of getting social services provided by local programs for older persons are linked to special social statuses, such as socially vulnerable, disabled, veterans of war etc., [1735] . Only in this case it was possible for older persons to enjoy benefits like free travel on municipal transport, canteen services, discounts on utility bills and one-time financial assistance for the gas installation in the living space. The only program, funded by local budget [1736] aiming at addressing the needs of older persons can be considered the program "Care for Poor and Homeless Older People",[1737] which provides care for the older persons, including medical care and food.

Several programs focusing on the needs of older persons had been funded within the frameworks of Poti City Hall local budget in 2015,[1738] . Among them were: 30 GEL preferential package per month for covering utility bills for blind pensioners, ; financial aid of 100 GEL twice a year for the pensioners with the special merit for the city; one-time financial assistance for the World War II veterans, each of 350 GEL. According to information received by the Public Defender, [1739] Poti City Hall was planning to implement the program for "Home Care Service" and introduce new "Elderly Club" in 2016, however, none of these programs are considered in 2016 municipality budget, approved by №28 / 34 resolution of the City Council of Poti,, [1740] .

It is noteworthy that in most cases, events and activities planned for 2016 also are not focusing on the needs and requirements of older person either.. In this regard, is should be positively assessed, that 2016 Zugdidi City Hall budget included, [1741] additional program providing preferential package for public transport for vulnerable pensioners [1742] and 100 GEL appendage to the monthly pension for distinguished citizens , [1743] however, the latter is designed for only ten beneficiaries.

CONCLUSION

It can be concluded, that ensuring social welfare for older persons is a problem for local self-government bodies.. The programs, focusing on older persons care, are not being elaborated at the local level and the few existing programs are homogeneous. . Single time financial support, canteen services, single-time financial supports for veterans and financing utility bills are mostly considered as programs oriented on the needs of older persons by the majority of municipalities. (Zugdidi City Hall, Ambrolauri City Hall, Tbilisi City Hall, Poti City Hall and other).

1733 <https://matsne.gov.ge/ka/document/view/2672500> article 15.
1734 <https://matsne.gov.ge/ka/document/view/2655168>
1735 <https://www.matsne.gov.ge/ka/document/view/2660088>
1736 <https://matsne.gov.ge/ka/document/view/2660088>
1737 Program Code 06 06 05
1738 < https://matsne.gov.ge/ka/document/view/2658245>
1739 Correspondence, №1–03/1067; 20.05.(2015).
1740 < https://matsne.gov.ge/ka/document/view/3129025>
1741 <https://matsne.gov.ge/ka/document/view/3117627>
1742 Program Code 06 03 08
1743 Program Code 06 03 06

It is obvious that the benefits envisaged by local programs are not substantially focusing on older persons' unique needs. Moreover, taking into account living conditions of older persons and the fact, that majority of the State pension recipients live under the poverty line, the age limit for the beneficiaries of most social programs (100 years) is too high and irrelevant. . The situation is aggravated by the fact that, in most cases, the service is provided through certain prerequisites (living allowance, medical care requirement and others). Most of older persons are unable to adequately care for themselves due to extremely poor living conditions. It is also noteworthy that the risk of need for long-term care increases with age.

As mentioned above, local authorities in certain cases, are financing presented projects, and in some cases, the budget supports a home care program and envisages care for the most vulnerable older persons however it does not have a systematic character. In addition, the main criteria for the registration of the beneficiary by the organization are his/her status of socially vulnerable. , which, on the other hand, leaves a certain number of older persons out of service which in turn proves, that the needs of older persons are not relevantly satisfied.

RECOMMENDATIONS

To the Ministry of Labor, Health and Social Affairs:

- Ensure regular monitoring of service delivered to older persons by specialized residential institutions and react adequately in case of violations;
- Require complete information about the organization before it's registration as a service provider, therewith enabling preliminary assessment of the quality and adequacy of offered service ;
- Ensure elaboration of minimal food standards for the mentioned institutions and it's approval through relevant legal act;
- Establish the number of medical personnel (doctor, nurse) needed in institutions, under the standard which will also determine their rights and obligations
- Ensure the study of health condition of beneficiaries placed in residential institutions for older persons and objectively identify their needs in terms of medical service both upon the entrance of the institution and thereafter, step by step
- Ensure identification of facts of inhuman and degrading treatment and all kinds of violence against older persons in residential institutions , establish mechanisms for adequate response and effective supervision mechanism;
- Assess risk factors of violence and ill-treatment in the institutions in order to prevent similar facts
- Ensure regular qualification raising of the staff by planning trainings and other measures

To the Social Service Agency:

- Ensure adequate involvement of social service in the service provided by the residential institutions for older persons, as well as supervision of the service delivery within the scope of its competence;
- Ensure active involvement of the Social Service Agency in the process of care, establishment of supervision and control mechanisms; .

To the State Fund for Protection and Assistance of (statutory) Victims of Human Traffiking:

- Ensure awareness raising of the representatives of administrations of residential institutions for older persons, and observation of confidentiality through the practice of obtaining consent of beneficiary/ beneficiary's legal representative before the disclosure of relevant information;

- Ensure smooth operation of feedback and complaint mechanism in the branches of the Fund and an opportunity for anonymous feedback.

To Administration of Specialized Residential Institutions:

- Ensure compliance with the requirements concerning the maintenance of documentation in accordance with the rule established under the Minimal Standards of Service to Persons with Disabilities and Older Persons in Specialized Residential Institutions
- Ensure secure environment for free orientation and movement of beneficiaries
- Ensure maintenance of temperature, relevant to the specific season and strictly observe sanitary norms in all parts of the building, including bathrooms;
- Support the creation of the environment accessible to persons with disabilities
- Elaborate individual plan of service delivery on the basis of the Social Agent recommendation and in compliance with the individual needs and requirements of beneficiaries;
- Ensure planning the measures necessary for improvement of personnel's qualification
- Ensure employment of professionals responsible for the development of beneficiaries' skills, organizing cultural, sport and labor activities; regular arrangement of such events;
- Ensure observance of the rule of filling medical documentations, their maintenance and forms
- Ensure primary medical care for beneficiaries in a timely manner;
- Ensure the observance of feedback and complaints procedures, including an opportunity for anonymous feedback and awareness raising among beneficiaries concerning the issue;
- Ensure protection of beneficiaries against discrimination as well as biased or negative treatment or action in the process of service delivery;
- Register in writing all facts of violence and measures undertaken in response thereof in a special registry
- Ensure employment of sufficient number of staff (doctor, psychologist, person responsible for organizing cultural, sport and labor activities, et cetera) necessary for quality service delivery.

To Tbilisi City Hall:

- Ensure reconstructions of the road to the NLEP boarding house for older persons and persons with disabilities " My Family", in order to make it possible for older persons to move freely and get emergency services if required.

To the Representative and Executive Bodies of The Local Self_governments:

- Study needs and requirements of older persons living on the territory of the local self-government unit;
- Elaborate programs, focusing on the interests of older persons reflect them in the local municipality budget;
- Make services envisaged by local programs oriented on the special need of older persons; .

RIGHT TO ADEQUATE HOUSING

Every year a number of applications regarding the housing and living conditions received by the Public Defender's Office is high, which confirms the urgency of the issue. High numbers of the applications on the right to adequate housing of the citizens was maintained during 2015. Applications of the study results showed that human rights violations carried out in the field does not have individual character and the problems have systemic nature. Although one of the objectives right of National strategy for the protection of human rights in Georgia (2014-2020 years) is providing the adequate housing according the state liabilities and solving the homelessness-related issues. [1744] There is no indication of the mentioned strategy and plan of solving the issues in the Action Plan of the Government of Georgia on the Protection of Human Rights for 2014- 2016. [1745] In addition, it is noteworthy that the Human Rights Action Plan's (for 2016-2017 years) project does not include the realization of the right to adequate housing-related activities

As rule Local authorities do not have the document, which would be serves registration rules of the homeless persons. The only exception is in the municipality of Tbilisi, which approved mentioned the legal act by the end of 2015. There is no centralized and municipal database for homeless persons in the State. The safety of the persons occupying the various facilities, their living conditions and use of the state program by the vulnerable households remains the problem. In addition, the problem of lack of finances allocated to state and local budgets targeting assistance for the homeless persons. Since the above-mentioned problems are discussed in detail in the special report of the Public Defender of Georgia, this chapter will not discuss them furthermore. [1746] Besides, the recommendations issued about the subject remains unchanged.[1747]

This chapter will focus on news and current issues, which emerged during the reporting period in 2015. The state delegated the obligation to local authorities to provide housing to the homeless. Thus, the local government has a special responsibility towards homeless families. If the relevant public authorities' fails to effectively provide adequate housing for homeless persons, the mentioned issued will be violation of the national legislation[1748] and infringement obligations taken under the international agreements. [1749] During the

1744 Decree #2315 of the Government of Georgia on approving "the National Strategy for the Protection of Human Rights in Georgia (2014-2020 years) In April 30, 2014.

1745 Approving act of the Action Plan of the Government of Georgia on the Protection of Human Rights for 2014-2015 and Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015) on creation and approval of coordination council's statute by the Government of Georgia decree #445, issued on July 9, 2014.

1746 See Special Report of the Public Defender's Office on „Right to Adequate Living" 2015. <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/ufleba-satanado-sacxovrisze-specialuri-angarishi.page>

1747 In 2015, as a result of the cancellation of the legislative machinery of police eviction, the Public Defender published special report on "The right to Adequate Housing" and recommendation issued in this regard.

1748 According to the Local Government Code Article 16 paragraph 2 subparagraph "u" the right of the municipal authority is the implementation of "providing homeless with shelter and there registeration." According to the Article 18, paragraph "b" of Organic Law of Georgia on "Social Assistance", Municipal authorities "provide shelter for homeless individuals."

1749 According to the Article 11 of the International Covenant on Economic, Social and Cultural Rights (came into force since January 25, 1994) "the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.". According to the

reporting period, the Tbilisi government approved a document setting out register and asylum procedure for the homeless persons. At the same time, the homeless shelter of Lilo started to operate in Tbilisi municipality. Besides Tbilisi, the Public Defender of Georgia requested information from 44 municipalities across the country shows that last year, some developments had taken place. The information received revealed that some positive changes have taken place in this direction during last year. 50 family-oriented social housing were built in Khelvachauri, 2016 budget of Tskaltubo has allocated money (250, 000) for rehabilitation of and old state-owned building and facilitation of shelter. The arrangement of financial resources (1 million) for shelter (for 50 families) is mobilized in Kutaisi budget, which should be considered as a positive development. It should be noted that in the 2015 in Kutaisi municipal budget 300 000 GEL was for social housing arrangement, which was not ensuring the successful implementation of the project. Also, there have been no effective measures taken for the construction of social houses by the local authorities, as the process cannot constantly be on "planning" stage and effective steps should be taken, the fact during the budget year this money was not spent is another evidence of ineffectiveness.

In municipalities where the sheltering service is not functioning, the accommodation is satisfied by paying fee for the flat in the framework of the program, but there were occasions when some municipalities had no homeless people helping policies.

It is noteworthy fact that in 2015 the police eviction mechanism[1750] was cancelled that worsened these persons' human rights in the arbitrarily occupied various facilities. [1751]

REGISTRATION PROCEDURES FOR HOMELESS PERSONS AND PROVIDING WITH SHELTER IN TBILISI

As far as the administrative act concerning homeless persons' approved by the government of the capital city is the first document on the issue and for the other municipalities it might become a guidebook, the Public Defender considers it appropriate to discuss major flaws of the document, which was revealed after working on the document.

In 2015, the City Council of Tbilisi approved a draft resolution proposed by the Tbilisi City Hall, as a result the registration procedure and the homeless person's asylum procedures determined. [1752] It is noteworthy to mention that in the special report on "The Right to Adequate Housing" of the Public Defender of Georgia, one of the main obstacles was the lack of determination of the registration procedure for homeless persons and the local authorities were directed by the recommendation to solve the problem. [1753] Thus, adoption of the normative act is positive change for Tbilisi population, as it for creates the first time legal guarantees for protection of the homeless persons and for dignified life with the minimum conditions.

According to the approved legal act, registration of homeless and housing issues statements and are reviewed by the Commission for the homeless shelter accommodation, which consists of representatives of the government of Tbilisi and representatives of government agencies. [1754] After the examining the application, the

Article 2 of the same covenant „Each State undertakes to take steps with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

1750 Article 172 paragraph 3 has been deleted from the Civil Code of Georgia. Accordingly the order #747 (24.05.2007) of the Ministry of Internal Affairs of Georgia on „Approval of the Rule of Eradication of the Infringement in to the Right Ownership of Real Estate".

1751 The mentioned issue is discussed in the following parliamentary report on " The abolition of the police eviction from immovable property".

1752 "Approval of the Rules Homeless the Registration and Accommodation with Shelter in Tbilisi Municipality " of the Municipal Council Resolution # 28-116, issued on November 27, 2015.

1753 See. "The right to adequate housing" in a special report of the Public Defender, pp. 9-12.

1754 „Tbilisi City Hall "Creation of the Commission on Homeless the Registration and Accommodation with Shelter issues" and Approval of the statute by the order #49.03.1384 of the Tbilisi City Hall, issued on December 9, 2015.

Commission presents the resulted recommendations to the Municipal Health and Social Service Department of Tbilisi City Hall, which makes the final decision on the registration of the homeless person. As for providing the homeless registered person with shelter, in this case the Commission's recommendation will be submitted by the municipal Department of the City hall to the municipal government of Tbilisi, which has the competence to make a decision on the matter.

The Public Defender's Office was involved in the process of committee hearing of the above mentioned initiated resolution. During the meeting, the local government was informed of the remarks of that should be considered, according to the Public Defender's position that would have significantly improved the draft legislation. It should be noted that the some part of the remarks was considered by the City Hall, however during the accelerated pace of legislative review of the legislative project , the parties did not had enough space for discussion and the document has been approved finally, some of the provisions are in contrary with the international human rights standards. Below we will discuss some of the key remarks, of what the local authorities were informed, but they did not take them into consideration.

The first principle subject of the resolution concerns the provision (Article 4) that applies to prioritization during the asylum process to the Annexed list of the persons indicated in Ordinance 19.18.560 of the governing body of Tbilisi issued on May 13, 2015, that are persons who broke into the state-owned particular objects. The mentioned provision is initially discriminatory. The resolution on priorities setting (persons with disabilities, and other bread-winner loss cases), refers to the general circumstances, which could be met by different persons. The priorities presented by this particular provision means assigning the specific preference for certain people, which are disadvantaged are essentially equal the persons. Thus, these provisions have problematic nature in terms of human rights protection. In this case, it would be better to assign general criteria for persons seeking asylum in the normative act.

The second important issue is the resolution is connected with the perception that providing the shelter for homeless persons depends on political will or it is an obligation of the self-governing bodies. In particular, Article 2, paragraph 4 of the normative act leaves the impression that, when it refers to "provide the registered homeless person with shelter space according to the Tbilisi municipality affordability and according to the available spaces in the shelter for homeless persons".

It is unacceptable approach, when the right is recognized and at the same time a reservation for its implementation is made to impose certain period of time. A homeless person must have the real / measurable / tangible expectation that the state uses all legal means / efforts to provide the shelter. It is important that the government has a vision / strategy and is taking steps to overcome the problem. The mentioned vision / strategy should make a real expectation for homeless person that that at some point she/he will be provided with the shelter. The provision puts the homeless into the precarious position, since it is unknown when the state could generate enough resources for the fulfilling the housing and shelter needs, which deprives them of the right to have a real expectations and gives a sense of insecurity.

According to the resolution (Article 2, paragraph "c"), a homeless person is obliged to prove that their ownership or used / owned property with other income is not enough for accommodation and subsistence allowance for to the registration the application. The same rule applies in the case where the applicant has some income. However, in this case we should take into account the obligation of the administrative body to collect evidence during the administrative proceedings and examine the place of the event. [1755] The mentioned issue is well regulated by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. In particular, housing providing rule defines not only the responsibility of the beneficiary, to provide information about the housing and regarding the condition of the property, but the Ministry has obligation to verify the accuracy of the facts and data as a result of the mutual study, make justified decision. [1756]

1755 General Administrative Code of Georgia, Article 97.

1756 Article 2, paragraph "c" and "d" of the Order #320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, issued on August 9, 2013.

The resolution of Tbilisi Municipal Council does not include an alternative means of providing shelter for homeless people, such as targeted financial aid issue of renting the temporary accommodations. At present, the most important tool for the protection of a person's homelessness is to provide rent of housing and if we consider given high demand and the lack of sufficient shelter space, it is more likely that the practice will continue in the future. Thus, the Public Defender considers that the mentioned targeted aid is better to be integrated in the resolution of the city council, which will collected all social guarantee protection tools for homeless persons at the local level. In such a cases, all the interested parties will be able to easily obtain information and take advantage of the relevant social services, besides that it will provide predictable regulations, equal approach and clear criteria.

At the moment, the matter indicated above is very scarce and inadequate in the regulation of the Government of the city, which determine the compensation for the execution of the program instructions for dilapidated and unfit living residents in Tbilisi. [1757] In particular, in the resolution specified exceptions are indicated in the transitional provisions, when the council is entitled to assign the appropriate funds by the same resolution for the needs of the "homeless person" who "is registered in Tbilisi and at the same time, had a property of living space, which has lost due to the difficult socio-economic situation and does not own the living space in Tbilisi city. "[1758] It should be noted that for revision and making a decision for the application there is no regulated criteria, therefore, to decide whom to grant compensation for the rent, this resolution gives very broad discretion to the administration.

Public Defender once again underlines the fact that the resolution of City Council issued on November 27, 2015, is a positive step in terms of the performance of duties with the right to adequate housing. However, it is important that to regulate these issues fully and fairly, to provide a solid legal guarantees and security for homeless individuals, not to allow to ignore their interests or unequal treatment to these vulnerable group members. Besides that, in the local municipalities where there is the problem of homelessness and / or already exist the shelter, it is important to mobilize the proper administrative resources like it occurred in the capital and with the registration of homeless persons, approve the instructions of asylum. The Public Defender oversees the implementation of the resolution of the City Council in practice and observes the results, the office will carry out further legal action.

HOMELESS PERSONS' INVOLVEMENT IN SOCIAL PROGRAMS

The Public Defender's special report on "The Right to Adequate Housing" was focused on the issue of the persons who facilities occupied certain facilities, limitation issue of social assistance - the allowance for the vulnerable families.[1759] In particular, those individuals who have occupied the state-owned property without permission of the government that may be prohibited from registering in the database of socially disadvantaged families and prohibit the availability of the social benefits defined in the program. [1760] The result of the registration banning is unjustified burden for strangers on the state in areas occupied the state-owned property without permission, who needs state assistance to meet minimum living standards. In the special report on the basis appraisal of limiting provision, the public defender recommended to abolish it.

In 2015, the Constitutional Court accepted the claim regarding the above-mentioned limiting provision to discuss its constitutionality. [1761] The Public Defender used the tool of Friend of the Court (Amicus Curiae) and

1757 Decree #35.50.1312 of the Tbilisi Government, issued on December 26, 2012.
1758 ibid, Article 10.
1759 See Special Report of the Public Defender's Office on „Right to Adequate Living" , pp. 24-27.
1760 Paragraph 5, subparagraph 5 of the Decree #126 of Government of Georgia on "The reduction of poverty level and perfection of social security Measures" issued in 2010.
1761 „Tamar Tandarashvili V. Government of Georgia", Constitutional application #663, issued on 02.08.2015.

addressed the constitutional court with the written opinion regarding the present case. The Constitutionality of the provision is disputed in term of the Article 14, 17 and 39 of the Georgian Constitution. The Ombudsman believes that the mentioned provision prohibition in a blanket form for the state-owned entities to register in the database and receive social benefits. The latter is so intense form of interference in the right of the persons that the idea of equality loses its sense.

In the present case, identifiable legitimate purpose of the State's ban may be the protection of public property and its use. It should be noted that it necessary the legitimate objective to be logically closely related to the banning. In the present case, there is unlikely to be logical connection between the banning the access to social support and protection of property rights from the arbitrary invasion. Even if there is such a connection, the Public Defender considers that the contested provision is not necessary tool to achieve the aforementioned goal.

The blanket provision of the ban should assess with the compatibility of the prohibition of discrimination, in addition a need on access to social assistance decent life for human should be assed. It is true that at the moment the government has some discretion in the implementation of social policy, however, banning the individual to the basic subsistence (living) in order to protect state property, will result the humiliation, the degradation of the individual, as a method of achieving it.

In addition, it is important to discuss if the provision fulfils the criteria of the principle of the social state, which is recognized as a fundamental value by the Constitution of Georgia. According to the article 39 of the Georgian Constitution, provides protection for the rights and freedoms that are not listed in the Constitution itself, however, derive from the constitutional principles, and is in accordance to the general spirit of international human rights standards. According to the definition of the Constitutional Court of Georgia, right to social benefits is provided under the Article 39 of the Constitution of Georgia and its content is recognized by the state, " the state is obliged to use all available appropriate means to protection its powerful mechanisms".[1762]

Considering the above mentioned, the Ombudsman considers that the contested provision is not only interferes with the right to social security, but completely abolishes the opportunity of benefiting from it for a particular group of individuals, for the strangers who occupied state property. The intensity of interference to the right cannot be logically connected with the legitimate aim. It is true that the state has an interest protection the property, however, the latter must not cause the possibility to use such a measure that leaves this group of individuals without guarantee of the rights.

ABOLITION OF THE POLICE EVICTION MECHANISM

In 2015, the Parliament adopted a law, which aims to eviction option of the removal from the property without a court order, therefore, abolished the police eviction mechanism from the immovable property. [1763] Before approval of legislative amendment, the Public Defender of Georgia presented the legislative proposal to the Parliament of Georgia, where negatively evaluation the abolition of the police eviction. [1764] The document emphasized that the amendment worsens the human rights situation of the persons, who have been arbitrarily detained someone else's real estate property. In particular, the abolition of the police eviction mechanism may promote the legal consequences included in the Article 160 Criminal Code of Georgia and the resolution of

1762 Paragraph III of the decision #1/1/126,129,158 of the Constitutional Court of Georgia issued on April 18, 2002.

1763 Legislative change #4625 of Parliament of Georgia issued on December 11, 2015 abolished paragraph 3 of the article 172 of the Civil Code of Georgia and According the legislative change #4627 of the Parliament of Georgia on December 11, 2015 subchapter b of the paragraph 2 of the article 17 of the Georgian Law on Police was renewed.

1764 See. http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saxalxo-damcveli-sapolicio-gamosaxlebis-meqanizmis-gauqmebis-iniciativas-uaryofitad-afasebs.page

the criminal proceedings, which will significantly worsen the situation of the people's (IDPs, socially vulnerable people and other vulnerable persons) rights who are homeless and living in the extremely poor socio-economic conditions, which break in public or private facilities and live there without any legal basis. [1765] According to our information, the article 160 of Criminal Code of Georgia was not used in these cases (or was used in a very rare cases).

It should be noted that approved the bill for the abolition of the police eviction Institute does not provides the protection measures from homelessness and in this sense obligations of local authorities during eviction process. In the special report on "The Right to Adequate Housing", the Public Defender reviewed the international guarantees of eviction mechanism and determined existence of national legal mechanisms as an essential pre-condition for effective protection of this right.[1766]

Thus, protection from the homelessness in terms of the absence of an effective social system, qualification of arbitrary occupation of the private property under Article 160 of Criminal Code of Georgia and its active practice should be assessed as encouragement of regress, since it clearly worsens the already difficult conditions of the people's rights. In this situation, it would be the most important create a solid legal guarantees that will provide the certain person in need with adequate housing, and protects the person to evict from the homelessness.

HUMAN RIGHTS SITUATION OF THE PERSONS LIVING IN THE TERRITORY OF THE FORMER 25TH AND 53TH BATTALIONS IN BATUMI

The situation in the autonomous territory of the Republic remains a key challenge, in particular, in the process of studding the socio-economic conditions of the persons living illegally in the territory of the former 25th and 53th battalions of Batumi and during the proposing the benefit that is reflecting their needs. Public Defender discussed this issue in the special report on "the Right to Adequate Housing" and called to the government of autonomous republic and local authorities to solve the problem and take the necessary measures. [1767] In this process, the Public Defender considered as the principal factor to obtain information about each family / person and to complete/ objectify study after which it would be possible to conclude their problems, for to indicate it in the response plan. [1768] This chapter discusses the steps taken by the local authorities during the reporting period.

The mixed commission on the territory of Adjara Autonomous Republic will study the matter of the persons illegally residing in the Batumi former 25th and 53th battalions. [1769] The Commission prepares the proposals, recommendations and conclusions according the results showed in the study of the spaces of arbitrary detention. The Public Defender's Office requested the complete information from the Government of the Autonomous Republic about the work done by the Commission. The provided data shows that from December 5, 2014 to December 25, 2015, The Commission held six meetings. [1770] At first during the meetings the matter was conducted the numbering of families that are illegally settled on the former territory of battalion. For the

1765 By the change of subchapter b of the paragraph 2 of the article 17 of the Georgian Law on Police, the in case of conducting the criminal action defined in the article 160 of the the Criminal Code of Georgia in case of the reasonable doubt provides the eviction from the house / apartment and / or from other illegal possession of owner and the person / persons eviction / getting out without a court order, according the order of the established by the minister.

1766 See. "The right to adequate housing" in a special report of the Public Defender, pp.19-24.

1767 See Special Report of the Public Defender's Office on „Right to Adequate Living" , pp. 19-24.

1768 See Special Report of the Public Defender's Office on „Right to Adequate Living" , pp. 19-24.

1769 Chairperson of the Government of the Adjara Republic of Georgia order # 407 issued on December 5, 2014 on "a approval of the act on fact-finding by Joint the Governmental Commission regarding the state, the Autonomous Republic of Adjara and the municipality-owned property's illegal occupation by the citizens ".

1770 Letter #2093/02 of the Government administration of the Adjara Republic of Georgia issued on December 25, 2015.

purposed of numbering the household five working group were set up and the act of the registration form was approved. On January 14, 2014, was finished numbering of the arbitrarily populated area of families at the 25th Battalion, as for the territory the 53rd Battalion, according to the data provided no evidence of the completion of the numbering is shown.

The lists of registered families was sent to the municipalities (Shuakhevi, Keda, Khulo, Kobuleti, Khelvachauri and Batumi City Hall), to look visit the address for to study their home situation and provide the Commission with the data obtained. For this purpose, the Commission approved the act of the visit of address to be completed by the representatives of the municipalities during the field visits. Based on the data obtained, the families were divided into the following categories: 1) the disaster-affected families; 2) single mothers; 3) Families (with less than 57 001 to rating points); 4) arbitrarily inhabited families from other regions; 5) the families, which do not belong to any category. On July 31, 2015, during the last meeting of the commission, the appropriate city halls / the first category of the families arbitrarily inhabited at the territory of the 25th Battalion were instructed to discuss the issue. In addition, the agencies were tasked to identify introduce the proposal for possible assistance to the families from other categories.

Considering the available data, it can be said that the government of the autonomous republic in Batumi former 25th and 53th battalions residing persons without authorization are under the special attention in terms of the obtaining the information and its study. Appropriateness of this approach is shared by the public defender, however in this case the problem is dragging out the process, which resulted continues extremely difficult socio-economic conditions of the residing citizens. Since 2012, the local government could not obtain the specific action plan and formulate the needs based assistance for various categories of persons. Due to the Urgent nature of the problem, the competent authorities must take action within a reasonable time and to take real / effective steps to resolve the issue.

LILO HOMELESS SHELTER

In December 2015 in Tbilisi, Lilo helter started to operate that was built for homeless persons, which can service 240 people. [1771] It is important that the institution has completely replaced its predecessor, the tents service at Moscow Avenue arranged over the winter of 2013-2014 in Tbilisi. The first beneficiaries of the Lilo shelter were former residents of the tent. Before the starting the operation of the shelter, the government of Tbilisi approved a normative act, which was determining the institution's organizational and legal form of business, its goals and objectives, the administrative structure, its management and financial rules. [1772] In addition, approved the document, which drafted the procedures of receiving and registration at the shelter. [1773] Lilo shelter represents the institution where the registered persons are provided with minimum / baseline living conditions. [1774]

Thus, it is essentially different from social housing of the homeless persons, in which the beneficiaries are accommodated with the temporarily isolated space and are independently engaged in household activities.

1771 See. http://www.tbilisi.gov.ge/news/1948

1772 The decree #31.13.933 of Tbilisi Municipality Government issued on August, 2015 regarding „Tbilisi Municipality non-commercial legal entity – "Lilo Homeless Shelter" establishment and assigning the director".

1773 The decree #41.16.1192 of Tbilisi Municipality Government issued on October 13, 2015 on "approving activity plan of non-commercial legal entity – "Lilo Homeless Shelter" on registration statement and on the approval of the forms of receipt forms for the homeless persons".

1774 According to the first paragraph of the article 2 of the Government of Georgia issued the Resolution #131 on "technical regulation: about approving the minimum standards for operating of temporary shelters for the homeless persons" issued on 7 February 2014 : „ temporary detention place is the place where homeless person is provided with temporary detention place, nutrition, season appropriate clothes and means of personal hygiene". About the definition of the homeless persons, paragraph 2, article 2 of above-mentioned order of the government it is as follows: „ the person who lives under the open sky, does not have place of permanent residence, regular income or the person at the moment live in the street and his/her live is under the risk".

Shelter has separate rooms for women and men. Ten beneficiaries are allocated in each room, where the five two-storied beds are located. For individuals allocated in the institution is provided personal items and hygiene products. The shelter is equipped with dining room, bathroom, laundry and drying blocks. According to the government of the Georgia's defined "Organization of Nutrition Standards," the beneficiaries are provided with meals twice a day.[1775]

In January 2016 the representatives of the Public Defender of Georgia conducted the monitoring in the institution. According to the data obtained shows that the shelter is registered in 149 persons (79 men and 46 women). The shelter provides services of the social workers, who help the beneficiaries to develop their capabilities / skills and promotes their integration in community by increasing their self-improvement. However, it should be noted that at this point is specific measures are not designed and aimed, which's implementation will be a prerequisite for achieving the aimed target. It is necessary, to integrate the above-mentioned services into the shelter-service, the government have to help the beneficiaries to eventually overcome homelessness by planning the appropriate measures.

On the need to replacement of the tent stationary type institutions was highlighted in the Public Defender's special report on "The right to Adequate Housing".[1776] Thus, Building the Lilo shelter is a step forward from the government in terms of the implementation of the right to adequate housing, however, needs of proper attention and efforts towards integration arraignments for the beneficiaries in the society. The state should not support the notion of community, according to which the long term residence in the shelter should consider it as their living space. The shelter for homeless persons is temporary detention place for the seat until the socio-economic situation does not improve, when as a result it will be possible for him/her to live independently.

RECOMMENDATIONS

To the Parliament of Georgia:

- To implement the change and improve the current definition of the homeless person in the Georgian Law on "Social Assistance" , in order to include the various forms of homelessness, which are in accordance with the international standards, is the subjects of the right to adequate housing
- To increase the obligations of the central government in terms of homeless persons, to specify the existed obligation's purpose, to define relationship mechanism between the centrals and local self-government to this end.

To the Governemnt of Georgia:

- To abolish the blanket provision that prohibits for the socially venerable families to register in the socially unprotected database if there are arbitrary possessing the public immovable property.[1777]
- In order to achieve the objectives based on the Right to Adequate Housing, develop an action plan and housing strategy under the National Strategy for the Protection of Human Rights (2014- 2020), defining specific activities, responsible bodies and timeframe ensuring the achievement of set targets.

1775 The Resolution #131 of the Government of Georgia issued on 7 February 2014 on "technical regulation: about approving the minimum standards for operating of temporary shelters for the homeless persons".

1776 See Special Report of the Public Defender's Office on „Right to Adequate Living" , pp. 27-28.

1777 Item 5 of the Article 5 of the decree of the Government of Georgia issued on April 24, 2010 on "improvement the measures to decrees the poverty in the country and to socially protect the population".

To Tbilisi City Hall and to the Ministry of Econommy and Sustainable Development, also to the Autonomous Republic of Adjara Governemnt and Local Self-government Units:

- To formulate the plan/strategy for the socially unprotected person, homeless families who arbitrarily occupied governmental and municipal property objects, study their individual issues to identify an exact scale of the problem

To Tbilisi City Hall and to the Ministry of Econommy and Sustainable Development

- In governmental and municipal property objects, where homeless/ socially unprotected persons are living and are in the vulnerable conditions, in particular there is no basic infrastructure, including electricity, drinking water and sewerage, should improve the condition in maximally short term and this process should be irreversible, so that they comply with the minimum/core standards of the Right to Adequate Housing.

To the Ministry of Labour, Health and Social Affairs:

- In order to reveal the scope of homelessness on a country level, carry out the monitoring of implementation of the Right to Adequate Housing and create a common database of homeless persons. The registered data will be used for developing the action plan for the strategy of eliminating homelessness.
- To conduct the research to find out the main causes of the homelessness in the country.

To Local Self-governemnt Units:

- In the municipalities where is need of homeless shelters , alike in the municipality of the capital, to implement registration of the homeless persons in the database and regalement the procedure of granting the shelter accommodation
- To maintain the database and ensure the availability of the given information to the LEPL Social Service Agency in order to monitor homelessness
- In order to meet the obligations imposed by the Article 18 of the "Law on Social Allowances", adequate financial means for creating the housing fund and/or implementation of other alternate project, ensuring the shelter provision to the homeless persons, need to be envisaged during development of local budget
- To start working process to implement socio-economic rehabilitation programs for the beneficiaries accommodated in the shelter, which will promote their integration into the society

To The Tblisi City Council:

- To change the legal act on the procedures of homeless registration and shelter accommodation in Tbilisi municipality for its perfecting purpose

To the Autonomous Republic of Adjara Governemnt and Local Self-government Units:

- To study co-ordinately and exhaustively the situation of the socio-economic conditions and in reasonable timeframes provide adequate measures to provide help for the families living on the territory of Batumi former 25th and 53th battalion.

RIGHT TO SOCIAL SECURITY

In this chapter, we will discuss and assess the new methodology of socio-economic conditions of vulnerable families and the problems encountered during its implementation in practice. Also, we will discuss the flaws revealed in the assessment conducted by the Public Defender's office in term of the socio-economic conditions of vulnerable families

The same chapter includes the discussion on the legislative shortcoming and challenges regarding the implementation of the legislation on mountain regions. This chapter also includes issues of access to forest resources of for the population, where assessment of the effectiveness of the social cuts procedures is presented.

The Public Defender's 2014 parliamentary report positively assessed[1778] the change of methodology of the socio-economic conditions of vulnerable families and alleged changes of the new methodology. However, the abundance of the appellations to the Public Defender's Office of the vulnerable citizens and the study results of the methodology indicates the existence of some kind of flaws, which will be discussed below.

THE NEW ASSESSMENT METHODOLOGY FOR THE SOCIO-ECONOMIC CONDITIONS OF VULNERABLE FAMILIES (HOUSEHOLDS)

As in previous years in 2015 high demand of inclusion in the social security program from the families below the poverty line remained high, since this program reveals society's the most vulnerable individuals across the country and provides them with basic social benefits.

The decree # 758 of the Government of Georgia issued on December 31, 2014, approved the new methodology of socio-economic status assessment for vulnerable families (households). The new methodology of the assessment is carried for the socio-economic conditions of vulnerable families (households), their reflection this data in the "united registry of the socially vulnerable people" and appointing new points to them.

In the framework of the new methodology, the gradation of the rating points has been implemented and was determined the appropriate amount of the allowance. In particular, the family member of a rating whose score is not more than 30, 000, the 60 GEL allowance was set, for the scores from 30 000 to 57 000 of the family members with the amount of 50 GEL, in cases of the score from 57 000 to 60 000 - 40 GEL and from 60 000 to 65 000 30 GEL amount. In addition, any vulnerable families, which do not exceed 100 thousand ranking points, each child benefits the addition 10 GEL.[1779]

1778 The Public Defender's annual report on the Situation in Human Rights and Freedoms in Georgia in 2014 pp. 777.

1779 Article 6 of the change N215 issued on 18.05.2015 in the law of Georgia on „Social Assistance" , decree N145 of the Government of Georgia issued on July 28, 2006.

In the framework of the existing methodology for targeted social assistance[1780] the matter of children was not included separately. According to the new formula, 260 thousand children will receive a monthly 10 GEL supplement. According to the survey conducted by UNICEF researching the welfare of the population of Georgia[1781], in Georgia 50 000 children live in extreme poverty, 225 000 children were living below the poverty line. According to the mentioned issued, the UNICEF recommended additional social cash allowance definition in the new methodology for children. However, it must be said that setting 10 GEL allowance for each children in the family cannot be considered as a sufficient measure for the poverty.

Based on the above mentioned the decree rating of vulnerable families were conducted according to the new methodology in test mode. [1782] As a result, it was revealed that large part of the single pensioners could not receive a living allowance. After the assessment of the new methodology in the testing mode, according to the government's decision in the above-mentioned decree the criteria for the calculation of scores changed, particularly, the changed settings – needs index for the pensioners have been increased. Accordingly, the lonely pensioners, who have been suspended from getting the allowance due to high scores, according to the new regulation the data was corrected. However, despite this fact, the majority of the examined statements addressed to the Public Defender's office was regarding the studding the legality of rating points for lonely pensioners. The cases studied by the office shows that the beneficiaries does not have any income other than a pension, have lower utility costs and are awarded with inconsistent ranking points for considering their socio-economic situation.

The new methodology of evaluating social and economic conditions of the socially vulnerable families does not require indication into family declaration of the results of the visual inspection of the family that was considered as the serious shortcoming of the previous methodology, since the social agent's subjective evaluation of the situation regarding the beneficiary's property and the information obtained can not reflect the reality. However, according the new methodology the visual inspection declaration part of the living floor material designation of the family house has a great importance. This particular record in the methodology and the fact that references to the parquet flooring materials[1783] are directly and substantially related to the changes of rating points can be considered as a shortcoming of the new methodology, as it does not allow the proper identification of vulnerable groups and unreasonably increases the number of points granted, as it does not allow the proper identification of vulnerable groups and unreasonably increases the number of points awarded.

Speaking of methodology gaps the attention should be paid to the identification value of the minimum consumer basket in the formula and the subject of its inflexibility. In the moment of defining, the price of the consumer basket formula for socially vulnerable families (households) was 149.6 GEL. Minimum wage is the basis social protection and social security for directed to support less protected part of the population. The minimum wage should be defined basis on the State's social policy. [1784] The minimum wage ensures minimal human physiological and social requirements and is designed to detect vulnerable part of the population and the minimum amount of social allowances. The National Statistics Office shall calculate the value of the minimum wage, based on which the ratio of the minimum subsistence level and minimum income should be determined. The minimum cost of the consumer basket of the household is considered necessary to calculate the index formula. To calculate the index of households are necessary to correctly identify important needs of the target group, since the lower the consumer index and the highs index of need is (the minimal consumer basket cost is provided), the lower the level of household welfare (in accordance with high social vulnerability). The minimum living wage will vary with changes in the consumer basket, respectively, in the case of increase the minimum wage calculation, the formula given in the form of the methodology of a fixed minimum consumer basket value still cannot be changed.

1780 Decree №93 of the Government of Georgia issue on March 30, 2010 „on Approval the Methodology of Socio-economic Status Assessment for Vulnerable Families (Households)"

1781 The information is available on the web page: <http://unicef.ge/uploads/WMS_2013_geo.pdf> [Last visited 28.03.16]

1782 Letter N04/76795 of the Social Services Agency, issued on 08.10.2015.

1783 The mentioned coefficient is only assigned to the families registered in the capital city.

1784 Law of Georgia on „Calculating the Minimum Living Wage".

One of the most important issues for the vulnerable families in social programs is the social programs offered by the self-government bodies and connecting these benefits to the certain amount of rating points.

In particular, it is about suggesting the needs-based approach and the social security for the beneficiaries of the various social security programs. The program following programs are – the emergency medical services , rehabilitation of the vulnerable and disabled children, providing with remuneration for customers of free or discounted urban transport services, various allowances for vulnerable families with many children, help with utilities, etc. In addition, the local administrative bodies of Tbilisi are carried out a variety of social security measures. The mentioned benefits are adjusted for only low rating score families and are not distributed to the families of the higher number of points, with the households. Considering the fact that the minimum score from March 2015 is 100 001 (one hundred thousand and one) for the recorded families, it is preferably the social programs to not be depended on having a very low points, as the families with relatively higher scores may have certain needs and have necessity of receiving the support. Moreover, the families of the latter group are left beyond the allowance.

PROCEDURAL FLAWS OF STUDDING THE CONDITIONS OF THE SOCIO-ECONOMICALLY VULNERABLE FAMILIES

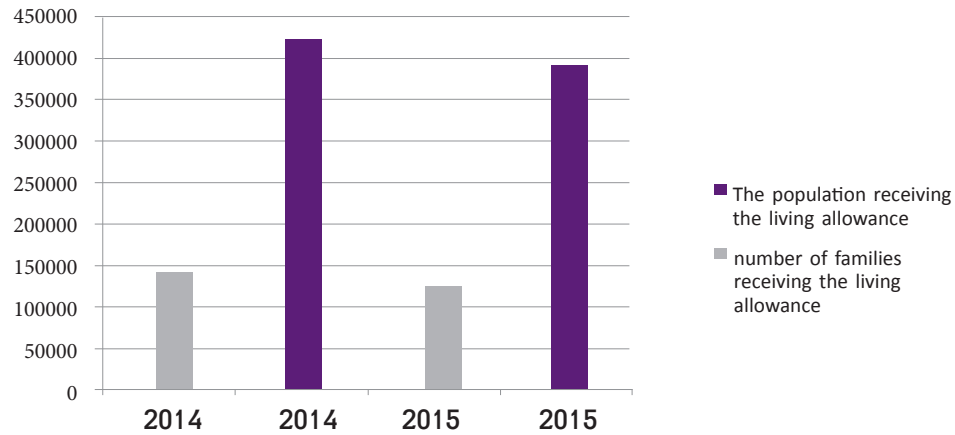
The Public Defender's Office examined applications revealed the number of flaws during the evaluating of the socio-economic conditions of vulnerable families by the Social Service Agency representatives. It should be noted that after addressing to the Social Service Agency by the Public Defender's Office, in certain cases, the data was corrected in favour of the vulnerable families, the scores of families were recalculated and the families were assigned to receiving living allowance.

The Public Defender's Office claims to have been identified the facts, when the authorized representatives of the agency inaccurate reference of the data in family "common declaration" led to an increase the rating and the removal of the allowance. Also agent's mistakenly entered data in the block C4 7th row and in E block as a result of the adjustment, which includes family's irregular revenues and utility costs, the ranking points given to the family has been fallen and received living allowance.

Studied statements revealed violation of the visiting terms by an authorized representative to the beneficiary's family. In particular, according to the order N02-150 of the director of Social Service Agency on " Approval of the Rules the Formation of the Database of Socially Vulnerable Families " "(Annex N3) under Article 11, the social agent should to respond to the application appeal in the territory of the unit (" the Declaration of Family "or filling " Protocol on the Termination of Declaration ") in maximally short terms, no later than 20 days from the date of placement of the application the base. Fulfilling the mentioned term should be under special attention, since the difficult socio-economic situation of the vulnerable families, assigning the allowance for the family might have vital importance.

Also, non-delivery for the beneficiary family of "F" block of "the Declaration of the Family" can be considered as procedural flaw. In particular, according to the observation of the practice, filled boxes of the statement will be transferred to beneficiary families only after specially indicated cases. "F" block is an assessment of the authorized person of the agency that is filled based on visual observation by the representative of the agency.[1785] Although according to the new methodology, the subjective assessment of the authorized person of the agency is not paid attention while granting the rating points to family, however, the mentioned block is an integral part of "the Declaration of the Family" and is vague why it is not issued with the essential documents.

1785 The mentioned block includes family's socio-economic conditions and is about the appraisal of the trustworthiness of the information provided by the family to the authorized agency representative.



The diagram above illustrates the statistical information obtained from Social Service Agency's website in 2014 and 2015 on the population and the number of families receiving social assistance. In particular, by the data of December 2014, [1786] 141 776 families received allowance, while the total number of people receiving benefits are - 421 387. As for the data for December 2015[1787] - the number was 125 301 families, while the total number of the population was - 389 650.

According to the given statistical information, the allowance recipient households and the population decreased, and therefore, the part of the families, who previously was the recipient of the allowance, is no receiving the allowance anymore. Public Defender's Office received a number of applications referred to the despite the fact unchanging the applicants' socio-economic status more scores were assigned during the evaluation and subsistence allowances terminated. The above mentioned statistics are to be related to the changes in the methodology and not with the reduction of poverty in the country. Accordingly, the need to improvement of the methodology is in the agenda.

THE BENEFITS PROVIDED BY LAW FOR THE MOUNTAINOUS REGIONS

As it is mentioned in the Ombudsman's 2013-2014 Parliamentary reports, it is especially difficult socio-economic condition for people living in remote mountainous areas, health care access, and living environment.

Accordingly, during the last two years, the Public Defender in its parliamentary report was requesting by the recommendation from the government level to develop a coherent strategy and plan of action at the state, for to protect mountainous regions from the socio-economic problems and violation of subsistence human the rights, for to provide equal socio-economic development on the whole territory of Georgia, to take short-term measures to develop so-called "Mountain Law " as soon as possible.

The law, which established benefits for the people living in the mountainous regions, came into force from the first of January in 2016. The government's legislative initiative submitted regarding "Mountainous Regions Development" was adopted by the Parliament in 2015. On December 14, at the National Development Council meeting on the mountain, was approved the list of the status of high mountain settlement. The List combines 1600 settlements of Georgia. In addition, the benefits were approved, salaries and pension supplements, which are benefits of the inhabitants of the settlements in with high mountainous status. The main mission of the law is to stop the process of emptying the mountainous regions, its economic development and job creation. Granting the status was defined by the Hypsometric settings, as well as with taking into account the its historical

1786 The information is available on the web page : <http://ssa.gov.ge/index.php?lang_id=&sec_id=769> [Last visited on 28.03.16].
1787 The information is available on the web page :<http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=770> [Last visited on 28.03.16].

and geographical basis, or the settlements situated at an altitude of 1500 meters above are automatically granted the status of mountain settlements. The status also was automatically granted to the historical and geographical traits, such as: Svaneti, the mountainous Racha, Guria, Mtiuleti, Khevsureti, Tusheti, Pshavi, Pankisi.

The new law on "Mountainous Regions Development" is directed towards the welfare, raising the standard of living, employment, economic and social conditions improvement of the population in the mountainous regions. In particular, tax and social benefits, creation of the mountain national council and the high mountainous region development fund.

According to the law, permanent residents of the mountainous area will benefit from social benefits. **Since September 1, 2016** - pensioner persons who receive monthly state pension, will be granted a monthly social assistance supplement – **with an amount of not less than 20% of the state pension. Since September 1, 2016** – in the mountainous settlements situated the state participation-based and under its management medical institution' s employed **medical staff**, whose work is paid from the state budget, the Government of Georgia **determine a monthly supplement**. **Since January 1, 2016 -** mountainous settlement situated public school, multi-sectoral **public school pupils** and vocational education **students, will be given increased the amount voucher, which is financed by the state**. **The educational institutions since September 1, 2016** – under the Ministry of Education and Science and its National Center of Teacher Professional Development functioning under the ministry system, the **teachers involved in its programs** and employed in the mountainous district and secondary educational institutions, **will receive additive remuneration -no less than 50% of their salary**. It should be noted that according to the law, **receiving the mentioned social benefits is not ground for cancellation of the allowance and will not be considered as an improvement in the assessment system of poor families with poor socio-economic conditions.**

It is important that after the law comes into force, on January 1, 2016, the permanent residents of the mountainous settlements and the industry undertakings the status of mutinous benefit from the Tax Code tax benefits. According to the law, **the estate tax was exempted** for the mountainous settlement the permanent residences for the owning **the property of the land** located on the same mountainous region, **as well as** the mountainous settlement enterprise owners **property** located on the territory of the same mountainous settlement– 10 calendar years since assigning the status. **With the adoption of the law on "Mountainous Regions Development"** the decree №591 of the government of Georgia on November 19, 2015 was approved regarding "on approval permanent resident status, its termination, and suspension and restoration rules in the mountainous".

The Ombudsman considers that taking care to the mountainous regions should be the most important feature for the state. From the state the special treatment to the mountainous regions on the one hand, difficult geographical location and on the other hand, severe demographic problems, this continued in the mountainous regions and remains as the main problem. During several years, the Public Defender was requesting by the recommendation from the government level to develop a coherent strategy and plan of action at the state, for to protect mountainous regions from the socio-economic problems and violation of subsistence human the rights, for to provide equal socio-economic development on the whole territory of Georgia. Public Defender welcomes privileges for residents the mountainous regions and considers that the adoption of this law is a progressive step forward, however underlines the possibility of the law not working as effectively as it was its initial main purpose, the flaw of the law will be discussed by the example of Tusheti region.

Tusheti

According to the second subparagraph of the second paragraph of "The Law of Georgia on the Development of Mountainous Regions" Tusheti is assigned to the status of the mountainous region, where the villages are located at an altitude from 1900 m to 2400 m.

According to the article 3, paragraph 5, subparagraph "c" of the Law, the status of the mountainous region persons' is granted during each calendar year, in a total of 9 months or more months period of actually living in the mountainous village.

In Tusheti snow cover duration is 5-6 months and during this time the access road is closed and communication is terminated with administrative center. Consequently, due to objective circumstances the majority of the population cannot stay more than 6-7 months to the main place of residence in a year. Accordingly, it would be impossible to grant the status for those persons who are forced to leave the region. During This year's winter season, only 26 of the inhabitants were living in the area.

Therefore, the seasonal migration of the local population of Tusheti is mainly due to the harsh climatic and geographical conditions and limited living space. (Low quality of infrastructure, water, electricity and communication problems, poor social background and also the problem of access to health care).

Tushetian major fmailies moved from Tusheti to the villages of – Zemo Alvani, Kvemo Alvani and Laliskuri, Tusheti and Shiraki got the function of pastures and seasonal housing during the summer and winter. The law on Mountain provides for an exception under the Article 3 paragraph seventh, when a person can maintains the permanent residents' status of the mountainous settlement. However, the rule of the exemptions does not specify the case of the natural migration when a person is forced to leave the life-threatening region and have to move temporarily to the secure area. In particular, in Tusheti villages an average of 6 months is liveable period of time.

To Tusheti region's residents to access to statutory subsidies, it is necessary to amend the legislation and instead of 9 month, indicate 6 months in an exceptional ground of granting the status of residence in the mountainous region, and / or Article 3 of the paragraph seven the exceptional reasons on the keeping status should be added with the temporary migration and natural condition.

After the activating the law of Georgia on Mountainous Regions, the settlements, which are located below the 800 meters and were granted the status of the settlement before the law came into force, after enactment of the law they were not assigned to the status of the mountainous regions,.

Mountainous region status has not received Municipality of Tkibuli that caused the abolition of tax privileges for the local residents and for miners. According to the decision of the Government, the miners tax privileges reserved until January 1, 2016. The government has prepared a draft law, according to which the miners are still will be able to use the exemption.

Gori district villages Nikozi, Zemo Khviti and Kareli district village Knolevi subjects regarding the development of mountainous regions, see the chapter "The legal status of conflict-affected communities." [1788]

THE AVAILABILITY OF FOREST RESOURCES FOR THE POPULATION

The population of Racha-Lechkhumi, Svaneti, Guria and Pshavi, during meeting to the Public Defender of Georgia within the reporting period announced that use of the woods for local population is a problematic in several dimensions. According to them, obtaining fuel and timber permit is complicated and protracted, which is special burden for the rural population already living in a difficult socio-economic conditions. Cutting area is not allocated on time and, therefore, in the harsh winter conditions the problem is more aggravated, because there is no access road to the cutting area of the forest.

1788 See. Subchapter on The legal status of the people living in the vicinity of the boundary line , Part - of the district and village on the Zemo Khviti and Kareli district village Knolevi.

Residents mentioned that the permits for the commercial timber extraction and processing adoption for an unknown reasons is delayed and in some cases, impossible. Despite the fact that some of the changes were adopted to the law on "The Forest Code" recently, it is still outdated and unable to meet the current challenges of the country and the population.

The code almost did not provide a sustainable forest management and the use of a system that provides **social** (the rural population does not have the means to get involved in the decision-making process. Also, take an active part in the forestry activity and get employed in forestry field), **economic** (the Code does not give priority to the on the ground processed timber obtained in Georgia and final product development direction, which should stimulate the economy, create jobs for the population and have positive impact on local production) and **ecological** (do not considers proportional cut increase in. Do not cut more than the natural increases itself. The balance must be protected, but the existing Code does not protect it) principles' protection and preservation.

According to the provisions of The Law of Georgia on "the Forest Code" and the government's N242 Resolution issued on August 20, 2010 on "Approval of the Usage Rules of the Forest" the population of the quality of I (timber) and II (fire) is allowed the social cutting, for which established procedures prevents the effective use of the forest by population, mostly in mountainous regions where winters are longer and going to the forest cutting are is complicated due to the conditions of the roads. The municipality sends lists of the household to the National Forestry Agency to ensure the timber of the quality of II (fire) for the population. Every citizen has the opportunity to receive 7 cubic meters of timber, and the population of in the mountainous regions are getting 15 cubic meters. Recipient is paying the fee - 6 GEL in a bank (Liberty Bank) - per cubic meter, which is given the logging a ticket for 30 days duration, after the submitting the ticket the agency allowed cutting in the in advance designated cutting area (in which the trees of the social use highlighted) will issue a timber according to the tickets. The National Forestry Agency is preparing a special document, which stated that the wood are legally obtained, and its owner has the right to transport and use it. During the reporting period, the population was indicating the problem time cutting of emissions, the fact that the cutting allocation period is not determined by the legislative and normative level is the basis for the issue. The practical problems posed for the population by the fact that the timber may be allocated far from the housing, and in some cases – in inaccessible place.

A special permit is required as well as for the use of I (timber) quality timber, which is protracted procedure in time and cannot ensure the timely and effective use. The Governor by recommendation of the National Forestry Agency presents the motions on the type and volume of wood before May 1 of each year. The management authority shall determine the quality of the wood species and the possibility of cutting down the material, and inform the requesting entity before September 1, and afterwards a governor gradually or together is submitting the documents. The notion must be accompanied by the appropriate conclusion of the commission with actual document confirming photograph, which is basis of issuing the individual administrative act by the management authority, after the fulfilling the mentioned procedure based on the order of the National Forestry Agency chief citizen can be registered in a electronic system, afterwards the citizens pays a fee, presents the bill to the agency and the basis of which the order defining the amount of the timber is issue with the logging ticket. For obtaining I (timber) quality wood timber by the population, manufacturing ticket procedure is long-delayed in term of the time, is in need term shortening and simplifying the procedures. With the exception of fire, natural disaster or other force majeure circumstances caused by accidents, during which the timber resource will be issued according to the same procedures, besides the cases of fixed terms.

Extraction and processing of the timber for personal and commercial delayed use is caused due to lack of resources with the inflexible legislation, in some cases tens of hectares of forest is assigned to each forest defender, which makes it impossible to perform their duties effectively.

We welcome the fact that the Parliament of Georgia by the decree # 1742 issued December 11, 2013 approved the "Concept of the National Forest", which takes into account the interests of the local population in the

process of sustainable forest management. Objectives of the concept can only be achieved by effective forestry policy, which cannot be implemented without an effective and flexible legislative regulation.

RECCOMENDATIONS

To the Parliament of Georgia:

- To revise the law on "Mountainous Regions Development" based on the shortcoming revealed along with its enforcement , in particular the term for granting the status of the mountainous region for permanent residences shall be reduced and / or to the paragraph seventh of the Article 3 shall amend temporary migration and natural condition an exceptional condition for keeping the status
- To develop new Forest Code, which provides introduction of a system of sustainable forest management, enforcement of the legitimate interests of the population, solving the social and economic issued by protecting and preserving the ecological balance.

To the Governemnt of Georgia:

- Due to the shortcomings in practice, to review the decree N758 of the Government of Georgia that approved the new methodology of the socio-economic conditions appraisal for the vulnerable families (households)
- To prepare appropriate changes regarding the tax benefits in the law of Georgia on "Development of Mountainous Regions" to remaining the status holders of mountainous region after enactment of the in the list of persons who gets these benefits

To the Ministry of Environment and Natural Recources Protection of Georgia:

- To develop pilot projects that promotes usage of the timbers for the commercial purpose by the mountainous population, simplifies the procedures for obtaining the permission for timber cutting and processing, creates new jobs and source of income and decreases the poverty level
- To provide accessibility/passage of the mountainous forest roads
- To ensure participation of the population in the process of sustainable forestry management
- To mobilize qualified and enough human resources for the forestry industry

To the Local Self-governemnt Units

- To provide suggesting the social programs to the socially vulnerable households by the local self-government units those benefits should not be only directed to the families with low ranking points and take needs of families with higher points into consideration.

HUMAN RIGHTS SITUATION OF INTERNALLY DISPLACED PERSONS

INTRODUCTION

One of the priorities of the Public Defender of Georgia is to study human rights situation of Internally Displaced Persons and to protect IDPs. In 2015, same as in 2014, the number of applications from IDPs filed at the Public Defender's Offices throughout Georgia was rather high. In 2016 Public Defender's Office and the existing project under its authority[1789] conducted active monitoring of IDPs' living conditions across the country. This report is based on the facts collected as a result of monitoring, review of applications filed to the Public Defender's Offices and on general situational analysis. The results of monitoring and received IDPs' applications clearly show that despite certain progress and some improvements, the main problem for the majority of IDPs is still miserable living conditions and lack of living space. Although in 2015 many IDPs enjoyed the right to privatize the facilities where they had been settled or were moved from collapsing collective centers, majority of them still live in severe living conditions. Another problem is that IDPs are not adequately familiarized with information regarding changes in their legal status. It is necessary to involve IDPs in decision-making process which will raise IDPs awareness on different issues.

In 2015, same as in 2014, representatives of Public Defender of Georgia were actively involved in the workings of the Study Commission on the Issues of IDPs under the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. Besides, Public Defender is a member of the "Steering Committee of the Action Plan for Implementation of the National Strategy for Internally Displaced Persons (IDPs) from the Occupied Territories of Georgia".

On December 18th of 2015, in accordance with Government's Decree #2721 "the Livelihood action plan has been approved for years of 2016-2017. Changes were made in Order #320 issued on August 9th of 2013 by the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, which determines the criteria of durable accommodation of IDPs. 2015 was different from all previous years due to implementation of wide-scale projects aimed at provision of durable accommodation of IDPs.

PROCESS OF DURABLE ACCOMMODATION OF IDPS AND IDENTIFIED SHORTCOMINGS

Before IDPs return to their permanent residence places, the priority for the Government still remains provision of durable accommodation and assistance to integration of IDPs into socio-economic life.

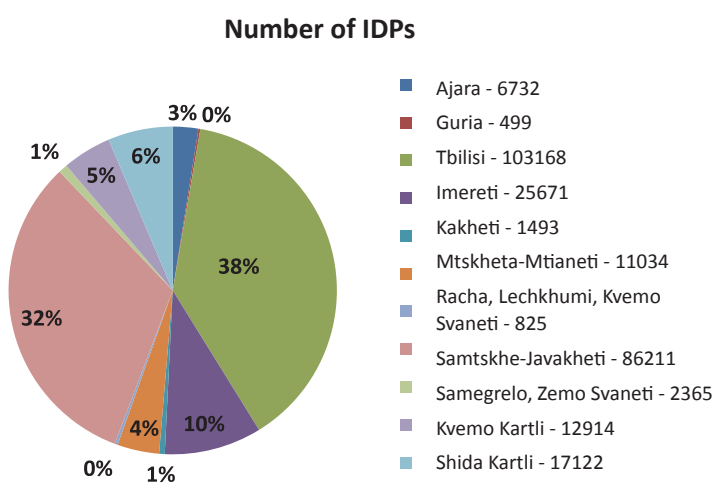
1789 Project "Enhance the Capacity of the Public Defender of Georgia to Address the Issue of IDPs" is funded by the British Embassy and UNHCR

At present there are 4 programs available for durable accommodation for IDPs:

- Settlement of IDPs into rehabilitated and newly constructed buildings
- Purchase of individual houses and flats for IDPs families (within the framework of "Village House" project).
- Granting of property title to IDPs for the living spaces in which they reside today (via privatization process).
- Mortgage loans payment program.

On the basis of Order #320 issued on August 9th of 2013 by the Minister of Internally Displaced Persons, Accommodation and Refugees of Georgia "The procedure for provision of durable accommodation for IDPs, criteria and statute of the Study Commission on the Issues of IDPs" has been adopted. This order approved "The rule for durable accommodation for IDPs". Review of IDPs' applications and decision-making is the responsibility of the Study Commission on the Issues of IDPs.[1790]

As of today, there are 268, 034 IDPs registered in Georgia. Out of the total number, 142,659 IDPs live in the so-called "private sector" and 125,375 IDPs are registered in former compact settlements.[1791]



1, 855 IDP families[1792] received durable accommodation in 2015, out of which 479 families were provided with houses ("Village house" project); 49 families received mortgage loans under special loan payment program; 1,327 families were provided with durable accommodation in rehabilitated and newly-constructed buildings. 55,450 IDP families are still in need of housing.[1793]

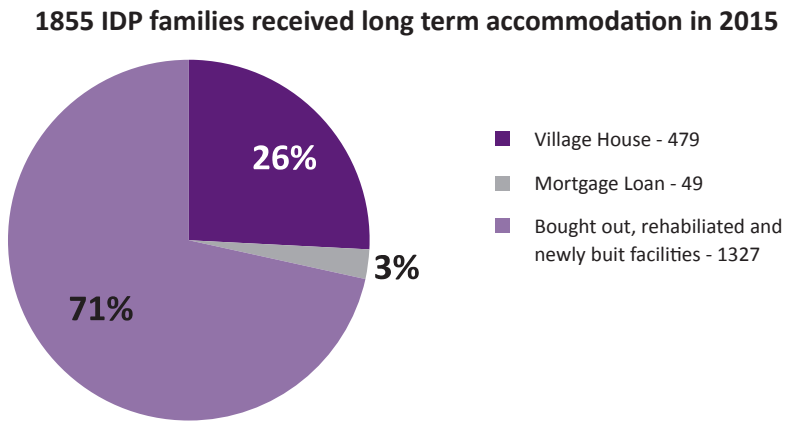
In accordance with the criteria specified under the same Order, 600 families received financial assistance to rent a living space under the temporary settlement program.

1790 Public Defender of Georgia conducts monitoring over this commission in the status of the observer, in the process of Durable Accommodation of IDPs.

1791 Letter # 01-02/08 31549 dated December 15, 2015 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

1792 Letter # 01-02/08/31048 dated December 10, 2015 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

1793 Letter # 01-02/08/31549 dated December 15, 2015 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia;



By the amendments to Order #320 issued by the Minister on March 6th of 2015, the alternative was set to provide durable housing to IDPs – one-time mortgage loan payment to IDPs.[1794] The loan application form[1795] and the list of eligible IDPs were approved. The right to apply for such loan was granted to the IDP families, who had bought houses/flats by means of mortgage loans before January 1st of 2015 and if such houses/flats were their only living space. The Study Commission on the Issues of IDPs reviews and approves applications for mortgage loans payments. In case if application is granted, an IDP family is entitled to receive one-time mortgage loan in the amount not exceeding GEL 20, 000. The time limit for loan payment applications is one month.[1796]

Public Defender of Georgia assumed that the time limit for mortgage loans payment applications is not reasonable and has addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with recommendation to review the limited time for applications.[1797] Since mortgage loans payments program for IDP accommodation is the same option as the accommodation program through providing individual houses to IDPs, Public Defender believes that limited time for mortgage loans payment program is inappropriate. Both programs are similar in content, because the government is not looking for accommodation spaces for IDPs. In both cases the government provides one-time financial support to resolve durable housing issue. Public Defender believes that it would be better to extend time limit for submission of the applications or the applicants for mortgage loans program should not be limited in time as it is the case in individual houses program. According to the information received from the Ministry[1798] the Study Commission on the Issues of IDPs discussed the time limit question and made a decision not to extend the time limit for submission of applications for mortgage loan payment.

Order # 320 issued by the Minister has all detailed procedures in place, which precede granting of property titles to IDPs. Such rules are an important step forward to regulate the process of providing durable accommodation to IDPs and during distribution of flats in line with the principles of justice. The above-mentioned order envisages several procedures for provision of housing. Namely, at first stage the Ministry provides information to IDPs regarding available accommodation opportunities. Consequently, IDPs can submit applications and fill in questionnaire, included in the order, to receive flats in sites offered by the Ministry. The appropriate unit at the Ministry reviews the applications in accordance with criteria and living space standards determined in the above order. The case is then forwarded to the Commission which will make a decision whether to grant or reject the application.

1794 Order # 309 dated 06/03/2015 issued by the Minster of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

1795 Order # 320 dated August 9th of 2013, Appendix #2, issued by the Minster of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia regarding adoption of "The rule and criteria for durable accommodation for IDPs and the statute of the Study Commission on the Issues of IDPs".

1796 The information is available at website: < http://mra.gov.ge/geo/news/show/189/8032 > [last seen on April 26, 2015]; The information is available at website: < http://mra.gov.ge/geo/news/show/189/7523 > [last seen on April 26, 2015],

1797 Recommendation # 04-9/3200 by Public Defender of Georgia;

1798 Letter # 01-02/08/12942 dated May 18, 2015 of the Ministry of internally displaced persons from the occupied territories, accommodation and Refugees of Georgia.

It is commendable that by Order #320, priority is given to IDP families who reside at the deplorable accommodation in their lawful possession which pose a threat to their lives or health. The status of such buildings should be confirmed by the conclusion of the "Levan Samkharauli National Forensic Bureau".

In 2014 report Public Defender referred to the accommodation facilities, regarding which facilities the Ministry requested "Levan Samkharauli National Forensic Bureau" to provide durability conclusion . Public Defender also recommended the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to give priority, in the process of durable accommodation, to families who live in dwellings with unsuitable living conditions. During the entire period of 2015 Public Defender was actively observing the process of resettelement of the IDPs from the collapsing buildings.

Tbilisi

In 2015 the most wide-scale resettlement process was carried out in Tbilisi. Public Defender's Office representatives were observing the working of the Study Commission on the Issues of IDPs as well as voting process.

In 2015 the Ministry provided flats to 561 IDP families near the Tbilisi Sea, in the so-called "Olympic village" in modern blocks of flats that had been bought out from developers. Up to 10,010 IDPs addressed the Ministry with requests to receive flats.[1799]

By the decision of the Study Commission on the Issues of IDPs, on the basis of given scores, the families with highest scores were selected, and examined on site by the monitoring groups.

Monitoring service worked from August 18th till September 15th and the report was sent for consideration to the Study Commission on the Issues of IDPs, which commenced the work on September 21st.

It is noteworthy that in order to raise the transparency level in durable housing provision process, representatives from any organization could have participated as observers.

Members of the Commission were reviewing the information about every IDP family and monitoring results on a case-by-case basis. The number of rooms in every flat was determined by the size of the family.[1800]

There were three main methods to distribute flats:

1. Removal of IDP families from deplorable facilities and facilities that pose a threat to their lives or health;
2. By the decisions of court or higher administrative bodies and on basis of administrative commitment of the Ministry, to provide accommodation to IDP families;
3. Durable housing for IDPs, in accordance with the established criteria.

It is commendable that pursuant to the Ministry's initiative, the facilities with the most unsuitable living conditions mentioned in the Parliamentary report of the Public Defender of Georgiawere examined by the experts. Accordingly, 14 facilities were considered as inadequate for living (according to the information from the Ministry, IDPs had been already moved out of two facilities and resettled.)

In 2015 in Tbilisi **178 IDP families** from deplorable facilities or from facilities which pose a threat to their lives or health were provided with flats. (From hotel "Airport" – 85 families; from hotel "Kolkheti" – 80 families and 13 families from deplorable facilities).[1801]

1799 Statement regarding distribution of apartments in Tbilisi issued by the Ministry of internally displaced persons from the occupied territories, Accommodation and Refugees of Georgia; < http://mra.gov.ge/geo/news/show/189/10096 >

1800 Statement by the Ministry of internally displaced persons from the occupied territories, accommodation and IDPs of Georgia; <http://www.mra.gov.ge/geo/news/show/189/9827>

1801 Letter # 01-02/08/3150 dated January 29, 2016 from the Ministry of Internally Displaced Persons from the occupied territories, Accommodation and Refugees of Georgia;

During the reporting period the Office of the an Public Defender's Office examined IDPs' statements and found out that there was an issue with the Commission's decisions for IDP resettlement being properly reasoned. In particular, when the Commission turns down the requests from IDPs regarding accommodation it doesn't provide detailed legal or factual reasons why such requests were rejected. In view of the above, IDPs do not have the information about the reasons why their requests were turned down.

It was also revealed that when census/inventory was conducted during resettlement process from hotel "Kolkheti", no reports were drawn that should have reflected facts that some IDP families didn't live at the hotel. Namely, from the applications examined by the Public Defender's Office it is established that the representatives of the Ministry visited hotel "Kolkheti" several times to identify the families who actually lived at the hotel in order to provide them with durable housing. The Public Defender's Office has studied and analyzed IDPs' applications and came to the conclusion that, with regards to the IDP families absent at hotel "Kolkheti" at the time of census/registration, the representatives of the Ministry did not fill in the documents that would confirm the visits to the addresses and assessment of factual residence of the family. Consequently, the Ministry didn't establish the reason of absence of IDP families and didn't take into consideration the reasons of their absence when decisions were made regarding IDPs' eligibility for durable housing.[1802] Due to the above-mentioned facts, some of the IDP families living at hotel "Kolkheti" were excluded from durable accommodation program.

It should be noted that the Ministry, as the administrative body that makes decisions on issues within its competence, should study all relevant circumstances and make decision on the basis of proper assessment and revision of such circumstances. In the process of moving out of the IDPs from hotel "Kolkheti" without considering the criteria, the Ministry didn't study the reasons why IDPs were not present at the hotel during the census/registration. It is important to note that some of the families couldn't live at the hotel due to grave living conditions and temporarily lived at their acquaintances' residences.

It should also be noted that the Ministry has not set the criteria for establishing the fact of an individual/family's actual residence at a specific address. As per the Ministry, establishment of factual residence at the address indicated by the IDP in his/her application is established by the monitoring unit, as a result of multiple monitoring/census sessions. If necessary, the monitoring unit may conduct night visits[1803]. Thus, it can be stated that the procedures and criteria for determining the factual residence is not prescribed by the legal act, which negatively affects resettlement decisions. In one of its judgements the Supreme Court of Georgia defines[1804] IDP family's permanent address. According to the definition, the permanent residence must be demonstrated by daily residence at given location, which can be ascertained by different utilities payment checks.

As for the voting procedure to distribute flats, the results of monitoring show that unlike in the previous years, in 2015 the voting procedure was peaceful and transparent. Any organization could have attended the voting procedure as observer. IDPs were informed that all adults should have attended the above procedure to sign the contract. Also it should be noted that the needs of persons with disabilities were taken into consideration during the voting procedure and the flats on the first floor were given to them by default.

It is encouraging that resettlement of IDPs continues in Tbilisi, although they still have to live in deplorable houses or in facilities that pose a threat to their lives or health. The Ministry should give priority to IDPs living in such facilities. The Public Defender addressed the Ministry regarding this issue.[1805]

1802 In cases reviewed by the Public Defender of Georgia, applicants indicated various reasons for not being at the registration address: Letters of the Public Defender's Office: # 04-9/10712m 29,12,2015; # 04-10/206, 11.01.2016, 04-9.10328, 18.12.2015.

1803 Letter # 01-02/08/30622 dated April 12, 2015 from Ministry of internally displaced persons from the occupied territories, accommodation and Refugees of Georgia.

1804 Decree as of June 9 of 2011 issued by Administrative Chamber at Georgian Supreme Court, case #BC-1896-1849 (K-10), p.1 http://www.supremecourt.ge/files/upload-file/pdf/ganmarteba51.pdf

1805 Public Defender's statement dated October 6, 2015 is available at website: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-ngrevad-obieqtebshi-mcxovreb-idzulebit-gadaadgilebul-pirta-gansaxlebastan-dakavshirebit.page

Imereti

In 2015, on the basis of order #320 the Ministry provided living space to 65 IDP families in Imereti region, in Kutaisi, on 5, Dadiani Street, in rehabilitated building.

2, 587 IDP families applied for flats in the rehabilitated building on Dadiani Street. There are 65 flats in the building, out of which 15 are one room flats, 40 – two-room flats and 10 – three-room flats. 109 IDPs received flats in new building (45 families were from deplorable facilities) in Kutaisi, on Otskheli Street, in former hospital building. The building rehabilitation was financed by municipal development fund and USAID.

As a result of the above, a deplorable facility in Kutaisi has been closed. "Turbaza Rioni" was one of such deplorable facilities that were mentioned in numerous annual reports by Public Defender.

1,850 IDP families applied for flats on Otskheli Street. Out of 109 flats, 44 are one room flats, 53 – two-room flats, 12 – three-room flats. It is noteworthy that 6 flats are for persons with disabilities. The building itself and outside infrastructure is completely adapted for the needs of persons with disabilities. Every flat has a separate bathroom and a water closet.

IDP families received flats in Kutaisi, on 2, Schmidt Street in accordance with filled-in application forms and accumulated points pursuant to order # 320. In 2015, IDPs received flats in Zestaphoni in rehabilitated buildings on 142, Uznadze Street and on 6, Rustaveli Street.

Samegrelo

In 2015, wide-scale resettlement process took place in Samegrelo region.

In Zugdidi, 320 IDP families received flats in 10 newly built blocks of flats. Thanks to newly built blocks of flats a facility with unacceptable living conditions that posed a threat to lives and health of its 104 IDP families was closed down. It is encouraging that Public Defender mentioned about the above 8 facilities in his 2014 report.[1806] IDPs were gradually receiving flats in the newly built blocks of flats. Out of 320 flats, 40 are one room flats, 160 – two-room flats, and 120 – three-room flats.

1806 Public Defender's report on the situation in human rights and freedoms in Georgia in 2014 report, p. 809 http://www.ombudsman.ge/uploads/other/2/2439.pdf >

Zugdidi, Akhalsopeli

On June 16th of 2015 in Zugdidi region, village Akhalsopeli, 42 IDP families received flats through voting procedure. IDP families were selected in accordance with durable housing criteria. There are 42 flats in the building, out of which 14 are one room flats, 23 – two-room flats, and 5 – three-room flats.

In Poti, on April 8th of 2015, 15 IDP families received flats by secret voting procedure in Maltakhva settlement and on Pirosmani Street. The voting procedure was conducted in peaceful environment. 40 families submitted application forms and only 15 families were selected in accordance with durable housing criteria.

In Akhaltsikhe, on 113, Rustaveli Street, 26 IDP families received flats in rehabilitated building of a former boarding school.

It is remarkable that IDPs' resettlement process continues across the country. According to the information from the Public Defender of Georgia in 2016, IDPs durable housing is planned in Tbilisi, Imereti, Zugdidi, Marneuli, Borjomi, Khashuri and Gori.[1807] Public Defender will observe resettlement process as he did last year.

Despite certain positive steps, there are still many deplorable facilities or facilities with unacceptable living conditions across the country, which have been examined by experts. According to the information provided by the Ministry, in 2013-2015 up to 90 facilities were examined by experts, and as of today, only 38 facilities have been closed.[1808]

PRIVATIZATION OF LIVING SPACES AS A WAY OF IDPS' DURABLE HOUSING

As it is known, privatization of durable housing for IDPs is one of the way of the Action Plan of Government of Georgia for implementation of State Strategy on IDPs, regarding durable housing. The above-mentioned process began in 2009 (in accordance with President's decree # 62 as of 2009) and envisages transferring of

1807 Letter # 01-02/08/31048 dated December 10, 2015 of the Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

1808 Letter # 01-02/08/3150 dated January 29, 2015 of the Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

state-owned collective centers to private ownership of IDPs families. This process is not regulated by the Minister's order # 320 and is regarded as an independent process.

There are 125,375 IDPs registered in former collective centers.[1809] It is commendable that in 2015 the transfer of living spaces to the ownership of IDPs across the country started in 210 facilities and this process still continues. In 2016, privatization of 75 facilities is planned.[1810]

In general, the privatization process could be positively assessed, however the monitoring conducted in 2015 identified some shortcomings. There are still a lot of facilities that do not meet the minimal requirements for living spaces,[1811] although these facilities have already been privatized by IDPs.

The cottages located in **Okrokhana settlement** in Tbilisi represent one of such poor facilities although their privatization is practically finalized.

Former collective center (clinical hospital building # 5 where 113 IDP families live) in Tbilisi, on 19, Paata Saakadze Street (former Tsinamdzvgrishvili Street) is in a very bad condition. This building was privatized after 2009, although the conclusion was provided by "Levan Samkharauli National Forensics Bureau", which states that the building located **in Tbilisi, on 19, Paata Saakadze Street** is a life threatening facility and it could collapse. It is dangerous for its inhabitants to stay in that building and the building should be dismantled.

In extremely bad condition are the flats in the so-called "Pur Combinatebis Karkhana" building in **Tsnori.** Nevertheless, IDPs agreed to accept the offer from the Ministry to privatize the facility in which they live, because they weren't aware of other options if they didn't agree to privatize their living space.

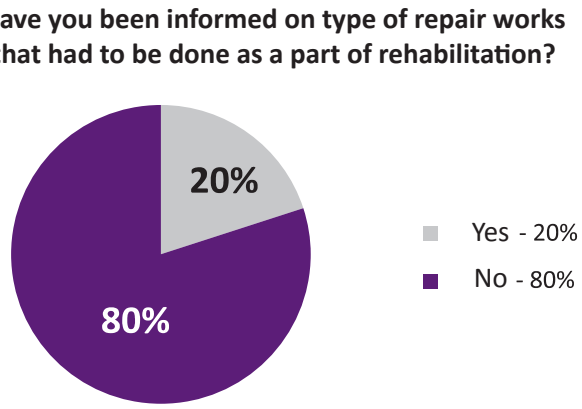
Apartments in "Pur Combinatis Karkhana" in Tsnori

1809 Letter # 01-02/08/31549 dated December 15, 2015 of the Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

1810 Letter # 01-02/08/32332 dated December 28, 2015 of the Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

1811 According to article 4, subparagraph "M" of the law on internally displaced persons from the occupied territories, accommodation and IDPs of Georgia, adequate housing means accommodation transferred to IDPs into ownership or lawful possession where essential conditions for dignified life are ensured including access to safety, sanitary conditions and infrastructure;

A questionnaire was prepared within the framework of IDPs' project at Public Defender's Office[1812] and IDPs were interviewed regarding privatization issues.



Most of the interviewed IDPs don't have the information about living space standards.[1813] Particularly, vast majority of them is not aware of estimated living space standards according to total number of family members. Most of the interviewed IDPs signed the privatization contracts without checking the size of living space. Among other problems are unequal distribution of living space and the so-called "partially legalized" facilities where measurements were taken several times, but still these facilities are not fully privatized. Due to this problem, IDPs can't set up an association of facility residents, and can't freely dispose their property and exercise other civil rights, because only some part of buildings is legalized. The above mentioned issues were reviewed in 2014 report.

Rehabilitation of former collective centers is still a pending problem. The surveys show that most of the privatized facilities haven't been rehabilitated.

However, the monitoring of the rehabilitated facilities showed that IDPs were complaining about the quality of the repair work. The Public Defender mentioned poor quality of facilities' repair in his 2014 Parliamentary Report.

It should be positively evaluated that in the reporting period the privatization process was expedited and IDPs raised their awareness about voluntary nature of privatization and options regarding resettlement should they refuse to privatize their factual living space.[1814]

Public Defender will observe the privatization process in 2016 and will submit the annual report.

"COLLAPSING" COLLECTIVE CENTERS

One of the important documents regarding IDPs' rights is UN Guiding Principles on Internal Displacement (hereafter referred to as Principles). According to Principles, "National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction".[1815] IDP rights to adequate standard of living is given in 18th Principle, which says that regardless of circumstances competent authorities shall provide internally displaced persons with and ensure safe access

1812 Project "Enhance the Capacity of the Public Defender of Georgia to Address the Issue of IDPs" is funded by the British Embassy and UNHCR

1813 Appendix # 6 to order # 320 dated August 9, 2013 from Minister of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

1814 According to surveys, unlike in 2014, most of the IDPs positively responded to the question of information awareness.

1815 "UN Guiding Principles on Internal Displacement", Principle # 3;

to: "Essential food and potable water; Basic shelter and housing; Appropriate clothing; and Essential medical services and sanitation".

International Covenant on Economic, Social and Cultural Rights (hereafter referred to as Covenant) is considered as the main document regarding the rights to adequate standard of living. Article 11 paragraph of the Covenant deals with right to adequate standard of living.[1816] Committee on Economic, Social and Cultural Rights (hereafter referred to as Committee) clarified that the right to standard of living is not limited to a shelter. The Committee attaches broader importance to it and considers the right to housing in terms of adequate standard of living.[1817] The concept of "adequate housing" comprehends several components including that of "appropriate living conditions" which is understood as the right of resident to have appropriate living space and be protected from cold, dampness, adverse impact on health and other dangerous factors.[1818]

As for national law on "Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia", this law gives IDPs the right to accommodation in Georgia.[1819] For the purpose of this law accommodation is transferred to IDPs into ownership or lawful possession where essential conditions for dignified life are ensured including access to safety, sanitary conditions and infrastructure;

The results of monitoring conducted by Public Defender show that there are still severe living conditions in some facilities. Public Defender mentioned in his detailed report to the Parliament about facilities in demanding situation.[1820]

Despite of the fact that in 2015 in **Tbilisi** IDPs were resettled from quite a few collapsing facilities, which were mentioned in Public Defender's report[1821] in 2014, living conditions of IDPs in collapsing facilities is still a pending problem.

Several facilities in Tbilisi deserve special attention, among them, the building on **6, Nadareishvili Street.** The roof, water supply system and sewage are damaged. Besides, there is expert's conclusion from "Levan Samkharauli National Forensics Bureau" which says that the building's condition poses a threat to its inhabitants. However, 5 IDP families still live in that building for several years.

The buildings located on **21, Yumashev Street, "Duzani"** and on **7, Zhores Streets** are also in extremely bad conditions.[1822] Public Defender mentioned these buildings in his 2014 report. IDPs still live in bad living conditions in Tbilisi, on **37, Chavchavadze Avenue, on 2, Dadiani Street** and in facilities on **2, Chantladze Street.**[1823] On December 16th, of 2015 Public Defender sent his recommendation[1824] to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to provide adequate housing to residents living on 2, Chantladze Street, specifically to rehabilitate the building or resettle IDPs within framework of durable/short term[1825] housing program.

Extremely bad conditions are observed **in Kutaisi, "Gumati boarding school", "Tskhaltsitela" boarding house, hotel "Zeskho", "Mtis Broli" and sanatorium "Khvamli".**

1816 The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

1817 General comments on Economic, Social and Cultural Rights Committee, general comment # 4, paragraph # 7

1818 General comments on Economic, Social and Cultural Rights Committee, general comment # 4, paragraph # 8

1819 Paragraph "M" of article #4 of the" law on internally displaced persons from the occupied territories, accommodation and IDPs of Georgia"

1820 Public Defender's report on human rights and fundamental freedom in Georgia, p. 616

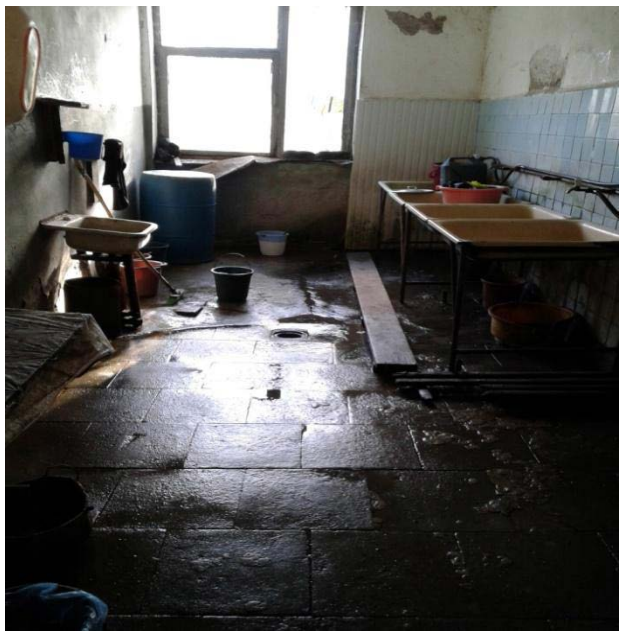
1821 From hotel "Airport", hotel "Kolkheti", buildings on 34, Kazbegi Str., 49, Chavchavadze Str., and on 25, Kakheti highway.

1822 There is expert's report issued by "Levan Samkharauli National Forensics Bureau" regarding instability and deplorable state of the facility.

1823 Public Defender mentioned these facilities in his 2014 report.

1824 Public Defender's recommendation # 04-9/10226 dated December 16th, 2015

1825 Provision of rental payment



Gumati boarding school

Monitoring has revealed severe living conditions in Tskhaltubo district, in former collective centers **(sanatorium "Philial", sanatorium "Imereti", "Intouristi")**. Most of them are former health centers buildings that have not been rehabilitated. Consequently, most parts of the buildings are depreciated; walls have cracks; water is leaking from roofs and sanitary and health conditions are not adequate.

Tskhaltubo, sanatorium "Philial"

IDPs still continue to live in unbearable conditions in Daba Surami, in sanatorium "Surami", in **Gori**, at tourist facility "Khis kotejebi", hotel "Kartili" and in former detox clinic.[1826] Nothing has changed in Gori,

1826 Public Defender mentioned these facilities in his 2014 report, p. 811

in Verkhvevi IDPs' settlement. IDPs don't have financial means to rehabilitate the facility. It is advisable to examine the settlement to see whether it could be at all rehabilitated.

According to monitoring, in some of IDPs collection centers, such as **Berbuki, Skra, Khurvaleti, and Sakasheti**, the main problem is lack of drinking and irrigation water, roads, bad sewage, cottages settlements which were built in swampy places and create problems for inhabitants.

Grave situation is in Samegrelo-Zemo Svaneti region because facilities are extremely inadequate. Especially deplorable is the situation in some former accommodation centers – in Zugdidi, in village Tsaisi, "Kurortis Samretskhao", in village Ingiri "Meurneobis sastumro", and in "Shekeo" building.

This year monitoring was conducted in East Georgia **(Kakheti)** at former IDPs' compact settlement facilities.[1827]

Despite some positive steps, the living conditions are still very severe for most of the IDPs in **Kakheti region**, specifically, in **former hotel "Kizikhi" in Tsnori**. The water is leaking from the roof when it rains; the basement of the building, bearing partitions, and water supplies system are damaged, and there is no sewage in the building.

Tsnori, hotel "Kizikhi"

Residents of this building addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia on numerous occasions, requesting improvement of their living conditions, but they still have to live in miserable living conditions.

Tsnori, hotel "Kizikhi"

1827 Monitoring was conducted in the following facilities: former technical building in Sagarejo municipality, boarding school in village Zemo Bodbebi, in Tsnori, on Aghmashenebeli street, former bread baking factory and hotel "Kizikhi", in village Khirsa, collective farmers building, former trade union and national guards buildings.

One of the worst buildings is **"Madneuli Saerto Satskrovebeli" (Madneuli hostel) in Bolnisi municipality, in Daba Kazreti.** According to the Ministry, 39 IDPs are registered in that place.[1828]

The monitoring results of 2016 showed that one of the priorities for the Ministry should be resettlement of IDPs from such buildings or rehabilitation of the buildings. Delays in solving problems of collapsing buildings may lead to grave consequences. Health and lives of residents in such buildings are under permanent danger.

INTEGRATION OF RESETTLED IDPs

In 2010-2012, Public Defender thoroughly reviewed IDPs eviction/resettlement process in the Parliamentary Reports. Several statements were made regarding wrong planning and implementation, especially procedural violations during IDPs' eviction from various facilities. Public Defender's Office representatives conducted monitoring of alternative facilities and the monitoring results are reflected in the Annual Parliamentary reports.

One of the serious problems regarding alternative housing was lack of information. Particularly, IDPs who were subject to alternative resettlement didn't have any information about alternative housing. They were advised about alternative housing only on the day of eviction and therefore couldn't make an informed decision. Since IDPs' resettlement in alternative facilities was regarded by the State as durable housing, it is imperative that the State assists IDPs in gaining access to sources of living for their social-economic integration.

Within the framework of the 2015 project,[1829] follow-up monitoring was conducted with a view of double checking living conditions and the situation in collective centers. Also, the monitoring was conducted to find out whether the problems were solved that had been identified during the initial monitoring, to see if Public Defender's recommendations were fulfilled, if there are any positive steps in the regions, or whether new problems surfaced themselves that had not been identified during the initial monitoring. Monitoring was conducted in the following facilities: **Daba Shaumiani in Marneuli municipality, in Bakurtshikhe village of Gurjaani municipality, in village Tsintskharo of Tetritskharo region, in Potskho-Etseri village of Chkorotskhu region.**

Monitoring showed that the situation with accessibility to livelihood and employment options has not improved. The government still doesn't have employment programs for IDPs and local infrastructure doesn't give IDPs the opportunities to satisfy their socio-economic needs. Allowances still remain the main source of income for IDPs resettled in regions.

Pursuant to international standards, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.[1830]

However, allocation of agricultural plots of land still remains a pending problem. During the first monitoring the IDPs living in **Bakurtsikhe** advised about lack of agricultural land plots and a second monitoring confirmed that the problem has not been solved. IDPs further elaborated that they addressed the issue to local municipality, but haven't received any feedback from local authorities even for temporary use of land. 35 IDP families are registered in former technical college dormitory and only 16 IDP families have privatized their living space, as for plots of land, there is no plan to allocate land to private ownership of IDPs.[1831]

1828 Letter # 01-01/07/16328 dated June 11, 2015 from Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia

1829 Project "Enhance the Capacity of the Public Defender of Georgia to Address the Issue of IDPs" is funded by the British Embassy and UNHCR

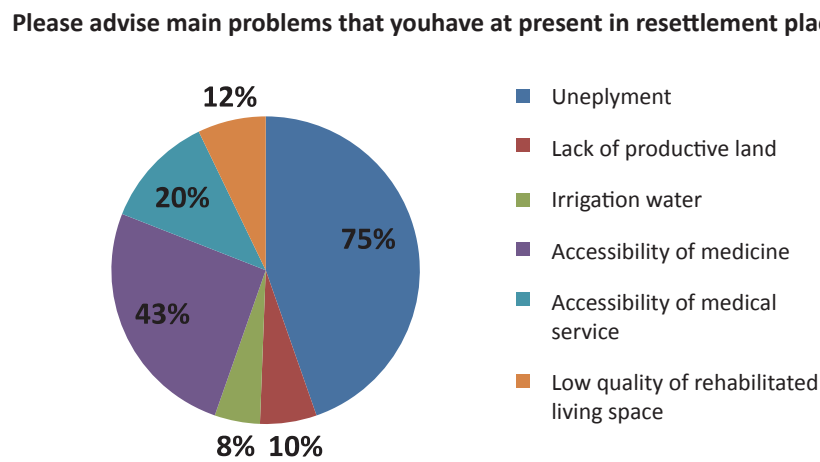
1830 Right to adequate Housing (art11.1): forced evictions, CESCR General Comment 7, 05.20.1997, para. 17

1831 Letter # 01-01/07/10355 dated April 15, 2015 from the Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

It is commendable that in **Daba Shaumiani, in former military facility** where 186 IDP families are registered, agricultural land has been transferred to the ownership of IDPs. However, ownership title to living spaces has not yet been given to IDPs.[1832]

According to international standards increasing access to land by landless or impoverished segments of the society should constitute a central policy goal for the government. Clear governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.[1833]

During the monitoring process we also attempted to identify general problems that IDPs are experiencing.



It is clear that unemployment is still a burning issue. In accordance with IDPs long-term framework principles, during the eviction process government should select such places for IDP where there are sufficient employment options which will help IDPs satisfy their socio-economic needs.[1834]

The monitoring in **village Tsintskharo** indicated that rehabilitation of transferred living spaces is a pending problem.

In all of its annual reports, the Public Defender emphasizes the problems that IDPs have in **Potskho-Etseri**. Regrettably, the problems for IDPs settled in this facility are still unresolved. There is no pharmacy, and IDPs need to go to Daba Jvari to buy medicine; besides there is no first aid medical center and IDPs have to go to Zugdidi for medical assistance, which causes additional charges. In view of the above, we came to the conclusion that despite some positive steps to solve IDPs' long-term issues, there are still unsolved problems which require great efforts and active work from the relevant agencies of the State.

ONE-TIME MONETARY ASSISTANCE

Pursuant to statute of the Study Commission on the Issues of IDPs,[1835] the commission[1836] has the right to study IDPs' different needs to adopt appropriate decisions. According to the Action Plan[1837] of the government

1832 Letter # 01-01/07/10356 dated April 15, 2015 from the Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia.

1833 The Right to adequate housing (art.11(1)):13/12/91, CESCR General Comment 4, para.8(e).

1834 Inter-agency standing committee's scheme regarding IDPs durable problems solution;

1835 Order # 320 dated August 9th of 2013 issued by the Ministry of internally displaced persons from the occupied territories, accommodation and IDPs of Georgia regarding adoption of "The procedure for provision of durable accommodation for IDPs, criteria and statute of the Study Commission on the Issues of IDPs". Appendix #7

1836 Representatives of Public Defender Office do not attend the meeting of the Study Commission on the Issues of IDPs when it reviews one-time monetary support.

1837 Approved by Georgian government's decree dated February 4th, of 2015. Decree # 127, article 2.2.4.

strategy in 2015-2016 regarding IDPs/IDPs, in case of urgent need, the state provides one-time pecuniary assistance to IDPs according to developed criterion.

According to the information received from the Ministry,[1838] in 2013 one-time monetary support was given to 2,193 IDPs, in 2014 – to 4,791 IDPs, and in 2015 – to 2,563 IDPs. In 2013 for monetary support program GEL 264, 682 was spent, in 2014 was spent GEL 850,160 and in 2015 – GEL 750,185. According to the same information, the minimum amount of such monetary support is GEL 100 and the maximum amount is not defined.

Submitted statistics report shows that IDP families actively utilize one-time financial support. It should be noted that there are no developed criteria, according to which a decision could be made regarding the need for immediate assistance. At the same time, maximum amount of such financial support is not specified, which allows the Commission to specify such amount at its own discretion.

CONCLUSION

Having analyzed in general the legal status of IDPs we can state that their main problems remain unchangeable for years. Despite the fact that in 2015 wide-scale resettlement was underway across the country, our office's activities have identified the main directions where the work should be continued to solve most of the IDPs problems.

In addition to durable housing, it is essential to integrate IDPs in the resettlement places. It is necessary for the government to tailor all activities to the needs of IDPs in order to solve their long-lasting problems, facilitate access to sources of living and implement all measures envisaged by the assistance strategy.

In 2016 one of the priorities for the Ministry should be resettlement of IDPs from collapsing compact collective centers that pose a threat to health and lives of its residents or rehabilitation of such facilities. Delays in solving problems of collapsing buildings may lead to grave \ consequences. Health and lives of residents in such buildings are under permanent danger.

RECOMMENDATIONS

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Should IDPs' requests for accommodation be turned down, it is necessary to record factual and legal grounds of the denial in the protocol / minutes of Commission meeting.
- To draft a form that would reflect the absence of IDP family at the registered address and would confirm the visit of Ministry's representatives and will also show that IDP family didn't live at the given address.
- To establish the procedures by legal act that would determine factual address at which IDP family resides, and develop appropriate criteria for that purpose.

1838 Letter # 01-02/08/31139 10.12.2015

- To develop criteria for rendering one-time financial assistance in order to target beneficiaries of such financial assistance.
- In 2016, within the framework of IDPs' durable housing, to put priority on former IDPs compact settlement facilities that are in deplorable condition and pose a threat to health and lives of its inhabitants.
- To resettle IDPs to such places where they would have access to sources of living and better employment options.
- To transfer agricultural land to IDPs in regions and implement IDPs employment programs in new resettlement places
- To take specific measures in order to raise informational awareness regarding scheduled privatization and rehabilitation works as well as raise IDPs' awareness of their rights.
- Prior to starting privatization process in former compact accommodation facilities, it is imperative to conduct rehabilitation works and transfer to IDPs' ownership only if a building has been rehabilitated.

THE HUMAN RIGHTS SITUATION OF THE CONFLICT-AFFECTED POPULATION

INTRODUCTION

Seven years have passed since the end of the August 2008 war. But while the fighting has stopped, Georgian, Ossetian and Abkhazian citizens residing in conflict zones are still suffering from the devastating effects of the war. This is reflected in the deprivation of life, destruction of livelihoods and the increasing frequency of illegal detentions along the administrative boundary lines. Thousands of people remain unable to return to their homes, hundreds of families are deprived of the right to access their property and family and community ties have been disrupted by wire fences.

During the 2015 reporting period, the Public Defender and his staff carried out intensive monitoring of the human rights protection of victims of the conflict residing near the administrative boundary lines, as well as in communities located in the occupied territories. A number of meetings were held with members of the local population, civil society activists and representatives of local and central government bodies. This report was prepared based on meetings with those individuals and groups.

The documented human rights violations listed in this chapter are proof that there are no alternatives to a policy of peace and conflict transformation. Adequate protection of human rights is the best available mechanism for preventing further conflict and violence. Ignorance of human rights issues increases the prevalence of attitudes that result in escalated tension and destabilization.

The Public Defender's Office regrets that international human rights organizations still have no access to the conflict regions. The international community must intensify its efforts, including its attempts to influence the Russian authorities, to ensure the presence of international representatives in the conflict areas. For their part, the Georgian authorities should ensure maximum flexibility to develop human rights monitoring and protection mechanisms in the conflict regions.

The Public Defender and his staff actively participate in the confidence building process and in educational projects, along with the involvement of Georgian, Abkhazian and Ossetian human rights advocacy organizations and civil society representatives. We also welcome other formats that aim to bring closer the communities currently divided or separated due to the conflict.

THE HUMAN RIGHTS SITUATION OF THE POPULATION RESIDING NEAR THE ADMINISTRATIVE BOUNDARY LINES

Socio-Economic Conditions

Based on the Constitution of Georgia and relevant International Treaties, the Georgian Government has undertaken the obligation to protect the social and economic rights of persons who lack adequate resources

and to take respective efforts for the practical realization of those rights. Fulfilling this obligation is crucial for the realization of social justice in the country. Social assistance to vulnerable groups should be viewed as protecting the basic rights of citizens and not an act of discretion or "charity" by the State.

Significant projects have been implemented in villages near the administrative boundary line in order to ensure the protection of these rights. Infrastructure works for gasification were implemented in 50 villages from 2013–2015. Irrigation water wells and drinking water reservoirs were installed; 29 public schools were rehabilitated and a new school was built; more than 700 students received funding for higher education for the 2015-2016 academic year; and the Ministry of Education provided 345 netbooks to first year students in 30 different schools and 34 notebook computers to principles of the first grades.[1839]

Two-hundred GEL aid was provided to each family in the villages near the administrative boundary lines for the winter season and 23 ambulances were equipped with additional medical personnel. An Emergency Center is being built in the village of Tkviavi in Gori Municipality.[1840] A new 220 bed multi-profile university hospital is being built in the village of Rukhi in Zugdidi Municipality.

Regardless of these crucial social projects, the socio-economic conditions of citizens affected by the conflict, especially those residing near the administrative boundary lines in Shida Kartli and Samegrelo, are still grave. Local residents complain about the lack of irrigation and drinking water, kindergartens, roads, schools and hospitals. However, the key problem facing local residents remains the difficulty of finding sources of income; due to the wire fences and lack of irrigation water, the population can no longer pursue traditional agricultural activities.

Only a few NGOs are currently implementing projects focused on creating sources of livelihood in the conflict-affected communities. This is insufficient as the situation requires more attention from the Government. There are no formal barriers for the conflict-affected population to participate in state-funded entrepreneurship programs implemented by the Ministry of Economy and the Ministry of Agriculture. However, people living in villages near the administrative boundary lines cannot partake in these programs for two main reasons: these programs are centralized and there is no information available at the local level; and for projects in which co-funding is required, local farmers and entrepreneurs do not have adequate resources and have no access to bank loans due to the fact that they live in high-risk areas. In addition, a large majority of the population has not registered their agricultural lands as their legal property, which is an additional barrier for carrying out entrepreneurial activities. It is thus necessary to create programs specifically tailored to the needs and capabilities of the conflict-affected communities.

Also worth mentioning is that the draft "State Strategy of Socio-economic Development of Conflict affected Regions", prepared a year ago by the Office of the State Minister of Georgia for Reconciliation and Civil Equality, has not yet been approved by the Government. The State Minister's Office has yet to develop an implementation action plan for this strategy. Delaying the implementation process hampers mobilization of state policy and resources.

Rehabilitation works and the issuance of compensation for homes damaged during the 2008 war were carried out on an intensive basis immediately following the war. However, there is still a sector of the population in Shida Kartli that by 2015 has still not received aid from the state. The village of Zardiaantkari in Gori Municipality warrants special mention. This village was occupied until 2012. Despite the Georgian Government regaining control over the territory, residents are still unable to return to their homes and are instead living in shelters in various regions, with relatives or in Gori kindergarten #1. Their living conditions are grave. Certain works

1839 The State Minister of Georgia for Reconciliation and Civil Equality Letter dated February 1, 2016 # 198 to the Chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia.

1840 Emergency Hospital is being built in village Tkviavi, "Interpressnews", 08.02.2016, information available on the webpage: <http://www.interpressnews.ge/ge/sazogadoeba/365288-sofel-tyviavshi-gadaudebeli-dakhmarebis-samedicino-klinika-shendeba.html?ar=A> [last seen 26.02.2016].

were launched in 2013–2015, including gasification and drinking and irrigation water recovery, among others. However, the residents refuse to return until their residences are rehabilitated similar to those of other victims.

The Public Defender applied to the Co-Chairs of the Government Commission for Response to the Needs of the Affected Population Living in the Villages of the Administrative Boundary Lines ("State Commission") on July 17, 2015 with a specific proposal on the above-mentioned issue. The proposal emphasizes that the village remains one of those most damaged by the conflict in Shida Kartli and if problems are not addressed in a timely manner, its economic viability will be threatened. Violations of housing and property rights were revealed in the course of the evaluation of the Public Defender.

The International Covenant on Economic, Social and Cultural Rights, in particular Article 11, protects the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The Committee on Social, Economic and Cultural Rights defines the Article's substance. Based on this definition, the "right of everyone to an adequate standard of living" should not be understood in the narrow sense that applies only to providing a shelter – which could mean no more than a roof. In reality, the definition refers to the right to live in safe, peaceful and respectful conditions. In order for housing to be considered adequate, it must meet the following requirements: respective infrastructure; legal guarantees on the property; suitability for living; and a proper location from where to work and receive basic services.[1841]

It's important to make clear that a lack of resources does not exempt the State from its obligations under the International Covenant on "Economic, Social and Cultural Rights", including the right to adequate housing and fulfilment of the above minimum conditions. According to the Covenant, the most vulnerable groups in society should be provided with adequate support even in cases of extreme shortage of state resources.

The issue described above is still unresolved, and the Public Defender has not received a comprehensive explanation from the Co-chairs of the Commission in response to the submitted proposal.

Citizen T.T.'s Case

Citizen T.T., who cannot return to the village of Zardiaantkari, applied to the Public Defender. The village was occupied until 2012, and since the Georgian Government renewed control over the territory the applicant's house has been rented by the Ministry of Interior. According to citizen T.T., his house was heavily damaged during the war and during the time it has been rented. Moreover, it is located adjacent to the post of the Ministry of Interior Special and Emergency Measures Center. This gives the impression that the house is part of the post's infrastructure. It also increases the security risks for the applicant and his family members for returning to the house. Regardless of all the above mentioned, citizen T.T. has not received compensation from the State.

The Public Defender studied the case and addressed the Ministry of Interior with a recommendation outlining the number of international agreements that guarantee the right to adequate housing. The Public Defender believes that in this particular case the right to adequate housing has been violated. In order to restore the violated rights, the Public Defender recommended that the Ministry ensure alternative living space or compensation to citizen T.T. until a police post is located next to his house.

In response to the recommendation, the Public Defender was informed by the Ministry of Interior that damage to the house was not caused by the Ministry and that the economic and infrastructural issues raised in the recommendation are beyond the Ministry's competence.[1842] Accordingly, the Ministry of Internal Affairs did not follow the Public Defender's recommendation.

1841 General Comments of the Committee of UN on Economic, Social and Cultural Rights # 4, par 8.
1842 Letter of the Ministry of Interior to the Public Defender of Georgia. Letter # 314942. February 2, 2016.

Both in 2014 and 2015 members of the local population raised the issue of clean drinking water. According to these citizens the local drinking water, which is supplied by wells, has high mineralization and lacks filtering. This has resulted in an increased frequency of kidney disease among the population.[1843] Again in 2015, the Public Defender issued recommendations to the Government Commission for Response to the Needs of the Affected Population Living in the Villages on the administrative boundary line: conduct regular maintenance of drinking water systems and entrust these measures to the responsible authorities; ensure effective decontamination of water; and keep the population informed regarding water quality.

The right to clean drinking water is one of the most important components of the right to health. It is also directly linked to adequate housing standards. In accordance with international norms, drinking water should be safe, acceptable, sufficient and physically accessible.[1844] The state is obliged to provide safe drinking water to the population and carry out a number of necessary activities in this regard. Those include the periodic safety inspection of water reservoirs and the timely identification and elimination of problems and potential threats.[1845]

Based on information provided by the staff of the State Minister on Reconciliation and Civil Equality, the chlorination of wells was completed in late 2015 in nine villages surrounding the administrative boundary line (Koshka, Zardiaantkari, Gugutiantkari, Didi Khurvaleti, Kveshi, Ditsi, Knolevi, Atotsi and Tsagvli). Chlorination will improve water quality.[1846]

The fact that since 2015 the population has been supplied with natural gas should be evaluated positively. However, there are problems with the billing process. According to local residents, meter indicators are taken on a monthly basis but households do not receive bills for the consumed gas. Local citizens are worried that their debt will accumulate and result in seizure of the gas supply. Problems with payments are also related to the lack of payment machines in the village. This necessitates traveling to the administrative center to pay the bill.

The Situation in the village of Tsaghvli in Khashuri Municipality

Residents of the village of Tsaghvli raised the issue of an existing alternative kindergarten during a meeting with representatives of the Public Defender's Office. Based on their statement, the local kindergarten does not meet the needs of village residents. Specifically, unlike in standard kindergartens, children spend four hours each day in the alternative kindergarten. This creates an inconvenience for parents, and due to that, many do not bring children to the kindergarten.

It is important for the community to have a kindergarten that can provide full preschool education to its students. According to representatives of the school, the alternative kindergarten currently has nine children; that number will increase to 40 if it reopens as an ordinary kindergarten. It is also worth mentioning that there is no other kindergarten in Tsaghvli, an area that comprises eight villages. The Public Defender's Office sent a letter explaining the issue to the Khashuri Municipal Governor. In response, the Office received notification that the Municipality would not be able to open a fully-functioning kindergarten in the village.[1847]

Opening such a kindergarten in Tsaghvli is crucially important for preschool children who need to receive education. According to local residents, inadequate conditions in the village have resulted in a significant increase in emigration.

1843 Laboratory tests conducted by the National Food Agency in 2014 prove that drinking water is polluted in Shida Kartli region, including the dividing line villages and settlements, Public Defender's Annual Report of 2014, p. 820.
1844 UN Commiittee on Economic, Social and Cultural Rights. General Committee # 15 (2002) par. 3.
1845 Council of Europe Committee of Ministers' Recommendation 14, (2001), principle 8-10.
1846 Letter # 198 of the the State Minister on Reconciliation and Civil Equality dated February 1, 2016, to the Human Rights and Civil Integration Committee Chair of the Parliament of Georgia.
1847 Letter N1587 of the Public Defender's Office, dated October 13, 2015, to the Governor of Khashuri Municipality.

Conditions in the villages of Zemo Nikozi and Zemo Khviti in Gori Municipality and the village of Knolevi in Kareli Municipality

In July 2015 a new law was adopted "on the Development of Mountainous Regions." The law aims to ensure social and economic support for people residing in Georgia's mountainous regions, including a number of benefits and aids. The status of "high mountainous region", which qualifies communities to receive this aid, will be granted to settlements located at altitudes of 1500 meters or higher. However, the Government of Georgia, taking into consideration other circumstances, is also entitled to expand this status to settlements located at altitudes higher than 800 meters.

The list of high mountainous regions was approved at the end of 2015.[1848] The list includes several settlements higher than 800 meters in Shida Kartli near the administrative boundary line. However, the villages of Zemo Nikozi and Zemo Khviti in Gori Municipality, as well as the village of Knolevi in Kareli Municipality, do not appear on the list. The respective populations of these villages have requested revisions to the list to have them classified as high mountainous regions.[1849] Citizens point to the fact that the situations in these villages are grave and emigration is high, so it is vital that they receive special status as well.

According to the law, the following bodies are entitled to submit nominations to the list: The Ministry of Regional Development and Infrastructure, the respective municipality, the relevant state governor and the Government of the Autonomous Republic of Adjara. The deadline for submitting nominations was set at April 1, 2016 during the December 2015 session of the Mountain Development National Council.[1850] The Mountain Development National Council will discuss submitted nominations at the April session and if it deems it appropriate will address the Government of Georgia with a relevant proposal.

According to information available to the Public Defender, the Kareli district administration has already applied to the Council regarding the village of Knolevi. The Gori Municipality administration rejected similar requests submitted for the following villages: Zemo Nikozi, Nikozi and Zemo Khviti, citing the position that these villages do not comply with the criteria envisaged in the law and by the protocol of the Council session.[1851]

Mentioned Law and other problematic issues related with this Law are outlined extensively in the Chapter on Social Rights.[1852]

HOUSEHOLD WASTE PROBLEM IN VILLAGES NEAR THE ADMINISTRATIVE BOUNDARY LINE

The Public Defender's Office conducted monitoring and revealed that household waste is not being removed from the villages near the administrative boundary line in Shida Kartli. This is a serious problem for the local population, as garbage accumulates and leads to insanitary conditions. The Public Defender learned that this problem is prevalent in the following villages: Tsitelubani, Kordi, and the village of Knolevi in Kareli Municipality. Garbage bins are available in only a few villages.

The Public Defender's Office notified the Gori municipal governor of this problem in 2014 (letter # 01-6/14561 22.10.2014). The governor stated in his response that the purchase of garbage bins was planned

1848 Resolution №671 of the Government of Georgia, dated December 30, 2015 on the approval of the list of high mountainous regions.

1849 Residents of Nikozi request to be included in the list of regions with high mountainous status, „Trialeti", 17.02.2016, information available at the web page: <http://trialeti.ge/?menuid=2&lang=1&id=4264> [last seen 09.03.16]; Village that did not appear in the list of village with high mountainous region status, "Ibernews", 7.02.2016, information available at the web page: <http://iberianewss.blogspot.com/2016/02/blog-post_7.html> [last seen 09.03.16].

1850 Protocol # 2 of the Mountain Development National Council session. December 14, 2015.

1851 Article 2(1) of the Law on High Mountainous Region Development; Mountain development National Council, Protocol # 2, Annex 1, December 14, 2015.

1852 See subchapter in the below document "Benefits foreseen in the Law on High Mountainous Region development".

within the 2015 budget. This would ensure the removal of household waste in all villages in the municipality (letter N530/15 12.02.2015). Indeed, 21 garbage bins were placed in Tsitelubani. Garbage bins were also placed in the village of Kveshi in Gori Municipality within the framework of the 2015 village support program. However, the problem remains in a number of villages along the administrative boundary line in Shida Kartli.

Security Problems

Military exercises in the occupied territories and illegal detentions near the administrative boundary lines continue to be serious problems affecting the security of local residents.[1853] During the 2015 reporting period, members of the population were extremely concerned about the increasing number of military exercises and the constant shooting near the administrative boundary line, in particular coming from the direction of so called South Ossetia (hereinafter referred to as "South Ossetia"). These citizens live in constant fear and regularly hear explosions and gunfire, thus reliving the trauma of the 2008 war. This is confirmed by the head of the EU Monitoring Mission, who said the following:

> "For the past years [...] mission observed increased number of intensified military trainings [...] not only in terms of quantity, but also in terms of used modern technology and armaments. Some of the military bases in Abkhazia and South Ossetia are located in the immediate surrounding area of the administrative boundary line and the local population continuously hears the noise."[1854]

As for detentions, official statistics state that 163 persons were detained in 2015 at the administrative boundary line with South Ossetia (this figure was 142 in 2014), among them 18 women and seven juveniles. On the Abkhazian boundary, there were 341 detentions (in 2014, the figure was 380). Among the detainees were 39 women and 15 juveniles.[1855] However, the actual number of detention cases on the Abkhazian administrative boundary line is much higher due to the population of Gali region. The Georgian Security Service is unable to register cases in this region. Based on Abkhazian and Russian sources, 2,400 persons were detained in 2015.[1856]

Local residents state that cases often occur where Russian border guards cross the boundary and detain people on their own property, on the village roads and in cemeteries (Shida Kartli villages: Flavi, Bershueti, Zemo Sobisi, Kirbali). Detentions tend to increase during religious holidays, when members of the local population traditionally visit churches and cemeteries located at the village edges. For example, on January 4, 2016, Russian border guards arrested two young men who, according to their families, went to church to light candles. This happened in the village of Bershueti in Gori municipality. It is worth mentioning that the church is located on Georgian-controlled territory and therefore the young people could not have crossed the administrative boundary line.

Detainees are released upon the payment of fines. The amount collected by so South Ossetia is 2,000 Rubles (roughly 70 GEL), in Abkhazia it varies from 1000-30000 Rubles (25–500 GEL).[1857] However, there was no receipt of payment or official decision of the *de facto* court in either of the cases discussed with representatives of the Public Defender's Office.

Residents of Shida Kartli have asked for help, as many detainees are socially vulnerable and income constraints make it extremely difficult for their families to pay the fines. This particularly applies to cases when two members

1853 Public Defender's Office representatives met and received information from the residents of the following villages: Flavi, Kveshi, Kirbali, Akhalsopeli, Tsietlubani, Khurvaleti, Zemosobisi, Bershueti, Sakorintlo, Dvani, Mejvriskhevi, Jariasheni, Ditsi, Kvemo Artsevi.

1854 Monitoring Mission in Georgia regarding the existing situation "Radio Freedom", 17.02.2016, information available on web page: <http://www.radiotavisupleba.ge/content/eumm-state-of-play-and-future-perspectives/27558020.html> last seen 26.02.2016].

1855 Letter of Georgian Security Service to Public Defender's Office. Letter # 383603. February 16, 2016.

1856 Abkhaz-Georgian border crossing points should be reduced, Information Agency "Sputnik Abkhazia" 17.03.2016. information available at Russian webpage: <http://sputnik-abkhazia.ru/Abkhazia/20160317/1017555465.html#ixzz439N4TnYk> [last seen 18.03.2016].

1857 Parliamentary Report 2014 of the Public Defender of Georgia. Pg.839.

of the same family are detained. During the Public Defender's monitoring period there were several cases when single financial aid payments were allocated by the local municipality to socially vulnerable detainees. [1858]

Citizen I.T. Case

On July 23, 2014, citizen I.T. was detained in his own garden in a village near the administrative boundary line in Kareli region. He was detained for illegally crossing the border and was sentenced to one year's imprisonment. He was released in May 2015. According to his statement, he was the victim of inhumane treatment for up to one year. He was subjected to torture by the prison guards. Specifically, he was beaten; nails were removed; his fingers were crushed between a wall and a closed door; his teeth were broken; he was accused of espionage; and he was threatened with 10–25 years of imprisonment. Moreover, in conversation with the Public Defender's representative the prisoner described inadequate prison conditions and mentioned that he was fed with food that other prisoners in the same cell received from relatives. He did not receive any care while he was ill. The Public Defender's Office referred the citizen to the Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT), and psychological assistance was subsequently provided to him.

INCIDENT IN THE GORI MUNICIPALITY VILLAGE OF KHURVALETI

On July 11, 2015, Russian border guards moved the administrative boundary line once again to make it closer to the central highway that connects east and west Georgia. The move has worsened the already fragile security situation and aggravated the socio–economic problems of Georgian citizens. Once this information became public, a demonstration was organized by journalists and NGO representatives that inspired a strong reaction from the local population. When speaking with representatives of the Public Defender, members of the local population mentioned that after similar demonstrations the security situation became even worse. It has become dangerous not only for residents to come near the administrative boundary line, but also to the surrounding agricultural land plots. Similar incidents illustrate the intolerability of everyday life for the population near the administrative boundary line, both in terms of security and poor social conditions. According to the evaluation of the Head of the EU Monitoring Mission, similar incidents may create "new hotspots."[1859]

Meetings continue to be regularly held in Ergneti within the framework of the Incidents Prevention and Response Mechanism (IPRM). Local security issues are being discussed with the participation of all relevant parties. This forum was created within the framework of the Geneva international discussion format and provides a space for negotiation on security issues for the population affected by the conflict and living near the administrative boundary line. However, there have been efforts to politicize the IPRM. This ultimately hampers the resolution of humanitarian issues such as the drinking and irrigation water supply, the release of prisoners and freedom of movement, among other things.

Programs Implemented in Villages Near the Administrative Boundary Line and the Report on Implementation of the Public Defender's Recommendations

The Public Defender's 2014 Report identified a number of problems. Among those identified, the Public Defender emphasized the problem of registration and recognition of property rights on agricultural lands

1858 Decree # 5 of Gori Municipality Administration, January 5, 2015. Decree on Approving the Rules of Allocation of Social Aid from the Local Budget.

1859 Monitoring Mission in Georgia on existing situation "radio Freedom", 17.02.2016, information available on the web page: <http://www.radiotavisupleba.ge/content/eumm-state-of-play-and-future-perspectives/27558020.html > [last seen 26.02.2016].

in villages near the administrative boundary lines. Due to unorganized household books, the lack of proper documents and the prevalence of informal agreements, it remains difficult to register and recognize lands in the villages surrounding the administrative boundary lines. Even those citizens who have relevant documents often cannot afford to pay the amounts due for legalization due to financial constraints. This amount is at least 150 GEL. Not only are the lands not registered, but the houses and other buildings on these lands are also unregistered.

The Public Defender addressed the Ministry of Justice to speed up the land and property registration process on the administrative boundary lines. This should enable members of the population affected by the installation of wire fences to use legal mechanisms to protect their rights.

Based on information provided by the National Agency of Public Registry (the Public Registry), the Public Registry has been inquiring into the situation of lands near the administrative boundary lines since 2013. The Public Registry conducted a study of a 600-900 meter wide section of land along the administrative boundary line. Satellite photos and documents protected in archives have been studied, the materials and documents protected in the Public Registry were digitalized, and a pilot project was implemented. Within the framework of this project, sixty-two land plots were studied at one part of Ditsi City Council. The study showed that in more than half of the cases the documents were in order (36 plots), the rest (26 plots) did not have any legal documentation that could prove property rights.

These documents as well as those documents protected in the Public Registry were digitalized, and the Public Registry elaborated recommendations within the framework of this project and based on the revealed problems. These recommendations envisaged exempting residents of these villages from land registration fees. The project also identified the need to legalize land ownership certification documents that were issued in violation of legislation.[1860]

Despite the implementation of important works, according to the Public Defender's information the process has not moved forward since implementation of the pilot project. This has been confirmed by the non-governmental organizations working in the field and by members of the local population. According to the Public Registry, the process is ongoing and cannot be sped up.[1861]

However, an important development was the approval of a package of legislative amendments aimed at simplifying the registration process in the country to make it more accessible to citizens. According to the Minister, the initiative, among other things, includes the delivery of certain services free of charge.[1862]

In addition, the Public Defender's 2014 Report outlined a number of important initiatives by the Government. Implementation of these initiatives was delayed and prevented realization of the rights of the population. For example, the decision to finance university studies for the 2014-2015 school year for students affected by the conflict was made in October 2014; however, funds were only transferred at the end of the academic year. Due to this, several students faced the risk of suspension from student status. The Public Defender addressed the Minister of Education and Science requesting that it ensure that universities be informed on the funding of students residing in the occupied territories and surrounding areas. This funding was provided from the state social aid program, and would prevent suspension of student status for these persons. The Public Defender recommended analyzing, revealing and eliminating in a timely manner the bureaucratic barriers. However, the same problem occurred in academic years of 2015–2016, as the decision on financing was adopted by the State Commission in November 2015 and by January 2016 the amount was still not allocated.

1860 Ministry of Justice of Georgia, National Public Registry Agency, Letter of May 27, 2015. N128615.

1861 Ibid.

1862 See the statement of the Ministry of Justice regarding the initiative: <https://www.youtube.com/watch?v=nqkrgCLkMVw>; barriers for registering lands in private ownership shall be abolished, Ministry of Justice, 15.03.2016. Information available at the webpage: <http://justice.gov.ge/News/Detail?newsId=5133 > [last seen 26.02.2016].

Launching the construction of a public school in the village of Atotsi in Kareli Municipality should also be evaluated positively. The Public Defender of Georgia, in his 2014 Annual Report, addressed the grave situation of the school in Atotsi. In particular, the school building in which 51 students studied was in a dilapidated condition and the access road was fully amortized. The Public Defender addressed the Temporary Commission with the proposal to build a school in Atotsi and described the other needs of the population affected by the conflict in surrounding villages.[1863] Demolition of the old building and new construction works were launched in October 2015. School students currently attend the school near their village in the village of Bredzi. They are provided with transportation. Teachers made clear that the education process had not been disrupted.

THE HUMAN RIGHTS SITUATION OF THE POPULATION RESIDING ON THE OCCUPIED TERRITORIES

Taking into consideration international and European human rights standards, it is the obligation of the governments of Georgia, the Russian Federation and the *de facto* governments to protect human rights on the territories of South Ossetia and Abkhazia.

The Russian Federation, which maintains effective control and occupation of Abkhazia and South Ossetia, is immediately responsible for human rights violations committed on those territories. Georgia, as the state of the territory on which the human rights violations take place, despite the fact that it cannot exercise effective control still carries the positive obligation to restore its jurisdiction and to take all necessary measures, including legal and diplomatic measures, to effectively address human rights violations in these regions.[1864]

Despite the fact that the *de facto* governments are not subject to international law, they have the obligation to respect internationally-recognized human rights and freedoms. This commitment derives from two main sources: a) significant part of the Universal Declaration of Human Rights is recognized as customary law, which means universal recognition of certain norms; and b) the *de facto* governments, as non-state entities controlling territory and populations, are obliged to respect the rights of the populations under their control.

There are continuous instances of violation of right to life, health care, education and movement in Abkhazia and South Ossetia, as well as regular ethnic decimation, illegal detention and other problems. The state of civil and social rights was grave throughout the reporting period.

Right to Education

The right to education is guaranteed by international human rights law. It is enshrined in the United Nations and the Council of Europe's respective binding conventions. According to international law, education shall be physically and economically accessible to everyone without discrimination and shall be provided in acceptable conditions. This means that the form and substance of education, including the curriculum and teaching methods, shall be appropriate, culturally relevant and of good quality for students and parents.[1865] In addition, according to the Convention on the Rights of the Child, education should aim at promoting respect for the culture, language and values of the child and his/her parents.[1866]

Problems regarding the right to education in one's native language as well as access to it is particularly acute in the Gali district, where access to education in the Georgian language became even sparser in the academic year

1863 Proposal of the Public Defender of Georgia of July 17, 2015 (N 01-6/5821) "Need to carry out effective measures for realization of social rights of the population affected by the conflict."
1864 European Court of Human Rights. Decision as of October 19, 2012 (*Catan and Others v. Moldova and Russia*) par.109, 145.
1865 General Comments of UN Committee on Economic, Social and Cultural Rights N13, par.6.
1866 UN Convention on the Rights of a Child, Art. 28 and Art 29(1)(c).

of 2015-2016. Until 2015, among the 31 schools[1867] in Gali district, 11 schools in the so-called "lower zone" maintained instruction in Georgian language. However, based on the decision of the *de facto* government, the first to fourth classes of these schools accepted instruction in Russian language since the 2015–2016 academic year. Teaching in Georgian language was reduced for the rest of the classes. In addition, each following first class will study in Russian language.[1868] Accordingly, teaching in Georgian language will be terminated in Gali district schools in the near future, finalizing the process that was launched in 1995, which aimed to substitute education in Georgian language with that in Russian language in Gali district.[1869]

Schools belonging to Ochamchire and Tkvarcheli regions had to change their language of instruction to Russian over 1995-2015 (11 schools in total). Schools in the Gali "upper zone" (nine schools in total) introduced teaching in Russian language in a gradual manner, following the "first class" principle. This meant that each new class would start the education process in Russian language. Accordingly, education has been administered in Russian language since 2005, except for in the "lower zone" of Gali region. In addition, the number of hours dedicated to teaching Georgian language and literature has been gradually reduced.[1870]

This policy has been protested several times by school administrators as well as by parents. They addressed the *de facto* government but with no result. According to the Public Defender, several families had to leave the territory and move their children onto the territory controlled by Georgia in order to enable their children to receive education in Georgian language. In September–December of 2015, the Accreditation Commission of the Ministry of Education and Culture of Abkhazia recognized the education of 54 students received on the occupied territories, based on parents' applications. These were students who wished to continue their studies beyond Enguri.[1871] In the documents submitted to the Public Defender, several parents stated openly that the change of school was motivated by the change to Russian language study.

It must be mentioned that other ethnic minorities are able to receive education in Abkhazia in their native languages. Ethnic Georgians cannot exercise the same rights or their ability to exercise this right is reduced every year. This must be evaluated as discrimination on an ethnic basis.

Switching to studies in Russian language seriously reduced the quality of education in Gali district as well as in the village of Ochamchire and Tkvarcheli villages in the former Gali district. Students have difficulties learning in Russian language, while teachers have difficulties teaching in it; an absolute majority of these persons are ethnic Georgians and the teachers have received education in Georgian language.

Statistics prove this trend: of the 190 students who registered from national exams from Gali region, only 11 received a state grant for receiving a high score. This is 6% of all students who registered for the exams.[1872] That indicator is 13% for Zugdidi municipality and 16% across the country.[1873]

Crossing the administrative boundary line in order to reach school continues to be a problem for the local population living near the administrative boundary line. The number of children who must cross the administrative boundary line has reduced in comparison to previous years:

1867 Reference is made to prevous boarders of Gali, including 10 schools belonging to de facto government in Tkvarcheli and 1 school belonging to Ochamchire region. Gali region is also divided in "upper" and "lower" zones.

1868 In all schools of Gali region education process is administered following the standards of Ministry of Education of Abkhazia . Information available in Russian language: <http://www.apsnypress.info/news/vo-vsekh-shkolakh-galskogo-rayona-obuchenie-budetvestis-po-standartam-minobrazovaniya-abkhazii/> [last seen 15.01.2016]; Interviews with the contact persons, September – October (2015).

1869 "Living in Limbo", Human Rights Watch, 2011, pg. 48.

1870 See the Public Defender's Special Report of 2015, "Right to Education in Gali Region: 2015–2016 academic years' novelties and consequent problems".

1871 Ministry of Education and Culture of Abkhazia, Gali Resource Center.

1872 Ministry of Education and Culture of Abkhazia Autonomous Republic, Gali Resource Center.

1873 Among 1024 school undergraduates of Zugdidi municipality education resource center, 135 received state grant. This was 13 % of total registered persons. Country wide – among registered 40076 undergraduates, 6742 received the grant. This is 16% of registered undergraduates. Letter of the National Center of Evaluation and Exams. February 4, 2016 MES 3 16 00097362.

- Five students had to cross the line between the Zugdidi Municipality village of Khurcha to the Gali Region village of Nabakevi during the academic year of 2015–2016. Up until 2011, this number was as many as 40.[1874]

- Eleven students crossed the administrative boundary line from the Gali Region village of Saberio to the Tslenjikha Municipality village of Tskhoushi (4-9 grades). The village of Pakhulani – 12 students (9–11 grades) in the 2015-2016 academic year; whereas, in 2014,18 students (9-11 grades) crossed the line to go to Tskhoushi school and 48 students in 2014. Thirteen students crossed the line to go to Pakhulani school in 2013.

- Currently, 15 students travel from village Otobaia in Gali Region to Zugdidi Municipality village Ganmukhuri (7–11 grades). The number of students in 2014 was 18 and in 2013 it was 34.

In addition to this, only those students who are included in a special list used by the Russian border guards are able to cross the administrative boundary line. First year students do not appear in this list. At the end of October, Russian border guards requested new lists of students. Students were not allowed to cross the line during four days while the new list was being compiled. Three students were unable to be included in the list for the academic year of 2015–2016 and thus were not able to start their studies. [1875]

Persons who are unable to cross the administrative boundary line in this way sometimes attempt to do it by finding bypass roads. There were several cases of juveniles being detained in 2015, including a case in which Russian border guards detained students of the 10th and 11th grades (girls) and intimidated them. They were forced to temporarily miss their studies as a result. [1876]

We believe that similar violations of the right to education is problematic for several reasons. First and foremost, children are deprived of the right to receive education in their native language. The latter is guaranteed in the UN Convention on the Rights of the Child (Article 29c). In addition to that, parents are deprived of the right guaranteed by the European Convention of Human Rights that the state shall respect the right of parents to ensure that education and teaching is in conformity with their own religious and philosophical convictions (Article 2 of Protocol 1).[1877]

Restrictions on movement across the administrative boundary line violates students' right to access to education, as it is not accessible in a physically safe area. In addition, juvenile detention on grounds of "illegal crossing of the border" is a violation of their rights, as the detention of juveniles is permissible only due to extreme necessity[1878] and as a last resort. Russian border guards use these detentions to guarantee payment of the fine.

Also problematic is the situation faced by Gali teachers, who are under a fragile security situation and at high risk of human rights violations. Security problems arise when teachers attempt to teach Georgian language to students in secret. There are frequent inspections at schools and if such facts are revealed, the teachers are subject to dismissal from their places of work.[1879] There were instances of school heads and teachers being dismissed for organizing events in Georgian language, including using Georgian language and symbols.[1880]

The Public Defender was notified that in April 2015 the *de facto* authorities held meetings with the directors of the school. These persons were openly forbidden to enter territory controlled by Georgia.[1881] In addition,

1874 In 2014 – 7 students were crossing the line, in 2013 – 13; in 2012 – 22.
1875 Ministry of Education and Culture of Abkhazia Autonomous Republic, Gali Resource Center.
1876 Information collected by the Public Defender. Village Khurcha of Zugdidi municipality, village Tskoushi of Tsalenjikha municipality. October 2015.
1877 See the International Covenants of UN Economic, Social and Cultural Rights. Article 13. paragraphs 3 and 4.
1878 UN Convention on the Rights of the Child. Art. 37.
1879 „Living in Limbo", „Human Rights Watch", 2011, pg. 49.
1880 "Human Rights Watch" wrote about similar cases in the report of 2011. School director, deputy and two teachers were dismissed from work when they found the memory disc with Georgian students singing Georgian anthem and relevant video. "Living in Limbo", „Human Rights Watch", 2011, pg. 56.
1881 Information submitted to the Ombudsman by the contact person.

constant inspections are organized when teachers are not in place or when they have left Enguri. In the conversation with the Public Defender's representatives, the directors and teachers explained that academic personnel are extremely tense due to these inspections and restrictions, which has negative effects on the education process.[1882]

In October-December 2015, Tkvarcheli and Ochamchire region school teachers and technical staff, as well as the rest of population, were prohibited from crossing the administrative boundary line without holding passes issued in the regional centers. As a result, these people were unable to go beyond Enguri, not only for educational purposes, but also to receive medical services or attend to other personal issues.[1883]

Gali region and its local population can play a special role in the normalization of Georgian-Abkhazian relations, which is of vital importance for regional peace and stability. All parties should work to improve education processes in Gali region without attempting to politicize it, and should attend to it only in the context of human rights.

The situation has not changed in the occupied region of Akhalgori in comparison to last year. Among 11 schools in the region, six are Georgian and five are Russian. Students have no problem receiving education in their native language. The situation has not been fundamentally altered since the occupation in 2008.

Freedom of Expression

Freedom of expression is one of the core values of a democratic society. International human rights law protects the freedoms of expression, assembly and association. According to the assessment of the Special Rapporteur of the UN Human Rights Committee, the right to freedom of association is a driver for realization of other rights, and the state of its protection speaks volumes about the protection of other rights.[1884] Restrictions of this right should be in such a way that does not interfere with its substance.

The situation is not favorable in this regard in Abkhazia and South Ossetia, where there are several active non-governmental organizations. These organizations often suffer from pressure exerted by the *de facto* authorities. This violates their freedom of expression, freedom of assembly and freedom of association. Pro-opposition journalists are also subject to pressure.

The situation is particularly difficult with regard to freedom of expression in South Ossetia. According to the assessment of "Freedom House" in 2015, this region appears in the list of "not free" territories with 6.5 points (1 being the best, 7 being the worst). The 2015 report states that South Ossetia's *de facto* authorities control non-governmental organizations to a large extent.[1885]

Organizations and civil activists who participate in Georgian-Ossetian meetings are subject to pressure. According to the Public Defender, a number of civil society representatives changed their minds and decided not to participate in public events due to interference and warnings from the South Ossetian security service.[1886] This kind of interference in the activities of the civil sector restricts the right to free assembly and prevents the development of civil society in the region.

The situation in this region is even more complicated since 2014, when the *de facto* South Ossetian Parliament, following a Russian Federation practice, adopted the Law on NGOs. This law imposes additional accountability

1882 Interview with the Public Defender of Georgia.
1883 Information submitted to the Ombudsman by the contact person.
1884 Special Rapporteur of the UN on the Rights to Freedom of Peaceful Assembly and Association Maina Kiai, A/HRC/20/27, par. 12.
1885 „South Osetis, Freedom in the World", (2015), "Freedom House", information available on the web page: <https://freedomhouse.org/report/freedom-world/2015/south-ossetia> [last seen 03.02.2015] .
1886 Information provided by the Public Defender's contact person.

on NGOs that receive foreign funding, requiring that they provide state bodies with their financial expenditures.[1887]

Due to this pressure, two of the most respected and experienced non-governmental organizations (the Socio-economic and Cultural Development Agency and the Association of South Ossetian Women for Democracy and Human Rights) decided to liquidate their organizations in October 2015. According to them, this was their reaction and protest to the situation with regard to non-governmental organizations. [1888]

The adoption of legislation restricting the activities of non-governmental organizations in South Ossetia has nearly paralyzed the civil society. The same law that was adopted in Russia was negatively assessed by international governmental and non-governmental organizations.[1889] The Special Rapporteur of the UN Human Rights Committee has defined in its report that organizations must have access to resources and funding, which are important and integral components of freedom of association.[1890] As it is said in South Ossetia, sources of funding for non-governmental organizations are already scarce and this legislation does not correspond to reality.[1891] Accordingly, the situation created in South Ossetia violates the freedom of association.

As a result, South Ossetia is completely closed to international organizations.[1892] *De facto* authorities have been refusing to allow OSCE, Council of Europe, UN High Commissioner for Human Rights and other delegations into the country for years already. Even the small connection that international non-governmental organizations already had with Ossetian organizations ended in 2015. For example, South Ossetian security services sent an official alert to an employee of the British non-governmental organization International Alert regarding the inadmissibility of her actions. According to the South Ossetian security services, the employee intended to implement projects ignoring national legislation and against the national interests of South Ossetia.[1893] The organization issued a statement in response to the accusations which referred to them as groundless.[1894]

An example of pressuring journalists and attempting to discredit them is an article published by law enforcement agencies regarding journalist Irina Kelekhseeva. The article accused "Ekho Kavkaza" and Irina Kelekhseeva of violating ethics and morality. Kelekhseeva considered this article to be defamatory and decided to argue in court to restore her rights. The *de facto* Court did not share her position. [1895]

The situation is relatively better in Abkhazia, where local and international organizations have more space to work. Freedom House assessed Abkhazia as "partly free" with a score of 4.5 points. The report notes that non-governmental organizations have considerable influence on the *de facto* Government.[1896] However, there were examples of interference in the work of journalists. In October 2015, Sukhumi and Gali journalists preparing a report in the Gali region village of Tagiloni were asked by Russian border guards to show special passes for being in a "border zone." The journalists were detained for a couple hours before being released after issuing an "administrative violation" act.[1897]

1887 Draft law "on Non Commercial Organizations" (South Ossetia) 28.04.2014, internet edtion "Kavkazki Uzel" information is available on Russian web page: < https://www.kavkaz-uzel.ru/articles/241580/> [last seen 03.02 .2015].

1888 „Self liquidation, as new form of protest" 05.10.2015, Radio "Echo Kavkaza", information is available on Russian web page: http://www.ekhokavkaza.com/content/article/27289604.html >[last seen 03.02.2015].

1889 Opinion of Human Rights Commissioner on the legislation of the Russian Federation on Council of Europe standards, CommDH(2013)15.

1890 Report of the UN Special Rapporteur on the right to assembly and association, Maina Kiai, A/HRC/20/27, par. 67.

1891 „Are considered as "foreign agent", Radio Caucasus, 22.07.2013, information is available in Russian language at the following webpage: <http://www.ekhokavkaza.com/content/article/25053756.html >[last seen 03.02.2016].

1892 Red Cross International Committee is the only body that continues to work in Tskhinvali.

1893 „What did agent Sotieva committ"?, Murat Gukemukhov, Radio Echo Caucasus 26.06.2015, information is available in Russian language on the following webpage:< http://www.ekhokavkaza.com/content/article/27095841.html> [last seen 03.02.2015].

1894 „Alert International denies accusations by Security Service ", 10.07.2015 information is available in English, webpage: <http://www.international-alert.org/news/international-alert-refutes-allegations-south-ossetian-security-services#sthash.6TztSHqb.dpbs> [last seen 22.03.2016].

1895 Tskhinvali Court did not grant the journalist's complain against Ministry of Interior", Internet edition "Kavkazski Uzel", 23.01.2015, information available at Russian webpage:< http://www.kavkaz-uzel.ru/articles/256091/> [03.02.2015].

1896 "Abkhazia" Freedom in the World" (2015), "Freedom House", information available at the webpage: <https://freedomhouse.org/report/freedom-world/2015/abkhazia >[last seen03.02.2015].

1897 Place, where you cannot relax, October 30, 2015. Information is available in Russian language at the following webpage: <http://www.sukhum-moscow.ru/index.php/kontekst/item/2554-intsident-na-gruzino-abkhazskoj-granitse> [03.02.2015].

In accordance with the European Convention on Human Rights, interference in the freedom of expression shall be clearly prescribed by the law, necessary to achieve legitimate means and shall be proportional.[1898]

Any interference in the work of journalists that does not satisfy the above mentioned requirements is in violation of freedom of expression. The above described incident was an arbitrary and illegal interference in the work of journalists by Russian border guards, as there was no predefined rule to the restrict journalists' presence at that particular place.

Passportization and Related Problems

Abkhazia and South Ossetian citizenship documents or passports issued by the *de facto* authorities are not recognized as legal documents by Georgia or by the international community. However, possession of these documents is related to a number of basic rights for the residents of these territories.

According to the *de facto* Abkhazian law, all persons having "Abkhazian nationality (Abaza)" are considered to be citizens of the *de facto* Abkhazia Republic regardless of his/her citizenship, except in cases when he/she fought against the Abkhazian civil order through "anti-constitutional means." Abkhazian citizenship is also granted to those persons who had lived on the territory of Abkhazia for more than five years continuously until 1999.[1899] In addition, dual citizenship is only allowed along with citizenship of the Russian Federation.[1900]

These requirements on citizenship both directly and indirectly discriminate against ethnic Georgians living in Abkhazia. Those ethnic Georgians living in Gali region that left Abkhazia in 1992–93 due to the war are not considered citizens of Abkhazia. Also, the majority of the Gali population are citizens of Georgia. This precludes the possibility of having Abkhazian citizenship according to the *de facto* legislation.

As noted in the Public Defender's 2014 report, the passportization policy of Gali region's population changed in 2014 by the removing of "illegally issued" passports.[1901] It was decided that those in the Gali region who declared to be holding Georgian citizenship would be able to obtain residence permits. Those desiring to obtain Abkhaz citizenship would have to present a document certifying their renouncing of Georgian citizenship. For this purpose, the *de facto* local administration conducted a public opinion poll in 2015 in Gali region. They requested members of the local population to reveal the personal numbers on their Georgian citizenship documents. The population followed this instruction.[1902] According to reports, the issuance of new passports and residence permits will launch in March 2016.[1903]

New regulations will be enforced starting in April 2016 for persons not holding Abkhazian citizenship. Along with other issues, this will regulate preconditions for receiving residence permits.[1904] According to the regulations, a person shall have the right to receive a residence permit if he/she has a temporary residence permit and there is "legal basis for it."[1905] However, it is not clear what the term "legal basis" means; this provision thus may be used for making arbitrary decisions.

1898 See also UN Covenant on Civil and Political Rights, Art. 19(3).

1899 „Law Republic of Abkhazia on Citizenship", Article 5. Information available on Russian language, webpage: <http://mfaapsny.org/council/citizen.php> [last seen 03.02.2016].

1900 „Law n Republic of Abkhazia on Citizenship" Article 6. Information available on Russian language, webpage: <http://mfaapsny.org/council/citizen.php [last seen 03.02.2016].

1901 State of Human Rights Protection for Persons Affected by the Conflict in Georgia, the Public Defender, (2014), pg. 27-28.

1902 Information received from the contact point.

1903 „Change of passports will be launched in March in Abkhazia", Elena Zavodskaia, Radio "echo Caucasa" 05.02.2016 Information available on Russian language, webpage: <http://www.ekhokavkaza.com/content/article/27534861.html> [last seen 08.02.2016].

1904 „Signed the law "the state of rights of foreign citizen in Abkhazia" information available in Russian language at the web page: <http://presidentofabkhazia.org/about/info/news/?ELEMENT_ID=3531> [last seen 05.02.2016].

1905 Law on Abkhazia Republic "Rights of Foreign Citizens Residing in Abkhazia", information is available on Russian language, webpage :< http://bit.ly/1VIIDPB > [last seen 26.02.2016] Article 10(1) and (2).

In accordance with this regulation, it is necessary to receive a temporary residence permit before obtaining a residence permit.[1906] This permit is only issued to persons who were born on the territory of Abkhazia and have been permanent residents there for at least 10 years. [1907] The residence permit must be renewed every five years.[1908] Upon enforcement of the law, persons holding residence permits will have to report to the authorities, on an annual basis, regarding their residence and place of employment and income as well as if leaving the territory of Abkhazia.[1909]

In accordance with the same law, citizens of foreign countries will have neither active nor passive rights to participate in elections and referendums, neither will they be allowed to participate in local government elections.[1910] Persons having no Abkhazian citizenship will have no right to work in the "public service".[1911]

The above mentioned regulations immediately affect those members of the Gali population that don't hold Abkhazian passports. It is likely that many of them will fail to satisfy not only the Abkhaz citizenship requirements, but also the criteria set for receiving residence cards, and may be forced to leave their permanent residences. For example, a person may be refused a residence permit or have their existing permit annulled if they have been outside of Abkhazia for a period of six months.[1912] This is problematic for Gali region residents who study abroad or study on the territory controlled by Georgia.

Other grounds used to refuse residents permits are also problematic. For example, in cases when a person is deemed to have acted against the "independence and state sovereignty of Abkhazia" or "with his/her activities threatens the security of Abkhazia", or "assisted the occupation regime during the war in 1992–1993."[1913] These regulations might be used to issue arbitrary decisions against residents of Gali region.

Of particular concern is the grounds for refusing resident permits to "the drug addicted persons" or to persons who do not have certification that they do not have "disease caused by the human immunodeficiency virus".[1914] This restriction is clearly discriminatory against drug addicts as well as against persons infected with HIV.

There are special regulations in Abkhazia on transactions regarding residence spaces. It is prohibited to donate or sell residence space to a foreign citizen.[1915] Only in cases when a person holds an Abkhazian passport is he/she is entitled to own property or receive an inherited property. Accordingly, the ambiguous status of the Gali population adversely affects the protection of their property rights to a large extent.

The Public Defender learned about one Gali resident who had to pay a bribe in order to register the ownership of a newly-purchased house. A Human Rights Watch report also pointed out several cases when persons had problems receiving their inheritance because they did not have an Abkhazian passport.[1916]

Gali region's population near the administrative boundary line may face additional problems. According to the information provided to the Public Defender, Russian and Abkhazian border guards told the population residing within one kilometer from the administrative boundary line that they might have to give up their lands and premises below the Enguri river, as it is "the state border" and it is impermissible that people live there.[1917]

As for South Ossetia, the possession of South Ossetian passports for the Akhalgori population, similar to the situation in Gali, brings opportunities for employment, social benefits and freedom of movement. Akhalgori

1906 ibid, Article 10(4).
1907 ibid, Article 7(2)(14).
1908 ibid, Article 10(5).
1909 ibid, Article 10(8).
1910 ibid, Article 17.
1911 ibid, Article 18(1)(1).
1912 Article 11 (10).
1913 Article 11 (1), (2).
1914 ibid, Article (12).
1915 Civil Code of De facto Abkhazia, Article 546 and 563.
1916 "Living in Limbo", „Human Rights Watch", 2011, pg. 39-40.
1917 Information submitted to the Public Defender by the contact person.

residents who are interested in receiving Ossetian passports need to apply to the Akhalgori passport unit and, along with other documents, bring a statement denying Georgian citizenship.

Until 2014, it was relatively easy to receive an Ossetian passport in Akhalgori. Since 2014, issuance of passports has been gradually terminated. The Gali case is now being considered in Tskhinvali as an analogy. So far, there has been no final decision on the issue, however, according to non-official data, approximately 40–50% of Akhalgori's population already hold Ossetian passports. [1918]

Women Rights and Domestic Violence in the Occupied Territories

The number of applications to the Public Defender's Office regarding gender-based violence increased in 2015. Case study and additional research results revealed that domestic violence is one of the most difficult and taboo problems in society.

There are no reliable statistics on trends of violence against women in the conflict zones. However, according to the Public Defender's inquiry as well as unofficial information, there were 129 domestic violence cases, including five murders and the disappearance of one victim last year in Gali region.[1919] Residents also speak about the psychological problems of children in relation to domestic violence. NGOs and civil activists also speak about the frequency of early marriages.

These problems which are prevalent on the occupied territories are caused by a number of factors: facts about domestic violence are almost never known outside the family and the victim almost never applies to the law enforcement authorities. Due to taboos and economic hardships, the victims often continue to live together with the offenders. In addition, there is no legal system and no shelters to protect victims on the occupied territories. One of the residents of Akhalgori region told the Public Defender that she cannot even apply to local police regarding her domestic violence case, as she will be laughed at and ridiculed by the entire population of Akhalgori.

Non-governmental organizations work with minimal resources. They mostly focus on raising public awareness and delivering legal consultations and healthcare services. There was one shelter functioning in Gali region at one of the offices of local NGO. This shelter could accommodate 3-15 victims at any one time. However, due to financial problems, the shelter was closed down.

The same is true about the problem of early marriages. Law enforcement agencies do not respond to such incidents and justice remains in the hands of families. In the majority of cases families are against girls returning home because they consider it to be in violation of family dignity and honor.

The prohibition of abortion in Abkhazia should be assessed as disturbing. In December 2015, the *de facto* Parliament of Abkhazia adopted a law which absolutely prohibits abortion on the territory of Abkhazia, even in cases when the fetus threatens the mother's health.[1920] According to the authors, the purpose of this regulation is to improve the demographic situation in Abkhazia and to protect human life from the very beginning. The only female member of the *de facto* Parliament in Abkhazia voted against the adoption of this regulation. The media in Abkhazia criticized the process of adoption of the law due to the lack of preliminary study of the views of the population at large and of medical personnel;[1921] despite this the regulation entered into force on February 9, 2016.[1922]

1918 Information submitted to the Public Defender by the contact person.

1919 Information submitted to the Public Defender by the contact person.

1920 „Abortions are prohibited, the agreement is signed", Helena Zavodskaia, Radio "Ekho Kavkaza" 18.12.2015, Information is available in Russian language on the website: <http://www.ekhokavkaza.com/content/article/27436256.html> last seen on 11.01.2016].

1921 „Phatima Kharzalia: „MPs shall get familiar with international practice", Helena Zavodskaia, Radio "Ekho Kavkaza", 21.12.2015, Information is available in Russian language on the website: <http://www.ekhokavkaza.com/content/article/27441072.html/ >[last seen on 11.01.2016].

1922 „The law on prohibiting abortion in Abkhazia entered the legal force", Internet publication „Cavkaski Uzel" 10.02.2016, Information is available in Russian language on the website: <http://www.kavkaz-uzel.ru/articles/277361/> [last seen on 10.02.2016].

International experience proves that the prohibition of abortion does not solve demographic problems but leads to increases in the number of illegal abortions and, respectively, the number of deaths among the female population.[1923] The use of other, more effective measures such as the improvement of the social conditions of families, support for single mothers and other policies are better for the regulation and improvement of demographic problems. According to statistics, one of the main causes of female mortality in countries where abortion is prohibited is unreliable abortion practices.[1924] As is mentioned in the statement of the UN Committee on the Elimination of Discrimination against Women in 2014, safe abortion constitutes part of the right to sexual and reproductive health. In the same statement it is argued that unsafe abortion is a leading cause of maternal mortality and morbidity and as such, governments should legalize abortion at least in cases of sexual violence, incest, threats to the life and/or health of the mother, or severe fetal impairment.[1925] Prohibition of abortion in such circumstances represents a violation of women's rights to health and privacy and, in certain cases, to freedom from cruel, inhumane and degrading treatment.[1926]

Female political participation in the entire region, including the occupied territories and the rest of Georgia, is problematic. As a result of *de facto* parliamentary elections in 2012 only one (2.8% of the total) female MP entered the 35-seat Parliament of Abkhazia (in the previous years the number of female MPs was between two and four).[1927] Among the 12 ministers in the *de facto* government there are three women, or 25% of the total. Women hold the positions of Minister of Culture and Historic Heritage Protection, Minister of Finance and Minister of Justice of Abkhazia.[1928]

The data looks better in South Ossetia, where during the last two parliamentary election cycles[1929], among 34 MPs six were women (17.6%). As for the government in 2015 out of 12 ministers 4 were women (33.3%).[1930] This data is more favorable than that of Abkhazia and Georgia.[1931] A female candidate, Ala Jojieva, ran for president during the 2011 presidential election in South Ossetia and, according to the *de facto* Election Commission of South Ossetia, won the election,[1932] but due to the political events that developed after the election Ala Jojieva failed to become president.[1933]

In Abkhazia and South Ossetia, as in the rest of Georgia, women are more active in the civil sector, education and healthcare services.

1923 „Facts and results: Legitimacy, frequency and security of abortion, in the World", Susan A. Cohen, "Guttmacher Policy Review ", fall 2009, volume 12, issue 4, Information is available in Russian language on the website: <https://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html > [last seen on 11.01.2016].

1924 „Application of the Convention on Elimination of All Forms of Discrimination against Women for the Advocacy of Reproductive Rights", „Global Justice Center", Information is available in English language on the website: <http://www.globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=171&cf_id=34> [last seen on 11.01.2016].

1925 Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights, 57th Committee Session, February 10-28, 2014 Information is available in English language on the website: <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf> [last seen on 11.01.2016].

1926 INFORMATION SERIES ON SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, ABORTION, Information is available in English language on the website: <http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf> [last seen on 08.02.2016].

1927 For detailed analysis please see Gender and political representation in the de facto states of the Caucasus: women and parliamentary elections in Abkhazia by Karolina Ó Beacháin Stefańczak & Eileen Connolly; CCaucasus Survey" 3:3, 258-268.

1928 „Structure of Abkhazia Cabinet of Ministers", Information is available in Russian language on the website: <http://www.km-ra.org/index.php/ru/struktura> [Last seen on 11.01.2016].

1929 „Members of Parliament of VIth Parliament of South Ossetia Republic", Information is available in Russian language on the website: http://www.parliamentrso.org/node/42 [Last seen on 11.01.2016].

1930 „Ministries, the Government of South Ossetia Republic", Information is available in Russian language on the website: <http://rso-Government.org/struktura-pravitelstva-respubliki-yuzhnaya-osetiya/ministerstva-i-vedomstva/ministerstva-ryuo/> [Last seen on 11.01.2016].

1931 Among 19 ministers in the Government of Georgia 3 are women (15.7%) and among 150 MPs 17 are women (11.3%).

1932 „Central Election Commission of South Ossetia: Jojieva received 57% of votes during the Presidential Elections, 87% of ballots is counted", Internet publication "Cavkaski uzel", 28.11.2011, Information is available in Russian language on the website:: <http://www.kavkaz-uzel.ru/articles/196577/>[Last seen on 9.03.2016].

1933 „Supreme Court of South Caucasus: The Election Results are Void", Radio "Ekhokavkaza" 29.11.2011, Information is available in Russian language on the website: <http://www.ekhokavkaza.com/content/article/24406138.html> [Last seen on 9.03.2016].

Citizen J.T.'s case

Citizen of Georgia J.T. applied to the Public Defender in 2015. She lives in South Ossetia and suffers from physical and psychological abuse by her husband, due to which her health condition has significantly worsened. It became known to the Public Defender that the husband of J.T. is an employee of the law enforcement authority in South Ossetia and he does not allow his wife to cross the administrative boundary line to return to her parents, who live in Shida Kartli region. Their young children (seven and nine years old) are also in a difficult psychological condition due to the family situation.

The Public Defender's Office applied by letter to the international and non-governmental organizations working in South Ossetia. They affirmed that J.T. required medical and psychological assistance. But their involvement and interest worsened the condition of the victim. Despite the fact that local police were informed about her condition, their response was not effective or sufficient to eliminate the violence. They did not take any measures to isolate the victim from the abuser or to provide her with relevant assistance.

The central authorities of Georgia who provide services to the victims of domestic violence cannot assist people living on the occupied territory until they reach the territory controlled by Georgia.

Response Mechanisms to Human Rights Violations

The lack of effective mechanisms, nonexistence of the rule of law, widespread corruption and undemocratic regimes are factors contributing to the difficult human rights situation on the occupied territories. All these factors cause fear and hesitance among the population and discourage them from exercising their rights.

The Public Defender became familiar with several instances of human rights violations during the reporting period but the victims hesitated to apply to the government, courts or international human rights mechanisms for help, because they were afraid it would cause more damage to them and their families.

On December 17, 2014 law enforcement officials arrested eight residents of Gali region on grounds of participating in the war in Abkhazia in 1992-93. They were released from custody after 10 days; they were then escorted to Enguri Bridge and forced to leave, with their right to return restricted.[1934] According to the information received from the victims they are not aware of concrete charges against them. They did not receive the decision of the court and were not informed regarding the length of the prohibition on returning. All of them have families in Gali region and currently live on the territory of Georgia with the help of relatives. The Public Defender offered the victims assistance in communicating with Abkhazian, Georgian and international organizations, who can provide legal assistance at the local and international levels, but the victims abstain from the use of such measures of protection due to the fact that their families remain on the occupied territory.[1935]

Persons whose family members' rights to life, education, and health have been violated also refuse to receive legal assistance. They indicate that the use of international legal means would force them to leave the occupied territories and go to live on the territory controlled by Georgia.[1936] Therefore, both the Public Defender as well as Government institutions lack the opportunity to react directly to human rights violations on the occupied territories.

According to the information received by the Public Defender, instances of arrest of young people as well as physical and/or verbal abuse significantly increased in 2015. Armed people in masks patrol the streets and stop young people, arresting those who don't have Abkhazian passports and family members are not informed about the arrests or detentions for a certain period of time.[1937]

1934 8 Georgians arrested in Gali were released and entry into Abkhazia for them is prohibited, "Rezonansi" 31.12.2014. Information is available on: <http://www.resonancedaily.com/index.php?id_rub=2&id_artc=23159> [Last seen on 12.03.2015].

1935 Information submitted to the Public Defender by the contact person.

1936 Information submitted to the Public Defender by the contact person.

1937 Information submitted to the Public Defender by the contact person.

The case of the beating of two young people arrested in Gali on charges of theft was a highly resonant case. The suspects suffered severe bodily injuries caused by the beating and were moved to Gali hospital. According to the prosecutor's statement, the victims were so harshly beaten that they were not able to testify.[1938] A criminal case was commenced for the beating and the employees of the Criminal Investigation Unit of Gali police were temporarily terminated. The family members of the victims protested in Sokhumi in front of the residence of the President of Abkhazia, the Ministry of Interior Affairs and the Prosecutor's office. According to the information available to the Public Defender, the young people were acquitted due to the fact that their charges were not proven and the law-enforcement officers suspected of the beating were removed from their positions.

Access to effective legal remedies is a fundamental human right. This right is enshrined in Article 13 of the European Convention on Human Rights and Freedoms. According to this article, anyone who has their rights and freedoms set forth in the Convention are violated shall have access to an effective remedy before a national authority, notwithstanding whether the violation was committed by persons acting in an official capacity. In compliance with the case law of the European Court of Human Rights, the legal remedies shall be "effective", both legally as well as in practice and state agencies shall not obstruct their enforcement.[1939] As the given facts reveal, Gali residents do not have access to effective legal remedies, which is a violation of their rights.

The right to apply to the European Court of Human Rights is also protected (Article 34 of the ECHR). In the case of *Popov v Russia*, the Court reiterated the importance of free application of an individual to the European Court of Human Rights by concluding the following: "it is of the utmost importance that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure, direct or indirect, from the authorities to withdraw or modify their complaints".[1940] Accordingly, hindering in any way the right to apply to the European Court of Human Rights is considered to be a grave violation of the European Convention on Human Rights. This right is especially important for people residing on the occupied territories who have limited access to effective legal remedies and legal institutions, and often European Court of Human Rights is the only available institution which they can appeal to restore their infringed rights.

Problem of Free Movement

As in previous years, movement across the administrative boundary line was still limited in 2015.[1941] People residing in Abkhazia are allowed to move onto the territory controlled by Georgia only with Abkhazian passports and when passing through the check points; in addition, they need a permit from the Security Agency of Abkhazia, which is issued only once per month. The circumstances are different for residents of Gali region, who are not required to have the permit and are allowed to use the check points in case they have an Abkhazian passport, but part of the population do not have Abkhazian passports and are forced to cross the administrative boundary line by avoiding the check points. This increases their risk of arrest.

As it became known to the Public Defender in November-December 2015, people residing in Ochamchire and Tkvarcheli regions were required to obtain permits in the regional centers. They were asked to visit the local security service personally and apply in writing for the permit, receiving a decision two weeks later. According to the information submitted to the Public Defender, nearly 90% of applicants were refused permits and, due to this fact, people were forced to pay a certain amount of money to cross the administrative boundary line to

1938 Incident in Gali Region, 27.05.2015, Information Agency "Abkhazia-Inform", Information is available in Russian language on website: <http://abkhazinform.com/item/769-intsident-v-galskom-rajone> last seen on 03.02.2015].

1939 European Court of Human Rights May 25, 1998 Decision on Case of *Kurt v. Turkey,* par.139.

1940 European Court of Human Rights; July 13, 2006 Decision on Case of *Popov v. Russia*, 26853/04 par. 246.

1941 Since the war in 2008, the Russian Federation signed an agreement with the de facto governments of Abkhazia and South Ossetia, according to which Russia takes the responsibility for all technical and financial resources required for the administration of borders. Currently Russia has around 1200 border guards on four border bases and around 100 observation points at the 350 km dividing line of South Ossetia and 900 Russian Border Guards and 12 border points on the 120 km dividing line of Abkhazia.

arrive in Zugdidi.[1942] This is an additional indicator of how difficult and risky it is for those people residing in the occupied territory to get onto territory controlled by Georgia.

As for the residents of South Ossetia, the administrative boundary line is entirely closed for them except for three exceptions: the administration in Akhalgori issues permits for residents of Akhalgori allowing them to cross the administrative boundary line at the Akhmaji-Mosabruni crossing point (even in this case permits were not issued for all residents); residents of village Kardzmani in Java region also have the right to free movement and can use the crossing point at village Perevi in Sachkhere municipality; and in 2015 according to the information of the administration cross-border movement has been simplified at the crossing point in village Zardiaantkari in Gori Municipality for those residents, who have South Ossetian passports. There are only 17 such residents who already had the right to cross the administrative boundary line.[1943]

In addition, permission to cross the administrative boundary line was granted to 10 residents from Georgian-controlled territory based on a special list created for the occasions of weddings and funerals; since January 2016, this has also been prohibited.[1944]

Priest Isaiah for more than three years has been prevented from leaving Akhalgori due to his not having a permit. According to the information available to the Public Defender, when he entered Akhlagori he had a form #9 but after the document expired he was refused an extension or a new permit, and thus cannot leave Akhalgori because he will not be admitted back.[1945]

The practice of arresting residents of territory controlled by Georgia as well as residents of the occupied territories continues to be a problem at both the administrative boundary lines of Abkhazia and South Ossetia. The Public Defender reviewed instances of arrest of infants and their parents, school children, medical patients and seniors.

Two deadly cases were brought to the attention of Public Defender in 2015 – the deaths of two persons crossing the administrative boundary line with Abkhazia. In January 2015 a young woman who wanted to move onto the territory controlled by Georgia from a village in upper Gali due to medical reasons tried to detour and cross river the Enguri by horse due to her not holding a permit, but she fell into the river and drowned. A 12-year old juvenile died on May 4, 2015 because he was not able to cross the administrative boundary line in time to receive appropriate medical assistance. Due to the lack of special permits, the family tried to bypass the border crossing in order to get onto the territory controlled by Georgia but the child died on the way. Bypassing and detouring by those seeking medical attention is very common and these people are regularly arrested.

Such instances should be considered violations of the right to health. The right to health has been acknowledged by certain international law documents, including Article 12 of the International Covenant on Economic, Social and Cultural Rights, which states that everyone has the right to enjoyment of the highest attainable standard of physical and mental health. The right to health includes access to healthcare, which is an absolute right and accordingly requires special protection.

The practice of detaining persons in Russian military bases in the occupied territories also involves the violation of rights. The explanations given by arrested citizens to the staff of the Public Defender's Office revealed the following: there are unacceptable conditions in the basements of the Russian Federation's military bases; detainees are not provided with water and food; and 12 people are placed in one cell despite their gender and age.

1942 Information provided by the contact person.

1943 „Only 17 residents of Zardaantkari are allowed to cross the border", Information Agency "Sputnik South Ossetia", 15.10.2015. Information is available in Russian Language on the webpage: <http://sputnik-ossetia.ru/South_Ossetia/20151015/723311.html> [Last seen on 02.02.16].

1944 „Neither death nor wedding", Murat Gukemukhov, Radio "EkhoKavklaza"" 05.02.2016, Information is available in Russian Language on webpage: <http://www.ekhokavkaza.com/content/article/27534878.html> Last seen on 02.03.2016].

1945 „Modern Heroism of Priest Isaiah is that he is devoted to his clergy", Manana Nozadze, 22.04.2015, Information Agency "For.ge", Information is available on webpage: http://www.for.ge/view.php?for_id=40130&bloger_id=22&cat=12 [Last seen on 29.03.2016].

Explanation of Citizen E.K.

According to the information provided to the Public Defender by an eye witness in September 2015, E.K. and several other people were crossing onto the territory of Abkhazia by a bypass road. They were arrested by Russian militia near the village of Nabakevi on charges of illegally crossing the administrative boundary line. The detainees were taken to the basement of the Russian military base and put in a cell with 20 other detainees. Later, more people were brought and by the end of the day there were roughly 40 detainees in the cell. According to the eyewitnesses, they were to be moved to the building of the Gali militia but for uncertain reasons that was postponed until morning. Children were among the detainees, the youngest being a four-month old infant. All the detainees were placed in one room. The minimum conditions were not provided to the detainees; there were not enough seats in the room and the detainees were not provided with food or water. The eyewitnesses said that they had a verbal argument with the Russian soldiers after asking for water and food for the children. The children were sleeping on the table at night, the rest were sleeping on the floor and on chairs. On the following morning all the detainees were taken to the Gali Russian Military Base and were released only after the payment of fines.

The rights to freedom and liberty, private and family life, freedom of movement and freedom to choose one's place of residence are acknowledged by international human rights norms and by the Georgian Constitution.

The arrest and detention of Georgian citizens in the conflict zones for violation of the so-called "border regime" represents a violation of freedom and security. The right to freedom of movement is guaranteed by a number of international treaties. The Universal Declaration of Human Rights, Articles 3 and 9, declare that everyone is entitled to the rights to life, liberty and security and no one shall be subjected to arbitrary arrest, detention or exile.

The European Court of Human Rights, in a decision on the case of *Ilaşcu and Others v. Moldova and Russia*, concluded that it involved a violation of Article 5 of the European Convention on Human Rights (Right to Liberty and Security) because the detention of the applicants was not legitimate and the sentence was not issued by a competent "court". According to the assessment of the European Court, none of the applicants were convicted by a "court" and a sentence of imprisonment passed by a judicial body such as the "Supreme Court of the MRT" at the close of proceedings like those conducted in the present case cannot be regarded as constituting "lawful detention" ordered "in accordance with a procedure prescribed by law".[1946] According to the standard established by the European Court of Human Rights in the above mentioned case, arrests made on the occupied territories shall be considered violations of the right to liberty and security.

CRIMES COMMITTED DURING THE 2008 WAR AND THE INTERNATIONAL CRIMINAL COURT INITIATIVE

It has become known that the International Criminal Court authorized the opening of an investigation on January 27, 2016 into alleged crimes against humanity and war crimes committed during the war in 2008. Prosecutor Fatou Bensouda applied to the Pre-trial Chamber 1 for authorization on October 13, 2015.

The prosecution will investigate in the context of the 2008 war such crimes as: murder, deportation or forcible transfer of population and persecution; war crimes involving destruction of property and pillaging; and intentional attacks against the civilian population and peacekeepers. The investigation will also be interested in actions such as: indiscriminate or disproportionate attacks against civilian targets; and sexual and gender-based violence. The investigation covers the period from July 1-October 10, 2008.

1946 Decision of the European Court of Human Rights on the case of *Ilaşcu and Others v. Moldova and Russia*, par. 462.

The International Criminal Court has had regular communication with the respective Prosecutor's Offices in Georgia and the Russian Federation during last seven years and has observed the process of investigation of crimes committed in August 2008. Neither Georgia nor the Russian Federation completed its investigation and no one has been charged. The Public Defender of Georgia in his 2013-2014 Parliamentary Reports referred to the investigations into crimes committed during the war in August 2008 and the period immediately following it and provided the recommendation to the Prosecutor's Office of Georgia to conduct an investigation into these crimes "effectively and speedily", including those cases involving missing persons.

Georgia ratified the Statute of the International Criminal Court (Rome Statute) on September 5, 2003. Despite the fact that the Russian Federation has not ratified the Statute, citizens of Russia can be held liable for crimes committed on the territory of Georgia. The Court depends on the cooperation of concerned countries during the process of collection of evidence. It is important for representatives of the Prosecutor's Office to enter the territory of South Ossetia in order to investigate the cases of 2008.

The Public Defender welcomes the opportunity for international investigation into crimes committed during and following the war in 2008, which will help to establish the truth, restore the rights of victims and speed up the peace process between the parties to the conflict and the aggrieved population.

In addition, the Public Defender has applied a number of times to the Prosecutor's Office regarding effective and speedy investigation into the cases of three Ossetians who went missing during the 2008 war, but none of the cases have been concluded as of yet. Problems regarding the investigation of these cases were mentioned in a Council of Europe report published in 2010.[1947] It is important to note that the International Criminal Court will not investigate the cases of the three missing Ossetians because it happened after October 10, 2008.

STATE PROGRAMS FOR THE PROTECTION OF RIGHTS OF PEOPLE DAMAGED BY THE CONFLICT AND THE ANALYSIS OF THE ENFORCEMENT OF PUBLIC DEFENDER'S RECOMMENDATIONS

According to the case law of the European Court of Human Rights, the High Contracting Parties shall secure human rights to everyone within their jurisdiction.[1948] Jurisdiction is primarily territorial. Even in the absence of effective control over the territory, the state still has a positive obligation to take diplomatic, economic, judicial or other measures in its power and in accordance with international law to secure these rights and eliminate their violation.[1949] Accordingly, the Georgian Government has a positive obligation to protect and secure the rights of people living on the occupied territories.

The State Strategy and Action Plan regarding the Occupied Territories of 2010 refers to the fact that the Government of Georgia considers the population residing in Abkhazia and South Ossetia to be part of the Georgian community and an inseparable part of its future, and accordingly allows them access to benefits intended for citizens of Georgia, including social benefits, healthcare and education. In addition, the Rules of Acting on the Occupied Territories of Georgia approved by the Government of Georgia[1950] determine that people living on the occupied territories are citizens of Georgia, and it is the State's constitutional obligation to provide access to all benefits that are guaranteed for all citizens of Georgia.

The Government of Georgia implements healthcare and education programs targeted towards the above mentioned goals. According to official data, from 2013-2015 the Government of Georgia spent up to seven

1947 Monitoring of Investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia, Strasbourg, and September 29, 2010.

1948 Convention on Human Rights and Fundamental Freedoms; Article 1.

1949 Decision of the European Court of Human Rights on the Case of *Ilaşcu and Others v. Moldova and Russia*, par. 331; and *Catan and Others v. Moldova and Russia; par.* 109, 145.

1950 Decree of the Government of Georgia #320 issued on October 15, 2010 on approval of the rules of performance on the occupied territory of Georgia; Article 1.

million GEL providing healthcare services to the population residing on the occupied territories.[1951]

One of the most successful programs with regard to the protection of rights to healthcare of people residing on the occupied territories is "the State Program on Referral Services." This program allows residents of the occupied territories to receive free medical services. According to official data, the number of patients using the Program increased by 153%[1952] from 2013 to 2015. But the real problem is that people residing on the occupied territory who hold identification as citizens of Georgia are not able to benefit from the Program. The Public Defender referred to this problem in his report of 2014.[1953] The Public Defender proposed that the Minister of Labor, Health and Social Affairs to develop a unified approach towards helping all people legally residing on the occupied territories, regardless of their citizenship.[1954]

According to the response received from the Ministry,[1955] the issue of funding those people who are candidates for the State Healthcare Program and are holders of Georgian ID cards are reviewed by an ordinary commission. The healthcare services of such people might be fully funded in cases when residency on the occupied territory is confirmed. But it is clear according to the statistics that people who both reside on the occupied territory and hold a Georgian ID card are not in an equal position and compose only 2% of all patients residing on the occupied territory, who are funded by the referral program.[1956] It is important to grant equal access to the "State Referral Program" to all people residing on the occupied territories in order to make the program more accessible to holders of the Georgian ID card.

In addition, the Government of Georgia approved the "State Program on First Phase Measures for Management of Hepatitis C" on April 20, 2015 and offered eligibility to residents of the occupied territories. It is important to note that a pre-condition of involvement in the program is holding the Georgian ID card; this means that the number of patients who reside on the occupied territories but do not hold a Georgian ID card will be minimal. The Public Defender of Georgia applied to the Prime Minister of Georgia on January 28, 2016 with a request to amend the decree to allow people residing on the occupied territories with neutral ID cards to be eligible for the State Program on First Phase Measures for Management of Hepatitis C.[1957] In response to this request, the Ministry of Labor, Health and Social Affairs clarified that due to security risks regarding the medicines no changes can be made to the program beneficiary list.[1958]

In 2014 the Public Defender proposed to the Prime Minister of Georgia and the Minister of Labor, Health and Social Affairs[1959] to improve the access to State social programs for those who reside on the occupied territories and do not hold Georgian citizenship. The beneficiaries of social programs in most of cases were people with Georgian ID cards, which is problematic for those living on the occupied territories because in most cases they do not have such documents. The Public Defender provided an example of a person with a passport issued in South Ossetia who was refused reimbursement for damage caused during the performance of labor duties.[1960] In addition, social rehabilitation and child care services available under state programs cannot be provided to persons with Abkhazian or South Ossetian passports.[1961] The proposal of the Public Defender included making amendments to these documents, so that people residing on the occupied territories would be allowed to benefit from these programs even if they held Abkhazian or South Ossetian passports.

1951 Report of the activities performed by the Staff of the Minister of Georgia for Reconciliation and Civic Equality in 2013-2015; Information is available on webpage: <http://mes.gov.ge/content.php?id=4791&lang=geo> [last seen on 10.03.2016].
1952 Letter N01/3479 of the Minister Labor, Health and Social Affairs, dated January 18, 2016.
1953 Report of the Public Defender of Georgia for 1024 pg. 830.
1954 Proposal of the Public Defender of Georgia dated September 16, 2014 N01-6/11691.
1955 Letter N997/00 of the Minister Labor, Health and Social Affairs.
1956 Letter N01/3479 of the Minister Labor, Health and Social Affairs, dated January 18, 2016.
1957 Proposal of the Public Defender of Georgia dated January 26, 2016 N01-6/780 on the involvement of people with neutral ID cards in to the State Program on Hepatitis C.
1958 Letter N01/3479 of the Minister Labor, Health and Social Affairs, dated January 18, 2016.
1959 Proposal of the Public Defender of Georgia dated September 16, 2014 N01-6/11691.
1960 Decree of the Government of Georgia #45 on approval of rules on issuing compensation for the damages caused during the enforcement of labor activities; March 1, 2013.
1961 Decree of the Government of Georgia #292 on approval of the state program on social rehabilitation and child care, April 14, 2014.

The Ministry of Labor, Health and Social Affairs informed the Public Defender[1962] that the list of beneficiaries of the State program on social rehabilitation and child care increased in 2015[1963] and now includes not only people with Georgian ID cards but also those with neutral ID cards and travel documents. Accordingly, people residing on the occupied territories are now allowed to receive services under this program in cases when they present neutral ID cards or neutral travel documents. This change is a step forward and must be assessed positively, despite the fact that it does not fully cover the recommendation of the Public Defender.

The National Report of Georgia for Universal Periodic Review (UPR) 2nd Cycle covered the human rights condition on the occupied territories. In addition, in November 2015 the Georgian delegation within the Universal Periodic Review emphasized to the UN Human Rights Council the importance of international monitoring mechanisms for the protection of human rights on the occupied territories of Georgia, which is in compliance with the recommendation issued on several occasions by the Public Defender. Furthermore, the publication of quarterly reports by the Ministry of Foreign Affairs on human rights conditions in the occupied territories is an important initiative.

The Ministry of Education and Science continues to make progressive steps forward with regards to the protection of the rights of students and teachers residing in the occupied territories and conflict zones. The Ministry supports teachers and technical personnel working in the conflict zones, including supporting their efforts to improve their qualifications. Teachers have the opportunity to participate in trainings and programs organized by the Ministry as well as to get familiar with the methodology and literature.

In 2015-2016, the bachelor's degree students residing on the occupied territories received educational grants from the Ministry, among them were 90 students from Abkhazia, 75 students from the former South Ossetian Autonomous Republic (including Kurta, Eredvi and Akhalgori Municipalities) and five students from the Sachkhere Municipality village of Perevi. In addition, grants were issued to 50 students who studied during the last three years and have received the certificate proving completion of secondary education in schools in the villages near the administrative boundary line.[1964]

Unfortunately, unlike in previous years, Georgian schools in the Gali and Akhalgori regions were not provided with Georgian textbooks for the 2015-2016 school years. The Ministry of Education and Science of Georgia informed the Public Defender that delays in the delivery of textbooks were caused by technical factors. The textbooks were purchased by March 2016 and it was planned to have them delivered to the Gali and Akhalgori regional schools. In addition, the delivery of textbooks for the next school year has also been planned.

On March 10, 2016 it became known that the Government of Georgia and the authorities of Abkhazia and South Ossetia reached an agreement regarding the release of prisoners in adherence to the "all for all" prisoner exchange principle. This move made possible the release of several persons who had been illegally deprived of their liberty and detained in Tskhinvali and Sokhumi prisons. A total of 18 prisoners were released. Four were released by the Georgian side, 10 by the Sukhumi authorities and four by the Tskhinvali authorities.

In 2014 the Public Defender dedicated a special report[1965] to the situation of detainees and urged the Government to find ways to achieve the release of detainees and prisoners. The Public Defender's Ossetian Forum as well as local and international non-governmental organizations were actively involved in studying the case. The Public Defender welcomes the dialogue launched between Georgia and the de facto governments on the release of prisoners and believes that the move will promote the restoration of confidence between all parties, contributing to further stability.

1962 Letter N997/00 of the Minister of Labor, Health and Social Affairs, December 25, 2015.

1963 Decree of the Government of Georgia N138 on approval of the state program on social rehabilitation and child care, 2015.

1964 Decree #449 of the Government of Georgia, information is available on the webpage: <http://mes.gov.ge/content.php?id=4791&lang=geo> [last seen on 02.02.16]; Similar funding shall be provided to the students in 2014-2015 educational year.

1965 See the special information bulletin of the Public Defender – on the status of prisoners and detainees on the dividing line "(2014). Information is available on the webpage: <http://www.ombudsman.ge/uploads/other/1/1771.pdf>.

The agreement reached at the 35th round of the Geneva talks on March 22-23, 2016 regarding restoration of the Incident Prevention and Response Mechanism in Gali Region is a serious achievement. The Public Defender had repeatedly addressed the delegations participating in the Geneva international discussions with the recommendation to show more flexibility and to take more effective steps for restoration of the Incident Prevention and Response Mechanism in Gali district.

However, despite certain important initiatives, the Public Defender believes that the decision-making process with regard to protection of the rights of people living in the occupied areas is often inflexible and delayed due to disagreement between the relevant agencies and the lack of a unified position.

A unified and coordinated state policy means a policy of conflict resolution where every agency is able to analyze the existing situation and challenges of the breakaway regions within their authority and to make relevant, flexible decisions to protect the rights of the population. This requires in-depth knowledge by members of the Government of the problems of the occupied territories.

According to the opinion of the Public Defender, the resolution of several important issues would support protection of the rights of those who were affected by the conflict, and would help to rebuild trust in a society still divided by the conflict. In particular, along with the visa liberalization process and the issuing of Georgian citizenship identification cards to people residing on the occupied territories, the following actions should be carried out: acceptance of documents issued by the illegitimate authorities; restitution; access to information, healthcare, social services and education, including the western education for the students residing on occupied territories; and improvement of health and education infrastructure on occupied territories.

In 2015 high ranking officials from several institutions participated in a meeting organized by the State Minister on Reconciliation and Civil Equality and the Ministry of Foreign Affairs in order to discuss these issues. In addition, it was reported by the media that the Georgian Government has created a new inter-agency working group that will focus on current developments in Georgia's conflict zones. The group is led by the Prime Minister.[1966] However, discussions did not continue and above-mentioned issues are still unresolved.

Almost 25 years have passed since the start of armed conflicts in Georgia. It is time for the parties, including political circles and the body politic, to start meaningful discussions about the normalization of relations, which will help to improve the living conditions of people residing on both sides of the administrative boundary lines, protect the dignity and rights of these individuals, shift attitudes among the opposing societies and help heal the wounds left by the war. To achieve all this, it is necessary for state agencies to better coordinate their activities and form a relevant strategy. The benefits meant for Georgian citizens, including healthcare, education and social assistance must be equally available to the Abkhazian and South Ossetian populations in order to ensure the realization of their rights and to develop and reintegrate the conflict-affected communities.

RECOMMENDATIONS

To the Prime Minister of Georgia:

- Assign appropriate institutions (Ministry of Health, Labor and Social Affairs, State Minister for Reconciliation and Civil Equality, State Security Service of Georgia) to develop mechanisms for the inclusion into the referral programs of persons with Georgian citizenship residing on the occupied territories. Prepare amendments and changes to the Governmental Decree on "Creation of the Commission for Decision-making on Provision of Medical Services within the Referral Services and Determination of the Rules of Operation" in order to ensure a unified policy towards all people residing on the occupied territories regardless of their citizenship.

1966 Meeting of the Interagency Council, Press Service of the Prime Minister, 07.07.2015, Information is available on the webpage: <http://gov.ge/index.php?lang_id=GEO&sec_id=406&info_id=50222> [last seen on 02.02.16].

- To make amendments and changes to Article 2 of the Governmental Decree #169 on "the State Program on First Phase Measures for Management of Hepatitis C" adopted on April 20, 2015, by which the program beneficiary list, in addition to those people holding Georgian citizenship documents, will be extended to all people legitimately residing on the occupied territories and holding neutral ID cards.

To the Parliament of Georgia and Members (State Minister for Reconciliation and Civil Equality, Ministry of Foreign Affairs of Georgia, Ministry of Justice of Georgia, State Security Service of Georgia) of the Delegation of the Geneva Talks:

- To be flexible during the negotiation process in order to enable the protection of human rights in the conflict regions; to cooperate with Abkhazia and South Ossetia in order to eliminate the politicization of human rights issues.
- To use all available resources in order to ensure uninterrupted movement of ambulances, medical patients and schoolchildren across the administrative boundary lines.
- To use all available resources in order to increase the involvement of international human rights organizations and UN agencies to study human rights conditions on the occupied territories.
- To use all available means to protect the local population's freedom of movement and to ensure that the parties agree on a mechanism to eliminate the vicious practice of detentions on the administrative boundary lines.
- To use all available political, legal and diplomatic resources in order to protect the right to education of the Gali population, including raising this issue during negotiations and informing the international community, as well as applying international legal mechanisms.

To the Interim Governmental Commission on responding to the needs of population residing in the villages alongside the administrative boundary lines and their individual members:

- To discuss and make decisions on the rehabilitation of houses damaged during the 2008 war, the owners of which not having received any aid from the State. Special attention should be paid to conditions in the village of Zardiaantkari Gori Municipality.
- To discuss and take action in order to improve water quality in the villages near the administrative boundary lines.
- To discuss and assign appropriate authorities (Ministry of Agriculture, Ministry of Economy and Sustainable Development) to study the conditions of the villages alongside the administrative boundary lines and to develop agricultural and entrepreneurial programs adjusted to the needs and opportunities of the conflict-affected communities.

To the Office of the State Minister of Georgia for Reconciliation and Civil Equality:

- To develop and present for approval to the Government a State strategy and action plan for the socio-economic development of regions affected by the conflict.

To the Ministry of Justice:

- To finalize with haste the issue of registering land and property in the villages near the administrative boundary lines in order for the population to access legal mechanisms to protect their rights which have been violated by the installation of barbed wire and/or fences.

To the Ministry of Education and Science of Georgia:

- To continue and broaden support for schools and their staff in Gali region, including financial support, which might include honorariums and an improved healthcare package.
- To improve and broaden educational programs for children and teachers residing on the occupied territories, tailored to their specific needs.
- To develop exchange and informal educational programs that will allow school children living on the occupied territories to fill gaps during the studies.

To the Kareli Municipality Governor:

- To ensure the opening of the kindergarten in Tsagvli community.

To the Gori Municipality Governor:

- To ensure removal of household waste from the villages near the administrative boundary line.

RIGHTS OF THE ENVIRONMENTAL MIGRANT PERSONS

For many years, the special chapter in the Public Defender's annual report to parliament is dedicated to the human rights situation of the victims of natural disasters. [1967] Despite a number of recommendations issued by the Public Defender regarding the environmental migrants, many problems remain unsolved. This report will be the focus on all of these issues and it will cover revealed trends and problematic issues of the previous period, as well as cases in 2015.

The main problem remains the absence of a comprehensive and uniform legal basis for the disaster victims. As is known, according to the order[1968] of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, (hereinafter - Minister) created commission, in which was represented the various state agencies among them was the Public Defender's Office and international and non-governmental organizations, has developed an the draft law "on Environmental Migrants", which has not been enforced yet. [1969]

It should be noted that the ministry bought 69 houses for eco-migrants during 2013-2014 years, while during the reporting period - 91 houses, [1970] which indicates the number of resettled families is the upward trend.

During the reporting period, one of the innovations was the measures implemented for create eco-migrants' database. In particular, according to the information of the ministry, [1971] working on the software of the electronic database is finalized and the data processing is ongoing. However, in the absence of definition of the Eco-migrant (at present this definition exists only for purposes of accommodation procedure, which is not enough), the base cannot be complete and cannot play an important role in determining the future policy of the eco-migrant related issues. During the reporting period private ownership transfer process for the eco-migrants settled in 2004-2012 has started.

This chapter also will be review the natural disaster of June 13-14, 2015, in Tbilisi, Vere river valley, conducted measures by the state and deficiencies revealed in the process.

1967 In 2013 special report has been prepared on the subject.

1968 The order N123 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, issued on June 6, 2013.

1969 According to the letter N03-01/03/6188 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia regarding the postponing the discussion of the draft law on "Eco-migrants" (on 25.06.2014) that was proposed by the ministry to the government of Georgia.

1970 The letter N03-01/03/2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

1971 The letter N03-01/03/2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, issued on January 21, 2016.

LEGISLATION ON ENVIRONMENTAL MIGRANTS AND ITS SHORTCOMINGS

There is no single definition of eco-migrants at international level, as well as there is no universal, binding international document regarding eco-migrants, however, one of the most important document in this term is the 1998 UN Guiding Principles on internally displaced persons (hereinafter - the principles of the United Nations). The mentioned act – is not a binding document, however sets out the basic principles, which shall be main guide for the state in terms of the internally displaced persons. According to the mentioned principles, persons that were effect in natural disaster is placed under the definition of internally displaced persons.[1972]

The International Organization of Migrations on international level also refers the definition of Environmental migrants, according to which migrants are persons who are forced to leave their place of permanent residence due to the environmental changes that endanger their lives or living conditions. [1973] The report also notes that the changing the living place due to environmental change cannot be construed differently from the rest of the movement.[1974]

According the all the mentioned above, despite the absence of universal international definition of environmental migrant, there still exist a unified understanding of the issue. In particular, internally displaced person is considered a person who had to live permanent residence place for the external reasons, [1975] which were not depending on him/her.

However, current Georgian legislation does not consider the eco- migrants as internally displaced persons. The law of Georgia in "Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia " admit only those as an IDP, chancing the departing from the permanent residence is caused by the occupation of the territory by a foreign state, aggression, armed conflict, mass violence and/or massive human rights violations. [1976] Thus, the legislative gap between the international standards and domestic law is clear.

According to Georgian legislation, environmental migrants are not considered, as internally displaced persons and the legislation in the field do not apply to them, there is no legal status of migrants regulated on the legislative level and the definition of the eco-migrant families is used for the purposes of settlement only. In particular, the government has adopted the normative acts for the disaster-affected families for the purposes of receiving an accommodation. [1977] The order N779 (13.11.2013) on "Creation of the Regulatory Commission on the Affected by natural disasters and displacement of families subject to the approval criteria of the resettlement and resettlement issues "of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter - N779 command) to settled up a commission to review subject matter of the accommodation and in private ownership transfer of living spaces issues for the families affected in natural disasters. The mentioned order includes the definition of a migrant family, which is only used for the purposes of resettlement. Unfortunately, order N779 does not cover the other social issues, such as migrants' social security, rehabilitation of damaged residential properties, etc.[1978]

The regulations outlined in the order N779 was reviewed in 2014 Annual Parliamentary Report of the Public Defender. Only the changes that were made during the reporting period will be discuss in this chapter. The chapter also tackle the problems that were caused due to the lack of a comprehensive legal framework that originated issues in the practice.

One of the major change was the amount of the funds for to buy a house. In particular, instead of 20 000 (twenty thousand) GEL, eco-migrant families can buy Real Estate for 25 000 (twenty five thousand) GEL.

1972 The 1998 UN Guiding Principles on internally displaced persons, preamble, paragraph 2 .
1973 International Organization of Migration (IOM), report on the world migration, 2010, pp. 73-74.
1974 ibid.
1975 Due to aggression, armed conflict, mass violence and/or massive human rights violations and natural or human created catastrophes.
1976 Law of Georgia on "Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia" Artcle6, paragraph 1.
1977 The order N779 (13.11.2013) on "Creation of the Regulatory Commission on the Affected by natural disasters and displacement of families subject to the approval criteria of the resettlement and resettlement issues "of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.
1978 In case, it is possible.

The order N779, as already was mentioned, only regulate the transfer of houses for the eco-migrant families and their property accommodation procedures and operates on the whole territory of the country. An order includes the forms of the house damage assessing categories [1979] that demand the signature of the governor and representative of district governor, [1980] which is a legislative gap, because according to the Code of Self-government, this form must be require the signature of the mayor and representative of mayor, in the case of self-governing cities.

The Order # 779 is not enough due the lack of guarantees given and by the contribution of the society - caused to the fact that, during the natural disaster of June 13-14, in 2015 special regulations became necessary to formulate for the victim families. [1981] In the case of Tbilisi, local government units was determined as responsible agency for victims of resettlement and compensation issues, while the organization and provision of accommodation for eco-migrants is a competence of the department of the eco-migrants of the ministry.[1982] To develop various categories of damage, elaboration of the different housing accommodation rules, etc. the mentioned regulations, besides the damage compensation for the victims considers other types of financial aid as well. Concerning the victims of disaster of June 13-14 the possibility of rehabilitation of damaged houses is also provided, while the order N779 does not include such a possibility. According to the example of June 13-14, it is clear that the regulation in the field of eco-migrants needs to be revised, due to its insufficient and limited condition. The state should provide such multi-dimensional approach for eco-migrants living in various geographic areas of the country.

As it was already mentioned, there is no special strategy and its implementation action plan for eco-migrants rights. However, the government of Georgia approved "the Human Rights Action Plan for the 2014-2015 "one of the chapters is dedicated to the issued of the families affected by the disaster. The action plan provides a short list of issues, including: the development of a special law, production and formation of the database. It should be noted that for the period mentioned in the action plan the database has not been completed, and the draft law on eco-migrants has been developed before the approval of the action plan. [1983] In addition, only elaboration of the draft law is not is not enough measure for to solve the issue, because its review and initiation process in the Parliament to has not yet started.

Finally, it must be said that the disaster-affected persons as well as IDPs, belong to the vulnerable category, due to their needs and socio-economic situation, it is important that the government to take steps and provide the both categories of internally displaced persons with equal social guarantees and credentials.

PRACTICE AND CURRENT SHORTCOMINGS IN THE ECO-MIGRATION FIELD

During the reporting period the Public Defender's Office was studding the applications of the victims of natural disasters / migrants, which still live in state-owned houses. The lack of arable land is still a problem for Migrant families settled in different regions of Georgia.

An important aspect to support realization of the right of eco-migrants is adequate financial support from the state. According to the ministry, [1984] 1 777 000 GEL has been spent on the resettlement of migrants during the

1979 The order N779 (13.11.2013) on "Creation of the Regulatory Commission on the Affected by natural disasters and displacement of families subject to the approval criteria of the resettlement and resettlement issues "of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, annex N4 and N5.

1980 Is appointed in the municipality administrative unit.

1981 The decree №17-66 of the Tbilisi City Council used on July5, 2015 on „ Approving the rules for the victims (families) of the June13-14, 2015 disaster in Tbilisi municipality providing with housing, transferring the real estate and other means of financial support"

1982 Article 7, paragraph 4^1 of the decree N34 of Government of Georgia issued on February 22, 2008 on „ Approval of the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia"

1983 The Government of Georgia approved the action plan on July 9, 2014. The ministry presented the draft law on eco-migrants on June 25, 2014.

1984 The letter N03-01/03/2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia issued on January 21, 2016.

year 2015. In particular, 1 010 applications have applied for the living space, while 91 of environmental migrant families actually got it. Mentioned figures reveal the lack of states efforts for this matter and its extremely small scale. According to the information of the ministry,[1985] by budget of 2016, 2 250 000 (two million two hundred fifty thousand) GEL is set aside for the resettlement of migrants.

It should be noted prior to the enactment of the order N779,in different regions of Georgia, the issue eco-migrants were settled in the houses of the private ownership was discussed. Matter of the fact that the migrants still live in the state-owned houses; they do not have a sense of ownership for the estate they possess and cannot dispose the real estate. Herewith, there are cases when for the rehabilitation of the estate; consent of the owner is required, which may be an additional obstacle for the family already living in difficult socio-economic situation. According to the information of the Ministry,[1986] Description / profiling the houses that was purchased during 2004-2012 for the resettled families were carried out. The mentioned measures are aimed to transfer migrants' detained houses to their private ownership. The project implementation is scheduled for the year of 2016. The Public Defender's Office is implementing the project monitoring. It is important that the procedures to be conducted mainly for the interests of migrants and promoting protection of their rights.

One of the resettlement area of eco-migrants is in Tsalka municipality. During the reporting period, the Public Defender's Office continued studding claims presented in the Tsalka municipality by the victims / migrants of natural disaster, which indicated that the houses where migrants live, is private property of the state and the Greek citizens, which's ownership have not been transferred to natural disaster victims.

The majority of migrants settled in Tsalka live in homes Greek citizens. Since 2014 it is a the trend, that the Greeks are returning to Georgia and demand to leave their houses from the migrants, there are a number of similar cases, respectively, migrants have to arbitrarily take state-owned buildings and live there with families and little children, where there is no adequate living conditions, electricity, water supply and other infrastructure.

According to the notification from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia,[1987] during 2015 13 eco-migrant family living in Tsalka municipality statement have been satisfied regarding „ find the living housing " and for to purchase these 13 house 253 000 GEL were spent from the state budget.

According to the decree N996 of the Government of Georgia issued on May 18, 2015 on " the Temporary Measure for Transferring Real Estate Property to the Natural Disaster-affected Families " in the framework of the project, before activating the order N779of the Minister issued on November 13, 2013 , Description / profiling the houses that was purchased during 2004-2012 for the resettled families were carried out, together with the acquired land measuring of these houses and preparation of its cadastral plans and their registration in the Public Registry according to the new regulations. The process of transferring ownership of private residential buildings will be carried out during 2016, including the 571 house located in the Municipality of Tsalka.

According to information provided by the Municipal Government of Tsalka, in Tsalka Municipal District from the various municipalities of Georgia (mainly from the mountainous regions of Adjara Autonomous Republic and municipalities of Mestia) has been settled 2,400 families, including 571 families living in state-owned buildings.

According to the information from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the information filled in the application by the inhabited by families

1985 The letter N03-01/03/2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia issued on January 21, 2016.

1986 The letter N03-01/03/2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia issued on January 21, 2016.

1987 The letter N03-01/03/2018 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

in Tsalka municipalities in 2015 on this stage is impossible, because currently the information is not in digital format and their sorting by applicants' actual place of residence requires a very long time. The Ministry noted that the electronic database software development is completed and the ministry's information allocation is starting to the database. According to the preliminary information, digitalizing of the data will be finalized during the 2016, after that it will be possible to elaborate different statistical information.

One of the most important factors of realization Migrants' rights is in their integration in the new place of residence. According to the regulations of the Ministry,[1988] the ministry is obligated not only to accommodation eco- migrants, but to take the necessary measures for their subsequent adaptation and integration. Thus, the accommodate of the beneficiary is not the realization of the final result of the right. Accommodation is important for further measures, which implies adequate housing and social conditions creation for eco-migrants, which will ultimately serve settled person's adaptation and establishment in the new place of residence. The mentioned problems are obvious in cases of resettlement before the date of the issuing the order of N779 for the disaster-affected persons. Despite the fact that sufficient period has passed after the accommodation, in many cases they still are not integrated in the new place of residence. The mentioned issued has various causes, such as lack of agricultural land, [1989] lack of access to employment, intolerance of host community due to the different religious beliefs of the migrant families[1990] and so on.

In order to solve the above mentioned problem, it is important the state to set goals for to achieve the integration of the settled population in their living areas. It is possible, that different measures will be needed for the relocated families in different regions of the Georgia. In addition, community involvement is important in the planning process of adaptation and integration of migrants.

NATURAL DISASTER OF JUNE 13-14[1991]

23 people are dead / missing during the June 13-14, 2015 Vere disaster in Tbilisi, [1992] many families were left without the house. The ownership / use of the land, garages and vehicles owned by the part of the inhabitants were destroyed. According the provided information[1993] the houses were damaged / destroyed for 150 families, and the car - 157 cases. The city's infrastructure was damaged largely. The tragedy has united the entire society; a significant financial contribution has been mobilized. According to information provided[1994] 103 20 733 029.60 GEL was collected by the private sector (twenty million seven hundred thirty-three thousand and twenty-nine and sixty white gel).

On the one hand, taking into consideration the fact that the guarantees offered by the state to eco-migrants are scarce and insufficient, at the same time on the other hand, based on the fact that the public managed to mobilize a large donation for the disaster victims, the Tbilisi City Council adopted the normative act in order to support victims.

1988 The decree N34 of Government of Georgia issued on February 22, 2008 on „ Approval of the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia"

1989 For example: Akhmeta municipality villages Koreti and Phichkhovani.

1990 On the example of Samtatskaro, Chela, Mokhe, Tsintskaro and Nigvziani.

1991 The same topic is discussed in the chapter on Right to Healthy Environment.

1992 The letter N08/10537-8 (17.009.2015) annex four of the National Property Management Agency of Tbilisi municipality.

1993 The letter N08/10537-8 of National Property Management Agency.

1994 The letter N06/15212284-1 of Tbilisi City Hall.

THE LEGISLATION ON COMPENSATION FOR CAUSED DAMAGE AND ITS CURRENT SHORTCOMINGS

For the purpose of compensation of damages for the population, the Tbilisi City Council has developed a housing provision and other forms of financial aid rules.[1995] City Council adopted document is regulating the provision with housing rules for families affected by the natural disaster, real estate exchange for compensation and issuing other types of financial aid. Matter of the fact that the state guarantees provided for the eco-migrants is scanty and insufficient, the new rules were adopted in the force majeure situation, which, of course, increases the risk of mistakes and could still cause of the violation of human rights of the victims.

For the purposes of City Council resolution various terms are defined, including the victim person (family) concept.[1996] "The victim family" definition is linked[1997] to the real estate ownership and damage / existence of destruction on the area designated by the certain authority. In turn, the National Environmental Agency has prepared a topographic map of the surrounding area, where the water through and flooding the area is distinguished.[1998] The residents of this particular area whose houses damaged can be considered as victims. However, The Public Defender's Office in the proceedings several statements made by the applicants[1999] indicating that their houses are no in certain area of disaster, but were damaged by the natural disaster, and the damage still is not reimbursed. In the resolution the city council indicates that in such cases[2000] the district administrations of Tbilisi are implementing appropriate measures. The Public Defender's Office continues studding the cases and will appraise the measures taken by the local government according the results of studding, if it is effective enough.

In addition, the resolution recognizes two[2001] categories of the victims and in these categories includes three[2002] groups of affected families. However, the resolution makes an exemption from the mentioned concept and recognizes recipient of other types of financial aid for those individuals who, for the purposes of the resolution is not considered as the victim family, however before the natural disaster in a particular territory was unlawful possessing a residential area and that was destroyed. It should be noted that the document does not specify a rehabilitation of accommodations for this type families, also it is obscure on the basis of what documents or information can prove about the fact that certain family was living in the territory without a specific legal basis.

As for the practical realization of this provision, according to the information of the Property Management Agency (hereinafter - the Agency),[2003] the unlawful families were provided with cash assistance by the local district governments.[2004] Moreover, because the process is still underway, the final data of the amount does

1995 The decree №17-66 of the Tbilisi Citi Council issued on July 5, 2015 „ In Tbilisi municipality for the victims (families) of disaster of June 13-14, 2015 adopting the regulating provision on providing the accommodation, transferring the real estate and issuing other types of financial aid".

1996 Subparagraph "a" of the Article 2 of the decree №17-66 of the Tbilisi Citi Council issued on July 5, 2015 „ In Tbilisi municipality for the victims (families) of disaster of June 13-14, 2015 adopting the regulating provision on providing the accommodation, transferring the real estate and issuing other types of financial aid".

1997 The decree N274 of the Government of Georgia issued on June 18, 2015 „ on Approval of the statute for the creation of the interagency commission for the disaster of June 13-14, 2015 liquidation and studding activities of the river Vere Valley and surrounding area and for organizing the future reconstruction process"

1998 The information is available on the web page:< http://tbilisi.gov.ge/news/1461>, [Last visited on 09.03.2016]

1999 For instance, in case of the citizen M.M., the house was damaged not due to the flood of the river Vere, but as a result of the rain water flooding from the damaged drainage system of the adjacent building. Currently, living in the above house is hazardous for the life and health of the inhabitants. Due to the fact that the resolution of the City Assembly (Sakrebulo) does not foresee the issues of compensation of damages or provision of the housing for this type of the victims, citizen M.M. is still left without the living space.

2000 Subparagraph 4, Article 1 of the mentioned decree.

2001 I category - the victim person (family), whose house has been destroyed or damaged by the disaster, and are not subject to rehabilitation, II category - the victim person (family), whose house was damaged by the disaster, however, is subject to rehabilitation.

2002 I group - owners, II group - "to recognition ownership (possession) of transferred real estate to the physical and legal entities" legitimate possessor of the real estate (hereinafter –possessor), III group – "to recognition ownership (possession) of transferred real estate to the physical and legal entities" arbitrary possession the real estate considered by the legislation (hereinafter - possessor).

2003 Interview with the head of the National Property Management Agency Privatization Department of Tbilisi municipality- N. Esitashvili, recorded on March 11, 2016.

2004 Of Vake and Saburtalo discticts.

not exist at this time. Unlawfully living of the family in the Territory was determined as a result of census families.[2005]

In addition, it should be note that to the families whose land was destroyed during the flood or garages were damaged are in the range of persons defined by the resolution. According to the information of the agency, the families whose land was destroyed during the flood or garages were damaged will not be reimbursement in practice. [2006] This situation is still problematic.

During the reporting period, the Public Defender's Office also studied damages reimbursement issue of the June 13-14 disaster-affected vehicle owners / holders. Tbilisi Municipal Government approved the list of owners of vehicles damaged by the disaster by the decree N31.36.946 issued on August 5, 2015 (Appendix 2). According to information provided by the Agency, [2007] from time to time the list was amended and corrected according to the statements. the City Council approved Resolution N33-128 issued on December 29, 2015 on " the financial assistance rules for the disaster destroyed or damaged vehicles during the disaster on July 13-14, 2015 in the Tbilisi municipality". According to the paragraph 1 of Article 4 of Approved rule, the allowances is granted according to the evaluator (by Agency of "Levan Samkharauli National Forensics Bureau") issued conclusion, which, determines whether the vehicle can be restored or not. According to the information of the agency, [2008] the contracts with the car owners are sign according to this rule.

RECOMMENDATIONS:

To the Parliament of Georgia and Governemnt of Georgia:

- To adopt a law on eco-migrants, which will be in accordance with international standards, that defines the term of eco-migrant and their social guarantees

To the Ministry of Internally Displaced Persons from the Occupies Territories, Accomodation and Refugees of Georgia:

- To elaborate the database of natural disaster affected victims as a result of defining the tern eco-migrant on the level of the legislation
- To adopt and implement adaptation-integration programs for the resettled for the purpose of protection of human rights of the victims and displaced persons as a result of the disaster

To the Government of Georgia, to the Ministry of Internally Displaced Persons from the Occupies Territories, Accomodation and Refugees of Georgia, to the National Property Agency and to the Public Registry:

- To accelerate the process of transferring the private ownership of the real estate that was issued before the enactment of the order N779 of the minister in different regions of the Georgia, this should be aimed at protecting the rights of eco-migrants.

2005 Interview with the head of the National Property Management Agency Privatization Department of Tbilisi municipality- N. Esitashvili, recorded on March 11, 2016. According to the interviewee representatives of different administrative bodies census all the families at their living addresses.

2006 Interview with the head of the National Property Management Agency Privatization Department of Tbilisi municipality- N. Esitashvili, recorded on March 11, 2016.

2007 The letter N01-8/1431 (04.11.2015) of the National Property Management Agency of Tbilisi municipality.

2008 The letter N01-8/874 (16.02.2016) of the National Property Management Agency of Tbilisi municipality.

ON REPATRIATION OF PERSON'S FORCIBLY SENT INTO EXILE FROM THE SOVIET SOCIALIST REPUBLIC OF GEORGIA BY THE FORMER USSR IN THE 40'S OF THE 20TH CENTURY

Law "on Repatriation of Persons forcefully sent into exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 40's of the 20th Century"

In the following chapter, the attention will be payed to the matters and issues of repatriation of persons' forcibly deported from the SSR of Georgia by the former USSR in the 40's of the 20th centyry.

According to the data of December 2015, [2009] in the framework of the Georgian law on "Repatriation of Persons forcefully sent into exile from the SSR of Georgia by the Former USSR in the 40's of the 20th century" in the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is registered 5 841 persons. Only 1 533 of them were granted the status. The data was the same during the last year as well because procedure of granting the status hasn't been carried out in 2015.

As for the granting the citizenship to the persons with status of repatriate, according to the information [2010] provided by the State Services Development Agency of the Ministry of Justice, presently only 472 persons with repatriate status have been granted the citizenship of Georgia.

The topic of the repatriation of forcefully deported persons from South Georgia is still a widely important political issue; the legal status of these persons is problematic as well. despite the fact that along with the membership of Council of Europe, Georgia committed[2011] to repatriate the persons forcefully sent into exile from the former Soviet Union of Georgia by the Soviet Union in the 40-ies of 20th century, a variety of factors hampering the fulfilment of the relevant obligations and procedures for quite a long time. Even the fact that the legislative framework was created after only seven years from taking the commitments, it determines the attitude of the government about the issue. In particular, the Parliament of Georgia adopted the law of Georgia on July 2007, "Repatriation of persons' forcefully sent into exile from the Soviet Socialistic Republic of Georgia by the former USSR in the 40's of the 20th century ". Until 2014 there was no clear strategy for decent repatriation of Meskhetians, whose approval can also, for some extent, be considered a step forward. An action plan still is not adopted, however this still has a positive tendency. According to the information received from The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia [2012] the Action Plan project has already been completed and soon will be adopted, after discussing and reviewing with appropriate agencies.

2009 The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia letter N02–01/05/1884 (21.01.2016).

2010 The Public Service Development Agency of the Ministry of Justice information- letter N01/17344 (27.01.2016).

2011 The opinion of the parliamentary assembly of the Council of Europe, January 27, 1999 – The information is available on the web page: <http://www.assembly.coe.int//Main.asp?link=http://www.assembly.coe.int/Documents/AdoptedText/ta99/eopi209.htm#1>.

2012 Session of the inter-governmental council working on Repatriation of Person's Forcibly Deported from the SSR of Georgia by the Former USSR in the 1940s (30.12.2015).

Special attention should be paid to the fact of the creation the inter-governmental council working on Repatriation of Person's forcefully sent into exile from the SSR of Georgia by the Former USSR in the 40's of the 20th century, operating since March 1, 2011. The aims of the Council is to coordinate the bodies dealing with the matter of repatriation and to support the implementation of concrete initiatives and recommendations, [2013] however, it should be noted, that the work of the Council according to the intensity of its working meetings is rather inefficient. In 2015, only one session was held in the Council where the project of an action plan was presented. We believe that inter-governmental council working on repatriation should make more intense steps and find effective measures to solve the problems of the repatriated population.

Despite the existence of the legal framework and state's readiness to implement the repatriation process, a number of challenges still remain that needs comprehensive approach to overcome.

LEGISLATIVE REGULATIONS

Despite the adoption of the law on, "Repatriation of Persons forcefully sent into exile from the SSR of Georgia in the 40's of the 20th century by the Former Soviet Union" in 2007, a number of legal documents were adopted afterwards, these acts only regulate the reparation and the technical issues citizenship status. The Public Defender has repeatedly underlined on the shortcomings law in "The Situation of Human Rights and Freedoms" reports. [2014] Accordingly, we will briefly review the essential shortcomings of the legislation.

In 2007, law on "Repatriation of Persons Forcefully Sent into Exile from the SSR of Georgia in the 40's of the 20 th century by the Former Soviet Union" was adopted to regulate the legal status of forcefully deported persons' dignified return and repatriation process. The purpose of the law is the creation of legal mechanisms for descendants to return of the persons and their generations to Georgia, while the reparation system defined by the law is based on historical justice ensuring, compliance with dignified and voluntary return principles and provides the gradual repatriation. [2015] However, it should be noted that the law only specifies the procedures for granting the status of repatriate. The law does no guarantees the socio-economic and the property related issues, which we believe is one of the most important aspects of the repatriates return.

According to the mentioned law, the state is obliged to provide a simplified procedure for to grant citizenship to repatriate status holders. In particular, according to the decree of the Government of Georgia, "Simplified Procedure for Granting the Citizenship to the Repatriate ", the repatriate status holders "shall not apply for citizenship" under the Article 26 of the organic law of Georgia, which defines the general conditions of granting the citizenship. [2016] However, due to the fact that the simplified procedure shall apply only to the persons who have applied to the government of Georgia and received the status of the repatriate, the issue remain for factually repatriate, however, in case not holder of the status of repatriate persons. The applications received during the last years at the Public Defender's Office show that there are a certain group individuals, who did not manage submitting the documents within the limited time and obtaining the repatriate status, therefore, they cannot obtain the Georgian citizenship through a simplified procedure and their legal status in Georgia remains unclear.

2013 The information is available on the web page: <http://mra.gov.ge/geo/static/173 >[Last visited ...].

2014 The information is available on the web page: <http://www.ombudsman.ge/ge/reports/saparlamento-angarishebi >[Last visited on …]

2015 The law of Georgia on, "Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union", article 1.

2016 „Article 26. Granting Georgian citizenship to adults under regular procedure: Adults shall be granted Georgian citizenship under regular procedure if they meet the following requirements:
a) they have lawfully resided in Georgia for the last 5 consecutive years up to the day of applying for Georgian citizenship;
b) they know the official language of Georgia within the established limits;
c) they know the history of Georgia and basic principles of law within the established limits;
d) they have a job and/or real estate in Georgia, or carry on business on the territory of Georgia or hold an interest or shares in a Georgian enterprise."

As in previous years, reports have noted a problem with granting the citizenship for repatriate status holders is an issue, which, it is true have been granted citizenship of Georgia under the simplified procedure, but the president's command on granting the citizenship can be considered void, because these individuals have failed to submit the certifying documentation of cancelling other country's citizenship under the regulation, which are outlined in the decree N87 of the Government of Georgia, " Simplified Procedure for Granting the Citizenship to the Repatriate ". According to the fourth article of the decree:

"The president issues a decree on accepting the request of citizenship by the repatriate person in cases person's citizenship application meets the criteria, which takes effect immediately after the repatriate status holder person represents a document proving cancelling the citizenship of foreign state to the agency or the diplomatic mission in foreign country or consular section."

All the above mentioned is confirmed by the statistical information requested from the LEPL Public Service Development Agency of the Ministry of Justice, that was discussed above. According to the information received,[2017] the so-called Conditional 472 foreign citizens of repatriate status holders were granted with citizenship, however confirming documentation that they cancelled the other country's citizenship have not presented any of them. According to the law, the President's order on granting the citizenship is cancelled after the order expires and as a result, mentioned individuals will no longer have the opportunity to benefit from the simplified procedure of granting the citizenship, which has been approved by Article 8[2018] of the decree of the Government.

REPATRIATION AND INTEGRATION

Along with the formation of Meskhetian Persons dignified return state policy, it is important to study their needs and ensure information delivery by the language they can understand. Consequently, the repatriation action plan and its effective conduct have crucial role in the process effectiveness. Therefore, we consider it necessary to promote the acceleration process repatriation Action Plan.

One of the important challenges for the government is process of repatriation and integration and it needs a comprehensive approach. The existing legal framework is a prerequisite to facilitate the return of displaced persons, however, for the real return more specific measures shall be taken, such as set out the repatriation the strategy in the action plan activities and to eliminate conflicting public opinion.

For the purpose integration of persons, it is necessary to pay attention to the problems that may be encountered in case of returning. Namely, access to education, employment and health care.

As you know, the repatriation law and the bylaws adopted based on it, do not provide for any kind of social assistance for the repatriates, which negatively impacts on process of their return to Georgia and on the provision of a decent life in Georgia.

The state state on Repatriation of Person's Forcibly Deported from the SSR of Georgia by the Former USSR in the 40's of the 20th century is important, which aims to promote repatriates dignified and voluntary return and civic integration of the repatriated population. Taking into consideration that the document contains only general information, it is necessary to accelerate the adoption of the Action Plan, afterwards promote integration measures for the repatriation. Taking into consideration that the repatriates do not have Georgian citizenship, after returned to Georgia they have problems in terms of accessing the education, health and employment. Accordingly, it is necessary to speed up and improve the process of granting the Georgian citizenship.

2017 The letter N01/17344 of LEPL Public Service Development Agency of the Ministry of Justice of Georgia (27.01.2016).

2018 „....in case of violation period terms with inexcusable reason a person with repatriate status will not receive citizenship under the simplified procedure" – article 8 of the decree N87of the Government of Georgia, " Simplified Procedure for Granting the Citizenship to the Repatriate ".

One more challenge is the so-called Self-repatriate Meskhetians who settle in Georgia by their own will and funds. The Public Defender has underlined the issue in "The Situation of Human Rights and Freedoms" reports.[2019] During the reporting period, the government has not undertaken any measures to inform these individuals and for regulation the legal basis of their presence in Georgia, as a result, their legal status is still in need of improvement.

In order to prevent mentioned groups of people living in Georgia by violating the immigration legislation and the persons of life, it is necessary, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with international and non-governmental organizations, to find the people and give them the opportunity to live within the framework of the Georgia legislation.

To raise awareness is one of the main challenges facing in case of the internally displaced persons, as well as among the local population. The state is obliged to carry out appropriate measures to inform the public.

We believe that a protracted process that was needed for repatriation process the development of the concrete steps towards of posed a certain obstacles for exiled persons. Therefore, it is important to inform the repatriate status seeker persons about Georgia and the repatriation process. It is also necessary to inform and promote the educational and socio-economic development. As we know, the mentioned persons do not know the Georgian language, which may pose a problem in terms of integration. It is important to respond to such challenges and trying to abolish the problems, which will promote to facilitate the engagement of these persons involvement in the country's political and socio-economic life.

An increased effort to integrate repatriates is necessary. The state is required to accelerate the repatriation process, which fulfils the obligations taken toward the Council of Europe and it will help restoration of the historical justice.

RECOMMENDATIONS

To the Parliament of Georgia and to the Ministry of Internally Displaced Persons from the Occupies Territories, Accomodation and Refugees of Georgia:

- To review the Law of Georgia "on Repatriation of Persons Forcefully sent into Exile from the Soviet Socialist Republic of Georgia in the 40's of the 20th Century by the Former Soviet Union" and determine the terms for reviewing the application for the Status of Repatriated and the timeframe of the granting the status

To the Governemnt of Georgia and to the Ministry of Internally Displaced Persons from the Occupies Territories, Accomodation and Refugees of Georgia:

- To confirm the "State Strategy on the Repatriation of Persons Internally Displaced by the Former USSR from the Soviet Socialistic Republic of Georgia in the 1940s of the 20th Century" elaborated in 2016, to promote the process of reparation and as inevitable tool for Meskhetians' integration

To the Ministry of Justice and to the Ministry of Internally Displaced Persons from the Occupies Territories, Accomodation and Refugees of Georgia:

- To ensure providing timely research on so-called self-repatriated persons, to appraise their number and needs and to start procedures for defining their legal status, including discussing the adoption of the simplified Georgian citizenship granting procedures
- To take measure to speed up and promote the process for granting the Georgian citizenship procedures for the repatriate status holders.

2019 The information is available on the web page: <http://www.ombudsman.ge/uploads/other/2/2439.pdf>, pp. 870, Last visited on...].

LEGAL STATUS OF ALIENS

In the recent years, Georgia's involvement in the global migration processes has significantly increased, which creates the necessity of forming the policy adjusted to the human rights and implementing the effective measures in this direction. One of the priorities of the Association Agenda adopted for the implementation of the Association Agreement between the European Union and Georgia is the determination of the status of migrants and availability of fair legislative procedures for the protection of their rights.[2020] Consequently, proper planning of the migration policy and constant improvement of its management is one of the main challenges of the Government.

To support the effective management of the migration processes, the Georgian Government has taken systemic steps in 2015. Namely, the Migration Strategy[2021] for 2016-2020 and the Action Plan[2022] for its implementation entered into force. The unified migration analytical system was set up, based on which, in order to determine the migration trends, the data on natural and/or legal persons is being processed and the analysis of the statistical information is conducted in various State institutions.[2023] Noteworthy is the fact that one of the thematic directions in the migration strategy is the support to the legal migration, where the improvement of visa and residence policy is the primary objective.[2024] The objective foresees the improvement of legal regulations and gradual harmonization with the best international practice.

Applications submitted by the aliens and stateless persons to the Office of the Public Defender of Georgia, mainly addressed the right to reside legally on the territory of Georgia. In his Parliamentary Report of 2014, the Public Defender has reviewed the existing shortcomings of the legislation related to the procedures of issuing Georgian visas. In particular, an alien willing to enter the state territory was obliged to address the consulate of Georgia abroad in order to obtain a visa. If the above institution did not exist in a certain state, an alien willing to enter Georgia would have to travel to a third country in the vicinity, where Georgia had a consulate.[2025]

In 2015, the electronic visa portal was launched in Georgia.[2026] Through the above portal, the Ministry of Foreign Affairs of Georgia is authorized to issue e-visas to the aliens abroad and the relevant visa application can be submitted through the special web-page.[2027] Therefore, in terms of improving the service for issuing the

2020 "Georgia-EU Association Agenda," Chapter: Migration and Shelter, pp. 13-14, available at: <http://eeas.europa.eu/delegations/georgia/eu_georgia/association_agreement/index_ka.htm> [Last Visited on 28.03.2016].

2021 Decree N622 of the Government of Georgia on Approving the 2016-2020 Migration Strategy of Georgia, 14 December 2015.

2022 2016-2017 Action Plan of the Migration Strategy for 2016-2020, Available at: <http://migration.commission.ge/index.php?article_id=212&clang=0> [Last Visited on 28.03.2016].

2023 Decree #352 of the Government of Georgia on Approving the Rules for the Formation of the Unified Analytical System of Migration and its Administration, dated 17 July 2015.

2024 See footnote N2, Chapter IV: Supporting Legal Migration, Objective "a".

2025 The Situation of Human Rights and Freedoms in Goergia, Report of the Public Defender of Georgia, 2014, Chapter: Legal Status of Aliens in Georgia, pp. 877-890.

2026 Law of Georgia on the Legal Status of Aliens and Stateless Persons, Article 6 paragraph 1^2.

2027 Available at: https://www.evisa.gov.ge/GeoVisa/

Georgian visa, positive changes were implemented by the Government, based on which, the aliens were given the possibility to receive the electronic visas without going to the Georgian consulates abroad. In parallel to the above processes, last year, with the decree of the Government of Georgia, the list of those 94 countries, whose citizens can enter without a visa and stay in Georgia for the full 1 year was approved.[2028]

Together with the visa policy, the issues related to the residence permits and obtaining citizenships by the aliens or stateless persons is not of any less importance. Similar to 2014, during the previous reporting year, the number of the rejected appeals submitted to the Public Defender's Office was maintained, when the requests of the aliens or stateless individuals on obtaining residence permits or citizenships were rejected due to the national and/or public safety reasons. However, it should also be noted that unlike 2014, the number of applications received in this direction was decreased in 2015.

Legislative acts approved in 2014 has improved the legal procedure of the negative decision-making on rejecting the residence permit or the citizenship requests based on the nationa and/or public safety reasons. Namely, the cases when a certain person's request can be declined based on national and / or public interest protection according the law were defined exhaustively.[2029]

Based on the applications studied by the Office of the Public Defender of Georgia, it was revealed that the Public Service Development Agency was not pointing to the certain refusal provision, while declining residence permit and citizenship request, regarding the conditions causing the existence of national and/or the need to protect public safety. The similar circumstance can be caused by the fact that the State Security Services[2030] provide insufficient information to the Public Service Development Agency.[2031] Consequently, in a number of cases, unjustified decisions were made with the negligence of the requirements of law by the State institutions. In such cases, the interested parties are evicted from the right to appeal the in the court or to submit evidence to that proved it wrong, because these persons do not know the real legal reasoning of the refusal.

The above-mentioned practice violates not only the requirements of the domestic legislation, but also contradicts the international standards. According to the EU and European Parliament directive, the persons concerned shall be notified in writing of any decision taken due to the protection of the national and/or public interest, in such a way that they are able to comprehend its content and the implications for them.[2032] Despite the fact that the above document does not have an obligatory character, it is a main guidance for the State, since it enshrines the objective/consientious definition and standards of the right and the Government oriented on the establishment of the European values should strive to achieve them. In addition, it should be noted that the similar practice prevents the implementation of the objective set out in the 2016-2020 Migration Strategy. As it was noted above, one of the main objectives of the strategy is the creation of the legislative and institutional space for the migration management, which will ensure more harmonization with the EU standards.

RECOMMENDATIONS

To the State Security Service and to the LEPL Public Service Development Agency

- While making a negative decision on the issuance of the residence permit or granting the citizenship based on the national and/or public security interests, to ensure the relevant justification established by law, to indicate[2033] a concrete ground (sub-paragraph) and to properly inform the individual, whose request was rejected, with the sufficient protection of the State and/or public security.

2028 Decree N255 of the Government of Georgia dated 5 June 2015.

2029 1) Article 16 paragraph 2 of the Organic Law of Georgia on the Citizenship of Georgia; 2) Article 18 paragraph 2 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons.

2030 Till 1 August 2015 – the authorized structural unit of the Ministry of Internal Affairs (Counter-Intelligence Department), and since 1 August 2015 – The State Security Service.

2031 1) Decree N237 of the President of Georgia on Approving the Regulations for Reviewing and Deciding the Matters of the Georgian Citizenship, 10 June 2014, Article 17 paragraph 3; 2) Decree N520 of the Government of Georgia on Approving the Procedures for Issuing the Residence Permit of Georgia, 1 September 2014, Article 13 paragraph 5.

2032 Directive #2004/38/EC of the European Union and the European Parliament, Article 30 paragraph 1.

2033 The sub=paragraphs listed in Article 18 paragraph 2 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons and in Article 16 paragraph 2 of the Law of Georgia on the Citizenship of Georgia.

THE HUMAN RIGHTS OF ASYLUM SEEKERS, REFUGEES AND PERSONS WITH HUMANITARIAN STATUS IN GEORGIA

INTRODUCTION

The right to asylum is enshrined in international law. Every individual has the right to seek and to enjoy asylum.[2034] This right is further reinforced ty the UN Convention Relating to the Status of Refugees and its optional Protocol of 1951 and 1967 respectively. Also, pursuant to Article 47 of the Georgian Constitution, the Georgian State shall grant asylum to foreign citizens and stateless persons in accordance with universally recognized rules of international law.

The Office of the Public Defender of Georgia has been active in monitoring the situation in the protection of rights of asylum seeker, refugees and individuals with humanitarian status.

In comparison to data from previous years, there has been an increase in a number of referrals by foreign citizens including asylum seekers, refugees and individuals with humanitarian statuses to the Public Defender's Office. Respectively, the reporting period saw intensified efforts of the Public Defender's Office to monitor the situation in the protection of human rights of above mentioned categories and identify gaps. A special report [2035] on human rights of asylum seekers, refugees and humanitarian status holders was developed by the end of 2015 within the frame of "Support to the Public Defender's Office in Surveying the Situation of Refugees, Persons with Humanitarian Status and Asylum Seekers in Georgia'. A presentation was organized for state agencies, diplomatic missions and non-governmental organizations to introduce the findings of the survey. The report provides detailed information on the results of the monitoring in relation to the situation in protection of human rights of these groups. The document provides an overview of the current situation in Georgia in terms of asylum seekers, refugees and humanitarian status holders and practices related to allowing them to cross the state border, accessibility of asylum granting procedures and appeals in courts. The report highlights gaps in legislative framework and a series of recommendations developed for the purpose of having these gaps addressed.

It should be noted that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia initiated the development of a new draft law on International Protection in the processes of improving the legal framework for asylum. The discussion process of the above mentioned draft law included various state agencies, international organizations and NGOs as well as representatives of the Public Defender's Office. The report also provides a brief overview of the draft law.

2034 United Nations General Assembly, the Universal Declaration of Human Rights, 10 December 1948, 217 A (III). Available at: http://www.refworld.org/docid/3ae6b3712c.html

2035 Available in Georgian at: https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view?pref=2&pli=1

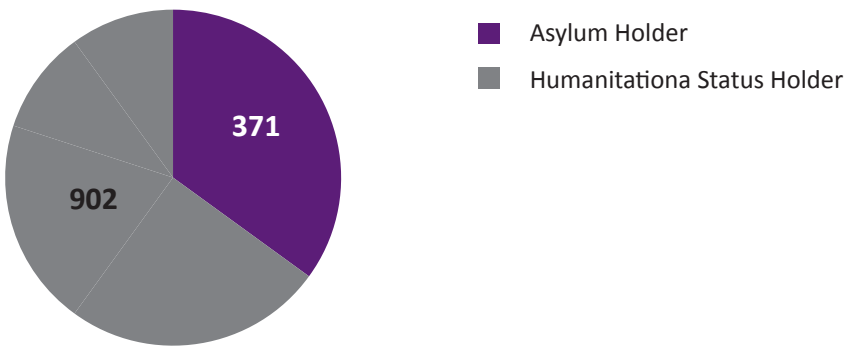
GENERAL INFORMATION AND STATISTICAL DATA ON ASYLUM SEEKERS, REFUGEES AND HUMANITARIAN STATUS HOLDERS

In 1999 Georgia became a signatory country to United Nations Convention relating to the Status of Refugees (1951) and its Optional Protocol (1967) thus taking the responsibility for protecting asylum seekers, refugees and humanitarian status holders.

The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter referred to as the Ministry of Refugees) is the only administrative body responsible for accepting, reviewing and deciding on applications submitted by asylum seekers.

As of 31 December 2015[2036] the number of refugees and humanitarian status holders residing in Georgia totals 1273 with 232 them having already been granted the status of the refugee based on the principle of prima facie[2037], 139 have the status of the refugee while 902 have the humanitarian status.

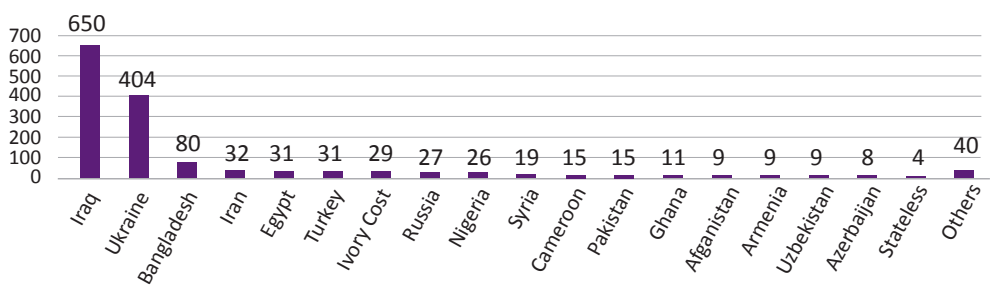
Statistics of the Asylum and humanitarian Status Holders



Most persons with refugee and humanitarian statuses are from Iraq, Ukraine, Russia and Syria forced to leave their respective countries of origin due to military actions and armed conflicts, and seek safe asylum in Georgia.

As for Asylum seekers, overall 1449 individuals referred to the Ministry of Refugees seeking asylum during the reporting period. Most of them are citizens of Iraq (650 individuals), Ukraine (404) and Bangladesh (80).

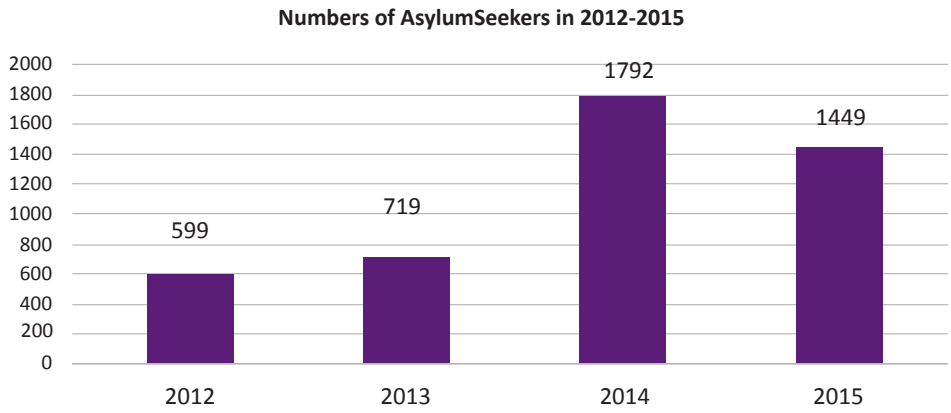
Statistics of Asylum Seekers by the Country of Origin



The number of asylum seekers in Georgia has been on increase since 2012 and hit its highest point in 2014 when 1792 persons sought asylum in the country.

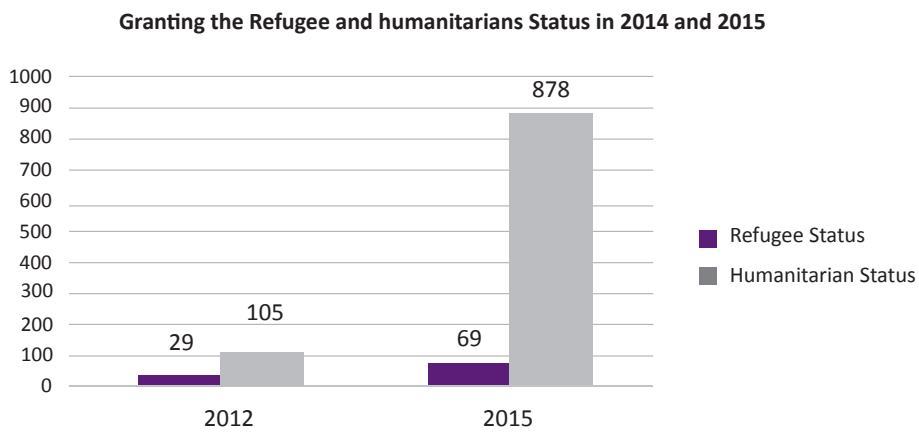
2036 Information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. Letter N1282/16, 27.01.2016.

2037 Latin: at the first sight

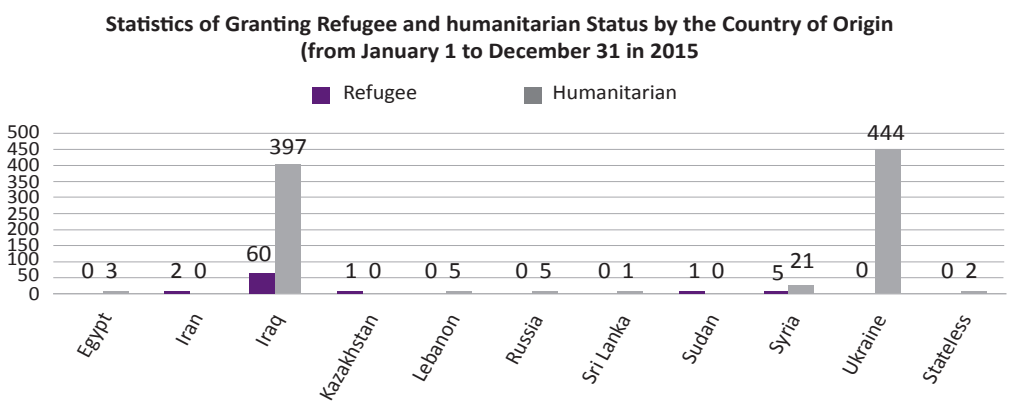


Positive Trends in Revision Procedures of Refugee and Humanitarian Statuses/Increased Rate of Granting Statuses

In comparison to previous years the number of those who have been granted refugee and humanitarian status has considerably increased in the reporting period. As of 31 December 2015 positive decisions were made on 75 per cent of reviewed applications as compared to only 37 per cent in 2014. Putting in numbers, 69 persons were granted the refugee status and 878 obtained the humanitarian status in 2015 while in 2014 only 29 applicants were qualified as refugees and 105 were granted humanitarian status. A change within the state asylum policy and improved procedures for granting asylum, as well as developments in Ukraine, deteriorated situation in Iraq and Syria resulting in an increase in the number of persons seeking asylum outside their home countries, have significantly contributed to improved trends outlined above.



Most of asylum seekers granted with the status were ctizens of Iraq and Ukraine.



The period from 2014 to 2015 was marked with the improvement of an asylum system and harmonization with EU standards. A rule of identification of asylum seekers on the state border, admission to enter the country, transfer and cooperation was developed and introduced. The rule was approved by a joint order of the Minister of Internal Affairs and the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (hereinafter referred to as "the joint order").[2038] A procedure for determination of the status of the refugee was further harmonized standards and recommendations laid down in the Geneva Convention on the Status of Refugees and its Optional Protocol of 31 January 1967.

A series of structural and procedural changes implemented in 2015 can be considered a positive trend. Respective changes were made to Order N100 on *the Procedure of Granting Refugee and Humanitarian Statuses* issued by the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. In order to improve a mechanism of interviewing asylum seekers, an electronic recording system for interviewing and filling out questionnaires was also introduced. The order provides details of the operation of a unit responsible for acquiring information on source countries as well as procedures for effecting revision of a high number of applications filed by asylum seekers to the Ministry.

Order N100 also defines an application form to be filled out and submitted by an asylum seeker, timeframe for the registration as asylum seeker and issuance of respective certificate, and a rule for the submission of identity documents.

Legal changes implemented in the reporting period are certainly positive steps forward. These changes are discussed in detail in the special report on human rights of asylum seekers, refugees and humanitarian status in Georgia.[2039]

There was no department or unit in the Ministry of Internally Displaced Persons from the Occupied Territories to be responsible for the quality of decisions or respective paperwork prepared by the Department of Asylum Issues and carry out monitoring. Therefore, the Public Defender welcomes a change to a statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees initiated by the end of 2015 and taking effect in January 2016. As a result of the above change two structural sub-units responsible for (1) determination of the status, and (2) control and trainings were created in the Department of Issues related Migration, Repatriation and Refugees.

LEGISLATIVE REGULATIONS AND THEIR RELEVANCE TO EU STANDARDS, ENVISAGED CHANGES AND EXISTING GAPS

Harmonization of national legislation with European standards and legal area is one of the priorities within the efforts aiming at EU integration. The Law of Georgia on the Refugee and Humanitarian Statuses adopted on 6 December 2011 determines a legal status of asylum seekers, persons with refugee or humanitarian status in Georgia, their rights and responsibilities, legal guarantees, social and economic guarantees of persons with refugee or humanitarian status, as well as grounds and procedures for granting, suspending and revoking of refugee or humanitarian status of asylum seekers in Georgia, and persons with refugee or humanitarian status. Even though the law reflects on the UN Convention Relating to the Status of Refugees of 1951 and rests upon its standards and principles for the definition of the refugee, family unity, protection of unaccompanied minors, non-refoulement, there are yet gaps which may prevent individuals from enjoying their rights and freedoms guaranteed by the law.

A new draft law on the international protection developed within the reporting period serves the purpose

2038 A joint order by the Minister of Internal Affairs of Georgia and the Minister of Internally Displaced Persons, Accommoddation and Refugees of Georgia N1033-N2975 (23 December, 2014).

2039 Available in Georgian at: https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view?pref=2&pli=1

of addressing these very gaps. The Public Defender hopes that the law will be adopted in the current year. Representatives of the Public Defender have been actively involved in the discussion process and therefore, an in-depth analysis of the law will be made during discussions in the Parliament. However, it may be briefly noted that the draft law introduces a new concept of "temporary protection' alongside with the refugee and humanitarian status which suggests that individuals entering the country in a large group be registered and granted a status of temporary protected person. The draft law also introduces concepts of "countries of origin' and "internal flight alternative' as well as a new term "sur place' etc. Definitions of "family members' and "derived status' for family members of individuals enjoying international protection also embedded in the law is also important in terms of the principle promoting family unification. In order to accommodate goals of the UN Convention on the Rights of the Child of 1989 a procedure, inter alia, for establishing the best interests of the minor has been outlined in the draft law.

The draft law takes into consideration EU Directive of 2011 on the standards of international protection (Directive 2011/95 of the European Parliament and the Council of 13 December 2011) and provisions of qualification directives of 2013 (Directive 2013/32 of the European Parliament and the Council of 26 June 2013). Unlike the existing legal framework, the draft law got even closer to the UN Convention relating to the Status of Refugees of 1951. More specifically, the draft law will regulate grounds for granting the status of international protection as well as exclusion and non-eligibility criteria for the above mentioned status, also the grounds for granting, terminating or revoking the refugee, humanitarian or international protection status.[2040]

In spite of the fact that the above mentioned draft law takes into consideration directives related to the international protection and provisions of the UN Convention relating to the Status of Refugees, remaining gaps need to be reviewed and responded. It should also be noted that the draft law also draws on recommendations included in the report of the Public Defender on the Situation in the Protection of Human Rights and Freedoms for 2014[2041] and the special report on the asylum seekers, refugees and persons with humanitarian status.[2042] Therefore, the present report will only focus on most significant gaps which have slipped through the changes rather than analyzing those gaps in-depth.

In spite of numerous positive changes, articles that need to be amended still remain in the draft law. For instance, a timeframe of a procedure for the determination of refugee or humanitarian status may take as long as six or nine months in the case of continuation as well as terms of revision of an appeal to court. These terms are quite lengthy and are believed to badly affect asylum seekers, especially those who have no source of income (with exception of those who live in reception facilities for asylum seekers and in addition to monthly allowance enjoy other benefits) to support themselves in a foreign country. The above recommendation has not been taken into consideration while developing the new draft law and therefore the timeframe for the revision of the application of the asylum seeker remains the same. It is important that the draft law explain specific reasons and circumstances under which a decision to extend the revision period shall be based on urgency. In addition, the law specifies that the first interview be scheduled within four months since the registration of the application which is unreasonably long period of time.

We are convinced that an article related to the right to demand international protection sur place, which is also introduced in the draft law, should be more specific and clear so that it does not contradict the UN Convention relating to the Status of Refugees of 1951.

Paragraph E of Article 3 (Chapter II) of the Law of Georgian on the Refugee and Humanitarian Statuses [2043] which provides grounds for declining an application for granting refugee status for state security reasons also

2040 Explanatory note to the draft law on international protection

2041 Available at: http://www.ombudsman.ge/uploads/other/2/2439.pdf

2042 Available at: https://drive.google.com/file/d/0B9BM3M8hbgAUb0FhZGRDdFNUMm8/view?pref=2&pli=1

2043 E) towards who there is a reasonable assumption that may compromise Georgian state security, territorial integrity, public order and law and order –Chapter II, Article 3 of the Law of Georgia on Refugee and Humanitarian Status. Grounds for declining application for refugee status

seems to be problematic. The Ministry's decision to apply to the aforementioned article rests upon a letter provided by the Counter Intelligence Department of the State Security Service. The examination of the results within the reporting period has revealed that the document developed by the Counter Intelligence Department of the State Security Service is not well grounded and does not include specific reasons which are important for making appropriate decisions. It is important that the above letter provide justification to the best of possibilities and reference be made to those factual grounds which do not represent classified information and/or divulging of which does not compromise security. Even though information related to the state security is confidential, nevertheless the state cannot refuse to the asylum seeker by ignoring requirements obliging the latter to provide explanation and adhere to the established procedures In the event of the responses provided by the administrative body lacking justification because of lack of knowledge of factual circumstances, there is no mechanism to ascertain whether or not the rights of the asylum seeker have been violated or have been exposed to discriminatory treatment of persons in equal conditions. While examining cases processed by the Ministry within the reporting period, representatives of the Public Defender found out that the above mentioned article had been applied to without appropriate assessment and no information was provided to the asylum seeker on a decision to reject their application. It should also be noted that changes made to the law in July 2015 provide a definition of the potential threat to the state security stipulates such cases "whereby there are reasonable grounds for believing that the asylum seeker, or refugee or humanitarian status holder has connection to a) armed forces of the country/organization hostile to Georgia's defense and security b) intelligence services of other countries c) Terrorists and/or extremists organizations d) other organized crime organizations (including transnational criminal organizations) and/or illegal turnover of armament, mass destruction weapons or their components'.[2044] However, after the introduction of the changes there was not been a case of the State Security Service issuing a negative conclusion within the reporting period. Therefore, aforementioned articles have not been referred to as grounds for rejection which was repeatedly mentioned by representatives of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. Importantly, providing basic information to asylum seekers is of utmost significance so that they can enjoy effective protection mechanism should the Ministry decides against granting them the status.

Another important issue which requires improvement and further elaboration is an appeals procedure for an individual-legal act issued by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and effective legal proceedings based on conclusions provided by the Counter Intelligence Department of the State Security Service. It is important that the above procedure be in line with a practice established in the European Court of Human Rights. While reviewing a case Liu and Liu v. Russia[2045] the Court tried to ascertain whether or not the national legislation contained effective protection mechanisms against misuse of power and discretion of the executive authorities while prosecuting justice. In this regard the Court reiterated that "even where national security is at stake, the concept of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence (if need be with appropriate procedural limitations on the use of classified information)'. The court discussed whether or not there were appeals mechanism available to review the decision by the executive authorities and question their assertion that the national security was at stake in this case. The Court argues that while it is important to take into consideration what the authorities deem as a threat to national security, the independent competent body should be able to respond to cases whereby the reference to the concept of national security lacks reasonable justification, common sense or reasonable basis. In the presence of such a definition, the police or other authorities can arbitrarily interfere in the rights enshrined in the Convention. Even though practices of the common courts have considerably improved within the reporting period and now judges, while reviewing legal-administrative acts on the denial of refugee and humanitarian status on security grounds, require confidential information from respective bodies, it is still

2044 Paragraph 3, Artice 25 of the Law of Georgia on Refugee and Humanitarian Status
2045 Decision N42086/05, Para. 49 of the European Court of Human Rights on the case Liu and Liu v. Russia.

necessary that the practice have irreversible character so that judges can scrutiny confidential information and ensure effective proceedings.

OVERVIEW OF THE FINDINGS OF THE MONITORING IN 2015

In the reporting period representatives of the Public Defender examined the cases of asylum seekers, refugees and holders of humanitarian status placed at the shelters operating under the penitentiary institutions of the State Border and the Ministry of Corrections, the reception center for asylum seekers, the center of temporary accommodation under the Ministry of Internal Affairs of Georgia, as well as cases of asylum seekers submitted to common courts.

In order to contribute to improved access to procedures for the admission to the territory of Georgia and shelter by asylum seekers the Office of the Public Defender of Georgia together with representatives of UN Association and the Office of the United Nations High Commissioner for Refugees implemented the monitoring of the state borders in accordance to agreed timetable. Unannounced monitoring of patrol police and its findings stand out as particularly important.

The monitoring visits were paid to the following border-immigration control department of the patrol police at the Ministry of Internal Affairs: Sarpi, Batumi Airport, Kutaisi Airport, Tsodna Lagodekhi), Dariani (Kazbegi), Potis Porti, Vale, Sameba (Ninotsminda), Tsiteli Khidi, Geguti, Sadakhlo, railway section Sadakhlo as well as the unit of border-immigration control Tbilisi Airport. The monitoring team visited structural units of Georgian border police (a sub-agency to the Ministry of Internal Affairs) including structural units, and border-immigration departments of the patrol police. Overall 21 visits were implemented throughout the year.

The visits revealed a series of problems observed with regard to identifying asylum seekers at the border and obtaining information about the latter, as well as with regard to supervision over the implementation of procedures established by the joint orders of the Ministers of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees and the Minister of Internal Affairs. More specifically, lack of understanding of established procedures upon the identification of the asylum seeker at the border by patrol police staff, obtaining information related to them as well as measures to be taken when the asylum seeker tires to cross the border from the occupied territories seems to be problematic. In this regard it was important to ascertain to what extent a foreign citizen seeking asylum and crossing the border (legally or illegally) can exercise their right to asylum.

Infrastructure of the premises of the border police and border checkpoints do not conform to the established standards demonstrated by the absence of separate rooms for interviewing asylum seekers/temporarily detained persons or individuals with specific needs. Only few checkpoints are in line with the modern standards. In most cases interviews take place in conference rooms or a room used by the chief of duty environment of which cannot ensure the protection of confidentiality. In such cases there are no rooms similar to the above mentioned ones, foreign citizens are kept in day rooms for border guards. It is important to place a traveler in conditions responding to minimum standards as upon the detention at the border it requires time and additional resources to obtain specific information related to the detention. Adherence to the standards is particularly important when asylum seekers are involved as, language assistance, and in specific cases, gender sensitive selection of the latter, which requires time and resources, is a must alongside other procedures.

A visa policy and access to visa procedures at the border is of utmost importance. A new law on the legal status of foreign citizens and stateless persons enacted on 1 September 2014 new visa regulations were introduced for citizens of a number of countries. New immigration rules had created problems and barriers for foreign

nationals willing to visit or live in Georgia. However, with the introduction of a new electronic visa portal (e-visa) obtaining short term tourism or business visas has become easier.

Findings of the monitoring mission have revealed that denying of entry to foreign nationals to the country on grounds of the lack of visa or appropriate documents required by the legislation is a frequently used practice. However, what is concerning in such cases is the fact that most of individuals who have been denied an entry to the country are nationals of Iraq, Syria and Iran. These individuals are citizens of those countries who, because of ongoing armed conflicts and exposure to the violation of human rights generate a large group of people in need of international protection.[2046] Statistics provided by the Public Information Unit of the Ministry of Internal Affairs of Georgia suggests that the number of individuals who were denied an entry to the country in 2014 totaled 8 405 including 217 nationals of Iraq, 401 of Syria while 509 were citizens of Iran.[2047] We believe that whenever an individual is denied an entry to the country for not having sufficient documentation, only after careful examination and scrutiny of the reason for leaving one's home country, should responsible body make a decision to deny requested entry.

As for the *monitoring of courts in terms of reviewing cases of asylum seekers*, the monitoring team found that common courts reviewed cases of asylum seekers from June to October 2015. The team requested decisions (city court - 58 decisions, court of appeals – 20 decisions, Supreme Court – 5 decisions). The team also monitored court sessions (city court - 13 sessions, court of appeals – 6 sessions). The monitoring of the common courts aimed at identifying strength and weaknesses of the justice system in relation to reviewing cases of asylum seekers through observing court hearings and examining cases retrieved from courts, as well as contributing to improved protection of human rights and rule of law through developing respective recommendations.

During the monitoring an attention was also paid to technical aspects of court sessions, which also influenced legal proceedings. The team identified problems related to ineffective communication (parties did not often know the date of scheduled sessions) resulting in postponing of the session. Low level of awareness of asylum seekers on procedural aspects of hearings seemed to be a frequent occurrence. The team's attention was caught by those cases whereby a party did not have any representative/lawyer and terminology used by the judge was not comprehensible especially when it came to explanations and replications. Even though there is no legally binding responsibility for providing explanations of the rights, however, it is important that parties be adequately informed on their rights so that they are able to clearly formulate what they have to say. In this regard a legal change related to legal assistance to be provided free of charge to asylum seekers, refugees and holders of humanitarian status taking effect in 2016 is expected to contribute to elimination of this kind of problems.

However, the most urgent issues that requires immediate response is the mechanism for appealing against negative decisions made by the Ministry of Refugees on the basis of conclusions provided by the Counter Intelligence Department of the State Security Service of Georgia. The monitoring team made a special emphasis on reviewing such decisions and court hearings ensured.

The European Court of Human Rights holds that the use of confidential information may become unavoidable when national security is at stake. However, this does make national authorities exempt form effective control of domestic courts when the former assert that a particular case involves threats to national security and elements of terrorism. There are techniques which can be employed which both accommodate legitimate security concerns about nature and sources of intelligence information and yet accord the individual with substantial measure of procedural justice.[2048] The aforementioned technique was introduced to the United Kingdom as a response to a decision by the court.[2049] Whenever a decision on deportation is made on the

2046 An interim report for 2014 of the United Nations High Commissioner for Refugees. Eglish language version: UNHCR Mid-Year Trends 2014, http://www.unhcr.org/54aa91d89.html, p.5.

2047 Letter N 713455 (22.03.2016) of Public Information Unit of the Administratio of the Ministry of Internal Affairs

2048 on the case Liu and Liu v. Russia

2049 Chahal v. The United Kingdom. N22414/93, 15 November, 1996. Para.131-132

grounds of national security and is based on confidential information, a court hearing where such information is to be presented, shall be closed with neither the claimant nor his or her legal representatives attending the session. However, a lawyer, examined and approved by security services shall protect interests of the clamant.[2050] While making decisions under similar circumstances, it is critical that court keeps a balance between national and individual security.

Analysis of the practice established by the European Court of Human Rights corroborates that authorities should take into consideration the following circumstances:

- Whenever the rights of an individual are restricted on the grounds of national security threats, they have the right to some kinds of guarantees against arbitrary decision
- Assertion by the executive authorities that national security interests might be at stake, does not make these authorities exempt from effective control which may involve a demand by the judiciary to examine information of confidential nature
- There should be techniques in place which can be employed to enable courts examine factual grounds for a decision presented by executive authorities and at the same time ensure that national security interests are not compromised

According to the national legislation judges of general courts have access to classified information[2051] based on which respective bodies make decisions on the inexpediency of granting the status. At the same time in light of decisions issues by the State Security Service of Georgia failing to provide any justification necessary to ensure effective discussion at the court, it is essential that judges request classified information kept at security services or other competent authorities, which served as grounds for denying an individual refugee or humanitarian status. This is the only way to ensure procedural justice and the protection of the right to fair trial.

The fact that neither claimant/appellant nor his/her representative has the access to materials which served as grounds for denial a status in the event of the court requesting classified information. A role of the judge and especially his/her endeavor to make decisions conforming to the principles of fair trial is of utmost importance in this regard.

One of the important piece of work undertaken within the reporting period was the monitoring of the situation of asylum seekers, refugees and humanitarian status holders placed at a shelter at penitentiary establishments of the Ministry of Corrections. In 2015 the monitoring team examined the situation of foreign nationals including asylum seekers, refugees and humanitarian status holders at penitentiary establishments N8[2052] and N5[2053].

The monitoring included visits to cells as well as individual interviews with all asylum seekers. Information related to inmates was provided by the Ministry of Corrections and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. However, it should be noted that the number and personal data of asylum seekers were not complete and did not match each other. Several asylum seekers and humanitarian status holders were identified by accident during the monitoring as they were missing from databases run by either ministries. Overall 35 visits were paid to penitentiary institutions within the reporting period. In accordance with the article 177 of Criminal Law of Georgia, in the course of detaining a foreign national, the prosecutor or upon his/her instructions, the investigator, shall notify the Ministry of Foreign Affairs of Georgia and respective diplomatic mission. However, in many cases it is strictly inexpedient and inadmissible to provide any kind of information to embassies of countries of origin when asylum seekers or refugees are detained. International law of human rights protects the privacy of all

2050 Anti-Terrorism, Crime and Security Act 2001, Part 4: Immigration and Asylum.
2051 Law of Georgia on State Secrets, Article 6
2052 Penitentiary establishment N8 is located in Tbilisi, Glani N7 microdistrict, at the 2nd km
2053 Penitentiary establishment N5 (for female inmates) is located in the village of Mtisdziri, Gardabani municipality

individuals and protects against arbitrary or unlawful interference.[2054] Whenever asylum seekers are involved, it is important to take necessary measures to that information concerning private lives of individuals cannot be accessed by an individual or a state and therefore used in a manner which violates the international law of human rights. According to the guiding principles on detention developed by the Office of the United Nations High Commissioner for Refugees (UNHCR) principles of general data and confidentiality should be protected in regards with the information related to asylum seekers including information on health status.[2055] Pursuant to the guiding principles, identity of detainees and detailed information concerning the detention should be recorded in a manner required by respective rules. However, there should be a balance to be struck between the access to such information and issues related to confidentiality. Provision of information to stakeholders, relatives and lawyers should adhere to the same rule. The following trends were observed while monitoring individual cases:

- Most of foreign nationals/stateless persons, asylum seekers, refugees and humanitarian status holders deem general conditions of detention facilities satisfactory and assess the attitude of the administrative as positive.
- Muslim inmates complain that they cannot eat food delivered to inmates because of religious reasons, while there is not much to select from at a local shop.
- Lack of language assistants in the facilities is deemed to be a serious problem. Beneficiaries who have no or little knowledge of Georgian, find it difficult to communicate with the administration. Yet another problem faced by the beneficiaries is the need for translation of statements and documents which the inmate wants to send. Furthermore, examination of individual cases revealed that it often takes as long as two months to get documents translated.

RECOMMENDATIONS

To the Government of Georgia, Parliament of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- Ensure the adoption of the new law on international protection in 2016

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia

- With the introduction of the new law on the international protection, cut the timeframe for reviewing applications submitted by asylum seekers to the Ministry and decision making on applications, established by the Law on Refugee and Humanitarian Status, Article 14.
- Individual administrative-legal acts issued on the denial of refugee or humanitarian status on national security grounds, to include appropriate justification and factual circumstances which do not contain classified information and/or the information compromising national security.
- Regularly update database of beneficiaries placed at penitentiary establishments

2054 United Nations General Assembly, Universal Declaration of Human Rights, 10 December, 1948, 217 A (III). Available at: http://www.refworld.org/docid/3ae6b3712c.html [Last accessed on 30 October 2015].

2055 Detention Guidelines: Guidelines on the detention criteria and standards relating to the detention of asylum seekers and alternatives to detention. Available at: http://www.unhcr.org/refworld/docid/503489533b8.html [Last accessed on 20 March, 2016].

To the Ministry of Internal Affairs of Georgia:

- Ensure adequate training on issues related to asylum for staff of border police, patrol police and respective units (operative-investigation unit). Greater attention should be paid to newly recruited staff of above mentioned services.
- Ensure interview and temporary detention rooms at the borders conforming to international standards.

To the Ministry of Internal Affairs of Georgia and State Security Service

- Ensure the provision of justification while making decisions on inexpediency of granting refugee or humanitarian status on grounds of national security, and where possible, provision of information to individuals denied the aforementioned rights, or their representatives.

To the Common Courts of Georgia

- Common courts to request and examine all information (including classified one) used as grounds for denial of refugee or humanitarian status, from the Counter Intelligence Department of the State Security Service of the Ministry of Internal Affairs of Georgia, while reviewing respective case
- Common courts to adhere to principles and standards established by the European Court of Human Rights while reviewing appealed cases of individual administrative-legal acts on denied status. Courts should always examine information and materials which served as grounds for decisions made by the Ministry.

To the High School of Justice of Georgia

- Ensure effective retraining of judges, assistant judges and candidates on issues of refugee law.

To the Ministry of Corrections:

- Update the database in order to ensure full information on foreign nationals/asylum seekers, refugees and humanitarian status holder prisoners.
- Ensure that language assistance services are available at the facilities in order to identify and respond to problems experienced by foreign citizens/stateless individuals/asylum seekers, refugees and humanitarian status holders in detention facilities.
- Take special measures to ensure awareness raising of the staff on asylum seekers, refugees and humanitarian status holders, and their rights.